

A P P E A R A N C E S

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I N D E X

Witness: Examination: Question No.:

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THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY THE 29TH

MAY, 2003, AT 11:30A.M.:

CHAIRMAN: Mr. Healy, not for me but for others

present, I think they are entitled to some

explanation.

MR. HEALY: I think maybe I will explain and it may be

of assistance to Ms. Nic Lochlainn as well.

I think a difficulty has arisen in relation to

documents in this case and it arises, or it seems to

have evolved in the following way: when evidence was

given by Ms. Nic Lochlainn on the 6th March, 2003, you

will recall that certain documents which only came to

light then, were brought to Ms. Nic Lochlainn's

attention, and as the transcript, which I don't want

to go into in detail, shows, Ms. Nic Lochlainn was

asked to look at the documents; she wasn't asked any

specific questions about them or not many questions

about them on that day and they were brought to her

attention solely so that she could identify them and

see what kinds of issues they were throwing up. It

was understood, at least I understood and I think it

is clear from the transcript, that she would look at

them and they would be taken up the next time she came into the witness-box.

I think due to some crossing of wires somewhere along the line, when Ms. Nic Lochlainn came into the witness-box yesterday she didn't realise that she was going to be asked about these documents or asked about them in the context in which they were drawn to her attention. And I think she has had an opportunity of examining the documents and one or two other aspects of them which were drawn to her attention even up to just a few moments ago. That is what, up to a point, caused the delay.

I think at least we are ad idem now as to what documents we are looking at, why we are looking at them and why we want Ms. Nic Lochlainn to talk to the Tribunal about them, although she may have seen them before.

CONTINUATION OF EXAMINATION OF MAEV NIC LOCHLAINN BY  
MR. HEALY:

Q. MR. HEALY: And I should also say, Ms. Nic Lochlainn, that I think you are concerned that it could be suggested that you were not anxious to help the Tribunal.

I think am I right in saying what I said a moment ago, that you

A. Yes, I think there was a clear

Q. Just let me finish

A. Sorry.

Q. That you weren't aware that I was going to be asking you these questions about those documents?

A. Yes. I thought from my transcript of the second day of my last appearance that there was quite a focus, I was expecting a focus in relation to weightings which didn't arise yesterday. I think it was just as a result of a misunderstanding, but I certainly wasn't trying to be unhelpful. I would have prepared differently if I had expected some different line of questioning.

Q. Can we deal with one another problem about documentation before we go on?

A. Yes.

Q. Now, if you look at the weightings book, Book 54. Do you have that?

A. If you give me moment, please.

CHAIRMAN: Maybe you will keep the tempo at just a little bit slower. Between yourself and Mr. Healy yesterday I think there was a record breaking velocity, and perhaps for the slower moving characters like myself, you will just keep it a little bit slower.

A. Fine, thanks. I have Book 54.

Q. MR. HEALY: Right. Well, if you just go to Leaf 9 for a moment, please.

A. Yes, I am at Leaf 9.

Q. And go to the second page of the documents in that leaf?

A. The one beginning "Guide to the Award of Marks"?

Q. What did you say to it was?

A. Excuse me, I said the one beginning "Guide to the Award of Marks".

Q. Well, sorry, it may be in a different page in my copy.

Could you go to Annex B of the document entitled "Annex B"?

A. Yes, I have it.

Q. Now, that's a list of the criteria as they are contained in Paragraph 19 of the RFP?

A. That's correct.

Q. And the weightings next to them are the weightings that were agreed on the 18th May, isn't that right?

A. That's correct.

Q. And I think what I wanted to ask you about was something that you said in evidence, I think, yesterday, and you may have said it earlier as well, that the first time you ever heard about 32.5 was in March of 2002?

A. Yes.

Q. And that surprised me because of the fact that, as you can see on this page of this document, next to the weighting of 30 for credibility of business plan and approach to market development, you have the figure 32.5. Do you see that?

A. I do.

Q. And I think this morning we got a look at the original, or at least I was shown the original of this document?

A. Yes.

Q. And am I right in saying that the original has, between the two lines, a list of numbers written in a blue biro?

A. I'll just get the original because I think I have it here.

Q. Yes, do, yes.

A. Sorry, I have it.

Q. Yes?

A. Yes...

Q. A list of numbers between two lines written in a blue biro; is that right?

A. In my handwriting.

Q. In your handwriting?

A. Yes.

Q. Then the 32.5 and some of the other marks are in pencil, is that right?

A. That's correct the Xs and ticks.

Q. The Xs and ticks. And we might as well get this out of the way now; perhaps you would explain to me how the two sets of marks came to be on it?

A. What I can tell you about it is the stuff that is in my handwriting; the fax cover sheet was produced by

me, I think, from my template, and it has some blue markings on it as well which were added in biro, blue biro. The second page I have added "Annex A" and "Technical aspect as noted by John McQuaid at a meeting with M Jacobsen."

"Annex B" relates to is a word document, I think, in terms of the type, and then there are blue lines, as you say, to distinguish between to link clearly what weighting is attached to each criterion, and I wrote that.

The next page I have added "Annex C".

Q. I understand most, I understand all of the document from the last day. I just really want you to explain to me how the 32.5 came to be on there?

A. Well, you see I have explained to you that it is somebody else's writing.

Q. Yes?

A. So I can't say, as I said to you quite clearly in evidence yesterday, it was in the last year. I mean, approximately March, 2002, when I became, I can't say it was March, but it was sometime in the last year, when I came to look at the documents and to try and see what had been happening with the weightings I was surprised because I did out a table at the time, to notice the 32.5.

Q. I understand that.

A. to notice the 32.5 issue and to notice that it had

been changed that was the first time. Since it is quite clear to me that that was the first time that I noted the 32.5, it is clear to me that the writing on this page, which was in pencil, was written by Margaret O'Keeffe, and I think I have spoken to her and she has confirmed that, but maybe you could clarify that with her yourself.

Q. Do you know why she wrote it on?

A. How could I know?

Q. Have you spoken to her?

A. No, she had no recollection of it, but what I am trying to say is, the bit of the fax that was in my handwriting was produced by me and there is an issue in relation to this fax because if you look at the covering sheet

Q. Yes?

A. It says "I am attaching" I am just looking at the bullet point 2.

Q. Yes.

A. And I am saying that I am attaching two things; basically Annex B.

Q. Yes.

A. And Annex C.

Q. Yes.

A. And I am then asking a question

Q. Yes.

A. In relation to something that the consultants have



produced. It seems to me clear that I am basically asking them to make sure that what they've produced accords with what we thought the weightings were.

Q. Yes.

A. But it seems to me that it doesn't make any sense if you don't expect that Annex B and Annex C are actually different representations of the same thing, so it seems clear to me that when I sent Annex B with 30 on the top criterion and I sent Annex C with their split from the table, that my understanding was that I was sending them two documents indicating these are the weightings and that they accorded with each other because essentially, I suppose, what I was asking them to do was to look at what is Annex D and to make it match Annex B and C. So if I am making them match Annex B and C, it seems clear that what I would expected them, if somebody was to look at these documents and actually look at them in detail and try to implement a change, the immediate question comes to mind should I implement the change to correct it and accord it to Annex B or should I implement the change and correct it to accord with Annex C?

Q. I follow.

A. It seems clear to me that there was a misunderstanding in my mind when I sent this fax and that in fact the changes that I am suggesting they should make are in unimplementable by the consultants unless a further

conversation took place and since I only became aware of the 32.5 in spring 2002, perhaps in March of it in preparation for this statement which I made in, I think, May, then it is clear to me that I wasn't aware of the 32.5. Margaret became aware of it and perhaps it seems clear from the handwriting that Margaret became aware of it but it is not clear to me when that handwriting was put on it, and I would suggest that because it is in pencil, it was perhaps done as a cross-check at a subsequent date, but I would suggest that it didn't go out on the fax that actually issued, that went out on the fax that actually issued.

Q. I follow that. I follow that. While you are on that, could you just clarify one other thing for me about Annex B, since you have the Annex C, since you have the original in front of you. If you tot up the indicators for the first criterion, you get 32.5, isn't that right?

A. That is correct.

Q. Do you see the markings on Annex C, are they in your handwriting, are they?

A. I think that the

Q. Are they all in biro to begin with, I suppose?

A. No, I think actually from this original

Q. Yes?

A. it is a copy from the evaluation model that we had on file and the copy showed not sorry, the stroke

through 15 replaced by the 18 is not a biro stroke, it is an actual copy of what was on the file.

Q. A photocopy you mean, is it?

A. A photocopy, yes, sorry. And under the licence fee payment, the stroke through 14 and the writing 11 in my handwriting is also, wasn't in biro but was a copy of what was on the file. I think the line through 100 to reflect 103 was again a copy of what was on the file.

Q. Is that in your handwriting, the 103?

A. The last one is, I think, yes.

Q. Just to clarify that; does that mean before you sent it you totted them up to make 103?

A. No, it just means that I took a copy of what was on the file and faxed it.

Q. I understand, yes. Is that 103 your handwriting?

A. The 103 is my handwriting. As I said at some meeting of the Project Group which I think, which I am not certain which one it was, but I believe might have been second Project Group meeting which discussed the evaluation model, that somebody at the meeting, I think Ed O'Callaghan mentioned that there was the 103 issue and that at that point I made a note of it and I think that the response of the consultants was that they would resolve the issue and as I said, we didn't immediately say "and could you please fax us back the table with the resolved issue".

Q. Right.

A. Since the weightings were always treated with huge sensitivity in relation to their confidentiality, that in fact very limited numbers of these documents were available, and as I said, when the model was agreed and even though the consultants had said there might be revisions to a final table, that in fact those revisions were not forwarded to the Department subsequently because there was no need for them in that the discussions of the model had, I think, concluded.

Q. Obviously the sensitivity disappeared once the 4th August passed?

A. Which is why I think, that I think it was Fintan Towey circulated then to the people who were going to be involved in the evaluation copies of the evaluation model which he took from our file and copied.

Q. And you said that in your evidence, I think, the last day?

A. I think I did.

Q. Yes. Now, just while we were on that, to try to clarify this reference to 103 and when it was made; I think you were under the impression that it may have been made at the second, at the meeting to consider the second version of the evaluation model, the agreed version of the 9th June, isn't it?

A. Yes, that is, as I said I am not clear, but it is

certainly one possibility.

Q. I don't think Ed O'Callaghan was at that meeting?

A. Well, as I said I am it is quite possible also I think I might have said it in evidence before, that since the evaluation model was taken from the file, copied and circulated after the closing date in August 1995, that a subsequent meeting of the Project Group would have been a meeting where people would have had this document and would have had the opportunity to look at it and make the tot and note the 103 problem, so it is possible that the problem arose at a meeting later than August, 1995, or the problem was articulated later.

Q. When you say "from the file", Ms. Nic Lochlainn, what do you mean by that when you say you took it from the file, the copy from the file? I am just trying to identify what file so that we can perhaps try and find out when or who put in the figures?

A. I think it would have been the, I think after the meeting on the 9th June which proved, in essence, the model produced by AMI on the 8th June, that the copy which had been provided by AMI would have been put on the file.

Q. Yes, when you say "the file"

A. Sorry, it would have been the GSM MOB 11 M-O-B 11.

Q. Is that a file to which all of the people involved in your section would have had access?

A. That is correct, yes. I suppose if I could re-emphasise, I don't wish to bore you, but to me there was an issue of trust in relation to this table; that the consultants were producing the splits and producing the split of weightings to indicators, and if they said at some meeting that they would revise the table, it wasn't that we were going to follow-up and check.

Q. I follow that.

A. Sorry, yeah.

Q. He was an expert and he says he is going to make the change, it is not an earth shattering change; here is a computer, he just sticks in the numbers, isn't that all that was involved?

A. I am not sure, as I said before, how much discussion happened when the 103 problem was noted, but you could argue that in fact they should have given it more discussion because if you are going to change 103 to 100, necessarily you are going to have to delete 3 from somewhere, and if the meeting had given discussion to what weightings should be applied to all of the eight criteria, and I believe, following which obviously I documented that, and serious, you know as you said before, a lot of trouble was given to make sure that when the change happened from 18, 15 to 18 etc., that there was considerable attention given to make sure that everybody was clear that that was what

we were doing. Consequently a change from 103 to 100 would have been a similar change; again it is a move of a 3, and I think, in fact, it might have been a failure on the part of the consultants to simply say that they were going to go away and resolve this 103 problem, but I have no memory of a serious discussion following the recognition by, I think, Ed O'Callaghan that it was 103 and not 100. I think that the consultants said, "Oh, we will resolve that," and we took that on trust.

Q. I follow. So you just assumed

A. I think if there had been a discussion at the time when Ed O'Callaghan said this tot's at 103 and if we hadn't, if there had been any discussion of it beyond the context of, I seem to remember it was sort of 'Oh somebody has done a little bit of a mistake on the totting' not 'oh my goodness, we have got the wrong ratings'. I think if the conversation had been along 'oh my goodness, we have got the wrong ratings' I would have remembered it.

Q. Just in relation to that, you may or may not be familiar with the evidence given by, I think it was Mr. Billy Riordan, do you remember that or do you know anything about it?

A. I am aware that Billy Riordan gave evidence. I read his proposed Memorandum of Intended Evidence, but I wasn't reading the transcripts of the proceedings when

he gave evidence in person.

Q. Right. In the course of his evidence, he produced the

18th October version of the evaluation report, and in

that report he raised some queries about the well,

it is not clear whether he raised them or whether in

fact he recorded somebody else as having raised them,

and I am not going to ask you to pull out another

book, Book 56, I am going to get it on the overhead

projector so you can see it more easily. Book 56,

Leaf 5, which is the 18th October version of the

report, I think, and at page 14 there is a table

containing the dimensions and the marketing aspect.

