

A P P E A R A N C E S

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Mr. Jerry Healy, SC

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I N D E X

Witness: Examination: Question No.:

Joe Brosnan Ms. O'Brien 1 - 60

Margaret O'Keefe Mr. Coughlan 61 - 124

Maev Nic Lochlainn Mr. Healy 125 - 515

THE TRIBUNAL RESUMED ON THE 28TH OF MAY, 2003, AT

11 A.M. AS FOLLOWS:

MS. O'BRIEN: Joe Brosnan, please.

JOE BROSINAN, HAVING BEEN SWORN, WAS EXAMINED BY

MS. O'BRIEN AS FOLLOWS:

A. My name is Joe Brosnan.

CHAIRMAN: Thanks very much for attending,

Mr. Brosnan.

A. Thank you, Chairman.

Q. MS. O'BRIEN: Good morning, Mr. Brosnan.

Mr. Brosnan, you furnished the Tribunal with a

Memorandum of Intended Evidence. Just for everybody

else's assistance, that can be found in Book 35 at

Divider 10. I think you have a copy of that

memorandum with you in the witness-box, Mr. Brosnan;

is that right?

What I propose doing, Mr. Brosnan, is taking you

through your memorandum and then referring to some of

the documents which in fact you refer to in the

memorandum itself and discussing one or two of the

matters more fully.

You state that in July of 1995 you were Chef de

Cabinet to Mr. Pdraig Flynn who was then EU

Commissioner with responsibility for Employment and

Social Affairs; is that correct?

A. That's right, yes.

Q. You say that you recall that on the 6th of July, you were contacted by telephone by Mr. John Loughrey, the then Secretary to the Department of Transport, Energy and Communications. Mr. Loughrey briefed you on the difficulties which the Department was encountering in relation to an issue which had arisen with the European Commission in the course of the second GSM competition. In particular, Mr. Loughrey stressed the urgent need for a letter to issue from Mr. Karel van Miert, the Commissioner with responsibility for competition matters.

The information which Mr. Loughrey provided to you over the telephone was essentially the same information as was set out in a letter and information note forwarded by Mr. Loughrey to you on the following day, the 7th of July, 1995.

You have informed the Tribunal that prior to your dealings with Mr. Loughrey, you were unaware of the history of the matter?

A. That's correct.

Q. You informed the Tribunal that Mr. Loughrey indicated to you that he felt that an approach by you to your opposite number in Mr. Van Miert's Cabinet might be of assistance in order to stress the urgency of the matter from the Department's point of view.

While your Commissioner, Mr. Padraig Flynn, had no portfolio responsibility in relation to competition matters, it was nonetheless usual enough practice for members of a Commissioners's Cabinet to make contact with members of another Cabinet where issues relating to the Commissioner's own Member State were involved?

A. Correct.

Q. You say that your understanding of the problem on the competition side was that the issue which had arisen in relation to the second GSM evaluation process was similar to issues which had arisen between DG IV and other Member States, and Commissioner van Miert was anxious that a resolution of the issues with the Irish Government would not undermine the Commission's position as regards those other cases?

A. Yes.

Q. You say that where issues of this type arose, it was your usual practice to contact your opposite number in the relevant Cabinet, that is the Chef de Cabinet.

While you have no clear recollection of doing so, you believe that it was probable that you spoke to Mr. van Miert's Chef de Cabinet, whose office was next-door to your own. However, as this was an urgent matter, it is possible that you would have spoken to the member of the Cabinet dealing with the issue if Mr. van Miert's Chef de Cabinet was not available?

A. Yes.

Q. You state that in making contact with Mr. Van Miert's Cabinet, you believe that your approach would have been to avoid entering into the merits of the issue, and to confine your comments to the urgency and necessity of both a Departmental and political level of securing a speedy resolution. You state that it is probable that you left the note furnished to you by Mr. Loughrey with Mr. van Miert's Cabinet?

A. Yes.

Q. You state that while you have no specific recall of the matter, you believe that you would have reported back by telephone to Mr. Loughrey on the outcome of your dealings with the Mr. van Miert's Cabinet, and you think it is likely that Mr. Loughrey would have told you that in relation to any future developments, you could liaise with Mr. Andy Cullen, who was the Department's representative in Brussels?

A. That's right.

Q. You say that you were uncertain as to whether you made any further approach to Mr. van Miert's Cabinet, but you think it unlikely that you did so, as having explained the matter, it would have been counterproductive to pursue it further. You state that you recall that sometime in the week ending the 14th of July, 1995, you had a telephone conversation with Mr. Andy Cullen, who inquired how matters stood, and that you asked Mr. Cullen whether you should

forward the Commissioner's letter, if and when it issued to Mr. Cullen or to Mr. Loughrey, and that Mr. Cullen indicated that it was in order for you to forward a copy of the letter to him?

A. Yes.

Q. You state that you would have received the letter on the on Friday, the 14th of July, 1995, but you were uncertain as to whether it was Mr. van Miert's Chef de Cabinet or Mr. van Miert's secretary who delivered the copy to you. It is likely that you would have known in advance that the letter would issue.

You state, finally, that in relation to the fax number on the banner of the fax cover sheet, dated the 14th of July, 1995, from you to Mr. Cullen, you were almost certain that the number was a fax the number was of a fax machine located near your office; while the number on the fax banner is different to the typed number on the faxed cover sheet, you think that the typed number relates to a fax machine that was further away from your office, and it was more likely that you would have used the fax machine adjacent to your office.

You believe that you must have spoken to Mr. Cullen in advance of faxing the letter to him, probably to inform him that the issue of the letter was imminent and to get Mr. Cullen's fax number. You did not transmit the fax or letter to Mr. Fintan Towey, who

you did not know at the time. You think it unlikely that you spoke further to Mr. Loughrey regarding the issue, although Mr. Loughrey probably phoned to thank you for your assistance?

A. Yes.

Q. And that completes your Memorandum of Intended Evidence.

Now, I think the position, therefore, is that on the 6th of July, which I reckon would be a Thursday of the week, you received a telephone call from Mr. Loughrey, who presumably was known to you from your years within the civil service; is that right?

A. That's right. I would have known Mr. Loughrey very well from my time in the civil service and in Dublin.

I would have known him since about 1970, and from time to time, when there was an issue current in the Commission relating to something to do with the business of his Department, he would have contacted me about it.

Q. Yes?

A. And that's what he did on this occasion. He rang me on that evening of Thursday the 6th of July.

Q. That is perfectly understandable. I think what he was simply asking you to do was to use your good offices to expedite the issue of this closing letter, which effectively had already been agreed between the Department and the Commission?

A. That's right. He was concerned because, as I understood it, the Department felt that they had already reached an agreement on this matter with the Commission services, with DG IV, as it then was.

Q. Yes?

A. But they had had some intimation from DG IV that there was a delay or a problem of some kind at Cabinet level, at Mr. van Miert's Cabinet level, and Mr. Loughrey would have known the procedures within the Commission fairly well, and he would have known that it was fairly normal practice in a matter like that for the Cabinet of the Commissioner of the nationality concerned to make an approach to the Cabinet of the Commissioner responsible for the particular dossier and to do whatever they could to try and help matters along, as it were.

Q. Just to iron out some logjam that had arisen?

A. Exactly.

Q. I think the position is that you knew nothing about this evaluation process at all until you were contacted by Mr. Loughrey on the 6th of July?

A. No, the whole thing was complete news to me. As I said in my statement, Mr. Flynn had no portfolio responsibility in relation to telecommunications matters or competition matters.

Q. Yes?

A. I mean, I would have been aware in a general way that

there was a process of liberalisation and so on going on in the telecoms area, and in other areas, and that the Commission had policies in relation to it. There would have been, I think, a green paper that came to the Commission in the previous December, which I would have been aware of, and I would have been aware that there were cases current in the Member States about liberalisation of telecoms, but I knew absolutely nothing about the individual case here, or the competition, or anything like that.

Q. Yes. I think on the following day, on the 7th of July, you received a fax from Mr. Loughrey, and I think you have a copy of that?

A. I do, yes.

Q. And that in the Tribunal's books, that is at Book 42, at Divider 82.

I think you have said that in this fax of the 7th of July, which I think would have been received by you on the Friday of that week, Mr. Loughrey effectively set out the information in a more concrete way that he had already provided to you on the telephone the previous day?

A. That's right.

Q. I will just refer to you that briefly. It is from Mr. Loughrey; it is addressed to you as Chef de Cabinet.

He says: "Dear Joe, after we spoke last night I got

hijacked by other events, and I am sorry it is only now that I am reverting to you on this potentially very difficult situation on the second GSM License.

"In short, it may be helpful for to you get a flavour of events by setting out the saga in the following sequence.

"1. As you might imagine, it would be far more comfortable, if not very wise, to cling on to the comfortable public telephone operations monopoly system that we had in Ireland for as long as possible.

As you know, we had voice telephony derogation up to the year 2003, although it would not be advisable to seek or take up in full such a derogation.

"2. On the basis of very focused encouragement of Martin Bangemann and indeed he spoke on several occasions to the previous Minister and myself on the matter we were urged to start to introduce competition into the Irish telephone markets, starting on with a second mobile phone licence. Consultations with DG IV and DG XII were an intrinsic part of our approach.

"3. The Department of Finance have, and indeed others, would have liked a full-blown auction, where the second operator would have to write the largest possible cheque. Other countries have gone this route. Once again, on the advice of DG IV, we chose a competitive framework which would favour competition.

We turned our backs on an auction based on the highest possible entrance fee.

"4. We formulated our proposals and put forward what we believed was an acceptable balanced approach and all those papers were lodged with DG IV and DG XII early in March last.

"5. We had, of course, followed all the competition rules, to both the letter and the spirit of the law.

Explicitly flagged in all our procedures was a closing date of the 23rd of June last.

"6. You can imagine the Government's dismay when DG IV indicated that they could" I think there should be a "not" there for it to make sense.

A. That's right.

Q. "...could not agree with the balance of the fee structures which we had proposed in our approach.

"7. Despite this setback, I immediately sent Martin Brennan and Fintan Towey to consult with the Commission, and notably with DG IV, to see how best we could meet precisely and by way of advance agreement whatever DG IV required. Fresh proposals were agreed with DG IV.

"8. As a result of this process, we were advised that the Minister should write to Karel van Miert on the lines of the letter already faxed to you this morning.

"9. The Commission's proposed response to the Minister's request was indicated to us in the form of

a draft letter also faxed to you this morning. This letter was signed by Mr. van Miert.

"10. We acted in good faith at all stages, and now find that the Commission is apparently not prepared to give the go-ahead by way of the agreed letter.

"11. From past dealings with Karel van Miert, both on energy liberalisation matters and notably Aer Lingus, we have always found him to be a most reasonable and constructive man.

"12. It may well be that DG IV's perception of events may differ a little from what we honestly believe to be the case, and in that spirit, there may well be something that we can do to allay any further misgivings that the Commission may have. If there is any further information or clarification that is required, you can be assured that I will arrange to have it supplied by return.

"We would greatly appreciate if you could explain our position to Mr. van Miert's Cabinet. We have tried all along to do the right thing, and it has not always been comfortable to do so. The credibility of the Government in general, and the Minister in particular, has been dented in this matter in the international telecommunications sector, and we have already had feedback with some of the bigger international players are now casting doubts over our competence to introduce competition effectively in the mobile phone

area initially and in the full range of telecommunications services in the near future.

"I know it is the intention of both Karel van Miert and Martin Bangemann, that they wish to be of help in facilitating the introduction of a more liberal regime. The earliest possible clearance by Mr. van Miert of our GSM rebalanced proposal would be of more assistance to us than in our approach than in any other measure I can think of.

"I have attached a more formal note prepared by our telecommunications division covering a good deal of the same ground. It might be of help to you if you wish to leave a piece of paper with any of your colleagues in the corridor."

It is signed "John Loughrey."

I presume what Mr. Loughrey meant by that last sentence was that it might be useful to you, in approaching your opposite number, to be able to furnish them with the information memorandum which he enclosed?

A. That's right. The reference to the corridor was simply because of the fact that the van Miert Cabinet were located on the same floor of the building in Brussels as we were, and in fact his Chef de Cabinet's office was next-door to mine.

Q. Right. Now, the information memorandum, then, I think is at 42-83?

A. Yes.

Q. And I think it sets out much the same in much the same terms the information provided by Mr. Loughrey.

And unless there is anything that you wish me to refer to in it, I don't propose opening the note.

A. No, not particularly. I think the reason that he sent the note was I can't remember whether it was I asked him explicitly for it in the telephone conversation the previous evening or whether he deduced from the conversation that I wasn't particularly expert in this particular field, and that he just felt it would be useful for me to have a piece of paper to give the van Miert Cabinet so that the issue would be set out clearly there.

Q. Because all of these matters were new to you and these issues were new to you.

CHAIRMAN: But it effectively puts the same matter in more impersonal and staid terms?

A. That's right. It is obviously drafted in a way that is suitable for transmission to another Cabinet.

Q. MS. O'BRIEN: Yes. I think in that letter to you of the 7th he refers you to two faxed letters that were sent to you, it appears, earlier on the 7th. Again I am just going to refer you to what I think are the letters that were faxed to you, just to enable you to identify that those were the letters.

And if I could just refer you to Book 42, Divider 79,

there is a letter of the 22nd of June, and this was the formal letter from the then Minister, Mr. Lowry, to Commissioner van Miert. If you don't have one of those books, I think I will arrange to hand you up a copy of that letter.

A. I don't.

Q. It is there on the screen to your right, Mr. Brosnan.

If you just look to your right, you will see a copy of it is up there. We are just arranging for a hard copy to be handed up to you now.

(Document handed to witness)

A. Thank you.

Q. Again, we have opened this letter time and again in the course of the evidence of other witnesses, and I don't propose doing so.

A. That would have been it, yes.

Q. Can I take it that that is a copy of the letter which Mr. Loughrey faxed to you earlier, on Friday, the 7th?

A. Yes, sure.

Q. Now, the second letter which you referred to, I believe, was the draft final letter which was to be issued by Mr. van Miert, and that's in the Tribunal's books at Book 42, Divider 83A, dated the 29th of June. Again it will appear on the monitor to your right. I can get you a hard copy of it.

(Document handed to witness)

That, effectively, was the closing letter that the

Department was awaiting to be issued by Mr. van Miert?

