

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.

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

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I N D E X

Witness: Examination: Question No.:

Fintan Twoey Mr. Coughlan 1 - 429

THE TRIBUNAL RESUMED AS FOLLOWS ON FRIDAY, 9TH JUNE,

2003 AT 11AM:

CHAIRMAN: I think there is one short preliminary matter, Mr. Towey, if you'd like to go back for a few minutes.

MR. BREEN: Garrett Breen is my name, from Landwell Solicitors. I wonder could I make a brief application in relation to a witness who is due to appear before you next Tuesday; Ms. Regina Finn is due to appear, she is my client, and the issue of representation has arisen. I have been asked to apply for limited representation for Ms. Finn for appearance before the Tribunal. As you may be aware, she is the Director General of Utilities Regulation in the states of Guernsey, the bailiwick of Guernsey, which consists of the island of Sark, Hearn and Guernsey. She is in charge of three utilities of telecommunications and electricity and the postal service in Guernsey, and the regulation of that, and, as such, she is a very public figure in Guernsey and is subject to public comment and press coverage both in the printed and broadcast media on an almost daily basis. And in those circumstances, her employers have indicated to her that, for her appearance before the Tribunal, they would be very anxious, and indeed she is anxious herself, that she do have adequate representation while appearing before the Tribunal.

Now, I do realise that her role is probably I think it's common case that her role is quite minor in the

whole affair, but nevertheless, because of her very public persona and in order to protect the public persona of the office in another jurisdiction, she is very anxious, as are her employers anxious, that she be granted limited representation. That is the purpose of my application today.

Her employers have written to her. I think you may have that correspondence.

CHAIRMAN: I was given, through Mr. Davis, a copy of that letter.

MR. BREEN: That is my application today.

CHAIRMAN: Well, I appreciate, first of all, that Ms. Finn is making herself available, having now moved to Guernsey and taken up the senior regulatory position that she now occupies, and I, of course, accept that such matters as her travelling expenses, and perhaps her consultations with you with a view to facilitating the provision of her statement, and indeed your own attendance, while she is present, I can foresee little difficulty. On the more substantive aspect of an actual order of the limited representation, I have to be mindful of the fact that, as I have said on numerous occasions, in all these matters, I will have to adjudicate at the end of the sittings, and whilst I can't give any indicators as to what criteria will be applied, I very much doubt if I will be operating on a basis of what might be called unreasoned munificence.

However, I do appreciate the lady is travelling, she does hold a position of some substance in her new abode. I accept, as you fairly concede, that, on the face of matters, her evidence, whilst important enough for us to seek her attendance, is not inordinately pivotal, and certainly perhaps is not comparable with perhaps the present witness and a number of others in the context of the entire evidence relating to the GSM competition, and, in these circumstances, I think, Mr. Breen, what I will do is I will note your application, I will give you liberty to renew it. It seems to me at the moment that her evidence, on no realistic appraisal, could exceed a day; it's probably likely to be somewhat more in the nature of half a day, or even less. If it transpires, as I envisage, that no matters potentially critical of her arise, it may not be necessary for us to take it further, but I do accept that if something comes up which could potentially impact upon her reputation in any way, it is right and proper that she should have appropriate legal representation.

So I think what I'll do is I'll note your application. I'll give you liberty to take such steps as you feel you should take, and if it does transpire that representation to the extent of intervention by you or counsel is necessary, I'll then deal with it on the merits. In other words, I won't take you short if it

transpires that a situation arises, that I don't think terribly likely, that her reputation could be in any jeopardy, but if that does arise, I'll see that she is not taken short.

MR. BREEN: Just by point of clarification, the issue of costs isn't really her primary issue at all in this application; it's the question of representation, and by solicitor and perhaps by counsel. And I suppose really what she is anxious is she would have the right to have counsel present during her evidence and to intervene, if necessary, and, in fact, to perhaps cross-examine any other witnesses in the future who may comment on her evidence. The issue of costs is actually very low down in her mind, and she has asked me to indicate to you, Chairman, that she will have to, unfortunately, go back to her employers and ask them is what you have indicated sufficient for their purposes for the protection of the office as they see it. And in those circumstances, unfortunately, she would not be able to take those instructions in time for her to travel for Tuesday. Now, obviously, it may well be that it might be appropriate to maybe reschedule her while she takes those instructions. I don't know whether that would be in ease of the Tribunal, but she is very anxious that she needs to go back to her employers. It's Independence Day, unfortunately, in Guernsey today, so that can't be

achieved today, and if she has to do that on Monday, she had intended she is booked to travel on Sunday, in fact. If she did that on Monday, she wouldn't get here in time for Tuesday. I'd be hopeful that in what you say, Chairman, there would be no issue, but nevertheless, she does feel that she has to go back to her employers, having regard to the correspondence.

CHAIRMAN: As you are probably aware, Mr. Breen, a number of witnesses of perhaps comparable roles in the past did have the contingency of having a solicitor attending, if you like, on a watching brief basis, in the anticipation that if anything arose, which it usually didn't, that, in that instance, that there would then be, if you like, a trigger for a representation order, and either the solicitor, or a counsel of the solicitor's choice, being then in a position to examine.

So in other words, that's what I am indicating I think the appropriate position; if there is any slight matter that could potentially refer to her credibility or good standing, of course she must have the right to intervene through her lawyers. But what I am simply indicating to you, if it's merely a question of running through her statement uncontroversially, of her not being examined by anybody else, it may be premature for me to effectively sanction full representation for her. But that doesn't stop you

taking such contingency plans that you might think proper on foot of your instructions, and I am certainly not trying to be difficult. I am just saying that I AM applying the public purse and I have got to be careful of what I do in relation to it, but I don't think you'll be taken short on that basis.

Perhaps, Mr. Healy, there is no earthly way that Mr. Towey is going to finish today, I think that's clear. And whilst I hope it's not going to be long into next week, perhaps in the context of what we have heard, it might be preferable that rather than have I don't want to certainly have Ms. Finn hanging around the Tribunal not being called for a number of days. It may be

MR. HEALY: It had been envisaged, if necessary, that she could be interposed. I think maybe if I could speak to Mr. Breen, I think there is

CHAIRMAN: Perhaps I mean, it wouldn't raise a particular problem if perhaps we put back Ms. Finn's evidence until, let's say, Wednesday, which might facilitate

MR. BREEN: It certainly would, Chairman, facilitate greatly.

CHAIRMAN: I'll give you liberty to raise the matter again. I am conscious of the force of what you say, but you appreciate the considerations I have to operate, and I am certainly not envisaging a situation

that, either from her standpoint or that of other employers, that there is any question of her being treated unfairly or given less than a proper due process, and I assure I won't let that happen. Very good. I'll give you liberty to discuss it further with the Tribunal legal team. I think it probably does make sense, not least for the continuity of Mr. Towey's evidence, that we put it back until not before Wednesday, preferably on Wednesday, and any further application that needs to be made can be dealt with in the advance of that.

MR. BREEN: I appreciate that. May it please you, Mr. Chairman.

CHAIRMAN: Mr. Shaw, you had

MR. SHAW: For some reason, Chairman, my counsel for the Department haven't arrived as of yet. I am endeavouring to contact them. I'd be anxious Mr. Towey not proceed with his evidence in the absence of counsel. I'd ask you to rise for a few moments to endeavour to contact them again to see what the position is, Chairman.

CHAIRMAN: From what I have just said, Mr. Shaw, I can hardly force Mr. Towey on, but it will certainly have to be within ten minutes.

MR. SHAW: In relation to Tuesday, Mr. Chairman, Mr. Towey is travelling to Brussels tomorrow, and has made arrangements to be back here Tuesday morning, and it's



my understanding that Ms. Finn would be proceeding on Tuesday morning with her evidence and, consequently, Mr. Towey won't be available until two o'clock on Tuesday afternoon.

MR. HEALY: If you give me

CHAIRMAN: I think perhaps, rather than out tossing her to and fro, it's sensible the legal teams try and get together to see that we don't have a wasted half day. That, I certainly don't want, and look, Mr. Shaw, you are well able, if you don't have counsel in ten minutes, to proceed, but I'll give you that much time to see what you can do. I appreciate your situation.

MR. SHAW: Very good, Chairman.

THE TRIBUNAL THEN ADJOURNED FOR A SHORT BREAK AND RESUMED AS FOLLOWS:

CHAIRMAN: Mr. Nesbitt, I am not, I think, somebody of inordinate pomp and circumstance, but not from my point of view, but from a general viewpoint, it's not ideal that nobody from the State counsel team was available at eleven o'clock.

MR. NESBITT: I accept that, there is no explanation that's acceptable. I am sorry.

CONTINUATION OF EXAMINATION OF FINTAN TOWEY BY

MR. COUGHLAN:

Q. MR. COUGHLAN: I told you yesterday that we'd be looking at a few documents today, so I think that the

place where we might start would be the 9th meeting of the GSM Project Group which took place on the 4th September, 1995. And it's the minute is at Book 42, page 95 or tab 95.

I think the minute records the meeting was opened by Mr. Brennan who outlined the agenda for the meeting, isn't that correct? And the first thing was that Andersens the presentation of the quantitative evaluation on the six applications

A. Yes.

Q. discussion of the forthcoming presentations and the future framework of the project.

Then on the quantitative evaluation: "Prior to presenting the initial draft report of the quantitative evaluation, Mr. Andersen" they used the word "report" there. We have always been looking for a report but everyone seems to think, and would it be your recollection as well, it would be the documents, a number of sheets constituted the report

A. Contained in the quantitative evaluation, yes.

Q. Contained in the quantitative at this time. That's fair enough.

"Mr. Andersen first acknowledged certain shortcomings in the results gleaned so far from the quantitative scoring. The quantitative evaluation had highlighted some incomparable elements, i.e.,

" Some applicants had not calculated OECD baskets to their best advantage" that related to tariffs.

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

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

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

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

"The meeting discussed each dimension of the scoring document in turn. The consensus was that the quantitative analysis was not sufficient on its own and that it would be returned to after both the presentations and the qualitative assessment.

"It was also agreed that the figures used by the applicants could not be taken at face value and needed to be scrutinised. Responsibility for such a scrutiny has not yet been decided.

"The need to reflect a change in the weighting for the licence fee was highlighted. AMI submitted to correct the model in this respect."

We know that the old weightings still remained in the

quantitative evaluation, isn't that correct?

A. Yes.

Q. "Mr. Andersen concluded that the scoring at this stage was relatively close and that no conclusions could yet be drawn."

Then there was a discussion about forthcoming presentations. We have opened that before.

Then we move down to the further framework of the project.

"10 sub-groups meeting for the qualitative evaluation had been proposed by AMI. 5 had already taken place.

AMI committed to provide the Department with documentation on these earlier sub-group meetings.

Project Group members were welcome to contribute/suggest amendments to the scoring.

"Andersens outlined a timetable for the remaining 5 sessions and personnel were nominated to attend; Mr. Towey, Mr. Riordan were to attend the financial and performance guarantees meetings; Mr. McQuaid and Mr. Ryan are to attend the radio network, capacity of the network and frequency efficiency sessions.

"Andersens stated that the qualitative scoring of dimensions would take place in the sub-groups.

Scoring of aspects would take place after the presentations. Mr. Brennan, however, specifically requested an opportunity to revisit the qualitative evaluation of dimensions after the presentations. The

group would have an initial discussion on the qualitative evaluation scoring on the afternoon of the 14 September. Gaps would be highlighted and the extent of the need for supplementary analyses assessed.

"The date of the 3rd October, 1995, for the delivery of a draft qualitative report was suggested by Andersens.

"A discussion on the question of the backbone network, as proposed by many of the applicants, also took place. It was concluded that very little could be done until the successful applicant had been chosen."

Now, that's the

CHAIRMAN: My technology is gone AWOL, the date of this meeting, Mr. Coughlan, I should have it.

MR. COUGHLAN: That meeting, that's the 4th September, 1995, the 9th meeting of the PTGSM.

Q. Does that reasonably accurately record your recollection of that meeting as well?

A. I think it is, yes. I mean, I don't particularly recall anything that's not

Q. And behind it, at tab 96, you will see a handwritten note of the GSM Project Group dated 4th September.

A. Yes.

Q. And again, that seems on the first page, sets out the agenda; the presentation of the quantitative report, and the fact that it is noted that Andersens

seems to be admitting to certain shortcomings, and then they are listed in relation to the quantitative report. There seems to have been some discussion as well

A. Yes.

Q. and explanations given.

Now, if sorry, I beg your pardon, before Andersens presented this quantitative evaluation, this first quantitative evaluation, I think it was always understood that the quantitative evaluation by itself would never be enough, isn't that correct?

A. Oh, yes, I think so.

Q. And the evaluation model, that was clearly understood, isn't that right?

A. Yes.

Q. And there were certain shortcomings highlighted in it, and I think the meeting decided on that occasion that it would be returned to after the presentation and after the qualitative analysis was carried out?

A. Yes.

Q. And that was the view of the meeting and the view of the PTGSM, and it was based on the understanding, also, whatever understanding people had of the evaluation model, isn't that correct?

A. Yes.

Q. So matters were proceeding along the lines of the agreed and adopted evaluation model, isn't that right,

at this stage, on the 4th September?

A. Yes.

Q. Now, on the 4th September, and I just have to refer you to a different book at the moment, there was another meeting with Andersen, isn't that correct, relating to contractual matters? I think you were in attendance?

A. On the 4th September?

Q. 1995.

A. I don't doubt it.

Q. It's in Book 52, I think. Do you have Book 52?

A. Yes.

Q. Tab 21.

A. I don't have a Tab 21.

Q. I see.

A. I do now.

Q. And this is a meeting which you are recorded as attending, and Martin Brennan, Maev Nic Lochlainn and Michael Andersen were in attendance?

