

A P P E A R A N C E S

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Mr. Jerry Healy SC

Ms. Jacqueline O'Brien BL

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Mr. John O'Donnell, SC

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I N D E X

WITNESS: EXAMINATION:Q. NO:

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,
26TH MARCH, 2003 AT 11AM.

MS. O'BRIEN: Mr. John McQuaid, please.

JOHN MCQUAID, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MS. O'BRIEN:

CHAIRMAN: Please sit down, Mr. McQuaid.

Thank you very much for your attention and your
cooperation in preparing your statement.

MS. O'BRIEN: Good morning, Mr. McQuaid. Thank you
very much.

I don't think you have been here, Mr. McQuaid, during
the course of the evidence of other witnesses from the
Department, so I thought it might be of assistance to
you if I could just indicate how I intend to approach
your evidence. And what I propose doing initially is
opening and reading out your memorandum of intended
evidence, and in the course of doing that, if there is
any aspect of the answers that you want to clarify or
that you want to amplify in any way, please feel free
to do so.

Having done that, what I would intend doing, subject
to your agreement, is reverting back to certain
aspects of the answers that you provided and
discussing them with you in a little bit more detail.

And in the course of doing that, I anticipate that
I'll be referring to a small number of the documents

that have been produced to the Tribunal by the Department and have been opened very fully in the course of the evidence of other witnesses.

So I wonder, do you have a copy of your memorandum of intended evidence in the witness-box with you?

A. I do indeed, yes. That's the document which was prepared not by me, but based on information which I provided.

Q. Exactly. It was based on answers which you provided, I think, to two sets of written questions that were raised by the Tribunal. And the Tribunal has endeavoured to fuse the two sets of answers into, as far as it can, some kind of reasonable chronological order.

In your memorandum you state that you served as a director of Telecommunications and Radio Technology Division in the Department of Transport, Energy and Communications, subsequently the Department of Public Enterprise, from November 1994 to June, 1997. You were seconded from the Department to the newly established Office of the Director of Telecommunications Regulation, ODTR, on the 30th June, 1997. You left the Department and the ODTR in November, 1999.

And I think since then, Mr. McQuaid, you have been working as a consultant in the private sector; is that right?

A. That is correct.

Q. In the course of that consultancy, I wonder, do you provide any consultancy services to the Department?

A. I have provided some consultancy service to the Department in the past, in the area of underground telecommunications infrastructure.

Q. You say that you were a member of the evaluation committee for the competition to award the second GSM licence. With regard to the preparation of this response to the Tribunal's set of questions, you state that you relied mainly on your recollection of events which for some events were no longer clear and may not be accurate after more than six years. You did refer to some of the key documents in the Department's files during the preparation, but did not go through most of the files in order to validate your recollected responses. You did not have contacts with the other officials or ex-officials during the preparation of this response, except for a chance contact with Maev Nic Lochlainn who was working in the same building; is that correct?

A. Correct.

Q. And can I just ask you, in relation to the private consultancy that you are currently pursuing, whether you have provided any consultancy services to either Esat Digifone to Esat Digifone?

A. No, I have not provided any consultancy contracts at

any time to Esat Digifone.

Q. And I take it that you have provided no consultancy services to Telenor?

A. No, I have provided none to Telenor.

Q. And I take it also that you provided no consultancy service to Mr. Denis O'Brien?

A. No.

Q. Or to Persona, which was one of the consortia?

A. No.

Q. Or, do I take it also, to Irish Mobicall?

A. No.

Q. Thank you, Mr. McQuaid.

Some of the initial questions raised, Mr. McQuaid, in the Tribunal's questionnaire, related to a period of time before you joined the Department; so what I propose doing is to skip on directly to Question 5, which is on page 3 of your memorandum.

You were asked for details of all of your dealings with Mr. Michael Lowry on his appointment as Minister in relation to the GSM licensing process.

And you stated that you had no direct dealings with Michael Lowry in relation to the GSM licensing process, including the evaluation of the applications.

Your understanding was that the Minister would have dealt directly with Mr. Loughrey, Mr. Fitzgerald and Mr. Brennan on such matters. You would have met the Minister at events relating to the project, including

the public announcement of the result press briefing on the 26th October 1995, the grant of the licence on the 16th May 1996, and the launch of the Esat Digifone service on the 20th March 1997. Is that correct?

A. That is correct, yeah.

Q. So you had, just to clarify, you had no direct dealings whatsoever with the Minister during the course of the evaluation process, except that you would have met him, obviously, on those events?

A. No direct dealings at all.

Q. Now, paragraph 6, you were asked for your knowledge, direct or indirect, of or involvement, together with your knowledge of the involvement of any other person in the finalisation of the evaluation criteria and in particular, dealt with separately but initially you have answered that you were not directly or indirectly involved in finalising the evaluation criteria. From the files, it appears that the evaluation criteria were first set out in an aide-memoire dated November 1994 and a modified version was included in an aide-memoire dated February 1995, and also in the invitation document for applications. And you have pointed out again that you joined the Department in November of 1994.

One of the specific matters you were asked about in relation to the evaluation criteria, Mr. McQuaid, was the selection of an open-ended licence fee structure;

and again you have confirmed that you were not directly or indirectly involved in the initial decision to have an open-ended licence fee structure.

In relation to the second specific matter that was raised, which was the deletion of financial capability from the evaluation criteria, again you stated that you were not directly or indirectly involved in the deletion of financial capability from the first criteria in the aide-memoire dated February 1994 and also in the invitation document for applications. And is that correct?

A. That is correct.

Q. Paragraph 7, you were asked for details of all considerations which to your knowledge, direct or indirect, prompted or contributed to the Department's movement from its initial view of firstly favouring the publication of weightings attached to the evaluation criteria specified in paragraph 19 of the RFP document to its ultimate position of non-publication of weightings attached to the relevant criteria.

Secondly, favouring the placement of the emphasis of the evaluation criteria on the criterion of tariffs to its ultimate position in which the first priority was given to the credibility of business plan and the applicant's approach to market development, each of which was record in a memorandum from Mr. Jimmy

McMeel, dated 19th April 1995, and a note to the

Minister from Mr. David Doyle.

And in answer to that query, you have informed the Tribunal as follows: You say that commencement of your involvement with the project coincided with the second meeting of the GSM Project Group on the 6th March, 1995. You did not attend the first meeting of the Project Group and have not seen minutes of this meeting, you having joined the Department in November of 1994. And is that correct?

A. That is correct, yeah.

Q. In fact, I think maybe there were no minutes kept of that first meeting, but certainly the Tribunal has not been able to identify minutes of that first meeting from the files produced by the Department.

A. Okay.

Q. You then go on to inform the Tribunal that at the fourth meeting of the GSM Project Group, a letter from the Department of Finance dated 31st March re weighting of evaluation criteria was discussed, but no conclusion was recorded. It was further discussed at subsequent meetings in the context of the evaluation model.

You further state that the evaluation criteria was set out in descending order of importance in the invitation document for applications. And I think there you are referring to what we describe as the

RFP?

A. That is correct, yes, the initial document that was available to applicants, potential applicants.

Q. Yes. You go on to state that your recollection is that the associated weightings were a component of the evaluation model developed by Andersen Management International, and discussed at Project Group meeting number 7 on the 18th May and approved at Project Group meeting number 8 on the 9th June. You say that your further recollection is that Maev Nic Lochlainn was asked by the Chairman to put a note on the file which set out the percentage weightings corresponding to each evaluation criteria, and no copies were to be made in order to minimise the risk of this information becoming public.

You state that the weightings were revised in July 1995 on the advice of Andersen Management International, fee minus 3 percent, tariffs plus 3 percent, and there you make a reference to a memo of the 27th July, and you state that you agreed by correspondence with this revision. And is that correct?

A. I believe that is so, yes.

Q. And I think that reduced the weighting on the licence fee, which was the fourth criterion, from 14 to 11; and I think from evidence we have heard and documents we have seen, it increased the weightings on tariffs

by a corresponding 3 and increased it from 15 to 18?

A. That is correct.

Q. Now, to Question 8. You were asked for your role, if any, in the establishment of the Project Group and in the appointment of departmental and other officials to the Project Group.

You have informed the Tribunal that you were not directly or indirectly involved in the establishment of the GSM Project Group. And of course you couldn't have been, because you only joined the Department in November 1994, I think it was established, in early 1994. You state that the commencement of your involvement with the project coincided with the second meeting of the GSM Project Group on the 6th March 1995. You did not attend the first meeting of the Project Group and have not seen minutes of this meeting, having joined the Department in November 1994. You state that regarding the appointment of departmental and other officials to the Project Group, you may have approved the participation of Aidan Ryan, assistant staff engineer from your division, Telecommunications and Radio Technology Division, in the GSM Project Group. And is that correct?

A. That is correct. Now, Mr. Aidan Ryan was of course in the Department before I joined, and he may have had some involvement before I joined the Department.

Q. And in fact, just looking at the various reports of

the Project Group meetings, it appears that Mr. Ryan was a regular attender. I think he attended pretty well all of the meetings of the Project Group?

A. That is correct, yes.

Q. And he would have been, of course, I take it you would have considered him as a full member of that group?

A. He was, yes, yes, commencing with meeting number 2.

Q. Yes, commencing with meeting number 2.

Question 9, you were asked for your understanding of the role of the Cabinet or Cabinet Subcommittee in the GSM process, and in particular in the light of paragraph 2 of the Government decision of the 2nd March 1995: Namely, a recommendation be put by the Minister to Government in time for a final decision on the granting of the licence to be made by 31 October 1995.

And you answered that your understanding was that the Project Group were expected to make a recommendation to the Minister on the ranking of the applicants in accordance with the weighted evaluation criteria and that the licence should be granted to the applicant ranked first. You state that the final decision rested with the Minister and the Government, and it was for them to decide how they should reach such a decision, whether by Cabinet or Cabinet Subcommittee or otherwise. And is that correct?

A. That is correct, yes.

Q. Now, at paragraph 10, you were asked for your understanding of the RFP document issued by the Department in March 1995. And I think that's the document that we have been referring to as the invitation to applicants.

And in particular, paragraphs 3, 9 and 19, which provided as follows:

And you state firstly that your understanding was the RFP document issued in March 1995 was an invitation for applications for a single licence to operate a GSM mobile telephony service for 15 years, to be read in conjunction with the information memorandum issued at the same time. And is that correct?

A. That is correct, yeah.

Q. Now, the specific paragraphs on which you were asked to indicate your understanding were firstly paragraph 3, which provided that applicants must give full ownership details for proposed licensee and will be expected to deal with the matters referred to in the following paragraphs in their submissions.

And you inform the Tribunal that with regard to paragraph 3, the requirement to give full ownership details, your understanding was that applicants were required to state the intended principals in their consortium, together with the intended percentage ownership by each principal and background information on each principal.

You further understood that both the principals and the ownership profiles could change during the licence period between the submission of applications and the award of the licence, and the Project Group could not behave in an unreasonable way to such a development.

And is that correct?

A. That is correct, yeah.

Q. Can I just clarify, Mr. McQuaid, in relation to that matter, and your understanding; was that your understanding at the time of the evaluation process, that the ownership could change during the course of the process and that the Project Group would adopt a reasonable approach to that?

A. Well, companies, the companies who submitted applications could undergo sort of changes in their ownership during the period coincident with the evaluation of the tenders. So I think that was always a possibility.

Q. Was that a possibility as a result of the contents of the applications which were received, or do you recall whether that was contemplated as a possibility at the time that the RFP document itself was issued on the 2nd March?

A. No, I am just saying there what my kind of understanding was, and I am really qualifying what is in the first sentence there, that the applicants were required to set out their the ownership details at

the time that the applications were being submitted.

But I am just qualifying that by saying of course that could change.

Q. What I am really just trying to explore with you, just on this point, and to clarify with you, is whether you can recall that there was some discussion within the Project Group, perhaps at an early stage of the evaluation process, where you discussed what these paragraphs meant, what approach you should take to them, and how applications should be judged, based on the paragraphs?

A. No, I can't recall any discussion. This answer here is a response to the Tribunal's question.

Q. Though it's purely your understanding?

A. It is, yes.

Q. Because in fact, the paragraph itself, when taken in the RFP and read from what it states, is quite mandatory in its tone, isn't it? It says that they must give full ownership details. It doesn't appear on its wording to contemplate any possible change?

A. If you say so. I haven't got that document in front of me, but

Q. It's just quoted there at paragraph 3, "Applicants must give full ownership details of proposed licensee and will be expected to deal with the matters referred to in the following paragraphs in their submission."

A. Yeah.

Q. But you can't recall there being any discussion within the Project Group as to how those paragraphs of the RFP should be interpreted?

A. No.

Q. You can't?

A. No.

Q. The second paragraph on which the Tribunal specifically asked you for your understanding was paragraph 9: "Applicants must demonstrate their financial capacity and technical experience and capability to implement the system as successful and must include a business plan for at least the first five years in a complete technical proposal."

And you answered as follows: With regard to paragraph 9, the requirement for a business plan, a technical proposal, etc., your understanding was that applicants were required to provide a technical proposal and a matching business plan, having regard to the guidelines and calculatory assumptions for submissions of applications provided subsequently by the Project Group. In addition, 22 mandatory tables were required to be completed for each year 1 to 15, with data generated in the technical proposal and business plan. In addition to the above information, as well as other supporting information I take it what you meant to say there was that applicants must have demonstrated financial capacity, technical expertise and

implementation capability. Is that correct? There seems to possibly be some glitch in the typing of your answer there, Mr. McQuaid. I am just clarifying that what I think you meant to say was in addition to the above

A. In addition the above information as well as other supporting information

Q. Applicants must have demonstrated

A. Financial capacity, technical expertise and implementation capacity. Yes, I think that is correct, yes.

Q. Thank you.

Then the third matter on which again the Tribunal asked for your specific understanding was paragraph 19. "The Minister intends to compare the applications on an equitable basis, subject to being satisfied as to the financial and technical capability of the applicant in accordance with the information required herein and specifically with regard to the list of evaluation criteria set out below in descending order of priority."

And I don't intend to read them, but they are set out below. And your answer was that with regard to paragraph 19, comparison of the applications, your understanding is consistent with the approach adopted in the Evaluation Report.

And just to clarify that, I take it that it was your

understanding that the applications were to be evaluated by the Evaluation Group in accordance with those stated criteria and in the descending order in which they appeared?

A. That is correct.

Q. Now, at paragraph 11, you were asked for your understanding of the purpose of the protocol adopted by the Project Group at its meeting on the 6th March 1995 for dealings with potential bidders during the tender process, bearing in mind that all civil servants are bound by duties of confidentiality.

And you answered that your understanding of the purpose of the protocol relating to the approach to dealing with potential bidders during the tender process, as agreed at meeting number 2, was to explicitly agree the points of procedure for the GSM Project Group in order to ensure consistency in approach and avoid any misunderstandings or oversights during the tender process and to have a written record of such an explicit position.

And I am sure that the Project Group considered that it was necessary to bring into play a protocol of that type to ensure that the evaluation process was objective and fair?

A. That is correct.

Q. Now, at question 12, you were asked whether you discussed the protocol with the Minister or otherwise

advised the Minister regarding contacts with members of consortia, and if so, the import of the advice given.

And you answered that you did not discuss the protocol for dealing with potential bidders with the Minister or otherwise advise the Minister regarding contacts with members of consortia?

A. Correct.

Q. Paragraph 13, you were asked for your role, direct or indirect, together with your knowledge of the involvement of any other person in the appointment of Andersen Consulting as consultants to the Project Group.

And you stated that you did review the proposals received for the provision of consultancy services for the project with Martin Brennan in March 1995. You agreed to recommend I should say, "we agreed", you and Mr. Brennan, agreed to recommend Andersen Management International as the best proposal overall for the task of assisting the group with the competition process.

A. Correct.

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

You answer that the services to be provided by Andersen Management International were broadly in line

with the terms of reference set out in Annex A of their proposal, subject to the way in which the competition developed.

And just to clarify that, I take it that it was your understanding that Andersen Management were to be consultants to the Project Group and were to advise the Project Group in the course of the evaluation, but were not in any sense being delegated the task of conducting the evaluation?

A. No, the task of evaluation was not delegated to Andersens, but they did assist; they did provide assistance during the evaluation process.

Q. Yes. Now, at Question 15, you were asked for the identity of all persons who to your knowledge, direct or indirect, had any involvement of the setting of the weightings which were attached to the evaluation criteria.