It is on the projector now, you can see it. Can you

see it? You see the marketing aspect?

A. I see it, I see a table on the screen, yes.

Q. Underneath that market development, coverage, tariffs,

international roaming; do you see that?

A. Mm-hmm.

Q. And do you see that the weighting, it seems to be put

in next to market development is 7.5. Do you see

that?

A. Yes.

Q. And that was actually agreed, isn't that right?

A. It was agreed in relation to the quantitative

evaluation.

Q. Correct, it was. But clearly as of that date, which

was around the 23rd, we think, of October, from



Mr. Billy Riordan's evidence, somebody at the meeting, or Mr. Riordan was under the impression that 7.5 was still the score or weighting for market development.

Do you remember any discussion about it at that point?

A. I don't remember any discussion about it, I am sorry.

Q. If you could just go to page 50 of the same report, and again I will put it on the projector so you won't have to pull it out. You see on the top left-hand corner there is a box with an arrow down to weight, do you see that?

A. I see it, yes.

Q. And it says, "Not agreed by Project Group."

A. I see that, yes.

Q. And then on the right, "No reason why the 10 should be split in this way."

A. I see that, yes.

Q. It probably should read "No reason why the 30 should be split in this way."

A. I think it is 10s with an "S", 10 and then "S".

Q. That is the first time anyone has said that to us, yes you are right: "Why the 10s should be split in this way." And again you don't recall any discussion about it at that time?

A. I don't recall any discussion of it but I think it is Sean McMahon's notes which indicate that there must have been a discussion of it.

Q. I think he was discussing the weighting at the

indicator level, you may be right, that was my impression?

A. I am not certain, but there is

Q. I think that was his evidence?

A. there are notes to suggest that there was a discussion about weightings.

Q. Oh, yes, I beg your pardon?

A. It is possible since

Q. You are quite right, there was. He referred to confusion about the weightings, a general note, yes.

A. Which may also be, since I don't recall but it could possibly be a reference to the discussion that took place

Q. Yes, you are right.

A. in Billy Riordan's notes or

Q. If you go onto the next page, I will just put it on the overhead projector, you will actually see the reference again to 7.5. You don't remember any detailed discussion of it?

A. As I said to you before, unfortunately I am not the kind of person who has detailed recollections of meetings which took place eight years ago. I am sorry I can't be more helpful, but it seems that if people who were at the meeting took contemporaneous notes relating to weightings, that there was a discussion of weightings.

Q. Presumably?

A. And it seems that what I do remember about the way meetings evolved, was that there were people with strong views at the meeting, and that there was never any obstacle to them expressing those views, so if at least two persons at that meeting had suggested that they had a concern in relation to the split of the weightings, I would assume that the discussion took place, but since in the next version of the evaluation report there wasn't a change in the weightings at that table, I must assume that there was an agreement of the split, which is in that table.

Q. Mm-hmm.

A. I am sorry I can't recollect but that is...

Q. I see. Well, you know that Mr. Buggy, in May of '96, April of '96, was again asking a question of how did the split

A. I am aware of that, I am aware that such a record exists.

Q. And I suppose following on from what you said a moment ago about how careful people were and how fastidious people were about the weightings; if there had been any agreement, any concrete agreement, it would be surprising that it wouldn't have been noted because it was a major shift, isn't that right?

A. But it was quite clear to everybody who was looking at the evaluation reports that the split in relation to the top criterion in the qualitative table was

10:10:10 and it is perhaps true that the documentation at that stage of the process really related to new versions of the evaluation report and that those versions were available to people and that they could have disagreed with them or otherwise.

Q. I am

A. And they seem to have agreed with them.

Q. I am just going back to what you said earlier about how much care, I think everybody agrees, was given to documenting any changes in the weightings because there was such important matters

A. But I believe

Q. and there was no documentation of any change in the weightings at this time, isn't that right?

A. I would disagree with the terminology "a change in the weightings" in this instance, because I think it has always been clear that the weightings which had 7.5 for market penetration scores 1 and 2 related in fact to a quantitative evaluation and that there was a clear decision by the Project Group documented by myself on the 31st May, which stated 30, 20 blah, blah, blah, and that there was no decision or no documented decision by the group how the 30 would be split in terms of the qualitative evaluation. So I would disagree with the phrase "change" because I believe that in fact there was not a change; it was a decision which was taken to split the 30 into

10:10:10. It was not a change since there had been no decision by the group except that 30 was to relate to the top criterion.

Q. I see. Well, I wonder can that be right, I am not trying to catch you out, Ms. Nic Lochlainn, but the 18th October version of the report at page 50 refers to

A. Sorry I don't have it.

Q. I will put it on the projector again.

A. Thanks.

Q. There is no point in trying to balance six documents.

Do you see the heading "6.4: The result based on conversion of marks to points" do you see that?

A. Sorry. Yes, I see that. I would prefer to have the actual report, if I could, since it would give me a context of what page you are looking at.

Q. Yes, sure. Book 46, Leaf 46, page 50.

A. Sorry, what tab? I have Book 46.

Q. If you go to Leaf 46.

A. Okay, I have the evaluation report, 18th October.

Q. You have it, have you?

A. I have that tab, yes.

Q. 6.4 on page 50?

A. Sorry I am at page 48, sorry, yes 6.4, yes, I have it.

Q. The page numbering might be different because I think these were faxed over and sometimes

A. Page 50, 6.4.

Q. Do you have it?

A. I have, yes.

Q. You see where it says in the first words, first line:

"Also a weighting mechanism was agreed prior to the closing date for quantitative purposes", do you see that?

A. I do.

Q. And I think that is the weighting that is being referred to in relation to this table?

A. But I would suggest that it is inaccurate to say that this table is a quantitative table; it is a qualitative table.

Q. No, no it is just the wording: "A weighting was agreed prior to the closing date for quantitative purposes as evident from both Table 17 and 18. If the marks (A, B, C, D, and E) are converted to arabic points, it could be calculated which applicants come out with the highest score measured by points, although such a calculation distorts the idea of a qualitative evaluation."

I just want to say to you that what is being referred to there is the weighting which was agreed for quantitative purposes. The only weighting which was agreed was the one that we referred to earlier in the evaluation model, and we drew your attention to one particular part of that weighting which was expressly approved of, where a 7.5 score was approved for market

development. Do you remember that?

A. I do remember the 7.5, yes, in relation to the quantitative evaluation.

Q. Yes. And it is those quantitative weights that are being applied here, isn't that right, that is the idea; it is what the text says?

A. It says that there was a weighting agreed for the quantitative purposes, but in fact there is a difficulty there since this table has nothing to do with the quantitative evaluation. This table is to do with the qualitative evaluation and the only agreement that was made in relation to a weighting for the qualitative evaluation was that there would be 30 for the top criterion. There was no agreement, and so I think there is perhaps a problem in the text, but it is quite clear to me that Table 18 refers to the qualitative evaluation.

Q. If no as you said yourself

A. It is simply a quantification of the qualitative evaluation.

Q. Okay. Right. You said yourself no weighting was agreed for the qualitative apart from 30, 20, isn't that right?

A. That's correct, yes.

Q. Well, I will just come back to that in a moment, but this table breaks down the 30, 20 and so on in a particular way?

A. It does.

Q. Isn't that right?

A. It does.

Q. Was there any agreement about breaking it down in this way recorded by you?

A. It seems, as I said before, that at this stage in the process, the record of agreements was really the versions of the evaluation report which were being produced and there was, it seems, a discussion about weightings and whether 7.5 or 10 should apply in one case and various other things in other cases, and it seems that the conclusion of that discussion was not documented, except in the fact that the next evaluation report arrived and it still had 10:10:10 here, so what is clear is that there was some discussion around weightings, there was some discussion around the weighting split for the top criterion, and it seems to have included, in the version of the evaluation report which followed where 10:10:10 remained, and so it seems as again, some of these meetings I was not at but others I was, but I have no recollection specifically of meetings of how they evolved. It seems to me that there was an agreement to do the 10:10:10 split and it seems to me that there is some inaccuracy in what the consultants say, that the weighting mechanism was agreed in the context of the first sentence, that there is a problem



in saying as evident from both Table 17 and 18; that that is not true, that there was a quantitative weighting agreed but it wasn't agreed in the context of Table 17 and 18. It was agreed, the quantitative weightings were agreed for a quantitative evaluation which is not described in this report.

Q. We will get it clear: the quantitative weighting was agreed prior to the closing date?

A. It was agreed prior to the closing date in relation to quantitative evaluation.

Q. When was the qualitative weighting at 30, 20 agreed? Can you show me a note of it?

A. The qualitative, the weightings for the criteria were set down in the note of the 31st March and it simply said 30, 20 etc..

Q. I see. The note of the 31st March, maybe you mean May?

A. May, sorry.

Q. We will just have a look at it. It says, "Agreed at the meeting of the 18th May, 30,20, 15, 14, 7, 6, 5, 3." Where does that say qualitative or quantitative?

A. As I think I said before, we were very careful in relation to these notes.

Q. But it doesn't say that?

A. That was why they were so

Q. Amn't I right what was agreed at the meeting of the 18th May was the weighting for the quantitative?

Didn't we agree that yesterday?

A. I think what we agreed was that the table with the splits related to the quantitative and it seems that since the eight criteria were relevant both for the quantitative and the qualitative, that the split here was intended to relate to both.

Q. Yes.

A. But that there was a clear decision in relation to the split of the 30, 20 etc., for the quantitative and that there was no decision and silence in relation to how the 30 might or might not be or could be split in relation to the qualitative evaluation.

Q. You were not present at any meeting at which formally it was agreed 10:10:10 for market development, financial key figures and experience of the applicant, am I right in that?

A. I was present at meetings of the evaluation, in relation to the evaluation report where people accepted the table that was there.

Q. I didn't ask you that question, Ms. Nic Lochlainn. Were you at a meeting at which formally a proposal was put that market developments 30 points would be split 10:10:10?

A. I wasn't at the meeting on the 9th October where I think the discussion in relation to the split or of the weightings for the first criterion was held.

Q. And what meeting was that? Is that in the notes of

the meeting of the 9th?

A. I wasn't at the meeting of the 9th October which was a Project Group meeting.

Q. If you weren't, how do you know?

A. I have always said to you in relation to that meeting, I am relying on notes that were provided by other people.

Q. Where do they say it? Just point it out to me. I didn't see it.

A. I said this before in evidence today, that there seemed to have been discussions on the weightings where people seemed to have suggested that 7.5 was the correct weighting to be used, but as I can say, that at this stage documentation arrived in the form of a new evaluation report and the new evaluation report was the following report which continued to be 10:10:10.

Q. That is not the question I asked you, Ms. Nic Lochlainn. Other people have given evidence about where this was done. I don't want to trap you but I think Mr. Towey said that he agreed it in Copenhagen?

A. He was in Copenhagen and I wasn't.

Q. Yes.

A. But he seemed, I would suggest that whatever happened in Copenhagen was subject to the approval of the Project Group when they viewed the evaluation report.

Q. Okay.

A. And if he agreed 10:10:10 in Copenhagen, then that came into the evaluation report and was discussed by the Project Group.

Q. Okay. Can we just take it in two stages again. Am I right there was no formal adoption by the, no formal documented sorry, I will go back a step, there was no formal proposal at any meeting of the Project Group at which you were present where the 10:10:10 split was approved?

A. I have already said to you that I believe

Q. No, were you present at a meeting?

A. No, I wasn't present on the 9th October.

Q. We need to get these things clear, Ms. Nic Lochlainn, I am not trying to trap you. Were you present at a meeting where somebody said 'We need to formally agree a split of 10:10:10 for the first criterion, and I now want to know does everybody agree with that?' Were you present at any such meeting?

A. I was not present on the 9th October.

Q. Were you present at any such meeting at which that was done?

A. I was present on the 23rd October when the table, whatever number it became in the evaluation report discussed at that stage was there, I can't remember any formal

Q. Ms. Nic Lochlainn, I am going to ask you this question once more and only once. Were you present at a

meeting at which a formal proposal was tabled to split the 30 weighting for market development into 10:10:10.

I think the answer to that should be yes or no?

A. I have already said no, I wasn't at the 9th October so...

Q. I didn't ask you that question, Ms. Nic Lochlainn, I want you to understand the question. Were you at any meeting, were you personally present at any meeting at which formally a proposal to split the 30 into 10:10:10 was tabled and formally agreed by everybody present?

A. No, I wasn't, I wasn't at the meeting on the 9th October.

Q. You are saying two things so: you weren't at the meeting of the 9th October and you weren't at any meeting at which formally something like this was approved, is that right?

A. I am saying I wasn't at the meeting of the 9th October, and since I wasn't at the meeting it is difficult to imagine what happened, but it seems from notes that a discussion and an explicit agreement was reached at that meeting, whether you can describe it as a formal proposal and a formal conclusion is another thing. I am saying I wasn't available for attendance at that meeting on the 9th October.

Q. That is your answer?

A. Yes.

Q. It was agreed then, you think, and yet at the meeting of the 23rd October it seemed to come up again as an issue; isn't that strange if it was all agreed on the 9th, why would it all have come up again on the 23rd and Mr. Billy Riordan making notes about it from the beginning to the end of his copy of the report which I understand was gone through by everybody that day, how could that have happened? The answer is it couldn't have happened.

A. I don't believe that the answer is that it couldn't have happened. I believe that it is quite reasonable, I believe it is quite reasonable for this kind of a documentation where splits are made across, that people will refer back, will take time in between meetings to review other documents and may come up with further questions and want to discuss the matter again. So I think it is quite possible that Billy Riordan, in between those two meetings, did that examination went back to further models and took the notes that he did and discussed them on the 23rd. I think that is quite possible because I think it is quite normal for any meeting of a large number of people to have different people saying that they agree things and then subsequently thinking that well, did we fully agree it and re-examining documents I think it is quite normal.

