

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. John O'Donnell, SC

Mr. Conleth Bradley, BL.

Mr. Diarmuid Rossa Phelan, BL.

Instructed by Matthew Shaw

Chief State Solicitors Office

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

Mr. Gerry Kelly, SC

Instructed by: Eoin O'Connell

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR REGINA FINN: Garrett Breen

Landwell Solicitors

OFFICIAL REPORTER: Mary McKeon SCOPIST: Ralph Sproxton

I N D E X

Witness: Examination: Question No.:

Regina Finn	Ms. O'Brien	1 - 133
Mr. O'Donnell	134 - 139	
Mr. Breen	140 - 141	
Fintan Towey	Mr. Coughlan	142 - 399

THE TRIBUNAL RESUMED AS FOLLOWS ON TUESDAY,
13TH MAY, 2003 AT 11AM:

MS. O'BRIEN: Ms. Regina Finn, please.

MS. REGINA FINN, HAVING BEEN SWORN, WAS EXAMINED AS
FOLLOWS BY MS. O'BRIEN:

CHAIRMAN: Ms. Finn, thank you very much indeed for
making yourself available from the Channel Islands. I
have every hope that we will be able to deal with your
rather limited involvement in the course of the
morning's sitting.

MS. O'BRIEN: Good morning, Ms. Finn. Thank you very
much.

Ms. Finn, I don't think you have been present for the
of the evidence of any of the other witnesses to the
Tribunal since the commencement of these sittings.
Just for your assistance, I thought I should indicate
to you how I intend to approach your evidence. What I
intend doing initially is opening your Memorandum of
Intended Evidence, which is in a question-and-answer
format, and then proceeding to discuss some of the
matters referred to in your memorandum in a little bit
more detail; and in the course of doing so, I'll open
a very small number of the documents which have been

served on you.

I should say, in the course of opening the memorandum, if there are any matters that you want to clarify or you want to amplify, please feel free to stop me and to do so; is that all right?

A. That's fine.

Q. Now, you were asked I wonder if you have a copy, by the way, of your memorandum with you in the witness-box?

A. I don't have a copy with me at the moment.

Q. We'll just make sure you get one now. And also, for everybody's assistance, the documents I'll be referring to are confined to Books 43 and 44.

A. I have the document now.

Q. Now, you were initially asked for the date on which you joined the Department of Transport, Energy and Communications, the division to which you were assigned, and the person or persons to whom you reported.

You answer that you joined the Department of Transport, Energy and Communications in or around August 1990. You do not remember the precise date and assume that the Department's personnel files will contain this information. You were assigned as a systems analyst to the information technology division reporting to the senior systems analyst, Ms. Deirdre Fallon; is that correct?

A. It is.

Q. You were then asked for precise details of your role or involvement in the second GSM licence negotiations and licencing process from the date in which you joined the Department, to the 16th May 1996.

And you answer that on promotion in 1994 to assistant principal, you were moved to the Telecommunications and Radio and Regulatory Division, where you were assigned to work on broadcasting matters reporting to Mr. Sean McMahon. Early in 199 possibly in or around February or March in a reassignment of responsibilities, you were assigned to work on telecommunications matters, continuing to report to Mr. McMahon. You were moved in the section in place of Mr. Ed O'Callaghan who was simultaneously reassigned to the role that you had occupied in the broadcast section. This assignment took place after the determination and announcement of the ranking in the second GSM licence competition.

A. Correct.

Q. You go on to say that when you assumed this new role, you had no particular job description, and at the time would have had various different matters on your desk. Amongst them was working with a cross-functional team of other officials, including officials from other departments who were already involved in the award of the second GSM licence. Your role in the team was not

consciously defined, however, as can be seen from your answers to the questions below, although a draft of the second GSM licence had already been prepared before your arrival, you became specifically involved in the finalising of the licence text for signature by the Minister?

A. If I could just make a short statement there, just to amplify a little bit on my role at the time. There were a number of areas that I was involved in, including regulation of the market generally, European transpositions, the development of the regulatory regime and independent regulation of the telecoms sector. In the first instance this licence was only one of a quite a number of things on my desk. In the second instance it was the total licence, which I can't remember was 30, 40 pages, with quite a lot of clauses, that I was responsible for coordinating. So one or two clauses were quite a small part of the overall job.

Q. Yes, of course.

Now, at Question 3 you were asked for your understanding of the composition of the Esat Digifone consortium which won the evaluation process and the respective shareholdings of the participant members of the consortium.

And you have informed the Tribunal that you were not involved in assessing the bids for the second GSM

licence and had no sight of the Esat Digifone bid or the information that it contained in relation to the composition of the consortium or the respective shareholdings of the participant members of the consortium. You believe, however, that you would have been aware, particularly as it was in the public domain, that the majority shareholders in the bidding consortium were Telenor and Esat Telecom, with a minority shareholding being held by or for other investors.

A. That's right.

Q. Question 4, you were asked for your knowledge, direct or indirect, of the date on which and the manner in which the Minister or the Department was informed by Mr. O'Brien, Communicorp, Esat Telecom or Esat Digifone or any other person on their behalf, that Communicorp/Esat Telecom did not intend to fund its equity participation in Esat Digifone by drawing on finance to be provided by Advent International but intended to fund its participation by placement through CS First Boston, including details of the precise information provided to the Minister or the Department, and you were asked to identify where such information was recorded.

And you answer that you were not aware at the time that there was issue regarding Advent funding versus First Boston funding. The Tribunal has sent you a

series of letters post the 4th May 1996 which deal with the ownership, financial strength of the parties in the consortium. These letters were sent to Mr. Martin Brennan, and you had not seen them before you prepared your statement.

In summary, therefore, as you were not even aware of the issue, you cannot assist to any degree with the question?

A. Correct.

Q. Question 5, you were asked for the date on which and circumstances in which you first became aware of the involvement of IIU Limited or Mr. Dermot Desmond in the Esat Digifone consortium and for your understanding as to the precise nature of the involvement of IIU at that time, and the source of such knowledge or understanding.

You answer that you cannot recall the precise date or circumstances in which you became aware of the involvement of IIU Limited or Mr. Dermot Desmond in the Esat Digifone consortium. You state that it would appear from the file documentation that by the 16th April 1996, you were aware of the involvement of both IIU Limited and Mr. Desmond, and sought clarification of the overall ownership structure of Esat Digifone Limited; and you have referred to documents, and the referencing to those documents, I think, was references that the Tribunal had adopted at the time

those documents were initially furnished to you?

A. That's right.

Q. I think what you are referring to is a fax of the 16th April which you sent to Mr. Brennan and Mr. Towey, and possibly also the contents of a letter of the 17th April which you received from Mr. O'Connell?

A. That's correct.

Q. You state further, primary in your mind was the need to ensure the precise and correct drafting of the provisions of the licence that related to ownership and the granting of the licence.

And you see the action points you refer to the action points arising from a meeting on the 12th April as set out in memorandum of that date?

A. That was I think that particular meeting, there is an action point at which I was to deal with the issue of the ownership and identify the precise names of who was involved. And you'll see I think it's ringed on the document that it was "check these names" was an action point.

Q. We'll refer to that document briefly when we are discussing it further.

You continue by stating that you do not recall your exact level of knowledge on the issue at that time.

You assume from the documentation that, having requested clarification on the ownership structure before issuing the licence, you were at least aware of

the time of the information mentioned in the documents now furnished to you. Thus the documents on page number and you give the number along with the letter from Owen O'Connell dated 17th April 1996, comprises the information you had available to you on the involvement of IIU on the 16th and 17th April 1996 respectively.

You state that in summary that documentation showed that the shareholding in Esat Digifone was 37.5%, Telenor Invest AS; 37.5% Esat Telecommunications Holdings Limited, and 25% IIU Nominees Limited. You state that the associated documentation indicated that IIU was "a Dermot Desmond company".

A. That's right.

Q. Question 6, you were asked for your knowledge, direct or indirect, of any dealings between Communicorp/Esat Telecom, Telenor and IIU Limited, Mr. Dermot Desmond, regarding their respective liabilities to subscribe for the capital of Esat Digifone Limited.

And you state that you do not recall any information relating to dealings between Communicorp/Esat Telecom, Telenor and IIU Limited/Mr. Dermot Desmond regarding their respective liabilities to subscribe for the capital of Esat Digifone Limited other than the information in the documents referred to above in your response to Point 5.

A. That's right.

Q. Then you were asked, at 7 and 8, to which you furnished a composite answer; at 7, details of all dealings which you had or to your knowledge, direct or indirect, any other official had with the Minister from October 1995 to May 1996 regarding the licence negotiations or the issue of the licence, including all dealings which led to Mr. Martin Brennan's statement in a memorandum dated 21st March 1996, addressed to Ms. Finn, that the Minister had directed that a licence should issue to Esat Digifone Limited by the following Tuesday.

And then at Question 8 you were asked for your knowledge, direct or indirect, and your understanding of all matters, including representations from whatsoever source, considerations or objectives which had prompted or contributed to the Minister's intervention and direction as referred to in the memorandum of the 21st March 1996.

And your answer, composite answer to both those questions, was that you do not recall having any direct dealings with the Minister from October 1995 to May 1996 regarding the licence. You presume that during this period, the Minister had ongoing dealings with senior officials of the Department on this and a range of matters, but you do not recall details of any such dealings or any involvement by you at all. You state that it is clear from the file note dated 21st

March 1996 and again you give the file reference that the Tribunal had adopted at the time that you were informed during a telephone conversation that Martin Brennan or the Secretary, Mr. John Loughrey, had had discussions with the Minister on this issue.

You do not believe that you received any details of the discussions other than those recorded in the note, and you go on to state that you do not recall having any knowledge at that time of or being informed of any matters that prompted the direction by the Minister to issue the licence by the following Tuesday. Is that correct?

A. That is.

Q. Then again, Questions 9 and 10, you have dealt with by way of composite answer. Question 9, you were asked for all dealings which you had or which to your knowledge, direct or indirect, any other person had with the Minister, with the Taoiseach, with the Tanaiste or with any other member of the Government, politician, official or person which led to the reference in notes of a meeting dated 12th April 1996, that pressure towards a final licence to Esat Digifone was then very strong from a number of quarters, including political pressure from the Taoiseach, the Tanaiste and the Minister.

And at Question 10 you were asked for the precise pressure to which you or which to your knowledge,

direct or indirect, any other departmental official

was subject to in April 1996.

And your answer to both those questions was that other

than the information you received in the telephone

call referred to above that's the telephone call on

the 21st March?

A. That's right.

Q. You do not recall any other dealings that prompted the

reference in the notes of the meeting dated 12th April

1996, the pressure to award the licence was very

strong from the Taoiseach, Tanaiste and the Minister.

However, it would appear from the note of a telephone

conversation between Mr. McMahon and the parliamentary

draftsman, and Attorney General's Office which appears

to be dated in or around 19th February 1996, which was

supplied to you by the Tribunal on the 22nd August

2002, that in advance of the meeting on the 12th

April, the Minister, before 13th February, had

communicated an "instruction that the issue of a draft

licence to Esat Digifone was to be expedited".

Your handwriting appears in the top right-hand corner

of the document, and so you believe you may have seen

the document, although you do not recall it, and

therefore you may have been made aware in this way of

the pressure from the Minister at that time.

You go on to state that you believe that the reference

to the Secretary's commitment that the matter would be

expedited arose from a meeting on the 11th April 1996, the record of which is set out in the pages you have referenced. You say that the record shows that it was a general conclusion of that meeting that the progression of the licence award process could happen "speedily". You believe that the reference to the pressure arising from the fact that Esat Digifone wished to draw down funds may have been prompted by sentiments expressed by Esat representatives at the meeting on the 12th April 1996, along with the correspondence from Esat dated 3rd April 1996. And you finally state that you cannot recall any other dealings prompting this reference.

A. That's correct.

Q. Now, again, you have provided a composite answer to Questions 11, 12 and 13. And in question 11, you were asked for the date on which, circumstances in which and person by whom you were first informed or made aware that 25% of the shares in Esat Digifone Limited had been issued to IIU Nominees Limited.

Question 12, you were asked for your understanding of the contents of a letter dated 17th April 1996 from Mr. Owen O'Connell from William Fry Solicitors for Esat Digifone, addressed to you, and in particular, your understanding at that time as to the identity of the beneficial owners of the shares held by IIU Nominees Limited and the extent, if any, to which the

then proposed configuration of the capital of Esat Digifone Limited differed to the intended capital configuration as disclosed to the Department in the Esat Digifone application.

And Question 13, you were asked for the date on which and circumstances in which you first became aware that the shareholding of Esat Digifone Limited held by IIU was to be held beneficially for Mr. Dermot Desmond.

And your answer to those three questions was as follows: You state that you do not remember having any knowledge of the detailed shareholding of Esat Digifone, including the percentage of the shares of Esat Digifone Limited held by IIU Nominees Limited, other than that indicated by the documentation. I think there you mean your fax of the 16th April and the letter of the 17th April.

A. That's right.

Q. You state that it would appear from those documents that you requested clarification on the ownership structure from Owen O'Connell in a telephone conversation on the 16th April 1996. You do not recall this conversation, but Mr. O'Connell refers to it in his letter of the 17th April 1996. You take the view that this call probably took place.

You state that Mr. O'Connell provided information on the ownership structure of Esat Digifone Limited in his letter dated 17th April 1996. That letter did

specify the identity of beneficial owners of the shares held by IIU Nominees Limited. The document I think the document of the 16th April indicated that IIU was "a Dermot Desmond company".

A. Mm-hmm.

Q. You state further that as stated in response to question 3 above, you were not involved in assessing the bids for the second GSM licence, having only been involved after the ranking was announced. You had no sight of the Esat Digifone bid so as to know exactly what information it contained in relation to the composition of the consortium or the respective shareholdings of the participant members of the consortium. Therefore, it seems that any knowledge you had at the time as to the extent, if any, to which the then proposed configuration of the capital of Esat Digifone Limited differed to the intended capital configuration as disclosed to the Department in the Esat Digifone application was restricted to the information in Mr. O'Connell's letter of the 17th April 1996. In fact, you were not conscious that there may have been any significant difference between the configuration of the capital of Esat Digifone Limited involved in the bid and its configuration upon signing the licence. You were seeking the clarification solely to ensure that the text of the licence would be drafted correctly. You do not recall

the date on which you first became aware that the shareholding of Esat Digifone Limited held by IIU was to be held beneficially for Mr. Dermot Desmond. Is that correct?

