

A P P E A R A N C E S

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I N D E X

WITNESS: EXAMINATION:Q. NO:

Colin McCrea

Ms. O'Brien

1 - 410

Mr. O'Donnell 411 - 486

Jimmy McMeel Mr. Coughlan 487 - 615

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 4TH APRIL,
2003, AT 11 A.M.:

MS. O'BRIEN: Mr. Colin McCrea, please.

COLIN McCREA, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MS. O'BRIEN:

CHAIRMAN: Good morning, Mr. McCrea, thank you for
your attendance. Please sit down.

A. Thank you.

Q. MS. O'BRIEN: Morning Mr. McCrea, thank you.

A. Thank you.

Q. Mr. McCrea, just to put your evidence in context, I
think you weren't one of the Departmental civil
servants but you were Mr. Michael Lowry's programme
manager from February 1995 until July of 1996, isn't
that correct?

A. That's correct.

Q. And the Tribunal sought your assistance in the course
of the investigative phase of its work, which you
provided, and you kindly furnished the Tribunal with a
Memorandum of Intended Evidence?

A. Yes.

Q. And what I propose doing, Mr. McCrea, is taking you
through your memorandum and then returning to one or
two matters to discuss them further and in doing so, I
may refer you to a very small number of documents, if

that agreeable to you?

A. That's fine.

Q. I don't know if you have a copy of your memorandum with you in the witness-box?

A. I have, yes.

Q. Just for everybody else's benefit, it is at Book 35 at Flag 10.

Now, you have informed the Tribunal that you were appointed programme manager to Mr. Michael Lowry in February of 1995, and you held that post until July, 1996, is that correct?

A. That's correct.

Q. You say that you did not know Mr. Lowry prior to his appointment?

A. That's correct.

Q. You said that you had worked with Coras Treachtala and had met Mr. John Loughrey, who was then Assistant Secretary at the Department of Agriculture?

A. Yes.

Q. You state that you understand that your appointment as programme manager was at the suggestion of Mr. Loughrey?

A. Yes.

Q. You have informed the Tribunal that you were not a member of the Fine Gael Party or any political party?

A. That's correct.

Q. And that your role as programme manager was to help to

ensure that the programme for Government agreed upon by the Rainbow Coalition was delivered?

A. Yes, in a very general sense.

Q. Yes. You state that part of your job was to liaise with other programme managers to ensure that potential problems were identified and resolved prior to Cabinet meetings?

A. Yes. I might say, that that was more the theory than the practice; that didn't happen that often.

Q. Yes. You state that you had no role in the GSM evaluation process, but you were informed of some of the major developments?

A. Yes.

Q. You recall that on one occasion you asked Mr. Martin Brennan about the evaluation criteria and Mr. Brennan informed you about them but not about the application of the weightings to the criteria?

A. Yes.

Q. You state that you were told that the weightings would be applied but not be disclosed to either yourself or to Mr. Lowry?

A. Yes.

Q. You state that you attended some of the weekly management meetings with the then Secretary, Mr. John Loughrey, and assistant secretaries to the Department?

A. Yes.

Q. You state that information on the GSM evaluation process would only arise if some major development had occurred such as the intervention of the European Commission?

A. Yes.

Q. You state that shortly before the announcement of the result you were furnished with what you understood to be a copy of the draft report?

A. Yes.

Q. You further inform the Tribunal that the document contained a table showing the bidders on one axis and their scores under the various criteria on another axis?

A. Yes.

Q. You informed the Tribunal that you read the document and you returned it immediately to Mr. Martin Brennan?

A. I read part of the document.

Q. Yes. You state that you had no recollection of discussing the document with anyone and that was the only document which you received in connection with the competition?

A. Correct.

Q. And in relation to another matter, you state that you had no recollection of Mr. Mark Fitzgerald raising a query with you regarding the respective role of Mr. Lowry and the Cabinet in the decision as to the ultimate result of the GSM evaluation process?

A. Yes.

Q. You informed the Tribunal that you agree, however, that the response attributed to you sounds correct, and would have been consistent with your understanding at the time?

A. Yes.

Q. And I think the response that Mr. Fitzgerald attributed to you was that the decision was not one for Mr. Lowry but one for the Government; is that correct?

A. Yes.

Q. You state that you would have occasionally encountered Mr. Fitzgerald but never had an arranged meeting with him?

A. Yes.

Q. You inform the Tribunal that these encounters with Mr. Fitzgerald would have been during your period as programme manager to Mr. Lowry; that the encounters would involve you and Mr. Fitzgerald chatting about various issues while Mr. Fitzgerald waited to meet with Mr. Lowry. You were not present at any of Mr. Fitzgerald's meetings with Mr. Lowry?

A. That's right.

Q. And that concludes your memorandum. Now, as you state in your memorandum, you were appointed in February of 1995 and you held your post as programme manager in 1996, and just again to

confirm, that you didn't know Mr. Lowry before that, you weren't a member of the Fine Gael Party and your belief is that you may have been nominated for that position by Mr. Loughrey who you had known from your time in Coras Treachtala when Mr. Loughrey was Assistant Secretary in the Department of Agriculture?

A. Correct.

Q. Now, in relation to your function as a programme manager, Mr. McCrea, could you expand a little on what that involved?

A. Well, in a general sense, it was to deliver the programme for Government that was agreed by the Coalition Government at that time, the Rainbow Government. But that was a very general document. And very quickly you would get into more detail. So the way I approached the work was to work with Michael Lowry to identify what were the key issues that he would like to see achieved or progressed substantially during his term of office.

Q. Yes?

A. And then to work with the Department to try to ensure that that happened and then there were other issues that would have come up.

Q. And what other issues would have arisen?

A. Well, you never know what is going to come up, but issues at this time, at the time we are talking about, in September and October, there was a rather

large controversy about an issue that was called the 'Horgan's Quay affair,' I think.

Q. And that was an issue that arose. It wouldn't necessarily have been anticipated when you were appointed?

A. No.

Q. Am I correct in thinking then that it involved you liaising fairly closely with Mr. Lowry and also liaising in turn with the civil servants in the Department?

A. Yes, more with the civil servants though, than the Minister, because once the programme, as we envisaged it, was set out, then Mr. Lowry would have let me get on with it.

Q. When you were first appointed in February, presumably in February of 1995, presumably would you have had quite a lengthy liaison or meeting with Mr. Lowry to identify what his priorities were in terms of his term as minister?

A. Not really. This was something that I worked on. We had a fairly short meeting when I was appointed, and I told him, I think, the way that I would have liked to have done it or I may or may not have told him that and I would have gone away myself and over a period of months worked out what I thought the priorities were.

Q. And what did you consider the priorities were vis-a-vis that particular Department?

A. There were priorities like the mobile phone licence.

Q. Yes?

A. Like a securing a partner for Telecom Eireann.

Q. The strategic alliance for Telecom Eireann?

A. Yes. There were issues like that.

Q. In relation to the mobile phone licence, as you say, you were appointed in February of 1995, so matters were at an advanced stage, and in fact the Memorandum for Government which ultimately resulted in the decision of the Government on the 2nd March, presumably would have already been prepared or at an advanced stage of preparation?

A. I wouldn't know that.

Q. I see. Well, when you had this initial consideration or discussion with Mr. Lowry and you identified the introduction of a second GSM operator as a priority, do you recall any particular exchange that you might have had with Mr. Lowry at that time or at any early stage in the process?

A. Sorry, could you repeat that question?

Q. What I said was, at the time of your initial consideration of the priorities of the Department and your discussion with Mr. Lowry when you identified the introduction of the second GSM operator as a priority, I asked you whether you record any particular exchange that you might have had with Mr. Lowry at that time, or at an early stage in the process?

A. I only recall one real meeting with Mr. Lowry about this issue.

Q. Yes?

A. It was fairly self-evident that this was going to be one of the priorities and it didn't need a discussion.

Q. Yes. And can you tell me when that meeting was?

A. The one meeting, it was when we were getting our riding instructions from the Secretary General, the Secretary of the Department, as to how important it was that this was seen to be a tight process free from political interference.

Q. And do you recall was that discussion before or after the 2nd March when the Government approved the evaluation process?

A. I don't recall.

Q. And who was present at that meeting, can you recall, Mr. McCrea?

A. John Loughrey, Michael Lowry are the people that I remember. There may have been one or two other people there.

Q. Would Mr. Lowry's private secretary have been in attendance?

A. I don't think so.

Q. And what about Mr. Brennan as Chairman of the Project Group?

A. I don't recall the only person I recall, the only two people I recall being there were these two, that

isn't to say there weren't other people there.

Q. Yes, yes. And Mr. Loughrey was emphasising to you and to, well presumably to Mr. Lowry but you happened to be there, the importance of this being a sealed process, and the importance of it as an evaluative process, being objective and fair and so forth, those types of matters, was it?

A. It was, but he was referring to me also as well as the Minister.

Q. Yes. Yes. Do you recall whether the Minister made any comment to you in the course of that meeting or indeed on any other occasion in relation to the process, or his views of the process?

A. I don't recall any specific mention of the process. My impression is that he was listening, understood the reasons for it and was happy to go along with them.

Q. Yes. Do you recall him making any comment to you in relation to the previous Government or any rumour that he might have heard in relation to the preferences of the previous Government as to the recipient of the licence?

A. I do.

Q. Yes. Could you tell me about that?

A. It was he said to me that a politician's name. It was said that this politician this was known as this politician's nest egg.

Q. And in what connection was he saying that?

A. He was saying it in a connection of, I would say, political banter. Just a thing that one party would say in relation to another.

Q. And can I take it that the politician he was referring to, and I am not going to name him at the moment, but would that politician have been a member of the previous Government?

A. He was, yes.

Q. And presumably a member of the Fianna Fail party who was a member in that Government?

A. Yes.

Q. And which of the applicants or potential applicants was he referring to when he made that comment to you, which you describe as in the form of banter?

A. I don't know if I knew it at the time but I subsequently heard it was Persona.

Q. I see. Can you recall was that comment made to you in the course of a meeting that you are relating to me, the meeting that you attended?

A. Sorry, can you repeat that?

Q. Do you recall whether that comment was made to you during the course of the meeting that you attended with Mr. Loughrey, the one that you have been referring to?

A. Yes.

Q. Do you recall whether Mr. Loughrey was present at the time the comment was made?

A. I think he was. It was an idle one moment sentence.

Q. Yes, yes?

A. He wasn't saying that that politician was saying it about himself.

Q. Yes.

A. He was saying that maybe some others were saying that it was.

Q. Yes.

A. And he wasn't giving the impression that he took any particular notice of this.

Q. It was just a passing comment?

A. It was, yes.

Q. Can you tell me, in terms of your activities as programme manager how frequently would you have had interaction with Mr. Lowry?

A. The interactions would take place mostly midweek, and I would say they would have been two or three times a week.

Q. So you would have two or three meetings with him during a week?

A. I would meet with him rather than have meetings with him.

Q. You wouldn't organise it formally, is that it?

A. Not frequently, but sometimes I would.

Q. Would you meet Mr. Lowry on your own or would there be anybody else present at the same time?

A. A bit of both.

Q. A bit of both. And what just to fill us in, what would the subject matter of those meetings be? What would the purpose of them be?

A. I might have, I might have a quick meeting with him before a Cabinet meeting to say what was the state of play, or was there anybody particularly keen on some point.

Q. Yes. Yes.

A. It would be of that nature.

Q. And that would be on the Tuesday morning, would it, before the scheduled Cabinet meeting?

A. It would be or it would be on the phone beforehand.

Mr. Lowry came up from his constituency on Tuesday mornings generally.

Q. And he came up, generally, on Tuesday morning, and would he then be in the Department during the course of the week, or what was his pattern of attendance at the Department?

A. Well, he was he was in and out.

Q. And rarely there on a Monday, is that what you are saying?

A. Rarely there on a Monday or Friday.

Q. Rarely there on a Monday or Friday. So really his business in the Department was on a Tuesday, Wednesday or Thursday, unless he was attending meetings or functions or so forth?

A. In a physical presence, but he was always on the phone.

Q. Of course, he would have been in contact, presumably, or available 24 hours a day?

A. Yes.

Q. Can you explain to me then just the structure of the programme manager system? Because I think that was system that was introduced by the rainbow coalition, isn't that right?

A. No, there was, it was in place in the previous Fianna Fail/PD.

Q. Labour?

A. PD, sorry Fianna Fail/Labour.

Q. Labour, yes?

A. Labour Government.

Q. Can you just explain to me how it operated?

A. Well, each Cabinet Minister had a programme manager and the idea was to, was to help speed up decisions, help ensure that they were delivered so there weren't so a lot of the detail would be handled by these advisers, these programme managers rather than by Cabinet Ministers.

Q. Yes, yes. Am I correct in thinking that the usual practice was that the papers which were to go to Government on the following Tuesday would be made available to the programme manager on the previous Friday?

A. No, that's not correct, but it is not quite correct in that

Q. Maybe you would correct me?

A. in that the Cabinet papers would have been given to me or a copy of the papers by the civil service.

Q. Yes?

A. So there wasn't a meeting of programme managers, it wasn't given out in a I am not sure what other programme managers

Q. But you received them on a Friday anyway; is that right?

A. I think so, yes.

Q. And you would have received them from the civil servants?

A. Yes.

Q. Would these be the documents or the Cabinet papers solely from your own Department or would they be from all of the other departments that were bringing matters to Government on the following Tuesday?

A. From all departments.

Q. And what would you do with those papers? Would you review them? How would you proceed from there?

A. I would review them and if there were any issues that should be brought, that I thought should be brought to the Minister's attention, I would bring them to his attention .

Q. And would these be issues identifying, perhaps,

matters in those papers that you would interpret as being an obstacle to the programme for Government?

A. It was much more mundane than that. It was that is priority for such and such a Minister. These would be the type of issues that would be brought up.

Q. Am I correct in thinking, then, that the programme managers met as a body prior to the Cabinet meeting?

A. Subsequent to the meeting.

Q. Subsequent to the meeting?

A. Subsequent to the meeting, I think they met on a Wednesday the Cabinet meetings were generally on the Tuesday.

Q. And what about the Fine Gael programme managers, did they meet as a body?

A. They met as a body on the Monday evening.

Q. Yes. And what was the purpose of that meeting?

A. Was to bring to our attention some of the issues that were coming up and the importance to which they attached to some of the issues.

Q. And would it also be to fully inform you and be able to brief your own Minister before he went to the Cabinet meeting?

A. Yes, that would be part of it, yes.

Q. Apart from your role as programme manager, if you like, as somebody who assisted in ensuring that the programme for Government was implemented and I suppose in shepharding matters that were coming to Government,

would you also have considered yourself as a general advisor to Mr. Lowry?

A. I suppose yes, I suppose you could, yes.

Q. Yes. Now, as you indicated, you were appointed in February of 1995. If I could just refer to you one or two documents now in Book 41, Mr. McCrea. The first one is just the Memorandum for Government which was dated the 17th February. It is in Book 41 at Divider

43. Do you have it there?

A. I have it, yes.

Q. You see it is a short Memorandum for Government. I think the reason that it is so abbreviated is that it in fact refers to or refers by reference, implicit or otherwise, to the aide-memoire that was prepared for the Cabinet Sub-Committee and that had been considered by the Cabinet Sub-Committee earlier. And it records the considerations of the Cabinet Sub-Committee and it sets out the decision that had been sought. It was dated the 17th February, 1995. Do you see that?

A. Yes.

Q. Do you recall this document?

A. No.

Q. Had you joined the Department as of the 17th February?

A. I don't know the exact date I joined the Department.

Q. Yes?

A. I don't recall this.

Q. Right. Now, in the ordinary way and on the basis of

what you told me, am I correct in thinking that that Memorandum for Government which was ultimately considered by the Government on the 2nd March, would have come to the attention and would have been furnished to all of the programme managers on the previous Friday before the Cabinet meeting?

A. The normal practice would be that memorandums, such as these, such as this, would be circulated certainly I would have seen the Cabinet papers.

Q. Yes?

A. I don't know about other programme managers, I presume it was the same.

Q. Yes. Yes. Do you recall at the time at all, whether there was any discussion of this memorandum, either within the Fine Gael programme managers or within the wider body of programme managers?

A. I don't recall any discussion at this time.

Q. Right. Do you recall at all whether Mr. Greg Sparks, who was the Tanaiste's programme manager, raised any queries with you regarding the evaluation process at this time or at any other time?

A. He certainly didn't raise it at this time, and I can't I can't recall he ever raising the issues with me.

Q. Right?

A. There was an atmosphere of it being very important to keep this completely under wraps and not to be discussed.

Q. There would be nothing wrong with him asking you though how it was progressing or, you know, how many applications were in, when were you expecting a result? That wouldn't have in any way undermined the sealed nature of the process, would it?

A. No, but he would have got a lot of that information from the press. I mean, it was stated the number of applications that were received. So he wouldn't need to ask me that. He certainly never asked me how it was progressing.

Q. Did he discuss it with you at all, Mr. McCrea?

A. I have no recollection that he did.

Q. You have no recollection?

A. No.

Q. Do you recall any of the other programme managers discussing it with you at all?

A. I don't recall them discussing it with me, but I would have created an atmosphere where those type of comments weren't welcome.

Q. I suppose that you could only create that atmosphere if queries were made of you; isn't that right?

A. I suppose that people if people said how was it going? I would give a very curt answer.

Q. Do you remember whether people did ask you how it was going?

A. It must have happened, but I don't recall, and I would pay no significance.

Q. It would be unusual if it didn't happen, wouldn't it?

A. It would be, yes.

Q. It would be unusual if it didn't happen. It was such

a topical and such a substantial matter. As you said

yourself, you recall this lengthy meeting with Mr.

