

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, BL

Instructed by: John Davis

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES: Mr. Richard Law Nesbitt, SC

Mr. Conleth Bradley, BL.

Mr. Diarmuid Rossa Phelan, BL.

Instructed by Matthew Shaw

Chief State Solicitors Office

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

Mr. Gerry Kelly, SC

Instructed by: Eoin O'Connell

William Fry Solicitors

FOR TELENOR: Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

For Michael Lowry: Kelly Noone & Co.,

Solicitors.

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxtton.

I N D E X

Witness: Examination: Question No.:

Fintan Twoey Mr. Coughlan 1 - 240

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY,

7TH MAY, 2003, AT 11AM:

MR. COUGHLAN: Mr. Towey, please.

FINTAN TOWEY, HAVING AFFIRMED, WAS EXAMINED AS FOLLOWS

BY MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Towey, do you have the memorandum

of intended evidence? And I think you know the procedure we follow here; that I take you through this, in the first instance, and then we'll come back and perhaps go through some of the documents over the period of the process and seek clarification, if necessary, in relation to matters?

A. Yeah, okay.

Q. Now, I'll just take you through this at the beginning.

I think the memorandum states that "the following responses have been prepared from the Tribunal documents based on answers supplied by Fintan Towey from memory, which may be subject to correction and on the basis of a review of specific documentation referred to in the questions raised by the Tribunal's legal team.

"The following combination has not been endorsed in final form by Fintan Towey, who was in Brussels, due to the short time available to him to review it.

Mr. Towey will endorse or indicate any variations by the latest" and there is a date given.

All I want to say to you, if you want to vary or correct anything as we go through, please feel free to

do so, is that all right?

A. Okay.

Q. Now, I think the first question which was raised was that you were asked the date on which, the circumstances in which and person by whom you were first appointed to assist Mr. Martin Brennan in the second GSM licensing process. I think you have informed the Tribunal that you were assigned on promotion to Telecommunications and Radio Development Division in September 1994. The assignment was made by the personnel officer following a discussion by the Department's management committee. The vacancy arose from the promotion of your predecessor. Your responsibilities in the post were not confined to the GSM licensing process but extended also to other telecommunications issues, notably emerging EU legislation, transposition of EU directions and policy in relation to satellites and radio frequency spectrum. Throughout the GSM bid process, you worked in the Telecommunications and Radio Development Division as an Assistant Principal, reporting to Mr. Martin Brennan, then Principal Officer. Your section, with the division, provided the Secretariat to the GSM Project Team chaired by Mr. Martin Brennan. Your own role included the provision of advice to Martin Brennan, liaising with the consultants, ensuring circulation of papers to

Project Team members, documentation of the process, direct participation in the decision-making in relation to the comparative evaluation of applications, vetting the final report, finalisation of the licences, defence of the process and interaction with senior officers and the Minister, as required.

You then said that, as one who was at the heart of the GSM evaluation process from before Michael Lowry became Minister, right through to the award of the licence, and the subsequent defence of the process, you would like to state that it is your view that the comparative evaluation of the application received of the applications received was carried out in good faith in accordance with the predetermined evaluation criteria and that the winning application was the best application according to those criteria.

The evaluation of the technical aspects of the applications was the only element of the process in which you were not a direct participant. There was not, to your knowledge, any external influence brought to bear on the process which could have had the effect of ensuring any particular result.

Is there anything you wish to add at this stage? You can add at a later stage if matters arise.

A. Yes.

Q. I think the second query which was raised with you

then was the names of all officials or persons who assisted in the initial phases of the process, that is from the date of your first involvement to the date of the issue of the RFP forms. And you have informed the Tribunal that your recollection of the persons who assisted in the period from the date of your involvement to the date of the issue of the competition documents is as follows: John Loughrey, Sean Fitzgerald, Martin Brennan, Maev Nic Lochlainn, Colin McCrea, Dave Doyle that's Mr. Doyle of Finance, I think

A. Correct.

Q. Mr. Jimmy McMeel, also of Finance, and Mr. Denis O'Connor. I think you were then asked for details of all consultations which you, or any other person assisting you, or any other departmental official, had with interested parties prior to the announcement of the competition, including the identities of the parties, the nature of the consultation and the subject matter of submissions received from interested parties, if any.

I think you have informed the Tribunal that before the announcement of the competition, you met with a small number, two or three parties, who were interested either in providing consultancy advice or in bidding for the licence. You recall meeting representatives of PA Consulting, and the representative of a French

company, probably Societe Generale des Eaux. "I think I may have met with Denis O'Brien around this time also but cannot be certain." These meetings took place in the context of an open-door approach taken by the Department to hearing the views of all interested parties on the licensing of a second GSM operator. There were more or less existing (sic) exercises by the Department sorry, they were more or less listening exercises by the Department. I think Mr. Brennan has also described these; you were on a learning curve, as it were?

A. That's true.

Q. I think you were then asked for your knowledge, direct or indirect, of the various options considered by the Department regarding the structure of the licensing process, i.e. the options of an auction, a beauty parade, a combination of auction and beauty parade, etc. Including details of the options considered and the names of all departmental officials or other persons who were parties to the consideration or who were otherwise consulted.

I think you have informed the Tribunal that the question of the approach to the licence fee was considered as two separate points. Firstly, before the launch of the competition, and secondly, after the suspension of the competition due to the concerns raised by the European Commission. The options that

were given serious consideration before the launch of the competition, insofar as you can recall, were:

1. The successful applicant would pay a fee of $\text{€}1/25$ million and Eircell would pay no fee.
2. Successful applicants would pay a fixed fee of $\text{€}1/20$ million and Eircell would pay no fee.
3. An auction approach to a royalty-type fee where Eircell would be obliged to match the fee paid by the new entrant but with an up-front fee of $\text{€}1/23$ million, payable by the new entrant only.
4. An auction approach to an up-front fee where Eircell would not be obliged to pay any fee.

The Department's telecommunications policy priority for the competition was that it would lead to the early development of effective competition for the existing service provided by Eircell. A high entry charge was regarded as a threat to the achievement of this objective because of its potential impact on the withdrawal of the new entrant to reduce tariffs and compete on price with the incumbent. Accordingly, the Department's original intention was that the competition would be held on the basis of a beauty contest. It was also generally known that the European Commission was not in favour of auctions. The Department of Finance, on the other hand, was of the view that auctions were a well-established practice in this area and that the opportunity for

revenue gain should not be missed. In view of this, and protests by Telecom Eireann pleading unfairness of this approach and their inability to pay, a compromise was reached that there would be an auction-based approach to the fee element of the beauty contest and that there would be no requirement for Eircell to pay a fee. It was your understanding that an auction approach was decided on at the instigation of the Department of Finance. You believe that Colin McCrea, John Loughrey, Sean Fitzgerald, Martin Brennan, yourself, and Maev Nic Lochlainn were involved in considering the options. The departments of the Taoiseach, Finance, Social Welfare, Enterprise and Employment, and Office of the Tanaiste were consulted.

A. Correct.

Q. I think you were then asked the date on which, the circumstances in which, and considerations involved in the initial view of the Department that a fixed fee should be charged for the licence, and the names of all Department officials or other persons who were a party to the decision or who were otherwise consulted.

I think you have informed the Tribunal that the initial view of the Department as set out above was that a fixed fee should be charged for the licence, based on the view that a high fee determined by an auction would feed into higher tariffs and militate against effective competition in the market. To the

best of your recollection, this view was shared by John Loughrey, Secretary; Sean Fitzgerald, Assistant Secretary; and Martin Brennan, Principal Officer.

A. If I may interrupt you at that point, Mr. Coughlan. I believe, on re-reading the files, in fact, that Mr. Sean Fitzgerald may have had a slightly different view and may have been more sensitive to the argument that there was an economic rent to be earned in this sector and that to charge a fee solely to the new entrant would not be unfair.

Q. Right. You say that, on the other hand, the Department of Finance favoured an approach that would yield a higher return to the Exchequer. Your recollection was that Dave Doyle and Jimmy McMeel of the Department favoured that approach, which was presumably shared by their superordinates. The approach set out in the competition document was finally settled to reflect the views of the Department of Finance but also taking into account the pleas of Telecom Eireann.

I think you were then asked for your knowledge of, or involvement, direct or indirect, together with your knowledge of the involvement of any other person in the retention of KPMG as consultants to the competition in relation to the initial competition design, and your knowledge, direct or indirect, of the advice rendered by KPMG.

And you have informed the Tribunal you did not have any role in relation to the recruitment of KPMG or interaction with the company in relation to the competition design. This was handled, before you joined the division, by your predecessor, Conan McKenna. Your understanding is that KPMG were recruited because of their specialist knowledge following an extensive study they had carried out for the European Commission in relation to the licensing of mobile phone operations. Your understanding is, also, that the advice given was reflected in a report in the competition documents.

I think you were then asked for details of your input in the preparation of the draft tender document initially submitted to KPMG, together with the details of input of any other official or persons, and the precise input made.

And you have informed the Tribunal that your input in relation to the competition documents related mainly to the licence fee provision after KPMG had given their advice. You think there may have been some other small changes but don't recall the details. You were not aware of what role exactly might have been played by officials of the Department, but Martin Brennan and Conan McKenna would have been central players.

And then I think you were then asked for details of

your input into the revised tender document subsequently submitted to KPMG, together with details of the input of any other official or persons and the precise input made. And I think your response is the same as the response to the previous query raised?

A. Correct.

Q. I think you were then asked for your knowledge, direct or indirect, of the considerations, if any, given to the issue of the transparency in the competition design, and, in particular, to the issue of the disclosure/nondisclosure of the evaluation criteria weightings, including the details of such consideration and the input, if any, of other persons and professional advisers to the considerations.

And I think you have informed the Tribunal that the weighting of the evaluation criteria was determined by the Project Team following a proposal by Andersen Management International. The question of non-disclosure of the weightings was decided by the Project Team at its meeting on the 27th April, 1995.

The decision taken is reflected in the information memorandum issued the following day. On rereading the files, it would seem that the Department of Finance had concerns about the possible constraints of a weighting mechanism, presumably because of their view of the importance of Exchequer revenue. You are not aware of what advice, if any, was given by KPMG on the

question of weightings or their disclosure. You believe it may have been that you may have been informed at sometime that it was the view of KPMG that the evaluation criteria be listed in descending order of priority.

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

I think you have responded: The Department's figures initial inclination response to questions received from interested parties was in favour of publication of the weightings. The Department of Finance, however, did not favour a weighting system or its publication. The stance was related to their interest in the high licence fee. It is not possible at this stage to say whether the Project Group found that Department's view persuasive or just that it was necessary to compromise to move forward.

The second query then was the placing of the emphasis on the evaluation criteria of the criterion of tariffs to its ultimate position in which the first priority was given to the credibility of the business plan, and the applicant's approach to market development as also recorded in the memorandum of Mr. McMeel and the note to the Minister.

And you have informed the Tribunal that there was never any question of tariffs being afforded the highest priority in the evaluation criteria. The comments in the memorandum of Jimmy McMeel would seem to relate to the relative weighting of tariffs and the licence fee.

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

And you have informed the Tribunal that you dealt with Minister Michael Lowry on several occasions in relation to the GSM licensing process from the launch of the competition, through the announcement of the result, the award of the licence, and in defending the integrity of the process. These generally occurred in the context of the public statements in relation to the GSM process. You do not recall the details of individual meetings, but none of the face-to-face meetings were on a one-to-one basis. You also spoke to Minister Lowry when he telephoned you sometime in

August or September 1995. He was anxious to know how the competition was going, because he was subject to representations by parties who were concerned that the decision on the winner had been made. You recall that at the time of the call, it was not clear which consortium would be the winner. You made this clear to him. You also believe that you mentioned that it may be to his advantage not to have knowledge of how the evaluation was proceeding.

A. Correct.

Q. Just, if I might pause for a moment. Just in relation to that, can you remember whether it was August or September of 1995 or is that still your best recollection?

A. I can't say for certain, but I think it would have been September, because I believe, in talking to him, that I had a reasonably good idea of which of the applicants were leading, so to speak. And I think I would only have had that in September.

Q. Very good. Now, I think you were then asked for your knowledge, direct or indirect, of the factors which prompted the decision made by the Minister in or about early February 1995 that there should be no limitation placed on the licence fee nominated by competition entrants subject to a minimum of $\frac{1}{25}$ million, together with details of all discussions with or advices given to the Minister by you or to your knowledge, direct or

indirect, by any other official or person.

And you have informed the Tribunal that your understanding is that this decision was made in order to accommodate the view of the Minister for Finance and his Department, and also to take into account the concerns expressed by Telecom Eireann. You prepared a number of versions of the aide-memoire for Government to reflect the different options being contemplated but otherwise gave no advice to the Minister on this point. You believe that, in this point, that the interaction with the Minister was handled by your superordinates.

So can I take it that you would have had the task of preparing various aide-memoires, reflecting all the

A. evolving thinking.

Q. All the evolving thinking and the different positions?

A. Yes.

Q. But that the advice would have been further up the line, would have been Mr. Loughrey, Mr. Fitzgerald or Mr. Brennan?

A. That's correct, yes.

Q. Now, I think you were then asked for details of all dealings which you had, or which, to your knowledge, direct or indirect, any other official or person had with the European Commission prior to the announcement of the second GSM competition on the 2nd March, 1995.

And you have informed the Tribunal that before the

announcement of the competition, some letters had been received from the European Commission threatening legal action arising from Ireland's failure to introduce competition into the mobile telephone market. Martin Brennan had a number of contacts in relation to the approach to the competition. You do not recall having a direct role. A copy of the competition document was sent to the Commission on the 8th March, 1995. That clears that; that was a matter which arose in the course of the evidence of other witnesses you remember that the competition documents were sent on the 8th March?

A. Yes.

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

And you have informed the Tribunal that you understood that the Cabinet would take the decision in relation to the launch of the competition and would also make the final decision on the award of the licence. The

role of the Cabinet Subcommittee was to resolve problems, mainly the licence fee, in order to pave the way for the launch of the competition. The time-frame of the 31st October, 1995, was that sought in the memorandum put to Government. Your reading of the exchange of letters between Martin Brennan and Jimmy McMeel is that the Department of Finance was seeking to ensure that a weightings mechanism would not serve to limit the exercise of discretion in relation to the licence fee in an auction setting. However, this is really a matter for the authors of the letters.

I think you were then asked for your the purpose or purposes for which the competition design allowed a period of six weeks from the date of the availability of the evaluation report to the planned announcement of the result of the competition process.

I think you have informed the Tribunal that the planned schedule for the competition was prepared by AMI and was revised after the suspension of the competition. You do not know why a period of six weeks may have been allowed from the date of the availability of the evaluation report to the planned announcement of the result of the competition process.

You can only speculate that such time may have been allowed to provide for margin for slippage and for political consideration of the recommendation.

A. If I may interrupt there. I believe, actually, on

re-reading the files, that at the second meeting of the Project Team, which took place shortly after the launch of the competition, the minutes record a view that six weeks should be allowed for consideration of the result by the Government. And I think from that point onwards, as the schedule for the competition was revised, I think that six-week period was rolled forward.

Q. That's right, yes, it moved from October to November, isn't that right? The end of October to the end of November, yes.

Now, I think you were then asked for your understanding of the RFP document issued by the Department in March of 1995 and, in particular, paragraphs 3, 9 and 19. Now, I don't think unless you wish me to read out paragraphs 3, 9 and 19 they have been read out on many an occasion here. And I think you have informed the Tribunal, first of all, that your understanding was that paragraph 3 was designed to ensure clarity as to who the backers of the project would be. You were not involved in drafting the original provision. You were also not involved in drafting paragraph 9, but your view is that it was always considered to be subsidiary to paragraph 19 in the evaluation of application. Paragraph 19 was interpreted by you as the primary basis on which applications would be compared, is that

correct?

