

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, BL

Instructed by: John Davis

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES: Mr. Richard Law Nesbitt, SC

Mr. John O'Donnell, SC

Mr. Conleth Bradley, BL

Instructed by Matthew Shaw

Chief State Solicitors Office

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

Mr. Gerry Kelly, BL

Instructed by: Eoin O'Connell

William Fry Solicitors

FOR TELENOR: Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Kelly Noone & Co.,

Solicitors

FOR DONAL BUGGY: Colleen Cleary

Landwell Solicitors

OFFICIAL REPORTER: Mary McKeon. SCOPIST: Ralph Sproxton

I N D E X

Witness: Examination: Question No.:

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 18TH JUNE, 2003 AT 11AM.

MR. COUGHLAN: Mr. Donal Buggy.

MS. CLEARY: Can I make an application on behalf of Mr. Buggy. The name is Colleen Cleary, and I am appearing here on behalf of Landwell Solicitors to renew an application for representation for Landwell Solicitors on behalf of our clients, Billy Riordan and Donal Buggy, who have been represented since August 2001.

As you are aware, an application for representation in respect of Mr. Riordan and Mr. Buggy was previously made on the 9th April 2003 by Mr. Jim Trueick of our office. After further discussions with the solicitor for the Tribunal, John Davis, we wrote to John Davis on the 14th May 2003 to more fully explain and expand on our role as solicitors to Riordan and Mr. Buggy, which I hope you have a copy of.

At the time of our application, you indicated that there could be no doubling up of work; and as confirmed in our letter of the 14th May 2003, there has been no duplication of work which might give rise to additional costs. All solicitors' work done in relation to Mr. Buggy and Mr. Riordan has been done by Mr. Jim Trueick, a partner in our office, or one of our assistants; the Chief State Solicitors has not

been involved in this work.

I'd also like to bring to attention on the 9th May 2003, when Garrett Breen, also a partner in our office, applied for representation on behalf of Ms. Regina Finn. You indicated that you would see little difficulty in allowing the cost of consultation with a view to facilitating revisions of a statement with the solicitors' attendance at the Tribunal while Ms. Finn was giving evidence.

In the circumstances, Sir, I'd like to request that our request for representation again be considered in light of our letter of the 14th May 2003 to John Davis and our Mr. Breen's recent application for representation in regard to Regina Finn.

CHAIRMAN: What you are proposing is that you will be taking instructions from Mr. Buggy, but that if questions require to be asked in addition to what may be thought necessary by Mr. Nesbitt or his counsel, you would be instructing him in that regard; is that what's envisaged, as opposed to seeking to question the witness separately yourself?

MS. CLEARY: That's absolutely correct, Sir.

CHAIRMAN: Well, I think what I'll do you will, of course, as you remind me, be aware of the previous exchanges with Mr. Trueick and with Mr. Breen. I have indicated my reluctance to make any superfluous orders of limited representation, and my anxiety that, in

colloquial terms, the cake not be unduly egged, but I do accept that work has been put in and communications maintained with Mr. Davis by your office over a considerable period.

And subject to the overriding caveat that if I make an order of limited representation, I am of course giving no guarantees in relation to any ultimate costs adjudication which, as with all other similar persons, will have to be the subject matter of applications and orders at the conclusion of evidence and probably of the presentation of a report, subject to that.

Whilst it may be that there is no great difference between the position of Mr. Riordan and Mr. Buggy, in the context of the limited but significant involvement of Mr. Buggy at particular stages of the process, I am disposed to make a limited order of representation.

Any additional matters in relation to your other clients can be canvassed at another stage.

MS. CLEARY: I am very grateful, Sir.

DONAL BUGGY, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. Buggy, I think you have a memorandum of intended evidence. Do you have it with you in the witness-box?

A. I do, yeah.

Q. And I intend taking you through that and then perhaps returning to some of the documentation.

Now, I am going to commence by dealing with what is described as the background in this, and I am going to quickly skip over a number of pages, because in fact, you didn't join the Department until June of 1995, and many of the issues which have been canvassed with other civil servants prior to June of 1995, you had no involvement in; you weren't even in the Department.

Isn't that correct?

A. That's correct, yeah.

Q. Now, I think also, just so that we can be clear about everything, you were an accountant, and you were seconded from Price Waterhouse Coopers, isn't that correct, at the time?

A. That's correct, yeah.

Q. I think your present position is that you are the Chief Financial Officer of Independent Group; is that correct?

A. That's correct.

Q. Now, I think you say, by way of background, that given that you were not an official of the Department, you think it is worth giving some background information on your role within the Department, and in particular, your role within the Project Group established to conduct the second GSM evaluation process.

You were seconded from Price Waterhouse Cooper to the Department of Transport, Energy and Communications for a 17-month period from June 1995 to October 1996.

During that period, you were assigned as an accountant to the planning unit.

Your role within the Department was to provide advice from a financial perspective to any official of the Department who sought that advice. Generally, this involved reviewing correspondence, mainly annual financial statements, quarterly management accounts and business plans between the Department and other Government departments and semi-State companies, and advising the relevant Department officials on the financial aspects of the correspondence. You did not get involved in the internal workings of the Department, nor in any policy-making decisions, as these areas were not within your brief.

In June 1995, you were asked by the Department to participate in the Project Group which had already been established to assist in the evaluation process regarding the awarding of the second GSM licence.

Your role within that Project Group was to advise the Department officials within the Project Group on any financial matters that arose as part of the evaluation process and to assist in the evaluation of the financial aspects of the various bids. This role was purely a part-time role, compared to other Department officials who were working virtually full-time on this project, and your input was only required on an ad hoc basis as and when queries of a financial nature arose.

You did not consider that your role was central to the whole project, and this is evidenced by the fact that you only attended three out of the thirteen Project Group meetings; seven of the thirteen meetings took place before you joined the Department, and the further three took place while you were on holiday in September 1995. And you attended none of the financial sub-groups; all of these took place while you were on holidays. Is that correct?

A. That's correct, yeah.

Q. Now, you then go on to deal with responses to the questionnaire which was furnished by the Tribunal, and then you say the following responses in respect of the questionnaire issued by the Tribunal in its letter dated 5th March 2002 and the 28th June, 2002. Each of these responses is provided to the best of your knowledge and recollection of events that occurred over six years ago. You have recently had access to two lever-arch types of documents provided to you by the Chief State Solicitors Office entitled "File of Disclosure Documents". You have reviewed those papers in advance of the meetings with counsel for the Tribunal on the 7th February 2002 and asked for access to the same files for the purpose of providing this response. And the numbering of your answers follows the numbers of the questions set out in the Tribunal's schedule; is that correct?

A. That's correct.

Q. Now, I think we can perhaps move on to about page 6, and Question 9, because everything else there, you know about. You weren't in the Department at the time; isn't that correct?

A. That's correct, yeah.

Q. Now, I think you were asked for your understanding of the this is Question 9 you were asked for your understanding of the RFT document issued by the Department in March 1995, and in particular, paragraphs 3, 9, and 19, which provided as follows and they are set out in the question.

I am not going to read them out. We have read them out many times at this Tribunal.

I think your response is: As you did not join the Department until June 1995, you had no role in the drafting of the RFP document issued by the Department in March 1995. Your understanding of the RFP document was that it was typical for the Department to issue such a document to the prospective applicants in order to give them an understanding of what they were applying for and what should be covered by their applications. With regard to the specific paragraphs mentioned, your understanding was as follows:

Paragraph 3 that is where the ownership details of the proposed licensee; is that correct?

Your understanding was each applicant was asked to

list its consortium members and their respective shareholdings within the consortium.

Paragraph 9: Each applicant was asked to highlight any prior technical experience that they had in rolling out and operating a mobile licence. They were asked to provide a business plan which encompassed the roll-out of the network infrastructure, the marketing of the service, the operation of the service and the financing of the whole business. Applicants were also asked to demonstrate their financial strength in order to show that they were capable of funding their business plan.

