

A P P E A R A N C E S

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

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I N D E X

WITNESS: EXAMINATION:Q. NO:

Billy Riordan Mr. Healy 1 - 320

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,
9TH APRIL, 2003 AT 11AM.

CHAIRMAN: As there is a funeral over lunch that I am very anxious to attend, at least in part, I hope it won't inconvenience persons present if I very marginally vary the luncheon adjournment by rising at half past twelve and resuming at ten to two. Thank you.

MR. TRUEICK: Could I make an application I am from Landwells solicitors; my application is to represent this witness here, Billy Riordan, and the forthcoming witness, Donal Buggy, representing them individually. I am representing them along with counsel for the Department. We are sharing counsel, but we have separate solicitors on the basis of not being a civil servant, not being an employee of the Department, and requiring, if you like, independent advice in that respect.

CHAIRMAN: Well, I can certainly see a possible requirement for independent advice, Mr. Trueick, but is there not a potential difficulty of a scenario in fact in which a witness may ultimately be represented potentially on the public purse by two sets of representatives? As you are aware, I think perhaps

from discussions with members of the Tribunal legal team, there have been instances of witnesses of a comparatively substantial nature in the past who have appeared and have had solicitors in attendance in case something that may potentially reflect on that person's reputation or fundamental interests were to transpire. It just seems to me, if I am to immediately accede to a limited representation order, we could have potential problems about who can talk to who, what precisely is the situation.

I certainly don't want to take you short in the matter, but my disposition at the moment is to note your interest and your application to certainly permit you having a watching brief, and if it does transpire that if something were to crop up that perhaps reflects on your client and indeed on the firm to which he was then, I think, employed, I think, according to his statement, paid, subject to his secondment to the Department of Finance if something were to transpire in that regard, of course I'd hear a further application from you.

MR. TRUEICK: Perhaps just for clarification, Chairman, I am only representing the individual. I have no brief here for PwC, his former employer, only the individual, Billy Riordan, and then subsequently Donal Buggy.

CHAIRMAN: Yes. Well, I think that's what I'll do for

the moment, Mr. Trueick. Plainly if something were to transpire that reflected on Mr. Riordan's or Mr. Buggy's competence or character, or something of that sort, a changed situation might then arise; but I think as of now, what I will simply do is note your interest and application, not make any order at this juncture; but if a changed situation were to arise in the course of evidence, I'd give you liberty to apply. I am not shutting any door, but at this moment there seem to be potential pitfalls of making a separate limited representation order.

MR. NESBITT: Mr. Chairman, if I just might say something so it's on the record now, it does seem to me that the concern of the Tribunal may be to avoid duplication of cost, and perhaps that's something that may be able to be dealt with at the end, if it's clear that the work put in by Landwells is work that hasn't duplicated cost and has assisted in the workings of the Tribunal. I just mention that lest sight be lost of that issue.

CHAIRMAN: Yes. I think I had mentioned at a very early stage, when the Tribunal started, long before you were involved, Mr. Nesbitt, that based on the experience of some previous Tribunals, including that, I think, chaired by the former Chief Justice, Mr. Justice Finlay, that on occasions, there were procedural recourses that provided where somebody had

undertaken professional work that necessarily assisted the Tribunal, by way of preparing a statement or something of the like, that fell short of actual representation, provision could, in appropriate cases, be made in that regard. So I'll bear that in mind.

MR. NESBITT: I am much obliged, Mr. Chairman.

MR. HEALY: Mr. Riordan, please.

BILLY RIORDAN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. HEALY:

CHAIRMAN: Thanks, Mr. Riordan. And not to add to the panoply of opening salvos in your appearance, could I just mention a slight personal matter as well as the professional one that we have just discussed.

Although to my knowledge you and I have not met, I think it is the case, as has cropped up on occasions during the Tribunal in previous instances, that your father is related to me relatively distantly through marriage; and obviously, both through that and through his having been a prominent solicitor in Dublin for many years, I am acquainted with him. But I don't see it as a difficulty, and if it isn't for you, we can perhaps just note it and proceed.

A. It's no difficulty for me.

CHAIRMAN: Fine.

Q. MR. HEALY: Thanks, Mr. Riordan.

Do you have a copy of a memorandum of intended evidence? Do you have that?

A. Sorry, that would be this? Yes, I do.

Q. I think you do, yeah.

A. Yeah.

Q. Book 34, Divider 4, I think you have separately, as indeed I do myself. This consists of a pulling together of various questions directed by the Tribunal to you, together with your answers, and I think you have seen it before and approved of it; is that right?

You have seen it before, and you have approved of it?

A. Yes.

Q. And I am going to go through it, maybe leaving out one or two things where clearly you have made it you have made it clear that there is you had no involvement in certain aspects of the matters being examined by the Tribunal. But as we go through it, if there is anything you want to add to any of the answers contained here, please either interrupt me or at the end of the reading out of the memorandum, please make sure to remind me of anything additional; or if you have, as it were, if your memory has been stimulated by anything that has happened over the past few months and it isn't in your memorandum of intended evidence because that was put together earlier, please do not hesitate to draw it to my attention or to the attention of the Chairman.

Now, you start off by saying that your involvement in the second GSM evaluation process and the licence

negotiations with Esat Digifone arose out of your secondment from PricewaterhouseCoopers, PwC, to the Department of Finance. The secondment was for two years, from October of 1994 to September of 1996, and was based on a fee payable by the Department to PwC.

Your broad role within the Department was primarily to provide financial accounting advice across a wide range of issues centred on the State-owned sector.

The range of issues in which you provided accounting input included Aer Lingus, and you mention the issues you advised on, the Cahill Plan, EU inquiries regarding State support, fleet changes, asset disposals, what you call the ESOP scheme, which I don't fully understand.

A. It's an employee share-ownership plan.

Q. Team Aer Lingus financial situation is another issue that you advised on. You also provided accounting input in relation to Telecom Eireann, with reference to the strategic alliance process, depreciation accounting, dividend policy, again a similar employee share-option scheme, and in relation to share capital.

An Post was another semi-state that you dealt with.

You reviewed results, corporate plans, management accounts and statutory accounts. Also an organisation whose acronym is INPC; who is that?

A. The Irish National Petroleum Corporation.

Q. You reviewed results and accounting policies. You

also advised in relation to Government accounting, including consideration as to the appropriateness of accrual accounting in the public sector.

You advised, in relation to Aer Rianta, reviewing corporate plans, and then you have a list of other matters in which you were involved, including a range of entities who included Bord na Mona, Bord Gais, Temple Bar Properties, Housing Finance Agency, RTE, Department for Enterprise and Employment, Department of the Environment.

And you say "During my time with the Department, I reported to primarily to Mr. David Doyle but also worked alongside Mr. Jimmy McMeel, who I shared an office with, and Mr. Fred Cooper. From time to time I would also be asked to discuss financial accounting matters with Department of Finance officials from other votes", as you put it.

"To fully explain the nature of the secondment, it is important to note that I was very much asked to engage in specific matters from a financial accounting point of view within wider projects. In other words, my role was very much task-driven as directed by officials of the Department of Finance. If asked, I would give my advice and views which officials then considered and decided the result and course of action. I was explicitly not an official of the Department and had no decision-making or executive

role. My role was purely that of an adviser. More specifically, my involvement in the second GSM process entailed attending Project Group meetings and dealing with specific financial accounting matters when asked to do so, primarily by Mr. McMeel, who was the Department of Finance representative on the Project Team. Within the Department of Finance, the primary concern was the financial implications of the competition, especially in relation to the licence fee. In most respects, the Department of Finance was quite removed from the project, as it was being led by the Department of Transport, Energy and Communications; therefore, while I frequently accompanied Mr. McMeel of the Department of Finance to meetings, there were large sections of the entire process which I did not have any involvement in or input to whatsoever. Indeed, there would have been many meetings at which I would have had no input and said nothing.

"Finally, I must point out that the narrative I have set out below is based on my recollections of events some six years ago. Put another way, half my working life ago, and in the intervening period, I have had two further employments. I was provided with two leverarch files of documents from the Chief State Solicitor's Office just prior to my meeting with counsel for the Tribunal on 7th February 2002, and the

same set of documents were provided to me for purposes of this reply. This is my best effort at recalling the matters identified, but it is important that the obvious point regarding the time period is always borne in mind".

Can you just clarify one matter for me: What was your level of experience when you took on this job then?

A. When I started in the Department of Finance, I was two years a little over two years out of articles.

Q. Two years fully qualified?

A. Two years fully qualified out of articles. I think I came out of articles in April or May 1992, and I started in the Department in September '94.

Q. And prior to that, you had been presumably

A. An article clerk.

Q. An article clerk, but presumably coming up to the end of your articles, working at a relatively experienced level, if you like, in a firm of accountants; would that be right?

A. I suppose it depends on what you mean by "relatively experienced".

Q. Well, do I not understand, correct me if I am wrong, that in the course of an accountant's training, the training is to a significant extent involves on-the-job work?

A. That's right.

Q. And that the level of work you are asked to involve

yourself in increases in importance as your training goes on?

A. That's correct.

Q. And presumably, the day before your training ends, you are as good as you were the day after, and so on?

A. Yes.

Q. The next two pages deal with your involvement in aspects of the process, or rather the next two pages contain queries regarding your involvement in aspects of the process in the period prior to the I suppose prior to the March, I think, of 1995, when KPMG were becoming involved, when the process was being conceived by Mr. Brennan and other officials in his Department; and unless you want me to go into these matters, I don't propose to mention them.

You had no involvement in getting in touch with Mr. Pye of KPMG, and you had no interaction with him or with KPMG at all in the period leading up to the, if you like, creation of the RFP?

A. That is correct.

Q. You had no involvement in the work which was a combination of Department work, KPMG work, and to some extent even political work, in the generation of the evaluation criteria which ultimately formed part of the Government decision?

A. No.

Q. Now, I think if you go to page 5

A. Which question number is that, please?

Q. This is Question Number 9. I think it's the same pagination as on your document, is it? It is Question Number 9 on page 5.

A. Yeah.

Q. You were asked for your understanding of the RFT, sometimes called the RFP, document, issued by the Department in March of 1995, and in particular, paragraphs 3, 9 and 19. And they were set out in the query.

And your response is "I had no involvement in the process up to the stage the RFP document was issued.

The project was very much led by the Department of Trade, Enterprise and Communications rather than the Department of Finance. Apart from the inclusion of parameters in relation to the licence fee, to my knowledge, the Department of Finance had no input.

Furthermore, while I would have been generally aware of the issue, officials dealt with all aspects of the matter of the licence fee on behalf of the Department of Finance. However, my broad understanding of the RFP document was that it set out the terms on which bidders could make submissions, the nature of the process, and the information which would be required in relation to the particular paragraphs raised.

"In relation to paragraph 3, paragraph 3 is as follows.

"Applicants must give full ownership details for proposed licensee and will be expected to deal with the matters referred to in the following paragraphs in their submissions."

And your response in relation to that paragraph is "I understood that this was a broad requirement, that applicants were required to set out a number of specific matters in their proposal, including ownership of the bidding consortium".

Next you were asked about paragraph 9, which is as follows: "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 a complete technical proposal" and so on.

And your response is: "I understood that this was part of the requirements of the bidding consortia, and in particular, that DTEC wanted to be satisfied that the wherewithal to complete the project was available within the consortium."

In relation to paragraph 19 and I don't think we need to quote that at this stage unless you want me to go through it for you to refresh your memory.

A. No, I think it's fine.

Q. You say "I understood that this paragraph gave potential bidders a clear indication of what the key criteria to be examined would be. I understood that

this was necessary in order to make sure that the bidders were aware of what the critical elements of the proposals should be and the relevant importance."

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

And your response is "My understanding of the protocol adopted by the Project Group at its meeting on the 6th March 1995 for dealings with potential bidders during the tender process and which protocol was notified to me by memo dated 6th March 1995 from Mr. Brennan, bearing in mind that all civil servants are bound by duties of confidentiality, was that the need for confidentiality and transparency was very important and clearly understood. Protocol did not appear to me to be unusual or onerous, especially as confidentiality is a cornerstone of my professional training, and I had signed the Official Secrets Act on being assigned to the Department".

You were then asked a question about your involvement in the role of the appointment of Andersen Management, and you said you had no role in that.

Then you were asked the following question: for your precise understanding as to the services to be rendered by Andersen Consulting and the precise terms of their brief.

And you said: "Given my role, I had no detailed understanding as to the services to be rendered by Andersen Consulting or the precise terms of their brief. My understanding is that engagement of Andersen Consulting was handled by DTEC in every respect".

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 weights which were attached to the evaluation criteria.

And you say, "To my recollection, the weightings which were attached to the evaluation criteria were set by personnel from DTEC and Andersen with input from Mr. McMeel of the Department of Finance only in relation to the specific instance of the licence fee criterion."

You were then asked for your knowledge of the manner in which the weightings were devised, and again you say "I have no knowledge nor recollection of the manner in which the weightings were devised. As I recall, they were developed by DTEC in conjunction with AMI and brought forward to the project meetings for approval. It is important to emphasise that I was

an attendee at the Project Team meetings to provide expertise and comment as required but did not contribute as a deliberative member".

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

And you say "I became aware of the weightings as they were brought forward to Project Team meetings for ratification by the Project Team. From memory, I think there were a number of such meetings in March and June of 1995 at which the weightings were discussed".

You were 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 say "To my knowledge, direct or indirect, the only persons who were informed or otherwise aware of the weightings were the people who attended the Project Team meetings, and the source of their knowledge was the presentation of the proposed weightings to the meetings by members of DTEC and AMI".

You were asked for details of all steps taken by the Project Group to protect the confidentiality of the weightings. And you say "The entire process was conducted with a high degree of confidentiality which have been several times stressed by the Project Group leader, Mr. Brennan. From memory, the level of

documentation that members removed from the Project Group meetings was minimal, and it was stressed that any such documentation should be kept under lock and key. I also recall that much of the documentation produced by AMI had the name of the person to whom it was given in grayed-out background print on every page. As previously stated, such confidentiality requirements are second nature to me, and I recall that the whole issue of confidentiality was treated very seriously by DTEC in running the project."

You were asked for your role in and your knowledge, direct or indirect, of the intervention of the EU Commission in connection with the capping of the licence fee and the reweighting of the evaluation criteria. And your response is: "I have no involvement, direct or indirect, or knowledge of the intervention of the European Commission apart from an awareness that the officials were engaged in the resolution of the matter through attendance at Project Group meetings. As previously stated, the licence fee was the primary concern of the Department of Finance at this stage, but as the issue had no requirement for accountancy expertise, I was not requested to become involved and as a result had no involvement.