A. That's correct, yes.

Q. Now, I think you were then asked for your involvement in, and/or knowledge, direct or indirect, of the process which led to the revision of the tender documents resulting in the evaluation in the status of the requirements of sorry, I beg your pardon, in the elevation in the status of the requirements of financial capability and technical capability and your understanding of the impact of the revision of the overall competition design.

And you have informed the Tribunal that insofar as you can recall, paragraph 19 was not changed after you joined the division. You believe that it was always that you were always of the view that the requirements expressed in the chapeau could potentially have been used to disqualify candidates in advance of a full evaluation in accordance with the detailed criteria. You did not consider it possible that any applicant that was deficient in these respects could score well in the more detailed evaluation given the priority attached to financial and technical capability. Had the number of applicants been greater, the chapeau requirement may have been used to narrow the field.

I think you were then asked for your role in the establishment of the Project Group. We should perhaps

explain, the chapeau was that which appeared above the listed criteria in the memorandum which went to Government, and it appears in paragraph 19. Is that the Minister being satisfied, subject to the financial and technical capabilities?

A. That's correct, yeah.

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

And I think you have informed the Tribunal that you do not recall participating in the decision that the Project Group should be established or in determining its membership.

I think you were then asked the purpose for which the Project Group was established, including the function of the individual members and their intended input into the evaluation process and the ultimate outcome of the process.

And you have informed the Tribunal that the Project Group was the decision-making body for the management of the process. In essence, the group brought together six parties, three separate divisions of the Department, the Department's accountancy professional, the Department of Finance, including that Department's accountancy professional, and the consultants. No formal terms of reference were set out, and as such,

the specific role of members was not prescribed. The Project Group made decisions on the basis of consensus. You do not recall any dissenting voice in relation to any of the decisions taken by the group.

These decisions included, for example, sign off on the information memoranda issued to interested parties, the evaluation model, and ultimately the evaluation report.

I think you were then asked for details of the protocol established for the preparation, circulation and adoption of minutes of meetings of the Project Group, and in particular, whether the formal minutes were prepared solely by the official who attended the meeting and kept a contemporaneous note or whether you, or to your knowledge, direct or indirect, any other member of the Project Group or any other person had any input into the formal minutes, and if so, the extent of such input.

I think you have informed the Tribunal that there was no prescribed formula. In practice, the Secretariat for the GSM Project Team within Telecommunications and Radio Development Division, that's Martin Brennan's division, prepared and circulated minutes. This was usually done by Maev Nic Lochlainn. You do not recall whether you or Martin Brennan systematically cleared the minutes before distribution

A. If I may interrupt there, Mr. Coughlan, I can confirm

that I didn't. I didn't systematically clear the minutes.

Q. Very good. No other member of the Project Team had a role in the preparation of the minutes. It would of course have been open to members of the team to raise any issue arising from the minutes. You do not recall any instance of such an occurrence.

I think we do ultimately see one, I think, where Mr. Billy Riordan, I think, raises it in perhaps one of the final minutes; isn't that right?

A. That's right. 9th October, I believe.

Q. I think you were then asked for your understanding of the purpose of the protocol adopted by the Project Group at the meeting of the 6th March 1995 for dealing with potential bidders during the tender process bearing in mind that all civil servants are bound by duties of confidentiality.

And you have informed the Tribunal that your understanding is that the protocol was adopted by way of placing a special emphasis on the sensitivity, in legal and political terms, of the GSM process and the potential risks of contacts on a one-to-one basis with interested parties during the competition process.

Your recall is that the document was also prepared with a specific intention in mind of copying it to the Minister as well as senior civil servants not participating in the Project Group.

You were then asked whether you discussed the protocol with the Minister or otherwise advised the Minister regarding contacts with members of the consortia, and if so, the import of the advice given.

And you have informed the Tribunal you did not give advice to the Minister on this point.

Well, we know from other evidence that the Secretary, Mr. Loughrey, brought the matter to the Minister's attention?

A. Correct, yes.

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

I think you have informed the Tribunal that you were directly involved in the appointment of Andersen Management International; the tenders for the provision of consultancy assistance had been sought and received before you became involved in the process. Mr. Brennan, yourself, Mr. McQuaid, and Mr. Ryan participated in the evaluation from which Andersen Management International was selected. You were directly involved in concluding the contract; apart from legal advisers, there was no other party involved in the recruitment process.

Just before we move on, and we will move on in detail

to this particular matter, Andersens, along with other people, applied for this particular position; isn't that correct?

A. Yes.

Q. And they were furnished, I take it, as other people were, with the documents, the competition documents in effect, or

A. That is true, yes.

Q. And at that time, when they applied, or in the course of their discussion or negotiation or concluding of any legal matters, did Andersen Management ever indicate to you, or to anyone else, to your knowledge, that they were not capable of carrying out the competition or advising on the competition based on the competition documents as seen by them?

A. No.

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

And your understanding of the services, you have informed the Tribunal that your understanding of the services to be rendered by the consultant was as set out in the formal contract which you drafted.

You were then asked for the identity of all persons who, to your knowledge, direct or indirect, had any involvement in the setting of the weightings which

were attached to the evaluation criteria.

And you have informed the Tribunal that the persons who were involved in the setting of the weightings attached to the evaluation criteria were only those who attended the relevant Project Group meetings on the 18th May 1995 and those who gave approval to the revised weightings at the end of July 1995. The names on file in relation to the latter, that is giving approval to the revised weightings, are Mr. McMeel, Mr. McQuaid, Mr. Dillon, Mr. Buggy, and yourself?

A. Correct.

Q. I think you were then asked for your knowledge, direct or indirect, of the manner in which the weightings were devised, and you have informed the Tribunal that the weightings were decided on the basis of consensus within the Project Group, following consideration of a proposal put by the consultants.

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

And you have informed the Tribunal that you were in attendance at the Project Group meeting when the weighting of criteria was initially discussed and decided. You also participated in the revision of the weightings.

I think you were then asked the identity of all persons, to your knowledge, direct or indirect, who

were informed of or were otherwise aware of the weightings, and the source of their knowledge.

And you have informed the Tribunal that as far as you were aware, no person outside the Project Group was made aware of the weightings.

A. I think in fairness, on that point, it's clear from the documents and from evidence already given that the European Commission was informed that the licence fee would not have a weighting in excess of 15 percent

Q. I think that is correct, and I think that was in the context of confidential exchange of communications between the Commission and the Department, or the Minister the Department, the Minister and the Commission?

A. That's correct.

Q. Now, I think you were then asked for details of all steps taken by the Project Group to protect the confidentiality of the weightings, and in particular to prevent unauthorised access to the weightings.

And you have informed the Tribunal that all the Project Group were aware of the weightings; a specific arrangement was made for confidentiality of the evaluation model at the Project Group meeting on the 18th May 1995.

I think you were then asked for details of your involvement, together with your knowledge, direct or indirect, of the involvement of any other person in

the drafting of the information memorandum issued to entrants on the 28th April 1995, and in particular, that portion of the memorandum which responded in following terms to a question posed by Esat Digifone as to how financial capability would be assessed and whether there were any specific criteria.

"Financial capability will be assessed by reference to the proposed financial structure of the company to which the licence would be awarded if successful. The financial strength of consortia members and the robustness of the projected business plan for the second GSM operation. Further details of the criteria which will be considered in the assessment of financial capability will be elaborated in the supplementary memorandum to be issued by the Department, giving guidelines for submission of applications. Please also provide full details of the criteria intended to be elaborated on as indicated in the information memorandum together with the date on which and manner in which such criteria were elaborated."

And you have informed the Tribunal that you believe that the response questionnaire was based on the examination by the Project Group of the questions posed. Various members contributed material subsequently in the areas they had expertise. On file, you have located a manuscript document in your

writing appended to a fax received from Andersen Management International which contains the quoted material in relation to assessment of financial capability. You may have been the originator, but the possibility that it was dictated to you over the telephone cannot be ruled out. Your recollection is that the material provided by the consultants, while accurate, was unclear in parts. The financial tables which applicants were required to complete, you believe, represented the Project Group's view of the financial data which would be assessed in the evaluation.

A. Yes.

Q. Is that correct? Now, we can come back to that when we look at the documents. We know that in the draft responses prepared by Andersen, there was a selection, or a choice, I think; isn't that correct? But we'll come back to them in due course.

A. That's correct.

Q. Now, I think you were then asked for your knowledge, direct or indirect, of the consideration given by the Project Group or any individual member or any other person to the draft response to the Esat Digifone query prepared by Andersen Management dated 25th October, and in particular the matter which prompted or contributed to the adoption of the formulation of the memorandum rather than the adoption of the

formulation proposed by Andersen Management

International. And your response is the same as to the previous query?

A. Yes.

Q. I think you were then asked for details of all dealings, meetings and negotiations between you or any other departmental official with any Commission official, the Minister, any person on behalf of the Minister, any member of the Government, any person on behalf of any member of the Government, or any other person in relation to the intervention of the Commission in the competition process and including, in particular, the following:

1. The intervention of the Commission in relation to the auction element of the licence fee.
2. The intervention of the Commission in relation to the transparency of the competition design and specifically in connection with the non-disclosure of the weightings.

And you have informed the Tribunal that other than the provision of a copy of the competition documents to the Commission, you are not aware of any contact made with the Commission in relation to the competition process after the launch of the competition and before the receipt of the Commission's letter dated 27th April 1995, objecting to certain elements of the competition. You were involved in procuring legal

advice provided by senior counsel on how the Department should respond. You were involved in discussions with Martin Brennan and a teleconference with Commission officials. You were also aware that Mr. Brennan subsequently met with representatives of the Commission and that an agreement was reached in relation to the licence fee. The Minister's letter to the Commission dated 22nd June 1995 set out his response to the Commission's view on the transparency of the GSM process.

Now, I think you were then asked for details of your role in, and knowledge, direct or indirect, of the resolution of the issues raised by the European Commission, including in particular the capping of the licence fee at $\text{€}15$ million and the reweighting of the evaluation criteria in the light of the capping of the licence fee.

And you have informed the Tribunal that the issues which were taken into account in relation to the licence fee were as follows:

1. The Commission was clearly opposed to high fees in principle and could not, from a legal point of view, allow a situation where a new entrant would have to pay a high fee for market entry while the established operator would not incur a comparable charge.
2. The Department of Finance had a budgetary requirement that the GSM process would yield revenues

of the order of $\text{€}1/225$ million.

3. Telecom Eireann had protested that it was not in a position to bear a high fee, and in particular, one which would be determined entirely by a third party, if it was forced, for example, to match a bid made by a new entrant.

The Department was sensitive to the financial welfare of Telecom Eireann, as a process was underway at the time to secure an investor in the company by way of a strategic alliance. The agreement in relation to the licence fee whereby Eircell would pay $\text{€}1/210$ million while the new entrant would bid a fee in the range of 5 to $\text{€}1/215$ million was put forward as a balance between these issues.

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

1. The manner in which the Department hoped to resolve the Commission's objections to the auction element of the competition.
2. The manner in which the Department hoped to resolve the Commission's concerns regarding the transparency of the evaluation process.
3. The date to which it was likely that the process would be deferred.

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

And you have informed the Tribunal that following the suspension of the competition, the Department met with some of the interested parties. You believe that these included Esat Digifone and Concast, and these meetings are recorded on file.

A. I should also add, I think, the file records that we also met with Persona.

Q. That's correct.

You do not recall any specific details at this stage of the exchange, but the Department would have been careful not to reveal any information on how the issues raised by the Commission might be resolved. I think that's correct?

A. Correct.

Q. I think you were then 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.

And you have informed the Tribunal that the quantitative and qualitative analysis were evaluation techniques proposed by Andersen Management International. The quantitative approach entailed the

comparison of applications on the basis of a relatively small number of objectively quantifiable variables. There was no element of judgement required once the decision was made on what figures would be put into the model.

The qualitative approach entailed the comparison of applications on the basis of a wider range of indicators, including indicators that required some judgement to be made by the evaluators. The distinction between, therefore, between the two techniques was in the nature and extent of the evaluation. The quantitative evaluation played no role in the ultimate decision and would have been far too superficial as a basis on which to discriminate between applications.

In any event, your recollection is that all of the indicators included in the quantitative evaluation were also included in the qualitative evaluation.

I think you were then asked the date on which and manner in which the Project Group determined that each entrant should be admitted to the evaluation process and details of the criteria applied.

And you have informed the Tribunal that Andersen Management International conducted an initial assessment as to whether each applicant met with the requirements in relation to presentation of applicants, volume, executive summary, etc. You do

not recall any financial or technical assessment in advance of the full evaluation. You believe that this was because, firstly, these matters would be examined in full in any event in the course of the evaluation; and secondly, it would not be possible for an applicant with significant weaknesses in relation to these crucial elements of the evaluation criteria to be ranked the highest.

A. I might add to that, Mr. Coughlan, that it was our clear view, I think, after we received the applications, that generally speaking, we had a strong field; there was no feeling that there was any particularly weak application among them, on a prima facie basis, of course. But I am of the view that had it been the case that there were applications received where we had grave doubts as to financial or technical capabilities, that we would have invoked this provision in order to disqualify them.

Q. Right. I suppose one could also understand that in relation to both financial and technical capability, one would have to look at the applications in order to apply some form of judgement even if one was invoking the chapeau; isn't that correct? Like, it's not something that could have just occurred on a prima facie basis, effectively?

A. That is true. But I suppose what I am saying is that in terms of just looking at the applicant consortia

and the companies that had applied, there was a general view that these were companies that had financial strength and technical capability. If the issue of disqualification had arisen, of course we would have had to have looked in more depth at it.

Q. Yes.

I think you were then asked for details of the purpose for which the oral presentation by competition entrants were taped, the use of the tapes sorry, I'll start that again: details of the purpose for which the oral presentation by competition entrants were taped, the use to which the tapes were put and by whom, and B, details of the manner in which and place where the tapes were retained, together with your knowledge, direct or indirect, of the last known whereabouts.

Well, the tapes turned up anyhow, so I think we can pass from that other than to that you do say that because of the because the exchanges would be oral, it was considered that it would be prudent to retain a record in case any issue which arose would subsequently be the subject of dispute. Perfectly understandable. You wanted a record of what happened at the presentations, and we have that.

A. Correct.

Q. I think you were then asked to provide full details of the following:

1. Details of all queries raised by the Department in the course of Esat Digifone presentation on the 12th September 1995 regarding the financing of the Esat Digifone consortium.
2. Details of all queries raised by the Department in the course of the presentation addressed to the funding of Communicorp's equity participation in Esat Digifone.
3. Details of all queries raised by the Department in the course of the presentation regarding the letter of comfort provided by Advent dated 10th July 1995 and appended to the Esat Digifone application.
4. Details of all queries raised by the Department in the course of the presentation regarding the terms governing the offer of £230 million to fund Communicorp's equity participation in Esat Digifone as referred to in the letter of the 10th July 1995 from Advent International to the Department.
5. Details of all queries raised by the Department in the course of the presentations regarding the commitments provided by the institutional investors in the Esat Digifone bid.

You have informed the Tribunal that you recall the question of the funding of Communicorp's group share of the funding of Esat Digifone was raised. You do not recall the details. You do not specifically recall questions about the institutional investors.

Well, we have the tape of the presentations, so we have that. It's there.

A. It's on the record, yes.

Q. And then you were asked to indicate the following:

1. Whether the Department requested the Esat Digifone consortium at any time prior to the 25th October 1995 to provide the Department with a copy of the offer of a $\frac{1}{2}$ 30 million facility to Communicorp by Advent International referred to in the letter dated 10th July 1995.

And you have informed the Tribunal that, no.

I think you were then asked whether a copy of the offer was provided to the Department, and if so please indicate the date on which it was received and furnish the Tribunal with a copy of it, if you have it.

And again the answer is no.