A. Yes.

Q. And the note records that "The meeting was conducted following correspondence between Michael Andersen, Martin Brennan, re contractual matters. Michael Andersen had claimed that certain elements of the evaluation were additional to that foreseen in the original contract and would be separately invoiced under 139. DTEC's view was that these tasks were

included in the main contract which should be invoiced under 109 and subject to the ceiling of €297,000-odd.

Michael Andersen responded with a letter disagreeing strongly with the DTEC position and suggesting a meeting to discuss critical paths and deliveries from AMI team for the remainder of the evaluation; and to clear the error.

"The meeting took place after the main GSM Project Group meeting on Monday 4th September.

"Michael Andersen outlined his position that the Department seemed totally unaware of the extra work that was needed in the evaluation. Fintan Towey and Maev Nic Lochlainn had already indicated approval for many of the tasks outlined. Fintan Towey, Maev Nic Lochlainn countered that it had never been made clear that this approval meant approval of invoicing under 139."

I take it that's for extras, was it?

A. It was a separate invoice.

Q. "The nature of the work made it very difficult to establish at this point the cost that would be associated with the full analysis.

"Martin Brennan stated his extreme dissatisfaction that a contractual negotiation meeting had already taken place and an agreement had been reached. This agreement accepted that certain tasks were ancillary to the main contract and these could be separately



invoiced and not subject to a ceiling of i;½297,000.

The procedures for such invoicing had been signed off with reference to a letter of the 14th June, 1995;

that the central task tendered for AMI would be completed according to the contract and subject to the agreed ceiling;

that AMI had already conducted many GSM evaluations in other countries and would therefore be expected to be able to estimate associated costs in a reasonably reliable fashion;

that the agreement reached as regards a ceiling for the main tasks was now being completely disregarded by Michael Andersen and that Government budget procedures could never allow for an open cheque consultancy, and this has already been made clear to Michael Andersen.

"Michael Andersen responded that it was impossible for him to say in June whether the work could or could not be completed under the ceiling as he had not yet seen the tenders. Martin Brennan noted that this made a farce of the agreement reached and signed by both parties in June. Michael Andersen then proposed that he would invoice all activities under 109 as requested by DTEC; that he would complete a report within the agreed ceiling, but that he may not be able to stand fully over its contents, and that AMI would rigidly adhere to the letter of the AMI tender. Later, however, Michael Andersen threatened not to complete

phase D of the process - for example, licence

negotiation - if his budget ran out.

"Martin Brennan then clarified that Michael Andersen meant to submit a report with reservations and that there would be no qualification of a difference between candidate 1 and 2. Michael Andersen confirmed that this could be the case if he was not allowed the budget to use adequate resources. He also pointed out that the resources had already been removed from the AMI Irish GSM team, for example, Jon Bruel did not attend the meeting on the 4th September.

"Note: The lesser quality of recent AMI work had become apparent in the meantime.

"1. Graphical comparison of applicants spreadsheets had not been distributed to the Project Group on the 4th September. As earlier promised by AMI.

"2. On the 4th September, Jon Bruel had been replaced by Mikkel Vinter, a more junior colleague.

"3. Sub-groups: Qualitative evaluation had already taken place although the AMI tender says that the evaluation would proceed as follows: quantitative evaluation, presentations, qualitative evaluation.

"4. Very poor notes of the sub-group meetings, which AMI conducted without DTEC participation, were handed to Michael Andersen for distribution to Project Group.

"5. The initial phase of review reevaluation after the presentation would take place on Thursday 14th

September when all evaluations would be exhausted after four days of solid meetings.

"6. No other evaluation meeting had been suggested by AMI.

"Martin Brennan made it clear that his primary objective in meeting was to resolve the dispute and have the report and follow-up completed to the highest standard. Ideally, he would like, he said, to be able to give AMI a clean bill of health in all respects if he were approached by another administration for a reference after the event. Fintan Towey pointed out"

I think we touched on this yesterday "Fintan Towey pointed out that while the nomination of a single winner was not actually stated in the AMI tender, the term 'evaluation' would be understood to lead to a ranking of applicants. Other exchanges occurred re the language expected, work tasks and actual commitments in the AMI tender. Later, Maev Nic Lochlainn suggested that the problem may lie in communications. AMI had never stipulated clearly to DTEC that approval was being sought for specific additional expenditure. Michael Andersen insisted that DTEC was not allowing for the amount of additional work needed. Maev Nic Lochlainn then requested that Michael Andersen quantify the overrunning budget in some fashion since DTEC was currently faced with a suggestion of a large overrun

without any clear figures to review.

"The meeting concluded as follows:

"Michael Andersen to return to the Department with estimates for the additional amount of work envisaged.

"DTEC to revisit the items listed in Michael Andersen's earlier letters to see which tasks could be regarded as 139. Maev Nic Lochlainn should liaise with Jon Bruel re detail of work tasks if necessary."

Do you remember that meeting?

A. I do, yes.

Q. And I know Ms. Nic Lochlainn this is Ms. Nic Lochlainn's note. It's a mixture of recording what's happened at the meeting, and other views, isn't that correct?

A. Yes.

Q. And would you agree with the content of that note?

A. I think so, yes.

Q. And there was some, it would appear from the note anyway, some concern about the quality of the work which Andersens were producing for you, isn't that right?

A. You are referring to

Q. If you go to the second page, the lesser quality of recent AMI work.

A. Okay. I think, subject to checking it, that that description of the lesser quality is, in fact, a reproduction of something Andersen had provided by way

of a statement on his part as to the way in which resources were being reduced as distinct from the Department's independent assessment of that.

Q. I see. I see. But there are matters specified, like the replacement of Jon Bruel, the fact that Michael Andersen had started off holding qualitative meetings on his own, and

A. Yes.

Q. things of that nature?

A. Yes.

Q. After this particular meeting, further funds were made available, isn't that correct, to Andersens?

A. Yes. I think there was a further meeting at which a deal was agreed.

CHAIRMAN: To some extent, they had you over a barrel?

A. Yes.

Q. MR. COUGHLAN: Now, did you ever continue to have any concerns about the quality of the work which Andersens were producing or advising in relation to?

A. No. My view was that once we reached a deal, there was a clear agreement that Andersens would produce a high quality report in accordance with the tender, and without any reservations on their part, and we would pay them the increased amount.

Q. As the work went along, were you happy with it yourself?

A. I was happy with it.

Q. Now, you said that there was a further meeting, and that there was a deal hammered out. We know that funds were obtained; I think Mr. Brennan had communication with perhaps Mr. McMeel in the Department of Finance.

A. It was actually a different part of the Department of Finance.

Q. Was it?

A. And I believe I had some contact, but I can't rule out that Martin Brennan may also have been in touch with that Department.

Q. Do you know if that, what I might describe, might be too strong to describe it as a deal, but a resolution of what was a conflict between Andersens and the Department, if that's noted anywhere?

A. I can't say off the top of my head. I would have thought so. I would have thought there was a record of the agreement as to what we would pay them, given that there was already an existing formal legal contract specifying an amount. I would have thought there was a written record.

Q. Perhaps we'll come across it. Because you know that Mr. Andersen has furnished memoranda to the Tribunal, and has indicated that he felt that there was need for further work, particularly on the financial issues surrounding Esat Digifone and perhaps Persona, but that, due to budgetary, as he describes it, as

budgetary problems, he couldn't do that work?

A. Yeah, he never made that apparent to the Department at the time, to my knowledge.

Q. Now, as of the 4th September, and of course this was not conclusive, you had rankings arising from the quantitative analysis which had been conducted, isn't that right?

A. Yes.

Q. And we have been through these on a number of occasions, but I think that the Persona consortium were ranked first in that particular

A. Yes.

Q. And I think I am correct that the Esat Digifone consortium were ranked third in that particular or

A. That may be the case.

Q. Now, the 10th meeting of the Project Group took place on the 11th September, and the purpose of that was to discuss the forthcoming presentations, isn't that correct?

A. Yes.

Q. And then, I don't think we need to unless you wish I don't think we need to go into what transpired at that particular meeting?

A. Okay.

Q. And then the presentations occurred, morning/afternoon, morning/afternoon, three hours for

each, isn't that correct, and we have the tapes, and they are the record of what transpired in those presentations?

A. Of course at the meeting that took place before the presentations, we did make it clear that the purpose of the presentations was to clarify the material already received. I think we have covered that ground already.

Q. Yes, we have covered that ground, yes. Yes, as a general rule, of course?

A. Oh, yes.

Q. As a general rule?

A. As a general rule, yes.

Q. And it was always open, the rules of the competition, and as you were running it, it was always open to the Department to seek any information

A. It was

Q. or the Project Group to seek any information they wanted?

A. Yes, that was clear.

Q. And if the Department felt that they needed any sort of clarification, they could ask for it?

A. That's correct.

Q. Now, you said that and we have the tapes, so I don't think we need to go through the presentations with you, we actually have the tapes.

A. Okay.



Q. But you said that after each presentation there might have been a short discussion?

A. Yes, I believe there was, either after each presentation or at the end of each day.

Q. At the end of each day. They weren't noted discussions, were they? Were they just a

A. No, I mean, they followed three-hour meetings.

Q. Everyone was tired, maybe six hours of meetings?

A. Yes. I think the last one was noted because the last presentation took place in the morning and we had a Project Group meeting on the afternoon.

Q. That was the one of the 14th September, 1995.

Now, on the 14th September, 1995, there was the 11th meeting of the PTGSM, and that's at Book 42, tab 103 sorry, I beg your pardon, tab 104.

I think the first page, under the heading "Opening", deals with that presentation which had taken place, isn't that correct, that morning?

A. Yes.

Q. And then you go over, "Review of the Current Position"?

A. Yes.

Q. And, "The group agreed that the presentation had served as a useful exercise, the ability of each applicant to work as a team had been highlighted. All applicants had been treated equally. The presentations will serve to consolidate the initial

views on the applications arising from the quantitative assessment.

The importance both of a foreign applicant having a good knowledge of the Irish scene and an Irish applicant having an understanding of the global picture, was noted.

"Some companies showed that they could take a pro-active role in developing the market when required.

"Mr. Brennan also stated that the group agreed that no further contact between the Evaluation Team and the applicants was possible, although access to the Minister could not be stopped.

"AMI said that while all the applications would be scored, greater resources would, from now on, be expended on the leading applications. Two distinct groups had emerged those with a good score to date and those whose ranking was such that further intensive evaluation was deemed unnecessary."

Now, could I just ask you there about you see that paragraph, "Mr. Brennan also stated that the group agreed that no further contact between the Evaluation Team and the applicants was possible, although access to the Minister could not be stopped."

Do you remember that particular discussion and what that relates to?

A. Not especially. I think, I mean I think it was

just a general comment that now that we have seen now that we have seen the applicants, we had to get on with the evaluation, and that, as a general rule, there wouldn't be further contact. And, I mean, I don't recall it, but I suspect that it was an acknowledgment that the Minister can't be isolated and that the possibility of the Minister having contact couldn't be prevented.

Q. Now, again, whilst things weren't definitive at the meeting of the 4th, when you received the quantitative evaluation, again things were not definitive at this stage, but the presentations had served to consolidate the initial views on the applications arising from the quantitative assessment, isn't that correct?

A. Yes.

Q. And we know from the tapes that every consortium was told "don't contact us, we'll contact you," so they knew that that was the end, from their point of view, of making a contribution which could in some way affect the bids?

A. Yes.

Q. Now, you said, I think, that you believed that when the Minister contacted you, that it could have been after the presentations, isn't that right?

A. It's possible, yes.

Q. The minute continues under the heading, "How to Progress the Evaluations", then: "The assessment of

the technical dimensions was complete. T&RT Project

Group members had attended all but one of the

sub-groups and were happy with the conclusions.

T&RT/AMI are to score the technical aspects by close

of business on the 14 September.

"AMI listed the next steps as:

"1. Finalise the qualitative scoring and award marks

on the dimensions.

2. Perform initial scoring of the aspects, and

3. Perform supplementary analyses in blocking/drop

out.

"Financial analysis concerning Sigma/Advent.

Adherence to EU procurement rules

tariffs,

interconnection since assumptions vary widely

between applicants.

"The score of the marketing and financial and

management dimensions would take place in Copenhagen

next week. DTEC to appoint the appropriate personnel

to attend. AMI would provide the first draft

evaluation report on the 3rd October. This would be

discussed by the group on Monday 9 October. The three

DTEC divisions would supply any written comments prior

to that meeting. Following that, AMI would produce a

second draft report by 17 October.

"Other issues:

"Mr. Towey reported that the draft licence " I

don't think we need to deal with that particular matter?

A. Just a small observation in relation to the reference at the top of the page, to financial analysis concerning Sigma/Advent. I suspect that that should read Sigma/Communicorp.

Q. Probably. Well, it may or may not, because what happened, I think, Mr. Riordan did conduct some inquiries through PriceWaterhouse Cooper, I think, about Advent?

A. There may well, and there may well have been discussion of that, but I am clear that it would be in the context of a financial analysis concerning the weakness of Communicorp.

Q. Right.

Now, again, can I take it that at this time, as of the 14th September, you and the other members of the Project Group were proceeding on the basis of the evaluation model which had been adopted?

A. I think that's a fair comment. Always being clear that we would make a final decision in accordance with the selection criteria.

Q. Well, I'll come to that in due course, but I am saying at this stage, the evaluation model nothing had arisen to indicate that the evaluation model was not being complied with, if I could put it that way. You had had a quantitative evaluation, you had the

presentations?

A. Yes.

Q. You were in the course of, and planning qualitative sub-group meetings?

A. Yes, okay.

Q. Do you understand?

A. Yes, okay.

Q. And things were proceeding along those lines, isn't that right?

A. Yes.

Q. And everything appeared to be reasonably normal

A. I understand, yes.

Q. as far as you and other members of the Project Group, insofar as you could determine, understood it, isn't that correct?