And you answer that the evaluation criteria were set out in descending order of importance in the invitation document for applications. Your recollection is that the associated weightings were a component of the evaluation model developed by Andersen Management International and discussed at Project Group meeting number 7 on the 8th May, and approved at Project Group meeting number 8 on the 9th June. Your further recollection is that Maeve Nic Lochlainn was asked by the Chairman to put a note on

the file which set out the percentage weightings corresponding to each evaluation criteria, and no copies were to be made, in order to minimise the risk of this information becoming public. The weightings were revised in July, 1995 on the advice of Andersen Management International, fee minus 3 percent, tariffs plus 3 percent, and you refer to the memo of the 27th July, and you agree by correspondence with this revision. Based on your recollection of events, the members of the Project Group and Andersen Management International staff would have had sight of the evaluation model.

And below that, Mr. McQuaid, in your reply, you set out a very helpful table; and I don't know if we can just put that table, which is on page 11, the first part is on page 11 of your memorandum, which is at Divider 3 of Book 35, on the overhead projector.

Sorry, there may have been an error in the transcript, in that meeting number 7 was on the 18th May.

That's just the first page that's page 11 of your memorandum, and shows the first part of the table that you set out. And I think on the left-hand column, Mr. McQuaid, you have set out each of the evaluation criteria per the RFP document; is that correct?

A. That is correct. They are the primary evaluation criteria as set out in the evaluation document in descending order of importance.

Q. And then, I think, in the second column, you have set out the agreed weighting of each of those criteria?

A. That is correct, yes.

Q. And I think in the case of the tariffing and the amount that the applicant was prepared to pay for the right to the licence, you set out the initial weighting in brackets, and then the revised weighting, which is

A. That is correct.

Q. which was set after the 27th July?

A. That is correct. 15 went up to 18 and 14 went to 11 as a consequence of the capping of the licence fee.

Q. Then I think in the third column, you have set out each of the dimensions which was linked to each of the separate evaluation criteria; isn't that right?

A. Yes. These are the dimensions which in the Andersen in the evaluation model proposed by AMI, which, as it were, meshed in with the primary evaluation criteria.

Q. Yes, and then in the final column, I think you show the percentage weighting of each of those separate dimensions based on 100 as a percentage?

A. That is correct, yes. These were the weightings which were used in the actual evaluation model and evaluation process.

Q. And I think I am correct in thinking, am I not, that much of that information has been taken by you

directly from Table 17 in the final version of the

report; is that correct? I think it is

A. Yes, I think that's probably correct.

Q. Nothing really turns on it; it's just to clarify it.

A. I think I did.

Q. I am not criticising

A. There was also an evaluation model produced by Andersens. Now, I have not seen that evaluation model since the whatever meeting we discussed it at, so it's pretty hazy in my mind at this stage.

Q. Of course, no, I fully understand that.

And can I just refer you briefly, and we'll come back to it, and I might discuss this with you in a little more detail when we look at the model; but you'll see in the case of the first evaluation criterion, credibility of business plan and applicant's approach to market development, that the agreed weighting was 30%?

A. Correct.

Q. And you see there that that was made up of three separate dimensions: Market development, financial key figures, experience of the applicant. And each of those was weighted equally at 10%?

A. Correct.

Q. Now, it appears from the evaluation model that we have seen, and possibly you will have a chance to look at it at lunchtime, but on the 9th June, when the

evaluation model was actually approved, that those constituent weightings of credibility of the business plan, i.e. the weightings attached to market development, financial key figures and experience of the applicant, were actually revised, and their relative weighting appears to have been changed. And it appears, from that evaluation model that was approved, that market development was actually dropped to 7.5, financial key figures were increased to 15, and experience of the applicant was left at 10. For some reason, and as a result of possible confusion, and indeed confusion right up to a very late stage in the process, it seems that at the 11th hour, when the final weightings were being applied, that the initial weightings proposed in the draft evaluation model were actually applied to those three dimensions. That's not something that you were

A. I certainly can't shed any light on that particular detail. The other thing I would say, as well, is that I was not involved in the evaluation of those particular dimensions.

Q. Well, what I might do, Mr. McQuaid, is that when we are looking at some of the documents, I might refer you to it, because where you might be able to assist us is in relation to the dimension of coverage, because I think you were involved in the sub-groups in relation to coverage?

A. That is correct, yes.

Q. You may be able to shed some light as to how this happened or how it occurred in the course of our further discussion?

A. Right.

Q. Oh, yes, can I just clarify one other matter with you.

If I could just move on now to Question 16.

You were asked for the manner in which the weightings were devised, and you said that you were not directly or indirectly involved in devising the evaluation criteria. From the files, it appears that the evaluation criteria were first set out in an aide-memoire dated November 1994. A modified version was included in an aide-memoire dated February 1995, and also in the invitation document for applicants.

You state that your recollection is that the associated weightings were a component of the evaluation model developed by Andersen Management International and discussed at Project Group meeting number 7 on the 18th May and approved at Project Group meeting number 8 on the 9th June, and again you refer to the revision of the weightings by the plus and minus 3.

Paragraph 17, you were asked for the date on which and person by whom you were informed of the individual weightings.

And you answered that your recollection is that the

associated weightings were a component of and could be deduced from the evaluation model developed by Andersen Management International and presented and discussed at Project Group meeting number 7 on the 18th May and approved at Project Group meeting number 8 on the 9th June.

Question 18, you were asked for the identity of all persons who to your knowledge, direct or indirect, were informed of or otherwise aware of the weightings, and the source of their knowledge.

And you have answered, based on your recollection of events, the members of the Project Group and Andersen Management International staff would have had sight of the evaluation model and would have been able to deduce the weightings corresponding to the individual evaluation criteria.

You did not at any time disclose this information to any other individual outside the group. You go on to state that other members of the Project Group may have, in the course of their duties, disclosed the weightings to persons outside the group, but you have no evidence of this. Is that correct?

A. That is correct, yes.

Q. Can I just clarify one matter with you. You have stated there that other members of the Project Group may have, in the course of their duties, disclosed the weightings to persons outside the group but that you

have no evidence of this. I am just wondering, do you have any information or are you aware of any knowledge short of evidence that might suggest to you that other members, albeit in the course of their duties, might have disclosed the weightings to persons outside the group?

A. No, I don't have any specific information, no.

Q. I see.

Question 19, you were asked for details of all steps taken by the Project Group to protect the confidentiality of the weightings.

You have answered that your recollection is that Maev Nic Lochlainn was asked by the Chairman to put a note on the file which set out the percentage weightings corresponding to each evaluation criteria, and no copies were to be made and circulated, in order to minimise the risk of this information becoming public.

You state that regarding the evaluation model from which the individual criteria weightings could be derived, the confidential nature of the document was emphasised the Project Group meeting number 7 before the presentation of the model by Anderson Management International. Furthermore, it was agreed that only three copies would be left in Dublin, in the hands of Fintan Towey, Sean McMahon, and Jimmy McMeel, and that lock-and-key security would apply at all times. And I think we have seen that from the reports?

A. From the minutes of the meetings, yes.

Q. At Question 20, you were asked for your role in and knowledge, direct or indirect, of the intervention of the European Commission, including the manner in which the intervention was resolved, the capping of the licence fee at IR $\text{€}15$ million, and the reweighting of the evaluation criteria in the light of the capping of the licence fee.

And you have informed the Tribunal that you had no involvement with officials in the European Commission with regard to their intervention on the licence fee issue and the subsequent resolution of that issue which resulted in the capping of the licence fee at $\text{€}15$ million. However, you were briefed on the position by Mr. Brennan at Project Group meeting number 7 and number 8. I think we have seen that again in the reports of the Project Group meetings.

And again you refer to the revision of the weightings in July and the manner in which that revision was effected.

Question 21, you were asked for details of all information provided to applicants at any time prior to the 14th July 1995 in connection with a suspension of the evaluation process, including in particular the following:

1. The manner in which the Department hoped to resolve the Commission's objection to the auction

element of the competition.

2. The manner in which the Department hoped to resolve the Commission's concerns regarding the transparency of the evaluation process.

3. The date to which it was likely that the process would be deferred.

4. Any other matter relevant to or touching on the evaluation process.

And in relation to that, you have informed the Tribunal that you were not involved in any communications with the applicants during the period referred to as the suspension of the evaluation process, and that that matter was handled by Mr. Martin Brennan and by his staff.

A. That is correct.

Q. Question 22, you were asked for your understanding of the evaluation model developed by sorry, the evaluation model adopted by the Project Group, and in particular,

A. The qualitative and quantitative approaches.

B. What these approaches entailed.

C. The distinction between the quantitative and qualitative approaches.

And you have answered as follows: The supplementary memorandum for the information in respect to applicants issued to applicants after the publication of the initial invitation documents included a set of

tables to be completed by applicants, appendix to Annex 2, with numerical information. And I think we have described those, and they have been discussed here as the mandatory tables?

A. The mandatory tables, yes, I think they were referred to as that, all right, yeah.

Q. This information was processed by Andersen Management International using their quantitative evaluation model to provide first-cut scores on the applications.

While it would not have been correct to rely on these scores per se because the numerical information was taken at face value and important aspects which could not be quantified numerically could not be included, the results provided a useful input for the more rigorous qualitative evaluation.

You go on to state that the qualitative evaluation was carried out by sub-groups drawn from Andersen Management International and the Department's teams, and each sub-group agreed on a number of indicators at the beginning of the evaluation session, and by a process of discussion and consensus, agreed a grade A, B, C, D or E for each indicator. In the case of the evaluation sessions in which you participated, the relevant percentage weightings of each indicator were also agreed before the overall scores for each applicant were computed at the end of each session.

You state that all applicants were given an A score

for the dimension 11: licence payment. That's presumably when the licence payment was capped at $\frac{1}{2}$ 15 million, and I think each applicant nominated a licence fee of 15.

A. Correct.

Q. You go on to state that the final score was arrived at by aggregating the scores for each of the 11 dimensions using weightings corresponding to the agreed weightings for the evaluation criteria as per invitation document to applicants. In this regard you strongly argued that the final aggregation of scores should be carried out numerically for the avoidance of any doubts, and this was done in Table 17 of the Evaluation Report.

And you go on to state then that the leading application had a score of 432, with a clear margin of 22 points over the application ranked second.

And I think you have set out again, the same table that you set out earlier in your replies to the queries raised by the Tribunal?

A. That is correct.

Q. Can I just clarify one or two matters in relation to your answer to that question, Mr. McQuaid, if you wouldn't mind.

In relation to the qualitative evaluation I think later in your memorandum we'll come to it you have indicated that you were actually a member of the

sub-groups that evaluated a number of the criteria; I think the technical aspects criteria?

A. The technical aspects I was a member of four sub-groups, and I have a rather vague recollection of a fifth one, performance guarantees.

Could I also say as well that my comment there in relation to how the qualitative evaluation was carried out was really based on my experience at the evaluation sessions which I attended, and I assume that a similar process was used at the other evaluation sessions, which I didn't attend.

Q. Of course. You could only have knowledge of what happened at the sessions you attended.

A. That is correct.

Q. Could I just clarify with you, and again, we may come back to it further when we are discussing matters in more detail. Can I take it that the first step that you made in these groups was to define your indicators?

A. That is correct, yes. We had flip charts and whiteboards, and we listed the indicators and the applicants A to F, yeah.

Q. And when you defined those indicators, which members of the group would propose them?

A. Well, I think we did the indicators were proposed by AMI, by Andersen Management, and we also had the evaluation model as well, which we had previously

discussed at the project meetings.

Q. So having defined the indicators, do I take it, then, that you discussed each application in terms of each defined indicator, and you then graded each application on that indicator?

A. That is correct, yes. We also had, as well, the mandatory the information provided in the mandatory tables, and the results of the number-crunching which was done on those mandatory tables by Andersen which was referred to as the quantitative evaluation, and that formed an important input to our evaluation process.

We also had, as well, the tender documents sorry, the proposals from each of the six applicants, and of course we had read the sections of the proposals beforehand which pertained to the particular dimension in question.

Q. And then you graded each application from A to E?

A. That is correct. We scored them on the basis of either A, B, C, D or E, in descending order.

Q. And can I ask you, then, after you graded them, was it then that you decided on the relative weightings of the indicators?

A. Yes, it was. I think we probably had a discussion on this, and you can do this two ways: You can decide at the beginning or you can decide at the end on the relative weightings. Now, if you decide at the end,

as we did, we felt that one was better informed at the end, one had a better feel for the information, because one had spent some hours going through the details and discussing it among sort of among ourselves as well, so we had a better feel for the relative importance of the indicators at the end than at the beginning, when we were coming in cold to it.

Q. So the very last step in the process of the sub-group evaluation was to actually weight the relative the various indicators and then to aggregate the grades?

A. That is correct, yes. So we did that by converting the scores, A, B, C, D and E, to numerical values, 5, 4, 3, 2 and 1.

Q. Did you actually do that in the sub-groups themselves, Mr. McQuaid, I wonder?

A. We did, yes. In the sub-groups which I participated in.

Q. In which you participated in?

A. Yes.

Q. Because you have said there in your reply that you strongly argued that the final aggregation of scores would be carried out numerically, for the avoidance of any doubts, and that that was done in Table 17 of the Evaluation Report.

I'll just tell you why I raise that with you. Mr.

Martin Brennan, in his evidence to the Tribunal,

indicated that he attended a meeting in Copenhagen on

the 28th September. Mr. Fintan Towey was also at that meeting, Mr. Michael Andersen, and various other personnel from Andersen Management International. And the purpose of that meeting seems to have been to score the final aspects, the ones that you weren't involved with, and to draw together what appeared to be the ranking on the evaluation process. And Mr. Brennan said that he looked at the table showing the aggregation of the grades and that he found it difficult to actually see the result, and he said that in the course of that meeting, that it occurred to him that the sensible way of doing this was to treat the grades, instead of being A to E, being 5 to 1, and to apply the weightings to those grades; but he didn't suggest to us that that was an operation that had ever been conducted at sub-group level.

A. Yeah, I think we are talking about two different events here. What I am talking about here is the in response to your question, is how we conducted the scoring during the evaluation sessions of individual dimensions which I was involved in. What you are going on to there, then, is how the final how the bottom-line scores for each dimension were aggregated to arrive at the total final score for each applicant for the competition.

Q. I suppose what I am just trying to explore with you is this: that the technique and the operation that seems

to have been carried out at your sub-groups was exactly the same operation that Mr. Brennan decided to carry out on the 28th September. And I am just wondering, did you discuss with him at all that it was an approach that had been adopted in your sub-groups of converting grades to numbers and then applying the weightings? Do you recall?

A. I don't recall any specific discussion along the on those lines, no.

Q. And can you just assist me on one final matter on that, and again, when we are discussing the sub-groups and discussing the documents, we might come back to it again; but do you recall that that operation of converting grades to scores and applying the quantitative weighting, was that operation undertaken at the initiative of Mr. Andersen as consultant, or would it have been your own idea?

A. I think, as I recall, it resulted from our group discussions during the evaluation session.

Q. Right. And you remember those you actually have a recollection of those discussions?

A. Not not in detail, no, but I think there generally was we did face the issue of the relative importance, you know, how do we address the relative importance of each of the elements in a particular dimension during an evaluation session; and we recognised and we recognised that some elements

were more significant than others.

Q. And that presumably would have been reflected in the weighting that you attributed to those elements?

A. That meant, then, that we had to have a way of dealing with it, and we dealt with it by converting once we had scored in terms of A, B, C, D and E, once we had scored each of the individual elements for each of the applicants, we had a matrix of scores, we then have to aggregate those to arrive at a final score. And we did that by converting them to numbers.

In fact, as I recall, Mr. Marius Jacobsen did the calculations on probably on the whiteboard or flip chart to in order to aggregate the individual scores for each element to arrive at the final score for each applicant for that particular dimension.

Q. Is that because there was a difficulty in applying numerical weighting to grades?

A. No.

Q. Well, I am just not quite clear, then, why you would have done it, because you had grades of A to E; you wanted to aggregate those grades, and you wanted to apply a weighting to them. Why would you convert A to E to 5 to 1 and then apply the weightings unless there was some inherent difficulty in applying a numerical weighting to a grade?

A. The reason we did that was because, if you had grades of A, B, C, D or E for each of the take a

particular applicant, and if there were five elements being five individual elements being scored, and let's say he got an A for one and a B for the next and an A and a C and a D, well, each of those elements had different weighting of importance.

You had to have a method to come up with a final grade, the grade being A, B, C, D or E, so the method we used was to convert the A, B, C, D and E to numbers to do the arithmetic and then convert and then add up the numbers and get a final the final bottom-line score for each applicant numerically and then convert it back to a grade.