Thirdly, whether any inquiries were made by the Department at any time prior to the 25th October 1995 as to the terms governing such offer, and if so, when and by whom, and kindly identify where such inquiries were recorded; and you have informed the Tribunal that none, to your knowledge.

Well, I believe that there were none, I think.

A. Yeah.

Q. I think you were then asked, fourthly, if such inquiries were made, please provide details of the information provided regarding the terms of the Advent

offer. Well, it doesn't arrive, because I don't think any information was sought or received, isn't that correct, in relation to the

A. Correct.

Q. I think you were then asked for details of each and every aspect of the Project Group's initial views of the applications arising from the quantitative evaluation which confirmed by the presentations as recorded in the minute of the 11th meeting of the GSM Project Group on the 14th September, 1995.

And you have informed the Tribunal that while the quantitative evaluation indicated that the application by Persona had the highest score, and the oral presentations confirmed that this was a strong application, the quantitative evaluation was clearly an inadequate basis on which to make a decision. The possibility of doing so did not occur to you, or to your knowledge, to any other member of the Project Team. You do recall at some point posing the question to the consultants as to whether it was unusual in their experience that the qualitative and quantitative evaluation would produce different results; the response given was that it would be unusual for the different techniques to produce the same result. All of the Project Team were party to the consensus decision that the final result should be determined on the basis of the qualitative evaluation.

That's something we'll come back to about when this consensus arose.

A. I suspect we might.

Q. I think you were then asked the composition of each of the 56 sub-groups which met to conduct the qualitative evaluation of indicators, including the date on which and place at which each of the sub-groups met and the duration and manner of their deliberations.

And I think you have given you are giving some very helpful information to the Tribunal here. You say that your recollection of the composition of the supply groups as was as follows:

Financial issues, that is business plan and performance guarantees, and that sub-group comprised of Billy Riordan, you, Michael Andersen, Jon Buel; Donal Buggy was also involved in financial analysis after the initial scoring was carried out.

Then, on the credibility of the business plan, that was Martin Brennan and you.

Market development, which included tariffs, etc., it was Maev Nic Lochlainn, Michael Andersen, Jon Buel, Martin Brennan, and you.

Technical issues, including coverage and roaming:

John McQuaid, Aidan Ryan, Michael Ryan, Marius Jacobsen.

And finalisation of results: Martin Brennan, you, Michael Andersen and Jon Buel, and all of the

sub-groups met in Copenhagen?

A. Yes. May I say here, in relation to credibility of the business plan, I believe that Michael Andersen and Jon Bruel also participated in that sub-group. So there was no sub-group that did not include the consultants.

Also, in relation to technical issues, the name Michael Ryan isn't correct. I can't say for certain who participated in a sub-group.

Q. We know that Mr. McQuaid certainly did, and Mr. Aidan Ryan.

A. And other than that, it was representatives of the consultants.

Q. Other than that, yes, I think that's correct. I think you have informed the Tribunal that the duration of meetings which you attended varied. The modus operandi for meetings attended by you was generally along the following lines: firstly, a brief presentation by the consultants on how the evaluation for each dimension should be approached and the proposed indicators.

Secondly, agreement on the proposed indicators.

Thirdly, a proposal by the consultants in marks to be awarded to each applicant.

Fourthly, discussion and agreement on the marks to be awarded to each applicant in respect of each indicator.

Fifthly, an overall score for each applicant for each dimension.

This is something we'll come back to, because I think you are perhaps the person who may be best placed to assist the Tribunal, in that you participated in, I think, all of the sub-groups other than the technical; would that be

A. That's correct, yes.

Q. Just what happened at each one. This is because we have perhaps some there may have been different approaches, perhaps, on the technical side as opposed to some of the ones you participated in, and just to get an understanding and a feel for exactly what happened at them.

A. Okay.

Q. But we'll do that with the documents. It would be easier for you as well.

A. Okay.

Q. Now, I think you were then asked for precise details of the difficulties encountered by the Project Group in scoring certain indicators in the course of the quantitative evaluation as recorded in the minutes of the meeting of the Project Group on the 4th September, 1995. This was after the first run of the quantitative evaluation.

And you have informed the Tribunal that you do not have any detailed recollection of these difficulties.

Again, we can come to the documents, and we'll have a look at them. They may assist you.

A. Yes.

Q. I think you were then asked for details of your knowledge, direct or indirect, of the evolution of the decision that the qualitative evaluation should be decisive and should be taken in precedence to the quantitative evaluation.

And you have informed the Tribunal that the quantitative evaluation was clearly an inadequate basis on which to take a decision; that the possibility of doing so did not occur to you or, to your knowledge, to any other member of the Project Team. You do recall at some point posing the question to the consultants as to whether it was unusual in their experience that the quantitative and qualitative evaluation would produce different results. The response given was that it would be unusual for the different techniques to produce the same result.

Again, in relation to the evolution of the decision, it might be better when we get to the documents, and we can follow the minutes through, and that would probably be of more assistance to you in relation to this matter.

A. Yeah.

Q. It does seem, though, am I correct in thinking perhaps you would prefer to wait for the documents

it does seem to have something which evolved after the 28th September, 1995, doesn't it?

A. I wouldn't have said so, no.

Q. You don't think so?

A. I don't believe so.

Q. You don't believe so?

A. No.

Q. Very good.

I think you were then asked for your involvement, direct or indirect, together with your knowledge of the involvement of any other person in the decision that the qualitative evaluation should be decisive and should take in precedence to the quantitative evaluation, including details of all matters which prompted or contributed to the decision, whether directly or indirectly; and you refer to your response above and say that all of the Project Team were party to the consensus decision that the final result should be determined on the basis of the qualitative evaluation.

I think you were then asked for details of all dealings, discussions and meetings with Andersen Management International regarding the decision that the qualitative evaluation should be decisive and should take in precedence to the quantitative evaluation together with details of all advice given by Andersens regarding this matter. And you refer to

your previous two responses.

You were then asked for details of the supplementary analysis conducted in respect of Advent, Communicorp and Sigma, as referred to in the minutes of the 11th meeting of the GSM Project Group on the 14th September 1995, and the results of such analyses.

And you have informed the Tribunal that your understanding is that the supplementary analyses referred to is that as set out in the annex to the evaluation report.

I think you were then asked for precise details of your knowledge, direct or indirect, of the evaluation of the following decision:

A: The decision not to score "Other aspects" of the evaluation model; that is, the indicators of sensitivities and credibility.

B: The decision to confine the consideration of the indicators to comments within the body of the evaluation report as referred to in a letter dated 21st September 1995 from Andersen Consulting and as referred to in the evaluation report.

And you have informed the Tribunal that the evaluation of "Other aspects" of the applications was intended to identify any issues which might pose a threat to the success of the project or which might need to be taken into account in the licence to be awarded. There was no provision for scores for these issues to be

incorporated into the scoring model as such, which reflected the evaluation criteria set out at paragraph 19 of the competition document. However, the analysis could have revealed a need to re-open scoring in relation to credibility of the business plan, for example. Alternatively, it may have revealed some other flaw in an application which would give rise to a doubt about the delivery of the project.

In the event, the analysis of other aspects did not give rise to such consequences. Your reading of the letter from the consultants dated 21st September is that they did not see a need to revisit the scoring on the basis of the assessment of "Other aspects".

A. I think I might be able to clarify that answer a little bit, Mr. Coughlan.

First of all, in the introductory paragraph, where I talk about the scoring of other aspects, I believe what I mean there is that it was not possible to score other aspects as an additional criterion, in the sense that the criteria had been laid down by Government, and obviously they were limited at that point. So it wasn't open to us to add an extra criterion and to attach a weighting to it.

The second point I wanted to make is that the analysis of other aspects, as I say, could have revealed a need to re-open scoring in relation to credibility of the business plan, for example. But just to be clear, it

could equally have given rise to a need to revisit the scoring of any other criterion. But in fact, we chose not to pursue that course, and I think we'll come to that in any event.

Q. We'll come to that in due course when we have the documents, yes.

I think you were then asked for your involvement, direct or indirect, together with your knowledge of the involvement of any other person in the decision not to score other aspects, including details of all matters which prompted or contributed to the decision, whether directly or indirectly.

I think you have informed the Tribunal that the comparative evaluation was carried out on the basis of the evaluation criteria described at paragraph 19 of the competition document. The scoring model was confined to these criteria. The analysis of other aspects may have had the effect of calling into question some of the scores awarded in the evaluation model revealing a major flaw in an application or identifying issues which may need to be addressed in the context of the issue of the licence.

In the event, the assessment of other aspects in the case of Esat Digifone highlighted only the need to ensure that Esat Telecom would have adequate resources to deliver on the project. Section 6.3, page 49 of the final evaluation report concludes as follows:

"This analysis has not revealed any factor in relation to the three top applications which necessitates that the overall ranking be reconsidered or that further analysis be carried out."

Again, this is an area we'll go back into again when we look at the documents and the final report.

A. Yeah.

Q. I think you were then asked for details of all dealings, discussions and meetings with Andersen Consulting regarding the decision not to score the other aspects, together with details of all advice given by Andersen Consulting regarding the matter. And I think you have informed the Tribunal that you do not recall any discussions specifically on this issue; is that correct?

A. In fact, on re-reading the filings, I see that this question was posed by Andersens, and I believe I did respond to it.

Q. Now, I think you were then asked for your understanding of the following:
The precise status of the data comprised in the tables of the quantitative evaluation dated 10th September, 1995.

The status of the ranking resulting from the quantitative evaluation and the manner in which the quantitative evaluation was applied to the data comprised in the tables to arrive at the final

rankings in the evaluation report.

I think you have informed the Tribunal that the quantitative evaluation was carried out by the consultants. The results of the quantitative evaluation plays no part in the determination of the result. This was appropriate because, firstly, the quantitative evaluation was of itself far too superficial as a basis for discriminating between applications; and secondly, the indicators used in the quantitative evaluation were also used in a more wide-ranging qualitative evaluation.

No member of the Project Team put forward the view that the result of the quantitative evaluation should be treated any differently.

I think you were then asked for full details of the budgetary remuneration issues which arose with Andersen Consulting from the date of their appointment to the 16th May 1996, being the date of the issue of the licence, including in each instance the manner in which such issues were resolved and the extent to which such resolution impinged on the evaluation process, directly or indirectly.

I think you have informed the Tribunal that a number of contractual disputes arose with Andersen Consulting. The nature of the disputes and the manner in which they were resolved is set out in the document attached to Annex 1. You do not consider that the

dispute had any adverse impact on the evaluation process.

Again, we can come to deal with the various disputes.

I am not holding you to anything. We have some documents, and you were involved in some meetings where matters were thrashed out?

A. Yes.

Q. Now, I think you were then asked the date of the meeting attended by you and Mr. Martin Brennan in Copenhagen with representatives of Andersen Consulting at which the results of the evaluation were consolidated, and the ranking emerged which ultimately became the ranking in the evaluation report, together with the names of all persons present.

And you informed the Tribunal that you believe that the ranking which ultimately became the ranking in the evaluation report was decided on the 28th September 1995 and that Martin Brennan, Fintan Towey, Michael Andersen and Jon Bruel were present.

I think you were then asked for details of all advice given and recommendations made by Andersen Consulting regarding any further supplementary or confirmatory analyses which would be appropriate after the completion of the qualitative evaluation and the consolidation of the scores.

And you inform the Tribunal that you do not recall any such advice.

I think you were then asked whether you kept Mr. Sean Fitzgerald, Mr. John Loughrey, the Minister, or any other person informed of the trends and/or ranking emerging from the evaluation process during the course of the process, and if so, the identities of all persons whom you so informed and the precise information which you relayed.

And I think you have informed the Tribunal that you do not recall providing any such information directly to John Loughrey or Sean Fitzgerald. At some point during August or September, the Minister well, I think you think it must have been September, you think?

A. I think so.

Q. The Minister rang you in Martin Brennan's absence in relation to the progress of the competition. His main concern was to ascertain that the process had not concluded and that the winning consortium had not yet been decided. You made it clear to him that the evaluation had not been completed. You may have mentioned the names of the front runners but cannot be absolutely certain on this point. You believe that the Minister indicated that he was under some pressure to ensure that a genuine evaluation process was underway and that the result was not a foregone conclusion.

At some point following the completion of the

technical evaluation, you had a telephone conversation with Aidan Ryan. He informed you of the ranking of Esat in general terms with which you deduced that they would be the winning consortium. You believe that you said as much to him.

Well, we can leave aside any conversations you had with Mr. Ryan. He was a member of the Project Team or the Project Group; isn't that correct?

A. Yes.

Q. Just very briefly, this conversation with the Minister, can you remember how it came through to you?

You say that it was he rang you because Martin Brennan was absent. Did the Minister ring you directly, or did it come through the switch? Or can you remember?

A. I can't say for certain, but it would be extremely unlikely that the Minister would have my phone number; well, he may have obtained it from his private office. It's more likely that he was transferred from his private office, perhaps to Martin Brennan's secretary initially, and then, in Martin Brennan's absence, may then have been transferred to me. That would be a likely way he would come to talk to me.

Q. And can you remember how the conversation went?

A. I believe having the impression that he was in an open area, a crowded area. There was background noise; put it that way. And as a result of that, I think we

speculated in the Department that he may have been at a race meeting somewhere. But that is speculation; it could have been anywhere else with background noise. And it was a very short telephone conversation in which he said to me that he was under a lot of pressure in relation to the competition, and he wanted to know how it was going. He gave me the very clear impression that he was under pressure in the sense that one of the consortia and he didn't mention any applicant by name but that he was under pressure in the sense that one of the consortia had the view that the competition was sewn up, and that the favourite, the media favourite for the competition had the licence in the bag, so to speak, and he was anxious to ascertain that that was not the case, or whether that was the case or not. And in response to that, I made it clear to him that the competition hadn't reached that stage of finality at all and that there were a number of players in the game. I can't say for certain whether or not I mentioned the top two or three applicants at that point to him, but he seemed to be satisfied with that, and I believe he said that he would speak subsequently to Martin Brennan.

Q. And can I take it when you say the media favourite, that must have been the Persona?

A. The Persona, yes.

Q. I think

A. I think it was also the bookies' favourite also at the time.

Q. Sorry?

A. I think it was also the bookmakers' favourite at the time.

Q. And you think that this was it was in September

A. I think it would have been, yes.

Q. Now, we can come back to it anyway.

A. Okay.

Q. Now, I think you were then asked for your knowledge, direct or indirect, of the purpose for which the

narrative summaries of the application of the six

competition applicants were prepared in September

1995. These are the ones that seemed to have gone to

the Comptroller & Auditor General; do you

A. I know that there are summary documents on file which

I believe I may have prepared in the course of my

first reading of the applications to get an overview,

so to speak; I think I may have prepared these

documents in manuscript and subsequently decided to

get them typed up. I can't confirm that they went to

the C & AG.

Q. Probably nothing turns on it; it seems to be that

summaries did go to the C & AG. I don't know either,

or it wasn't anything that you had any involvement

in that you can recollect?

A. Okay, well, those documents, I mean, had no particular

status. But if it was something that was sought by the C & AG, it may well be the case that those documents were provided on that basis.

Q. I don't think anything turns on it. It's just to try and understand what was happening.

A. Okay.

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

And I think you have informed the Tribunal, it would appear from the files that Mr. Sean Fitzgerald had sight of the draft evaluation report, given the existence on file of an undated table of numbers in Mr. Fitzgerald's writing. There is no evidence from the files that any other person outside of the Project Group had access to the draft report between these dates.

I think we have had Mr. Fitzgerald's evidence about I think, about the workings he did on a particular draft report, and he gave it back to Mr. Martin Brennan, I think was his evidence.

A. Okay.

Q. Did you ever it would appear it's again

something we can come to, but that Mr. McCrea may have seen some portion of the report, anyway?