Q. This is a fairly important matter, isn't it, agreeing

a split in the weightings?

A. It would be important, yeah.

Q. It could change everything, couldn't it?

A. Well, if there was a dramatic change in the weightings, it could change everything, but I think that can only be demonstrated if different weightings are applied and a result is calculated.

Q. And what? Sorry?

A. Sorry, I am maybe going too fast. I think that it may make a big difference, but I think that the only way that that can be demonstrated or the degree of difference which can be demonstrated is, if you take different weightings, apply them and look at the actual result.

Q. I appreciate that, but changing a weighting is a serious matter?

A. Again, I would say

Q. And if everybody formally agreed the weightings on the 9th, isn't it strange, would you agree with me, it is strange that they would still be asking questions about it on the 23rd?

A. As I said before, people may go back and review documents and have second thoughts, that is quite possible. Meetings proceeded in a manner where people were open to make interventions at any point about any issues that were of concern to them. It would be quite normal for an accountant to pay particular attention

to weightings and he may or may not have made interventions but it seems clear to me that there was agreement on the evaluation report as drafted, and that it had a clear table which had a 10:10:10 split.

Q. I understand.

A. And I think that it had that table in each of the drafts of the evaluation report and I think that as you said, a weighting is an important thing and if anybody had a serious problem at any point they could have challenged it, but if they did discuss it, then I think that the meetings agreed that the 10:10:10 split would remain.

Q. I see. How long did the meeting of the 23rd take, do you know?

A. As I said to you before, I

Q. Roughly?

A. Unfortunately I am not the sort of person who has a very good recollection of meetings but I have a recollection that the meeting was long, but that's...

Q. And the meeting went through the report in some detail, isn't that right?

A. That's correct, yes.

Q. And a moment ago I drew your attention to Mr. Billy Riordan's notes on his copy of the 18th October version of the report and the first note I drew to your attention was on page 14, do you remember where I showed you that market development was given a



weighting of 7.5?

A. I remember that, I can't you don't have the document up, yes.

Q. Yes. Then I drew to your attention, and that was on Table 1, and then I drew to your attention that similar questions were being raised at pages 50, 51 of the report and page 50. So at the beginning of the examination of the document Mr. Riordan was asking or he was recording the fact that other people were asking this question, and you would have expected him to have been given an answer then, well this was all agreed on the 9th, wouldn't that be right?

A. I would have expected it to have been discussed and that the discussion ended with a satisfactory conclusion with Billy Riordan. If it did not, he wouldn't have accepted the evaluation report, I suggest.

Q. No, no, that is not the question I am asking you. If there had been a formal agreement on the 9th, which was the previous meeting of the Evaluation Group, and if Mr. Riordan recorded this at page 14, which must have been early on in the meeting, surely he would have been told at that point we agreed all of that at the 9th?

A. And it is quite possible that he did. Unfortunately I don't have a recollection of those discussions.

Q. I understand. Then he is still raising it 40 pages

later almost?

A. It is not quite clear in relation to his notes whether the discussion proceeded as you said. I am not sure how it proceeded.

Q. That is what he said in evidence?

A. Fine, I can't remember, so...

Q. I think yesterday the last thing you said in evidence was that after the meeting of the 4th September you thought the focus was on the qualitative, is that right?

A. I think that the consultants indicated that there were problems with the quantitative, yes, and it seemed, as I think I pointed out, that the work programme that the consultants defined for us on the 14th September focused entirely on the qualitative part of the evaluation, and as far as I can see, no mention was made of the quantitative point.

Q. But the quantitative was something that the consultants would be working on, not the Departmental members, isn't that right?

A. It is true, yes.

Q. The number-crunching exercise?

A. If they felt, I think they would still have told us they were doing it if they felt it was an important part of the process, or alternatively if they felt, for instance, I think there was talk in that part of the meeting in relation to sub-groups, etc. in the

qualitative evaluation, and if they felt that the quantitative was an important input to those meetings, I think that they would have mentioned it in that context, but it wasn't at all clear to me from those notes that they were giving any weight at all to the quantitative at that point.

Q. I see. Could you go to Book 54, the weightings book?

A. Just one moment, please.

Q. Yes. Sorry, go to Leaf 9 of Book 54, the weightings book.

A. Excuse me a second.

Q. Yes.

A. I am at Tab 9 of Book 54.

Q. Yes. It contains your fax to Michael Andersen, do you see at that?

A. That's correct.

Q. You say: "Michael, two items for your attention, please.

"Firstly, please see qualitative scoring for technical aspect as recorded by John McQuaid which follows (Annex A)." And you ask a question about that.

Then, "2. "Please see attached list of criteria and weighting as agreed by the Project Group prior to the 4th August (Annex B).

"Could you please clarify how these relate to the weights as detailed on page 17/21 of the document of the 8th June, 1995 which were to be the weights

underlying the quantitative evaluation? (Page 17 is also attached at Annex C) and to page 7 of the draft quantitative report (see section on weights at Annex D) e.g. OECD-basket is weighted 15.96%. Does this correspond to 18% for competitive tariffing as agreed by the group?"

Now, do you see your reference to the draft quantitative report?

A. I do.

Q. It suggests that that draft quantitative report was still a live document as of the 6th October, do you see that?

A. I see that date, yes.

Q. So clearly there was still attention being paid to it up to that date, isn't that right?

A. It seems that some attention was being paid to it.

Q. And you yourself called it the draft quantitative report?

A. I did.

Q. And somebody, either you or somebody else had gone to the trouble of checking something in it that he wasn't satisfied with?

A. Yes.

Q. And the draft quantitative report that you actually produced is dated the 20th September of 1995, you will see it at Annex C, is it, or D?

A. D.

Q. Annex D, do you see that?

A. I do.

Q. This was the second quantitative report and it was produced after the meetings we referred to a moment ago and still seems to have been, as I said, a live document right up to the 6th October. Do you see that?

A. I would agree that it was a live document. Whether it was a significant document is, I am not so sure.

Q. Well, significant enough for you to be drawing attention to something on it and for other people to be paying attention to it, isn't that right?

A. It was significant enough to warrant a fax, I would agree.

Q. Yes. I see.

Do you see in that document where you referred to the scoring of aspects, do you see that, just the document we looked at just a moment ago?

A. Annex A, is it?

Q. Yeah. No, it is in the second paragraph of that note you refer to the

A. the qualitative scoring for technical aspect.

Q. Yes. I just want to be clear that you understand that to mean that somebody was actually scoring the aspects. Mr. McQuaid was anyway, wasn't he?

A. I think Mr. McQuaid would have been at the technical sub-groups.

Q. Yes. But he is scoring aspects, do you see that?

A. I think that, yes, that is quite clear from the note.

Q. Because there was some doubt about whether aspects were going to be scored or not.

Thanks, Ms. Nic Lochlainn.

CHAIRMAN: Mr. McGonigal?

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. MCGONIGAL:

Q. MR. MCGONIGAL: Ms. Nic Lochlainn, if you could just help me to clarify a couple of things. The book that you started off with, Book 58, could you go to that for a second for me, please?

A. Yeah.

Q. And it is the Tab No. 2?

A. Yes.

Q. Now, just these clearly are your detailed notes taken at the meeting of the 18th May?

A. That's correct.

Q. And I am just curious about something and I wonder if you could help me; if you go to the fourth page. Do you have that?

A. I do, yes.

Q. And just at the end of that fourth page you see that it ends at 3.10, do you see that?

A. Yes.

Q. And if you go over the page it starts on Section 5?

A. That's correct.

Q. What was concerning me is, what happened to Section 4?

A. Which section was that?

Q. Well, if we go then and we will try and work this out.

If you go, then, to Book if we go to your documents excluding Book 58 which includes the report of the 17th May, do you know that document, the evaluation report of the 17th May?

A. The evaluation model of the 17th May, yes.

Q. Yes. If you just turn that up for a second for me.

A. Could you just give me the book number again, sorry?

Q. Well, I have it in a book called 'Ms. Nic Lochlainn's documents excluding Book 5' that is our book, is it, I see?

A. It is Book 54, sorry.

Q. I am sure Mr. O'Donnell will be able to produce it for you; it is the evaluation model of the 17th May, maybe Book 54(1)?

A. Yes, I have it, it is the evaluation model of the 17th May.

Q. Yes. If you just go to page 16 of that, 16 of 19.

A. Yes.

Q. And you see the 4 there, vote-casting and weight matrix?

A. Yes.

Q. And do you see the page before is 3.11, I think?

A. Yes.

Q. And then the page after 4 is 5?

A. Yes.

Q. Now, if you go back to your handwritten notes?

A. Yes.

Q. You see you have 3.10 on the bottom of the fourth page then you go into section 5?

A. Yes.

Q. I was wondering to myself what happened to section 4?

A. As I have said to many people before, I don't have specific recollections, but what is clear to me from the meeting of the 18/5 was that I had some material from that meeting in order to complete the note which went to 30, 20 etc., and it seems clear to me also that I was given a direction not to write down a record which had a list of the evaluation criteria and attaching the weightings to it, so it seems to me that there was some decision that this part of the discussion was particularly sensitive and that it is possible that I took a note, a rough note which I subsequently destroyed.

Q. Yes. I was trying to work it out in my own mind and I sort of wondered, I thought of the sort of possibilities and I suppose the first possibility is that there was no discussion at all about section 4, but you seem to think that that wouldn't be correct?

A. I am not certain whether the discussion was based on section 4, but I think there was some discussion in relation to weightings and whether it was simply somebody saying there are these eight criteria, how



will we weight them? whether they used section 4 or not.

Q. That is the second possibility, that there was a discussion about section 4 or the weightings, as you rightly call it, and it was, that you didn't take any notes on it?

A. It is possible.

Q. And the third possibility, I suppose, is that there was a discussion on it, you did take notes on it, but for security reasons, it was decided not to keep those notes?

A. That is also possible. I think since I have said all along that the consultants really owned this table, it was their baby, it is quite possible that they were responsible for taking notes in relation to that table and that is why it didn't end up in my notes.

Q. Yes. You see, if you just go for a second, just let me tease this out a wee bit. If you go to the minutes of the meeting of the 18th May of 1995, which is Book 41, Document 64.

A. I have it.

Q. Now, those are the minutes of the 18th May, and the first thing I want to draw to your attention is the fact that you appear to have done those minutes?

A. I did, yes.

Q. And those minutes presumably would have been done from the notes that we have been just looking at?

A. Yes.

Q. And if you go to the second, or is it the second page, if you go to the second page it is the second page, you see paragraph 4?

A. That's right.

Q. You have reference "can be made on the file to the formulae agreed."

A. Yes.

Q. So that would seem to indicate that certainly there was a discussion about this formula which was to be, which was to be made on the file?

A. That's right.

Q. And it was in this sort of obscure language so as to keep its secrecy and confidentiality, is that right?

A. That would be correct, yes.

Q. And the formulae that we are talking about is, of course, the weightings which were to attach to the criteria?

A. That's right.

Q. Now, if you go, then, to those handwritten documents, if you go back to those for a second and if you go to the last three pages, and I want to try and do the same exercise with that, because it looks even more interesting.

First of all, in relation to those last three pages, I had understood from the way that they were given to us, that in fact the 1, 2, 3 on the top of the pages

had been put there probably by you at the time that you drew that up; is that not right?

A. That would be correct, I would say, yeah.

Q. Now, I was just looking at the second page, and you will see 3.11, "solvency okay", then you have a table underneath that?

A. Yeah.

Q. And then there is, after the table, there is "Qual equals common sense check on" do you see that?

A. I do, yes.

Q. Do you see that?

A. Yes.

Q. I was just looking at the physical page itself and comparing it with the page before and they seem to be different pages, and as you look at it, the possibility appears to exist that something has been taken out of the middle of that page. Can you assist me at all in relation to that?

A. I can, but it is quite a simple explanation. It is just

Q. I thought that would be so.

A. When I am the 1, 2, 3 pages that you are referring to now are notes that I produced subsequent to the meeting in order to prepare for the formal report and I have a habit of writing with large writing and sometimes running into too many pages so what I sometimes do is I cut the bits of the pages that I am

going to use, which in this case is the bit which starts "qualitative equals to common sense check", that was one page, and I had stapled it to the 3.1 because I wanted it to be sequenced that way in the formal report but it isn't that I had cut out something else.

Q. I was just wondering about that, Ms. Nic Lochlainn.

First of all I am glad you cleared that up for me.

A. I think you could see that if you examine the original.

Q. It just puzzled me when I was looking at the pages that there was this difference. The other curious fact is that it comes at the point where you might have expected section 4 to appear?

A. In terms of the chronology of the evaluation model?

Q. Yes.

A. Yes.

Q. You see, if you look at the minute again, the table which is at the top of page 2 is in fact immediately above paragraph 4 in the minutes, do you see that?

A. That's correct, yes.

Q. So that when I was looking at this I wondered to myself whether again, this was another example of, as you say, joining two pages to cover over the section dealing with paragraph 4 so that there would be no copy of it available other than in the way the PTGSM had agreed that this should be kept?

A. It seems certain that when I was doing the rough notes, that there was a page which had 3.1, solvency, etc., and that there could well have been other things at the bottom of that page, but that this record is a staple of another page on top of it, but what I don't know is if it is possible that there was something to do weightings on the bottom half of that page and that I cut it and binned it because there was only one record remaining on our files. I am afraid I don't have any exact memory. All I can be clear about is that it is certain that the page which is noted here as 2 was an amalgam of two pages which were stapled together if you go to the original on the file.

Q. I understand that. I don't expect you to remember everything Ms. Nic Lochlainn, but I just wanted you to have a chance to clarify that for me.