Loughrey and Mr. Lowry in which Mr. Loughrey was

impressing upon everybody who was assembled how this

had to be an entirely sealed process, how it was an

evaluative process, it had to be objective, it had to

be seen to be fair and so forth. I take I take it you

would have known that a Project Group had been

established?

A. Yes.

Q. And you would have known that that Project Group

comprised representatives from each of the three

telecommunications and radio divisions and

representatives from the Department of Finance?

A. I wasn't aware of the Department of Finance.

Q. I take it you would have known that Mr. Martin Brennan

was Chairman of the Project Group?

A. Yes.

Q. And from what Mr. Loughrey told you, and I suppose

from what was generally known around the Department,

would you have been aware that, as you say, this was a

process that was to be sealed? It was a matter on

which the recommendation was to be made solely by the

Project Group, and that there was to be no input from

any third party?

A. I would say that's correct, except it was the recommendation.

Q. The recommendation. Yes.

A. From the Project Group.

Q. Yes. You would have been aware of that and you would have known it?

A. Yes.

Q. During the course of that meeting that you had with Mr. Loughrey, do you recall at all whether he referred to a protocol that had been adopted by the Project Group in relation to dealings with applicants or members of consortia applicants? You will find a copy of it at that book, Mr. McCrea, at Divider 48.

A. Could I interrupt you for just one moment?

Q. Yes, of course.

A. The reason why you may think it unusual that I didn't see this memorandum of the 17th February is that because at that stage, I wasn't reading the papers, the Cabinet papers, it was a subsequent decision, agreement with the Minister.

Q. I see. I am not quite with you, Mr. McCrea.

A. You may find. I can't recall the date I joined the Department, I said to you that I read, that I had access to all of the Department, all of the Cabinet papers, or virtually all of the Cabinet papers. So you might wonder, well why didn't I see this one? I

am just explaining that the reason I didn't is because I had I did not have access to Cabinet papers at that stage.

Q. At that stage. You weren't in full swing at that stage?

A. Yes.

Q. Now, if I could just refer you to a memorandum. It is a it is in Book 41 at Divider 48. It was a memorandum which Mr. Martin Brennan circulated to the Secretary, Mr. Loughrey, to Mr. Sean Fitzgerald, and to each of, to Mr. McMahon, that is Mr. Sean McMahon who was head of the Regulatory Division, to Mr. McQuaid who was Head of the Technical Division, and to the staff in the development division.

Do you recall at any stage being made aware of that memorandum or being aware of the protocols which are recorded in it? You see: "We agree as a matter..."

A. Yes, I haven't seen this before so I am reading it.

Q. I will read it out to you. "We agree as matter of prudence, contact with potential bidders should respect the following ground rules:

"1. Always at least two people present on our side.

"2. Always stress that discussion is by way of informal

clarification subject to formalisation in the written

information round provided for in the competition.

"3. Also produce a brief record of attendance and discussion.

"4. As a general rule contact to be "in the office" and thus avoiding social exchanges which almost by definition cannot be controlled."

A. Yes.

Q. Do you recall being made aware of the contents of that memorandum?

A. I certainly, I certainly was aware of the generality of that.

Q. Yes. You would have been aware that they were the ground rules that were going to be adopted?

A. More or less, yes.

Q. And in the course of that discussion that you had with Mr. Loughrey and with Mr. Lowry, as you say, when Mr. Lowry was giving you your riding instructions?

A. Mr. Loughrey.

Q. Mr. Loughrey, sorry, Mr. Loughrey, I do apologise, was giving you your riding instructions, do you recall Mr. Loughrey effectively making the substance of this known to Mr. Lowry?

A. Yes.

Q. And you recall that Mr. Lowry fully understood it?

A. He seemed to understand it, yes.

Q. And agreed to be bound by it?

A. Well, he didn't say he didn't say "agree with this and I understand it." He listened and he made no comment, as far as I recall.

Q. I see.

A. I would assume agreement that was

Q. You could infer from that that he did. Now, in paragraph 4 and 5 of your memorandum, Mr. McCrea, just to refer you back to it previously, you said that you had no role in the GSM evaluation process, which of course is fully understandable, but that you do recall that you were informed of major developments and you cited firstly an inquiry that you made of Mr. Martin Brennan in relation to weightings, and you also refer to your attendance at the management committee meetings?

A. Yes.

Q. And insofar as you were furnished with information of the management committee meetings, you cited the intervention and ultimately resolution of the European Commission issues?

A. Yes.

Q. And I'll just ask you firstly in relation to the management committee meetings, did you always attend those during the, during your term as programme manager?

A. I was always invited. I didn't always attend.

Q. Right. Well, would you have attended frequently?

A. I would, yes.

Q. You would. So if you were available, would you have attended them?

A. Yes.

Q. Would that be fair?

A. Yes.

Q. And I think you have indicated that these were chaired by Mr. Loughrey, is that right?

A. Yes.

Q. And the assistant secretaries within the Department attended them?

A. Yes.

Q. And were they on any particular fixed day of the week or did it just depend what was convenient?

A. No, I think they were on a Monday morning.

Q. Monday morning. Was anybody else in attendance at those management committee meetings other than yourself, the assistant secretaries and Mr. Loughrey?

A. I think that they were the only people that attended.

Q. Did Mr. Lowry ever attend them?

A. Never, not to my knowledge.

Q. Not when you were present?

A. Not when I was present.

Q. Presumably you would have been present from, roughly, I suppose, March, maybe late February/March, March of 1996?

A. I don't believe he attended during that period of

time.

Q. And you say that you were informed in that context of the intervention of the European Commission?

A. I believe so.

Q. Yes. I believe you probably know, or I will refer you to it, that that intervention was initiated by receipt of a letter of the 27th April from Commissioner van Miert to Mr. Lowry, and you will find that at Divider 59 of the book that you have before you, Book 41. I don't know, would you have seen this letter before Mr. McCrea, would it have been...

A. I am just having a quick glance at it and I don't recall seeing the letter.

Q. Is it likely that it would have been tabled at the management committee meeting?

A. I think the more likely way it would have happened is that Mr. Loughrey would have said there is an issue here and this is the issue that they have, that the Commission has raised, and he would have indicated how he would have thought the pros and the cons and how it should proceed.

Q. Yes?

A. I don't recall that happening, but that would be

Q. That would have been the way you would have expected it to be handled?

A. I don't ever recall documentation like this being provided.

Q. But you would have known, I suppose, that there were two limbs of the intervention of the European

Commission: Firstly the issue of the licence fee on the basis that there was a provision for an open-ended licence fee at that stage, and secondly, the issue of transparency, you would have known that?

A. Transparency in relation to what?

Q. Transparency in relation to the competition design?

A. Oh yes, yes.

Q. You would have been aware of that?

A. Yes.

Q. And you would have been briefed on that in the management committee meetings?

A. Yes.

Q. And would you have also been briefed in relation to the attendance of Mr. Brennan and other members of the Department when they went to the Commission on the 2nd June, do you recall?

A. I don't recall that.

Q. You don't recall that?

A. That is probably too much detail.

Q. Yes. Do you recall whether the proposals for the resolution of the dispute by capping the fee at $\text{€}15$ million and imposing an equivalent fee of $\text{€}10$ million on the incumbent operator, would have been discussed to any extent at the management committee meetings?

A. I certainly remember it being brought up, and I think

a discussion would have taken place on the likely implication no, 'implication' is the wrong word, the likely way that this would be handled.

Q. Was it Mr. Loughrey who was informing the meeting of these matters?

A. Yes.

Q. Rather than Mr. Fitzgerald?

A. I think it was Mr. Loughrey.

Q. Mr. Loughrey. We know that this matter was ultimately resolved and, if you like, what we have called the closing letter was received from the Commission on the 20th July. I will just refer to you that briefly. It is in Book 42 at Divider 83A. I certainly remember it being brought up and I think it is dated the 14th July and it's stamped as having been received in the Department on the 20th July of 1995?

A. Sorry, could you tell me 43A, did you say?

Q. 83A.

A. I have an 83 and I have an 84.

Q. Maybe the 83A hasn't been inserted into your book. We will get you a copy of it now.

(Document handed to witness.)

We will hand you up a hard copy of it there now.

Just to briefly take you through it.

"Dear Mr. Lowry,

"On the basis of the clarifications provided in your letter of the 22nd of June, and during discussions

your experts had with DG IV concerning the granting of the second GSM licence in Ireland, the Commission is now in a position to complete an assessment of the auction element in the call for tender of the second operator.

"The Commission as is stated in its Green Paper on mobile communications of the 27th of April, 1994, is not in favour of such auction procedures for granting mobile licences. The Commission has, however, taken note of the specific factual and legal circumstances."

CHAIRMAN: I think you can just summarise it really, Ms. O'Brien.

Q. MS. O'BRIEN: It sets out then the matters that the Commission took into account and effectively the Commission, I think Mr. Loughrey described it as nihil obstat in relation to the proposals that had been made by the Department to resolve the issue. What I just want to draw your attention to, Mr. McCrea, is the top right-hand corner of that letter. You will see that it appears that a copy of the letter was CCed to you, do you see "Secretary, Mr. Fitzgerald," I think that is Mr. Brennan and Mr. McCrea?

A. Yes.

Q. Could you just tell me for what purpose that would have been CCed to you, that letter?

A. I would consider this to be completely normal

Q. Yes?

A. I was kept abreast of developments, of main developments on the major issues. Sometimes I would ask for information and I would get it, and sometimes it would be provided to me.

Q. So that would have been part of the standard procedure?

A. Yes.

Q. Do you recall at all whether you were copied with any earlier version of that letter, because we know that a faxed copy of that letter was received into the Department on the 14th July?

A. I don't remember receiving a faxed copy of the letter.

Q. You could have been though, I take it, it is possible?

A. It is, yes.

Q. Apart from the intervention of the European Commission, can you recall what other major developments in relation to the process were raised or discussed at the management committee meetings?

A. Sorry, in relation to?

Q. In relation to the process, you indicated in your memorandum that major you were kept informed of major developments and one of the sources of your information were the management committee meetings, and I just wonder what other, can you recall what other major developments in the course of the process were discussed at the management committee meetings?

A. Well, the issue of the fee was the one that I

remember, because that was an important issue.

Q. Yes?

A. There was a discussion of the situation. So I remember that. I don't remember of anything else that, offhand, that was discussed.

Q. Well, presumably they would have discussed the fact that the competition had been deferred because of this EC intervention?

A. That would have been part of that, yes.

Q. Would you have known that the new closing date was now the 4th August?

A. I knew it had been delayed, yes.

Q. Would that have been a matter discussed at the management committee meetings?

A. It might it would have been said, I think, in the context of one of the implications of this is a delay.

Q. Yes. And presumably also, then, it would have been discussed that the result was now expected not at the end of October, but at the end of November?

A. Well, I have no recollection of that, but I think its

Q. It would follow, wouldn't it? Do you recall at all in the management committee meetings in the weeks leading up to the announcement of the result on the 26th October, whether there was any reference in those meetings to the likely availability of the result?

A. I believe that I didn't attend the management meetings

in the period leading up to that.

Q. And why do you believe that, Mr. McCrea?

A. Because I was greatly involved in other issues at that time.

Q. And what other issues were those?

A. This was a period of high political drama for Michael Lowry, there were many issues of a political nature.

Q. Can you recall what they were?

A. I think there might have been a note of no confidence taken in the Dail. There was certainly daily newspaper issues about, an issue called the 'Horgan's Quay affair'. There was an issue of anonymous letters. This was a period of high tension.

Q. I see?

A. High political tension. And that would have preoccupied me at that time.

Q. And did you keep a diary at the time? Have you been able to check that diary at all as to whether you were in attendance at those meetings?

A. No, I didn't keep a diary. But I would be very surprised if I did.

Q. I see. At paragraph 4 in relation to being informed of the major developments, you also recall that on one occasion you asked Mr. Brennan about the evaluation criteria and Mr. Brennan informed you about them, but not about the application of weightings to the criteria. He told you that the weightings would be

applied but would not be disclosed to either you or to

Mr. Lowry?

A. Yes.

Q. Can you recall what prompted you to make that inquiry of Mr. Brennan?

A. I can't, but I can assume that there would have been a progress report, an issue raised that the process is underway at the management meeting, and that when I encountered Mr. Brennan I would have said to him "I hear the process is underway. How is it going?"

Q. Yes, I can understand that. That doesn't quite explain why you would have asked about weightings. I am just intrigued as to what would have prompted you to ask specifically about weightings.

MR. O'DONNELL: He doesn't say that he was asked about weightings. He said that he asked about the evaluation criteria. He said that Mr. Brennan informed him about them, but not about the application of weightings. So he didn't say in his statement that he was asked about weightings. He says that he asked about evaluation criteria.

CHAIRMAN: Well, I suppose, Mr. O'Donnell, it indicates there was some discussion about weightings following upon an initial query by the witness, so I think what Ms. O'Brien is seeking to elicit is perhaps the precise circumstances of the conversation proceeding to touch upon

MR. O'DONNELL: Just so it is fair to this witness, he doesn't say in his statement nor has he said here that he asked about weightings. He said he asked about the criteria. These were in the RFP document. He says that he was then informed about them but not about the application of weightings and that he was then told that weightings would be applied but that they wouldn't be disclosed. It is not a situation where he came along to Mr. Brennan and said "Well now, tell me all about the weightings." He doesn't say that, so he didn't ask about weightings.

CHAIRMAN: Perhaps you will just tell us how the conversation proceeded and how it came about that you were told by Mr. Brennan that in fact there would be weightings but that it would be inappropriate for you or your Minister to know their actual content, as best you can recall?

A. Chairman, as best I can recall it, I encountered Mr. Brennan. I said to him "Have you criteria?" And he said "yes." I recall that he I would have said to him "What type of criteria?" And he would have just given the, what I would have considered to have been the normal type of issues that would be in such a competition: marketing, technical and competence, management, financial now the rest of it, I don't know whether I asked him or whether he told me, but my recollection was of a very firm direction coming from

Martin Brennan that this wasn't, that this was not that in keeping with the procedures, this was something that I shouldn't ask about and that even if I asked about it, I wouldn't get it.

Q. MS. O'BRIEN: What he was referring to is what the weightings were going to be, that is what you shouldn't ask about?

A. Sorry?

Q. Wasn't he inferring that what you shouldn't ask about was what the weightings were going to be that would be applied to the evaluation criteria?

A. Well, he was saying that if I did ask, I wouldn't. I wouldn't get the weightings, I think that is different than saying that he wouldn't, that he wasn't going to answer my questions.

Q. And you didn't ask the question?

A. The issue came up. I couldn't put my hand on my heart and say I didn't say it. It seems an unusual thing for me to say.

Q. Can I just ask you, do you recall then discussing that with anybody else, the issue of the weightings? Do you recall relaying that information to Mr. Lowry?

A. No, I don't.

Q. You don't. But you did meet him what? Two or three times a week. Isn't it likely that you would have relayed it, given, as you say, that Mr. Brennan was so empathic and you recall it so well, that he said you

wouldn't be told the weightings if you asked for them, isn't it likely that you relayed that information to Mr. Lowry? There would have been no difficulty with it?

A. There would have been no difficulty with it, but there would be no reason to raise it either. And our meetings between Michael Lowry and myself were of rather short duration. And I would say we concentrated on, I am trying to think of a correct word, of things that were pertinent. So if things were going well you wouldn't discuss it. If I had no influence to bear on a process, he wouldn't bring it up. He would be quite selective about, and I would have been selective about what we talked about. This wouldn't have been an issue as far as I was concerned.

Q. Wasn't this the most significant matter that was proceeding in the Department at that time, Mr. McCrea?

A. At what time? Around the time early on?

Q. At all of the time, up to May of 1996? From the day you joined the Department, wasn't this the most significant matter that the Department was dealing with?

A. Yes, it was a very significant matter, but remember, I wasn't part of the team. It was there was a very the civil service is very professional. There was a very good team put in place as far as I could see. They had engaged the best experts to assess it, so I

had no role to play, and neither had the Minister, so

it wouldn't have come

Q. Except to keep a general eye on the progress of the evaluation or the progress of the process, I should say, as to how it was proceeding?

A. Yes, that would have been normal but this wasn't an issue, the weightings, I wouldn't have mentioned it to him. It wouldn't

Q. In any event, you say you can't recall whether you did or not?

A. No, I can't, but it would be usual for me not to raise issues such as that.

Q. But, Mr. McCrea, you had only joined the Department in February and we are now talking about now, presumably, March or April. Can I take it that you really wouldn't have established a usual practice at the time?

You had only joined the Department in February, isn't that right?

A. Yes.

Q. Well, then, I will move on.

Now, you said in your memorandum, you said that you had no role but you were informed of some of the major developments and you cited the discussion you had with Mr. Brennan regarding the weightings, and you cited the information which you derived from attending the management committee meetings. What other major

developments do you recall which you were informed of?

A. In relation to the licence?

Q. In relation to the entire process, from start to finish

A. I don't recall any formal other than the issue of the fee, I don't remember any substantive discussion.

I mean, I would have been aware of when the bids were coming in.

Q. Yes?

A. That the bids had been received.

Q. Yes?

A. I would have been aware of I am not sure if the correct word is the interviews, between the applicants and Martin Brennan's team. I would have been aware of the, the method by which they guarded the secrecy of those meetings. They are the type of issues that I would have been informed of on a fairly routine regular informal basis.