A. Yes.

Q. Do you have any recollection of that?

A. I don't specifically recall it, no, but I wouldn't rule out that I may have been instrumental in giving him a copy.

Q. If you gave a copy to anyone, would it have been on the instruction of Mr. Brennan, or

A. Oh, it would have, yes, yeah.

Q. And it would also clearly have been on the grounds that it was a very confidential and sensitive document? But you wouldn't have done it of your own motion?

A. No.

CHAIRMAN: This is why you made the point, I think, early in your statement that you were quite anxious that the secrecy protocol be communicated perhaps to very senior departmental officials in both departments?

A. Absolutely.

CHAIRMAN: So that even though they had their concept of State secrecy, it would be emphasised that it was highly sensitive?

A. That's correct, absolutely, yes.

Q. MR. COUGHLAN: Now, I think you were then asked for details of your views regarding the draft evaluation

report, together with details of your understanding of the content 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 the Esat Digifone, Persona, and Irish Mobicall.

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

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

D. The overall presentation of the material.

And you have informed the Tribunal that the evaluation report was, in your view, an accurate account of the evaluation process in which you had participated. The financial capability of Esat Digifone, Persona and Irish Mobicall was addressed for the purposes of the evaluation mainly by the consultants and by Billy Riordan, a professional accountant on secondment to the Department of Finance.

You were also present at the sub-group which carried out the ranking of business plans. Donal Buggy, also professional accountant on secondment to the Department of Transport, Energy and Communications, also reviewed the financial tables in conjunction with

Billy Riordan after the sub-group meeting, but this review did not give rise to any requirement to modify the scoring.

After the result was announced and for the purpose of affirming the ownership arrangements of Esat Digifone, Donal Buggy carried out a further investigation of the financing arrangements in relation to Esat Telecom.

The other aspects of the application were assessed by Andersen Management. The qualifications expressed by Andersen Management International reflected the issues brought out by the evaluation. The presentation of the material could have been improved through further work. You do not believe that there were shortcomings of substance in the report.

I think you were then asked for details of the analyses and investigations undertaken by the Project Group or by Andersen Management or by any other person in assessing the indicators of sensitivities and credibilities as referred to in chapter 4 of the evaluation report.

And you have informed the Tribunal that this analysis was done by Andersen Management International and accepted by the Project Group.

I think you were then asked for details of all meetings and discussions which, to the knowledge, direct or indirect, of the officials took place between officials or between officials and other

persons, or any other discussions regarding the content of the first draft evaluation report of the presentation of the material comprised in the draft report or any other aspect of the report dated 4th October 1995 when the report was received and the 9th October 1995, when the report was discussed by the Project Group for the first time.

And you have informed the Tribunal that you would expect that some bilateral contact took place with officials on the Project Group about the first draft evaluation report but cannot recall specific details.

I think you were then asked for details of all your discussions, if any, with any member of the Project Group or any departmental officials regarding the contents or proposed contents of the draft or final reports.

And you have informed the Tribunal that you would certainly have spoken to Martin Brennan in relation to the contents of the report. You do not recall any one-to-one discussions with others, but would not rule out that such discussions may have occurred, given your central role in finalising the evaluation report.

You were in attendance at the Project Group meeting which discussed the evaluation report in detail.

I think you were then asked for details of all matters discussed and raised at the Project Group meeting on the 9th October 1995, including, in particular, the

following:

A. Mr. Brennan's statement in relation to the Minister's state of knowledge regarding the outcome of the competition.

B. Statements made by Mr. Brennan regarding the Minister's view of the draft evaluation report and/or approach which should be adopted in the drafting of the final report, and in particular, the Minister's view that the report should not undermine itself and/or that the project should be treated as bankable, as recorded in the contemporaneous note of the meeting made by Ms. Margaret O'Keeffe; and in response, please furnish a full account of your knowledge, direct or indirect, of the Minister's own statement of his views.

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

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 Project 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.

I think you have informed the Tribunal that you do not

recall any discussion of Martin Brennan's report in the relation to the Minister's statement of knowledge. You were also not aware of any views expressed by the Minister in relation to the report. Your recollection in relation to the reported view of the Minister to the effect that the report should not undermine itself and that it should confirm the bankability of the project related to the Minister's view that the documentation of the analysis must be conceived and balanced. Your recollection for the request for time to consider the results is that some members of the Project Group felt that the result could be better presented. You do not recall any suggestion that the evaluation should be revisited or that any consideration should be given as to whether it was appropriate to give a licence to the company in which Esat Telecom was a shareholder.

I think you were then asked for your understanding as to the stage which the evaluation had reached following the Project Group meeting on the 9th October 1995, and in particular, whether any further steps were required to be taken to finalise the evaluation, and if so, please provide full details of such steps.

And you have informed the Tribunal that your recollection is that the evaluation was substantially complete at that point that is, after the Project Group meeting of the 9th October and all that

remained was, firstly, sign-off by the Project Group on the nature and extent of the evaluation and the outcome; and secondly, ensuring that the evaluation report faithfully documented the process and marking.

You were not aware of any suggestion that the nature and extent of the evaluation process were deficient.

I think you were then asked for your input or involvement or your knowledge, direct or indirect, the input or involvement of any other member of the Project Group or any other departmental official or any other person whatsoever in the preparation of the formal typed minute, dated 17th October 1995, of the Project Group meeting of the 9th October 1995.

And you have informed the Tribunal that you do not recall having any role in the preparation of these minutes.

I think you were then asked whether you received or were otherwise aware, directly or indirectly, of the contents of the handwritten note made by Mr. Sean McMahon on a copy of the minute dated 17th October 1995 of the meeting of the 9th October 1995.

B. Whether the contents of the handwritten notes were raised at any subsequent meeting of the Project Group or of any other members of the Project Group or otherwise discussed with any other person, and if so, when, and the name of each person present or each person involved.

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

And you have informed the Tribunal that you were not aware of these handwritten notes until made aware of them by the Tribunal.

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

And you have informed the Tribunal that you understand that the Minister took the view that since the outcome had effectively been decided, it would be preferable to announce it as quickly as possible. You think that this message was conveyed to you by Martin Brennan, who had received it from John Loughrey. You do not recall when you received this message. You suspect that it may have been either after the Project Team meeting on the 23rd or the 24th October.

I think you were then asked to confirm that eight copies of the final draft report dated 18th October were received by the Department and were designated for Mr. Michael Lowry, Mr. John Loughrey, Mr. Sean

Fitzgerald, Mr. Colin McCrea, Mr. Martin Brennan, Mr.

Sean McMahon, Mr. John McQuaid and Mr. Jimmy McMeel.

And you have informed the Tribunal that the file shows

that a covering letter dated 19th October from Mr.

Dinesen of Andersen to Mr. Martin Brennan stating that

eight copies of the final draft report dated 18th

October 1995 were enclosed. The file also shows the

initial faxed request from Ms. Maev Nic Lochlainn to

Andersens dated 18th October, seeking copies of the

report for Mr. Michael Lowry, Mr. John Loughrey, Mr.

Sean Fitzgerald, Mr. Colin McCrea, Mr. Martin Brennan,

Mr. Sean McMahon, Mr. John McQuaid and Mr. Jimmy

McMeel.

I think you were then asked to provide details of the

knowledge, direct or indirect, of the departmental

officials of all consideration given by the Project

Group or by any member of the Project Group or by any

other person, whether in conjunction with Andersen

management or otherwise, to the qualification placed

by Andersen on the financial capability of Esat

Digifone and Persona as set out in the evaluation

report and appendices, and in particular, page 44 of

the report and Appendices 9 and 10.

And you have informed the Tribunal that the Project

Group was aware of a potential financial weakness of

one of the parties in the Esat Digifone; however, this

awareness was balanced by the Project Group's belief

that the business opportunity was excellent. The concerns reflected on page 44 of the report were followed up by the certification in relation to financing received at the time of the licence award.

I think you were then asked for details of and knowledge, direct or indirect, of officials of any discussion with Andersen Consulting concerning further inquiries or investigations or other actions which would have been required to enable Andersens to provide a report with any qualification or rider regarding the financial capability of either Esat Digifone or of Persona.

And you have informed the Tribunal there is an inference in this question that Andersen Management International produced a qualified report. This was not the case. The report identified strengths and weaknesses in all applications. In the case of Esat Digifone, although its application was the strongest overall, one weakness related to a financial vulnerability. The Project Group did not consider that further analysis was necessary in relation to this or any other weakness in the Digifone application. The financing issue was followed up at the time of the licence award. Mr. Towey cannot recall any discussions with Andersen Management International in relation to the need for further analysis.

I think you were then asked for your recollection of any approach made or request made to Mr. Martin Brennan by Mr. Sean McMahon, by Mr. John McQuaid or by any other member of the Project Group to Mr. John Loughrey on or about the 23rd October 1995 for further time in which to consider the draft evaluation report.

And you have informed the Tribunal that you understand that such a request was made by Sean McMahon but cannot recall the details other than the need for some more time. It is your belief that the purpose for such further time for consideration was to ensure that the evaluation report would stand up to scrutiny and for a clear and comprehensive statement of the outcome of the process.

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

And you have informed the Tribunal that you understand that Mr. Loughrey was disposed towards allowing a short time for further consideration of the report.

You trust that this was on the 23rd October but do not recall it. You were not present at the meeting.

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

any other person in the decision made by the Minister on or about the 24th or the 25th October 1995, that the result of the process would be announced on the 25th October 1995.

And you have informed the Tribunal that you were not involved in this decision.

You were then asked for the date on which, circumstances in which and persons by whom you were informed that the Minister intended to announce the result of the process on the 25th October 1995.

And I think you have informed the Tribunal that you think that Martin Brennan informed you, but cannot say so with certainty.

I think you were then asked for details of all meetings of the Project Group or any member or any of the members of the Project Group on the 24th or the 25th October, the purpose of such meeting, the matters under discussion and the outcome of such meetings.

And you have informed the Tribunal that the final Project Group meeting, that is of the Project Group excluding Andersen Management International, in relation to the evaluation report was held on the evening of the 24th October. The objective of the meeting was to finalise the evaluation report, and the outcome was unanimous agreement on the amendments that would need to be made to the draft report so that it could be finalised the following day.

Could I just ask you there, was Michael Andersen present at the meeting on the 23rd October, do you remember?

A. I believe so, on the 23rd, yes.

Q. There is some confusion; some people seem to remember him being there. Ms. Nic Lochlainn says if she has noted him as being there, he was there.

A. Yes.

Q. You seem to recollect him being present on the 23rd?

A. I believe he was there on the 23rd, yes.

Q. It's something we can come back to.

A. Yes.

Q. I think you were then asked for your knowledge, direct or indirect, of or your involvement or the involvement of any other person in the discussions between Martin Brennan and John Loughrey on the 24th or the 25th October 1995 whereby Martin Brennan conveyed to Mr. Loughrey the result of the evaluation process.

And I think you have informed the Tribunal, "I was present at a number of discussions between John Loughrey and Martin Brennan about the GSM licensing process. I cannot say for certain that I was involved in the particular meeting where John Loughrey was first informed of the result or the expected result.

My recollection of John Loughrey's view was that the evaluation report should clearly set out the reasons why the first-ranked application was better than the

second-ranked application."

Is your recollection the same as Mr. Loughrey's, that his only involvement in the whole GSM process up to the close to the end, say from the 23rd, 24th, 25th, was that all he ever was informed of was the critical path?

A. I believe that is true. He would obviously have been involved in the fee discussions at the launch, but other than that, as far as the evaluation went, I think he would only have been informed of the critical path, yes.

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

And I think you have informed the Tribunal, the fact that Esat Digifone was ranked first was clear to all recipients of the draft final report. The actual final decision regarding the result of the competition was made at the meeting of the Project Group on the 24th October 1995, and which included and which concluded at about 10.30/11 p.m., which reached agreement in finalisation of the evaluation report. I think the attendance at the meeting was: Martin Brennan, Fintan Towey, Maev Nic Lochlainn, Sean McMahan, Ed O'Callaghan, John McQuaid, Aidan Ryan,

Billy Riordan, and Donal Buggy.

I think you were then asked for the precise date on which and time at which the evaluation report was approved and/or adopted by the Project Group and the name of each person present or who was otherwise a party to such approval or adoption.

And you say "See response to the question above."

I think you were then asked the purpose for which the draft document headed "Financial Evaluation" and included on your computer disk was prepared, together with details of all dealings of you or, to your knowledge, direct or indirect, of any other person with Andersen Consulting, other members of the Project Group, or any other person, in connection with the draft document, and in particular, in connection with the possible incorporation of the draft document or any part of the draft document in the final evaluation report.

And you have informed the Tribunal that you do not have a copy of this document. I don't know whether you got you a copy of it yet, but it's something we can come back to in the course of matters.

A. Okay.

Q. I think you were then asked for your knowledge, direct or indirect, of or your involvement or the involvement of any other person in discussions between Mr. John Loughrey and the Minister on the 24th/25th October

1995, whereby Mr. Loughrey informed the Minister of the result of the evaluation process.

And I think you have informed the Tribunal that your recollection is that you were told that the Minister accepted the result, which you think was conveyed on the 25th October, and then indicated that he needed to clear it with the Taoiseach, Tanaiste and Minister for Finance, which he duly did. You cannot say for certain whether you were at the meeting or whether the outcome was reported to you. Your understanding is that the Minister took the view that since the outcome had been effectively decided, it would be preferable to announce it as quickly as possible. You think that this message was conveyed to you by Martin Brennan, who had received it from John Loughrey. You do not recall when you received this message.

I think you were then asked for your role in or your knowledge, direct or indirect, of the role of any other person in the preparation of the following documents: Mr. Loughrey's recommendation to the Minister dated 25th October, 1995; the briefing note to the Minister regarding the outcome of the evaluation process; the memorandum to Government dated 26th October 1995.

You have informed the Tribunal that John Loughrey personally prepared his recommendation to the Minister. You do not recall who prepared the briefing

note, but would not rule out that you may have contributed some of the material. You cannot recall the arrangements in relation to the preparation of the memorandum to Government dated 26th October, 1995.

I think you were then asked for details of all consideration given by the Project Group, by any member of the Project Group, or by any other person whatsoever, whether in consultation with Andersen Consulting or otherwise, to the qualifications placed by Andersen Consulting on the financial capabilities of Esat Digifone and Persona.

And you have informed the Tribunal that the Project Group considered the financial vulnerabilities of central participants in both Esat Digifone and Persona consortia, and your recollection was that firstly, these vulnerabilities were not regarded as so serious that they were considered a major threat to the delivery of the project by other consortium.

Secondly, the business case for a second mobile phone operator was very robust, as had been proved by the success of second operators in other countries.

And thirdly, confirmation in relation to financing could be required to be certified as a requirement in advance of the issue of the licence.

CHAIRMAN: I think that's a fair point to break until two o'clock, Mr. Towey. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF FINTAN TOWEY BY

MR. COUGHLAN:

Q. MR. COUGHLAN: I think we'll continue with Query 81, I think, Mr. Towey.

A. Yeah.

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

And you have informed the Tribunal that the content of the document referred to was agreed by the Project Group, excluding Andersen Management International, on the night of the 24th October. The document contained the amendments which the group considered necessary to finalise the evaluation report. The addition was included in the report as agreed text reflecting the collective judgement of the Project Group, which met on the night of the 24th October 1995, but at which AMI were not present. The text was accepted by AMI

with only minor modification and included in the final report.

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

And you have informed the Tribunal Billy Riordan did a considerable amount of work on the financial analysis of applications. You have a general recollection that Mr. Riordan had some concerns about the depth of financial analysis undertaken by Andersen Management International and that, as a result, he was anxious to ensure that the consultants were fully satisfied with the financial analysis and its conclusions and that this part of the analysis was not seen as his responsibility or that of his employer.

You consider it probable that this formed the background to the notes made by Billy Riordan, which have been referred to by the Tribunal and which are only partly legible and which you had not previously seen.

I think also we know that that, from Mr. Riordan's evidence, relates to the corrigendum in the minute of the meeting of the 23rd?

