

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

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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

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

Instructed by: Owen O'Connell

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Kelly Noone & Co.,

Solicitors.

OFFICIAL REPORTERS: Viola Doyle and Mary McKeon.

I N D E X

Witness: Examination: Question No.:

Fintan Towey

Mr. Coughlan

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THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 21ST

MAY, 2003, AT 11 A.M.:

CONTINUATION OF EXAMINATION OF MR. FINTAN TOWEY BY

MR. COUGHLAN:

CHAIRMAN: My apologies for persons present for the

late start; I think it was, Mr. Coughlan, that you

sought to have a little time to discuss certain

matters with Mr. Nesbitt.

MR. COUGHLAN: Yes.

Q. Mr. Towey, I will be dealing with matters from the

13th May, 1996, up to the signing off of the licence,

but just in that regard, could I just ask you about

something you said yesterday?

A. Yeah.

Q. And that was, it arose out of Mr. Johansen's note of

the meeting of the 3rd May, where he said that they

were being asked to underwrite, in effect, the

project?

A. Yes.

Q. And I think yesterday you said that you don't recall

any firm view being taken that you should seek an

undertaking from Telenor; it did arise at the meeting

but you understood it at the time to be spontaneous,

do you remember that?

A. Yes.

Q. Now, at this stage, this is on the 3rd May, when

Mr. Johansen records what happens, what he understand

happens at the meeting. Had there been any demand being made of the Communicorp or Esat Holdings's side to put more equity into the project?

A. No, I am not aware that is the case.

Q. And likewise, in relation to IIU, that they were only entering the process, as you understood it, at that stage, but the equity requirement of Esat Holdings could have been underpinned by way of an underwriting from Telenor; could you have gone down, perhaps gone down that route?

A. Okay, yeah.

Q. You see, the evaluation report

A. Yes.

Q. required a certain step, isn't that right, and I think it is in page 44 of the evaluation report. Book 46.

(Book handed to witness.)

Book 46, Divider 50. I will just get the page.

Yes, it is page 44 at Divider 50. It is the second last paragraph.

CHAIRMAN: The second or third one, Mr. Coughlan.

Q. MR. COUGHLAN: Sorry, it is Divider 50; that is the final report and it is page 44, the second last paragraph. And it says: "Although being assessed as the most credible application, it is suggested to demand an increased degree of liability and self-financing from the backers, if the Minister

intends to enter licence negotiations with A5."

A. Yes.

Q. Yes, and that was how, that is how it was envisaged that you would tie them down in the licence, isn't it, to underpin the financial frailty of Communicorp, as it was then, or Esat Holdings, as it had now become?

A. Yes.

Q. Now, I don't see in any of the documents any such demand being made of Esat Holdings?

A. Demand being

Q. A requirement of them that they'd increase their equity and self-financing?

A. Okay, no, I don't think that was made. I mean, when we came to the point where we were ready to issue the licence, we, you know, we conducted an analysis to ensure that all of the parties had the funding in place.

Q. Yes. Well, sorry, that was what the the report identified a problem or a risk, isn't that right?

A. Yes.

Q. And the solution that was found for that particular risk was to make this demand, effectively make it a licence condition, isn't that right?

A. I see what you mean.

Q. Yes.

A. I mean, it is not the kind of thing one would put into the licence per se, but I mean, there was something

that we had to be satisfied about before giving the licence. That's what that is saying.

Q. You see, whilst it doesn't look anywhere that there was such a demand made, the question one could envisage the underwriting commitment from Telenor, who was certainly good for it

A. Okay.

Q. in everyone's view there was no difficulty about that; that might be one way of approaching it, and that is why I just wonder whether it could have arisen, as you say, spontaneously. When you say "spontaneously", do you mean that that was a suggestion that came from the Department side or from the Telenor side?

A. No, it was a suggestion from the Department side.

Q. Right. All right.

A. Martin Brennan asked, but like I say, I felt it was spontaneous. Now, I can't recall the conversation that gave rise to it, but clearly there was some kind of a discussion about the backers staying with the project.

Q. Right. And even as a non-lawyer, you yourself expressed a view yesterday as to what the potential worth of such an undertaking, an undertaking might be anyway, isn't that right?

A. Well, I think we got something from Telenor, and as I said yesterday, I haven't seen it, but I don't think

it was a particularly valuable document.

Q. Yes. I am saying you made that, as a non-lawyer you made or you formed that view about it?

A. Yes.

Q. You didn't take any particular advice about it, did you?

A. About the Telenor letter?

Q. Yes.

A. No.

Q. Now, we had dealt with Mr. O'Connell's minute at Tab 213 of Book 44 yesterday, and just behind it, at Tab 214, there is the letter from Mr. O'Connell which is also dated the 13th May.

A. You are still on Book 46?

Q. Book 44, I am going back to Book 44; Book 46 just has the evaluation reports.

A. Okay. Divider?

Q. I am now going to Divider 214. And there is a letter dated the 13th from Mr. Digerud and it encloses the documents which have been requested. Now, they may have been all handed to you at they may all have been handed to you at the meeting of the 13th because you know it records

Mr. Brennan reading through letters?

A. Some letters, yes. That seems like it would make sense, yeah.

Q. Now, if you go to Divider 215; this is an attendance

of

Mr. O'Connell's of a telephone conversation he had with Mr. Denis O'Brien. Just the note itself first of all reads:

"DOB/Lowry call yesterday.

'Getting there slowly but surely.'

called last night re auto dialers

meeting Loughrey + Lowry re this."

I think Mr. O'Connell has informed the Tribunal in his Memorandum of Intended Evidence that on the 14th May, 1996, he was informed of a telephone conversation of the previous day between Denis O'Brien and the Minister.

"My note contains the quotation 'Getting there slowly but surely'. I do not know whether this is a summary of

Mr. O'Brien's view of the overall position in regard to the licence or a statement made by Mr. O'Brien to the Minister or vice-versa. In any event, the conversation appears to have resulted in a meeting being arranged for the 14th May between Mr. O'Brien and the Minister and Mr. John Loughrey, Secretary of the Department."

Were you aware that Mr. O'Brien and the Minister were in communication at this time?

A. Specifically on the 14th, I am not sure, but I mean, I know in a general sense that Mr. O'Brien was in

contact with the Minister in relation to the issue of a licence and I believe that he was in contact with Mr. Loughrey as well

Q. Right.

A. in relation to the need to put the, get the licence in place for financing reasons, but on the 14th, I mean, I can't I don't have a specific memory of this.

Q. All right. Well, if it relates to the whole question of the licence, what would the source of Mr. Lowry's general knowledge of things? Would that be information were you in communication with the Minister yourself directly or would it have been Mr. Loughrey and Mr. Brennan?

A. I wasn't in communication with the Minister directly. I know that Mr., I know Mr. Loughrey would have been in touch with what was happening, if I can put it that way.

Q. Yes.

A. But I don't recall any direct contact with the Minister.

Q. Right. So was any knowledge you had of the Minister's involvement in matters coming to you from either Mr. Brennan or Mr. Loughrey?

A. Yes, and I mean, I would have known that the Minister was anxious that this be finalised.

Q. Yes. You said that you would have known that the

Minister was anxious that this would be finalised;
that would have been how you understood things
generally?

A. Yes.

Q. Now, if you go to Divider 217, and this is a note of
Mr. O'Connell's of a briefing he received from
Mr. Denis O'Brien on the meeting he had with the
Minister and John Loughrey on the 14th May of 1996.
And Mr. O'Connell has informed the Tribunal, in his
Memorandum, "That the Minister was seeking information
concerning IIU and the availability of finance. The
Minister appears to have told Mr. O'Brien that the
shareholding in Esat Digifone on the day that the
licence was granted had to be 40:40:20 but there
appears to have been some discussion of a shareholding
to 45:45:10 at a later date."

That would be after the licence.

"There was also a discussion of the terms of Article 8
of the licence and there was discussion of a
forthcoming press conference at which the grant of the
licence would be announced and apparent agreement as
to the need for a rehearsal thereof."

Then Mr. O'Connell refers us to this document, being
the record of the briefing he received from Mr.
O'Brien.

Now, you weren't at this meeting; this is the first
thing I want to say. You are not recorded as

A. Yeah.

Q. May I take it you weren't, you weren't at the meeting?

A. No, I wasn't.

Q. "Minister hasn't got information, wants financial information IIU.

Michael Walsh to go to the Department private meeting. Letter that finance is in place from the underwriters.

" DOB underwriters are Telenor + IIU will be satisfied tomorrow.

"Lots of frustration/pressure.

"All by 11 o'clock tomorrow. Lowry 'Will check with Sec' and hold DOB/LB" that "LB" must be Leslie Buckley, I think it is "responsible.

"Has to be 40:40:20 on day. DOB Article 8 very tough. Can do nothing.

Shares amongst parties will not allow Telecom parties to reduce shareholding.

Loughrey to meet Owen O'Connell/Martin Brennan tomorrow AM. Minister informed of 45:45:10 very quickly. Lowry 'let ink dry.'

"Public announcement. Lowry wanted last week.

Do everything in one go.

Deflect attention away from ownership.

Discuss business infrastructure, contracts, roll-out plan, employment," I think is it "ownership"?

Something now "contracts. Cost of buying phones

hold off buying phones to public, etc..

"Must be phenomenally well briefed on bid document and tender.

Owen O'Connell to be present and to answer questions.

Legal ownership" something "expressly "

A. "Extremely".

Q. "Extremely important."

"Legal ownership issue extremely important. All reporters focused on this.

All three shareholders to agree.

Owen O'Connell answers questions. Rehearsal.

"Persona have written another letter to ask licence not to be granted. Just ask one person" "Just want one person with one signal."

Well, sorry, you don't remember being at such a meeting where such a matters were being discussed with the Minister?

A. No.

Q. Did you even know about it?

A. Well, at this remove I can't say that I did, but I mean, I expect I would have been told of it, of the fact of it, but I don't recall.

