

A P P E A R A N C E S

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I N D E X

WITNESS: EXAMINATION:Q. NO:

Sean McMahon Mr. Healy 1 - 658

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 2ND
APRIL, 2003, AT 10:30 A.M.:

CHAIRMAN: Yes please, Mr. McMahon, if you come up
sorry for the long wait yesterday.

CONTINUATION OF EXAMINATION OF SEAN McMAHON BY MR.

HEALY:

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

A. Good morning.

Q. As I hope you could see from what I was saying
yesterday, having looked back over a number of
documents, in particular after Mr. McQuaid and
Mr. O'Callaghan and you last gave evidence, I wanted
to not shift the focus of the inquiry, but to refocus
on a number of areas, including in particular, the
issues of evaluation, the nature of the evaluation
that was conducted, and the evaluation model that was
adopted, and I also wanted to look in particular at an
aspect of that, namely the aspect of weightings.

Now, I think the reason, as I said, that I wanted to
do that was that those two issues seem to have
exercised the minds of a number of people at various
times in the process, and that their concerns seem to
be crystallizing in some relatively, as I could see
from the documents, or as I feel I could see from the
documents, relatively intense discussions on the 9th

October and on the 23rd October. First of all, do you agree that I am right in thinking that there was a lot of discussion and indeed a lot of confusion about those two things at least, quantitative versus qualitative and weightings, using that term in a compendious way?

A. It would be true to say that there was some confusion certainly, and I think, I can't remember the words that I used in my statement to you, but on the day on which, I believe it may first have been the 9th and then again on the 23rd this came up for discussion, this was probably at the behest of myself and Mr. O'Callaghan, and we perceived it as being considerable confusion, but then it has to be said that is because we were raising it on the day, and because when we weren't getting the sort of answers that we expected, that we then characterised it as considerable confusion. It may well have been that we were sowing as much confusion in the minds we were asking.

Q. Well, in fairness

A. I suppose the point is, it may have been that it was much clearer in their minds than it was in ours and that was why we were asking.

Q. Maybe you are right. But I don't think you were the only person who was suggesting there was confusion.

Mr. Andersen is recorded as having noted at the

meeting of the 23rd that the group were still at odds over what the quantitative/qualitative evaluation meant?

A. Yes, that is true.

Q. And as you can judge from the note of that meeting and the meeting of the 9th, a number of people were, I suggest, distinctly confused about how the weightings were applied. Would that be fair?

A. That could be fair in the following sense: On reflection it may be the case that people were quite satisfied with the approach to be adopted, were willing to adopt that without adverting to the kind of difficulties which often arise in quantitative type analyses and when adjustments were to be made, as they do, that they were again quite prepared to let the experts do it and not tax their minds with the details of how such difficulties are dealt with.

Q. Right.

A. And so that when you ask someone like that at a later stage, well explain to me why we did this, that or the other or how we got this, that an ordinary person going through that process might not be able to do that. Now, I have characterised that as confusion, I think in my statement. It is true that if we were all asked to explain exactly what we meant or understood by the process, there would be bound to be differences of opinion, I think, and we were certainly

experiencing those on the days that I mentioned, that is the 9th and the 23rd. Having said that, I was still anxious to see that there was a rational thread going through the process. I was in a position where I had, in effect, left this process at the time that the sub-groups went to Copenhagen with a notion in my mind of how the process was to be done which had been garnered from the earlier documents, evaluation models, etc., untainted by any of the difficulties that did in fact arise, and then I came back into it at a stage when much of the spade work and the number-crunching had been done and those difficulties had been encountered, and I was unaware of them. And so I was anxious to try and satisfy myself that there still was a thread of rationality running through the whole thing. That's really what I was at, I suppose. It is fair to say I have spent more time in the last four weeks trying to re-engineer this process than I ever did during October at the time, because it simply wasn't possible. Does that answer your question?

Q. It does, up to a point. I am interested that you should say that you have been, you have done more work on it in the last four weeks I am not criticising you for that than you did at the time, because you didn't have the time but you did in fact have another four weeks at the time that the process was accelerating, isn't that right?

A. Yes.

Q. Do you remember, I think you said to me the last day you were in the witness stand, the last day you gave formal evidence in the witness stand, that at one point you were wondering could you take out your calculator and try to work out what this thing was all about?

A. Mm-hmm.

Q. Now it seems from some of the documents that the Tribunal retrieved from the Departmental documents and put on the overhead projector yesterday, that a number of people were engaged in that type of exercise, certainly Mr. Billy Riordan seems to have been engaged in it, Mr. Buggy seems to have been engaged in it, Mr. O'Callaghan at least, I am not sure he had his calculator out but he was clearly wondering about some of the results he was seeing?

A. Yes.

Q. And I think I am correct in saying that you cannot take out a calculator, or indeed you cannot use any other device, whether a set of rules, a set of guidelines, that would enable you to go through the report and to check the results?

A. I am not sure that is quite right, because

Q. Well, maybe I am wrong in that?

A. At the time presented with tables like those at number 16 and 17 and 18, I think

Q. Yes?

A. It is certainly possible to get out your calculator, I think that I did it at the time.

Q. I see.

A. Although I have to admit it wouldn't have been in my green books and I don't know where I did it and convert letters to the appropriate 1s, 2s, 3s, 4s and 5s, multiply them by the correct weights, and I remember arriving, at least in the case of the two front runners, at the numbers I think it is, is it 432 and 410 at the bottom of the table, and saying to myself, well, yes provided those letters are the correct ones, and I certainly wasn't in a position to gainsay the people who had arrived at those letters, that was their considered judgement at the time. To that extent, yes, one could run a calculator over the figures and say that yes, this is the correct result.

Q. Well, can we just look at that for a moment. What you did, if I am right in my understanding of what you said, you looked at Table 16, 17 and 18, and you applied, you engaged an exercise where you converted each A into a 5 and each E into a 1 and all the other letters in between into their corresponding, all the other letters into their corresponding numbers. You applied the weightings and you did the tots. Now, you didn't do that exercise in all of the other tables from which the letters which you were

translating into numbers were derived?

A. Those are the tables, presumably, which dealt with the dimensions and sub-dimensions and came up with a series of letters along the bottom purporting to represent in the case of each dimensions what the score was.

Q. Yes.

A. I didn't, because I couldn't, because I wasn't in the position of an appeal court looking at something a jury had done.

Q. No, no, I am not suggesting at all that you would look at the way in which the various sub-groups scored a particular criterion.

A. Right.

Q. You have described the three tables on which you carried out your exercise: 16, 17 and 18?

A. Yes.

Q. In some of the reports it is 15, 16, 17, that doesn't matter, we are talking about the last three tables?

A. Yes.

Q. Those tables consist of results derived from other tables?

A. Yes.

Q. Those other tables, in fact, also consist of results derived from further tables and further back there are a number of layers, but you could have taken those three tables you described, and could you have found

in the report, it is in the report, the tables from

which those results are derived?

A. Yes.

Q. And those results are all totals or subtotals of other sets of letters?

A. Yes, that's correct. Now, I think it is fair to say I did, I do recall going through, I think it would have been the dimensions, and seeing that in, for example, in the case of the dimensions dealing with frequency efficiency, running along the line and seeing what the six letters were and then making sure that those were the same six letters which ended up in the appropriate table at the end.

Q. But you do agree with me that each of the letters in Table 16, 17 and 18, represent aggregations of scores to be found elsewhere in the report?

A. I think that's right in the sense that they represent aggregation of sub-indicators and indicators related to those dimensions.

Q. Yes. I don't think there are any sub-indicators actually mentioned in the result, but the next layer the indicators are mentioned?

A. I think there were sub-indicators mentioned.

Q. Maybe you are right. But you didn't go back to that layer in any case?

A. I couldn't second-guess any of the letters arrived at in any of those tables.

Q. No, I am not suggesting that you could second-guess them. I will give you an example, I think it might be the easiest way. I am not suggesting you second-guessed them. I am saying you were looking at a series of derived scores; they were not derived from, as far as we can see, other people at least didn't think they were derived from judgements, they were derived from other tables; they were tots, they were subtotals, do you follow me?

A. I do, in most cases, yes.

Q. So you didn't go back to check that they were the correct subtotals so?

A. What you are saying to me, if I can understand you correctly, is that I didn't do the same kind of reckoning with my calculator in the case of those small tables as I did I think I may have done it in one or two cases.

Q. I see. Well, maybe we might just look at that, one of those exercises for a moment. But before I do that, can I just ask you one thing about that. If you were carrying out that exercise, and we know other people may have been carrying them out at the meetings or may have done them elsewhere. Was there any discussion with Mr. Andersen about carrying out this type of exercise?

A. There may have been but I certainly can't recall it. I think it would have been an obvious question on the

morning when we saw the first draft final report, but

I don't know.

Q. Have you got a Book 46?

(Book handed to witness.)

A. Okay, Mr. Healy, I have got the book.

Q. Yes. Now, the last three tables in that book, you

call them 16, 17, 18, that's what they were called in

the

A. Which divider should I be at here?

Q. I beg your pardon, you should be at Divider 50.

A. Okay, I am at Table 16.

Q. Now, in that book, Tables 16 and 17 are contained in

the final section of the report, the section which is

in fact headed "The Final Evaluation"; do you see

that?

A. Yes.

Q. That is of course a new heading which was introduced

for the first time in that final report. You wouldn't

have seen that, of course, because you would have only

have seen the version of the 18th October?

A. That's right.

Q. And in the "Summary and Concluding Remarks" in the

version of the 18th October, there were three tables

in the final section: There were the two tables that

are numbered 16 and 17 here, and another table which I

will come to in a moment.

If you look at Table 16, you will see that it has a

grand total at the bottom of scores, do you see that,
B down, C down, B, B down, B up, C up; do you see
that?

A. Yes.

Q. And a ranking?

A. Yes.

Q. A5, A3, A1, A4, A2, A6?

A. Yes.

Q. And on the next page, on Table 17, you have what, I
think nobody has doubted, are the same letters
representing the scores for each of the dimensions,
and they are totted up converting each A into an 5, B
into a 4 and so on and you have the same result, the
same ranking rather?

A. Yes.

Q. Now, this table was presented to you for the first
time at the meeting on the 9th, and I think that would
have been in fact the first time that you saw the
report of the 3rd, isn't that right?

A. I think so, yes.

Q. And you would have seen it again at the meeting of the
18th?

A. Yes.

Q. You had at least had

A. The meeting of the 23rd.

Q. I beg your pardon, the meeting of the 23rd. You had
at least had some opportunity, you mightn't have read

the report because Mr. O'Callaghan had the only copy on your side, I think, but you had some discussion with him, but still you hadn't had the same, a full opportunity or the same opportunity as he had to go through the report?

A. Yes.

Q. But I take it that it is on this page then that you were doing your tot with your calculator?

A. Yes, I think so.

Q. To produce the same result as you see on the next page?

A. Yes, I think so.

Q. Now, if you go back for a moment to page 14.

A. That was of the same final report.

Q. Of the same final report, yes. You see there is a heading the "Comparative Evaluation of Applications"?

A. I do.

Q. And underneath that you see that you have "4.1 Marketing Aspects"?

A. Yes.

Q. And you recall, we will come to this later on, that Mr. Andersen divided the evaluation up into marketing aspects, technical aspects and financial aspects and he regrouped the various, what we call, paragraph 19 criteria under these aspects headings?

A. Yes.

Q. And he has listed here the items that he has grouped

under the "Marketing Aspects" heading and he has the scores that each of the applicants got under each of the headings: market development, coverage, tariffs, international roaming plan; do you see that?

A. I do, yes.

Q. Just to concentrate on A1 for the moment. You see A1 gets a C for market development?

A. Yes.

Q. Now, if you go over the page for a moment, there is a heading "Market Development"?

A. Yes.

Q. Do you see that?

A. I do.

Q. And you go on then, I think if you go on three pages or more, I am not sure, I think if you go to page 18, you will see a table and that's a table headed "Market Development," do you see that?

A. I do, yes.

Q. And there are 10 indicators of market development listed under that dimensions?

A. Correct.

Q. And if we concentrate on A1 for a moment, you see that A1 gets a C, B, E, C, C, D, C, A, D, C, C; do you see that?

A. I do indeed, yes.

Q. And a tot at the bottom: C?

A. The copy which I have is blackened out but I can rely

on the monitor here.

Q. You can see it on the monitor, it is a better copy on the monitor?

A. The market development subtotal you are suggesting to me is C.

Q. Yes.

A. Yes, I see that.

Q. If you now go back to page 14 again?

A. Right.

Q. You will see that for market development A1 gets a C?

A. Yes.

Q. And it is from that subtotal of the ten dimensions that that C is derived, do you see that?

A. Yes. It was an unfortunate aspect of the report, if you like, that tables which appeared subsequently fed back to tables which appeared previously.

Q. Yes. Mr. Andersen would set out in an introductory section the results of the work which would then be explained in the following parts of the section?

A. Yes.

Q. And if you go on then, to page 48 again, to Table 16, you will see that market development is the first dimension and C is the score put in?

A. Yes.

Q. Now, when you looked at the ten indicators that were shown here, we know that in some cases, perhaps not in every case, in some cases there appear to have been

sub-indicators, so there must have been other tables

feeding into like the table to the 10 dimensions,

Table 2 of the 10 indicators of the dimension, market

development total, all right?

A. All right.

Q. Now, if you wanted to see whether that C was a correct

tot in the same way that you were trying to see

whether the tot of all of the figures on page 48

generated the proper subtotal or total, in fact grand

total at the bottom, you would have had to go back to

Table 2, isn't that right, the list of the ten

indicators under the dimension, market development?

A. If in fact oh, it is Table 2, you would have to do

that, that's correct.

Q. If you wanted to do that, how would you do it?

A. How would I do it now? I don't recall. As I think I

said to you a few moments ago, I think I did this, in

a couple of cases at least at the time. As to how I

did it, I don't exactly recall.

Q. I could understand that you could simply, and I had

this exercise carried out, you can translate every C

into 3, every B into a 4 and E into a 1 and so on?

A. Yes.

Q. But you would also ask yourself the question, surely,

is there a weighting to be applied here?

A. I would ask myself that question, yes, was there a

weighting applied?

Q. Yes.

A. And if so, how had it been arrived at?

Q. I think you did ask those questions at the meeting of the 23rd?

A. Yes, right.

Q. And if there were subtotals derived from similar calculations made in respect of a list of sub-indicators, then the same question would have had to have been asked?

A. It would arise, yes.

Q. Were there weightings applied or were there not?

Amn't I right in thinking that you can find no answer in this document to that question?

A. I think that's correct, that there is no indication in the report as to how the answers to the indicators were arrived at, yes.

Q. I think did you say at one point and maybe in your evidence, maybe this is what you were referring to, I think you said "I might take my calculator and go home at the weekend and go through the whole thing." You obviously needed more time than would you have at a meeting to do it. If you did do that, you would have been at home dependant on the report and no way of knowing whether there was a weighting here or not?

A. Yeah.

Q. Now, we'll come back to the questions that you posed at the meetings and the answers that you got when you

and apparently other people were raising these questions. But one way of looking at this might to be say, maybe there were no weightings?

A. Yes.

Q. And I will refer you to other views expressed by other members of the team when they were canvassing were there weightings, were there any weightings applied.

But if you were to carry out that exercise and apply no weightings on the assumption that if Mr. Andersen doesn't mention weightings, no weightings were applicable, you would get a tot at the end of Table 1 and you would feed that tot into Table 16?

A. Can I stop you there, Mr. Healy?

Q. Yes.

A. I don't think you would. I think Table 1, that that tot at the bottom of it is not relevant for feeding into anything. In other words

Q. Yes.

A. it would be a tot, if any, at the bottom of Table 2 that would feed

Q. I beg your pardon, I am sorry, you are quite right. You are quite right, Mr. McMahan. Sorry, I am confused. It is the tot at the bottom of Table 2, you are absolutely right. Sorry, I am getting my tables mixed up. The tot at the bottom of Table 2 would then be fed into the C, it would be fed in and, if you like, wherever the C is, the first score for A1 on

Table 16, isn't that right?

A. Yes, I think that's right.

Q. And so on down for all of the other applicants in respect of all of the other tables where you could do that exercise.

Now, do you remember the last day that we discussed table , on page 49, Table 17. And I think we, I was suggesting to you that the difference between, certainly between A5 and A3, was a very, very small difference?

A. Yes, you did.

Q. And I think you pointed out to me that at least there was a ranking of sorts there?

A. Yes.

Q. And I was suggesting to you yes, there is a difference between the two of them on the scoring, but that it was given the margin of error that must have been involved in this type of scoring a very small difference such as maybe to amount to nothing, I am not saying that there wasn't, as you correctly pointed out, a difference.

Now, I want to show what you could happen if you fed in the figures in the way that I've suggested a moment ago. If you fed in a tot from Table 2 into Table 17, and if you converted all of the letters on Table 2 into numbers, arrived at a subtotal and then fed that subtotal into Table 17, and if you did that with every

other similar table?

A. Okay, could I have Table 2 on the monitor for a moment?

Q. Yes.

A. It would be a help. I am largely in your hands here, Mr. Healy, because I haven't done such a comprehensive tot.

Q. You will have to assume for a moment that my arithmetic is right. If there is any problem about that, there will be no difficulty in correcting it. I simply want to describe the exercise for you?

A. So if I understand you correctly, what you are going to do is to take the bottom line of Table 2, is that right? Or are you taking every letter in that?

Q. I am taking every letter in Table 2 and I am converting it into a number?

A. Right.

Q. And I am generating an average score at the bottom?

A. All right.

Q. And I am taking that and I am feeding it into Table 16?

A. Okay.

Q. So what I am doing is, I am going to look at all of the applicants, A1, A2, A3, A4, A5 in fact I am only going to look A1, A3, A5 because they were the top applicants.