A. I believe so.

Q. That first paragraph; isn't that right?

A. Yes.

Q. Now, I think you were then asked to provide details of

all inquiries which, to the knowledge, direct or

indirect, of the officials were conducted either by

those officials or by any other person regarding the

conclusion in the document "Suggested Textual

Amendments" as follows: "Having regard to the level

of interest in the Irish competition for the GSM

licence and the high profitability of mobile

communications generally throughout Europe, that the

project is fundamentally robust and after licence has

been awarded, an attractive opportunity for corporate

debt financiers," together with precise results of

such inquiries, if any.

And you have informed the Tribunal this addition was

included in the report as agreed text reflecting the

collective judgement of the Project Group which met on

the night of the 24th October 1995, but at which AMI

were not present. The text was accepted by AMI with

only minor modifications and included in the final

report. The fact that they made such minor

modification suggests strongly that they considered

the text before agreeing to include it.

You were then asked for your knowledge, direct or

indirect, of the content of the document dated 23rd

October 1995, prepared by the Regulatory Division, the purpose for which the document was prepared, whether the document was formally circulated, and details of any discussion concerning or action taken on foot of the document.

And you have informed the Tribunal that to your knowledge, this document was not circulated or discussed.

And you say in this you are assuming that the reference is to the document shown to you by the Tribunal. I think that's correct?

A. Yes.

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

And you have informed the Tribunal that the Department received a faxed copy of the final evaluation report on the morning of the 25th October.

A. I think, in relation to that, it's fair to say that the documents that have been opened by the Tribunal

suggest that we didn't receive a final copy on the morning of the 25th, because we were still in correspondence with Andersens about the modifications.

But it is my recollection, albeit that there is no copy of the final report on the files, but it is my recollection that the final report was received in the Department by fax before the Minister made and announced made the decision and consulted with the leaders of the parties in Government.

Q. Mr. Loughrey didn't actually see the final report; he has given evidence to that effect. Do you know and I know you are just relying on your recollection, because we can't find the document. Can you remember receiving it yourself, or ...

A. I certainly remember that I went to work very early that morning, having worked late the night before at the meeting of the 24th; and the reason why I arrived early was specifically for the purpose of getting the Project Group's amendments to Andersens and agreeing the final report so that it would be received in the Department before any decision was made. And I am quite certain that it would stand out in my mind if I had failed in that objective.

Q. Well, we know that you were certainly faxing material to Mr. Andersen and receiving responses back from him, I think; we can see those documents.

A. Yes.

Q. Do you think it's likely that if the final report was available before Mr. Lowry went to see the Taoiseach and the other Ministers, that it would have been given to Mr. Loughrey, wouldn't you have thought, at least?

A. Well, it would certainly have been available to him, yes.

Q. Well, it's something we can come back to, you know, sort of people have different recollections.

Now, I think you were then asked for your understanding of the composition of the Esat Digifone consortium which won the evaluation process and the respective shareholding of the participant members of the consortium.

And you have informed the Tribunal that your understanding was that the Esat Digifone consortium was as declared in their application, a 50/50 joint venture between Communicorp and Telenor Invest AS.

Well, we have the tape now of the presentation, and that's the record of what transpired at the presentation. So I suppose it's not something I need to go into in great detail with you, but I will come back to it.

A. Yes.

Q. Now, I think you were then asked for your knowledge, direct or indirect, of or understanding of the role of the Cabinet or the Cabinet Subcommittee in the ultimate decision on the outcome of the evaluation

process.

I think you have informed the Tribunal that the leaders of the parties in Government and the Minister for Finance were informed by the Minister by telephone of the result on the 25th October. The outcome was formally noted by the Government subsequently on the 26th October on the basis of an aide-memoire submitted by the Minister.

I think you were then asked for details

A. If I may just say, in relation to that, I think my recollection was not in fact absolutely correct on that, and that the Minister made one phone call at which he discovered or during which he discovered that the Taoiseach and leaders of the Government parties were together.

Q. I think that's correct. In fact it was the phone call which resulted in him going to them, I think?

A. Yes, I believe so.

Q. I think you were then asked for details of all information provided by you, directly or indirectly, 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 all communications by the Minister to you during the course of the process.

And you have informed the Tribunal that your only recollection of direct contact with the Minister

during the course of the process was the telephone call mentioned in response to earlier questions. "I would have also had contact with him in relation to the statements to the Dail in relation to the process." Well, we can deal with those. Those, I think if I am not mistaken, those all postdate the announcement; isn't that right?

A. They do, yes.

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

And you have informed the Tribunal that you have no direct knowledge of such contacts. You understand that the Minister's office has produced a record of meetings held.

That's correct; there were I suppose what were described as courtesy

A. I believe so.

Q. courtesy calls at some stage.

Now, I think you were then asked 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, your understanding as to the precise nature of the involvement of IIU at

that time, and the source of such knowledge or understanding.

And you have informed the Tribunal that you were advised by Esat Digifone at some point after the announcement of the result it may have been by way of a telephone call from Denis O'Brien, but you cannot be sure that Dermot Desmond would be the investor in 20% of the consortium. You understood this to mean that Dermot Desmond would be the financial investor envisaged in the application made by Esat Digifone.

You have discovered, based on media revelations and information provided by the Tribunal, that a letter sent to the Department after the oral presentation given by applicants for the licence indicated that IIU could potentially be involved in financing Esat Digifone. However, the letter was returned to Esat Digifone, and a copy was not retained by the Department.

A. I'd like to say, in relation to that, in particular in relation to the reference of a telephone call from Denis O'Brien in relation to the involvement of Dermot Desmond. That's a pretty isolated memory, in fact, and I can't actually place it in time; or indeed, I can't recall exactly the context in which it would have arisen. I can't imagine that it would have been in advance of the letter we received from Digifone in April.

Q. Just in fairness to you, it is something I think we come to later in your memorandum, where you again deal with this issue.

A. Okay.

Q. And I think you perhaps, at that time, think that it might have been around the April time, when

A. Okay.

Q. But we can come back and deal with it again, but if we just proceed for the moment.

That particular letter, and again I'll give you an opportunity to deal with the letter when we look at the documents, but I think that was the evening you returned from Copenhagen, having attended the meeting with Martin Brennan, Michael Andersen and Jon Bruel on the 27/28th, whatever, 28th September; is that correct?

A. Yes.

Q. And am I correct in understanding that you went to the office when you came in, do you think, or

A. I can't say for certain whether I returned on the evening of the 28th and went to the office on the 29th or whether I returned on the morning or early afternoon of the 29th and then went to the office.

But it was in that context that I received the letter, yes.

Q. And how did you receive the letter? Can you remember?

A. I don't remember exactly whether whether it was

handed to me by a member of my staff or whether I happened to collect it from the fax machine myself.

Q. And we will go into the letter in detail when we look at the documents, but in effect, what the letter was saying, that it was underwriting the non-Danish or the non-Norwegian participation in the Esat Digifone consortium; isn't that

A. Yes, it was responding to issues that had arisen in the presentation made by Digifone.

Q. That's what the letter stated, as a result of what had transpired at the presentation, and it was indicating we will look at it that it was in effect, they were underwriting the non-Irish or sorry, the Irish participation?

A. I believe that word was used in the letter, yes.

Q. And we know Martin Brennan has given evidence about this as well, and you may or may not have been present or be aware of the evidence he has given, but can you remember the sequence of events then? You got the letter, whether you got it from a member of staff or however you got it, you got it in the office, anyway?

A. Yes.

Q. And can you remember what happened then?

A. Well, I also received some further material from two other applicant consortia. Now, I can't recall the specific sequence, whether I got one, the letter from IIU first or whether I received the other material

before that. But certainly, I mean, I would have read the letter, and I would have very clearly formed the view that this was an attempt to address what was perceived by Digifone as a weakness in their application. And I would have been very conscious of the fact that we had repeatedly elaborated the point that there was no question of any additional material being admitted to the competition after the closing date. And on that basis, I would have formed the view that there was no option whatever but to return it to the applicant.

Now, I believe, but I can't specifically recall doing so, but I believe that I would have consulted with Martin Brennan in relation to that course of action, as I would have done in relation to the other additional items received from our consortia. Now, I am conscious, obviously, that Mr. Brennan, in his evidence, doesn't recall this conversation; but I believe that such a conversation would have taken place and that we would have agreed the line.

Now, I mean, obviously, I myself believe that the correct decision was taken, and I would take full responsibility for that course of action. But I also believe that it would stand out in my mind if there had been any disagreement on the course of action between myself and Mr. Brennan.

Q. Can you remember I understand the view you took,

and you would have conveyed such a view to Martin Brennan. Would you have conveyed the contents of the letter, or given him an indication what it was about?

A. I believe I would have informed him of the contents.

Q. I think Mr. Brennan, in giving his evidence, was of the view that he wasn't aware of contents, but that he believed that or that he told the Tribunal that you had indicated to him, perhaps in Dublin Castle here, that you had some recollection that you would have conveyed the contents of the letter to him; would that seem right?

A. I believe it's unlikely that I would have had a discussion with him about the letter without having discussed the contents with him.

Q. Very good. Well, we'll come back to it when we deal with it

A. But my recollection is, in terms of ultimate action taken, I was very clear in my view that that was the only way to proceed.

Q. And you, therefore, if you look at the first portion of your response there, the first paragraph, you believe it's unlikely that you would have been aware of any involvement of IIU before that letter arrived in the Department?

A. That's correct, yes.

Q. I think you were asked for your knowledge, direct or indirect, of the letter of the 29th September, and you

refer to that response there, and it's something you have told the Tribunal about now and we can return to in due course.

Now, I think you were then asked for your knowledge, direct or indirect, of or your involvement or the involvement of any person in the decision made to return the letter of the 29th September to Denis O'Brien on the 25th October without retaining a copy on the departmental files.

And you informed the Tribunal that your recollection is that "This course of action was agreed between Martin Brennan and me."

Would it be usual to return a document without taking a copy of it and keeping it on the departmental files?

A. Generally speaking, no.

Q. Generally speaking, no, it wouldn't be unusual; it's what would be done, is it?

A. Generally speaking, it would be usual to retain a copy, but

Q. That's what I mean, generally speaking you would take a copy and keep it on the file?

A. But I perceived this as a different set of circumstances.

Q. I think you were then asked for your understanding, based on the contents of that letter, as to the involvement of IIU/Mr. Dermot Desmond in the consortium and the impact that such involvement had on

the composition of the consortium or the proposed capital configuration of the consortium to be licensed as set forth in the Esat Digifone bid document and as represented at the oral presentations.

And you informed the Tribunal that the letter dated 29th September 1995 was not given any consideration along the lines suggested.

Now, that is the direct involvement of IIU/Mr. Dermot Desmond; is that right? I think you did give some consideration that it appeared to be an attempt to mend what may have been perceived as a weakness in the Esat Digifone consortium; isn't that correct?

A. That's correct, yeah. I mean, what I am saying there is that as suggested in the question, that this letter was not intended to convey to us a change in the composition of the consortium in a manner that was not consistent with the application.

Q. I understand. That letter wasn't telling you that Dermot Desmond/IIU are involved in this consortium now?

A. That's correct.

Q. It wasn't saying that?

A. Yes.

Q. Now, I think you were then asked whether you had any knowledge, direct or indirect, regarding any involvement or interest or any potential involvement or potential interest of IIU Limited or Mr. Dermot

Desmond in the Esat Digifone consortium as of the 25th October 1995.

And you have informed the Tribunal you were not aware of any such interest as of the 25th October that should be 1995?

A. It should be, yes.

Q. You were then 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 have informed the Tribunal that you have no knowledge of any such dealings other than such information as was formally notified to the Department and is held on file.

I think you were then asked for details of your role and involvement in the licence negotiations from the 25th October 1995 to the 16th May 1996.

And you have informed the Tribunal that you prepared a first draft of the licence which was discussed with Telecommunications and Radio Regulatory Division and Telecommunications and Radio Technology Division. The Regulatory Division saw the need for significant changes and sought time to consider the draft licence.

I believe that that division had some discussions with Digifone to which you were not a party. Your recollection is that Digifone needed urgent

finalisation of the licence in order to secure the financing for the implementation of the project.

Before their consideration was completed, Esat Digifone approached the Department with a view to obtaining the licence as quickly as possible in order to secure financing for the project. As a result of this approach, the licence was brought to finality quickly.

You were involved in the finalisation of the licence, including the procurement of legal advice. You also handled the transposition of Commission Directive 96/2, which changed the legal basis for the issue of the licence. In advance of the formal issue of the licence, the ownership and financing of the project was certified to the Department. Together with Martin Brennan and Donal Buggy, you were a direct participant in vetting the certification. Senior counsel was also involved?

A. I think I should clarify that point in relation to my being a direct participant. It's more correct to say that Martin Brennan and Donal Buggy met with the various players at this stage. I would have seen the documentation in relation to certification of ownership and funding, but I wasn't I didn't have a decision-making role at that point.

Q. Am I correct, or do you agree with the evidence which has been given, I think, by Mr. Brennan and Mr.

Loughrey, that Mr. Loughrey directed this particular end of things and that Martin Brennan and Donal Buggy were involved with the various members of the consortium which were going to receive the licence; isn't that correct?

A. That's correct, yes.

Q. And your role was, not to downgrade it in any way, was in fact more of a secretarial role in relation to the matter; would that be a fair way of putting it?

A. That's correct.

Q. I think you were then asked for details of all dealings which you had, or to your knowledge, direct or indirect, any other official had with the Minister from October 1995 to May 1996 regarding the licence negotiations or the issuing of the licence including all dealings which led to Mr. Martin Brennan's statement in the memorandum dated 21 March 1996, addressed to Ms. Regina Finn, that the Minister had directed that a licence should issue to Esat Digifone Limited by the following Tuesday.

And you have informed the Tribunal that you do not recall any such dealings with the Minister. You have not been able to locate the document dated 21st March 1996. Your recollection is that Digifone needed urgent finalisation of the licence in order to secure the financing for the implementation of the project.

I think you were then asked for your knowledge, direct

or indirect, and understanding of all matters, including representations from whatsoever source, considerations or objectives which had prompted or contributed to the Minister's intervention and direction as referred to in the memorandum of the 21st March 1996.

And you informed the Tribunal that you do not recall any details of the intervention by the Minister.

That's a matter which Mr. Loughrey has dealt with anyway in his evidence?

A. Yes.

Q. You were then asked for all dealings which you had or to your knowledge, direct or indirect, any other person had with the Minister, with the Taoiseach, with the Tanaiste or with any other member of the Government, politician, official, or person which led to a reference in a note of the meeting dated 12th April 1996 that a pressure towards a final licence to Esat Digifone was then very strong from a number of quarters, including political pressure from the Taoiseach, Tanaiste and the Minister.

And you have informed the Tribunal that you do not recall having any knowledge of the contacts other than that there was a willingness to seek to expedite the issue of the licence to facilitate Digifone in organising financing. You note that the minutes referred to suggest that the secretary made a

commitment to this effect to Denis O'Brien.

You were then asked the precise pressure to which you, or to your knowledge, direct or indirect, any other Department official was subject to in April 1996.

And you have informed the Tribunal that you were not aware of any undue pressure. Digifone's need for the licence and the Minister and the Department's willingness to expedite its issue seemed perfectly reasonable.

I think you were then asked the knowledge of the officials, direct or indirect, of the date on which and the manner in which the Minister or the Department was involved by Mr. O'Brien, Communicorp, Esat Telecom and Esat Digifone, or any other 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 financed by Advent International but intended to fund its participation by placement through CS First Boston, including details of the precise information provided to the Minister or the Department, and kindly identify where such information was recorded.

And you have informed the Tribunal that you do not recall the date on which such information was received, but you presume that unless the file shows differently, it was in the days immediately preceding licence award.