Therefore, apart from the attendance at Project Group meetings, I had no knowledge of how it was resolved or how the fee was capped at 15 million. I recall from

memory, rather than any documents I have seen, that once the matter was resolved, the Project Group agreed to reweight the evaluation criteria on the basis that it was expected that most applicants would tender the maximum fee. From memory, DTEC and the Department of Finance officials agreed on this approach, and it came forward to the Project Group for approval. Again, it was a matter in which I had no personal involvement."

You were asked about your involvement in the suspension of the process, and you say you had no involvement in it.

Question Number 20, you were asked for your understanding of the evaluation model adopted by the Project Group and in particular,

"a) the qualitative and quantitative approaches.

"b) what these approaches entailed.

"c) the distinction between the quantitative and qualitative approaches".

A. Sorry, excuse me, I don't seem to have page 11 in this file.

Q. I see. I'll get you one. That's your own set of documents, but I'll get you one in any case.

A. I have it, I think.

(Document handed to witness.)

Q. As you can see, I passed over Question 19, because I don't think we knew from the previous question you had no involvement in that.

And I will just repeat Question 20 again, for your benefit. You were asked about your understanding of the evaluation model adopted by the Project Group and in particular,

"a) the qualitative and quantitative approaches.

"b) what these approaches entailed.

"c) the distinction between the quantitative and qualitative approaches".

And your response is: "I understood that the evaluation model developed by AMI and adopted by the Project Group was a holistic approach involving a purely mathematical quantitative approach based on certain criteria and a qualitative approach based on the judgement of each proposal over a range of criteria within each of the major evaluation criteria.

The difference between the two approaches was that the quantitative evaluation would automatically come up with a model through a straightforward plug-in of certain facts to a model. The qualitative approach would be the more judgmental exercise, which would take a number of iterations and would ensure that the evaluation was in fact holistic. Put another way: I understood that the quantitative approach would be used to give some early indication of the relative performance of the applicants, but that the complete picture would be derived principally through the qualitative evaluation. However, it is important"

CHAIRMAN: I think there is one tiny slip, Mr. Healy, about the second sentence, that I think what perhaps it should have read from Mr. Riordan's statement was that the quantitative evaluation would automatically come up with a result rather than a model, it then referred to. It's not of great moment.

MR. HEALY: All right.

Q. "However, it is important to emphasise that my role within the Department of Finance was to provide financial accountancy expertise as required by the Department of Finance. Therefore, given that DTEC were running the project and that with the extensive advice of the expert consultants they had engaged, AMI, they had designed the evaluation model, I had no input. The evaluation process came forward to the Project Group for approval, and unless I was asked for specific comment, the officials were the appropriate individuals to decide if it was suitable from the point of view of the Department of Finance. The understanding that I have described in the previous paragraph is my memory of an impression I formed, and therefore could be a misapprehension on my part." You were next asked for details of your involvement in any of the sub-groups which conducted the qualitative evaluation. If you were so involved, you were asked for details of the sub-groups of which you were a member and details of the precise manner in which the

sub-groups evaluated the entrants.

And you say "I attended the sub-groups which conducted the review of the performance guarantees and the financial evaluation. My involvement in the performance guarantee sub-group was minimal, as this was led by DTEC officials and did not require much financial expertise. As I recall, I attended the evaluation but had no input. My attendance at the financial evaluation was more involved in a very specific respect. As Mr. Donal Buggy was on leave from DTEC, I attended some discussions with officials and members of AMI at the outset of the financial evaluation in relation to how the evaluation should be conducted and the initial assessment. However, during the early stages of the evaluation process, it emerged that the financial tables which were to be used to calculate some of the financial scores within the qualitative evaluation contained a number of inconsistencies. These required some accountancy expertise to resolve, and as a result, I produced a memo for AMI, dated 15th September, informing them of the approach I suggested to resolving the inconsistencies. AMI then made the amendments to the extent that they agreed with my suggestions and incorporated the numerical scoring element into the qualitative financial evaluation.

"I recall formally confirming at a Project Group

meeting that AMI had completely satisfied themselves that the tables were, following amendment by AMI, a reasonable and fair basis on which to conduct the evaluation, and this is clearly minuted in the notes of the Project Group.

"AMI then came forward with the financial scoring of the applications based on the qualitative criteria in a draft financial section of their report which was reviewed by myself and Mr. Donal Buggy for reasonableness. Any comments we had would have been passed on to AMI for them to consider in finalising the draft. The financial evaluation also included an evaluation of the financial strength of the bidders.

This was conducted by AMI on the basis of the information included in the applications, background research and their knowledge of the telecommunications sector. After a number of iterations, AMI prepared a draft financial evaluation section of their report setting out the findings, and this was reviewed by myself and Mr. Donal Buggy. I recall myself and Mr. Buggy reviewing the drafts of the finance section of the AMI report and concluding that they appeared to be reasonable assessments, including the identification by AMI of weaker consortia members within each application and how this would impact on the overall financial strength of the bid. Again, any comments we had were passed on to AMI for them to consider in

finalising the draft.

"In summary, the financial group meetings which I attended involved effort to resolve the difficulties in the formatting of the tables and some initial evaluation. However, because of the issues with the format of the tables, the initial evaluation was not progressed. AMI could not conclude the evaluation until the amendment to the formatting was done. The way things finally worked, AMI resolved the difficulties with the table format in order to improve the comparability of the various tenders during and after a meeting on the 19th, 20th September, 1995, and came forward with a draft evaluation on the 27th September of 1995. The interval between the 20th and the 27th September was the time AMI spent reformatting the tables, carrying out the scoring, and drafting the relevant sections of the report. This was a very busy time in the Department of Finance. Telecoms strategic alliance and task force" I take it you are referring to the fact that you were involved in those issues?

A. Yes, indeed.

Q. And "I had no input in this interval. On receipt of the draft scorings, myself and Mr. Donal Buggy reviewed it for reasonableness and made any comment we had to AMI".

You were then asked for your knowledge, direct or

indirect, of the progress of the actual evaluation process, to include the source of such knowledge and in particular, but not exclusively, in relation to the following: The outcome of the quantitative evaluation. That's the first item.

Secondly, the difficulties encountered in scoring certain indicators in the course of the quantitative evaluation.

Thirdly, the decision that the qualitative evaluation should be decisive and should take in precedence to the quantitative evaluation.

Fourthly, the decision not to score the "other aspects", and in particular, the indicators of credibility and sensitivities.

And your answer is: "My knowledge of the progress of the evaluation process, direct or indirect, was purely through the Project Group meetings, with the exception of the qualitative financial evaluation, where I was more involved as set out above. I do recall the quantitative evaluation coming forward to the Project Group, but I do not recall the difficulties in scoring certain indicators, apart from the issues with the financial table formatting which I have already referred to. I do not recall how it was decided that the qualitative evaluation should be decisive and should take precedence to the quantitative evaluation.

Furthermore, I do not recall the issues surrounding

the decision not to score the "other aspects" and in particular, the indicators of credibility and sensitivities. As previously stated, it is important to note that my role throughout my secondment to the Department was limited to the provision of relevant expertise as required, and therefore I had no input to the overall running of the process.

"I would have considered it outside my terms of reference to get involved in these types of policy-type decisions, which were very much for the officials within DTEC and the Department of Finance."

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

And your response is: "I was not kept informed of the trends and/or ranking emerging from the evaluation process. The only information I had on trends and/or ranking was through attendance at the Project Group meeting at which AMI produced the first draft of their report. I was not aware of any trends during the specific work I carried out on the financial evaluation. Furthermore, I recall that the applications were referenced A1, A2, A3, A4, A5 and A6

by AMI in the evaluation" I suppose that should be "process" "in order to limit the ability to identify how the applicants were performing. Finally, the size of the qualitative evaluation exercise and the fact that it took place within a number of sub-groups in which I had no involvement meant that it was impossible for me to identify the emerging trends on the evaluation. It is also important to note that I had several other projects on at the same time including, as I recall, work on Telecom Eireann's business plan for the strategic alliance on the task force in relation to the semi-state sector which had been set up by the Minister for Transport, Energy and Communications. Therefore, I was focused only on attending the Project Group meetings and the aspects of the GSM project which I had been specifically asked to undertake."

You were then asked to provide full details of the following:

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

And you say "I do not recall any questions being raised in the course of the Esat Digifone presentation on the 12th September regarding the financing of the Esat Digifone consortium."

A. Obviously sorry, just to interrupt you, I now have seen transcripts of the presentations, so now I now know what questions were asked at that.

Q. And you would have been asking questions at that?

A. Yes.

Q. We'll come to those in due course.

A. Yeah.

Q. You were asked for 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.

And you say "I do not recall any queries raised by the Department in the course of the presentation addressed to the funding of Communicorp's equity participation in Esat Digifone."

Again, you might wish to qualify that in light of new information. We'll come back to that.

CHAIRMAN: It's probably fairer if you skip that entire question, Mr. Healy, because if the witness hadn't had sight of the tapes which I think probably, at the time of your statement, they were still believed to be mislaid.

A. Yeah, except for the very last point, where I did say it's based on my memory of events seven years ago.

Q. MR. HEALY: Did you have any access to your own notes in preparing these responses, your own documents?

A. No, not this first response.

Q. I see.

A. I think I was subsequently provided with my own notes for the second for the further responses.

Q. I see.

In Question 25, you were asked to indicate 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 IRi₂30 million facility to Communicorp by Advent International referred to in the letter of the 10th July.

And you say, "I do not know if the Department requested the Esat Digifone consortium at any time prior to October of 1995 to provide the Department with a copy of the offer of 30 million facility to Communicorp by Advent International referred to in the letter of the 10th July."

The next question is related to the same thing, and you know nothing about it, you say.

And finally you say "To my knowledge, I never saw such a letter or any extract from it."

Question 26, you were 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 any such analysis.

You say "I have no recollection of any supplementary analysis being conducted in respect of Advent,

Communicorp and Sigma apart from some research into the background of Advent and Sigma. As I recall, some Companies Office information, along with some other publicly available data, was sourced by the Department and forwarded to Andersen Management International, who conducted the supplementary analysis."

A. Sorry, just to say I also see from my files that I did source some press cuttings from PriceWaterhouse's library in relation to Advent, but I wasn't aware of that at this time.

Q. I think you relayed a query through PriceWaterhouse to another, to other to Price Waterhouse's American offices; would that be right?

A. Well, to the library, and I think the library just fished off some press cuttings, etc.

Q. I see. I think they sent you back an amount of material, didn't they?

A. They did.

Q. I think it wasn't just press cuttings. I might want to have a look at it again; I think it was some material from directories and things like that?

A. Perhaps it was. Maybe it was.

Q. You were asked for your input, if any, in the draft tables of the quantitative evaluation dated 20th September, 1995, and you say "As I recall, the only input I had to the quantitative evaluation was in relation to the mandatory tables used in the financial

evaluation. Such input was indirect, in that it was through the memo I prepared dated 15th September, 1995."

You were asked for your input and role in relation to the document dated 27th September and headed "Qualitative Evaluation of Applications, Dimension: Finance". That should read 27th September, and I think you have corrected it in your answer in any case.

"I do not recall a document dated 27th December, headed 'Qualitative Evaluation of Applications, Dimension: Finance'". However, you say there was a document produced by AMI around 27th September, "produced in the lever-arch files provided to me, to which I am assuming the matter refers. My input and role in relation to this document is as stated under matter 19, I attended some initial discussions in relation to the financial evaluation and provided a memo containing suggestions to AMI regarding amendments to be made to the table formatting.

"AMI considered my memo and then amended the table formatting as they saw necessary. They then prepared scorings, and these were, I recall, set out in the AMI draft document called 'Qualitative Evaluation of Applications, Dimension: Finance', which myself and Mr. Donal Buggy reviewed again included in the lever-arches provided. I recall that officials from

DTEC were also involved in the discussions and review of this section of the AMI report".

You were asked for details of you were then asked for details how the figure for IRR at 18.12% in the document headed "GSM2 bid process business plans review of financial information company Esat Digifone" can be reconciled with a figure of 12% for IRR inserted for Esat Digifone in the draft quantitative evaluation report dated 30th August, 1995, and the figure of 12.2% for IRR in the supplementary analysis dated 6th October, 1995. You were asked for details of precisely how this figure was recalculated on "common assumptions" with the result that IRR for A5 was reduced from 18.2% to 10.6%.

And you say "The three documents referred to in the question were I believe each prepared by Andersen Management International, and the figures referred to were sourced and/or calculated by them. Therefore Andersen Management are the people to ask. I was not asked to check or reconcile the various iterations of the financial figures. It was not for me to check the detailed workings of Andersen Management International, as it was their responsibility.

"It is for this reason that I raise the matter of Andersen Management International giving their assurances in relation to the financial tables.

However, as I recall, given the fact that Andersen

Management reformatted the tables, I do not find it surprising to see the numbers change between iterations."

You were asked to provide a full overview of your understanding of the evaluation of financial aspects of the applicants. You say "I was involved in the financial evaluation for a limited period when Mr. Donal Buggy, accountant on temporary assignment from PwC to DTEC, was on annual leave for three weeks in the first half of September 1995. Up to that point I had very limited involvement in the entire process. I also had no involvement after 23rd/24th October 1995. I think it is worth making my role in the financial evaluation very clear. The financial evaluation was led and conducted by personnel from AMI. My input was in the form of assisting Mr. Fintan Towey from DTEC at meetings to discuss the evaluation. I was deputising for Mr. Donal Buggy, who was on leave".

You were also involved in providing, as requested and directed by officials, some input as to what criteria AMI might use in carrying out their evaluation. You were also involved in reviewing, again as requested and directed by officials along with Mr. Donal Buggy, the financial evaluation methodology which was applied by Andersen Management International. And you were also involved in providing, again as requested by officials, some views as to how the formatting

difficulties with the mandatory tables might be addressed by Andersen Management International in their evaluation.

"I provided this input when asked to do so by Department officials or Andersen Management International. I want to be absolutely clear that I did not lead or even participate in the financial evaluation. This was done by Andersen Management International, who were engaged by the Department of Transport, Energy and Communications as experts in evaluating mobile licence competitions. From a number of questions asked of me at our last meeting, counsel for the Tribunal appears, perhaps, to somewhat misunderstand the position, attributing a more involved role to me than was in fact the case; therefore, detailed questions in relation to the conduct of the financial evaluation should be addressed to AMI. My understanding is that the evaluation of the financial aspects was as follows:

"First, financial key figures was one of the dimensions within the first of the evaluation criteria set out in paragraph 19 of the RFP document.