A. If I might suggest to you it might perhaps save the

Tribunal time if you were to tell us if you found a different bottom line at Table 2.

Q. That is what I am going to come to but I am going to show you the actual figures on the monitor.

MR. MCGONIGAL: Is this one of the charts we got last night?

MR. HEALY: Probably is. I am just checking that everybody had got copies of the charts.

Q. MR. HEALY: As I said, Mr. McMahon, instead of translating simply the C from Table 2 into Table 16, we translate what those letters there would add up to into Table 16, in other words we carry out on Table 16, on Table 2 and all the other tables feeding into Table 16 the self-same exercise as you were carrying out as Mr. Brennan had carried out and as it appears a number of other people were carrying out around the table or in their offices at the time.

Now, if we look at that on the overhead projector, you will see that in the case of A1, A3, A5, these are the scores that are generated if you apply the weightings.

MR. MCGONIGAL: Which weightings?

MR. HEALY: That are on the left-hand side of the column in the same way that they were applied, as far as we can tell, in Table 16 and in Table 17?

A. Can I stop you there for a moment?

Q. Yes.

A. So what I have now got here is a reproduction of Table

17?

Q. Correct.

A. Using numbers under each one of the three top scorers, is that right?

Q. Yes.

A. That are derived from arabic numbers rather than Roman letters?

Q. Correct.

A. And the 2.9, for instance, if you might take that and explain to us how exactly

Q. Yes, if you add up all of the lettered scores, if we go back to Table 1 for a moment, you see it on the monitor?

A. I do.

Q. Table 2, you see it on the monitor?

A. Yes.

Q. If all of those scores for A1, A3, and A5, those lettered scores are translated into numbers and you add them up and you divide by 10, to get the average score. Do you see that?

A. Yes.

MR. FITZSIMONS: Where is the exercise?

A. As I understand what you are saying you did, yes, so you took, in the case of A3, for example, if I am not mistaken then, you took, you added 3 to 2 and 2, a further 2, a 5, a 5, a 4, a 2, a 2 and a 2 and divided by 10, is that correct?

Q. MR. HEALY: Yes. Did you say in the case of A3 or in the case of

A. A3.

Q. A3. Are you starting at the top or starting at the bottom?

A. The top, taking the 3.

Q. Yes, I think you may have said a 2, did you, by mistake?

A. I beg your pardon, you start with a 3 and then a 2 and a 2.

Q. No, a 3 then another 3, isn't it?

A. Well, I am looking at A3: underneath the C is a B.

Q. No, I think you may be mistaken there. If you look at A3 for a moment?

A. Oh, sorry the top one is a C, I beg your pardon, yes.

Q. Do you see that?

A. Yes.

Q. It is a 3. Underneath that is another 3?

A. Yes.

Q. Underneath that is a 4, and another 4?

A. Right.

Q. And another 4. Then a 5?

A. Yes.

Q. A 5?

A. Yes.

Q. A 2?

A. Yes.

Q. And then two 4s?

A. Underneath the second 5 there is a D, I think, isn't there, which would give you a 4?

Q. No, a D gives you a 2.

A. Oh sorry, yes of course, right.

Q. Then two 4s?

A. Right.

Q. Do you see that?

A. Yes.

Q. And the same in A5 and the same in A1?

A. All right.

Q. This is not a complex exercise; it is simply a tedious one?

A. Right.

Q. There is absolutely no complexity about it, as I think Mr. Brennan showed when he was doing it?

A. Right.

Q. Then you get a tot at the bottom and because there are 10 indicators, if you want to get the average, you divide by 10?

A. All right.

Q. Then you translate that into what is on, in the case of A3 you translate that into the A3 column on Table 16 on page 48?

A. And in the case we have just been describing then, presumably you got a 3.8; is that right?

Q. 3.8, yes.

A. Can I ask you if you then rounded up or down or

Q. We didn't round it at all. We left it as it is, to two decimal places.

A. Because that would make a significant difference.

Q. That is precisely the point I am coming to. If you round it up or down it makes a significant difference because you will lose some marks or else you gain some marks as the case may be. But if you carry out that exercise, you will get, if you look at the table, just put it up for a moment on the overhead projector, you get, firstly, an unweighted total in each case of 42.8, 45.3 and 48.4; do you see that?

A. Yes.

Q. If you then apply the weightings which are down the left-hand column and carry out a similar tot, you get a weighted total of 389, 422 and 435?

A. Okay.

Q. Now, the original scores were 362, 410 and 432. Underneath that you see the difference from the original scores?

A. Yes.

Q. 85 for A5 goes up by 3; A3 goes up by 12; and remarkably A1 goes up by 27, and that gives you a percentage mark for A5 of 87%; for A3 of 84.4%, and for A1 77.8%.

That shows decreasing differences in percentage terms between the top three candidates; do you see that?

A. Can you repeat that to me?

Q. It shows decreasing differences in percentage terms between the top three candidates when you compare this result with the result that is on Table 17?

A. In other words, you are saying that instead of the 4 percentage point difference, there is now a 3 percentage point difference.

Q. It is 2.6, isn't it?

A. But isn't it equally remarkable that the ranking remained the same?

Q. Yes, of course the ranking remains the same. You are absolutely right about that. But the differences are getting closer not further apart.

A. Okay.

Q. And I think I am right in saying that one of the concerns you had at the time was that these candidates were very close?

A. Yes.

Q. Now, I think I was suggesting to you on the last occasion you gave evidence that they were so close that certainly the top two, maybe even now the next one, as to make no difference between the margin of error that must have been involved in this process, which was a qualitative one we are told, and not a quantitative one?

A. Yes, I remember you putting that to me.

Q. Now, if you go, for a moment, back to the version of

the report that you were working on on the 23rd, which was the 18th October version of the report. And that is contained in Book 46, Leaf 46.

A. Okay, I have that.

Q. And if you go to page 47. You see there is a heading "Summary Concluding Remarks and Recommendation." Do you see that?

A. Yes.

Q. And in that summary and in the following pages are set out the, if you like, the culmination or pulling together of the results of the evaluation process.

And this is something that you took issue with in one sense, at least, if you look at the second paragraph it says: "This report aims at nominating and ranking the best applications on the basis of the evaluation.

This has been conducted by way of four different models which can briefly be summarised as follows:

"1. The results on the basis of the evaluation of the marketing, technical, management and financial aspects.

"2. The results on the basis of business case sensitivities, risks and credibility issues.

"3. The results on the basis of a re-grouping of the criteria. (Qualitative award of marks)

"4. The results on the basis of the amplification of a quantitative scoring model (conversion of marks to

points)."

I think you said, and I think you got agreement from people who were at the meeting that there was only one method. And what did you mean by that, that there was only one method?

A. I think I may have been drawing people's attention to the language used in that second paragraph where it said, "This has been conducted by way of four different models." Whereas we had one evaluation model, which had gone through a number of iterations but was nonetheless the evaluation model, and I felt that to put a statement in there which lead one to believe that this had been done by four different models, all of which were in conformity, which is what it does seem to suggest to me, was wrong.

Q. Yes. Now, if you the first item there, is described as "The results on the basis of the evaluation of the marketing, technical management and financial aspects"?

A. Mmm.

Q. This is a reference to the work contained in the previous, I think not quite the previous but two chapters back, the chapter that contains all of the tables like Table 2 and Table 1 that we that we saw a moment ago?

A. Yes.

Q. And that work generated a table which seems to me,

correct me if I am wrong, and I think a different view was taken by the group, seems to me to be given a preeminent position in the report at this point and that's table, the table on page 48. It is called Table 16 on this version of the report.

A. Yes.

Q. Now, you can see that what you have here is all of the same dimensions being grouped under a different list of headings?

A. Yeah.

Q. Grouped under the headings which Mr. Andersen described as 'aspects', so that you had them grouped under marketing aspects, technical aspects, management aspects and financial aspects, each one generating a subtotal like the subtotal we saw a moment ago in Table 1, and each subtotal then being added up or aggregated with the other subtotals to give you a grand total.

Now, there was a discussion, it seems, at the meeting of the 23rd, which was stated that the report or the result could not be shown on this table. Do you remember that discussion? I can refer you to it. It might be easier if I refer you to it. If you go to Book

A. If you say that my notes or that my evidence indicates that I was part of that discussion, then I must accept that, yes. This is one of those tables, I have to

say, that I didn't really like.

Q. Yes.

A. And in truth, you are explaining rather well, you know, what it was and why it was that I didn't understand things at the time.

Q. Sorry, excuse me for a moment.

Was that because you felt that that table wasn't clear or that it didn't have sufficient clarity to be the result?

A. I am not sure that I wasn't sure at the time what it contributed

Q. Yes.

A. On. Having regard to what I have read in the last month or so, it seems that this was one of those tables which was meant to show a conformity when you, or at least when Andersens took the results and put them into different compartments, disaggregated them, aggregated them vertically, horizontally, whatever, tending to show the same result. I think that's what the report was meant to do at the time, but it has taken me this previous month, and it has clearly taken you a long time not to understand what I didn't understand when I first saw it, if you follow me?

Q. Yes. Well, maybe it is an advantage, maybe it is a disadvantage, I don't know, but Mr. Andersen was present at your meetings. Unfortunately he is not present at our proceedings.

You see, I want to suggest that from my reading of the evaluation model and the report, this is in fact what Mr. Andersen was aiming at from the outset, and while I don't think that the evaluation model was followed, and I am not criticising that if I could find out why it wasn't followed or why it was deviated from or where and on what basis, but be that as it may, if you look at the evaluation model and assume that Mr. Andersen was aiming at something along the lines of what was set out in his evaluation model, I think you might agree with me that this table is in fact what he was aiming at. I am going to refer you to that. If you look at Book, I think, 54. If you go to Divider 2, Leaf 20. In fact, another way of doing it is, if you wanted to, you could go to

CHAIRMAN: No, let's keep it to one, Mr. Healy.

Q. MR. HEALY: In fact, I can't refer you to the one book because I have just realised, indeed Ms. O'Brien has just alerted me to the fact that Annex 3, the evaluation model contained in the Appendix to the second version of the report, doesn't contain the relevant page. We will have to come back to that. So I am going to have to refer you to Book 54, Leaf 2?

A. Okay, I have got that.

Q. Do you see there is a heading "Award of Guide to Marks." "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." Do you see that?

A. Yes.

Q. That is in the section dealing with the qualitative analysis?

A. Right.

Q. And this is the guide to the awarding of the marks in that section. And I think it tallies with what is in Table 16 that you have at Leaf 46 of Book 46, doesn't it?

A. This is the book I was reading a moment ago?

Q. Yes. And if you look at the whole of the chapter comparing the comparative evaluation of the applications, the whole chapter, one page or two pages of which we looked at a moment ago, you will see that it feeds directly into that particular matrix, and if I could ask you to go back once again to page 14 of Book 46?

A. Okay, just one moment.

Q. Leaf 46.

(Book handed to witness.)

And if you can just keep your hand on page 48 as well.

You can see that the first table "Marketing Aspects" tallies with the first section of Table 16. Do you see that?

A. Yes, I do.

Q. And all of the similar tables under the "Other Aspects" tally with Table 16?

A. Yes.

Q. And if you go through the whole of that section, which is described as the "Comparative Evaluation of the Applications," you can see that it is intended, as far as I can see, correct me if I am wrong, to generate Table 16?

A. It does look like that, yes.

Q. And it seems to me that Table 16 is what came first in terms of the work as well, and not any of the other tables. Now, how Table 16 came to be put together in terms of the work from which it derived is not entirely clear, but looking at what Mr. McQuaid said in evidence last week, and looking at some other information, it would appear that in arriving at the scores and in subtotalling the scores, to generate the subtotals that are contained on Table 16 and that were contained at various places throughout the comparative evaluation of the applications, what the evaluators, or at least in this case what they did was, they took each of the dimensions, they converted them into numbers, they added them up, they applied sorry, I beg your pardon, they converted them into numbers, they applied the weighting, they added them up and they got a score. Then reconverted that score back into letters. Do you follow?

A. I follow, yes.

Q. If you like, we will take it very slowly by looking at simply the marketing aspects on page 14 again and we will stick with these two tables for ease.

We can also look at them at page 48, it is the same thing. They took the C, the B, the C and the A, they converted them into numbers he was in fact talking about the technical aspects they applied the weightings, they added them up, and they reconverted that number back into a letter to grade?

A. If that is Mr. McQuaid's evidence on that point or the evidence of anyone that was there, then I must accept that, yes.

Q. Yes. Now, from what Mr. Andersen suggested at one point, that this could have a distortive effect, the Tribunal was concerned that this mightn't have been a valid exercise. However, Mr. McQuaid was insistent that not only was his view, not only was it his evidence that that was done, but it was his view that this was what was supposed to be done and Mr. McQuaid indicated that he carried out this exercise with a Mr. Jacobsen who was on the Andersen side, if you like?

A. Mm-hmm.

Q. Now, if you go to page 48 in Table 16 again. Mr. McQuaid described in evidence how he carried out this exercise in the context of the technical aspects, radio network architecture, network capacity,

performance guarantees and frequency efficiency and how he arrived at his results.

A. Okay

Q. Mr. Buggy, you will recall, was a member of the Evaluation Team, he was an accountant. I suppose like all accountants, he would reach into his calculator faster than most people. To judge from the paperwork, he seems to have been involved in an exercise similar to that which Mr. McQuaid used to generate scoring. I presume that Mr. Buggy was not involved in generating scoring on technical aspects. I don't know if he was involved in generating scoring of other aspects, but to judge from the notes on his copy of the version of the report of the 18th, he was carrying out a similar exercise. And I am going to have to refer you to Book 56. It might be easier if I actually gave you the page rather than ask you to turn to I am going to refer to you Leaf 1 of that book which contains the October the 18th version, I think, of the report, and I am going to refer to you page 14. I am just going to take out the page rather than hand you over the whole book so you might prefer to give it back.

(Document handed to witness.)

These were all served last night but there seems to be some difficulty, some people don't appear to have got them but they were definitely served.

CHAIRMAN: Well, if we get one on the monitor it might

save

MR. HEALY: If we put one on the monitor and I think

you have a copy of the page that is on the monitor,

Mr. McMahon?

A. Yes.

Q. You will see the table "Marketing Aspects". Do you

see that?

A. I do.

Q. And this is Mr. Buggy's handwriting, I understand.

And if you, for the moment, ignore the various

comments that Mr. Buggy has written in on the side?

A. Right.

Q. He has put in here, I think, as Mr. McQuaid was doing,

a weighting opposite market development, coverage,

tariffs, and international roaming plan; do you see

that?

A. Yes.

Q. And those weightings are in fact the weightings that

are contained on Table 17, Table 16 and 17. You

recognise the weighting for tariffs, 18. You can take

it that the other weights are the weightings that are

on Table 16 and 17?

A. Okay.

Q. He has confined his tot to A3 and A5; do you see that?

A. I just want to check something

Q. Yes, take your time.

A. Okay, Mr. Healy, what was the last thing, I beg your pardon? .

Q. If look at A3 and A5, he has confined his work to A3 and A5?

A. Right.

Q. A3 has a B, an A, a B, a C. A5 has an A, an A, a C, a C. Do you see that?

A. I do.

Q. You can see then there are weightings to be applied on the left-hand side?

A. This is Mr. Buggy's exercise.

Q. Yes. 10, 7, 18 and 6, so that A5 as an A which is 5, with a weighting of 10, giving 50. The next score it has is an A with a weighting of 7, giving a score of 35. The next score it has is a C, meaning a 3, with a weighting of 34, giving a score of 54?

A. I beg your pardon, the scores that you are talking about are not written here now, as far as I can see.

Q. I am just saying it because I am going to show you what I think he was doing.

A. All right.

Q. The C with a weighting of 18, as I said, was 54. The C with a weighting of 6, is obviously, or translates to 18. And if you do the same with A3: the B with a weighting of 10 generates a score of 40; an A with a weighting of 7 generates a score of 35; the B with a weighting of 18 generates a score of 72, and the C

with a weighting of 6 generates a score of 18. Now, underneath that he has a number of tots. He has on one side, I think, a tot of, if you go to about three figures down, you see 165, and 157; do you see that? Can you make those out in your handwritten copy?

A. I see the 165.

Q. If you go under A5, there are three figures in the handwriting, the third is 157; do you see that?

A. I do, I see that, yes.

Q. And then underneath the next section of printed text you will see there is a 4.02; do you see that?

A. I do.

Q. Then 3.

A. 93 or something.

Q. Something 3. Do you see that?

A. Yes.

Q. And then underneath that he has, he converts that to a numeric score and he gives a lettered score sorry, he gives a B and a B; do you see that?

A. Yes, I do.

Q. Now, if you look at the scoring that is contained in the subtotal here, A5 has an A/B; do you see that?

A. I do.

Q. And A3 has a B?

A. Yes.

Q. Now, if A5's mark is 157 on the basis of the translation we did a moment ago, and A3's mark is 165,

then obviously however you characterise the scores, A5

has the lower score, hasn't it?

A. It would have the lower score of those two.

Q. Yes.

A. But really you are asking me to speculate on Mr.

Buggy's work here, Mr. Healy.

Q. I am not asking to you speculate. I am just saying, I

am asking you to look at what was in the typed

subtotal?

A. Yes, I see that, yes.

Q. A5 is given the higher score?

A. Yes.

Q. Whereas on Mr. Buggy's work, either A5 has the lower

score or if you look at what he actually inserts at

the bottom, A5 and A3 have the same score?