You were then asked the date on which, circumstances in which, and person by whom you were first informed and made aware that 25% of the shares in Esat Digifone Limited had been issued to IIU Nominees Limited.

And you have informed the Tribunal that you believe that it was in April 1996 that you were first informed Dermot Desmond would be the "institutional investor" in the Digifone consortium. You suspect that Denis O'Brien may have informed you of this by telephone but cannot be certain. You note from the Department's file that the IIU share of Digifone was declared to be 25%. You do not think that you were previously aware that the institutional investment might increase to above 20%.

That's the portion of your statement I asked you to wait to come to.

Is that the communication from Denis O'Brien you think that you may have received?

A. The point I wanted to make is that I have a memory at some point of talking to Denis O'Brien saying that Dermot Desmond was the investor, but I can't place it in time. I don't imagine that it was before we received the letter, before I think we received the letter from William Fry, perhaps, telling us that IIU was the institutional investor. And so all I want to say, really, in relation to the phone call was Denis O'Brien perhaps he can throw some further light on

it.

Q. I was just you are satisfied that it wasn't before the letter of the 29th September, anyway, the

A. Oh certainly not, no.

Q. You are unsure as to whether it was before the letter of I think it's the 16th or 17th April, or the communication with Regina Finn, I think on the 16th April; you think it was before that

A. I don't expect it was in advance of that, because

Q. You don't

A. Because I believe I would have acted I would have taken some action on foot of the phone call.

Q. So you think it was around but subsequent to the 16th/17th April that you had this telephone conversation?

A. Yes.

Q. Now, I think you were then asked for your understanding of the contents of a letter dated 17th April 1996 from Mr. Owen O'Connell of William Fry's for Esat Digifone to Ms. Regina Finn, and in particular your understanding at that time as to the identity of the beneficial owners of the shares held by IIU Nominees Limited and the extent, if any, to which the then-proposed configuration of the capital of Esat Digifone Limited differed to the intended capital configuration as disclosed to the Department in the Esat Digifone application.

And you have informed the Tribunal that your recollection is that there was never any suggestion, other than the media, but that Dermot Desmond was the sole beneficial owner of the shareholding of IIU. The new information contained in the letter of 17th April was the change in the shareholding arrangement for the Esat Telecom share and the increase in the institutional shareholding to 25%.

Could I just pause there for a moment; there was never any suggestion, other than the media, about Dermot Desmond being the sole beneficial owner of IIU. Do you remember something in the media around this time?

A. Not anything specific, but I think there was some speculation that Dermot Desmond was fronting for others. But in our contacts with the consortium, there was never it was always, you know, made clear to us that Dermot Desmond was the sole investor.

Q. That is from the 16th/17th April, that period?

A. Yes.

Q. We'll come to them in due course, but could I just ask you now, you know these press clippings that we have maybe you weren't present when some of these were opened at the Tribunal; there were a couple of newspaper articles. There may have been one sometime October/November of 1995, one in February of 1996. I think you are aware, in general terms, of those particular newspaper articles?

A. I am aware. I haven't seen the newspaper article from November '95, but I have seen references to it in evidence to the Tribunal. The later one, in February '96, I have seen.

Q. I'll come to them in detail, and we can go through them. But just for the moment, do you remember any recollection of seeing those articles at the time that they were published?

A. I have no specific recollection of seeing the February article. I know I was on leave at the time myself. I returned from leave, I believe, on the 5th March. And as a result, it's possible that I would not have seen it in clearing my desk, including press cuttings, on my return from leave, because I was away for two to three weeks. So I can't recall seeing that at the time.

Q. I think you were then asked the date on which and circumstances in which you first became aware that the shareholding in Esat Digifone Limited held by IIU was to be held beneficially for Dermot Desmond.

And you say that you refer to the response to the previous question.

I think you were then asked for details of all previous dealings which you had in both your personal capacity and professional capacity with Mr. Michael Walsh and Mr. Dermot Desmond, and you have informed the Tribunal that you had no dealings with them.

A. Yes.

Q. And then I think you were asked for full and precise details of the meeting of the 3rd May of 1996, attended by members of the Esat Digifone consortium, including the identities of all persons present, the purpose of the meeting, the matters discussed, and the outcome of the meeting, including, in particular, the consideration of issues arising from the involvement of Mr. Dermot Desmond as beneficial owner of the shares held by IIU and any request made by Martin Brennan to Telenor to underwrite the entire of the obligations to subscribe for the capital of Esat Digifone Limited.

And you have informed the Tribunal that you do not have a specific memory of this meeting and could not find a record of it.

Now, I know that that was your initial response. We then got hold of Mr. O'Connell's notes, and you then responded in due course in the following answer.

A. Yes.

Q. And I think you were asked the knowledge of the officials, direct or indirect, of a meeting which took place this is the meeting of the 3rd attended by Mr. Knut Digerud, Mr. Arve Johansen, Mr. Peter O'Donoghue, Mr. Michael Walsh, Mr. Paul Connolly and Mr. Owen O'Connell, including the following, and you were asked to identify the officials, the purpose of

the meeting, the matters discussed, the queries or issues raised by the Department, the requirements of the Department, and the requests made by the Department to Telenor to underwrite the entire of the equity and operating expense of Esat Digifone and the reason or reasons for such request. In each instance you were asked to indicate the source or sources of your knowledge of such a meeting.

You informed the Tribunal that you don't have a specific memory of this meeting. The report by Mr. O'Connell would seem to be an accurate account.

We'll come to that in due course.

A. Okay.

Q. Do you now have any recollection of that meeting? Has anything sort of that has been said here in evidence at the Tribunal, or

A. Based on reading Mr. O'Connell's report, I have a recollection, as I say, of the meeting; and on that basis, I feel that what Mr. O'Connell says in his report is reasonably accurate.

Q. Right. Do you remember a request being made of Telenor to underwrite the whole project?

A. I don't remember any I don't remember the Department setting out with that request, because I don't believe it ever, you know, formed the view that it should seek such an undertaking from Telenor. But I believe that in the course of a meeting, and it may

well have been this one, and it may well have been in the context of the Department stating how the financial strength of the consortia had been assessed, that it was stated by the Department, by either myself or Martin Brennan, that the financial strength was assessed on the basis that the consortium had one strong member that was Telenor, obviously, in this case and that they saw that as a sufficient assurance that the project would be carried to finality. And I believe that Telenor expressed a view that that's how they saw it, in any event, and that in response to that, that Martin Brennan said that if that could be confirmed in writing, it would be helpful, but he wasn't making a formal request.

Q. I see; okay.

A. That's my recollection.

Q. I think you were then asked for your knowledge, direct or indirect, of the request or requirement of the minister or the Department that the configuration of the issued share capital of Esat Digifone should be restored to the capital configuration of the consortium which had applied for the licence that is, restored to 40:40:20 and in particular, all members or considerations which prompted or contributed to such a request or requirement, the identity of all officials who had an input or involvement in the decision to make such a request or

requirement and the input of the Minister in the decision to make such a requirement.

And you have informed the Tribunal that you don't recall the Minister requiring the share capital to be restored. The Department required the share capital to be restored so that the licence was granted to the same consortium as had applied for it.

I think you were then asked for your understanding of the extent to which the composition of Esat Digifone Limited diverged from the composition of the Esat Digifone consortium, and in particular, by reason of the substitution of Mr. Dermot Desmond as a holder of 20% of the shares in Esat Digifone for the institutional investors who it was intended and/or proposed would subscribe for those shares.

And B, whether, and if so to what extent, consideration was given to the change in the composition of the consortium and the outcome of such a consideration, if any.

I think you have informed the Tribunal that the composition of Esat Digifone at the time of the announcement that they had been ranked first in the evaluation was a 50:50 joint venture between Communicorp Group and Telenor Invest. At the time of licence award, the sharing of Telenor Invest AS and Esat Telecom Holdings Limited would replace Communicorp Limited, had been reduced to 40% as

indicated in the application. The difference between the consortium to which the licence was granted and that envisaged in the application was that Dermot Desmond was not one of the potential financial investors named in the application. The Department or the Project Group did not have any opinion as to what kind of financial investor would be desirable. It was always understood that the role of the financial investor was to subscribe funding, as distinct from providing any of the experience or expertise necessary to deliver the project in accordance with the application.

The emphasis at the time when the ownership and financing of the project was being considered just before the award of the licence, therefore, was on ensuring that Dermot Desmond had sufficient funding available to him to finance his share of the investment requirements. The Department was satisfied before the issue of the licence that the shareholders had the financial strength to ensure the delivery of the project.

Again, I just want to say, in fairness to you, in relation to that final sentence, you were not involved in that particular aspect of matters, were you?

A. No. But I mean I knew that an exercise had been carried out.

Q. You knew the exercise had been but because it's

something I will come back to because in fact the Department required, through what transpired to be side letters, that Mr. Denis O'Brien, the Communicorp side, or the Esat Telecom Holdings side would, in effect, be underwritten by Telenor and the IIU side of the investment, but that's something you weren't directly involved in; you knew what was going on, but you weren't involved in any decision making?

A. I would have seen the papers, yes.

Q. I think you were then asked for details of all dealings and discussions which you had with the Minister, with Mr. John Loughrey, with Mr. Martin Brennan or with any other persona rising from the involvement of Mr. Dermot Desmond in Esat Digifone Limited.

And you have informed the Tribunal that you do not recall discussions other than those directly relayed to ensuring that certification was obtained in relation to the financial resources of Dermot Desmond.

Martin Brennan and Donal Buggy were involved in these discussions. You may also have discussed the matter with Regina Finn and legal advisers.

I think you were then asked all steps taken by the Department, whether alone or in conjunction with the Department of Finance, to satisfy itself as to the financial capability of Esat Digifone Limited prior to the issue of the licence, in particular, details of

the specific conditions incorporated into the licence to meet the qualifications and reservations expressed by Andersen Consulting in the evaluation report.

I think you have informed the Tribunal, the steps taken were in securing certification as to the availability of resources in advance of the issue of the licence. The ownership arrangements were then protected through the restrictions relating to change of ownership incorporated into the licence.

I think you were then asked for your involvement, direct or indirect, or the involvement of any other person in analysis conducted by Donal Buggy, as recorded and comprised in a memorandum of the 15th May 1996 from Mr. Buggy to Mr. John Loughrey.

And you inform the Tribunal that you do not recall playing a role in the preparation of this document.

You believe you may have sourced some documents for Donal Buggy to facilitate preparation of the document.

These would be documents that would have been in your section and that Mr. Brennan was the one directly involved with Mr. Buggy in this particular exercise?

A. Correct, yes.

Q. I think you were then asked for your knowledge, direct or indirect, of any person by whom Mr. Buggy was requested to carry out the financial analysis comprised in the memorandum of the 15th May 1996, together with the precise analysis which Mr. Buggy was

requested to carry out and the purpose for which it was undertaken.

And you have informed the Tribunal you cannot say for certain whether the analysis was carried out at the request of Martin Brennan or John Loughrey. We know it was Mr. Loughrey now.

A. Yes.

Q. Your understanding of the purpose was to ensure absolutely clarity obtained in relation to ownership and financing in advance of the issuing of the licence.

You were then asked for details of all discussions, meetings and contacts between you and Mr. Buggy or any other departmental official or any other person regarding the analysis comprised in the memorandum of the 15th May 1996, the matters under discussion and the outcome.

And you have informed the Tribunal, you recall discussions with Donal Buggy in the context of achieving an understanding of the ownership and financing of Esat Digifone.

You were then asked for your knowledge, direct or indirect, of a meeting which took place at the Department on the 13th May 1996 attend by Mr. Knut Digerud, Mr. Owen O'Connell and included in particular their knowledge of the following:

1. The identity of the official who attended the

meeting, the purpose of the meeting, the matters under discussion, the request made by the Department that Esat Digifone identify key questions likely to be raised at the press conference to announce the issue of the licence, to draft answers to such questions and to explain to the Department the reasons for such answers. The requests made by the Department that the meeting be arranged between the Minister and Mr. Digerud together with one or two others at which the press conference would be discussed or rehearsed. In each instance you were asked to identify the source or sources of your knowledge.

You have informed the Tribunal the report prepared by Owen O'Connell would seem to be an accurate record. Again, there is no record in the Department of this meeting.

A. That's correct.

Q. I think you were then asked for your knowledge, direct or indirect, of all steps taken by Esat Digifone or by any person associated with Esat Digifone or by the Department on foot of the request that key questions be identified and draft answers prepared, including questions identified, the answers prepared, the reasons for such answers, the identity of all persons, including departmental officials, who had any input into the identification of questions and the preparation of draft answers.

And you have informed the Tribunal that you have a general recollection that some questions and answers were prepared. You do not recall any detailed discussions of them.

I think you were then asked for your knowledge of all meetings, discussions or contacts of whatsoever nature between Esat Digifone or any person on its behalf and the Minister or the Department in connection with the key questions identified, the draft answers prepared, and the reasons for such answers or otherwise in connection with the announcement of the issue of the second GSM licence to Esat Digifone, and including meetings between Esat Digifone and the Department or the Minister on the 14th, 15th and 16th May 1996, and recorded the attendance of Mr. Owen O'Connell, solicitor for Esat Digifone.

And you have informed the Tribunal that you have a general recollection of the meeting of the 15th May, the purpose of the meeting was to ensure consistency between the Minister and Digifone in seeking to allay controversy over the ownership of the company.

I think you were then asked for your understanding of the terms on which IIU and/or Telenor provided funding to Esat Telecom to finance its obligation to contribute to the licence fee of $\text{€}15$ million paid by Esat Digifone to the Department on the issue of the GSM licence to Esat Digifone, together with the source

or sources of your understanding.

And you have informed the Tribunal that you presume that the fee was paid from company funds in accordance with the Shareholders Agreement.

I think you were asked for your understanding regarding the funding arrangements between IIU, Esat Telecom and Telenor, for all aspects of the funding of Esat Digifone Limited including the source or sources of your understanding.

And you have informed the Tribunal that you understand that this was dealt with in the bid document and the Shareholders' Agreement.

I think you were then asked to identify the following:

All documents furnished to the Department in connection with the rights and obligations of the shareholders of Esat Digifone inter se in advance of the issue of the licence to Esat Digifone on the 16th May 1996, and all documents furnished to the Department in connection with the project financing of the Esat Digifone in advance of the issue of the licence of the 16th May 1996.

And you have informed the Tribunal that such documents as were provided were on file. You do not believe that apart from the application, any other papers were provided until May 1996. This is apart, of course, from the letter received in September 1995, which was returned.

You were then asked for your knowledge, direct or indirect, of the following:

1. All side letters entered into between the members of the consortia or any two or more of them in advance of the issue of the licence on the 16th May 1996.

2. All side letters entered into between Esat Digifone Limited or any shareholder of Esat Digifone Limited with the financial institutions which provided project financing to the company in advance of the issue of the licence of the 16th May 1996.

In each instance you were asked to identify the source of your knowledge.

You informed the Tribunal that you were not aware of such letters.

You were then asked for your knowledge, direct or indirect, of meeting between the Minister and/or the Department and the financial institutions who provided project financing to Esat Digifone at any time prior to the issue of the licence.

And you have informed the Tribunal that you met with representatives of the companies concerned. You think it was AIB and ABN-AMRO. The project financiers were seeking some comfort, you think, that the licence would not be revoked. You believe that there is a record on file. There was no more senior official present.

Now, you were then asked for your knowledge, direct or

indirect, if the consent of the Department of Finance was obtained in the issue of the licence; if so, when and how and from whom such consent was obtained.

You have informed the Tribunal that a formal legal consent was not required and was not obtained. The Department of Finance had, however, given consent to the competition document's original proposals in relation to the licence fee, the revised fee arrangements, and the outcome of the evaluation through the Project Group. The parties in the Department who were involved were Jimmy McMeel, Dave Doyle, and presumably their superordinates. You believe that the consent of the Minister for Finance was required for regulations governing the grant of the licence in relation to the use of radio frequencies in accordance with the Wireless Telephony Act 1926. You understand that the necessary regulations were made by the Office of the Director of Telecommunications Regulations, and you presume that the necessary consents were obtained.