Q. Yes. By whom were you informed?

A. I would say by John Loughrey and Martin Brennan.

Q. Right. Well, Mr. Loughrey wasn't in the Department from the 20th August until I think the 3rd or 4th October, so certainly for the period when the presentations occurred, I think we can exclude Mr. Loughrey, so it must have been Mr. Brennan during that time?

A. I am saying that over the course of the whole

licence

Q. Yes?

A. I would have discussed this with Martin Brennan and with John Loughrey. I wasn't talking about that specific time. I wasn't even aware that John Loughrey took holidays then or whatever.

Q. Yes. Would you have been aware that various members of the Project Group were travelling to Copenhagen at any stage in September of '95?

A. No.

Q. No. The interviews that you were referring to, you were aware that they were going on?

A. Yes.

Q. And it must have been Mr. Brennan that informed you of that because Mr. Loughrey wasn't there?

A. Yes.

Q. You say that you were aware of the measures that were put in place to ensure security at those presentations?

A. Yes.

Q. Could you tell me what those measures were?

A. As I recall at the meetings the meetings took place in one very large room and that there was a smaller room beside it, and that the meetings were recorded, I think they were recorded anyway. The issue that I remember was that there was a monitoring system put in place to ensure that there was no transmission

outside, to outside sources of that, and I was told that the system was so sophisticated that at the end of the meeting somebody made a mobile phone call and they went in to tell the technician of this and that the technician said that "you think that I wouldn't know the difference between an illegal transmission and transmissions of this nature." It was a kind of a topic of the sophistication of the equipment.

Q. Yes, and it was Mr. Brennan who explained all that to you?

A. Yes, I think so.

Q. And you knew, presumably, that the presentations were starting, I think it was on the 11th September and that I think there was one on the Monday afternoon, the Tuesday, Wednesday, Thursday? You would have known the week that the presentations were on would you?

A. I would have known the presentations were going on.

But, just, I would have purposely avoided getting involved in anything like that. It was of no concern of mine. There was a procedure put in place, I wanted to see the outcome, not the I didn't need to know the detail.

Q. What involvement would you have avoided?

A. I would have avoided asking Mr. Brennan who is coming in? When? What is taking place? This was not of concern to me.

Q. Did anybody indicate to you after the presentations what impression any of the applicants had made on the Project Group, just in a general way?

A. I would say it is hard to know now what I knew at the time and what I subsequently know.

Q. I appreciate that, Mr. McCrea, you can only do your best.

A. So I do recall it being said that some of the bidders didn't perform well.

Q. I see, yes. Who do you recall indicated that to you?

A. Well, I don't recall but I would assume it was, it was either Martin Brennan or, probably Martin Brennan.

Q. Right. Do you recall relaying that to anybody else?

A. Oh certainly not.

Q. You wouldn't have relayed it to Mr. Lowry?

A. No, there would have been no need.

Q. You see, Mr. McCrea, now I just want to be clear in relation to the presentations. You say that Mr.

Brennan told you that the presentations were being organised, he told you about the equipment that was being installed for security purposes, is that right?

A. I think the sequence is slightly different. I think I knew the presentations were taking place and that I think afterwards there was this, there was this comment about the sophistication of the monitoring equipment.

Q. And where did that comment to start with, I think

your evidence is that the comment was made to you by

Mr. Brennan, is that right?

A. I believe so, I believe so.

Q. And do you recall when and where it occurred?

A. Well, I it can only have occurred during the time of these meetings or immediately after these meetings.

It could have been that day or it could have been the next week. So I don't that's the when. I don't

know the dates. I don't know the where. But it was,

it wasn't a meeting; it was an encounter.

Q. Tell me, was your office near Mr. Brennan's office?

A. No, my office was near Michael Lowry's office. I don't recall where Martin Brennan's office is.

Q. Was that on the same floor as the room in which the presentations were being held?

A. No, it wasn't.

Q. It was on another floor?

A. I think I was on the fourth floor, I think that these meetings took place on the second floor.

Q. I see. You say that there was an encounter at some stage after the presentations?

A. Yes, because I became aware of this. I didn't have a formal meeting about it, so it must have been a casual encounter.

Q. And in relation to the impressions that the participants made on the Project Group, can you tell me exactly what was said to you by Mr. Brennan?

A. In relation to the quality of the presentations, the impression?

Q. Yes.

A. No, I can't. Because I have a general recollection of one of the consortium, one of the bidders and hearing that they didn't do well.

Q. And which of those bidders was it that you were told didn't do well?

A. I don't know the name of it, it was one that involved Bord na Mona.

Q. I just want to go back to the encounter again, Mr. McCrea, I am going to have to press you on it further. I need to know exactly where that encounter occurred?

A. Well, I am afraid I can't, I can't help you. It wasn't was it the encounter I can't remember where either of the encounters took place, whether in relation to the technical equipment or in relation to this comment.

Q. Well, where were you likely to encounter Mr. Brennan in the ordinary course?

A. I would say that it was either on, on the floor, floor 2 or floor 4, in other words, when I was going to the Secretary's office or that Martin Brennan was going to the Minister's office.

Q. I see. Well, we know that Mr. Loughrey wasn't there in September, so it can't have been you going to the Secretary's office where you encountered Mr. Brennan?

A. Okay.

Q. And you said that the other alternative was that it would be when you were going to the Minister's office, when Martin Brennan was going to the Minister's office, isn't that right?

A. I am sorry, you are looking for a degree of precision which I can't give you.

Q. Mr. McCrea, we have to look at this degree of precision, I have to say to you that what you have just described now is a breach of the sealed process and we need to know exactly what the details are.

MR. O'DONNELL: I don't know if that is a correct summary of this witness's evidence on this point. It is a suggestion that there was a comment made to him, I don't know the nature of the comment, it seems to be it is a matter for him to decide. It is ultimately going to be a matter for you. But it certainly isn't an appropriate thing for this, for it to be put to him that he has been a participant in a breach of the process. There is no breach of the process. He has said that there was a comment made to him about one of the consortia. I don't know even the nature of the comment, the detail of the comment, but what is now unfair to this witness in my respectful submission is that he is being asked to give precision as to a meeting, an encounter, a chance random encounter which occurred eight years ago in circumstances where he has

said that he cannot give details of that kind of precision, and he is now being told "notwithstanding the fact that you can't give that kind of detail, I am going to press you for it anyway." What is he supposed to do in a situation where he comes in eight years later and says "I can't remember the details of it" and he is being told that you have to remember. That seems to me, with respect, to be unfair to this witness.

CHAIRMAN: Its not particularly apposite at this stage to declare the circumstance to be either right or wrong. I think it is appropriate that Ms. O'Brien seek to elicit, as far as possible, what the witness can recall. There certainly will be no question of it proceeding to an oppressive degree. And again, Mr. McCrea, all that is asked of you, this is a matter of some potential importance. It is not suggested there was anything wrong on your part. As best you can recall, see if you can assist us as to the circumstances in which this encounter may have come about?

A. Well, Chairman, if I could say then two things. One is that I am not sure when I became aware of this, if it was subsequent to the issuing of the licence or very late on in the process, and so I am only, so I am assuming and I can go no further than that, that somebody said something to me. If I knew that prior

to the

CHAIRMAN: I thought you had said that it was in the immediate time of the presentation or interviews or

A. No. I said to Ms. O'Brien that I can't remember, you know, when I received this information and she said "that is perfectly understandable" or words to that effect.

Q. MS. O'BRIEN: I think you indicated, Mr. McCrea, that it was either after the presentations or possibly the week after the presentations?

A. No, I am sorry, there is a misunderstanding here, that was in relation to the technical aspects.

Q. I see.

A. What I thought we were discussing was when I knew that this consortium didn't perform very well.

Q. Well, why would you be told long after the fact that a consortium didn't present themselves very well

A. It might

Q. in a chance encounter as you have described it?

A. The reason why I said it was a chance encounter because I know that I didn't have a meeting with Mr. Brennan. I didn't meet him in his office, he didn't meet me in mine. I know that I was aware of that at some time and I don't know when I was aware of it.

Q. But can you assist me as to why Mr. Brennan would be mentioning this to you long after the fact? Can you shed any light on that?

A. I could have got it at the time of the, for example, I am not saying this is the case, I am just giving you a for example, at the time when I read the draft report.

Q. I see. Well, we will come to discuss that then.

A. Yes.

Q. You had just said in evidence that you know you didn't have a meeting in Mr. Brennan's office and you know that he didn't have a meeting in your office, so you recall that?

A. I think I would have recalled if I had, if I'd asked for a meeting or if he had asked for a meeting to discuss something like this.

Q. And just to recap again, you said it would have been a chance encounter, either when you were going to Mr. Loughrey's office or when Mr. Brennan was going to the Minister's office and we have already, I think, excluded that as you going to Mr. Loughrey's office as Mr. Loughrey was away in September, if the exchange occurred in September?

A. I think that's a possibility, but I am not saying that is when it took place.

Q. I see.

A. I don't wish to say that since Mr. Loughrey was not present in the building, that therefore it must have taken place when Martin Brennan was going to the Minister.

Q. Well, you couldn't have been going to Mr. Loughrey's

office if he wasn't present in the building, could

you? You would have no business there?

A. Well, I would have because there were a lot of assist secretaries on that floor.

Q. I see.

A. I could have easily been going to see them.

Q. Yes. Did you have any other chance encounters or exchanges with Mr. Brennan in relation to the process, and I am excluding now for the moment the provision of the report to you which we will come to shortly?

A. I don't recall any.

Q. But you can't exclude them?

A. No.

Q. Were you told of any other major developments by Mr. Brennan, apart from the presentations which you mentioned? Were you told, for example, that a quantitative report had been made available early in September?

A. No, I wasn't.

Q. Were you told anything about the evaluation model, that it was going to involve a quantitative and a qualitative evaluation?

A. Certainly not.

Q. Did he tell you anything about what occurred after he returned from Copenhagen on the 28th September?

A. No, I didn't even know he was in Copenhagen.

Q. Were you aware at all, Mr. McCrea, that the Minister

had encounters with members of consortia in the month of August and September?

A. No, I wasn't.

Q. You weren't aware that the Minister had a meeting in Killiney Castle Hotel with Mr. O'Boyle, who was Chairman of the Persona Group, on the 16th of August?

A. No.

Q. You weren't aware that he met with Mr. Denis O'Brien in Hartigan's pub in Leeson Street on the 20th September?

A. No.

Q. Did you have any role at all in relation to the opening by Mr. Loughrey or Mr. Lowry or the attendance of Mr. Lowry at the opening of a mine in Galmoy, the Arcon Mine in Galmoy?

A. Did I what?

Q. Were you in attendance or did you have any role in relation to Mr. Lowry opening a mine in Galmoy on the 15th September?

A. I wasn't in attendance, I knew that he was attending that.

Q. Yes. Did you have any discussions with him to brief him or to discuss with him what matters might arise in the course of that function?

A. No. This was, as far as was concerned, a constituency matter. It wasn't dealing with the Department. It was something that was taking place in his local area

and that would be normal practice for the local TDs

and Ministers to attend such openings.

Q. Wouldn't it have had some impact in terms of the energy portion of his portfolio, given that it was a mine?

A. I suppose it would.

Q. Yes.

A. I had no discussion prior to or after that opening with Mr. Lowry about that.

Q. But you recall that he was going to it?

A. I do, yes.

Q. Do you remember whether Mr. Lowry was in the Department on the day before that function, the 14th September?

A. As I recall it was a Monday, the opening.

Q. No, the opening was on a Friday, Mr. McCrea?

A. Sorry. Well, therefore my recollection is bad. I knew he was attending. I don't know where he was beforehand.

Q. He would have had to have been briefed, wouldn't he, by his Departmental officials?

A. He I presume so.

Q. Yes. And on the basis of your evidence, he was normally there on a Tuesday, Wednesday and Thursday, anyway?

A. Well, he was. They were the days he would have been present. It is not saying he was there on a Thursday.

Q. I accept that.

A. I have no idea whether he was or not.

Q. Were you aware that the Minister was seeking information from Mr. Fintan Towey in relation to the process in either late August or early September?

A. No, I wasn't.

Q. In your exchanges with Mr. Brennan, did Mr. Brennan ever mention to you that he had at least three conversations with the Minister in relation to the process?

A. I don't recall Martin Brennan ever saying that to me.

Q. Did you recall anybody else saying it to you?

A. No, no.

Q. Did Mr. Lowry ever mention it to you?

A. That he had meetings about the process ?

Q. Not meetings about the process is not what I said, Mr. McCrea, that he had discussions with Mr. Brennan about the process?

A. No, I didn't, I didn't know that.

Q. Now, in paragraph 6 of your memorandum you have informed the Tribunal that shortly before the announcement of a result you were furnished with what you understood to be a copy of the draft report. The document contained a table showing the bidders on one axis and the scores under the various criteria on another axis. You read the document and you returned it immediately to Mr. Martin Brennan. You have no

recollection of discussing the document with anyone.

This was the only document you received in connection with the competition.

A. Yes.

Q. I think you confirmed that when I was taking you through your memorandum?

A. Yes.

Q. Now, just to try and assist you in fixing this in time,

Mr. McCrea. Am I correct in thinking that you were on leave when the actual result itself was announced?

A. No, I wasn't on leave, but I wasn't in the Department.

Q. And I think you hadn't been in the Department for a number of days, isn't that right?

A. I can't recall that.

Q. Well, is it your evidence that you were in the Department on the 23rd and the 24th and that you simply weren't there on the 25th, because you can recall that you weren't there on the 25th?

A. I believe I was there on the 24th and 25th, but I just remember that I wasn't there on the day.

Q. You weren't there on the day?

A. On the day of the announcement.

Q. Right. But you were there

A. I was I went to Coras Trachtala on that day, that is what I remember.

Q. But you were there over the previous days leading up

to the announcement of the result?

A. I have no recollection that I wasn't.

Q. Right. You say shortly before the announcement of the result. Can you just indicate if you can, whether this was a matter of weeks before or a matter of days before the announcement?

A. My impression is that it was a matter of weeks.

Q. Weeks. Well, if it was a matter of weeks, Mr. McCrea, we know that the first draft report arrived into the Department on the 4th October, which was a Thursday. That would have been about three weeks before the actual announcement of the result. We know that the second draft report arrived into the Department on the 19th October, which was the Thursday before the result was announced on the Wednesday. So isn't it probably more likely that the report or whatever document was furnished to you, was generated or was part of the first draft report of the 3rd October?

A. I can't be precise.

Q. Yes.

A. But just my impression, my feeling is that it was the earlier document.

Q. The earlier document. Can you tell me in what circumstances Mr. Brennan furnished this document to you?

A. As I it would be normal practice for him to keep, for the Department officials to keep me up-to-date on

something of a major, major shift and they had the draft report and I think they thought that it would be appropriate for me to see it.

Q. Well, did he say that to you? Can you recall what he said to you?

A. I remember getting the document.

Q. Yes.

A. I remember thinking this is an important document.

Q. Yes.

A. I remember thinking that this is a very sensitive document.

Q. Yes.

A. I remember reading it immediately or reading a portion of it immediately. If there was an executive summary in it I probably would have read the executive summary, and immediately bringing it back and not having it in my presence.

Q. Now, it was definitely Mr. Brennan who gave it to you?

A. I can't think it would have been anybody else. I don't remember him coming in and giving it to me, but it can't be anyone else. I believe it was Mr. Brennan.

Q. Yes. Why do you believe it was Mr. Brennan?

A. Because he was the Chair of the group, and I would have considered it to be one of the things that he would do.

Q. Yes. And you say here that you returned it to Mr.

Brennan?

A. I think so, yes. I certainly I returned it, I am nearly sure it was to Mr. Brennan.

Q. Right. Can you recall where did you bring it to read it?

A. In my office.

Q. In your office. And how long did you spend reading it?

A. I would say about ten minutes.

Q. Ten minutes?

A. Yes.

Q. Can you describe the document to me?

A. I can't. I have difficulty doing that. I remember having a document and going to what I considered to be an executive summary, reading the executive summary, paying particular attention to the chart.

Q. Yes?

A. And then finishing with it and getting it out of my office back to safekeeping.

Q. Can I just refer you to the first draft of the report, to see if we can identify whether it was this document that was furnished to you. It is at Divider 117. At the start you see it is a document that runs to about 50 pages for the main body of the report, I think. I think this one had 49 pages and the annexes are about the same size as the main body of the report. The document is about 100 pages long. Is it your

recollection that it was a document of that size that

you received?

A. Can I just have a look at this document?

CHAIRMAN: Yes, take as long as you like, Mr. McCrea.

Q. MS. O'BRIEN: Yes, I am just trying to assist you.

A. It could have been this document. There seemed to me to be more charts in it that I recall.

Q. Yes?

A. Because I am just looking at the summary section.

Q. Yes. Well it does contain a table like you describe with the two axes and one with the applicants and the other with the evaluation criteria?

A. It does. I am trying to see where is the conclusion.

It looks like the document I saw.

Q. Right. And do you recall were you given the entire of the report or just a portion of the report?

A. It looks larger than I received.

Q. Yes?

A. Perhaps half of this though is an appendix.

Q. Yes, half of it are the appendices?

A. Perhaps I didn't receive the appendices.

Q. But the main body of the report runs to 50 pages. Do you recall it as being as dense a document as this that you were given?

A. It is very hard to be precise about this because as I said, I had other preoccupations.

Q. Yes?

A. And nevertheless was aware of this, of receiving this, was aware of its importance. I remember reading an executive summary. It looks bigger, but my recollection isn't that clear.