A. Yeah.

Q. And presumably that is a copy of the letter which Mr. Loughrey faxed to you earlier in the morning of the 7th?

A. I am virtually certain that it is, yes.

Q. Yes. Now, in your memorandum, you indicated that it would have been your usual practice to take this matter up directly with your opposite number in Mr. van Miert's Cabinet. I think you indicated also that his office might have been next to yours, on the same corridor?

A. That would have been the normal practice, anyway, if you had an approach to make to another Cabinet, the Chef de Cabinet would go to the Chef de Cabinet of the other Cabinet, unless he or she wasn't available. And in this instance, I don't recollect whether it was Mr. van Miert's Chef de Cabinet I spoke to. I mean, I would have had numerous occasions during the seven years that I was in Brussels that I would have gone to Mr. Van Miert's Chef de Cabinet, and 99 times out of 100, it would have been the Chef de Cabinet that I would have spoken to. I do recollect on one or two occasions speaking to his Deputy Chef de Cabinet instead. I can't recall on this occasion whether it was the Chef or the Deputy Chef, but I certainly would have gone, you know, as quickly as possible to van

Miert's Cabinet after receiving the documentation from John Loughrey on Friday morning, because obviously the matter was urgent.

Q. Yes?

A. And because it was a Friday, if Mr. Van Miert's Chef wasn't there that day, I would certainly have gone to his Deputy Chef de Cabinet. So I don't recall which it was, but it is one or the other.

Q. I think you say in your memorandum that you would have simply stressed the urgency attaching from both a political and a Departmental level to the issue of the letter, but you wouldn't have entered into the merits of the issue at all?

A. Well, that would have been there would have been two reasons for that. First of all, I wouldn't have felt really competent to engage on the technical details of the merits of the issue with the Chef de Cabinet of the Commissioner who was responsible for that area.

Q. Yes?

A. And secondly, I wouldn't have even if I had been, I would have laid off doing it, because it is not particularly helpful, if you are going to the Chef de Cabinet of another Commissioner, to try and tell them their business and to be trying to argue the merits of an issue with them that is within their area of responsibility and not yours. My concern was to try

to get the result that was desired, and I felt the most effective way was, of doing that was to explain the urgency, you know, the kind of matters that had been set out in Mr. Loughrey's letter, that the Department had thought they had reached agreement on this, that there had been a Government decision a few days previously, and that you know, there was a lot basically the Irish authorities wanted to do the right thing on this, were trying to resolve the matter amicably, and you know, that it was politically very urgent, and that there was, you know, a great concern in Dublin about the delay that there would be in the competition if the reply was further delayed. And I again, I am virtually certain that I would have given Mr. Van Miert's Chef or Deputy Chef, as the case may be a copy of the information note that Mr. Loughrey sent me. I would not have given him the letter that he sent me, but I would have given him the information note.

Q. That would make sense, to give it to him. I think you say that subsequent to that, you don't recall it, but you imagine and believe that you would have confirmed to Mr. Loughrey that you had spoken to your opposite number, and that it may have been on that occasion that Mr. Loughrey suggested to you that if you needed to liaise further with anybody, you could do so with Mr. Cullen?

A. No, I mean, in view of the urgency of the matter and the importance that was being attached to it in the Department, I think it is you know, it is practically certain that I would have got back to Mr. Loughrey and said, "Look, I have made contact with the van Miert Cabinet. I have given them the information note. I have stressed the urgency to them. They told me that the decision still hasn't been taken, and so on, but they took note of what I said. They said they would know show the information note to Commissioner van Miert."

In the circumstances, I would have felt Mr. Loughrey would have wanted to know that as soon as possible.

Q. Of course; that is natural enough. I think you do recall in that week that you did have a telephone conversation with Mr. Cullen, when he may have telephoned you to see how matters were progressing, or how, when and if you thought that letter would issue?

A. That's right. I certainly spoke to Andy Cullen in the course of that week. I don't remember who initiated the call, whether he rang me or I rang him. I think the probability is that he rang me, that at a certain stage he just wanted to check up what was happening, was there any progress, was there any definite news. My recollection, again, is that there were contacts going on in parallel between the Department, possibly through the aegis of Mr. Cullen and DG IV, the service

concerned, about the whole matter, and they were keeping very closely in touch there.

But yes, I did speak to Andy Cullen during that week.

Q. Yes. And you think that on that occasion he would have said to you that as and when the letter issued, you could fax it to him rather than directly to the Department?

A. That's right. And I think John Loughrey well, sorry; first of all, John Loughrey would have indicated to me that Andy Cullen was the liaison person from there on on the matter in Brussels, and either I think I probably asked Andy Cullen, you know, "If the letter comes," you know, "should I send it to you or should I send it to John Loughrey?" He said to send it to him, which again would have been normal practice. I mean, he was the Department's representative in Brussels, and you know, he would have been the natural conduit for a communication like that to go back to the Department from the Commission.

Q. Yes. Now, I think you said that on the 14th of July, you received the closing letter, the final closing letter that had been signed by Mr. van Miert, although you are not sure whether it was his Chef de Cabinet or Mr. van Miert's secretary that would have given it to you?

A. Again, I think you know, the high probability is that it was either Mr. van Miert's secretary or his

Chef de Cabinet's secretary who would have brought it in, you know.

Q. And I think you have also said that you before you received it, you probably were aware that it was about to issue?

A. I must have been. Again, I don't recollect, but while I would have been loath to get back to the van Miert Cabinet on the substance of the issue and try to put pressure on them about it or whatever, certainly if it had reached Friday morning without my knowing, I mean, one week later, and with the weekend coming, and in view of the urgency of the matter, I would probably have put in a call just to check you know, what is happening? Is there likely to be a reply sometime? I must have been told at some stage that it is likely to issue today, or you know.

Q. Now, I think on receipt of it you then faxed it to Mr. Cullen?

A. That's right.

Q. In the Irish Permanent Representation?

A. Yes, that's right.

Q. We have a copy of it; I don't know if you have a copy of it there. We will put it on the monitor.

A. I do, yes.

Q. You can see the fax cover sheet. The sender is yourself; the addressee is Mr. Cullen. You then have a telephone and fax number, number of pages, two.

Your message is, "Please find attached, as promised, copy of the above-mentioned letter."

I think you can confirm that the writing below that,

"F. Towey", is not your writing?

A. No, it is not. It is not.

Q. I don't think you knew Mr. Towey?

A. I didn't know Mr. Towey. I still don't know Mr. Towey to this day, and I did not send a copy to Mr. Towey.

Q. I think you have drawn the attention of the Tribunal to the fact that the reason for a divergence between the fax number as shown on the banner at the head of the fax cover sheet and the fax number as printed on the cover sheet is because you probably decided to use the fax machine that was most adjacent to your office?

A. That's right. In the Cabinet we had two fax machines.

Q. Yes?

A. One of which was quite a long way around the other side of the building on the same floor, and the other of which was located in an office just across the corridor from my office.

Q. Yes?

A. You know, I am again practically certain that the number that the fax was sent from, the one that is on the banner on the very top, was the number of that other fax which was our fax within the Flynn Cabinet.

Q. Yes. I think in fact the number showed on the top it is a bit difficult to see it on the monitor is

2966531?

A. Yes.

Q. And I think the time you sent that was at 16:15 Brussels' time. Of course you were sending it from yourself in Brussels to Mr. Cullen, who was in Brussels, so it passed to him at 15 minutes past 4?

A. I assume so, yes.

Q. Can I just ask you, apart from this version of the final letter, which, as you see, is dated and signed by Mr. van Miert, did you ever receive any other version of this letter?

A. Any version? You mean different text?

Q. No, I don't mean different text. I mean did you receive any version of it that mightn't have had the date impressed on it. You see, the date is shown there, 14/07/1995. I am just wondering, did you receive any other copy of this letter? Maybe that is the way I should put it.

A. I don't really recollect. I am not aware that I did, but I may have. I mean, it is possible that but it was only a date that was missing off this other copy, you say?

Q. Yes.

A. If it was an unsigned copy, I mean, I would understand it more easily, because it is possible that you know, just before it was signed by Mr. van Miert, his Cabinet would have brought out a copy and said "Look,

this is it, he is going to be signing it in a few minutes, but he just hasn't finally signed off on it yet."

If a copy was given to me which didn't have the date on it, it is possible that when it was faxed to the rep, that somebody would have come back and said, "Well, there is no date on this", or else it is possible that I sort of said, "There is no date on it; we need to get a dated copy." I don't remember, really.

Q. This is certainly the only copy that you decide to fax to Mr. Cullen?

A. Yes.

Q. Yes.

A. That I can recollect. I mean, I can't say for absolutely certain that I didn't fax earlier, shortly before that, an undated copy, and that you know, the reason that the two copies are there is because he came back and said, "Look, we need a dated copy," or whether it was we sort of said we needed a dated copy. I just don't recollect.

Q. Just to clarify that, Mr. Brosnan, there isn't any other copy which Mr. Cullen has other than the one you sent. We haven't seen any other.

A. Right.

Q. This is the only one we have seen, certainly within the Department, that you faxed to Mr. Cullen.

A. Right. Well, the only recollection I have is of sending one fax to Mr. Cullen, but I mean, at this stage, eight years later, I couldn't swear on a Bible that I didn't send another undated copy half an hour previously or whatever.

Q. Of course. This is certainly the only one that it appears that Mr. Cullen ever sent on to the Department, and I think he has told us that if it arrived early enough to be put in the diplomatic bag on Friday, he would have put it in the diplomatic bag that day, and it would have arrived sometime around mid-day on Monday; or alternatively, if he didn't make it on the Friday evening, he would have put it in the diplomatic bag on the Monday, and it would have arrived in the Department on the Tuesday at lunchtime.

A. I would imagine that the concern of the Department at that stage would be to have in their hands a copy of a fully official, you know, letter which had full standing as a letter from Mr. van Miert. If there wasn't a date on it, even if it was signed, it would still be a bit less than full assurance that clearance had been got from Mr. van Miert to the terms of the competition.

Q. Yes. Can I just apart from Mr. Cullen, did you do you recall, did you send a copy of this letter to anybody else?

A. Absolutely not.

Q. And having faxed it to Mr. Cullen, do you recall what you did with it? Did you file it away in your own files or dispose of it in some other way?

A. Well, I can only sort of say what I would normally have done in a case like that. I don't recollect precisely what I did with that particular letter. I mean, in my office in the Cabinet, I had a safe which was in the form of a filing cabinet, but it was actually a safe. It was you know, reinforced and so on, and it had a combination lock on it.

Q. Yes?

A. And with correspondence of that kind, I mean, I would have I would have put it into that safe, and I would have kept it for a certain length of time. And eventually I would have destroyed it, when the matter was over and done with, as it were.

Q. Yes, I can understand that. Thank you, Mr. Brosnan.

A. Thank you.

MR. FITZSIMONS: No questions.

CHAIRMAN: Nothing arising, Mr. Fitzsimons?

Mr. McGonigal?

MR. MCGONIGAL: No questions.

MR. BRADLEY: No questions.

CHAIRMAN: Mr. Brosnan, it is not really a question I wanted to put to you on the hoof, but Mr. Brennan, who, as you know, did work in Brussels himself, indicated that it mightn't be beyond the bounds of

possibility that there could be shortcomings within Brussels as to security; that maybe, on occasions, lobby groups or media or the like may get hold of confidential or sensitive documents such as this one.

Without going into any comparative tract on it, can you comment?

A. Well, certainly the European Commission is a very open and transparent bureaucracy or civil service, you know. By comparative standards, I would feel that you know, the general tenor of the way the Commission does business is to be very open and forthcoming with information about things. And that, as you say, Chairman, because of the fact that it's you know, a civil service which is located in Brussels and is responsible for 15 Member States, as it was at that stage, it has to deal with people who are you know, not necessarily located on the spot, and there is a lot of groups, interest groups of various kinds who were represented in Brussels, and they do they do a lot of lobbying, they do a lot of information gathering for the bodies that they represent, and there would be a lot of contact between various interested parties employers' groups, farmers' organisations, trade unions; you name it, and the Commission about, you know, various policy proposals and so on that are in the course of preparation, various decisions that are due to be coming up on the

Commission agenda.

So, you know, I think the starting point of Commission officials would be to be as open as they could be with something. On the other hand, DG IV in particular and the competition, the Competition DG, as it is now called, they would also operate in a certain atmosphere of secrecy and confidentiality because they are enforcing competition policy. I mean, it would not be unknown for them to do dawn raids, for example, on places in relation to cartel cases and things like that, and I would be very surprised if a Commission official would knowingly issue to a third party a document which they knew to be secret or confidential; and let's say in the case of the present instance, of Mr. van Miert's letter to Mr. Lowry, that they would issue a document of that kind knowing that it was likely to give any advantage to one competitor over another in the competition of the kind that was taking place then.

Now, whether somebody would necessarily have realised that, I don't know; I am not qualified to say. But my feeling would be that if they were aware of the fact that there was something in that letter which was likely to give an extra edge to one competitor over another, I would be very surprised if a Commission official would knowingly do that. But whether they whether it could have happened without somebody

realising what was involved, I just don't know.

CHAIRMAN: That's helpful. Thank you very much for attending and for your assistance generally,

Mr. Brosnan.

A. Thank you, Chairman.

THE WITNESS THEN WITHDREW

MR. COUGHLAN: Ms. Margaret O'Keefe, please.

MARGARET O'KEEFFE, HAVING BEEN SWORN, WAS EXAMINED BY

MR. COUGHLAN AS FOLLOWS:

A. Margaret O'Keefe.

CHAIRMAN: Thank you very much for attending,

Ms. O'Keefe. Please sit down.

Q. MR. COUGHLAN: Ms. O'Keefe, I think you have a Memorandum of Intended Evidence; isn't that correct?

A. Yes.

Q. And I would just take you through that, and I don't think there would be too much that I would ask you after that. It is in Book 35, Divider 5.

A. Yes, sorry, hold on, and I will see...

(Book handed to witness.)

Q. Do you have it?

A. Sorry, Section 5?

Q. It is, yes. Divider 5A. It is behind Divider 5.

A. Yes.

Q. You have that now?

A. Yes.

Q. And I think you state that consequent upon the letter

from the solicitor to the Tribunal dated the 3rd of October, 2002, you now set out your response to same in the format requested by the Tribunal.

And I think the first query that was raised with you was details of your role in the second GSM License evaluation process. And you inform the Tribunal that you were a job-sharing Executive Officer in the Communications Corporate and Development Division during the GSM evaluation process. Your duties included ongoing administration, issuing, receiving and filing and faxing correspondence. You also attended some meetings.