Q. Right. I think we can skip over the, what I describe as the Donal Buggy stuff on the financial matters because I think you have informed us that as regards that particular aspect of things, all you did was

retrieve information when requested, isn't that right,

for Mr. Brennan and Mr. Buggy?

A. Yes. I mean, I would have seen letters that were coming in at the time and I would have had an opportunity to comment on them, but I mean, the main exercise was being led by Mr. Buggy, I think.

Q. Mr. Buggy. Now, if you go to Divider 223. Sorry, just if I go back to Mr. O'Connell's record of the briefing he received from Mr. O'Brien following the meeting which

Mr. O'Brien had with the Secretary and the Minister on the 14th, again there is no record of that meeting in the Department's papers?

A. I don't believe so.

Q. Now, Divider 223. Mr. O'Connell informed the Tribunal that on the 15th May, 1996, he met Martin Brennan, Fintan Towey and Donal Buggy of the Department and he encloses the document at Divider 223 as a note of the meeting. And we have had it reconstituted and if you go to the second page, it is in its typed form.

"Department of Communications Martin Brennan,
Fintan Towey Donal Buggy.

"Friday if necessary, 3:30 Thursday.

"TE big price decreases tomorrow." That is about Telecom Eireann.

"World Communications Day 17th May.

Bill O'Herlihy per Minister.

"Martin Brennan. When did Telenor" I suppose I think if you continue with the note "when did Telenor late April/early May. KD phone calls late April, meeting Oslo early May.

"Parties talking second half of April, double dealing re Southwestern Bell."

"Pain in the ass comment.

"Co-owned 50:50 intention to place/float 20%, strong supporting letters were available from a lot of blue-chip investors.

"In normal course when project became real, negotiated but deal available, which we now have. IIU not in original.

"Comfort Minister favourably disposed re letter.

"Ref P1 shareholders agreement recital D.

"Ref 4 shareholders.

"Dress rehearsal with Minister sometime about 1 o'clock, some our side.

"45:45:10 'Cruising altitude'.

"In normal trading circumstances, debt equity around 50% in start-up phase.

More fluctuation because of capital spend.

Will tend a little more towards equity, especially in early phases.

Martin Brennan: (Save Minister. Needs our help)".

Now, I think somebody, when we were reading this note before, I can't remember whether it was Mr. O'Donnell,

said "say Minister" or "some or Minister". In any

event, "Whether same project as won competition.

"Martin Brennan not keen on Denis O'Brien as speaker

(not attribution)

"1st conference DOB: We will be lowering prices

25% in three years. Focus of attack. Couldn't have

won competition on this basis. Application was

stronger than that.

"Prepare better answer.

Get correction in launch commitment per bid.

Good presentation in price area.

Consider (although not in application) 10-second

billing units, oral presentation.

Denis O'Brien one second billing by end year 1.

Different packages, different consumers, 25%

simplistic, more complex, exciting things to shake-up

market, e.g. per second billing early on (if Esat

Telecom).

Attempt to correct complaint/innuendo.

25% in 3 years.

We couldn't have won competition on the basis not

enough another consortia reducing from 30 - 33%

within a year of launch.

Why only signed now was licence delayed to put

money in place?

Leslie a speaker?

Department delay all on our side.

"What is impact of delay on launch will there be delay (especially if different). Geographical and quality coverage stress this.

"Everyone knows Christmas market critical and intend to demonstrate seriousness for that.

"Question 16 June deferment: 23 June original closing. If no deferment, could we have bid?

"Comfort now as to how Minister will act in given circumstances in the future."

Now, again do you remember this particular meeting?

A. Not in any great detail, but I mean it seems to be, I mean, it is clearly for the purpose of preparing for the press conference which was to be held the following day.

Q. I see the point that there is discussion about the question of tariffs and matters of that nature, but there is also discussion about the Shareholders' Agreement and matters of that nature. I was just wondering again why there is no record of this meeting in the Department?

A. Well, again, you know, I am not sure whether it would have been seen to be particularly important at the time. I think in advance of this meeting Digifone had produced some kind of document in relation to, you know, possible questions arising at the press conference and I presume that that is part of the record, that this meeting was around that and was a

pretty general discussion, that's my assessment of it.

Q. Right.

Well, can I suggest to you that all of these meetings

appear to be fairly important and critical meetings.

The time was being made available in a busy period,

isn't that right, for these meetings?

A. Yes, yes.

Q. And again, I must suggest to you, that all the more

reason why there would be a record, at least of the

meetings taking place, whatever about the view you

express as to why no note was kept of meetings. You

see, the Tribunal would never have known that these

meetings took place unless we had received the

information, in the first instance, of the meeting on

the 3rd from Mr. Arve Johansen. That is what led the

Tribunal into this whole area?

A. Yes.

Q. From the papers; and the Department gave the Tribunal,

you know, a very large number of documents?

A. Yes, yes.

Q. But the Tribunal was never able to ascertain from

those documents that these meetings had taken place,

and no official in all the meetings the Tribunal had

with officials from the Department prior to getting

the information from Mr. Johansen were informed of

these meetings?

A. Yes, yes. I understand what you are saying and I

mean, I personally, I mean didn't recall these specific meetings in looking back.

Q. Right.

A. I want to be clear about that, that from my point of view, there is nothing, nothing happened at these meetings that I have any difficulty in standing over, if you understand what I mean. I suppose to reflect on a comment that may have been made yesterday, I mean, certainly there is no question of any concealment on my part; you are correct in saying that these meetings took place in a busy period. Now, I can't say at this time whether I formed the view that the meetings weren't important, or whether I may have had some intention to write a report but subsequently took the view that it was overtaken by events or that I had other priorities that required my attention.

Q. These questions about the lack of records at these meetings aren't directly just personally to you; there were a number of officials involved?

A. Okay.

Q. And you were one of them, so you have...

A. Yeah.

Q. But you see, I now want to ask you about one thing here: that note made by Mr. O'Connell on the, it is on the third typed page, the same as the note.

"Martin Brennan: (Save Minister. Needs our help)". Do you see that?

A. I see that, yes.

Q. You see when you look at this period from the 16th April up to the 16th May, the Department received the information from Mr. O'Connell, or received information from Mr. O'Connell on the 16th April and then received a letter from him on the 17th April about the make-up of Esat Digifone, isn't that correct?

A. Yes, I think that's correct, yes.

Q. And Mr. Loughrey has told us that there would have been discussion that no matter what was to happen, he was not going to permit the configuration 37.5:37.5:25?

A. Yes.

Q. I think Mr. Loughrey also told us in evidence here that that suggestion that the extra 5% which IIU were to have was to come out of or be part of the 12% which was intended to float within three years after the award of the licence; that that didn't cut much ice with him, he didn't accept that that is where it was coming from.

A. Okay.

Q. Now, as of the 1st May, Mr. Brennan writes to Esat formally outlining the Department's position and the Department's requirements and informing them that the information was necessary before anything could be done, isn't that right?

A. Yes.

Q. So there could have been no position taken by the officials in the Department that matters were concluded between the Department and Esat Digifone, isn't that right?

A. Until that letter was responded to.

Q. Until and whatever follow-on was necessary perhaps?

A. And assessed.

Q. Until the Department

A. I understand.

Q. Until you were satisfied?

A. I understand, yes.

Q. And can I take it that that view would have been made, in the normal course of events, would have been made known to the Minister?

A. Oh yeah. I mean, yes.

Q. I'd expect that, yes.

A. Yes.

Q. Now, in Book 44, at Divider, the same book, at Divider 212, there is a document and it is headed "Informal Government Decision, GSM Licence."

"The Minister for Transport Energy and Communications referred to the official press conference arranged by his Department on Friday the 19th April which had gone very well. The terms of the proposed contract had been agreed with Esat Digifone. Legal clearance was awaited from the Attorney General office.

"As regards the question of disclosure of information to the unsuccessful bidders, the Attorney General's advice had been sought as to what might be disclosed without breaching confidentiality undertakings. The Minister indicated that he was fully satisfied that the competition which had taken place would withstand any scrutiny whether in court or elsewhere."

Now, there is no as you can see on that, and we have been informed by the Government Secretariat that this was an informal Government decision dated the 23rd April of 1996. The decision was conveyed by Ms. De Burca by phone to the Department on either the 23rd or the 24th. She doesn't have a record of the phone call so she can't be sure of the date of her call, but she can confirm from the records of the Secretariat that it was, as it is called, an informal Government decision. It appears to be, I don't know the technical language that might be used but it is certainly the Minister informing the Government of something, isn't that right?

A. Yes.

Q. And it records that he informed them that the terms of the proposed contract had been agreed with Esat Digifone. Now, that was not so as of that date, isn't that right?

A. That's correct.

Q. So that particular piece of information couldn't have

come first of all, did you know about this

particular issue at the time?

A. I expect it is a piece of paper they would have, that would have come to me. I mean, I see here it is marked to Mr. Brennan, amongst others, so I expect that I would have seen it, yeah.

Q. Well, as regards, first of all, the content of it, Mr. Loughrey has informed the Tribunal that he had not been advised in relation to this. He had not agreed this?

A. No, he wouldn't have.

Q. That there were considerable issues to be resolved?

A. Yes.

Q. And even at this stage he might have entertained doubts as to whether the licence should be issued because he didn't know how matters might be resolved?

A. Yeah, I think that would be correct.

Q. That is what he has said.

A. Yeah, as at end April there was quite a number of things.

Q. Did you inform sorry, I beg your pardon, did you advise the Minister that contracts had been agreed with Esat Digifone?

A. No, I don't believe any official could have.

Q. I suggest to you that it is improbable that any official advised the Minister along those particular lines?

A. I agree.

Q. Now, the next turn of events where we see the Minister saying something about this is when he makes the speech in Dail Eireann on the 30th April of 1996?

A. Yes.

Q. Again we went through this on Friday, I think, and it was a portion, it was in response to a question that Mr. Bat O'Keeffe put to him asking whether Mr. Dermot Desmond was involved as one of the investors, I think?