The other thing I just wanted to ask you about, and I can't find it just for the minute. If you bear with me.

I just wanted to ask you about the point in your notes where you had the 7.5, yes there it is there. It is Tab 3, it is the tenth page in?

A. Yes, I have it.

Q. And you see you have "evaluation model major sections only discussed." Then you have page 5 with lines around it, 7.5 weighting in the middle. Then to the

right you have "3.1 approved". Do you actually

remember a discussion in relation to this?

A. No, I don't, I am sorry.

Q. So when you say that the 7.5 is agreed, are you saying

that that is your recollection or that is your

reconstruction based on what is here?

A. Oh, it is quite clear to me that everything I am

saying about these meetings are based on my

interpretation of the rough notes since I don't have

any recollection of how the meetings proceeded.

Q. Yes. Because what was puzzling me I will tell you

exactly what was puzzling me was why only the 7.5

appeared and there don't seem to be any other

weightings referred to in any other of those notes?

A. That is quite true. I was puzzled by that myself.

Q. Yes. I just wondered whether it would be right to

give it the status of the 7.5 being agreed

independently of everything else or whether that would

be putting too strong an interpretation on it?

A. I am not certain.

Q. Yes, but the reality of your evidence is it, is this:

that looking at it now, you cannot recollect the

conversation and cannot recollect what it might mean?

A. I can only recollect I can only see from the note

that obviously the mention was made of 7.5 and that

there was an agreement on 3.1.

Q. But the rest is reconstruction?

A. There has been a lot of speculation about what happened at meetings.

Q. Yourself and Mr. Healy were doing a lot of reconstruction but it was reconstruction, isn't that right?

A. It is speculation since I have no exact memory and I was the person that was there at the time.

Q. The other thing that I just wanted to ask you about yes. It is this book, 58, I think. No, 54, Tab 9.

Now, the fourth page third page first of all. It is a very small point and I just want to make sure that I am right. The 30, 20, 18, 11, 7, 6, which you have down as weighting agreed by the group prior to the 4/8; when it was being dealt with there seems to have been a suggestion that those were the weightings which were agreed on the 18th May. Of course they weren't, because this weighting reflects the change following the licence?

A. That's correct, yes.

Q. So this in fact is reflecting the agreement which resulted from the change in the licence and the new weightings which had to be agreed and were the subject matter of correspondence and notes on the 27th July, and things like that?

A. Exactly, yes.

Q. Isn't that right?

A. Yes.

Q. Now, the second thing that I just want to come at in relation to that, the next page is the handwriting.

Am I right in understanding, am I right in understanding that you are saying that that is your handwriting?

A. Which handwriting, because there is a few handwritings on the page?

Q. Well, that is possibly the best way of dealing with it. Can you tell me which handwriting is yours?

A. Sorry, which Annex are you talking about?

Q. I think it is Annex C, the next page?

A. The next page with the quantitative table?

Q. Yes.

A. Yes. Annex C: that is my handwriting.

Q. Annex C is your handwriting?

A. That's right. When you come to the "7.5 coverage..", that, I believe, is Margaret O'Keeffe's handwriting.

It is in pencil in the original. The stroke through the 15 replaced by an 18 is my handwriting, but again

I would emphasise that it is a copy, it isn't in the original; it is a copy of what was on the file. The tick is in pencil, which would suggest that it was also Margaret O'Keeffe's, since the "coverage" is in her handwriting. The "6" followed by a tick, which is also in pencil, which I assume is also Margaret O'Keeffe's. The bracket followed by "25", I am not certain whose handwriting it is. The "technical" just



above it, however, is Margaret O'Keeffe's handwriting.

The two Xs are actually in red followed by a

stroke-out, a line-out which is in red and

"performance guarantees" which is in red, and the

performance guarantee or "guarant", but I think means

guarantee, is in, I think, Margaret O'Keeffe's

handwriting.

The tick on "frequency economy" is in pencil so I

would assume it is Margaret O'Keeffe's. The tick

following again the 11 is in pencil and I would assume

it is Margaret O'Keeffe's.

Q. Yes. The only curiosity that I had in relation to that was trying to understand when those corrections and things might have been made and I assumed when I was looking at these documents, perhaps wrongly, that they were probably made sometime after or about the time of the fax itself which would have been October?

A. I am not sure when I would feel that I wouldn't have sent out the fax with those notes on it. I would have sent out the fax with just my own notes on it, so obviously it was subsequent to the 6th October. How much subsequent, I am not certain, I can not recall.

Q. They wouldn't have been made before the 6th October in all probability, well not much before it?

A. I think the document was produced on the 6th October.

Q. In or about that time?

A. It was faxed, I believe, without Margaret O'Keeffe's

writing on the 6th so...

Q. The other thing I just wanted to ask you about and you have touched on it a couple of times, Ms. Nic

Lochlainn, it has obviously figured very much in your mind, and that is that the role that was played by Andersen International in relation to this process?

A. Yes.

Q. They were the experts and you saw them as the experts?

A. Yes.

Q. And clearly you yourself relied and depended upon them to do the work that they had put themselves forward as being the experts on?

A. Yes.

Q. And in that sense, you were dependant on the documents that they produced and the veracity of them?

A. Yes.

Q. So that if there are errors in some of the documents, clearly the best and only people that can explain it would be Andersens?

A. I would agree, yes.

Q. And this particularly applies in relation to the weightings between the qualitative and the quantitative?

A. It relates to all their documents, yes.

Q. And all the documents particularly relating to the weightings?

A. Yes. Particularly, I would say, in relation to the

weightings on the quantitative since they were the only people who ever implemented anything to do with those weightings. No work was undertaken. As I understand, in Dublin on the back of how the 30, 20 etc. was split into the quantitative.

Q. The other aspect of this relationship that you have introduced which is interesting, is that there was a high degree of confidentiality and security attaching not only to the reports but also to all of the documents which people were concerned with?

A. Yes.

Q. And the security and confidentiality relating to that was treated on the basis that they would not be allowed out of the particular office where they were discussed?

A. That's correct.

Q. So that so far as the Department people were concerned, unless they were at the actual meeting where things were discussed, the first opportunity they would have of catching up would be when they went to the next meeting in the same place?

A. I believe so, yes, except there were three people who had copies but they were told to lock them.

Q. Yes?

A. Yes.

Q. And as you rightly said, that, in a sense, didn't give the Department people the opportunity of effectively

taking certain documents away and giving them the consideration which people like to do?

A. Yes.

Q. And so that each time they came back to these meetings, they were effectively having to regenerate a number of conversations without having had the advantage of considering them fully in the meantime?

A. Yes, I would agree with that.

Q. And you, I think, are putting this on the basis that you saw that as a disadvantage?

A. I believe that now, as I said, I discovered in the spring of 2002 that there was an issue in relation to, that we had an agreement on our file which went 30, 20, blah, blah, and that they had a document which added up to 32.5 on the first indicator, and to 7.5 in relation to coverage, when there was a clear agreement in Dublin and on my files that it was 7, and I think, they were responsible for that table and that they should have noticed that and have spoken to us about it.

Q. Clearly then

A. Sorry, if I could just bring that a little bit further. In relation to, as I know when I was giving evidence earlier this year it was mentioned that the consultants had a renormalisation procedure which allowed them to bring the 103 back to 100, but having looked at those figures and the recalculations which

would have allowed you to bring it back to 100, I still don't see that that was a satisfactory manner in which to proceed, since if you take the first criterion, which was 32.5 in the table, and you renormalise it, it becomes 31.55, which is higher than the weighting which the group had agreed, which I had understood to be 30. Again, if you look at other weightings, for instance the 20 for the second criterion, and you renormalise that in the manner in which they did, it becomes less than 20. So again it was different from the agreement of the group. So I would suggest that if that renormalisation was happening, that it should have been discussed with us, and that I would suggest that you would have to at least to put a further question-mark over the quantitative result if, in fact, you are not exactly sure that the weightings that were pushed through it, even if renormalised, really related to the weightings which were clearly agreed by the Project Group which was the 30, 20, etc. split.

Q. Yes, I understand that. Now, just apropos of that. I don't know if you have been asked this before, I am absolutely certain that you have, but I have just lost the note on it, but could you go to the final report which is Appendix 3 which is in Book 46, I think it is. I am afraid again I am using a slightly different book. I think it is 46, isn't it?

A. It is 46, I have Book 46.

Q. Yes. I want Appendix 3 of the final report, just page 10.

A. Sorry, could you just tell me what tab it is?

Q. I can't, I am afraid, to be honest because I am working from a slightly different book.

A. Sorry, I will just look for it myself.

Q. 46.51, Mr. Reynolds has helpfully told me.

A. These are the appendices?

Q. Yes. I just want you to go to Appendix 10 for a second. Sorry, not Appendix 10, Appendix 3, page 10, I beg your pardon?

A. Yes, I have page 10.

Q. Do you see the weightings there?

A. I do.

Q. Can you tell me anything about those?

A. I can tell you that this is what I meant when I discovered last March that I was surprised because I didn't know at the time that this had happened and I have no understanding why the consultants would have bothered to do that.

Q. Yes.

A. Because it is an appendix which is purported to include a historical document, and it should have included an historical document.

Q. I understand that. Clearly Andersens will be able to clear that up for us

A. If they were here.

Q. when they come. The other thing I just wanted to ask you about, Ms. Nic Lochlainn, is if you would go back to Book 58, Tab 6. Again if I appear to be going over territory already covered, I apologise, but I just want to ask the witness about these.

Do you have that?

A. Sorry, I do, yes.

Q. And this appears to be a collection of your documents and appears to be created at the time of a sub-committee meeting discussing market development?

A. That is correct, yes.

Q. And am I right in understanding that all of these documents relate to that one meeting?

A. I will just flick through them quickly but I think I would agree that, yes, they relate to the market development sub-group.

Q. 15, there are approximately 15 pages headed by two pages of typed written material, three pages of which I presume came from Andersens?

A. Yes, the typing would have been done by Andersens.

Q. Yes, and they set out the market development and the indicators and then they have a table, a score chart with grades on them and lots of markings on the grades and then more explanations in relation to how they had done all of this, isn't that right?

A. That's correct.

Q. And what we can see on the screen there, it shows it, what we can see is the essence, the nature of the discussion which took place at that sub-committee meeting?

A. Certainly my inputs to it, yes.

Q. Yes. Those would be the result of your input but the input, your input would have been resulting from the discussion which took place?

A. I think my input, I am not sure if this is a draft that was produced after the meeting or if I was given I think I was given the document and typed, which are the first two pages, by Andersens, prior to the meeting, and that I considered what they had proposed, and agreed or disagreed, or whatever, and that I brought that as an input to the sub-group meeting.

Q. You brought that, I see that. The next few pages are actually the way in which you may have arrived at some of your scorings, gradings?

A. Yes.

Q. And also trying to create questions that you might want to have clarified, things that you felt should be brought to the attention of the other people?

A. Yes.

Q. And sort of detailed thorough examination of the dimensions, dimension market development?

A. Yes.

Q. And that the way you approach your work in relation to



this progress PTGSM?

A. Yes.

Q. And is that the way that all of the Department people approached the work?

A. I believe so, yes.

Q. And if the pages had survived, we would have had similar jottings from all of the other people who had taken part?

A. I believe so, yes.

Q. And it would seem clear, but possibly needs to be said, Ms. Nic Lochlainn, that there seems to be, running throughout that, absolutely no suggestion of anyone controlling, dictating or influencing your mind in the way in which you should arrive at a result?

A. None whatsoever.

Q. And it was as they say, all your own work?

A. Yes.

Q. Thank you, Ms. Nic Lochlainn.

CHAIRMAN: Mr. O'Donnell?

MR. HEALY: Just before Mr. O'Donnell, there was one matter that I omitted.

CHAIRMAN: That might be clarified at this stage.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY

MR. HEALY:

MR. HEALY: It might be in ease of Mr. O'Donnell.

Q. Ms. Nic Lochlainn, could you just for a moment go in Book 58 to Leaf A5, please. This is something that I

forgot to draw to your attention.

A. Sorry. Yes.

Q. Leaf A5 contains, I think, a number of notes all in your handwriting, isn't that right?

A. That is correct, yes.

Q. And the first note is dated the 29th August, 1995, and it has "AGs", I think meaning AG's office, on the top left-hand corner?

A. That's correct.

Q. And underneath that there is a box with a number of names, Mr. McFadden, Mr. Towey, Mr. O'Callaghan, and?

A. Myself.

Q. And yourself. And that you have a note of what transpired at that meeting?

A. Yes.

Q. Am I right in thinking, without going through all of the details of it, that it seems to be a note on some of the issues surrounding the technicalities of the licence itself, isn't that right?

A. That's right, legal issues, yes.

Q. You see in the middle of the page you have "issue of renewal to be examined by DTEC"?

A. Mm-hmm.

Q. Underneath that "to what extent should we tie our hands?"

A. "Not at all" I would say.

Q. "Not at all. Underneath that, "no obligation to

include a condition" is it?

A. I think so, yes.

Q. "of renewal. If pressed" something?

A. "Argue community law".

Q. "Argue community law." Underneath that "transfer of shares." Underneath that "assignment of the licence" and so on. And there seem to be three pages dealing with that meeting, the first three pages in that leaf, is that right?

A. Yes, that seems to be correct.

Q. Pardon?

A. Sorry, I said that seems to be correct.

Q. Yes. And the next page, then, is a document which, again, has on the top left-hand corner what I understand you recognise as "AG office", is that right?

A. "AG's off", yes.

Q. "AG's off".

A. Yeah.

Q. Underneath that you have a list of names: "JG", which probably means Mr. John Gormley, is that right?

A. I think so, yes.

Q. Underneath that Mr. McFadden, Mr. Towey, yourself and Mr. Brennan, is that right?

A. It is very interesting, but I think I have a memory of meeting with myself, Mr. Towey and Mr. Brennan, so I am assuming that is...