A. Yes.

Q. It seems that this was an exercise that a lot of

people on the Irish side were doing in order to see

whether the result was one that they could accept or

understand, would I be right in that, to judge from

what I have been telling you and what you know

yourself?

A. It would certainly seem that way, yes.

Q. If you go to I haven't given you the book so I am

going to take back that page from you. I am going to

refer you to the same book and to save you the trouble

I am going to give you the page. I am going to refer

you to Book 56, Leaf 5, page 14.

(Page handed to witness.)

This now is Mr. Buggy's version of the I beg your
pardon, this is Mr. Riordan's version of the 18th
October version of the report?

A. Okay.

Q. And I am referring you to the same portion of the
report where he has carried out a similar exercise?

A. Right.

Q. Again he has confined his exercise to A3 and A5; do
you see that?

A. I do.

Q. And A3 if I could just, sorry, refer you first, he has
also put in a set of weightings; do you see that?

A. Well, there are certainly a lot of scribbles.

Q. Yes, on the left-hand side?

A. Yes.

Q. It looks to me like a set of weightings?

A. Well, they look like percentages to me.

Q. Yes. They are percentages, correct. 7.5%, a
weighting of 18 is of course a weighting of 18% out of
100; do you see that

A. Yes.

Q. for tariffs? The weighting for market development
is 7.5%, the weighting for coverage is 7.5%, and the
weighting for international roaming plan is 7.5%.

That is different, as you can see, for the weighting

that it had or the weighting it was given by Mr.

Buggy, but I will come back to that in a moment.

The top two weights are also different at 7.5% and 7.5%; that is because they are from what seems to be the only documented approved version of the evaluation model?

A. Mm-hmm.

Q. Now, this is something I will come back to in a moment when we discuss weightings, but there is a difference between the weightings applied here, because one of these accountants at this point in any case appears to have been under the impression that the weightings was as per the evaluation model and another accountant appears to think they were as per a different agreed set of weightings?

A. Well, we are aware that they were, that there was some, I hasten to call it, let's not call it confusion, but there were in existence at that time pages which had weightings which some people had objected and said that these were not the agreed weightings and that sort of thing.

Q. Yes. We will be coming back to that. There seems to be a lot of confusion about weightings. But Mr. Buggy [sic] does his tot?

CHAIRMAN: Mr. Riordan.

Q. MR. HEALY: I beg your pardon, Mr. Riordan does his tot, and he generates a total for A3 of 1.77 and for

and for A5 of 1.56; do you see that?

A. I do.

Q. And again his tot suggests that A3 with 1.77 has a higher score than A5 with 1.565 although the subtotal gives A5 the higher total?

A. Yes.

Q. Now, I want to refer to page 48 of this book and I am going to give you, I am going to give you the actual page, page 48 of this version Mr. Riordan's version, Book 56, Leaf 5, page 48.

Now, do you see where in Table 16 the table that we started off talking about a moment ago where you had the subtotal A/B for marketing aspects, Mr. Riordan has suggested a B with a question-mark, obviously referring to the work he had done earlier?

A. Yes, indeed.

Q. If that B or that A/B were to be converted to a B on that table, I think if you look at the table you will see that it would mean that the grand total for A3 and A5 should in each case be a B?

A. That may be the case. I would need to check that.

Q. Yes. If you look at the marketing aspects subtotal, what you would then get is a result where A5 had a B, and A3 had a B?

A. Yes.

Q. Under the technical aspects, A5 had an A and A3 had a B. Under the management aspects A5 had a B and A3 had

an A. Under the financial aspects both A5 and A3

A. Are Bs again.

Q. Are B. So if you ignore weightings or anything like that, they would end up with the same score?

A. Yes, it would seem that way.

Q. Now, my feeling is that all of this tends to suggest that the thinking that you seem to be reflecting or that seems to be reflected in your paperwork is that you feel that these two were extremely close and that you couldn't separate them and that you would need to revisit the qualitative assessment; isn't that right?

A. I think that's correct, but perhaps I should step back a bit here and point out that in coming to that conclusion, I didn't necessarily go into the same detail as you have gone into

Q. Yes.

A. In satisfying yourself that there might have been a different scoring, or even ranking for that matter, on any of those tables contained in Section 4 dealing with aspects were something that I had been uncomfortable with from the start. I had been far more concerned that this report should show all along how the criteria in the request for tenders would stack up once the dimensions would feed into it.

Q. Yes.

A. So that in saying as I did at the time and I as I did to you in evidence, that I felt that these were very

close, one didn't have to go into these tables here in order to come to that conclusion it seemed to me.

Q. I think I understand what you are saying but what has, I think, caused some confusion, certainly puzzlement for me, is that it is this table that was in fact it is this table which was the result of all the work?

A. It was one result.

Q. Well, it seems to me to have been the result intended for and aimed at by Mr. Andersen and it is only subsequently as a result of perhaps suggestions by Mr. Brennan that Tables 17 and 18 on the next two pages, we've looked at them already, we can call them 16 and 17 or 17 and 18 depending on which report you are talking about, the two tables in which the weightings are contained?

A. Yes, I understand.

Q. And it seems to me that those tables were generated subsequently. You were not a party to the generating of the tables; isn't that right?

A. That is quite right, yes.

Q. Do you know am I right in thinking that there was no round table discussion to generate those tables?

A. I can't say that for certain. As I say, I wasn't at Copenhagen so I am not aware of any discussion about it. I don't remember a discussion on their return from Copenhagen other than the discussions which I took part in and maybe even generated about clarity in

all of this.

Q. But you were not part of any discussion and there was no discussion following Copenhagen at which these results were arrived at in the form in which they are contained in Tables 16 and 17 of the final report?

A. I don't recall a detailed discussion of it, no.

Q. I don't think everybody was in Copenhagen at the same time either; isn't that right?

A. That's correct, yes.

Q. So there can't have been any round table discussion in Copenhagen which could have lead to those tables?

A. Yes, that's correct.

Q. If I could refer to you Book 46 again and ask you to go to Leaf 34?

A. Right.

Q. Leaf 34 contains the October 3rd version of the

A. Of the evaluation.

Q. of the evaluation report?

A. If you go to page 43, it is a page headed "Summary Concluding Remarks and Recommendation".

A. Yes.

Q. It is similar to, I think, the corresponding page on the 18th October version we may have mentioned earlier. On the next page you have the table, then called Table 16, containing the grouping of the dimensions under Aspects: marketing aspects, technical aspects; do you see that?

A. I do.

Q. On the next page you have the, what is called the results based on a re-grouping of the criteria. Do you see that?

A. I do.

Q. It says: "In order to investigate whether the conclusions of the evaluators are consolidated on the basis of paragraph 19 of the RFP document the evaluators have carried out a separate conformance testing.

"The basis for the conformance test is the agreed interpretation prior to the closing date, where the 7 indents of paragraph 19 were operationalised into 11 dimensions."

A. Okay.

Q. If you go on to the next page it continues: "As the 11 dimensions are essentially the same as Table 16, the only distorting effect of Table 17 could be the scoring of the aspects which was also agreed prior to the closing date. It appears, however, that the scoring of the aspects has not had a distorting effect during the implementation of the evaluations, since the end results remain the same.

"From this it can be concluded that had the three best applications are following:"

A5 in first position, A3 in second position, and A1 in third position.

The next page, or the next item contains the results based on a conversion to marks. And Mr. Andersen says: "Also a weighting mechanism was agreed prior to the closing date for quantitative purposes as evident from both Table 17 and 18. If the marks (A, B, C, D and E) are converted to arabic points (5, 4, 3, 2, 1) it could be calculated which applicants come out with the highest score measured by points, although such a calculation distorts the idea of a qualitative evaluation."

A. Yes.

Q. Now, that is the translation, if you like, from letters to numbers. If you go back to 5.3: The results based on a re-grouping of the criteria, Mr. Andersen says that "in order to investigate whether the conclusions of the evaluators are consolidated on the basis of paragraph 19 of the RFP document, the evaluators have carried out a separate conformance testing."

Now, do you understand what that means?

A. It would appear from it that Table 17 of the exercise contained in 17 was done in order to confirm what appeared in the other tables.

Q. Yes?

A. Whereas it was always my, certainly my own feeling, that what appears in Table 17 was more important by far.

Q. Yes, but I can't understand the sentence "In order to investigate whether the conclusions of the evaluators"

I presume he must be referring to Table 16 on the previous page "are consolidated on the basis of paragraph 19 of the RFP document, the evaluators have carried out a separate conformance testing."

A. Yes.

Q. Do you understand that? I am not trying to trick you.

I don't understand it.

A. I am not sure that I do. What I think it means is what I said to you a moment ago, that whoever wrote this or whoever drafted this was of the view that what appeared in Table 17 had been done in order to corroborate or confirm that there was, that there was consistency with the exercises which had been carried out before that. And that's what I suppose.

Q. And he goes on to say that although applying the weighting in fact he doesn't say that, I am sorry,

I thought he might have done.

I want to refer you now to the same book, Leaf 50, which contains the same table; this time it has become Table 16 and it is on page 48?

A. Page 48. Okay.

Q. And for the first time now you see a text underneath that which doesn't appear in any other version of the report which says "The marks awarded under each dimension are outlined in Table 16. The result in the

grand total line has been achieved through a process of discussion to reach an agreed result taking account of the weighting of the evaluation criteria determined prior to the closing date."

Do you see that?

A. Yes.

Q. Now that seems to be or to suggest something totally different to what we saw in the text of the October 3rd version of the report. What October 3rd said was that there was something in the nature of conformance testing being carried out, some kind of a check or something. Now it is being suggested that the result in the grand total line had been achieved through a process of discussion to reach an agreed result taking account of the weighting of the evaluation criteria determined prior to the closing date. That means that it seems to me that people stood around or sat around and tried to work out how if you applied a weighting to letters, you would arrive at a lettered score at the bottom. It seems to me that would be a very, very long discussion, if it could ever take place.

A. You may be correct there, Mr. Healy, but it does seem to me as if all of this would best be directed at some of those who were present at the time. I mean

Q. You certainly weren't present at any such discussion?

A. No, I wasn't.

Q. And I think we know that there was no pulling together

of everybody in Copenhagen to take part in any such discussion?

A. I can't vouch for that, but not a plenary session, no.

Q. Now, this is the final version of the report. Of course, and you wouldn't have seen this text

A. Yes unless it appears in any of the previous reports.

Q. No, it doesn't.

A. I see.

Q. It appears for the first time in this version. Could I suggest that it is a fairly significant piece of text, because it was a piece of text to which all of the evaluators were going to effectively be deemed to have subscribed; isn't that right?

A. Yes.

Q. Which would mean that either you should have taken part in the discussion and there should have been a discussion amongst all the evaluators, or at worst, at the absolute worst, that the result of the discussion should have been conveyed to you and you should have gone along with it, and none of those things happened; there was no discussion of which you were a party and there was no discussion the result of which was conveyed to you in those terms and a request made to you to go along with it or to subscribe to it?

A. If, as you say, Mr. Healy, and I have no reason to doubt you, that the text which appears there under

Table 16 is new and had not been in either of the previous drafts, then I wouldn't have seen it, that's correct, and I would not have been invited to subscribe to it.

Q. Yes.

A. Unless it was a form of text which had been discussed following on the evening of the 23rd, and there was a good deal of discussion on the evening of the 23rd of the sort of amendments that should be made to this report to make it more readable, but I certainly don't recall that.

Q. Well, could I suggest to you that this is a fairly fundamental addition to the text, because what it does is, it suggests that a certain total, grand total score was arrived at and this, remember, is now the preeminent table

A. Yes.

Q. in the evaluation, because the other table has been demoted, so this is now the primary table?

A. Mm-hmm.

Q. And I suggest that

A. It is certainly the one which I would seek to rely to satisfy myself, yes.

Q. Yes. I can understand that you might seek to rely on it to satisfy yourself, but what the text suggests is that the table was the result of a discussion to reach an agreed result taking account that the weighting of

the evaluation criteria determined prior to the

closing date

A. I think what it says is that the grand total line was achieved.

Q. Yes. Oh the grand total line, that is the line we are talking about?

A. I think all of the letters in it are traceable back to the relevant tables establishing dimensions.

Q. Correct, yes. That's true. But to arrive at the grand total line would have required an amount of discussion, wouldn't it?

A. It would if people were treating that as a purely qualitative examination which is what they were doing, as I understand it.

Q. Yes. You see, it is almost a mathematical impossibility, surely Mr. McQuaid recognised this to apply a weighting to a letter?

A. Yes.

Q. It can't be done?

A. That's correct.

Q. So if you were to arrive at that result, and it is a lettered result, by applying a weighting, I suppose it is theoretically conceivable that if the whole lot of you sat around a table and you applied each weighting to each score, you might, by a process, you might, by a consensus over a very long period of time, arrive at a result?

A. Yes.

Q. But as far as we can see, no such discussion took place, no such discussion took place at which you were present in any case, but what I am intrigued by is the fact that this text appears for the first time in a version of the report which in any case was not brought to your attention and I am suggesting to you that it is a fundamental piece of text; it is now, in fact, the text that conveys the result?

A. Yes, I can see where you might attribute that kind of weight to it. I am not sure that I, that I do as I sit here now, I would need to read the report again corner to corner, but it does seem to me that it is reasonable to say that the persons who did have discussion arrive at a bottom line there, being the B with the down arrow etc., etc.

Q. Yes?

A. could have done so with regard to each of the letters here and weightings. Now, it becomes far easier, I think, for most mortals to convert those letters to numbers and then apply weightings, because numbers are more easily

Q. Added or multiplied?

A. Yes, of course. And I do take the point that multiplying by weights in cases like that adds a spurious accuracy if that kind of accuracy is relevant at all.

Q. Yes.

A. But that's not to say that the persons who were doing a qualitative analysis of this kind should not have applied weightings.

Q. Mm-hmm.

A. Or should not have striven for the kind of accuracy that was necessary in the end.

Q. That is an interesting proposition. We can discuss that all day if we wanted, but the fact is that this table appeared in the first version of the evaluation report. It had a legend attached to it which suggested that some kind of conformance testing had been used to arrive at a result. At the meeting of the 23rd October, a fairly frenetic meeting I would suggest, it was decided that this table would have to be the final table, and then for the first time a text appeared under that table and that text is, I suggest to you, the primary text in the entire report, and I would just like to go over that with you.

If you go to the previous page, you have the final evaluation, this is a new language introduced for the first time after the 23rd, and you have an introductory paragraph, the four models bit has been removed.

If you go onto the next page you then have "Final scoring according to evaluation criteria." Then underneath that you have the text which is the

substantive text in that section. "The marks awarded under each dimension are outlined in Table 16. The result in the grand total line has been achieved through a process of discussion to reach and agreed result taking account of the weightings of the evaluation criteria determined prior to the closing date."

I am suggesting that this seems to be the result of inordinate pressure to pull this together in some way and maybe some shortcuts were taken, including shortcuts in presenting a result in terms to which not every member of the Evaluation Team had subscribed. Would you agree with that?

A. Yes, we were under time pressure. I think that is evident.

Q. But under so much time pressure that civil servants were prepared to state the result in terms which doesn't seem to me, from all the documentation we have seen, to accord with the procedure that was actually followed with the events that actually occurred. It may have been a way of describing, perhaps somewhat liberally, what had occurred, but certainly nothing of the kind described there had occurred, and I would suggest that that was because of inordinate pressure?

A. Certainly there was pressure, I think that is a central plank of my evidence to the Tribunal, there was time pressure and I would much prefer that there

had not been and you may well be right in suggesting that this was one of the results. If on the other hand, you know, that time pressure was such as to lead the persons who had done the evaluations to a wrong result, well then that would have been a different matter and I think my evidence to you is that from discussions with them on the 23rd, from readings and even re-readings, insofar as the time allowed, of what was there, I certainly satisfied myself that these people had arrived at a result.

Q. I am aware that is your evidence?

A. Yes.

Q. But I think the qualification you have introduced, maybe before and also now, is that from discussions with the people and from what they said to you, that so far as the time allowed, you went along with the decision?

A. I did indeed, yes. But once again you are expressing far better than I ever could the kind of difficulties that I had with the written report at the time.

Q. Yes. Would I be right in saying that you could have been overborne, and I am not saying by anyone acting in a mala fide way, but somebody arguing simply for a result so that as the Minister wanted, it could be got out that day?

A. That was certainly part of the argument that I was facing. I could never have been overborne in such a

way as to subscribe to something which I felt was wrong

Q. Yes

A. or incorrect.

Q. But you were armed with only a certain amount of information?

A. Yes, that's right. But I did have implicit faith in all of the persons who were involved. And nothing that I have heard since would shake my faith in the bona fides of any of those people, so that I did not, although I did not like the notion that there was time pressure or the direction from where it seemed to be coming, I had no reason, no evidence to believe that there was anything untoward afoot.

Q. What direction did you perceive the pressure to be coming from?

A. Well, it is there in the evidence. The only evidence that I had was when Mr. Brennan said that the Minister wanted a result, he hadn't been promised one and on the other occasion that, you know, that he would like the process accelerated. I think there was just the two occasions. Now, that was, that was a fact of civil service life, practically everything we did

Q. Was under time pressure?

A. was under pressure, yes.

Q. But in this case you had in fact oodles of time, didn't you?

A. According to our critical path, yes, we would have had oodles of time, but as I say, it was not unusual for ministers to want to speed things up.

Q. I appreciate that.

A. It troubled me, but I have no reason to suspect that there was something wrong in the assessment.

Q. When ministers want to speed things up in the ordinary way, they want to speed up executive action taken on foot of some policy decision, either a Government or Departmental policy?