A. It was always normal, in my opinion.

Q. Now, I am going to refer you to it's a reference in book 57, Tab 17. And what this is, I'll just tell you, it's a handwritten note made by Mr. Billy Riordan, and you can see it's headed "Post presentation meeting". Do you see that heading there?

A. Yes.

Q. And it appears to be referable to the meeting of the minutes of the 14th September, that meeting, in any event.

A. Okay, yes.

Q. And do you see, if you go down I can't read that

first "Risks to process. Supplementary analysis,

capital" I can't make that out.

A. Could be "capital"

Q. "In A5", is it?

A. "In A5", it is.

Q. Which perhaps is the Advent point?

A. Yes. "EU rules".

Q. "EU rules", yes, and then "All treated equally

A. "re" something.

Q. Then "Political pressure will come on stream." Do you see that point?

A. I do, yeah.

Q. And perhaps that is referable to the note in the minute of the meeting about contact with the Minister, it can't be stopped

A. It may have been. I mean, I think that people in the Project Group generally would all have been aware of the potential for political pressure in relation to this issue.

Q. Can I just develop that point slightly, because, as I understand Mr. Riordan's understanding of events, or of what could potentially occur, was that after the presentations, once the Department had had an opportunity of seeing the various applicants, that it would be after that time when the Department might have got a feel for the applicants, and, perhaps more importantly, the applicants might have got a feel for

the Department.

A. Okay.

Q. That applicants might apply pressure on the political side of the system?

A. Yeah. I mean, I can see how that's a reasonable hypothesis, but

Q. Would that have been your own

A. I mean, not particularly. If there was going to be political lobbying in relation to this, I wouldn't you know, I would have foreseen it could happen at any time. But I take your point that...

Q. So can I take it that people in the Project Group Now, did you go to Copenhagen after that?

A. I am sorry, what date was this again?

Q. That's the 14th September. That was a Thursday.

A. Okay.

Q. The 17th was a Sunday.

A. Okay, subject to checking, I was in Copenhagen on, I think, the 7th and 8th September, and again on the 20th and 21st, and again on the 27th and 28th.

Q. Right.

A. If it helps, I can get you the exact dates.

Q. You think it was the 7th well, I take it that you are accurate about that?

A. I think so, yeah. It may have been 5/6, it may have been 6/7, but it was early September, and again, I am almost certain, on 20/21 September and 27/28



September.

Q. When you were there in early September, whether it was the 5/6 or 6/7 September, in what context in what capacity were you there?

A. I was accompanied by Billy Riordan, and we had supply group meetings in relation to performance guarantees and financial the financial indicators. It was a first meeting in relation to financial indicators and there were subsequent meetings.

Q. And when you attended on 20/21?

A. On 20/21, I was accompanied on that occasion by Martin Brennan, Billy Riordan, Maev Nic Lochlainn, and we conducted supply group meetings, I believe, in relation to marketing aspects, management aspects I am sorry the use of the word "aspects" may be misleading marketing dimension, the financial dimension, the management dimension. I think it was primarily those ones.

Q. Well, why do you say the use of the word "aspects" is misleading? Wasn't it the aspects that were being considered?

A. No, no. It was the dimensions.

Q. You were considering the dimensions in groups, isn't that right?

A. In sub-groups, yes.

Q. No, groupings, you were considering them in sub-groups, but you were considering the dimensions in

groupings, isn't that correct?

A. Not at that stage, no.

Q. And when was that done?

A. That was, I believe that was done on the 28th, but it may be better to look at it on a more specific basis.

But, for example, we did actually look at tariffs, I believe, also at this meeting. So the dimension tariffs, and we would have agreed the overall marking for the dimension tariffs. I believe we did the same thing for the overall marking in relation to marketing, financial indicators, the financial dimension, the experience dimension. But we didn't look

Q. We'll look at actually what was done in terms of any documents that are available in due course.

A. Okay.

CHAIRMAN: I know we have to come to it still, but were tariffs the 27th/28th or as an additional work on the 20th and 21st?

A. I think on the 20th and 21st, we did the final marking on tariffs.

Q. MR. COUGHLAN: Now, I will come to, and I'll ask you, because we are trying to understand what actually occurred at the sub-groups and how the sub-groups approached their work. Mr. McQuaid has already given his evidence about how his sub-groups approached their work, so we have an understanding of that, and I'll be

asking you in due course to because I don't think Mr. Brennan had a clear recollection of how they worked, and what transpired at them. Can you be of assistance, when we come to it, in assisting the Tribunal in how your sub-groups approached each one of these

A. Yeah, I can describe the approach that we took.

Q. Just, in general terms, before we come to each individual dimension, or indicator, could you just describe in general how you understood, or you remember your sub-groups working?

A. Okay. The process was led by the consultants, and I think in most cases at the sub-groups I was at, I attended, it was by Michael Andersen. I don't rule out that Jon Bruel may have led on the Andersen side in some of them, but I can't remember specifically.

And the approach taken was that Andersens proposed the indicators that would be used to assess the dimension.

In all cases, they included the indicators that had been used in the quantitative model, but Andersens also proposed additional indicators which they felt was necessary to ensure a fair and equitable comparison of the applications. And that was discussed, that question was discussed: Are these the right indicators? Are there any other indicators that we should be looking at in order to ensure that we are being fair?

Then, Andersens, on that basis, proposed their marking, their award of scores to each applicant under the agreed indicators. They set out the rationale underlying their proposed level of marking, and that, then, subject, formed the basis of an interaction within the sub-group, and a process of validation, essentially. And in some cases, scores were changed. In other cases, the Andersen proposal may have stood.

Q. How did Andersen propose scores or markings? What format was it?

A. It may have been a document that was presented to the sub-group. I think that was I think that was the case. In other cases where there were new indicators, there may have been a use of a flip chart or a whiteboard or something like that, but I think it was a document proposed by Andersens.

Q. And how were they scored?

A. I am sorry, I am not clear. I mean, they were

Q. How were they scored? A, B, C, D, E?

A. Yes, on a scale A to E. And Andersens presented explanatory material in their document which set out the basis. I mean, I think it was the draft that essentially appeared in the final report setting out the marks awarded to each dimension.

Q. And were there any weightings used in the sub-groups you were present at, or in any of them?

A. No, we didn't use weightings. When we came to the

point where we were seeking to reach an overall score for dimension, we did that by way of a discussion and consensus as to what were the most important issues within the indicators. So effectively, there was an implicit weighting in arriving at a result under each dimension. And you'll recall, of course, that from the evaluation model, it's clearly stated that there would be no ex ante weighting of indicators or dimensions.

Q. Well, when you say "implicit weighting", I can understand you say that they were scored on a scale of A to E?

A. Yes.

Q. And then in considering the matter further, there was further discussion, is that right?

A. Yes.

Q. And that's how you arrived at the bottom line?

A. At the bottom line, that's correct, yes.

Q. Now, when you say "implicit weighting", and you may not mean it in the sense of weightings as we are discussing them in the course of this Tribunal, or are you? Or is it that the discussion was to reflect something else?

A. No, I am not sure I follow your question, but I'll try and explain to you what I did mean.

What I meant was that in circumstances where we had, for example, eight indicators scored on a scale of A

to E, we didn't simply, for example, convert the letters into points and do a simple tot-up giving each, what would be an equal weighting. That would be an equal weighting system.

What we did was, we had a discussion that, okay, which of these indicators are the most important? Who is scoring highly on the most important indicators? What is our view as to how the overall scores should be awarded in order to fairly reflect the scores according to the various indicators? So what I am saying is that implicitly that meant that we were attaching greater importance to some indicators than others, and that's what I am describing as an implicit weighting system. Nothing more.

Q. And can I just because I know when we come on to deal with the meeting of the 23rd October, obviously Mr. McMahon notes there must have been some sort of an explanation given, he is noting something that Mr. Andersen and Mr. Brennan said to him at that meeting, but can I take it that when you approached the different sub-groups, that not the same formula was followed in each sub-group you attended?

A. I believe the same formula was followed

Q. So

A. across the sub-groups I was involved in, yes.

Q. Is there a record of that anywhere, of these discussions?

A. There is not a record of the discussions. I mean, the paper record on this would include the initial scoring which had been proposed by Andersen.

Q. I understand that.

A. The discussions were not noted. I mean, it was an iterative process. There was no record kept of the discussions, but the decision was recorded and the way it was recorded was in the form that is reproduced in the evaluation report.

Q. Might I just ask you to consider this issue, and I understand what you have told us about how you worked.

But any other member of the Project Team, looking at it, when it was brought back to Dublin, or if it was brought back to Dublin

A. Yes.

Q. I would not be able to view it in a transparent manner in that there was no record of the discussion which would have informed them as to how matters may have moved or may not have moved from what was suggested by Andersen, to the bottom line at the end of the sub-group meeting, if all that was recorded was, as you say, the result. Would that be a fair comment?

A. Well, the individual indicators were explained, and I believe it was made clear in the process of looking at the evaluation report in the Project Group. I think the procedure was described. I think, for example,

the word "eye-balling" comes to mind. I think that was the word that Martin Brennan used to describe that procedure whereby we looked at the indicators and decided on the basis of looking at the indicators that had been scored and our view of the importance, the relative importance that we arrived at a consensus on the bottom line.

Q. And could I ask you, in the course of the discussions which you participated in in your sub-groups, I think yourself and Mr. Brennan were in a number of sub-groups together, isn't that correct?

A. That's correct, yes.

Q. And I think you participated in virtually all of the sub-groups other than the technical sub-groups, is that correct?

A. Yes.

Q. And did Mr. Brennan also participate in all of the sub-groups other than the technical ones? I know that Ms. Nic Lochlainn may have been involved in some of the sub-groups, and Mr. Riordan.

A. Yes. No, Martin Brennan wasn't involved in all of the sub-groups. He wasn't involved in the performance guarantees, for example. He wasn't involved in the first meeting where financial indicators were considered.

Q. That was prior to the presentations?

A. That was prior to the presentations.



Q. And it was to be returned to when

A. It was to be returned to, because there were some questions in relation to the consistency of the financial information across the applicants. That financial dimension was, I believe, returned to on 20/21.

Q. We'll come to that, because Mr. Riordan has given evidence about that, and perhaps we should review what he has said to the Tribunal and afford you an opportunity of dealing with that as well.

But I am just interested in this debate that took place. Andersens would propose and then debate would ensue, is that correct?

A. Yes.

Q. And can I take it that the contrary position, if a contrary position was to be put, would come from your side of the meeting?

A. Yes.

Q. And can I take it that as you were the members of the PTGSM, and Andersens were consultants or advisers and could advise strongly and perhaps debate the issue with you, the decision was one which was taken by the PTGSM members of the sub-group, isn't that right?

A. Well, I don't think that's fair to say that. I mean, a decision was taken by consensus.

Q. Yes, of the PTGSM members of the sub-group?

A. I am sorry, you are including Andersens in that, are

you?

Q. I am not.

A. Okay. Well, in that case, I disagree. The decision was taken by consensus among the participants in the sub-group. That is to say, I don't believe that any final award of scores to a dimension was agreed without the agreement, express agreement of the Andersen Management International members.

Q. But, it was incapable now, we are hearing this because we have never understood, or not even Mr. Brennan has been able to tell us what exactly transpired at these meetings. And that, I hasten to add, is that he didn't have a clear recollection of events. But nobody could audit what happened at any of these meetings, isn't that correct? No other member of the PTGSM, even?

A. Well, you could audit what happened in terms of awarding scores at the level of the indicator.

Q. I understand that. You could audit to the extent, if Andersen produced a document suggesting or nominating.

A. Well, I mean, no, in terms of the justification that was laid out in the evaluation report, the scores awarded to each indicator were justified. There is a justification in the evaluation report. The question of auditing the overall score at the level of dimensions, I mean, you are correct in saying that there is not a written down record of the discussion,

but what was presented to the Project Team was that the award of scores at the dimension level was a consensus arrived at by looking at the indicator scored as explained. So it was open, therefore, to members of the Project Team to assess whether or not they felt that was fair.

Q. Yes, I understand the point you are making. But again, if I may use the analogy of the jury, the PTGSM were there, particularly when dealing with what, on the qualitative side of matters where judgements were being exercised.

A. Yes.

Q. And I think we agreed yesterday that the purpose the more people involved in the consensus, the more likely it was that it wouldn't produce a distorted or an arbitrary result. That was the reasoning behind it, isn't that correct?

A. Yes.

Q. Now, to enable them to do that, would you not agree that there needed to be a degree of transparency I am not saying that it should have noted every iota of a discussion but that there would be a note of the discussion to enable them to understand the reasoning of the people who were present at the sub-group who arrived at a position?

A. Okay.

Q. Would that be fair to say?

A. Well, yeah, I mean, I didn't particularly have the view at the time that the procedure was non-transparent.

Q. Yes, I understand the point about you say it is transparent to the extent you can see what was done.

A. Yeah.

Q. But because it's the exercise of judgement, you couldn't see how it was done, isn't that right?

A. Well, I am not sure that I understand exactly what you mean by that.

Q. Well, nobody else nobody else looking at the end result, when they had to consider it, they could see the end result, they could see that that was there?

A. Yes.

Q. They knew the people who were present?

A. Yes.

Q. But they couldn't see how it was done, isn't that right?

A. It may be necessary, in looking at it in that context, to infer, to some extent, what had been looked upon as being important in arriving at the scoring for each dimension.

Q. Well, you know, I understand the point you are making. But that is the exercise of judgement, isn't it, as to what is more important? That is the exercise of a judgement?

A. Judgement was exercised, yes.

Q. Judgement was exercised. To enable the people, the other members of the Project Team to understand how the judgement was exercised, they'd have to have some knowledge of the discussion and the reasons which were being offered as to why, for example, one indicator may be more significant or one dimension may be more important or significant than another, isn't that right?