You were then asked for your knowledge, direct or indirect, of and your role and the role of any other person in advising the Minister regarding the contents of the letter dated 29th March 1996 from the Minister to the Chairman of the ESB.

You have informed the Tribunal that you do not recall dealing with the Minister's response to the Chairman

of the ESB, but could not exclude that you had a role and may even have drafted it.

You were then asked for your dealings or knowledge of the dealings of any other person with any official of the European Commission, the Minister, any person on behalf of the Minister, Esat Digifone or any other person whatsoever regarding the complaint lodged with the European Commission by the Persona consortium in early May 1996.

And you have informed the Tribunal that your recollection is that only Martin Brennan and you had any contact with the Commission in relation to the complaint made by Persona. The Commission consulted the Department in relation to the complaint. In turn, you consulted with other telecommunications divisions and with the Department of Finance. Martin Brennan prepared a reply and the Commission decided not to process the complaint further. Legal advice was also obtained on the response. You do not have any specific memory of contact with the Minister in relation to the matter, but it's likely that he was kept informed of developments.

I think we do know, from a note which Mr. McMeel made, he was present at some meeting in Brussels where a suggestion was made at that meeting, I think, by Mr. Ungerer, that perhaps the political route should be pursued in relation to this complaint. Do you have

any recollection of that?

A. No, that doesn't strike a chord with me.

Q. Now, I think you were then asked for your knowledge,

direct or indirect, of and your role or the role of

any other person in advising the Minister regarding

the Minister's dealing with the European Commission in

early May 1996 regarding the complaint made by Persona

and the application by Persona for provisional relief

restraining the Government from issuing a licence to

Esat Digifone.

And you have informed the Tribunal that your

recollection is that the Department obtained legal

advice that avenues of redress were available to

Persona through the Irish courts. The Minister would

probably have been informed of this advice. You do

not believe there was any direct interaction between

the Minister and the Commission in this matter.

I think you were then asked for details of all your

dealings which you had with the Minister in connection

with the affairs of Esat Telecom Limited or any

associated company or of Mr. Denis O'Brien.

And you have informed the Tribunal that you do not

recall any dealings with the Minister relating to Esat

Telecom or Denis O'Brien other than those relating to

the GSM licence.

You were then asked for full details of your contacts

with certain persons about whom the Tribunal had

inquired.

And you have informed the Tribunal that regarding contacts with the persons the Tribunal inquired about, you dealt with Mr. Lowry as Minister on a number of occasions in relation to the GSM bid process, usually in the company of Martin Brennan, and occasionally other senior officials in the Department. These contacts related to the Government approval for the launch of the process and later for the defence of the integrity of the process. You recall speaking to him only once during the course of the process, and this was over the phone; due to "pressure," he was anxious to know what way the competition was shaping up. Your advice to him at that time, it was not possible to separate the leading players as the evaluation was not complete. You also dealt with him on other elements of the Department's business, mainly in the context of Ireland's presidency of the European Council in the second half of 1996. You also dealt with Minister Lowry on several occasions in relation to the GSM licensing process from the launch of the competition through to the announcement of the result, the award of the licence and in defending the integrity of the process. These generally occurred in the context of public statements in relation to the GSM process. You do not recall the details of individual meetings, but none of the face-to-face

meetings were on a one-to-one basis. You also spoke to Minister Lowry when he telephoned you sometime in August or September 1995 well, we know that was September now he was anxious to know how the competition was going because he was subject to representations by parties who were concerned that the decision of the winner had been made. You recall at the time of the call it was not clear which consortium would be the winner. You made this clear to him.

You also believed that you mentioned it may have been to his advantage not to have knowledge of how the evaluation was proceeding. Your only recollection of direct contact with the Minister during the course of the process was the telephone call mentioned in response to earlier questions. You would also have contacts with him in relation to the statements to the Dail in relation to the process.

You do not recall any dealings with the Minister relating to Esat Telecom or Denis O'Brien other than those relating to the GSM licence. You have had official meetings with Denis O'Brien on a number of occasions both before and during the bid process.

These meetings were primarily, not exclusively, related to the award of the second GSM licence and are recorded in the Department's files. You believe that you also spoke to him on at least one occasion over the telephone, after the announcement of the

competition result, in relation to the formal award of the licence.

You were introduced to Mr. O'Brien Snr. in the Earl of Kildare after the press conference held a couple of days after the result of the GSM competition was announced. You say that you should also declare that you were a recipient of hospitality from Denis O'Brien and/or Digifone on three occasions. One was in relation to sponsorship of an event in Leopardstown race course in October of 1997; the second was at the event where the Digifone service was launched in March 1997; and the final instance was at Denis O'Brien's party to mark the sale of Esat Telecom to British Telecom.

Finally, you, along with a number of others, received from Denis O'Brien a bottle of whisky shortly after the result of the evaluation of applications was announced. This was returned.

I think it was returned in the case of all officials?

A. Yes, I believe so.

Q. You were introduced to Paul Connolly in the same circumstances as those in which you met Mr. Denis O'Brien Snr. You believe that you first met Mr. Barry Maloney at the meeting where Digifone made a formal presentation of their application to the GSM Project Team in September 1995. You spoke to him on a number of occasions after he became Joint Chief Executive of

Digifone, mainly in relation to the payment of the 1/2 million penalty fee for failing to meet the service launch requirements of the licence. You also spoke to him on a number of occasions in relation to difficulty getting planning permission for masts and mast sharing of Eircell. Finally you met Mr. Maloney briefly at a Digifone-sponsored event at Leopardstown races.

You met with Mr. Owen O'Connell in relation to the terms of the Digifone licence and both met and spoke to him on the phone in relation to this matter a number of times. In his capacity as Chief Executive of Digifone, you met Mr. Knut Digerud on a small number of occasions, mainly in relation to the award of the licence.

Apart from at the formal presentation of applications to the Project Team in September 1995 and the press conference shortly after the announcement of the result in October 1995, you met with Mr. Johansen on one occasion after the award of the licence. Also present were Mr. Knut Digerud and Mr. John Loughrey, then Secretary General of the Department. The meeting was held at the request of the Telenor representatives, mainly as a courtesy call to the Secretary General. They set out the company's plans to expand commercial activities in Ireland.

You dealt with officials at Telecom Eireann, notably the late Michael Ryan, company secretary; Gerry Ryan,

head of regulatory affairs and subsequently company secretary; and a number of officials of Eircell.

These contacts would have related to wider issues than the award of second GSM licence and notably the developing European regulatory regime for telecommunications. You recall dealing with officials of Telecom Eireann in relation in particular to a payment of a licence fee of $\text{€}10$ million, the award of a licence to Eircell and issues in relation to planning permission for masts including exemptions.

As to other state companies, you recall meeting representatives of the ESB, Bord na Mona and RTE at the formal presentations of the applications.

I think you also furnished the Tribunal with a short supplementary memorandum of proposed evidence, or witness statement?

A. That's correct, yes.

Q. I'll just deal with that now. Unless you wish me at this moment, I don't intend going into the document, the report of the telecommunications strategy group at this stage. Do you wish me to

A. I think that's correct.

Q. Is that all right? I'll just run through the supplementary statement, so.

You attach the report of the telecommunications strategy group which was completed in 1994, shortly before you joined the telecommunications and radio

regulatory division. The group comprised representatives of the government department and external industry experts. The report sets a clear objective for the Irish telecommunications sector; that is that it should rank in the top quartile of OECD countries in terms of price, quality and availability of services.

The essence of the strategy to achieve this objective was that competition would be a driver of the change in the sector and that this would be supported by fair and independent regulation. The report also envisaged the transformation of Telecom Eireann so that it could compete successfully in a competitive marketplace.

The report was endorsed in principle by the then minister, Mr. Brian Cowen. It was not published. I don't think we need to take it any further for the moment.

A. Okay.

Q. It just wasn't published.

Nevertheless, you understand that the strategy was fully endorsed by the Ministers and was decided that the implementation of the strategy would be pursued with each element being tackled individually, as distinct from seeking Government stakeholder support for the entire strategy at once. You understand that the essential principle of the strategy was accepted by Mr. Michael Lowry when he became Minister soon

afterwards. You are drawing attention to the report merely to assert the nature and extent of the Department's commitment at official level to the development of the vigorous competition in the sector and fair treatment of all operators.

There is also a separate matter which, on the advice of legal advisers, you wish to put on record. It arises from a Tribunal inquiry about the media report relating to legal advice provided in the "Hours" preceding the licence award. You recall that senior counsel was engaged to provide advice on the terms of the licence to be awarded to Esat Digifone. He had previously given advice on discussions with the European Commission concerning the licence fee for the GSM licence. You do not recall specifically when he was engaged to advise on the licence terms, but you believe that it was sometime in advance of the award of the licence on the 16th May 1996.

The provision of advice by him concluded with his attendance at the Department on, you believe, the night before the licence award. The purpose of his attendance was to advise on the terms of the licence relating in particular to change of ownership, and taking account of ongoing negotiations with Esat Digifone. That company was represented by Mr. Owen O'Connell of William Fry's, who was also in touch by telephone with the consortia members. The outcome of

the discussions and the advice provided by senior counsel was agreement on the terms of the licence in relation to change of ownership, and on a side letter relating to a specific change which was in prospect.

You believe that senior counsel may also have provided advice on the material which had been received by the Department in relation to certification of the ownership and financing of the project.

Now, I should tell you, Mr. Towey, I am just going to go through a few matters in this particular memorandum for the moment, so you needn't turn to documents immediately.

A. Okay.

Q. And I also intend, because this is an inquiry and we need to avoid and move it away from any perception of an adversarial system, I am going to put to you the questions which counsel for the State has been putting to all witnesses, all State witnesses so far, and get your response to those and then proceed with the inquiry, if that's all right with you.

A. Okay.

Q. But, in the first instance, if I might just draw your attention to it's your response to Query Number 1 on page 2. And if you go you see, it's you say "As one who was at the heart of the GSM evaluation process from before Michael Lowry became Minister right through to the award of the licence and the

subsequent defence of the process, I would like to state that in my view, that the comparative evaluation of the applications received was carried out in good faith in accordance with the predetermined evaluation criteria and that the winning application was the best application according those criteria".

The evaluation of the technical aspects of the application was the only element of the process in which you were not a direct participant. There was not, to your knowledge, any external influence brought to bear on the process which could have had an effect on ensuring any particular result.

Now, it may just be a question of language in the first instance, but could I just pause there for a moment; are you aware of any external influence on the process, and not just no external influence which you believe could not have affected the result?

A. No. I mean, obviously you are aware that the Minister at certain points did have a view, for example, that the result should be announced quickly.

Q. Yes.

A. He also had a view, at the point where it came to issuing the licence, that we should bring the matter to closure quickly in that instance also. But I didn't and wouldn't interpret either of those initiatives on the part of the Minister as undue interference.

Q. Because the one thing we do know from your evidence is that the Minister made contact with you when he couldn't make contact with Mr. Martin Brennan in September of 1995.

A. Yes.

Q. And from the information conveyed to you by the Minister, he indicated he was under some pressure or some communication, or something of that nature, from a consortium or a consortium member; isn't that right?

A. Yes, that was the impression I formed, certainly.

Q. And that he was anxious to ensure that the process was not completed or that the as you had said, the media favourite hadn't got it sealed up; isn't that right?

A. Yeah. I had the impression that he was anxious to ensure that it wasn't a foregone conclusion.

Q. And I think you very fairly say that whilst you haven't got an absolute recollection, you believe you may have indicated to him who the front runners might have been at that time?

A. Yeah, that's right, yeah. The impression that I had from him was that he was being subjected to the view that Motorola jobs would disappear and that the Government that because of this, the Government would ensure that the licence was issued to Persona. That was my interpretation of where he was coming from.

Q. But there can be no doubt, first of all, he made an intervention for the purpose of obtaining information?

A. Yes.

Q. And he did obtain information?

A. Yes.

Q. And that was the only occasion that you had a direct contact with the Minister, other than formal contacts which were not on a one-to-one basis?

A. That's correct, yes.

Q. And you do not know what other interventions the Minister may or may not have made; isn't that correct?

A. That's correct, but I don't know that he made any others, other than I mean, I know that Martin Brennan spoke to him at some point

Q. You know that Martin Brennan spoke to him, so he spoke to Martin Brennan, somebody involved in the process as well?

A. Yes.

Q. Was there a view or was there a rumour circulating in the Department that Motorola, or Persona, the consortium, had received some sort of an indication that from the previous Government, or from some member of the previous Government, that they'd be all right for the licence, or something of that nature?

A. I had heard something to that effect, yes.

Q. And when the Minister spoke to you in September, his concern was to ascertain or, sorry, he wished to

ascertain information from you as to whether a rumour or something which had been said to him about this particular consortium was not the case; that it hadn't been, I suppose, a decision arrived at or a foregone conclusion given effect to?

A. Well, I was inferring that. I mean, the Minister didn't name any consortium, but he did say to me that he was under pressure and it was being suggested to him that this was a foregone conclusion. And from that, I inferred that it may be the case that another consortium was suggesting that Persona had the licence in the bag.

Q. I understand. I take it the Minister was satisfied with the assurance you gave him, first of all, that the competition was still in progress?

A. I believe so, yes.

Q. Did you report the contact with the Minister to Martin Brennan or

A. I would have done so, yes.

Q. To Martin Brennan?

A. To my knowledge, this was the first instance where the Minister had expressed an interest in the competition.

Q. And you believe that in the normal course, you would have reported to your immediate superior?

A. I would have done so, yes.

Q. Now, I know you are expected to be levelheaded when you are doing a job like you were asked to do, or a

job you do nowadays, but were you concerned that the

Minister had made this contact?

A. Not particularly, no.

Q. Did you see it as being uneventful in the closed phase of the competition that the Minister should have made contact with a member of the Project Team seeking information about the process?

A. I wasn't unduly surprised that a member of a consortium may have made contact with him. I mean, I think we were always clear in the Department that it was a likelihood that the Minister would, one way or another, come into contact with people who had a direct interest in what was happening in this competition. And this I mean, this was an instance of that. It clearly had happened that at some event he had encountered people.

So, no, I wasn't at all surprised by that.

Q. You weren't surprised?

A. No.

Q. Were you concerned?

A. I don't believe so no, I wasn't concerned.

Q. You weren't concerned. Am I correct, or am I correct in understanding that the information the Minister was seeking was that whatever contact he had with somebody, that he was concerned that Persona should not be considered to be the consortium which would receive this licence?

A. No, I didn't interpret what he said that way at all.

The impression, like I say, was the impression I had was that he was under pressure; in other words, pressure was being brought to bear on him. So I simply assumed that it was someone who was saying to him, "Look, this is in the bag", and kind of, you know essentially pressing him to try and get a view, or try and get information on what was happening. That wouldn't surprise me at all.

Q. I agree, it wouldn't surprise you, because you use the word yourself that you got the impression that the Minister was under pressure from somebody who was saying to him something like words to the effect, "These fellas have it in the bag", you know, or ...

A. Yes. No, my impression was, in my response to him, that the competition was still ongoing, that you know, he felt okay; he had a basis now on which to get these people off his back.

Q. Well, of course that was now, with the benefit of looking at it here in this Tribunal

A. Yes, that may be the case.

Q. That gave the Minister information which he was able to communicate to whoever was putting the "pressure" on him?

A. Yes.

Q. And I appreciate you have to have thick skin and broad shoulders when you are doing your type of job in

dealing with Ministers, but leaving aside your own view as to how you felt you might have been able to handle it or Martin Brennan might have been able to handle it, this is the was this the first occasion that you had experienced Ministerial interest in the running of the process?