"Second, Andersen Management identified two major aspects within the dimension: solvency and IRR.

These two major aspects were scored by Andersen Management as part of the quantitative evaluation.

These aspects were scored in the quantitative

valuation on bases which had been proposed by Andersen Management International in consultation with the Project Team before the applications were received.

The first attempt at the qualitative financial evaluation took place on the 6th September, 1995.

However, as there were problems with the mandatory tables, the evaluation was not concluded. It was agreed that the tables should be checked by Andersen Management. The discussion also considered how the financial evaluation should be done in principle.

This meeting was attended by Mr. Fintan Towey, myself and Andersen Management personnel. At that meeting four categories were identified by Andersen Management

for evaluation: solvency, financing, profitability and sensitivity. The principals behind the indicators were discussed in some detail at the meeting on September 6th referred to above, and initial scoring for indicators was discussed. However, there was a lot of additional work to be done by Andersen

International on the evaluation, including further consideration of the indicators and further work on the specific scoring approach behind the indicators.

"During this meeting, my input consisted of comments on the types of sub-indicators which Andersen Management might use in their evaluation, rather than the actual evaluation process. A typed file note of the discussion is at the back of Tab 4 of my notes.

As I recall, Andersen Management further considered the financial evaluation at a meeting which did I not attend, on the 13th September, and produced their first draft financial evaluation as a result. This evaluation contained the specific scoring approach behind several of the indicators". And you say "A copy is included in my notes at Tab 4."

"In a note dated 15th September, I suggested to Andersen Management some format changes which might be made to the tables in order to enhance their usefulness for comparison purposes." And you refer to the note on pages 257 to 260 of Book 1 of the documents extracted from the Department of Transport, Energy and Communications documents.

"Andersen Management considered my suggestions and then produced revised financial numbers as appropriate. A further financial sub-group meeting took place on the 19th September, although, as I recall, Andersen Management had not yet concluded their reformatting and checking of the numbers. As I recall, a revised draft financial evaluation was not available, and therefore this session did not further the process. However, I believe that further discussion of the indicators took place on this occasion, and Andersen Management proceeded to finalise the indicators they were to use in completing the evaluation. I do not recall the detail of these

discussions."

"On the 27th September, 1995, Andersen Management produced their second draft financial evaluation. As requested by Department officials, Mr. Donal Buggy and I then reviewed the second draft financial evaluation, dated 27th September, from the standpoint of satisfying ourselves that the methodology discussed had been followed. Again, as requested by officials, Mr. Buggy and I also reviewed the finance section of the draft Andersen report dated 9th October and provided observations by fax. A copy of this fax is included in my notes in Tab 4."

I suppose you mean dated 3rd October there, I think.

We'll come to it at a later point.

A. I think you are right, I think it would have been the 3rd.

Q. "Regrettably I cannot assist the Tribunal in explaining the interaction of the final award of marks in Table 14 with the quantitative evaluation. Again I stress that I did not participate in the process of awarding marks; however, I would be surprised if Andersen Management International, as architects and operators of the process, could not provide a satisfactory answer to this question.

"At the risk of repeating myself, I should point out that these events took place almost seven years ago, and I lost contact from the entire process about that

time, being involved in many other project and indeed career changes."

You were then asked for "details of consideration, if any, given to conducting supplementary analyses on financial aspects other than IRR, and in particular whether any consideration was given to conducting further analyses on the perceived financial frailty of the Esat Digifone consortium and the Persona consortium."

You say "I do not know whether or not any consideration was given to conducting supplementary analysis on financial aspects in addition to internal rate of return. Indeed, I do not recall the consideration to carry out supplementary analysis on internal rate of return. I do not know whether any consideration was given to conducting further analysis on the perceived financial frailty of the Esat or Persona consortiums, other than what is contained, other than what is set out in Appendix 10 of the Andersen report. In relation to Appendix 10, I do not know what gave rise to the consideration of the financial risks".

You were asked for the date or approximate date on which and the person by whom you were informed of the final result of the evaluation process.

And you say "As far as I recall, I was informed of the final result of the evaluation process at the Project

Group meeting on the 23rd October, 1995. From memory, I, along with other members of the Project Group, was informed of the result by Mr. Martin Brennan at that meeting".

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

You say "As far as I recall, I did not receive a copy of the first draft evaluation report but saw a copy at the meeting on the 9th October, 1995. I did not retain a copy of the report after the meeting."

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

And you say "I do not know the identity of all persons to whom access was given". You repeat the first time you saw it was at the meeting of the 9th.

I think again we can pass over the next question, because effectively you have already answered it.

You were then asked for details of your views regarding the draft evaluation report, together with details of your understanding of the contents of the report, and in particular, the following:

"a) the manner in which the issue of financial

capability had been addressed, and in

particular"

A. Sorry; once again, I don't have page 26. I am sorry.

Q. All right.

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

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

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

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

"D. The overall manner in which the material was presented.

You say "Within my secondment to the Department of Finance, I had a very specific role as set out previously, and therefore in all of my work addressed only those specific matters which I was asked to address.

"My views of the draft AMI evaluation report were therefore very much focused on the financial section.

On reading the drafts produced by AMI, I concluded

that the report appeared to be a reasonable evaluation of the financial capability. As I recall, in their draft report, AMI dealt with the financial capability of all applicants through consideration of each of the individual bidding consortia members and their ability to carry through to carry the project through to completion. As I recall, AMI concluded that the Esat Digifone application had the financial strength of Telenor to sustain the consortium. Similarly, Persona had Motorola, and Irish Mobicall had Deutsche Telecom, Tele Danmark and SBC as financially strong members of their consortium.

"The manner in which the 'other aspects' of the consortia had been addressed, i.e. the indicators of credibility and sensitivities, was not an area which I was involved, and therefore I did not form an understanding. I am not aware of any qualifications or reservations expressed by Andersen Consulting regarding the top three entrants. I recall reviewing the overall report and passing specific common-sense comments to Mr. McMeel regarding context, wording and phraseology in relation to some draft sections of the report. It was at the time apparent that the report was written by non-native English speakers. Apart from that, I formed no views on the overall manner in which the material was presented."

I think you have already answered the next question.

Question 38, on page 28, you were asked for details of all matters discussed and raised at the Project Group meeting on the 9th October, 1995, and including in particular the following:

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

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

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

"D. The request made by certain members of the Project Group that it was necessary to revisit the qualitative evaluation.

"E. The request made by certain members of the group that consideration should be given to the appropriateness of awarding the licence to Esat Digifone, having regard to the Department's experience of Esat Digifone.

And your answer is: "As I recall, the meeting on the 9th October, 1995, was a lengthy session at which the draft AMI report was considered. I do not have a great recollection of the meeting, and while I have seen the minutes of the meeting, in particular, I do

not recall any statement made by Mr. Brennan in relation to the Minister's state of knowledge regarding the outcome of the competition. I do not remember Mr. Brennan making a statement" sorry, "I do remember Mr. Brennan making a statement at some stage in the process regarding the Minister's state of knowledge, but I do not recall when that statement was made or what the substance of that statement was. Any statements made by Mr. Brennan regarding" I am sorry, I'll have to repeat what you said earlier "I do not recall any statements made by Mr. Brennan regarding the Minister's views of the draft evaluation report and/or the approach which should be adopted in drafting the final report".

You say "I do not recall any request made by members of the Project Group that further time was required to consider the results. I do not recall any requests made by members of the Project Group that it was necessary to revisit the qualitative evaluation".

And you say do you not recall any requests made by members of the group that consideration should be given to the appropriateness of awarding the licence to Esat Digifone, having regard to the Department's experience of Esat Telecom.

You say "Again I should emphasise that given the specific reasons for my involvement in the entire process, I was very much focused on the matters which

were relevant to my role. I was very strictly of the view of the types of particular matters referred to above were for consideration by the officials and well beyond my brief as an accountant within the Department of Finance. It would have been inappropriate for me to participate in any discussion of such matters at the Project Group."

You were asked for your understanding as to the status of the evaluation following the Project Group meeting on the 9th October, 1995, and in particular, the steps to be taken in progressing the evaluation.

And you say "My recollection of the status of the evaluation following the Project Group meeting on the 9th October was that DTEC would finalise the AMI report with AMI and come forward with updated drafts for comment. In my role I passed any comments to Mr. McMeel of the Department of Finance for his consideration."

You were then asked whether you received or were otherwise aware, directly or indirectly, of the handwritten notes made by Mr. McMahan and a copy of the minutes of the meeting of the 9th October. You were asked whether the contents of the handwritten notes were raised at any subsequent meeting of the Project Group or were otherwise discussed, and if so, when, and the name of each person present and each person involved.

And you were asked for your knowledge, direct or indirect, of the subsequent meetings referred to in the handwritten notes made by Mr. McMahon, including the date of each such meeting, and so on.

And you say "I did not receive nor was I aware, directly or indirectly, of the handwritten notes made by Sean McMahon on a copy of the minutes dated 17th October at the meeting of the 9th October. I was not aware of the contents of the handwritten notes". You say it was the first time you have heard any reference to these notes.

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

You say "I had no knowledge, direct or indirect, or involvement or knowledge of the involvement of any other person in the decision made to accelerate the date on which the result of the competition was announced by the Minister. Again, this type of matter was entirely for the officials who were responsible for policy."

I don't think you were able to throw any light on the next question.

Question 43, you were asked whether you could recall the source of the term "bankability" written by you in

the margin on page 44 of the final draft version of the evaluation report dated 18th October, 1995.

And you say "I looked again at page 44 and cannot shed any further light on the annotations, and in particular, in relation to the term 'bankability'".

You were asked to

A. Just to say, sorry, I don't know whether you want me to take this now. I now, having seen Martin Brennan's testimony of I think it was Day 175, I see that Martin Brennan had at one stage discussed the issue of bankability with Sean Fitzgerald. So now, what I believe, although cannot be a thousand percent sure, what I believe what must have happened is that is whether the issue that's through the route which the issue came to the Project Team.

Q. Do you mean that you think he discussed it with Sean Fitzgerald and then he discussed it with you?

A. I think it was then raised at a Project Team meeting, and I made a note of it.

Q. I see. And do you mean that at the Project Group meeting, you were told that Mr. Fitzgerald has made this point, is it?

A. No, I believe that's when the whole notion of bankability was raised.

Q. I see.

A. I am surmising somewhat from having seen Martin Brennan's evidence.

Q. I see.

A. You will recall that I had no recollection up to that.

Q. Yes.

You were asked to provide the following information regarding handwritten notes prepared by you in respect of your observations on the draft evaluation report of the 18th October, I think it says here, received on the 19th.

Firstly, as to the circumstances in which the document was generated, and you say "As I recall, the handwritten notes were generated by me during a meeting to discuss a draft of the Andersen report." And that's a meeting with that's not a meeting of the Project Group; is that right?

A. I am sorry, say again, please?

Q. Looking at your answer to Query Number 1, just to put this into context, what is being referred to here is a whole series of handwritten notes you put on the second draft evaluation report.

A. Which would have been the draft dated the 18th, would it?

Q. Correct.

A. Yes, okay.

Q. And you say "As I recall, the handwritten notes were generated by me during a meeting to discuss a draft of the Andersen report." It's just where was that meeting? Do you know?

A. I believe that was I am pretty sure it was a

Project Team meeting.

Q. And it wasn't a private meeting in the Department of

Finance with Mr. McMeel or a meeting with Mr. Buggy?

A. No.

Q. A fellow accountant?

A. No.

Q. It was during

A. During a Project Team meeting, and I believe that in

several instances, the notes that I have made on

various iterations of the report or other documents

actually reflect not necessarily my own views but

views that were aired at such meetings.

Q. Well

A. I am in the habit of making notes on documents.

Q. I am not going to hold to you that at this point.

Certainly you might want to think about it, because it

seems to me the only Project Group meeting at which

that could have happened would have been the 23rd

October.

A. That's correct, I think.

Q. That's a long report.

A. Yes, it is.

Q. Would you only have received the report at the Project

Group meeting, do you think, or would you have

received it in advance?

A. I don't know.

Q. I see.

You were asked how the issues referred to in the document arose, and you say "At that meeting, I noted that the draft report contained some references to the report being jointly prepared by Andersen and the Project Team. While it was probably not within my remit as a financial adviser, I recall I was strongly of the view that the report should be prepared by Andersen Management International. As stated in the note, I felt that the Project Team should provide comment or feedback, and if Andersen Management agreed with the points made, they should take them on board. I was of the view that Andersen Management should take ownership of the report, and this is reflected in the final report."

You were asked about the persons or person to whom the document was addressed, and I think what that refers to is the persons or person to whom the notes were addressed. And you say "I wrote the notes during the meeting as a private communication for Jimmy McMeel to read and consider at that meeting. It is important to note that as an adviser to the Department of Finance on temporary assignment from PwC, I frequently put forward views to Mr. McMeel for his consideration. It was up to Mr. McMeel to decide if the views were relevant or appropriate to the specific occasion.

After the meeting, I filed the notes. I do not

believe the notes were read by anyone else at that stage".

You were asked for the response of such person or persons to the contents of the notes.

And you say "I do not recall what Mr. McMeel's reaction to my notes was".

You were asked for full details of your knowledge, direct or indirect, of all issues which arose regarding amendments proposed by the Project Group to the drafts of the Andersen report, the perspective involved, and how such issues were resolved.

And you say "Apart from the matters of the ownership of the Andersen Management report, which I was reminded of by the above-mentioned notes, I do not recall any specific amendments proposed by the Project Group to the drafts of the Andersen report. As I have stated in my response to the previous questionnaire, I was limited in my areas of attention, indeed my observations on the ownership of the report as contained in my handwritten notes was, I believe, my only observation outside the pure financial numbers area during my involvement in the process".

You were 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. McMahan, Mr. Brennan, Mr. McQuaid, or any other member of the Project Group, to Mr. Loughrey on or about the

23rd October, 1995, for further time in which to consider the draft evaluation report.

And you say "I had no knowledge, direct or indirect, or involvement or knowledge of the involvement of any other person in any approach made by Mr. Sean McMahon, Mr. Martin Brennan, Mr. McQuaid or any other member of the Project Group to Mr. Loughrey on or about the 23rd October 1995 for further time in which to consider the draft evaluation report".