Paragraph 19: Before evaluating an application, that application had to first clear the hurdle of financial capacity and technical experience and capability to implement the system. Once the application had cleared this hurdle, then it would go forward to be evaluated against other applications. The criteria under which each application would be evaluated was set out, and it was stated as to how these criteria ranked amongst each other.

I think then at Question 10 you were asked for your understanding of the protocol this was the confidentiality protocol which was adopted on the 6th March of 1995, and again, of course, you weren't in the Department at the time that this was adopted, but perhaps you deal with it this way you weren't in

the Department until June 1995, and you were not involved in adopting the protocol which was adopted by the Project Group at its meeting on the 6th March 1995. However, during the course of your involvement in this project, you were made aware, through discussions at various Project Group meetings, that the confidentiality surrounding this project was vital, and it was also crucial that there be no dealings with applicants on a one-to-one basis and that all applicants needed to be treated in a similar manner. To you this appeared to be a sensible approach, and it appeared reasonable for these points to be explicitly stated in order to ensure that there was no misunderstanding within the Project Group as to how all dealings with potential bidders were to be conducted.

I think you were then asked whether you discussed the protocol with the Minister or otherwise advised the Minister regarding contact with members of the consortia. And your response is that you had no discussions with the Minister on any aspect of the second GSM licensing process, and therefore, you can confirm that you had no discussions with nor did you give any advice to the Minister on the protocol regarding contacts with members of the consortia.

I think you were then asked at Question 12 about the whole question of the appointment of Andersen

Management. This was all done before you joined the Department; isn't that correct?

A. That's correct.

Q. I think you were then asked, at Question 13, for your understanding as to the services to be rendered by Andersen and the precise terms of their brief.

And you have informed the Tribunal that as you did not join the Department until June 1995, you were not involved in preparing the terms of engagement for Andersen Consulting. Based on observations during the process, your understanding as to the services that Andersen Consulting rendered were as follows:

Firstly, to formulate a framework for conducting the tender process. Secondly, to develop a framework for evaluating each bid. Thirdly, to carry out the main part of the evaluation. Fourthly, to prepare the draft and final reports. And fifthly, to assist the Project Group and the Department in any public relations aspects that might arise during the process.

Each of these steps was subject to the approval of the Project Group, and in certain instances members of the Project Group assisted Andersen Consulting in performing its tasks.

You were then asked about the identity of all persons who, to your knowledge, direct or indirect, had any involvement in the setting of the weightings which were attached to the evaluation criteria.

And you have responded that the setting of the weightings which was attached to the evaluation criteria took place before you joined the Department in June 1995, and therefore, you were not aware of who was involved in that process.

You were asked for the manner in which the weightings were devised, and again, you say that this happened before you joined the Department and you were not aware of the manner in which they were devised.

I think you were then asked the date on which and person by whom you were informed of the individual weightings.

And you have informed the Tribunal that as far as you can recall, you were first informed of the individual weightings during the first Project Group meeting that you attended, in early June 1995. You don't remember being specifically informed of the weightings by any particular individual, but you think it was brought you were brought up to date by general discussions at that Project Group meeting. Is that correct?

A. That's correct, yeah.

Q. Now, I think you were then asked for the identity of all persons, to your knowledge, direct or indirect, who were informed of or were otherwise aware of the weightings and the source of the weightings.

And you have informed the Tribunal that as the

weightings were devised before you joined the Department in June 1995, you were not aware of who was involved in the process or who was informed or otherwise made aware of the weightings. However, from the time you joined the Department, you were aware of nobody other than members of the Project Group knowing about the weightings.

I think you were then asked for details of all the steps taken by the Project Group to protect the confidentiality of the weightings, and you have informed the Tribunal that as far as you can recall, the Project Group were told not to discuss the weightings with anybody outside the Project Group, and very few copies of the documents containing the weightings were retained by the Department, and they were to be held in a secure place.

I think you were then asked about the question of the intervention of the European Commission regarding the capping of the licence fee at $\frac{1}{2}$ 15 million. And you have informed the Tribunal that when you joined the Department in June 1995, the issue of the European Commission intervention on the capping of the licence fee at $\frac{1}{2}$ 15 million was virtually resolved. You had no involvement, direct or indirect, in these discussions, as this was a policy matter for the Department and the Department of Finance, and as such, was not part of your brief. Following the decision to cap the licence

fee at 1/215 million, the evaluation criteria had to be reweighted. Once resolved, it was decided what the reweighting should be, and the Project Group approved this reweighting.

I think then you were asked for details of all information provided to the applicants at any time prior to the 14th July 1995 in connection with the suspension of the evaluation process, including, in particular, regarding the following: the manner in which the Department hoped to resolve the Commission's objections to the auction element of the competition; the manner in which the Department hoped to resolve the Commission's concern regarding the transparency of the evaluation process; the date to which it was likely that the process would be deferred; and any other matter relevant to or touching on the evaluation process.

And you have informed the Tribunal that as you only joined the Department in June 1995, you had no involvement in the lead-up to the suspension of the licensing process, nor had you any involvement in providing applicants with any information prior to the 14th July 1995. As regards the Department's dealings with the Commission, these issues were not within your area of responsibility, and you had no involvement.

I think you were then asked for your understanding of the evaluation model adopted by the Project Group, and

in particular, the qualitative and quantitative approaches, what these approaches entailed, the distinction between the quantitative and qualitative approaches.

And you have informed the Tribunal that your understanding of the evaluation model adopted by the Project Group is that it was based on the criteria set out in the RFP document issued in March 1995, and it adopted two types of evaluation techniques: a quantitative evaluation and a qualitative evaluation.

The quantitative evaluation was basically a mathematical exercise based on predetermined information supplied as part of the bidders' applications and was used to provide the Project Group with an early indication as to trends in the evaluation process in the lead-up to the applicants' formal presentations and in advance of the qualitative evaluation.

The quantitative evaluation consisted of a set of indicators that covered each of the criteria set out in the March 1995 RFP document. Points were awarded to each indicator, and weightings were then applied to each indicator to reflect the fact that certain criteria were more important than others. The points, after adjusting for the weightings, were then accumulated for each applicant.

The qualitative evaluation was a judgmental exercise

which followed on from the quantitative evaluation and the formal presentations by the applicants. The results from the quantitative evaluation were used as a starting point for the qualitative evaluation, and then more judgmental issues were analysed and grades awarded to each applicant.

The qualitative evaluation was broken down into a number of aspects, and these were further broken down into dimensions, with grades being awarded for each dimension. In order to evaluate each of these aspects, sub-groups were established comprising of Andersen Consulting employees plus departmental staff with expertise in their particular area. As your expertise was in the finance area, you would have been involved in the finance sub-group and didn't spend much time looking at the other areas. However, you were on holiday when the meetings of the sub-groups took place and therefore didn't play an active role in the evaluation process. On your return from holidays, you did review the output of the financial sub-group and were satisfied with the result.

In your opinion, there was a clear distinction between the quantitative and qualitative evaluation approaches, in that the quantitative evaluation was the mathematical approach with the purpose of identifying early trends in the process. The input of the Project Group was not really required in order to

compare the quantitative to complete the quantitative evaluation. The qualitative evaluation was a more judgmental approach, with each issue being discussed and considered in detail by the sub-groups established by the Project Group.

You were then asked for your involvement, if any, in the sub-group which conducted the qualitative evaluation. And I think we can move on quickly and deal with the reply you gave.

You have informed the Tribunal that given that your area of expertise was the finance area, you would have expected that the Project Group would have asked you to be involved in the sub-group evaluation in the financial aspects of the qualitative evaluation.

However, due to the fact that you were on holidays at the time this sub-group was established and performed its work, you were not involved in the detailed evaluation process. On your return from holidays, you reviewed the output of the finance sub-group in conjunction with Mr. Billy Riordan.