Q. Then it says on the right-hand side, you have "1983"; that is a piece of legislation, I think?

A. Mm-hmm, the Telecoms Act.

Q. Two pieces of legislation in 1983. Underneath that "comment", is it?

A. I think it is "could mount".

Q. Sorry, "could mount..."

A. "Only a constitutional challenge," I think.

Q. Sorry?

A. I think it reads "could mount only a constitutional challenge." I am not certain.

Q. Go ahead and read it.

A. Then underneath that a little arrow "difficult to predict."

Q. Yes.

A. Then I think that might be an abbreviation for competition but it is very hard to see in this version.

Q. Yes.

A. "Competition is non-statutory argument".

Q. Yes. Then underneath that you have a line?

A. Then there is a line and then, "legal advice to government

" mad not to follow analysis and/either expert or expensive advice."

Followed by the other hyphen, " political pressure awesome."

Q. Yes. Go on.

A. Then the question of renewability. The question of, "mobile is in exclusive Telecom privilege." I think I mean under Section 87(1) of, presumably, the Telecommunications Act.

Q. Yes?

A. Then a reference to Mineral Developments Act, No. 15 of 1975, I think.

Q. Mm-hmm. Can you, looking at that document, put any date on it?

A. I am sorry, I can't. I have a sense that it was on a Friday, but I am not I know that is not very helpful. That is all I have.

Q. Do you know if it was before or after the other meeting that is dated the 29th August?

A. I have no recollection, I am sorry.

Q. All right. Can you remember a meeting at which there was a reference to political pressure being awesome?

A. I can't, no.

Q. What the meeting was definitely discussing, it seems, was the statutory basis for giving the licence out, is that right, doesn't that seem to be right?

A. It seems that there may have been concerns about the Telecom angle and whether they wanted us to do it or whether it could be issued. Were we really trying to give something away which was in the exclusive privilege of Telecom Eireann and was there a

difficulty with that and perhaps could they challenge

it?

Q. And that would probably date it to then very early

days, would that be right?

A. It seems possible once the decision made to go the way

we did, there wouldn't have been any value in

discussing it.

Q. I recall other documents dealing with that issue that

were way back in the first quarter, I think, or the

first third of 1995, do you recall mention of them?

A. I don't recall mention of them. It was only myself

intensively involved with the GSM stuff from March

'95.

Q. As you can well imagine, I am trying to understand

what the reference to "political pressure being

awesome" means?

A. Well, I mean, I have no recollection of the meeting.

I have to say to you I am just looking at the notes,

but it seems that somebody is saying that if you have

analysis and experts giving you advice, it would be

mad not to follow that, and there is a reference to

the political pressures, which I assume could be a

reference to the general pressures which were apparent

in relation to the consortia and their pressures in

relation to any number of politicians at the time.

Q. That is what I was trying sorry.

A. Sorry, I think there was a sense that even when, say,

Brian Cowen mentioned the idea of issuing a mobile licence, I think he was asking Martin Brennan to issue it within three months, in other words to have a winner and to have a licenced person within three months which would suggest that there was pressure to get the job done.

Q. I follow. I mean, what I am trying to distinguish between, is that kind of pressure, i.e. pressure coming from your boss, if you like, because his political party wanted a policy objective achieved. I could understand that would be one type of pressure, wouldn't it?

A. It would.

Q. Another type of pressure would be political pressure coming on because the opposition were taking a line on something, again it would be understandable political pressure, for instance, the opposition might not want or might want an auction; the government might not want an auction. There might be sort of that policy difference between them. Then there could be political pressure which would be direct political pressure brought to gain a particular result, in other words, improper pressure?

A. That is true, yes.

Q. The issue

A. I suppose I should say since you have said that as a possibility, I have absolutely no recollection at all

at any time throughout the process that there was pressure to influence the result in any way.

Q. I haven't asked you about that.

A. Since it is mentioned as a possibility, I want to put it on the record quite clearly that I was there at the time. I have absolutely no recollection that there was an inference.

Q. I understand that.

A. And I understand that I was a relatively lower person in the hierarchy, yet I was at the meetings and I never heard anything in relation to it.

Q. Did you ever attend any meeting between Martin Brennan and the Minister?

A. No.

Q. In any case, just to go back to where we were, I was trying to see which of these three possibilities might cover this. You say you are not aware of any political pressure affecting you or the process?

A. Apart from

Q. You did note a reference to political pressure at this time?

A. I did at that meeting, yes.

Q. It does seem likely that it is to do with, doesn't it, to do with that issue of the basis upon which you would grant the licence, i.e. would Telecom have the giving of the licence or would the Minister and the government have the giving of it? Would that be



right?

A. I am not certain. As I said to you in the private interview, I wasn't very understanding of the issues that were being discussed here; that is my recollection of the meetings with the AG's. It is true that the first part relates to constitutional challenges which I think could be put forward by Telecom Eireann, but there is a line under that which would suggest to me that it is possible that we moved to a different part of the discussion.

Q. Yes.

A. I am sorry I can't really be very...

Q. I appreciate that. Is it also possible that what you had was a discussion about how you would deal with this; I am not sure the challenge would come from Telecom, I could see it coming from somebody else, anybody in the business might think it was wrong that an exclusive privilege like this, or this privilege should be in the exclusive remit of Telecom.

Was it possible that you were discussing that, and then you went on to draw a line and say 'We have to be specific about what we are going to do here. It is mad not to follow the analysis/expense of our expert advice', notwithstanding the political pressure, if you know what I mean, and the pressure was, therefore, ordinary, what I would call, ordinary party political pressure from one political party or one group in the

government, the Opposition rather, opposing the Government's policies. Is that the type of pressure it seems to be, if that is the issue it was directed to?

A. To be quite honest, I have no idea what the political pressure relates to.

CHAIRMAN: Well, I think essentially what Mr. Healy is putting to you, Ms. Nic Lochlainn, in this, is that it doesn't seem to relate to the crucial last days of the evaluation, in which case it might have a possible other potential connotation. It seems to relate to something that was earlier and separate because you were obviously in the because you obviously were in the last days of dealing with the evaluation. Plainly there wasn't time to be going to the AG's office. So, if you like, it is an aspect of this observation that you made that probably takes it outside of the crucial final days that Mr. Healy is drawing your attention to?

A. I would certainly agree at that it wasn't in the final days. Now, that you have mentioned that, I had said before that it was a Friday, and I think it was a Friday in the summer.

Q. MR. HEALY: Yes.

A. So if it was in October, it wouldn't have been a Friday in the summer.

Q. Not in Ireland anyway, maybe in May. There is one

last matter.

A. Certainly just to respond; it certainly is my memory that it wasn't a meeting that we were having in the middle of doing all the evaluation work at the end.

It was certainly a meeting that we had where we were discussing sort of

Q. Macro issues?

A. Yes.

Q. Therefore it was macro political pressure, if you like?

A. It could well have been macro political pressure, yes.

Q. I had one other question, I don't know whether Mr. O'Donnell would like me to wait; it arises from Mr. McGonigal's examination. We will try and get it over with now.

Just to clarify one thing, we had, as Mr. McGonigal I think said, perhaps not in the language I am going to say it, yesterday we tried to reconstruct a number of things that you had no memory of, but where you were relying on your notes and we had some differences of opinion over what or what way they should be reconstructed but I think there was one point, in the course of your examination by Mr. McGonigal, when you were asked about the note you made of the 7.5 weighting for market development, and at one point you said referring to the general notion that we were doing a lot of reconstruction, you said "it is

speculation since I have no exact memory. And I was the person that was there at the time." Now you did say that. I can only see from the note that obviously the mention was made of 7.5 and that there was an agreement on 3.1. Could I just remind you of what you said yesterday at page 90 of the transcript, Book 224.

Just to be clear about one thing. You said at

Question 397, "All right "

A. Sorry, excuse me, could you give me the page number again?

Q. I beg your pardon, page 90, Question 397.

A. Yeah.

Q. We had discussed this, I think, on maybe two or three occasions and we disagreed about a lot of things but eventually at the end of it I asked you:

"All right. Okay. One thing was clear; you were satisfied that Item No. 1 was 7.5?" And you said,

"That is quite clear when we discussed the marketing

indicator." I said, "yes." You said, "What is not clear from my notes is whether in relation to each of the indicators were" I think that should be "where"

"where 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." "Yes," I say, "The only split that you discuss is the 7.5?" You say,

"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."

I say, "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, is 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."

Is that a fair account of what you recall in relation to that?"

A. Yeah, I suppose the only thing was that Mr. McGonigal's intervention raised the question mark in my head that the approved related simply to the 3.1 on that page as opposed to the 7.5 that was, as again, we are all speculating it was a valid question mark.

That is all I am saying.

Q. In relation to that yesterday, I think you made it clear that it was the one thing you were clear about, isn't that right?

A. But I am saying that Mr. McGonigal made a suggestion that it was possible that the approved related simply to the 3.1. I was saying, yes, I agreed that it was possible.

Q. Yes. Thank you.

CHAIRMAN: Well, Mr. O'Donnell, if you felt you were this side of 15 minutes...

MR. O'DONNELL: No, I would prefer to leave it until two o'clock if that was satisfactory, Chairman. I don't think I would be terribly long. I wouldn't like to guarantee that I would finish in 15 minutes.

Mr. Healy may want to come back again, I don't know.

CHAIRMAN: Two o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

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

Q. MR. O'DONNELL: Ms. Nic Lochlainn, just to recap on certain elements of your evidence. I think you have made it clear that as far as the PTGSM were concerned, the team were concerned, what was critical was firstly, the criteria set out in paragraph 19?

A. Yes.

Q. And secondly, the weighting in descending order which

related to those criteria?

A. Yes.

Q. And they were the two cornerstones of the project that you were that the team were undertaking?

A. Yes.

Q. And we then when Andersens came aboard, Andersens introduced first, sorry, before Andersens came aboard, I think everybody was clear that this was going to be a beauty contest rather than a simple number-crunching contest; that the phrase "beauty contest" had been used. It was, I suppose, a competition where one's perception of the various attributes of the various consortia was going to be depended upon, rather than simply crunching numbers?

A. Yes.

Q. Now, Andersens produced this quantitative model, but this was a quantitative model firstly, which was solely and exclusively devised by them?

A. Yes.

Q. Secondly, the only input that the only inputting into that quantitative model was to be by Andersens?

A. Yes.

Q. And the numbers that were to be put in were to be put in direct from the applications by the various consortia; in other words, it wasn't a situation where members of the Project Team looked at those numbers first, rearranged them, re-crunched them and then sent

them off to Andersens. The numbers were taken out of the applications and put directly

A. By Andersens.

Q. By Andersens themselves?

A. Yes.

Q. So Andersens owned this model and were responsible for it?

A. Yes.

Q. And if they weren't happy with it, it was, I suppose, in their it was a matter of their discretion as to whether or not to pursue it?

A. Yes.

Q. As far as you were concerned?

A. Yes, since they had proposed it.

Q. And likewise, if there were errors in any of the documentation in relation to that quantitative model, it was a matter for them, as far as you were concerned, to correct them because you trusted them to correct them?

A. Exactly, yes.

Q. The qualitative model of course was different. Because the qualitative model was going to involve input through the sub-groups of the civil servants, such as yourself?

A. Yes.

Q. And it was also not going to rely on the crunching of numbers, but it was going to rely on assessment?



A. Judgement.

Q. Perception, judgement, feel, if you like?

A. Yes.

Q. All right. Now, your own booklet of documents which was referred to also makes it clear that as far back as the 18th May, this qualitative assessment was going to be a common sense check on the quantitative model, but it was also clear that the qualitative evaluation was always going to be of a higher order than the quantitative evaluation?

A. That's what that note says, yes.

Q. And your note says that as far back as the 18th May?

A. It does, yes.

Q. That's not something that is simply introduced at the end when the qualitative model produces the result that it does, it's something that's been in everybody's mind since the 18th May?

A. Yes.

Q. I think interestingly, your note of the meeting of the 18th May I think may also refer to the concept of bankability?

A. Yes, I think I noticed that in the notes myself, yes.

Q. I think you said, I think in relation to interconnection, I think you said they needed the criteria the consortia needed to be bankable in their business plan?

A. Yes.

Q. And so that reflects a discussion that occurred as far back as the 18th May and again, this was long before any applications had been made or received?

A. Exactly.

Q. And long before anybody knew anything as to the financial standing of any of the consortia?

A. Clearly, yes.

Q. And before anybody knew anything about who had even be applying?

A. Yeah.

Q. All right. Now, Mr. McGonigal has dealt with the meeting of the 9th June, and I won't pursue that, save to say that I think it is clear that the PTGSM did not agree weighting criteria which added up to 103?

A. Yes.

Q. But insofar as there was doubt or ambiguity in relation to that, that by the end of July, the weightings had been adjusted and reagreed because of the intervention of the EU and the licence fee?

A. Yes.

Q. And so as of the end of July, it is clear that the weightings were 30, 20, 18, 11 and so on?

A. Yes.

Q. So they were the last weightings agreed before the closing date?

A. That list was, yes.

Q. And this wasn't simply a table produced at a meeting

where people may or may not have spotted it, this was a situation where, I think, you contacted every member of the PTGSM?

A. Yes.

Q. You indicated that these were the weightings which were to be, which were now to apply?

A. Yes.

Q. And every member of the PTGSM either telephoned you or I think wrote to you indicating that they were in agreement with this?

A. I think I asked them to write to me.

Q. And I think some of the correspondence indicates letters from these various team members saying that they agreed with these weightings?