Q. I see. Can you tell me for what purpose Mr. Brennan was giving you this document some weeks before, as you say, the announcement of the result?

A. It would be normal practice for civil servants to keep me up to date on major developments.

Q. It wouldn't be a normal practice for them to keep you up to date on a matter that was subject to a sealed process, would it, Mr. McCrea?

A. There was no other sealed process so I have no other, I have no other basis for that, but I was, I suppose, a trusted person in the Department and they gave it to me.

Q. But why give it to you, Mr. McCrea? That is what I don't understand, because

A. As far as

Q. Was your view being asked about it?

A. Absolutely not. It was an information.

Q. Did you ask Mr. Brennan anything about it in order for him to furnish you with it? Did you ask him for it?

A. I don't think I asked him for it. I think I gave it back and said something as bland as "very interesting".

Q. I see. So you are saying that Mr. Brennan just

volunteered it to you?

A. I am saying that I don't recall asking him for it.

Q. I see. Well, you say you don't recall asking him, but you might have asked, is that it?

A. I can't imagine that I did ask him.

Q. I see. You can't imagine that you asked him?

A. Exactly.

Q. Why can't you imagine that you asked him?

A. Just that I had I had my main preoccupation at this stage was not about this issue.

Q. But, Mr. McCrea, wouldn't you have had a natural reticence about asking about this? Didn't you say that to me that you considered it to be a sealed process, that as far as the programme managers were concerned, and anybody else, would you have made it clear that it was something that you weren't going to discuss?

A. I would have considered that I was considered to be a confidential source, and I was working with the Minister, that it was an important development and he was bringing me up to date. I would have considered nothing unusual about that.

Q. Is that because you were working with the Minister?

A. Yes, I was the Minister's programme manager.

Q. And the Minister's advisor?

A. I was his programme manager he so this would be a programme issue.

Q. You see, Mr. McCrea, it appears that Mr. Brennan was giving you a copy of whatever document he gave you, which indicated the matters that were subject to the evaluation process at a time well in advance before the Project Group had reached any conclusion on this process. Do you understand me?

A. Yes.

Q. Would you agree with me that that appeared to be a breach of the seal of confidentiality to which this process was intended to be subject?

CHAIRMAN: Well, I suppose that is for me, Ms.

O'Brien.

MR. O'DONNELL: That is for the Tribunal.

CHAIRMAN: All right, Mr. O'Donnell, there is no need.

Thank you.

Q. MS. O'BRIEN: You gave this back to Mr. Brennan?

A. Yes.

Q. Do you recall discussing it with anybody?

A. I don't recall discussing it with anybody.

Q. You are saying that you are given this important document in relation to this significant process?

A. Yes.

Q. And that you never mentioned it to anybody?

A. There are two aspects in this, one is that as I said, I was working day and night on another issue.

Q. Yes?

A. And I realise the importance of the document and the

importance of not discussing it with anybody, so I would have been very conscious that I shouldn't bring this topic up with anybody.

Q. Did you mention it to Mr. Loughrey who was back in the Department at this stage?

A. If I mentioned it to anybody it would have been him, but I have no recollection of doing so.

Q. You didn't discuss it with Mr. Lowry?

A. No.

Q. But wasn't Mr. Brennan giving this to you on the basis that you were the Minister's programme manager, he was bringing it to your attention on that basis?

A. Yes.

Q. But surely as part of your functions and your role, would you have been under an obligation to bring this to the Minister's attention, wouldn't you not?

A. Absolutely not.

Q. But why not, Mr. McCrea?

A. Because there was a process underway. This was a development. I wasn't involved. There was no need to bring it up to the Minister's attention. I couldn't see any reason why I would.

Q. But weren't you the Minister's guardian? If it was legitimate

A. I was.

Q. If you just listen to me for a moment. If it was legitimate for you to be in receipt of this

information, why wasn't it legitimate for you to pass

it on to the Minister?

A. I didn't say it wasn't legitimate for me. I am saying that I didn't because there was no reason to.

Q. I am just not clear what the reason was for you to have been furnished with this document in the first place?

A. Well, I would normally have been informed of developments in major issues. I would have been informed, particularly if there were problems with an issue.

Q. Yes?

A. And on this occasion I wasn't being informed of a problem, I was being informed of a stage in the process, a major stage in the process. That happened regularly throughout my period as programme manager. I would have considered it to be perfectly normal.

Q. Is there any other major stage in this process of which you were informed?

A. The only other one I recall is the issue of the fee.

Q. Yes. Were you aware that the Minister had a desire to accelerate this process, Mr. McCrea?

A. I think I was. I think I was aware that he would have liked to have it brought forward.

Q. And what

A. He would have liked to have it accelerated, yes.

Q. And what was the basis of your knowledge of that?

A. I don't know, but I recollect being aware that he would have liked to have, to accelerate the process.

Q. Well now, we know that from the documentary record, and nobody has suggested that it is otherwise than accurate, that on the 3rd October, which was the Wednesday, the first Wednesday in October, that Mr. Brennan attended a meeting of the divisional heads within the telecommunications and radio division and he informed the meeting that the Minister wanted to accelerate the process. You have told us that you were aware that he had a desire to do so?

A. Yes.

Q. Perhaps I can assist you. Who could have told you about that?

A. The context could have been that the Minister was under such political pressure that he would have said it would be good for me if I can announce something positive and to do so as soon as possible.

Q. Are you saying then that the Minister might have been the source of your awareness?

A. I am saying that I was aware and that it would seem that it seemed a logical political request by the Minister.

Q. Well...

A. Sorry, I don't know how I was aware, but I was aware, I believe.

Q. Well, let's think how you could have been aware. Mr.

Brennan told the meeting that the Minister wanted to accelerate the process, so could it have been Mr. Brennan who told you?

A. It could have been, but I don't believe it was.

Q. You don't believe it was?

A. No, I believe it was probably, it was probably the Minister.

Q. Well, could it have been anybody other than the Minister?

A. I suppose it could have been Mr. Loughrey, but I don't believe it was.

Q. It could have been Mr. Loughrey at that stage. Why do you say you don't believe it was either Mr. Brennan or Mr. Loughrey, when you have no recollection?

A. Because I don't recall having very many encounters with

Mr. Brennan at that time, but I had frequent encounters with the Minister at that time.

Q. But you had very frequent encounters with Mr. Loughrey as well, didn't you?

A. I did, yes.

Q. You were very close to Mr. Loughrey?

A. Yes.

Q. Do you recall any discussion of this type with the Minister?

A. I don't recall any discussion.

Q. You don't. What you are saying to the Tribunal is

that you surmise that this might have been the

Minister's reason?

A. Yes.

Q. Because there couldn't have been any other reason, could there? There was no pressure on this?

A. There was to pressure to accelerate the process.

Q. No?

A. Well, chief executives are always looking for information sooner than

Q. But apart from that, the completion, the projected completion date was the end of November, there was no pressure at this stage?

A. No pressure other than there was a lot, a lot of political pressure.

Q. A lot of political pressure on Mr. Lowry?

A. Yes, on the Minister.

Q. Yes. Were you aware that Mr. Lowry had been appointed had been informed of the ranking, the provisional ranking on the evaluation?

A. No, I wasn't.

Q. You knew it of course?

A. Yes.

Q. You knew it from the report?

A. Yes.

Q. I suppose you wouldn't have been surprised if you had known that he was aware, would you?

A. I suppose not. Well, if information was given to me

it would be given to the Minister.

Q. Precisely.

A. It could have been given to the Minister.

Q. You have no discussion at all, you can recall no discussion between you, his political advisor, his programme manager, in relation to the outcome of this evaluation?

A. That's correct.

Q. If this had gone to Government in the orthodox way, Mr. McCrea, it would have gone by either Memorandum for Government or aide-memoire, isn't that right?

A. Yes.

Q. And that would have been circulated to the programme managers on the Friday before it came to the Cabinet, isn't that right? Isn't it right?

A. Yes.

Q. Isn't it extraordinary, therefore, that you and Mr. Lowry didn't have some discussion in the days preceding the announcement as to how you would shepherd this through the Government?

A. It was an issue that, an area that I wasn't involved in. I presumably thought that I had no I had no contribution to make.

Q. But, Mr. McCrea, you were his programme manager, your principal function was in relation to sheparding matters through Government and ensuring that the Rainbow Coalition's programme for Government was put

into effect, wasn't it?

A. That's the theory, but wasn't the practice.

Q. It wasn't the practice?

A. It wasn't the practice in this case and I don't even recall it being a practice in any other cases. There wasn't a lot of this type of activity. This was a process that I was only peripherally involved in.

Michael Lowry would have known that I was peripherally involved in. He would have known that I had no influence on the process. And therefore he wouldn't have brought this up with me.

Q. I can accept that, but what I am asking you is this: the net result of this process was that the Minister was going to go to the Government with a recommendation?

A. Yes.

Q. And that was going to be subject to a Government decision?

A. Yes.

Q. So that was a matter which would generate Cabinet papers, isn't that right?

A. In the normal circumstances.

Q. In normal circumstances?

A. Yes.

Q. And those Cabinet papers would be furnished to the programme managers?

A. Yes.

Q. And the matter would be discussed by the programme managers?

A. Not as a group.

Q. Perhaps not as a group, it might be discussed by the Fine Gael programme managers, but those programme managers would be advising their ministers, isn't that right?

A. In the normal process.

Q. To keep them right?

A. Yes.

Q. Did Mr. Loughrey discuss with you at all in the days coming up to the announcement of this as to how it would best be dealt with when it came to Government?

A. It might be helpful if I said to you that I didn't know the matter was going to the Government on the date it went.

Q. Yes?

A. So therefore, there was no discussion prior to it. I wasn't even aware of the date of the announcement.

Q. But

A. I wasn't present at the announcement.

Q. But you knew it was coming up, didn't you, because you had been furnished with this?

A. I knew it was coming up at some time.

Q. But in the reasonably foreseeable future you knew it was coming up?

A. But I didn't know it was that week.

Q. And you said you mentioned it, I think, to Mr.

Loughrey, is that right?

A. Mentioned what to Mr. Loughrey?

Q. The process.

A. I am sorry, I am not clear about the process of bringing this to the Cabinet.

Q. Yes?

A. No, I didn't, no.

Q. You had no discussions with him about it at all?

A. No.

Q. You say you were out of the Department on the 25th?

A. Yes.

Q. That was the day it actually went to the party leaders?

A. Yes.

Q. What were you told about the way this was handled when you came back to the Department, was it the following day, the 26th?

A. No, I came back later on that afternoon, and I was told that the announcement had been made and that Esat was the winner.

Q. I see. And were you told at all why it was dealt with the way it was dealt with, by going to the party leaders?

A. I think I was told that the process was no, I was told, I recall anyway, I recall that I was told that it was decided to move on this so as to avoid any

possibility of leaking.

Q. I see. And who would have told you that, can you recall?

A. John Loughrey.

Q. Mr. Loughrey?

A. Mmm.

Q. And what did you see as being the concern about leaking at the time?

A. This was a sensitive issue, it was an important issue.

It was important that it was seen to be conducted properly.

Q. Yes?

A. Once a decision was made, it seemed prudent to announce the decision as quickly as possible. You don't want to have speculation and such like and once a decision was made it was better to get it out quickly. It seemed perfectly logical to me.

Q. Of course there was no real rush to make the decision itself, was there, because you had to the end of November and it had remained completely tight, watertight up till then?

A. There was no there were political reasons to announce it.

Q. There were political reasons to announce it?

A. To announce it quicker.

Q. And what were they?

A. The pressure that Michael Lowry was under.

Q. The pressure that he was under?

A. That would be my impression, that the Minister would like to announce something positive.

Q. I see. So you think that political pressure that he was under was what informed his desire to accelerate this process and to get it announced, is that it?

A. I think he would have, given the pressure that he was under, he would have liked to have seen a decision announced as soon as possible.

Q. If the matter had been dealt well, it was dealt with by aide-memoire on the Thursday, when it went to Government effectively to ratify the decision which had already been paid by the party leaders, there would have been no risk, really, would there, of any leakage from the process, had the matter been put back to the Thursday?

A. Would you explain the sequence that you are

Q. The sequence is that on Wednesday we are told that Mr. Brennan informed Mr. Loughrey that there was a result, Wednesday the 25th; that Mr. Loughrey advised Mr. Lowry that he should get that result pinned down straightaway, and it so happened that the party leaders were meeting. Mr. Lowry went to the meeting of the party leaders and he secured their approval of his recommendation and he then announced that publicly. On the following day, the 26th October, the matter went by aide-memoire to the Government to

effectively ratify the decision that had already been made. Do you recall that?

A. I subsequently knew that. I didn't know that on the 25th.

Q. You didn't know that on the 25th?

A. No.

Q. But on the 26th you knew it?

A. Well, if there was a memorandum, and I saw the memorandum, then I would have been aware.

Q. Yes, it was an aide-memoire?

A. An aide-memoire.

Q. An aide-memoire. What I am trying to get at or discuss with you, Mr. McCrea, is that what reason would there have been not to postpone the announcement of the result or the bringing it for approval until the Thursday, the following day, just one day?

A. I presume that once they had the agreement of the party leaders there was no reason to delay it.

Q. Well, what was the rush on the 25th? That's what I don't understand, why the matter couldn't have waited over until the 26th?

A. I have no idea, other than to say once the decision was made, why delay it?

Q. Well, you see, even Mr. Fitzgerald, when he gave evidence, he had some concerns, he said the matter was done at such haste, that a health warning in relation to the financial capability of Esat Digifone didn't go

in, didn't go to Government and that was something that he regretted because there was so much rush, and what the Tribunal is trying to understand is what was the need for the rush on the Wednesday, why the matter couldn't have simply waited until Thursday to go to a full Cabinet decision?

A. I can't help you on that.

Q. You can't assist?

A. I told you that my, I told you my surmising of why it might have happened.

Q. Yes. Did Mr. Loughrey indicate to you at any stage that there had been some dissent within the Project Group?

A. No.

Q. No. He didn't indicate to you that a delegation of the three principal officers from his Department who served on the Project Group had come to see him on the 23rd October?

A. No, I wasn't aware.

Q. Just to move on to something else, Mr. McCrea, I wonder were you a recipient of the press cuttings service that they had in the Department?

A. I think so, yes. I mean, I have seen I saw many press cuttings, so I presume I was.

Q. Yes. I presume you knew what the make-up of the Esat Digifone consortium was that won the competition. You would have been aware that it was Communicorp and

Telenor with 50:50 to reduce to 40:40 with 20% to be placed by Davys with institutional investors, would you?

A. Not at all. I might have known that Esat and the communications company were in partnership as I would have known that there were other people coming together to form some of the other bids. I wouldn't have known anything about the percentages or...

Q. Sure, I can understand that. But you would have been live to issues in the media relating to this process and the licence itself?

A. Certainly, yeah.

Q. So if matters came across your desk in which there was comment on Esat, on the composition of the consortium, on who was involved, presumably would you have taken an interest in that?

A. Yes.

Q. If you read an article of that type, would you then bring it to the attention of Mr. Brennan or Mr. McMahon, maybe, who was involved in the licence negotiations at that stage?

A. No, I wouldn't. I was on the periphery, they were involved in its detail. I presume that they would all have this information.

Q. Right?

A. I am not sure how much credence they would put on press reports.

Q. Of course. Mr. McCrea, did you have any involvement at all in the preparation of speeches for Mr. Lowry in the Dail or replies to parliamentary questions?

A. On some.

Q. Yes. Can I just refer you to replies by Mr. Lowry in the House on the 22nd November to see if you had an involvement first of all. They are in Book 43 at Divider 156.

(Book handed to witness.)

Now, just to explain to you the document behind that divider, the first one is the report of the actual proceedings in the House. That's the first, you see page 9 of 9.

Now, if I could just bring to you the Dail questions which are then listed and also the draft replies, because I think the replies were all taken together in the form of a speech.

Do you recall if you had any input into these?

A. This is headed up "Second GSM Licence Esat Digifone Preliminary Response"; is that it?

Q. I wonder are you looking at the correct divider. It is Divider 156.

A. I am sorry, I have the correct document now.

Q. You have the correct document. Maybe if you just look at the draft of the reply that was prepared. You may be able to assist me as to whether you had any involvement?

A. And where is this?

Q. The reply is the final part of that set of documents, the draft reply. It starts off with the actual report of the proceedings in the House. There are then the questions and the next document is the draft reply.

You see it starts, "Ceann Comhairle: I propose to take questions, 5, 10, 13.."

A. Yes, I have it.

Q. Do you have it there?

CHAIRMAN: I suppose as we are just embarking on this topic now at ten to one, it might be preferable to give Mr. McCrea a chance to actually read the documentation over lunch. So we will resume with a view to concluding Mr. McCrea's evidence at two o'clock. Mr. O'Donnell, sorry for getting a little irate earlier on.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF COLIN McCREA BY

MS. O'BRIEN:

Q. MS. O'BRIEN: Mr. McCrea, I think over lunch you have had a chance to look at the Dail reports, and I think the position is that you didn't have any input into those speeches?

A. That's correct.

Q. Finally Mr. McCrea, I just want to come to deal with the last two paragraphs of your memorandum in which

deal with matters which the Tribunal brought to your attention on foot of a statement which the Tribunal had received from Mr. Mark FitzGerald. And just briefly, in his statement Mr. Fitzgerald referred to contacts which he had with Denis O'Brien. And at paragraph 6 of his statement of the 11th November, he said he received a further telephone call from Mr. O'Brien around the middle of October, 1995. His recollection is that this was after the Golf Classic. That's the Fine Gael Golf Classic. Which was held on Monday, 16th October, but it must have been before the end of that week because during much of the following week, Mr. Fitzgerald was in the UK.