Q. So in fact, what you started off, just to clarify, is that your A to E, you converted into 5, 4, 3, 2, 1?

A. Correct.

Q. You apply the numerical weighting?

A. Correct.

Q. You aggregated what was then scores?

A. Yes.

Q. And then you converted that score back to a grade?

A. Correct.

Q. So in fact I think maybe you would agree with me what I was asking you earlier, is that the reason that you undertook this exercise of conversion from grades to scores and back from scores to grades was because of the mathematical impossibility of weighting grades of A to E and then aggregating them?

A. The difficulty of aggregating them; not weighting them, but aggregating them, yes. You had to have a method to do it.

Q. What I thought I might do later, Mr. McQuaid, is that you were a member of the sub-group on coverage, and we have some documents in relation to that sub-group.

And also I think a document, a record that you might have had in relation to the aggregation of the technical aspects indicators, and I thought we might come back to those in the course of our discussions.

So maybe at lunchtime, you might be able to have a look at them?

A. Very well.

Q. Now, Question 23 on page 18. You were asked for your involvement, if any, in the sub-groups which conducted the qualitative evaluation. If you had such an involvement, the sub-groups of which you were a member and details of the precise manner in which the sub-groups evaluated the entrants.

And you have answered that you were a member of the sub-groups that evaluated the dimensions

A. Sorry, what page are you?

Q. Page 18.

A. Sorry, which question?

Q. Question 23.

A. Thank you.

Q. You were asked for your involvement, if any, in the

sub-groups which conducted the qualitative evaluation.

If you had such an involvement, the sub-groups of which you were a member and details of precise manner in which the sub-groups evaluated the entrants.

You answered that you were a member of sub-groups that evaluated the dimensions, radio network architecture, network capacity, coverage and frequency efficiency.

You also have an unclear recollection of also being in a group that evaluated performance guarantees as it was grouped under technical aspects. You say that the applications were qualitatively evaluated in the sessions in which you participated in a manner as described in Answer 20. And we have dealt with that already.

Question 24, you were asked to provide full details of the following:

1. Details of all queries raised by the Department in the course of Esat Digifone presentation on the 12th September, 1995, regarding the financing of Esat Digifone consortium.
2. Details of all queries raised by the Department in the course of the presentation addressed to the funding of Communicorp's equity participation in Esat Digifone.
3. Details of all queries raised by the Department in the course of the presentation regarding the letter of comfort provided by Advent dated 10th July 1995 and

appended to the Esat Digifone application.

4. Details of all queries raised by the Department in the course of the presentation regarding the terms governing the offer of $\text{US}\$120$ million to fund Communicorp's equity participation in Esat Digifone as referred to in the letter of 10th July 1995 from Advent International to the Department.

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

And you have answered that the presentations by each of the six applicants to the evaluation committee in September 1995 were recorded on magnetic tape. The details of queries raised by the Department and AMI in the course of the preparation will be contained on these tapes. You understand that the Department has to date been unable to find these tapes.

I think you may know, at a late stage in the Tribunal's work, the Department was in fact able to find those tapes. And I don't know if you have had an opportunity of either listening to the relevant presentations or reading the transcript.

A. No, I haven't, no.

Q. There may be one or two matters that I refer to you, but if I do, I'll have a copy of the transcript for you, Mr. McQuaid.

Question 24, you were asked to please indicate the following:

1. Whether the Department requested the Esat Digifone consortium at any time prior to the 25th October to provide the Department with a copy of the offer of 30 million facility to Communicorp by Advent International referred to in the letter dated 10th July 1995.

You have informed the Tribunal that you were not involved in evaluating the funding, financing aspects of the bids between the 4th August 1995, receipt of bids, and 25th October, 1995, public announcement of result, and cannot recall any request by the Department to Esat Digifone consortium to provide a copy of the offer of IR 30 million facility to Communicorp by Advent International as referred to in a letter dated 10th July, 1995.

You were asked whether a copy of the offer was provided to the Department, and clearly you can't assist the Tribunal in relation to that.

You were asked whether any inquiries were made by the Department at any time prior to the 25th October 1995 to the terms governing such offer, and if so, when and by whom, and kindly identify where such inquiries were recorded. And again you have reiterated that you were not involved in that aspect of the evaluation.

And again, if such inquiries were made, that that's

not applicable, given that you were not involved.

Just moving on to Question 26. You were asked to please provide details of supplementary analysis conducted in respects of Advent, Communicorp and Sigma as referred to in the minutes of the 11th meeting of the GSM Project Group on the 14th September 1995 and the result of analysis.

You state that the supplementary analysis referred to in the minutes of the 11th meeting of the GSM Project Group as: financial analysis concerning Sigma, Advent were carried out by AMI, and that the results of their analysis are included in Appendix 10 of the Evaluation Report.

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

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

sensitivities.

And you have informed the Tribunal that for each evaluation session in which you participated, the scores were recorded by Andersen Management International on a flip chart or whiteboard. After the evaluation sessions, Andersen Management International staff drafted the respective sections of the Evaluation Report first draft corresponding to each dimension and included the recorded scores. This represented the outcome of the quantitative evaluation sessions.

Would I be correct in thinking that you probably meant "qualitative" there, rather than "quantitative"?

A. The outcome of the qualitative, that is correct, yeah.

Q. You state further that for each evaluation session in which you participated, no difficulties were encountered during the evaluation which resulted in a situation where it was not possible to reach a consensus on the scores for each application.

You state that the numerical information provided by applicants in the mandatory tables was processed by Andersen Management International using their quantitative evaluation model to provide first-cut scores on the applications. While it would not have been correct to rely on these scores per se, because the numerical information was taken at face value, and important aspects that could not be quantified

numerically could not be included, the results provided a useful input for the qualitative evaluation.

You state that the qualitative evaluation was more rigorous and holistic evaluation than the quantitative evaluation and fully covered the evaluation criteria as per invitation document to applicants.

You state that for each evaluation session in which you participated, no factors were explicitly excluded from the evaluation process such as sensitivities, credibility and risks were applicable, and it would not have been correct to score an attribute such as risk twice. In addition, the evaluation criteria did not include explicit criteria for sensitivities, credibility or risks, but some of criteria included some of these attributes, e.g. credibility of business plan and applicant's approach to market development.

Now, at Question 28, you were asked whether you were kept informed of the trends and/or ranking emerging from the evaluation process during the course of that process, and if so, the precise matters of which you were informed, by whom you were so informed, and when you were so informed; if you were so informed, the identities of all persons to whom you relayed any such information.

You have answered that regarding the dimensions that you were involved in evaluating qualitatively, you

were fully informed on emerging scores. Regarding the dimensions that you were not involved in evaluating qualitatively, you were not informed on emerging scores and did not have sight of these scores or the overall scores for each applicant based on the respective sum of scores for each dimension until you received a copy of the first draft of the Evaluation Report dated October 3rd, 1995.

Can I take it therefore, Mr. McQuaid, from what you are saying, that there wouldn't have been informal exchanges between as far as you were concerned, at least between members of the Project Group outside of Project Group meetings in relation to the results emerging from the process?

A. Not in my case, anyway.

I should add that I was in a different building and had some remove from 44 Kildare Street.

Q. I think you were on the other side of the Quays, in fact?

A. I was in Cathal Brugha Street. So I was over there, I had my own work to do, so I wasn't meeting informally meeting other members of the Evaluation Group apart from Aidan Ryan, who of course was on the same he was on the same in the same evaluation sessions as myself.

Q. You wouldn't have been in the habit of meeting Mr. Brennan on a daily basis, or Mr. Towey, or indeed Mr.

McMahon or Mr. O'Callaghan?

A. No, Mr. McMahon was in other building, in Ely Place.

Q. Yes.

Now, at Question 29, you were asked the date or approximate date on which and the person by whom you were informed of the final result of the evaluation process.

You stated that the qualitative evaluation sessions which you attended were carried out in Copenhagen between the 7th to the 9th September, and the oral presentation by applicants took place in Dublin between the 11th and 14th September. At that point you were familiar with the scores of dimensions which you evaluated. When you received a copy of the first draft of the Evaluation Report dated October 3rd, 1995, on or soon after October 3rd, you had, for the first time, sight of the overall scores for each applicant based on the respective sum of scores for each dimension arising from the qualitative evaluation sessions. Is that right?

A. That is correct.

Q. Can I take it therefore that we know that Mr. Brennan, Mr. Towey went to Copenhagen on the 28th September; we know that Mr. Brennan was back in the Department on the 2nd October. But can we take it that he did indicate to you in any informal way what had been the outcome of his meeting in Copenhagen on

the 28th?

A. Well, the next project meeting, as I recall, was on the 9th; is that right?

Q. That's correct.

A. The 9th October, so I would have met Mr. Brennan on the 9th October. Now, I can't recall whether I received the draft copy beforehand or at the meeting, and if I received it beforehand, how soon beforehand. If it had been beforehand, it was obviously sometime between the 3rd and the 9th October.

Q. Well, I think we know from the documents available to us that in fact the first draft Evaluation Report didn't physically arrive into the Department until the 4th, which was the Wednesday.

A. Okay.

Q. So it would have been sometime, I think, between the Wednesday and the Monday, if you received a copy of it in advance of the meeting on the 9th.

A. That was correct, yeah.

Q. We also know that in fact the members of the Regulatory Division that served on the Project Group, Mr. O'Callaghan and Mr. McMahon, did not receive a copy of it before the meeting on the 9th.

A. Okay.

Q. At Question 30, you were asked for the approximate date on which you were furnished with a copy of the first draft Evaluation Report.

And you have answered to an extent, we have discussed it already, but your formal answer was that the first draft of the Evaluation Report was received in Dublin on or soon after the 3rd October and was discussed at Project Group meeting number 12 on the 9th October. Your recollection is you received a marked copy of this draft.

When you say a marked copy of the draft, Mr. McQuaid, do you mean a draft on which there were manuscript annotations which were not made by you?

A. No, what I mean is that my name was marked on each page of the copy.

Q. I see. And is that your recollection, clear recollection of the first draft of the 3rd October, that your name was also set on each page?

A. Sorry, could you repeat that again?

Q. Is that your recollection in relation to, clear recollection in relation to the first draft, the draft of the 3rd October, which was discussed at the meeting of the 9th October, that it was a copy that had your name marked across each page? Or could it have been the second draft of the 18th October? Perhaps you received marked copies in relation to both drafts, but it's not clear, certainly from the documents that the Tribunal has seen.

A. Well, I am just basing that on my recollection. I can't say for certain now. But that's my

recollection, that copies were marked. But I can't

recall whether all drafts were marked.

Q. Very good.

Now, Question 31, you were asked for the identity of all persons to whom access was given to the draft evaluation dated 3rd October between the 4th October 1995, when the draft report was received by the Department, and the 9th October 1995, when the report was discussed at a meeting of the GSM Project Group.

And you answer that the first draft of the Evaluation Report, dated October 3rd, 1995, was received in Dublin on or soon after this date and was discussed at Project Group meeting number 12 on the 9th October.

Your recollection is that you received a copy of this draft and shared the document with Mr. Aidan Ryan, assistant staff engineer from your division, Telecommunications and Radio Technology Division, who was a member of the GSM Project Group. The responses from the other officials should confirm the other respective persons who had access to the first draft.

Question 32, you were asked for details of all meetings and discussions which, to your knowledge, direct or indirect, took place between officials or between officials and other persons or any other discussions regarding the content of the first draft Evaluation Report of the presentation of the material comprised in the report or any other aspect of the

report between the 4th October 1995, when the report was received, and the 9th October 1995, when the report was discussed by the Project Group for the first time.

And you say that you do not recall any formal meetings or discussions regarding the content of the draft Evaluation Report before the 9th October. You say that you were primarily concerned with the sections that covered the dimensions that you were involved in evaluating with Mr. Aidan Ryan, and the staff from Andersen Management International; in particular, you wanted to ensure that the draft text properly reflected the points that were discussed during the evaluation sessions and the scores awarded. In that regard, you may have had discussions with Mr. Aidan Ryan, Mr. Michael Andersen, Mr. Marius Jacobsen, and Mr. Ole Feddersen, before the 9th October 1995; is that correct?

A. That is correct, yeah.

Q. That of course will be predicated on you having received the draft before the 9th October?

A. That is correct, yeah.

Q. At Question 33, you were asked for details of your views regarding the draft Evaluation Report, together with details of your understanding of the contents of the report, and in particular, the following:

A. The manner in which the issue of financial

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

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

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

D. The overall presentation of the material.

And you have informed the Tribunal that you were primarily concerned with the sections which covered the dimensions that you were involved in evaluating with Mr. Aidan Ryan and the staff from Andersen Management International. In particular, you wanted to ensure that the draft text properly reflected the points which were discussed during the evaluation sessions and the scores awarded.

Regarding the dimension financial key figures, under the criteria credibility of business plan and applicant's approach to market development, as you were not involved in the evaluation of this dimension, are not a qualified accountant, you tended to leave the consideration of the respective commentaries in the draft Evaluation Report to other appropriate Project Group team members.

For each evaluation session in which you participated

in, factors were explicitly excluded from the evaluation process such as sensitivities, credibility and risks, where applicable, and it would not have been correct to score an attribute such as risk twice.

In addition, the evaluation criteria did not include explicit criteria for sensitivities, credibility or risks, but some of the criteria included some of these attributes, e.g. credibility of business plan and applicant's approach to market development.

You state that regarding the concluding comments of Andersen Management International on risks etc., you took the view that the project, irrespective of who was awarded the licence, carried certain risks of performance targets being missed there was no chance of finding a risk-free applicant. In your mind the main risks to the project were (in time order) delays in issuing the licence, delays in securing sites and permission for radio masts.

lack of technical expertise to build a quality network.

lack of marketing style and sales drive to secure customer connections.

You go on to say that in your mind, a risk of failure due to inability to secure capital funding was low, as there was a prevailing opinion at the time that the second national licence for public mobile telephony

were a licence to print money. You saw no merit in further analysis of the risks as analysis would not reduce the risks and could delay the issuing of the licence.

But of course, in relation to financial matters, I think you have already indicated in evidence that you left that to your colleagues who were specially qualified in that area?

A. That is correct; they were specially qualified. I was not. Also, of course, I was not involved in the evaluation sessions relating to the financial dimensions.

Q. Yes. In relation to the further analysis, we'll discuss that, I think, later, when we are looking at some of the Project Group meetings where the evaluation reports were being considered.

You state that regarding the overall presentation of the material, including the overall result, you strongly argued that the final aggregation of scores should be carried out numerically for the avoidance of any doubts, and this was so done in Table 17 of the Evaluation Report. The final score was arrived at by aggregating the scores for each of the 11 dimensions using weightings corresponding to the agreed weightings for the evaluation criteria as per invitation document to applicants. The leading application had a score of 432, with a clear margin of

22 points over the application ranked second.

Again, we'll come back and discuss this, Mr. McQuaid, when we are looking at the records that we have available of the meetings of the 9th October and the 23rd October. But can you just assist me as to whether you recall that there was discussion within the Project Group in relation to the inclusion of Table 17 in the Evaluation Report? Because you state here that you strongly argued in favour of it; so do you recall whether there was debate within the Project Group at either of those two meetings in relation to inclusion or exclusion of Table 17?

A. In the first draft of the Evaluation Report which I looked at yesterday, there were a number of tables presented in the if you like, the final results section, and certainly I think, and I can't recall the details now, but certainly I would have commented on the importance of the particular table where the scores were given.

Q. I suppose that showed the result in its clearest form?

A. It did, yes, yes. Indeed, I may also have questioned the usefulness of putting in some of the other tables, because there was a sort of a clutter, a clutter of tables there, and the table that really counted was the one which gave the scores where you could trace back from those scores to the original evaluation criteria and weightings. And that was really what

that was really the aggregation of the evaluation to get the final result.

Q. As you said it showed the result in its clearest form?

A. In its clearest form, yes.

Q. At Question 34, you were asked for details of your discussions, if any, with any member of the Project Group or any departmental official regarding the contents of the draft report.

And you have answered that you were primarily concerned with the sections of the draft Evaluation Report which covered the dimensions that you were involved in evaluating with Mr. Aidan Ryan and staff from Andersen Management International. In particular, you wanted to ensure that the draft text properly reflected the points which were discussed during the evaluation sessions and the scores awarded.

In that regard, you would have had discussions with Mr. Alan Ryan, Mr. Michael Andersen, Mr. Marius Jacobsen, and Mr. Ole Feddersen, to resolve any outstanding matters. You cannot recall the details.

You say that regarding the overall presentation of the material in the draft Evaluation Report, including the overall result, you would have made comments during meetings number 12 and 13 of the GSM Project Group.

In addition, you strongly argue that the final aggregation of scores should be carried out numerically, for the avoidance of any doubt. And this

was done in Table 17 of the Evaluation Report. The final score was arrived at by aggregating the scores for each of the 11 dimensions using weightings corresponding to the agreed weightings for the evaluation criteria as per invitation document to applicants.