A. Yes, I agree.

Q. So these were the weightings determined prior to the closing date?

A. Yes.

Q. And as these were the last weightings, they were the applicable weightings?

A. Yes.

Q. Now, in relation to the quantitative evaluation, it was clearly an evaluation that was going to be limited in its scope, and obviously was the brain child of Andersens, and was also going to be, if you like, looked after by Andersens. But it seemed that it was clear, as far back as early September, that the

problems with the quantitative model exceeded even Andersens own predicted possible problems, isn't that right?

A. I think so, since they raised various problems, they admitted shortcomings, which I said yesterday was consultancy speak for problems. Even the phrase "admit" would suggest that there is something wrong, that there is something they are not happy with.

Q. Yes, you felt that this was significant, that they couched their introduction of the report in such heavily guarded language?

A. Exactly, yes.

Q. And it seems, and I think Mr. Healy put to you that of course they, to some extent, predicted a possible problem in relation to roaming?

A. They had predicted that in the original model, yes.

Q. And indicated they wouldn't score it, and of course that problem did arise?

A. Yes.

Q. But other problems so that was one problem which they had predicted which was already going to devalue the quantitative evaluation?

A. Exactly.

Q. But other problems which they hadn't predicted had also arisen?

A. Mm-hmm.

Q. And I think the notes indicate that this, these

problems cumulatively affected some 50% of the scoring in the quantitative model?

A. I think somebody else made that calculation, yes.

Q. And Mr. Healy suggested to you that one of the problems, I think the problem in relation to one of the applications about the calculation of IRR over 15 years, that a letter was sent by Andersens to you on the 21st August of 1995?

A. Yes.

Q. And that suggested a way in which the problem about one of the applications might be addressed by, instead of averaging out over 15 years, doing it over ten years?

A. Yes.

Q. But of course, firstly, that created another problem in itself because one would have to look at which ten years do you pick?

A. Yes.

Q. And secondly, even though that appeared to be the solution proposed by Andersens in August of 1995, when we come to the meeting of the 4th September of 1995, it's clear that that problem has not been resolved?

A. Yes, it seems it's clear that they are not happy because there has to be a judgement call made in terms of what numbers they put in, and since it's a quantitative model which is simply supposed to have hard numbers; I don't think they anticipated that

amount of judgement would be used.

Q. The IRR problem they identified on the 21st of August is still there. It hasn't been solved, despite their musings as to how it might be solved, it hasn't proved capable of resolution, and it's clear from their own notes and their own admissions to the Project Team, that it isn't, it doesn't appear to be solvable?

A. If they were satisfied I think they would not have included it in the introduction.

Q. Yes, and so in those circumstances, it's not just simply somebody saying, well, this is a model that we have organised on, but there are little problems at the edge, these are serious problems which they have, in some circumstances, in some cases already considered and been unable to solve?

A. Yes, I think so.

Q. So from the 4th September, certainly, it is clear that there were major problems in relation to the quantitative report?

A. Yes, I think there were major question-marks over it.

Q. And the quantitative model?

A. Yes.

Q. Now, when you go to the 14th September, your notes, and I think your minute, your records are at, in Book 58, Tab 10, you ask the question at the start of your notes, "Where are we? What next?" And later on, I don't think I don't know if you have your own Book

58, Tab 10?

A. Yes, I am looking at it.

Q. And I think you say, "Where are we? What next?" And

then further down the line you go, "Where from here?"

And what is discussed there is "Finalise qualitative."

That's number 1?

A. Yeah.

Q. And the quantitative evaluation simply isn't

mentioned. It doesn't figure?

A. It doesn't appear at all in this report, no.

Q. It appears to have disappeared. It had been left, I

suppose, to Andersens to try and fix this, if it could

be fixed, if it could be repaired, for them to repair

the quantitative model. But this was Andersens

were present at this meeting, and this just doesn't

arise at this meeting, it's not an issue that is

capable of being dealt with

A. They don't think it's worthy of mentioning.

Q. or being mentioned?

A. Yes.

Q. And Andersens aren't pursuing you, there is no

correspondence which indicates that Andersens pursue

you saying 'Here is a way we can fix these problems,

here's a way we can get the quantitative evaluation

report model to work'?

A. No, I don't recall any such correspondence.

Q. In fact, if we look at the various minutes of the

meetings, and the work programmes that are decided upon later, we see that Andersens set out a fairly considerable programme of work to be undertaken by the Project Team; for example, the work proposed, and this is in Book 42, the proposed work at Tab 109. They have a programme of work, again addressed to you, from Mr. Andersen, it's dated the 17th September of 1995.

And they set out a schedule of work to be undertaken.

A. Yes, I see it.

Q. And of course, this relates to the sub-group, the sub-groups and the various evaluations that are to take place?

A. Yes.

Q. But there is no further work proposed in relation to the quantitative evaluation of any sort?

A. No, there is nothing here about it.

Q. Nor do they indicate in their own note that they propose to do further work which they will then give to you?

A. There is nothing at all in this page about the quantitative.

Q. And if we then go to Tab 111 in the same book, they say they refer to the work programme for the next ten days, and that's from the 21st September onwards?

A. Mm-hmm.

Q. And again it's clear that no further work is going to be undertaken in relation to the quantitative



evaluation?

A. Yes, there is no mention of it at all in this document, I think.

Q. Indeed, it's clear that the quantitative evaluation, the work in it has ceased, and there is clearly a problem as to how it's going to be included, if at all, in the report, if one looks at the last page of that memorandum under "Questions to the Department"?

A. Exactly. It's not clear whether it will be used.

Q. It says, "How do they integrate the quantitative evaluation in the report? We prefer to leave this question unanswered until we have the final results."

And at that stage, it's clear that it's possible that it won't be integrated, or it's certainly unclear as to how it would be integrated at all, if at all, into the report?

A. It seems that under Section E they do provide a description of what they anticipate at that stage would go into the draft report, and it doesn't include as far as I can see, it does not include the quantitative.

Q. It doesn't appear to refer to it at all. Exactly.

And so in those circumstances, not only have the civil service side of the PTGSM stopped working, because of course they never started on the quantitative evaluation, but the AMI, the originators of the quantitative model, the people who had responsibility

for it and who were the only people inputting any information into it, they had also stopped working on the quantitative evaluation completely?

A. Can I just say that it's also clear from these documents, and the rough notes of the meetings, that it is Andersens who are setting the pace and who are saying 'This is what we have to do, these are the next steps, this is the work programme.' They defined the work programme, if they had, therefore, made a recommendation within that, 'Oh, and you might not be doing it but Andersens will be doing it also', it would have become clear there, but we very much took the guidance of what was important from them.

Q. Yes. In the context of setting the pace and setting the work programme, I think it was around this time that the negotiations in respect of Andersens' fees concluded?

A. I think they were substantially concluded on the 14th, yes.

Q. And I think at that stage, the timetable proposed was a timetable that Andersens would provide a report by the 25th a final result by the 25th October?

A. A final report, a third

Q. Provided on the 17th?

A. A third draft report, but it would be the final report on the 25th, yes.

Q. And that was an Andersens driven momentum, you say,

rather than something that had come from outside?

A. It seems clear that the I was involved in the, in those contractual discussions with Andersens, and this was clear at the time, that they had budgetary problems which had arisen because they had used an inaccurate exchange rate estimation in their original tender, and they had resource problems, and I think the impression was they wanted to finish it as quickly as possible.

Q. I see. Well, if there could be any possible doubt, then, about the uselessness, if I can, not put too fine a point on it, of the quantitative evaluation, these are resolved by virtue of the minutes of the meeting of the 9th October. Now, and they are at page 120 of Book 42, Tab 120.

Now, again, Ms. Nic Lochlainn, I understand that you weren't at that meeting?

A. Yes, I wasn't.

Q. So it's not just your view that these, the quantitative evaluation was no longer of any use, it's the view as recorded by Ms. O'Keeffe of the people who attended that meeting, that the quantitative evaluation couldn't be used. And I think if we look at that meeting, it's at Tab 120. Over the page, under "Discussions of the evaluation report, the agreed amendments included" and the first three set out

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

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

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

" Inclusion of an executive summary and annex explaining some terminology.

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

So it's clear from the person making the minutes of that meeting, that the meeting had agreed that the quantitative evaluation could not be regarded as part of the evaluation process, and could not be presented as being part of the evaluation process?

A. Exactly. And I understand that these minutes would have been circulated, and there were no objections to that part.

Q. And they were also circulated to you, I see?

A. Yes.

Q. As well as the people who attended the meeting.

And I think without opening them again at length, I think it's clear that the quantitative evaluation and the uselessness of it at this stage, was discussed,

and as noted by the verbatim note of Ms. O'Keeffe, which is over, in the next tab, this clearly was discussed at this meeting at some length. There were a number of contributions, and agreement was reached in the manner recorded in the minutes, that the quantitative evaluation could not be part of the evaluation process?

A. Yes, it's clear that discussion took place and that Margaret made those notes.

Q. Right. Now, if we can then come to the weighting and, in particular, the allocation of the weights, the 30 marks into 10, 10 and 10.

A. Yes.

Q. Now, you, of course, were not in Copenhagen and weren't at the meeting where the

A. Those tables were devised.

Q. Yes, exactly, where the split of the 30 into 10:10:10 appears to have been first mooted by the people there.

And of course, this is a split that's not just mooted by one person, but it's a table that is agreed by the people participating in that sub-group?

A. Yes.

Q. It is then brought back to the meeting of the 9th October?

A. Yes.

Q. Now, you weren't at the meeting of the 9th October?

A. No.

Q. But my understanding of your evidence is that it wasn't while it wasn't formally presented at the 9th October, as of, if you like, a motion before the House

A. Yes.

Q. that the 30 should be split into 10:10:10. This was a matter which the participants in the sub-group were entitled to do, firstly; and secondly, that the Project Team had no difficulty with them taking the approach they did, after the matter had been discussed, that was the result of the discussions on the 9th October?

A. It seems clear from the notes that are available to me, that these matters were discussed, and it seems clear that the next version of the evaluation report had the same split, and it seems to me that it is clear, then, that the discussion concluded that the 10:10:10 was a reasonable thing to do.

Q. Now, Ms. Nic Lochlainn, you were one of a number of members of the PTGSM, but it was a fairly high-powered team. There were senior civil servants from all sides of the Department house, if I can put it that way?

A. Yes, and from the Department of Finance.

Q. And from the Department of Finance. So there was the regulatory side, the technical side, the development side, Finance, and AMI?

A. That's right.

Q. So, and of course, the AMI at least the Department of Finance personnel included people from the private sector who had been seconded

A. Yes, Billy Riordan, yes.

Q. And you knew many, if not all of these people well before you participated in this evaluation process.

They certainly weren't afraid of making their views known or heard?

A. No. It was certainly the case that at any of the meetings anybody who wanted to make a view known, could have done so, and Martin Brennan's style of Chairmanship would have been very clear about that.

Q. Yes. And it isn't a situation where the, one of the participants would be in some way cowed into submission by virtue of the, what was being presented to him as having happened in Copenhagen. If he felt or she felt that there was a problem, do you think any of the people who were there were the kind of shrinking violets who would have said 'Well, I think I'll just go along with this'?

A. No, I don't think the people in that group were shrinking violets or in any way cowed I think the fact that the discussion of the reports were lengthy shows that there were plenty of opportunities for people to say what they wanted, and they were the kind of people who would have said what they wanted.

Q. And while Mr. Healy put to you in resolute terms that

there was no formal resolution adopting the split of 10:10:10, nor was there any formal motion put opposing this

A. Of course not because if there had been and if it had been accepted, it would have resulted in a change to the evaluation report. And can I just in terms of whether people were forthright or not, I have heard the suggestions made in transcripts of these proceedings before that, well I think it was made in my own evidence when I was in, here in March, that well, I was, you know, a relatively junior member of the group and that I was a relatively junior member of the group and that might have influenced me as to whether or not I would intervene on any point, and I just want to put it on the record that I have never had a difficulty of intervening in any forum in relation to something which I think is important. And I think that that kind of modus operandi is quite standard in the civil service and that people, if somebody has something important to say, that it isn't taken in the context of what grade that person is. It is simply something that is important to say, and it is listened to. And I just think that that's important to say.

Q. I don't think anybody who has heard you give evidence would believe that you'd hold back if you had something to say?



A. No, I think I am generally regarded as a forthright person.

Q. I don't think, nothing we have heard up here would lead anyone to differ from you in relation to that.

But I mean, that was the position in relation to the other personnel there?

A. Of course, yes. There is nobody there, off the top of my head, I could say would in any shape, way or form be described as a shrinking violet type of person.

Q. And so if they had had problems with the 10:10:10, firstly, there seems to have been discussion about weightings, certainly that appears to have occurred, but if after the meeting of the 9th October they had problems with the 10:10:10, they could have raised it?

A. They could. They could have raised it either with members of the group or with senior members in the Department who were not on the group or in the Department of Finance.

Q. There is a reference made, I think by Mr. Healy, to Mr. Riordan's notes, and that the figures, some figures appear on his copy of the final report that suggest, and of course Mr. Riordan's evidence isn't clear on this, that somebody, either Mr. Riordan or somebody else still had a figure of that sort in their head. Now, I don't expect you to comment on Mr. Riordan's evidence, but do you know how long Mr. Riordan had to read the report on the 9th October,

how far in advance he had it?

A. I am not certain, no. I think we received that report in our Department on the 3rd October, but I am not clear when it was circulated or how quickly.

Q. I think it's conceivable that the figure, that if he had a problem with it, that it may have arisen afterwards, he may have only noted this subsequently?

A. Quite possible.

Q. And brought this to the attention of the team on the subsequent meeting on the 23rd October?

A. I am not certain when it came to his attention, but I think, given the way the group operated, that at any meeting that he felt it was an issue, he could have raised it and it would have been discussed and given a fair hearing.