A. Yes.

Q. And in that, the Minister and I am paraphrasing now so I don't want to be taking out documents unless you wish to specifically stated that it was a matter for Esat Digifone as to whether Mr. Dermot Desmond was involved or not. Do you remember that?

A. Yes.

Q. And I think we went through it and there was no draft prepared in that form for the Minister and you agreed that none could have been because that wasn't, that couldn't be a true statement of the position. The Department had to be satisfied, isn't that right, and the Minister had to be satisfied?

A. Yes.

Q. So we now have a situation where the Minister is informing Dail Eireann that it is a matter for Esat Digifone.

We then go to Divider 211, and this is a press

statement which was issued by the Minister, Mr.

Loughrey believes, from Brussels, and it reads:

"Lowry to issue second GSM License following meeting in Brussels with Commissioner van Miert.

"In line with my policy of maintaining an open and constructive relationship with the Commission, I met Commissioner van Miert to inform him of my intention to issue a second mobile phone licence in the very near future,' says Minister Michael Lowry, TD, Minister for Transport Energy and Communications in a statement issued in Brussels today, Wednesday May 8th.

"Minister Lowry added, 'I also made a presentation to Commissioner van Miert on the background to the GSM competition. I briefed him on the procedures observed, on the method pursued and the basis for arriving at a decision in favour of Esat Digifone. I referred to the recent complaint to the Commission on the award of the licence.'"

Now, just if we take the first portion of that.

"Minister Lowry said, 'I also indicated that should Commissioner van Miert require any further clarification or information in the course of his review of the matter I would be pleased to cooperate fully.'

"In his response, Commissioner van Miert indicated that he was obliged to consider all complaints to him.

However, as a result of certain clarifications, the

Commissioner indicated that he would be notifying Persona that he saw no justification for acceding to their request for any interim measures of an injunctive character."

It ends, and was dated.

Now were you with the Minister in Brussels on this occasion, do you know?

A. I can't say for certain.

Q. Right.

A. I certainly don't recall travelling to Brussels. I didn't travel to Brussels with the Minister specifically for a meeting like this, but a meeting like this could have taken place in the context of a Telecommunications Council, which I may have been at, for example, but I don't specifically remember the Minister meeting with the Commissioner in May. Actually, as I think about it, in May '96, that was just shortly before Ireland took over the Presidency of the Council in the second half of '96, so the Minister was the President in prospect from the 1st July following this. So it wouldn't be unusual that he would meet the Commissioner in that context.

Q. And I understand that, but what I am more interested in here is that the Minister stating in a press release that he had informed Commissioner van Miert of his intention to issue a second mobile phone licence in the very near future.

Now, again as of this date, the work that was being done in the Department, according to Mr. Loughrey, had not been completed and hadn't really started, in effect?

A. Yes, yes.

Q. Right. And then we see the statement recorded by Mr. O'Connell of Martin Brennan saying "(Save Minister. Needs our help)". You see, when you look at that whole series of events, doesn't it appear that the Minister was driving this situation? I understand the civil servants were doing their job as they considered it appropriate to do, but we had a situation where the Minister had informed the members of the Government that an agreement had been concluded?

A. Yes.

Q. He informs Dail Eireann it is a matter for Esat Digifone whether Dermot Desmond is involved or not?

A. Yes.

Q. He is informing Commissioner van Miert and the world that he is going to issue the licence in the near future; all of this before there is any commencement of the concluding work which could have resulted in a situation of not being able to give the licence to Esat Digifone?

A. Yes.

Q. And here, I suggest to you, is a clear example of the Minister driving a situation and that the only result,

come hell or high water, was that the licence would be awarded to Esat Digifone?

A. Yeah, yeah.

Q. Do you understand the point?

A. Well, I do see what you are saying. Now, I suppose at the time my own frame of mind was that while there was a process to be undertaken in relation to the financing and the ownership of Digifone, I didn't personally view it as a likely outcome that that would result in Esat Digifone not being awarded the licence.

Q. How could that be so?

A. I am saying that was a view that I had; it may have been a naive view, it may

Q. Fair enough.

A. That was my frame of mind. I didn't have an expectation or I didn't have a sense that, you know, maybe this was not going to, or maybe that this was going to fall apart because I mean, you know, that's why it would have been, I think. I didn't have that sense

Q. Right.

A. as such, I don't think I would have well, I certainly didn't piece together these pieces of information that you have just done, and I didn't have any, you know, I didn't see any sinister implications, I suppose, in the papers that I saw at the time.

Q. Right. Nevertheless, as you describe it, your own,

perhaps, naive view that things wouldn't come unstuck

or there wasn't the risk of them becoming unstuck.

Nevertheless, can I take it that you would have been

aware, perhaps, of the Minister's desire that things

should not come unstuck?

A. I wouldn't have seen it in those terms. I mean, I

knew the Minister was anxious to move this along.

Q. When you say to "move it along"; to issue the licence?

A. Yes, to issue the licence.

Q. To issue the licence to Esat Digifone?

A. Yes. And my understanding all along was that this was

necessary now in order to finalise the financing

package and to keep the project moving. In other

words, what the consortium had been putting to us was

that they had been, they had been financing this as

far as they could without the licence, but that they

had reached the point where now they needed the

licence to continue to finance the project.

Q. But can I take it that, and I understand the way you

were describing your own state of mind at the time

A. Yes.

Q. that from the moment this particular information

came into the Department on the 16th and 17th, was it

your, the 16th and 17th April of 1996

A. Okay, yes.

Q. From around that time?

A. Yes.

Q. Was it your view that the attitude or the direction which things were taking in the Department was to bring this to a conclusion or a finality which would result in the award of a licence, the licence to Esat Digifone? Did you see it just as effectively further administrative steps to be taken?

A. Well, as you know, the Project Group had taken a clear view that this was, this was a robust opportunity, so as I say, my frame of mind was that, you know, this, that there wouldn't be a problem. A problem would not arise which would thwart the award of the licence.

Q. And can we take it that you understood that also to be the Minister's view?

A. Yes, I expect so, yes.

Q. Tab 26, perhaps, if we just go to it. It is just another record of Mr. O'Connell's. He says that, in his memorandum, that "At 11:55am on the 16th May, 1996 I met Martin Brennan, Fintan Towey and Donal Buggy.

The meeting appears to have dealt with last minute arrangements for signing of the licence." And he refers to this particular document then.

"Martin Brennan/Fintan Towey D Buggy 11:55." It is a licence negotiation. "Knut has to be there.

Michael Walsh 'ought' to be there" I think these are references to the press conference.

"Have told you a lot about this company more. Loves answer re 500K.

"Seamus Brennan, Minister to guarantee coverage geographically and quality.

Dail tonight.

"Wants formal press release.

"Still looking at letters.

"Very urgent re shareholders agreement.

"Still on for 3:30. Printing stage.

"Minister's press release need now.

Accountant Department of Finance, i; 1/215 million."

Do you remember that particular meeting? Again there is no records of the meeting in the Department and I don't need to go over again what we have discussed about all of the other meetings where there were no records.

Can I take it that the questions I asked you about it will receive the same response; that you wouldn't have considered these significant meetings and...

A. Yes.

CHAIRMAN: Was the reference to the 500K, in your recollection, concerned with extra money that Esat said they may have had to pay out because of the delay occasioned by the European hiccup?

A. I think I've, I think I've seen that actually in some other papers, Chairman, yes, yes. I think there was some rumour that the delay had favoured Esat Digifone in bringing together their consortium and this was basically saying that, in fact, they felt penalised by

the delay.

Q. MR. COUGHLAN: I think that the extra time involved to keep staff on and pay more, that was the...

Now, at Divider 234, this was the dress rehearsal on the 16th May of 1996. And Mr. O'Connell told us that he finished this note and he says that this was the note of a dress rehearsal meeting he attended for that day's press conference on the 16th May, 1996. And again it has been reconstituted. And it is:

"Rehearsal for press conference.

"When did Telenor and Esat get together (re delay)"

Then there is "April 1995".

"Whether ready to put in bid?"

"Certain 9 May: 'April' is answer.

"Were ready 23rd June, felt penalised better prepared.

"Team disappointed.

Added 500K to cost (keeping team together).

One new competitor Arve.

"Delay in licence Government/State.

"DOB contribution I wish to scotch the persistent rumours on this. The licence fee has been paid; millions have been spent by the company to date, am entirely out of the shareholders funds, little or no bank funding to date. All of Esat Telecom Holdings share of the funds have been paid. Arrangements among the shareholders have been concluded to everyone's

satisfaction and are working.

"Is this the consortium as that which applied?"

Do you remember the dress rehearsal?

A. I don't actually recall this, no.

Q. Well, you were the ones who had indicated the need for

a, that the Minister needed to be prepared and that

there be a dress rehearsal and that you would ask for

Mr. O'Connell to ask Esat to assist in that regard,

isn't that right?

A. That's correct, yes.

Q. And I think we have seen some draft questions which

were prepared and which may have been sent over as

well. I think they were prepared by Ms. Gleeson?

A. I certainly saw some questions and answers. I cannot

confirm Ms. Gleeson's role.

Q. Again you believe that you saw some questions and

answers the ones prepared by Ms. Gleeson which we have

seen here at the Tribunal?

A. I believe I saw some questions and answers but I can't

say that I recall Ms. Gleeson's name or role.

Q. We haven't been able to find again, we will search

again but we haven't been able to find any

questions and answers document which might relate to

this particular press conference in the Department's

papers. Now, we will look again; they may be there.

But as far as I am told by everybody who has conducted

the searches of the papers that we have, at least,

that they are not in the Department's files?

A. I thought we received something.

Q. I understand you may have received something. We received the questions and answers prepared by Ms.

Gleeson

A. Okay.

Q. from Mr. Owen O'Connell.

A. Okay.

Q. But we have nothing in the Department's files. Again this would not be a situation where a meeting might be considered unimportant and no note kept of it; that explanation won't stand up there. What could have happened to a document like that if it was received in the Department, in the normal course of events? I take it it would be put on a file?