A. That's right.

Q. Then at Question 14 you were asked for details of all previous dealings which you had, in both your personal capacity and professional capacity, with Mr. Michael Walsh and with Mr. Dermot Desmond.

I think you have informed the Tribunal that you do not remember ever having any dealings with Mr. Michael Walsh and Mr. Dermot Desmond, although you refer to your response to the following question, Question 15.

Then, Question 15, you were asked for your knowledge, direct or indirect, of a meeting which took place at the Department on the 3rd May 1996 attended by Mr. Knut Digerud, Mr. Arve Johansen, Mr. Peter O'Donoghue, Mr. Michael Walsh, Mr. Paul Connolly, and Mr. Owen O'Connell. And including the following:

1. The identity of all officials who attended the meeting.
2. The purpose for which the meeting was held;
3. The matters discussed;
4. The queries or issues raised by the Department;
5. The requirements of the Department;
6. The request made by the Department to Telenor to underwrite the entire of the equity and operational

expenses of Esat Digifone and the reason or reasons for such request. And in each instance you were asked to also indicate the source or sources of your knowledge of such a meeting.

You have informed the Tribunal that you note the file note of attendance of Mr. Owen O'Connell, solicitor, of William Fry, of a meeting at the Department on the 3rd May 1996, in Schedule 2 of the Tribunal's correspondence to you, and you note that your name is included on the first page of that note. You have informed the Tribunal that you have no recollection of the meeting or of being present at such a meeting.

You further state that if you were at such a meeting, it is likely that you would have prepared a note yourself regarding the portion of the meeting that was relevant to your role. You state that if such a note exists, you have asked the Tribunal to forward it to you to assist your recollection. In addition, you have informed the Tribunal that it would be normal that if a senior member of the Department attended such a meeting, a Department note would be made of the meeting; and if so, you again requested that the note be forwarded to you in order to assist your recollection. And you finally state that in the absence of such notes, you cannot recall ever attending such a meeting.

A. That's right.

Q. I can just confirm to you, Ms. Finn, that the Tribunal did take this matter up with the Department, both in relation to this meeting of the 3rd May and indeed a number of subsequent meetings later in May, and has been informed that there are no notes at all of any of these meetings in the Department files.

Now, Questions 16 and 17 you have also dealt with by way of composite answer. At 16 (a) you were asked for your understanding of the extent to which the composition of the Esat Digifone Limited diverged from the composition of the Esat Digifone consortium, and in particular, by reason of the substitution of Mr. Dermot Desmond as the holder of 20% of the shares in Esat Digifone for the institutional investors who it was intended and/or proposed would subscribe for those shares; and

(b) whether, and if so to what extent, consideration was given to the change in the composition of the consortium and the outcome of such consideration, if any.

And at Question 17, details of all dealings and discussions which you had or which to your knowledge, direct or indirect, any other departmental official had with the Minister, with Mr. John Loughrey, with Mr. Martin Brennan, or with any other person arising from the involvement of Mr. Dermot Desmond in Esat Digifone Limited.

And your answer to both those questions was to refer to your response to Questions 3 and 11 to 13 above. You do not recall being party to any consideration of issues arising from the involvement of Mr. Dermot Desmond in Esat Digifone Limited, and as mentioned at 11 to 13 above, the divergence of composition of Esat Digifone Limited was not an issue for you at the time. Now, Question 18, you were asked for your knowledge, direct or indirect, of the request/requirement of the Minister or the Department of the configuration of issued share capital of Esat Digifone should be restored to the capital configuration of the consortium which had applied for the licence that is, restored to 40:40:20 and in particular,

1. All matters or considerations which prompted or contributed to such request or requirement,
2. The identity of all officials who had an input or involvement in the decision to make such request or requirement.
3. The input of the Minister in the decision to make such request or requirement.

You have informed the Tribunal that you do not recall a request or requirement of Minister of the Department that the configuration of issued share capital of Esat Digifone should be restored to the capital configuration of the consortium which had applied for the licence; is that correct?

A. That's right.

Q. Then Questions 19, 20, and 21 you have again dealt with by way of a composite answer.

Question 19, you were asked for your knowledge, direct or indirect, of a meeting which took place at the Department on the 13th May 1996 I am not going to read the entire of it, because what you in fact tell the Tribunal is that you had no knowledge of that meeting and that you didn't attend it.

At Question 20 you were asked again for knowledge that you had of certain steps that might have been taken on foot of what occurred at the meeting on the 13th May.

And at Question 21, again you were asked for your knowledge of discussions or contacts which might have occurred or been contemplated as a result of what occurred at that meeting.

And your answer to all of that is that you had no involvement at the meeting of the 13th May 1996, and you do not recall any knowledge of dealings between the Department, the Minister and Esat Digifone in relation to the identification of key questions and draft answers, including dealings on the 14th, 15th and 16th May 1995, as identified in the schedule.

Then at Question 22, you were asked for all steps taken by the Department, whether alone or in conjunction with the Department of Finance, to satisfy itself as to the financial capability of Esat Digifone

Limited prior to the issue of the licence; in particular, details of specific conditions incorporated into the licence to meet the qualifications and reservations expressed by Andersen Consulting in the evaluation report.

And you have informed the Tribunal that there were three issues dealt with in this particular question, as follows:

1. The issue as to whether you were aware of steps taken by the Department, whether alone or in conjunction with the Department of Finance, to satisfy itself as to the financial capability of Esat Digifone Limited prior to the issue of the licence.

You state that you do not recall that you were aware of the specific steps taken by the Department or the Department of Finance to satisfy themselves as to the financial capability of Esat Digifone. You believe, based on the documentation provided to you, that this was addressed by those who had been involved in the original evaluation, to which you were not a party.

In particular, the analysis that resulted in the memorandum from Mr. Donal Buggy to Mr. John Loughrey on the 15th May 1996 appears to address this issue.

A. Correct.

Q. 2. Whether you were aware of the reservations expressed by Andersen Consulting in the evaluation report.

And you state that as far as you remember, the evaluation report prepared by Andersen Consulting was kept in the Telecommunications Development Division files. You worked in the Telecommunications Regulatory Division, and the document was generally treated as a confidential document. You do not remember having access to a copy of the report so as to be informed of the reservations expressed in it?

A. That's right.

Q. And thirdly, whether in drafting the relevant provisions of the licence, did you or the other involved incorporate any specific conditions into the licence to meet the concerns of Andersen Consulting or any concerns as to the financial capability of Esat Digifone.

And you have informed the Tribunal that you cannot answer this third aspect of the question without seeing all documentation relevant to the drafting of these specific conditions.

You were then asked a series of questions, Ms. Finn, about matters which were of interest to the Tribunal but which, from your answers, it is clear that you had no involvement or knowledge, and that you were not in a position to assist the Tribunal in its inquiries.

So I'll just ask you to move directly on to the final question in your memorandum, Question 34, on page 18.

You were asked for details of all dealings which you

had with the Minister in connection with the affairs of Esat Telecom Limited, of any associated company or of Mr. Denis O'Brien.

You have informed the Tribunal that you do not recall any details of direct dealings with the Minister in connection with the affairs of Esat Telecom Limited, any associated company, or of Mr. Denis O'Brien. You believe that any dealings that you may have had arose in the normal execution of your functions in the Department and are as recorded in the files.

A. That's right.

Q. Now, Ms. Finn, it appears from your memorandum you initially joined the Department in 1990. In 1994, you were promoted to Assistant Principal, and you were assigned to the Regulatory Division, reporting to Mr. Sean McMahon, in 1994; is that right?

A. Yes.

Q. But at that time the job that you held was on the radio or the broadcasting side rather than on the telecommunications side?

A. That's right.

Q. And you had no involvement whatsoever in the actual evaluative process which led to the result of the competition, which was announced in October of 1995; isn't that right?

A. That's correct.

Q. I think you have informed the Tribunal that it wasn't

until February or March of 1996 that on a reorganisation within the Regulatory Division, you were reassigned and you took up, if you like, the function that Mr. Ed O'Callaghan had previously discharged?

A. That's right, yes.

Q. I think Mr. O'Callaghan swapped with you, and he went to the broadcasting side?

A. Yes.

Q. I think from your memorandum it appears from then on, as you said yourself, you were involved in a number of different tasks and there were a series of matters on your desk, but one of those was in relation to the drafting of specific articles in the licence that was ultimately granted to Esat Digifone on the 16th May 1995?

A. I would say on my desk was the role of coordinating the drafting, rather than doing the drafting. There were quite a number of parties involved, and I was involved, indicating views and ensuring the coordination and finalisation of the text.

Q. And as I said, you were, if you like, you joined a team, which was both an interdivisional team and an interdepartmental team, that ultimately led to the grant of the licence?

A. That's right.

Q. And I think, just from the documents, it appears that

you would have worked with or you may have liaised with Mr. Towey, Mr. Fintan Towey, Mr. Martin Brennan, Mr. Sean McMahon, who you continued to report to as your immediate superior?

A. That's right.

Q. And it appears that while you may not have had contact with them, that Mr. Buggy, Mr. Loughrey and perhaps Mr. Fitzgerald also played some role in the time of your involvement?

A. They continued to have responsibility in the overall structure of the Department for the final decisions, yes.

Q. Now, can I refer you, Ms. Finn, just to Book 43, Divider 168, which is just the note of the a note to file, I think, prepared by you on the 21st March.

It records a telephone conversation which you had with Mr. Martin Brennan, presumably, on that date?

A. I am sorry, could you repeat the number of the tab, please?

Q. Yes, of course. It's Book 43, Tab 68.

A. Yes, I have that.

Q. You record Mr. Martin Brennan, Development Division, rang this office today, Thursday 21. He was with the Minister and the Secretary at the Telecommunications Council, and the matter of the GSM licence was raised.

The Minister directed that a final licence issue to Esat Digifone by Tuesday next at the latest.

Following discussion, the Secretary agreed that instead of this, a draft version of the licence would be made available to Esat by Friday, 22nd (tomorrow).

Mr. Brennan was communicating the Secretary's instruction in this regard.

"In discussions with the Attorney General's Office, that office still advises against sending any copy to Esat before it has been cleared by the AG. However, in order to comply with the direction received, a copy of the draft licence will be sent out with a cover sheet containing a caveat similar to that which accompanied previous drafts. The AG's office has reluctantly agreed to this course of action."

Can I just take it, as regards that note to file, the information contained in the first paragraph which you were recorded, that was based solely on information conveyed to you by Mr. Brennan?

A. That's correct. It looks to me like a direct transcript of a conversation with him.

Q. I take it that when you sent out the licence the following day, you would have brought that matter to the attention of Mr. McMahon as well?

A. Absolutely.

Q. Now, in your memorandum that you furnished to the Tribunal, you just dealt with this in your reply to Questions 7 and 8, which are on page 5 of the memorandum. And just in the last paragraph of your

reply, you say that you do not recall having any knowledge at that time of, or being informed of any matters that prompted the direction by the Minister to issue the licence by the following Tuesday. And again it's probably just a matter of semantics, but I take it you can confirm that subsequent to that, you didn't have any knowledge of the matters that might have prompted the Minister to furnish that direction, or you weren't informed in any way of what those considerations might have been?

A. I certainly don't recall that, no, having any additional information.

Q. Now, could I just ask to go to Divider 181 of the same book, Ms. Finn, and that's the record of the meeting of the 12th April, which you also referred to in your memorandum.

A. Yes.

Q. And that was a meeting on Friday, 12th April; and can I just ask you first of all, from looking at the document, do you think that that was a document that was prepared by you? You'll see that it says at the top rather strangely, I suppose "NB, this is not the official report of this meeting merely a side note of certain points raised".

A. I believe that the document was prepared by me, and I believe that heading at the top referred to the fact that I was taking a note of those issues which had

relevance to my role as opposed to potential other issues that may have been discussed at that meeting.

Q. I see. And you recorded there the attendances, and on the Esat side was Mr. Digerud, Mr. O'Donoghue and Mr. O'Connell, and on the Department side was Mr. McQuaid from the technical division; Ms. Norma O'Sullivan, also from the technical division; yourself on the regulatory side; and then Mr. Fintan Towey and Mr. O'Conghaile from the Development Division.

Can you just recall that, because I suppose we are not used to seeing Mr. McQuaid, as Principal Officer, attend meetings with Esat Telecom at the time, can you recall who might have, if you like, led for the Department in the course of that meeting, or who might have chaired the meeting?

A. I can't recall if there was a formal agreement among the people who was chairing it or leading it. So I am afraid, seven years ago, I can't really recall; sorry.

Q. Now, we can see that I suppose the focus of that meeting appears to have been in relation to, firstly, Article 8, and that was certainly the focus of your interest in the meeting, would have been Article 8. And Article 8, as you saw it, and again I think you can confirm to me, that was the article in the licence which fixed issues of ownership from the date on which the licence issued?

A. I think that's correct.

Q. And I think Mr. O'Connell was anxious that Article 8 be finalised so that the consortium could go ahead and make its financing arrangements?

A. I believe Mr. O'Connell was concerned that the licence in its entirety would be finalised, and there were some specific comments on that particular article.

Q. And I think there you have noted that the Department clarified that the objective of the draft article was firstly to ensure Ministerial control over the identity of the licensee, and secondly, to ensure that the licensee fulfilled all obligations placed on it as to the provision of an independent service and an independent network.

A. I see that.

Q. And I think Mr. O'Connell provided a suggested revised draft?

A. Yes, that's what's recorded.

Q. Then on the second page, I think you have recorded the other concerns about the licence, and I don't think I need to open these. These may have arisen from a letter of the 3rd April, which had been received by Esat Digifone, in which they were effectively complaining about the impact of the delay in the issue of the licence on their own funding arrangements. And I think there had been some suggestion that there was it was being imposed on them as a matter of commercial duress, and there was a possibility, if the

licence was issued, it might be subject to revision or renegotiation after the actual issue date; isn't that right?

A. I think that's right, from looking at the documentation.

Q. I think those matters were pretty well resolved, both at this meeting and I think at a previous meeting with Mr. Loughrey?

A. Yes, I think that's right.

Q. Now, can I just ask you to refer to the third page of that report, under the subheading "Comments".

A. Yes.

Q. And it records "Pressure to award a final licence to Esat Digifone is now very strong from a number of quarters, including:

political pressure from the Taoiseach, Tanaiste and the Minister

the Secretary's commitment to Mr. Denis O'Brien that the matter would be expedited

Esat themselves, who want to draw down funds immediately on the strength of the licence."

Now, can you recall, Ms. Finn, whether, in making that note, and the note that you made at the first bullet point, that there was political pressure from the Taoiseach, Tanaiste and the Minister, were you recording what somebody stated in the course of that meeting?