You were then asked for details of your role in the taping of all presentations made by applicants to the Project Group in September 1995. And I think you have informed the Tribunal you did all the preparation, setting up of the main conference room for the presentations. On instructions, you met with members of the Garda Technical Bureau and arranged for the conference room to be continuously monitored before and during each presentation for recording devices.

As part of the GSM competition, each of the applicants made a presentation supporting their application.

You attended five of the six presentations which took place between the 11th and the 13th of September, 1995, and on Mr. Martin Brennan's instruction, you recorded these presentations. At the start of each

presentation, Mr. Brennan advised the applicants that the process would be taped. You then turned on the recording equipment. All the presentations were audio-taped onto a four-hour videotape. At the end of each presentation you re-wound each tape and checked to make sure that the proceedings had recorded.

Despite the fact that the presentations were being taped, written notes of the presentations were also taken by various members of the Project Group.

Ms. Nic Lochlainn and yourself took the general notes on the proceedings, and the technical and financial experts on the GSM Project Group took notes that pertained to their area of expertise. Ms. Nic Lochlainn's and your handwritten notes were then filed on the GSM files in the division.

I think you were then asked for details of the manner in which and place in which the tapes of the oral presentations were retained. And you informed the Tribunal that following each presentation, the tape was labelled and placed in a locked filing cabinet in a locked storing room. The original tender documents were also kept in this room. The keys to the storage room and the filing cabinet were kept in a drawer of the desk that yourself and your job-sharing partner shared. On some occasions the Administrative Officer of the division, Ms. Nic Lochlainn, held the keys.

Each consortium submitted 12 copies of their tenders.

During the process, the technical and financial members of the GSM Project Group were given the parts of the tenders that pertained to them, and they were responsible for the security of the documents. All staff in the division had to sign a logbook when they took any part of the tender document out of the store room. The general files which were contained which contained all the written correspondence in relation to the granting of the GSM License were held in the division. The filing cabinet was kept locked.

I think you were then asked for details of your role in the provision of access to the tapes and your knowledge, direct or indirect, of who had access to the tapes and the purpose of such access. And you inform the Tribunal that to the best of your knowledge, no copies of the tapes were made, and at no time did any person ask you for or listen to the tapes when you were in the division.

When the granting of GSM License was completed, the storage room was no longer required. The various parts of the tender documents were filed in a filing cabinet of the division. However, the filing cabinet contained a complete set of the tenders and tapes, and the tapes were transferred from the storage room to a room beside the Communications and Corporate Affairs and Development Division. In due course this filing cabinet was moved into the room occupied by the

Communications and Corporate Affairs Division.

I think you were then asked about the whereabouts of the tape, and I think this all related to the fact that the tapes were not located when you furnished this particular statement. So I don't think we need to deal with the rest of that insofar as it deals with the tapes.

I think then you were asked, at Question 7, details of the protocol for the presentation, circularisation and adoption of minutes of meetings of the Project Group.

You see "See answer to Questions 10, 11 and 12."

I think I will go to that in due course.

I think you were then asked for confirmation that you attended the 12th meeting of the Project Group on the 9th of October and kept the minute of the meeting.

You inform the Tribunal that you attended the 12th meeting of the Project Group on the 9th of October, and you took handwritten notes of the meeting.

Then you were asked for confirmation that the handwritten notes of the meeting were a contemporaneous record kept by you. You say that these notes were a contemporaneous record of the meeting kept by you.

I think then Questions 10, 11 and 12, which you refer to in response to Question 7, and those questions are: Details of the manner which you prepared and typed the minutes of the meeting, including the identity of all

persons who you consulted in the preparation of the typed minutes and the extent of the input of such persons in the final document. Confirmation that you circulated the typed minutes to all persons who attended the meeting, to Ms. Nic Lochlainn and to Ms. Nuala Free, prior to the 13th meeting of the GSM Project Group on the 23rd of October, 1995. And you were asked whether you were aware or had any knowledge, direct or indirect, of the views of Sean McMahon regarding the contents of the typed minute as comprised in a handwritten note made by him on a copy of the minute dated the 17th of October, 1995.

I think your response to those three questions and to Question 7 is as follows: "Following the meeting, I compiled a first draft of the minutes of the meeting. And the usual procedure was that I would submit my work to my manager" that is, your Administrative Officer, Ms. Maev Nic Lochlainn, or your Assistant Principal, Fintan Towey for checking and approval.

In this case, as Ms. Nic Lochlainn was not in attendance at the meeting, you would have submitted the draft to Mr. Fintan Towey. The minutes of the meeting were typed and circulated on the 17th of October, 1995, in your absence. You were job-sharing, and you were in work from the 6th to the 11th of October, 1995, and on a week off from the 12th to the 18th of October, 1995. You were not aware, nor had

you any knowledge of Mr. Sean McMahon's handwritten comments dated the 1st of November, 1995, and a copy of these minutes and a copy of these minutes held in files in Mr. McMahon's division.

I think you were then asked whether you placed both the typed minutes and your handwritten attendance of the meeting in the Departmental files. You inform the Tribunal that to the best of your knowledge and your recollection, you would have placed your handwritten notes on the file and a typed draft copy which would have been submitted to Mr. Fintan Towey for his approval. You cannot confirm if you or Karen Fennell, the person who signed the approved copy of the report, placed the report on file.

You were then asked the identity of all persons who had access or were given to whom access was given to the draft evaluation report dated the 3rd of October, 1995, between the 4th of October, 1995, when the draft report was received by the Department, and the 9th of October, 1995, when the report was discussed at a meeting of the GSM Project Group. And you have informed the Tribunal that to the best of your knowledge, and as noted by a letter on file, two copies of the first draft evaluation report, dated the 3rd of October, 1995, were received. These copies had been personally for Martin Brennan and Fintan Towey. The words "Copying prohibited". This copy had been

"personally for Martin Brennan" on one copy and Fintan Towey's name on the other copy. You have no personal knowledge of persons to whom access was given to the report.

I think you were then asked for details of all meetings and discussions which to the knowledge, direct or indirect, of you, took place between officials or between officials and other persons, or any other discussions regarding the content of the first draft evaluation report, of the presentation of the material comprised in the report, or any other aspect of the report between the 4th of October, 1995, when the report was received, and the 9th of October, 1995, when the report was discussed by the Project Group for the first time.

You have informed the Tribunal that to the best of your recollection, you did not have any discussions with any officials regarding the first draft evaluation report. Following the meeting, you faxed corrections to grammatical errors in the report to Andersen Management Limited.

I think you were then asked to confirm that eight copies of the final report dated the the final draft report, dated the 18th of October, 1995, were received by the Department and were designated for Mr. Michael Lowry, Mr. John Loughrey, Mr. Sean Fitzgerald, Mr. Colin McCrea, Mr. Martin Brennan,

Mr. Sean McMahon, Mr. John McQuaid, and Mr. Jimmy McMeel. And you have informed the Tribunal that regarding the final draft report dated the 18th of October, 1995, from a review of the files, Maev Nic Lochlainn requested eight copies of the file of the draft final report. To the best of your knowledge, these eight copies were received. Each copy was personalised to the designated names.

Now, can I just ask you: We have your note, both the minute and the note you kept of the meeting of the 9th of October, and I you know that that has been typed up, your handwritten note; isn't that correct?

A. Yes.

Q. And you approved of it. Do you have any apart from what is contained in the note, do you have any recollection of the meeting of the 9th of October yourself?

A. No, other than I was told to go to the meeting and, like, write the reports of the meeting. And these are comments that were made by people at the meeting.

Q. Yes?

A. And not my own comments.

Q. Yes. You weren't a member of the PTGSM; you were there as a note-taker. Isn't that right?

A. Yes. I was only at one other meeting, and that was the meeting prior to the presentation. Because I going to the presentation, I went to hear what the

format was, to one of the other Project Group meetings, but that was the only other one I was at.

Q. Yes. And the reason for the presentations were, you were first of all liaising with the Gardai about the security; isn't that right?

A. Yes.

Q. And secondly, you were to attend as a note-taker at that as well?

A. And to tape and to look after anything in general that anybody may require.

Q. Yes. Would you looking at the note of the meeting

MR. O'DONNELL: Do you have a copy?

A. I have two of it, yes.

Q. MR. COUGHLAN: Looking at the note now, would you be able to identify who may have made the various comments at this stage?

A. No, other than there is names in front of them.

Q. Other than the names?

A. Yeah. There is one on the handwritten one that is not on the typed one.

Q. What is that?

A. There is there are a few amendments to the typed one when I looked at it last night do you want me to go through them?

Q. Yes, please, that would be helpful.

A. The one you are checking is the verbatim notes?

Q. Yes?

A. As approved by myself on the 1st of February, 2002?

Q. Yes?

A. That one, yeah?

Q. Yes, that's right?

A. You have, "Agenda. Object is to get feedback on context", not "content", I have written in the handwritten notes.

Q. "Draft report. Future work programme"...

A. "Object," it is the third line.

Q. "Object to get feedback on"?

A. "Context".

Q. "Context"?

A. That is what I have written in the handwritten notes.

Q. Yes?

A. That's all on that page.

Q. All right.

A. Under "Supplementary Analysis."

Q. Yes, that is on page 2?

A. Page 2, sorry, yes. Under "Interconnection," there is "supply" and a question-mark.

Q. Yes?

A. That should be "Supplementary analysis."

Q. "Supplementary"

A. "Supplementary analysis."

Q. Okay.

A. And, "Hard to score," then, "the block-out and

drop-out rates," it says "rate", it should be "rates".

Q. That is, "Hard to score the block-out and drop-out rates"?

A. "Rates", yes.

Q. It should be plural?

A. Yes.

Under, "Martin Brennan", then it says, "Would proceed in the way Andersen suggest and would strengthen report. The annex on methodology should cover this and become main report." There is a dash there.

Q. "And become", yes, okay.

A. Under "John McQuaid", "Page 44", it just says "correct, okay evaluation model appendix. Quantitative analysis" and it is like I have an arrow in there and a space, so whether there is something missing.

Q. "Quantitative analysis", okay, and an arrow?

A. Yes, I have a space, an arrow, yes. "Report based on quantitative analysis. Concluding remarks (page 44)."

Q. Okay.

A. Page 3.

Q. Yes?

A. Well, "Overall Presentation: Should summary be at start?" I just have written, "Should they be at start", somewhere on the handwritten notes as well.

Q. That is the second line under "Overall Presentation"?

A. Well, "summary", and "they" is written over it in handwriting as well.

Q. I beg your pardon? Could you just go through that again?

A. "Should summary be at start." I just have also in the handwritten notes I have the word "they" written over "summary".

Q. Yes. Okay.

A. Under "Michael Andersen: 16, 17, 18 tables reflect discussions in Copenhagen. If different weighting used to prove you get the same result."

Q. Yes?

A. Not "some result".

Q. Oh, yes, I think, yes, we have made that correction ourselves.

A. You have that one made, have you?

"Michael Andersen", under "Michael Andersen: It is difficult", not "it is different". Or has that been corrected?

Q. Which one is that now?

A. Under "Michael Andersen, it is difficult."

Q. The second, "it is difficult"?

A. Yeah. Now, on page 4

Q. Yes?

A. you have, on the third line down, before "chain of events", I have Fintan Towey's name written over that.

Q. Where is this page 4, now? Could you just show me that one?

A. Page 4 of the typed one. You see the third sentence,

"Chain of events"

Q. Yes.

A. I have Fintan Towey's name written over that.

Q. Over "Chain of events"?

A. Yes.

Q. All right.

A. Under "Quantitative", the word "publish" is in, was a line underneath it.

Q. Which page are we on now?

A. We are still on page 4. Under "Quantitative", you see "Billy Riordan", then "Quantitative", "It is not necessary to publish the original."

Q. "It is not necessary to publish"

A. "The original." It is written in that, that is okay.

Page 5, "holistic" is typed, "heuristic" is the word I have down, H-E-U-R-I-S-T-I-C.

Q. That is the second line, is it?

A. Yes.

Q. We see that, it is heuristic.

A. And then under Fintan Towey's name, "Should marketing be in the methodology," I have "3.1" written above "Marketing". And "ANP", that is AND, "Andersen will" I don't know, the sentence isn't complete.

Page 15, "Dealer Commissions," and the next thing is "Fintan Towey". That "FT" is "Fintan Towey", "obviously said should figures be put in"; that is obviously a comment Fintan made.

Q. Yes?

A. Yes, page 18, then, is "Fintan Towey"; the "FT" is "Fintan Towey".

Q. Say that again?

A. Page 18, the second line from "FT: Page 19," you see that? That is that "FT" is "Fintan Towey".

Q. Yes, I think we have that. Yes.

A. Page 7.

Q. Right?

A. "More balanced statement."

Q. "More balanced statement"?

A. Yes. "The project will survive" comma yeah.

That is basically it, the changes I just wanted to make.

Q. Thank you.

I just want to go back to if I could go back to page 3 first of all. You see you have a heading at the top, "Weighting"?

A. Yes.

Q. "Table 17 different from agreed weighting." Do you know who you were attributing that statement to, or can you tell from the note?

A. No, I have no initials over it.

Q. All right. Now, if you go as you to the bottom of page 3, you have "F. Towey", "Fintan Towey"; isn't that right?

A. Yes.

Q. "...should we not include quantitative analysis upfront, quantitative analysis too simplistic to give results"?

A. Yes.

Q. Are you attributing all of that to Fintan Towey, do you know?

A. Well, I have no other initials put in. I don't know whether it is; I can't say for certain.

Q. If you the top of page 4, you have over the commencement of the sentence "Chain of events, evaluation model 80% deals with quantitative evaluation," over that you have

A. I have an "FT" written over that in the handwritten notes.

Q. So does that indicate that you are attributing what is under it, then

A. It would like it.

Q. to Fintan Towey?

A. It would look like it, yes.

Q. Thank you.

Now, this is just a matter I am not raising any major issue about it, but because the Department have indicated, through their legal advisers, that it was a mistake, in fact, but were you aware that this document was retained for about six months whilst consideration was being given as to whether privilege would attach to it? Were you ever consulted about

that?

A. No.

MR. COUGHLAN: Thank you, Ms. O'Keeffe.

CHAIRMAN: Does anybody have any questions to raise?

MR. FITZSIMONS: No.

CHAIRMAN: The limited amount of work that you did as Deputy Secretary to the group, Ms. O'Keeffe, your functions didn't include actually circulating the members of the Project Team with the minutes once they had been approved; that was up to Ms. Nic Lochlainn, was it?

A. Yes, it was.

CHAIRMAN: Yes. Thank you for your assistance.