And you say "Again I should say that this question is the first time I have ever heard of such matters".

You were asked for your knowledge, direct or indirect, of the involvement of any other person in any approach made to Mr. Loughrey. And again you say you had no knowledge, and that the question is the first intimation you have had of any such approach.

You were asked for your understanding of Mr. Loughrey's response to such request, 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 say "As I had no knowledge of the request or approach to Mr. Loughrey, I similarly had no knowledge of the response. In addition, I had no knowledge as to whether further time would be available for the Project Group. The time line for the project was

managed by officials of DTEC."

A. Sorry, could I just have a quick word with Mr. Trueick? Sorry, excuse me.

Q. Have you got a problem with that question?

A. No, it's nothing to do with the question, it's just no.

Q. You were asked for details of your knowledge, direct or indirect, of all consideration given by the Project Group or by any member of the Project Group or by any other person, whether in conjunction with Andersen Management or otherwise, to the qualifications proposed by Andersen on the financial capability of Esat Digifone and Persona as set out in the evaluation report and appendices, and in particular, page 44 of the report and Appendices 9 and 10.

And you say "From my recollection, the comments made by Andersen Management on the financial capability of Esat Digifone and Persona as set out in the evaluation report were considered by the Project Group at the Project Group meetings which considered the drafts of the report. As I recall, any input from officials was to be reflected in the drafting of the final report, which was handled by Mr. Brennan and Mr. Towey.

Again, from recollection, I do not recall the comments from Andersen Management as being considered by Department officials as qualifications of their report. As I recall, the comments were taken to be

points of note or suggestions which Andersen Management were identifying that the Department might have regard to in the finalisation of the licence, rather than derogations from the overall conclusions of the report."

You were asked for details of your knowledge, direct or indirect, of any discussions with Andersen

Consulting concerning further inquiries or investigations or other actions which would have been required to enable Andersen to provide a report without any qualification or rider regarding the financial capability of either Esat Digifone and/or Persona.

And you say "I have no recollection or knowledge, direct or indirect, of any discussion with Andersen Management concerning further inquiries or investigations or other actions which would have been required to enable Andersens to provide a report without any qualification or rider regarding the financial responsibility of either Esat Digifone or Persona.

"Again, as stated above, I do not recall officials regarding the comments from Andersen Management in relation to financial capability as being qualifications in relation to their conclusions. In order to make sense of this question, I have assumed the word 'with' in line 4 should be 'without'."

I think, if you go down to Query Number 51, the date you were asked for the date on which and the circumstances in which and the person by whom you were informed that the Minister intended to announce the result of the process on the 25th October.

And you say "I do not recall the date on which or the circumstances in which and person by whom I was informed that the Minister intended to announce the result of the process on the 25th October, 1995.

Given the limitations of my role, it is quite possible that I was not informed in advance of the announcement."

You were asked for details of all meetings of the Project Group or any members of the Project Group on the 24th or 25th October.

And you say, "I do not recall the specific meetings of the 24th or the 25th, the purpose of such meetings, the matters under discussion or the outcome of such meetings".

You were then asked for details of your knowledge, direct or indirect, concerning any amendments to the first draft report dated 3rd October, 1995, and the second draft report dated 18th October, 1995, including your knowledge, direct or indirect, of the contents of the document entitled 'Suggested Textual Amendments' which appears to have been faxed by Mr. 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 same day with his annotated comments.

You say "I have no recollection of or knowledge of amendments made to the first draft report of the 3rd October and the second draft report of the 18th October. I do not recall the 'Suggested Textual Amendments" which were faxed to Mr. Andersen on the 25th.

A. Sorry, at the time of answering that question, I hadn't seen that document.

Q. Right. Do you recall it now?

A. Yes.

Q. Maybe, to save us time, do you remember having any involvement in it?

A. I think it was no, I don't. I think it was drafted following a Project Team meeting.

Q. Do you recall seeing it after it was produced and before it went to Mr. Andersen?

A. No, no.

Q. If you say at the time that you wrote this answer you couldn't recall the document, when you did see it, did you recognise it as a document that you had seen before?

A. I didn't, but it has my handwriting on it, so I had obviously seen it before.

Q. Which means you must have, I suppose, had some involvement in?

A. I think what happened was, after the final the next iteration of the report was produced, I think I considered whether the points raised in it were reflected in that report. I am speaking from memory now.

Q. We'll come back to it.

A. Sure.

Q. It's half twelve now, Sir.

CHAIRMAN: Close enough. Ten to two, then, if you please, Mr. Riordan.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF BILLY RIORDAN BY

MR. HEALY:

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

If you go to I think it's page 36.

A. Yes. Thank you.

Q. I think you had already referred to this suggested textual amendments, and the next query, Query Number 54, sought details of all inquiries which, to your knowledge, direct or indirect, were conducted either by officials or by any other person regarding the conclusion in the document "Suggested Textual Amendments", which is as follows, and I am quoting it: "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, the project is fundamentally robust, and after a licence has been awarded, an attractive opportunity for corporate debt financiers, together with precise results of such inquiries, if any".

And you say, "I have no knowledge, direct or indirect, of any inquiries or the results thereof which were conducted by officials regarding that particular conclusion in the document "Suggested Textual Amendments".

If you go to Query Number 56; I think we've already dealt with Query Number 55.

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

And you say: "As far as I can recall, the precise date on which and time at which a final decision was made by the Project Group regarding the result of the competition was at the meeting on the 23rd October, 1995. As far as I can recall, the name of each person who was present or was otherwise party to such decision were those who attended the meeting as per the minutes".

The next query is as to I think the next query is concerning something of which, I think, you say that

you know nothing.

I think the same goes for the next page of queries.

And I think the same goes for page 39. I'll give you a minute just to confirm that I am right in that.

A. Sorry, excuse me.

CHAIRMAN: Take your time.

A. Yes.

Q. MR. HEALY: If you go to page 40, then, you were asked for your understanding of the composition of the Esat Digifone consortium which won the evaluation process and the respective shareholdings of the participants.

And your response is: "As I recall, my understanding of the composition of the Esat Digifone consortium which won the evaluation process was that it was 50% Telenor and 50% Communicorp."

You are 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 process.

And you say "My understanding of the role of the Cabinet or Cabinet Subcommittee in the ultimate decision or as to the outcome of the evaluation process was that the Cabinet or the Cabinet Subcommittee would make the ultimate decision as to the outcome of the evaluation process, having regard to the recommendation of the secretary of DTEC following the completion of the project. I should

stress that my understanding was that of a person who had never been involved in a public sector project such as this before".

You were 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.

And you say "I provided no information to the Minister regarding the evaluation process during the course of the process. I had no communication with the Minister whatsoever throughout the process. In fact, I have never met Mr. Lowry."

You were then asked for your knowledge of any similar meetings or communications between the Minister and any other member of the consortium.

And you say you had no knowledge of any such meetings or communications.

You were asked for the date on which and the circumstances in which you first became aware of the involvement of IIU Limited or Mr. Dermot Desmond in the Esat Digifone consortium and your understanding of the nature of that involvement.

You say "I do not recall the date on which or the circumstances in which I became aware of the involvement of IIU or Mr. Dermot Desmond in the Esat

consortium. However, I had no role in the process after the announcement by the Minister on the 25th October 1995, and I believe the involvement of IIU or Mr. Dermot Desmond in the Esat Digifone consortium happened after that date."

Can you just clarify for me, Mr. Riordan, when you left the civil service, as it were, on secondment and went back to private practice?

A. I think it was around late summer 1996.

Q. By that, do you mean August/September?

A. Yes, around that time, yeah.

Q. And just to clarify that answer, you say you had no role in the process after the announcement by the Minister on the 25th October of the winner of the competition. Do I take it that you became aware in some way of Mr. Dermot Desmond's involvement or the involvement of IIU but you can't put a date on it; is that it?

A. Yes.

Q. And if you became aware of it, how did you become aware of it, or can you recall how you became aware of it?

A. I can't recall, to be honest. It may have been through public press, or it may have been through contact with the Department of Transport, Energy and Communications.

Q. Did you know of his involvement before you left the

civil service?

A. Yes. It was public knowledge when I left the civil service. It was it had been in the papers for four or five months before that.

Q. And do you recall if you knew of it before the formal announcement of the granting of the licence?

A. I don't believe I did.

Q. I see.

You were then asked for your knowledge of a letter, which has now been mentioned many times in the course of the evidence, of the 29th September, 1995, from Mr. Michael Walsh of IIU to Mr. Martin Brennan. And you say the first you have heard of any such letter was in the course of your response to the Tribunal's queries?

A. Correct.

Q. Do you recall any reference in the course of any meeting, and we'll come to the details of it in a minute, to the receipt of further communications from applicants after the end of the presentations?

A. Sorry, could you repeat that question?

Q. Do you recall any reference at any meeting of the Project Group to the receipt of additional communications, letters, without identifying them, letters such as this, without identifying them?

A. No, no.

Q. So you don't recall anyone saying "We have got a letter, but we are not taking it into account, and

that's the end of it"?

A. No.

Q. I see. Now, I think that disposes of Questions 68, 69.

In relation to Question Number 70, you 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 Limited.

And you say similarly, you had no 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.

You say "I became aware of these dealings after the licence was issued. As I had no role" I am not sure what the next two words mean "As I had no role whatsoever in the process after the 25th October, I have no recollection of the date on which or circumstances in which I first became aware that the 20% shareholding in Esat Digifone held by IIU was to be held beneficially for Mr. Dermot Desmond."

Can we take it from that that whenever you did hear about it, and you think it was probably after the formal announcement and granting of the licence but before you left the civil service, that when you did

hear of it, you heard of it from somebody, as you say, within Department of Transport, Energy and Communications, and what you heard was that Mr. Desmond was the owner of the 20% ?

A. I can't recall what I heard, but it was the first time I had heard of any involvement. I can't recall what the precise description of Mr. Desmond's involvement in the consortium, but it was the first time I heard of any such involvement.

Q. The reason I am asking you to clarify it is that if you look at Question Number 70, there is a reference to the liabilities of Mr. Dermot Desmond/IIU to subscribe for capital; but in your response, you mention Mr. Desmond's 20% shareholding in Esat Digifone, and I am just wondering why you referred specifically to his 20% shareholding, referring to it as a 20% shareholding. Is that because that's what you had been informed by

A. That's what I still that's what I figured from press reports, whatever way I picked it up, was a percentage shareholding. I had no knowledge at that time that that was the case.

Q. I appreciate you had no knowledge at the time, but I think just really going from the response you gave me a moment ago, when you said you learnt of this sometime after the licence was formally granted and before you left the civil service, and that you

probably learnt of it from somebody in DTEC, I was wondering, was it from somebody in DTEC you learnt that Mr. Desmond was the holder of a 20% shareholding?

A. Probably not. Although I can't be sure. I don't mean to be difficult on this, but it became widely known that Dermot Desmond held 20% of the licence for the subsequent X number of years, I think, and therefore that's where I probably picked up the 20% rather than anything as part of my work with the Department.

Q. You say that you have had no dealings whatsoever, in either a personal or professional capacity, with either Mr. Walsh or Mr. Desmond.

A. Correct.

Q. I am just skipping over a number of years.

A. Sure.

Q. And I take that goes for IIU as well?

A. Yes.

Q. If you go to Query Number 76, you were asked for your knowledge, direct or indirect, of the date on which and the manner in which the Minister or the Department was informed by Mr. O'Brien/Communicorp/Esat Telecom and Esat Digifone, or any person on their behalf, that Communicorp/Esat Telecom did not intend to fund its equity participation in Esat Digifone by drawing on finance to be provided by Advent International but intended to fund its participation by placements through CS First Boston, including details of the

precise information provided to the Minister or Department, and kindly identify where such information was recorded.

And you say "I have no knowledge, direct or indirect, of the date or manner in which the Minister or the Department was informed by any party that Communicorp/Esat Telecom did not intend to fund its equity participation by drawing on finance to be provided by Advent. I had no involvement whatsoever in the project at this stage."

Again, I don't want to catch you out; I just want to clarify what you mean by "at this stage."

A. It really refers that beyond the October, end October point, I had no real involvement in the process at all.

Q. So what you are saying is that up to that stage, up to that time, you had no knowledge of Advent dropping out of the picture in any way?

A. No.

Q. As far as you were concerned, they were still there?

A. As far as I was concerned, yeah.

Q. I think the next pages of queries on page 45 we can dispose of, in view of the fact that you weren't present in the Department.

And likewise pages 46 and 47, 48, you might just clarify that. I am right in assuming, am I, that I don't need to dwell on any of these because you don't

have any knowledge of them, because

A. If you just give me a couple of minutes.

Q. Yes, take your time.

A. How far do you want me to go on, please?

Q. I think I have done 48. 49, I think again, the queries there refer to matters about which I think you say you have no knowledge and no understanding. The same goes for page 50 and 51.

A. Sorry, I am up as far as 51, if that's any good to you.

Q. I think that's the end, is it?

A. Sorry, it is indeed.

CHAIRMAN: And I think you conclude by stating you had no connection whatsoever with anybody connected with Esat or Mr. O'Brien or anything that could have given you any possible conflict of interest.

A. Absolutely, unequivocally.

MR. NESBITT: There is one matter, Mr. Chairman. Mr.

Riordan undertook a careful analysis of the questions that were asked of him by the Tribunal. There were three separate series of questions asked, and we understand that Mr. Healy has had to draw them together in the documents being read out for his own purposes; but there is additional material that Mr.

Riordan has given to the Tribunal through questions.

We haven't had the chance to just analyse what parts haven't been included in the bits and pieces that have

been put now. Perhaps I'll just reserve the position to come back if we think there is additional matters of interest there that might impact on what has been said so far.

CHAIRMAN: We'll leave that open, Mr. Nesbitt. I think the Tribunal lawyers only had sight of it today as well, so I think the realistic course is for Mr. Healy to proceed, and if portions of this become apposite, we can address them in due course.

MR. NESBITT: Thank you.

Q. MR. HEALY: I think what you seem to be I hope I am correctly summarising what's contained in your responses to the Tribunal questionnaire what you seem to be at pains to emphasise is that your role on the Project Team was as an observer with specific expertise that would be brought into play if you were asked to bring it into play from time to time?

A. Yes.

Q. And I think you say that you weren't a person with any deliberative role on the Project Group. Perhaps you could just clarify what you mean by that.