A. Oh it would, yes, yes.

Q. So if it is not there, it is either lost or it has been removed?

A. Well, I mean, I see no reason why such a document might be removed.

Q. The only matter I would like to take up with you there is, it falls into a pattern, doesn't it, of all of this contact with Esat Digifone or with Mr. O'Brien not being recorded at all on the Department side through this very important and crucial period and

A. Yeah...

Q. I might suggest to you it would only drive you or

perhaps it can only drive you to the conclusion that this was for the purpose of concealing all of this contact?

A. It certainly wasn't deliberate. As I have said to you, I am not quite sure about the reasons as to why a record of meetings may not have been kept, but as I have also said, I mean, there is nothing that was discussed in those meetings, from which we know of, in relation to the records that you now have, there is nothing that I think, you know, can't reasonably be explained or there is nothing within those meetings where I can think of any circumstances in which there would be a motivation for concealment.

Q. Well, might I ask you to consider it this way: all of the notes made by Mr. O'Connell seem to record certain sensitivities on the Department's side?

A. Yes.

Q. All that has ever been declared in public about any of this process was that it was effectively, I suppose, one which was the, or should be the envy of all other departments or anyone else who had to engage in such a process again, and there were massive problems coming up and there is no record of it, even of the views of the Department about them on the Department side?

A. Well, I am not sure what you are referring to when you say "massive issues", but I mean when you say "sensitivities on the part of the Department"

Q. There was a massive issue here, there was two massive issues here. There was the question of ownership?

A. Yes.

Q. Finance?

A. Yes.

Q. Share configuration?

A. Yes.

Q. And just, just leave it at those because they were the ones identified by Mr. Brennan on the 13th as recorded by Mr. O'Connell. You say that they were probably concerns which would be out there in the public's mind?

A. Yes.

Q. But I must suggest to you that there was a decision made in the Department either not to keep any record of these meetings, and that that amounted to a concealment of what was happening in this particular licence award process

A. There wasn't any decision of that kind. There was no such decision.

CHAIRMAN: I suppose logically, Mr. Towey, the same considerations would have applied to your meeting with the Attorney General's officials, Mr. McFadden and Mr. Gormley? I mean, logically, if these matters were comparatively trivial or if it was engaged in the same inquiry, there was no reason to keep a note of that, but that was minuted?

A. In relation to the legal advice being sought?

CHAIRMAN: Yes.

A. Yes, I understand what you are saying.

CHAIRMAN: I mean, there you were meeting other public servants and you did follow the normal protocol of keeping a record.

A. Yeah, yeah. I understand what you are saying, Chairman. But like I say, I can't say exactly at this remove why a record wasn't kept, but I mean, I am very clear that there was no question of a decision or a deliberate concealment exercise.

Q. MR. COUGHLAN: In rehearsing the Minister, did you do any work on the questions and answers document which you believe you saw in preparing the Minister?

A. I thought that the document that I had received was innocuous, if I can put it that way, in the sense that it didn't raise any issues that I believed would create, be of concern to the Minister.

Q. Right. Did you know if any drafts were prepared in a question-and-answer format for the Minister in the Department to be prepared for the press conference?

A. I think that we might have intended to do that, but I don't specifically recall and I don't think I have actually seen a prepared document amongst the papers.

Q. Well, the Minister would never be allowed to go into Dail Eireann without being prepared in terms of being prepared with a document?

A. That's correct.

Q. Isn't that right?

A. That's correct, yes, absolutely.

Q. And this press conference was, from Mr. O'Connell, from what is conveyed by Mr. O'Connell's notes anyway, was considered to be very important and that the Minister wanted to be prepared and needed a dress rehearsal and needed even Digifone people there for that dress rehearsal, isn't that right?

A. Yeah, I am not entirely sure whether the Minister expressed that view or whether the Department took that view in the context of the Minister's tendency to prepare carefully.

Q. Yes. Doesn't it seem unlikely that the Minister was briefed or prepared for a press conference without documents?

A. I would expect that for something like this, that he would have documents normally, yes.

Q. And the only document that we have ever seen around this was Ms. Gleeson's document that is not in the Department files, and there are no other documents in the Department's files of drafts prepared on a question-and-answer basis to prepare the Minister for the press conference?

A. I would have to reflect on the reasons for that. I mean, certainly, you know, we had the frame of mind this was to be a prepared event.

Q. Now, the note of the press conference that we have,
the only note of the press conference that we have,
that we have seen is again Mr. O'Connell's note,
Mr. O'Connell's note of the press conference and this
is in Book 38, Divider 1B-26.

It is a short enough note. And do you have it? It is
"ML" I presume Michael Lowry; he is saying
"unanimous decision. Questions conclusively responded
to. Competition fully respected."

Signed, dated, timed.

"Top table Loughrey, Lowry, DOB, Arve Johansen,
Michael Walsh, John O'Callaghan, Knut Digerud, Barry
Maloney."

I can't make out the other one, oh maybe Martin
Brennan, yes.

"Question why so long?"

A. Michael Walsh, I think.

Q. Or is it Michael Walsh you think is the final one.
Michael Walsh is there. It may be Martin Brennan, we
will check that anyway. "Why so long? First time"
or "kind. Very comprehensive.

Complex process, prudent and cautious process.

Denis O'Brien, whether 120 million has changed from
previous 100.

"Plan said 124 million. Total "

A. "Total investment "

Q. "Total investment" is it?

A. I think so.

Q. "50 million. Questions re money, planning?"

"Looking good, not an easy ride.

"Will need objective 80% by

A. "Population at start-up."

Q. " population at start-up" again something "Knut

Digerud

A. "Introduced"

Q. "Introduced Knut Digerud."

Do you know if any record of this press conference was

kept by the Department, or sorry, was made by the

Department in the first instant?

A. I don't believe it was.

Q. I wonder would you go to Divider 239, I think it is.

Mr. Dukes had by now become Minister and it was the,

it is a letter of the 6th December, 1996. I just

wonder if you had any role in the preparation of this

letter?

Mr. Brennan did; he told us and Mr. Loughrey has told

us about his involvement in it.

A. 239 is empty in my copy.

Q. It is missing, okay. I will get you a hard copy.

(Document handed to witness.)

Does it does it ring a bell with you?

A. I mean, not specifically, but I mean it is the kind of

letter that I could have been involved in drafting, in

the sense that as an inquiry from Deputy Molloy, it

wouldn't be unusual for a first draft to be produced either by me or within my unit.

Q. Well, just looking at it in its final format, is it, does it appear to be your style or...

A. Well, I mean, I see in the language that was used I think on a number of occasions or a number of drafts, so, you know, it is difficult to discern a particular style from it in those circumstances.

Q. You can see it is silent as to the real position which pertained as the time just before the licensing stage as was known to the Department about the 25% ?

A. Yes.

Q. Mr. Dukes do you remember any discussion about that?

A. No, I don't.

Q. I don't think Mr. Dukes has any recollection of anyone ever telling him of the position of IIU having 25% no matter for what period the Department were aware of it, and that when he came into office he had a briefing about this whole matter because there was controversy about it and the Minister had, Minister Lowry had resigned in controversial circumstances anyway. Do you remember, ever remember any participation in a briefing of Minister Dukes about it?

A. I wasn't at a briefing and I don't, I don't particularly recall him, I don't recall having

knowledge of him having a particular interest. Now, I am sure that as incoming Minister, he would have had a general interest. But I suppose what I am trying to convey is that I am not aware of him having an interest which gave rise to a request to Martin Brennan or to me to create new documents or to, you know, identify precisely the steps in the process.

That is what I mean.

Q. It is just that looking at the letter, and bearing in mind that Mr. Molloy had intervened in the House when Mr. Seamus Brennan asked about the ownership of 20% of the consortium, and Mr. Molloy had intervened and said "25%"; do you remember that?

A. I remember you bringing that to my attention, yeah.

Q. So you don't remember any discussion at all about the preparation of this letter?

A. No, I don't. Do you know if Mr. Molloy's letter raised any specific issues in relation to...

Q. We don't even know if there was a letter from Mr. Molloy as to whether it was something that was raised with Mr. Dukes by Mr. Molloy by way of him meeting him or meeting him in Dail Eireann and raising the matter with him.

A. Okay.

Q. But there can be little doubt but that, I suppose the purpose of this letter was to clarify for Mr. Molloy, or to, I suppose the first paragraph there appears to

be "considerable confusion abroad about the precise situation regarding ownership and investment in Esat Digifone. I hope the following information will clarify the matter for you."

A. Yes.

Q. So it was definitely intended to deal with what is described as "confusion abroad about the precise situation regarding ownership and investment in Esat Digifone."

A. Yes.

Q. And if there had been questions, as Mr. Molloy himself indicated in the House, that one of the matters of confusion was this question of whether it was 20% or 25%

A. Yes.

Q. this letter did not address that particular issue, isn't that right?

A. It doesn't, yeah. I mean, I could speculate that a judgement was taken that the key events were the application and the licensing stage.

Q. That is why I was just wondering, it would appear that there would have had to be a discussion; it is a fairly tight letter, isn't it?

A. Yes, yes.

Q. But it would have been well-known to all of the civil servants that IIU did have, for whatever period the civil servants understood it to be, 25% interest,

isn't that right?

A. Yeah, that was I mean, that was known to be a step in the process. It is not something that we would have taken a particularly sinister view of, I mean in the sense that I think the view was that IIU negotiated their position up to 25%.

Q. Yes.

A. And there was a view that that was something we couldn't accept and it was restored to 20%.

Q. But if this information wasn't given to Mr. Dukes, the question must arise as to why not? Again it seems to fit into a pattern that we saw back in May of 1996 of not keeping a record of meetings where sensitivities, particularly surrounding this question of ownership, were being discussed, and there is no record in the Department of it?

A. I mean, like, I say, I don't recall any discussion, but I don't see why there should be any sensitivity about it. I think in the papers, for example, there is a mention of a prospect that IIU's shareholding would be reduced.