A. Thank you, Chairman.

THE WITNESS THEN WITHDREW

MR. COUGHLAN: Those are the witnesses this morning.

Ms. Nic Lochlainn is available for this afternoon,

Sir.

CHAIRMAN: Well, it is not unreasonable that she kept herself.

We will resume, then, at 2 o'clock. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MAEV NIC LOCHLAINN, HAVING BEEN PREVIOUSLY SWORN,
RETURNED TO THE WITNESS-BOX AND WAS FURTHER EXAMINED
BY MR. HEALY AS FOLLOWS:

CHAIRMAN: Thanks, Ms. Nic Lochlainn. Of course you

are already sworn. Thank you for coming back. Please sit down.

Q. MR. HEALY: Thanks Ms. Nic Lochlainn.

You recall that the last time that you were in the witness-box, a number of documents came to hand, I think, during the time you were in the witness-box?

A. Mm-hmm.

Q. And neither you nor I were able to deal with them at the time. I think I simply went through them, flagging them to you and flagging some of the aspects of the documents I wanted you to look at?

A. Mm-hmm.

Q. And I want to come back to deal with some of those documents now and maybe to put them into perhaps a context that none of us was in a position to put them into at the time that they were first introduced into evidence.

Now, you have a Book 58, I think, which contains those documents?

A. Yes, I have it.

Q. You may be working from an older book, as I certainly am?

A. Yes.

Q. But they were re they were consolidated and put together in Book 58.

Now, the first document that I want you to look at is in Book 58, I think it is Leaf A2?

A. Yes.

Q. And what I wanted to do was to go to the last I was going to ask you to go to the last two pages

A. Yes.

Q. of that leaf, last maybe it is more than two, maybe three pages. I think it is two pages in your book, is it?

A. I am working off Book 58.

Q. Yes.

A. If you describe the page, I might know.

Q. If you go to the last two pages. The second-last page has the No. 3.1 on the top left-hand corner, then after that it has "Add 1 indicators"?

A. "SIM cards."

Q. Do you see that?

A. Yes.

Q. Right. Now, the next document I think, on your copy anyway, I am not sure it is on mine, has page number 3 written on it, do you see that?

A. Yeah.

Q. There was, I think, some copying problem in sending the documents from the Department to the Tribunal, and just now this afternoon Mr. Shaw has identified page 2 of a three-page group of documents

A. Yes.

Q. of which that is a part, and I think the second page is being handed out. I don't think much will

turn on the new information contained in the second page.

So now, that leaf, A2, contains two documents; the document I just referred you to is contained in the last three pages, I think, of everyone's Leaf A2 now, and what and another document contained in the first, I don't know how many, first however many pages of that leaf?

A. Yes.

Q. And both of those documents are in your handwriting, isn't that right?

A. Yes.

Q. And the first document, and the second document, as I understand it, deal with the notes you took of the meeting of the 18th of May, 1995, at which the first version or first draft of the evaluation model was presented by Andersens, is that right?

A. That's correct, yes.

Q. So the first few pages, which are, I hope I am not being too casual in saying, are written in a faster hand, are the notes you actually took at the time, and the second few pages, which more or less follow the same order as the first few, are your more considered and tidied-up version of what is contained in the first document, isn't that right?

A. That's correct, yes.

Q. So you took notes of the meeting while you were at the

meeting, and then you went back to your office, or whatever, and you tidied them up and you put them together in a tidier and more legible and easier, readily comprehensible form, isn't that right? Is that right?

A. Yes.

Q. Simply for the record, there is no date on those documents, at least on the copies I have?

A. Yes.

Q. But you have agreed with me, they're a note of the meeting of the 8th of May, 1995, but lest there be any doubt about

A. It I think it is the 18th of May.

Q. 18th of May, I beg your pardon. Lest there be any doubt about it, that is clear from the fact that the pages of the evaluation model that are being referred to, and the information noted by you with respect to those pages, makes sense only in the context of the first version of the evaluation model, isn't that right?

A. I haven't done that crosscheck, but if you look at the formal report, it reflects what is in these rough notes.

Q. Yes. Well, in any case, if you want to be absolutely clear about it, if you look at the second set, the more tidier, if I can put it that way, set of notes, and you go down to 3.8

A. Yes.

Q. you will see it is a reference to one of the indicators. The indicator to which it refers at 3.8 on the first version of the evaluation model is the indicator that deals with frequency efficiency, is the dimension that deals with frequency efficiency, and the indicator is frequency economy figures. And you will see that you have a note, "Change total N/W traffic to" that is "total" "network traffic to peak network traffic." Isn't that right?

A. Yeah, that is what I have written, yeah.

Q. And that is a reference to one of the formula contained in the first version of the evaluation model in which total network traffic is the criteria used to develop a score and it is changed to peak network traffic by the time you get to the 18th of May. And there is a figure of 80% used to as an assumption in that first version of the evaluation model, and that's changed to 50% when you come to the second version.

I think what those notes show, is that you went through, or the Evaluation Group, the PTGSM, went through the first version of the evaluation model in considerable detail, isn't that right?

A. Yes.

Q. Now, for a moment, if you go to the start of that leaf, the start of Leaf A2, these are your original

notes made, presumably, at the meeting?

A. Yes.

Q. And we know, I think, that that meeting was attended by almost everyone, isn't that right? We don't need to go back to the formal minutes, we have been through them several times?

A. There were a lot of people at it, yes.

Q. Yes. And in your formal note, or in your contemporaneous note, the first reference is 3.3?

A. Can I just if you go to the pages underneath the first tab.

Q. Yes?

A. I have a feeling that those are also notes of the 18th of the 5th, '95.

Q. Correct.

A. Yeah.

Q. That is the point I think we are trying to clarify; those are the first half of A2, is that what we are talking about now?

A. No, I am talking about Tab 1.

Q. I beg your pardon. Yes.

A. It starts the document starts it is the document that starts with "Presentation".

Q. I see.

A. And I have a feeling that those are also notes from the meeting of the 18th of May, and that they would have been notes which should have preceded, or least

certainly the back page of that tab, if you see it, it starts "GSM meeting minutes".

Q. I see that, and I hadn't noticed that before.

A. Yes. All of those documents together, and not necessarily in the order that they are there, I think, so that we didn't begin discussing at 3.3, we would have begun somewhere else.

Q. Just to explain this: I think these documents were retained by you, but these were documents that you had used to generate other documents, and that they were not retained in any in any particular order, and when they came to the Tribunal and to Mr. Shaw, they were in disarray, let me put it this way, without criticising you; you hadn't intended to put them in any order, you had simply finished with them, isn't that right?

A. Yes.

Q. Just to be clear about it now, the I think the most helpful document would be the last page of what is in Leaf No. 1, is that right?

A. That's correct, starting with the "GSM"

Q. That is probably the start of the meeting or at least the start of the portion of the meeting that dealt with GSM issues?

A. I would say it is the start of the meeting because there is the note there which says, "MB opened meeting."

Q. Yes. And it says, "Introduced Agenda.

"Agenda Item No. 1:

"Andersen to present. Confidentiality of Andersen document is critical."

Is that right?

A. Yeah. I should point out that that piece in the different handwriting is, I think, written by Denis O'Connor on my behalf.

Q. Because you were temporarily out of the room?

A. Yes.

Q. Could you go on to read the rest of that for me so that

A. Sorry.

Q. so that I can understand it?

A. I am not sure how far we got. "Introduced Agenda." I think the "MB" possibly stands for Martin Brennan.

"Agenda 1: Andersen to present." I am assuming that is Andersens to present the draft evaluation model.

And then, "Confidentiality of Andersen document is critical."

Q. Yes.

A. "Martin Brennan proposal" then "Martin Brennan"

I think the next word is "proposal". This is not

my own writing, I have to add. "One copy for

Department is unworkable. We need" then "one

for Finance, one for Martin Brennan, one for Sean

McMahon. To be kept under lock and key/no copying."

Q. Yes?

A. Then "MA", I think is Michael Andersen, I

Q. I suppose so, yes.

A. "...unhappy with proposal. Department of Finance" which I assume is somebody from Department. "Need for two people only to see it." I presume that is two people within the Department of Finance?

Q. Yes?

A. "The track record" I guess could be a reference to their track record with keeping confidential documents confidential. Then, "TRA would represent the Telecom and Radio Regulatory Division, and they have given a commit to conf" presumably a commitment to confidentiality.

Q. Yes?

A. Then there is a line, then the "Conclusion", is "Three copies agree to hold in locked cabinet."

Q. Then underneath that you have

A. That is the attendance list.

Q. That is the attendance. So "BR", Billy Riordan, is it?

A. Yes. "Jimmy McMeel."

Q. Martin Brennan?

A. "Fintan Towey, Martin Brennan."

Q. Fintan Towey, Martin Brennan, I beg your pardon.

A. "Name of AMI body."

Q. Yes?

A. "Sean McMahon."

Q. Yes?

A. "Aidan Ryan, John McQuaid, Maev Nic Lochlainn, Eugene Dillon and Denis O'Connor."

Q. On the side in a circle?

A. Yes.

Q. Okay, so we go on to the next leaf, then, which is Leaf 2.

A. Are you trying to go through these in chronological order as they happened in the meeting?

Q. Yes?

A. It just seems that, if you go back a page from the one I was just reading from, the bottom of that says, "MA refer people to page 6 as the starting point."

Q. Yes, I see that.

A. I am not certain if the pages that precede that

Q. The pages that precede that seem to be about interconnection and an issue with the Commission.

Those were two live issues around this time as well, weren't they?

A. They were, yes, I presume. It is just that I am not sure why that is put there, unless Denis O'Connor put it on the wrong part of my notes.

Q. Well, I think you are making sense of it now, or you are making sense of it for me?

A. I am just trying to piece them together.

Q. Yes, it is

A. It would make sense, in that the discussion on the detail starts at 3-point whatever it is, which I think starts on page 6 of that document.

Q. You are absolutely right, yes.

A. So I am not sure if the discussion about interconnection and the Commission came prior, then, to the discussion of the detail of the model.

Q. Well, I think we can agree on this much; they are certainly dealing with two issues which may be related to the process, which are indeed related to the process, but they are not specifically focused on the evaluation model, is that right?

A. That would be correct, yes.

Q. So Michael Andersen referred people to page 6 as the starting point, and page 6 of the evaluation model, number 1, deals with the dimensions and the indicators and goes through each of the dimensions and the indicators which were being used to enable the evaluation of the criteria set out in Paragraph 19 to be conducted, isn't that right?

A. Yes, the quantitative evaluation, I think.

Q. Yes. Well, I think it was the same dimensions in the qualitative, wasn't it?

A. I think the dimensions would have been the same.

Q. Yes. But obviously not the indicator?

A. The weighting in this model

Q. Pardon?

A. The weighting the split of the weighting is related to the quantitative evaluation.

Q. Sorry, would you I didn't quite

A. The split of the weightings that were discussed here

Q. Yes?

A. the various indicators, I think there were 13, they were the split of the weights that were to apply for the quantitative evaluation.

Q. Yes, but if you look at your note, in any case, you will see that, firstly, you record, "3.3. AMI have heard views and are to reconsider." Do you see that?

A. Yes.

Q. "Qualitative analysis/in-depth analysis on tariffs. "No ambition to cover each/all of the tariff aspect."

Do you see that?

A. I do.

Q. Now, 3 page 6, as I said, on the evaluation model, do you want to have do you want to refer to the evaluation model?

A. It might be handy, yes, if you are going to refer to that.

Q. It is on Book 54. (Book handed to witness.)

A. This is under Tab 1?

Q. Yes.

A. Yes, it has got "Sean McMahon" scribbled on it.

Q. Yes.

A. I suppose I should say, since I have noticed it in Sean McMahon's writing, on page 4 of this, "AMI will take out" that a discussion, according to Sean McMahon's notes, didn't start at the indicators but it started back further.

Q. Yes. It is possible that there was a general discussion before you got down to the indicators

A. Yes.

Q. Judging from Sean McMahon's notes. And I suppose if you go while we were at it, maybe if you look at the front page of Sean McMahon's notes. He deals with the confidentiality issue, which is the one you have already mentioned?

A. Yeah.

Q. Then if you go to the next page, he has a note, "Are applicants to be entitled to assessment criteria?"

Answer: No."

Do you see that?

A. Yeah.

Q. So there must have been some discussion at that stage of the general assessment criteria?

A. Maybe the applicants were to be given them?

Q. The answer was no, they weren't to be given them?

A. I don't know exactly what he means by "assessment criteria" there, but I can see that the answer is "no".

Q. Yes. They would get the RFP but they wouldn't get the

breakdown which went beyond that?

A. Okay.

Q. I presume that is the answer, isn't it?

A. Well, they didn't get it.

Q. Yes. If you go on to the next page, "Procedure for quantitative evaluation process". We have been through this with a number of witnesses, we have been through it with you, I think. This is an account of the steps which described the procedure for the qualitative evaluation, do you see that?

A. For the quantitative evaluation?

Q. For the quantitative evaluation, I am sorry. Do you see that?

A. Yeah.

Q. And clearly, there was some discussion there, to judge from Sean McMahon's notes?

A. Yeah.

Q. And then the next page you have, "The dimensions assessed in the quantitative evaluation". Do you see that?

A. Yes.

Q. Just while we are on that, what you have in the left-hand column is a list of the evaluation criteria from Paragraph 19?

A. Yeah.

Q. In the middle you have the dimensions linked to each of these criteria?

A. Yeah.

Q. And then you have the indicators for the dimensions in the quantitative evaluation, do you see that?

A. I do.

Q. So each indicator relates back to a dimension which, in turn, relates back to Paragraph 19?

A. That's correct.

Q. So every indicator in the quantitative evaluation relates back to Paragraph 19?

A. Correct.

Q. On to page 4, there is, again, a reference, there must have been some discussion of it. Then, on page 6, which you have noted was described by Mr. Andersen as the starting point, the heading is, "Dimensions and Indicators", and the first dimension is market development.

A. Yes.

Q. Do you see that?

A. Yes.

Q. And trying to relate that in some way to what is contained in your note, do you know that Mr. McMahon has recorded, "Agreed AMI will look at this." And there seems to be a reference both to tariffing and to market development in his note?

A. Is this in the note here?

Q. Yes.

A. I haven't read it yet. I can't read it all, but

anyway...