Mr. O'Brien asked Mr. Fitzgerald to meet him for a coffee at a restaurant close to his office.

Mr. Fitzgerald assumed that this might relate to a business matter about which he had shortly before spoken to Mr. O'Brien. He was surprised when he arrived to find Mr. O'Brien sitting at a table with Mr. Phil Hogan and Mr. Jim Mitchell. As he sat down Mr. O'Brien asked him if he had heard any news of the licence. Mr. O'Brien had never previously asked Mr. Fitzgerald anything about the licence.

Mr. Fitzgerald told Mr. O'Brien that he, Mr. Fitzgerald, had bumped into Mr. Michael Lowry at the Golf Classic at the K-Club, and that Mr. Lowry had said to Mr. Fitzgerald that Denis O'Brien had made a

good impression on the Department, that he had good sites and good marketing. Mr. Fitzgerald may also have said that Mr. Lowry had said to Mr. Fitzgerald that there would always be a third licence because Mr. Fitzgerald recalls Mr. Lowry said that to him.

Mr. Fitzgerald does not recall any other significant matter arising in that brief conversation with Mr. Lowry.

Mr. Fitzgerald was annoyed with himself at having passed on the comments made to him by Mr. Lowry, even though they had been gratuitous and he believed them unimportant.

Mr. Fitzgerald understood that Andersen Consulting were responsible for evaluating the bids in the competition, and shortly after that coffee meeting, he checked with Colin McCrea and Sean Donlon, respectively, Mr. Lowry's and the Taoiseach's programme managers, who confirmed that the award itself would be a decision for the Government rather than for the Minister alone.

And that was the information which the Tribunal brought to your attention. And in your memorandum you have informed the Tribunal that you have no recollection of Mr. Fitzgerald raising a query with you regarding the respective roles of Mr. Lowry and the Cabinet in the decision as to the ultimate result of the GSM evaluation process, but you agree, however,

that the response attributed to you sounds correct and would have been consistent with your understanding at the time?

A. That's correct.

Q. You went on to say that you had occasionally encountered Mr. Fitzgerald, but never had an arranged meeting with him. The encounters would have been during your period as programme manager to Mr. Lowry, but the encounters would involve Mr. McCrea and Mr. Fitzgerald chatting about various issues while Mr. Fitzgerald waited to meet with Mr. Lowry. That you were not present at any of Mr. Fitzgerald's meetings with Mr. Lowry?

A. Yes.

Q. Now, if I could just ask you two matters arising out of that. Could you indicate to me how frequently you would encounter Mr. Fitzgerald coming to attend meetings with Mr. Lowry?

A. I suppose over an 18-month period, about four times. That's a guess.

Q. And did you know what the purpose of those meetings were?

A. No.

Q. You didn't. You can't recall Mr. Fitzgerald making this inquiry of you at the time?

A. No.

Q. Clearly from the timing set out in Mr. Fitzgerald's

statement, it would have been in the short number of days after the 16th October, which was a Monday.

Mr. Fitzgerald says he went to London the following week, so it would either have been the 17th, 18th, 19th, or 20th, the Tuesday, Wednesday, Thursday or Friday of that week prior to the announcement, but you have no recollection?

A. None at all.

Q. Thank you Mr. McCrea.

MR. FITZSIMONS: I have no questions for the witness.

MR. MCGONIGAL: I have no questions.

CHAIRMAN: Very good. Mr. O'Donnell?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. O'DONNELL:

Q. MR. O'DONNELL: Just one or two questions, Mr. McCrea.

Firstly to deal with your position as programme manager. I think you made it clear in your statement that you didn't know Mr. Lowry before this, you were appointed as his programme manager?

A. That's correct.

Q. And I think you didn't maintain any contact or link with him after you left as programme manager, which I think was in July of 1996?

A. That's correct, other than two Christmas dinners, I think.

Q. I see. But you wouldn't have been a personal friend of his before the, your appointment as programme manager, and you weren't a personal friend of his

afterwards?

A. That's right.

Q. It seems reasonable to characterise your relationship as purely strictly professional rather than personal or friendship?

A. Yes.

Q. Now, I think you indicated that you were aware of the sealed nature of the process of selection, of evaluation and selection from a very early stage?

A. Yes.

Q. And you took the sealed nature of that process extremely seriously?

A. Extremely so.

Q. And you were concerned that that process that the sealed nature of that process of selection would not be breached in any way whatsoever?

A. Yes.

Q. And you also believe that your Minister understood that also to be the case to apply to him also?

A. All the impressions were that he understood that.

Q. And again, while you say that it would not be unusual for you to be informed from time to time of major developments, you would not have any interest in or be permitted to be interested in the actual process of evaluation itself?

A. I had no involvement in the process at all.

Q. And never attempted to become involved in the process

of evaluation itself?

A. Absolutely not.

Q. So that, for example, when at management committee meetings you were informed of developments in relation to the licence fee, that was information being given to you about a development, but not something that requested an input from you?

A. No, it was passed to me for information, or passed to me and others for information.

Q. And there was at no stage during the process of evaluation, were you asked to have an input into the process of evaluation?

A. At no stage.

Q. Nor at any stage during the process of evaluation, did you seek to have an input into the process of evaluation?

A. I never sought to have an input.

Q. So far as you were aware, at no stage during the process of evaluation did your Minister seek to have an input into the process of the evaluation?

A. To my knowledge, he never tried to have an input to the process.

Q. He never had an input or tried to have an input?

A. He never had an input or tried to have an input.

Q. Therefore to that extent the process of evaluation remained sealed?

A. As far as I was concerned, it remained sealed.

Q. Now, I think you were asked to comment on the report, the provision of the report to you?

A. Yes.

Q. And I think it's clear that the report that you were provided with was the report of October 3rd, of 1995, which I think is at Book 42, Tab 117, and maybe we could just look at that report again. I think you have indicated in your evidence that you only had a very brief, I think some ten minutes, examination of the report itself?

A. Yes.

Q. And I think you said you saw a table which indicated what the ranking was?

A. Yes.

Q. Can you tell the Tribunal whether it's your recollection that the table contained numbers or letters?

A. My recollection is that it contained numbers.

Q. And so that it gave the result, therefore, in numbers?

A. Yes.

Q. All right. Perhaps you could turn to page 46 of the report?

A. Yes.

Q. Do you have that?

A. Yes.

Q. And that has Table 18 on it, which appears to show the scoring in numbers?

A. Yes, at the bottom.

Q. Do you recognise that table?

A. I don't particularly recognise this. I can't be precise that I saw this. My recollection is that there was a table like this and that it had numbers.

Q. It had numbers, all right. But from the table that you saw, you were able to identify who was ranked first?

A. Yes.

Q. And you think that this was probably a table that identified that ranking by reason of numbers rather than letters?

A. Yes.

Q. All right. So it's likely, given that there is no other table that indicates the ranking in numbers, that that is probably the table you saw?

A. It's likely.

Q. I see. And you then handed that report back to Mr. Brennan, as you say, within about ten minutes of having read it?

A. Yes.

Q. You didn't I think you say you didn't receive the appendices, the annexes, and so the report is considerably thinner than it is in this book?

A. That's my recollection.

Q. But you were given a full booklet, you weren't just being given a page torn out?

A. Oh no.

Q. You were given a full booklet?

A. Yes.

Q. I see. Now, you then were asked about the anxiety of the Minister to announce the result, and perhaps if I could just ask you firstly, you are aware that the process in question here is the process of selection of the, from the consortia who applied, of the appropriate consortium to be awarded exclusive negotiation for the licence. That's the selection process, the evaluation process?

A. Yes.

Q. Is there any basis in your mind for distinguishing between the process of selection on the one hand, which was sealed, and the announcement of a result, which was a different matter?

A. Could you explain the question again.

Q. Maybe I haven't put it clearly. Is there any distinction between the selection process, the process of selection, which is the process of evaluation of the consortia on the one hand, which as we all know was sealed, and on the other hand, the announcement of the result, which is a separate matter?

A. I understand the difference.

Q. And did you see it as a difference?

A. Yes.

Q. And therefore, the furnishing of the report to you by

Mr. Brennan, you did not regard that as a breach of the selection process or the evaluation process?

A. No.

Q. Again, the fact that you received the process the report, didn't mean that you were being invited to have any input into it?

A. Absolutely not.

Q. Nor did you seek to have any input into it?

A. No.

Q. And I think you made it clear that you didn't pass on a copy of this report to anybody?

A. No.

Q. And you didn't discuss the contents of the report with anybody?

A. No.

Q. So it wouldn't be possible, so far as you are concerned, for anybody else to have had an input into the process as a result of you being given a copy of this report?

A. I am sure that as a result of me being given the report, nobody had an input to the process.

Q. And so, therefore, all you were doing was that you were being given information as to how the process was going, but you were not being given an opportunity to have any input into the process?

A. No, I was not.

Q. And therefore the process remained sealed at that

stage?

A. Yes.

Q. Now, then when we come to the decision of the Minister to decide to try to announce the result as quickly as possible, I think you have indicated that the Minister wanted to accelerate the announcement of the decision for his own reasons. Before we come to his own reasons, you have worked in the business world, you have been on the Irish Trade Board for a number of years?

A. Yes.

Q. You were an Assistant Chief Executive within Bord Treachtala?

A. Yes.

Q. And you are aware of time pressures within business, acceleration of announcements of decisions within business occurring?

A. Yes.

Q. Is there anything unusual in your mind about somebody wishing to announce a result as soon as possible?

A. No, there is not. I find that chief executives always want to make an announcement quickly.

Q. Especially if it's good news?

A. Yes.

Q. And so therefore, it would not be unreasonable for somebody in a position of chief executive to want to announce a decision, particularly if it's good news,

quickly, and would the same apply to a minister?

A. Yes, I would consider the Minister to be in that category.

Q. And therefore it would not be unreasonable, in your view, for a minister to seek to have the announcement of a decision take place as quickly as possible?

A. No.

Q. Without, of course, interfering in the process of evaluation, which was a separate and sealed process?

A. Yes, they are different. Yes, and it would be the announcement that the Minister would have wanted to announce, in my opinion.

Q. Without attempting or wishing to prejudice the process of evaluation in any way whatsoever?

A. Yes.

Q. I see. Now, firstly I suppose from the point of view of the public, it was going to be good news that a new mobile telephone licence was going to be in place, because there was going to be a second mobile operator, more competition, and therefore hopefully lower prices and better service?

A. Yes.

Q. So that was good news generally for the public. So in the abstract, that was something that would be, it would be desirable would happen as quickly as possible?

A. Yes.

Q. And obviously, the sooner the result is announced, the sooner negotiations in respect of the licence can occur, the sooner the licence can be granted, and ultimately the sooner the second operator can get up and running?

A. Yes.

Q. So from the public point of view, it was a good thing, a desirable thing for them to know as quickly as possible?

A. Yes.

Q. But you said also from the Minister's own personal point of view, he had a personal desire to announce good news because he was the subject of some unfavourable comment about other matters during this time?

A. Yes. The Minister was under, what I would consider to be, extreme political pressure at the time, and I think he was very anxious, I would have thought, to get out good news.

Q. Yes. I think his own political career had attracted a considerable amount of press attention and some attention within the Houses of the Oireachtas also?

A. Quite a lot, yes.

Q. And particularly the summer of 1995 was a stormy summer from his point of view?

A. The period, as I recall it, from mid-August to November was a very stormy time.

Q. And so, therefore, in the circumstances where there was a lot of, what I might call, bad news around about the Minister, or certainly unfavourable comment, he'd hardly be human if he didn't want to announce some good news if he had an opportunity to do so?

A. Any politician who is under pressure like that would want to make a favourable announcement.

Q. But of course this was without wishing to interfere with the evaluation process in any way whatsoever?

A. I would have thought the announcement of a successful competition is what he wanted to announce.

Q. Yes, that a competition had been held, that it had been successfully carried through, that there was now an exclusive negotiation right going to the winner, and that there would soon, in due course, be a second operator?

A. Yes.

Q. That was good news to be announcing?

A. Yes.

Q. So far as you are concerned, his principal concern therefore was with the announcement of the result, rather than who the winner, the actual winner was?

A. Yes. Yes.

Q. He never told you who he would like to have seen win the competition?

A. No, he did not.

Q. Nor did anybody else ever tell you who he, Mr. Lowry,

would have liked to have seen win the competition?

A. No.

Q. So from that point of view, it seems that he was indifferent to the outcome, provided he could announce the result as quickly as possible, to, I suppose, in the eyes of the press or in the eyes of other politicians, paint himself in a slightly more favourable light than he had been to date?

A. Yes.

Q. I see. And did that seem to be to you reasonable, politically?

A. Absolutely reasonable in the circumstances.

Q. I presume, Mr. McCrea, given your consciousness of the seriousness of the sealed nature of the process of evaluation, if you had felt that he was doing something untoward, or something improper, you would have told him?

A. Yes.

Q. And you had no occasion to do that in relation to this?

A. No.

Q. Now, I think also it's clear that you did not have any input into the process. Did anybody else, to your knowledge, outside of the team have any input into the evaluation process?

A. No.

Q. And nobody sought to lean on you to persuade you to

intervene in the process?

A. On no occasion.

Q. Nor did you seek to lean on anybody else, either on your own behalf or on anybody else's behalf

A. Certainly not.

Q. to intervene in the process?

A. Certainly not.

Q. As far as you were concerned, the process, the process of evaluation remained sealed, independent and free from outside interference?

A. Yes.

MR. O'DONNELL: Thanks very much Mr. McCrea.

CHAIRMAN: Have you gone back to CTT, Mr. McCrea?

A. No, I now work for a philanthropic organisation.

CHAIRMAN: Thank you for your help today.

THE WITNESS THEN WITHDREW

MR. COUGHLAN: Mr. McMeel.

JIMMY McMEEL, HAVING BEEN SWORN, WAS EXAMINED AS

FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. McMeel, I think you furnished the Tribunal with a Memorandum of Intended Evidence, and we got a fresh one this morning which was tidying up?

A. Yes, some tidying up

Q. I think everybody has been circulated with the tidied up one.

A. You will appreciate that I am abroad, so I am here and there, I am able to add the odd little word or two.

Q. Yes. What I intend doing is just, this afternoon, we'll just read through this, if that's all right, and then we can come back to some matters on Tuesday morning.

A. Fine. I'll just get my copy of it.

Q. Just before I do, were you here for Mr. McCrea's evidence this morning?

A. No, I wasn't.

Q. Or any of it this afternoon?

A. Yes, I was present for the evidence this afternoon, yes.

Q. Were you aware, or are you aware that Michael Lowry said to Mr. McCrea, at least to Mr. McCrea, and perhaps in the presence of Mr. John Loughrey, according to the evidence of Mr. McCrea, that if Persona were to get the licence, or words to that effect, that that was a meal ticket, or words to that effect, for an unnamed Fianna Fail politician? Were you aware of that? Or words to that effect.

MR. O'DONNELL: I don't think that's what Mr. McQuaid said at all. We can read back to his evidence. I don't think the words "meal ticket" were mentioned. Nor Persona.

Q. MR. COUGHLAN: Yes, Mr. McCrea used the word "Persona". It was the Persona it was the Persona consortium. Were you aware of any of that type of conversation?

A. I am totally confused by this.

Q. Yes, good. Not at all, I am not confused about it at all. This is a recurring theme in the course of this Tribunal, this particular theme: Mr. Lowry saying something. It comes ultimately on the 25th, when he goes to the other members of Government, including your Minister. I'll come to that in due course.

Now, I think you have informed the Tribunal that "this response arises from the Tribunal's letter dated 3rd October, 2002, wherein officials were requested to review statements already submitted, and in particular, the supplemental statements. After reviewing same, and consequent upon the request of the letter dated 3rd October, 2002, I now set out my statement and insertions as requested. I refer also to my answers to the Tribunal's letter dated 28th May. "This statement is based on my recollection of events seven years ago in response to questions put by the Tribunal in the course of the last year. During"

A. Sorry, I should say it's probably eight years ago now. And I'd also add, by examination of the official files of the Department of Finance in addition to my recollection.

Q. Yes. I think if then during the relevant period you were one of the Department of Finance officials dealing with energy until September, 1995, and communications aspects of the vote for Transport,

Energy and Communications. In that capacity you would have had infrequent contact with the Minister for Finance, is that correct?

A. That's correct. I'd also like to add, I had no contacts or dealings with Minister Michael Lowry.

Q. That is clear during your statement, you had no particular dealings with the Minister for Transport, Energy and Communications.

A. None.

Q. I think you reported to a Mr. David Doyle, is that correct?

A. I reported

Q. Directly

A. I reported at the outset of this I reported to Mr. Charlie Smyth, but subsequently, yes, I reported to David Doyle. I think right at the end, I think at the time of the press conference and so forth, Mr. Stephen O'Sullivan had replaced Mr. David Doyle.

Q. You had, at that time, held the rank of Assistant Principal, is that correct?

A. Yes.

Q. Mr. Doyle was your Principal Officer?

A. Mr. Doyle was my Principal Officer.

Q. Now, I think you were asked for your involvement, direct or indirect, together with your knowledge of the involvement of any other person in the selection of Mr. Martin Brennan to spearhead the second GSM

licensing process in the Department.