Again, I think you have reiterated how strongly you felt about the inclusion of Table 17

A. Yes.

Q. in the final version of the report?

A. Yes.

Could I add that this was an issue about the presentation. This was an issue about the presentation of the results in the final Evaluation Report. It was not an issue about the actual result itself.

Q. No, it was a matter of presentation?

A. Presentation, yes.

Q. As you said, I think, in this answer that you have provided, you say that you were very anxious that it be carried out numerically, for the avoidance of any doubts?

A. Yes.

Q. Again, I think, echoing your concern that the result should be represented in its clearest form?

A. Yes.

Q. Now, Question 35, you were asked for details of all

matters discussed and raised at the Project Group meeting on the 9th October 1995, and including in particular the following:

- A. The statement made by Mr. Martin Brennan in relation to the Minister's state of knowledge regarding the outcome of the competition.
- B. Statements made by Mr. Martin Brennan regarding the Minister's views of the draft Evaluation Report and/or the approach which should be adopted in drafting the final report.
- C. The request made by certain members of the Project Group that further time was required to consider the results.
- D. The request made by certain members of the Project Group that it was necessary to revisit the qualitative evaluation.
- E. The request made by certain members of the group that consideration should be given to the appropriateness of awarding the licence to Esat Digifone, having regard to the Department's experience of Esat Telecom.

And your answer to Question 35 is as follows: You say that you have to rely on the written minutes to recall the matters discussed at Project Group meeting number 12 on the 9th October. With regard to C, requests for further time to consider the results, D, revisiting the qualitative evaluation, and E, awarding of the

licence to Esat Digifone, you do not have a clear recollection of the discussion of these matters, and the minutes provide no assistance.

You say that you do recall a short meeting which took place in 44 Kildare Street between the 23rd and the 25th October, subsequent to meeting number 13", attended by Mr. Loughrey, Mr. Brennan, Mr. McMahon and myself, and perhaps others". You state that the purpose of the meeting was to brief Mr. Loughrey and progress the process towards a final recommendation, having regard to the result of the qualitative evaluation process.

You do recall that at this meeting, Mr. Sean McMahon was not comfortable with moving to conclude the evaluation process and provide a recommendation on the ranking of the applications. Is that correct?

A. That's correct, yeah.

Q. Can I just ask you, you say there that it was attended by Mr. Loughrey, Mr. Brennan, Mr. McMahon, yourself, and perhaps others. And I just should draw your attention to the fact that Mr. McMahon has a note which records the fact of that meeting, the fact that the four of you, or the three of you, went to see Mr. Loughrey; but he also includes in his note reference to Mr. Sean Fitzgerald.

Now, Mr. Sean Fitzgerald has no recollection of attending that meeting, and Mr. McMahon indicated in

evidence that he may have been mistaken when he made that note. And I wonder if you can assist at all as to who else might have been present in addition to the three of you, as the heads of the Department, meeting with Mr. Loughrey.

A. No, I am afraid I can't assist you there. I remember certainly meeting Mr. Loughrey, because up to that, Mr. Loughrey did not involve himself with the workings of the Project Group. So that was the first time we really met him after the final project meeting. And I know Mr. Brennan obviously would have been there, and Mr. McMahon. And really, my recollection, going back that number of years and without any record, I just can't remember the detail.

Q. There is no difficulty with that at all, Mr. McQuaid.

Question 36, you were asked for your understanding as to the status of the evaluation following the Project Group meeting of the 9th October, and in particular, the steps to be taken in progressing the evaluation.

You state that your recollection is that by the 9th October, the evaluation of the applications was completed. The scores for each dimension for each applicant were agreed, subject to the comment by Andersen Management International, but the supplementary analysis in relation to interconnection and tariffs, which had yet to be provided, did not suggest that it would be necessary to revise the award

of marks. However, while there was a general satisfaction with the detailed analysis and the final result, the presentation in the draft report of that analysis was not acceptable. This is subsequently recorded in the minute of meeting number 13, and reflects the views of the Regulatory and Technology Divisions and the Department of Finance.

When you state there that that reflected the views of Radio and Technology Divisions and the Department of Finance, by omitting the Development Division, are you suggesting that that didn't represent or reflect their views? Or are you simply relying on the note which I know refers to the two divisions and the Department of Finance?

A. I think I am probably relying on the minutes.

Q. Yes, I can understand that.

Question 37A, whether Mr. McQuaid received or was otherwise aware, directly or indirectly, of notes made by Mr. Sean McMahon on a copy of the minutes dated the 17th October of the meeting of the 9th October.

B. Whether to Mr. McQuaid's knowledge, direct or indirect, the contents of the handwritten note were raised at any subsequent meeting of the Project Group or any member of the Project Group or were otherwise discussed with any other person, and if so, when, and the name of each person present or each person involved.

C. Details of the subsequent meetings referred to in the handwritten notes made by Mr. McMahon, including the date of each such meeting, the persons present, the matters under discussion, the outcome, and whether any note, attendance, or minute of any such meeting was kept, and if so, by whom.

And you have stated that you have no recollection of receiving or being otherwise aware of notes dated 17th October made by Mr. Sean McMahon on a copy of the minutes of meeting of the 9th October. Your recollection is that by the 9th October, the evaluation of the applications was completed, and that while there was general satisfaction with the detailed analysis and the final result, the presentation in the draft report of that analysis was not acceptable.

This is subsequently recorded in the minutes of meeting number 13 and reflects the views of the Regulatory and Technology Divisions and the Department of Finance. And again you refer to the short meeting which took place in 44 Kildare Street with Mr. Loughrey, which, as you say, has remained in your mind because it was the first time that Mr. Loughrey had any direct involvement, or indeed indirect, on the basis of the information the Tribunal has, with the evaluation process.

You state, just at the end of that paragraph, you do recall that at this meeting, Mr. Department

A. I think that's probably "Mr. McMahon". I think it's

Q. I think it probably is. I don't know whether it was your department or Mr. McMahon's, and I thought I'd leave it up to you to clarify it.

A. It's Mr. McMahon.

Q. Question 38, you were asked to provide a full narrative account of any information, direct or indirect, which you may have had concerning what prompted Mr. Billy Riordan to record his concerns regarding the ownership of the report on both page 6 of the final draft version of the October 18th, 1995, and in his various handwritten notes.

And you stated that you have been unable to find in the Department files the annotated copy of the Evaluation Report and the various handwritten notes referred to. You have not asked Mr. Riordan what prompted him regarding his concerns regarding the ownership of the report.

In any event, I suppose Mr. Riordan was dealing primarily with financial matters?

A. That is correct.

Q. And you wouldn't have

A. I was dealing with technical.

Q. You wouldn't have interested yourself particularly in financial matters?

A. No.

Q. Question 39, you were asked for your knowledge, direct or indirect, of or the involvement or the involvement of any other person in the decision made to accelerate the date on which the result of the evaluation was announced by the Minister.

You again refer to the short meeting which took place at 44 Kildare Street attended by yourself, Mr.

McMahon, Mr. Brennan, that meeting being with Mr. Loughrey, and again your understanding as to the purpose of the meeting.

You then continue on, and you say as you recall, Mr. Loughrey, Mr. Brennan, and yourself saw no requirement to or merit in delaying the announcement of the result of the original target date in November, as you recall, but Mr. Sean McMahon was not comfortable with moving to conclude the process. The issue then was not one of accelerating the announcement but whether to delay the announcement or not with reference to the original target date.

A. That is correct.

Q. I wonder, can I just clarify that with you, Mr. McQuaid, because in the information available to the Tribunal from documents produced, it seemed to be envisaged, in relation to critical path, that there would be a period of approximately five weeks available after the final report was prepared for consideration of this matter by the Cabinet or the

Cabinet Subcommittee, or certainly consideration at Governmental level, so that insofar as the announcement of the result was made on the 25th October, it really wasn't a question of postponing or possibly postponing it until the end of November; it was more a question of not pursuing what had been the original critical path, or in other words, not allowing the five-week period for further consideration by the Government. Do you follow me?

A. Well, I'd really have to look at that document now and sort of reacquaint myself with it before I would comment on that. As far as I was concerned, at that point in time, after we had got the draft report from Andersens, the result was known to the evaluation committee, so the result was known. All of the participants in the various evaluation committees had signed off on their on the scores for their individual for the marking of the individual dimensions; so the result was of the evaluation was known at that time, so any further time that would elapse would, in effect, be a delay in the announcement of that result to the public.

Q. Well, as you understood it at the time?

A. Yes.

Q. We'll come back and discuss it a little bit further when we are looking at the documents.

At Question 40, you were asked to provide details of

your knowledge, direct or indirect, of all consideration given by the Project Group or by any member of the Project Group or by any other person, whether in conjunction with Andersen Management or otherwise, to the qualification placed by Andersen on the financial capability of Esat Digifone and Persona as set out in the Evaluation Report and appendices, and in particular, page 44 of the report and Appendices 9 and 10.

And you have answered that the financial capability of applicants, including Esat Digifone and Persona, was considered by the sub-group that evaluated the dimension financial key figures made up of eight indicators, including financial strength of consortium members. You were not a member of this sub-group. In addition, a supplementary analysis was carried out by AMI on financial risks, Appendix 10 of Evaluation Report, and you had no involvement in initiating or carrying out this analysis, including further inquiries, investigations or other actions?

A. That is correct.

Q. Question 41, you were asked for details of your knowledge, direct or indirect, of any discussions with Andersen Consulting concerning further inquiries or investigations or other actions which would have been required to enable Andersens to provide a report without any qualification or rider regarding the

financial capability of either Esat Digifone or of

Persona.

And again you have indicated that you had no involvement in the financial end of the evaluation.

A. That is correct.

Q. Question 42, you were asked for your recollection or knowledge, direct or indirect, of Mr. Loughrey's response to such request or approach, and in particular whether it was Mr. McQuaid's understanding that further time would be available for the Project Group to finalise the evaluation.

And you have stated that you did not make any approach to Mr. John Loughrey and were not aware of any individual approach to Mr. John Loughrey by other members of the Project Group to request further time in which to consider the draft Evaluation Report.

And I should just say there that what the Tribunal was referring to was the meeting which you, Mr. Brennan and Mr. McMahon attended with Mr. Loughrey. But certainly it was Mr. McMahon's evidence, and I'll refer you to it so that you can comment on it, that his intention in attending that meeting was in order to obtain further time to consider the result and to consider the draft report.

A. Yes, I did say there "individual approach".

Q. Oh, I see, I see. So you knew of no approach other than the meeting

A. Other than what was discussed at that meeting with Mr. Loughrey.

Q. I see.

Question 43, you were asked for your knowledge, direct or indirect, of or your involvement or the involvement of any other person in the decision made by the Minister in or about the 24th and 25th October that the result of the process would be announced on the 25th October, 1995.

And again you have relayed much the same answer that you have given to a number of earlier questions. But in the last sentence of your answer, Mr. McQuaid, you have said that after that meeting, and by "that meeting" you are referring to the meeting which you attended with Mr. Loughrey, that events moved quickly, culminating in the public announcement of the result on the 25th October, but you had no involvement, direct or indirect, in these final events?

A. That is correct, yes.

Q. So just by way of clarification, should I take it, therefore, that after the meeting of the 23rd October, neither you nor Mr. Ryan had any involvement in moving the process forward to the ultimate announcement of the result on the 25th October?

A. No. As I recall it, I went back to my offices in Cathal Brugha Street, and things moved very quickly then; and no doubt at some stage before the public

announcement, I got a telephone call probably to say that it was going to be announced.

Q. Yes, and I think you did attend at that announcement, the press conference that was called?

A. I did, yes.

Q. So presumably you would have been told, "Look, a press conference has been organised"?

A. "A press conference has been organised for" whatever time, sort of; "you are requested to attend".

Q. And that would have been in Kildare Street, so you would have had to make your way from Cathal Brugha Street down to Kildare Street?

A. It would have been in the conference room on the second floor in 44 Kildare Street.

Q. Now, Question 44, you were asked for the date on which, circumstances in which, and person by whom you were informed that the Minister intended to announce the result of the process on the 25th October 1995.

You say that you cannot recall the place and time that you were informed that the Minister intended to announce the result of the process on the 25th October 1995. Although, as you have just indicated, the probability is that you'd have received a telephone call to say "Look, there is going to be a press conference; will you come down and attend it?"

A. Yeah.

Q. Question 45, details of all meetings of the Project

Group or any of the members of the Project Group on the 24th and 25th October, the purpose of such meeting, the matters under discussion, and the outcome of such meetings.

And again you refer simply to the meeting of the 23rd October

A. Correct.

Q. with Mr. Loughrey.

The next question, Question 46, you were asked for the precise date on which and time at which a final decision was made by the Project Group regarding the result of the competition and the name of each person who was present or was otherwise party to such decision.

And you have answered that the minutes of meeting number 13 of the Project Group on the 23rd October records that views from Regulatory, Technology and D/Finance all indicated that while there was general satisfaction with the detailed analysis and the final result, the presentation in the draft report of that analysis was not acceptable.

"Regarding the overall presentation of the material included, the overall result, I strongly argued earlier that the final aggregation of scores should be carried out numerically for the avoidance of any doubt, and that was done in Table 17 of the Evaluation Report. The final score was arrived by aggregating

the scores for each of the 11 dimensions using weights corresponding to the agreed weightings for the evaluation criteria as per invitation documents to applicants (paragraph 19).

The leading application had a score of 432, with a clear margin of 22 points over the application ranked second.

In answering that question, Mr. McQuaid, you have referred to the minutes of the meeting of the 23rd October, and you have recited what they contain. And do I take it, therefore, that you have no personal or immediate recollection of a formal decision being made by the Project Group in relation to this matter?

A. Well

Q. It's just the way you have quoted from it. I just wanted to clarify.

A. Really, that was the last meeting of the Project Group, and I am relying on the minutes of that meeting to answer that question.

Q. That's perfectly understandable. I just wanted to clarify that with you.

Question 47, you were asked for the precise date on which and time at which the Evaluation Report was approved and/or adopted by the Project Group and the name of each person present or who was otherwise a party to such approval or adoption.

You answered that at the 13th meeting of the GSM

Project Group on the 23rd October, Mr. Brennan was deputed to come to final agreement with AMI with respect to the final text of the Evaluation Report.

Just again to clarify there, are you again relying for your answer on what's contained in the report of that meeting?

A. Yes, I am, yes.

Q. That's perfectly understandable; I just wanted to clarify it with you.

Question 48, you were asked for your knowledge, direct or indirect, concerning any amendments to the first draft report of the 3rd October 1995 and the second draft report of the 18th October 1995 and including your knowledge, direct or indirect, of the contents of the document entitled "Suggested Textual Amendments", which appears to have been faxed by Mr. Fintan Towey to Andersens at 10.05am on the 25th October 1995 and faxed back by Mr. Andersen to the Department at 2.07 on the 25th October 1995 with his annotated comments.

And you have answered that you were a member of the sub-groups that evaluated the dimensions: radio network architecture, network capacity, coverage and frequency efficiency, and you also again reiterate your unclear recollection of being part of the Evaluation Group on performance guarantees.

You state that you were primarily concerned with the report sections which cover the dimensions which you

were involved in evaluating with Aidan Ryan and the staff of Andersen Management International. In particular you wanted to ensure that the draft text properly reflected the points that were discussed during the evaluation sessions and the scores awarded. In this regard some changes may have been made to the draft reports of the 3rd October and 18th October, 1995, which could be identified by a comparison exercise.

And you say that you have been unable to find within the Department's files the document "Suggested Textual Amendments".

You would have hardly had any input into that document in any event, because I think we know that it was prepared by Mr. Fintan Towey, and it may have been prepared based on meeting of the or meetings of the Project Group or sub-groups of the Project Group on the 24th October; and I think you have already indicated that the last meeting you attended was on the 23rd?

A. Correct.

Q. This next question I am going to pass over, because it relates to a particular portion of that document, "Suggested Textual Amendments". So I'll pass over that, Mr. McQuaid, and go directly to Question 50.

You were asked for your knowledge, direct or indirect, of our your involvement or the involvement of any

other person in any approach made or request made by you, Mr. Sean McMahon, Mr. Martin Brennan or any other member of the Project Group to Mr. John Loughrey on the 23rd October for further time in which to consider the draft Evaluation Report.

You say that you did not make any approach to Mr. Loughrey and was not aware of any individual approach to Mr. Loughrey by other members of the Project Group to request further time in which to consider the draft Evaluation Report.

I think you have clarified, effectively, that answer already?