A. Yes.

Q. If you are engaged carrying out an executive function, then obviously you have to respond and you are obliged to respond to ministerial pressure, if the Minister wants it tomorrow morning it has to be done tomorrow morning regardless, isn't that right?

A. Yes.

Q. Here you were carrying out a function that went beyond an ordinary executive function?

A. Yes.

Q. You were carrying out a) an adjudicative function and b) a function that was supposed to be sealed from and immune from any ministerial intervention?

A. Yes, it had been delegated to us.

Q. Isn't that right? So therefore ministerial pressure, if it was to apply here, had to be applied to the extent that it could overbear what would be presumably

a civil servant's natural resistance to pressure where he was carrying out a non-executive function but something more adjudicative?

A. That depends. I had the luxury, I suppose, where I could be in a position to stand back from this sort of thing and argue against speeding up. Mr. Brennan didn't have that luxury. He was in the firing line in the sense that the Minister was dealing directly with him.

Q. I think he himself said that there was pressure but it wasn't coming from him; I think that was the way he put it. I hope I am not misquoting him?

A. That may be what he said. All I can say to you, the pressure, such as it was, did not amount in my mind to the kind of pressure which would have caused any alarm bell to ring, in other words I did not conclude, I had no evidence to conclude that it was pressure of the kind which would have distorted the result.

Q. I suppose to form that opinion then, in any case, armed as you were with only some of the information, you were dependant firstly, on relying on what your colleagues told you?

A. Yes, largely.

Q. And you were dependant on, I suppose, what we can assume was your confidence that Mr. Andersen was providing you with the correct technical guide all along?

A. Largely, yes.

Q. And largely your confidence that he was observing procedural requirements; how this competition was being run, that this competition was being run correctly?

A. Yes.

Q. So you know that this result, which I think on any analysis has to be regarded as an extremely close one, has been presented as an extremely clear one?

A. Yes, afterwards, I think.

Q. Afterwards.

A. Yes.

CHAIRMAN: Can you just, Mr. McMahon, give me again your recollection of what followed upon the visit to Mr. Loughrey? I think you told us that this was a quite extended discussion of some time between one and two hours; that there were differences, people argued in good faith, different views, and Mr. Loughrey eventually said there would be a week, and when you went back to the meeting, then, how was it that it transpired? I think Mr. Brennan's evidence, if I recall correctly, was that there was the week but we worked into the night and we managed not to require it. Can you just give me again your recollection on that?

A. Yes. In as far as I can, Chairman, yes. We went to see Mr. Loughrey, I think it was myself and Mr.

Brennan and Mr. McQuaid, and possibly Mr. Fitzgerald,

I think my notes indicate that he was there, although he doesn't recall it. I argued as hard as I could for an extension of time saying that I didn't believe the report was in a fit state to support the conclusion.

And I think even at that time I was quite happy with the conclusion of the other members, and from what I had seen, that this was a good result. I left the Secretary's office feeling that yes, it had been agreed that the report should be recast and that we would have adequate time to do it. Now, I don't recall myself coming away with the undertaking that that would be a week, although it seems that in discussions with others afterwards, a week was mentioned, and it may be that suggestion may have come from me that it was a week that we had.

We went back down to the meeting, you are quite right, we discussed it until late into that evening. As far as I can remember, I was amongst the last to leave, although I believe Mr. Towey was there for the rest of the night. We agreed that there would be textual changes in several places, and I am going on memory now, purely, that there would be a reshaping of the report in other ways.

I then left with the impression that what we were going to see was another draft of the report on the following day, once Mr. Towey had faxed the nature of

this discussion to Andersens. I believe that on the following day, and I say this from contact with Mr. O'Callaghan, that discussions about textual amendments actually continued, although I don't recall being present, and that further material was faxed to Copenhagen for incorporation into a new revised report. Now, I don't believe that I ever saw a revised report after that. Does that answer your question, Chairman?

CHAIRMAN: Yes. Thank you, Mr. McMahon.

Q. MR. HEALY: I think what you said was you believed at that stage that what the report required was a reshaping?

A. Well, I certainly felt that the qualitative analysis should be presented in a better way. There were many aspects of the report that I wasn't happy about. I had naturally conceded some points in the interest of expedition and said that yes, well okay, it isn't a great report but that can stay and this can, and other things should go or whatever it was. I don't recall much or indeed any of the detail of that night, but I remember making quite clear that I would have been happier to see the report changed in some respects. Now, I don't remember whether those respects were ones in which I had conceded, they probably were, given that it was unlikely that I was going to get a recasting of the report at such a late hour, but the

conclusion, one of the conclusions that we did arrive at on that evening was that further analysis was not going to alter the result, those who had carried out the actual assessments and did the numbers were very confident of the quality of the winner, and I certainly agreed with them that yes, that we could, we could log that as a decision provided that the report was now altered in the way that I had wanted it altered. I wasn't alone in that. There were others.

Q. Yes. So before you went to that meeting, you were certainly of the view that a further revisiting of the qualitative assessment was required?

A. Yes. And the nature of a round table discussion where many of the things that you have traversed today and other things that were worrying me would be gone into and explained. I had abandoned hope that there might be, let's say, an audio-visual report of how everything was done, but I would have welcomed a round table discussion with a look again at each of the tables in the report.

Q. Before you went into the meeting, to judge from the note that you prepared and which we think now must have been prepared in advance based perhaps on Mr. O'Callaghan's quick review of the report, you wanted to revisit the qualitative assessment, was I think the way you put it?

A. Yes.

Q. Following the reception of the report of the 3rd October at the meeting of the 9th October, you wanted you believed that the qualitative assessment would continue?

A. I did, yes.

Q. You say that subsequently you were, you may even have been informed at the meeting, but in any case, you were informed that the qualitative assessment had taken place?

A. Yes, had been done.

Q. Yes, but notwithstanding that it had taken place as you had been told, you wanted it revisited?

A. Yes, I felt there should be a more, a further round table discussion of it.

Q. But I think that that revisiting that you wanted to carry out, or you wanted the team to carry out, was based on your perception that the two front runners were very close but you couldn't say which of them was ahead?

A. That was one of the aspects of it, yes.

Q. And your view was that you couldn't say which of them was ahead from the reading of the report?

A. Yes.

Q. But also from the presentation you had been to and from your reading of the applications; isn't that right?

A. Yes.

Q. So your overall impression sorry

A. Just to stop you there, if I had had the time at that time to go back and read all of the presentations, it could be that I would have discovered material which I could have brought to the table and said, "Look here, why isn't that upfront?" And, "Doesn't that indicate that there is a clear difference?" I am picking examples out of the air. Now, I didn't have that kind of time at that time, but I would have welcomed discussion on it to see whether we could make the report a) more readable, and b) more conclusive.

Q. Could I suggest to you that it went further than that, Mr. McMahon, and that is what your note that you prepared reflects, that you were concerned that you had two front runners but you couldn't say which was in front, and that was not just based on the form of the report, but based on your overall impression of the evaluation, which included the applications, the presentation, and the report?

A. Yes, that is fair. It was based on what was in my head at the time of the whole process, yes.

Q. And you felt strongly enough about that, that going into the meeting you reduced that or those feelings into writing in a systematic, coherent way?

A. Yes.

Q. And in going into the meeting you must have had an impression already that this was going to be driven

forward and driven forward to a conclusion there and then?

A. Well, I think that I must have written that note and I think I have said this in my replies to you, that I must have written that note at some time during the morning of the meeting of the 23rd or early in that morning perhaps, when I had heard that the Minister wanted a result.

Q. Do you remember we discussed that the last time you were giving evidence?

A. Yes.

Q. And I thought we had agreed, I am not trying to hold you to it or anything because it is

A. You asked me if I might have gone back to my own office.

Q. I think I was suggesting that I suggested to you that you hardly stopped the meeting, went off and typed it up and went back with it?

A. It is most unlikely, yes.

Q. That you would have done it beforehand?

A. Yes.

Q. And that was because you had heard beforehand, maybe that morning, maybe earlier, I don't know, that the Minister intended to or that the Minister wanted a result and that therefore the result was going to be as per that report?

A. Right.

Q. But I am suggesting to you that you felt, you must have felt two things: firstly, that considerable pressure was being brought to bear for that result, and that report to be the basis for the conclusion of the Tribunal's work, and that you felt so strongly about it that you reduced your feelings to writing because you anticipated considerable pressure, and that it was the anticipation of considerable pressure on those two issues that prompted you to reduce your feelings to writing?

A. I can't, I can't exclude the possibility that I might have averted, at that time to somebody, the Minister or someone else wanting a particular result or a particular report, but I don't believe that that was primarily what drove me to write that short note. I would certainly have been, I suppose, cross enough to resist pressure from the others, or from anywhere for that matter, to rush ahead with a report in the state that I thought that it was in.

Q. Yes.

A. I think I have explained to you before that I am certainly one of those people that believe whereas it may not always be possible, it is desirable that you have your arguments marshalled and put in writing before you announce an important decision or give it to a minister to announce.

Q. Yes.

A. And I think that's probably what would have motivated me to write that note at the time.

Q. Do you recall that Mr. O'Callaghan, in his chronology, noted that I think he had met Fintan Towey in the week prior to that meeting of the 23rd and had been told that the Minister wanted a decision, he wanted to go to Government on the following Tuesday, I think?

A. Yes.

Q. The 23rd was?

A. The 23rd was a Monday, I think.

Q. The 23rd was a Monday. The 24th is a Tuesday. I think Mr. O'Callaghan was recorded

A. Yes, I do recall something like that, yes.

Q. Is it possible that he would have relayed that to you?

A. Yes, it is possible.

Q. In that week?

A. Yes, yes, it is possible, yes.

Q. Sorry?

A. It is conceivable that I was aware of increasing time pressure, yes.

Q. And that at that point you didn't have the next version of the report; you then got the next version at the weekend?

A. Yes, that's right.

Q. But I just want to be clear about this, because I think it is important that I understand the distinction, that the Tribunal understands the

distinction between concern about the report, and I am not down-playing that in any way, it is obviously important that a report should support a conclusion and if it doesn't, it would cause you to question a conclusion, because it is writing your ideas down that sometimes makes you look at them to see if they are right.

You were concerned, first of all, with the way the arguments were marshalled in this way of a conclusion, and secondly, you were unhappy about the conclusion itself, not unhappy to the extent that you felt that Esat Digifone shouldn't have been there in at the kill, but that you were unhappy that there wasn't a sufficiently clear qualitative difference between Esat Digifone and Persona?

A. I was unhappy that the report didn't show that difference.

Q. Yes. And you wanted not just the report looked at, but the qualitative assessment revisited?

A. Yes.

Q. And that would have entailed some kind of round table discussion?

A. It would. That was not because I suspected that what was in the report was wrong, but because I suppose in a sense I wanted to put my hand into the wound and know, and I wanted to exhaust any possibilities there were for putting distance between the front runners.

Q. Yes. I think you yourself had some concerns, did you, concerning Esat Digifone's finances? I think Mr., maybe it is wrong to refer to Esat Digifone's finances, Mr. Fitzgerald says that he had concerns regarding Communicorp's finances?

A. He did, I understand.

Q. You would have had experience of Communicorp, isn't that right?

A. I had experience of dealing with Esat Telecom whom I knew to be connected to Communicorp.

Q. Well effectively I think we can take Esat Telecom and Communicorp more or less interchangeable?

A. The Esat side of the house, the Esat Group we could call them. Yes, I did have some concerns. At that particular time I don't think they were as well developed as

Mr. Fitzgerald described in the witness-box, but I knew from anecdotal evidence that Esat Telecom was in financial difficulty at the time and was not, was accumulating debt, I think, and was certainly not in profit. And there were concerns in my mind that I would like to have aired, I know I probably did air some of these at meetings of the Project Group and I knew that the report was to address these insofar as they related to the sensitivity of Esat's financing.

Q. You wanted to know where they going to get the money presumably?

A. Yes, I want to be sure that there were certain things in place like the Shareholders Agreement, that there were agreements in place which would deliver this money when and as needed, and I wanted to know at the same time that there would not be a relinquishment of control by the Esat group of its share of the business, in other words, that whoever put the money up would not be in a position to.

Q. Wave a big stick over the equity?

A. Exactly, because whatever I might have thought about Esat Telecom, I regarded their ability to drive the market as particularly good and useful to this sort of project.

Q. Yes.

A. And I felt that they were the ideal marriage partner for the likes of Telenor, and I would not have wanted to see O'Brien drop out of the equation.

Q. When you went to the meeting of the 23rd, the one where you wanted, as you say, the qualitative assessment to be revisited, I presume that a major part of that would have been having a look, once again, at the financial support, the financial capability of the Esat Digifone consortium?

A. It would.

Q. And it would have meant trying to get to the bottom of what money there was for Mr. O'Brien and how it was tied down?

A. It wasn't a major concern in my mind but it was, is certainly one of those things that I would have wanted to allude to in it, yes.

Q. And if you had more time?

A. Yes.

Q. It is something you would have looked at?

A. Certainly.

Q. At that point, I think you had no Shareholders Agreement. I think you had a draft or and an indicative Shareholders' Agreement but no Shareholders' Agreement provided by the Esat Digifone consortium?

A. I know that now.

Q. Isn't that right?

A. I know that now. At the time I believe I was under the impression that there was a Shareholders' Agreement in existence.

Q. I see. If you had been there for another week, you might have found out that you hadn't?

A. Yes, yes.

Q. You had asked a question about whether the money from Advent was tied down by an agreement, do you remember that at the presentation?

A. This was during the presentation, was it?

Q. Yes.

A. Yes.

Q. And I think you got an answer that it was?

A. I believe I did.

Q. Yes. If you had had more time, I suppose you might have been absolutely clear that there was no agreement and you might have wanted to discuss that?

A. Yes.

CHAIRMAN: Something you said a few minutes ago, Mr. McMahon. Again I think in the context of the arguments and pressures and extended discussion of the long meeting interrupted by the trip to Mr. Loughrey, I think you said that you could not exclude the possibility that you may have adverted to the Minister wanting a particular result, and you then referred to having been somewhat cross at the time.

A. Mmm.

CHAIRMAN: Perhaps it is something that I better not leave out there. Could you deal with that as best you can?

A. Certainly. I was really trying to explain to Mr. Healy that amongst the possibilities which presented themselves to me at the time that this pressure for a result was coming, was the possibility that a particular result might be favoured. Now, I mention that only because it was a possibility well within the realm of possibilities and that it would have been my duty as a civil servant to just note it. Having noted it, I passed on. I did not seriously consider at the time, indeed I had no evidence to suggest that it was

a real possibility. And quite the contrary, in fact, because I knew the people on the assessment team and I had every reason to believe that they were all acting bona fide and that there would be no question that any of them would have given in to that kind of pressure, had it existed.

Q. MR. HEALY: Do I understand what you are saying to the Chairman was that pressure for a result can frequently mean pressure for a particular result?

A. It can, yes.

Q. And if a result is known to a minister, even a tentative result, or perhaps something more than that here, a provisional result, one which was about to be copperfastened or not if you got your extra week, then there could be pressure which would effectively be pressure for that result, isn't that right?

A. Yes, it is a possibility, yes.

Q. And a civil servant wouldn't necessarily be aware of what the Minister was aware of, in terms of any, let me put it this way: a civil servant mightn't be aware that there were problems with a particular result, he mightn't be aware that in this case if the evidence to be given is ultimately accepted, that the Minister was in discussion with members of the Esat Digifone consortium, with Mr. O'Brien in particular?

A. Well I certainly wasn't aware of anything like that, yeah.

Q. Yes. If you had been aware of that

A. Right.

Q. that might have fueled your resistance to, I suppose, an administratively untidy result, if we put it at its absolute lowest, if you like?

A. Yes, I would have been concerned if I thought there was anything like that, yes.

Q. And it is undoubtedly the case, isn't it, that if a minister seems not unhappy with a result and wants that result brought home, as it were, in the sense if he wants it administratively brought home, he wants the process finished, that if you don't spend anymore time looking at an application, there is less chance of that result being changed?

A. Yes, so it would seem.

Q. Now, I am not going to spend too much time on the weightings, Mr. McMahon, but again the material that I referred to yesterday was not with a view to suggesting that anybody on the civil service side, at least as far as I can see, was trying to in any way distort the weightings but there seems to have been considerable administrative confusion regarding the weightings then, and even now, in it. I don't think you got answers to many of the questions you asked, I certainly don't.

A. Well, can I refer you back to my reply a wee while ago when I suggested to you that this is certainly one of

those things which, when you revisit it, can be very troublesome in coming to an understanding of it and that in asking at the time, not having been in Copenhagen, and when the people came back with these results, when asking them to explain a process that they had actually been a part of, I may have given rise, in fact, to some of the confusion. Now I am not saying that that was a bad thing. In fact it is part and parcel, if you like, of the civil service process of policy formation, that somebody is entrusted with a task of bringing forward proposals

Q. Yes.

A. and working the proposals to the extent that they can be discussed at a higher level or amongst a group and we did this all of the time and it then becomes the job of somebody who has been outside of the group to sit back, take a

Q. And encourage a

A. And say, exactly, "look, how did you come to this conclusion etc., etc?" And surely it is often the case that the people who have spent so much time with something can be stumped to the extent that they will say "Well, yes, I thought I understood that when I did it. But now that you have put it that way, I don't," and they would go away and come back and say, "Yes, I do think I understand why you did this and here is the reason." But there is that tendency that when you

have been close to some particular process, particularly a highly technical one, that you can lose sight of the woods for the trees and need to be jogged back.