I think you were then asked to provide details of matters which arose, effectively, at the presentations, and particularly the presentation of the 12th September, the Esat Digifone presentation.

And you weren't present at the presentation, isn't that correct? You were on holidays?

A. That's correct, yeah.

Q. I think then, if we move on to Question 24 so, you were asked to indicate the following: whether the Department requested the Esat Digifone consortium at any time prior to the 25th October 1995 to provide the Department with a copy of the offer of IRi½30 million facility to Communicorp by Advent International referred to in the letter dated 10th July, 1995.

And you have informed the Tribunal that you have no recollection of the Department requesting the Esat Digifone consortium at any time prior to the 25th October 1995 to provide the Department with a copy of the offer of i½30 million facility to Communicorp by Advent International referred to in the letter dated 10th July 1995.

Then you were asked whether a copy of the offer was provided to the Department, and you were asked to indicate the date on which it was received. And you have no recollection of a copy of the offer being provided to the Department; isn't that correct?

A. That's correct, yeah.

Q. You were then asked whether any inquiries were made by the Department at any time prior to the 25th October 1995 as to the terms governing such offer, and if so, when and by whom, and to identify where such inquiries were recorded. And you have no recollection of any inquiries being made by the Department at any time prior to the 25th October 1995 as to the terms

governing such offer.

I think you were then asked, if such inquiries were made, to provide details of the information provided regarding the terms of the Advent offer. And again, you have no recollection of such inquiries being made or any responses in respect thereof; isn't that correct?

A. That's correct.

Q. I think you were then asked to provide details of the supplementary analysis conducted in respect of Advent, Communicorp and Sigma, as referred to in the minutes of the 11th meeting of the GSM Project Group on the 14th September 1995 and the results of such analysis. And you have informed the Tribunal that you were on holidays at the time of the 11th meeting of the GSM Project Group on the 14th September 1995 and therefore did not attend this meeting; nor were you involved in the supplementary analysis conducted in respect of Sigma and Advent as referred to in the minutes of that meeting. To your understanding, based on subsequent conversations with other GSM Project Group members on your return from holidays, this supplementary analysis was carried out by Andersen Management International, and the objective was to ascertain the current financial position of these two companies.

I think you were then asked for your knowledge, direct or indirect, of the progress of the actual evaluation

process, to include the source of such knowledge, and in particular, in relation to the following:

- A: Outcome of the quantitative evaluation.
- B. The difficulties encountered in scoring certain indicators in the course of the quantitative evaluation.
- C. The decision that the qualitative evaluation should be decisive and should take in precedence to the quantitative evaluation.
- D. The decision not to score other aspects, and in particular, the indicators of credibility and sensitivities.

I think you have informed the Tribunal that your knowledge, direct or indirect, of the progress of the actual evaluation process revolved around your attendance at the various Project Group meetings. As your role in the Department was to purely give advice on financial matters as requested by departmental officials, you did not get involved in the detailed evaluation process except for reviewing the financial aspects of the evaluation. Therefore, you only became aware of the progress of the overall evaluation process through discussions at the Project Group meetings. Your knowledge of the progress of the actual evaluation process was also limited by the fact that you were on holidays for the first three weeks of September 1995.

In respect of the particular areas noted in the questionnaire, your knowledge was as follows:

A. As far as you can recall, the outcome of the quantitative evaluation occurred while you were on holidays during the first three weeks of September 1995, and as a result, you had virtually no involvement in this part of the process.

B. Before you went on holidays in September 1995, you were aware that there were difficulties in scoring certain indicators in the quantitative evaluation process, due to the fact that information provided by the various applicants was not consistent across each application, and in some instances was inconsistent within each application.

C. You don't have any recollection of a decision that the qualitative evaluation should be decisive and should take precedence to the quantitative evaluation.

As far as you can recall, the quantitative evaluation was always going to be an early indication of the trends developing, and the qualitative evaluation was going to be the more detailed evaluation, and therefore the main evaluation approach.

D. As far as you recall, the "other aspects" and in particular the indicators of credibility and sensitivities were always considered to be corroborative support for the main evaluation as opposed to being part of the main evaluation.

Could I just ask you, if you can recollect, when you were away on holidays, was it the first three weeks of September you were away?

A. It was, yes.

Q. And that was prior to the 4th September, which was there was a meeting of the Project Group on the 4th September; I don't think you were present at that?

A. I don't think I was, no. I think I went before that.

Q. It was at that meeting that the quantitative evaluation was presented by Andersen for the first time, and it was at that meeting that Andersen outlined certain problems. Can I take it that if you found out anything about problems with the quantitative evaluation, it must be after you came back from holidays and not before you went on holidays?

A. That's correct; I would have found out about the quantitative evaluation. I think I was aware before I went on holidays that it was difficult to tie in figures that had been provided by the various applicants.

Q. Who told you that?

A. I think myself and Billy Riordan would have been looking, a first look at the tables that were provided, and what I know, from recollection, what I remember was that there was mandatory tables, and also some of the applicants had provided a business plan

themselves, and there was actually inconsistencies between the mandatory tables and the business plan.

Q. Had you any discussions with Andersens before this?

A. No.

Q. Before you went on holidays?

A. I don't recollect any discussions with Andersens, no.

Q. Were you involved in any aspects of the evaluation process whereby Andersens sought further information from applicants?

A. No, I wasn't, no.

Q. I think, if we move on to Question 27 so, you were asked whether you were kept informed of the trends and/or rankings emerging from the evaluation process during the course of that process, and if so the precise matters of which you were informed, and by whom you were so informed, and when you were informed.

And if you were so informed, the identities of all persons to whom you relayed any such information.

And I think you have informed the Tribunal that as far as you can recall, you were not kept informed of the trends and/or rankings emerging from the evaluation process during the course of that process. You believe that you only became aware of the overall trend when Andersen Consulting produced their first draft, or first full draft of their evaluation report.

As far as you can recall, prior to this, you had only seen the results of the financial aspects of the

evaluation; is that correct?

A. That's correct.

Q. So it would have been perhaps as late as the meeting of the Project Group of the 9th October, when the first draft report was considered, or around that time, that you would have had any feel or understanding of the emerging trends; would that be

A. Exactly. It was I can't remember whether I only got the first draft of the report at the meeting or a day or two before, but it's in or around the 9th October.

Q. Now, I think you were then asked the date or the approximate date and the person by whom you were informed of the final result of the evaluation process. And you have informed the Tribunal, as far as you can recall, the final result of the evaluation process was decided at the Project Group meeting on the 24th October 1995. At the meeting of the 23rd October, there was still a number of amendments to be made to the draft Andersen Consulting evaluation report, but these were of a presentational nature and didn't impact on the final result.

I think you were then asked for the approximate date on which you were furnished with a copy of the first draft evaluation report, and you say you are not sure whether you received a copy of the first draft Andersen report. It was either at the Project Group

meeting on the 9th October or a day or two before the meeting. That's the point you have just dealt with?

A. Exactly, yes.

Q. I think you were then asked for the identity of all persons to whom access was given to the draft evaluation report dated 3rd October 1995 between the 4th October 1995 and the 9th October 1995, when the report was discussed at a meeting of the GSM Project Group.

And you have informed the Tribunal that you have no recollection of having received a copy of the draft evaluation report dated 3rd October 1995 before the GSM Project Group meeting on the 9th October 1995, but you also have no recollection of anybody else receiving the draft evaluation report prior to that meeting on the 9th October 1995.

I think you were asked for details of your views regarding the draft evaluation report together with details of your understanding of the contents of the report, and in particular, the following:

A. The manner in which the issue of financial capability had been addressed, and in particular the financial capability of Esat Digifone, Persona and Irish Mobicall.

B. The manner in which the "other aspects" of the consortia had been addressed. That is, the indicators of credibility and sensitivities.