A. Yeah.

Q. Paragraph 51, you were asked for your knowledge, direct or indirect, of or your involvement or the involvement of any other person in discussions between Mr. Brennan and Mr. Loughrey on the 24th and 25th October whereby Mr. Brennan conveyed to Mr. Loughrey the result of the evaluation process.

And you have informed the Tribunal that you cannot recall any indirect involvement by you in any meetings solely between Mr. Brennan and Mr. Loughrey on the 24th and 25th October.

At Question 52, you were asked for your knowledge, direct or indirect, of or your involvement or the involvement of any other person in discussions between Mr. Loughrey and the Minister on the 24th or 25th

October whereby Mr. Loughrey informed the Minister of the result of the evaluation process.

And again you have stated that you had no involvement in any such discussions.

At paragraph 53, you were asked to indicate whether the Department had in its possession a copy of the final draft Evaluation Report as of the 25th October, 1995, when the Minister met with members of the Cabinet and following such meeting announced the result of the evaluation process. If the Department did not have a copy of the final Evaluation Report in its possession at that time, you were asked to indicate precisely what document or documents were in the possession of the Department.

And you have answered that at the 13th meeting of the GSM Project Group, on the 23rd October, Mr. Brennan was deputed to come to final agreement with AMI with respect to the final text of the Evaluation Report.

The final version of the Evaluation Report was dated 25th October, 1995, but you cannot recall when exactly the Department received a copy or copies.

Do you recall at all, Mr. McQuaid, when you received a copy of that final version of the report?

A. The precise day?

Q. Yes.

A. No, I can't recall, no.

Q. Maybe I can assist you in this way: Do you recall,

would you have had a copy of the final version before the announcement on the 25th, when you attended the arrangements that had been made, or after the 25th?

A. I just cannot recall when I received the final a copy of the final Evaluation Report.

Q. That's understandable.

A. But I would expect that they all there were a number of copies made, and I expect that they all arrived in Dublin from Copenhagen together, so it may be possible to deduce

Q. We have tried to do that, but there seems to be some confusion as to when people actually received copies, or as to when a copy of the final version might have been in the Department, or at least a full copy of the final version.

At Question 54, you were asked for your role or your knowledge, direct or indirect, of the role of other persons in the preparation of the following documents.

I am afraid there has been a typing error there; that should have read "Mr. Loughrey's recommendation to the Minister dated 25th October 1995".

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

C. The memorandum to Government dated 26th October 1995.

And you answer that you had no involvement in the preparation of the following documents. And you list

them.

At Question 55, you were asked for your knowledge, direct or indirect, of the contents of a document dated 23rd October, prepared by the Regulatory Division, the purpose for which the document was prepared, whether the document was formally circulated, and details of any action taken on foot of the document.

And you say that you have no recollection of seeing the document entitled "Views of the Regulatory Division, 23rd October 1995."

Question 56, you were asked for your understanding of the composition of the Esat Digifone consortium which won the evaluation process and the respective shareholdings of the participants.

And you have answered that your understanding of the composition of the Esat Digifone consortium during the evaluation process was as set out in Section 3.1, page 10, of the final Evaluation Report, with reference to participants behind A5. Telenor Invest AS, 50%; Communicorp Group, 50%; 20% to be made available to institutional investors before launch.

You go on to state that Appendix 9 of the Evaluation Report also includes the composition of consortia, and further assessment is provided in Section 10.5 of Appendix 10. Is that correct?

A. Correct, yeah.

Q. Question 57, you were asked for your knowledge, direct or indirect of, or understanding of the role of the Cabinet or the Cabinet Subcommittee in the ultimate decision as to the outcome of the evaluation process. You have answered that your general understanding was that the GSM Project Group would conduct an evaluation of the applicants' proposals and make a recommendation to the Minister on the ranking of the leading applicants (3) and to enter into licence negotiations with the leading applicant. The Minister, in consultation with the Cabinet, Cabinet Subcommittee, and having regard to the recommendations of the Project Group who decide which of the six applicants should be selected for licence negotiations. Is that correct?

A. That is correct, yeah.

Q. Question 58, you were asked for details of all information, if any, provided by you to the Minister regarding the evaluation process during the course of the process, together with details of all communications by you to the Minister and of all communications by the Minister to you during the course of the process.

And again you have stated that you had no direct, written or oral communications with the Minister regarding the evaluation process during the course of the process.

A. That is correct.

Q. Question 59, you were asked for your knowledge, direct or indirect, of all dealings, meetings, and communications between the Minister and any member of any consortium or any person associated with any member of any consortium during the course of the evaluation process.

And you answered that you had no knowledge of any dealings, meetings or communications, direct or indirect, between the Minister and any members or persons associated with the applicant consortia during the course of the evaluation process, subject to the following possible exception: You say that during this period, there may have been representations from Esat Telecom Limited and Mr. O'Brien regarding the scope of Esat Telecom's licence to provide value-added services; and while at the time you may have been made aware of these representations, you have no clear and specific recollection on these possible representations.

A. That is correct.

Q. So any representations of which you may have been informed would have been representations regarding the operation of the value-added services licence?

A. Of Esat Telecom, correct.

Q. Do I take it that those representations would have related to the use by Esat Telecom of auto-dialers and

routers in the course of the exercise of their

privileges under the VAS licence?

A. That is correct, yeah.

CHAIRMAN: I think, Ms. O'Brien, that probably ends

Mr. McQuaid's recollections of the process per se, and

it's as good a time as any to pause until ten past

two. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF JOHN MCQUAID BY

MS. O'BRIEN:

Q. MS. O'BRIEN: I think we finished at Question 59 of

your memorandum of intended evidence. So perhaps we

could start Question 60. That's on page 42.

A. Yes, I have it now.

Q. Thank you. Question 60, you were asked for the date

on which and circumstances in which you first became

aware of the involvement of IIU Limited or Mr. Dermot

Desmond in the Esat Digifone consortium, your

understanding as to the precise nature of the

involvement of IIU at that time, and the source of

such knowledge and understanding.

You answered that you have no clear recollection of

the day on which and the circumstances in which you

first became aware of the involvement of IIU Limited

and Mr. Dermot Desmond in the Esat Digifone

consortium. You have checked through the minutes of

the GSM Project Group meetings number 2 to 13 and have found no reference to this matter to assist you; is that correct?

A. That's correct, yes.

Q. At Question 61, you were asked for your knowledge, direct or indirect, of a letter dated 29th September, 1995 from Mr. Michael Walsh of IIU to Mr. Martin Brennan, and you answer that you have no recollection of seeing the letter dated 29th September from Mr. Walsh of IIU during the evaluation process; is that correct?

A. That is correct, yeah.

Q. Question 62: You were asked for your knowledge, direct or indirect, of or your involvement or the involvement of any other person in the decision made to return the letter of the 29th September, 1995 to Mr. Denis O'Brien on 2nd October 1995 without retaining a copy of the letter on the departmental file.

Again, you say you have no recollection of any involvement of the decision made to return the letter dated 29th September to Mr. O'Brien without retaining a copy of the letter on the file?

A. That is correct.

Q. Question 63, you were asked whether you had any knowledge, direct or indirect, regarding any involvement or interest or any potential involvement

or potential interest of IIU Limited or Mr. Dermot Desmond in the Esat Digifone consortium as of 25th October 1995.

You have informed the Tribunal that you have no clear recollection regarding knowledge of any involvement or otherwise of IIU Limited or Mr. Desmond in the Esat Digifone consortium as of the 25th October.

A. That's correct.

Q. Question 64, you were asked for your knowledge, direct or indirect, between Communicorp/Esat Telecom, Telenor, or IIU Limited/Mr. Dermot Desmond, regarding their respective liabilities to subscribe for the capital of Esat Digifone Limited.

And you have informed the Tribunal that you have no clear recollection regarding knowledge of any dealings between Communicorp/Esat Telecom, Telenor and IIU/Mr. Desmond as to their respective liabilities to subscribe for the capital of Esat Digifone Limited during the evaluation process.

A. Correct.

Q. At Question 65, you were asked for the date on which and circumstances in which you are first became aware of the 20% shareholding in Esat Digifone Limited held by IIU was to be held beneficially for Mr. Dermot Desmond.

You have informed the Tribunal that you have no clear recollection of the day on which and the circumstances

in which you first became aware of the 20% shareholding in Esat Digifone Limited held by IIU was to be held beneficially for Mr. Desmond.

A. That is correct.

Q. You were asked for your knowledge, direct or indirect, of or your involvement or the involvement of any other person in all steps taken by the Department, whether alone or in conjunction with the Department of Finance, to satisfy itself as to the financial capability of Esat Digifone Limited prior to the issue of the licence.

And you inform the Tribunal that at that time, assessment of the financial capability of the Esat Digifone consortium was undertaken by a sub-group drawn from the Department, Department of Finance, and Andersen Management International as part of the assessment of the dimension financial key figures; you were not a member of that sub-group. In addition, supplementary analysis was carried out by Andersen Management International as set out in Appendix 9 and 10 of the Evaluation Report. You were not involved in the detailed consideration or reporting of this analysis.

A. That's correct.

Q. And I take it, therefore, also, Mr. McQuaid, that you had no knowledge of any further analysis which was undertaken in the days immediately leading up to the

grant of the licence on the 16th May 1996?

A. No, no.

Q. Paragraph 67, you were asked for details of all dealings and discussions that you had with the Minister, with Mr. Martin Brennan, with Mr. John Loughrey, with Mr. Sean Fitzgerald, or with any other person arising from the involvement of Mr. Dermot Desmond in Esat Digifone Limited.

And you have answered that you had no dealings or discussions with the Minister, Mr. Brennan, Mr. Loughrey, Mr. Fitzgerald or other persons arising from the involvement of Mr. Desmond in Esat Digifone Limited.

A. That's correct.

Q. Paragraph 68, you were asked for details of all previous dealings which you had in both your personal and professional capacities with Mr. Michael Walsh and with Mr. Dermot Desmond.

And you answered that you had no previous dealings, personal or professional, with Mr. Walsh or Mr. Desmond.

A. That's correct.

Q. Paragraph 69, you were asked for your knowledge, direct or indirect, of the date on which and the manner in which the Minister or the Department was informed by Mr. O'Brien/Communicorp/Esat Telecom and Esat Digifone or any person on their behalf that

Communicorp/Esat Telecom did not intend to fund its equity participation in Esat Digifone by drawing on finance to be provided by Advent International, but intended to fund its participation by placements through CS First Boston, including details of precise information provided to the Minister or the Department. And you were asked to identify where such information was recorded.

You have informed the Tribunal that you were not involved in any communications to or from the applicants during the evaluation period, with the exception of the oral presentations by the applicants from the 11 to the 14th September 1995. Such communications were handled by Mr. Martin Brennan and by his staff.

A. That is correct.

Q. Now, I think you have indicated in replies to the questions raised by the Tribunal, Mr. McQuaid, that you had no knowledge of or involvement, direct or indirect, of the events which occurred and the dealings which occurred between the Department and Esat Digifone in the weeks leading up to the grant of the licence on the 16th May. That's really just the balance of the questions up to Question 82.

A. Question 82 I may have attended and this is just a rough recollection I had there was a meeting prior to the final grant of the licence, there was a

meeting with between the Department and Esat Digifone to discuss the final draft of the licence, and I have a recollection of attending sort of one meeting.

Q. But that's not any of the meetings which the Tribunal has asked you about in these questions?

A. No, no it's not.

Q. Meetings on the 3rd May or on the 13th May?

A. No.

Q. That presumably was a meeting in which topics relating to technical matters were being addressed?

A. Technical matters in relation to the what was almost the final version of the licence.

Q. In those circumstances, what I propose doing is passing directly on to Question 82, Mr. McQuaid, which is on page 53 of your memorandum.

A. I have that, yes.

Q. Do you have it there?

A. I have indeed, yes.

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

And you answer that on occasions, you provided advice, including technical advice, to Mr. Sean McMahan regarding the extent of voice telephony services to the public reserved to Bord Telecom Eireann and the

corresponding extent of liberalised value-added service; i.e. other licensed operators, including Esat Telecom, were entitled to offer to the public. Your recollection is that Mr. McMahon had a number of meetings with the Minister on this issue, and you recall attending one of those meetings with the Minister on a date which you cannot recall. You cannot recall details of meetings other than the Minister's wish to see more progress on resolving the issue.

A. Correct.

Q. And again I think that's the issue which arose due to the use of auto-dialers and routers that we already adverted to this morning?

A. That is correct, yeah.

Q. Now, Question 83, you were asked to furnish full details of your contacts with certain persons about whom the Tribunal has made inquiries.

And firstly, under the subheading "Announcement of Result of Competition", you have informed the Tribunal as follows: You state that following the final meeting of the evaluation committee on the 23rd October 1995, the result was announced by Mr. Lowry at a press conference on the 25th October. A subsequent press briefing jointly hosted by Mr. Lowry and Mr. Denis O'Brien was held on the 26th October. You attended those press conferences and the subsequent

briefing in the conference room at 44 Kildare Street,
and you would have met Denis O'Brien and some of his
team at those events?

A. That is correct.

Q. And I think again you have referred to those events
earlier today?

A. Yes.

Q. Secondly, the grant of the licence. You have informed
the Tribunal that the licence was granted on the 16th
May, 1996, at a press conference at 44 Kildare Street,
at which Minister Lowry and Mr. Denis O'Brien
exchanged the licence fee cheque and copy of licence.
You also attended this press conference. You would
have met Mr. Denis O'Brien and some of his team at
that event, including Mr. Denis O'Brien Senior?

A. That is correct.

Q. Then, in relation to meetings with Eircom, you stated
that during your period as Director of the
Telecommunications and Radio Technology Division in
the Department of Transport, Energy and
Communications, later Department of Public Enterprise,
and also during your period as head of Technology
Division in the Office of the Regulator, Director of
Telecommunications Regulation, you attended periodic
meetings with Eircom, previously Telecom Eireann. In
particular, you met Mr. Gerry Condon and his team to
discuss technical issues relating to the licensing of

point-to-point radio links, and Mr. Eddie Nugent and his team to discuss technical issues relating to the allocation of codes and numbers from the national telephony numbering resource.

A. Correct.

Q. You also attended a presentation by Mr. Alfie Kane to the Director of Telecommunications Regulation, Ms. Regina Finn, and yourself in 1995, and you recollect it. The presentation provided an overview of Eircom?

A. That is correct.

Q. You state that there were also some meetings during the period 1996 to 1998 with Telecom Eireann, later Eircom, in an attempt to clarify the extent of Telecom Eireann's monopoly with regard to voice telephony. Your colleague Mr. Sean McMahon, PO, took the lead in this area, and you provided support as required?

A. That is correct, yes.

Q. And then meetings with Esat Telecom: There was some meetings during the period 1996 to 1998 with Esat Telecom to attempt to clarify the extent of Telecom Eireann's monopoly with regard to voice telephony. Your colleague Mr. Sean McMahon took the lead in this area, and you provided support as required. This may have included contact with some Esat Telecom representatives, including Mr. Leslie Buckley and Mr. Mark Roden?

A. That is correct.

Q. And then, in relation to meetings with Esat Digifone, you stated that during your period as Director of the Telecommunications and Radio Technology Division in the Department, and also during your period as head of Technology Division in the Office of the Regulator, Director of Telecommunications Regulation, you attended periodic meetings with Esat Digifone after the announcement of the result of the competition in October 1995. In particular, you met Mr. Hans Myre and his team to discuss technical issues relating to the licensing of point-to-point radio links and the allocations of codes and numbers from the national telephony numbering resource. Mr. Knut Digerud and Mr. Barry Maloney may have sat in at some of those meetings?

A. That is correct.

Q. You also have an uncertain recollection of attending a meeting, accompanied by Mr. Sean McMahon, with Mr. Barry Maloney and his team from Esat Digifone to discuss details regarding the draft licence shortly before the grant of the licence in May, 1996?

A. Yes, that is the meeting that I was referring to earlier.

Q. Yes. Then under the heading "Third Annual World Conference on Intelligent Transport Systems", you informed the Tribunal that you represented the Department of Transport, Energy and Communications at

The Third Annual World Conference on Intelligent Transport Systems from the 14th to the 19th October in Orlando, Florida. Minister Lowry attended 13th to the 15th October. You assisted the Minister with the final preparation of his address to the conference?

A. That is correct.

Q. Then under the heading "Meetings with Mr. Lowry", you have stated that in general, the Minister was briefed by the Secretary, Mr. John Loughrey, and the Assistant Secretary, Mr. Sean Fitzgerald, on telecommunications issues, and you did not attend at such meetings with the Minister?