Now, I mention all of that because when I say in my notes and evidence that there appeared to be considerable confusion, I think those were the words I used, it would have been because I think when I questioned people, and I am sure I questioned them closely on the 23rd and on the 9th, about why exactly they may have done something, they may not have always been able to answer me and I would have written that down as considerable confusion. It was indeed, I suppose, but I think that throughout it all, that I relied on Andersens to be able to step in and say "yes, look, relax everybody, we are doing what we said we would do and here is why we did it." And on several occasions I do remember Michael Andersen explaining to me when I put him under pressure to explain something like that.

Q. Well, I think the documentation that I referred to yesterday shows that civil servants were quite properly examining the material in the form of the reports very critically?

A. Yes.

Q. Mr. Buggy's and Mr. Riordan's version of the report are full of critical comments and as I think I pointed

out, it is interesting that they focused on that Table

1 in a way that Mr. O'Callaghan also focused on it?

A. Right.

Q. They raised questions, you raised questions, and these documents show that questions were being raised?

A. Right.

Q. What I can't see is where are the answers? They are not in the report. If you were raising questions on the 9th and the 23rd, they are not in the notes of the meetings?

A. Okay. I think that bears out what I was saying that I should have liked to see the report written in such a way that my questions would not have been necessary and that

Q. A lot of your questions were not difficult questions, a lot of them were yes or no questions. Can I just bring you through some of the major milestones of the weighting at issue?

A. Yes.

CHAIRMAN: If you are, it is just on a quarter to, given that we started close to half past it is it is preferable now to defer until two o'clock. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF SEAN McMAHON BY MR.

HEALY:

Q. MR. HEALY: Thank you, Mr. McMahan. If I could ask

you to look at Book 54.

(Book handed to witness.)

A. Okay, I have got it.

Q. This book, Mr. McMahon, contains a lot of documents dealing with the question of weightings and dealing also with the evaluation model and the various drafts of it that came into existence. The first document that I want to refer you to is document number 1. It is the first version of the evaluation model. Do you see it?

A. Yes.

Q. Proposed sorry, I beg your pardon.

A. It is just the single line note by Maev Nic Lochlainn, is that the one?

Q. It says are you looking at 1A by any chance?

A. I beg your pardon, I am, yes, sorry. Okay.

Q. These documents are in fact I think from the regulatory files, they may even have your handwriting on them, do they?

A. They do indeed.

Q. You see where it says "not to be copied Sean McMahon. Not to be removed from "

A. "File".

Q. "From file" again signed or initialled by you because these were critically confidential documents containing, as they did, an outline of the process and more importantly, perhaps, the weightings that were

going to be applied?

A. Right.

Q. Now, the first of these documents you have dated the 18th May of 1995, which I think refers to a meeting of the Evaluation Group held on that day?

A. Yes.

Q. At which this document was presented by Mr. Andersen and seems to have been considered by the team?

A. Yes, that's right.

Q. It would appear from the minute which I read out yesterday which I don't think we need to refer to, that the documents were brought to the meeting by Mr. Andersen and handed out to the people present at the meeting?

A. Yes, exactly.

Q. And while I think, as I was suggesting, it might have been better if you had an opportunity to examine these in advance, it does seem that there was a significant amount of discussion at the meeting concerning the content of the documents?

A. Yes, I have looked at this document, yes.

Q. Pardon?

A. I have looked at this document.

Q. Yes. The document opens with an introductory chapter or an introduction to a chapter heading entitled "Quantitative and Qualitative Evaluation." And we know from the document that what was envisaged was firstly

a quantitative evaluation based on the processing or evaluation of measurable material?

A. Yes.

Q. And then subsequently a qualitative evaluation based on a, based on other material, much of which would not be amenable to measurement?

A. Yes.

Q. And what was envisaged was that the quantitative evaluation would generate information and indeed a ranking, but that of course would have to take into account that measuring measurable information

A. Yes.

Q. isn't necessarily as a refined a process as taking into account all the other factors, many of which could be non-measurable?

A. Exactly.

Q. It was obviously something that was intended to produce information in which you could have considerable confidence, so far as it went, and there was that qualification, wasn't there?

A. Yes.

Q. That it only went and could go so far?

A. Yes.

Q. And on the next page there is a reference to the procedure for the quantitative evaluation and it firstly refers to the selection of a set of indicators and dimensions that had already been done by Mr.

Andersen as part of his work. He divided the criteria set out in Paragraph 19 into a number of dimensions and these he had divided into or sometimes simply recharacterised as indicators?

A. Yes.

Q. He felt that these indicators best corresponded with the criteria nominated by the Government as the criteria by which the contest was to be evaluated?

A. Yes.

Q. And on the next page he has set out each Paragraph 19 criterion, and next to it the dimensions into which it is to be divided, and then the indicators by which each of these dimensions was to be measured, if you like, isn't that right?

A. Yes.

Q. And as you can see, in some cases there is a breakdown of the evaluation criteria, in some cases there isn't.

If you go back for a moment to page 2, at step 2 Mr. Andersen says, "All the selective indicators will be assigned a weighting factor." Then you have a note; I think it says, maybe the note refers to the previous page, I may be wrong?

A. I think it says "take out" or something "the weighting factor or put in 'should be'" that is what it is, it is "put in 'should be assigned a weighting factor'." It was just a grammatical point I think.

Q. In any case, we know that at that meeting Mr. Andersen proposed a set of weightings and if you go to page 19 you will see the weightings that he proposed?

A. Page 19, did you say?

Q. I beg your pardon, page 16, I am confused by the fact that was 16 of 19?

A. Yes, he did, yes.

Q. Right. The previous 16 pages are devoted to describing how the various indicators would actually be measured formally when proposed and so on, and they were clearly discussed. We have already, I think in part, discussed the formula proposed for measuring IRR, I won't go over that for the moment.

Now I think I can make this easier for you by giving you a table, one of the tables I had on the overhead projector, yesterday, in which I have shown how the weights attached to the indicators on this table are linked to or related to the dimensions, and dimensions are in turn related to the criteria which makes it easier to follow, because if you were to use this table to work out what criteria the weights were linked to, it can be a somewhat lengthy exercise.

I think you would have got some of these documents or some of these tables that were given to you last night. I will put one on the overhead projector and you can see if you have it.

Now, that document endeavours to encapsulate the

information that you had available to you at the meeting on the 18th May when you were deciding on what weightings to apply?

A. Right.

Q. The page of the evaluation model that you've opened contains all the information that is in the fourth column from the left on that the fourth column from the left?

A. The fourth column.

Q. Sorry, the fourth column from the right, I beg your pardon, do you see that? Do you see the weights?

A. That is the fourth column from the left, isn't it?

Q. The fourth column from the right, it is the you see I beg your pardon, the fourth from the left, the second from the right. It starts off as number 10, number 10, number 5, number 5; do you see that?

A. Yes, I see the weights there, yes.

Q. Now those are the weights that are linked to the indicators that are in the third column from the left on that document, do you see them: forecasted demand, number of network occurrences. All the information contained in the third and fourth columns from the left on the document which I have on the overhead projector is the same as the information that is contained on page 16 of the evaluation model that you have in front of you?

A. Okay, Mr. Healy, yes.

Q. But what I have arranged is I have arranged for that information to be reorganised or regrouped so that you can see which weight attached to which indicator and which dimension applies to which evaluation criterion?

A. All right.

Q. We may have to pull back a bit from the document so that we can see them altogether.

A. Yes, if you could zoom out a little bit, yes.

Q. We can see the whole document, yes. Can you still read it on the monitor?

A. Yes, I can, yes.

Q. Okay. Now, you can see that the total weight for the first criterion was 30, that never changed as the total weight for that criterion?

A. That's right.

Q. The total weight for the next criterion, quality and availability of technical approach, was 20. I don't think that changed either. The approach to tariffing was at that point weighted at 15, the amount the applicant was prepared to pay for the licence was weighted at 10 at that point; we know for certain that changed, don't we?

A. Yes.

Q. And so on. There was clearly a discussion at that meeting at which you decided that you would adopt a different set of weightings to those proposed and they were merely a proposal by Mr. Andersen?

A. Yes.

Q. And if you go on to the next document in Book 54, it is the document contained in Leaf 1(a), you see that Ms. Nic Lochlainn has recorded that at the meeting of the 18th May it was agreed that the weightings would be 30, 20, 15, 14, 7, 6, 5 and 3?

A. Yes.

Q. And that is, that order respects the evaluation criteria set out in Paragraph 19. So the 30 is the total weighting for credibility of the business plan; 20 is the total weighting for quality and viability of technical approach; the 15 is the total weighting for tariffing?

A. Was the total weighting at that time.

Q. At that time, yes. We know that changed but it was the agreed weighting at that time. The weighting for the licence fee was increased from what was proposed by Mr. Andersen to 14?

A. Yes.

Q. Coverage was weighted at 7; international roaming plan at 6; performance guarantee at 5; and efficiency of proposed use of frequency spectrum resources at 3.

A. Right.

Q. And from the table I had on the monitor a moment ago you can see that there are a number of changes in various places?

A. That's right, yes.

Q. Now, at that meeting, as I think we have mentioned before, I think I mentioned it in discussions with you and with other witnesses, there were discussions about the evaluation model and there were questions raised by people about how the quantitative would gel with or interplay with the qualitative. And it would appear that as a result of that and also as a result of a number of other suggestions, including as I think we mentioned before, a suggestion in relation to how IRR would be calculated, a second evaluation model was proposed by Mr. Andersen and this is contained at Leaf 2 of Book 54. And again you have the same note on it: "Second draft of AMI's paper not to be removed from office, not to be copied."

A. Okay.

Q. Now, this draft incorporated a number of changes proposed at the previous meeting, including an additional section in relation to how the quantitative and qualitative evaluations would be combined or would integrate with one another. But one thing is clear, that from that evaluation model, which was agreed by everybody on the Evaluation Team, you were going to get a quantitative report and then when that was done, you were going to work on a qualitative report and the quantitative report was going to contain a ranking based on the hard measurable data. You would get your qualitative report and then you would have to go back

and look at your quantitative report again?

A. Yes, that was the understanding.

Q. And we had some examples of that, I think, in the evidence already given, you could measure for instance I think Mr. McQuaid was giving an example of how you would measure the rate at which people might roll-out the network. I think we had an example of Esat Digifone rolling out 90% of their network in one go 80% of their network in one go, if you like in one step, with Persona opening with 40% of their network three months earlier than Esat Digifone?

A. Mm-hmm.

Q. Both of them were going to achieve the 80% by the same time, but I think a judgement was made that you are better off to roll-out your network to 80% in your first step into the market rather than to roll-out 40% of your network, perhaps exposing yourself or your flanks as it were to some kind of an attack from the opposition?

A. Yes.

Q. And you could measure a person's roll-out, I suppose in quantitative terms, by days, months, weeks or whatever? I don't know how you would do it.

A. Yes.

Q. But bringing a quantitative evaluation to bear you might say that we prefer to give more marks to the applicant who is going to roll-out his in one go?

A. Yes.

Q. I think I said "bringing a quantitative"; what I should have said is bringing a qualitative evaluation to bear.

A. Yes, another way of doing it perhaps would have been to weight in some way, that is W-E-I-G-H-T, in favour of applicants who achieved the most first, or alternatively to bring a qualitative judgement

Q. Yes, I think they didn't adopt that weighting mechanism so you brought a qualitative judgement to bear. You and I might disagree what the appropriate qualitative judgement is, but you couldn't disagree that one or other might be appropriate?

A. Yes, they did come up with a second way of doing it as you see from the...

Q. Yes. But what that might enable you to do is to reconsider perhaps a ranking that had been achieved on a quantitative evaluation, and to apply the judgements you had made on the qualitative evaluation to those rankings. In any case, in this evaluation model, there were also tables which were presumably intended to reflect the agreement that had been reached on weightings at the previous meeting of the 18th May?

A. Right.

Q. And if you go to page 17 of this document you will see that it contains a table like the table we looked at a moment ago with the weights attached to each of the

relevant indicators.

Now, the indicators are listed in a way which doesn't directly correspond or, if you like, linearly correspond with the dimensions and the Paragraph 19 criteria and I have arranged to have them regrouped so that they do correspond linearly with the indicators or with the dimensions and the evaluating criteria in Paragraph 19 and I hope we will be able to look at that on the overhead projector now.

Now, there are two aspects of this table I want to draw to your attention. The first thing is that if you tot up all those figures on the far right-hand side of that table?

A. Yes.

Q. The far right-hand column, they do not come to 100, as you might think they would from the evaluation model. They come to 103?

A. Yes, I have actually done the same exercise as yourself here, Mr. Healy, and you are quite right, that's the case.

Q. Well, somebody spotted this at the time anyway, I think, and it may have been that this is not a big issue, mind you, as long as it is always understood that they will come to 100 and you simply renormalise each score as you input it into your ranking process, and we know that that was done, because there are documents which suggest that this renormalisation

exercise was carried out. Now, I may be wrong in thinking that it was always intended that an renormalisation exercise was envisaged, it may be that a mistake was made and that renormalisation exercise became a necessity?

A. I am not sure which.

Q. As long as you did the renormalisation exercise and stuck to 100, it wouldn't matter.

If you look at the right-hand column again where it has the total weight for the first criterion, it is in at 32 and a half?

A. Yes. That is where the extra three actually comes from, if you take the 2.5 there and the .5 beside the 7.

Q. Which is the coverage criterion, you get the 3. What I am more concerned about for the moment is the way the weights are broken down with respect to the indicators which are in the next column from the right; do you see that?

A. I do.

Q. And again, if for a moment we discount the additional three marks, you will see that in the case of the indicators for the credibility of business plan and applicant's approach to market development, the weights are 3.75 for market penetration 1, 3.75 for penetration 2; those two indicators are linked to the dimension, market development, that is the one we are

most familiar with because it crops up time and again in the evaluation report, so therefore the weighting for market development was 7.5. Do you see that?

A. I do.

Q. And the weighting for experience of the applicant is 10?

A. Yeah.

Q. The weighting for financial key figures is broken down into 7.5 for solvency and 7.5 for IRR; that comes to a total of 15?

A. Yes.

Q. Do you see that?

A. Yes.

Q. Now, because we now that renormalisation was either intended or did in fact occur for, perhaps because it was realised that this error in computation had taken place, what I am more interested in is the relative differences between these different weightings?

A. Okay.

Q. And you can see that the weighting for market development at 7.5 is half the weighting for financial key figures at 15?

A. Yes.

Q. And it doesn't matter whether you renormalise or not. If you do renormalisation, that relativity is going to be maintained?

A. Yes, as long as you maintain that. Just to go

backwards for a moment, if we can.

Q. Yes, do.

A. To the point at which Ms. Nic Lochlainn had, I am getting some feedback here I think, which Ms. Nic Lochlainn had recorded our agreement on the weights.

Q. Yes?

A. Remind me of the page again.

Q. Yes, I think if you just go back to 1(a)?

A. You will notice that she records our agreement as to the overall weights.

Q. Correct?

A. Not the weights of the sub-indicators.

Q. Yes. I think I made that point yesterday in my opening remarks, yes.

A. I make that point simply so as not to preclude that there may have been some discussion, or even agreement, I simply don't recall as to how we might break down those weights within the dimensions and what

Q. Did you say there may have been or there may not have been?

A. There may have been, I simply don't recall. And it may have been that Andersens themselves did it and then brought it to our attention. I do think that, in fact I am sure you are going to go on and show that when the 3.75 and 3.75 first came to light, certainly it was queried from two directions: I think one from

the point of view that it totalled 103, and secondly, from point of view that we hadn't seen the 3.75 and the 3.75 before.

Q. I see. I wasn't aware that that was ever suggested, but I am interested in that for a moment. Can we just take up one point you made. First you say that Ms. Nic Lochlainn noted the total weights and as you say, it is not evident that in noting the total weights she was paying any attention to the breakdown?

A. Yes.

Q. And clearly the total weights must have been agreed at that meeting?

A. Yes.

Q. You are saying, are you speculating then that the breakdown that I've just referred you to, we will call it the 3.75 or the 7.5 breakdown, it is easier to refer to it that way, you think that may have been a proposal by Andersen for the next meeting?

A. It is a possibility, yes.

Q. Yes.

A. Because I don't recall our discussing it but it may be that we did, it may be.

Q. I see. When the document came back for the next meeting, we know that it was discussed, whether it was discussed at length or not we don't know, because there is a very short entry in the relevant minute for the meeting of the 9th June in which it is noted that

the meeting adopted formally the evaluation model?

A. Yes.

Q. And a reference is made to a typographical error on one of the pages which would tend to suggest that at least one or more than one person present had read it to the extent of drawing attention to a typographical error?

A. Yes, I think Ms. Nic Lochlainn mentioned that in her note to Andersens, it may have been a fax, I think she suggested it might have been a typo.

Q. It is actually suggested in the meeting, just so that you are it is on the overhead projector.

A. I see that, yes, "One minor typo on page 6 of 21."

Q. On page 6 of 21?

A. Yes, 6 of 21.

Q. That is also recorded in her note of the relevant Evaluation Group meeting, she makes the self-same note that the evaluation model was approved with the correction of one minor typo, I suppose which would suggest that, I suppose, somebody at least was reading it?

A. I am looking at page 6 of 21 here.

Q. Yes.

A. Which is dealing with the coverage dimension and there is an extra 5 there in the formula.

Q. Yes?

A. For calculating demographical coverage score.

Q. With a line through it?

A. With a line through it. Could that be the typo?

Q. Might be. Are you suggesting that are you somewhat concerned that this mightn't have been the document that was discussed at the meeting?

A. I am not really suggesting anything. There is a possibility.

Q. I suppose when you look at what she said in her note when she referred to page 6 of 21, she can only have been referring to this document which contains 21 pages compared to the previous document which only contained 19?