A. I have tried to recall the source of this, and as I said in the memorandum, I can't recall whether there was a specific discussion of this at the meeting or a statement of it at the meeting. I have recorded where I believe there are other references to the pressure from the Minister, including in my memorandum of the 21st, and the Secretary's statement and the fact that he said Digifone wanted to draw down funds, they are all kind of on the record, and I have been able to locate those. I can't recall what prompted the particular reference to the Taoiseach or the Tanaiste.

Whether it was some discussion at that meeting or some prior discussion, I have tried to remember, and I am afraid I can't.

Q. Clearly, insofar as you have recorded it in that note, it was on the basis of an impression that you had at the time?

A. I recorded there what I saw as the situation we were dealing with, yes.

Q. So it was either as you say, you don't know whether it was stated at the meeting; but if it wasn't stated at the meeting, then the source of your impression must have been gleaned elsewhere?

A. Absolutely, either it was at the meeting or elsewhere. I am afraid I can't recall.

Q. It would have been elsewhere within the Department, either from something, presumably, that somebody else

said to you, or from access to the documents that you have referred to in your memorandum, or perhaps from discussions with I don't know, Mr. McMahon, or other of the departmental officials who you were dealing with at the time; wouldn't that be fair to say?

A. Well, clearly it was relevant to the work I was doing, so they are all potential sources. I can't, you know, identify where it might have come from apart from those sources.

Q. Right. And then if I just take you on to the fourth page, you have, under the heading "Actions Arising From the Meeting" and there are just the matters that you were going to attend to; at 3, "Consider text for security article". That's, I presume, the article in the licence dealing with the creation of security over the assets of Esat Digifone, was it?

A. I am not sure. It's not very clear. I think it might be to do with interception of messages on telecommunications networks rather than security over assets.

Q. I see. My assumption was completely wrong?

A. It may be national security issues, if I can call it that.

Q. I see.

"4. Have a security article processed by parliamentary draftsman and included in legal analysis." Again,

that was something you were attending to.

"5. Consider E. O'Connell's Draft Article 8 and seek drafting by PD" presumably that's "Parliamentary Draftsman" "including a redraft in legal analysis.

"5. Amend draft licence."

Again, that was something that you were going to deal with?

A. That's right. And the second bullet point there talks about the names of the companies that were involved, and the mark on it, the handwriting on it, was noting that had to be checked; and I think that handwriting was Mr. McMahon, who was my boss at the time.

Q. In fact I think we can see, from a manuscript entry on the very first page of that report, that Mr. McMahon clearly saw the report, and he appears to have noted Ms. Finn, or sent a note to you, Ms. Finn, noted as discussed.

A. Yes, because any issues to do with this, particularly as I was new in the area, were obviously handled through him as my direct superior.

Q. Yes.

Now, if I can refer you on, then, to your fax of the 16th April which you sent to Mr. Brennan and Mr. Towey in relation to the capital configuration of Esat Digifone. That's at Divider 183 of the same book that we are dealing with at the moment.

A. Yes.

Q. It's on the overhead screen at the moment.

We can see that that's a facsimile transmission to Martin Brennan and Fintan Towey, and of course they were in Kildare Street at the time, weren't they?

A. Yes.

Q. And you were in Ely Place, so you would have had to communicate with them by fax?

A. Yes.

Q. From Regina Finn, and the date is the 16th April 1996, and the comment reads "Martin, Fintan, attached is the latest information to come to light about the shareholdings in Esat Digifone. Owen O'Connell is to provide further detail in writing. You may wish to pursue further." Signed "Regina".

A. That's right.

Q. I think Mr. McMahon, in his evidence, also believed that you wouldn't you wouldn't have faxed it to him, because he was in the same building; that you would have put this document on his desk also?

A. I certainly would have passed this document to Sean McMahon, because, as I say, he was down the corridor in the same building.

Q. Then on the next page is the, if you like, the contents of the fax, and contains the information that had been conveyed to you by Mr. O'Connell, and you set out that information initially in a diagrammatic form and then below the document, you set it out in the

text.

A. That's right.

Q. Can I just ask you this before looking at the detail of what's in the information. By anybody's standards, this was a lot of information you were getting on quite a complex issue; and I wonder, do you recall how that information was conveyed to you by Mr. O'Connell?

A. Well, from reading the documents, I gather and I am sure Mr. O'Connell is right that it was in a telephone conversation. So this was effectively my note of that telephone conversation. The fact that it was to be followed with a letter indicates to me that I suggested it might be a good idea for him to put it in writing, because it was quite complex, and I am not sure whether it was all accurately down in that note, so it was worthwhile verifying it.

Q. So in the course of the call, which would have been a lengthy call, I suppose, you would have taken handwritten notes and then you would have prepared this graphic and this text and circulated it to the people you were involved with in the interfunctional team?

A. That would have been the normal process, yeah, and this would have been the record of it.

Q. Now, if we just look at the graphic first, I think in the middle, on the foot of the page, you have "Esat Digifone Limited", and you have arrows coming towards

Esat Digifone Limited showing the shareholding in the licence company.

A. That's right.

Q. On the left-hand side, I think you show Telenor Invest as holding 37.5%.

A. Yes, that's right.

Q. And then in the middle, just above that arrow, you show Esat Telecom Holdings Limited as holding 37.5%?

A. Yes.

Q. And on the right-hand, with the arrow going into the "Esat Digifone" box, you have 20% plus 5%, and I presume that little "up" mark is an increasing by 5%?

A. That's actually just to reference the footnote underneath it, I think; that's all.

Q. A right to acquire 5%. And you have above that "IIU/Dermot Desmond", and I think feeding into that you have institutional investors.

A. That's right.

Q. And then just above "Esat Telecom Holdings Limited" you have the various shareholdings in that company, and just from left to right you show miscellaneous at 12%, Advent at 31%, Denis O'Brien at 57% and American investors at 2%.

A. Yes. I think that's a question mark, percentage.

Q. I see.

A. I think it was unclear quite what the percentage would be.

Q. And then you have, as you say, two notes referenced from that graphic at the foot of it, and the first is "Current flotation by First Boston Bank, eventual percentage shareholding, unknown". And would that be a reference to the American investors in Esat Telecom, do you think?

A. Yes. I think that was referencing it's the footnote to the bubble that says "American Investors", and question mark, which implies that there was to be a flotation of some sort of shares in Esat Telecom Holdings, and the percentage that that would affect was unclear.

Q. Then the little "up" symbol by the 20%, there is 5%. The note for that is "IIU right to acquire 5% via the 12% held by Miscellaneous category in Esat Telecom Holdings there. You have a question mark there?

A. Yes. That's probably because I was unsure as to whether I had that completely accurate or not.

Q. Then the text read "Owen O'Connell, William Fry Solicitors, provided the following information on behalf of Esat Digifone Limited. At present, Communicorp is the vehicle whereby Denis O'Brien holds shares in Esat Digifone. Communicorp also has ownership of Esat Telecom and the radio interests of Denis O'Brien. The objective is to uncouple the telecommunications and the radio elements of Communicorp because they are incompatible from the

point of view of investors. With this in mind, Communicorp will retain the radio interests and slide out of the current picture in relation to telecommunications."

Under the heading "Esat Telecommunications Holdings Limited has been incorporated to take over the telecommunications interests of Communicorp.

Ownership comprises

"Denis O'Brien, 57%

"Advent, 31%

"Miscellaneous, 12%, made up of Denis O'Brien, 6%, and employees of Esat, 6%.

"A flotation is currently underway by First Boston Bank which involves the placing of shares in Esat Telecommunications Holdings limited. It is not yet known what percentage of that company will finally be owned by American investors."

Then you have "Esat Telecommunications Holdings in turn owns Esat Telecommunications Limited, 100%, and Esat Digifone Limited, 37.5%.

Then below that, you have Telenor Invest AS owns 37.5% of Esat Digifone Limited.

"IIU (a Dermot Desmond company) currently holds 20% of Esat Digifone, which it intends placing with institutional investors. It also has the right to acquire a further 5% (by means of the 12% of Esat Telecom Holdings Limited, which is held by

miscellaneous?)" And you have a question mark there, I suppose signifying you weren't absolutely sure, based on the basis of the information Mr. O'Connell gave you over the telephone, whether that was accurate?

A. That's right.

Q. Then "Owen Connell is to provide further information in writing, including deadlines for this change in ownership."

A. Yes.

Q. I presume or am I correct in taking it that it was at your request that Mr. O'Connell agreed to provide all of this information in writing?

A. Well, I can't recall, but it would seem to be the logical next step, given that, as you say, it was quite a lot of information over the telephone.

Q. You were really being given two categories of information here, weren't you? You were being given information as to how Communicorp intended to restructure its interest by hiving off its telecommunications interest in a new company, and you were also being given information about the share structure within Esat Digifone itself?

A. That's true, yeah.

CHAIRMAN: Without being patronising, it's a formidably lucid exposition of quite a complex basis on the strength of a telephone conversation, and added

to the diagramme, it's very helpful.

A. Well, thank you for that.

Q. MS. O'BRIEN: You faxed that to Mr. Brennan and Mr. Towey on the 16th April?

A. Yes.

Q. And we know that you gave it to Mr. McMahon; Mr. McMahon saw it as well?

A. I am sure I did.

Q. Do you recall whether, before you received the letter of the 17th April, you received any feedback from Mr. Brennan or Mr. Towey or Mr. McMahon or indeed, anybody else in relation to this information?

A. I don't recall, I am afraid. I mean, obviously I did communicate it to them. The letter came in fairly hot on the heels of the fax, so there was a small space there. I am not sure whether there was any discussion of it. I can't really remember.

Q. All right. Well, then, if we just turn over the page, you will find the letter of the 17th April from Mr. O'Connell, addressed to you.

A. I have that, yes.

Q. And I am not going to open it all, because I suppose the significant part, from the Tribunal's point of view, is the first portion of it, under the heading "Esat Digifone"

it reads: "Dear Regina,

"I refer to our telephone conversation of yesterday

regarding the ownership of Esat Digifone Limited and of Esat Telecommunications Holdings Limited. The position is as follows:

"There are 3,000,000 ordinary shares of i£½1 each in issue in this company. They are held as to 1,125,000 shares by each of Esat Telecommunications Holdings Limited and Telenor Invest AS, and as to 750,000 shares by IIU Nominees Limited.

"It is intended that by the time notification is received from you that the second GSM licence is available for issue, the issued share capital will have increased by i£½15 million to i£½18 million (all comprising shares of IRi£½1 each) held as to 6,750,000 by each of Esat Telecommunications Holdings Limited and Telenor Invest AS, and as to 4,500,000 by IIU Nominees Limited.

"The 25% of Esat Digifone Limited held by IIU Nominees Limited effectively represents the institutional and investor shareholding referred to in Esat Digifone's bid for the licence. You will recall that this referred to an immediate institutional investor holding of 20%, with a further 12%, in short- and medium-term stages, of the anticipated 12%, 5% has been pre-placed with IIU Nominees Limited. It is understood that most or all of the shares held by IIU Nominees Limited will in due course be disposed of by it, probably to private and institutional investors."

Now, can I just ask you there, you will see that there are a number of handwritten annotations on the first page of that letter. And I think Mr. McMahon felt they might have been your handwriting.

A. The figures, 37.5 it looks like my handwriting, yes.

Q. You just worked out what the percentage shareholding was going to be based on the anticipated gross shareholding in each instance?

A. That's right; I did the mental maths.

Q. I think for Esat and Telenor you had 37.5% in the first paragraph, and below the reference to 750,000 shares held by IIU Nominees Limited you had 25%, and then in the second paragraph, which detailed the increase in shareholding following the increased issued share capital in the company, again I think you have a line coming down from Telenor referencing 37.5, and just below the 4,500,000, which would be the increased shareholding of IIU Limited, you have 25%?

A. That's right.

Q. Now, just on the top right-hand side of the first page of the letter, under the date the 17th April, is that also your handwriting?

A. I don't think so. It doesn't look like my handwriting.

Q. I think it could be a reference to Fintan Towey, with perhaps a date below it, the 18/4/96.

A. It could be. It's a very poor copy that I have, I'm afraid.

Q. It's a very poor copy I have as well.

A. The last two words do look like Mr. Towey, you are right, yes.

Q. Now, do you recall, when you received that letter, would you have faxed it to Mr. Brennan and Mr. Towey, as you did the information that you received on the 16th?

A. It's very likely that I would have. I would expect that I would have, yes.

Q. And presumably you would also have brought it to Mr. McMahon?

A. Certainly, yes.

Q. Now, we know from his evidence that this letter, in fact, was also furnished to Mr. Loughrey. Would you have been aware that that letter had been furnished to Mr. Loughrey?

A. I am not sure. From the fax that I sent originally, I noted that Fintan and Martin might want to pursue it, because they obviously knew more about that issue than I did. So how they would have pursued it and whether they would have brought to Mr. Loughrey's attention or whether Sean McMahon might have asked me to send it up to Mr. Loughrey, I am not sure. I would have expected it would have been brought to his attention, yes.

Q. I appreciate at the time that your focus would have

been entirely different from Mr. Brennan, Mr. Towey and Mr. McMahon, and also you would have had none of the familiarity that they had with the information which had been furnished both in the application by the Esat Digifone consortium and also information provided during the course of the evaluation process; but do you recall at all whether you were conscious of the impact that this information had on the other members, if you like, of your interfunctional team?

A. In terms of the impact that it had on them, I think that having sent the information over, and being unaware of you know, the magnitude or otherwise of it, I don't think I would have had a particular awareness of how it was being dealt with by the team in the other building, obviously, because they were in a different building.

Q. Would you have been aware or would it have been relayed to you that this was being seen by and being perceived by the Department as being significant new information which was coming to light?

A. I don't recall having that information passed to me or perceiving it in that light.

Q. Now, I think you then attended, on the 22nd April, a meeting with Mr. Towey and officials from the Office of the Attorney General. And you'll find a record of that, Ms. Finn, at Divider 192 in the same book. It's a note of the meeting.

A. Yes, I have that.

Q. That appears that note appears to have been prepared by Mr. Towey and dated the 24th, and we'll see from the foot of the document, on the second page, that it was copied to Mr. Brennan, Mr. McMahon, and to yourself?

A. That's right.

Q. Now, this was a meeting that you attended with Mr. McFadden and Mr. Gormley, and obviously with Mr. Towey, and Mr. L. Bacon at the Office of the Attorney General on the 22nd April, and there were two technical matters that were the primary purpose of that meeting. That was the disclosure of information to the unsuccessful applicants, and also the transposition of Directive 96/2 and its impact on the award of the GSM licence. And I don't think I need to refer you to that.