A. Correct.

Q. Then finally, "Meetings with Denis O'Brien post grant of the licence"; you have stated that you recall two other occasions when you met Denis O'Brien after the award of the licence. The first was at the event in The Point on the 20th March, 1997, which launched the Esat Digifone service. The second was at a meeting between Esat Telecom and the Director of Telecommunications Regulation in 1998 to discuss regulatory issues arising at that time?

A. That is correct.

Q. And that, I think, concludes your memorandum of intended evidence?

A. That is correct, yes.

Q. Now, Mr. McQuaid, you have informed us in your

memorandum that your first significant involvement in relation to the evaluation process was when you attended the second GSM Project Group meeting on the 6th March?

A. That is correct, yes.

Q. You joined the Department, I think, in November of 1994?

A. November '94.

Q. And I presume that was from the private sector, was it?

A. Sorry?

Q. Was that from the private sector?

A. No, I previously worked in Telecom Eireann.

Q. I see. So you left Telecom Eireann, and you joined the Department?

A. Correct.

Q. And you were appointed to, as Principal Officer, to head up the Telecommunications and Regulatory Technical Division?

A. No, the Telecommunications and Radio Technology Division.

Q. Now, you have indicated that you had no input into the drafting of the evaluation criteria, but there is just one matter that I want to ask you about on which you may be able to be of some assistance. And I don't know if you have available to you Book 41; I think Mr. O'Donnell is going to get it for you now.

If I could refer you Flag 23. Do you see that's a copy of the aide-memoire which went to Government in November of 1994, and in fact you referred to it briefly in your memorandum, so you may have had an occasion to consider it.

Can I just refer you to paragraph 10 under the heading "Tender Competition". That's the fourth page of the aide-memoire.

A. Yes, paragraph 10. I see that, yes.

Q. You'll see it lists there the proposed evaluation criteria?

A. I do indeed, yes.

Q. Now, can I just take you to the second and third of those proposed criteria. And you see the second proposed criteria was "Technical experience and capability of applicant", and the third was "Quality and viability of technical approach proposed and its compliance with the requirements set out herein"; you see those two there?

A. I do.

Q. In fact, the third of those was retained in the final RFP document; isn't that right?

A. The equality and viability of technical approach, that is correct, yes.

Q. Now, can I just refer you, then, by way of comparison, to the aide-memoire which was the basis of the Government decision of the 2nd March, and that's at

Divider 41. And this time, if you could refer to paragraph 11 of that, which is on the seventh page of the aide-memoire.

A. Yes, I have that.

Q. Right. And again we have a list of the evaluation criteria proposed.

A. Yes.

Q. And you'll see there that there having been 9 criteria, there are now 8, and the criteria that was deleted from that list of evaluation criteria was technical experience and capability of applicant. Do you see that?

A. Yes.

Q. And if you just look up to the kind of preamble above those proposed criteria, you'll see that it provided that the Minister, subject to being satisfied as to the financial and technical capability of the applicant in accordance

A. Where exactly is that?

Q. That's just three lines above the bullet point list of criteria, in the paragraph above that. It says "The highest bidder will not necessarily be successful. The documentation indicates that the Minister intends to compare the applications on an equitable basis, subject to being satisfied as to the financial and technical capability of the applicant."

Do you see that?

A. Yes, I see that.

Q. It appears that what happened, and indeed Mr. Brennan has referred to it and we have heard evidence of it, that the matter of both financial and technical capability was deleted from the evaluation criteria and that they were effectively inserted as matters of which the Minister had to be satisfied. Do you see that?

A. I haven't seen this before, so I just have to take a moment

Q. Of course. I can take you through it, Mr. McQuaid. If you just refer back to the aide-memoire of November.

A. Yeah.

Q. You will see that the second proposed criterion was

A. I am wondering, does credibility and again, I haven't seen this document either before or for a very long time does credibility of the business plan include technical sorry, include the financials?

Q. It did, but for the moment you needn't be concerned about the financial viability. I am just asking about the technical one because I know that's your area of expertise.

A. Okay.

Q. You will see technical experience and capability of applicant was the second pointed criterion in November 1994?

A. Yes.

Q. And then in February of 1995, that had been deleted, and in effect, it had been elevated to something of which the Minister had to be satisfied. And really what I want to ask you about is this, because while everybody accepts that that was done, nobody has been able to assist the Tribunal as to when it occurred or what considerations there were; and I am simply wondering if you can recall, were you consulted at all on this matter?

A. No, I think this was before my time. The previous document you showed me was November '94. That is when I joined the Department. So I really was not involved in this consideration of the evaluation criteria prior to the issue of the RFP document.

Q. That's all I wanted to clarify. You weren't approached or your input wasn't sought in relation to this matter?

A. No.

Q. If you go on to Divider 47 in that book, Mr. McQuaid, you will see the report of the second meeting of the GSM Project Group. And that was on the 6th March, and both you and Mr. Ryan were in attendance at that time. And as you have indicated, that was your first active participation in the evaluation process.

And you'll see there that a number of matters were dealt with: Mr. Brennan updated the group in relation

to changes on the GSM issue since the first meeting.

There was then some discussion of spectrum, and I presume you would have had particular interest in the issue of spectrum, because it was a technical matter; would that be correct?

A. That would be correct, yes.

Q. There was then discussion in relation to critical path. The selection of consultants, and that records the fact that you were to be involved in the selection of consultants. It also dealt with matters relating to the information rounds. Then the protocol on meetings with applicants during the course of the evaluation process. And a discussion of items that need to be examined in the context of the second GSM. And the next meeting was fixed for the 29th March.

A. Yeah.

Q. Now, if you just go over to the following divider, 48, you will see that there was a memorandum from Mr. Brennan recording the protocol which had been agreed by the group for meetings with applicants during the course of the process. And I think that that was circulated also to you as head of one of the divisions?

A. That is correct, yes.

Q. And I suppose to an extent, that underlines the importance that you, as a group, attached to that particular protocol?

A. Indeed, indeed.

Q. Now, the third meeting, and the record of the third meeting, Mr. McQuaid, is at Divider 50.

A. Yes, I have that.

Q. And I think in the interim, you and Mr. Brennan, and possibly Mr. Towey, had been involved in the tendering and selection process for the consultants; was that correct?

A. That is correct, yes. Bids had been received, and I received copies of the bids which I examined, and then I met with Mr. Brennan and we evaluated the bids from the consultants, and I think came to the conclusion that the Andersen Management one was the best bid.

Q. All things being taken into account, presumably, including what they were quoting for doing the job?

A. Yes, but I think principally because they gave a more detailed explanation of the process that they would use to evaluate the applicants.

Q. I see. And Mr. Brennan was able to report to the group that the choice was clearly between Andersen, a Dutch consultant, and KPMG, but it seems to suggest

A. A Danish consultant.

Q. sorry, a Danish consultant and KPMG, but the KPMG was too expensive?

A. Yes.

Q. So clearly costing must have been a consideration in the selection?

A. It was a consideration, yes.

Q. Can I just ask you, during the course of that portion of the evaluation that is, in the selection of

Andersens did you actually meet with the applicants during the course of that process, or not?

A. No, I did not.

Q. And do you know whether Mr. Brennan or anybody else did?

A. Not to my knowledge, no.

Q. I think Mr. Brennan then informed the group that there had been ten interested parties who had applied to the Department for the RFP documents and had paid the fee of $\frac{1}{2}$ 5,000. He also discussed matters relating to the information round, and I think you gave you are reported here as having given a brief presentation on a draft model detailing the costs of the various types of infrastructure available?

A. That is correct, yes.

Q. And the next meeting was then fixed for the following Monday at 10am?

A. Yes.

Q. I think the fourth meeting was on the 10th April, and again I just refer you to Divider 52, where you will find the report of that meeting. And again both you and Mr. Ryan were in attendance?

A. Yeah.

Q. And there seem to have been three principal topics of

discussion at that meeting. Firstly, there was an update on the consultants and confirmation that the Department of Finance had given the go-ahead to engage Andersens?

A. Yes.

Q. Secondly, there was discussion of the letter from the Department of Finance; I think you referred to that already in the course of your memorandum.

A. Yeah.

Q. And I think that was the letter from Mr. McMeel where he'd expressed some concern on the application of weightings; isn't that right?

A. Yes, yes.

Q. And then finally, there was further discussion on matters relating to the proposed information round?

A. Yes.

Q. Now, the fifth meeting was on the 19th April, Mr. McQuaid, and you will find a report of that at Divider 54 of the same book.

A. Yes, I have that.

Q. And in fact, on the basis of the attendances, you don't seem to have been present at that meeting. Mr. Ryan, it appears, was present?

A. That would appear so, all right, yes.

Q. I suppose you would have received a copy of the report in any event, which was the 25th April, and I take it that Mr. Ryan would have briefed you as to what

occurred at that meeting?

A. He would have, yes.

Q. And this was the first meeting, I think, that Mr. Andersen and Mr. Jacobsen attended as consultants to the group?

A. Yes.

Q. Again there were a number of things discussed. The consultants were introduced. There was discussion of their contract. Again, there was further discussion of the letter from the Department, and there was further information provided in relation to the proposed information round. I think that was then imminent, the actual provision of answers to the questions raised?

A. Yes.

Q. Then the fifth meeting or the sixth meeting, I should say was on the 18th May, and you will find that at Divider 64 of the same book.

A. Yes, I have that.

Q. And that appears to have been a fairly substantial meeting of the Project Group. You were in attendance, and I think the two principal matters that were under discussion were the presentation by Andersens of the draft evaluation model.

A. Yes.

Q. And then also the receipt by the Minister of a letter from Commissioner van Miert on the 27th April?

A. Yes.

Q. I think that was the letter by which the Commission took issue with certain aspects of the design of the evaluation process?

A. That's right, yes.

Q. Now, there seems to have been quite lengthy discussion in the course of that meeting of the it is in fact the seventh meeting, on the 18th May. And the draft of the evaluation model proposed by Andersen Management International, I think, was discussed at some length in the course of that meeting?

A. Yes, I believe it was.

Q. Now, Mr. McQuaid, I am just going to refer you to that draft model, if I may, and there is a draft the draft model that we have is in Book 54. I don't know if arrangements can be made to pass up a copy of that book to you. It's entitled "Weighting documents". We'll see if we can get you a copy. We are trying to arrange one for you now, Mr. McQuaid.

Now, Mr. McQuaid, if you go to Divider 1 of that book.

A. Yes.

Q. You see the first document there appears to be the draft evaluation model of the 17th May, 1995. You will see the date is towards the bottom of the

A. Yeah.

Q. page. And there you'll see that there was a circulation list, and I think your name is the sixth

name on that list, "John McQuaid".

A. That is right.

Q. Now, we haven't been able to find your copy, if you like, of this evaluation model within the documents produced by the Department. It may be that you didn't retain it. There is many reasons why it may not be available. The copy we have here and the annotations on this copy are from the Regulatory Division files, and it appears that these were made by Mr. McMahan. I just don't want to confuse you in relation to the annotations.

A. Okay.

Q. Do you recall receiving this document in advance of the meeting on the following day?

A. I can't recall exactly when I received it, but I would have had it for this meeting, yes.

Q. It's quite a dense document?

A. It is, yes.

Q. But judging by the even the formal report of the meeting, and sometimes the formal reports may not record every element of what's discussed at the meeting, it does appear that this draft was discussed at some length in the course of that meeting?

A. It was, yes.

Q. And do you recall those discussions? Obviously you wouldn't recall the detail of every item discussed.

A. I do recall that some time was spent discussing this

evaluation model, including, I suppose, a presentation by AMI, who were the authors of the document.

Q. They would have explained to you

A. They would have gone through it, yeah.

Q. It's not surprising there was lengthy discussion, because I suppose that it was probably, certainly at that stage of the evaluation, the single most important step that the Project Group was taking in agreeing a mark?

A. Yes.

Q. Now, if I can just refer briefly to some aspects of it. You see on the first page, there is the heading "Introduction". It says "It's been decided to apply both a quantitative and a qualitative evaluation model to the eligible applications. This document contains information concerning the quantitative and qualitative evaluation models and intends to give a complete description of these.

"The document comprises two parts: The first part describes the quantitative evaluation procedure, including the selection of dimensions, indicators and the scoring model. The second part is a description of the qualitative evaluation model, including the evaluation process and a guide to the award of marks.

"As both the quantitative and qualitative evaluation will be performed, the guiding principle will be to work within a manageable set of aspects, which is

essentially identical, i.e. marketing aspects, technical aspects, management aspects and financial aspects. In addition to these aspects, which form a common denominator in both evaluations, the qualitative evaluation also deals with the risks, i.e. the sensitivities of the business cases in relation to the evaluation criteria outlined in paragraph 19 of the RFP document.

"Each aspect is broken down into dimensions, and each dimension is subsequently broken down into indicators. (The chosen division of the evaluation criteria into aspects, dimensions and indicators is based on the framework described in the proposal from Andersen Management International AS, and the reader is assumed to be familiar with the contents of this proposal)."

So in effect, that describes in a form of introduction a twofold evaluation process, but with common denominators being the aspects and dimensions; isn't that correct?

A. Aspects, dimensions and indicators, yes.

Q. And in the building blocks of the evaluation, both on the quantitative and the qualitative side, were intended to be the indicators?

A. That is correct. They were the basis of the building block.

Q. In fact, when I think it came to the actual process, certainly on the qualitative side, in many instances,

those indicators were broken down again into subindicators; isn't that correct?

A. Yes, in some cases they were, yes.

Q. Now, over the page, Section 2 dealt with the procedure for the quantitative evaluation. And I am just going to deal with the steps on that page.

It says "The following steps describe the procedure for the quantitative evaluation of the applications.

"1. A set of dimensions and indicators has been selected for the quantitative evaluation process. An assessment, including a point scoring method, will be defined for all indicators. The same set of dimensions, indicators and point scoring must be used for all the eligible applications.

"2. All the selected indicators will be assigned a weighting factor. The weighting factor has been decided by means of discussion.

"3. The score for each indicator will be a value between 5 and 1 (both included), with 5 being the best score. All scores should be rounded to the nearest integer.

"4. Uncertainties regarding the scoring of points may be dealt with in the qualitative evaluation.

"5. The result of the quantitative evaluation will be considered with due respect to the significance of differences in the total sum of the points assigned.

"6. A memorandum comprising the salient issues of the

quantitative evaluation will be annexed to the

Evaluation Report."

And then on the next page, headed "Dimensions assessed

in the quantitative evaluation", and you'll see there

that there was a table included within the evaluation

model. It says "An overview of the selected

dimensions, indicators and the relation to the RFP

document, paragraph 19, can be seen in the following

table."

Now, you have the table in front of you there, Mr.

McQuaid?

A. I have the table in front of me.

Q. It's on the overhead projector. And you will see on

the first column, Andersens listed the evaluation

criteria from the RFP document in the order in which

they appeared in the RFP, in paragraph 19; isn't that

right?

A. That is correct, yes.

Q. And in the second column, they listed the dimensions

linked to each of the evaluation criteria?

A. Yes.

Q. And then in the third column, they identify the

indicators for those dimensions?

A. They seem to have just one indicator per dimension.

Q. That's right. They seem to have one indicator per

dimension.

A. There may have been more than one.

Q. Yes, in certain instances there are more than one dimension for the evaluation criteria; but as between the dimensions and indicators, there seems to have been equality?

A. Yes.

Q. If you take, I suppose, the first one there, credibility of a business plan and applicant's approach to market development, that was the first and most important of the evaluation criteria. And that was linked to three dimensions: Market development, experience of the applicant, financial key figures.

And for market development, the indicators were forecasted demand; for experience of applicant, number of network occurrences in the mobile field; and for financial key figures, solvency and IRR. I suppose they might have been considered as two separate indicators for that dimension?

A. Yes.

Q. I think in fact, when we come to the weighting, we'll see they were separately weighted.

A. Yeah.

Q. Then if we look at the second of the evaluation criteria, the one which you had a particular interest, "Quality and viability of technical approach proposed and its compliance with the requirements set out herein." The two dimensions were radio network infrastructure and capacity of the network. And the

indicator for radio network infrastructure was number of cells. Is that correct?

A. Yes.

Q. And the indicator for capacity of the network was reserve capacity?

A. Yes.

Q. And then just going down through the list, if I can bring you to the fifth of the criteria, because that was again one which you were involved in the qualitative evaluation.

"Timetable for achieving minimum coverage requirements and the extent to which they may be exceeded."

A. Yes.

Q. And you'll see that the dimension for that evaluation criterion was coverage; isn't that right?

A. Correct, yeah.

Q. And the sole indicator for that dimension was speed of demographical coverage of class IV (2W) hand-held terminals.

A. Yes.

Q. Mr. Coughlan tells me it's 2 WAP; is that correct?

A. That is correct, yeah.

Q. And that was the indicator for that dimension; isn't that right?

A. Yes.

Q. And I am correct, am I not, in stating that coverage was not a dimension or an indicator for the second of

the evaluation criteria, quality and viability of technical approach? It's just there was some confusion yesterday, so I just wanted to take this opportunity to clear it up.