A. Okay.

Q. That's the only point I am making.

A. Well, yes, but, you know, I do think if you approach this exercise on the basis of having read the applications and formed a view, and in looking at the scoring awarded at the indicator level, I don't think that the scoring awarded at the dimension level, even though I agree, it does involve some judgement, but I don't believe it's opaque.

Q. Well, it's something I'll come back to, because, of course, this was in the context of the qualitative analysis which was being conducted, isn't that right?

A. Yes.

Q. And during this period when this was before the presentations, when you were in Copenhagen, and when you were in Copenhagen on 21/22, there had been no meeting of the PTGSM which had recorded any variation or rejection of the evaluation model, isn't that correct?

A. Variation or rejection of which?

Q. The evaluation model which had been adopted on the 9th June of 1995?

A. That is correct, yes.

Q. But before sorry, I beg your pardon, so we take it let's take it in stages, 21/22 September, there had been no meeting of the PTGSM which had decided in that way.

Now, I think on the 21st September, 1995, and this is at Book 42, document 111 I should perhaps have first of all said that we did make reference I think in your evidence either yesterday or the day before about a quantitative evaluation dated the 20th September, 1995, you know the

A. Yes.

Q. And again, the position in relation to that quantitative evaluation, I think, ranked Persona number 1, again not definitive, ranked Persona number 1, isn't that right?

A. The one dated 20th September?

Q. The second one we have seen?

A. I don't believe that I ever saw that.

Q. I think you could be correct about that. And I think that you could have been, and other members of the Project Team may have been operating on the one which was produced on the 30th August, 1995, and discussed at the meeting of the 4th September.

What's your understanding of the one on the 20th?

A. My understanding, if a quantitative evaluation was produced on that date, is that its purpose was not to

be discussed as an evaluation leading to a ranking.

The only I can only surmise that it may have been

produced on that date so that some of the indicators

within it could be used in the qualitative evaluation.

So, in other words, I am surmising that it may have

been produced for the purposes of some of the material

within it, rather than as an evaluation per se.

Q. Did you ever see it even, until you came to assist the

Tribunal?

A. I mean, I can't say that I would not have seen it in

the sense that

Q. That it may have been in Copenhagen

A. In the sense that it may have been produced in

Copenhagen and that it may have been produced for the

purposes of referring to some of the figures within

it. But what I am saying, clearly, is that it

certainly never registered with me as an evaluation

report on the quantitative evaluation, if you

understand me?

Q. Yes, I do understand. And that distinguishes in your

mind from the first one which the PTGSM were furnished

with and considered at the meeting of the 4th

A. That one was furnished as an outcome of the

quantitative evaluation.

Q. Now, on the sorry, I referred you to Book 42, Tab 111. This is a memorandum from Michael Andersen to Martin Brennan on the 21st September, 1995.

A. Yes.

Q. It's to Martin Brennan and to you. Do you remember receiving it?

A. Yes.

Q. Now, you can see that it relates to the work programme for the next approximate ten days.

"The remaining award of marks to the 10 dimensions.

"Some calculatory and graphical works needs to be done concerning the tariff dimension. MT has the initiative to circulate the resulting graphs and suggest an award of marks to the new indicator as well as to the tariff dimension as a whole. Deadline, Monday the 25th."

Can you say whose handwriting that is on the right-hand margin, or is there one on yours, if you can?

A. I'm afraid not.

Q. All right.

"Concerning the dimension financial key figures, the existing calculatory work needs to be checked and reviewed by as well as MT/JW as BR. MT is, together with BR, to suggest a revised award of marks on the basis of reviewed figures. Deadline: Wednesday the 27th.



"The reports on the radio network architecture and capacity of the network performance guarantees, frequency efficiency and coverage has been concluded.

"In addition to the reports on the tariff and financial dimensions, the market development report is to be furnished by MT. The report on roaming is to be finalised by MNL and the report on experience is to be furnished by MMA. These reports should be finally drafted no later than Wednesday the 27th.

"Scoring of the marketing aspects, financial aspects and other aspects:

"It is suggested that the award of marks to the remaining aspects is decided at a meeting on Thursday the 28th. The meeting may either be a conference call or a meeting in Copenhagen.

"The scoring of the financial aspect "

First of all, if I could just pause there for a moment. Do you remember having any discussions as to whether it should be a meeting in Copenhagen or a conference call?

A. No. But it became a meeting.

Q. Whose call would that have been? Would it have been yours or Martin Brennan's? Other members of the PTGSM don't seem to know too much about it.

A. I think Martin and I would have agreed that it was probably better to do it live.

Q. "The scoring of the financial aspect will be

self-explanatory, whereas we need to consult each other concerning the scoring of the market aspect.

"Concerning the award of marks to the other aspects, we suggest to proceed as follows:

"1. We need to make some risk investigations of which the following are proposed."

Then it sets out A1, A2, A3, A4, A5, A6.

"Other risks might be identified and dealt with later in the process. If there is a clear understanding between the Department and AMI of the classification of the two best applications, it is suggested not to score "other aspects," the risk dimensions and other dimensions, such as the effect on the Irish economy.

In this case, the risk factor will be addressed verbally in the report.

"If there is no immediate unanimity, it is suggested to score the other aspects and the dimensions under this heading.

"A decision has to be taken at the meeting of the 28th September."

"C. The grand total: The grand total is to be scored at a meeting of the 28th September.

"D. Supplementary analysis:

The following status can be outlined concerning the status of the work with the supplementary analyses."

Then it sets those out.

"These and other supplementary analyses should, as far

as possible, be annexed to the first draft report.

"E. The first draft report:

A short synopsis of the first draft report be outlined

as follows:

"1. An introduction where the procedural aspect of evaluation model included the criteria presented.

"2. Key characteristics of the applications, including a short description of each applicant and the basic philosophy behind each applications such as the core strategy, and some key characteristics relating to each of the four aspects of the business case - marketing, technical, management and financial aspects.

"3. Comparative evaluation of the applications structured around the four aspects and based on the dimensions. Under each dimension, also, the indicator will be mentioned. Each subsection in this chapter will be structured around the dimensions and the indicators identified.

"4. Sensitivities and risks:

Also, the general credibility of the application will be mentioned.

"5. Summary and conclusion:

In this chapter, a general overview of the award of marks will be given, and, as a minimum, the three best applications will be ranked in an order of merit, together with a recommendation to enter into licence

negotiations with the consortium behind the best application.

"F. Questions to the Department:

AMI has the following questions to the Department; should the identified meeting September 28th be conducted by means of a conference call or a meeting in Copenhagen?"

You believe that that would have been a decision would have been arrived at as a result of a discussion between yourself and Martin Brennan?

A. I expect so, yes.

Q. "Does the Department wish to score other aspects?" Can you remember the answer to that?

A. My I do, yes. Our view was that it wasn't possible to score "other aspects" as a stand-alone dimension, as a stand-alone criterion, in the sense that the selection criteria didn't provide for that.

Q. Whose view was that, yours or Martin Brennan's?

A. I believe it would have been mine. I have no doubt that was shared by Martin Brennan.

Q. Did you discuss it with any other members of the PTGSM?

A. No.

Q. "Given the time-frame and the fact that we are not yet ready to begin the drafting of the report, will it be acceptable for the Department that AMI produces a non-edited report to be received by the Department by

fax late October 3rd?"

I suppose that was acceptable, was it?

A. Yes.

Q. "How do we integrate the quantitative evaluation in the report (we prefer to leave this question unanswered until we have the final results)?"

A. Their advice was that it be left unanswered, so I am sure we left

Q. I am going to come to that in a moment now.

A. Okay.

Q. Do you remember I'll come back to it. "How do we proceed" we needn't concern ourselves about the last note. But if we come back to that, "How do we integrate the quantitative evaluation in the report (we prefer to leave this question unanswered until we have the final results)?"

Can you tell us anything about that?

A. Not particularly, but I would expect that in response to the consultants' view that it be left over, that we wouldn't take a different view.

Q. Well, was there a decision made about that?

A. Was there a decision made in what sense? I mean, I believe myself and Martin Brennan would have agreed, okay, let's await the final results.

Q. Well, if I can just now pause there for a moment. There has been no record that we have seen, and nobody has given any evidence that there was any decision of

the PTGSM as of this date, that the evaluation model was as adopted, was not to be followed, isn't that correct?

A. That's correct.

Q. And what the evaluation model required was that when most of the work was done on the qualitative evaluation - most of it meaning perhaps virtually all of it - that one would revisit the quantitative evaluation, isn't that correct?

A. Yes.

Q. And what is set out and described then as a result of the interplay, that that would produce the result, isn't that right?

A. Yes.

Q. Could one not reasonably infer that what was being suggested here is that, how you integrate the quantitative evaluation in the report, and the preference being suggested by the consultants here, that they prefer to leave that unanswered until the final result, was indicating that when this interplay had occurred and a result had been achieved, that you then consider how you integrate the quantitative report in the the quantitative evaluation in the final report, or in the report?

A. I don't think the word "integrate" here is intended to link back to the word "interplay" used in the evaluation model. I think all that's intended here is

"include". I suspect that that's I am fairly

confident

Q. I understand that point. But if you go to what's in the brackets then, "(We prefer to leave this question unanswered until we have the final results)".

A. Yes.

Q. It was never envisaged at this stage that the outcome of the qualitative analysis would be the final result, isn't that right? There is no record of that here at this stage?

A. But it does foresee the decision and the grand total being arrived at.

Q. I understand that. I understand. You see, this is where I am having difficulty. I understand, of course, a grand total being arrived at in relation to the what you were in the process of, which was the qualitative evaluation.

A. Yes.

Q. Once that was done, or virtually complete, if you take the wording of the evaluation model, one then had an interplay, one went to the quantitative evaluation, warts and all, and you had the interplay and it was as a result of that interplay that you arrived at the results, or result. Wasn't that what was envisaged and adopted?

A. Okay, however you might interpret this, I can say that certainly I have no recollection of Michael Andersen

or his team ever indicating that we need to return to the quantitative model, or that we need to look at the interplay between the quantitative and qualitative model. In other words, my belief is that in the course of undertaking the qualitative evaluation, it became clear to it certainly became clear to me, and I suspect it became clear to all of the other evaluators, that the qualitative model was much broader and comprehensive than the quantitative model, and also, that it took account of all of the issues covered within the quantitative model. So I believe, at this stage, that I was of the view, and that the other participants in the evaluation process, including Andersens, were of the view, that the quantitative model had been superseded, and now the only question was he was asking, was how do we deal with the quantitative evaluation in the evaluation report?

Q. There was no quantitative model. The evaluation model was a three-step procedure, I suppose: you conducted a quantitative evaluation; you had the presentations; you conducted a qualitative and then you had the interplay. You revisited the quantitative. That's what the evaluation model, as adopted, required, isn't that right?

A. It provided for revisiting, yes.

Q. No, it required it. That's what it



A. Okay.

Q. That wasn't done at all, was it?

A. The quantitative model was never revisited.

Q. No, the quantitative evaluation was never revisited, never. It wasn't, was it?

A. As an evaluation producing a ranking, no. I mean

Q. It was not revisited?

A. Well, I would need to reflect on the question of whether it was revisited in the sense that the indicators in the quantitative evaluation formed the starting point for looking at the indicators for the qualitative evaluation.

Q. Yes, I understand that. And that is in accordance with the evaluation model. That was to be the starting point when you jumped off into the qualitative evaluation.

A. Yes.

Q. So Michael Andersen understood that very clearly. It was something that he had set out in his model.

Now, I take the point you make about Michael Andersen, and I want to ask you about Michael Andersen and the role of Andersen Management International in this whole question, also, of how the quantitative evaluation was disregarded, or a step in the evaluation model was disregarded.

When you went to Copenhagen on the 28th, that 27th/28th, whatever that time was, did you have any

discussion, and in fairness to you, Mr. Towey, I want to say, you were the one who is noted at the meeting of the 29th of wanting the quantitative model, or the quantitative evaluation in the report?

A. Yes.

Q. But do you remember any discussion about the quantitative evaluation in Copenhagen?

A. None.

Q. Do you know if Mr. Brennan had any discussion with Mr. Andersen when you weren't present?

A. Well, I have no knowledge of such a discussion. I couldn't rule it out, but I very much doubt it.

Q. So Andersen said nothing at all, that you can recollect, about the quantitative evaluation?

A. I don't recall, I don't recall him doing so.

Q. Because you know from papers which you received from the Tribunal, or which Mr. Shaw received from the Tribunal, that Mr. Andersen furnished to the Tribunal a document which he says was a quantitative evaluation which was run, I think, on the 2nd October of 1995, and it gives a completely skewed sort of position, although it still ranks Persona as number 2, it brings somebody else who wasn't in the running at all up to number 1 and still has Persona ranked above Esat Digifone.

A. Okay.

Q. Now, that was never produced to the Department, we

know. It's not in any Department papers. Nobody ever remembers seeing it. It doesn't seem to have formed part of any discussion at the meeting of the 9th, 23rd, or at any meeting?

A. Correct.

Q. It's of concern to the Tribunal, though, that Mr. Andersen produced this particular document to the Tribunal which he says was run at that time. The date the Tribunal has on it is a 2002 date, which, as you know, Mr. Andersen's computer system, it ran when it produced a document it's the date that the run took place.

Can you remember what type of attitude, if any, Mr. Andersen had to the quantitative work he had done, other than stipulating at one stage certain shortcomings and saying the evaluation model, that it couldn't be definitive?

A. I don't recall it surfacing as a point of discussion at all after the 4th September.

Q. Right.

CHAIRMAN: We are nearly on five to one, Mr. Coughlan.

Just without interrupting the sequence of Mr. Coughlan's questions, could I just raise, in conclusion, the more general point of the relationship between the members of the Project Group and Andersens, as consultant. I think you said this morning, earlier, that you regarded the relationship

as working on a basis of interplay and consensus?