A. That I was not somebody with, if you like, executive authority.

Q. Could you give me an example of what you mean by that?

A. I would my role was really to provide advice. If the advice to officials. If the advice was not taken, you know, I took that to be okay, I have

given my view; and you know, if it wasn't taken, then I wasn't somebody that would say "Hold on a second; I have a right of veto here", or something like that.

You know, does that give you any sort of indication?

Q. It does up to a point. I think I am trying to understand what your role was, and I think I am getting some picture of it. I think you have mentioned in the course of your response to the Tribunal's questionnaire that you have referred to the evaluation model, which you have described as something proposed by Mr. Andersen and adopted by the group. In relation to something like that, a document put forward by Mr. Andersen and adopted by the group, now, I don't imagine that every time the group had to decide something, they'd have a formal vote. They might decide to proceed in a certain way on the basis of a certain document, or the steps set out in a certain document, or "These are the next things we'll do, and after that we'll do something else". Would you have contributed to those decisions?

A. My contribution would have more likely most likely have come through probably Jimmy McMeel asking me for a view on a particular area, and I would give the view that I had. Possibly to him or possibly openly.

Q. I see. So he might, at a meeting, suggest or invite you to contribute to the meeting on a particular issue because he might be aware that you had some particular

expertise or view that could be of value to the meeting; would that be right?

A. Yes.

Q. And at other times, do I understand you to say that you'd communicate with him at a meeting, communicate privately, directly "bilaterally", I think as they call it to him, and he would or would not decide to communicate your views to the meeting?

A. Or else I would openly communicate as well. It wasn't just purely bilaterally with Jimmy McMeel. So it could happen in one of two ways.

Q. Yes. Maybe just clarify that for me.

A. I could either make observations directly to Jimmy McMeel, or I could make the observations openly.

Q. Yes, but did I understand you to say any observations you were making openly to the meeting, you'd make at the invitation of Jimmy McMeel?

A. Not necessarily. If somebody else asked me for thoughts on things or to do pieces of work, I would do it; it wasn't purely Jimmy McMeel.

Q. Was it as formal as that? Would you not, of your own initiative, make a contribution to the meeting?

A. Sorry, that is the point I would make. It could come in both ways. Otherwise I would make, without invitation, make an open contribution.

Q. But was there any difference, then, between the way you were contributing to the work of the Project Group

and the way other people were contributing?

Presumably you were all just sitting around putting in your three ha'pence worth, and so on?

A. Well, I would say that my role was different in that I was asked to look at specific areas, and I would make contributions in those specific areas. So I did not see my role as having the same over-reaching role that others would have.

Q. I see. You saw the civil servants as having an over-reaching role over and above their own areas of expertise?

A. Certainly the key civil servants in the on the team, yeah.

Q. Does that mean Mr. Brennan, Mr. Towey, Mr. McMahon, Mr. O'Callaghan, Ms. Nic Lochlainn, Mr. Ryan I think, Mr. McQuaid; is it those people you are talking about?

A. I would say the formal civil servants.

Q. Well

A. The people you see, I was not a civil servant.

Q. Yes, I appreciate that. I am just going through a list of all the civil servants, so far as I can recall them. Are you saying it was only some civil servants had this wide-ranging role, or all of them?

A. The civil servants in general.

Q. All of them?

A. Sorry, I don't really have that specific a view on whether it was some or all of them. Several I viewed

certainly civil servants, Fintan Towey and Martin

Brennan, as having an over-reaching role.

Q. All of them, or some of them?

A. Sorry, you are putting me on the spot there.

Q. I am, yeah.

A. I would say some of them, on reflection.

Q. That's what I am trying to understand. I understood

I had the impression, I think, from statements made by the Minister in the Dail, that every member of this group arrived at the decision that was ultimately promoted by him as the decision of the process. Do you understand me?

A. Yes.

Q. But from what you are saying, do I understand that some people had a sort of more important role, and some people had a subsidiary role which didn't give them the same say in things?

A. Certainly I felt I had a subsidiary role.

Q. But as regards the others, the civil servants, the career civil servants?

A. I have never really given any thought to it, to be honest to you.

Q. Well, is that impression you have, perhaps something you are just casually turning around in your mind?

A. It is, really, and I guess I shouldn't really be doing that.

Q. You have described your contributions, I think, in a

number of specific ways. You said you made a specific contribution in relation to the tables used initially in the quantitative evaluation; is that right?

A. No, I believe not. I believe that my specific role took place after the first draft of the quantitative evaluation had taken place.

Q. I appreciate you didn't design these tables, but that after the first draft came, you suggested some improvements, and you got involved, as it were, you got involved on a rolling-up-your-sleeves basis when it came to assisting with producing better versions of those tables; is that right?

A. The issue in relation to those tables arose at a discussion at a meeting I think around early September, the issues difficulties had been identified with these mandatory tables, as they were titled. And Andersen Management International undertook to try and resolve these difficulties.

I think what you are referring to, the sleeves-rolled-up piece of work was the piece of work I did at the request of the Project Group after the 14th September, the project meeting; is that right?

Q. So, I think I am trying to divide it into a number of different contributions. I understood that you made a contribution to the improvement in the tables; that you also made a contribution to the sub-group on the qualitative evaluation of the financial criteria.

A. Sorry, I don't understand the first element you referred to.

Q. You were involved in fine-tuning or at least you were involved, firstly, in producing a critique of the mandatory tables?

A. No, no.

Q. Well, we'll come to the documents. I certainly understood you to have been involved in the mandatory tables, that you said in your answers, I think, to the Tribunal's questionnaire, that you were involved in altering or suggesting that alterations be made to the mandatory tables to ensure that the results were more comparable.

A. What I referred to there is I referred to the piece of work that resulted in a memo dated 15th September.

Q. Yes. And subsequently you became involved in the financial evaluation sub-groups?

A. No, the financial evaluation sub-group had already had an initial meeting on the 6th September, I think it was.

Q. I see. So you had two involvements, then, both in relation to the mandatory tables and in relation to the financial evaluation sub-group?

A. The task in relation to the mandatory tables, I believe, was subsidiary to the role in the financial evaluation sub-group.

Q. In the financial evaluation sub-group, you were going

to be making decisions, involved in a decision-making process?

A. I was having an input to the decision-making process, yes.

Q. In relation to the tables, these are going to be simply used to plug information into them to produce results; isn't that right? Quantitative, measurable results?

A. The quantitative sorry, the tables resulted in numeric data which was an input to the qualitative assessment which was conducted through the financial evaluation sub-group.

Q. Did you not understand it to be an input to the quantitative evaluation as well?

A. The quantitative evaluation had, before the financial evaluation sub-group had sat, had already had at least one execution, and it had used data which was also contained in the mandatory tables.

Q. And then another one was produced, with presumably better data, or better comparisons?

A. Once Andersens had made the amendments to the mandatory tables, they then produced revised, as I recall this is from memory, but as I recall revised quantitative evaluation data.

Q. Now, again, just to clarify one or two things about the way that you were doing your work. In the course of going through your questionnaire, I asked you about

the notes you made on the 18th October version of the draft evaluation report. And I think you said that your recollection is that you made the notes at a meeting, and that that must have been the meeting of the 23rd October.

A. I think so, but I can't be positive. Could you just repeat the dates again, please?

Q. I think what you said to me was that you put your notes on the 18th October version of the draft evaluation report at a Project Group meeting.

A. Yes.

Q. Well, the only Project Group meeting that you attended after the report was produced was on the 23rd October?

A. Right.

Q. So therefore, that's the only meeting, if it was a Project Group meeting that you made those notes?

A. If I am correct in my recollection, that makes sense.

Q. It's only at that meeting you could have done it?

A. I think so, yeah. If that's the way the events work, that makes sense.

Q. I think what you said to the Tribunal is that you had given material to Mr. McMeel, or you'd address those notes to Mr. McMeel, or you'd produce them for his consideration; is that right?

A. No, I might have made the observations at the meetings, or else the notes I had made on that report could be observations made by other people.

Q. Can we just get that clear, because I think in your response to the questionnaire, or from your response to the questionnaire I may be wrong in this; we can come back to it later on I understood you to say that the notes that you made on that version of the report were for the were addressed to Mr. McMeel.

A. Sorry, maybe we are talking about different things now. You mean these handwritten notes?

Q. Yes.

A. Sorry, I thought you meant all the scribbles on the report.

Q. Scribbles on the report?

A. Scribbles contained in the report.

Q. Marginal notes?

A. No, what I mean by the handwritten notes that I passed to Mr. McMeel are in relation to the ownership of the report; that's what I mean by the observations I made directly to Jimmy McMeel.

Q. I understand. Maybe we'd better clarify that. What I was concerned about was when you put marginal notes on the 18th October version of the evaluation report, and can you tell me, did you do that at a meeting, or did you do it in your own office, or what?

A. I believe that it was done at a meeting.

Q. Was it at a Project Group meeting?

A. Yes, I believe so.

Q. And therefore, again, it must have been the Project

Group meeting of the 23rd?

A. I believe it must have been, yes.

Q. And can we take it, therefore, that the notes that you made at that meeting reflected your own or somebody else's contributions to the meeting?

A. I believe so, yes.

Q. The result, I think, of the process, in the sense of the Minister going to the Government with the result was something you weren't aware of

A. No.

Q. until after it had happened; is that right?

A. Yes.

Q. In order to enable you to respond to the Tribunal's questionnaire, I think you were provided with documentation, the documentation you referred to as being contained in the leverarch files. I take it that your responses are based on that information, on the information contained in the transcripts of the presentations; have you seen those?

A. Yes.

Q. Have you had

A. Sorry, I have seen the presentation sorry, the transcript from the Esat presentation.

Q. From the Esat presentation, right. Have you had access to any other DTEC documentation, or are you dependent on what the Tribunal has given you?

A. I was sorry, I was provided with two leverarch

files containing information extracted from the Department of Transport, Energy and Communications files. I was also provided with two leverarch files which were my own files from the Department of Finance.

Q. Again, just to clarify that; the two leverarch files which were not Department of Finance files, were they the ones provided to you by the Tribunal?

A. They came to the Chief State Solicitor's Office.

Q. I see.

A. They came from Mr. Shaw.

Q. And does that apply to the documents you got from Finance as well?

A. I think all of that came through the Chief State Solicitor's Office, all the documentation, yeah.

Q. The Finance documents contain material filed by you in the course of or after this process and kept separately in the Department of Finance; isn't that right?

A. Yes.

Q. So therefore, in order to I just want to be clear about the extent to which you have been able to assist the Tribunal in your response to the Tribunal's queries it's based on what the Tribunal has given you through Mr. Shaw?

A. Correct.

Q. You hadn't had any access to any other documentation?

A. No.

Q. Now, I want to refer you to Book 54, and I think Mr. Shaw can provide you with a copy of that.

Have you been given a copy of it now?

A. I have it, yeah.

Q. It's headed "Weighting Documents"; is that right?

A. That's the book.

Q. The front cover.

A. Sorry, by the way, I had been provided with you asked me a few minutes ago about documents I had been provided with. I had been provided with this, I think, last week at some stage.

Q. In fairness to you, you wouldn't have been provided with that in advance to any response of the questionnaires.

A. That's true, actually.

Q. If you look at that document, and the first leaf, Leaf 1, and if you go to the second page, it should be headed "Quantitative and Qualitative Evaluation of the GSM Applicants' Applications". Do you see that?

A. Yeah.

Q. This is a copy of the evaluation model proposed by Mr. Andersen. Do you recognise it?

A. Yes. Sorry, I don't necessarily recognise it, but I presume it's extracted from the Department's files. It wasn't on my files.

Q. Well, I suppose at some point you may have had it.

You wouldn't have had it in advance of any meeting.

What I have found in the last few days, in fact only yesterday, is that on the 16th May, Ms. Nic Lochlainn gave notice to you, and I presume to all of the other people involved in the Project Group, of a Project Group meeting for 11am on Thursday, 18th May.

Now, I might be able to put a copy of this document it's not of terrible importance, but I can just put it on the overhead projector. It may bring some of this to mind.

Just go to the top of this document for a minute.

It's a fax cover sheet addressed to you, at the Department of Finance, from Maev Nic Lochlainn; do you see that?

A. Yeah.

Q. If we just go to the substance of the document. See where it says "Billy, next GSM Project Group meeting will be held

" 11am Thursday 18 May in room 1.02 in 44 Kildare Street.

"Draft agenda as follows:

"1. Presentation by Andersen Consultants of evaluation model

"2. Presentation by Andersen Consultants of proposed work plan.

"3. Interconnection interim regime.

"The consultants have planned an intensive session on

the evaluation model and have asked for the group's flexibility in continuing the meeting to 5 or 6 p.m. as required.

"Please let me know if you cannot be in attendance, to facilitate arrangements for the meeting."

Do you see that?

A. Yeah.

Q. You may not remember the actual document, but in any case, it's informing you that the evaluation model is going to be presented, and I don't think copies were made available until you got to the meeting.

A. That would probably have been the case.

Q. I think there is actually a note at the meeting that they were handed out.

At this meeting, the evaluation model appears to have been discussed in some detail. And I don't want to refer you to the minutes of the meeting at which it was discussed, but if we look at the evaluation model, you'll see, if we go through parts of it, what it entailed.

Firstly there is an introductory section indicating that a quantitative and qualitative evaluation would be performed. And the document is divided into two parts, the first part describing the quantitative evaluation procedure and the second part containing a description of the qualitative evaluation model.

Now, on the second page you have a heading "Procedure

for the Quantitative Evaluation" setting out how that evaluation would be carried out, the steps that would be taken to carry it out.

And on the next page you have a heading "Dimensions Assessed in the Quantitative Evaluation"; do you see that?

A. Yes.

Q. And this may be of assistance to you in getting your nomenclature in order for the rest of the examination, because we might as well be on the same wavelength where Mr. Andersen's terms are concerned.

On the left-hand side of that column, you see a list of the evaluation criteria as they are contained in paragraph 19 of the RFP document. Do you see that?

A. Yes.

Q. Then in the middle column, you see a list of dimensions linked to each evaluation criteria; do you see that?

A. Yes.

Q. So that in the case of credibility of business plan and applicant's approach to market development, there are three dimensions: market development, experience of the applicant, and financial key figures. They were deemed to be the three aspects, or we'd better stop using the word "aspects" for the moment the three features of this evaluation criterion that Mr. Andersen felt ought to be evaluated. And he divided

these in turn into three indicators which could actually be used to measure each of the applications so that they could be compared one with the other under these headings.