C. The qualifications expressed by Andersen

Consulting regarding the ranking of the top three entrants.

D. The overall presentation of the material.

And you have informed the Tribunal that your view of the draft evaluation report prepared by Andersen was that it was a good report but a little difficult to read. You think it was difficult to read due to the fact that the people for whom English was not their first language prepared it. As far as you recall, you thought that the report was very detailed and appeared to be a very fair assessment of the bids. However, you would qualify this by saying that you were not particularly interested in the non-financial sections, as you didn't have any expertise or brief to deal with issues outside of the financial section.

In respect of the particular areas noted in the questionnaire, your views are as follows:

A. As far as you recall, Andersen Consulting had assessed the issue of the financial capability by looking at the financial strength of each member of the consortium. Once the consortium had at least one financially strong member, then it was considered to be financially capable and moved forward to the awarding of grades. However, Andersen Consulting, in awarding grades, did mark the consortium down if it consisted of some financially weak members.

Therefore, a consortium in which all the members were financially strong got a better grade than one which only had one financially strong member. To you, this appeared to be a reasonable way of grading financial capability.

As far as you recall, Andersen Consulting evaluated Esat Digifone as having a financially strong consortium member in Telenor and a financially weak member in Communicorp, and hence it did not receive top marks. Persona was considered to have two financially strong backers, in Motorola and Unisource, but a financially weak partner in Sigma. However, it was awarded top marks, given that it had two strong backers.

Irish Mobicall was considered to have three financially strong backers, in Southwestern Bell, Tele Danmark and Deutsche Telecom, and therefore awarded top marks.

B. As far as you recall, the other aspects, including the indicators of credibility and sensitivities, were always considered to be corroborative support for the main evaluation as opposed to being part of the main evaluation.

C. Your understanding of the qualifications expressed by Andersen Consulting regarding the ranking of the top three entrants is that they were advising the Department that in entry negotiations with any of the

top three ranking entrants, there was a number of issues on which the Department should look for more comfort. For example, Andersen Consulting was advising for comfort on the financial strength of Esat Digifone and Persona consortium.

D. You don't recall having any strong views one way or another on the overall presentation of the material.

You were then asked for detail of your discussions, if any, with any members of the Project Group or any departmental officials regarding the contents of the draft report.

And you informed the Tribunal that you don't recall having any discussions with any departmental officials other than members of the Project Group on the contents of the draft report. All discussions with members of the Project Group took place within the Project Group meetings, except for discussions you had with Mr. Billy Riordan when you were reviewing the draft financial aspects section of the report.

You were then asked for details of all meetings and discussions which, to your knowledge, direct or indirect, took place between officials or between officials and other persons, or any discussions regarding the contents of the first draft evaluation report of the presentation of the material comprised in the report, or any other aspect of the report,

between the 4th October 1995 and 9th October 1995.

And you have informed the Tribunal that you have no recollection of any discussions regarding the content of the first draft evaluation report, of the presentation of the material comprised in the report, or any other aspect of the report between the 4th October 1995 and the GSM Project Group meeting on the 9th October 1995.

I think you were then asked for details of all matters discussed and raised at the Project Group meeting on the 9th October 1995, and including, in particular, the following:

- A. The statement made by Mr. Martin Brennan in relation to the Minister's state of knowledge regarding the outcome of the competition.
- B. Statement made by Mr. Martin Brennan regarding the Minister's view of the draft evaluation report and/or the approach which should be adopted in drafting the final report.
- C. The request made by certain members of the Project Group that further time was required to consider the results.
- D. The request made by certain members of the Project Group that it was necessary to revisit the qualitative evaluation.
- E. The request made by certain members of the group that consideration should be given to the

appropriateness of awarding the licence to Esat

Digifone, having regard to the Department's experience of Esat Telecom.

And you have informed the Tribunal that as far as you recall, the Project Group meeting on the 9th October 1995 centred mainly around the draft Andersen evaluation report and comments from the Project Group on the presentation and phraseology within the report.

In respect of the specific items noted in the questionnaire, your recollection is as follows:

A. Given that the draft report contained a draft result, the importance of confidentiality was stressed by Mr. Martin Brennan. Mr. Brennan also informed the Project Group that the Minister was aware of the draft result and that, if possible, the Project Group should finalise the report as soon as possible to avoid any leaks and to avoid any undue influence being brought to bear to alter the result.

B. You don't recall Mr. Martin Brennan making any statement regarding the Minister's view of the draft evaluation report and/or the approach which should be adopted in drafting the final report. As far as you recall, Mr. Brennan only stated that the Minister was aware of the result contained in the draft report and that the Minister was open to announcing the result as soon as possible after finalisation of the report in order to avoid the possibility of leaks and to avoid

any undue influence being brought to bear to alter the result.

C. You don't recall any member of the Project Group requesting further time to consider the results. As far as you recall, the only concern was over the presentational phraseology of the report, not the actual result. In any event, you don't recall any decision at this meeting that is, the 9th October as to the final result.

D. You don't recall any request by certain members of the Project Group to revisit the qualitative evaluation.

E. You don't recall any request by any members of the group that consideration should be given to the appropriateness of awarding the licence to Esat Digifone, having regard to the Department's experience of Esat Telecom.

I think you were then asked for your understanding as to the status of the evaluation following the Project Group meeting of the 9th October, and in particular, the steps to be taken in progressing the evaluation.

And you have informed the Tribunal that as far as you recall, the status of the evaluation following the Project Group meeting on the 9th October 1995 was that the Project Group was generally satisfied with the result contained in the draft report but that no final decision was taken at this meeting. There were

concerns over the presentation and phraseology of material in the draft report, and recommendations were made to Andersen which the Project Group believed would improve the report and make it easier to understand.

As far as you recall, the next step following the meeting was for Andersen to incorporate the proposed amendments into the draft report and to produce the outstanding sections. The Project Group members were to continue reviewing the report in order to satisfy themselves with the content of the report and the recommendations contained in the report.

I think you were then asked whether you received or were otherwise aware of notes made by Mr. Sean McMahon on a copy of the minute dated 17th October of the meeting of the 9th October.

And you say that you did not receive nor were you otherwise aware, directly or indirectly, of notes made by Mr. Sean McMahon on a copy of the minute dated 17th October of the meeting of the 9th October. In fact, to date, you have never seen these notes made by Mr. Sean McMahon.

You were then asked whether, to your knowledge, direct or indirect, the contents of the handwritten notes were raised at any subsequent meeting of the Project Group or of any members of the Project Group or were otherwise discussed with any other persons, and if so,

when, and the name of each person present or each person involved.

And you have informed the Tribunal that you have no knowledge, direct or indirect, of the contents of the handwritten notes being raised at any subsequent meeting of the Project Group or with any members of the Project Group or discussed with any other person.

I think you were then asked for your knowledge, direct or indirect, of the subsequent meetings referred to in the handwritten notes made by Mr. McMahon, including the date of each such meeting, the persons present, the matters under discussion, the outcome, and whether any note attendance or minute of any such meeting was kept, and if so, by whom.

And you have informed the Tribunal that you have no knowledge, direct or indirect, of the subsequent meetings referred to in the handwritten notes made by Mr. McMahon.

You were then asked for your knowledge, direct or indirect, of or your involvement or the involvement of any other person in the decision made to accelerate the date on which the result of the evaluation was announced by the Minister.

And you have informed the Tribunal that you had no knowledge or involvement, direct or indirect, nor knowledge of the involvement of any other person in the decision to accelerate the date on which the

result of the evaluation was announced by the

Minister.

You were asked to confirm that eight copies of the final draft report dated the 18th October 1995 were received by the Department and were designated for Mr.

Lowry, Mr. Loughrey, Mr. Fitzgerald, Mr. McCrea, Mr. Brennan, Mr. McMahon, Mr. McQuaid and Mr. McMeel.

And you have informed the Tribunal that you have no knowledge as to how many copies of the final draft report dated the 18th October were received by the Department and for whom they were designated.