But if you just go over the page to paragraph 5, you'll see that it's recorded "The Department also gave to the Office of the Attorney General a copy of an extract from Esat Digifone's application outlining the ownership of the company together with an internal departmental document and a letter from William Fry & Company, Solicitors, concerning restructuring of the Esat element. The Department indicated that clarification would be necessary of any change in the ownership structure of Esat Digifone relative to that

outlined in the application."

A. Yes.

Q. You will see that that paragraph records that what the Attorney General's officials were furnished with was an extract from Esat Digifone's application, an internal departmental document, and presumably a copy of the letter that you had received from Mr.

O'Connell?

A. Yes.

Q. Do you recall at all what the internal departmental document consisted of?

A. I believe it may have been the graphic, the fax, the note of my telephone conversation, but I can't recall that for a fact, but I believe it might be.

Q. That's what I would have assumed, that it was probably that, because certainly we haven't found anything else on the departmental files to which that note might refer.

A. Mm-hmm.

Q. Now, while you were present at that meeting, did you have any role in following up the request for assistance from the Attorney General's Office regarding that issue of ownership?

A. No, I don't believe so at all.

Q. Now, if I could just ask you to go over the page, you'll see there is a letter here, from Mr. Towey to Mr. McFadden and Mr. Gormley, which appears to have

arisen from that meeting of the 22nd April; and that's enclosing, I think, further documents, and it's also reiterating the Department's requirement for a legal opinion on the restructuring of the ownership of Esat Digifone.

But, again, presumably, you had no input into the preparation of that letter, or the progressing of that aspect of the assistance that was being sought from the Attorney General's Office?

A. I didn't. I believe the two sub bullet points, the documents that were sent and attached, I may have had input into those two documents, but not the other issue; you are right.

Q. And of course they related to the transposition issue of the directive and the other matters, the disclosure of information to the disappointed applicants, perhaps?

A. Well, they didn't the two bullet points didn't deal with the disclosure of information, because I wouldn't have been involved in that.

Q. That letter refers to meetings on the 22nd and on the 23rd April. I don't think we found a note anywhere of a meeting on the 23rd April, but do you recall at all whether you might have attended two meetings, one after the other, on the 22nd/23rd?

A. I am afraid I don't recall at that level of detail.

Sorry.

Q. That's understandable.

Now, can I refer you to the document at Divider 198,

because it would appear that you proceeded to

coordinate the preparation of a revised draft licence.

A. Mm-hmm.

Q. And you have sent a memo to Fintan Towey on the 25th

April 1996.

A. Yes.

Q. And you say "Further to previous discussions, please

find enclosed a revised draft of this licence which

was prepared following comments by Laney Bacon and

discussions with John McQuaid.

"Regarding Article 8 ownership.

"As discussed, Denis McFadden advises that the revised

draft should not go out to Esat Digifone until the

ownership issue is resolved. He will consider this

further and may request a meeting to clarify the

Department's request on this issue. I have informed

Peter O'Donoghue (who had asked for the article) of

the sense of the revised draft but that until some

questions about ownership are resolved, I am not in a

position to let him have the revised article."

The next portion of it deals with the security issue

and Article 11.

A. That's right.

Q. Can you recall at all there is reference there to a

consideration by Mr. McFadden as to whether a further

meeting would be required to clarify this ownership issue. Do you recall either being at a meeting, or arranging any further meeting, or knowing whether such a meeting occurred?

A. I am afraid I don't; I am sorry. I don't recall whether there was any further specific meeting on that topic. There was obviously continuing communication between all the parties on the overall licence, I am sure the documents show that; but whether a further specific meeting was arranged or I had any involvement in it, I don't recall.

Q. Clearly this ownership issue was acting, I suppose, from your point of view, as a bit of a block to you progressing the actual licence itself, in that the advice was that it shouldn't go out, even in draft form, until the ownership issue had been clarified.

A. Certainly it would continue to be an unresolved issue at that time, yes.

Q. Do you have any recollection at all as in your own mind, if you like, on the mechanical side as to when that issue might have been resolved?

A. This fax was the date of April 25th, obviously the licence was finalised, I think it was May 16th, for signature. I am afraid I don't, without going through the documentation again to try and identify when it was resolved. I am sure there was further drafts.

Q. You don't have any recollection in being hampered

through the early weeks of May in actually proceeding to send out draft licences because this ownership issue was still there?

A. I think my recollection was that there were a number of articles where some fine-tuning of drafting continued to be required, including Article 11, which is referred to there. So I can't pinpoint in my mind one particular issue that was hampering the process.

Q. Now, I think the letter from Mr. O'Connell of the 17th April, which was addressed to you, was actually replied to formally by the Department on the 1st May, and there is a copy of that reply at Divider 203 in the next book, which is Book 44.

A. Thank you; I have that.

Q. You will see that this letter, in fact, was sent above the signature of Mr. Brennan.

A. That's right.

Q. And I am just wondering why it was that the response to the letter, if you like, not only passed from your hands but passed from the regulatory side of the division over to the development side and was replied to by Mr. Brennan?

A. Well, my recollection was that this is based on the division of responsibilities between the two sections, the regulatory section compared to the development section, and Mr. Brennan and the development section had taken the lead in the competition process, and

therefore continued to have responsibility for any issues arising out of that that needed to be finalised. I am not surprised that I passed the issue over to that division for them to deal with. I am not surprised that Mr. Brennan responded to follow it up.

I think there was some comment by somebody during a transcript that I might have drafted this. I don't believe I did have any hand in drafting this letter.

There wouldn't have been a sense any sense in that, because I wasn't aware of the information in the bid document.

Q. I see. So just to summarise, therefore, am I correct in thinking that your feeling on it is the reason that it was passed over is that a question now arose as to what information had been furnished in the course of the competition process vis-a-vis the information which was now being furnished regarding ownership and capital configuration, and it was for that reason that it passed back to the Development Division?

A. Yes. It was much more appropriate for them to deal with it, A, because they had all the information, and B, they took the lead in that issue.

Q. And you are quite happy and clear that you wouldn't have had an input into the preparation of this letter?

A. Yes.

Q. Would you have been aware would you have been copied with this letter, or would you have been aware

that it was being sent out?

A. I don't think I would have been copied. It's possible that a copy went on the Regulatory Division files.

And I don't have any particular recollection of being aware that it was going out or quite how the issue was being pursued.

Q. Because you can see that, I suppose, Mr. Brennan was making it quite clear in that letter I am not going to open it all, but just if we can lift it a little on the overhead projector, below the two bullet points, the next sentence, he says: "It is essential that the Department can identify precisely any changes in the effective ownership (both direct and indirect) of Esat Digifone since the time of submission of the application."

A. Yes.

Q. And then finally, in the penultimate sentence of the letter, he says "It is essential that these matters be cleared up before issue of the licence. We also need to discuss the public presentation of these matters."

A. That's right.

Q. But as you say, you don't believe you had new input into the drafting or preparation of it; it may have been on the Regulatory Division files?

A. Yeah, I certainly wouldn't have had any input into the drafting or preparation of it; you are right.

Q. Now, what occurred after that was that there was a

meeting in the Department on the 3rd May, and this was the meeting to which you have made reference in your memorandum of intended evidence. There is no note of this meeting whatsoever on the Department files, or in any division files. And the only note of the meeting that we have is a note of Mr. O'Connell, who was a solicitor in William Fry acting for Esat Digifone at the time.

And that's at Divider 206, but before I refer you to it, Ms. Finn, because again I don't know if the note has assisted you at all in any recollection of that meeting. But you stated clearly in your memorandum of intended evidence that had you been at the meeting, you would have prepared a note of the matters that were of interest to you or which related to your areas of responsibility regarding the preparation of the licence.

A. That would have been the way I would have worked, and I would expect to have made a note similar to the note of the previous meeting, where I said "This is not a full note, but it's a note of the issues relevant to what I need to pursue".

Q. So it would have been your practice, presumably, to take handwritten notes in the course of the meeting and to turn those into a more structured and formal document after the meeting and to keep that on your file?

A. That was my general practice, yes.

Q. I think you went further, as well, in your reply, because you indicate that at the time when any senior civil servant attended a meeting and presumably anybody would consider this to be a significant meeting that a note would have been kept of that meeting in a fairly formal way and would have been placed on the file?

A. Again, I would expect that to be normal practice for the Department.

Q. And you were saying that based on your experience of the civil service in the 1990s

A. That's right.

Q. Can I just refer you very briefly to the note to see if it assists you at all. We have found in the past that Mr. O'Connell does take very accurate notes, so again, while you may not have a recollection of meeting, and perhaps there was nothing of such significance to you at the meeting for you to recall it, I think you could probably take it that you were at the meeting, if he has you there.

We have had that typed up; in fact, we reconstituted it in typed form, and it should be in the book that you have. It's at Divider 206.

A. I do have it, yes; thank you.

Q. It records "Knut Digerud, Peter O'Donoghue, Arve Johansen, Michael Walsh, Paul Connolly, Owen O'Connell

at Department Communications. Martin Brennan, Fintan Towey, Regina Finn, Eanna" it's been suggested by the witness it would have been Eanna O'Conghaile.

Then it records:

"Clear a political football.

"Identify of each shareholding

legal and beneficial ownership. Esat Digifone

changes relative to bid.

"Change in institutional investment replacement of

Advent and Davys by IIU.

"Need detailed information quality about IIU.

Confirmation that Telenor is same as at bid date.

Differences in detail as to expertise and asset

strength between Communicorp and Esat Telecom

Holdings. Numbers re IIU, Telenor backdrop statement

as operator as last report

AJ: That's the way we see it anyway. "We'll never

abandon this one".

"Not requesting statement but would be helpful per MB.

"Project finance POD bank 60/equity 40

ABN and AIB appointed co-providers

25 million bridging committed

thought to presentation. More the better provided

agreed in advance.

"Donal Buggy plus Billy Riordan. Maybe Andersen.

"Better than 50% chance that Commission will send us

Persona complaint. Department would already have

replied plus would like us to coordinate response when Telenor and Esat began to talk. Reference complaint." Now, it may well be, based on that note, there was many matters discussed at that meeting which wouldn't be part of your focus, but you can see here there was reference to the identification of each shareholder and the legal and beneficial interest.

A. Mm-hmm. I can see that issue was addressed at the meeting. Unfortunately, I really can't recall being there. I don't dispute Mr. O'Connell's note, and you could be right; the issues do not seem to go to the heart of my responsibilities, which could be the reasons that I didn't record it on a separate note on the file.

Q. Just in relation to note-taking and note-keeping on general matters, Ms. Finn, when did you actually leave the Department?

A. I moved to the ODTR, the independent Regulator, on a secondment basis after it was set up in 1997, and I actually resigned from the Department to take up a position with the Regulator's office as a direct employee of the ODTR very poor memory of this a year or so later.

Q. So you had seven years in that particular Department?

A. Yes, in or around.

Q. Do you ever recall a note or a record not being kept of what you would consider a significant meeting?

A. I don't have any specific recollections. There was a general practice of note-keeping. Clearly work pressures and time availability may well have impacted on, you know, how efficiently or quickly issues were recorded on a day-to-day basis. I'd say each individual civil servant made certain judgement calls about what notes to keep. And I don't have any specific recollection of meetings not being recorded.

Q. You would have considered it to be one of the practices of the Department in the years that you were there?

A. Yes.

Q. Now, I think in your memorandum you indicated that you were not involved in what were a series or numerous meetings between Monday, 13th and Thursday 16th May.

Again, there is no record of any of these meetings in the Department, except for one or two which relate to notes kept by Mr. Donal Buggy; but your recollection is that you had no involvement in any of those meetings?

A. That's correct.

Q. Now, I think the actual provisions of the licence itself may not have been finalised or may not have been fully agreed until really the 11th hour, until the 16th May itself; would that have been the case?

A. I haven't had the chance to look at that documentation. I take your word for it. Certainly

work was ongoing during May.

Q. Were you at the press conference that was arranged to announce the award of the licence?

A. I was not, no.

Q. Now, can I just ask you one last thing: You may or may not recall that the Minister made a lengthy statement in the Dail on the 30th April.

A. 30th April? I don't recall that, specifically, no.

Q. I take it that you had no input into the preparation of any part of that statement?

A. No, I don't recall having any involvement in preparing anything to do with the Minister's statements on this.

It wouldn't have been something I would have had any reason to be involved in.

Q. Thank you, Ms. Finn.

A. You are welcome.

CHAIRMAN: I'll just see, Ms. Finn, if some of the legal representatives for other persons present may have a couple of brief matters to raise with you, and I'll leave Mr. Breen, your own adviser, until the end, as is the usual practice.

Mr. Fitzsimons?

MR. FITZSIMONS: I've no questions.

MR. MCGONIGAL: No questions.

CHAIRMAN: Mr. O'Donnell?

MR. O'DONNELL: Just one or two questions.

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

Q. MR. O'DONNELL: Ms. Finn, you worked with Mr. Towey and Mr. Brennan; you knew them, I think, fairly well throughout your years although you weren't working directly with them; you were working in a different building but you knew Mr. Brennan and Mr. Towey fairly well?

A. They were colleagues.

Q. And you trusted them, I would have thought, implicitly?

A. Yes, I trusted them as professional colleagues, yes.

Q. And I think you said in your evidence that there was a matter of an individual civil servant's own individual judgement call about what notes to keep in particular situations?

A. That's true, within the general practice of recording significant issues.

Q. And I suppose it was ultimately a matter for their own individual judgement in each case as to when notes should or shouldn't be kept?

A. As I say, I think everybody had to make their own call within the general practice of recording issues.

Q. The fact that there was no note kept of this meeting by Mr. Brennan or Mr. Towey wouldn't, in your view, be in any way sinister or give rise to any speculation on your part; they were responsible civil servants, in your view?

A. I wouldn't have any reason to consider it sinister,

no.

Q. Thank you.

CHAIRMAN: Mr. Breen?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. BREEN:

MR. BREEN: There were some questions that I just wanted to bring the witness through. Several of them have already been dealt with, in fact, during her direct evidence. There is just one matter, just arising from the evidence of Mr. Brennan on Day 165 of the hearings, in relation to when he was asked about the commissioning of a report concerning an individual who was in fact the sole principal behind IIU, Mr. Dermot Desmond.

Q. Ms. Finn, it has been suggested that in fact you were involved in the commissioning of this particular report in relation to Mr. Dermot Desmond. Can I ask you, were you in fact involved in this commissioning?