Q. It says, I think, "Market development is more than just number of SIM cards." Am I right in that?

A. Well, you could be, I can't see

Q. Does it look like I am right in it?

A. Yeah, I don't know what the "AR" is, but anyway, go on.

Q. "AMI agrees, but very difficult to provide for assessment of traffic" something?

A. "Traffic figures."

Q. "Traffic figures"?

A. Yeah.

Q. "Maybe best to compare this with traffic/tariffing and do a combined quantitative. AMI agree" "are agreed AMI will look at this." Do you see that?

A. Yes, I see that.

Q. Your note then begins with 3.3?

A. Yeah.

Q. Which, in fact, deals with tariffs?

A. Yeah.

Q. And you have, "AMI have heard views, to reconsider.

Qualitative analysis, in-depth analysis on tariffs.

No ambition to cover each/all of tariffs aspect."

A. Yeah.

Q. Now, there seems to be a correlation between your note and Sean McMahon's note, isn't there?

A. Yes, they both mention tariffs, yes, and revisiting.

Q. And there is a question of some reconsideration by AMI?

A. Mmm-hmm.

Q. And the reconsideration seems to relate to some connection between market development and tariffs on Mr. McMahon's note?

A. On Mr. McMahon's note, that is what it says. There is no mention of that in mine.

Q. Your note says, "Qualitative analysis is an in-depth analysis on tariffs." Then you go on to note that there is no ambition to cover everything?

A. Yes.

Q. Does that seem to suggest that perhaps Mr. Andersen or somebody else was saying, "Look, the quantitative analysis is going to give you some information, but you can't cover everything on it, eventually we will go to the qualitative analysis to get a broader view." Would that be fair?

A. I don't know if that is what he is saying there. It would seem to me that he is saying that there is he is saying no ambition to cover each of the tariff aspects. The tariff is a very, very complex part of any application. I don't know it is necessarily he is making any comparison between the qualitative and the quantitative in this bit of my notes or that I am recording that he is making that.

Q. Hold on for a minute. Could you speak just a little

louder into the microphone or pull it down towards you, maybe.

A. Sorry. I am just saying, I think he is saying that he is not going to cover everything about tariffs because he was aware that tariffs is a very complex part of any application.

Q. Yes?

A. That's what I think he is saying. I can't remember what you thought he said, but I know that that is what I think he is saying.

Q. Is that what you think you recall he said or what you think he said, from your notes?

A. I am telling you straight out, I don't recall that meeting, I can't recall things eight years ago. I am going from the note.

Q. He says, if you look at note, "No ambition to cover each/all of the tariffs aspect."

A. Yes.

Q. We are talking about the quantitative analysis at this point, primarily, is that right?

A. This discussion obviously was taking place in relation to the quantitative, because it is at about 3.3, but underneath the 3.3 I have written down "qualitative analysis".

Q. Just hold on a minute, we will just make sure we are on the same wavelength. You are agreeing we are talking about the quantitative analysis?

A. I agree, that in general this discussion is about the quantitative

Q. That is what we are talking about here?

A. Excuse me, can I talk?

Q. Just hold on a minute. I don't think there is any difficulty with what you are saying. I just want to be clear about it. We are talking about the quantitative analysis here?

A. We are talking that there was a general discussion about the quantitative which may have moved into the qualitative at any point.

Q. No, no, can we just get one thing clear. Am I right in thinking that your note, "No ambition to cover each/all of the tariffs aspects," refers to the quantitative analysis?

A. No, what I am trying to say to you is because a) I don't recall what happened at the meeting, and I am relying on my notes, I believe it would be reasonable to say that I can infer better from my notes than others can, that because, even though you are in a general discussion of the quantitative model, because immediately above that line where there is an arrow, I am referring to the qualitative analysis. It is not clear at this point in time, and I can't recall whether the "no ambition to cover each/all of the tariffs aspects", now relates to the qualitative analysis where there is going to be an in-depth

analysis, or whether it relates to the quantitative analysis. I don't think anybody can be clear about that at this point.

Q. Well, I am going to suggest to you that it is clear?

A. Well, it may be clear to you.

Q. Just hold on and listen to my suggestion first.

A. I would love to.

Q. My suggestion is that are you listening?

A. Yes.

Q. My suggestion is that what Mr. Andersen was saying was that the quantitative analysis couldn't deal with every aspect of tariffs, it could only deal with some aspects, and that the qualitative analysis which would be following on, would be an in-depth analysis of tariffs. Do you see that?

A. I see that that is your suggestion, but I would repeat that I don't necessarily agree with the suggestion.

Q. Okay. If we go onto the next item, "International Roaming". Do you see that?

A. Yes.

Q. This is a reference to indicator, or to the dimension, "The applicant's international roaming plan", and the indicator, "Number of international roaming agreements." Do you see that?

A. Yeah. It is on page 8 in the model.

Q. Your note is "Roaming", with an arrow down to "All applicants will enter maximum number of roaming

agreements"?

A. Yes.

Q. And you say, "Because of Paragraph 19, can however

it" I suggest you probably intended to write in

"give it a low weighting." Do you see that?

A. I can see "Can however it a lower weighting", yes.

Q. It goes on, "Roaming agreement, slow process." Then

"roaming" something, I can't understand then

"International Feature"?

A. I think it is "by time".

Q. "Roaming by time. International feature." Is that

right?

A. I would say so, yes.

Q. Then, "Number of roaming plans in place after two years."

A. Mm-hmm, yeah.

Q. "In isolation, what type of country?"

A. "Of what type of country."

Q. Right. Am I right in thinking that what was being suggested there is that although it was envisaged or anticipated that many of the applicants would enter the maximum number of roaming agreements, you could handle the information you were given without giving people too much credit for it, because you could give it a low weighting under Paragraph 19, would that be right, because it was low down in the descending order of criteria?

A. I think that the notes would suggest that the discussion indicated that there was a difficulty with this indicator and it would, however, get a low weighting, or it could.

Q. Well, there would be no question of "would"; you had to respect the descending order. It was the third-last, so it could get one, couldn't it?

A. Mm-hmm, it did.

Q. If you go on to the next page, then, there is a section dealing with well, from the previous page, a section dealing with 3.5, and that goes right on.

The next page, you have 3.6 in the margin, do you see that? Then 3.7, do you see that?

A. Yeah.

Q. Now, at 3.7, do you see it, there is a reference to "performance guarantee"?

A. Yeah.

Q. What's what do the two words after "performance guarantee" mean, do you think?

A. I think the second word is "for", I don't know. I think the first word might be "mean".

Q. Yes?

A. It is possible that this it reads "performance guarantee", then there is a second line follows the little dash with the hyphen, and it goes "really mean for qualitative analysis according to John McQuaid."

Q. Yes. Am I right in thinking that what is being

suggested there, or what John McQuaid is suggesting, is that this is all very well, but it is really for the qualitative evaluation, this portion, is that right?

A. It looks like he is saying that it is more appropriate. I think it actually might be "really more for", I am not sure. It could be "mean" or "more".

Q. Underneath that you have "Formulae", is it?

A. Yes.

Q. "Look okay according to somebody else"?

A. According to TNRT, which is the Technical Division.

Q. Which would be Mr. McQuaid's division?

A. Exactly.

Q. Is it Mr. McQuaid or is it being suggested here that, fine, these formula are okay, but really, this is a lot more than what the formula suggests and it is really for the qualitative?

A. John McQuaid is saying it is really for the qualitative.

Q. Yes. But he does seem to be acknowledging that the formula are all right but they are not going to capture all of the information?

A. He is saying that it should be revisited, I would suspect, yes.

Q. Where is he saying that?

A. In the that the qualitative would be something on

this too, yes.

Q. Yes. The next page you go on to 3.8, "Frequency Efficiency", and so on. We discussed that earlier.

The next page you go on to 3.9, the question of experience. The next item is 3.10, that is the licence payment. It says, "Leave discussion 'til weighting " I don't know what the next word is?

A. Yeah, it might be, "Okay for the minute," I am not sure. It looks like "MIN" to me. The only way I can fit "minute" into the sentence is to say it is "okay for the minute."

Q. The next item deals with IRR, do you see that? There is a discussion about that and

A. Mm-hmm.

Q. There is a discussion about that and what levels or how you would approach it. There seems to be a suggestion that a 13% IRR is pretty high for

A. Ireland.

Q. for Ireland, is it?

A. Mm-hmm.

Q. And underneath that "8%"

A. "Government Gilts," I would say.

Q. "Government Gilts." Then, "11.5% equal to 5 marks," which seems to be the approach eventually adopted, isn't that right?

A. I am sure that can be confirmed in the documents.

Q. I think it was the approach eventually adopted, you

change the Andersen approach.

On to the next page, you are dealing with Section 5, which is the next section of the evaluation model.

The section dealing with the qualitative evaluation process is headed, "Procedure for the Qualitative Evaluation Process." It is on page 17. Some of this will we have seen echoed in the printed minutes.

The first note you have is, "Critical reading," then you have an arrow from "qualitative" down to "common sense check on quantitative"?

A. Yes.

Q. An arrow from that, "Take into consideration issues not covered in quantitative." Do you see that?

A. Yes.

Q. Do you recall or is that your impression of the purpose of the qualitative evaluation?

A. I don't recall the specific discussion in relation to this section.

Q. Does it suggest that you did the quantitative first and the qualitative is based on number-crunching and fairly hard information and perhaps somewhat crude criteria, and you need to do a qualitative to make a common-sense check on it?

A. I think this page, you know, that the discussion seemed to have well, I don't know if it went on for some time, but, like, I have other points made about the qualitative evaluation being higher than the

quantitative.

Q. Yes?

A. So I think the first one, the common-sense check on the quantitative was one option or maybe one view proposed, and the second one, the qualitative evaluation, was higher than the quantitative, was maybe another view or maybe a view proposed by the same person. It was also felt that the quantitative analysis would be done quickly, which would fit in with what you are saying there, a bit.

Q. Yes?

A. It being number-crunching, and that the I think there is an inference in the bullet point following where it says, "Critical reading complex, takes a lot of time," is again a differentiation between the two.

Q. Slow down just a little for the notetaker.

A. Sorry, sorry.

Q. Go ahead.

A. I think that in relation to the bullet point where I have written "critical reading"

Q. Yes?

A. and "Complex, takes a lot of time," is again a differentiation between the two, so it is difficult to take one...

Q. Well, all other things written on that page we have heard and seen, we have heard from other witnesses and seen in other places, and doesn't it seem to reflect,

to some extent, what is contained in the evaluation model? The quantitative had the advantage of having hard concrete information, but it had the disadvantage that it didn't cover a broad, or it didn't enable you to have a broad overview of an application?

A. In certain areas it might have invalidate and not be incomparable, yes. I think that it is clear that it represents a discussion

Q. Just a moment, sorry.

A. Sorry.

Q. Does it say anywhere here that it wouldn't be incomparable, I am not sure about that?

A. It might not say on this page, but it does, for instance, in the actual if you go to the international roaming part of the quantitative, the quantitative indicator for international roaming.

Q. Yes?

A. I think it says that this might not actually be used or it might not be scored.

Q. Yes?

A. Which...

Q. Yes. What I am saying is, at this point, everybody seemed to have a clear understanding that there was a difference between one part of the model and the other part, and that the first part, the quantitative part, would only bring you so far of the way, is that right?

A. Yes, that you would need to do a qualitative.

Q. Yes.

A. Yes. And, in fact, some people seem to have put forward the view that the qualitative would be more important.

Q. Was that put forward here?

A. Higher than quantitative. Qualitative evaluation higher than quantitative.

Q. I see that. I think that is why I was saying to you, earlier, in relation to tariffs, that what was being suggested was that the quantitative evaluation didn't, if you like, I can put it this way, have the ambition to cover all aspects of tariffs because number-crunching can only do so much for you?

A. I think it was clear that there was an intention to do a qualitative evaluation which would be wider than the quantitative evaluation in that area.

Q. Yes?

A. I think maybe what I was disagreeing with you about was not I am not sure if the qualitative evaluation on tariffs would have been all-encompassing

Q. I appreciate that.

A. in that it wouldn't have covered every possible angle.

Q. It would have been wider than the quantitative?

A. It would certainly have been wider than the quantitative, yes.

Q. Go on to the next page. This is a reference to part 6

on page 17, which is headed "Guide to the award of marks."

A. Yeah.

Q. "If any two of the evaluators proceeded on" is it?

Is that right?

A. Sorry, yes.

Q. "On a different "

A. "On different understanding."

Q. "Understanding," is it?

A. Yes.

Q. "The process could be challenged." You have "Evaluation process, who, where, what and how." Then you have, "Relationship between quantitative and qualitative. Needs to be spelt out a bit more."

A. Yes.

Q. Then you have a reference to weighting. "Logistics", again that is more of the who, what, where; who is going to do what, when and where. And if you go to the very end, you have again "help" in a circle, "How to award marks on the qualitative side." And could I suggest that that reflects a discussion in which people wanted to be clear in their understanding of the difference between the qualitative and the quantitative portions of the process?

A. Yes.

Q. And how the two were to operate together?

A. Yes.

Q. Just bear with me for one minute, Ms. Nic Lochlainn, because I am working from the original book that we had when you were last giving evidence.

If you could go back to Leaf A2, the start of it, where you have I beg your pardon, if you go to the end of it where you have the as I suggested earlier, the tidier version of the notes

A. Yes.

Q. of that meeting, and you go to the end of the first page, and you have a reference, once again, to 3.10.

You have a note which says, "Okay. Leave 'til debate later on weighting." Do you see that?

A. I can't read it, but I presume you can read it better, yeah. "Leave 'til debate on" something yes.

Q. Maybe I have got a better copy than you have?

A. Okay, there is no point if you can see it.

Q. Am I right it says "leave to"?

A. Which fits in.

Q. No, I will get you a better copy. I am going to put it up. I am going to put a copy on the monitor.

A. It would fit in with what I said about 3.10 earlier.

Q. Yes, it would. Is that a bit easier to read? That is the copy we received.

A. "Leave 'til debate" something "on"

Q. "Later on weighting"?

A. Yeah.

Q. Now, there must there was, presumably, a debate at

that point on the weights, and on what weighting would apply to the different criterion?

A. It is not clear to me what at what point in the meeting that discussion took place.

Q. We know, from your previous evidence, that following that meeting you had a list of weights, isn't that right?

A. Yes.

Q. Just put it on the overhead projector. It is a note to file that you made on the 31st of May of 1995. It is Book 54, the weightings book, Leaf 1A. Do you see that?

A. Yeah.

Q. "Agreed at the meeting of the 18th of May, 1995, 30, 20, 15, 14, 7, 6, 5, 3." And that list presumably respects the list of criterion, the evaluation, in the Paragraph 19 of the RFP?