And you replied, the Department of Finance had no role in the appointment of Mr. Brennan. This was a matter for the management of the Department of Transport, Energy and Communications.

I think you were then asked for your involvement, direct or indirect, together with your knowledge of the involvement of any other person at the early stages of the process in the devising of evaluation criteria.

And you informed the Tribunal that you were not involved in the early stages of the devising of the selection criteria. You were aware that Mr. Roger Pye of KPMG was providing input to the early stages of the process in terms of the tender documentation.

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

And you responded: "Apart from those involved in DTEC, I was aware that Mr. Pye of KPMG was providing input to the process circa March/April 1994."

You are then asked for your knowledge of, or your involvement, direct or indirect, together with your knowledge of the involvement of any other person in the retention of KPMG as consultants to the Department in relation to the initial competition design and of

the advice rendered by KPMG.

You have informed the Tribunal, you were aware from early March, 1994, that DTEC would seek outside help on how to proceed. You have no recollection of having been involved in the selection of Mr. Pye. You were aware of the involvement of Mr. Martin Brennan and Mr. Conan McKenna in the selection of Mr. Pye.

I think there may have been a slight involvement.

There had to be a fee agreed or obtained or approved from the Department of Finance?

A. That would not have been my side of the Department.

There is a specialist union in the Department of Finance that deals with those

Q. It wasn't a figure issue anyway. I think it was a fee in the region of 20,000 or something like that?

A. I don't have an involvement in that type of issue.

Q. Now, I think you were then asked for your knowledge, direct or indirect, of, or involvement, together with your knowledge of the involvement of any other person, in the finalisation of the evaluation criteria, and in particular: A) The selection of an open-ended licence fee structure.

And you have responded: "The open-ended licence fee structure adopted at the outset was in keeping with the approach of the Department of Finance, that, insofar as possible, and commensurate with the other criteria, the benefit of the Exchequer be maximised."

You are then asked for your knowledge of:

B. The deletion of financial capability from the evaluation criteria.

And you respond: "Financial capability was not deleted as such. It was covered under criterion 1, the credibility of the business plan. It was covered under financial aspects, dimensions, financial key figures, which had eight indicators." And then you refer to page 41 of the evaluation report.

You were then asked details of all considerations which, to your knowledge, direct or indirect, prompted or contributed to the Department's movement from its initial position of: 1. Favouring the publication of weightings attached to the evaluation criteria as specified in paragraph 19 of the RFT document to its ultimate position of non-publication of the weightings attached to the relevant criteria as recorded in the memorandum of Mr. Jimmy McMeel, dated 19th April, 1995, and a note to the Minister from Mr. David Doyle.

You respond, "The material from the Department of Finance files should be seen in the context of the Department's position at the time, which was to ensure that the question of the fee payment was not played down in a weightings formula during a period when the fee had not been capped. I cannot recall the precise argumentation of the time in regard to the question of publication of the weightings, but it appears that the

advice of the consultants did not fully endorse publication in advance. It appears that the experience of the consultants was that not all countries had revealed weightings to the applicants."

I think you were then asked about favouring the placing of the emphasis on the evaluation criteria on the criterion of tariffs to its ultimate position in which the first criteria was given to the credibility of business plan and the applicant's approach to market development as also recorded in your memorandum and note to the Minister.

And you respond, "As stated above, the Department of Finance approached the matter from a particular perspective. I would draw attention to responses 17 and 18 below."

The perspective from which the Department of Finance was approaching was to, in the interests of the Exchequer, to maximise the return to the Exchequer, having due regard to the other policy issues involved and the criteria whereby this particular competition would be run, would that be a fair way of summarising it?

A. Perhaps, but I think you should also bear in mind that there are records which show that the Department of Finance was concerned about the question of tariffs.

Q. Yes.

A. You know, so it was not a crude, you know, let's have

a fee at all costs.

Q. Oh no, where there was a kind of a crude argument being put on the other side, if one might sort of simplify it, that if you had a high fee, you'd have high tariffs because people would need to recoup?

A. We acknowledged the argument though, that there was some validity in that argument, that a high fee did lead to high tariffs and we were concerned that the consumer get a good deal out of it.

Q. And what you wanted to see was a balance whereby you'd maximise with a view on tariffs, the return to the revenue on the licence fee?

A. I think this is a negotiation, so you know, you end up with a compromise which is the balance.

Q. Yes.

CHAIRMAN: There was a bit of healthy tension, I think Mr. Loughrey magnanimously acknowledged he lost the battle, so people did hold their position?

A. I'd prefer not to see these things in terms of battles, you know, just negotiations

CHAIRMAN: I am not trying to suggest that.

Q. MR. COUGHLAN: I think you were then asked details of the inquiries made by you of banking sources, which led you to make a statement in the memorandum dated 13th December, 1994, which you sent to Mr. Doyle in the Department of Finance in the following terms:

"Banking sources tell me that consortium participants

should have no difficulty in getting loan finance."

And you responded: "In regard to the reference to banking sources, where the events concerned took place seven and a half years ago, I believe the reference are to contacts with the ICC Bank. Formerly the Department of Finance used the services of ICC personnel in the same way as Billy Riordan of PriceWaterhouse was engaged subsequently."

So, can I take it you either took advice or had somebody on secondment in from ICC Bank in the Department to assist the Department on matters of banking matters?

A. I don't know whether it was that formal. It may have been that I met somebody from the ICC Bank for lunch or something like that, and this arose in conversation. And incidentally, like all of these other and a halves, it's eight and a half years ago.

I am not sure it was that formal. We certainly had ICC personnel, but whether I approached them or I approached somebody who had formerly been an ICC person in the Department of Finance, I'd say I met him in a lunch situation or something, and we discussed the issue in broad terms.

Q. Well, it would have been by way of, I suppose, a general type of inquiry, as opposed to specific inquiry?

A. I am not sure I'd classify it as an inquiry. It was

something that would have arisen in a chat in a social-type situation.

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

You responded, you had no role in the establishment of the Project Group. You were nominated to represent the Department of Finance. You had no appointment in the appointment of DTEC representatives to the Project Group.

You were then asked for your understanding of the role of the Cabinet or Cabinet Subcommittee in the GSM process, and in particular, in light of paragraph 2 of the Government's decision on the 2nd March, 1995, and in the light of correspondence between Mr. Martin Brennan and you dating from March to May, 1995, namely: A) A recommendation would be put by the Minister to Government in time for a final decision on the granting of the licence to be made by the 31st October, 1995.

And you respond: "My understanding was that Ministers were to be consulted about the final decision." But as the Department of Finance files show, you felt that there could be problems if Ministers without good reasons decided to ignore the outcome of the evaluation process. In fact, per the files, the

relevant Ministers were scheduled to discuss the matter at 4pm on the 25th October, 1995, and the outcome was noted by the Government decision on the 26th October. The correspondence with Mr. Martin Brennan was the Department of Finance endeavouring to promote the fee criterion, which was number 4 in descending order of priority in the context of weighting of selection criteria. This was at a time before the fee was capped.

We'll come to deal with that particular correspondence between yourself and Mr. Brennan in due course. But I think there was correspondence, it was at a time before the fee was capped. It was at a time when negotiations were going on?

A. Yes.

Q. And I think you had raised the issue in specific terms, with Mr. Brennan, that this was Government policy, that the decision would be one for Government, and I think Mr. Brennan responded to you in due course in that regard and agreed with you, but pointed out that this was one where his Minister was required to go to Government with a recommendation. I think that was the general nature of the debate or the correspondence, but we'll come to deal with them in due course. Do you recollect that?

A. Well, I think if the correspondence is on record, it will be there, but I don't recall.

Q. You don't recall?

A. Other than the correspondence and records that are there.

Q. You knew this was a Government decision?

A. I knew that the matter was to go to Government, but as I said in my statement, I felt that the Government didn't have that free a hand, as such.

Q. I see. We'll come and deal with that in due course.

CHAIRMAN: Your point being that the Government could not trivially reverse an outcome?

A. Arbitrarily the Government could not set aside

Q. MR. COUGHLAN: Arbitrarily, capriciously, trivially, yeah. I won't deal with it. You argue the position quite well in your correspondence and I'll come back to it in due course, Mr. McMeel.

Now, I think you were then asked for your understanding of the RFT document issued by the Department in March, 1995, and in particular, paragraphs 3, 9 and 19, which provided as follows:

We know paragraph 3 is: "Applicants must give full ownership details for the proposed licensee, and will be expected to deal with the matters referred to in the following paragraphs in their submission."

Paragraph 9: "Applicants must demonstrate their financial capacity and technical experience and capability to implement the system if successful, and must include a business plan for at least the first

five years in the complete technical proposal."

Paragraph 19: "The Minister intends to compare the applications on an equitable basis, subject to being satisfied as to the financial and technical capability of the applicants in accordance with the information required herein."

Then the eight criteria are set down, I think, thereunder, and we have been through these quite a number of times. So unless you wish me to read through them now, I don't intend doing it?

A. No.

Q. I think you have responded: "Paragraph 3 outlined a requirement to disclose the entities or persons behind the application. Paragraph 9 is a broad description of matters to be covered by the application. And paragraph 19 is the selection criteria for those applications admitted to the evaluation."

I think you were then asked for your understanding of the purpose of the protocol adopted by the Project Group in its meeting of the 6th March, 1995, for dealings with potential bidders during the tender process and which protocol was notified to Mr. McMeel by memo dated 6th March, 1995, from Mr. Martin Brennan, bearing in mind that all civil servants are bound by duties of confidentiality.

And you have responded: "It was a useful reminder to all members of the Project Group as to how to conduct

themselves vis-a-vis the potential applicants."

I think there is general agreement about that. This was a good thing, isn't that right?

A. Absolutely.

Q. This particular protocol, and the adoption of it?

A. Yes, vis-a-vis potential applicants, yes, it was a prudent thing to do.

Q. Now, I think you were then asked for your role, direct or indirect, together with your knowledge of the involvement of any other person in the appointment of Andersen Management International as consultants to the Project Group.

And you responded: "Firstly the advisers were Andersen Management International, AMI, a different entity from Andersens Consulting. Secondly, I had no involvement in the selection of AMI."

Is there a particular point or is it just a clarification?

A. It's just a clarification, because it's quite early in the questions. It was referring to Andersen Consulting, which is a completely different entity from this Andersen Management International.

Q. Right. Now, I think you were then asked for your precise understanding as to the services to be rendered by Andersen Consulting and the precise terms of their brief.

And you have responded: "The consultants were to

advise the Project Group and to apply their expertise to help to assess the applications in terms of the selection criteria."

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

And you have responded: "Proposals for setting the weightings came from the DTEC side of the Project Team and from the consultants, not from the Department of Finance. They were approved by the Project Team in due course."

I think you were then asked the manner in which the weightings were devised.

And your response is: "Please see answer to the above question. This question should be referred to the Department of Public Enterprise."

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

And you have responded : "The principle of whether there should be weightings had been the subject of discussions and correspondence from March, 1995. This potentially had complications for the Department of Finance in terms of the fee. The Department of Finance files indicate that the actual weightings were discussed at the Project Group meeting on the 18th May, 1995. Other than that, I have no recollection of

details. The Department of Finance files also show that the revised weightings for the fee criterion were agreed in July, 1995."

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

And you have responded: "As far as I am aware, information of the weightings was available only to members of the Project Team and Andersen Management International. However, the files indicate that on the 16th September, 1995, I sent a note to my line superiors (Mr. David Doyle, Mr. Philip Furlong, Mr. RJ Curran) in D/Finance about the state of play in the process. This included an annex giving information on weightings, but at that stage the applications had been submitted and were being processed."

I take it the point you are making there, that you informed your immediate superiors in the Department of Finance about the weightings, but after the closing date for the process?

A. And per their request.

Q. And per their request. Now, I think you were then asked for details of all steps taken by the Project Group to protect the confidentiality of the weightings.

And your response is: "The official minute of the

Project Group meeting on the 18th May, 1995, speaks of 'lock and key security'. The room in the Department of Finance where Billy Riordan and I were located and where information on this process was kept was locked when unoccupied. This situation applied from a point in the GSM2 process onwards and throughout the Telecom Eireann strategic alliance process. The two processes overlapped and I was a participant in both."

So you had significant confidential matters on the other side as well in relation to the strategic alliance, and you kept those matters under lock and key as well?

A. Correct.

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

And I think you have informed the Tribunal, that based on a Commission letter which had been copied to you to the Belgian authorities about the fee arrangements for their second licence, the files suggest that you were aware from January, 1995, that the Commission could become involved in the matter. The involvement crystallised with a letter from Commissioner van Miert

on the 27th April, 1995. It should be noted that several EU countries; for example, the United Kingdom, France, Germany, Netherlands, Scandinavian countries, did not charge a fee as such for their GSM licence.

Together with DTEC officials, you attended a meeting with the Commission on the 2nd June, 1995. Based on this, and on advice supplied from the Attorney

General's Office, the matter was resolved by the 15 million inclusive of 5 million administration element fee on the second mobile licence and 10 million fee on Telecom Eireann/Eircell. This matter was discussed at

the Project Group meeting on the 9th June, 1995. It was agreed by the Minister for Finance. The

resolution satisfied the Commission in terms of a level playing field requirement and ensured that the budgetary arithmetic for 1995 stayed broadly on track.

In view of the revised arrangement for the fee, the consultants suggested a change to the weightings. You had no difficulty in agreeing to a reweighting, as you considered it very likely that all applicants would offer the $\frac{1}{2}$ 15 million, which is what happened.

Therefore, weighting for the fee was a much less important issue than had been the case when the fee was open.

I think you were then asked for details of all information provided to applicants at any time prior to the 14th July, 1995, in connection with the

suspension of the evaluation process, including, in particular, regarding the following:

1. The manner in which the Department hoped to resolve the Commission's objection to the auction element of the competition.
2. The manner in which the Department hoped to resolve the Commission's concerns regarding the transparency of the evaluation process.
3. The date to which it was likely that the process would be deferred.
4. Any other matter relevant to, or touching on the evaluation process.

And you respond: "These questions relate to the Department of Transport, Energy and Communications and should be referred to the successor to that Department."

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

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

And you have responded: "I was not involved in any of the detailed evaluations. At the time of the evaluation, the process to find a strategic partner for Telecom Eireann was beginning. This was a

priority issue for me. The fee for the second mobile licence had been resolved, and there were much greater financial economic interests for the State in the strategic alliance and in connected matters, such as pension liabilities, for which I had particular responsibility. My understanding is that the quantitative and qualitative approaches were complementary. The former was more of a numerical exercise, comparing the applications, while the qualitative evaluation was a form of an in-depth question discursive analysis of the application using indicators. But as I was not involved in the evaluation I did not see the process in action."

That's something I'll come back to. It's just that I recollect in the documents you sent a memorandum to, again, perhaps to Mr. Doyle, where you are describing this quantitative and qualitative process, and am I not correct in thinking that you were of the view, or may have been of the view at that time, that what was conveyed to you, that these complementary approaches, that is the quantitative and qualitative approaches, tended to produce the same result. Am I correct?

A. Actually I was just looking at the record of that before I came here, and what I said was, and perhaps it just arose when reading it I said, "The evaluation document deals with quantitative and qualitative evaluations. The latter acts as a check

on the former, and as such is at a higher level."

Really what I ought to have said, is that the quantitative evaluation is subsidiary to the qualitative evaluation.

Q. Say that again, would you please?

A. I'll just quote what I said, "The evaluation document deals with quantitative and qualitative evaluations.

The latter acts as a check on the former." That is to say, the qualitative acts as a check on the quantitative, "and as such, is at a higher level." I ought to have said that the quantitative evaluation was subsidiary to the qualitative evaluation.

Q. What are you reading from there?

A. I am reading from a note I sent to, note to file dated

Q. We'll come to that.

A. Really it was subsidiary.

Q. Now, I think you were then asked to provide full details of the following:

"Details of all queries raised by the Department in the course of the Esat Digifone presentation on the 12th September, 1995, regarding the financing of the Esat Digifone consortium.

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

"3. Details of all queries raised by the Department in the course of presentation regarding the letter of comfort provided by Advent, dated 10th July, 1995, and appended to the Esat Digifone application.

"4. Details of all queries raised by the Department in the course of the presentation regarding the terms governing the offer of i;½30 million to fund Communicorp's equity participation in Esat Digifone as referred to in the letter of the 10th July, 1995 from Advent International to the Department.

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

And I think you have informed the Tribunal that at this remove, you have no recollection of questions asked during the presentation referred to. Is that have you seen any of the transcripts?

A. I have seen some transcripts, but I have not read the transcripts of the presentations.

Q. Sorry, yes, you have seen transcripts of the proceedings before the Tribunal, but you haven't read the transcripts of the presentations?

A. And I have not read all the transcripts.

Q. I wouldn't expect you to. But you haven't seen the

transcripts of the presentations?

A. No, no.

Q. Now, I think you were then asked to indicate the following:

"1. Whether the Department requested the Esat Digifone consortium at any time prior to the 25th October, 1995, to provide the Department with a copy of the offer of the $\text{€}1/230$ million facility to Communicorp by Advent International referred to in the letter dated 10th July, 1995.

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

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

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

And your response to that is: "These questions relate to the Department of Transport, Energy and

Communications, and should be referred to the successor of that Department."

Why do you say that? These are queries that really relate to the Project Group, don't they? Or would you see it as being more DTEC's question to answer?