A. I wasn't involved in any way with it.

Q. And I think, if I can just very briefly deal with the matters that had been dealt with already, but ...

One of them is in relation to the letter of the 1st May, that was written to Mr. O'Connell. I think it was suggested by Mr. Loughrey that you had been involved in the drafting of that letter. Can you yourself confirm again whether you were involved or not?

A. I wasn't involved in drafting that letter at all.

MR. BREEN: Mr. Chairman, that's all the questions I have.

CHAIRMAN: Thank you, Mr. Breen.

How long is it that you have held the regulatory position in Guernsey now, Ms. Finn?

A. Well, the statutory office has been in existence two years. I have been there three years.

CHAIRMAN: I see.

Thank you very much indeed for your attendance and assistance today.

I think, Ms. O'Brien, because of your anxiety to see that the witness might be free at lunch, you led a fairly mercurial pace, so we finished a little early.

I think it is the situation, Mr. Nesbitt, as we discussed on Friday, that Mr. Towey is getting in from Brussels at lunchtime. Am I safe enough to say two o'clock?

MR. NESBITT: I understand two o'clock will be fine, Mr. Chairman.

CHAIRMAN: Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF FINTAN TOWEY BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Mr. Towey

A. Sorry, Chairman, before we begin today, there is a couple of issues arising from my evidence last week

that I'd like to revisit briefly.

First of all, in the final exchange in the day relating to the Project Group meeting of the 23rd, and the meeting on the following day of the 24th, there is a suggestion, and let me just find the reference again yes, sorry, on page 112, line 2, Mr. Coughlan said "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", that meaning the evaluation report. And I said in response that I think that's probably true, but in fact, the official report of that meeting of the Project Group concludes in relation to the future work programme as follows:

"Amendments to certain sections remain to be finally agreed. These were to be agreed within the Irish members of the group on the following day, and Mr. Brennan was then to be deputed to come to final agreement with AMI with respect to the final text of the report."

So I think it is clear that at the Project Group meeting on the 23rd, it was clearly envisaged that the Irish members would finalise their views on the text on the following day, and that that would be agreed between Mr. Brennan and Andersen. Which also, of course, clearly suggests that the Project Group felt that that was entirely plausible. In other words, it does indicate that there was a significant measure of

agreement at that meeting. That's one of the points I wanted to mention.

There is another point which was raised a number of times, and in particular, on pages 70, page 81 and 82, of the transcript. I think it's clearly suggested that you were suggesting, Mr. Coughlan, that at the Project Group meeting on the 9th October, that the consultants, in their draft evaluation report, were presenting a fait accompli, and that there was an attempt to drive that through the Project Team.

Just for the purpose of absolute clarity in relation to my recall of this particular issue, I wanted to say that I didn't recall it being portrayed in that way at all, that what was being presented was a proposal, and I am not aware that anybody in the Project Team perceived it as being driven through or being a fait accompli.

Q. Right. Okay.

A. There is one final point that I'd like to mention also which relates to page 74 of the transcript, where you suggest, again, Mr. Coughlan, that Andersens were not members of the Project Team. Now, I think we had covered this ground actually on the first day of my evidence, where I had clearly set out my view. So just to be absolutely sure as to my evidence in relation to that, I wanted to re-state my view that Andersens were members of the Project Team.

They are the main issues.

Q. I understand the point that your understanding of affairs were. Andersens had a different view. The contract has a different view?

A. I am not aware that Andersens have expressed a different view.

Q. Well, I think and the statement which was issued by the Minister when they appointed Andersens, they were to be his advisers, so I understand your understanding, or belief of matters, that they were a member.

A. Okay, yeah, so long as you are clear on that.

Q. I bring to your attention other matters. Now, as regards the questioning relating to the presentation of this effectively as a fait accompli, you may or may not have been here when Mr. Ed O'Callaghan gave his evidence.

A. I wasn't here.

Q. You weren't here. Well, Mr. O'Callaghan gave his evidence to the effect that Mr. Martin Brennan there were two reasons why he accepted it effectively as being the result, and I use that in a loose sense for the moment that he was informed by Mr. Martin Brennan that it was the result, and that the Minister knew about the matter. So I am just bringing that to your attention.

A. Yes.

Q. All right? Now, as regards the first point you raised, which relates to the latter portion of the evidence you gave on Friday about I asked you about your recollection of events, and we were seeking clarity because there was some confusion amongst all the members of the Project Team who gave evidence as to whether the meeting continued on the 23rd or whether there was another meeting on the 24th; there was a lot of confusion about that, and what I asked you was for your recollection of events, which you told us on Friday. In due course, I am going to bring you to that note, which purports to be the official note of the meeting of the 23rd, which was not in fact drawn up for some considerable time later. What I was asking you and I understand the point you are making that the official note of the meeting records something; what I was asking you was for your recollection of events, and it was your recollection of events that the meeting adjourned on the 23rd. You did not believe that you had to work on the 24th and as a result of something you were told on the morning or the afternoon of the 24th, you had to work late into the evening. That was your evidence; isn't that right?

A. Let me be clear that I can't recall in leaving the meeting on the 23rd, that I would not have to work the following day.

Q. Well, you said it on Friday, didn't you? You actually said it?

A. I believe that I said on Friday, on that point, I said "That's probably true." And what I am saying is that on

Q. You said that on Friday, and when I asked you for your recollection of events

A. What I am saying is that on reflection, and having looked at the documents, I feel that the documents actually portray what happened.

Q. Are you saying that you have a recollection of that, or that you don't have a recollection, but that you did have some recollection on Friday which you don't have now? I am just trying to understand. You did say it on Friday.

A. What I am saying was that I was unsure on Friday, and I may have been I may, for example, have been a little bit hasty in my response. I mean, for example

Q. You stated something on Friday, and you did say it, that it was the probability, and you are now, having looked at the matter and looked at the documents, you are saying now that you are either unsure and the document reflects the situation or may reflect the situation; is that what you are saying?

A. What I am saying, Mr. Coughlan, is that I am clear at this stage that you have a very comprehensive

knowledge and understanding of all of the documents relating to this process and that in circumstances where you were suggesting to me, or you were asking me suggesting, in fact, that it wasn't intended that the meeting would reconvene the following day, that I agreed that that was probably the case.

Q. No, what I asked you is did you when the meeting adjourned, did you believe you'd be working the next day? And you said you didn't believe so, or words to that effect.

A. I said that's probably the case.

Q. That's probably the case. And that was your recollection; isn't that right?

A. I can't say that I have a firm recollection.

Q. The Sole Member can deal with both versions which you have now given, Mr. Towey.

A. Okay.

Q. If I could refer you to Book 46 for the moment, Mr. Towey, and what I'd like to do at this stage is if you go to the first document at Tab 34, and it's the first draft version of the evaluation model dated 3rd October 1995. I wonder, do you have that?

A. Yes.

Q. And in the introduction, it states that "This report contains the results of the comparative evaluation of the applications for a GSM2 licence in Ireland. The evaluation has been carried out jointly by the

Department of Transport, Energy and Communications and Andersen Management International. The evaluation is based on a number" sorry, before I proceed with this, as regards the matters you raised concerning the transcript of last Friday, did you discuss the matter with anybody between last Friday and what you have asked to say here?

A. No.

Q. Continuing: "The evaluation is based on a number of pre-adopted procedures and techniques

CHAIRMAN: Sorry, Mr. Coughlan, it's the first draft report, rather than model.

MR. COUGHLAN: It's called "The first draft version of the evaluation of the six applications for the GSM2 licence in Ireland."

Q. "The evaluation is based on a number of pre-adopted procedures and techniques which were drawn up and documented in writing prior to the closing date, 4 August 1995. See Appendix 2 and Appendix 3.

"Basically, the evaluation has been performed in accordance with the method "Best application," which is often dubbed "Beauty Contest". This method is strongly recommended by the EU Commission, and the Commission has been duly informed about the methods and techniques of this method applied in Ireland.

"Furthermore, the evaluation has been based on the tender documents, in particular, the RFP document,

which sets out the following statements concerning the evaluation criteria in paragraph 19."

And they are set out.

Then it goes on: "These criteria have been structured as marketing aspects, technical aspects, management aspects, financial aspects, and other aspects. Each aspect has been subdivided into so-called dimensions, and each dimension has been sub divided into indicators and sub-indicators, in order to measure and compare the relative merits of the applications in a consistent manner.

"The evaluation comprises both a quantitative and a qualitative evaluation, and it was decided prior to the closing date that the qualitative evaluation should be the nucleus of the evaluation. As outlined in Appendix 2, a heuristic methodology has been applied, with the award of marks to each application based on a scale from A to E, A being the best.

"In order to sort out as much uncertainty as possible, a number of supplementary analyses have been conducted, and they appear" then these weren't available at the time of this draft, I think, so they are appendices X to X "to this report. Some of the analyses have been deemed necessary in order to make the information provided by the applicants more comparable. Other analyses have been deemed adequate to conduct in order for the evaluators to sufficiently

document certain decisive marks awarded to certain applications.

"The Department has received an application from Eircell for comparative purposes.

"Initially this report describes some of the key characteristics of each application in Chapter 2.

"Having in a general way introduced the applications, the next chapter, Chapter 3, as the main body of this

report, presents the detailed results of the

comparative evaluation. This part of the report is

structured around the four main aspects of the

evaluation: the marketing, the technical, the

management and financial aspects. Each aspect will

then be broken down into one or more dimensions and

each dimension will be described by several

indicators. Thus, the presentation of the results of

the evaluation follow the structure laid down prior to

the closing date of the tender.

"A separate Chapter 4 has been devoted to cater for

sensitivities and risks in each application. In this

way, conclusions regarding the overall credibility of

the application have been qualitatively assessed.

"The last chapter, 5, will provide a summarising

overview of the results of the evaluation, and in this

part of the report the three best applications are

identified and ranked. In the last part of the

chapter, the only recommendation in this report

appears; namely, to enter into the licence negotiations with the consortium behind the application that came out with the best results from the comparative evaluation based on the method recommended by the Commission and on paragraph 19 of the RFP document.

"Supplementary information and the summary of the results from some of the supplementary analyses conducted are to be found in the appendices."

Then we go over, Chapter 2 deals with the key characteristics of the applications. I don't think we need concern ourselves specifically with that for the moment.

If you then go on to Chapter 3, and this is the comparative evaluation of the application.

And as indicated, this is the main body of the report and presents detailed results of the comparative evaluation; isn't that correct? That was what was understood.

And it goes on:

"This chapter intends to provide a presentation of the results of the comparative evaluation. Each section deals with one of the identified aspects comprising an overview of the various dimensions attached to the aspect together with the assessment (marks awarded) of both the dimensions and the aspect.

"In order to proceed systematically and consistently,

each dimension has been broken down into so-called indicators. The sub-indicators have been used to further refine the assessment of the dimensions. The applications are described in relation to each dimension after the overview provided in each sector of this chapter. The assessment of the dimensions is based on factual information and the methodology described in Appendices 2 and 3."

And then dealing first, we deal with the marketing aspects.

"The dimensions of the marketing aspects are identified as market development, coverage, tariffs and international roaming plans."

And then we have a table which sets those out; isn't that correct?

Now, am I correct, if we take, for example, the first aspect of market development, and I think if we go to page 14.

Now, I think that particular table there contains the dimensions which relate to the aspect market development; isn't that correct?

A. Yes.

Q. And we can see there that in relation to that particular aspect, there are 10 dimensions; isn't that right?

A. Yes.

Q. They are 10 dimensions. And these dimensions

themselves would have been arrived at as a result of those dimensions being broken down into indicators; isn't that right?

A. I am sorry?

Q. Those dimensions in turn would have been broken down into indicators, would that be correct? Or were they?

A. The dimension is market development.

Q. Yes.

A. And we looked at 10 indicators.

Q. Sorry, I beg your pardon you are absolutely right.

They are the 10 indicators. And each indicator then was arrived at first of all, your starting point was you took the indicators which reflected the indicators which were in the quantitative evaluation; isn't that right? That was your starting point?

A. Yes.

Q. And then Andersens would have suggested further indicators, and/or in the course of discussion, further indicators would have evolved; isn't that correct?

A. Andersens suggested them. I think there may have been a small number of instances where further indicators arrived from the discussion.

Q. I understand that. And that's how you arrived at the indicators; isn't that right?

A. Yes.

Q. And I am you were involved in the you were

involved in this particular evaluation; isn't that

correct?

A. I was indeed.

Q. I am just trying to understand what exactly happened.

A. Yes.

Q. Not why you arrived at a particular position, but how you did this.

A. Yes.

Q. Now, you took an indicator, and you looked at each applicant; isn't that right?

A. Yes.

Q. And as a result of discussion, you had hard data, of course, from the quantitative evaluation?

A. Yes.

Q. In respect of some of these indicators, in any event?

A. Yes.

Q. You took an indicator, you looked at the six applicants, and you then decided to score them; isn't that correct?

A. Yes.

Q. As a result of discussion?

A. Yes.

Q. And you scored them on what has been described as a soft scoring basis of or grading of A to E?

A. Yes.

Q. Isn't that right? And in arriving at the score for each applicant, did you, in effect, compare the

applications and say, "Well, I think" we'll take anyone, take neutral ones "A2 is the best, and A1 is not as good, or perhaps down the scale"? How did you actually arrive at the score for each one, you know, in the discussion?

A. Andersens, based on their analysis of the applications proposed a scoring, so they set out their view of the appropriate scores and the justification. And then there followed a questioning in some cases a questioning, it varied, obviously, from indicator to indicator, but in some cases there was a questioning, a discussion of the justification, the factors taken into account, etc., and by a process of agreement, a scoring was agreed.

Q. You arrived at a score for each one. But it was it was on the basis of compare each application; were they relative to each other, do you understand me, when arriving at a scoring? Say, looking at it, A2 is the best, A6 is the worst

A. Yes, I mean, that type of consideration did play a large part in it. Beyond that, I am not quite sure what you are asking.

Q. That's what I am trying to understand, how you arrived at the score.

A. Okay.

Q. You did you weren't doing this

A. Okay, we took

Q. This wasn't a mathematically certain score. This was an evaluation and the exercise of a judgement. You have six applicants. You look at them under an indicator. Andersens suggest something. You have all read the applications, that's what was required, and you could say, "From my knowledge of the application, that seems reasonable", or you could say, "Question Andersens", perhaps you could tweak it one way or the other that, say, A3 isn't that bad on something, or A5 isn't that bad, or better

A. Okay. Generally speaking, the Andersen analysis produced a view as to which application was the strongest in respect of any particular indicator. Now, generally speaking, but not always, the best application would have been awarded an A, according to that indicator. Then other applications would have been graded relative to that.