A. Yes.

Q. Do you remember that discussion at all, do you?

A. No, I don't. I have already said I don't recall the meeting.

Q. If you go to page 16 of the first version of the evaluation model, do you see the vote-casting and weight matrix for the quantitative for the indicators in the quantitative evaluation, do you see that?

A. Yes.

Q. And I think we discussed earlier how each of those indicators relates back to a dimension, which, in turn, relates back to the Paragraph 19 criteria?

A. Yes.

Q. And I think in your evidence the last time you were here, you indicated that if you wanted to if you wanted to find out what weight applied to a any one of the Paragraph 19 criteria, you went to the indicators, you totted them up, you went back to the dimensions and that brought you back to the criterion, isn't that right?

A. In relation to the quantitative evaluation, yes.

Q. In relation to the quantitative?

A. Yes.

Q. And everything that is contained on page 16 of the first version of the evaluation model can be seen to relate back to everything that is contained on the table on page 3 that we discussed at the outset of your evidence this afternoon?

A. All the indicators in the quantitative model fits back into dimensions and fits back into criteria.

Q. Yes. Now, if you for a moment stick with page 3, and if we leave if we can leave that page on the overhead projector. If you can stick with page 3, the first criterion is credibility of business plan and applicant's approach to market development, and that is related to three dimensions, which are, in turn,

are related to a number of indicators. The indicators to which it relates are given weights by Mr. Andersen in the first version of the evaluation model which come to 30. I will take you through that tot, if you want?

A. That is forecast demand, network occurrence and solvency and IRR, yes?

Q. Yes. That was obviously his proposal at that time?

A. Mm-hmm.

Q. And the next item, quality and viability of technical approach, which is divided into radio network infrastructure and capacity of the network, and further subdivided into a number of cells and reserved capacity, has two indicators which are weighted respectively by Mr. Andersen in that first version at 15 and 5, giving a total of 20?

A. Yes.

Q. Do you see them?

A. Yeah.

Q. And the next item is tariffs, and we can call it tariffs, I suppose, whether you look at the indicator, the dimension or the criterion, and that's weighted at the proposed weighting for that from Michael Andersen is 15, do you see that?

A. Yes.

Q. So the first three criterion first three criteria should have, according to Andersen, weights of 30, 20

and 15. Of course, this is just his proposal to the meeting; you were obviously going to debate it or discuss it. Then if you look at the next five criteria, the amount the applicant is prepared to pay for the right to the licence, Mr. Andersen suggested a weighting of 10 for that; for coverage he suggests a weighting of 10; for international roaming, a weighting of 5; for blocking and drop-out, a weighting of 5; and for frequency, a weighting of 5.

A. Yeah.

Q. Now, my impression, when I first saw that, and I suspect other people, and certainly members of the PTGSM may have had formed the same impression, is that the last five indicators are not properly discriminated by reference to their ranking in the Government-approved list of criteria, isn't that right?

A. That would be correct, yeah.

Q. Because two of them are each scored at 10, even though one is a higher ranking than the other, and the next three are scored at 5, even though they are in descending order of priority. Can you remember a discussion about altering or, if you like, can you remember a discussion about what Mr. Andersen proposed?

A. No, I can't.

Q. If you look at what is contained in 1A of your

weightings book, you will see that the first weighting proposed, of 30, is the same as what Mr. Andersen proposed, isn't that right?

A. That's correct, yeah.

Q. The second one, 20, is the same?

A. Yeah.

Q. The next one, 15, is the same. Do you see that?

A. I remember it from what you said, yeah.

Q. Yeah. So those three don't appear to have been changed from Mr. Andersen's proposals at all?

A. Yeah.

Q. And it is only the other ones, 14, 7, 6, 5, 3, which have been changed. And it seems to me, and would you agree with me, that it is reasonable to suggest that one of the important factors in promoting the notion they should be changed was, that you had to have a proper order of priority in the weightings as much as in the criteria if you were going to respect the Government order of priority?

A. That would be correct, yeah.

Q. I now want to go to your note of the meeting of the 9th of June, 1995, where the evaluation model was again considered. And I think it is contained in Book 58 A3.

A. Yeah.

Q. Now, by this time the model had been discussed in considerable detail, and we needn't go into all the

detail, but it is clear from your notes, I think, that the members of the Project Team, the Department members made quite a significant input into the document, and clearly demonstrated, from your notes, a familiarity with it, would that be right, or with the issues that were being addressed in it?

A. I believe that there was a general discussion. A lot of the discussion focused on the indicators and what weighting whether the indicators they had chosen for the quantitative evaluation were the correct ones.

Q. Right.

A. And I think that is where the focus there was some discussion as you had as we discussed, just now, in relation to the interaction between the qualitative and the quantitative, but I don't think that that

CHAIRMAN: Sorry, Ms. Nic Lochlainn, you are just dropping your voice a wee bit, both for the stenographer, and I am finding it a little hard to follow.

Q. MR. COUGHLAN: Maybe the microphone could be turned up.

A. I am sorry, I just have a low voice. I am sorry, anyway. Now, to go back to where I was in my head.

Q. You were saying, maybe if I

A. No, I would prefer to say it myself, actually, if that is okay?

There was, as I said, quite clearly, from my rough

notes, there was some discussion about the relationship between the qualitative and the quantitative, and but I was, I suppose, disagreeing with what you suggested there. I don't think, actually, that that influenced the text of the evaluation model much, and I would also like to disagree in

Q. We will just take that for a minute, one at a time?

A. Sorry.

Q. Did I suggest it affected the text? Sorry, I want to get that clear.

A. I think you said there was a lot of that discussion, and that influenced the document.

Q. I see.

A. What I am suggesting to you is that there was a lot of discussion around the indicators in the quantitative model, and whether the right indicators had been chosen, and that kind of thing. There was also some discussion about the interaction between the qualitative and the quantitative, but I don't think that that affected the document.

Q. I see.

A. And I would also say that the peculiarity, in a sense, about the discussion about this, both versions of the evaluation model, is that they are highly confidential documents, as you saw. There were discussions before they were even discussed, about the

confidentiality and the way that they should be treated, and they were complex documents, and they were discussed at the meeting, and then a very limited number of documents were retained in Dublin, and, in fact, I don't know, I have a feeling that people who were given a copy immediately locked it up because of the confidentiality agreements and, therefore, there was very little time for people to actually sit back and examine the document and to see whether they agreed with this and that. So yes, I would agree there was a discussion on the day, but it was of a complex document which was presented on that day and more or less taken away. The bulk of the people there didn't take a version of that model away with them. And the same thing happened the second version of the evaluation model which arrived on the meeting of the 9th. Again, it was circulated on that day and I think taken away on that day, so I am just trying to put a qualification, to say that people had a deep understanding of it, they certainly they had made points on the points, they checked that the points had been reflected, but it is a different thing if you go away into your own office with your own desk, and in peace and quiet can kind of see an in-depth consideration of the document. I am not sure if that happened, because people brought them away, and, as far as I know, the limited number that stayed in

Dublin were locked up quickly.

Q. I see. All right. Well, then, just to clarify that; there was you agree that there was quite an in-depth discussion of it, insofar as that could take place, when people had just received a copy of it?

A. And the discussion mostly focused on the quantitative indicators.

Q. Yes. There was, I think, a page of your notes devoted to making sure that everybody understood what the qualitative evaluation was about and how it related to the quantitative, isn't that right?

A. There was that discussion, yes, and those notes.

Q. And that discussion resulted in another half page being put into the next version, isn't that right?

A. I take it it is. I hadn't looked at them in that detail.

Q. There were only six sections in the first version, but in the second version there were seven versions, and the seventh seven sections, and the seventh section reflected that discussion, I think, that you had about the relationship between the quantitative and the qualitative, isn't that right?

A. I am not I haven't looked I haven't compared the documents in that detail, but I take it, since you say that it has, it has.

Q. Would that suggest that there was some discussion about the quantitative/qualitative relationship, and

that it did form a large part, or a significant part I can't say large part of what Mr. Andersen had to do by way of homework when he went away?

A. He had to do homework on it, obviously, yeah.

Q. Yes. And we know that there must have been a discussion on weightings, isn't that right?

A. Of course.

Q. Yes. And that discussion must have gone through each of the indicators and the dimensions and the criteria, to come up with the result that you ended up with, isn't that right?

A. There was a discussion on the weightings, and it is clear that I came away from that meeting with the weightings which you had up on the screen earlier, the 30, 20 in relation to the evaluation criteria. There was a large element of trust in relation to what the consultants were doing within the break-up of any weighting for any particular evaluation criteria.

So

Q. Sorry, there was a large element of?

A. There was trust of the consultants. If you notice in my rough notes, I think actually it might be on the 9th of June, at the very end of it, I think it may we have discussed this before, about the 103 issue, that it added to, that the figures of 1. added to 103, and not to 100, and I think it is in the back note, the back of the I took on yes, the very back

page is it is just before Tab 4 in the folder I am using here. It is my the very back page of my rough notes of the 9th of June, 1995.

In essence, the evaluation model was approved as presented that day, except there was one typo, I think, on page 6, but in the last piece of text that I described this, it says, "approved," and then it says, "actions over the weekend," and then there is an arrow and it says, "final table may need to be mod," which I think is "modified".

Q. Yes.

A. And this is where I am coming to the issue about trusting the consultants. I think that it is quite possible that the 103 issue was raised then, and that we trusted, there was a trust thing that the consultants would resolve that problem.

Q. I follow.

A. It wasn't, in other words I think that there was absolute clarity in the group of the 30, 20, and that the consultants had proposed certain splits on the 30, 20, extra, and that when they said they were going to modify the table, obviously they were going to modify that split.

Q. I understand.

A. There wasn't a "Please tell us next week how you have modified it and give us a new table".

Q. I follow. So at end of that meeting you think that

you, you agreed with the splits, which everybody

assumed that they came to

A. 30, 20.

Q. That they tallied with the 30, 20?

A. With the 30, 20, yeah.

Q. Okay. Well, can we just go back to the start of it.

We can get through that note hopefully even more

quickly.

If you go back to the start of that note, which you

said is A3, is that right, on your Book 58?

A. It is just behind 3.

Q. Yes. The meeting the note is headed, "Meeting 9th of the 6th, '95" top right-hand corner, is that right?

A. That's the one, yeah.

Q. Is that the attendance, I can't quite get the first bit, but it is "FT, MNL"?

A. I guess it might have been Martin Brennan before "MB", possibly Fintan Towey, Maev Nic Lochlainn, Eamonn Molloy, Eugene Dillon, Denis O'Connor, Donal Buggy, Billy Riordan, John McQuaid, Aidan Ryan, Jon Bruel and probably Michael Andersen.

Q. Michael Andersen. And probably Martin Brennan is left out at the top?

A. At top, yeah.

Q. And it starts off on the top left-hand corner of the note, "Report of Commission meeting," is that right?

A. Yeah, I think there is something above that, but I

can't read that.

Q. All right. Okay. And you can stop me if you want at any point, but I think the first few pages, certainly the first page, and the second page, are all about the then quite live issue of the intervention of the Commission?

A. Yeah.

Q. That's on page 1, I think. It is also on page 2, also on page 3, where you seem to be, the discussion seems to be crystallising into a number of options. You see that?

A. Yeah.

Q. Page 4, there is a reference to getting the opinion of counsel. At the bottom of that page, "We are working at how long this is going to take, whether there will have to be a deferral and how long the deferral will be." Do you see all of that?

A. Yes.

Q. On the next page there is some discussion about the taxation aspect, presumably that is the taxation aspect of the licence payment, whether that would be whether applicants would be allowed to treat that as an expense for the purpose of the calculation of profit, I suppose. I think we have seen that elsewhere.

A. Yeah.

Q. Then you have a discussion about the draft licence.

Then you have, "Revisit selection criteria/weighting

etc." What is underneath that?

A. "Ourselves."

Q. "Ourselves." "AMI to consider revisit of weighting."

I suggest that is to do with the fact that you would

have to make an adjustment because of EU intervention

if you ended up with one of the options, the fixed

payment, well not the fixed

A. The flat fee.

Q. the maximum payment option. The next two pages

deal with a number of other items, I think a number of

technical items. The next page deals with

interconnection, as does the following, the page

following that. Then you come on to a page which has

a line across the centre and underneath that

"evaluation model"?

A. Yeah.

Q. And this is now the 8th of June version of the

evaluation model. It says, "major" that looks like

"dimensions", is it short for dimensions?

A. "Major changes."

Q. "Major changes." Is that "changes", is it?

A. That is changes.

Q. Sorry. "...only discussed." Do you see that?

A. That's it, yeah.

Q. So you're only going to focus, then, on the major

items?

A. Yeah.

Q. And the first one refers you to page 5, and page 5 is the page that begins with the lists of the dimensions and indicators of the quantitative evaluation, and the first item is the dimension, market development. Do you see that?

A. Yes.

Q. And you have noted "Seven and a half weighting." Do you see that?

A. Yeah.

Q. Now, for one moment you pass on to page 17 of that, of 17 of the second version of the evaluation model. It is contained at Leaf 2, Book 54. Do you have it open there, have you?

A. Page 17 of 21?

Q. 17 of 21, yes?

A. Yes, I have it, yes.

Q. And the first item is, the first item is the market development item?

A. Yeah.

Q. Which is divided into Mark Penetration Score 1, Market Penetration Score 2, and the weights are 3.75 and 3.75, but the total indicator is weighted at seven and a half?

A. Yeah.

Q. Then if you go back to your note, on the right-hand side you have "3/1 approved"?

A. Yeah.

Q. You see that? Would I be right in thinking that that means that this was regarded as a major change, you were looking at it because it was a change from the previous model, the previous split, it was being drawn to your attention, you looked at it, and it was approved by the people who were present?

A. Yeah.

Q. The next note you have is page 6, Item 3.2. I am not going to go into the text of it because I can't quite follow it all, but it says "approved" again?

A. Yes.

Q. The next item, page 7. I beg your pardon, the next Item 3.3, it is on page 7, in fact, "OECD basket approved." Do you see that?

A. Yes.

Q. Then there are some notes which seem to be explanatory of it?

A. Yeah.

Q. If you then go on to the second next page, page 9, it says, "Nominator amended to 150 as requested." And if you look at the table on page 9, I beg your pardon, if you look at the formula on page 9, you will see that the nominator has been changed to 150. Can you see that?

A. Yeah, I can see 150 on that page, yeah.

Q. Page 11, "Frequency efficiency formula" that means

changed again, does it?