A. Well, I have to say, when I was replying to these things, everywhere I saw the word "Department", and I thought I asked guidance from Mr. Davis, that "Department" always meant Department of Transport, Energy and Communications. It didn't mean the Department of Finance.

Q. That's something we can think about. But can I take it that when you respond like that, it's not that you are being evasive in any way, you actually don't know as well, would that be a fair way of putting it?

A. I don't know, I don't know, and let me read the question again. I simply don't know. But I did interpret "Department", and I think it was by way of guidance from your team, that "Department" was to mean the Department of Transport, Energy and Communications, or the Department of Public Enterprise, or whatever. Not the Department of Finance.

Q. Very good. Now, I think you were then asked to provide details of the supplementary analysis conducted in respect of Advent, Communicorp and Sigma as referred to in the minutes of the 11th meeting of

the GSM Project Group on the 14th September, 1995.

And the results of such analysis.

And your response is: "The supplementary analysis of financial risks is included in Appendix 10 of the report."

We can come back to that. Can I take it that that's your knowledge of the supplementary analysis, is it, is what you gleaned from Appendix 10 or

A. Supplementary analysis is the heading of Appendix 10 says, "Supplementary analysis on financial risks."

Q. But can I take it that your knowledge of this analysis is gleaned from Appendix 10, not from any involvement you had, would that be fair to say?

A. I had no involvement. Most of my knowledge is gleaned from records.

Q. Yes.

A. At this stage, at this remove.

Q. Now, I think you were then asked for your involvement in any of the sub-groups which conducted the qualitative evaluation, and if you were involved you had no involvement in the sub-groups?

A. No.

Q. I think Mr. Riordan, representing the Department of Finance side on the Project Team, did attend some sub-group meetings in Copenhagen?

A. Yes, he attended some sub-group meetings in Copenhagen because his counterpart in the Department of

Transport, Energy and Communications I think was away on holiday, so he filled in.

Q. That was Mr. Buggy?

A. That was Mr. Buggy, yes.

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

"A. The outcome of the quantitative evaluation.

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

"C. The decision that the qualitative evaluation should be decisive and should take in precedence to the quantitative evaluation.

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

And you responded: "As I was not involved in the detailed evaluation of the sub-groups, my knowledge was limited."

The response to A: The outcome of the quantitative evaluation:

And you reply: "The records indicate that I was not present at the Project Group meeting of the 4th September, 1995, at which quantitative evaluation was

discussed. I would have been aware from the minutes of the meeting that there were difficulties with that aspect of the evaluation. (This matter is discussed in page 5, Appendix 2 of the report.)"

We'll come to deal with that in due course. But any information you had as regards any difficulties was gleaned from the minutes and what was contained in page 5 in Appendix 2 of the report, would that be fair to say?

A. That's what I have said in my answer, yes.

Q. B) this was the difficulties encountered in scoring certain indicators in the course of the quantitative.

"I would have been aware from the minutes of the meeting of the 4th September, 1995, that the difficulties related to the comparison of information across applications. I was aware also (as can be seen in Appendix 4 of the report) that there are problems with some aspects of the financial data submitted by the applicants. In that regard, I recall that I was surprised that some applicants had not taken more care in these matters, given the very lucrative nature of what they were applying for."

Then, in response to C and D, this relates to the decision that the qualitative evaluation should be decisive and the decision not to score other aspects.

You have stated, "It appears that I was not present at the Project Group meeting on the 4th September, 1995.

However, my view is that the selection criterion that included credibility of the business plan, is dealt with in the evaluation report; for example, under the aspect, financial key figures. In addition, the report at Chapter 5 deals with sensitivities, risks and credibility factors. Furthermore, supplementary analysis of financial risks is set out in Appendix 10."

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

I think you have informed the Tribunal that the files indicate that you were aware by mid-September, 1995, of the trends emerging from the evaluation.

"On the 16th September, 1995, I sent a note to my line superiors, Mr. David Doyle, Mr. Philip Furlong and Mr. RJ Curran on the state of play in the process.

This had an annex stating that Esat Digifone and Persona were doing well and Irish Mobicall were in third place. I would have gleaned information from my attendance at the Project Group, possibly from a member of the consultancy team."

You were then asked on question 29, the date or approximate date on which and the person by whom you were informed of the final result of the evaluation process.

And I think you have informed the Tribunal that you had known for sometime how the process was going in general terms, and on the basis what the likely result was. "I cannot recall precisely when and by whom I was informed of the definitive outcome."

I think you were then asked the approximate date on which you were furnished with a copy of the first draft evaluation report.

And you informed the Tribunal: "I do not recall when I was first furnished with a copy of the draft report.

The minutes of the Project Group indicate that it was discussed at a group meeting on the 9th October, but I was not present. It was discussed again on the 23rd October when I was present."

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

And I think you have informed the Tribunal that this should be referred to the successor of the Department of Transport, Energy and Communications.

Can you remember what was the procedure if somebody came in? Were documents kept over in DTEC and consulted there or

A. No, some documents were forwarded, but I think some, such as the evaluation methodology, they stayed there, because there was a secretariat to the process there.

Q. I think you were then asked for details of all meetings and discussions which to your knowledge, direct or indirect, took place between officials or between officials and other persons, or any other discussions regarding the content of the first draft evaluation report of the presentation of the material comprised in the report or any other aspect of the report between the 4th October, 1995, when the report was received, and the 9th October, 1995, when the report was discussed by the Project Group for the first time.

And I think your response is, you would draw attention to your responses, number 34 and 35 below. At this remove you do not recall any discussion that took place between the dates referred to.

You were then asked for details of your views regarding the draft evaluation report, together with details of the understanding of the contents of the report, and in particular, the following:

"A. The manner in which the issue of financial capability had been addressed, and in particular,

the financial capability of Esat Digifone,

Persona and Irish Mobicall.

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

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

"D. The overall manner in which the material was presented."

You responded: "I do not remember having strong views on any of the above. Thus, I was generally happy with the finished project, but see D below.

"A. I consider that the financial matters had been evaluated under the financial key figures heading and also dealt with elsewhere in the report. But I was aware that neither of the first two ranked applicants had scored the highest marks under that particular heading.

"B. See answer to 27 (C) and D above.

"C. By its nature, the qualification in the report concentrated on the top three ranked applicants. However, the evaluation report says at page 49, 'The risk identified among the three best applicants are generally considered to be normal business risks, whereas those identified for A4, A6, and in particular, A2, are more serious.'

This analysis has not revealed any factors in relation to the three top ranked applications, which necessitates that the overall ranking be reconsidered or that further analysis be carried out.

"D. I vaguely recall that the early draft of the report shows that the writer was not a native English speaker. This is to be seen in various documents from AMI; e.g., their application to act as adviser."

I think you were then asked for details of all of your discussions, if any, with the members of the Project Group, or any Departmental official regarding the contents of the draft report.

And you have informed the Tribunal that you do not recall any discussion of the evaluation report with any DTEC officials, or with any members of the group outside the Project Group structure.

I think you were then asked for details of all matters discussed and raised at the Project Group meeting on the 9th October, 1995, and including, in particular, the following:

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

"B. The statement made by Martin Brennan regarding the Minister's view of the draft evaluation

report, and/or the approach which should be adopted in drafting the final report.

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

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

"E. The request made by certain members of the group that consideration should be given to the appropriateness of award of the licence to Esat Digifone, having regard to the Department's experience of Esat Telecom."

I think your response is: "The minutes do not record me as having been present at the meeting of the 9th October, and this question should be referred to the Department of Public Enterprise."

You weren't at the meeting of the 9th October?

A. If the minutes say I wasn't there, I wasn't there.

Q. And you have no recollection of a discussion about the Minister's state of knowledge, that's the Minister for Transport, Energy and Communications' state of knowledge?

A. If I wasn't at the meeting, I couldn't have.

Q. And nobody informed you of what you have said?

A. No.

Q. And I think the minutes of that meeting weren't

circulated until after the announcement anyway?

A. Yes.

Q. Now, I'm come back to that minute anyway.

A. Okay.

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

And I think your response is, you weren't present at the meeting of the 9th October, so I suppose you don't know what steps were necessary as of that date?

A. No.

Q. I think you were then asked whether you received or were otherwise made aware, directly or indirectly, of the handwritten notes made by Mr. Sean McMahon on the copy of the minutes dated 17th October of the meeting of the 9th October. It must have been around that date that they were circulated, I think anyway Mr. McMahon got his copy. I don't know if they were circulated to Finance at that time?

A. I am sure they were circulated at the same time.

Q. And your answer is: "I was not aware of any note made by Mr. Sean McMahon. However, I recall that Mr. McMahon telephoned me off the record at some stage. My recollection is that he was concerned in relation to the matter set out at Question 35(E)

above." That is the dealings of Esat Telecom, is that correct?

A. Yes.

Q. "My view was that the matter was not a selection criterion and was extraneous to the process. I considered that it would have been inappropriate and unorthodox to introduce such a matter to the process at that stage, and it could have exposed the process to challenge."

I think you were then asked whether the contents of the handwritten notes were raised at any subsequent meeting in the Project Group or any members of the Project Group, or were otherwise discussed with other persons, and if so, when and the name of such persons present or each person involved.

I think your response is: "I was unaware of the notes and cannot recall if these notes were raised at a subsequent meeting of the Project Group. This question should be referred to DTEC.

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

And again, you said this is a matter which should be

referred to DTEC.

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

And you respond: "I was in favour of the acceleration. At that stage we knew the result. In the Department of Finance we were beginning to get requests for meetings, as well as representations from the Minister from some of the applicant consortiums. Factors extraneous to the selection criteria, such as employment in Ireland were being cited in representations. I was concerned that if there was a delay in the announcement, rumours about the result may have emerged. This might have led to pressures for extraneous factors to be taken into account, which I believe would have exposed the process to challenge."

Could I just pause there for a moment, when you say that you were in favour of acceleration, can you state what date you were in favour of acceleration from, can you remember?

A. I can't remember what date I was in favour of acceleration, but certainly on the 23rd October, there is a record of me sending a draft reply to the Minister's office for issue, I think to the Persona

consortium, who had made representations without sight of these extraneous factors. So it's around that time, and also there is another record which says that in my note to the Minister, I think, saying that the result had been delayed or something.

Q. We'll come to those notes. It's around that time, it's around the 23rd, that sort of period?

A. Once the requests for meetings and representations started arriving, certainly I felt that there was no value in hanging on anymore, since we knew the result.

Q. You weren't aware of the Minister for Transport, Energy and Communications' desire to accelerate the process as and from early October, were you?

A. I don't know whether I was aware or not.

Q. Well, were you?

A. I don't know whether I was aware or not. I really don't know. I don't recall whether I was aware.

Q. That's what I just you don't have any recollection

A. I don't have any recollection.

Q. of anyone saying that to you?

A. I don't no, I don't have any recollection. Did that arise in a meeting which I was

Q. It was not a meeting at which you were present. It was an internal interdivisional meeting within DTEC.

A. I have no recollection.

Q. Of that matter being brought to your attention?

A. Of that matter being brought to my attention, no recollection.

Q. I think you were asked to confirm that eight copies of the final draft report, dated 18th October, were received by the Department and were designated for Mr. Lowry, Mr. Loughrey, Mr. Sean Fitzgerald, Mr. Colin McCrea, Mr. McQuaid, Mr. Brennan, Mr. McMahon, and yourself.

And you say that this should be referred to the Department of Transport, Energy and Communications.

Even though a shadow copy arrived for you, it went there, was that the system of the secretariat, was that, isn't that right?

A. The copy was sent to me?

Q. Mr. Andersen prepared these copies. The name was printed across the pages. They'd all be sent to DTEC?

A. I presume so.

Q. I think you were then asked to provide details of your knowledge, direct or indirect, of all considerations given by the Project Group, or by any member of the Project Group, or by any other person, whether in conjunction with Andersen Management or otherwise, to the qualification placed by Andersen on the financial capability of Esat Digifone and Persona, as set out in the evaluation report and appendices, and in particular, page 44 of the report and appendices 9 and 10.

And your response is: "I would draw attention to number 33 above. I was aware that this was an issue in the licence negotiations."

And then you compared number 62 below.

"The financial criterion were not the only or overriding selection criteria, and the first two ranked applicants had been marked down in relative terms because they were not the strongest applicants from an overall financial perspective (this is outlined at number 33 above). In fact the winning applicant got a "B" for "financial strength of consortium members" compared to "A" for three of the six applicants.

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

And your response is, at this remove you do not recall any discussions with AMI about further inquiries.

I think you were then asked to provide a full narrative account of any information, direct or indirect, which you had concerning what prompted Mr. Billy Riordan to record his concerns regarding the ownership of the report on both page 6 of the final

draft version of October 18th, 1995, and his various handwritten notes.

And you respond: "My recollection is that Mr. Billy Riordan was very concerned that AMI be seen to take ownership of the report. My view was that the issue was for Ministerial decision, both by virtue of the statute and the Government decision on the 2nd March, 1995. Therefore, I was concerned that there should be no perception that the matter had been, in effect, handed over in total to the consultants. I was also aware that officials had been involved alongside AMI in the detailed evaluation process. However, the evaluation report is on AMI paper."

Perhaps we'll come back and discuss that in due course when we look at the correspondence which you had with Mr. Martin Brennan at the beginning of this process.

Because here you are recording that this was this issue was one for Ministerial decision by virtue of the statute and the Government decision on the 2nd March, 1995. The decision was one which had to come to Government and which the Government had to make, isn't that right?

A. Well, I think the statute says it's a decision for the Minister for Communications.

Q. No, the statute says the Minister is the licensor, isn't that right?

A. Yes.

Q. Government policy had been enunciated by virtue of a decision of the Government?

A. Yes.

Q. But that's I think that's what you are articulating here?

A. Yes.

Q. I think there may have been some discussion.

Mr. Riordan was saying, "get Andersens to take ownership of the report," and you were pointing out that it wasn't this wasn't just something a consultant could decide, isn't that right?

A. Well, I don't think anything that is, where it says a Minister shall decide in a statute should be handed over to a consultant.

Q. I know that. It went a little bit further here, Mr. McMeel; what you were concerned about here was Government policy?

A. I was concerned about both matters actually.

Q. But you were concerned with ensuring that it was a decision for Government, isn't that right?

A. Well, I was concerned with dealing with Mr. Riordan's point in relation to the ownership of the report. I didn't think it was as simple as handing it over to

Q. Yes. Now, I think you were then asked for your knowledge, direct or indirect, of, or your involvement or the involvement of any other person in any approach made or request made by Mr. Sean McMahon, Mr. Martin

Brennan, Mr. John McQuaid, or any other member of the Project Group to Mr. John Loughrey on or about the 23rd October, 1995, for further time in which to consider the draft evaluation report.

And you have informed the Tribunal, that you have no recollection of having any knowledge of or involvement in this.

You were then asked for your knowledge, direct or indirect, of, or your involvement or the involvement of any other person in any approach made by Mr. Loughrey to the Minister seeking a postponement of the announcement of the result of the evaluation.

And you have informed the Tribunal, that you have no recollection of having any knowledge of or involvement in this.

You were then asked for your understanding of Mr. Loughrey's response to such a request, or approach, and in particular, whether it was your understanding that further time would be available for the Project Group to finalise the evaluation, and the source of your understanding.

And you have informed the Tribunal that you have no recollection of having been aware of this.

You were then asked for your knowledge, direct or indirect, of, or your involvement or the involvement of any other person in the decision made by the Minister on or about the 24th/25th October, 1995, that

the result of the process would be announced on the 25th October, 1995.

And you have informed the Tribunal that you have no recollection of having any knowledge of or involvement in this.

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

And you have informed the Tribunal that you were informed by Martin Brennan that the Minister would meet on the afternoon of the 25th October in connection with the result. "On the 25th October I sent a note to the Minister for Finance outlining the result."

Can you remember how Mr. Brennan communicated with you? Was it by telephone?

A. I presume it was by telephone, because I presume it was by telephone.

Q. We don't see any memo coming across anyway?

A. No. No, I presume I think the basis for me knowing it was Martin Brennan was, I think, on a minute that I sent to the Minister.

Q. I think that's right, yes.

A. I presume it was a telephone call.

Q. I think you were then asked for details of all meetings of the Project Group or any of the members of

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

And then you said that this is a matter for the Department of Public Enterprise.

You were asked for your knowledge, direct or indirect, of, or your involvement or the involvement of any other person in the discussion between Mr. Martin Brennan and Mr. John Loughrey on the 24th/25th October, 1995, whereby Mr. Brennan conveyed to Mr. Loughrey the result of the evaluation process.

And you say that you had no recollection of having any knowledge of or involvement in this.

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

And you say that again: "I refer to my earlier answer, number 34. The amendments referred to in the documents copied to me in many case correct the

English usage; e.g. "unappropriate", or concern the description or write up of the process. They do not affect the outcome of the evaluation which had emerged from the work of the sub-groups. As stated earlier, (see reply to number 28) the trend in the evaluation in terms of the likely outcome was becoming evident from mid-September, 1995, i.e. some six weeks before Mr. Towey's suggested amendments."

You were then asked to provide details of all inquiries, which, to your knowledge, direct or indirect, were conducted either by those officials or by any other persons regarding the conclusion in the document "Suggested Textual Amendments" as follows:

"Having regard to the level of interest in the Irish competition for the GSM licence, and the high profitability of mobile communications generally throughout Europe, that the project is fundamentally robust, and after licence had been awarded, an attractive opportunity for corporate debt financiers.

Together with the precise results of such inquiries, if any."