Q. I understand.

A. On issues on an indicator where sorry, what I am trying to say is that it would not always be the case that the worst application relative to the best would score an E.

Q. I understand that as well. And that's where discussion may come into it?

A. Yes, exactly, yeah.

Q. That's what I am trying to understand. You looked at them relative to each other.

A. Yes.

Q. You might have had a view that so-and-so was the best?

A. Yes.

Q. And whilst not an invariable practice, it was the usual practice that whoever was viewed as being the best would get an A, but not invariably so?

A. I need to check the documents, but that's my recollection.

Q. And in relation to whom you might view as being the weakest I don't want to call them the worst the weakest, they didn't invariably get an E?

A. No, that's correct.

Q. So, that's how you approached each indicator, would that be correct?

A. Yes.

Q. And you scored them or graded them that way?

A. Yes.

Q. Now, you then, I think, have informed the Tribunal, and it's described, to an extent, in this particular evaluation document here, that I am just trying to understand, how did you then arrive at the bottom line? Was that as a result of discussion also? In other words, how did you arrive at the subtotal? Did you just tot up the As, Bs, and Cs, or did you I think you indicated you told us the last day that you had a discussion, and you may have considered one indicator more significant or better to enable you to

form a judgement than another?

A. Yeah.

Q. And can I take it so that the bottom line didn't
wasn't arrived at as a result of just aggregating the
As, Bs, and Cs?

A. That's correct, yes.

Q. But that you had a discussion about the 10 indicators
and the six applicants, and as a result of that
particular discussion, you then decided to grade them
for the subtotal on the bottom line?

A. Yes.

Q. And how was that done? And the reason I ask you is
because you had 10 indicators and you had six
applicants, so you had effectively 60 indicators
rolling around in your head?

A. Yeah.

Q. Isn't that correct?

A. Yes.

Q. What form did the discussion take to arrive at the
bottom line, can you remember?

A. Well, I mean, again I believe in relation to the
bottom line that in some cases, Andersens made a
proposal on the overall scoring. Now, I can't say
that that was the case across all of the dimensions.
But if Andersens didn't propose one, then somebody in
the group clearly did, or there was perhaps a
suggestion that in looking at the overall scores here,

that one or other application seemed to be emerging as the strongest. And in looking at the grades awarded there and taking a view as to the most important elements within the most important indicator that was in the dimension, a view would have been taken as to whether, overall, that particular application merited an A or a B, for example.

Q. Right. Because it would be erroneous for us to attempt to tot up the As, Bs and Cs and see if we can arrive at a bottom line, isn't that correct, from the methodology that you have described that it was a judgement, because we don't know which of the indicators in the discussion were the ones which were more pressing on the mind of the evaluators; isn't that correct?

A. Yeah. I don't know if, for example, you did an exercise where you attributed equal weight to all of the indicators, I don't know if that would produce the same result, because I have never done that exercise. But if it did, it would be coincidence, because there was, in the exchange, allowance was made for a greater importance, let's say, to certain indicators.

Q. And it wouldn't be possible for us, or for looking at this, to say whether, to say necessarily, whether, for example, an A for customer care and churn is better than an A for market research, or vice versa, without knowing what was expressed in the discussion

at the time as to the indicators which the people present considered to be more important better, I suppose, in attempting to arrive at a bottom line; would that be fair to say?

A. That's probably the case, yes.

Q. And it's not possible for us to look at, say, that table, and work out whether, say, an A for segmentation was either twice as good as an A for customer care and churn, or twice as bad, in terms of how it affected the minds of the evaluators. Just looking at that

A. At that specific level of detail, I think that is true; but you could, of course, I think, form a general impression in looking at the grades, whether, for example, A5 is superior to A1 in relation to marketing, in the sense that A5 scores several As and a small number of Bs, whereas A1, for example, have only one A, one B.

Q. I thought that was the problem that I had identified and asked you about, that without knowing which indicators, as there is no weighting, it's not possible to work out what priority one attaches to an A versus a B vis-a-vis a different indicator. It's not possible to do that without having a specific weighting?

A. Without having a specific weighting, I can see the kind of difficulty that you are describing. But what

I am suggesting to you is that I think that you could form an initial impression as to whether the total scores at the bottom of this table seem to reflect what's in the table.

Q. Yes, but that's not what happened, though, isn't it?

That's not what happened.

A. How do you mean, that's not what happened?

Q. I think you told us that what happened was because

I asked you that was it possible just to add up all the As and the Bs and arrive at the bottom line? And you said no. That what happened, was in the course of discussion of these 10 indicators, that it emerged that a view or a consensus evolved in that group as to which indicators were more significant or more important than others, and that it was as a result of that, and looking at all of the indicators, that a judgement was exercised on the bottom line to say "That's the best", or "That is better"

A. A judgement was arrived at.

Q. That's what was done, wasn't it?

A. And what I am saying is that if A1, for example, had been awarded an E or, sorry, if A1 had been awarded an A or if A5 had been awarded an E, or even a D or even a C, that anybody coming and looking at this would find difficulty in reconciling the total mark with the individual indicator marks.

Q. They might, unless it was explained to him that, for

example, you know, somebody took a view about one of the indicators being far more significant, or two of the indicators, say, being far more significant or two or three times more significant than another indicator, and we do have an example of that in due course, where there seemed to be a view that something that in relation to one of the dimensions, that the final indicator was viewed as being three times less significant than the preceding indicators. Do you understand?

A. I do.

Q. That's actually described?

A. It is declared, because obviously that's something of enormous significance, and I would expect, if there was anything of that kind of or anything particularly significant, that you know, that one indicator had an enormous importance or an enormous or that clearly outweighed a number of other indicators, I would expect some indication of that here.

Q. But the one thing sorry, two things we know about this particular table: There were no weights to begin with, isn't that correct?

A. That's right, yeah. I mean, I think in the evaluation model, it states clearly on the qualitative evaluation that there is no ex ante weighting.

Q. Oh, I agree, I agree. I am not saying that this is

departing from that. But there are no weights, and secondly, it is not described other than that it was arrived at by way of discussion as to the priority which may have attached to various indicators, isn't that correct, that's not described?

A. That is correct.

Q. And I think what you have told us is that the bottom line, in any event, arose as a result of a discussion and a judgement being arrived at; isn't that correct?

A. Yes.

Q. And then that dimension the bottom line in relation to that dimension would then have been brought back if we go back to page 10, under the aspect "Marketing", number 1, market development those grades would have been fed in there in the first line; isn't that correct?

A. Yes.

Q. The bottom line?

A. Yes.

Q. Very good.

A. I am sorry, on page 10, which line are you talking about?

Q. Sorry, do you see "Marketing Aspects", do you see the table?

A. Yes.

Q. And then "Market"?

A. Yes.

Q. Number 1, market development?

A. Yes.

Q. Do you see that? The bottom line of the work done on those indicators was fed into that line; wasn't that correct?

A. Correct.

Q. Now, if we go to page 17, and the dimension is coverage. Were you present at that particular

A. I think this dimension may have been scored by the technical people.

Q. I think Mr. McQuaid was present at that.

Now, I'll tell you what Mr. McQuaid told us that they did. It's different.

A. Okay.

Q. In that, again, the first thing you looked at were the indicators which were thrown up by the quantitative evaluation.

A. Yeah.

Q. And then Andersens proposed, or in discussion, further indicators were developed?

A. Yes.

Q. They then graded them?

A. Yes.

Q. But he told us that in order to arrive at a bottom line in their particular case to test whether their bottom line was correct, that they seemed to aggregate the indicators; they converted them to numbers; he

applied a weighting which in which he tried to give effect to the descending order of priority, if you understand me?

A. Okay.

Q. He then applied the weighting to the numbers. He arrived at a total, or subtotals in each case, and then he reconverted them back to grades, and they conformed. That was how they did it in his particular sorry, in this particular sub-group, anyway, and perhaps in all the technical sub-groups.

That wasn't how you approached it?

A. No. I don't understand what you say when you say that Mr. McQuaid gave to the indicators a weighting which respected the descending order of priority.

Q. That's what he told us he did. He gave a weighting.

A. But I'd like to explain my view.

Q. Yes, indeed.

A. That this assessment was carried out at the level of the dimension, and while the dimensions were weighted, the indicators, the sub-indicators within the dimension were not weighted. Now, in the evaluation model for the qualitative evaluation, it says there is no ex ante weighting, but clearly

Q. It didn't preclude you from applying a weighting, if you wished?

A. No, it didn't, and clearly on the basis of what you say, this sub-group chose to do that.

Q. Yes. It's different to the way your sub-group operated?

A. It's different.

Q. And in any event, the what happened, similar to your own sub-group, then, the bottom line was brought back to the aspect table, the marketing aspect, and was included at Line 2; isn't that correct?

A. Yes.

Q. We then move to page 20, and we have here the dimension tariffs, and then we have the indicators; isn't that correct?

A. Yes.

Q. And I think you were present at that particular

A. I was, yes.

Q. sub-group.

And can we take it again that this sub-group, which you attended, was followed the same format as the dimension marketing sub-group which you attended?

A. It did, yes.

Q. And you arrived at the bottom line without applying a weighting and by exercising a judgement, having had a discussion as to which are considered to be the more significant indicators, and you arrived at the bottom line that way?

A. Yes.

Q. And that bottom line, then, that subtotal was brought back to the table on page 10 under the aspect

marketing and included at Line 3 as tariffs; isn't

that true?

A. Yes, yes.

Q. We then go to the dimension on page 22, international roaming plan. Were you involved in that particular sub-group, or was that one of Mr. McQuaid's?

A. I don't believe it was Mr. McQuaid's. I suspect that I was involved in it.

Q. Right. Well, if you were, all sub-groups which you attended conducted their business the same way; is that correct?

A. Yes.

Q. So again, the exercise of judgement, a bottom line obtained, and that was brought back to the table on page 10 under the heading "Marketing Aspect", and then it was entered in line 4, "International Roaming Plan"?

A. Yes, I can confirm I was on that sub-group, yes.

Q. Right.

Now, the subtotal for the aspect, marketing, were not concluded at that stage, is that correct, at the end of the various sub-groups

A. Correct.

Q. dealing with the indicators.

Were these aspect subtotals, were they arrived at on the 27th and the 28th September of 1995 in Copenhagen?

A. I believe on the technical aspects, the technical

sub-groups, in the aftermath of that, they carried out marking at the aspect level.

Q. They carried out the marking they produced the technical subtotals?

A. Yeah, I believe so, yes.

Q. This marketing one wasn't carried out until the 27th 28th September?

A. Yes.

Q. 28th September?

A. Yes.

Q. We can pass over from the technical aspects, because Mr. McQuaid has dealt with those particular matters in his evidence, and you weren't present in any event.

A. Yes, okay.

Q. Now, you were involved in the management aspects; isn't that correct?

A. I was, yes.

Q. And I think this is the particular one if we just have a look at that there "The management aspects have been evaluated by just one dimension, namely the experience the applicant. The award of marks" sorry, it's on page 31, I beg your pardon "The award of marks to this dimension and to the subtotal of the management aspects will therefore be identical." You'll see that?

A. Yes.

Q. And then, coming over the page, under the heading

"Experience of the Applicant," you can see that the hard data which was available from the quantitative evaluation is produced in this draft of the report; it doesn't appear in the subsequent draft or in the final version, but it appears in this draft.

A. Yes.

Q. So that must have been available, as I said, it had to be available for the qualitative evaluation; isn't that correct? The hard data that was the starting point or the jump-off point?

A. Yes.

Q. Now, you can see from the quantitative table there, take, for example, A3 scores a 5 on the quantitative you can see it on page 33 A3 scores a 5 on the quantitative evaluation, which is the top score; isn't that correct?

A. Yes.

Q. And we can see there that A2 scores a 0.45, which is, I suppose, the weakest score?

A. Yes.

Q. And that's all based on hard data; isn't that correct?

A. Yes.

Q. There then follows a discussion in the document, and if you go over to page 34, it says the second paragraph on page 34: "The quantitative experience of the application as a cellular operator in OECD member countries has also been defined as an indicator. The

quantitative scoring which appears in Table 12"

that is the one we have just looked at, on page

32 "has been translated into the award of marks"

I take it this is for the purpose of qualitative

analysis "A3 getting the highest mark and A2 the

lowest. This indicator has been weighted 3 times less

than the other indicators during the scoring of the

experience dimension."

Do you see that?

A. Yes.

Q. Now, do you know why the indicator was weighted three

times less than other indicators during the scoring of

the experience dimension?

A. No, I don't recall.

Q. You don't recall. Because, if you go to the

management if you go to page 33, there is a table

which is the award of marks concerning the experience

dimension, isn't that correct, Table 13? And if you

look at the subtotal, A3, which has scored a 5, gets

an A; that was considered to be the best. A2, which

was the weakest, got a D I beg your pardon, it's

line 4, experience of cellular operator; I beg your

pardon A5 gets an A, which is the best; A2, which

is the weakest, gets an E. Do you see that?

A. I am sorry, can you tell me exactly

Q. I beg your pardon. Table 13, page 33.

A. Yes.

Q. Item number 4 above the subtotal.

A. Item number 4, yes.

Q. "Experience of cellular operator"?

A. I am sorry, you had said A5 got an A, which

Q. Sorry, A3 got an A. My confusion, I caused the confusion there, because they have scored 5 in the quantitative, isn't that correct, and that was the hard data you were jumping off from there, and that was the only dimension which was applicable?

A. Yes.

Q. They got an A. A2, which got 0.45, got an E. A4, which got 0.54, got a D. A5, which got 0.97, got a C. And then we saw that A1 and A6, which got 3.68 and 2.74 respectively, got a B.

Now, were those figures arrived at through the exercise of a judgement sorry, not those figures; those grades, those scores?

A. They were, yes.

Q. Do you know how a 0.97 came to be scored as a C? Do you know how that happened, for A5?

A. I don't specifically recall the reasons for that.

Q. Right. Do you know how it arose in the course of discussion that it was decided that this particular dimension should be weighted three times less than the other indicators during the scoring of the experience dimension? It's the one example of one we have that you were involved in where that's recorded.

A. I am not sure what exactly the text relates to here, but on page 34, you do have the indicator "Sufficient Experience of Applicant as a GSM operator", and I am not sure how that paragraph relates to the following paragraph, or how each of them relate to Line 4 in Table 13.