A. That is correct, yes.

Now, I should also add as well, that this the dimensions that you listed there, that are listed, and the indicator in particular, relate to the quantitative evaluation.

Q. Of course.

A. And not to the qualitative evaluation.

Q. I was going to ask you to confirm that. They were for the quantitative evaluation?

A. They were for the quantitative evaluation.

Q. Now, on the next page, I am not going to take you through it; it was really a narrative explanation of the dimensions and indicator, and then a more technical consideration of them. And again, I am going to pass over them, Mr. McQuaid, and I'd like you to go on then to page 16.

You will see there there is internal pagination, just at the bottom right-hand corner, below the line, page 16 of the 19. That's the effectively the weighting table for the quantitative indicators, isn't that right, "Vote casting and weight matrix". It says "The following table shows how the votes will be given for each of the indicators in the quantitative evaluation.

A list of the various is included."

A. Yes.

Q. So that's a listing of the weightings for the quantitative evaluation?

A. That is correct, yes.

Q. I just want to go through one or two of those with you by reference back to the table that we have just looked at, which was on page 3. And I'll just draw your attention to one or two matters.

Now, you'll see there the first of the indicators is "Forecasted demand", and the weighting proposed it's at .10, but we can call it 10. We can take it on a base of a hundred rather than one; I think it makes it clearer.

A. I think so.

Q. If I can just bring you down to 10, which is "Number of network occurrences in the mobile field"; that's the second of the indicators for credibility of the business plan.

A. Yes.

Q. And the weighting proposed there was also 10; isn't that right?

A. Yes.

Q. And then if I take you to solvency and IRR, that's number 12 and number 13 of the indicators, and the weighting in each instance there proposed was 5 for each of them. So a total weighting of 10?

A. Yes.

Q. Making an aggregate for that criterion, a weighting of 30, two 10s and two 5s, 30?

A. Yes.

Q. Now, can I just take you then to the second of the indicators, because again this is one with which you had involvement: "Speed of demographical coverage for class IV (2 WAP) hand-held terminals", and you will see the proposed weighting for that, which was the indicator for coverage, was 10?

A. Yes.

Q. And then finally, if I can just take you to the number of cells and the reserved capacity, the two indicators on the quantitative side for technical quality and viability, number of cells, had a proposed weighting of 15; do you see that?

A. Yes.

Q. And reserve capacity had a proposed weighting of 5.

A. Yes.

Q. Would it be reasonable to say that the relative weightings there between number of cells and reserved capacity on a three-to-one basis would have reflected, I suppose, at the time, Mr. Andersen's view, implicit view of the importance of those two indicators as between themselves. Number of cells, the proposed weighting was 15, and reserve capacity, the proposed weighting was 5, seem to suggest

A. Yes, it would reflect the importance, but it might also reflect the available numerical information as well. Bear in mind that the quantitative evaluation was carried out using numerical information which was provided by the applicant in the mandatory tables, and this numerical information was not the whole picture.

Q. Oh no, I understand that, of course. I was just asking you whether that would have reflected Mr. Andersen's thinking of relative importance of the two indicators.

A. Yes.

Q. At that stage you had no numerical information anyway, because this was the 25th May, and there was no applications received until the 4th August?

A. That is correct, yes.

Q. I just wanted to draw your attention to those because when we come to look at the actual evaluation model which was approved by the Project Group, there seemed to have been some changes in those weightings and their relative importance.

Now, if I take you to the next page, "Procedure for the qualitative evaluation process".

It says: "Despite the hard data of the quantitative evaluation, it is necessary to include the broader holistic view of the qualitative analysis. Other aspects, such as risk and the effect on the Irish economy, may also be included in the qualitative

evaluation, which allow for a critical discussion of the realism behind the figures from the quantitative analysis.

"The following describes some of the major steps in the qualitative evaluation process:

"1. The eligible applications are read and analysed by the evaluators.

"2. The eligible applications are evaluated by way of discussions and analyses.

"3. When deemed adequate and necessary, in-depth supplementary analyses will be carried out.

"4. Initially, the marks will be given dimension by dimension. Afterwards, marks will be given aspect by aspect (subtotals), and finally to the entire applications (grand total).

"5. When the dimensions are assessed, the evaluators should, as far as possible, use the same indicators as used during the quantitative evaluation. New indicators may be defined, however, if the existing indicators are not sufficiently representative for the dimensions to be evaluated.

"6. During the qualitative evaluation, the evaluators must take the results from the quantitative evaluation into account, only compensate when necessary in order to make fair comparisons between the applications.

"7. If major uncertainties arise (e.g. in accordance with Step 4 of the quantitative evaluation or due to

incomparable information), supplementary analyses might be carried out by Andersen Management International AS in order to solve the matter.

"8. The results of the qualitative evaluation will be contained in the main body of the Evaluation Report.

The results of the supplementary analyses will be annexed to the report."

And they are described as the major steps in the qualitative evaluation?

A. That is correct, yes.

Q. Can I just refer you to step number 5 and step number

6 of that list, Mr. McQuaid. You see at 5 it says

"When the dimensions are assessed, the evaluators should, as far as possible, use the same indicators as used during the quantitative evaluation. New indicators may be defined, however, if the existing indicators are not sufficiently representative for the dimensions to be evaluated."

Would I be correct in reading that to mean that the starting point is that you take the result of the quantitative evaluation on the indicators, and that that is the starting point of your qualitative evaluation? Would that be correct?

A. Yes, that would be the starting point in terms of deciding what indicator should be used for the qualitative evaluation. Additional indicators would be required, would have been required for the

qualitative evaluation, because there was certain elements which could not have been described in simple numerical terms.

Q. So when you looked at it, if you decided that you didn't have enough information based on the quantitative result, you would decide that you needed additional indicators; is that correct?

A. No, no. What I am saying is that the indicators which were necessary for the evaluation of each of the dimensions may not have been would not necessarily have been the same as the indicators used in the quantitative evaluation.

Q. I understand that. Just maybe it's the Danish English. It just seems to suggest in paragraph 5 that you didn't have to use new indicators; that "new indicators may be defined, however, if the existing indicators are not sufficiently representative for the dimensions to be evaluated." It didn't seem to be a foregone conclusion, on a reading of paragraph 5, that you would always need additional or new indicators in the qualitative, would you agree with me, on the basis of a reading of that?

A. That was at a very early stage in the evaluation process. We had not gone through the process, so I suppose we took that at sort of at face value at the time.

Q. Right. And then at 6 it says "During the qualitative

evaluation, the evaluators must take the results from the quantitative evaluation into the account and only compensate when necessary in order to make fair comparisons between the applications."

I presume you'd agree that that was a reasonable statement of what was intended in the qualitative evaluation?

A. I think it's a slightly restrictive comment, "and only compensate when necessary in order to make fair comparisons between the applications."

Q. I don't know, Mr. McQuaid. I am hoping that you could explain it to me, because after all, this is your model. It's Mr. Andersen's proposal, and certainly as regards this paragraph, this is what was adopted by the Project Group. So I am just asking you to assist and explain to me how the actual evaluation proceeded based on this description of the model.

A. The results from the quantitative evaluation formed part of the information and part of the material available during the conduct of the qualitative evaluation sessions.

Q. No, I appreciate that. It's just here it says "During the qualitative evaluation, the evaluators must take the results from the quantitative evaluation into account," which is what you have said, but it goes on and it says "and only compensate when necessary in order to make fair comparisons between the

applications."

And you said to me that that seemed to be unduly restrictive.

A. Yes. Well, it does appear restrictive there. We did during the evaluation, we did include additional evaluation elements in order to make fair comparisons, as I say, between the applications, in order to be as complete as possible.

Q. In fact, I think, if you look at the report, there is no instance of the evaluation of a dimension where you didn't include additional indicators.

A. I think that was correct.

Q. Isn't that right?

A. I think that is probably correct, yeah.

Q. I suppose it would be fair to say that really paragraph 6, as far as you were concerned, wasn't strictly followed in conducting the evaluation?

A. Yes, that would not strictly followed, yes, yeah.

Q. Now, if I can take you on to page 19. This is headed "Guide to the award of marks." And again this is in the section dealing with the qualitative evaluation, not the quantitative evaluation.

It says: "In order to guide the mark giving, a matrix has been elaborated below. The dimensions and indicators are not weighted ex ante. The marks will be awarded according to a "soft" 5-point scale (A, B, C, D, E), with A being the best mark. Averaging will

be made after consensus among the evaluators."

And then it sets out a table?

A. Yes.

Q. It says there the dimensions and indicators are not weighted ex ante. Now, I suppose what that means is that they weren't weighted at the outset in the same way as the quantitative indicators?

A. Yes.

Q. Well, as far as you understood when you were reading this who was going to fix and when were these weightings for the qualitative evaluation going to be fixed? Just it doesn't say it, so I am wondering what your understanding was.

A. Well, what happened, I can certainly tell you what happened in the case of the dimensions which I was involved in evaluating. We first of all decided on the criteria, the various criteria to be used it's aspects, dimensions and the sub element is called?

Q. Indicators?

A. Indicators, yes, we first decided on the indicators to be used. We then carried out our evaluation and scored for each of the applicants against those indicators, and we then decided, during the evaluation session, on the relative weightings of each of those indicators for a particular dimension. That was the way we carried it out within the groups which I was involved in.

Q. Well, presumably there must have been some uniformity in the process as between sub-group and sub-group, would you agree with me, in the actual procedure that was applied by each of the sub-groups? I mean, obviously, if there was to be a fair or objective evaluation process, there had to be similar procedures applied and followed by each of the sub-groups; isn't that right?

A. That is correct, yes.

Q. Do you think it's likely, therefore, that in the case of all of the sub-groups, the qualitative weighting was fixed and determined after the applications had been evaluated indicator by indicator?

A. I can't comment on the other evaluation groups; in other words, the groups which I didn't participate in.

Q. The narrative just above the table says "That the marks will be awarded according to a 'soft' 5-point scale, (A, B, C, D, E)". Now, what did you understand that to mean in comparison with the markings for the quantitative indicators?

A. By that I understand that a grading system was used, and you had to award a grade to each indicator for each applicant, a grade of A, B, C, D or E, rather than a precise mark or a precise numerical score.

Q. So this was, in terms of it being "Soft," I suppose if it wasn't precise, it was a little bit more imprecise; is that right?

A. Yes, yes.

Q. And it was "soft"?

A. It was soft insofar as we were selecting a score range, rather than a very precise score.

Q. So A, B, C, D and E would signify different ranges of score?

A. Yes, yes.

Q. And these weren't precise; they were relatively imprecise?

A. Yes.

Q. Now, if I can just refer you to the table below that, Mr. McQuaid, and this was the guide to award of marks for the qualitative evaluation. And the first column listed "Aspects and Dimensions". And below that you had each of the dimensions listed under different headings; isn't that right?

A. "Aspects".

Q. Yes, under different headings. Marketing aspects, technical aspects, financial aspects, management aspects, and other aspects.

A. Yes.

Q. And then on the axis at the top there was A1, A2, A3, A4, A5?

A. Yes.

Q. And obviously they didn't anticipate a sixth entrant at the time of the evaluation model; there was nothing there for A6?

A. No.

Q. I suppose the idea was you were going to give a grade to A1, A2, A3, A4, A5 for each of the dimensions listed on the left-hand side; is that right?

A. For each of the indicators.

Q. Well, it's dimensions there, aspects and dimensions.

A. Yes, but

Q. It hasn't listed indicators, because they weren't fixed in advance; isn't that right? You see on the top left it says "Aspects and Dimensions"?

A. Yes, I agree, yes, okay.

Q. What I just want to draw your attention to here, Mr.

McQuaid, is that each of the dimensions that are

listed, "Market development, coverage, tariffs,

international roaming plan, radio network

architecture, capacity of the network, performance

guarantees, frequency efficiency, financial key

figures, licence payment, experience of the

applicant", each of those were dimensions that were

identified in the quantitative evaluation; isn't that

right?

A. Yes.

Q. And each of those dimensions was linked to one of the evaluation criteria in paragraph 19 of the RFP?

A. Yes.

Q. So that in effect, what Mr. Andersen had proposed here was a regrouping of the dimensions under four

different aspects; isn't that right?

A. Yes, that is correct, yes.

Q. So if we take the one that you were involved with, "Technical aspects", there was radio network architecture, of the first dimension.

A. Yes.

Q. And am I correct in thinking that that was the dimension in the quantitative model which was linked to the quality and viability of the technical approach?

A. Yes, but it would have been, yes, but capacity of the network may also have been related to that.

Q. The two of those were the two dimensions linked to the second evaluation criteria, quality and viability of technical approach?

A. That is correct.

Q. The third, "Performance guarantees", was linked to performance guarantees, which was the 7th evaluation criterion?

A. Yes.

Q. And then frequency efficiency was attached to efficiency of proposed use of frequency spectrum resources, which I think was the last of the eight criteria?

A. Yes.

Q. So effectively Mr. Andersen had regrouped these dimensions under the heading of "Aspects"?

A. Yes.

Q. And in your case, you being the expert on technical areas, the technical aspects related to three of the eight evaluation criteria?

A. Yes. But I should also say that we also evaluated, from a technical perspective, coverage.

Q. I'll be just coming to that. You anticipated me.

Coverage was a dimension on the quantitative evaluation linked to the evaluation criteria in relation to speed of minimum achieving minimum coverage; isn't that right?

A. Speed of coverage, that's right.

Q. As you say, coverage is quite a technical matter?

A. It is indeed, yes.

Q. But it was actually grouped under "Marketing aspects"?

A. In this case, yes.

Q. But it was, nonetheless, still the dimension which was linked to the evaluation criterion of coverage?

A. Yes.

Q. Now, as I say, that was the evaluation model which was proposed on the 17th May by Mr. Andersen. It was discussed, I think, at some length, because you do recall it on the 18th May at the meeting of the Project Group.

Now, that wasn't approved, the evaluation model wasn't approved until the next Project Group meeting. And if I can refer you back I don't know if you have it

there with you at the moment, Mr. McQuaid to Book

41, it's divider 70.

A. Yes, I have it there.

Q. You'll see that both you and Mr. Ryan are recorded as

being in attendance at that meeting, and of course Mr.

Andersen and Mr. Bruel. And that's a lengthy report.

It deals in considerable detail with the not

surprisingly with the Department's dealings with

the Commission and advices that had been taken from

the Attorney General's Office.

But if you go to the very last page of the report,

you'll see there is a subheading "Evaluation model".

And it says "This was approved as presented, with

correction of one minor typo on page 6 of 21."

The second bullet point: "Further comments, if any,

to be forwarded to Maev Nic Lochlainn within a few

days of the meeting."

Do you see that?

A. Yes, that is so.

Q. If I can take you back to the book which we were

dealing with a moment ago, in which we were looking at

the evaluation model initially proposed by Mr.

Andersen on the 17th May, and if you move on to

Divider 1A, you will see that there is a version of

the 8th June. And you'll see that you were also, I

think yes, there you are on the circulation list

for this version, but again we are using the copy that

was in the Regulatory Division file, so that any annotations you can disregard.

Now, it appears, certainly from the report of the Project Group and from the dating of this model, that this must have been the evaluation model that was approved by the Project Group in its final form, and firstly I want to ask you, there are some quite significant changes to the model from the draft initially proposed. And I wonder, can you recall and maybe it's too difficult for you at this remove, but I wonder, do you recall, between the meeting of May and this meeting on the 9th June, whether there were any other discussions, either between yourself and members of the Project Group or between other members of the Project Group that you weren't a party to but of which you were aware, or between members of the Project Group and Andersens in relation to the evaluation model?

A. No, I can't recall any further discussions during that period.

Q. All right. Well, now what I want to just refer you to in this there are some fairly minor changes, but there are also some fairly significant changes. There were some changes to the indicators, the means of computing some of the quantitative indicators on the financial side; but I am not going to trouble you with those, Mr. McQuaid, because you have already stated

that you really weren't involved in that part of the evaluation.

So if you go directly to page 17.

A. Page 17 of which document?

Q. Page 17 of the sorry, of Tab 2. I am very sorry.

I referred you to Tab 1A; it should have been Tab 2.

A. Yes. This is the evaluation model.

Q. Yes, this is the proposed weighting for indicators on the quantitative evaluation. And I just want to draw your attention to some of the respects in which it appears to have changed from the initial weightings proposed by Mr. Andersen.