A. It does, yes.

Q. "...to include peak hour traffic as opposed to total traffic minutes." And again, you have "as requested"?

A. Mm-hmm.

Q. If you go on to page 12, Item 3.9, it is described as "approved". Then there seems to be a jump on to page 16, and that is "approved". "Page 19", you see that, it is the next item, it says "Discussion well reflected." Do you see that? Then, "Approved"?

A. Yeah.

Q. Maybe that that may refer to more than page 19, I don't know, but it seems to be a record of some satisfaction on the part of the group that their input had been reflected in the changes in the evaluation model.

Then we have been over this a minute ago, "Actions over the weekend.

"Final table may need to be modified.

"6/21 only modification." That actually means only change on this model, isn't that right?

A. Yeah, that they were to change something on page 6, yes.

Q. Yes. "Further comments to documents. No. Furnish views to me in next few days."

A. Yes.

Q. I think we know from another document that we

discussed the last time, nobody came back to you,

isn't that right?

A. Yes.

Q. So I think can we take it that at that point the various sections were able to take their copies of the evaluation model away with them?

A. I don't actually think that they did.

Q. I see. How would they furnish their views to you, I suppose? Would they be depending on mulling it over?

A. I am not certain, but that is the point I raised earlier, since they were such confidential documents I don't think the time was available for people to....

Q. But one thing in any case is clear that, as you have mentioned, if we go back to page 17 of the evaluation model for a moment, the weightings are here shown as coming to 100, isn't that right?

A. Yeah.

Q. Of those weightings, only one seems to have been discussed at the meeting to the point where you felt it was appropriate to note it, and that was in relation to market development, seven and a half?

A. That is the only one that is commented on, yeah, in my notes.

Q. Presumably the other people present accepted that those figures came to 100?

A. Well, as I pointed out before

Q. We know they didn't.

A. perhaps somebody I know now that they don't somebody noted at some point that it was 103, and it could be a reasonable explanation that it was at this meeting, and that it was consequentially because of the 103 problem that the consultants suggested that they would have to possibly look at the final table.

Q. But the final table doesn't have anything to do with the 103, Ms. Nic Lochlainn?

A. Where is the final table?

Q. If you look at the final table on page 20, do you see that?

A. Well, since neither of the tables has "final table" on top of it, I think it might be open to interpretation.

Q. Oh, I see, and is that your answer? You can't be serious? Are you telling me that because it doesn't have the words "final table" on it, it is not the final table?

A. I am telling you that it is unclear which final table. I had understood it to be the other one.

Q. Would you be try to be of some assistance and tell me, is it reasonable to assume that the final table is the one on page 20?

A. I am telling you that every time I saw "final table" in these rough notes, which I have examined in order to prepare for today, because I am trying to be helpful.

Q. Yes?

A. That I had assumed it was that table.

Q. I see. All right. Okay.

A. I am not certain if the other final table was amended.

Q. You could have been referring to final table of the criteria, then, meaning the indicators? I am taking on board what you are saying.

A. Yes, that is what I had thought, yes.

Q. And that the modification that would have been required was to make sure that it got to 100 and not to 103?

A. I am saying that it is quite possible that it was at this meeting that the 103 problem was raised and an answer to it was that that table needed to be changed.

Q. All right. Okay. One thing was clear, you were satisfied that Item No. 1 was seven and a half?

A. That is quite clear when we discussed the marketing indicator.

Q. Yes.

A. What is not clear from my notes is whether in relation to each of the indicators were a new rating was proposed for the split down, by the consultants, whether that was explicitly discussed and approved, I am not sure, because nothing is said about it in my notes.

Q. Yes. The only split that you discuss is the seven and a half?

A. That's the only one that I can see from my notes that

was discussed. I am not sure to what extent other ones were discussed or not discussed, but a lot of them were changed, obviously.

Q. They could have been discussed, the other ones?

A. They could have been, I don't know.

Q. Right.

A. I can't remember, sorry.

Q. I suppose if any of them was going to be changed, it is something that would have been mentioned, wouldn't it, at a later point?

A. I don't fully understand the question.

Q. You say that there may have been a discussion at the meeting of the splits, but you haven't recorded it, isn't that right?

A. I am saying that there was clearly a discussion in relation to the 7.5 for marketing. I am saying that since this model has different split weightings than the previous one, it is possible that it was discussed, it is possible that it wasn't discussed, I am not sure.

Q. I see.

A. But what is clear is that if there was such a discussion, the only one I only made notes about the marketing, so it is only definite that there was a discussion about the marketing split, it is not at all clear whether there were discussions on the other splits, even though it is clear that the indicator and

the breakdown on indicators for other things did also change.

Q. Yes, I follow. Did also change between version 1 and version 2?

A. You pointed out the first one was 10:10:10.

Q. Yes. We now go to AH, I beg your pardon, A7.

These are your notes of the PTGSM meeting of the 4th of September, 1995, isn't that right?

A. Rough notes, yes.

Q. Rough notes, of course. You have a box on the top right-hand corner, "4th of September, '95." Then you have a line down to a circle with the words "AM" in it?

A. Mm-hmm.

Q. Because we have another set of notes dealing with the PM portion of the meeting, isn't that right?

A. That's correct.

Q. It starts off with, "AM presentation of quantitative", is that right?

A. Sorry, yes, it is correct, yes.

Q. I think that is a sort of an agenda, "AM presentation of quantitative," then "presentation" that is a reference to the oral presentations by the applicants, isn't that right?

A. That's correct.

Q. Then, "Future work programme." And the first item is, "AMI draft quantitative report." You have a note

underneath it, "Started qualitative report at same time." Now, that is a reference to something we have discussed with you and with other witnesses, I think, and it lead to some, well, some tension with Andersen, that they had started the qualitative without involving the Department, isn't that right, but I think it was resolved?

A. I am not certain if it led to tension.

Q. I see.

A. I think it led to some miss some confusion.

Q. Was there not a meeting which you noted at which Mr. Towey and Mr. Brennan and Mr. Andersen had a fairly lively discussion about a number of contractual matters?

A. I was at that meeting, yes.

Q. And at that meeting was it not pointed out, or at least noted by you, in any case, that AMI had commenced the qualitative evaluation in their own sub-groups without involving the Department?

A. There was notes. There was five bullet points in one of those, so if that was one of them, I don't have it in my mind now.

Q. In any case, coming back to your note it goes on, "Comments" is it?

A. "Comments first."

Q. "Comments first do not over-exaggerate NB nec", is it?

A. Importance.

Q. "...importance of quantitative." So somebody has made that point that

A. I believe since Andersens was presenting the model or the report, that it was probably Andersens that made that comment.

Q. Okay. "Admit certain shortcomings.

"Calculation of OECD baskets done by applicants in a way not to advantage"?

A. "Not to their own advantage."

Q. "Not to their own advantage.

"Calculation of service"

A. "Parameters."

Q. "parameters block-out rates.

"Difficulty in"

A. "With the figures."

Q. "Difficulty with the figures at face value.

"IRR/some do not reinvest after year 10.

"Some variations in IRR over 10-year period."

Then you have "distribution", I can't follow the last word?

A. It says, "Therefore distortion", and then "ignored".

Q. I see. And the next page, I think, contains a discussion of the IRR again. Then the next item I think goes on to discuss tariffs, I think. And the next page, the item that you've discussed is roaming.

Do you see that roaming, do you see that?

A. Yes, page 3 is roaming.

Q. And I think it goes on down through the quantitative evaluation. The next page is reserve capacity. The next page is page 5. It seems to be to do with blocking and drop-out rates, am I right?

A. Yeah, it says that at the top.

Q. The next page says, "All have fair frequency economy," then underneath that, "look at OECD for experience," I think that is dimension 8. Then there seems to be a discussion of the qualitative, maybe I am wrong in that?

A. I think "QUAL" there on the left is short for qualitative.

Q. Yes. It goes on maybe what that means, and I will suggest this to you, is that if you look at your note, "How often done before? How successful?" This is ignored in the quantitative." Do you see that?

A. Yes.

Q. The quantitative just asks what your experience is in terms of

A. How many times you have done it.

Q. Yes. How well you have done it or how successful is a matter that quantitative can't measure, only the qualitative can do that?

A. Yes.

Q. The bottom of the page, "A2/A5, high level of external financing. Equity is leaking away." Is that right?

A. I think it is "eaten away".

Q. Is "eaten away", I see.

A. Eaten, E-A-T-E-N.

Q. Yes. "Operating deficit," is that right?

A. Yes.

Q. The next page, I think that may be related to the previous page, "During first investment heavy years."

Then you have an arrow to "more outflow". It says, "Needs to be examined further in qualitative." Do you see that?

A. Yeah.

Q. "A2/A5 look bankrupt according to" who is that?

A. I think it is "this".

Q. "According to this", I see. Then there is a reference to shareholder loans. On the next page, I think there is a reference to public share offering. It seems to be a reference to some capital proposals. And at the bottom of that page, then, you have "ADV", do you see that?

A. Yeah.

Q. What is that?

A. I think that is advised.

Q. "Advised." "First draft of quantitative here will be amended. 1. With respect to"

A. "Written response from applicants."

Q. "Written response from applicants.

2. New weightings."

A. I am not sure if that is "here", it is "quantitative" something, but I am it doesn't look like a "here" to me.

Q. Sorry?

A. I am not sure what it is either. I can't figure out what the word is.

Q. Right. If we just go back and look at one or two of those notes that you made. Firstly you started off with Mr. Andersen's introduction, where he says, "Don't over-exaggerate the importance of this quantitative", isn't that right?

A. That's right, yeah.

Q. That doesn't mean, of course, that it was unimportant, but you couldn't over-exaggerate it, it wasn't the be-all and end-all?

A. It wasn't the be-all and end-all. I think that was quite clear.

Q. Yes. If you go to the third page, under "Roaming", do you say that?

A. Yeah.

Q. I think you have the words, "Difficult to evaluate", and then, "this report is based on what applicants say. Therefore not"

A. "Enough."

Q. "enough detailed info, so delete this section as per page 8 of 21.

"NB score qualitatively, not quantitatively."

Do you see that?

A. Yeah.

Q. Now, when you refer to page 8 of 21, you are presumably referring to the quantitative evaluation or to the evaluation model and the quantitative section?

A. Yes.

Q. And if you could turn to page 8 of 21 for a moment?

A. Yeah.

Q. There is a section headed, "3.4. Dimension: The applicant's international roaming plan." Underneath that, "Indicator: Number of international roaming agreements." And then, "An important advantage of GSM over the analogue systems presently in use, is the possibility of widespread international roaming. The extent of the applicant's international roaming is an important factor to include in the quantitative evaluation. The relevant indicator is the number of international roaming agreements planned by the applicant by ultimo year 2 after the licence award. If there is no detailed information available on the proposed number of international roaming plans, even after presentations by the applicants, this indicator will not be scored."

You see that?

A. Yes.

Q. I presume that is what you are referring to when you said, or when somebody said and you recorded, "Delete

this section as per page 8/21"?

A. I assume it was, yeah.

Q. The reason I draw that to your attention is that I just want to be clear that it was understood from the time the evaluation model was adopted, that this particular element of the quantitative evaluation might not be able to be carried through, and it might have to be deleted, isn't that right?

A. It seems clear from the top....

Q. And it wasn't deleted because there was something wrong with the model, it was deleted because a difficulty that was anticipated did, in fact, arise and was taken care of in accordance with the model, isn't that right?

A. I am not sure if I saw a quantitative report after this which had all the other indicators except this one.

Q. No, but all I am saying is that you recorded that somebody suggested it should be deleted in accordance with the model?

A. Yeah.

Q. In other words, it wasn't deleted because there was something wrong with the model, which I think may have been suggested, I am not saying anybody is trying to mislead, but people, not everybody has had the advantage of your notes, would that be right?

A. There was an option on the model to delete it, I think

somebody suggested that we should do that, yes.

Q. If I go on to the next item

A. Sorry, just to clarify that, in relation to the discussion we had earlier about tariffs and what he did or didn't say about tariffs at that point. I think it was clear from that discussion that he also thought there might be difficulties on the tariffs indicator.

Q. Yes, he did. And hadn't he flagged that as well at the discussion he had where he said he couldn't get all the information you wanted on tariffs in the quantitative?

A. As I said, I am not sure if that phrase he said about all the information related to quantitative or qualitative.

Q. All right. If you go on to the next page, you have a reference to blocking and drop-out, do you see that?

"Look for more detail," do you see that query?

A. Sorry, I think

Q. It is page 5?

A. Oh, page 5, sorry.

Q. I am sorry.

A. Yes. "Look for more detail", yeah.

Q. Yes. Now, we know, I think, that he had in fact, or the Department had in fact already looked for more detail in relation to blocking and drop-out rates?

A. Mm-hmm.

Q. And I think those details were obtained. And for a moment could I ask you to go to the last page of your note and the very last two items, where you have, "Wait response from applicants", do you see that?

A. "Written response."

Q. "Written response", all right. "Will be amended written response from applicants and new weighting"?

A. Yeah.

Q. And it seems to me, tell me if you agree or not, that what that was a reference to was amending the quantitative report or evaluation to take account of the new information that you were looking for from the applicants in relation to blocking and drop-out rates?

A. It was to amend it.

Q. Yes?

A. And re-run it after receiving written answers.

Q. After receiving that information?

A. Yes. And also I think, in relation to having corrected the weightings to reflect the changes that were agreed after the Commission decision which didn't come through in the first quantitative report we got.

Q. Yes. I think it was still at, was it 14, was it 15, anyway it wasn't at 18?

A. It wasn't 18/11 anyway, quite clearly.

Q. Yes.

A. There was also the little problem that added to 32.5 on the top criterion.

Q. Sorry?

A. There were two problems with it; one the problem was that it hadn't been amended to reflect the change after the European Commission, and the second problem was that it had 32.5 as the top criterion, and various other criteria, which didn't reflect the 30, 20, blah blah note which had gone to our file and which everybody in Dublin thought was the case.

Q. Although it is not clear whether everybody noted that or whether that particular query was drawn to his attention at that stage?

A. I am not....

Q. It was a problem, yeah, it could have been sorted out, I suppose, easily?

A. Yeah, if...

Q. You just stick new figures into the computer?

A. It could have been sorted out if people I only personally noted that there was a problem with the 32.5 in March last year when I started to examine the papers to prepare for my statement for this Tribunal. So I am not clear when anybody else noticed it, that is when I noticed it, and I was very surprised because, as I said earlier, we had this thing that we trusted the consultants; we were paying them to do the job, they were technically on our side, they said they were going to amend their model, we assumed they were going to amend the model.