You were asked to provide details of your knowledge of all considerations given by the Project Group, or by any member of the Project Group or by any other person, whether in conjunction with Andersen or otherwise, to the qualifications placed by Andersen on the financial capability of Esat Digifone and Persona as set out in the evaluation report and appendices, and in particular, page 44 of the report and Appendices 9 and 10.

And you have informed the Tribunal you do not recall that the evaluation report prepared by Andersen Management International is in any way qualified as to its recommendation that Esat Digifone should be awarded the licence. And you also believe that the whole GSM Project Group was of the same opinion. The sections identified by the question do highlight a few

risks in awarding the licence to either Esat Digifone or Persona, but in identifying these risks, Andersen also proposed a number of ways to reduce these risks as part of the licence negotiations. As far as you recall, the GSM Project Group was made aware of these risks by Andersen and was satisfied that these risks could be satisfactorily reduced as part of the licence negotiations.

You were then asked for your knowledge, direct or indirect, of any discussions with Andersen concerning further inquiries or investigations or other actions which would have been required to enable Andersens to provide a report without any qualifications or rider regarding the financial capability of either Esat Digifone or of Persona.

And you have informed the Tribunal you do not recall any discussions with Andersen Management International regarding the financial capability of either Esat Digifone or of Persona other than the comments noted by Andersen in its evaluation report.

You were then asked for your knowledge in the approach made or the request made by Mr. Sean McMahon, Mr. Martin Brennan, and Mr. John McQuaid to Mr. John Loughrey on or about the 23rd October for further time in which to consider the draft evaluation report. And you had no knowledge or involvement, direct or indirect, nor knowledge of the involvement of any

other person in the approach or request made by Mr. McMahon, Mr. Brennan and Mr. McQuaid or any other members of the Project Group to John Loughrey on the 23rd October 1995 for further time in which to consider the draft evaluation report.

I think you were then asked for your recollection or knowledge of Mr. Loughrey's response to such a request. And you have responded that you have no recollection or knowledge, direct or indirect, of Mr. Loughrey's response to such a request or approach for further time in which to consider the draft evaluation report; therefore you have no understanding that further time would be available for the Project Group to finalise the evaluation.

May I just pause there for a moment; you didn't know, am I correct in understanding, that Mr. McMahon had gone to Mr. Loughrey, accompanied by Mr. Brennan and Mr. McQuaid, to ask for further time on the 23rd, did you?

A. I have no recollection of that, no.

Q. And you didn't know that they left their meeting with Mr. Loughrey believing that there was extra time?

A. No, no recollection of that either.

Q. And you were never so informed?

A. Not that I remember, no.

Q. So as far as you were concerned, on the 23rd, there was no question of further time; is that correct?

A. That's correct, yeah.

Q. Were you there for the whole meeting of the 23rd, can you remember, or were you in and out?

A. I can't remember whether I was there for the whole lot or not, no.

Q. I think you were then asked for your knowledge or your involvement or the involvement of any other person in the decision made by the Minister on or about the 24th or 25th October 1995 that the result of the process would be announced on the 25th October 1995.

And you have informed the Tribunal that you had no knowledge or involvement, direct or indirect, nor knowledge of the involvement of any other person in the decision made by the Minister on or about the 24th or 25th October 1995 that the result of the process would be announced on the 25th October 1995.

You were then asked the date on which, circumstances in which, and person by whom you were informed that the Minister intended to announce the result of the process on the 25th October 1995.

And you inform the Tribunal that you don't have any recollection of being informed by anybody that the Minister intended to announce the result of the process on the 25th October 1995.

You were then asked for details of all meetings of the Project Group or any of the members of the Project Group on the 24th or the 25th October, the purpose of

such meetings, the matters under discussion and the outcome of such meetings.

And you have informed the Tribunal that you don't have any recollection of any Project Group meeting or any meeting of my members of the Project Group being held on the 24th or the 25th October 1995.

You were then asked for your knowledge concerning any amendment to the first draft report of the 3rd October 1995 and the second draft report of the 18th October 1995, and including your knowledge, direct or indirect, of the contents of the document entitled "Suggested Textual Amendments" which appears to have been faxed by Mr. Fintan Towey to Andersens at 10.05am on the 25th October 1995 and faxed back by Andersen to the Department at 2.07pm on the 25th October 1995 with his annotated comments.

I think you have informed the Tribunal that as far as you recall, the main amendments to the first draft report of the 3rd October 1995 and the second draft report of the 18th October 1995 were only minor presentational amendments and the correction of some spelling and grammatical errors. As far as you recall, no amendments of substance were made to these reports, and there was certainly no change to the final recommendation. As far as you can recall, the GSM Project Group was satisfied with the final result at its meeting on the 23rd October 1995 and delegated

Mr. Martin Brennan to come to a final agreement with Andersen Management International on the final text of the report. You don't remember seeing the fax dated 25th October 1995 from Mr. Towey to Andersens and Andersens' reply on the same date.

I think you were then asked to provide a full narrative account of any information which you may have had concerning what prompted Mr. Billy Riordan to record his concerns regarding "the ownership" of the report on both page 6 of the final draft version of the October 18th 1995 and his various handwritten notes.

And you have informed the Tribunal you don't recall having any specific information on this issue. But as far as you recall, both Mr. Billy Riordan and you were of the view that the evaluation report was drafted in a manner which implied that the report was not the sole responsibility of Andersen Management International. As a result, both Mr. Riordan and you suggested to the GSM Project Group that Andersen Management International take ownership of its report. Mr. Riordan and you were strongly of this view, but the rest of the group were not so strong on this issue, and you both accepted this as the Department's prerogative.

You were then asked to provide details of all inquiries which, to your knowledge, direct or

indirect, were conducted either by those officials or any other person regarding the conclusion in the document "Suggested Textual Amendments" as follows:

"Having regard to the level of interest in the Irish competition for the GSM licence and the high profitability of mobile communications generally throughout Europe, that the project is fundamentally robust, and after licence has been awarded, an attractive opportunity for corporate debt financiers", together with precise results of such inquiries, if any.

And you have informed the Tribunal that you vaguely recall a GSM Project Group discussion on the ability of all the applicants to raise bank finance for this project, and the general consensus of the group was that bank finance would be available. You don't have any specific recollection of the discussion that took place. You don't have any specific recollection of the inclusion of the paragraph noted in the question or discussion surrounding its wording, but you now interpret it as being included to address the issue of obtaining bank financing.

Might I just pause there for a moment; does that mean that's the debt financing for the company?

A. Yeah, my understanding is that the company making the application would have been financed by equity put in by its shareholders and also by debt financing. And

that's referring to the debt

Q. This is the debt financing?

A. Exactly.

Q. Yes, that's right.

You were then asked for the precise date on which and time at which a final decision was made by the Project Group regarding the result of the competition and the name of each person who was present or was otherwise a party to such decision.

And you have informed the Tribunal that as far as you recall, the final decision was made by the Project Group at the meeting on the 23rd October, 1995. As far as you can recall, the people who attended this meeting were those noted as in attendance on the minute of the meeting, a copy of which is included in the leverarch file provided to you by the Chief State Solicitors Office.

You were then asked for the precise date and time at which the evaluation report was approved and/or adopted by the Project Group and the name of each person present or who was otherwise a party to such approval or adoption.

And you say that as far as you recall, the Project Group was satisfied with the final result of its meeting on the 23rd October 1995, and delegated Mr. Martin Brennan to come to a final agreement with Andersen on the final text of the report. You have no

recollection of having been involved in the evaluation report after this meeting, and you don't remember ever seeing a final copy of the report.

I think you were then asked for your knowledge or your involvement, or the involvement of any other person, in the discussion between Mr. Brennan and Mr. Loughrey on the 24th or the 25th October 1995 whereby Mr. Brennan conveyed to Mr. Loughrey the result of the evaluation process.