Q. Might I suggest the one, the one significant sensitivity about it is this: that IIU were not in the bid document; IIU were not at any presentation, no information about them was given at any presentation?

A. Yes.

Q. And they were not part of the evaluation process?

A. Yes.

Q. They weren't evaluated?

A. No, they weren't evaluated

Q. I think perhaps I am going to turn to some other matter which I informed Mr. Nesbitt and Mr. Towey that I wouldn't deal with before lunch, Sir, this morning so it might be an appropriate time.

CHAIRMAN: Well, we will resume at two sharp.

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: Now, Mr. Towey, I think I want to return now to the evaluation process, and the report, and matters surrounding it. And I think we brought to your attention, a document this arises out of the discussion we were having on Friday, and a trawl being conducted then in relation to suggested textual amendments, and various annexes that may have been brought into being. I think we brought your attention to a document, which is at it was already in the book of documents, I suppose the significance didn't occur to anybody until we were having our discussions, but it's at Book 52, Divider B-7. I think you have it in hard copy form yourself, anyway.

A. Okay.

Q. Now, I think that and I can tell you that that

document came off your word processor, your disks.

A. Okay.

Q. And it would appear that it was a draft being prepared, or a draft prepared by you, isn't that right?

A. Yes.

Q. And considering its content, it could only have been prepared after the 23rd October of 1995, isn't that correct, because it's for textual amendments to the 18th October version of the report, isn't that right?

A. Yes, I think based on the document that you showed me last Friday, that it was a document that was prepared arising from the discussion on the 23rd, and so specifically as a preparatory document for the 24th, yeah.

Q. And what I wanted you to go to, if you wouldn't mind, is to the second page of this particular document, and we have been over the positioning of what became, what was Table 16, that's the aspects table, which now became Table 15, and went into Chapter 4 of the final report.

A. Yes.

Q. And Table 17 of the the old Table 17, that is the table which is to represent the final result which had been described as a conformance test by Andersen, and this is the one where the weightings and the letters appear, isn't that correct, whereby the judgement was

exercised in relation to arriving at the bottom line?

A. Yes.

Q. And you can see here that on this draft prepared by you, you say "Include Table 17 here." So Table 17 goes in.

And then the text continues: "The marks awarded under each dimension are outlined in Table 17 (the award of marks to the various indicators underpinning the indicators are shown in Chapter 4). The result in the grand total line has been achieved by a process of discussion by the evaluators taking account of the weighting of the evaluation criteria determined prior to the closing date."

And that is what is contained in the final report. It ends there?

A. Yes.

Q. And I am not going over it again. We had a lot of discussion about the discussion that took place in Copenhagen between yourself and Martin Brennan and Michael Andersen, and perhaps Jon Bruel, but Michael Andersen anyway, yourself and Martin Brennan definitely?

A. Yes.

Q. Now, the text as prepared by you then continues: "Although this weighting mechanism was agreed, primarily in the context of the quantitative model, it inevitably carries weight as to the evaluators

interpretation of the importance of the various evaluation criteria subject to respecting the order of priority agreed by the Irish Government."

A. Yes.

Q. Now, that doesn't appear in the report, that particular sentence.

A. Yes.

Q. Now, I am going to refer you to two other copies of this which we have located. One appears to be Mr. Donal Buggy's well, we think it's Mr. Donal Buggy's. I think it is, it's his writing on it anyway.

A. Okay.

Q. And it's separate it's not in a book. We went through every document we had around this time and we pulled this out.

Now, if you go to the ninth page of that, under the heading "Final Scoring According to Evaluation Criteria"

A. The ninth page?

Q. Yes, the ninth page. And I presume am I correct in thinking this whole document of Mr. Buggy's appears to be a pulling together of all the various drafts which were prepared by you under various headings and various aspects of the report? They appear to be.

A. Yeah, I think so. I mean, the document that you gave me on Friday suggested there was four appendices, and

I think at the time it wasn't a complete document, but this is probably the complete set of appendices, yes?

Q. Yes, all right. Well, then, you see the 9th, "Final Scoring According to the Evaluation Criteria," and then, "Include Table 17 here," and then there is the then there is the paragraph, and then you see that there is a line through the final sentence, do you see that? First of all, would you confirm, that appears to be Mr. Buggy's writing, doesn't it, or do you recollect now?

A. I think that it is. I think that it is.

Q. We have two, and we think that one is Mr. Buggy's and one is Mr. Riordan's. As to which one is which, I just perhaps need clarification, but in any event, you can see that there, that the line has been put through this?

A. Yeah, I think it is

Q. We have looked at the writing and I think it's Mr. Buggy's.

A. Okay.

Q. Now, we know from a communication which Mr. Buggy had with you in April of 1995 in considering draft letters which would be sent to the disappointed applicants, that he raised the query "Split not agreed", and asked you was it just indicative. Do you remember that particular

A. I remember you showing me that, yes.

Q. All right. And then if we go to the other copy we seem to have been able to pull of this. That's already in the books, it's at Book 46, Divider 48, but I can perhaps give you a hard copy to avoid having to...

This seems to be a full set as well. We think this is Mr. Riordan's. And then if you go to the ninth page of that set of documents again, or page 9 as it is in the book, you will see the same paragraph as drafted by you, and you see that sentence, there is the line going through and the line across at the top and bottom.

A. I do, yes.

Q. Do you see that?

Now, I want to preface any discussion we have about this by your informing the Tribunal yesterday morning, I think, wasn't it, at Day 220, page 1, and it's

Question 2 well first of all, it's in reply to

Question 1 first of all you say,

"May I come back to something?"

And I say, "Yes, indeed, please do.

"Answer: There is an important point from my evidence from last week that I want to come back to. You recall that we spoke about the evaluation model that was agreed?

Question: Yes.

Answer: And the question of the weighting of the

selection criteria and how that applied.

Question: Yes.

Answer: And you recall that I put the view that my view was that the weighted model applied to both the quantitative and the qualitative method, models and I recall it was your view that it applied to the quantitative model.

Question: Yes.

Answer: Over the weekend I was re-examining the papers with a view to finding papers that would, I suppose, bear out what I understood to be my recollection.

Question: Yes.

Answer: And, in fact, when I looked to the papers, to the extent they were available to me, I feel that your view was correct in relation to that meeting and that it was at some point subsequently that I formed the view that the weighting model applies to the qualitative evaluation."

And I want to thank you for that correction, and it's helpful to the Tribunal.

But what I want to ask you about now, particularly in the light of this particular text which was drafted by you, you believe, perhaps on the morning of the 24th, or after the meeting of the 23rd anyway, of October of 1995, that's this document

A. Okay, yes.

Q. the textual amendment document. That seems to confirm that all that was agreed was the weighting mechanism for the quantitative model, isn't that right?

A. Yeah, it's my view that, I mean, that was clearly Andersen's view, and the documents that I re-examined following the meeting, the June meeting, do clearly show that the weighting model was agreed in the context of the quantitative model. I believe my perception, which I understood to be my recollection before I checked, was based on a re-examination of the evaluation model at some point where I felt that the logic of it was that the weighting model for sanctioned criteria was to apply.

Q. I understand the point you are making. Because yes, I understand the point you are making and I just want to bring you through that now.

That there was never an agreement about the weightings insofar as they applied to the qualitative model, isn't that right?

A. I believe that's true, that there was no express agreement at the Project Group in relation to that.

Q. And I appreciate that you believe that you had a recollection that at Copenhagen, that you believed that you had a recollection that there was a discussion about a weighting to be applied to the qualitative model, or to the qualitative yes,

model, I suppose?

A. Yeah, yeah.

Q. And can I take it that that recollection is an erroneous recollection so?

A. That the

Q. That there was a specific discussion about the qualitative and an agreement that a fair way to spread them was 10:10:10 was that an erroneous recollection?

A. No, I believe it was sometime before Copenhagen that I took a view that

Q. You personally took a view?

A. Me personally, as distinct from the Project Team that, within the evaluation model, the selection the weighting of the selection criteria had to apply.

Now, you do recall that I set out clearly to you that the weighting model was agreed in relation to the selection criteria and in isolation from any consideration of the weighting of individual indicators or anything like that.

Now, in Copenhagen when we reached this point where we had Table 16 essentially and we were looking at the question of a grand total, I mean it was at this point that I put my view very clearly, that we had to regroup these criteria and apply the weighting model in order to respect the evaluation criteria.

Now, it was in doing that that we had to take a view on the breakdown of the marks available for the first

criterion, which was 30 marks, and there was a proposal which was agreed that it be 10:10:10. Now, I know that we had the discussion about the weighting at dimension level implied by the quantitative model, but I don't believe I certainly have no recollection that that featured in any way in that particular discussion at Copenhagen.

Q. All right. Well, it's just that what I am trying to understand is, it seems clear if you drafted this text on the 24th, that there was no agreement of the PTGSM about the weightings on the qualitative model?

A. I agree, yes.

Q. And there never was?

A. In the Project Group, I accept that's the case, yes.

Q. Because if there had been of course, you wouldn't have drafted this particular text "that the weighting mechanism was agreed primarily in the context of the quantitative evaluation."

A. Yes.

Q. Now, we know also, again from the document which again I am sorry it isn't in books, and nothing specific turns on it, other than to point out something else that was happening; that the whole report, including the appendices, were obviously considered from the point of view of textual amendment, and we have, just to confirm that, I think we have a facsimile cover sheet. Again, I think this was brought to your

attention briefly this morning, but what it is is a fax from Martin Brennan to Michael Andersen, and it deals with suggested amendments to the various appendices, and there are a number of suggested textual amendments to Appendix No. 2, which is the methodology employed appendix, and there is no suggestion or agreement seen from Michael Andersen that that portion of the methodology appendix, which describes the application of the quantitative weightings, is changed.

So it looks as if, not only was the main body of the report considered, but all the appendices as well, from the point of view of producing the final report, as you might expect?

A. On this document, it doesn't particularly ring any bells with me. Now, it may be that if I examined it and looked at it in the context of other papers on the files it

Q. I think it was sent. But I don't think the text itself, nothing turns on anything itself in the text.

I am just bringing it to your attention that it appears that the appendices were gone through as well.