Q. Yes.

A. But in any case, to get back to the paper you are talking about there, the new weightings at the bottom would definitely refer, I think, to the....

Q. And the other item refers to the, looks like it refers to the new information that you had asked about blocking and drop-out rates?

MR. O'DONNELL: She said the new weighting...

A. At the bottom of that page, the new weightings.

Q. Sorry, yes?

A. They would definitely refer to the change after the European Commission, which they hadn't pushed through.

Q. That is all that it referred to, isn't it?

A. It is not clear to me when...

Q. All right. Okay.

A. As I said before, I am not sure when the 103 problem came up. If it came up at that meeting, perhaps they had to do something about it there.

Q. I appreciate that, but it is unlikely, isn't it, I suppose?

A. It is very difficult to imagine now after eight years.

Q. Isn't it unlikely, Ms. Nic Lochlainn, and in fairness to you and your colleagues, in that if it had come up you would have mentioned it, it would have been clearly

A. Well, I have a very clear recollection that 103 came up, and that it was mentioned and that the consultants

said that they would deal with it. I am not sure what meeting it was at, but I have a very clear memory that I think Ed O'Callaghan raised it, and that the consultants said "Yes, we will deal with it."

Q. Yes.

A. As I said to you, quite clearly it was in March, 2002, when I noticed that the top criterion in their model actually added to 32.5, and that there were other difficulties in relation to the coverage. It was only then that I noticed and I was amazed, so if other people had noticed it earlier, I don't know.

Q. Well, he didn't, as we know, the consultant didn't put in the blocking and drop-out figures, for some reason, isn't that right?

A. I don't know what the consultant did

Q. Well

A. in relation to the blocking and drop-out.

Q. Well, he didn't present you with a new model, he didn't present you with a new set of figures with the new blocking and drop-out figures inserted into the evaluation model?

A. Well

Q. Or if he did, we don't have it?

A. Well, I've I can't see any. I could only see two versions of the quantitative report on the file, one dated in August and one dated in September. I am not sure what inputs he had put into it, because as I

said, we were trusting the consultants to do whatever they were doing on the quantitative. It seems to me that the meeting where they, where they came to this meeting on the 4th of, sorry, what date is the meeting we are talking about? It is the one moment, please. It is the 4th of September. That at that meeting they came with a strong caveat on the quantitative model, and they said there were problems on several indicators, they said as you say, in one case, on the technical, they might have been looking for, they were

Q. Sorry, are you talking about this meeting now, is it?

A. Yes, the 4th of September, this one.

Q. Yes. Where does he say there is a problem?. I don't understand you to say in any of your notes there is a problem. He said there is shortcomings?

A. "Certain shortcomings" I think is consultancy speak for a problem.

Q. I think that you are wrong there, Ms. Nic Lochlainn.

If you look to your own note, what you say is, "Don't over-exaggerate the importance of the quantitative", and then you go through the report, and the problems, if you want to put it that way, are identified and they are all dealt with and you are told at

A. Well

Q. Just a moment. You are told at the end of the report, well Mr. Andersen is going to correct the problem?

A. I am not certain whether all that was

Q. Pardon?

A. I am not certain that they were all dealt with.

Q. I see?

A. And certainly my memory is, and it seems clear to me

from the discussions that took place at subsequent

Project Group meetings, for instance on the 14th of

September, where the consultants said "Now, we will

deal with the next steps for calculating a work

programme", or some such work item, it is clear from

the notes that the whole focus of the work programme

from that point forward related to the qualitative,

and that the consultants themselves didn't seem to

even bother mentioning the quantitative. So it seems

to me that at that point everybody is in agreement

that we were only focusing on the qualitative, and

that the understanding had been from the primary, from

the first meeting that there were two many

difficulties with the quantitative.

Q. Well, if we just take that very slowly now, Ms. Nic

Lochlainn. You said that from a certain date

everybody was satisfied you were only focusing on the

quantitative, which date is that? Which date is that?

A. It seems to me from the meeting of the 14th of

September, where there is a discussion of the work

programme.

Q. That is all I want to know is the date. So from the

meeting of the 14th of September, you were satisfied everybody was clear that you were focusing on the qualitative, right. So, you weren't nobody was clear about that on the meeting of the 4th?

A. I am not certain when the decision was made.

Q. Am I right that at the end

A. It seems clear from the meeting of the 14th, that only qualitative work is to be undertaken in the work programme, and I can't see people objecting to that in the work programme at that point.

Q. I see. I just want to be clear about the dating of it.

A. Well, I am just saying from, as I have said on numerous occasions, I find it difficult to recollect the meetings, so I do rely on the notes and the informal notes I have, and in the informal notes, in my rough notes, which are taken at the meeting on the 14th of September, as far as I recollect, it suggests something about the work programme, and it says the whole focus is in relation to the qualitative evaluation and has nothing at all to do with the quantitative.

Q. Maybe you will show that to me in a minute. We will just deal with this one first, the one of the 4th, because you say that was the impression of the group after the 14th. On the 4th you are presented with the quantitative evaluation, you were told that you don't

over-exaggerate the importance of it. There is no suggestion that you don't bother considering it, isn't that right?

A. There is no suggestion in my notes. I am not certain what happened in that discussion.

Q. Ms. Nic Lochlainn, are you trying to be helpful to this inquiry or not?

MR. O'DONNELL: This is not an appropriate comment from Mr. Healy, and I have restrained myself from making an application to Your Lordship in the past, but he has this, again, is a suggestion that this witness is being in some way deliberately unhelpful.

This witness has come back at personal inconvenience and cost to try and assist. She has been provided with additional documents which consist of handwritten notes which she took over eight years ago. These are rough scribblings which were taken over eight years ago which were then put into the form of minutes. It is now being suggested because she has a difference of opinion with Mr. Healy as to how these notes should be construed, that she is being deliberately unhelpful.

I have to say, Chairman, that does seem inappropriate, it is stretching matters.

I know that you view, you have been of the view in the past that the examination of witnesses has been fair, and I wouldn't broadly disagree with you, but certainly this does seem to be in the area of being

unfair, where it is suggested now for the second time that she is not being helpful or constructive, and deliberately, in circumstances where all she is trying to do, is to give her honest view of what these notes meant, hampered, of course, that it is eight years since she compiled them.

CHAIRMAN: The issue of the degree of infirmity of the quantitative examination that seems to have manifested itself at a late stage of the process is one of considerable importance, and I think it is inevitable that Mr. Healy has to ask certain questions upon it.

I don't think any inordinately perjorative connotations have arisen, but it is necessary for this important part of examining the context in which the quantitative examination appears to, in the words of Mr. Andersen, to have withered on the vine, that questions be asked in this regard, and I think it is necessary that I have that assistance, so we will proceed.

I don't see Mr. Healy's general tenor of examination as being hectoring or unfair.

Q. MR. HEALY: The first thing you noted about the meeting, Ms. Nic Lochlainn, was that Mr. Andersen said "do not over-exaggerate the importance of quantitative", is that right?

A. That is in my notes.

Q. Almost the first note. And I think if you go to the

last words of the note, you have, "First draft of quantitative." We are not sure what the next word means, is that right?

A. Yes.

Q. "...will be amended" or "written response from applicants and new weighting"?

A. Yes.

Q. Now, is it not reasonable to suggest that what the meeting concluded or said was "We have got the first draft, we don't exaggerate the overall importance of it, but we have to have new information and an amended quantitative to take account of that"?

A. It is clear at the end of the meeting that there was going to be a re-run of the model. I am not certain exactly when he said "do not over-exaggerate the importance of the quantitative", I think that has to be taken in the context of what I said earlier in my rough notes on the time when the evaluation model was presented, where it said that the qualitative was higher than the quantitative, and again, when he said that he is admitting certain shortcomings, I do believe that that is consultancy speak for serious problems, and I think it is clear that the parameters that were described had serious problems, in that, for instance, the OECD basket was incomparable, and that it was quite clear that nobody could give any real information about roaming agreements, to mention just

two. And I am sorry that I cannot be more helpful in relation to when exactly a formal decision was or was not taken about the quantitative model, but it is quite clear to me that I had no recollection at all of people having a problem in the group, that when they saw the first evaluation report that there was nothing in it about the quantitative model because there had been an agreement that that was now not being used.

Q. Your impression of what happened at this meeting is, in any case, an interpretation on these notes?

A. I have always been clear

Q. Is that right?

A. that I do not have recollections of meetings, that I have to rely on the record because I am not the sort of person that has that type of recollection, I am sorry.

Q. I just wanted to clarify that.

A. It would be helpful, I suppose, to you if I did, but unfortunately I don't.

Q. Right. Sorry, just one other matter.

A. The other thing, as I keep returning to the fact that we trusted the consultants, it was very much their work. It was agreed from the beginning that the quantitative was going to be a number-crunching exercise which they would conduct in the background, and we would have been very much influenced by their views on it, if they said that there were problems or

shortcomings, or whatever the word is, in relation to their quantitative report, we would have accepted their view on it.

Q. So I just ask you to look at a letter of the 21st of August, 1995. I think it has been mentioned already, but I am not sure that it is in any of the books. I will get you a copy of it. It is a letter to you from Michael Andersen. (Document handed to witness.)

A. I have the letter.

Q. It says, "Dear Maev, re the problems with the A5 application. We suggest to proceed as follows:

"For A5 only, to move all the years one year back, except for the present year 1, which is merged into the new year 1 together with the present year 2.

"To exclude year 15 from the spreadsheet concerning A1, A2, A3, A4, A6 and A7.

"To make a major financial recalculation of the IRR based on the first ten years (this will diminish the negative effect of applicant 5 that lacks year 15 and will also allow for more fair comparisons, as not all applications have reinvested after 10 years as requested in the tender specification).

"Please forward the Department's approval of this approach as soon as possible."

Do you see that?

A. I do.

Q. "We confirm that it will be possible to conduct a

presentation, Monday the 11th, during an afternoon session. We suggest to meet for the last-minute presentations at 11 a.m.. If needed, Marius and I will be able to begin earlier. Furthermore, we suggest that you announce to the applicant in question that the applicant has had to do the presentation on the 11th.

"Finally, we suggest to have an internal wrap-up meeting Thursday the 14th during the afternoon."

Now, can you recall getting a letter about recalculating IRR?

A. If you can say can I recall getting this letter, I can't recall getting this letter.

Q. Yes?

A. Yes.

Q. Well, do you know from reading the documents, that IRR had to be recalculated on a ten-year basis?

A. I can see that its stated here, I had no particular memory of what happened. I had a vague memory that there was something to do with years and the number of years that various applications used, but apart from that, obviously here...

Q. Sorry, excuse me. This was a difficulty with IRR that was identified at one point in the course, I think, of the process. Do you recall coming across that in the documentation? I can help you by telling you that it was done in any case, that IRR was recalculated on a

ten-year basis?

A. Patently it was, from this letter, if we agreed that approach, but to be honest I don't have any particular recollection of the...

Q. There seems to have been some confusion at this meeting, in that if you look at the first page of the note, under the words "Admit certain shortcomings", 1, 2, 3, do you see those?

A. Yeah.

Q. "IRR. Some do not reinvest after year 10. Some variations in IRR ten-year period"?

A. Mm-hmm.

Q. It seems that there was some impression at that point that what had been referred to in this letter had not been done?

A. Well, since I don't really recollect the letter at all and I don't recollect our response to it

Q. I see. All right.

A. I can't really help, I am sorry. I am not sure if there are other records apart from this letter which says "yes, please do that", in which case...

Q. Well, in any case, if you go on to the next page you will see that the impression, I think at that meeting, was that IRR was calculated on a 15-year basis. In fact, if you look at the actual tables which we put up on the overhead projector before, it is calculated on a ten-year basis, so that shortcoming doesn't, in

fact, exist; it had already been taken care of as a result of earlier correspondence between AMI and the Department, and there was some confusion that it still existed as a shortcoming. Do you understand what I am saying?

A. I am saying unless the consultants are saying if you can change the result that you get on that indicator by changing the year, and therefore you might be accused of favouring a particular applicant by choosing a particular year, I am not sure, I wasn't

Q. I have no idea about that?

A. I have no idea either, I am just I wasn't involved deeply. I mean, that letter could have been addressed to me simply because I was in the division. I can't recall it at all. I can recall that there were difficulties about years, but beyond that I can't recall what happened. But in if you do go back to the second page of the rough notes, where it says, "Depends on the year you chose", that seems to me, if there is any doubt at all about the result you get for a particular applicant depending on the year you chose, you are immediately entering into spheres of uncertainty, which I think is best avoided. So it is possible that even though they got extra information or did a recalculation, that they were still uncomfortable in terms that they were having to make a judgement about which year to pick. Because obviously

the ideal situation, you would simply take the financial tables that the applicants provided and use them.

Q. Yes, I understand that. At the end of that meeting, as I said, the quantitative evaluation hadn't been rejected, Mr. Andersen had been sent off to do something about it, and you say that it was later that you were under the impression that everybody at the meeting was now focusing on the qualitative, and that they had rejected the quantitative, is that right?

A. I said that it seems clear to me from

Q. What meeting was that?

A. the work programme that was defined on the 14th that the focus of the work programme was on the qualitative.

Q. I will try to get a copy of the minute.

A. If you are using this folder?

Q. No, I am going to have to use another folder. I am just trying to turn it up first and then I will refer you to it. I think it is Book 42, Leaf 104.

MR. O'DONNELL: There is a difficulty with time, Chairman.

CHAIRMAN: I know I have a judges' meeting in the Four Courts.

MR. O'DONNELL: I don't think this is going to be completed today. My witness has difficulties if this goes beyond 4 o'clock. It would mean rearranging her

day. It doesn't seem that Mr. Healy is going to finish. He is dealing with these additional documents today, so the logical thing would be to finish this tomorrow, My Lord.

CHAIRMAN: I think since the documents have come very belatedly to light, or at least have only the opportunity of going through them in detail has been quite in recent times, probably everybody will benefit from maybe having an opportunity to just reflect on them a trifle more over night.

In the context of the witness's difficulties, in addition to the matter I have mentioned myself, it is preferable that we seek to conclude, as we will tomorrow, your evidence, Ms. Nic Lochlainn. The usual 11 o'clock start. Thank you.

THE HEARING WAS THEN ADJOURNED UNTIL THE FOLLOWING DAY, THURSDAY, THE 29TH OF MAY, 2003, AT 11 A.M..