A. Yeah.

Q. Isn't that right?

A. Yes.

Q. Trying to fix that in time, if we could, you also remembering having a discussion with Aidan Ryan, a perfectly normal discussion, two of you were members of the Project Group, he on the technology side?

A. Yes.

Q. Can you remember whether you spoke to the Minister well, let's try and figure it out this way: Do you remember whether it was before or after the presentation?

A. I suspect it was before, but I couldn't rule out that it may have been afterwards.

Q. You suspect it, but you couldn't rule out

A. Yeah.

Q. Do you remember whether it was before or after you spoke to Aidan Ryan? And I just pause there for a moment; the technology people seem to have been in Copenhagen, I think, around the 7th September?

A. My phone conversation with Aidan Ryan had to be around

mid-September.

Q. Around mid-September?

A. Around mid-September.

Q. You think after the presentations had been given? The presentations finished on the 14th September.

A. They did, yeah. Okay, I suspect that it was after that.

Q. Right. And when do you suspect or when do you think you may have had the telephone call from the Minister?

A. The telephone call from the Minister was at a time when I knew who the top three contenders were but before I would have known that it looked like Esat Digifone were coming out on top.

Now, the telephone call that I would have had with Aidan Ryan would have to have been between Thursday, 21st September, and Tuesday, the 26th September.

Q. That was after Thursday the 21st was when you received the memorandum from Andersens; isn't that correct? There is a memorandum dated 21st of September, and you went to Copenhagen the following week?

A. Yeah. I mean, the important point was that I was in Copenhagen on 19/20 September, and at that time, some further scoring of dimensions would have been done, so it would only have been after that scoring had been done and when I obtained information from Aidan Ryan on the scoring on the technical aspects that I would

have had an overview which suggested Digifone would emerge as the winner, okay?

Q. So you can fix something for Aidan Ryan around that?

A. I can, okay. The phone conversation with the Minister was certainly before that, and I can't anchor it to anything specific. It could have been any time from early to mid-September.

Q. I am just trying to piece things together, if we can try and fix a time again. You know, and it's disputed between the Minister and Mr. Anthony J. F. O'Reilly that a conversation took place at the opening of the Galmoy mine on the 14th, the afternoon I think of the 14th September of 1995.

A. Yes.

Q. You are aware in general terms

A. I am aware in general terms.

Q. of that particular dispute and of what Mr. O'Reilly said the Minister said to him about presentations?

A. Yes.

Q. Nothing of that nature that is, conveying to the Minister what had happened at the presentations occurred in your telephone conversation with the Minister?

A. No, no, definitely not.

Q. So if Mr. O'Reilly is correct and if the Minister said that, that information didn't come from you?

A. No, it didn't.

Q. We know that the Minister met Mr. Denis O'Brien on Sunday, the 16th September, first of all at Croke Park and secondly in Hartigan's public house I beg your pardon, the 17th. It's the 17th.

A. 17th

Q. You are generally aware, again, of that?

A. I am, yeah.

Q. Trying to fix it, if that can assist us in affixing any sort of time in your mind, can you remember whether it was before the All-Ireland

A. That event was on a Sunday, wasn't it? So I mean it certainly wasn't in the context of that event that he rang me.

Q. Yes, I understand that. Can you remember whether it was before or after that, or can you be of any assistance there?

A. I can't say. I suspect it was before the presentations. I mean, during the week of the presentations, I wasn't at my desk for a lot of the time, because I was at the presentations. And also Martin Brennan was as available as I was, so it's likely it was before that.

Q. Right. Well, it's the first clear, concrete example that we have in evidence from somebody that this shows the Minister ringing you, in effect, acting on foot of some applicant's representations to him; isn't that right?

A. Yes. I think I should be clear in relation to this, also, that I mean, in terms of the rules of the competition, there was no question of the Minister being denied information, if he chose to seek it, in relation to the process. But certainly we did have a view that in terms of the prospect of him being approached by interested parties, his best defence would be ignorance and that it was in his interest not to have knowledge.

Q. No, like, first of all, let me say I am more interested in the Minister's approach to you than you didn't approach the Minister about this; that's the first thing.

A. Yeah.

Q. Secondly, this was a very formal process; it was an adjudicative process. And thirdly, this wasn't a casual meeting with you, or anything of that nature, where you might have been walking along a corridor and somebody said, "How are things going?" This was a formal contact with you when Martin Brennan wasn't available?

A. Yes.

Q. And raised specific issues with you about the process; isn't that correct?

A. Yes.

Q. Just getting back to the early days, this is before the publication of the RFP.

A. Yeah.

CHAIRMAN: Just while it's in my mind, Mr. Coughlan, just Mr. Towey, you may remember from one of the minutes or memoranda there is, towards the latter days, an entry, "Access to Minister cannot be stopped". Might your experience as recounted to Mr. Brennan, or other members, perhaps, put this somewhat in context?

A. Well, I think that comment was made by Mr. Brennan actually at a meeting where the protocol was circulated, that you know, there should be no one-to-one meetings, etc., and I think Mr. Brennan was simply acknowledging that yes, you can't basically keep the Minister free from all contacts, and Ministers are free to do as they wish. And yes, I mean, this I saw as an instance of that.

Q. MR. COUGHLAN: I think also it's I think there may be a note, perhaps, of the meeting I think it's the meeting of the 14th September, of the 14th September, after the presentations, there was a meeting of the PTGSM?

A. Yes.

Q. I'll come to it in due course. It may be recorded by two people, in fact, in a note of Mr. McMahon's and a note of Ms. O'Keeffe's and Mr. Riordan; there are a number of them who have notes of the meeting, and there is some suggestion, you know, sort of like, to

the effect we'll come to the actual wording that the process hasn't been compromised, or words to that effect?

A. That's right, yeah.

Q. Do you remember seeing those?

A. Yeah.

Q. Could that have related to any discussion that took place that you might have indicated to the rest of the PTGSM that the Minister had been in contact with you?

A. No. I believe that that comment actually arose from our view which had preceded the presentations, that the presentations were for the purposes of clarification, for the purposes of allowing visual presentation of material by the applicants, clarification of issues that the Department had put in questions, and that specifically there was no question of any additional material or new material being provided. And I think in that comment at that meeting, we were simply recording that we had preserved the parity of treatment of all applicants, and that none of the applicants had added any significant new material to their applications.

Q. I wonder, can you be correct in that, Mr. Towey; but I'll come to that when I deal with the documents, because it's immediately followed by the words, words to the effect like the Chairman has just referred to there, the Minister can't stop the Minister, or

words to that effect, can't stop the Minister meeting or talking to people. But we'll come to it in due course in the documents.

A. Okay, okay. I certainly don't recall that it was in response to any specific assessment of any specific event that the process was not

Q. I suppose what I am really inquiring of you about at the moment is that it wasn't if it referred to anything, it wasn't referring to something that you had reported to the group, that the Minister had made this particular contact with you?

A. No.

Q. And apart from Mr. Brennan, did you tell any other member of the Project Group that the Minister had made this

A. No.

Q. Now, again, I'll be coming back to the documents, but coming to the whole question of the licence fee and how it evolved, we have a fairly reasonable understanding, I think, in the Tribunal, unless you think that we need to be told something different or in addition, that policy evolved in debate between your Department and the Department of Finance on this particular issue; isn't that correct?

A. That's correct, yeah.

Q. There would have been a view expressed by your Department, or it would have been argued, perhaps, for

no licence fee or a low licence fee or something of that nature, the Department of Finance, understandably, on the other side were looking for a revenue gain?

A. Correct.

Q. And argued strongly for an option or a high licence fee; and as things evolved, a compromise was reached in the first instance whereby it became Government policy that there would be an auction element in the beauty contest. Isn't that correct?

A. That's correct.

Q. And the competition documents were sent to the Commission, and then the famous letter from Mr. van Miert arrived firing a shot across the bows on this question of the auction element in the beauty contest; isn't that the right?

A. That's right, yes.

Q. And whatever views may be taken about the Commission and how he might deal with them, legal advice was taken, and there were a number of considerations here: The Commission could get serious; you could have a protracted legal dispute, or a political-type legal dispute; but in any event, there was the danger of delaying the process?

A. That's correct, yes.

Q. So Mr. Brennan got involved, and the compromise position evolved then whereby the 15 million would be

acceptable to the Commission and Eircell would pay 10 million, the 5 million difference being the administrative cost in the competition. Are we correct in understanding that is how matters evolved?

A. Yes.

Q. Now, again, can I take it that I think the final letter whereby the we know, and again I'll be coming to this, because I think you are aware that portion of Commissioner van Miert's letter was found in the files of Mr. Jarlath Burke?

A. Yes.

Q. I think you drafted the Minister's letter to Mr. van Miert in the first instance; isn't that correct?

A. An early draft.

Q. And it would have been worked on by you, Mr. Brennan and perhaps Mr. Loughrey?

A. This is the eventual letter of 22 June.

Q. Yes.

A. It was worked on also by Mr. Nesbitt.

Q. I don't think you differ from the view of anyone else in the Department that this this was confidential correspondence between the Minister and Commissioner van Miert?

A. Yes.

Q. And it was nobody else's business to have such documents other than the appropriate people, the Department and the Commission?

A. I believe that's true, yes.

Q. I don't know, and again I'll just go briefly through it tomorrow morning with you, but you know the series of communications: First of all there was an initial draft furnished by Mr. Hoceped, I think?

A. Yes.

Q. We needn't concern ourselves with that, because it's in completely different format and content. And then there was a number of communications which took place by way of facsimile transmissions; I think you are aware of that also?

A. Yes.

Q. And looking at the various documents, we know from what's on the top of the document which was found in Mr. Jarlath Burke's files, that that would have corresponded with a document which would be in Brussels and one which was received in the Department. I think you are aware of all that.

A. Yes.

Q. Can you remember actually receiving the facsimiles into the Department?

A. Not particularly, no.

Q. And do you know where they would have gone once they came into the Department? Would they have been would there have been a circulation of them, for example? We know that the hard copy, the final hard copy which came in had a circulation list on it,

including the Minister and Mr. McCrea?

A. Okay. Faxes would have been received at the fax machine which we were using for all competition purposes, which was located in an office where my staff were located. So it would have been brought to a fax of that kind would have been brought to the attention of me or Martin Brennan, and either Martin Brennan or I would then determine what the circulation arrangements should be.

Q. And this was a sensitive document, but it was one that the Department was anxious to get as well, isn't that right, so that the competition could recommence?

A. Yes.

Q. Would it have gone to the Secretary?

A. I believe that it was faxed to the Secretary, I think in a hotel in Alicante or somewhere, with a cover minute, yes.

Q. Would it have gone to the Minister's office?

A. I don't believe so. The Minister would probably have been informed that we had received the letter we were awaiting.

Q. Would it have gone to Mr. McCrea?

A. It may have done. It's possible. I mean, there was certainly an interest on the part of all senior officials, including the Minister and his programme manager, in getting this letter so that the competition could be commenced.

Q. I can understand; you were anxious to get it.

A. Oh, absolutely, yes.

Q. Well, I'll have to ask you formally, did you give it to anybody outside official circles?

A. No.

Q. As regards the retention of AMI or any consultants, do you remember how that arose in the first instance?

A. I'm not sure what you mean. I mean

Q. The Project Group or a Project Group was in existence, and there had been some assistance rendered by KPMG or Mr. Pye?

A. Yeah.

Q. I seem to recollect that Mr. Brennan at some stage now maybe it's not the true situation felt that the Project Group could proceed with the matter without consultants, and that it was Mr. Loughrey who suggested that there would be consultants. Can you remember how AMI or any consultant came into the picture?

A. I mean, I very much doubt that anybody on the Project Group had the view that they could do this without the assistance of consultants, and it wouldn't surprise me that Mr. Loughrey would have I would expect Mr. Brennan to have the view that consultants

Q. I may be incorrect in that, but

A. Yeah, the decision in principle that there would be consultants was taken before I became involved in this

process, and it was always clear to me that the purpose of having consultants was to bring expertise firstly, to bring process expertise in the sense that nobody in the Project Group had any experience of evaluating applications of this kind, so it was important to recruit expertise in this area, to bring specialist expertise in areas of general telecommunications knowledge, for example, in relation to mobile communications, in relation to financial issues, accounting, law; all of those areas of expertise which were ultimately brought to bear within the evaluation. And essentially, it was clear, I suppose, overall, that the consultants would act as the guiding light for this process, that they would also act as guarantors of objectivity, so that in the sense from the point of view of potentially interested parties, the existence of consultants tasked with carrying out an evaluation would serve to provide some comfort of the prospect that there would be an objective decision taken here as distinct from perhaps a political decision.

Q. So and was that the as you understood it ultimately, the role which Andersens played or fulfilled in

A. Yes.

Q. in this process?

A. Yes.

Q. So they were retained as consultants, not as members of the project team, but they were there to guide, advise, lead, I suppose, in certain circumstances, the decision-takers?

A. Yeah, well, they were under contract to do that.

Q. To do that

A. But I would say this, they were also members of the project team.

Q. Well, is that right in the contract?

A. No, I don't believe so.

Q. Like, there is I understand your view; other people have a different view, and we even see at one stage where we come to it in the documents where Mr. Billy Riordan is expressing the view to get Andersens to take ownership of the evaluation report.

A. Yes.

Q. Was everybody clear as to what the role of Andersens was in this and what the role of the Project Group members were?

A. Well, it was certainly within the contract that Andersens would develop or deliver the evaluation report.

To the question of people generally within the group, I think that all members of the group would have had a copy of Andersens' proposal, and I suspect that the Telecoms Division at least would have had a copy of the contract. I am not sure that all individual

members of the group had the contract.

Q. Andersens, from what they tell us, anyway, saw themselves as pure consultants, not as members of the Project Group?

A. Okay. Well, I mean, I think it depends on how you interpret membership of the Project Group, but as I said in my statement, there were no prescribed terms of reference as such, but there was a general understanding, I think, which was my understanding, that this was a group which would, through consensus, guide this process and would take all of the key decisions.

Now, Andersens were participants in all of the key decisions, and I believe that had there been any instance where Andersens had said they disagreed with that particular course, I think that would have been, you know, it would have been a significant event. I think it would have been an obstacle to a particular course being pursued, so in that sense, you know, they were contributors to the consensus for all of the key decisions, and I would interpret that to mean that yes, they were members of the Project Group.

Q. That being so, I understand your view there was a major dispute with Andersens as of the 4th September 1995; isn't that correct?

A. There was a dispute, yes.

Q. And they were expressing the view, and we'll come to

the documents in due course, but they were expressing the view, were they not, that they were not contracted to produce a one, two, three; that what they thought that they were contracted to produce was three front runners. Isn't that right?

A. I certainly don't recall that.

Q. And they informed you that it would be difficult without extra phones and extra work to sort out the differences between the top-ranked people; do you remember that?

A. I don't recall that, and if they did put that case, I am quite sure that I would have rejected their contention, because I am quite sure it was clear from our tender procedures that we were looking for an evaluation process that would result in a ranking.

Q. You argued with him that it was implied, it was implied in any agreement that you had with him that it would produce what you were looking for, which was an order?

A. Yes.

Q. Isn't that correct? Do you remember that discussion?

A. I don't particularly remember it, but I have no doubt that that's what I was looking for.

Q. And in any event, extra phones had to be made available to them, isn't that correct, as and from that time?

A. That's correct.

Q. And can you remember specifically what that was for?

A. Well, it was essentially a horse trade. I mean, they came looking for a certain amount of money; we had a view that they were subject to a fixed-price contract, and we had an agreement on delivery of prescribed outputs. They were now saying they couldn't do so within the price, and they were looking for a significant increase on that. Our options were either to broker a compromise on the basis of which they would undertake to deliver a report they were preparing ...

DUE TO TECHNICAL FAILURE THE FINAL TWO MINUTES OF THE TRANSCRIPT IS NOT INCLUDED.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY, THURSDAY, 8TH MAY, 2003 AT 11AM.