And you inform the Tribunal that you have no knowledge or involvement, direct or indirect, nor knowledge of the involvement of any other person in the discussions between Mr. Brennan and Mr. Loughrey on the 24th or the 25th October 1995 whereby Mr. Brennan conveyed to Mr. Loughrey the result of the evaluation process.

You were then asked whether you had any knowledge or involvement in the discussions between Mr. Loughrey and the Minister on the 24th or the 25th October 1995 whereby Mr. Loughrey informed the Minister of the result of the evaluation process.

And you inform the Tribunal that you have no knowledge or involvement, direct or indirect, nor knowledge of the involvement of any other person in the discussions between Mr. Loughrey and the Minister on the 24th or the 25th October 1995 whereby Mr. Loughrey informed the Minister of the result of the evaluation process.

You were then asked to indicate whether the Department

had in its possession a copy of the final draft report as of the 25th October 1995, when the Minister met with members of the Cabinet, and following such meeting announced the result of the evaluation process.

If the Department did not have a copy of the final evaluation report in its possession at the time, please indicate precisely what document or documents were in the possession of the Department.

And you have informed the Tribunal you do not know whether or not the Department had in its possession a copy of the final draft evaluation report as of the 25th October 1995, when the Minister met with members of the Cabinet, and following such meeting announced the result of the evaluation process. Dealings with the Minister and the Cabinet were the responsibility of the officials of the Department and were not within your area of responsibility.

I think you were then asked for your role in or your knowledge of the role of any other person in the preparation of the following documents.

You say that as far as you recall, you had no role in or knowledge, direct or indirect, of the role of any other person in the preparation of the following documents. And the first one is A, the recommendation to the Minister dated 25th October 1995.

And your response is that you have no recollection of

making any recommendation to the Minister dated 25th October 1995, and if such a recommendation exists, you would like to see a copy of it. In fact, you have no recollection of seeing any recommendation to the Minister on this issue.

A. Just if I could just say, I think the original question was probably referring to my relations to the Minister, so just the answer is slightly different than the question that's put down here.

Q. Well, just to deal with these matters, we go on to a question of a briefing note which was prepared as well, and I think we have dealt with that in the course of the Tribunal with other witnesses. You didn't first of all, you didn't have any discussions with the Minister or Mr. Loughrey?

A. No discussions whatsoever, no.

Q. You didn't draft or participate in any discussion leading to the drafting of any recommendation to the Minister?

A. No, I didn't, no.

Q. You didn't prepare or discuss leading to the drafting of any briefing note?

A. No, I didn't, no.

Q. You had no involvement in the preparation of the memorandum for Government?

A. No involvement whatsoever.

Q. I think you were then asked about a document, again

which we have considered in the course of the evidence given to this Tribunal, and that is a document which was prepared in the Regulatory Division dated 23rd October, 1995. That, we know, is a document prepared by Mr. McMahon in the Regulatory Division.

And you say that you have no knowledge, direct or indirect, of the contents of the document dated 23rd October prepared by the Regulatory Division, and therefore you don't know the purpose for which the document was prepared and whether the document was formally circulated and the details of any action taken on foot of the document. You never saw it?

A. Never saw it, no.

Q. And you knew nothing about its contents or of its existence?

A. No, I didn't, no.

Q. You were then asked for your understanding of the composition of the Esat Digifone consortium which won the evaluation process and the respective shareholdings of the participants.

And you have informed the Tribunal that your understanding of the composition of the Esat Digifone consortium which won the evaluation process is as follows: Communicorp 50%, Telenor 50%. Is that correct?

A. That's correct.

Q. You were then asked for your knowledge, direct or

indirect, of the understanding of the role of the Cabinet or the Cabinet Subcommittee in the ultimate decision as to the outcome of the evaluation process.

And you have informed the Tribunal that your understanding was that the Cabinet or the Cabinet Subcommittee would make the ultimate decision as to the outcome of the evaluation process. However, you have no knowledge, direct or indirect, as to whether or not the Cabinet or the Cabinet Subcommittee actually made the ultimate decision as to the outcome of the evaluation process.

I think you were then asked for details of all information provided by you to the Minister regarding the evaluation process, and I think we can move on here, that you didn't provide any information to the Minister regarding the evaluation process?

A. No, I didn't, no.

Q. I think you were then asked, did you have any knowledge of any meetings between the Minister and any consortium members or persons associated with consortia. And you had no knowledge of the Minister's meetings with any of these people; is that correct?

A. That's correct.

Q. I think we go on then to Question 60. I think you were asked for your knowledge, direct or indirect, of the date on which and the manner in which the Minister or the Department was informed by Mr. O'Brien,

Communicorp, Esat Telecom, and Esat Digifone, or any other person on their behalf, that Communicorp/Esat Telecom did not intend to fund its equity participation in Esat Digifone by drawing on finance to be provided by Advent International but intended to fund its participation by placements through CS First Boston, including details of the precise information provided to the Minister or the Department, and kindly identify where such information was recorded.

And you have informed the Tribunal that you have no knowledge of the date on which and the manner in which the Minister or the Department was informed, by the list of people or entities I have mentioned or any person on behalf of them, that Communicorp/Esat Telecom did not intend to fund its equity participation in Esat Digifone by drawing on finance to be provided by Advent International but intended to fund its participation by placements through Credit Suisse First Boston.

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

And you have informed the Tribunal that as far as you

recall, you first became aware of the involvement of IIU Limited or Mr. Dermot Desmond in the Esat Digifone consortium on or about the 13th May 1996, when Mr. Martin Brennan asked you to give him some financial advice on the composition of the Esat Digifone consortium and the financial strength of IIU Limited and Mr. Dermot Desmond.

As far as you recall, your understanding of the involvement of IIU Limited on or about the 13th May 1996 was that it was a 20% shareholder in Esat Digifone, and it had agreed to underwrite Communicorp/Esat Telecom's 40% shareholding in Esat Digifone. This understanding was based on discussions with Mr. Michael Walsh of IIU Limited and Mr. Pearse Farrell of Farrell Grant Sparks, and also from various documents received by the Department from Esat Digifone, IIU Limited, Farrell Grant Sparks, Communicorp Group Limited, KPMG and Anglo Irish Bank Corp, copies of which were included in the leverarch file given to you by the Chief State Solicitors Office.

I think you were then asked for your knowledge, direct or indirect, of a letter dated the 29th September 1995 from Mr. Michael Walsh of IIU Limited to Mr. Martin Brennan.

And you have informed the Tribunal, as far as you recall, you had no knowledge, direct or indirect, of a

letter dated 29th September 1995 from Mr. Michael

Walsh of IIU to Mr. Martin Brennan.

I think you were then asked for your knowledge, direct or indirect, of or your involvement or the involvement of any other person in the decision made to return the letter of the 29th September 1995 to Mr. Denis O'Brien on the 2nd October 1995 without retaining a copy of the letter on the Department file.

And you have informed the Tribunal that as far as you recall, you had no knowledge or involvement, direct or indirect, nor any knowledge of the involvement of any other person in the decision made to return the letter of the 29th September 1995 to Mr. Denis O'Brien on the 2nd October 1995 without retaining a copy of the letter on the departmental file.

I think you were then asked for your knowledge, direct or indirect, regarding any involvement or interest or any potential involvement or potential interest of IIU Limited or Mr. Dermot Desmond in the Esat Digifone consortium as of the 25th October 1995.

And you have informed the Tribunal that as far as you recall, you had no knowledge, direct or indirect, regarding any involvement or interest or any potential involvement or potential interest of IIU Limited or Mr. Dermot Desmond in the Esat Digifone consortium as of the 25th October 1995.

I think you were then asked for your knowledge of any

dealings between Communicorp/Esat Telecom, Telenor, and IIU Limited/Mr. Dermot Desmond regarding their respective liabilities to subscribe for the capital of Esat Digifone Limited.