Q. And again, at the meeting of the 23rd October, which you were of course in attendance?

A. Yes.

Q. And again was there any suggestion in which people were being leaned on or squeezed or a certain result being driven through? I mean, I appreciate you stand to your memory rather than to any record that you compiled of it, but can you tell us about that?

A. The only thing I remember about the meeting is that there was contention, but that it was contention in relation to the presentation of the report. I had no recollection at all that there wasn't agreement on the

result, or that there was any disagreement about the tables, since the tables had been in the report for quite a while at that point.

Q. I think the only

A. I have a feeling that there were certain members of the group I have a memory that the meeting was suspended at some point, and I have a memory of standing in a corner of the room with one or two or three other members of the group, I can't say for certain who they were, but I have a feeling it might have been Jimmy McMeel and Fintan Towey, but in any case my memory is there was a clear sense of frustration, in that everybody was agreed this was the result and that the to-ing and fro-ing and the back and forth and the arguments were really in relation to presentation.

Q. And I think Mr. McMahon's note and his evidence were, was to the effect that there was disagreement as to which table would be presented as being the final result, whether it would be 16, 17 or 18, and ultimately we know it was, that the old Table 16 was relegated and Table 17 and 18 were promoted into the position whereby they presented the result, but it was that level of

MR. COUGHLAN: Just for clarification, Table 17 is presented in the report, just to keep the record straight, as the end result.

MR. O'DONNELL: But that is old Table 18.

MR. COUGHLAN: Old Table 17, old Table 17 is presented as the result in the final report. That's very clear.

Q. MR. O'DONNELL: What's clear is that Table 16, 17 and 18 were renumbered as 15, 16 and 17. But there was no discussion, as you recall, of somebody saying not just which table do we use? But that we have to change the figures in the table. That did not happen?

A. Not at all. I have no memory that there was a disagreement with the tables. There is disagreement in relation to the presentation, and particularly around the text.

Q. And so as far as you are concerned, the split of the weights into 10:10:10 were firstly a reflection of the 30 that had been agreed if at no later date, certainly by the end of July prior to the closing date?

A. Yes.

Q. That that split of the 30 into 10:10:10 was a matter which the sub-groups were entitled to do, the sub-group in charge of marking were entitled to take into to do themselves?

A. Yes, yes.

Q. That they then brought it back to the team, the full team meeting in plenary session, and that while not formally minuted as a motion proposed, seconded and voted upon, was adopted by virtue of the certainly by the minutes of the 9th October certainly by

virtue of adoption of the report?

A. Yes, by the fact that there was a discussion and the next table the next report with that table had the same split, I would say that is clear that there was no that the discussion did not conclude by saying that that split was unsatisfactory. That it must have concluded by saying that the split, which had been proposed in Copenhagen and returned to the group in Dublin, was acceptable and should remain in the report.

Q. If it hadn't been agreed, then one would have expected all the tables, the relevant tables to be altered or taken out, and one would also have expected the minutes to reflect disagreement, disharmony in relation to that part of the tables?

A. And I would have expected to have had interventions at the meeting on the 23rd which would have been outraged because, if they thought that a different split had been agreed

Q. Put back in again after it had

A. Yes, and I have no recollection of any such row.

MR. O'DONNELL: Thanks very much Ms. Nic Lochlainn.

THE WITNESS WAS FURTHER EXAMINED AS FOLLOWS BY

MR. HEALY:

Q. MR. HEALY: Just clarify a few small matters, Ms. Nic Lochlainn. Just to know which of your evidence is based on documents and which, if you like,

reconstruction from documents, and which is based on your memory.

Firstly, did I understand you to say in answer to Mr. O'Donnell that there was a quantitative model and a qualitative model?

A. There was the evaluation model which contained a quantitative table with quantitative splits of the indicators.

Q. There was an evaluation model, only one model ever, isn't that right?

A. There were two versions

Q. There was only one model?

A. There was an evaluation model document, one dated

Q. Yeah, there is only one model. It had two aspects, a qualitative and a quantitative?

A. Yes, I agree.

Q. And everybody knew that in advance because that's the play that Andersen made beforehand, isn't that right?

A. Everybody was aware that there were two elements to the model.

Q. And you knew that that was the play because that was in the Andersen tender document, are you aware of that?

A. I am not certain if the entire group was familiar with the tender documents, but certainly when the evaluation model was presented in May, it was clear that there was two elements to the evaluation model.

Q. Now, do I understand you to say a moment ago that you thought the notion of bankability was referred to on the 8th was referred to early on in the process, on the 8th May?

A. I can't remember exactly

Q. On the 18th May. Mr. O'Donnell said that

A. There were rough notes which had the word "bankable" or "bankability", I can't remember which one.

Q. What did they mean?

A. Well, if I could refer to the page?

Q. Well, you gave your answer a moment ago. What did you mean when you said "yes"?

CHAIRMAN: I think Mr. Towey's evidence last week, that was it came up initially in the context of interconnect.

MR. O'DONNELL: Yes, business plan.

A. Do you want me to look at this particular page?

MR. HEALY: Yes.

A. Sorry, if you could help me in telling me where it is.

Q. I think it's Tab 1 of Book 58, is it?

A. Yes, I have just found it, thank you.

Q. If you look at the first page. Could you read out the relevant part to me?

A. It says, "Critical as to whether or not they join".

Q. What's that about?

A. I think this is in relation to the discussion about interconnection, since I think an applicant had

written in saying that they were either considering withdrawing from the competition or had withdrawn.

Q. So this was Vodafone?

A. It could well have been Vodafone.

Q. This was not during the evaluation process, is that right?

A. Whether Vodafone withdrew or not?

Q. No, you weren't evaluating any applications at this stage, no?

A. At this stage we were at a meeting on the 18th May

Q. You weren't evaluating any applications at this stage?

A. No.

Q. Because it was the 18th May. You hadn't even yet agreed on what way to evaluate the criteria?

A. Depending on which part of the meeting this took place on, yes.

Q. I think Vodafone were criticising the fact that no rate for interconnection had been furnished, if you like, by the Department, in the competition documents, and that therefore, you couldn't make a bid without knowing what interconnection was going to cost you, isn't that right?

A. I am not exactly familiar with what Vodafone said, so I have to take it on trust that I don't have the document.

Q. You have a note that says, "Charge needs to be banked/bankable in their business plans." Is that



right?

A. I think it says "charge", yeah.

Q. Is there some reason why this is related to the reference to bankability later on in the process?

A. I don't believe that it is necessarily connected. I think it is simply I think it has simply been raised as an instance where considerations in the group related to whether something was or wasn't bankable, which was obviously raised by somebody who was at that meeting, and not, perhaps, by people outside the meeting.

Q. Do you know what it means in this page of your note?

A. What it means there?

Q. Yeah.

A. I think it means that information in relation to the level of interconnection charges needs to be available to the applicant in order for them to be able to decide what's in the business plan, or whether the plan as it holds together is bankable or not bankable.

Q. What does "bankable" mean in that context?

A. I think it might mean whether there is or isn't clarity in relation to the interconnection charge levels.

Q. Sorry, I didn't pick up the last whether there is or isn't

A. Clarity in relation to the interconnection charge levels, because it seems to be suggested that if there

isn't clarity, or if there is clarity it would make a

big impact on the business plan.

Q. I understand that. I understand that. But what does the word "bank/bankable" mean in this context? "Needs to be banked/bankable in their business plan." That's not what "bankable" means, surely?

A. Since I think it is highly likely that at this stage I was writing down what somebody else was saying, and not what I had said myself...

Q. Does that mean you really don't have any recollection of it and don't know what it means there?

A. I think, as I have said before, my understanding, looking now at the notes that I took then, were that whether or not you had information about the interconnection charge would impact upon your business plan, and whether you could produce a bankable

Q. Of course, but you don't understand it beyond that?

A. That's as much understanding as I can give it.

Q. Now, you were asked about the

A. I suppose I it simply suggests that there were discussions in the group on that day, which was the 18th May, and that the words "bankable" and "bankability" and the concepts of bankable or bankability were discussed.

Q. Was the word "bankability" used, as a matter of interest?

A. I can't say because I can't remember the meetings, but

bankable seems

Q. Let's just be clear about it, so that we are not accused of reconstructing. The word "bankable" is used, is that right?

A. The word "bankable" is in my notes.

Q. And the word "bank" is used?

A. The word "banked".

Q. The word "banked", right. Okay. Do you remember you were asked about the admitted shortcomings in the first quantitative evaluation report, do you remember that?

A. Yes.

Q. And I think it was suggested that at one point somebody had stated that 50% of the scoring was unreliable, do you remember that?

A. It was suggested, yes.

Q. Do you know that yourself, or are you simply recalling that somebody said that and that was recorded, as we know, in the notes?

A. I think I have done a calculation at some point which takes the indicators underlying the points they have made here, and it adds up to at least 41%.

Q. It's not 50 in your tot. What ones did you add up and how did you arrive at that?

A. I think I add up the weighting for the OECD-basket, the block-out rates, the IRR, I don't have the tot in front of me.

Q. Right. Well, we know that the we know that at that time blocking and drop-out rates was still waiting more information, and we know that international roaming was a predicted problem, isn't that right?

A. International roaming, it had been stated in the evaluation model could be difficult.

Q. And we knew that we were waiting for more figures on blocking and drop-out, isn't that right?

A. The notes at the end of the meeting would suggest that written responses were

Q. Now, in relation to IRR, what's your understanding of the position in relation to that, because you mentioned that in your evidence when you were being examined by Mr. O'Donnell?

A. It seems to me, as I said yesterday, that the IRR point is mentioned here as a problem. And it seems to me that when you look at the further text on the second page, that they are suggesting that some recalculation is going to be necessary, and it seems that the outcome of that recalculation will vary depending on which year you choose, which again as I said yesterday, would suggest that it is slightly dodgy because you are beginning to bring judgement to bear on something which is supposed to be a straightforward number-crunching exercise.

Q. And you said the problem with the IRR was never resolved, in evidence, in answer to Mr. O'Donnell, is

that right?

A. As I have always said, in relation to these meetings, it's really by the notes I am going, and it would suggest on the second page, that the problem on IRR has not been resolved, because what a redo on IRR is going to depend on which year you choose, which obviously brings a very subjective judgement to bear on what people were trying to purport was a number-crunching exercise.

Q. Could I suggest to you that that's, perhaps, maybe an unnecessarily severe interpretation of the notes, because we know that IRR figures were used in the qualitative in the exact form in which they were used in the quantitative, isn't that right?

A. I am not exactly sure in which form the IRR I wasn't involved in that part of the evaluation.

Q. They were used in self same form in the qualitative as they were in the quantitative without any changes at all; they were simply inputted into the qualitative.

So if that's the case, could there have been anything wrong with them? Or if there was something wrong with them, are we now to have to examine whether there was something wrong with the qualitative?

A. It just seems to me that the fact that they were used in the qualitative falls exactly into the description of the qualitative which was described as a process which would allow you to make judgements, and allow

you to have feel factors, and allow you to perhaps move away from the exact figures.

Q. But if you didn't do any of these things, if you simply put them in, and I may not be able to do this with you because you may not be familiar with it, but I am sure the Department can look at this; if you simply put them in on a number-crunching basis, which was done, using the selfsame figures, and arrive at a score based on the number-crunching scores, doesn't that suggest that there was nothing wrong with IRR?

A. I am not certain in this last question whether the score you are referring to is a score which was made on the qualitative evaluation of IRR.

Q. It was made on the qualitative, but the score was based purely on the number-crunching?

A. I think it is difficult at this remove to decide exactly how the score was arrived, since it was possible they had an input from the quantitative model in that element, but a) I wasn't involved, but it's also not clear what other judgements were brought to bear.

Q. Lets just clarify the aspects that you were involved, and those that you weren't involved. If IRR was used in the qualitative and the same numbers as were used in the quantitative were put into the qualitative, then from that, it must follow, there was nothing wrong with the numbers at the end of the day, isn't

that right, if that's correct, if that's correct?

A. I would not accept that, because I would accept that if there was figures being used in the qualitative evaluation in relation to the IRR, that the qualitative evaluation had always been proposed to be an evaluation which would allow subjective judgements to be brought to bear, and that if you've brought in an input where it is clear from the rough notes of the meeting of the 4th September at least, that there was a judgement being brought to bear, that that is fully acceptable in the context of the qualitative evaluation because that is exactly what was envisaged, and that is why a qualitative evaluation was needed as well as a quantitative one.

Q. So what you are saying is that if the IRR figures were introduced into the qualitative, and a judgement was applied which took account of perhaps some frailties in the figures, that would be okay, that's what the qualitative was for?

A. I believe that's what the qualitative was for.

Q. Okay. But if, in fact, the figures were introduced into the qualitative and no subjective judgement was made, if they were simply scored as numbers, does that mean that they were being accepted in the same form in which they had been used in the quantitative, without any judgement being brought to bear?

A. It is possible that the judgement will be brought to

bear and the conclusion of that judgement calling was that they were accepting the figures

Q. Just take this slowly, Ms. Nic Lochlainn. I have been through the proposition you have put to me, and I accept what you say. If the qualitative examination of IRR entailed making a judgement which took account of some then apprehended frailties in the IRR figures, then you could say that it was being brought into the qualitative and the judgement call was being made to take account of these frailties, isn't that right?

A. I am sorry, could you repeat that, please?

Q. If you use the quantitative evaluation figures containing IRR in the qualitative evaluation, but if you felt there was something wrong with those figures, it would be okay to use them in the qualitative, as long as you made a judgement call in scoring those figures to take account of the frailties that you believed existed in them. Do you understand?