Q. Very good. Perhaps there is an example again, I take it that the bottom line for management aspects subtotal, bearing in mind that Number 4 was to carry, or was to be weighted three times less than the other indicators, or the other dimensions, that the A for experience as cellular operator appears clearly to be less significant than, say, experience in the Irish market, because we have some text which says that; so that must reflect some discussion, mustn't it?

A. Sorry, can you point me to that text, please?

Q. Yes. If you go to I beg your pardon page 34, the second paragraph. "The quantitative experience of the application as a cellular operator in OECD member countries has also to be defined as an indicator. The quantitative scoring which appears in Table 12 has been translated into the award of marks, A3 getting the highest mark and A2 the lowest. The indicator has been weighted three times less than the other indicators during the scoring of the experience dimension."

So, there it's describing that so and we don't

know how that arose or, sorry, you can't assist us

now as to how that arose?

A. No, I don't specifically recall, but in looking at the text that is here, it seems to be the case that the preceding indicator, which relates to sufficiency of experience, in other words, that a view was taken that there is a threshold level of experience which is necessary, and that once that threshold level of experience was established, the value of a number of wider experiences was considered to be less significant than other factors within this dimension.

Q. Do you recall that and I can understand if you can't recall, but it had to evolve as a result of some form of discussion within the group; isn't that right?

A. So, I am inferring from this

Q. You are inferring.

And you don't know why well, one can see why A5 would or perhaps see, perhaps see why A5 would get an A because they had got 5 on the quantitative indicator, and that was what was being taken into account, but sorry, A3; I keep saying A5 sorry, A3 got a 5, but you don't know why A3 would have got a C in those circumstances when they had under 1?

A. No, no.

Q. If you go to page 34, then, and have the financial aspects, and the dimensions were financial key figures and licence payment. Well, licence payment was

neutral, wasn't it, so that was

A. Yes.

Q. And then I think on page 38, you have the dimension, which is the financial key figures, isn't that correct, or the dimension finance?

A. That's correct, yes.

Q. And then you have the indicators which are solvency so you had eight indicators: solvency, financial strength of consortia members, liquidity, IRR, profit/interest expenditure, accumulated operating costs/accumulated turnover, accumulated operating costs/SIM card years, and accumulated turnover/accumulated investments.

Now, you attended a meeting in Copenhagen before the presentations with Billy Riordan, isn't that correct?

A. That's correct, yes.

Q. And I take it that some hard data had been produced or was in the process of being produced in relation to the financial dimension?

A. Yes, some data had been produced.

Q. It wasn't completed at that time, to enable any evaluation to take place, according to Mr. Riordan, and I think your own evidence as well?

A. I believe we did a preliminary marking.

Q. You did, in fact, if I remember Mr. Riordan, there was a preliminary run of things; yes?

A. But it was subject to the caveat that there were

concerns about the underlying data and the need to look at the consistency, but we did a preliminary evaluation, yes.

Q. That's right. Now, I think you again attended a meeting in Copenhagen with Mr. Riordan; I think that would have been on the 20/21, would it, of September?

A. Yes.

Q. And Mr. Riordan, in his evidence, seems to recollect he didn't recollect many matters; he had to look at documents but he seemed to recollect that when he went to Copenhagen on this occasion, that he had to hang around a while because whatever work Andersens were supposed to have done wasn't done.

Would that be your recollection as well, in relation to this particular dimension?

A. I don't specifically recall that, no.

Q. Because we do know from the memorandum which you received, you and Mr. Brennan received from Mr. Andersen, dated the 21st, he was informing you that there needed to be some final work done in relation to the financial matters, and that I think he had used it may be self-explanatory, or something like that?

A. Yes.

Q. So perhaps Mr. Riordan's recollection of what transpired was probably correct, that Andersens hadn't done the work to enable him to finalise what he had

gone to Copenhagen for, at least?

A. I don't know what Mr. Riordan's evidence was, exactly, on this matter.

Q. I think it was to the effect that it was that he recollected hanging around waiting.

A. Okay.

Q. There were other sub-groups taking place as well. I think there may have been a marketing one at the time; isn't that right?

A. That may be the case, in the sense that Martin Brennan and Maev Nic Lochlainn were in Copenhagen at the time, yes, okay.

Q. You can't remember, in any event, 20/21, as regards the financial dimension?

A. I can't specifically remember, no.

Q. The gradings on the indicators here that is, solvency, financial strength, etc. can you remember when they were completed? Was that on the 28th in Copenhagen?

A. That memorandum from Mr. Andersen dated 21 September suggests that they were finally finalised, if I can put it that way, on the 28th; but it also suggests that there was no substantive discussion remaining at that stage.

Q. Well, do you remember any discussion?

A. Well I don't remember any discussion, no, and as I mentioned, I would have been of the view that if there

was any substantial discussion to take place on the financial dimension, that Billy Riordan would have been in attendance.

Q. I understand.

A. Now, I can't specifically recall what evaluation took place on the 21st, but I know that Billy Riordan was involved in reviewing information given and in reviewing the marks awarded. I believe that he consulted Donal Buggy in relation to this.

Q. I think we'll come to this in due course. There were two handwritten documents. You can see one is Donal Buggy's and one is Billy Riordan's, and they are well, Mr. Riordan doesn't remember it; he thinks somebody else may have said it, and he notes it, in any event, but there seems to be a note on both, both Mr. Buggy's in Mr. Buggy's and Mr. Riordan's handwriting, perhaps querying or suggesting slightly different grades in some of these on this particular table.

A. Okay.

Q. I think we'll come to them, but you may have seen some handwritten notes along those lines

A. I think I have, yes.

Q. Because I think it ultimately results in the corrigendum in the minute of the 23rd; you know, Mr. Riordan makes an intervention and is effectively making the point that it's Andersens who will be

accepting responsibility for the work done in relation to these. Do you remember that particular intervention?

A. Yes, I do.

Q. But insofar as, again, you know, there were no weights applied here, and the award of the grades would have been a result of the exercise of a judgement, and the bottom line would have been arrived at, again, in the exercise of a judgement rather than just an aggregation of the grades; isn't that right?

A. Yes.

Q. Now, if you go to so come the 28th September 1995, all of these sub-group meetings would have been completed, isn't that correct, come the 28th?

A. On the 28th

Q. Sorry, on the 28th?

A. On the 28th, yes.

Q. By the end of the 28th, all the sub-group meetings were completed?

A. Yes.

Q. And there existed the bottom line in respect of each dimension; isn't that correct?

A. Yes.

Q. Now, the technical people had gone on, you believe, and moved on to grade the aspects?

A. Yes.

Q. The technical aspects. On the 28th, then, what

happened in relation to all of the other sub-groups in which you had been a member which had arrived at a subtotal in respect of dimensions and had fed them into the lines on the aspects?

A. Well, I mean

Q. Were the aspects subtotalled then?

A. The aspects were subtotalled. Now, I can't say with certainty whether they were whether the aspects were subtotalled to produce what became Table 16 before or after we created Table 17 and 18. I can't be sure either way what the exact sequence of events was.

Q. That's very interesting. As was envisaged here, the aspects were to be subtotalled arising from the grades which had been awarded to the dimensions; isn't that correct?

A. Yes.

Q. So they if the dimensions had been arrived at by reason of the exercise of a judgement

A. Yes.

Q. the aspects subtotals could also only have been reached as a result of the exercise of a judgement in respect of the dimensions?

A. That's correct, yeah.

Q. You couldn't just aggregate them?

A. Yes.

Q. And likewise, if you couldn't aggregate the dimensions

to give rise to the aspects subtotals, arriving at the grand total could only also have been exercised, logically, as a result again of the exercise of judgement arising out of discussion rather than an aggregation of the subtotals for the aspects; isn't that right?

A. Do you mean you mean on Table 16, yes.

Q. I mean on Table 16.

A. Yes.

Q. So the grand total could only have arisen as a result of a discussion?

A. Yes.

Q. And that discussion could only have taken place in Copenhagen between you, Martin Brennan, Michael Andersen, and perhaps Jon Bruel, if he was present?

A. Yes.

Q. And that's what produced the ranking that discussion?

A. Of Table 16?

Q. Table 16.

A. Well, I don't believe so. I mean, it was at this point that it became clear, it became clear to us that and by "us", I mean Martin Brennan and myself that in order to arrive at a final ranking, that these dimensions had to be regrouped in the format of the selection criteria in paragraph 19. Now, I can't say with absolutely certainty whether we

did a preliminary ranking or not, or did a ranking, let's say, in relation to what became Table 16. I don't specifically recall. But what I do very, very clearly recall is it being my strong view initially that in order to respect paragraph 19, that these dimensions had to be presented in the form of paragraph 19; and I recall that it was Martin Brennan's clear view, which indeed I supported, that it was necessary to apply numbers in order to respect the weighting model.

Q. All right. Let's take this slowly, because this is quite important.

A. Yes.

Q. Because, if it occurred in the reverse manner, as you have described I'll go on to and describe what is in the report, right? And that's not how it's described in the report.

A. Okay.

Q. And if it happened if you are correct in your recollection sorry, you are not clear in your recollection. I want to be very careful about this, because if it happened if it happened as described by you, that you worked in reverse order, the production of Table 16, which was to be the output of the evaluation process, arose by reason of creating a winner and then working back to justify it through the process. Isn't that correct?

A. No. What I am saying is that I am not clear. I don't specifically recall what we did in relation to Table 16.

Q. All right; I understand that.

A. What I am clear on is our overwhelming view that, in order to arrive at a winner, we had to respect the evaluation criteria laid by Government, and the weighting model. Okay?

Q. I understand that entirely.

A. In other words, what I am saying is Table 16 doesn't actually figure prominently in my memory at all. What does figure prominently in my memory is Table 17 and 18.

Q. I am just trying to take this in now, because it's fairly significant, just in terms of my understanding.

A. Okay.

Q. If if Table 16 was created last of the three tables, can you tell me which of the other two tables may have been created first?

A. I am not sure on the timing in relation to Table 16; let's be clear on that. But of the remaining tables

MR. NESBITT: Mr. Chairman, I have to intervene on this point. I have been sitting quietly listening to these questions. I have no idea what they mean, and I have read this documentation on many occasions. This witness is sitting here some number of years after the

event. I think it's only fair if Mr. Coughlan indicates what he is proposing to achieve by asking questions, so that this witness has some idea. I mean, to ask the witness to speculate if a table was created last, which, as far as I understand, nobody has said that is the position. It's just, with respect, so far off the beaten track as to be useless to anybody listening to the exchange of questioning, with respect.

Q. MR. COUGHLAN: Perhaps I was mistaken. I understood and I was proceeding on the basis that Table 16 was created first, from the evidence so far. As a result of your intervention, Table 17 was created, as you gave evidence as I understood your evidence the other day and as a result of Martin Brennan's intervention, Table 18 was created. That's as I understood how matters proceeded.

Am I correct in understanding you now that you are unsure which particular table was created first?

A. I am not sure that Table 16 was completed first.

Q. That's as I understood the evidence. I am just trying to understand what's going on. I am at a loss why My Friend intervened, but anyway

CHAIRMAN: Well, you may proceed.

Q. MR. COUGHLAN: And I think you understand why I am trying to find out what actually happened there, because Table 16 is described as being the output of

the evaluation process; isn't that right?

A. Yes. What I am trying to recall the point I am trying to make is that I don't recall arriving at a point where Table 16 was completed and that we had a ranking that we were satisfied with, if you know what I mean. In other words, I don't recall that point, that okay, we have completed Table 16 and we have a ranking, and that's what's giving rise to confusion in my mind.

Q. In your mind.

A. Because overwhelmingly I remember the question, okay, how do we ensure we respect paragraph 19 in the weighting model? And there is the question then of you know, within that Table 16, for example, how you apply the weighting model within that. This is what's confusing me, if you understand.

Q. I am trying to tease it out. I am not trying to go anywhere or suggest anything. I am trying to find out what happened.

A. Mm-hmm.

Q. Table 16 is described as, and was always intended to be the output of the evaluation process insofar as it reflected the qualitative evaluation; isn't that correct?

A. That's correct, yeah.

Q. We'll go on and deal with other matters later about the quantitative and the qualitative and matters of

that nature. And it was designed the four main aspects of the evaluation, the marketing, technical, management and financial aspects; isn't that right?

That's what that table was designed around?

A. Yes.

Q. And this was structured around the criteria in paragraph 19, isn't that correct, described on page 1 of the introduction to this draft evaluation report.

"These criteria have been structured as marketing aspects, technical aspects, management aspects, financial aspects, and other aspects." Isn't that right?

A. Yes.

Q. It was not unfaithful to the criteria; isn't that correct? It was structured around them?

A. It was, yes.

Q. And it has been stated over and over again here, paragraph 19 had to be respected; isn't that correct?

A. Yeah.

Q. That was it?

A. Yes.

Q. Because that was Government policy and Government decision. The Government hadn't weighted the criteria; isn't that right?

A. No, the Project Team had, yes.

Q. And if and I am pursuing a line of query here if this table was created after any other table, can you

be of any assistance to the Tribunal in which order

the tables were created?

A. In terms of the overall ranking in Table 16, I can't

say when that was arrived at. Okay?

Q. We know about the dimensions markings, that they were

done in the sub-groups. The dimensions were marked at

the sub-groups.

A. Yes, yes, sorry, but as regards the aspects and the

grand total

Q. You don't know when

A. I can't recall that precisely in terms of the

sequence.

Q. All right.

A. My recollection is concerns about the structure and

the difficulty in arriving at an overall ranking

without taking account of the weighting. I do

specifically recall regrouping the criteria in

accordance with Table 17. I am not sure whether, on a

preliminary basis, we may have discussed a possible

overall marking; but clearly, in order to apply the

weighting model, we had to have figures. And I do

remember I do remember Table 18 being produced.

Q. Table 17 and Table 18 contain grades; isn't that

right?

A. Yes.

Q. And these were the grades arrived at for the

dimensions?

A. Yes.

Q. And in arriving at those particular grades, first of all in scoring the indicators and subsequently in arriving at the scorings for the dimensions, judgements had been exercised; isn't that correct?

A. That's correct, yes.

Q. At least in the sub-groups you were involved in, there were no hard figures used, no weightings used, other than, as you say, in the exercise of judgement, what you considered might be more important or better than another indicator?

A. Yes.

Q. Now, if it was possible to do that, it was always possible on the qualitative side to exercise a judgement, bearing in mind the relative importance of the evaluation criteria, isn't that correct, in their descending order of priority exercise a judgement?

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

Q. Well

A. We have been over the instances where I have described that we exercised judgement.

Q. Well, isn't Table 16, isn't that what Table 16 is intended to convey? Or am I incorrect about that?

That you arrive at a bottom line by the exercising of a judgement to arrive at dimensions. You exercise a judgement to arrive at a bottom line to grade aspects. And, therefore, in arriving at a grand total, one must

exercise a judgement in relation to the aspects; isn't

that correct?