A. Yes.

CHAIRMAN: If there was a breakdown, where did you see the decision-making role resting? If I could just give you one example; from the third of the three presentations that we heard played, the third one that, in fact, I think, was fronted by Mr. Gerry Scanlon and Mr. Loughlin Quinn, there was I dare say you don't remember this there was a little incident near the end in which one of the consortium spokesmen asked could they possibly put in a fairly small additional document, a spreadsheet, and Mr. Brennan, from recollection, said, "well, I'll have to rely on Mr. Andersen who is the expert," and indicated that, no, it seems, "because of our rules, don't call us, we'll call you, we can't take extra information." And then at the very conclusion of the meeting, Mr. Brennan expressed a different view and said, "All right, we'll give you 24 hours to put in that spreadsheet." Now, so that you don't think I am trying to set a trap for you, in my own view, I think Mr. Brennan was probably correct in that, but would you have a view yourself as to where the decision-making function lay, if there was, in fact, a difference, if Andersens advised a particular view to you or to a colleague or to the whole Project Group, and you felt well, no, we just want to go another way?

A. I think we would have been very reluctant to go in any direction that wasn't agreed by Andersens, because we did see them as the experts in this process. That's why we hired them.

CHAIRMAN: All right. We'll leave it there. Five past two. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF FINTAN TOWEY BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Towey, if we could just go back to that memorandum from Mr. Andersen to yourself and Mr. Brennan on the 21st September of 1995

A. Can you remind me where it is, please.

Q. Yes, indeed. It's Book 42, 111. And, again, turning to the under the questions to the Department, that's the final page

The first one, about whether the meeting should be conducted by means of a conference call or a meeting in Copenhagen. The decision was taken by you and Mr. Brennan that it should be in Copenhagen, is that right?

A. I believe so, yes.

Q. And that was without reference to other members of the Project Group?

A. I believe so, yes.

Q. "Does the Department wish to score other aspects?"

That was a decision which was taken by you and Mr. Brennan, without reference to other members of the Project Group?

A. Yes, I believe so.

Q. We can leave out the question of non-edited report. I think that's and then the question of integrating the quantitative report and Andersens wishing to leave the question unanswered until they have the final results. And then the final one we needn't concern ourselves with.

Did yourself and Mr. Brennan consider convening the Project Team to consider these questions before you either had a conference meeting or went to Copenhagen?

A. I don't think we did.

Q. When you went to Copenhagen, you went on the 27th, is that correct?

A. I think so. It may have been the 26th - 26th or 27th.

Q. And only you and Mr. Brennan went, is that right?

A. That's right, yes.

Q. And you were, first of all, involved, am I correct in understanding it, in certain scorings, before, of

A. I think the discussion is that we confirmed the financial scoring. The suggestion is, I think, somewhere, that it should be self-explanatory, so I presume that that was just a follow-up to the previous meeting and that there was nothing of substance in it.

Q. And did that take long, do you remember?

A. I don't recall that.

Q. Did that occur on the first day you were there? We'll take the 27th as being the first day; whether you travelled on the 26th is neither here nor there.

A. Okay. I presume so. I mean, the sequence would have been that we would have dealt with the finalisation of marks for the dimensions for which marks hadn't been finalised. And I gather from the papers here that, in the case of financial, it was some small confirmation that needed to be done. So presumably that would have been first.

Q. And you think that that may have taken a relatively short time, anyway?

A. I expect so.

Q. That particular matter?

A. I expect so.

Q. And you spent all the day of the 27th there, then, is that correct, in Copenhagen?

A. I am not entirely sure of that, but I think so. Can you give me one moment, please?

Q. Yes, indeed.

A. Okay, my record doesn't actually tell me exactly, the 27th and 28th September were dedicated to Copenhagen. So whether we travelled on the morning or evening of the 27th, I am not sure.

Q. I see. So you might only have spent one day there?

A. It may have been only one day.

Q. Right. Well, it was one or two days; this particular finalising, as you say, of the financial scorings, was a relatively short matter?

A. I expect it was, yes.

Q. You expect that it was?

A. I mean, if there was any substantive discussion, I expect that Billy Riordan would have been present.

Q. Yes. And could you tell me then, you know, what time would you have started there? We need to go through this day because we need to know what happened because it seems to be a fairly critical day in the whole affair. And what time would you have commenced work at Andersens on this?

A. Well, I can't say exactly, but on the assumption that one day's work, I expect that we'd have commenced at a typical starting time, nine or half past nine.

Q. You got this matter over fairly quickly, I take it?

A. I expect so.

Q. What happened then?

A. I expect we would have dealt with the finalisation of scoring, perhaps, on marketing or management. I think that may be indicated here.

Q. That's right. Would that have taken any length of time?

A. I can't say that I recall. I mean, we would have looked at these dimensions at the previous meeting.

So I am not sure to what extent there was work



remaining.

Q. This was the meeting on 20/21?

A. Yes.

Q. What discussion you don't recollect, or are you saying there was no discussion about the quantitative evaluation?

A. None.

Q. None at all?

A. None.

Q. And did anybody discuss the agenda for the meeting in the context of the questions which had been raised by Mr. Andersen in his memorandum to you and Mr. Brennan of the 21st?

A. I don't believe so.

Q. So there was no discussion about the quantitative or how one was to deal with the matter?

A. That's my recollection.

Q. And the meeting proceeded purely on the basis of what had been brought together by Andersen in what we call Table 16 we'll come to that in due course when we look at the evaluation, the draft evaluation reports that that was understood by you and Mr. Brennan, I take it, that that was the position as regards the qualitative evaluation, isn't that right?

A. That's correct, yes.

Q. And was there any further discussion we know about yourself and Mr. Brennan dealing with Mr. Andersen and

the further tables, but, apart from that, was there

any further discussion about matters?

A. I don't follow what you mean. I mean, we discussed

the outcome of the evaluation of the various

dimensions.

Q. Yes, I understand that. I understand that. But you

now had, and we have dealt with that yesterday, this

whole question of what was produced, and that was the

result of the qualitative evaluation, isn't that

right?

A. Yes.

Q. There was no discussion about the quantitative

evaluation?

A. None that I can recall.

Q. And then there was no further discussion as to the

matter progressing any further; that is, any interplay

between the qualitative and the quantitative?

A. Well, there was a discussion about reaching a final

result on the basis of Table 16, and that discussion

resulted in the creation of Table 17 and 18. So it

was along those lines that the discussion progressed.

Q. But that discussion was initiated by Mr. Brennan,

and/or you, isn't that right?

A. Yes, I believe

Q. If we take a look at Mr. Brennan, he was the lead

person?

A. Well, it was certainly at my initiative that the

proposal that we had to regroup the evaluation criteria or sorry, we had to regroup the dimensions in accordance with the evaluation criteria. That was certainly my view. I am I clearly recall that.

And it was certainly Martin Brennan's view that, in order to ensure we were arriving at the correct result, we had to use numbers rather than letters in order to apply the weighting model.

Q. Right. Well, those were two matters which arose as a result of your intervention and Mr. Brennan's intervention, isn't that right?

A. Yes.

Q. To arrive at the subsequent tables?

A. Yes.

Q. Again, I understand I understand that. And what that was was all relative, again, to the qualitative analysis, isn't that correct?

A. Yes.

Q. And were matters left at that, then, once that particular process had been completed, your intervention and Mr. Brennan's intervention?

A. Well, I mean, as a result of those interventions and discussion of them, Table 17 and 18 were produced, scored, ranked, etc.

Q. I appreciate that. And that was the end of the discussion, was it?

A. Once we reached Table 18 and confirmation of the

ranking, the only remaining issue was a discussion of the remaining supplementary analyses.

Q. And that gave you, rightly or wrongly, but what that gave you was the result, as you saw it, of the qualitative analysis, or of the qualitative evaluation?

A. That's what yes, that's what I understood.

Q. The question of supplementary analyses was discussed, but was that the end of the discussion then about the process you were engaged in for the time being?

A. Well, I mean, as I understood it, we had produced a result in accordance with the qualitative model. We had a ranking. There were supplementary analyses to be documented, but it was clear from the work that had been done by Andersens, and it was Andersens who carried out the work on the supplementary analyses, their view was that there was nothing in the supplementary analyses, although they weren't fully documented at that point, that would give rise to a change in the ranking. That was my understanding. So the question the issue was the next steps. I mean, the only other discussion I recall was the next steps, that obviously all of this had to be fully documented in a report.

Q. The meeting of the 4th September of 1995 had recorded that the qualitative the draft qualitative evaluation would be produced by the 3rd October, isn't

that right, the meeting at the 4th September?

A. I believe so, yes.

Q. And then the meeting of the 14th talks about the first draft report, isn't that right? I think there is a reference to that?

A. Okay.

Q. What I am trying to understand here is how what transpired to be a meeting which was purely referable to the qualitative evaluation, then evolved into a document which purported to give the result of the competition or provisional result of the competition; do you understand the point I am making?

A. Yes.

Q. There had been no meeting of the PTGSM to take to make that decision, isn't that right?

A. Yes.

Q. How did that come about? Was there any discussion between you, Mr. Brennan and Mr. Andersen to enable that particular step, which does not seem to have been provided for in the evaluation model, or in any decision of any meeting of the PTGSM how did that come about?

A. I think it was our view, in going to Copenhagen, that that was the purpose. I mean, in the sense that this memorandum does envisage a grand total.

Q. A grand total based on the qualitative table in the evaluation model, isn't that right?

A. That's correct, yeah.

Q. You see, this appears to have been, if you don't mind me saying so, how this evolved appears to have been a decision which only you and Martin Brennan seem to have considered, isn't that right?

A. And the Andersen team.

Q. And the Andersen team, or Mr. Michael Andersen?

A. Yes.

Q. Without any authority from any decision of any meeting of the PTGSM, whether by way of telephone conference or a meeting, isn't that right?

A. There was no formal agreement by the Project Team in advance, that's correct.

Q. And before you went to this meeting, on the 28th, you had been aware of the Minister making contact with you, isn't that right?

A. Yes.

Q. And you had conveyed that information to Martin Brennan?

A. Yes.

Q. And he was also aware of the views the Minister had expressed to you, as you have indicated in your evidence yesterday?

A. Yes.

Q. Now, when you came back from Copenhagen - we have been over it, and I don't intend going over it again - you received the famous letter of the 29th, and

A. Yes.

Q. and we have dealt with that. It appears that after that particular meeting in Copenhagen, Martin Brennan spoke to the Minister, and, we know from the record of the meeting of the 9th October, informed the Minister of the shape of the evaluation and the rankings, isn't that right?

A. I am not sure exactly what he informed him of

Q. Or words to that effect?

A. but I gather he had some discussion, yes.

Q. Do you know when he spoke to the Minister?

A. No.

Q. If it's recorded at the meeting of the 9th, it must have happened before the 9th?

A. Yes.

Q. And before the other members of the PTGSM had any opportunity to consider anything, isn't that right?

A. Yes.

Q. Wouldn't I be correct in understanding that a Minister exerting influence or interfering in any activity would not necessarily need to be so blunt as to indicate to anybody "I want this", or words to that effect, but that it is well-known within the civil service that Ministers, Taoisigh, all they have to do is to indicate a polite interest to indicate to civil servants what their line of thinking might be; wouldn't that be fair to say?

A. Possible.

Q. And hadn't Mr. Lowry done that in this case in the conversation he had with you, particularly insofar as it was referable to what you described as the media's favourite, or the bookmakers' favourite?

A. I don't see exactly what you mean. I mean

Q. He indicated to you that he was at least not neutral in relation to that particular favourite, as you described it?

A. I didn't perceive from that conversation that he was negative towards Persona.

Q. You have told us I don't want to go over and over it again that he was under pressure from another consortium; that, first of all, it was a foregone conclusion about them?

A. Yes.

Q. And secondly, you have informed us that you had heard the line, whether it was a tinkle or a rumour, that Persona were perceived to have had it in the bag from the previous Fianna Fail administration, isn't that right?

A. Yes.

Q. Mr. Lowry was certainly not Fianna Fail?

A. Correct.

Q. Would I not also be correct in understanding that if a Minister is informed of the shape or ranking in any type of situation, whether it be provisional or



otherwise, that for other civil servants participating in, whether it be a Project Team or some sort of a work team, if they have different views, it would be very hard to shift the Minister from that position if he had expressed the view, as you said he did to Martin Brennan, that he was happy with those two when he was told the rankings were Esat Digifone and Persona?

A. Yes.

Q. That he had no difficulty with that?

A. No difficulty, yeah. I should say I interpreted that as an offhand comment rather than a meaningful comment, if you understand what I mean.

Q. And it's probably more helpful that you do interpret it that way, because when we are involved in this inquiry, you'd wonder what business was it of the Minister to have any problem, one way or the other, with any outcome, but that he had no problem with it, but that's for Mr. Lowry.

A. Okay.

Q. So can I suggest to you that everything that transpired after Mr. Brennan had informed Mr. Lowry of what had happened in Copenhagen, was to give effect to what Mr. Brennan had told Mr. Lowry; namely, that the outcome, which had not been decided by the PTGSM, and the report, should reflect that?

A. Well, I mean, what followed was a diligent process of

looking at the evaluation report, and certainly the members of the Project Team who had not participated in the sub-groups were very anxious to establish, to their satisfaction, that the procedures that had been followed were fair, and that the documentation and presentation of them was balanced, clear and robust.

Q. It could only be driven to one conclusion, couldn't it, after the Minister had been informed?

A. I don't know if I could subscribe to that line of thought.

Q. It could only have been driven to the one conclusion - Mr. Fintan Towey?

A. It may be your view

Q. It's not my view. I am inquiring, Mr. Towey. It could only have been driven to that conclusion. Are you seriously suggesting that when Martin Brennan told the Minister of what had happened in Copenhagen, and perhaps informed him that this was only something that you and he had a view on it

A. Yes.

Q. no one else in the PTGSM, that to shift that position was going to be an impossibility?

A. I don't know in what terms Mr. Brennan might have reported to the Minister the progress of the evaluation. But I would imagine that he didn't present it as an absolutely final result, because clearly there was it was necessary that the Project

Team would evaluate the draft report.