And you have informed the Tribunal that as far as you recall, you only became aware of dealings between Communicorp, Esat Telecom, Telenor and IIU Limited/Mr. Dermot Desmond regarding their respective liabilities to subscribe for the capital of Esat Digifone Limited on or about the 13th May 1996, when Mr. Martin Brennan asked you to give him some financial advice on the composition of the Esat Digifone consortium and the financial strength of IIU Limited and Mr. Dermot Desmond.

Could I just pause there for a moment and just ask you, could you just assist me, when you say Mr. Martin Brennan asked you to give him some financial advice, I can understand on the financial strength of IIU Limited and Mr. Dermot Desmond; could you just assist me there what the financial advice on the composition of the Esat Digifone consortium means, or

A. Yeah, as far as I remember, as part of looking at the financial strength behind the Esat Digifone consortium, he wanted to understand where IIU sat in that business; so in other words, that they owned 20% of the business.

Q. That was

A. It's a fairly minor part of the analysis.

Q. So the composition was that they owned 20%; that's what that composition is referring to. Is that right?

A. Yeah, to show that if they owned 20%, then were they financing 20% of it.

Q. Right, I understand the point.

You were then asked the date on which and circumstances in which you first became aware that the 20% shareholding in Esat Digifone Limited held by IIU was to be held beneficially by Mr. Dermot Desmond.

And you say that as far as you recall, you first became aware that the 20% shareholding in Esat Digifone held by IIU Limited was to be held beneficially for Mr. Dermot Desmond on or about the 13th May 1996, when Mr. Brennan asked to you give him some financial advice on the composition of the Esat Digifone consortium and the financial strength of IIU Limited and Mr. Dermot Desmond.

You were then asked for your knowledge or your involvement or the involvement of any other person in all steps taken by the Department, whether alone or in conjunction with the Department of Finance, to satisfy itself as to the financial capability of Esat Digifone Limited prior to the issue of the licence.

And you say that your involvement in the steps taken by the Department to satisfy itself as to the financial capacity of Esat Digifone Limited prior to

the issue of the licence revolved around the request by Mr. Martin Brennan that you carry out a financial analysis of the financial strength of Telenor, IIU Limited, Mr. Dermot Desmond, to determine if they had the financial capacity to take over Communicorp/Esat Telecom's financial commitment to Esat Digifone in the event that Communicorp/Esat Telecom experienced financial difficulty. Your involvement in this matter commenced on or about the 13th May 1996 and finished on the 15th May 1996 with your memorandum to the Secretary of the Department dated 15th May, 1996.

The memorandum dated 15th May 1996 included in the leverarches given to you by the Chief State Solicitors Office include details of the exercise that you performed and your conclusions. Further details of that exercise are included in your responses to some previous questions; isn't that correct?

A. That's correct.

Q. As far as you can recall, the Department of Finance was not involved in the exercise that you performed, but you don't know whether or not your findings were communicated to the Department of Finance.

I think you were then asked for details of all dealings and discussions which you had with the Minister and Mr. Martin Brennan sorry, I beg your pardon which you had with the Minister, with Mr. Martin Brennan, with Mr. Loughrey, with Mr.

Fitzgerald, or with any other person, arising from the involvement of Dermot Desmond in Esat Digifone Limited.

And you have informed the Tribunal that as far as you recall, you had no dealings or discussions with the Minister or Mr. Sean Fitzgerald arising from the involvement of Mr. Dermot Desmond in Esat Digifone Limited. The only dealings that you had with the Secretary of the Department arising from the involvement of Mr. Dermot Desmond in Esat Digifone Limited was your memorandum to the Secretary dated 15th May 1996. As far as you recall, there was no discussion with the Secretary on this matter.

A. Sorry, just, I think I probably would have had a few informal conversations with him between the 13th and 15th as well.

Q. With Mr. Loughrey?

A. With Mr. Loughrey, yeah, but then it culminated in the memorandum of the 15th.

Q. All right.

Your dealings and discussions with Mr. Brennan arising from the involvement of Mr. Desmond in Esat Digifone Limited revolve around Mr. Brennan's request that you carry out a financial analysis on the financial strength of Telenor, IIU Limited, Mr. Dermot Desmond, to determine if they had the financial capacity to take over Communicorp's financial commitment to Esat

Digifone in the event of Communicorp experiencing financial difficulties. These dealings and discussions you have already referred to in previous questions.

You were then asked for details of all meetings and contacts which you had with representatives of or professional advisers to Esat Digifone or other members of the consortium in relation to financial issues in the period prior to the granting of the licence, including the date of any such meetings or contacts, the persons present or involved, the matters under discussion, the outcome, and whether any notes, minutes, or attendances were kept, and if so, by whom.

And you have informed the Tribunal that the only meetings and contact that you had with representatives or professional advisers to Esat Digifone or any member of the consortium in relation to financial issues in the period prior to the granting of the licence took place in the period 13th May 1996 to the 15th May 1996 as part of the preparation of your memorandum to the Secretary of the Department dated 15th May, 1996. You are uncertain as to the specific days between the 13th and the 15th May that each of these meetings took place, but as far as you recall, you attended the meetings with the following: Mr. Pearse Farrell of Farrell Grant Sparks, Mr. Michael Walsh of IIU Limited. You met with each of these

people separately, and on all occasions you were accompanied by Mr. Martin Brennan, and each meeting took place in Mr. Brennan's office. The matters under discussion in each case was the financial strength of IIU Limited, Mr. Dermot Desmond, and the ability of IIU Limited and Mr. Dermot Desmond to underwrite the funding commitment of Communicorp/Esat Telecom. You kept some handwritten notes of these meetings, all of which were included in the leverarches that you received from the Chief State Solicitors in preparation for responding to this questionnaire. The outcome of these meetings is detailed in your memorandum to the Secretary dated 15th May 1996. You were then asked for details of all information recorded or documents on which you based your memorandum dated 15th May 1996 to the Secretary regarding the financial strength of Esat Digifone consortium.

And you have informed the Tribunal that as far as you recall, the information and records and documents on which you based your memorandum dated 15th May 1996 to the Secretary of the Department in relation to the financial strength of Esat Digifone consortium are as follows, and then you set out the letter from ABN-AMRO to Mr. Martin Brennan dated 2nd May. That deals with debt financing; is that correct?

A. From memory, yes.

Q. The letter from Farrell Grant Sparks to Mr. Martin Brennan dated 7th May 1996. Letter from Arthur Andersen to Mr. Owen O'Connell dated 8th May 1996 I think that deals with the financial position of Telenor, which was never really much in issue anyway, was it?

A. No, it wasn't in issue, no.

Q. Letter from KPMG to Mr. Martin Brennan dated the 9th May, 1996; letter from Esat Digifone to Mr. Martin Brennan dated 13th May 1996; letter from Telenor Invest to Mr. Brennan dated 13th May; letter from Mr. Chris McHugh of IIU Limited to Mr. Martin Brennan, dated May 1996; letter from Communicorp Group Limited to Mr. Martin Brennan dated 13th May 1996; letter from Anglo Irish Bank to Mr. Martin Brennan dated 15th May 1996, and a letter from Farrell that letter there relates to funding available for Mr. Dermot Desmond?

A. This is the Anglo Irish Bank Corp?

Q. Yes.

A. Yes, it does.

Q. A letter from Farrell Grant Sparks to Mr. Martin Brennan dated 15th May, 1996.

All of these letters are included in the lever arches that you received from the Chief State Solicitors.

You say you also recall having reviewed the shareholders and underwriting agreements from Esat Digifone from a financial perspective, and you

reviewed the original business plan contained in the Esat Digifone application for the licence. And those were the documents that you based your memorandum on?

A. From memory, yeah.

Q. And of course, we have evidence from Mr. Brennan and I think Mr. Towey these documents would have been furnished to you, isn't that correct, by either Mr.