And he has divided these dimensions into three indicators: forecasted demand, number of network occurrences in the mobile field, and solvency and IRR; do you see that?

A. Yes.

Q. And those are called the indicators. When an evaluation was actually being carried out, it would be carried out on the indicator, and then the information, if you like, translated back through the dimensions eventually to the actual criterion itself; do you see that?

You then go on to page 6 of the 19 pages of that draft. You see a heading "Dimensions and Indicators", and what you have in this page and the following page is an explanation from Mr. Andersen as to how he proposed to measure the indicators linked to each of the dimensions; do you see that?

A. Yes.

Q. And the first one there, the dimension is market development and the indicator is forecasted demand. And he has a formula for scoring that particular indicator; do you see that?

A. Yeah.

Q. And then the next one, dimension: coverage, and then he has a way of if you look on the next page he has a way of tabulating scores on that particular dimension with respect to the indicator which he defines as speed of demographical coverage of Class IV (2W) hand-held terminals; do you see that?

A. Yeah.

Q. Now, the draft of this document that you are looking at comes from the Regulatory Division, and there is a lot of marks on it, but we know from the meeting itself that there was a fair amount of discussion of each of the various aspects of this document. And the document goes on like that, describing each of the indicators and how they'd be calculated, sometimes indicating the formulas that would be used and other times indicating some other method of scoring the indicators.

Then if you go to page 16, you see a heading "Vote Casting and Weight Matrix"; do you see that?

A. Yes.

Q. And what this has is a list of indicators. You can take each one of those indicators and you can refer it to one of the dimensions that we mentioned a moment ago, and each one of those dimensions can be referred to a particular criterion contained in the list of criteria set out in paragraph 19 of the RFP. They are not here on this page in the order in which they are

contained in paragraph 19, but they are all related to paragraph 19, ultimately.

But they are set out in a single list. Then there is an indication of a coding for each of the applicants, A1, A2, A3, A4, A5; do you see that? Maybe Mr. Andersen assumed there'd be five applicants or less at that point. We know there were six ultimately.

And then on the right-hand column you have the weight to be applied to the score achieved by each of the applicants in respect of each indicator; do you see that? And the score is in terms of two decimal points, with a grand total of 1. You can treat each score as a whole number and a grand total of a hundred; it's the same thing.

A. Okay.

Q. Now, on the next page, then, Mr. Andersen has set out the procedure for the qualitative evaluation process.

Do you see that?

A. Right, yeah.

Q. And he says "Despite the 'hard' data of the quantitative evaluation, it is necessary to include the broader holistic view of the qualitative analysis.

Other aspects, such as risk and the effect on the Irish economy, may also be included in the qualitative evaluation, which allow for a critical discussion of the realism behind the figures from the quantitative analysis.

"The following describes some of the major steps in the qualitative evaluation process", and he has set out the steps.

If you go to he says firstly, "The eligible applications are read and analysed by the evaluators.

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

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

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

"5. When the dimensions are being assessed, the evaluators should, as far as possible, use the same indicators as used during the quantitative evaluation."

That's the reference to dividing up the criterion into dimensions and then into indicators. And he is suggesting that in the qualitative, no more than in the quantitative, you should try to use the same indicators.

But then he goes on to say "New indicators may be defined, however, if the existing indicators are not sufficiently representative for the dimensions to be evaluated.

"6. During the qualitative evaluation, the evaluators

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

"7. If major uncertainties arise (e.g. in accordance with Step 4 of the quantitative evaluation or due to incomparable information), supplementary analyses might be carried out by Andersen Management International in order to solve the matter.

"8. The result of the qualitative evaluation will be contained in the main body of the evaluation report. The results of the supplementary analyses will be annexed to the report."

Then on the next page there is a guide to the award of marks, and this is different to the mark-giving matrix for the quantitative evaluation, in that you'll recall that in the quantitative evaluation, what Mr. Andersen did was he set out all the indicators and put their weights next to them, whereas here he has divided the criteria up into what he calls aspects, and he has grouped a number of dimensions under these aspects. He has divided the criteria into marketing aspects, technical aspects, financial aspects, management aspects and other aspects. And then do you see the way he has grouped dimensions underneath each of those: market development, coverage, tariffs, international roaming under marketing aspects, and so

on; do you see that?

A. Yeah.

Q. Now, Mr. Andersen, as you can see from page 16 of that draft evaluation model, or proposed evaluation model, was proposing a particular set of weights to be applied to each of the indicators. At the meeting it seems that weights were discussed. Can you remember discussing the weightings at the meeting?

A. Sorry?

Q. Can you remember discussing the weightings at the meeting?

A. I can't remember it, no.

Q. Can you remember expressing any views about the weightings at the meeting, suggesting that you know, you are giving too much of a weight to this particular criterion or not enough to this particular criterion?

A. No. This is an area I would not have strayed into, to be honest with you, because I would have viewed the relative importance of criteria as being a matter for the civil servants in the form of what the policy implications of that were. So, for example, if the licence fee were weighted at whatever, 15 or whatever, 15% if the licence fee were weighted at 15%, that wouldn't be a call that I would have felt that I should be making or having an input to.

Q. But, do you recall, I explained to you, if you look at

the overhead projector for a minute, or look at the monitor, that at that meeting, Mr. Andersen was proposing not just weightings, but how those weightings would be broken down, do you see that, as between one indicator and another indicator in the context of a single dimension. Do you follow that?

A. Yes, if you mean how we would weight forecasted demand versus speed of demographical coverage.

Q. Precisely. Maybe if I just give you one that if you look at the bottom, and we'll get it up in a minute now.

Do you see the last two: solvency and IRR? They were indicators referable to one of the dimensions, the dimension financial key figures?

A. Right, yeah.

Q. Do you see that?

A. Yes.

Q. And am I not right in thinking that when it came to the qualitative evaluation, at a later point in the process, you made some suggestions about what indicators should or should not be used; isn't that correct?

A. That's correct.

Q. And what I am trying to do is to jog your memory by referring you to this and to the fact that here, Mr. Andersen has suggested that financial key figures would be measured by reference to solvency and IRR,

and now whatever weighting is arrived at, if you like, as a policy decision to respect the list of criteria in paragraph 19, a further decision is going to have to be made as to what weight to apply to each of the indicators. Do you follow?

A. I do.

Q. And that could involve a judgement that is, if you like, involves more financial expertise; you might be able to say I don't know whether you did or not you might be able to say "Look, you shouldn't be giving as much to financial key figures as to market development", or "Between solvency and IRR, you should be giving more to solvency", or whatever

A. I understand the question.

Q. Do you recall being involved in any discussion like that?

A. I believe I was not, and I don't recall any discussion from me.

Q. Now, after that meeting, Ms. Nic Lochlainn, whom you recall I take it she was responsible for, I think, a lot of the paper management in the process?

A. Sorry, I do recall her; I know nodding my head is no good

Q. She made a note for her file that at that meeting, it had been agreed that the overall weightings should be 30, 20, 15, 14, 7, 6, 5, 3, and I don't think that anyone ever disputed what she had in mind there was

the order contained in the RFP if you look at the monitor you'll see it more easily.

A. This is the 31 May, '95, yes.

Q. Yes. I don't think anyone has ever disputed that what that probably refers to is the list of criteria contained in paragraph 19; do you see that?

A. Yes.

Q. You have no reason to think otherwise?

A. I have no reason to think otherwise. Again I should stress it wasn't anything I had involvement with, really.

Q. But presumably, from this lengthy meeting, which I think you attended, you would have been aware that what Mr. Andersen had now proposed was a model to be used in carrying out the evaluation process?

A. Yes.

Q. And I think you were, presumably, from your responses to the questionnaire, in no doubt that he was proposing this model, and the members of the group were scrutinising it and deciding whether or not to adopt it?

A. Yes.

Q. There was a further meeting on the 18th sorry, on the 9th June, at which, presumably, following the discussion that took place on the 18th May, changes to the model were tabled; and I am just going to refer you to the version of the model that was actually

adopted.

If you look at Book 54, and you go to Leaf Number 2, you will see the second version of the evaluation model.

Now, if you go to page 3 of that version, you'll see that again it contains a table setting out each of the evaluation criteria, each of the dimensions linked to each criterion, and the indicators linked to each dimension; do you see that?

A. Is that identical

Q. It's identical, I think, to the earlier table. And this again is the what Mr. Andersen calls the overview of the dimensions and indicators to be used in the quantitative evaluation, which, I think as you correctly described, involved plugging a lot of information into formulas that he had devised; isn't that right?

A. As I understand

Q. I think you referred to the quantitative as involved, I think the word you used, plugging information into formulas that he had already devised.

A. Yes, and I think those am I right in saying they are the formulae that are in this document?

Q. They are, yes, in this document.

Now, if you go to page 17 of this document, you'll see a document similar to the document we had on the overhead projector a moment ago, which again contains

a list of all the indicators to be used in the quantitative evaluation together with a list of the what now look like the revised weights to be applied to each of the indicators. Do you see that?

A. Yes.

Q. This model was, I think you presumably know from reading the minutes, adopted at a meeting of the Project Group on the 9th June of 1995?

A. This is the model that was presented this was the document that was presented to that group, is it?

Q. Yes.

A. All right.

Q. And this was the model that was adopted at that meeting.

A. Okay.

Q. You may not remember every detail of it, and I wouldn't expect you to, but I just refer you to one thing for a moment which may jog your memory.

If you go to Leaf Number 1 for a moment, and if you go to page 15, where you have a heading "Dimension: Financial Key Figures"; do you see that?

A. Yes.

Q. And underneath that you have the two indicators: solvency and IRR.

A. Yes.

Q. And then the model, the evaluation model or draft evaluation model goes on: "There are a number of

financial indicators which are all interrelated. Two indicators have been chosen which both express the credibility of the business case: the solvency and the internal rate of return (IRR) as defined in the supplementary document. The solvency is a value which varies temporarily, and the average for the years 2, 3, 4 and 5 is used. The IRR is a value derived over the entire period of the business case (15 years), and it is not critical to consider the temporal variation here."

Then it says: "The scoring is based on the following tables:" And he has a way of scoring solvency over Year 2, 3, 4 and 5. Do you see that?

A. Yes.

Q. If you have a solvency greater or equal to 60% you score a 5, greater or equal to 45% you score a 4, greater or equal to 35 you score a 3, greater or equal to 20% you score a 2, and 20% or lower you score a 1; do you see that?

A. Yes.

Q. Then underneath that, in relation to IRR, if you have an IRR higher than or equal to 13, you get a 5. Between that and 11%, you get 4, and so on. Do you see that, down as far as 7%?

A. Yeah.

Q. And I think, as an accountant, you will understand that approach to deploying a tool such as a measure of

internal rate of return?

A. Yes.

Q. Applicants who scored a high internal rate of return would get 5, as long as they were over 13; do you see that?

A. That's the way that would read, yeah.

Q. Now, if you go to the actual model that was adopted, that's in Leaf 2, and you turn to page 16.

I suppose I should firstly refer you to page 15, which is the corresponding the beginning of the corresponding text. Do you see the text begins at 3.11, "Dimension: Financial key figures"?

A. Yeah.

Q. "Indicators: solvency and IRR". And I think the text is the same.

A. Okay, yeah.

Q. And then on the next page, you have a table for measuring scoring; do you see that?

A. Yes.

Q. Firstly in relation to solvency and then in relation to internal rate of return. Now, do you notice there is a difference in the way internal rate of return is being measured?

A. Yes.

Q. What is done is an optimum or a desired rate of internal return is given a value of 11%; do you see that?

A. Yes.

Q. V equals the numeric value of IRR, 11%. Do you see that?

A. Yes.

Q. And then the way the scoring operates is if the V if the IRR that you achieve is sorry, I beg your pardon, it's V equal to numeric value of IRR less 11%; in other words, it's the difference between your IRR and 11 percent that is scored. Do you see that?

A. Right, yeah, yeah.

Q. So that if you have an IRR of 11% or you are only 1% higher or lower, you get a 5?

A. I see that.

Q. If you have an IRR of 2% higher or lower, and so on, you score less?

A. So the closer you are to 11, so the higher the score?

Q. Yes. So if you have a high IRR, you'll do badly; isn't that right?

A. Or indeed a very low IRR.

Q. Exactly. Whereas on the previous table, a high IRR, as long as it was above 13%, you'd do well on the quantitative anyway?

A. Yes.

Q. Obviously somebody might have a view about why you had a high IRR, but that's not the point. But do you recall any discussion on that issue? Mr. Martin Brennan said there was discussion on it.

A. Can I look at the minutes on it for a second?

Q. Do, yes. If you go to the minutes, and you go to the second page of the minutes, the fourth bullet point, it's on the monitor as well.

A. Right, yes, yes.

Q. It says "Solvency formula approved. IRR formula adjusted as follows". Do you see that?

A. Yes.

Q. And in fact there must have been a discussion but a slightly different adjustment. But in any case, I think perhaps it was expressed, perhaps correctly, by Mr. Andersen: If you got 11, or within a percent of it, you scored highly, but if you went above or below that, you began to score poorly?

A. Yes, that yeah.

Q. Do you recall any discussion of that?

A. I don't, explicitly, but sorry, I don't, clearly.

Q. It's an unusual way to use a tool like this

A. But I think the objective, if you want me to have a stab at it, I think the objective might have been to avoid a situation where it was overly high returns or overly low returns.

Overly low returns on the basis maybe I am picking this up from somewhere else, to be honest, somewhere else in the document

Q. I don't want to catch you out. I can tell you that in the evaluation report, what Mr. Andersen said about

this was that it involved looking at IRR not from the point of view of an investor but from the point of view of a consumer. And in fairness to you, Mr.

Brennan in evidence said that what was discussed at the meeting was that IRR should be fixed at what they felt a utility would achieve in terms of its rate of return.

A. I don't recall that discussion.

Q. You don't recall that?

A. I don't recall that discussion. I think I am being influenced by what's elsewhere in the evaluation report, to be honest with you. I don't recall any benchmarking against utilities.

Q. That was a remark Mr. Brennan made in the course of his evidence.

A. I don't recall anything like that.

Q. In any case, after that meeting of the 18th May, as I said, the weightings were agreed. Then after the meeting of the 9th May, the revised evaluation model was adopted. I presume that at that time, you may not remember it now, you must have read the evaluation model?