A. Yes, that's correct, but when I alluded to Ms. Nic Lochlainn referring to a typo, I wasn't in fact referring to her report of the meeting, I was referring to a document which she sent to AMI by fax later on.

Q. Yes.

A. Drawing their attention to the weights and how they appeared to have changed.

Q. Yes. We will come to that document and I have every intention of coming to that document.

In relation to this document, for a moment, it is clear that she recorded what she understood to be the approval of the document at the meeting on the 9th June?

A. Yes, that's right.

Q. Which is obviously referring to this document of her reference to page 6 of 21 and she indicates, and this is also a reflection of what is contained in the minutes that if further comments were required then, or if further comments were warranted, they should be forwarded to Ms. Nic Lochlainn?

A. That's right.

Q. That wasn't in fact done and she took the view that the meeting had approved the model

A. Yes.

Q. as tabled, as it were. Now, for a moment I will just refer to you Leaf number 5. And you see where Ms. Nic Lochlainn records in a note to file the agreement of the group to the rebalancing of the weights consequent on the intervention of the EU. I draw that to your attention because she seemed to regard it as something that required some formal recording or acknowledgment. Do you see that?

A. Yes, I think that is commendable.

Q. The next document in the book in Leaf 6 contains a number of pages from the first quantitative evaluation report, and if you go to the second page you will see that the weightings that are shown are in accordance with the evaluation model.

A. They are not in accordance

Q. But not in accordance with the EU intervention?

A. They are not in accordance with the immediately last

agreed set of weightings.

Q. Correct. But the breakdown, if you believe, maybe I should put it this way: if you leave the EU intervention out of it, they are in accordance with what was adopted at the meeting to consider the evaluation model?

A. Rightly or wrongly.

Q. Yes, the total weightings. And the breakdown is also in accordance with what was adopted when the evaluation model was considered?

A. Right.

Q. Now, where it is wrong is, in applying a weight of 14% to the licence fee when it should have been 11 and in failing to take

A. That's correct.

Q. and in failing to take the three points removed from that and to add them to the weighting for tariffs, OECD basket; do you see that?

A. Isn't it also wrong in that it has 103?

Q. That is true. But firstly that mistake that you have referred to was mentioned at the meeting at which this report was formally presented and the and Mr. Andersen undertook to correct that mistake?

A. That's correct, yes.

Q. But if you leave aside the 103, which I don't think was mentioned until later, I could be wrong in that, no issue seems to have been taken about the breakdown;

do you follow me?

A. Yes.

Q. Now, if we pass for a moment to Ms. Nic Lochlainn's fax, which is in Leaf 9, Ms. Nic Lochlainn is writing to Mr. Andersen drawing a number of matters to his attention. The first thing she draws to his attention is that in the report of the 3rd October there is a mistake on page 44 in the subtotal?

A. You are now at Divider 9, is that it?

Q. Yes, Divider 9. Do you have that?

A. Yes.

Q. The first thing she is drawing to Mr. Andersen's attention is the mistake in the 3rd October version of the evaluation report where the subtotal of the technical aspects is wrong because due to a typographical error, another set of letters was replicated?

A. All right.

Q. Do you see that? That is all it is; nothing more than that?

A. Okay.

Q. She does that by enclosing in her letter as Annex A a document she received from, presumably from Mr. McQuaid, it may be that Mr. McQuaid was the person who drew this to her attention, I don't know. It is Annex A, it is the next document. It says "Technical aspect as noted by John McQuaid at meeting with M Jacobsen."

I think that is her own writing. Presumably she is recording what Mr. John McQuaid told her, "This is what we did at the meeting, here is the proof of it, here is my own working paper, maybe you would make sure that that is corrected." And I presume she probably designed that it was a typographical error, but she wanted to be absolutely clear and certain about it.

Then she says, Item 2, "Please see attached list of criteria and weighting as agreed by the Project Group prior to the 4th August, 1995 (Annex B)." And she has the listing of the criteria with the weightings, including the rebalancing following the EU intervention?

A. Yes.

Q. And she says, "Could you please clarify how these relate to the weights a detailed on page 17/21 of the document of the 8th June, 1995" that's the page we were looking at a moment ago?

A. Yes, indeed.

Q. She says, "Could you please clarify how these relate to the weights as detailed on page 17 of the document of the 8th June which were to be the weights underlying the quantitative evaluation and to page 7 (SIC) of the draft quantitative report, e.g. OECD basket is weighted at 15.96. Does this correspond to 18% for competitive tariffing as agreed by the group?"

And she encloses page 17 of the evaluation model and also page 7, then, of the draft quantitative report of the 20th September. Do you see that?

A. She does.

Q. Now, the first question is to do with the first draft of the evaluation report of the 3rd October. The second question is to do, in a sense to do with something else altogether. The first thing she says is: "Can you please clarify how the total of the weights relate to the weights on page 17 of 21?" Do you follow?

A. I do, yes, yes.

Q. But she goes on to say, "That these were the weights underlying" "which were to be the weights underlying the quantitative evaluation." Do you see that?

A. I do.

Q. So as I see it, she is asserting that these are the weights, she said these are what we agreed on the document of the 8/6/1995. Can you please tell me how do they tally with the list of criteria that she sets out in the previous page. Then she has a specific query. She is simply asking the question that I think I have answered by putting my table, my regrouped table up on the overhead projector. She wants to know how do, how does the list of indicators in this form containing weights for indicators correspond to the

total weights that she puts in her list from 30 down

to 3?

A. Yes.

Q. And she asks "how does it relate to the weights shown

on the quantitative evaluation of the 20th September,

1995? And in particular she draws attention to 15.96

for OECD basket? Do you see that?

A. No, I have lost you there, now.

Q. The first question she asks is how does the list of

weights in the evaluation model, which I suggest she

says or asserts has been adopted, how does the list of

weights in that, which are weights for indicators,

correspond with or relate to, I think she says, the

total weights attached to the Paragraph 19 criteria?

A. Perhaps if you just go back to basics for a moment.

What I am reading here is the facsimile cover sheet

signed by, well, over Maev's name and at question

number 2; is that right? .

Q. Yes.

A. Her question is: "Could you please clarify how these

relate to the weights as detailed on page 17/21 of the

document of the 8th June, 95" is that correct?

Q. Yes.

A. It is just that you mentioned September there a moment

ago.

Q. I did?

A. And it threw me.

Q. Because she is asking two questions?

A. Right.

Q. The first question is, please clarify how these weights we are agreed that she is referring to the total weights for the criteria?

A. She is asking how they how they relate to the weights, which I take her to mean how do the individual weights relate to the individual weights?

Q. Let's be absolutely clear that we have the right nomenclature. She says, "Please see attached list of criteria(Annex B)." I would regard those as the total weights to be applied to each of the criteria.

Do you see that?

A. Annex B. Yes, this is the one in which weighting agreed by the group prior to 6 prior to 4 of 8 of '95?

Q. Yes.

A. I am looking at the monitor, here, yes, okay.

Q. Now, just before we leave that, are you ad idem with me that that table sets out the total weights agreed to be applied to each of the evaluation criteria, including the rebalancing consequent on the EU intervention?

A. Yes.

Q. And that is the list of the weights that she noted to file after the EU intervention?

A. Yes, correct.

Q. I am calling those the total weights applicable to the criteria. We discussed that the criteria were broken down in the evaluation model into dimensions and indicators?

A. Indeed.

Q. Right.

A. So she is asking here could you please clarify how these, being the ones which she has seen, the 3.75 and the 3.9 or something.

Q. No, I think not. If you read it again. "Could you please clarify how these" meaning the Annex B, would you agree with that?

A. Yes, right, right.

Q. "...related to the weights..."

A. "... as detailed on page 17/ 21." Right.

Q. "...of the document of the 8th June, 1995."

A. And I take it that the attached page 17 by her is the correct copy of the

Q. Correct.

A. Yes, that is what I meant by the 3.75, 3.75 there.

Q. And she describes these as "what were to be the weights underlying the quantitative evaluation." Do you see that?

A. Yes, I do.

Q. That is her first question, or the first part of her question, if you like. She wants to know how the total weights relate to the weights given to the

indicators?

A. Okay.

And she says, and I am going to paraphrase the first part of her sentence: and could you please clarify how they relate to page 17 of the draft quantitative report? She then includes an annex, which she refers to as Annex D.

A. Yes.

Q. She says, "E.g. OECD basket is weighted at 15.96%. Does this correspond to 18% for competitive tariffing as agreed by the group?"

A. Yes.

Q. So she has two questions. Firstly, how do the list of weights for the indicators relate to the total weights, and secondly, does the list of weights in the first, or second rather, quantitative evaluation correctly correspond with the total weights agreed for each of the RFP Paragraph 19 criteria?

A. Mm-hmm.

Q. If we just take this two steps at a time, sorry one step at a time I think it is easier take it in two steps.

If you look at the copy of the, the page from the evaluation report that Ms. Nic Lochlainn includes

A. That is page 17.

Q. as Annex C. Do you see that, page 17?

A. Yes.

Q. Now she has a few marks on that which I think are illustrative, I think, of her thinking. Firstly, the 15 is changed to 18; do you see that?

A. I do.

Q. Secondly, the 14 is changed to 11; do you see that?

A. I do.

Q. And then number of cells, reserve capacity, blocking and drop-out rate, have a bracket put around them and some writing which I can't follow. It says 25

A. I don't, I can't decipher that either.

Q. I don't know what it means but in any case, at the very bottom then she has dash; maybe she is simply signifying that everything within the bracket is 25?

A. I think that is what is intended, yes.

Q. And at the bottom she has 100, a line drawn through the 100 and 103 put in signifying that the tot comes to 103.

If you ignore the 103 for a moment, and you ignore the 15 to 18 and the 14 to 11, all of which the change in the 15 to 18 and the change of the 14 to 11 were subsequent to the adoption of this model, so they had to be changed obviously, but all they involved was an alteration in indicators which stood alone. Do you follow me?

A. Yes.

Q. The licence fee was not broken down into dimensions or broken down into indicators; there was only one

indicator and one dimension which was 11 which was easy to change that to 11. Likewise the tariffs, which is referenced to and indicator of competitiveness of an OECD-like basket didn't have any multiple dimensions to it; it just had one dimensions, one indicator so if you changed that, it didn't make any difference.

Now, the 103 is another problem, and I think that seems to have been solved by the renormalisation exercise. If you leave those issues out of it, the set of weights renormalised tallies with Ms. Nic Lochlainn's list. Her next question is a much harder question. She wants to know, does the 15.9% weighting apply to the OECD basket on the second quantitative report correspond with the 18% weighting that that had, that that had following the EU intervention?

Now, I don't know what answer she got to any of these queries. I have suggested that there were clear answers to the queries she had concerning the evaluation model table, but if you look at this second quantitative report, I think you will see two things.

Firstly, you will see that the licence fee payment has been reduced. Do you see that?

A. Yes, to 11.7.

Q. To 11.7%. The tariffs has not been increased to 15.9%. But I think you will also see that this does not have, I think I am right, any indicator for

international roaming?

A. Yes, it seems to have dropped out.

Q. Yes. And what I think happened was that the marks for international roaming were distributed amongst the other indicators so as to maintain the relativity between them?

A. Yes, I think that is correct.

Q. But while that was done, whoever was doing the calculating forgot that tariffs would have to be increased by 3%?

A. Yes, it certainly looks like that because I attempted to do the same sort of thing.

Q. Yes. That is just speculation, because I can't see the answer anywhere but that would appear to be what the answer is, or may be.

A. This was after, I think, during the quantitative analysis

Q. Yes?

A. that the persons doing that had encountered difficulty with roaming and with drop-out rates, I think, and something else.

Q. Apparently with the licence fee, but nevertheless it seems to be in all of them in any case, and so does blocking and drop-out rates.

A. I think their difficulty was in comparing the bids that had been made with regard to the claims on roaming agreements and what roaming agreements would

be in place.

Q. Can you follow that difficulty? Because I can't.

A. Bearing in mind that I wasn't there and that this, I certainly don't recall what discussion we had on it at the time, simply that in reading it now again over the last month or two, I have come across a difficulty that was presented by the people attempting to score roaming and I do seem to recall seeing something along the lines that there couldn't be roaming agreements in place until such time as a licence had actually issued.

Q. But the people doing this, Mr. McMahon, were not a group of people this information was being fed into, if you like, a number processor?

A. Yes, in Andersens.

Q. And Mr. Andersen said there was a difficulty with a number of items, I think four: one was international roaming, one was the licence fee?

A. Yes.

Q. Let's take the licence fee for a moment. How could there be a difficulty about an item which is effectively neutral? Everybody gives the same amount for the licence fee so they are all as good as one another?

A. Well, you are asking me to second-guess him. It is just simply from the point of view

Q. Do you understand my query?

A. Yes, I do understand where you are coming from. I am just trying to put myself in a mode where I was doing a similar exercise and if and where something was equal across the board, if you wanted to take away the wasted opportunity of using weights and apply them where they might be needed, what you might then do would be to simply weight that at, or just leave it out of the reckoning

Q. Yes?

A. for the purpose of re-distributing weights. That may be what he is referring to; that is my speculation.

Q. He hasn't left it out. He hasn't taken it out. He has left it in. That is why I could never understand the reference in the minutes to international roaming or the licence payment?

A. International roaming was different, I think.

Q. I appreciate that. But I couldn't understand why it would affect, why it would warrant doing away with the quantitative report. Do you see what I mean?

A. Yes, I see where you are coming from there, yes. I have really nothing to say on that.

Q. But again we may have to take this up with Ms. Nic Lochlainn and I think she is coming back on some of these documents. No question seems to have been asked either by Ms. Nic Lochlainn or anyone else concerning the distribution of the other weights. Do you follow

me?

A. You mean, for example, with the 3.75 and the 3.75
the 7.5 and the 7.5?

Q. Yes. And it seems, and I cannot be sure, that this
issue may have been raised at an Evaluation Group
meeting. Can you remember it being raised?

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

Q. I will refer you to something which I think suggests
that it was raised. It is in the next leaf in this
document. This is, I think, Ms. O'Keefe's handwritten

A. What divider are you on now?

Q. The next leaf, Leaf 10. You see the first item there?

A. I do.

Q. This is not the full document. This is simply one
page from the full document of which I need more pages
than this page. Do you have Book 42 at hand?

A. No.

(Book handed to witness.)

Okay, Mr. Healy, I have got it.

Q. Could you go to Leaf 121.

A. Okay, I have got that.

Q. Have you got Leaf 121?

A. Yes.

Q. Go to page 4. Do you see the heading "Quantitative"?

A. I do.

Q. Do you see the first item: "Ranking is probably

different now (Annex D)" do you see that?

A. I do, yes.

Q. Now, I think that must be a reference to Ms. Nic Lochlainn's fax because there is no Annex D to the report of the 3rd October which was being discussed at the meeting. The annexes to the report have numbers, not letters?

A. Mmm. If this is the case, I am just looking at the Annex D which she sent to AMI.

Q. Yes?

A. The ranking isn't different, is it?

Q. Well, I am not quite sure what it means. It says, it looks like it says "quantitative" first, as if somebody raised a question about a quantitative report and then says "ranking is probably different now (Annex D)." Can you remember it being discussed at the time?

A. I am afraid I cannot. Unless you wish to remind me now of anything that I recorded on that date.

Q. I can't, no, because at that meeting you had only just got the report and you had very sparse notes of what happened?

A. Okay.

Q. You can stay with that book for a moment. I don't want to deal with I want to stick with the weightings issue. And if you look at page 3 of Ms. O'Keefe's verbatim notes, do you see where she says at

the top of the page under "weighting", "Table 17

different from agreed weighting."

Do you see that?

A. I do.

Q. Now, if you go back to Leaf 117 on that book, you will

find, I think you should find Table 17. It is at page

45. Do you see that?

A. I do.

Q. What Ms. O'Keeffe records is a contributor to the

meeting saying "Table 17 different from agreed

weighting." Now, unless you made that contribution,

somebody at the meeting, and not just you, was raising

issues which might have caused confusion about

weightings. You can see somebody was drawing

attention to the fact that Table 17 contained a set of

weightings which was different from the agreed

weightings. And what that can only mean is that Table

17 differed from the weightings set out in the

evaluation model because Table 17 sets out the

weightings applied to each dimension, in other words

they are broken down. Do you follow me?

A. Yes.

Q. So instead of having 30 for the first criterion,

credibility of business plan and approach to market

development, you have instead, market development 10,

financial key figures 10, experience of the applicant

10, and then so on for radio network architecture and

capacity of the network and so on?

A. Yes.

Q. What was different was the breakdown?

A. Yes.

Q. You don't know what response that contributor got?

A. I can't accept that in going back through all of this material I was equally puzzled by the progression from one document to another when it appeared that having agreed what I see on Table 17, which I think I took to be the correct weightings

Q. Yes?

A. that somebody would then suggest that this was different to what had been agreed, but then going back to what Maev Nic Lochlainn recorded earlier on, maybe erroneously, I don't know, that the second evaluation model had been agreed when in fact it hadn't, in the meantime the EU intervention had come along and we had had to change the 14 to 11.

Q. I am not sure I follow you. Maybe it is my fault, Mr. McMahan?

A. Well, let's I am really retracing your own footsteps earlier here. The first evaluation model came.

Q. Yes?

A. The second evaluation model came. If I am looking at the correct one here now, it is at Divider 9 of

Q. You can take it I follow that, yes?

A. And that is the one in which there is a 3.75 and the 3.75 and in fact the top indicator, the top dimension totals 32.5 and not 30.