That's all I am bringing to your attention.

A. Okay.

Q. And we see the way it comes out in the final report from Michael Andersen, the methodology.

A. Okay.

Q. And that doesn't change, as described by Michael Andersen.

And we also know that in the draft of the 18th, and in the final report, that the table for the quantitative weightings has been changed, isn't that right, from that which was agreed by the PTGSM?

A. We were through that, yes.

Q. And that reflects the weightings which appear in Table 17?

A. It does.

Q. Now, I'd like to examine a number of positions with you, if I can, because the Tribunal now is now in possession of more information as a result of your evidence now.

A. Okay.

Q. And the Tribunal can see the various documents and how matters evolved.

Do you remember the other day I raised the question in the form of the cooking the books question, do you remember that?

A. I remember it well.

Q. Now, what I am putting to you at the moment is that one end of the scale, taking into account all of the evidence which the Tribunal has so far, that could be at one end of the scale, and what I want to do is come back from that and go through a number of options for your consideration, and for your comment.

A. Well, can I just say on that, that I view your proposition as a very extreme end of the scale, and I believe I have already dealt with that.

Q. Fine. Okay. I am now trying to examine a number of other options for your comment, and if you come up with some further view about it, the Tribunal will be delighted to hear from you about it.

A. Okay.

Q. And in this regard, I should also say, because what is involved here, I understand, is important and significant, and that even if, after today, you were to have a view, the Tribunal would still be interested in hearing it.

A. I understand, yeah.

Q. Now, if, as you say, the "cooking the books" is at the extreme end of the scale

A. Maybe off the scale would be a better description.

Q. I'll take what I we'll then try to take it from the lowest point on the scale mistake?

A. A mistake?

Q. Yeah, I am trying to create some sort of a scale or a table.

A. No, no, I wouldn't

Q. And to get your views about it.

A. I wouldn't view what we have, what we did here as a mistake. Now, I know that you have mentioned the appendix where you feel a document was altered. That

may be a mistake. It may be it may have been a misinterpretation by somebody in the Andersen organisation, for example. I don't we have been through this before. I mean, I don't see any reason why a historical document would not be reproduced faithfully, and if it was reproduced faithfully, I don't think it would serve to raise any significant question-marks in relation to the report, because the views on the quantitative evaluation are set out, not as comprehensively as they might have been based on the exchange that we have had, but the quantitative evaluation was rejected.

Now, on the issue of the evaluation as carried out; that evaluation was carried out in good faith and with a view to ensuring that we evaluated all of the applications fairly, and in accordance with the Government's evaluation criteria. In Copenhagen we had a scoring for the 11 dimensions which have been looked at by, largely, independent largely but not absolutely independent sub-groups, as you understand.

I was on quite a number of them; Michael Andersen was on quite a number of them. But we had all of the raw data necessary to reach a ranking in accordance with the evaluation model which had been developed in advance of the competition.

When we looked in practical terms, in practical terms, at achieving a ranking in accordance with that model,

we then saw that there were certain shortcomings, and as I had said to you, I believe that I had developed a view that the concepts of weighting, the descending order of criteria, would have to be taken into account in the qualitative model. When we reached this point, it was the view of Michael Andersen that we should achieve a ranking in relation to Table 16. You understand when I say Table 16, 17 and 18?

Q. Yes, I do.

A. So if we can stick with that terminology.

Q. Yes, indeed.

A. And as I said to you, I don't know at what stage we actually completed Table 16, at the behest of Mr. Andersen. We may well have done it on a speculative basis, but for myself and Martin Brennan, there was a huge concern here, that we had to respect in an express kind of way the descending order of the descending order of priority, and the views of the Project Group in relation to the descending order of priority were represented in the weighting model. So it was my proposition initially, which I believe Mr. Brennan fully agreed with, that the criteria be regrouped, and that we apply the weighting model.

Now, our view in putting this to Michael Andersen was that we were duty bound to produce a ranking in accordance with the Government's instructions. It was

on that basis that Table 17 was created. I think it was at that point that the breakdown of the 30 marks into 10:10:10 was agreed and we arrived at a view on the overall ranking. Now, I think we did that in, I think what you described as a qualitative way, in that we looked at the award of letters, if I can call it that to be clear, to each application, and we compared them and came up with a view. It was then Martin Brennan's view initially, and again it was one that I fully conferred with, that we should convert the letters into numbers in order to do a comprehensive mathematical calculation. And that served to confirm the ranking.

Q. I understand that. In fact, I have absolutely no interest in Table 18 at all, because, as you say, all that was done was to confirm the decision which you say was arrived at on Table 17. That was the decision

A. Yes.

Q. Now, to arrive at that decision, the judgement you formed, it was based on splitting the dimensions on the first criteria, 10:10:10?

A. Yes.

Q. We have been over and over it again. If they had been left as they were in the quantitative model, we have been through all of that, and what might or could have resulted from that.

A. Can I say in relation to that, that I didn't run the numbers on that alternative split until last night, and while it would serve to narrow the gap in Table 18 in numerical terms

Q. I am not talking about Table 18 at all

A. Okay, I understand.

Q. Not at all, because there was no decision on Table 18.

We spent a lot of time discussing Table 18. In fact, the deeper you get into the inquiry, we now understand that the decision is on Table 17. That's what's in the final report and that's what you say was done at Copenhagen.

A. Okay, okay. Let me qualify that a little bit. I believe we did mark Table 17.

Q. I beg your pardon?

A. I believe we did arrive at a ranking based on Table 17, but we did do the formal calculation in relation to Table 18.

Q. I know you did that

A. Which I believe confirmed the ranking, so if, on the other hand, it's suggested that our ranking on Table 17 was wrong, I mean, I think that would have given rise to Table 17 being revisited, if you understand what I mean?

Q. I do indeed.

A. So you can't say Table 18 wasn't part of the decision.

It was

Q. It couldn't have given rise to anything other than what was in Table 17, if you turned A, B, C, D, E into 5, 4, 3, 2, 1. It couldn't give you anything else?

A. Okay, yes.

Q. I think we wasted a lot of time, us trying to understand, and discussing that particular aspect of it. That's not what I am interested in at all.

A. Okay.

Q. A judgement was arrived at, and it was you informed us, and it was you informed us in the first instance.

I didn't approach you and make a suggestion to you, you informed us how the judgement was arrived at by looking at the, particularly the top three criteria, and that was you sort of, you said they were even on criteria number 1, there was no doubt about it, Esat were ahead on the technical, that ranked above the tariffs, and Persona were ahead in the tariffs, but respecting the Government's descending order of priority in arriving at a judgement, you said that's how the bottom line was arrived at on Table 17, by way of discussion, and that's how the judgement was arrived at in Copenhagen, isn't that right?

A. Yes.

Q. Now, that split, as we know, if you applied the split on the dimensions in the quantitative model, I am not saying would have, but could have resulted in a different judgement; not that you might not have been,

from an impressionistic point of view been of the view that Esat Digifone were the best, but that in applying the objective standards of the competition, and respecting the descending order of priority of the criteria in paragraph 19, that it would have put, on the first criteria, perhaps, Persona being ahead, and I was just talking about that in the exercise of judgement. It may not have been possible to call or it could have given rise to could have given rise to somebody making a different judgement call, that's all we spoke about the last occasion.

A. Well, I mean, if a different weight the different weighting that you mentioned had been applied, it would have the effect of putting Persona slightly ahead on the first criteria.

Q. That's right. Which couldn't be ignored in a judgement call because that was the most important criteria in the descending order, it was number 1?

A. Okay.

Q. Even to the extent that it carried a 3 to 2 weighting over the second one, 30:20, whatever it is?

A. Okay, yes.

Q. Now, from what you now told us, the PTGSM did not agree qualitative weighting?

A. Not before the 28th September.

Q. Never. Never. You told us never; they never agreed a qualitative weighting?

A. But in the context of the report, I mean, this was I mean, this was laid bare in the report.

Q. I mean, that's the point I am coming to, and this is why I am asking you to look at all of the matters in the report, what you drafted. If you say what happened at Copenhagen occurred, that would have been clear in your mind, I suggest, as of the 23rd and 24th October; it wasn't too far wrong?

A. Yes.

Q. Nowhere in your draft do you describe that. In fact, you continue to describe it as being the application of the quantitative weightings which, while not agreed, would have merit in a qualitative analysis.

You see

A. Is that not a description of what we did?

Q. Well, no. You didn't apply the quantitative weightings, you have told us that. You didn't.

A. Sorry, I think I understand what you are saying. You are saying that the quantitative weightings was the total package of the weighting of the criteria plus the weighting of dimensions implied at the level by the weightings of the indicators.

Q. It had to be. Had to be.

A. I understand what you are saying. But

Q. Otherwise it had no credibility at all. Nothing else was agreed by the PTGSM.

A. Okay, I understand what you're saying, but I mean,

what we were saying to the group was that we took the weighting of the evaluation criteria determined in relation determined by the group in relation to the quantitative evaluation, and we applied the criteria we applied the weighting at the criteria level in the qualitative evaluation.

Q. You see, what the report shows in the appendix is a change on the quantitative, the split on the quantitative weightings, isn't that right?

A. Well, it does

Q. There is no doubt about it, it does. And what you were drafting here is a reference "to the weighting mechanism agreed primarily in the context of the quantitative model." Again, anyone looking at it and looking at what was in the draft of the 18th, would see this particular split as representing the quantitative, isn't that right?

A. I understand the point that you're making, but nevertheless, I feel that in the discussion in the Project Group on the 9th October, where this would obviously have been discussed now, you recall from my evidence that I said I don't specifically recall the to-ing and fro-ing, the exchanges of the discussion, but to some extent I am inferring that this these kinds of issues had to have been discussed, and I think I have seen from the records of some other participants at those meetings, that they

were.