And you respond: "The statement of the robustness of the project contained in the document "Suggested Textual Amendments" is not dissimilar to the statement to be found in the Department of Finance files which had been copied to the Tribunal record 236 on Section 41/5/93, (part 2) 16th September 1995. Given

the circumstance, including the forecast made by the six applicants and the projections of Telecom Eireann, (including a letter from the CEO - record 212 on S41/5/93), it would have been unreasonable at the time to come to any conclusion, other than that the second mobile phone venture would succeed on the basis outlined in the statement referred to without need for further inquiry. The passage of time has confirmed the forecast is a success. To the best of my knowledge, mobile telephony has achieved a much higher level of penetration in Ireland than even the most optimistic forecasts of 1994/1995.

You were then asked the precise date on which, and time at which, a final decision was made by the Project Group regarding the result of the competition, and the name of each person who was present or was otherwise party to such decision.

And you say that this question "Please refer this question to the Department of Public Enterprise." Is that because you don't know, Mr. McMeel?

A. I consider this to be a question appropriate to the secretariat function of the process, in terms of recording times and so forth.

Q. Can I take it you don't know?

A. I don't know, but I consider it appropriate to the secretariat function.

Q. You then were asked the precise date on which, and

time at which, the evaluation report was approved and/or adopted by the Project Group, and the name of each person present or who was otherwise a party to such approval of adoption. And again your response is the same as to the previous question. And can I take it so that you don't know?

A. I don't know.

Q. You were then asked for your knowledge, direct or indirect, of, or your involvement or the involvement of any other person in discussions between Mr. John Loughrey and the Minister on the 24th/25th October, 1995, whereby Mr. Loughrey informed the Minister of the result of the evaluation process.

And you responded that you have no recollection of having any knowledge of or involvement in this.

I think you were then asked for your role, if any, or your knowledge, direct or indirect, of the role of any other person in the preparation of the following documents:

"A. The recommendation by Mr. Loughrey to the Minister dated 25th October, 1995.

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

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

And your response is: "I have no recollection of having any knowledge of or involvement in this."

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

And your response is, "This question relates to the Department of Transport, Energy and Communications and should be referred to the successor for that Department."

I suppose the one thing you could say is that the Department of Finance didn't have it. To the best of your knowledge?

A. If the Department of Transport, Energy and Communications it would depend. If the of Transport, Energy and Communications had it, we would have had it; if they didn't have it, we wouldn't have had it.

Q. Do you remember having it?

A. I don't remember.

Q. And can I take it, that if you did have it, it would be in the files of the Department of Finance?

A. There were various drafts of the report, what date are

we talking about?

Q. The final one?

A. Well, I see here the date of my version of the report is October 25th, 1995.

Q. Do you know when you got it?

A. I don't know when I got it, but the date on it is October 25th, 1995.

Q. We know that, but do you know when you got it?

A. I don't know when I got it.

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

I think you responded that you have no recollection of having any knowledge of this.

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

And your response is: "My understanding of the composition of the Esat Digifone consortium is per their application as set out in page 10 of the report on the evaluation."

You were then asked for your knowledge, direct or indirect, of, or understanding of the role of the

Cabinet or the Cabinet Subcommittee in the ultimate decision as to the outcome of the evaluation process.

And your response is: "My understanding of the role of the Cabinet Subcommittee in the ultimate decision as to the outcome of the evaluation process was that per Government decision on the 2nd March, 1995, a recommendation be put by the Minister for Transport, Energy and Communications to Government."

I think you were then asked for details of all information provided by you to the Minister regarding the evaluation process during the course of the process, together with details of all communications by you to the Minister, and of all communications by the Minister to you during the course of the process.

And you have informed the Tribunal that: "I provided no information to the Minister for Transport, Energy and Communications, and he did not communicate with me."

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

And you have responded: "I have no recollection of having any knowledge of any dealings, etc., of the Minister for Transport, Energy and Communications with

any member of any consortium or any person associated with any member of any consortium during the evaluation process."

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

And I think your response is: "The files of the Department of Finance indicate that the details arising from the IIU involvement were faxed to the Department on the 13th May, 1996. This arose a long time after the completion of the evaluation process, during the drawing up of the licence by DTEC. It had been envisaged per the evaluation report, page 44 in Appendix 10, that the capitalisation issue around one member of the Esat Digifone consortium be dealt with during the licence negotiations. My understanding was that IIU were institutional investors envisaged per the application, compare page 10 of the report on the evaluation. IIU were to invest and/or underwrite Communicorp's obligation to Esat Digifone up to i_c1/240 million. It is not clear to me that if the IIU involvement had been signalled from the outset, it would have negatively affected the evaluation of the

Esat Digifone application."

You were then asked can I just go back there. Is the first time the Department of Finance were made aware of the IIU involvement was on the 13th May, 1996, as far as you can see from the records?

A. That's what the records indicate, yes.

Q. And the licence was signed off three days later?

A. Yes. I don't know what date the licence was signed, but if you say it was three days later, it was three days later.

Q. And to your knowledge, did Finance have any involvement or were they just being kept informed about this?

A. The fax dispatched to the Department was informing us, but we had no role in it.

Q. I think you were then asked for your knowledge, direct or indirect, of a letter dated 29th September, 1995, from Mr. Michael Walsh of IIU to Mr. Martin Brennan.

And you say you cannot find a copy of the letter on the Department of Finance files. "I have no recollection of having knowledge of the letter."

I think we know this is the underwriting letter that was sent back. This is the letter of the 29th September?

A. I don't even know it was an underwriting letter.

Q. You didn't even know that?

A. No.

Q. You have never seen it?

A. No. I had only heard of this letter by virtue of what's been happening here.

Q. Yes. I think you were then asked for your knowledge, direct or indirect, of, or your involvement or the involvement of any other person in the decision made to return the letter of the 29th September to Mr. Denis O'Brien on the 2nd October, 1995, without retaining a copy of the letter on the Departmental files.

And you have no recollection of having any knowledge of or involvement in this.

You were then asked whether you had any knowledge, direct or indirect, regarding any involvement or interest or any potential involvement or potential interest of IIU Limited or Mr. Dermot Desmond in the Esat Digifone consortium as of the 25th October, 1995.

And you have informed the Tribunal that you have no knowledge of the involvement of IIU, Mr. Dermot Desmond, as of the 25th October, but you refer to the answer 62 above.

You then were asked for your knowledge, direct or indirect, of any dealings between Communicorp, Esat Telecom, Telenor and IIU Limited, Mr. Dermot Desmond, regarding their respective liabilities to subscribe for the capital of Esat Digifone.

And you have responded that you had no knowledge of

dealings between Communicorp, etc., and IIU, etc.

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

And I think you have informed the Tribunal that you first became aware of this in January, 2002. This is when you were dealing with the Tribunal, this Tribunal, is that correct?

A. Yes. Perhaps I was a bit confused about what "beneficially held" meant. I assume that IIU is the name on the share certificate in that situation.

CHAIRMAN: The share certificate

Q. MR. COUGHLAN: What share certificate are you talking about?

A. Well, if somebody has ownership of a company, I presume there is a share certificate, if they have equity in a company. I am just explaining

Q. Well, I am just interested you have raised the issue of share certificate now. What did you know?

A. What did I know of what?

Q. Well, you have been asked a question here, Mr. McMeel.

A. Sorry, could you

Q. I beg your pardon, the date on which and circumstances in which you first became aware that the 20% shareholding in Esat Digifone Limited held by IIU was

to be held beneficially for Mr. Dermot Desmond. And you said you first became aware of this in January, 2002.

A. Yes.

Q. Now, what clarification

A. My clarification is around the word "beneficially".

Q. Right. Well, what do you want to clarify? Were you aware of IIU and not aware of Mr. Dermot Desmond, was that

A. I am just wondering whose name is on the share certificate if you have beneficial ownership?

CHAIRMAN: Well, I think the essence of the question, Mr. McMeel, is that an initial understanding of a possible involvement of Mr. Desmond/IIU as a placer or a broker, and it's laterally transpired that he hadn't that merely professional involvement, but that he was to be a sharer in the equity, in the actual ownership of the consortium. And that's the distinction I think, rather than any question of formal legal documents.

A. Okay.

Q. MR. COUGHLAN: Just to clarify. You weren't aware of Mr. Dermot Desmond?

A. No, I assume that it was IIU owned the 20%, not Mr. Dermot Desmond. I was distinguishing between the company and the shareholder.

Q. I see your point. And you first became aware of IIU's

involvement on the 13th May, 1996?

A. Yes.

Q. And I think the point you are making now is that Mr. Dermot Desmond's personal involvement is something that you became aware of in January of 2002, would that be

A. It's whether it's actually owned by Mr. Desmond or owned by IIU? That was my query.

Q. Well, on the 13th May I just want to be clear you understood it was II?

A. I understood it was IIU, yes.

Q. And you had no knowledge of Mr. Dermot Desmond personally?

A. Well, I think in the documents of the 13th May, I think there is a reference to beneficial ownership, beneficially held or something like that, I seem to recall, but

Q. We'll come and we'll look at the documents and perhaps we can clear it up.

Now, I think you were then asked for details of all previous dealings of yours in both your personal and professional capacity with Mr. Michael Walsh and with Mr. Dermot Desmond.

And you say that you recall one previous encounter with Mr. Michael Walsh when he advised Bord Gais Eireann on the sale and lease-back of the gas interconnector to Scotland, and that was circa late

1993. You had no dealings with Mr. Desmond in either a private or professional capacity, is that right?

You had briefly dealings with Mr. Walsh, would that be right?

A. Yes, brief professional dealings with Mr. Walsh.

Q. I think you were then asked for your knowledge, direct or indirect, of the date on which and the manner in which Minister of the Department was informed by Mr. O'Brien, Communicorp, Esat Telecom and Esat Digifone or any other person on behalf of Communicorp/Esat Telecom did not intend to fund its equity participation in Esat Digifone while drawing on finance to be provided by Advent, but intended to fund its participation by placement through CS First Boston, including details of the precise information provided to the Minister or the Department, and the identity where such information was recorded.

And you had no recollection of having any knowledge of this matter. It wasn't anything you were involved in, in the Department of Finance?

A. No, no.

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

the issue of the licence.

And you have informed the Tribunal, that during the evaluation phase, some research was done at the behest of the Department of Finance in respect of Advent, as it was an investor in Communicorp.

I think you were then asked "for details of all dealings and discussions which Mr. McMeel had with the Minister, with Martin Brennan, with John Loughrey, or with any other person arising out of the involvement of Mr. Dermot Desmond in Esat Digifone Limited."

And you say: "I do not recall having any discussion with Mr. Loughrey or with the Minister for Transport, Energy and Communications. However, documents had been faxed to me about the involvement of IIU, and Martin Brennan may have spoken to me, but I have no recollection of any details. The fact was, that this arose after the evaluation process, that is during the drawing up of the licence which was DTEC's responsibility."

I think you were then asked whether, and to what extent consideration was given to the change in composition of the Esat Digifone consortium to which the licence was issued from the Esat Digifone consortium which won the evaluation process, and if so, the outcome of such a consideration.

And you say, that this is a matter for the Department of Transport, Energy and Communications.

A. Yes.

Q. I think you then respond or you put a number of questions together, isn't that correct?

A. That's correct.

Q. And I'll just run through them fairly quickly.

CHAIRMAN: Yes. I think you could probably summarise them, Mr. Coughlan.

Q. MR. COUGHLAN: I think you were first of all asked for your knowledge of meetings which took place on the 3rd May, 1996. This is perhaps a fairly significant meeting. Attended by Mr. Digerud, Mr. Johansen, Mr. Donoghue, Mr. Michael Walsh, Mr. Connolly, Mr. Owen O'Connell. I don't think you knew about this particular meeting on the 3rd May?

A. No.

Q. That's the first point.

A. Yeah.

Q. I think you were then asked for your knowledge of the request of the Minister or the Department that the configuration of the issue share capital of Esat Digifone should be restored to the capital configuration of the consortium which had applied for the licence, that's the 40:40:20 split, and you knew nothing about that?

A. No, no.

Q. I think you were then asked for your knowledge of a meeting which took place at the Department of the 13th

May this is question 75 attended by Mr. Digerud, Mr. Owen O'Connell. And the purpose of the meeting appears to have been the request made by the Department that Esat Digifone identify key questions likely to be raised at a press conference to announce the issue of the licence, and the request made by the Department that a meeting be arranged between the Minister and Mr. Digerud, together with one or two others at which the press conference could be discussed or rehearsed. I think you knew nothing about this particular meeting, is that right?

A. No.

Q. I think you were then asked for your knowledge of all steps taken by Esat Digifone or other persons associated with Esat Digifone, or by the Department, on foot of the request that key questions be identified and that draft answers be prepared. I think, again, you knew nothing about these matters?

A. No.

Q. I think you were then asked about meetings which occurred on the 14th or the 15th and 16th May, and which were recorded in the attendance of Mr. Owen O'Connell, solicitor for Esat Digifone. And again, can I take it, that you know nothing about these particular meetings?

A. No.

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

the terms on which IIU and/or Telenor provided funding to Esat Telecom to finance its obligations to contribute to the licence fee of 1/215 million paid by Esat Digifone to the Department on the issue of the GSM licence to Esat Digifone, together with the source or sources of these understandings.

And you were asked for your understanding regarding the funding arrangements between IIU, Esat Telecom and Telenor for all aspects of the funding of Esat Digifone Limited, including the source or sources of their understanding.

And again, I take it you knew nothing about these arrangements?

A. No.

Q. There has been evidence that there was contact made with the Department of Finance, I think, regarding the licence fee, and the question was being asked to whom the cheque should be made out, and for same day value.

I think matters of that nature, that would be

A. Yes.

Q. That would have been just a normal contact?

A. Yes, a normal contact. I presume the initial contact was with me, but I may have relayed it to somebody else.

Q. We can understand, and we can understand the need to get same day value.

A. It's a housekeeping issue, it's important. There have

been instances where it has not been achieved.

Q. I think you were then asked to identify documents in the Department in connection with the rights and obligations of the shareholders of Esat Digifone. And you were asked about side letters, which were signed on that day. Again, these are not anything you or the Department of Finance knew anything about or were privy to?

A. No, no.

Q. And I think you make the point that even when Mr. Brennan faxed you information on the 13th, he wasn't seeking any consents from you, and there was no consent necessary from the Minister for Finance either?

A. No, no.

Q. Now, you were then asked for your knowledge, direct or indirect, the consent of the Department of Finance was obtained to the issue of the licence, and if so, when, how and from whom such consents were obtained.

And you have replied: "As I understand it, the legislative position did not require the Minister for Finance to consent to the licence. At that time the statutory arrangements for the regulation of the telecommunications sector in Ireland were being revised, which involved transfer of responsibilities, including for licences from Ministerial level to a new independent regulator. It is not obvious how the

Department of Finance could add value to the licence document, which is essentially a technical telecommunications sector's matter. The consent of the Minister for Finance for the fee was necessary," and you understand that this remains the position in regard to such licences?

A. Yes.

Q. You were then asked for your knowledge, direct or indirect, of, and your role or the role of any other person in advising the Minister regarding the letter of the 29th March, 1996, from the Minister to the Chairman of the ESB. Again, you know nothing about this. This is a DTEC matter?

A. No.

Q. You were asked for your knowledge, direct or indirect, or the role in, or the role of any other person in advising the Minister regarding the Minister's dealings with the European Commission in early May, 1996, regarding the complaint made to the Commission by the Persona consortium, and the application by the consortium for provisional relief restraining the Government from issuing the licence to Esat Digifone. And you have informed the Tribunal, that you had no role in advising the Minister for Transport, Energy and Communications in relation to this complaint. You were copied some documents regarding this matter. It wasn't something you were involved in, was it, or

the Department of Finance?

A. No, no, we had no involvement in that.

Q. And then you were asked about the Minister's, that is the Minister for Transport, Energy and Communications, dealings with Esat Telecom Limited or associated companies of Mr. Denis O'Brien, and you had no dealings with Esat Telecom or any associated companies?

A. No, none.

Q. You were then asked to furnish details of your contacts with certain persons about which the Tribunal has inquired, and this list has been circulated before.

So I think you said that, regarding your contacts with persons about whom the Tribunal has inquired, you have met Mr. Denis O'Brien and Mr. Moloney just once, when they participated in the Esat Digifone presentation for the purpose of the second GSM bid process.

"Each consortium who had applied for the licence made a presentation. I recall one previous professional encounter with Mr. Michael Walsh, when he advised Telecom Eireann (sic) on the transaction for the sale and the"

A. Bord Gais Eireann, sorry

Q. Yes, of course, sorry, the gas interconnection to Scotland, late 1993. You had no dealings with Mr. Desmond, neither of a private nor professional

capacity.

As you were a Department of Finance official dealing with energy and communications matters during the relevant period you would have contacts with some semi-State companies in those sectors, including the ESB and Telecom Eireann, particularly, the latter.

The contacts with Telecom Eireann would have been about matters which were being discussed at the time e.g. dividend policy, mooted strategic alliance, resolution of the Exchequer's liability for pensions for Telecom Eireann staff. You may have had contact with Telecom Eireann's subsidiary ITI in regard to matters associated with Ministerial approval of company borrowings.

I think that's your memorandum.

CHAIRMAN: It's as good a time as any to leave it.

We'll take up the balance of your evidence, which ought not to be inordinately lengthy, Mr. McMeel, if it suits you, on Tuesday morning at eleven o'clock, is that convenient for you?

A. That's convenient, Chairman.

CHAIRMAN: Very good. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 8TH APRIL, 2003, AT 11AM.