Q. Yes?

A. I think in your own table you had discovered that.

Q. Yes. It is not the top dimension but the top criterion, I think, totalled

A. The dimension which related to it, yes

Q. Yes?

A. totalled 32. I don't ever recall or agreeing to that but I think there may have been something suggested that Maev Nic Lochlainn signed off that we had all agreed to that. Am I correct, did I hear you say that earlier on?

Q. Yes.

A. Well, if she did, that wouldn't have been correct, would it?

Q. Well, I can understand how some confusion could have arisen, and I am not saying, I am not holding anyone to this, I can well understand that confusion could arise, but the point is that it is still there up to this day?

A. It is, and somebody should have been

Q. It shouldn't be, Mr. McMahon, is my point, and there was time to clarify it. It shouldn't be there. If we look at it again, this is a very serious business, everybody took weightings as something of the utmost

seriousness. Ms. Nic Lochlainn recorded that at a meeting on the 18th May weightings were agreed, and she recorded those in a note to file, she recorded the total weightings agreed?

A. Yes.

Q. Now, I am drawing a distinction between the total weights for each criterion and the weights for each dimension which is the breakdown in weights and confusion could have been caused there but she did note the total weightings. Then on the 18th June she recorded that the evaluation model had been accepted and she went so far as to record that somebody corrected a typo on page 6, I think it was?

A. I think that is where a mistake has come into this. It is just a helpful guess on my part.

Q. Yes, maybe you would just expand on that?

A. Isn't it possible that that second evaluation model was considered and that it was simply missed that the weights in it did not correspond to the weights she had previously recorded as having been agreed.

Q. Yes. It is quite possible?

A. I think it is more than possible, because if nobody discovered that those weights amounted to 103 at the time, then it is entirely possible that nobody noticed that they had been broken down into weights for which there had been no discussion or no agreement.

Q. So what you are saying is that while on the 8th June

everybody agreed the evaluation model, they assumed that the total weights were the same as before?

A. Yes, it is a possibility that I am just throwing out as

Q. But that would mean that they made a mistake about the 103?

A. Yes.

Q. It wouldn't necessarily mean that they had any problem with the relativity of the weighting of individual dimensions one to the other, wouldn't that be right?

A. You are correct.

Q. They may have looked at the first one, which we will take as the easiest, and they would have said 7.5, or it is 3.5/3.5, that is fine, I am happy with that they may not have done the tot?

A. Exactly, yes. Similarly they may not have even looked at it.

Q. That is possible.

A. I know it is.

Q. If you look at Table 17, we will leave it on the overhead projector so I can refer you to another document?

A. Okay.

Q. You see the weights of radio network architecture, they are in at 10 and 10. Do you see that?

A. I do.

Q. In the first evaluation model proposed by Mr.

Andersen, they were in at 15 and 5?

A. They were.

Q. On the second model approved, so far as we understand from the documentation on the 9th June, they were changed to 10 and 10. And it is the 10/10 breakdown that we see in Table 17, do you see that?

A. It is.

Q. So it seems that somebody must have read it, and certainly the people working on scoring the indicators and the dimensions were obviously using the 10/10 from the second evaluation model?

A. Yes.

Q. Now, you may have heard me, and in fact this morning I think we looked at Mr. Riordan's note of the version of the report of the 18th October, and he had 7.5 as the score for the dimension, market development. That would seem to suggest that he was working on the basis that that was as it had been agreed in the first evaluation, in the second evaluation model; do you understand?

A. I see where you are coming from, yes.

Q. Yes. So you, in referring to confusion about weightings might not have been reflecting some of your own views, but perhaps the views of other people around you on the 23rd, because it is clear that they were working according to views of the weightings which may not have been consistent with one another?

A. I have to accept that, yes.

Q. Staying with Book 54 for just a moment. If you could go back to the evaluation model again, and to page 20?

A. Page 20. What divider was that again, please?

Q. It is Divider 2.

A. That's the second draft, is it?

Q. That's the second draft, yes.

A. Okay. And the page?

Q. Page 20.

A. Page 20, okay.

Q. Do you see where it says a heading "Guide to Award of Marks"? Do you see that?

A. I do.

Q. Underneath that is that table we discussed this morning which became Table 15 of the first evaluation report and the second evaluation report but which became, I think, Table 16 or whatever, anyway the third-last table of all of the reports. In the annex in the letter from or the fax from Ms. Nic Lochlainn to Mr. Andersen, you will recall the first document she referred to I think, maybe the first or second, was a page like this with Mr. McQuaid's workings on it?

A. Yes, with the technical aspects, yes.

Q. Yes. And that is obviously the document from which he was working in arriving at his calculations?

A. Yes, I think so.

Q. Which would seem to suggest and this is just a point I want to mention before I leave this evaluation model that he was of the view that this was the document which would generate the results of the competition?

A. That may be, it may also be that when people went to Copenhagen, a sensible way of handling it, logistically speaking, was to get those persons with technical backgrounds to take the different technical dimensions, and those with the financial or accounting background to take some of the financial ones and perhaps the marketing ones, and that I think was one of the reasons why Andersens evolved the marketing aspects, technical, financial and management aspects as a way of dividing the dimensions horizontally instead of vertically. Now, Mr. McQuaid would naturally have plucked this page out of his evaluation model, I think, in order to give himself a framework then for working on the radio network, architecture, capacity of the network, etc., etc.. You may also be right that it may be he thought that this was definitely the way that he thought it was going to be done. But if you look at this page in its place in the evaluation model.

Q. Yes?

A. It is part of the qualitative assessment, I think, and one wouldn't get the impression, reading this

evaluation model, that this qualitative format here was meant to be the one which would come to a conclusion, which is I think what you are suggesting.

Q. No, I am simply asking, I suppose I am asking a question by suggesting something; I am suggesting that Mr. McQuaid was operating on the basis that this was going to provide him with a result of the qualitative analysis?

A. Maybe.

Q. And this is

MR. NESBITT: Chairman, perhaps at this point it should be indicated where in the evidence Mr. McQuaid says anything like this. Otherwise we are just into a realm of unsustained speculation much it is impossible for this witness to do justice to the evidence he has to give with that sort of questioning, with the greatest of respect.

CHAIRMAN: Well...

MR. HEALY: It is a failure to understand. We are conducting an inquiry. Mr. McQuaid can come back and

CHAIRMAN: I mean he wasn't in Copenhagen. I suppose,

Mr. Healy, he is

MR. HEALY: I can't put the matter any further, Sir.

Mr. McQuaid was using a document. This was a process. I think something has been forgotten here: every

evaluator here was a jury man making this decision.

It is not open to people, I think, to say they weren't present when certain things were done. Everybody ultimately subscribed to the result, as I see it.

What I am trying to find out is what everybody understood about the result when they were arriving at it or endorsing it or subscribing to it. Now, Mr.

McQuaid conducted his piece of the work using this document, there can be no doubt about that. This document was the culmination of Mr. Andersen's work, according to the first draft of the report, but it disappeared from the summary section of the report in the final and only in the final draft, it disappeared into the body of the report and it was replaced by Table 16 and 18. I can't understand why that was done.

A. But

Q. MR. HEALY: I am asking you can you I was asking you this morning and I am just drawing this additional document to your notice, can you understand why that was done? It doesn't seem to tally with what was envisaged?

A. I don't recall what I said this morning and I hope I amn't going to contradict myself. It may be, I think as you may be suggesting, that there were those in the group, and I would have been one I think, who wanted to see all of these dimensions more particularly

related to the criteria set out in the descending order in the request for proposals.

Q. Yes?

A. And that it may also be that once Andersens, for whatever good reasons they had, had convinced the team that the quantitative analysis could no longer fulfill the role that had been anticipated for it and that a qualitative analysis would have to play a more, or at least a major role, then that this table was intended by them to be the centre piece or, if you like, the centre piece of the final conclusion, but were persuaded otherwise by members of the team who felt that we should still revert back to the descending order of criteria in the

Q. That's as may be, but if you conduct some of the numerical exercises then you get a different result?

A. Well, I am just trying to explain how one page may have, in your language, found its way to become a less important place in the report. I mean, I wish I could be more helpful, but don't forget not only was I not in Copenhagen which I have to say, and also, when a report came from Copenhagen, I had it at fairly short notice.

Q. Yes?

A. Now, Andersens were continually producing paper of a draft nature which we would discuss at our meetings. There was nearly always questions being asked about

why this and that was there, and proposals being made for amendment. I think with the best will in the world it would be utterly impossible now to go back and answer all the questions that you are asking about why this or that was done, even if you had the people who were actually at the job.

Q. I appreciate that. One would have expected it to have been documented, I suppose, is the point I am making, just as other important decisions were documented?

A. Ideally these sort of things might have been documented but we didn't have the benefit of stenographers and we certainly were all coming from other jobs into meetings.

Q. I think you have got fairly good notes, Mr. McMahon. Maybe if we had those kinds of notes of all the meetings we might find it easier to follow the process.

In relation to that last point you make, and it is the last thing I want to ask you about weightings, and I just ask you to look at page 50 of the first version of the evaluation report which is at Leaf 46, Book 46, I beg your pardon, I was looking at the second, I think it is the same, whether it is the second or the first, if you look at Leaf 46?

A. The first evaluation report?

Q. It is the second one I am asking you to look at, the second version. I think what I have to say

A. Is that Table 18?

Q. Table 18, correct. That's the final table in any of the versions of the report?

A. Yes, right.

Q. And it's I want to you look at Leaf 46 of Book 46 for a moment.

A. I am looking at something different, I am afraid, here. (Book handed to witness.)

All right, Mr. Healy, I have the right book. If you will tell me which divider now.

Q. Divider 46.

A. 46?

Q. Yes.

A. And page 40?

Q. Page 50.

A. Page 50. Okay, I have that.

Q. I want to refer to you a piece of text which was omitted from the final report. The heading is "The Results Based on a Conversion of Marks to Points."
"Also weighting mechanism was agreed prior to the closing date for quantitative purposes as evident from both Table 17 and 18. If the marks (A, B, C, D and E) are converted to arabic points (5, 4, 2, 3, 2, 1) it can be calculated which applicants come out with the highest score measured by points, although such a calculation distorts the idea of a qualitative evaluation."

Now, other witnesses have been asked about the omission of the reference to the possibility that such a calculation distorts the idea of a qualitative evaluation. There is another aspect of this passage that I want to refer you to. In the first line, do you see where Mr. Andersen says "a weighting mechanism was agreed prior to the closing date for quantitative purposes"; do you see that?

A. I do.

Q. And we know that a weighting mechanism was agreed for quantitative purposes. We have discussed what I think is some confusion that may have arisen as to what weightings were to be applied, but I think there can be no doubt from all the documentation we have seen what was agreed was a quantitative set of weightings?

A. Yes.

Q. And what I can't find is any decision that this set of quantitative weightings should be applied to what had become, according to Mr. Andersen, a qualitative evaluation?

A. Yes.

Q. Do you ever recall any discussion on that?

A. I don't, but I mean, one might equally say would it not apply to the qualitative evaluation in the same way and if

Q. I can't see why you wouldn't apply them. You could if you wanted, obviously?

A. Yes.

Q. But clearly no decision had ever been made to that effect, that I can see?

A. Would a decision be necessary? Is it not more likely that a decision would have to be made in order to exclude the qualitative evaluation?

Q. What I am drawing your attention to is the fact that Mr. Andersen, in this section of the report, and this is a passage, the first sentence that I think is repeated elsewhere and has not been removed from the report?

A. Yes, I see that.

Q. Draws attention to the fact that a weighting mechanism was agreed prior to the closing date?

A. Yes.

Q. This is some considerable emphasis placed on the agreeing of a mechanism prior to the closing date, I suppose the idea being that this conveys the impression that you couldn't devise a mechanism after the applications came in for fear it would appear favourable to one or other aspect of one or other application; do you follow?

A. I do.

Q. But the mechanism that was agreed prior to the closing date was a mechanism to weight or weight the scores in the quantitative evaluation only?

A. Why do you say that?

Q. Because that is what the document says is what, that is what Ms. Nic Lochlainn's documentation says, it is what the evaluation model says?

A. Well, I can only say that Ms. Nic Lochlainn's recording it doesn't necessarily mean that that was its only purpose. I mean, as I sit here now and try to recall, I can't see why the criterion which can be examined in either a quantitative or qualitative way, and were intended to be done both ways, shouldn't benefit from the kind of weighting which would, we would attach to them.

Q. Yes?

A. After all, weighting

Q. Let's just agree on one thing. I can't see, no more than you can, I presume, any reason why you couldn't say let's apply the quantitative weights to the qualitative results, why not? But that would be a decision that you would make after the applications came in, isn't that right?

A. Why?

Q. Because no such decision had been made beforehand, that's for sure?

A. I am not sure I am with you there.

Q. I see.

A. I am not sure if that's correct. I mean, the evaluation model, to use your words yesterday, envisaged a quantitative/qualitative investment, an

interplay between revisiting, whatever it was that you said.

Q. Correct.

A. That was all before the bids were lodged.

Q. Yes.

A. And it was understood at that time that in fact there had been proposals from Andersens about a weighting mechanism.

Q. Yes.

A. Now, whether you were to assess things qualitatively or quantitatively, it seems to me that you would be obliged to bring some weighting to them.

Q. If you look at the evaluation report, I think it is clear that the weightings that are devised were devised specifically for the quantitative portion of the evaluation; page 17 is in the quantitative portion of the evaluation?

A. Is that in the present book that I have I wonder?

Q. This is in Book 54. Book 54, the book on weightings?

A. Okay, right.

(Book handed to witness.)

Now, if would you like to direct me to where that authority is?

Q. I am sorry. You have the book?

A. I have the second draft now of the quantitative and qualitative evaluation.

Q. Yes. The evaluation model?

A. Right.

Q. It is in Leaf 2, it is at page 17?

A. Yes.

Q. That section of the report deals with the quantitative model, the quantitative evaluation?

A. Right.

Q. And you see the list of weightings applied to each of the indicators, we have been over that?

A. Yes.

Q. Go back to page 2 for a moment, there is a heading "Procedure for the Quantitative Evaluation Process"; do you see that?

A. I do indeed.

Q. There are six steps set out. Look at the second step: "All the selected indicators will be assigned a weighting factor." Do you see that?

A. Yes.

Q. If you go to page 18?

A. Yes.

Q. It sets out the steps to be followed in the qualitative evaluation process?

A. Yes.

Q. We will just say two things about that to begin with. Firstly the weights we saw were set out as part of the quantitative evaluation process. Now, we are now onto the next page which is the procedure for the qualitative evaluation process. There is no reference

there to the setting of weightings, though if you turn on to the second next page, you will find a reference to weightings under "The Guide to the Award of Marks."

Do you see that?

A. Yes.

Q. Where it says "In order to guide the mark-giving a matrix has been elaborated below. The dimensions and indicators are not indicated ex ante" do you see that?

A. Yes, I do.

Q. There is no weighting proposed here or adopted

A. Yes.

MR. FITZSIMONS: Sorry, Chairman, before the witness answers that question, Mr. Healy has said that on page 18 is set out the steps in the qualitative evaluation exercise, but perhaps if Mr. Healy could point out to the witness that on that page it is stated that, "The following describes some of the major steps in the qualitative evaluation process," just so that the witness is not walked into believing that these are the sole steps.

Q. MR. HEALY: I am not trying to walk you into anything, Mr. McMahon. What it describes is some of the major steps?

A. Indeed.

Q. On page 21 then it describes a weighting. I think what I was not trying to walk you into was the suggestion that no provision was made for a weighting;

there is a provision made for a weighting, but it says that the dimensions and the indicators are not weighted ex ante; do you see that?

A. I do indeed, yes.

Q. I better be careful with what I say to you now. Would a weighting

A. I think I drew your attention to that phrase in the first day in the witness-box.

Q. You may have done, I think I don't want to anticipate your

A. There are two other points which I meant to draw your attention to.

Q. Can I ask you a question about this first, just before you do that or maybe if you think they are important, draw them to my attention now?

A. No, no, I can come back to them.

Q. Would you think that applying a weighting was a major step or not?

A. No, because I think that actually there is, it is one of the points I was going to make to you, that if you go back to that page where it describes the procedure for the qualitative evaluation, it says at 5 there, "when the dimensions are being assessed the evaluators should, as far as possible, use the same indicators as used during the quantitative evaluation."

Q. Yes?

A. Then, "Supplementary indicators." Then at 6, "During the qualitative evaluation, the evaluators should take the results from the quantitative evaluation into account."

Q. Yes?

A. Now, I always understood and took these models to mean that we would try, as far as possible, having regard to the nature of a qualitative assessment, to have regard to the weights which we had agreed.

Q. Yes?

A. Primarily for the quantitative one. Now, I accept that the language in which these assessment models are written accept that weighting is an intrinsic part of a quantitative assessment.

Q. Is an intrinsic do you regard it as an important part?

A. It is an important part of any quantitative assessment, it seems to me.

Q. I thought you said a moment ago that it was a very important part of it?

A. They are an intrinsic part of a quantitative assessment. In other words one would be surprised to see a quantitative assessment described without reference to a weighting in a case like this.

Q. Yes?

A. But that doesn't exclude, I think, the possibility or the likelihood or even the necessity of applying

similar types of weighting in a qualitative

Q. Of course not.

A. and given that you are simply, as I pointed out a moment ago, mirroring the procedure in using the same dimensions, the same indicators, one would be remiss if you left aside the whole notion of weighting.

Q. Of course.

A. Because that, in fact, would be a distortion. That's the point I am making.

Q. Well, that is true, but I am sure you will agree with me that it is very hard to apply a weighting to a letter, isn't it?

A. Yes.

Q. If not indeed impossible. You cannot multiply a letter by a number?

A. No, I wouldn't quite go that far. I think as I said to you on day one, a letter is applying letters applying letters are really just another way of applying numbers between 1 and 5 if you are choosing A, B, C, D and E. I think if I had been designing this model I would have used numbers 1 to 5 rather than letters.