Q. Okay.

A. Now, in setting out what we had done, I mean, we would have I have no doubt that we would have made clear what we were doing; that we were taking the weighting of the criteria, and you'll recall from the papers where the weighting where the weighting model is recorded on our files, that it's recorded as a series of eight numbers at the criteria level. So I don't think there was any confusion. I don't think there could have been confusion within the Project Group as to what we had done.

Q. Of course on the criteria level, because Mr. Fitzsimons drew something to my attention yesterday about this question at the criteria level, and then when I read all around Mr. McMahon's evidence on the matter, I discovered, from reading what Mr. McMahon said, that he had no understanding of where the split 10:10:10 came from. He understood the 30:20, of course, but he had no understanding of the 10:10:10.

A. Yes. But he clearly achieved understanding and satisfaction.

Q. Look, you have told us that there was no agreement in relation to the application of weightings on the qualitative evaluation. You have told us that just this afternoon.

A. Yes.

Q. That being so by the PTGSM I know what you say yourself and Martin Brennan did out in Copenhagen.

A. Yes.

Q. That being so, there can have been no decision of the PTGSM on the qualitative evaluation if there was no agreement in the PTGSM on the application of weightings to enable a judgement to be arrived at?

A. There was no agreement in advance, but when we brought the draft evaluation report, there was a proposed basis for agreement.

Q. Mr. Towey, look, if that's the case, Mr. Towey, I suggest to you that you could not have drafted the paragraph to be included under Table 17 in the final report, that "Although the weighting mechanism was agreed primarily in the context of the quantitative model, it inevitably carries weight as to the evaluators interpretation of the importance of the various evaluation criteria, subject to respecting the order of priority agreed by the Government." You couldn't have drafted that if there had been an agreement by the PTGSM of the application of weights to the qualitative evaluation model?

A. But am I not correct in saying that the first part of this sentence, that the weighting mechanism was agreed primarily in relation to the quantitative model, that that represents Andersen represented Andersens'

view, I am clear on that. I am not sure to what extent other members of the Project Team, at the time, expressed that view, okay?

Q. Yeah.

A. But this text was drafted after two meetings of the Project Group which had looked at the draft evaluation report and the approach that we had taken, and I obviously drafted this text to represent my impression of the views of the meeting. Now, unfortunately, I can't recall the exchanges, but I mean, isn't this suggesting that okay, the model was agreed in the context of the quantitative evaluation, but the Project Group agrees that it represents the views of the Project Group on how the criteria should be weighted? Is that not what it's saying?

Q. Does it not represent, effectively, a spin on what really happened, Mr. Towey, because

A. Let me come back for a minute

Q. I'll put to you why I ask you the question.

A. Okay.

Q. If, as you have informed the Tribunal, that in Copenhagen, on the 28th October, you and Martin Brennan and Michael Andersen discussed a matter.

A. Yes.

Q. You informed us, because I asked you specifically, that you were not setting about to in any way amend or deviate from the quantitative weightings in terms of

the breakdown of them, but that you had a fresh look at this, and in a qualitative way, formed the view that the only fair way to split these in the first criteria, was 10:10:10. That's what you told me.

A. I understand what you are saying, but you are bringing together there some pieces of information that didn't form part of the discussion at the time.

Q. Sorry, I want to be and I take it as slowly as possible, because all I am asking you about is the evidence you have already given about this.

A. Okay.

Q. And you have said that at Copenhagen I asked you specifically did you consciously deviate from the split? And you said, no; that at Copenhagen you consciously arrived at what you considered to be the only fair split, 10:10:10, in a qualitative evaluation process. That's what you told us.

A. All right. Well

Q. Is that what happened at Copenhagen?

A. Well, subject to checking the record, let me say that there was no conscious deviation from the split of weighting at dimension level implied in the weighting of the quantitative indicators.

Q. All right.

A. Okay? Because I don't recall that weighting being discussed at all. What I do recall is a proposal that we should split it wasn't actually a long

discussion. I mean, I recall a proposal that, given the three dimensions that we had and their importance, that 10:10:10 would be an appropriate weighting.

Q. Now, and I am now going to bring it forward, because in the first draft evaluation report, the correct table is included in Appendix 2 in the methodology which gives the split as agreed.

A. Okay, yes.

Q. Isn't that right?

A. You drew my attention to it, yes.

Q. And that methodology states unequivocally that that was the weighting which was applied on what were described as conformance tables at that time?

A. Yes.

Q. Then, in the next copy of the report, the next draft, that is changed and the split in the weightings is the split which is reflected on Table 17 and 18, isn't that right?

A. Yes.

Q. And the methodology continues that this was the agreed quantitative weightings that were applied. And that is what is contained also in the final report?

A. Yes, I think so.

Q. At the very least, that is inaccurate?

A. The appendix is inaccurate.

Q. At the very least. It had to be changed by somebody, consciously changed by somebody?

A. Yes.

Q. And is it just coincidental that the change reflects what appears on Table 17 and 18 as being the split of the weightings, do you know?

A. No, I mean, I wouldn't see that as being coincidental, but let me make clear, since I haven't said it before, that while I accept that obviously that appendix was changed, I didn't change it.

Q. I accept that entirely.

A. Okay.

Q. I accept your evidence, you say you didn't change it, you accept it was changed.

Now, Table 17 and Table 18, with the split of the weightings, would be accurately reflected in an accompanying text which stated that there was a decision taken in respect of the qualitative evaluation in order to arrive at a result, that these weightings were agreed for that; wouldn't that be or words to that effect wouldn't that be a reasonable way to describe what you say happened at Copenhagen?

A. Well, the correct description, I believe, is that this result was arrived at on the basis of the marking of dimensions according to the qualitative evaluation, and the application of the weightings at the level of the selection criteria agreed in relation to the quantitative model, together with I mean, you could

add explanatory text in relation to the view of the group in relation to the breakdown of the weightings for the criteria.

Q. But sure you had, because you told us they were applied after you had all the marks, and the easiest way to get a result is when you have all the marks.

It's like marking each question on an exam paper and then deciding what particular marks you are going to apply to question 1, 2 or 3. You could get any result depending on the weightings or the marks that were going to be applied for each position. We know that.

A. That wasn't the way it happened. The way it happened was we took a view.

Q. Look, Mr. Towey, somebody changed this table. And you have told the Tribunal that things happened in a different way in Copenhagen. That is noted nowhere; it's not in the final report, it's not in any draft textual amendments, but what we do see in a draft textual amendment is this provision that the "Weighting mechanism was agreed primarily in the context of the quantitative model," etc..

A. Okay.

Q. And you have told us that there was no agreement by the PTGSM about a weighting, a split of weighting to be applied to the qualitative, isn't that right?

A. There was no agreement on a weighting to be applied to the qualitative in advance, that's correct.

Q. If there was no agreement on a weighting, there could be no agreement on a split?

A. Yes. But, if you take it that when we use the term "The weighting agreed in the context of the quantitative evaluation," that that was understood by everybody in the Project Team as being the weighting at the criteria level, not the weighting at indicator level, not the weighting at dimension level implied by the indicators, but the weighting of the criteria, isn't it all clear, in those circumstances, what we did and why?

Q. Isn't that an absolute nonsense, Mr. Towey, because that would mean you could do whatever you liked about the split at dimension level, and at indicator level, you could do anything you liked? How would that be an objective and transparent exercise?

A. Well, I mean, we took a view as to the split, as

Q. Look, Mr. Towey

A. as did the people in the technical sub-group.

Q. Isn't what happened here the Minister spoke to you long before the trip to Copenhagen, isn't that right, on the telephone?

A. Yes.

Q. You have informed us that there was certainly a rumour around that the Fianna Fail administration had promised this to Motorola, isn't that right? There was that rumour, you had heard that rumour?

A. I was aware of that rumour, yes.

Q. You go to Copenhagen with Martin Brennan, and you conduct your business on the 28th?

A. Yes.

Q. Having split the weightings for the criteria as you did?

A. Yes.

Q. You come back from Copenhagen?

A. Yeah.

Q. Martin Brennan speaks to the Minister.

A. Okay.

Q. And from all we have seen, he informed the Minister of the shape of the evaluation and the rankings of the first two, isn't that right?

A. Okay, yeah. I mean, I am not sure what else

Q. You can take the note

A. Okay.

Q. Well, I am not going to deal with the whole question of the bankability aspect there must have been a reason for the in-depth discussion, but we'll leave that for the moment.

A. Okay.

Q. There is a meeting of the PTGSM on the 9th.

Mr. O'Callaghan has informed the Tribunal that he was told by Martin Brennan at that meeting that this was the result. That is, that which appeared in the first draft evaluation report.

A. Okay.

Q. The Minister wants the process accelerated; there is a note of that?

A. Yes.

Q. Even before the second draft arrives, the Minister wants to go to Cabinet on the Tuesday after, on the 24th?

A. Yes.

Q. There was certainly there appears there was, it's accepted there was a visitation to the Secretary to get more time?

A. Yeah.

Q. But, again, things move fast again, and you were told that you had to have something prepared for the following day, the 25th, isn't that right, that's what you were told?

A. Well, certainly that was our objective, yes.

Q. That appears to have come from the Minister as well.

So all of the movements, or the interventions of the Minister as regards moving the process fast, seems to date back to a time when he had a discussion with Martin Brennan and had been informed of I'll put it in quotation marks "the results of Copenhagen", isn't that right?

A. Well, I mean, I think quite a lot of evidence has been heard on the subject of the Minister's interest in bringing this to a speedy conclusion. And I have

commented on that, you know, I accepted the objective, what you saw as being objective reasons for that. Now, earlier in what you said there, you referred back to this telephone conversation that I had with the Minister.

Q. Yes.

A. And the rumour that was circulating in relation to Persona. Now, I just need to be absolutely clear in relation to that, that I did not perceive from the telephone call with the Minister that he was in any way seeking to express a preference or an influence. I didn't take that interpretation at all from the telephone conversation.