A. Yes.

Q. And that would seem a reasonable way to proceed, wouldn't it?

A. It would.

Q. If, on the other hand, you took the quantitative IRR figures from the quantitative evaluation and put them into the qualitative evaluation and made no judgement call in relation to them, simply accepted them as they were in black and white from the number-crunching, and



scored them on that basis, that would seem to suggest that any problems in relation to them had been sorted out, wouldn't that be right?

A. It would seem to suggest that.

Q. Thanks. Now

A. I'll have to add that I was not involved in the financial sub-group, so I have no idea what they did.

Q. I understand. Now, just one or two final matters.

I think you say that it's your belief that on the 9th October, at the meeting of the 9th October, there was a discussion on the 10:10:10 split in marketing, is that right?

A. As I said, I wasn't at that meeting, but there seemed to be records of the people who were which would suggest that those weightings and that split were discussed.

Q. Could you just show me that, because that would be of assistance? I think the meet the notes you refer to are in Book 42, and you were referred to, I think, Book 42, note, or Leaf 120 and 121 when you were answering those questions, so presumably the answer is in there somewhere?

A. I have some documents, I am not sure which ones you are talking about.

Q. It's the ones you were talking about that I am interested in. You were asked questions about the 10:10:10 split, and you were referred to the meeting

of the 9th October and the two notes of that meeting,  
and you gave evidence that you thought that the  
10:10:10 split had been agreed at that meeting and  
that a record of that was to be

MR. O'DONNELL: She said there was a record

Q. MR. HEALY: Let me finish. And that in a meeting  
there was some record from which you could infer that  
the 10:10:10 split had been agreed?

A. I think if you look at the

MR. O'DONNELL: Give the answer that she actually  
gave. "It seems clear in the notes that were  
available that these matters were discussed, and it  
seems clear that the next version of the evaluation  
report had the same split, and it seems to me that it  
is clear that the discussion concluded that 10:10:10  
was a reasonable thing to do." That's what her answer  
was. It's at page 81, line 7.

A. In relation to

Q. MR. HEALY: Go ahead.

A. In relation to the record behind Tab 121, these are, I  
think, the verbatim notes as approved by Margaret  
O'Keefe, and in relation to the weighting, which  
comes on the third page, it says that "Table 17  
different from agreed weighting".

Q. Yes.

A. So I think that is, in terms of the notes which I  
think Sean McMahon made, but I don't have them in

front of me now, in relation to

Q. Table 17 is different at agreed weightings?

A. As in the split of indicators on Table 17.

Q. Well, where does it say that, Table 17 is different from the agreed weightings in terms of overall figures?

A. If we looked at Table 17, what is different?

Q. Well, let's go and find it.

A. I think it is the split that is different.

Q. It's the whole weighting, not just the split, isn't it? Do you want to have a look at it? Maybe it could help you. If you get Book 54, which is the weightings book. And if you go to Leaf 2, I think, and if you go to page 17

A. Sorry, I don't have 54, so you might give me a moment, please. I can see that on the screen, but I am not sure what part of folder

Q. Have you got Table 17 as well?

A. I can see Table 17 on the screen, but I can't see I am holding 54

Q. Don't get confused. What you see on the screen is page 17 of 21 of the second version of the evaluation model, the agreed version?

A. The 9/6 version, yes.

Q. And what you have there is a list of all of the we have changed it now, what you had on 17 of 21 was all of the indicators with their scores on the

quantitative model. And that model, if you tot up the scores for the first dimension, market development, or the first criterion, gives you a score of 32.5.

A. Yes.

Q. And it says, "Table 17 different from agreed weighting". The weights there on Table 17 are different from the weights in the

A. In the quantitative.

Q. Yes, if you do the tot, yeah. And you are saying that that means that somebody raised that point and must have got an answer that it was acceptable?

A. I was saying that I wasn't at this meeting, that I was relying on records that were taken by Margaret O'Keeffe, and I think by Sean McMahon, to indicate that there were discussions about the Table 17, whichever number table it was, and the split, in relation to people having queries about whether the 7.5 should have applied or shouldn't have applied.

Q. I think the point you make is an interesting one, and I think it is helpful, but I don't want to get the meetings mixed up. I think we already had a bit of a mix-up on them.

Sean McMahon's notes on this meeting don't account to very much, and he doesn't deal with the notes, with the weightings at that meeting. If you go on, in fact, to Tab 122, you'll see that that, there is more than a few lines. But let's just take it a step at a

time.

A. But in relation to, even if you take "Table 17 is different from the agreed weightings," if the agreed weightings were 30, 20, da-da-da, if you look at Table 17, I think it does add up to 30, 20, da -da-da, so it's the same. So the only way you can say it's different is if the split is different.

Q. If you look at Table 17 I see the point you are making. You say that Table 17 differs from the agreed weighting in the sense that

A. If you look at it, it says 30; if you go back it says 30. If you look at it, it says 20; if you go back it says 20. Where as if you are saying there's a difference, you look

Q. I understand. I misunderstood. You are saying that Table 17 differs from the 30, 20, 18 and so on?

A. Well, since I can't see Table 17, what I think if I could see Table 17 it would help. It says 10:10:10, which adds to 30 for the top. It says 10, 10, which adds to 20 for the second. It says 18, 11, 7, 6, 5, 3, and that is, I would argue, the same overall weighting as, whereas the only thing that is different is that there were records which split the alleged 30 into 7.5, etc., and these differ.

Q. Right, but can I just get this clear. I think I get your point. The first point you are making, you are saying that anyone looking at this would say Table 17

has 30 for the first criterion. That differs from the agreed weighting, and the only difference is in the split?

A. Yes, the only difference from what was agreed before is that it's 10:10:10, whereas for the quantitative model there had been 7.5, etc..

Q. Yeah. Which would come to 32.5, right. But can't you see, it cuts both ways? I mean, you may be right.

A. I may be right, it is quite possible that I am right because I am telling the truth, so I don't know what else is right.

Q. You don't have to be telling the truth to be right, unfortunately. You could be wrong when telling the truth. I am sure you have no doubt you are trying to tell the truth.

A. I am not trying to tell the truth, I am telling the truth.

Q. You weren't at this meeting?

A. I wasn't at this meeting, and everything I have said about this, I have based it on the records that are available.

Q. And we are trying to reconstruct it from records. And you have made what I think is an interesting point, that Table 17 differs from the agreed weighting, because Table 17 has 10:10:10 for the top three, isn't that right, top three dimensions?

A. Since I wasn't there, it seems to me that the "Table

17 is different from the agreed weightings" is reference by somebody who had, to a discussion by somebody who had a problem with the 7.5 not being there.

Q. Yes.

A. I don't know whether they were referring to the 32.5 versus 30.

Q. They could have been referring to the 32.5, couldn't they?

A. Since they could have been, I suppose. I wasn't there, so I don't know.

Q. It's either way, isn't it? They could have been referring to the 32.5, or they could have been referring to the 10:10:10 split?

A. The only thing I would say in the context of that is that it was, I feel, that it was the one thing that was clear among Project Group members, was that there were written records where people confirmed 30, 20, da-da-da, that they had no, as far as I can see, there wasn't an understanding in the group that they had agreed 32.5, etc..

Q. But

A. So in terms of writing down "agreed weighting", I would suspect that agreed weighting was 30 and not 32.5.

Q. Yes, but it's not just the 32.5 I am interested in, it's the fact that the split is 7.5, 15, 10. Do you

understand me?

A. Yes, and I believe, again, that from the record that it is different from the agreed weighting, that they are referring to the 7.5.

Q. We know that after that meeting another version of the evaluation report was produced, isn't that right, the evaluation report? We had the 18th October version, Tab 46.

A. Of the same folder?

Q. Yes. Oh, I am sorry, I beg your pardon, not of the same book, but we'll get the book for you. Have you got the next have you got Book 46?

A. I just want to say one thing in relation to what we were just saying about the 32.5, I would repeat that I became aware of the 32.5 in March of 2002 or thereabouts. So I don't know if there were discussions that took place then that I wasn't aware, that other people were more aware of it than I was.

Q. Nobody else seems to have been aware of it, but anyway, go on ?

A. Pardon?

Q. Nobody else seems to be to have been aware of it but it still may be worth discussing it?

A. Well that would accord with the fact that I was surprised when I discovered it in March of last year.

Q. At this meeting I mean, nobody else we do know it was mentioned in detail at the next meeting. But in



any case, this issue was raised, you say, in some form or rather what you are saying is it could have been raised and your reading of the note is that it could have been raised. Now, would you look at Book 46, Leaf 46, have you got that?

A. I do, yes.

Q. And Leaf 46 contains the evaluation model, sorry, I beg your pardon, contains the evaluation report 18th October draft?

A. I do, yes.

Q. And Leaf 47 contains the appendices to that, do you see that?

A. I see that, yes.

Q. And if you go to Appendix 3?

A. Yes.

Q. Page 10. Have you got that?

A. Yes.

Q. And remember you said to Mr. McGonigal this morning that it was, as you thought, I think, quite unsatisfactory you may have used even stronger language, that a historical document should have been altered in reference to this document. Do you remember that?

A. Yes.

Q. Now, the only thing that happened in relation to weightings between the meeting of the 9th, which considered the report of the 3rd, and the meeting of

the 23rd, which considered the report of the 18th, was that this historical document was altered so that the weighting in Table 17 agreed with the weighting in the evaluation model. Can you see that?

A. I am afraid that was a very long sentence, so...

Q. Pardon?

A. I am sorry, it's hard for me to remember the beginning of the sentence and I'd prefer if you'd repeat it. I am sorry.

Q. Let's take it again slowly.

A. Yes, thank you.

Q. If you look at, for a second, at the minute Ms. O'Keefe kept of the meeting of the 9th, you have the heading "Weighting" and then you have the words "Table 17 different from agreed weighting". Isn't that right?

A. That's correct, yeah.

Q. And you're suggesting as a possible interpretation of that that might indicate there was a discussion which resulted in the 10:10:10 split being agreed?

A. Being confirmed; it had been proposed and it was confirmed.

Q. What I am asking you to look at is a change that was made to the evaluation model in the next draft of the report, and if you look at that change, you'll see that the weighting for the top three indicators was changed to 10:10:10. Market penetration score 1,

market penetration score 2 were given a mark of 5 each, giving a total of 10. Speed and extent of demographical coverage for class IV hand-held terminals is 7. Tariff is 18. Number of international roaming agreements, 6. Number of cells, 10. Reserve capacity, 10. Blocking and drop-out rate, 2.5, 2.5, giving a total of 5. Frequency economy figure, 3. Number of network occurrences, 10. Up front licence payment, 11. Solvency and IRR, 5 each, making 10.

Now, that tallies with Table 17.

A. It does, I agree, yes.

Q. It was made to tally with Table 17?

A. By the consultants.

Q. Whoever it was done by, it seems to be much more closely related to the reference to Table 17 differing from the agreed weighting, than the proposition that you have advanced, doesn't it?

A. I am not certain if that conclusion can be drawn.

MR. HEALY: Thanks very much.

CHAIRMAN: From my recollection of your colleague, Mr. Towey's evidence over the last couple of weeks, I think when he had put to him the two issues; namely, the suggestion or contention that the Project Group may have effectively abandoned the quantitative report, and secondly, the issue of the 10:10:10 division within the first criterion, Mr. Towey, again

he was asked was there any express agreement, and he said the basis of the Project Group approval was implicit. Would you go along with that?

A. In that they agreed that table.

CHAIRMAN: Well, you are saying that it wasn't specifically set forth, but that from all the circumstances, you feel it's a conclusion that should be drawn, that they agreed on an implied basis both to drop quantitative evaluation as a serious ongoing part of the assessment, and also, as regards the subdivision of the first criterion?

A. I am not sure what you mean when you say "implied".

But it seems to me that there was a strong feeling at the meeting of the 4th September that there were problems with the model, and I cannot recollect whether that was formally changed into a decision not to do anything with it.

CHAIRMAN: Lastly, it may be a matter that Mr. Healy asked you about on your earlier occasion in the witness-box, as regards the very late service on the Project Team members of the last minutes of what obviously was the important last meeting. Can you recall the circumstances that delayed that?

A. I can recall that I was on holidays in November. And I can recall that it was a process where we were very busy up till the last minute, and that then once the final report was in and the decision had been

announced, obviously the pressure went off, and as is normal when you have a lot of jobs to do, and one of them is very busy you neglect all the other ones. So no, I don't have any specific recollection, except that it seems to reflect what would be the normal way to work, that you work on your pressure point until that's past the deadline and then you turn your attention to other things.

For instance, I think I was involved in travel to Brussels in relation to European directives around that time, and I certainly took at least two weeks, and I think two weeks leave in November, so I think I had stated earlier in relation to the minutes on the circulation, that there was no agreed procedure as in once there is a meeting, it's the following week that the minutes are circulated, and in a sense Martin Brennan left that to me.

CHAIRMAN: But in essence, once the result was announced and the press conference had been held, the heat had gone out of it?

A. Exactly, and since it was my understanding there was clear unanimity about that report and the result, there was no pressure to produce minutes to confirm that.

CHAIRMAN: Very good. Thank you, Ms. Nic Lochlainn.

Well, as regards ongoing sittings then, I think I did mention last week that our sequence as regards

concluding the civil service evidence has been, through no fault of the individual involved, who has enormously involved travelling commitments, and who at present is in New Zealand, has been somewhat inhibited by the question of his availability. It remains my firm hope that his new employers may assist in making him available for two days next week, which it seems to me, is enormously desirable to try to conclude this sub-phase with a view to taking up the other witnesses outside of the Project Group at the earliest possible vantage point.

So I think I will provisionally indicate there is no witness for tomorrow, that it is my firm hope that we will be able to sit for that witness on Tuesday and Wednesday. If that transpires to be simply impossible, I will cause communication by website on the usual basis with interested persons. Very good.

Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL FURTHER NOTICE