A. Not necessarily, no, because I don't know whether I was I may not have even been provided with a copy of it, because it was a highly sensitive document. So I can't be sure that I did.

Q. How were you going to conduct the work and I am not

suggesting for a moment that you didn't at some point do it but surely you were going to have to have an opportunity to study it if you were going to carry out the work?

A. I would have been aware, obviously, having been at the meeting, the way the evaluation model was being formalised, but I may not have read the document that resulted from that. I have to stress that I was on the periphery, particularly as I was in Finance, I was in a different building, and you know, it may well have been and again, I am guessing here, but it may well have been that DTEC made sure that this model reflected what had been agreed there, what had been agreed at the meeting.

I do see that the evaluation model was approved as presented, so I take it that it was presented at the meeting, in fairness, so I may not have actually read it at the meeting, but it may have been presented at the meeting.

Q. I am just wondering how people were going to actually carry out the work.

A. Well, you see subsequently the evaluation model would have been in reasonable circulation, because post the closing date, its sensitivity would be reduced.

Q. Yes. Do you recall getting it post the closing date?

A. I don't, to be honest. But to deal with the question that you quite rightly identify, how could you

evaluate if you don't

Q. You must have got it?

A. I must have got it.

Q. Can we put it this way: Did you ever feel at any point you didn't understand what was required of the Project Group to advance the process?

A. In terms of the financial evaluation?

Q. In terms of any aspect of it.

A. No, I didn't feel at a loss to it, although, as I say, I wasn't very close to it.

Q. Now, we know that subsequent to the sending out of the RFP, the competition had to be suspended during a period while the EU intervened and while a negotiated solution was obtained to the criticisms of the process being made by the European Commission. And you'll be aware that the weightings were rebalanced in order to take account of the compromise solution that was negotiated with the EU; isn't that right?

A. Yes.

Q. And I don't know if you can recall it, but you may recall or at least your reading of the papers over the last few months may have enabled you to recall that the weighting of tariffs was increased from 15 to 18 and the weighting of licence payment was reduced from 14 to 11; isn't that right?

A. I see that in these papers, yeah.

Q. And I think that process, the reweighting of the

process was documented in quite a formal way?

A. It appears to be from this, yeah.

Q. Do you recall being involved in that?

A. I don't.

Q. But I suppose, on the basis of what you have told us already, if somebody told you it was proposed to reweight the criteria in accordance with a deal done with the EU, you wouldn't have seen it as any part of your function to interfere in the overall or headline weightings?

A. Yes.

Q. The competition process began in earnest, then, after the closing date, after the 4th August; isn't that right?

A. Yes.

Q. When I presume you were involved, documents were being made available to you to allow you to engage with the process?

A. Directly after that well, at some point after that, yeah.

Q. There was a meeting of the Project Group on the 4th September of 1995 at which I think you were in attendance, and indeed the only Department of Finance representative in attendance. You'll find, if you haven't already turned it up, you'll find the minute of this meeting in Book 42 at Leaf 95.

Now, have you identified the reference to you in the

attendance?

A. Yes.

Q. You'll see the opening of the meeting, at which Mr. Brennan outlined the agenda.

"1. The Andersen presentation on the quantitative evaluation of the 6 applications.

"2. Discussion of the forthcoming presentations.

"3. The future framework of the project".

Do you see that?

A. Yes.

Q. So there were three items. The first was to look at the quantitative evaluation. Then to discuss what you were going to do in the presentations; that's when you were going to meet all the applicants. And lastly, how you were going to progress the process further.

It would appear that the initial draft of the quantitative evaluation was presented at that meeting.

Do you recall getting it into your hand at any time?

A. I don't.

Q. Do you see where it's noted that "Prior to presenting the initial draft of the report of the quantitative evaluation, Mr. Andersen first acknowledged certain shortcomings in the results gleaned so far from the quantitative scoring. The quantitative evaluation had highlighted some incomparable elements, i.e.

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

That's a reference to tariffs.

A. Right.

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

" for certain cases not enough information on roaming was supplied to score the application.

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

"The highly sensitive nature of the quantitative scoring document was noted. Copies are to be retained securely by Mr. McMahon, Mr. McQuaid, Ms. Nic Lochlainn and Mr. Riordan."

Do you see that?

A. Yes.

Q. So that presumably indicates that a copy of the document was made available to you?

A. Probably kept by me to be put on the Department of Finance file.

Q. Well, would it have been kept by you, I take it initially, would it have been kept by you in some specially secure way?

A. Again I am speculating, but I would imagine with that I would have gone straight back to Finance and passed it on to Jimmy McMeel. If I hadn't, I would have kept it very securely. But I was my read on that is I

was being given it for the Department of Finance file.

Q. When you say that you'd have given it to Mr. McMeel, I take it you would have read it and examined it yourself?

A. Well, yes, I believe it was considered at the meeting, as I understood the minutes, so I would have read it there.

Q. You are aware that it contained, I think I am right in saying, an indication of the weightings?

A. I have seen that from the papers, yes.

Q. If you go to Book 45, Leaf 14, I'll try and get it on the monitor so you won't have to juggle three and four books.

CHAIRMAN: I find, Mr. Riordan, certainly the sheer volume of documents gets impossible, so sometimes the monitor, if you have keen eyesight, it's more helpful.

Q. MR. HEALY: If you find you need the hard text, we'll get it.

A. It's just it's a bit difficult to read from here, to be honest, but I will endeavour.

Q. You are getting a hard-text copy as well, in any case. I wrongly referred Mr. Shaw to Divider 14; it's Divider 4. Divider 14 contains the later version.

A. This is the document that was circulated sorry I am looking at a qualitative evaluation of the applications coverage? No

Q. Have you got Book 45?

A. Yes.

Q. Divider 4?

A. Oh, sorry. I have a text on market development.

Sorry, let me just flick through.

I can see something like this at Tab 5, all right.

Dated 30/8/95.

Q. Yes. And has it got the heading "Quantitative Evaluation for Irish GSM2"?

A. Yes.

Q. This is a seven-page document. If you go to page 7, do you see that?

A. Yes.

Q. And you have the total weighted score of each of the applicants. Underneath that, the highest score, 3.48.

The highest scoring applicant is A3, and then you have a number of statistics about average of total weighted score, variants of total weighted score, sum of weighted variances; do you see that?

A. Yes.

Q. And then on the top left-hand side corner, you have the weights; do you see that? These are the weights now of the indicators, remember.

A. The 3.75%, etc.?

Q. Yes, and so on.

Now, if you received a copy of this and, if you like, received a copy to take away, may we take it that you would have read it and examined it the way you read,

if I may say so, very carefully, all of the other documents you got in the course of the process?

A. I suppose it's not a document that's easily read, if you know what I mean, in that it's a list it's a series of tables, so it wouldn't be an easily-read document.

Q. But presumably you would have reviewed it?

A. Oh, yes, I would have examined it, yes.

Q. And it would have given you an indication at that point of how the quantitative evaluation was going?

A. On the basis of the work done so far, yes.

Q. Yes, and we know that even at that point, there was in fact an error in the weightings; because if you look at the weighting for Item Number 10, licence payment do you see that?

A. Yes.

Q. It's still at 14%. And if you look at the weightings for OECD basket, that's still at 15%; do you see that?

A. Yes.

Q. And that this was mentioned at the meeting, that they would need to correct the model.

A. This is the meeting which received this first when this information was first presented?

Q. Yeah. So Mr. Andersen presented the information, but obviously somebody who was examining the document

A. Yes, I see that in the minutes.

Q. identified that error.

And the text said "The need to reflect change in the weighting for the licence fee was highlighted. AMI committed to correct the model in this respect. Mr. Andersen concluded that the scoring at this stage was relatively close and that no conclusions could be drawn."

Now, do you see the list of weights contained in that document?

A. Yes.

Q. If you, for a moment, just can turn to your Book 54, and go to Leaf 2 on page 17?

A. Yes.

Q. You'll see that there is a list of indicators which I think tallies with the list of indicators contained in this quantitative evaluation; do you see that?

A. Yes.

Q. Certainly if you look at the ones that you might be more familiar with, like solvency and IRR, in each case they are 7.5; do you see that?

A. Yes.

Q. So that that quantitative evaluation tallies with the weights given to the indicators in the evaluation model adopted on the 9th June?

A. Right.

CHAIRMAN: Including being an error because of the post European

MR. HEALY: Including the error, yes.

Q. Now, the Tribunal doesn't know and I don't know whether you're aware; I suspect you aren't but just to clarify it, do you recall receiving a corrected version of that quantitative report?

A. The one at Tab 2?

Q. The quantitative evaluation report I have just shown you, the one we had on the overhead projector a moment ago.

You will see it now again; do you see it there?

A. I don't recall, but I can look, if you like.

Q. I can tell you it's not in the documentation, but do you recall ever getting a corrected version as Mr. Andersen promised at the meeting of the Project Group?

A. I don't recall it, but I don't recall it.

Q. You may take it it's not there; it's not in the documentation.

A. I have one in my file that's dated 20th September.

Q. That's another one.

A. Sorry, you mean one between the two?

Q. I don't think that's a corrected version of this one.

To correct this one, all you'd have had to do was correct the 14 and the 15; do you follow me?

A. Yes, in terms of that correction, I don't believe

Q. As an accountant, I take it if you were presenting a document like this to a client and you saw an error like this, which is a fairly simple, I suppose, computation error, in some computer you could run off

a corrected version fairly quickly, but for whatever reason it wasn't done here, but unless you

A. I don't recall. I have to be honest, what I am recalling here is very much aided by the documentation I have in front of me, rather than from pure memory.

Q. Now, if you go to the last page of that minute of the meeting of the 4th September, you will see that under the heading "Future Framework of the Project" it's stated "10 sub-groups meeting for the qualitative evaluations had been proposed by AMI. 5 had already taken place. AMI committed to provide the Department with documentation on these earlier sub-group meetings. Project Group members were welcome to contribute/suggest amendments to the scoring."

It goes on: "Andersens outlined a timetable for the remaining 5 sessions, and personnel were nominated to attend. Mr. Towey and Mr. Riordan are to attend the financial and performance guarantee meetings."

That's I think in accordance with your own response to the Tribunal's questionnaire; isn't that right?

A. Yes.

Q. And again, so that there will be no dispute about it, or I am not suggesting you are disputing anything, but that there be no misunderstanding, you were to be, in other words, a member of a sub-group to deal with the qualitative evaluation at this stage; isn't that right?

A. Yes, okay, I would say I was a resource available to that sub-group.

Q. I see.

A. I was really there to help the sub-group, yes, so in essence but I attended a meeting on the 6th September, I attended what I regarded as an aborted meeting sometime later in September, and then I don't know whether there was a meeting held when Martin Brennan and Fintan Towey were in Copenhagen around the 28th September.

Q. I understand.

A. But there is some documentation I see that leads to further consideration and conclusion of that financial evaluation at that point.

Q. You were the only member, the only non-Andersen member of this group, apart from Mr. Buggy, who had accountancy qualifications; isn't that right?

A. Sorry, I was the only non-Andersen?

Q. You were the only non-Andersen member of the Project Group, apart from Mr. Buggy, who had accountancy qualifications?

A. As far as I know. I don't know if Fintan Towey has any. He was the only other non-Andersen person.

Q. I wanted to go further than that. You were the only non-Andersen member of the whole Project Group, apart from Mr. Buggy, who had accountancy qualifications?

A. I would have to take your word for that. I don't know

the qualifications of the other people.

Q. You were the only practicing accountant, in any case, apart from Mr. Buggy?

A. Yes.

Q. And at this particular time, you were in fact the only practicing accountant, other than whatever Andersens were providing on the Project Group, because Mr. Buggy was unavailable; isn't that right?

A. He was on holidays, yes.

Q. So you were the financial eyes and ears of, if you like, the Department side of this process at that point?

A. No, I wouldn't necessarily accept that.

Q. Wouldn't you? Right.

A. I would see my recollection was that Fintan was quite clued in to a lot of these issues and a lot of these points. So I definitely saw my role here to help as requested to. I was asked for input, and I gave input. I was asked to resolve the problems of the mandatory tables; I resolved I gave a solution that I suggested for resolving the problem with the mandatory tables.

But I wouldn't suggest that I was the financial eyes and ears, I wouldn't agree with the assertion that I was the financial eyes and ears of the of either departments or of the Government, the State side at the financial sub-group.

Q. I see. So if there were problems that you weren't asked to attend to, nobody would pick them up unless Andersen picked them up?

A. I would have seen, if there were problems, and they were picked up by either myself or Fintan or Andersens, that you know, we would agree how we would resolve them. For example, the problems were picked up in relation to the mandatory tables; and I think at the outset, Andersens said they were going to try to resolve them.

Q. I just want to get it clear: You weren't there on the basis of speak when you were spoken to. You certainly had a full role?

A. No, I was not there on the basis of speak when spoken to, absolutely not.

Q. If you could just track forward a little for a moment. At this point you had the first draft of the quantitative evaluation, and you were putting in place or you were making arrangements for two things. Firstly, the sub-groups were being put in place; isn't that right? And secondly, you were getting ready for the presentations?

A. Yes.

Q. That was the state of play, if you like?

A. Yes.

Q. We know that some sub-groups had taken place already, but there had been some, how shall we put it,

difficulty or unhappiness about that. But that was clarified, in any case, and eventually the documentation from the sub-groups that had taken place without any input from the Department was going to be made available. I don't know those sub-groups affected Finance, or did they?

A. I don't think they did.

Q. In other words your sub-group started its work there and then, without any work having been done already by Andersen?

A. Yes.

Q. And you say that you went to Copenhagen on the 6th September?

A. I think I am not sure whether the meeting was on the 6th, but around that time. I can check.

Q. Maybe you could clarify that to me.

A. I travelled on the 5th, myself and Fintan Towey travelled on the 5th and were in Copenhagen on the day of the 6th. And returned, I believe, on the evening of the 6th.

Q. I see. And did that trip generate documentation? Do you have documentation that enables you to confirm that, or are you simply referring to your diary?

A. No, because I have a file note in relation to that.

Q. I see. Maybe you could just refer me to it, because I may have overlooked it.

A. Sure, I have a copy of it. I am just not sure what

your reference is. Just give me one second.

There were basically two meetings held. There was a performance guarantees sub-group and a sub-group examining financial matters. I don't know where they are in your file references, to be honest with you.

Q. If you could just give me a look at them for a minute, and it may be that I'll be able to identify them, but just to be clear about it.