Q. I take your point. He couldn't have presented it as that?

A. Yes, but also on the question of whether the result was set in stone at that point, I don't believe that was necessarily the case. Now, from my point of view, from my level of knowledge of the evaluation process, I was very clear that the Esat Digifone application was the strongest application. So I didn't envisage any prospect of a change in that result, because it was the best application. But I could envisage circumstances in which individuals, if they felt that they were being presented with a fait accompli and were simply being asked to rubber-stamp a particular outcome, would relish the opportunity to rebel against that.

Q. But I am going to come at it a different way, now. Whatever about Martin Brennan, and it would now appear from the evidence you have given, clearly, clearly in breach of the confidentiality protocol and the sealed nature of the process, because there was there was no decision of the PTGSM when the Minister was informed of matters.

A. Well, in relation to the question of the sealed process, I don't think that that applied to information being provided to superordinate officials in the Department, or the Minister.

Q. Mr. Towey, did you hear Mr. Loughrey, the Secretary of the Department, talk about that?

A. I didn't actually hear

Q. Only when there was a result was anyone to be told?

A. If you are suggesting that

Q. Is that your answer?

A. No, what I am saying is that if the Minister had sought further information in relation to the competition, I don't believe that the Department would have been right or justified in denying the Minister access to information.

Q. So can we take it, as far as you were concerned, it wasn't a sealed process, as far as the Minister was concerned?

A. That is my view.

Q. That's your view. That's not the view the Minister ever expressed in public or in the Dail or anywhere else. He always relied and this whole process was defended both by the Minister and by civil servants, that it was independent of him. That's how it was defended?

A. That was how it was carried out, in my view.

Q. It certainly wasn't in the information that you have just told us. You have just told that Martin Brennan, before the PTGSM had arrived at any decision, that the Minister was told. How could you say that that was carried out independent of the Minister, in

those circumstances? And could we take it one step further, Mr. Towey, Mr. Brennan didn't leave it at just telling the Minister; Mr. Brennan told the civil servants at a meeting, and I would suggest to you, fired a shot across the bows of the civil servants present, "the Minister now knows this is it".

A. I don't think that was intended to convey that we had a final result.

Q. Of course there wasn't a final result. You didn't have a result. You and Mr. Brennan had gone off and discussed the qualitative analysis over in Copenhagen and brought that back, and then, low and behold, there is what is purported to be produced if Mr. Nesbitt would stop shaking his head for a moment what was purported to be produced

A. What we had was an evaluation

Q. What was purported to be produced was a result, it purported to be a result or a provisional result?

A. What we had was we had a comprehensive evaluation across 56 indicators which respected the selection criteria prescribed in advance by the Government, and we had identified what, in our view, in accordance with those criteria, was clearly the best application.

Q. According to your view, that was the view of you and Martin Brennan?

A. And the Andersen team.

Q. And the Andersen team, insofar as we know, yes. They

were not members of the PTGSM?

A. My view is that they were.

Q. Well, you know they weren't. We read the contract yesterday. We know they were advisers. We know they were consultants. They were like legal assessors to something like the Medical Council or something of that nature. That's the role they fulfilled. They weren't members?

A. The Project Group would not have made a decision without it being supported by Andersens.

Q. If, as you say, the Minister was entitled to any information he sought, was the Minister entitled to the weightings?

A. If the Minister had sought the weightings, I believe he would have been entitled.

Q. Did he seek them from anybody?

A. Not that I know.

Q. How do you know that?

A. Not that I know of.

Q. Not that you know of?

A. Yes.

Q. Was he entitled to be told, after the presentations, of how people had done?

A. If he had sought such information. I am not aware that he did.

Q. So, was the whole protocol of confidentiality subject to the Minister having some overriding position in

relation to this particular process which did not put him at arm's length from him, in your view?

A. In my view, if the Minister wanted to have information, he could have had information. In practice, the Minister did not express interest in this competition except for to what we regarded as a very, very limited degree.

Q. As far as you knew?

A. As far as I knew, yes.

Q. And insofar as he approached you, coming down along the line, he did so from, as you understood it, some public area, because you heard a lot of noise around?

A. That's the opinion I formed, certainly, yes.

Q. And he told you he was under pressure?

A. Yes.

Q. Which must have indicated a high degree of pressure if he would make such a sensitive phone call and go down along the line in a public area?

A. That may be one interpretation, yes.

Q. And from the moment, from the moment Martin Brennan spoke to him after Copenhagen, the Minister was putting pressure to close down the process?

A. I can't say the timing of the Minister's decision that we should move quickly towards a final result, but it was around that time.

Q. Because, if you would go to Divider 116 of Book 42 before I do, just to ask you about your view. You

have expressed the view that the Minister was entitled to any information he sought about the process?

A. Yes.

Q. And can I take it that you were, therefore, of the view the Minister was entitled to do whatever he wished with the information he received?

A. No, I don't believe so. No, not at all, in fact. I mean, when I say the process was sealed, I mean, there was absolute clarity that this process was sealed insofar as any interested parties were concerned.

What I am saying, that the Minister, as Minister, had he wished to have his finger on the pulse, so to speak, to have a more active knowledge of how this competition was progressing, in my view, as Minister, he was absolutely entitled to that information. No question. But I don't, in any way, agree that that necessarily implies that he would be entitled to share that information in any kind of way that might compromise the competition.

Q. Now, do you see

CHAIRMAN: Well, Mr. Loughrey I think had, in fact, mentioned the protocol to the Minister, and I suppose that's consistent in what you say; the protocol was as binding on Mr. Lowry as it was on members of the Project Group.

A. Yes.

Q. MR. COUGHLAN: If you go to Divider 116 of this book,



Book 42. These are notes, which were made by Mr. McMahon, of an interdepartmental division meeting, I think. It was the 3rd October, 1995, which was a Tuesday, and it was the Tuesday after you came back from Copenhagen. I think the letter had gone back on the the letter had gone back to Mr. Denis O'Brien, Mr. Michael Walsh's letter had gone back on the 2nd October, the previous day.

A. Okay.

Q. And it says "FT" could you have been at that meeting, do you think?

A. Yes.

Q. I don't think we need concern ourselves, there are other departmental issues raised. And then if you go over the page, item number 6.

"GSM:

" Minister wants to accelerate process.

" legalities more complicated.

" draft report new imminent.

" we need to discuss and digest.

"Agreed copy will stay here in 44, and discuss it in confidence."

Do you remember Mr. Brennan and Mr. McMahon says that that information came from Mr. Brennan at that meeting?

A. Not particularly, but I wouldn't doubt it.

Q. So it looks as if the Minister was expressing a view

about this within two working days on the second working day after you returned from Copenhagen, isn't that right?

A. If Mr. McMahon has written it down, I believe it's correct.

Q. You can't remember you can't remember that time-frame, can you, of the Minister's desire, at that stage, to move this?

A. No, not particularly.

Q. Did you have any discussion with Mr. Brennan around this time, that the Minister wanted this done very fast, now?

A. I don't specifically recall, but I don't doubt that Mr. Brennan would have informed me after whatever he had discussed whatever discussion he had with the Minister that led to the Minister expressing that view.

Q. Do you know did Mr. McMahon tell the Minister or Mr. Brennan tell the Minister about the letter from Michael Walsh of IIU?

A. I don't know.

Q. Now, the first draft of the evaluation report arrived in the Department, it was dated the 3rd October, 1995.

Can you remember when it arrived in the Department?

A. No.

Q. Would it have come to you as the secretariat

A. I believe it would have come to either me or to Maev

Nic Lochlainn on either I am not sure if it came by fax or hard copy. So we are talking 3rd/4th.

Q. And it looks as if it wasn't circulated at that stage, is that correct?

A. I don't know, but judging by the comments in this note of Mr. McMahon's, I suspect that's the case, yes.

Q. That it would perhaps have been kept at 44?

A. Yes.

Q. Did you read it when it came, do you remember?

A. I certainly read it. How immediate how immediately after receiving it, I can't say for certain.

Q. Right. Do you know if Mr. Brennan read it?

A. I can't say for certain, but I expect so.

Q. Did you have any discussion about it between receiving it and the meeting of the 9th October?

A. I don't particularly recall, but I expect that we would have had some discussion.

Q. About what, do you think, in the report?

A. Well, it was the first draft. I think it went through some modification before it reached its final form, and one of the issues in relation to it was that the English, in many respects, wasn't as clear as it might be. I think that we also had some concerns about the clarity of the report overall. And it would more than likely have been around those issues.

Q. Right. Now, I think we'll deal with the reports together, if you don't mind. We won't deal with the

contents of them at the moment.

A. Okay.

Q. If you could go to Divider 120, and that's the minute of the meeting of the 9th October, the 12th meeting of the Project Group. Do you have that?

A. Yes.

Q. And it reads "The Chairman opened the meeting by stressing the confidentiality of the evaluation report and the discussion re same. He also informed the group that the Minister had been informed of the progress of the evaluation procedure and of the ranking of the top two applicants. The Minister is disposed towards announcing the result of the competition quickly after the finalisation of the evaluation report.

"Discussion of the evaluation report:

"The draft evaluation report put forward by AMI was examined in detail. A range of suggestions in relation to the manner of presentation of the results were put forward by the group and AMI undertook to incorporate them in the second draft. The agreed amendments included:

" inclusion in the body of the main report of the proposed appendix in relation to the evaluation methodology.

" an expansion generally of the justification for the award of marks to the various indicators.

" revision of the financial conformance appendix to a more explanatory format.

" inclusion of an executive summary and an annex explaining some of the terminology.

" elaboration of the reasons as to why the quantitative analysis could not be presented as an output of the evaluation process.

"AMI also indicated that the supplementary analysis in relation to interconnection and tariffs which had yet to be provided did not suggest that it would be necessary to revise the award of marks.

"Future work programme:

"It was agreed that AMI would provide the first draft of parts of the report which had not been included in the first draft of the overall report for comments before submission of a complete second draft the following week."

Now, do you see there that the minute records that

"The Minister is disposed towards announcing the result of the completion quickly after the finalisation of the evaluation report"?

A. Yes.

Q. Doesn't it appear that what was being attempted here at this meeting, at the presentation of this first draft evaluation report, was to present it as a result, the result as a fait accompli?

A. Well, I don't particularly believe so. I mean, we

were presenting what we had seen as our to be clear, Andersens were presenting the outcome of the evaluation which included the final ranking of applications on the 28th. And what we were now doing was seeking the endorsement of the Project Group for that process.

Q. It was presenting it in the report. Read the minute, "The Minister is disposed to announcing" Martin Brennan was saying "The Minister is disposed towards announcing the result of the competition quickly after the finalisation of the evaluation report."

A. Yes.

Q. This is what Martin Brennan is saying to the meeting?

A. Yes.

Q. And he has told the meeting about the Minister knowing the top two rankings?

A. Yes.

Q. Doesn't it appear very clear that what was being attempted here was to present this as a fait accompli and to drive it through that meeting of the PTGSM?

A. I don't think well, there are no time-scales laid down here. There is an indication that once it is finalised, the Minister then wants to announce quickly. And what's not clear, of course, is whether I mean, it's not stated in the introduction whether the Minister had expressed this wish independently, or was receptive to the advice of

Mr. Loughrey or Mr. Brennan or Mr. McCrea.

Q. Because we will come to it in due course, but I want to go to the handwritten notes made by Ms. O'Keefe of this particular meeting, and it's at Divider 121. But what appears in the next draft of this evaluation report is a provision to the effect that there had been unanimity expressed at the meeting of the 12th at the meeting of the 9th

A. Yes.

Q. about the result, isn't that right?

A. Yes.

Q. Do you know how that particular wording got into the second draft of the evaluation report?

A. Not specifically aware, no, but, I mean

Q. Would it have been a result of discussion between Michael Andersen, yourself and Martin Brennan, for example?

A. I can't say that it was.

Q. Do you say it wasn't?

A. I can't rule out the possibility.

Q. That it was as a result of a discussion between yourself, Michael Andersen and Martin Brennan, that the wording, unanimity was subscribed for

A. Yeah, I don't know, I don't know.

Q. Ah, Mr. Towey, now, this is fairly serious stuff. You can't rule out that it was and you can't rule out that it wasn't.

A. I don't recall having a role in putting that word into the report or suggesting that it be put into the report. But I couldn't rule out that there wasn't a general consensus in relation to this report.

Q. No, no, there obviously wasn't a general consensus, because we know from other witnesses who have given evidence here, and from views which were expressed subsequently, that there was no unanimity subscribed for at this stage.

A. Okay, I am not sure if that was clear from the meeting at the time.

Q. Might I suggest to you the reason why it was put in was that there was an attempt to drive through this decision by Martin Brennan, in particular, and you as his assistant

A. No, I don't believe there was an attempt to drive it through.

Q. To drive it through, because that is the result that the Minister desired?

A. I don't believe that to be the case. The Minister was equally happy with Persona as a result.

Q. Well, you see, you weren't to know it, but when he went and spoke to the Taoiseach, the Taoiseach records him as saying to him that "Albert promised it to Motorola", but that's in the political sphere. It's not a matter for you, so, as to whether the Minister was or was not happy in light of the views he



expressed to you about Persona; it's for the Tribunal to decide.

Now, if you go to the 'Verbatim Note of the Handwritten Meeting of the Project Group on the 9th October, 1995, as Approved by Margaret O'Keeffe on the 1st February, 2002'.

A. What's the reference? I see it.

Q. I beg your pardon, it's 123:

"Confidentiality:

"Minister knows.

Shape of evaluation and order of top two.

Minister of State does not know.

Quick announcement.

"Agenda.

"Draft report.