Q. Yes. But if you look at what Mr. Andersen was suggesting, I think in fairness to him he was saying that he wanted to award marks according to a "soft" 5-point scale?

A. By "soft" I took him to mean that they were malleable to

an extent, and whereas one person might want to award a 5, another person might feel that a 3 was more in order and that these were not directly quantifiable directly back to the data submitted. That is what he means by "soft". I mean, that is what I would take him to mean by it.

Q. If you look at the passage in the evaluation model you drew my attention to, "During the qualitative evaluation, the evaluators should take the results from the quantitative evaluation into account as a starting point." Do you see that?

A. Yes.

Q. Were the results used, do you know?

A. I can't be certain of that. On the 23rd, when I spoke to my colleagues and asked them, so far as I could, how had this been done, how had that been done, I would be surprised had I not asked that type of question, because a lot of effort, as you yourself had pointed out, had gone into the quantitative analysis.

Q. The report doesn't say it was done?

A. Yes. But it would have been strange to my mind had it been discarded and not used.

Q. Well, we know the information may not have been discarded, but the result?

A. Of course not.

Q. But we have a number of different results, all roughly the same in that the same three or four people were

coming out on top, though in different positions, with differences between them?

A. Yes.

Q. I don't think Mr. Andersen in his report ever either alluded to the result or referred to it as the basis for any decision?

A. I think that's correct. But really as to whether the quantitative analysis formed an important part of the qualitative one is a question that you better put to some of the people who helped to do it.

Q. Yes.

CHAIRMAN: On the relative weighting aspects of the qualitative and the quantitative, could this much be said: As I take it from your earlier evidence, Mr. McMahan, that there appears no obvious clear reason in principle why the same weightings could not be applied to the qualitative appraisal as may have earlier been applied to a quantitative appraisal but it would not be unreasonable to expect Andersens, who were the experts, who had been over these fences in mainland Europe in these competitions, to be in no doubt about it?

A. Subject to what Mr. Healy has said, that it is a little more difficult to do it when you are starting with letters rather than numbers.

CHAIRMAN: Yes.

Q. MR. HEALY: I will just finish by asking you this

question: I think we have referred to numerous documents where Ms. Nic Lochlainn was careful to record the agreement of the Project Group to the weightings to be applied to the quantitative evaluation?

A. Right.

Q. Whatever may have been done, we know that no similar record exists in which she records for her file or otherwise the agreement of the Project Group to a set of weightings for the qualitative evaluation, isn't that right?

A. Yes, that seems to be the case.

Q. Mr. McMahon, I now want to go back to some of the documents in the chronology, I just want to bring you back over a few of them.

Firstly I want to refer you to something you may not need to turn up this document. It is in Book 43.

It is your note on your copy of the minute of the meeting of the 9th October, 1995. It is contained in Leaf 148.

A. If you give me that leaf number again, Mr. Healy, please.

Q. 148.

A. Yes, I have got that now.

Q. This was dated the this minute is dated the 17th October from the fact that you've put a note on it on the 1st November. It may be that you either got it

only around then or you only got to it in your basket around then. On the front page you have a manuscript note on the top right-hand corner "Mr. O'Callaghan to see"; do you see that, and you refer to page 2?

A. I do indeed.

Q. On page 2 you have this note which we have been over a few times. Do you see that?

A. I do indeed.

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

We expected the qualitative assessment to continue from that time." And 3, "The report, while it had probably highlighted the two best candidates, had a long way to go."

A. Yes.

Q. We have been over the content of that before and I don't want to go into that again. But would I be right in thinking that this is an indication of the strength of your feelings that even after the report had been concluded and after an announcement had been made, you still made a handwritten note of your feelings?

A. Yes, that would be fair.

Q. Yes?

A. Yes.

Q. And that was left on the file?

A. Oh yes, that is why I sent it to Mr. O'Callaghan.

Q. Was that because you had some apprehension that in

some way there had been less than full administrative
rigger and that you wanted to be sure that your views
were noted in case this matter came up for future
scrutiny? And I am not saying that in a selfish way.

A. No. I think what you are referring to there is the
civil service term CYA, but I wasn't.

Q. I am glad you put it that way for the transcript?

A. What I was doing was I was reacting to something which
seemed to me to be incorrect.

Q. Yes. Now, I think the last day before we were
diverted by the additional documents, we got as far as
discussing your involvement post the announcement up
to, I think, a meeting that you had with Mr. O'Brien
and I think some of his team on the one hand, and on
the other hand you had the Departmental team,
including Mr. Andersen. This was the first, one of
the first, I think the first formal post announcement
of the result of the competition meetings in which the
Department set out its stall, I think, would be a fair
way of putting it?

A. This was for the negotiation of the licence?

Q. Yes.

A. Yes.

Q. And I think you were wondering at the time, we tried
to work out from the documentation whether you had had
a pre-meeting conference, do you remember that?

A. Yes.

Q. I think we saw some documentation suggesting that you had or must have had a pre-meeting conference?

A. Yes, and I suggested to you that there was some document on file which I had written and I have subsequently found the date of that document, so it obviously remains on file somewhere.

Q. Yes. Maybe you will give me the date of that?

A. I will, yeah.

Q. In the negotiation of the licence, judging from I think some of the evidence you have given and some of the responses to the Tribunal questionnaire, I think you have the impression that you were confined, when I say "confined" I don't mean cornered, but that your work was very intensively bound up with getting the licence technically right; is that correct?

A. I think it would probably be more accurate to say that my work, I had a lot of, a lot of stuff on my plate at the time; the licence was one of the biggest of them. My role at that time I think was to break the ground on the licence. I had never been happy with the draft licence which had been floated at the time of the RFP and subsequently sent to Digifone. I felt it wasn't a licence document and I set down the things which I thought ought to be in a licence of that kind and set my division to work on producing it. Now, as the detail, as the principles came to be accepted and the document went forward and back to the Attorney

General's Office, I began to delegate the detail to people in the division.

Q. As the negotiations wore on, I think there were, what you had was a process whereby you set out your general views concerning the licence. Digifone set out its, either observations, criticisms or whatever. You presumably tried to get most of the things that were not causing a problem out of the way, and then you got stuck into the things that were, where there was disagreement or whatever?

A. Yes. And I should say to you that I think both my recall and my notes of this period are patchy.

Q. Yes?

A. And that that probably reflects the fact that I was trying to deal with several other things at the same time

Q. I don't know if we are going to finish this witness before half four anyway.

CHAIRMAN: Well, how much longer in your examination do you envisage, Mr. Healy? Plainly the witness isn't going to finish in toto, because obviously your colleagues will have some questions to ask.

MR. HEALY: I would have to take Mr. McMahon through his involvement in the, such as it was, in the early part of the negotiation of the licence where there was some very short discussions concerning financial matters. Then I think no real discussion concerning

financial matters until much later in April of 1996

CHAIRMAN: We might go until ten past, Mr. Healy,

just to try to ensure that we do proceed to the next

witness tomorrow.

Q. MR. HEALY: The initial licence result as framed in

the announcements by the Government and so on, were

that Digifone had won the competition; isn't that

right?

A. Yes.

Q. From the report I think we know that the result was,

to some extent, conditional, isn't that right? You

may not have had in fact you didn't have the report

at this time, I think, but we know from the report

that the result was, to some extent, conditional, it

was conditional on certain proposals being

incorporated into the licence to deal with financial

vulnerability in the Esat Digifone consortium?

A. Yes.

Q. While you were involved in negotiating the licence in

the early period, that is to say between November '95

and January '96, I don't think any attention was

devoted to this aspect of the negotiations; is that

right? We discussed this briefly before?

A. I am not sure, because I do

Q. In fairness to you it was mentioned at the outset but

after that I think in the negotiations it didn't form

any part of the exchanges between yourselves and

A. I think that's correct. I think that's correct.

Q. I hasten to add, it didn't form part of any of the exchanges between you and your team and the Digifone team?

A. I think that's correct. Although that doesn't mean that we weren't being aware of it at the time. I am sure that I began to draft the licence from the point of view that those provisions that dealt with that would be copper-tight.

Q. Yes. But I think the last day I suggested to you, and I think Mr. Brennan agreed this would have been a wiser course. He didn't necessarily agree with me that it was perhaps the proper or only course but I think he certainly agreed it would have been a wiser course to get the financial matter, which was the conditionality of the licence out of the way right away, instead of leaving it until April or May of 1996 when there could be a political imperative driving the thing forward?

A. Yes, indeed.

Q. Have you got a view on that?

A. I suppose any view that I would have would have to be in some way cast by what happened in April of 1996 when, to my knowledge, I first became aware, and as far as I know the Department first became aware whether it should have been or not of the difficulty that had been thrown up by the Esat

consortium's parent in this, Advent and IIU.

Q. Yes?

A. The difficulty that was in my mind at the time was the one thrown up by the sensitivity in the report Esat's solvency.

Q. Yes?

A. And from what I knew of its fundraising efforts in the United States, and the linking of those fundraising efforts to both the fixed line business and the mobile business, so this was something that I was conscious of, but yes, if I had known then what we subsequently knew in April, I would have been concerned to see that that was something which was gotten out of the way immediately, yes.

Q. I think again just to recap on one thing we mentioned before, you were at this point negotiating with what you understood to be an Esat consortium consisting of Telenor, Mr. O'Brien, and the banks, whether you say they were tied down or about to be tied down?

A. That's correct.

Q. That was the consortium, as far as you were concerned, had won the right to exclusive negotiations?

A. That's correct.

Q. And again you were not aware, and certainly nobody, am I right in that, told you that in fact the bank were no part of this and that Mr. Dermot Desmond's company, IIU, and Mr. Desmond himself, were a part of this

consortium?

A. I certainly wasn't aware of that at the time, yes.

Q. And I think, am I right in saying, that on the last day you were in the witness-box, we touched on the article written by Mr. McManus in which reference was made to IIU's involvement and Mr. Dermot Desmond's involvement?

A. Yes, indeed.

Q. I think you said that you weren't aware of it?

A. I wasn't aware of it, no, because I think that would stick in my memory if I had been.

Q. Yes. In April what you did become aware of, through I think Miss Regina Finn and others, was the fact that Mr. Desmond was now involved, isn't that right?

A. That's right, yes.

Q. And I think you became aware of that as a result of information relayed to you by Ms. Regina Finn; is that correct?

A. I think that's correct, yes.

Q. She was at the time working for you on the licence?

A. Yes.

Q. Now, the licence process was still being run by your side, but also by Mr. Towey and Mr. Brennan's side, isn't that right?

A. Mr. Towey and Mr. Brennan were doing most of the follow-up which I think at that time related to the political fallout from people who were aggrieved by

this decision, the parliamentary questions which related to the process, so on and so forth. They were handling all of that and even from what I have seen of the files, letters that were coming to my division related to the licence were being copied to Martin Brennan's division and in some instances being replied to from there, for whatever reason I don't know.

Q. Were you alive to the political controversy developing in the Dail at the time, where questions were being raised?

A. Indeed.

Q. Were you alive to the fact that questions were being raised concerning the membership of the consortium and the corporate structure?

A. I can't say now that I was aware of that. I know from what has transpired here that Deputy Molloy had been asking questions, but I cannot recall my awareness of it at the time.

Q. In other words you don't think you were aware that queries were being asked about, for instance, Mr. Dermot Desmond's involvement?

A. Yes, you are right, I don't think I was aware.

Q. Yes, I see. If we you could turn for a moment to Book 43, Leaf 183. Have you got that document?

A. Yes.

Q. This is a fax memo, it is a fax because it comes from Ely Place, I suppose, to Martin Brennan over in

Kildare Street and to Fintan Towey from Regina Finn,

saying: "Attached is the latest information to come to light about the shareholding of Esat Digifone.

Owen O'Connell is to provide further detail in writing. You may wish to pursue further."

Then on the next page she sets out diagrammatically in the first place and then in the form of text the information she has concerning the breakdown of interests in Esat Digifone. And in the diagram she shows, if you start with Esat Digifone at the bottom, she has on the left-hand side Telenor Invest with 37.5%, do you see that?

A. Yes sure.

Q. On the right-hand side 20% plus 5% Dermot Desmond?

A. Yes.

Q. And then in the centre, 37% going to Esat Telecom and that is split up into a number of different interests?

A. Yes.

Q. Do you see that?

A. Sure.

Q. Underneath there is a text which describes, presumably, what is in the table and says, "Owen O'Connell, William Fry Solicitors, provided the following information on behalf of Esat Digifone Limited. At present Communicorp is the vehicle whereby Dermot Desmond holds shares in Esat Digifone.

Communicorp also has ownership of Esat Telecom and the

radio interests of Denis O'Brien. The objective is to uncouple the telecommunications and the radio elements of Communicorp because they are incompatible from the point of view of investors. With this in mind, Communicorp will retain the radio interests and 'slide' out of the current picture in relation to telecommunications."

I don't think anything significant turns on that.

That was, it was something that had to be checked by the Department, the Department wanted to be sure, although you had a slightly different corporate vehicle, it was exactly the same people, isn't that right, and that was a concern that you had?

A. Yes.

Q. But you were concerned to ensure that it was essentially the same corporate vehicle?

A. Yes, we would have been, yes, I suppose we would have been concerned to see, from my point of view at least, that the Esat side of the house was comprised by the same people of the same drive, let's say, who had taken Esat Telecom to where it was then. Now, I don't mean financially, I mean from a marketing point of view.

Q. Yes. Well are they not the same thing? But anyway...

A. Not in that case they weren't, because market share was being achieved at the expense of debt.

Q. Yes. It goes on: "A flotation is currently underway

by First Boston bank which involves the placing of shares in Esat Telecommunications Limited. It is not yet known what percentage of the company will finally be owned by American investors."

It says that "Esat Telecommunications in turn owns

Esat Telecom. Esat Telecommunications known as Esat Telecom as we know, 100%; Esat Digifone Limited 37.5%.

Telenor Invest owns 37.5% of Esat Digifone.

"IIU, a Dermot Desmond's company currently owns 20% of

Esat Digifone which it intends placing with

institutional investors.) It also has the right to

acquire a further 5% by means of the 12% of Esat

Telecom Holdings which is held by miscellaneous. Owen

O'Connell is to provide further information in writing

including deadlines for this change of ownership."

Now, do you recognise that document? Do you recognise

getting do you remember getting it at the time?

A. I do, I recognise that, I certainly remember seeing

it. Now, its a long time but when the Tribunal first

notified me of this, the document certainly rang a

bell.

Q. Yes. And is the graphic we can ask Regina Finn, it

might shorten matters would you know if that's the

way she would have done things?

A. That is the certainly the way Regina would have done

things.

Q. So she developed the graphic and the text underneath

it?

A. That would be her style, yes.

Q. Can you recall, I know you recognise the document and you may remember getting it from her, but can you recall what dealings you had when she brought it to you?

A. Can I recall what?

Q. What she said or what you discussed when she brought it this to you?

A. Because we were, I think it is likely that because we were both in such a rush around the place at the time that she would probably have put it in a brown envelope and dropped it on my desk along with all the other circulation envelopes, and that I would have got to it in due course. If it was very important, she would have left it face upwards on my desk with a yellow mark or something.

Q. Yes. You will see that she sent it to Martin Brennan and Fintan Towey?

A. Yes.

Q. I don't know, but I think I am right that there is no similar fax on your desk, but of course she wouldn't have had to fax it to you, she would only have had to leave it on your desk?

A. Yes.

Q. Is it likely that you would have instructed her to send it to Martin Brennan and Fintan Towey?

A. I would certainly have done that if she had come to me immediately. For example, if it was the case that as soon as she discovered this, that she came to me and told me, I would have said, "well, gosh! You better do a note of that and get a fax of it over to Fintan and Martin."

Q. Yes. Why would they be brought into that loop at this stage?

A. Because they were still actively involved in this whole thing.

Q. But was it because they were regarded as dealing with, what I think you called earlier, the political issues or controversies arising from this?

A. Perhaps.

Q. Was this seen as something that was highly sensitive?

A. Yes.

Q. And what did the sensitivities arise from?

A. The sensitivities would have arisen I think from

Q. It is late in the day

A. The fact that what we were seeing here represented different percentages to those that had been put forward which the award had been made. Now that would have been my prime concern here.

Q. Would it?

A. Yes.

Q. Right. Would the fact that you are now dealing with a wholly new member of the consortium?

A. Well, I am not sure I would go so far as to call it a wholly new member of the consortium given that the initial consortium was 50:50 with an intention to give 20%, was it to the institutional investors, and those institutional investors were tipped at the time as being the banks and Advent, isn't that right?

Q. Why do you say "tipped"?

A. Not tipped, I don't mean tipped in the sense that there was a rumour; the indication was, and they were listed in the proposal document as being the banks.

Q. I think it went further than that, didn't it? You were told that they were already in fact whipped into a little caucus of their own?

A. That's correct. But it is the sort of thing, I am just trying to make the point: investors invest. They don't normally put in control until the investment gets to a critical stage perhaps, in this case they would, they were not the kind of investors that would have caused us concern of any sort. And if they had been replaced by three other banks, you know, it might still not have caused me any concern, but when the percentages began to shift beyond those which we had been told they would shift or they would stay at, then I got concerned, I must say.

CHAIRMAN: All right, well it is nearly a quarter past. Eleven o'clock tomorrow, Mr. McMahon. I think we will have you, if you choose, restored to Waterford

routes of title for Friday undoubtedly. Perhaps the
next witness could be told not before twelve. Thank
you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 3RD APRIL, 2003 AT 11AM.