Now, if you could also take out, because I think it would assist you while you are doing this, page 16 of the draft evaluation model, which has the same table but the earlier weightings proposed. I think it will assist you in considering it. That's page 16 of the model, behind Divider 1.

A. So what I have here is page 16 of the model, Divider 1, and also page 16 of the model, Divider 2.

Q. Yes, page 17 of the model in Divider 2. They are the same tables.

A. Page 16, yeah.

Q. All right. Can I just bring you directly to the technical indicators

A. Yes.

Q. of the second evaluation model. That's page 17 of

21.

And you'll see "Number of cells" there, the proposed weighting is 10. And "Reserve capacity", the proposed weighting is 10.

A. Yes.

Q. Now, if you go back to the earlier proposed weightings, you will see the "Number of cells", the proposed weighting was 15, and the "Reserve capacity" was 5. And that was the one that I drew to your attention at the time.

A. Yes.

Q. Can you throw any light on how or when or what considerations gave rise to the change in the proposed weighting from 15 and 5 to 10 and 10?

A. No, I am afraid I can't. I can't recall why that changed.

Q. I suppose it's surprising because, given that you were the most senior technical person on the Project Group, one would have imagined that as regards the weighting of technical indicators, that your views would have been sought; but you have no recollection of it?

A. I have no recollection, no, no.

Q. Can I draw your attention also to the weighting for coverage, speed and extent of demographic coverage for class IV (2 WAP) hand-held terminals. In the original proposed weighting, that was 10, and that was you see in this one it's been dropped to 7.5?

A. Yes, I see that, yes.

Q. But again, you have no recollection of how that came about?

A. No, no.

Q. And then finally, if I could just draw your attention to the weightings for the dimensions for credibility of the business plan and approach to marketing, the first of them, you will see, it had been forecasted demand; it had now been split in market penetration score 2 and market penetration score 2; do you see that?

A. Yes.

Q. And do you see that the initial weighting was 10, and the weighting of each of these that was now proposed was 3.75, coming in total to 7.5. Do you see that was dropped?

A. Yes.

Q. And the second one, number of network occurrences in the mobile field, I think that was the indicator for experience of the applicant. That had been 10, and it remained a 10?

A. Yes.

Q. And then the last two indicators, solvency and IRR, and these were the indicators for financial key figures, and they had each been 5, coming in total to 10, and they had now been increased to 7.5 each?

A. Yes.

Q. Making in total 15?

A. Yes.

Q. But again, you can't shed any light on how those revised proposed weightings came about?

A. No, no.

Q. I suppose there must have been consideration and discussion of the matter as between members of the Project Group?

A. I can't recall, really. And these weightings, to avoid any confusion, these weightings refer to the quantitative evaluation.

Q. That's correct.

A. Not the qualitative evaluation, which in fact determined the outcome of the competition.

Q. Sorry?

A. The quantitative, the scoring resulting from the quantitative evaluation was what finally determined the scores.

Q. Sorry, you said what finally determined the scores was

A. The scores of the competition.

Q. Was not the quantitative, are you saying?

A. No, it was the qualitative.

Q. It's just you see, Mr. McQuaid, it was these indicators that were applied to the qualitative at the end of the day.

A. Yes.

Q. It was these weightings on the quantitative that were applied to the qualitative results.

A. Yes.

Q. That's how it appears.

A. Subject to the weightings of the evaluation criteria.

Q. I am just saying to you, Mr. McQuaid, that it appears from Table 17, which, as you said in your memorandum, you were very anxious should show the result of the competition

A. Yes.

Q. that these were the weightings that were applied

A. Yes.

Q. in arriving at the final numerical result that gave a margin of 22 marks on 500. And it's quite evident, and we can look at it later if you wish, that the weightings that were applied to that table were the predetermined quantitative weightings.

A. Yes, okay.

Q. We can come back to it again.

Now, the next matter I want to refer you to in terms of changes to the evaluation model is an additional paragraph which was inserted in the procedure for the qualitative evaluation process. And you see over the page, page 18 of 21, is the heading "Procedure for the qualitative evaluation process". And that continues, point 1 to point 8, in accordance with the previous draft.

And there is an additional paragraph, paragraph 9, and it says "The draft report is to be presented and discussed among the essential persons identified by the Department. On this basis Andersen Management will be asked to propose a final report." Now, what did you understand the term "essential persons" to mean?

A. The members of the Evaluation Team sorry, the members of the Project Team.

Q. Right, so there would be discussion of the draft report among the Project Group?

A. Yes.

Q. And then there was a final additional section, whole new section inserted into the evaluation model, and that's Section 7; it's on the last page, and it's page 21 of 21, if I could refer you to that. It's headed "The interplay between the quantitative and the qualitative evaluation".

It says: "Initially, the quantitative evaluation is conducted in order to score the applications. This initial score will be given during the first three weeks after 23 June." Of course that date had to be changed because of the deferral due to the intervention of the European Commission. So that would have been during the first three weeks after the 4th August.

A. Yes.

Q. I think, in fact, we know it was presented on the 4th September?

A. Yes.

Q. "This initial score together with number-crunching performed on the basis of Excel spreadsheets will then form the basis for the presentation meetings and the qualitative evaluation."

That's really what had been said earlier in the model.

A. Yes.

Q. It then goes on to say: "When the bulk of the qualitative evaluation has been performed, however, this evaluation will conversely form the basis for a recalculation of scoring applied initially if mistakes, wrong information or similar incidentals can be documented."

So that seems to envisage that the results of the qualitative evaluation will be fed back into the quantitative scoring to recalculate that scoring; isn't that right, Mr. McQuaid?

A. If mistakes, wrong information or similar incidentals can be documented, yes.

Q. And of course if they are not documented, then presumably the original quantitative scoring stands as initially calculated?

A. Yes.

Q. Then it goes on to say: "The results of both the quantitative and the qualitative evaluation will be

contained in the draft report with annexes to be prepared by the Andersen team."

A. Yes.

Q. So what that seems to have contemplated is that you have a quantitative evaluation; that forms the basis for a qualitative evaluation and for presentations.

And then, if needs be, you feed back the qualitative results into the quantitative scoring. Isn't that right? Isn't that what it seems to contemplate?

A. That's one interpretation of it, yes.

Q. What's the other interpretation, Mr. McQuaid?

A. I don't know.

Q. You don't know.

It then says "The results of both the quantitative and the qualitative evaluation will be contained in the draft report with annexes to be prepared by the Andersen team."

I don't suppose there can be any doubt as to what the interpretation of that is.

A. Yes.

Q. There was to be both a quantitative and qualitative evaluation contained in the draft report?

A. Yes.

Q. And that was the evaluation model that was adopted and approved by the Project Group at the meeting on the 8th June?

A. Yes.

Q. Now, I think the 23rd June was the initial closing date for the evaluation process, wasn't it, Mr.

McQuaid? The 23rd June was the initial date?

A. Yes, before the Commission intervened, yes.

Q. And then I think the Commission intervened, and that hadn't been resolved by the 23rd June, so the closing date had to be postponed?

A. Yes.

Q. And I think in the interim, there were discussions between the Department, officials of the Department and officials of the Commission, and there was correspondence between the Minister and the Commissioner, and indeed between the Commissioner and the Minister?

A. Yes, I understand there was.

Q. And that would have been reported to you in the course of the Project Groups?

A. Yes.

Q. But you weren't involved?

A. I was not involved, no.

Q. I think that was ultimately resolved on the 20th July, on receipt by the Department of a closing letter from Commissioner van Miert which was dated 14th July?

A. Yes.

Q. I think in fact we have seen, and I am not going to refer you to them, but we have seen various versions of that letter of the 14th July, and it appears that

the Department had a version of it, at least as of the 14th July; and I am just wondering, would you have ever been circulated with any copies of or any copy of those letters of the 14th July from Mr. Van Miert to Mr. Lowry?

A. I don't recall having received a copy of that.

Q. Well, I suppose it wouldn't have been necessary to you on the technical side.

A. No, no not

Q. I was just clarifying it with you.

Now, after that had been resolved on the basis that there be a cap of $\frac{1}{2}$ 15 million on the licence fee, there was a new closing date of the 4th August set for the competition?

A. Yes.

Q. And at the end of July, there was a revision of those weightings that we have been referring to in the course of evidence moments ago?

A. That's correct.

Q. If I could just refer you to Book 42 now, if you could, if you have it with you in the box. If I could refer you to Flag 88.

And this is a memorandum from Ms. Nic Lochlainn to Mr.

Towey in which she confirms that she has received advice from Andersen Management International indicating their preference for reducing the fee weighting by 3 percentage points and increasing the

weighting for tariffing by a corresponding amount, and secondly that written communications received from the Department of Finance, from Mr. Buggy in the planning unit, from T & R Technology that's your division; isn't that right?

A. That is correct.

Q. And from D & R Regulatory Division indicated their approval to this change. And she says that "In line with the written procedure agreed earlier, once it is indicated that this division also approves this amendment, when the new agreed weightings for the various criteria will be formally adopted. "Submitted for approval and signature".

And it appears to have been endorsed by Mr. Towey on the 27th July?

A. Yes.

Q. And then if you just go to the previous page, there is a confidential note to file made by Maev Nic Lochlainn, Ms. Nic Lochlainn. She says "The new revised weightings, as agreed in recent telephone conversations with Project Group members and as later confirmed in written communications received from each interest represented on the group, are as follows:

30, 20, 18, 11, 7, 6, 5, 3."

And we see there that tariffs had been increased by 3, from 15 to 18, and licence fee had been reduced by 3, from 14 to 11.

There is only just one other matter I want to draw your attention to there, Mr. McQuaid, and again you may not be able to be of any assistance. But it appears that the weighting for the first evaluation criteria, credibility of business plan and approach to marketing, and for coverage, the fifth of the criteria, is incorrectly stated at 30 and 7; because I think when the alternative proposals were being made by Andersen, which were in the model as adopted, in error, the total of the weightings added the aggregate of the weightings came to 103, and that in fact the total for credibility of business plan was 32.5. And you will remember I drew your attention to the fact that coverage had been reduced from 10 to 7.5, not to 7?

A. Yes.

Q. And for some reason there, that doesn't appear to have been picked up by Ms. Nic Lochlainn.

A. Okay.

Q. Now, the competition closed on the 4th August, and there were six applications received. And I wonder, were you in the Department, Mr. McQuaid, during the month of August, when they were received? Or were you on holidays?

A. I can't recall whether I was on holidays or not, but I certainly I wasn't there when the actual delivery of the

Q. Well, I am sure they went to Kildare Street, in any event.

A. When the delivery of the tenders was made, including the arrival of Vikings, as I recall, or Digifone people dressed up as Vikings, anyway. No, I wasn't there at the actual delivery of the tenders.

Q. I think the intention was, am I right, in accordance with the evaluation model, that people were to do their best, members of the Project Group, to read the applications, or at least the relevant parts of the applications which impacted on their particular area of expertise, prior to within the first three or four weeks?

A. Yes.

Q. And do you recall, did you have an opportunity to do that in the month of August?

A. Yes, I did, I read through the technical volume.

Q. That must have made great holiday reading.

A. Indeed.

Q. The first meeting, I think, then, after the closing date, and I think the first meeting since the 8th June, of the Project Group, was the 9th meeting, on the 4th September, and that's at Divider 95 of the book that you have there before you. And I see that both you and Mr. Ryan were in attendance at that meeting?

A. Correct, yes.

Q. And in opening, Mr. Brennan outlined the agenda for the meeting.

"1. The Andersen presentation on the quantitative evaluation of the six applications.

"2. Discussion of the forthcoming presentations.

"3. The future framework for the project."

Now, in relation to the quantitative evaluation, it's stated "Prior to presenting the initial draft report of the quantitative evaluation, Mr. Andersen first acknowledged certain shortcomings in the results gleaned so far from the quantitative scoring. The quantitative evaluation had highlighted some incomparable elements, i.e.

" some applicants had not calculated OECD baskets to their best advantage."

I think OECD baskets related to tariffs; isn't that right?

A. That's right.

Q. "IRR had not been calculated in accordance with the tender specification in some cases".

And IRR was one of the financial key figures?

A. Yes.

Q. "For certain cases, not enough information on roaming was supplied to score the application."

And that was international roaming?

A. Yeah.

Q. Finally, "Certain of the indicators proved highly

time-sensitive; e.g., if scored in Year 4 they showed one ranking, Year 15 giving a completely different view."

So there seemed to have been problems in relation to three of what was then, I think, 14 indicators; isn't that right?

A. Yes.

Q. And I think, reading that, the difficulty related not to the actual scoring but to the information which had been provided by applicants?

A. By the applicants, that is correct.

Q. It went on to state: "Highly sensitive nature of the quantitative scoring document was noted." Sensitive, I presume, in terms of being confidential.

"Copies are to be retained securely by Mr. McMahon, Mr. McQuaid, Ms. Nic Lochlainn and Mr. Riordan. The remaining copies were returned to AMI."

It then went on to state "The meeting discussed each dimension of the score document in turn. The consensus was that the quantitative analysis was not sufficient on its own and that it would be returned to after both the presentations and the qualitative assessment".

Doesn't that just mean that you were going to do exactly what the evaluation model contemplated?

A. Yes.

Q. "It was also agreed that the figures used by the

applicants cannot be taken at face value and needed to be scrutinised. Responsibility for such a scrutiny had not yet been decided."

And again, that's exactly what was contemplated in the evaluation model?

A. Mm-hmm.

Q. It says "The need to reflect a change in the weighting for the licence fee was highlighted. AMI committed to correct the model in this respect.

"Mr. Andersen concluded that the scoring at this stage was relatively close and that no conclusions could yet be drawn."

A. Yes.

Q. Of course, based on the evaluation model, there would never have been any question of drawing any conclusions based solely on the quantitative analysis; isn't that right?

A. That is correct.

Q. Then you went on to discuss the forthcoming presentations, general questions, and some specific questions that were to be prepared, and then you went on to discuss the future framework of the project.

And it said that "10 sub-group meetings for the qualitative evaluations had been proposed by AMI.

Five had already taken place. AMI committed to provide the Department with documentation on these earlier sub-group meetings. Project Group members

were welcome to contribute/suggest amendments to the scoring."

Just to pause there, Mr. McQuaid, the conducting of sub-groups without departmental attendance was, to an extent, or was a significant departure, was it not, from what was intended in the evaluation model?

Wasn't it always the intention that the sub-groups would be made up of members of the Project Group assisted by consultants from Andersen Consulting?

A. That's right. That's for the qualitative evaluations, yes.

Q. That's right.

A. Yes.

Q. "Andersens outlined a timetable for the remaining five sessions, and personnel were nominated to attend. Mr. Towey and Mr. Riordan are to attend the financial and performance guarantee meetings. Mr. McQuaid and Mr. Ryan are to attend the radio network, capacity of the network and the frequency efficiency sessions.

"Andersens stated that the qualitative scoring of dimensions would take place in the sub-groups.

Scoring of aspects would take place after the presentations."

So the individual dimensions which we looked at a little while ago would be scored within the sub-groups, but the overall subtotals giving the result for each aspect would be scored after the

presentations?

A. Yes.

Q. "Mr. Brennan however specifically requested an opportunity to revisit the qualitative evaluation of dimensions after the presentations. The group would have an initial discussion on the qualitative evaluation scoring on the afternoon of the 14 September. Gaps would be highlighted and the extent of the need for supplementary analyses assessed.

"A date of the 3rd October 1995 for delivery of a draft qualitative report was suggested by Andersens.

"A discussion on the question of the backbone network, as proposed by many of the applicants, also took place. It was concluded that very little could be done until a successful applicant had been chosen."

No doubt you had a particular interest in the backbone network?

A. Indeed, yes.

Q. I see there, Mr. McQuaid, that the 3rd October was nominated as the date for the delivery of a draft qualitative report?

A. Yes.

Q. What was contemplated the quantitative report, I suppose, had arrived in the course of that meeting?

You had it already?

A. That's right, yes.

Q. So what was outstanding was a qualitative report?

A. Yes.

Q. Or indeed any revision of the quantitative report arising out of the qualitative results as contemplated in the evaluation model?

A. Yes, a report on the individual qualitative evaluations.

Q. Yes.

MS. O'BRIEN: I was going to refer now to the quantitative Evaluation Report, Sir, that had been tabled by Andersens in the course of this meeting. I wonder, would I be better to leave that over.

CHAIRMAN: Well, if you are starting off that, for the sake of five minutes it's probably preferable that we defer it until eleven o'clock tomorrow.

I'd be reasonably optimistic, Mr. McQuaid, that we may conclude your evidence tomorrow, depending on how matters go; and if it's convenient, could you please be here to resume at eleven o'clock tomorrow morning.

Thank you very much.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 27TH MARCH, 2003 AT 11AM.