"Future work programme:

"A. Producing draft number two.

"Good working draft produced on time.

Annex should be part of the main report.

Object is to get feet back on content, style of report, content accuracy.

"Report too brisk. Critically needs more elaboration and reasoning more significantly. Few lay readers but they will be critical terminology needs to be explained.

"Michael Andersen brought appendix on supply, on tariffs and interconnections.

Description of methodology still missing.

"Different groups examined, dealings with Commission,  
etc.

Relevance of annex dealing with conflict.

Full discussion needed on Annex 10.

Minister does not want the report to undermine itself,  
e.g. either a project is bankable.

Should be balanced arguments."

If I might just pause there. It would appear that the  
Minister, apart from knowing the shape of the  
evaluation and the order of the top two, must have had  
been given a reasonably detailed briefing about the  
financial state or capability of the top two.

A. I don't know whether that was

Q. It appears to be so?

A. It suggests that that may have been the case. I mean,  
what is clear here is that the Minister certainly  
wanted the report to be clear and unequivocal.

Q. But he didn't want it to undermine itself.

A. Yes. That's what I mean when I say it would be clear  
and unequivocal.

Q. And from this note, it was the Minister who suggested  
the concept of bankability, "for example, either a  
project is bankable or not." That's what the note  
records, isn't that right?

A. Well, it's not absolutely clear that it was  
necessarily the Minister. It may have been that I

presume that this was Martin Brennan who was speaking, and it may have been that he added that point, given that the financial weakness of Communicorp was the only real weakness, the only weakness in relation to the Digifone application. So, as such, it was the only weakness that we needed to establish or clarify in the report, how we had assessed it and our view of it.

Q. Well, you didn't score it, clarify it or explain it, isn't that what happened?

A. We took a view on it.

Q. Yeah. You see then, under the heading "Quantitative Evaluation" on page 2?

A. Yes.

Q. "Quantitative evaluation should not be performed separately but are taken into account in main report. Already agreed that international roaming should not be used. Hard to score the block out and drop-out rates.

"Tariffs well-defined basket of tariffs.

Metering billing should be a score indication.

Data not reliable for comparison purpose.

To be left over for discussion.

If included, it will give a false confidence in some figures."

Now, who was expressing that view?

A. I believe it was Andersens.

Q. Andersens. And, of course, if it was included, it would have showed a completely different ranking, isn't it?

A. Yes.

Q. Now, just in fairness to you, if I can go over the page to page 3 at the bottom of page 3. It's attributed to you. "Fintan Towey should we not include quantitative analysis up front? I presume it's saying, "quantitative analysis too simplistic to give result", or words to that effect?

A. Yes.

Q. So go over the page.

"1. The scoring.

"2. Would like to stick to the evaluation model."

These all seem to be attributable to you now, if I am not mistaken, or correct me if I am wrong.

"Should quantitative analysis be shown. Would have to open discussion again. Quantitative evaluation unfair and impossible. Figures impossible to compare. Chain of events, evaluation model 80% deals with quantitative evaluation.

Results of quantitative evaluation not reliable.

Quantitative analysis became less and less.

Should be explained in methodology report and wording is important."

Do you know if all of that is attributable to you, or is it it seems to be that there may have been a

debate; you had argued for the inclusion of the quantitative analysis, I think?

A. Yeah, I think there is a response, and I suspect it's Andersen's view.

Q. Right. And doesn't it show again you had argued for the inclusion and stating the that it was too simplistic?

A. Yes.

Q. Can I take it, at that stage, that even if it involved re-opening the discussion, you would have had no difficulty with it, to include it?

A. Well, my view is that it had been superseded, in entirety, by the qualitative evaluation. I didn't see it as an important element of the overall evaluation process, because it had enormous shortcomings. Its greatest shortcoming, in fact, that it was so extremely limited in scope, it covered only something like 13 indicators, whereas the qualitative evaluation incorporated 56 indicators. You had, within it, one not very good indicator, for example, in relation to tariffs, which accounted for 18% of the scoring, whereas the qualitative evaluation incorporated a further seven; in other words, eight indicators in total in relation to tariffs.

So my clear view was that it had been superseded by the more comprehensive qualitative evaluation.

Nevertheless, I was also clearly of the view that

since it was part of the paper trail, that it had produced, in particular, because it had produced a different ranking, that we should include it in the annex to the report, and we should deal with the reasons why it developed a different ranking.

Now, what's clear is that other members of the Project Team didn't, in fact think it should be dignified with that level of respect, and that it was sufficient to incorporate into the report a description of the reasons as to why the quantitative model was not a success.

Q. Not a quantitative model there had been a quantitative analysis?

A. The quantitative model.

Q. The quantitative model?

A. Yes.

Q. The model?

A. The model.

Q. So that, therefore, the model should have been disregarded altogether the model?

A. Yes.

Q. And therefore, a rejection of what had been adopted at the 9th June, is that what you are saying?

A. Yes, I believe that's the case.

Q. You believe that's the case. Now, can you show me where that is recorded at the minute of this meeting?

A. Well, it's recorded I am not sure how it's recorded

in the formal minute, but certainly in the sense that I had put forward the case that we should retain the quantitative model in an annex, I mean, it is clear from the response to that that there was not a consensus on that approach.

Q. Where do you say that is so? You say that the response to you is Michael Andersen here, is that right?

A. Yes.

Q. This seems to be reflect a debate?

A. I suspect that that is Michael Andersen, and you will see that there is no supporting voice for my argument.

I mean, I felt quite strongly that it should be included, but you'll see that nobody else felt that strongly.

Q. Let's be clear about this now; what's recorded in this note is, if you like, a debate; you proposing and you say Michael Andersen opposing.

A. Yes.

Q. It doesn't appear to be written down anywhere that there was a decision of the PTGSM about it. It's certainly not recorded in the minute and Ms.

O'Keefe's note doesn't make any note to that effect, that that was the decision of the PTGSM?

A. No, but, I mean, the next step following this meeting was that Andersens, I believe, would take away the views expressed and produced a further draft report

incorporating the views taken. Now, the report that we were looking at didn't have a quantitative evaluation. I had proposed it. It appears that Michael Andersen himself spoke against it. Therefore, there was no consensus within the group that it was necessary to bring the quantitative evaluation into the annex of the report.

Q. When you now look, with the benefit of hindsight, at matters we discussed over the last couple of days, when I drew to your attention, first of all, your evidence that the two you had been told by somebody in Andersen that the two different approaches, quantitative and qualitative, produced a different result, and you believe that may have been told to you by Marius Jacobsen?

A. Yes.

Q. And we then looked at the tender document which Andersens furnished?

A. Yes.

Q. Which did not accord with that view, isn't that correct?

A. That's correct, yes.

Q. That they tended, normally, to produce the same result, isn't that right?

A. Yes.

Q. Now, when you look at that and this argument being made by Mr. Michael Andersen here, doesn't it become



extremely disturbing as to why he would want to exclude from the report the quantitative analysis, with the explanation you wished to put on it, bearing in mind what he had tendered and what must have been the known view in the business, or the trade his business?

A. Well, I don't really think it's surprising at all because

Q. I didn't say it's surprising. Concerning and disturbing?

A. I don't regard it as a matter of concern. I mean, I had proposed that we incorporate the outcome of the quantitative evaluation because it produced a different result. That doesn't mean that I had any respect for the quantitative model as an evaluation model. I mean, I think in purporting to produce a ranking, in fact, it's quite a derisory piece of work. Thus, on that basis, it wouldn't surprise me it doesn't particularly surprise me that other members of the Project Group did not feel that it ought to be included in the final evaluation report, nor does it surprise me that Andersens would not be concerned about it.

Q. It's not that they are not concerned about it; they seem to be quite concerned about it, because they argue against your position. They seem to be concerned about it. They don't want to include it,

isn't that right, if this note is correct, or a

reasonably correct resume

A. Yeah, and I think their view was that, apart from the

clear restrictions within it, the problems with

measuring some of the data in a fair way across

applications further undermined

Q. Of course, in this particular meeting, Andersens were

in the same position as you and Mr. Brennan in

contending for the qualitative analysis to be the

result of the competition, isn't that right, it would

appear? They produced this draft evaluation report,

for what it's worth.

A. Yes.

Q. They didn't bring up any discussion at this particular

meeting about what the appropriate step to be followed

on foot of the evaluation model adopted on the 9th

June of 1995, and that was to now revisit the

quantitative analysis with the qualitative analysis.

A. I think it's true to say that there is no suggestion

from any party, including from Andersens, that there

was any merit in re-opening the quantitative model.

Q. Not merit; that they didn't adopt, they didn't comply

with the procedures adopted on the 9th June, and they

didn't open it to the meeting to do that, isn't that

right?

A. Well, the fact of not returning to the quantitative

model, certainly, you know the fact that we didn't

return or it wasn't proposed that there be a return to the quantitative model, that was a fact. But I think it is clear it is clear

Q. Perhaps another example, Mr. Towey, of trying to drive this view?

A. I don't believe so.

Q. A decision which the Minister desired?

A. I think that's attaching undue significance, actually, to the quantitative evaluation, because

Q. I am not attaching undue significance to it. I am talking about the evaluation model, which envisaged, or it had been decided that this was how it would be done.

A. But all members of the Project Team had seen the quantitative model at an early stage, and the view had been formed that it was clearly an inadequate basis.

Q. When was that?

A. That was at the Project Team meeting on the 4th September.

Q. Yes, and what had been said at the Project Team meeting on the 4th September, that the quantitative evaluation, on its own, was not sufficient, but would be returned, isn't that right?

A. Yes.

Q. That was the decision taken then?

A. Yes. And my view then of what happened, in practice, was that the quantitative evaluation was expanded in

the qualitative evaluation, so all of the indicators in the quantitative evaluation were used and expanded upon in the qualitative evaluation. So I would have seen

Q. That was always envisaged?

A. It was, yes.

Q. That was the model.

A. I would have seen the quantitative evaluation as a subset of the qualitative evaluation.

Q. I see.

A. So I am trying to explain that the issue of returning to a subset, a clearly inferior subset of the model, of the qualitative model, certainly is something that, you know, I didn't feel that it was necessary to do. It didn't occur to me, nor does it surprise me that it didn't occur to other members of the Project Team, including Andersens.

Q. Oh, it did occur to the Project Team, it did occur to Andersens. They argued against your proposition of including it.

A. Yes.

Q. I can understand other members of the Project Team, who may have been relying on the advice of Andersens, being confused about how the matter should proceed.

And might I suggest that there might have been a sensitivity that the inclusion of it well, first of all, the returning to it with the qualitative

evaluation as was envisaged in the model which was adopted, that that could could have led to either a different result of those ranked in the qualitative evaluation, or of those ranked in the quantitative well, first of all, the quantitative, or secondly, in the qualitative, and that was what was envisaged in relation to the interplay, that there would be such a discussion.

A. Well, in circumstances where the quantitative evaluation was a subset of the qualitative evaluation, I find it hard to envisage that kind of eventuality.

Q. Well, can you show me where that is once stated in the tender document, in the contract, which you drafted, and which was agreed between the Department and signed by the Department and Andersen, or in the evaluation model, or in any decision before you and Martin Brennan arrived back from Copenhagen? Can you show me anywhere where that is stated or recorded?

A. I think it became apparent, when the qualitative analysis was completed, that the quantitative model had nothing to add to this process.

Q. It certainly wasn't going to give you the same result or the Minister the same result, was it?

A. If the reasons why it gave rise to a different result were revisited, then I suspect that the reasons why it gave I think, with some investigation, it would have been clear as to why it gave rise to a different

result and whether

Q. But, sure, isn't that exactly what should have been done and the model provided for? Isn't that exactly

A. Well, I think, having carried out the qualitative evaluation, all the people who had experience of the qualitative evaluation were quite content that the quantitative evaluation, all of the quantitative indicators had been fully taken into account and expanded upon through a more comprehensive assessment through further indicators, and that the fact, then, that the quantitative evaluation gave rise to a different ranking, well, it wasn't regarded as a significant matter.

Q. What happened after the meeting of the 9th October of 1995, between that and the next meeting of the Project Team when the second draft evaluation report was received?

A. I don't have a particular recollection.

Q. Sorry, just if I could return to that handwritten note again, Divider 121.

A. Sorry, I mean, just to elaborate on that answer. After this meeting, Andersens undertook to provide parts of the annex that had not been, or elements of the report that hadn't yet been provided, and I understood that they would produce a further report based on the exchange at the meeting. Beyond that, I

am not sure what you are asking.

Q. Well, I suppose, Mr. McMahon gave evidence that he thought you were going to return to the qualitative matters, but you don't remember any discussion with any other members of the PTGSM between this meeting and the next meeting when the second draft was received?

A. I am sure, I am sure I would have had discussions. I don't specifically recall who I would have spoken to.

Q. Just in relation to that note of Ms. O'Keeffe, he is page 7, "Financial Risks":

"No doubt that A5 will survive" do you see that at the top of page 7?

A. Yes.

Q. "A3 have agreement that if one shareholder does not come up, the others will pay. That was an actual existing Shareholders' Agreement, wasn't it, which was part of the bid?

A. I think so, yes.

Q. "Put in requirements in licence conditions.

"If things don't go as planned, a lot more expenditure may be required.

"Problem not unique to anyone.

"More balanced statement. The project will survive.

No one consortium is weak in itself. Each member of consortium brings different elements."

Do you remember that particular discussion or...

A. I certainly recall that we had discussions where we covered the issue of the potential weakness, financial weakness in Communicorp, and I certainly recall there being a general view that this was a very solid business opportunity, and that, you know, this was not any kind of a fatal weakness at all.

Q. I'll come to that, but, you know, we all know that the opportunity was solid.

A. Yes.

Q. I think there is no doubt about that, that you wouldn't have had all these various companies looking for the licence if they didn't think that the business opportunity was a solid one?