Q. I appreciate that, but when you look at it

A. Sorry

Q. Sorry, I want to stop at that point at the moment.

A. Okay.

Q. Because the Minister told you he was under pressure from a consortium that

A. I did say I couldn't rule out it was another politician, okay.

Q. You came back to that very late, Mr. Towey, honestly, that it would be better if we stick to the evidence as you gave it, and let's deal with it.

A. Okay.

Q. That he was under pressure from a consortium, and that pressure related to, I suppose, a rumour that Persona

had it in the bag, isn't that right? Not the bookies

favourite, I don't know what it was the

A. The media's favourite, the bookmakers' favourite

Q. Sure, if that wasn't indicating to you an interest or

a concern about Persona, might I suggest to you that

your antennae were not, on that particular day,

perhaps, particularly alert?

A. Well, I didn't interpret it in that way at all. I

have to be clear about that. That it struck me as a

call that the Minister made in order to give a

response to representations he was receiving. I

didn't in any way perceive it as a negative

orientation towards Persona. But also, can I say, in

relation to the rumour, I was aware of such a rumour,

but I never saw anything in the way of evidence to

confirm it.

Q. That's a rumour by its nature, isn't it?

A. Yes. But I mean, this is important I mean, that

rumour certainly had no effect in terms of creating,

in my mind, any negative orientation towards the

Persona application.

Q. Well, I'll come to that now in a moment. But we do

agree about the Minister's intervention to accelerate

the process seems to date back to the discussion he

had with Martin Brennan after Copenhagen. That seems

to be when we see, in the documents anyway, that type

of intervention?

A. It was certainly after that date. I can't say when I first became aware of the Minister's wish to bring this to closure quickly, it may well be in the documents, but just now I can't...

Q. I take your point, when you say that you would not wish to have a negative view about somebody or you didn't perceive it as that being conveyed to you.

That's what you are saying, isn't that right?

A. Yes.

Q. Can there have been any doubt in your mind but that Persona may not have been the favourite with the Minister, even in a broad anecdotal way?

A. I never thought about what the Minister's views might be.

Q. Now, I know what your subjective view about Esat Digifone was.

A. When you say "subjective view"?

Q. As of the time on the 28th October in Copenhagen, that you took the view, before perhaps you had even concluded the whole that you thought they were the best, isn't that right?

A. My subjective view was that objectively they were the winner, they had the best application.

Q. You had that was an impressionistic view. In order to comply with the competition, you had to objectively show that that was the case, isn't that right?

A. I felt we had objectively shown it.

Q. Before the 28th September? Or before the 28th October

I mean I beg your pardon, before the 28th

September?

A. No, on the 28th September I felt it was objectively shown.

Q. And you say it was objectively shown by the result which was achieved on Table 17, is that right?

A. Yes.

Q. And that was on the split of weightings which had not been agreed by the PTGSM, isn't that right?

A. That's right, yes.

Q. And we have been over again; if the split, which had been agreed, was applied, it may not have changed your view, but it could have changed somebody else's view, or they would have to objectively explain why the first criteria was being, perhaps not pushed aside, but why, if somebody came out ahead on the first criteria, that that at least didn't warrant serious consideration in order to form a judgement.

Now, you come back with that particular unagreed split on the weightings. Martin Brennan informed the Minister. We then see a change in the Appendix 3, the weighting table on the quantitative evaluation model.

We then look at this particular text which you are preparing here.

A. Yes.

Q. And there is no record anywhere of the PTGSM agreeing

to a split in the evaluation sorry, in the weightings, to be applied to the qualitative evaluation, because, as you have said, there was never an agreement about the weightings on the qualitative evaluation?

A. Wasn't it agreed in the report? I mean, you know, as we have been through, this was obviously discussed

Q. You are saying because it was in the report, but what is in the report, what is in the report, Mr. Towey, is inaccurate, at the very least?

A. What's in the report is accurate in terms of the exercise that we carried out in Copenhagen.

Q. No, what's in the report is that the weightings, if you look at the methodology, we have been over and over it again.

A. Yes.

Q. That the weightings which were applied were those agreed for the quantitative evaluation prior to the closing date. That's what it says.

A. Yes.

Q. No doubt about it.

A. Okay.

Q. Now, first of all, all the members of the PTGSM were not, I suggest, in a position to form the judgement on Table 17, because it was effectively presented as the result on the basis of the split. The Minister knew about this. The PTGSM team were told the Minister

knew about the rankings, and from there on in, the

Minister is exerting pressure as regards time. Now

A. Was it from the 9th October onwards?

Q. From the 3rd October onwards.

Now, you see, I don't know if a different result would

have emerged if there had been further discussion and

if all of these matters we have been discussing had

been taken into account and tossed around in the

PTGSM, and people forming different views and a

discussion and consensus being arrived at. But what I

am suggesting is that once the Minister became aware

of something by way of an analogy or analogies, he

wanted the whistle blown on the game fast, or if it be

a race meeting, he wanted the finishing line brought

forward to meet the horses.

Like, isn't that what happened?

A. Well, I had no reason at the time to believe that the

Minister had any such motivation.

Q. I appreciate that. I appreciate that. And I only, at

this stage, because I am examining a position way

below what we have described as the cooking of the

books situation, that it was just in the context of

the Minister driving for a conclusion that the whole

PTGSM were directed towards doing that, giving it

fast, and thereby, depriving, or being deprived of an

opportunity to consider in the slow detailed manner

that you would expect conscientious serious civil

servants to do their work when there was loads of time, there was until the end of November in which to do it, isn't that right?

A. Yeah, I mean, there was no time constraint as such

Q. As far as you saw it?

A. if the Minister didn't feel or didn't wish to bring this to a conclusion, as in, by that I mean within the Project Team or the Secretary wasn't pushing for a result. So I understand what you are saying.

Q. You see the point I am making?

A. Yes. But we have been over the ground before, and I mean, the civil servants within the Project Team did look for some more time.

Q. They did, and they didn't get it. They got it well, sorry, Mr. McMahon believed he got it, and then to his total surprise, things moved so fast that the next day matters were again, as a result of the Minister's intervention

A. But as I described to you, I believe on the night of the 24th there was an agreement on the final text. That was my recollection of the agreement.

Q. I understand that, all in the context and look, we have been having discussions with you and other officials for a long time.

A. Yes.

Q. As we go through this over and over again, there are matters which arise, new matters which arise for

consideration, isn't that right? The focus shifts in relation to the evaluation report and the process itself, isn't that right?

A. Well, you know, the more and more you look over something that happened historically and see various owe people's recollections, yes.

Q. Remember this: We were not part of any Evaluation Team. We did not have the assistance of Michael Andersen while we were doing it.

A. Okay.

Q. All I am saying is that in the context of the Minister being informed of something before there had been any discussion of it with the PTGSM, and definitely no agreement with the PTGSM, that the pressure came on as regards time from the Minister there, and effectively he just wanted to move the finishing line. I am suggesting to you, that it is open to this interpretation that, he wanted to move the finishing line closer to the horses in the race, because of the position or the ranking which appeared from the Copenhagen outing?

A. If the Minister had that kind of a view, that could possibly be a motivation. I hardly need add at this point that I had no reason to believe any such motivation existed, but

Q. I know that. You don't know. All you can describe is what happened, and that's what the Minister was doing.

It's for the Sole Member then to draw his conclusions about that.

There is just one final small matter, and it was just, you furnished a supplemental statement, and you furnished a very interesting lengthy it's the report of the Telecommunications Strategy Group. I started reading some of it, and it's very interesting, but I don't think I need to ask you anything about it, do I, specifically?

A. No, I don't believe so. I mean, it occurred to me that might be of some value in clarifying some of the Department's orientation, but specifically in relation to the licence fee, which was

Q. Sorry, yes, I understand the point, and I don't think I need to circulate it to everybody either.

A. I believe not.

Q. It's a document which is there. But just coming down through it, the third-last paragraph: "I recall that Senior Counsel was engaged to provide advice on the terms of the licence to be awarded to Digifone. He had previously given advice in discussions with the European Commission concerning the licence fee for the GSM licence. I do not specifically recall when counsel was engaged to advise on the licence terms, but I believe that it was sometime in advance of the award of the licence on the 16th May, 1996. The provision of advice by him concluded with his

attendance at the Department on, I believe, the night before the licence award. The purpose of his attendance was to advise on the terms of the licence relating, in particular, to change of ownership or taking account of ongoing negotiations with Esat Digifone. That company was represented by Mr. O'Connell of William Frys, who was in touch by telephone with the consortium members.

The outcome of the discussion and the advice provided by counsel was agreement on the terms of the licence in regard to the change of ownership."

Now, we are talking about paragraph 8 of the licence, isn't that right?

A. Article 8, yes.

Q. "And a side letter relating to a specific change which was in prospect. I believe that he may also have provided advice on material which was received by the Department in relation to the certification of ownership and financing of the project."

I don't think anything specific is specifically different to what you have already informed us was in your main statement in that regard?

A. No.

MR. COUGHLAN: Thanks very much.

CHAIRMAN: Thanks Mr. Coughlan. Mr. Fitzsimons?

MR. NESBITT: Mr. Chairman, at lunchtime Mr. Towey indicated perhaps a desire to take a break before he

went into re-examination from other persons. He has been in the witness-box a substantial amount of time. I am not sure if he still feels like that. I just mention it.

CHAIRMAN: Well

A. If it's possible to take a short break?

CHAIRMAN: Surely, I'll just with the certain amount of time that we have lost, gentlemen, I mean, without unduly probing as to your intentions, would it be your belief, if we do perhaps resume a little early tomorrow and perhaps finish today now, might it make some sense if we end proceedings today and to try and ensure, if possible, that we may dispose of the other examinations of Mr. Towey, if perhaps in the course of tomorrow, we might start at half past ten? Does that seem to make sense?

MR. NESBITT: If that suits other persons before the Tribunal, that will certainly suit our team, Mr. Chairman.

CHAIRMAN: All right, well do that. We'll finish early today and we'll take up the other examinations at half past ten in the morning.

A. Thank you, Chairman.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY, THURSDAY, 22ND MAY, 2003, AT 10.30AM.