A. I have got a whole load of stuff on my knees.

Q. If you just give me the whole book for a minute, it may be that I already have them.

Well, I may be able to assist you, because it appears that I do have this documentation, and it now appears that I have other documentation relating to the same thing. I'll just give you these for a moment.

I think what I'll do, Mr. Riordan, and it will mean making other documents available to people, but so that we don't lose the thread of what you are describing, I'll read out the documents I have concerning this meeting, which are rather more extensive than you have. I am not criticising you for that, because what I have now been given from your files is, and I'll describe the documents, they are easy to read. It's a note to file, copies to Mr. David Doyle and Mr. Jimmy McMeel. If I put them on

the overhead projector, it will be easier all round.

Do you see that document?

A. Yes, yeah.

Q. "Meeting with Andersen Management International
Copenhagen on the 6th September 1995.

"Sub-group examining financial matters.

"Attendees:"

A. They are essentially two file notes covering that.

This is one of them, and the other one is the
performance guarantee sub-groups, which is the one

Q. I have all of them now. "Attendees: Michael
Andersen, Michael Thrane, Billy Riordan, Fintan Towey.

"After some introductory remarks from Michael Andersen
regarding the process to be undertaken in this
qualitative analysis, I have brought up the fact that
there appears to be a number of serious mistakes in
the mandatory tables. We discussed this at length,
and it was agreed that this was a serious state of
affairs, bearing in mind there were question marks
over the majority of the bidders' applications.

"It was agreed that the financial projections other
than those supplied in the mandatory tables formed
part of the bid, and as such would have to be
considered in the process of evaluating the position.

However, a difficulty arising in that if they are
different from the mandatory tables, the bid has
essentially got two financial proposals attached. It

was agreed that in order to establish the scale of the problems, we need to check the consistency of the financial projections; and if issues arise out of that process, we should go back to the bidders and ask a number of specific questions. Michael Andersen was unenthusiastic about the proposition that we should ask contestants to review their financial tables and ensure that they were consistent within themselves, consistent with the alternative financial projections provided, and consistent with the statements in the body of the bid document.

"I explained that I thought that the task of extensively checking the mandatory tables to ensure that they are consistent with the rest of the bid would be a mammoth task. I was also conscious of the fact that DTEC are negotiating with Andersen Management International in respect of how any additional work should be billed. At Fintan Towey's suggestion, it was agreed that a "quick and dirty" check should be carried out on the mandatory tables themselves to see whether they are internally consistent. This would include cross-referencing the revenue reserves per the profit and loss account with the revenue reserves in the balance sheet, the bank balance per the cash flow with the bank balance per the balance sheet, and the depreciation charge between the profit and loss account balance sheet.

"For the purposes of the finance sub-group meeting, it was agreed that we should use the tables as presented by the candidates and take them as is. Michael Thrane said he would check the consistency of the mandatory tables, and Michael Andersen suggested that I do likewise. I explained my reservation that it might not be possible for me to allocate sufficient time to carry out this task in parallel with Michael Thrane but that I would review it with my management. It was also agreed that we would review the position on Monday, before the presentations take place, to establish what came out of Michael Thrane's analysis and how we might approach the impact of inconsistencies going forward.

"I questioned whether the quantitative analysis might be incorrect as a result of cash flow being inconsistent and therefore the IRR being inaccurate.

Michael Thrane said that the IRR calculation was based on earnings and not cash flow, and therefore it might not necessarily be affected. I also questioned whether the solvency calculation might be incorrect if the calculations in the mandatory sheets are wrong.

Having discussed this substantial issue, we then decided to go ahead with the evaluation. I felt this would be useful from the point of learning how these meetings would be conducted throughout the evaluation process.

"Evaluation indicators:

"Michael Thrane suggested 4 categories for evaluation indicators we might use: solvency, financing, profitability and sensitivity.

"1. Solvency.

"The initial proposal was that the equity/debt calculation should be used (line 81 divided by line 87)."

That's a reference to the mandatory tables, is it?

A. Yes, I believe so.

Q. "This is the same calculation that was used in the quantitative analysis.

" capacity of backers was the second proposed evaluator finally agreed to be called financial strength.

"2. Financing:

" a measure of the shareholders' commitment to the project was considered appropriate. Putting this another way, this is the extent to which a potential bidder has invested funds in the project.

" I proposed that we might consider liquidity, i.e. line 77 divided by line 85. Michael Andersen resisted this on the basis that he thought that liquidity could be taken as a given. On that basis I said that we could comfortably identify what we would call liquidity problems, and if one

existed in the mandatory tables, then the score should be bottom of the range; and if one did not, then the score should be the top of the range. I said I could not justify ignoring liquidity as a criterion, as just such a position could undermine the success of the GSM operator every bit as much as a solvency problem could.

" finally the existence of bank commitments was also considered an important sub-indicator to score.

"3. Profitability:

" the IRR was again viewed as the most important issue here. This was the measure that was used in the quantitative analysis.

"A comparison of the bidders' exposure to the IRR was also considered important by Michael Andersen.

However, when we came to score this, the methodology/approach Michael used did not seem consistent or reasonable, and he agreed to review it again.

"I proposed that we examine the interest cover to ensure that the debt burden is not excessive. Michael Andersen resisted this, but when I pointed out that we were interested in the operator's profitability so that we could be comfortable that the company would continue to exist, he acquiesced.

"In this regard I suggested that we score the deviation of the IRR under various scenarios from the

headline IRR as evaluated under the profitability section. This was accepted as being an enhancement of the existing proposition. We also discussed whether the exposure versus IRR criteria should be moved to this subheading.

"I suggested that we examine some efficiency criteria for the operator. However, Andersen Management International argued that this would be no advance on examining the IRR. I suggested that we should be interested in efficiency, as effective use of resources is important, and proposed that indicators such as cost per line, revenue per line, etc., might be considered.

"At the end of this discussion, we accepted that progress had been made in identifying the indicators. However, we also very clearly reserved the right to amend the set of indicators at any stage we thought it was appropriate. We emphasised this on at least two occasions later in the meeting.

"The initial scoring exercise made up of the financing sub-group arrived at the results overleaf."

You have then solvency, bank commitments, 10-year IRR and exposure/IRR. And you have a note: "Item 4 is to be revisited by Michael Andersen." Another note:

"Several of the sub-indicators discussed have not yet been scored."

The next heading is "Performance Guarantee sub-group".

You say "This session was attended by Fintan Towey, Billy Riordan, Marius Jacobsen and Ole Feddersen.

"In the introduction, Ole pointed out that the performance guarantees was the eighth evaluation criterion in the RFP. He also pointed out that the licence agreement as is currently drafted can install penalties other than simply revocation of the licence.

"Before the detailed bids and their proposals were discussed, there was a protracted discussion about what constituted a guarantee. Fintan Towey reserved the right to reflect on this issue, but as he saw it, the guarantees would be any such items as might enhance the comfort of the evaluators as to the bidders' bona fides in respect of the commitments made in their bids. Andersen Management International had some question marks about this policy line, in that several bidders had made guarantees about the commitments without necessarily stating what they would do if these guarantees were not met. There was also some discussion about the information memorandum sent in response to bidders' questions which asked the question whether a performance bond was required.

This question was answered by saying that a performance bond was not specifically required.

Andersen Management International speculated that this may have resulted in some applicants disregarding the notion of a bid bond.

"Evaluation took the following:"

Then you have the approach to the evaluation in respect of each one of the six applications; is that right?

A. Yes.

Q. And you go through each one of them. We just mention the top 3, which would be A1, Mobicall. Do you see where, in the course of your response, you thought that all the time you were using the codes, I think I am right in saying that sometimes the codes were used, A1, A2, A3, A4, A5, but that sometimes the names were also used?

A. Yes, sir, you are right.

Q. I suppose, if you think about it, it would be hard to perform a complete evaluation if you didn't know who you were evaluating and the people they were?

A. Yeah.

Q. In relation to Mobicall, you say "The performance guarantee is dealt with on page 14 of the executive summary and book 3 section 4 in the chapter on quality, objectives and performance guarantees."

That's a reference to their actual applications; isn't that right. Am I right in that?

A. Yes.

Q. "This details a list of technical objectives and gives a lot of details on how they will be measured.

However, no information is given on potential

penalties for failing to meet this objective".

If we go to A3, Persona: "The technical plan in Section 2 on page 3 sets out targets, and while it has no financial penalties proposed, it does contain some commitments as to how Persona might remedy shortfalls in their performance. They do have quite extensive detail on the option plans that are involved in these remedies".

If you go to Esat Digifone, A5: "This proposal contains the greatest performance guarantees. In Volume 1, Section 7.2 details performance guarantees based on delays in the launch and not achieving the 90% coverage level. These guarantees amount to up to £1.8 million and are structured on the basis of £1 million for each month that the project is delayed."

Can I just ask you and then you have the scoring:

"After some discussion the following grades were allocated to the performance guarantees in each proposal.

"Mobicall, D; Persona, C; Esat Digifone, A".

Do you see that?

A. Yes.

Q. Now, I have here some handwritten notes, and it seems to me that they may relate to the same thing. I am not going to delay the evidence, but I'll ask you afterwards whether they are in fact your handwritten

notes which you used to produce this document.

The documents we have seen on the overhead projector were in the form of a memo from you to your superiors in the Department of Finance; is that right?

A. Yes, a file note.

Q. It was copied, I think, to

A. David Doyle and Jimmy McMeel.

Q. And who else?

A. Jimmy McMeel.

Q. Were they both kept in the loop, as it were, all the time in relation to the progress of the work that you were involved in?

A. Jimmy certainly was, yes. Probably less directly, David Doyle.

Q. Right. There seems to be, in the case of your files, very careful noting of most of the activities that you carried out in the course of the process; is that right? You prepared narrative memoranda like the two we have just seen in relation to most of your work; is that right?

A. Yes, most of the work, yes.

Q. On the overhead projector a moment ago, we saw a query that was raised concerning performance guarantees. Do you recall that issue arising at the meeting, where Mr. Andersen wondered whether monetary-based or money-based performance guarantees should be treated, you know, or should be afforded the same, I suppose,

marks or the same high grades as non-money-based ones,
due to the fact that a question had been asked in the
information round to which the answer had been given
that performance bonds were not specifically required?

A. I don't recall a discussion.

Q. Were you involved I don't think you were, but just
to clarify it were you involved in the information
round prior to the

A. This is the responses to collective questioning?

Q. Yes.

A. No.

Q. The next meeting of the Project Group took place on
the 11th September, but I am not going to dwell on it
because all it did was to outline a strategy plan for
the presentations.

And then the next involvement you had in the process
was at the presentations themselves; isn't that right?

A. Yes.

Q. So going into the presentation, you had the benefit of
the results of the quantitative evaluation; isn't that
right?

A. Yes.

Q. The first one.

A. Yes.

Q. You had the benefit of having conducted an evaluation
in Copenhagen; isn't that right?

A. Yes. Sorry, an inconclusive evaluation, because there

were issues identified with the tables, and there were a range of indicators not scored.

Q. Yes, you felt there ought to be other indicators?

A. Yes.

Q. Could we just go back to that evaluation for a moment, and go back to the first issue, the financial evaluation, and the scoring.

In arriving at the scores, can you help me as to how you arrived at a score for each applicant?

A. I can't. I can only I can't. I can't recall. I can only suggest that Andersens had data there which was reviewed and that gave rise to these scores.

Q. Did it mean that you all sat around the table and said, "Look, in relation to A1, we'll give them an A for solvency", and nobody disagreed?

A. I think Andersens would have produced whether the management tables or data and said "This is what the solvency score is on X, and therefore we are going to give them an A".

Q. Were all of these items in fact items on which you had hard data?

A. I can't be sure, to be honest. Solvency, I am guessing here again, solvency I imagine would have; 10-year IRR would have been; and exposure/IRR

Q. Well, the 10 years' IRR is something you could have got from a table; isn't that right?

A. Yeah, as would solvency be.

Q. Bank commitments/IRR involves some degree of judgement; isn't that right?

A. I don't know. It could have been that they simply said "The total bank commitment that candidate X has is such and such". Do you know what I mean?

Q. Yes.

A. They could have said "This is the maximum bank commitment they have available to them".

Q. But, remember, you were involved in I think what you were clear was a qualitative evaluation.

A. Yes.

Q. How did you actually go back doing it if there were yourself, Mr. Towey, Mr. Thrane and Mr. Andersen, four of you is that right?

A. Four, yes.

Q. Surely you weren't letting it all in Mr. Andersen's hands?

A. No, Mr. Andersen was presenting, I believe, what he thought was an initial scoring for our consideration, yes.

Q. And you all said "Yes, we'll run with that, and we won't run with that"?

A. But they may not have been the original scores that he produced.

Q. I follow.

A. They may have been after deliberation.

Q. I quite understand that. What I am trying to what

I am driving at is, how did you get at those scores?

Mr. Andersen may have proposed, for solvency of A1, he may have proposed a B; and am I right, then there'd be a discussion about whether it should be a B or an A?

A. That's what I would imagine, but I honestly don't recall, but that's what I imagine. I do recall some discussion of hard data. I can't remember the data that was discussed.

Q. It's obvious that if you have got measurable data, that's to be distinguished from the type of data that you would use to make judgements on, in that if you have measurable data when you are stuck with a number, somebody has a higher number than somebody else, they should get a higher grade; I suppose that's the way it operated?

A. Yes.

Q. Now

A. Could I take a comfort break for a moment?

CHAIRMAN: We are just about

A. That's what I was just asking, do you want to wrap up?

CHAIRMAN: Mr. Healy

A. I didn't mean to interrupt your train of thought.

Q. MR. HEALY: That's no problem.

CHAIRMAN: For the sake of five minutes, unless there is something you want to raise, Mr. Nesbitt

MR. NESBITT: This witness, as you appreciate, Mr. Chairman, he has some time difficulty on Friday, and

he was happy to work late if that suited the Tribunal.

A. Sorry; my difficulty is that I just simply have to leave at four o'clock on Friday.

CHAIRMAN: Well, what we'll do is we'll take

MR. HEALY: Weren't we going to start at half ten in the morning, I think, as well?

CHAIRMAN: It might be desirable. I was certainly going to start, if we went into Friday, at half ten; but it might be a little bit of a safety valve if we started at half ten tomorrow, if that's suitable to you, to ensure that you are free to take up your plans without having to come back, if remotely possible.

A. Thanks very much indeed. I appreciate that.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 10TH APRIL, 2003 AT 10:30 A.M.