A. Yeah. There is no question but that you could do

that, as a hypothesis. There is no question about

that.

Q. But you told us that none of these were as a result of

aggregation which resulted none of these were as a

result of aggregation, you told me?

A. None of which are we talking about

Q. None of the indicators dimensions were as a result of

aggregation in anything you were involved in?

A. That's correct.

Q. You used the exercise of judgement.

A. That's correct.

Q. And none of the dimensions to aspects were as a result

of aggregation?

A. I don't remember how exactly we arrived at the totals

in relation to aspects.

Q. And you don't know how the grand total was arrived at?

A. In relation to that particular table, no.

Q. Who did this, so?

A. The table?

Q. The table

A. The table was agreed. It was agreed, I believe, in

Copenhagen, on the 28th September.

Q. How was it agreed, is what I am trying to get at.

A. That's the point. I can't remember.

Q. Was it presented by Andersen, and did you agree it then?

A. It may have been presented by Andersen. I mean, certainly certainly he produced a table. Whether he produced a proposal for totals at the level of aspect or grand total, I don't specifically recall.

The point I am trying to make is that my overwhelming memory is that we needed to bring this clearly into line with paragraph 19.

Q. Well, the text of the report informs us that this was done, isn't that correct, that's what the text of the report

A. I am not sure, off the top of my head, what the report records in relation to this.

Q. All right. Well, we'll look at it anyway and see.

Because what this says, the text following the table, is that "As seen from Table 16, the evaluation has produced the following result concerning the three best applications". And then it lists them it ranks them. That is reflecting what's at the bottom of the table, the grand total and then the rankings; do you see that?

A. Yes.

Q. And then if you go over the page, to page 45, 5.3, and then it says "The results based on a regrouping of the criteria". Do you see that?

A. Yes.

Q. And then it says "In order to investigate whether the conclusions of the evaluators are consolidated on the basis of paragraph 19 of the RFP document, the evaluators have carried out a separate conformance testing." Do you see that?

A. Yes.

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

And then the 11 dimensions are set out; isn't that correct?

A. Yes.

Q. And they are graded; isn't that right?

A. Yes.

Q. And then there is a grand total, and then there is a ranking?

A. Yes.

Q. If these are all and they are, in fact; I think we have checked them if all of these are the grades which were awarded in the various dimensions, as we follow it through the report, which are arrived at as a result of the exercise of a judgement, can you tell us how the grand total was arrived at on this particular table?

A. On Table 17?

Q. On Table 17. Might I suggest to you it could only be

as a result of the exercise of a judgement?

A. I don't specifically recall how we arrived if we arrived at the grand total or how we arrived at it before applying the figures. I do specifically recall looking at the ranking

Q. All right; you don't recall?

A. Yes.

Q. I just want to get the order in which this was done first, if I can.

We see then, over the page, 5.4, "The results based on a conversion of marks to points".

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

And then we get a table, and we get a scoring in points, which is different language than that used in both Table 16 and 17, where there are grand totals, and then a ranking is produced. Do you see that?

A. Yes.

Q. Can you tell us whether that table was created before either Table 17 or Table 16 in this draft evaluation report?

A. We are talking about created, now. What I am talking about is the bottom line, the grand total of the ranking; okay?

Q. I am talking about I suppose the work done, if I put it that way, the work done on that sorry, Table 18 before Table 17 and 16, or what order was the work done? Can you remember?

A. What I do specifically remember is our clear view that we needed to rank the criteria as per Table 17 and apply numbers to it as per Table 18. I don't specifically recall whether, in relation to either Table 16 or Table 17, we might have done an overall ranking on a speculative basis, for example.

I mean, I do remember very clearly what I have already said to you several times the discussion about we need to get back to paragraph 19, and then the issue of applying numbers. That's my dominant memory in terms of how we needed to get from Table 16 to a final result.

Q. You see, if that be the case, and I am just trying to understand this, when you were in Copenhagen on the 28th, was the position that there was no result as per Table 16? Do you understand me?

A. Mmm, yeah, I believe that we agreed the overall ranking in relation to Table 16. But as I say, I don't know exactly at what point in the process. It may have been, for example, as I said, that we did it

on a speculative basis but subject to concerns that it wasn't consistent with paragraph 19. We may have come back to it and changed it after we had looked at Table 17 and 18. I just don't remember, as I say, the sequence.

Q. If we go back to Table 16 for a moment. Now, I know you have told us you can't remember how you got the subtotal for, say, marketing aspects; isn't that right?

A. Yes.

Q. You believe the technical people did the subtotals in relation to their aspects; isn't that correct?

A. I believe they did, yes.

Q. As regards financial aspects, that arose from the dimension financial key figures; isn't that right?

A. That's correct.

Q. And the market or the management aspects subtotal, again we saw from the table that

A. Directly results from the underlying table, yes.

Q. And you then do not know how the grand total was arrived at either; isn't that correct?

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

Q. It's very hard, wouldn't you agree, for anyone looking at this, then, if you were present and you were a member of the group in Copenhagen, and Martin Brennan doesn't seem to have a clear recollection about this other than that he couldn't see a winner in whatever

Andersen produced, to suggest that there is transparency in relation to this particular area of the evaluation process, if you don't even know how things were arrived at?

A. I think there is a lack of transparency in relation to the sequence, but I believe there is transparency as to how the dimensions fed into the evaluation criteria.

Q. Well, you have told us about how the judgements were exercised. We can't see the discussions which took place which gave rise to them, but in any event, you have told us how it happened.

A. Yes.

Q. We are coming to perhaps the most crucial area of the process: You don't have a recollection as to how this particular table arrived at a grand total and a ranking?

A. I don't recall the exact sequencing of events, but I have a very clear recollection as to how the evaluation of dimensions fed into the ranking consistent with the evaluation criteria and weighting model.

Q. Did you work backwards rather than forwards in relation to this, do you remember?

A. I don't particularly recall doing that, but I wouldn't rule it out.

Q. You wouldn't rule it out.

A. I mean, I know, for example, in looking at technical aspects, a subtotal for technical aspects, I would have had a critical view of arriving at a subtotal which married separate subelements of the evaluation criteria set down by Government, which have a different weighting. And that occurs also under the marketing aspects.

Now, those kind of things would have been of concern to me, as would the prospect of carrying out an overall ranking which couldn't really incorporate the weighting model, or the descending order of priority. These were the kind of problems that we encountered here.

Now, what I am saying to you is that I don't rule out that we may subject to having major concerns in relation to those issues, I don't rule out that we may have done some kind of subtotaling, but I don't recall it, because in my view, it wasn't a significant element in the process whereby we arrived at a result.

In other words, it was at the point where we checked the figures, where we applied figures, applied the weighting model and checked the figures. That's the point I recall where I had the feeling this is the ranking, this is the outcome.

Q. I understand that, and I understand the attraction of it. But the effect of that is to work backwards, and to, in fact, create a situation in Table 16 that this

was as a result of the evaluation process, whereas if you worked backwards, it was justifying, because you don't know how the subtotals or the grand totals were arrived at, and that is what Andersen indicates creates a ranking in the evaluation process. And if you take it from Table 18, where you have taken a lot of soft gradings isn't that correct?

A. Yes.

Q. These are dimensions, and we even saw there, in the course of indicators relating to the experience of the applicant, where A3 had 5 on the quantitative evaluation sorry, A3 had 5, yes, I got that one right and A5 had a 0.97?

A. Yes.

Q. And whilst you applied judgement and soft scoring, which was intended, of course

A. Yes.

Q. A5 would have lost out in terms of hard data, if you understand me, 5 versus 0.97; and when you translate it all back into this particular table on 18, A5 and I am saying or A3, and I am not saying other applicants, would not have lost out on the benefit of hard data when it came to apply hard numbers; that is, the weightings. Do you understand me?

A. I am afraid not. Sorry.

Q. I'll go through that again.

It's been discussed with many people here, the

gradings A to E

A. Yes.

Q. provide for, in fact, a 20% gap, isn't that right,

between each grade?

A. They do, yes.

Q. Whereas, if you have, as you had in the quantitative

evaluation, hard specific data

A. Yes.

Q. to which the weights were applied

A. Yes.

Q. that produced a hard result, with all its problems,

but it produced hard, specific results; isn't that

right?

A. I think I understand what you are saying, yes.

Q. Do you understand the point I am making?

A. Yes.

Q. Whereas when the exercise of judgement, even using the

hard data from the quantitative evaluation

A. Yes.

Q. an applicant can lose the benefit of hard data, in

that he may be .5 ahead on something, or behind; and

when you translate that into softer data vis-a-vis

another applicant, he can lose the benefit of that in

the soft scoring system. And when you apply then the

weighting to that, he has lost it all the way through

the system, if it happened at indicator level, if it

happened at dimension level, if it happened at aspect level, and if it happened right the way through here do you understand the point I am making?

Because

A. I understand the point you are making.

Q. Because Michael Andersen states here in this that and perhaps it's a point, was this ever discussed with him

A. Yes

Q. that "Also a weighting mechanism was agreed prior to the closing date for quantitative purposes as evident from both Table 17 and 18. If the marks (A, B, C, D, and E) are converted to arabic points (5, 4, 3, 2, 1), it could be calculated which applicants come out with the highest score measured by points, although such a calculation distorts the idea of a qualitative evaluation."

Did he ever have any discussion and explain to you matters like nominal, ordinal and interval ratio values in statistical terms?

A. No, no, I don't recall any such discussion.

Q. Because, just in the example that I took there, that we were looking at the experience of the applicants

A. Yes.

Q. in effect, A3 got because the only indicator was that which was produced by the quantitative information A3 scored a 5. It was 5 times,

effectively, better than A5, but it only got a score of A against A5's C; do you understand? Now, that was as a result of the exercise of judgement.

A. Yes.

Q. But we don't know why that judgement was exercised that way. You can't recollect, in any event?

A. No, I don't I mean, it may be there was a reason for that, but it's not apparent to me immediately.

Q. And what you did, in effect, was replaced a score with a ranking; in those circumstances, an A and a C?

A. Yes.

Q. And may have I am not saying "did" may have distorted the extent to which A3 was better than A5 on that particular indicator, or it was a dimension, in fact?

A. Well, on the specific case you are mentioning, on the basis of the figures we looked at, I can't immediately reconcile the scoring on the scale A to E with the figures that emerged from the quantitative evaluation.

It may be that there is a reason. I mean, I just don't know. It may be that it was a mistake.

Q. I take your point. I take your point.

A. Yes.

Q. And I understand, in the qualitative evaluation, what you were doing was exercising judgements in relation to matters, and those sort of judgements were exercised over a range of 56 indicators; isn't that

right?

A. Yes, that's right.

Q. And in that regard, there could have been a lot of hard data which could have benefited or detracted from a particular applicant's application, which could be distorted when one tries to apply a hard figure to the soft ranking system or the soft scoring system of an A to E, which is at steps of 20%.

A. Am I right in saying that you are suggesting that we could have used a scale with more points, a 10-point scale, for example, A to whatever the 10th letter is

Q. In the qualitative?

A. Yeah.

Q. I suppose so. I don't know; I suppose you could.

A. I am not entirely sure. I mean, I thought I knew the track you were on.

Q. What I am trying to understand is this: Michael Andersen is pointing out

A. You are talking about losing the value of hard data, but what I am saying to you

Q. Of hard marks, hard marks

A. Well, hard marks. What I am saying to you is that the data was looked at, and an appropriate score in terms of A to E was determined.

Q. I understand that. I understand that. I understand that entirely. What I am then saying is that by then

introducing a hard result do you understand the point I am making by applying a number and a weight which is at intervals of 20%, the person could be losing the benefit of the hard rankings, or of the hard scoring?

A. Where was the hard scoring?

Q. Well, let's take, for example, that particular case.

Now, if we go to page 32 of this, right? You know the one we have looked at?

A. I do.

Q. The 5 for A3, the 0.97 for A5?

A. I do, yes.

Q. A5 gets an A. Understandable.

A. Yes.

Q. A3 gets an A I beg your pardon, A5 gets a C, I think, in this particular one.

A. A5 gets an A; A5

Q. Gets a C; is that correct?

A. Okay.

Q. I think that's correct gets a C.

A. Okay.

Q. Now, that was being taken across that was the information which was being taken across into the qualitative assessment?

A. Yeah, but are you saying that this should have been an A for A3 and an E for A5?

Q. Well, if you are translating it directly, one would

think so. You can't tell us why it became a C?

A. I don't. I can't.

Q. You see. But just translating it directly, you would think so. It was a C; we don't know why. It was the exercise of some form of judgement?

A. Yes, yes.

Q. And perhaps that is what Michael Andersen is pointing out here when he says turning it into numbers, and arriving at a scoring in points, as he has indicated, it distorts the idea of a qualitative evaluation, but, like, he did state it here. He obviously drew it to your attention, or to the attention of and if it was here, surely it was something he must have said at Copenhagen when Martin Brennan wanted to do this; you don't recollect?

A. I mean, I'd have to reflect on the point you are making. I do recall there was a discussion with Mr. Andersen about this process of re-ordering the criteria and applying the numbers. I recall there was a discussion, but what I don't recall is a compelling argument from him. I don't recall an argument.

Q. And if what Mr. Andersen says here is correct, that it distorts a qualitative criteria, and if that I am not saying the actual table produced but if that work was done before the judgements were arrived at, giving rise to the subtotals for marketing aspect, technical aspect, financial aspect, and management

subtotals, and therefore giving rise to a grand total,
that in exercising that judgement, what motivated the
people making the judgement was what arose as a result
of distorting the qualitative evaluation, and
therefore affected their judgement in arriving

MR. FITZSIMONS: The idea

MR. COUGHLAN: Sorry, distorts the idea. Distorts the
idea.

A. Well

Q. MR. COUGHLAN: Perhaps we can look at this as to the
distinction between the idea of a qualitative
evaluation and a qualitative evaluation, but it's
something we'll look at tomorrow, perhaps.

But if that was done first, and this is why I am
anxious to know in which order it was done, and
perhaps you'll think about it overnight, and perhaps
you could be if you can, assist us on the order in
which these particular tables, or the work on them,
was done in Copenhagen.

CHAIRMAN: Well, it may be esoteric and abstruse, but
it is important, and I think we'll all benefit by
reflecting on the matter until eleven o'clock tomorrow
morning. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
WEDNESDAY, 14TH MAY 2003, AT 11AM.