A. Yes.

Q. That was not what was being evaluated, isn't that so?

Everyone knew that. That was not the subject matter of evaluation, that if you got the licence that there was a solid business potential in there. What was being evaluated here, based on the criteria in paragraph 19, subject to the financial and technical capability of the applicants

A. Yes.

Q. that was what was being evaluated?

A. Yes.

Q. And everyone knew that Communicorp were weak, isn't that right?

A. That they had a high gearing, yes.



Q. Just apropos that, do you remember in your evidence when we opened your Memorandum of Evidence I think it's answer 17

A. Okay.

Q. It's at page 13. You were asked answer 17. The question was your knowledge which led to the revision of the tender documents resulting in the elevation in the status of the requirements of financial capability and technical capability, and your understanding of the impact of the revision on the overall competition design.

And you responded: Insofar as you can recall, paragraph 19 was not changed after you joined the division. You believe you were always of the view that the requirements expressed in the chapeau could potentially have been used to disqualify candidates in advance of full evaluation in accordance with the detailed criteria. Did you not consider it possible that any applicant that was deficient in these respects could score well in a more detailed evaluation given the priority attached to the financial and technical capability.

Now, is that still your view?

A. Yes.

Q. Nevertheless, this particular consortium, whether it be 50% of it or 40% of it, but a considerable aspect of it, did not have the wherewithal that's

described, isn't it did not have the money to do

this?

A. We assessed that the consortium had financing available to it, but in the worst case scenario in the sensitivity analysis, there could be a funding shortfall.

Q. And they had, unlike, say, A3 who had a smaller shareholding and had a Shareholders' Agreement in position

A. Yes.

Q. this consortium, which had 40% had a potential to provide 40% of the equity of this project, couldn't have scored high on the question of financial strength, and seems to be somewhat at odds with the view expressed by you that anyone who couldn't score high in financial strength would be considered sufficiently strong to pass the chapeau?

A. Yeah. Well, the approach that we took was that each consortia should have sufficient financial strength.

And Andersens, in particular, advised that a fair way to approach this was to ensure that all that each applicant had at least one significant consortium member with the wherewithal, with the unquestioned, let's say, wherewithal to deliver on the project.

That was the approach that Andersens recommended in order to evaluate adequacy of financial strength, and that's what we implemented.

Q. Mm-hmm. Can I take it, therefore, and that is all you considered and implemented, that one had the wherewithal?

A. That is correct. I mean, I recall Andersens' view that it would be unfair to award higher marks to a consortium which happened to have a larger number of strong, financially strong members, in the sense that simply rewarding wealth going far beyond the level necessary to implement this project, should not serve as a basis for discriminating between applications. That was the justification, as I understand it, for Andersens on how to evaluate this.

Q. Of course what you were evaluating was that people had the sufficient financial capability, not way beyond what was needed to fund this particular project, but to fund it, isn't that right? That was what you were evaluating, subject to the financial and technical capability, that they had sufficient to do this particular

A. Sufficient financial capability, yes.

Q. To do this. It doesn't matter whether it was over and above, or not. That's a red herring. What you had to evaluate was whether they had sufficient capability?

A. Yes.

Q. And Andersens told you, it's all right if only one of them have it. Was that irrespective of whether they had a potential for 50% interest, a 40% interest down

to a minor interest?

A. As I understand it, it was a significant shareholder.

I don't believe that we defined "significant".

Q. What would you say would be significant? Or what did you understand? Sorry, I am asking you, what did you understand to be significant?

A. In consortium terms, I would consider 35-40% to be significant.

Q. Now, if you were to adopt that approach, I suppose a risk or a sensitivity which might arise would be instability in the consortium, isn't that right?

A. That's true, yes.

Q. If the member of the consortium with the money had to put it up

A. Correct.

Q. it obviously wouldn't be putting it up for nothing?

A. Correct.

Q. Did Andersens talk to you about that?

A. They, I think they specifically identified that as a potential eventuality in the risk analysis.

Q. In which we know, in this case, did give rise to serious tensions, subsequently?

A. I believe so.

Q. All apparently related to the financial frailty of Communicorp. That's where the tensions always seem to arise?

A. Well, tensions are always in relation to Shareholders'

Agreements, effectively.

Q. Now, Mr. O'Callaghan has given evidence that he believes on the 17th I believe it's the 17th October of 1995, that he was informed by you that the Minister wanted to go to Government the following Tuesday, the 24th. Do you remember that?

A. Not particularly, but I don't doubt it if Mr. O'Callaghan said it.

Q. And it may be confirmed that there is a note, I think, in the Department of Finance somewhere, where Mr. McMeel is reporting to Mr. Doyle or something

A. Yes.

Q. something along similar lines.

A. Yes.

Q. Do you know well, first of all, could I ask you this: Mr. Loughrey, when he gave evidence, had no knowledge, during the course of that week, that the Minister wanted to go to Government with this matter. That he said that the first time that he had an understanding that trends were emerging, may have been a day or two prior to the 25th, but that he wasn't told until the 25th that there was a result and then he took his various action with the Minister, but that the first inkling he had of anything emerging would have been a day or two prior to that and may perhaps relate to the meeting which Mr. McMahan and Mr. Brennan and Mr. McQuaid had with him looking

for well, Mr. McMahon was looking for more time?

A. I haven't seen that evidence.

Q. If that be the case, it seems unusual, doesn't it, that the Secretary of the Department wouldn't have been informed, either by the Minister or by his subordinates, that the Minister wished to go to Cabinet the following Tuesday, in relation to what was one of the biggest issues

A. I'd regard that as extraordinary, in fact, yes.

Q. Extraordinary?

A. Yeah.

Q. If you were informed or sorry, if you were informing other people that the Minister wanted to go to Cabinet about the matter, can I take it that you would have you didn't receive that information directly from the Minister yourself?

A. No.

Q. The probability is you would have received it from Mr. Martin Brennan?

A. The probability, yes.

Q. The probability. But you have no recollection of what Martin Brennan told you?

A. Not specifically, no. I mean, I, obviously at the time, would have had a general awareness that the Minister was anxious to announce a result quickly. That's evident, I think, from

Q. Yes, we know about him wanting to he wanted matters

moved fast, there is no doubt about it?

A. Yeah.

Q. And that's as and from the 3rd, we know about him accelerating the process. We know what's recorded at the meeting of the 9th. You knew that there was another draft report coming in, isn't that correct?

A. Yes.

Q. Do you know if the Minister was informed of that?

A. I don't know.

Q. But, as you say, if it's the sworn evidence of Mr. Loughrey that he was unaware of this development, it would appear that the Minister was in contact with somebody about the significant matter of bringing it to Cabinet or getting a result to bring to Cabinet, and it

A. The Minister, his office or I wouldn't rule out

Q. The Minister or his office or programme manager

A. I wouldn't rule out his programme manager wouldn't have had a role, for example, yes.

Q. Was in contact with somebody in the PTGSM?

A. Yes.

Q. The probability is it must have been Mr. Brennan?

A. That's probably the case, yes.

Q. Would it be an unusual state of affairs in a government department for this type of communication to be taking place without the Secretary being kept informed?

A. That would be unusual, yes.

Q. Obviously, it would be impossible for anything to go to Government without the Secretary knowing about it?

A. Yes.

Q. That being an impossibility unless he was away on holidays, and even then he might be informed?

A. Yes.

Q. It looks, doesn't it, Mr. Towey, that the loop in relation to this matter, that is the connection between the political end of the Department and the civil servant end of the Department, and particularly those carrying out this adjudicative process, the loop appears to have been one which excluded the Secretary from matters?

A. If Mr. Loughrey has said so, then that would seem to be the case. But I find that a little bit unusual, and I would be surprised if the Minister's programme manager or if Mr. Fitzgerald were not at least aware of what the proposals were. In other words, I find it surprising, very surprising, that there would be a suggestion that there was a proposal to bring this matter to Government, and that only Martin Brennan would be made aware of it.

Q. And Mr. Loughrey also has given evidence that he was unaware of any contact between the Minister and the Project Group, that is, in the context of what is recorded at the meeting of the 9th October, whereby



the views of the Minister are being expressed by

Martin Brennan. Mr. Loughrey has given sworn evidence that he was unaware of that.

A. Okay.

Q. Again, would that be usual or normal in civil service departments for that to happen, for such a contact to be made without the Secretary knowing about it?

A. Typically, on a matter of any importance, the Secretary would be made aware of information provided to the Minister.

Q. And the other way as well; would he, coming the other way, from the Minister or the

A. Yes, yes.

Q. Now, of course, he has expressed the view here that he would have considered it inappropriate to have any contact with the Project Group, or for anyone to have had contact, other than to know the critical path?

A. Yes.

Q. So that could be an explanation as to why Mr. Loughrey was not being informed of what was going on in the contacts between, or on behalf of the Minister and Martin Brennan, isn't that so?

A. I am a little bit surprised at this line of questioning, because it surprises me that the Secretary, Mr. Fitzgerald, Mr. McCrea, would not have been aware of whatever discussions Mr. Brennan had with the Minister, and the Minister's view in relation

to it. In other words, I would find it extraordinary if the Minister had expressed a view to Martin Brennan, and that only Martin Brennan and I in the Department were aware of it, and that surprises me. I would find it extraordinary if that were the case.

Q. Right. Were you aware that Mr. Brennan had furnished part of the draft evaluation report to Mr. Fitzgerald, for example?

A. I think I was aware of that, yes.

Q. And Mr. Fitzgerald gave it back, and we have a copy of that and we have Mr. Fitzgerald's notes on it, and we have heard

A. I think the purpose was to get a review from an independent party, if you like.

Q. Did you know that Mr. McCrea was shown some of the a draft evaluation report?

A. I am not clear on that point. I wouldn't rule it out, but I can't specifically recollect it. I do know that when we came to the point of seeking printed copies of the final report, that there was to be one for him at that stage.

Q. There was, indeed.

The second draft of the evaluation report arrived in the Department on the 18th, I think, of October?

A. It was there at the 18th, I presume it arrived on that day.

Q. What was done with it, do you know? Was it circulated

or was it kept in 44 again?

A. I can't say without consulting the files but I would have thought it was circulated.

Q. And there was a meeting on the 23rd?

A. Yes.

Q. And you have told us in your memorandum that you do remember Mr. McMahon and other people going to the Secretary looking for some time, isn't that correct; that you have a recollection of that?

A. I don't have a direct recollection, but I think people have reminded me that that happened. And I don't doubt

Q. You don't doubt it?

A. I don't doubt it.

Q. And Michael Andersen was present, as far as you recollect, on the 23rd?

A. Yes.

Q. Is that right?

A. Yes.

Q. It's just something I want to clarify, and we can finish there today.

In your memorandum you say that a decision was made on the evening of the 24th, isn't that right?

A. Yes.

Q. Was there a separate meeting of the PTGSM on the 24th; that it was the meeting of the 23rd adjourned, and was there a separate meeting on the 24th?

A. Well, I mean, I'd regard it as much of a muchness.

Q. I understand that, but I am just trying to get this in some sort of time sequence, because if the meeting you see, what I am trying to understand, because some people thought Mr. Andersen was present and Ms. Nic Lochlainn is adamant about this and she says if she recorded him as being present, he was present.

A. I am also adamant that he was present, yes.

Q. Right. Now, if the meeting adjourned, Mr. Andersen left, because he was in Copenhagen, certainly on the 24th, isn't that right?

A. He was, yes. He was there on the 23rd. He was not there on the 24th. Is that the point you are trying to establish?

Q. That's all I am trying to establish at the moment.

A. Okay, that's it.

Q. And the purpose of Mr. Andersen being there on the 23rd was to, again, go through the report?

A. Correct, yes.

Q. Achieve a conclusion, or whatever further steps had to be taken, isn't that right?

A. Yes.

Q. If the meeting adjourned, Mr. Andersen left it's this question of the time which may have been given is what I am interested in at the moment. How did the meeting reconvene on the 24th again? That's what I am

trying to understand. If time was given, it seems to have been taken away again, do you understand my point?

A. Yes. If time was given on the 23rd

Q. If time was given on the 23rd, one can understand Mr. Andersen leaving, but then it looks as if pressure as regards time came back on again. Can you help us there?

A. I don't recall the particular circumstances in which the meeting was convened on the 24th. It was an evening meeting. And it was clearly convened for the purposes that we would use our best endeavours to resolve remaining problems in relation to this. In fact, that was the output of that meeting was everybody's final views, final views on what was necessary to finalise the evaluation report.

Now, I am not sure as to who made the decision that that should be done on the evening of the 24th.

Q. Right. Do you remember being informed that the Minister wanted the matter dealt with the next day?

A. I don't remember that, but again

Q. You were put through a fairly long night, weren't you?

A. Well, it was pretty late, yes, and an early morning.

Q. And an early morning?

A. Yes. I was quite clear, I believe I was quite clear that our objective was to produce a final report on the night of the 24th.

Q. Yes, for the next day?

A. Yes, yes.

Q. That something was to happen the next day, that that's what you were working for?

A. Yes, there is no question about that. No question about it.

Q. And you can't remember when you were informed of this.

Was it the morning of the 24th, the afternoon of the 24th that you'd have to work?

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

Q. When the meeting of the 23rd ended, can I take it that you didn't anticipate that you'd have to work on it the next day?

A. I think that's probably that's probably true.

MR. COUGHLAN: I think perhaps I'll leave it there for today, Sir, and I'll go into some other matters on Tuesday morning. Oh, I should say I think there is a witness being taken, Ms. Regina Finn, is being taken on Tuesday morning.

CHAIRMAN: Yes, and I think you have made your plans, Mr. Towey. I know it's a fair amount of dislocation for you, you have made your plans with a view to getting in here around midday. Well, we'll aim to take up what I think is now approaching the latter half of your evidence, in any event, on Tuesday afternoon. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL TUESDAY, 13TH MAY,

2003 AT 11AM.