Brennan or Mr. Towey?

A. Yeah, I think mostly by Mr. Brennan.

Q. Mostly by Mr. Brennan. You didn't have any of them in your possession to begin with?

A. No.

Q. In fact, am I correct in thinking you had moved away from the particular work you had been doing in the Department at the time that you were involved to a limited extent in the Project Group back in the back end of 1995?

A. While we were doing the Project Group part of the exercise in, let's say, September/October 1995, I was reporting directly as part of the planning unit in the Department. Subsequently, I think at the end of the year, the Secretary to the Department had another adviser who left to go back to I think it was KPMG, and I took his office, say, from the beginning of '96. I was still working in the planning unit, but I was also accessed by the Secretary to the Department for advice.

Q. I think you were then asked Question 71 the person by whom you were requested to carry out the financial analysis comprised in the memorandum of the 15th May 1996, together with your understanding of the analysis which you were requested to carry out and the purpose for which it was undertaken.

I think you informed the Tribunal that you were requested to carry out the financial analysis comprised in the memorandum of the 15th May 1996 by Mr. Martin Brennan, and he then asked to you summarise your conclusions in the memorandum to the Secretary to the Department. And of course you have just informed us you would have had a number of informal discussions with the Secretary as well?

A. Just to clarify the point, I believe Martin Brennan asked me to do the exercise, but I would have been I would have known that the Secretary had probably asked Mr. Brennan to ask me, so I was aware that they were both fully involved in it.

Q. Yes, and you had some discussions with the Secretary, hadn't you?

A. Exactly, yeah.

Q. You say that your understanding of the financial analysis that you were requested to carry out was to determine whether or not Telenor/IIU Limited/Mr. Dermot Desmond had the financial capacity to finance Communicorp's share of Esat Digifone's funding

requirements in the event that Communicorp couldn't finance its own share. It also incorporated the ability of Telenor to finance the whole project if both Communicorp and IIU Limited/Mr. Dermot Desmond were not in a position to finance their share in the company.

Your involvement in this exercise did not cover any of the legal aspects of the shareholders and underwriting agreements other than to identify the financial obligations under these agreements and see if the relevant parties could fund those financial obligations. In addition, your involvement did not cover any policy decisions by the Department as to whether or not the licence should be issued to Esat Digifone. You were only requested to determine whether or not the shareholders were financially strong enough to carry the project if the other shareholders experienced financial difficulties.

Your understanding of the purpose for which this financial analysis was requested was to enable the Department to satisfy themselves that the shareholders in Esat Digifone were financially strong enough to ensure that Esat Digifone could build the GSM network, commence operations, and provide the level of service outlined in its application for the licence even if one or two of the shareholders got into financial difficulties and couldn't fund their share of the

company.

A. I think it's worth clarifying there as well that this exercise was by no means a due diligence on the financial strength, and I am sure that the Secretary and Martin Brennan will confirm that that's their understanding as well. It was purely a desktop exercise done in a couple of days.

Q. Yes. Well, were you given a time-frame when you were asked to do this?

A. I would have been given a time-frame on the 13th May, yeah. I think

Q. To get it done within a day or two?

A. I can't remember whether the 15th May was specifically mentioned, but it was definitely two or three days, is what I was told.

Q. In fairness to you, you couldn't have done anything much more in the period you were given?

A. No, you couldn't. That would have been my normal work in the Department, in that I would have been given a set project to do, and I would have been told "We need an answer in a week or we need an answer in two days or in three hours", depending on what it was.

Q. You were asked for details of all discussions, meetings, and contacts between you and any Department official regarding the analysis comprised in the memorandum of the 15th May 1996, the matters under discussion, and the outcome. And you have informed

the Tribunal, as far as you recall, except for your memorandum to the Secretary on the 15th May 1996, the only discussions, meetings and contacts you had with any Department officials regarding the analysis of the memorandum of the 15th May 1996 was with Mr. Brennan.

Mr. Brennan requested that you carry out this exercise, and you attended meetings that you had with Mr. Pearse Farrell of Farrell Grant Sparks and with Mr. Michael Walsh of IIU. You don't recall having any detailed discussions with Mr. Martin Brennan on this issue, other than to indicate the documentary evidence, that is letters from various parties and copies of the shareholders and underwriting agreements that you would require in order to complete to your analysis.

Following these meetings you prepared the memorandum for the Secretary dated 15th May 1996. As far as you recall, you didn't discuss the contents of the memorandum with the Secretary of the Department.

A. Again I think it's worth clarifying, I don't remember specifically, but I imagine I would have passed a copy of the memorandum by Mr. Brennan before giving it to the Secretary, just to make sure he was comfortable with what it was saying.

Q. That would be a usual practice?

A. It would be par for the course, yeah.

Q. You were then asked for all dealings and discussions

you had with the Minister, with Mr. Brennan, Mr.

Loughrey or Mr. Fitzgerald, or with any other persons,
arising from the involvement of Mr. Dermot Desmond in
Esat Digifone.

And you refer to responses you have already given,
that you became involved in this at the request of Mr.
Martin Brennan; isn't that correct?

A. Exactly, yeah.

Q. I think you were asked for any previous dealings which
you may have had with Mr. Walsh, Mr. Michael Walsh or
Mr. Dermot Desmond, and you said you had no previous
dealings in both your personal or professional
capacity with either Mr. Walsh or Mr. Desmond.

Now, I think you were then asked about a meeting which
took place at the Department on the 3rd May 1996 and
which was attended by Mr. Digerud, Mr. Johansen, Mr.
Peter O'Donoghue, Mr. Michael Walsh, Mr. Paul Connolly
and Mr. Owen O'Connell. And you have informed the
Tribunal that you had no knowledge that such a meeting
took place with the Department of the 3rd May; isn't
that correct?

A. That's correct.

Q. I think you were then asked about your knowledge of
the request or requirement of the Minister or the
Department that the configuration of the issued share
capital of Esat Digifone should be restored to the
capital configuration of the consortium which applied

for the licence; that is, restored to 40:40:20.

And you have informed the Tribunal that you have no recollection of the request/requirement of the

Minister or the Department that the configuration of

the issued share capital of Esat Digifone should be

restored to the capital configuration of the

consortium which had applied for the licence, and you

therefore can't provide any information on this query.

A. I think that request actually happened just before I got involved.

Q. Can I take it at this time that you were unaware that the position was that the split was 37.5:37.5:25%?

A. Looking back on my notes now, I think I have seen in some meeting that it was mentioned that it was

previously at that level and that the Minister or the

Secretary had requested it I think it was the

Secretary had requested that it move back to 40:40:20;

but from the point in time on the 13th May that I

started looking at it, it was 40:40:20 was the way I

was looking at it.

Q. As of the 13th May, did you know about the previous position, to the best of your knowledge?

A. As I say, on a meeting on the 13th or 14th, it was mentioned during a meeting. That's when I would

have

Q. All right. I think Question 77, then, you were asked for your knowledge of a meeting which took place on

the 13th May attended by Mr. Digerud and Mr. Owen O'Connell at the Department.

And you say that you had no knowledge of a meeting which took place at the Department on the 13th May attended by Mr. Digerud, Mr. Owen O'Connell, and therefore you can't provide any information on this query.

Now, I am going to come back to you about that after lunch, because and just to ask you, you know, are you sure that you have no recollection? Because I don't want to take you short, so you can consider this over lunch.

There are there is a note of Mr. O'Connell's of attending a meeting at the Department on the 13th May, and another meeting, I think on the 15th May. And he records Mr. Towey and Mr. Brennan as being in attendance at the meeting, but he also records you being in attendance.

A. I know for definite that I have never met Mr. Digerud, so

Q. If we leave Mr. Digerud out of it, did you have any meetings with Mr. O'Connell?

A. I have met Mr. O'Connell on a number of occasions in different aspects. I am not certain; I can't remember

Q. The best way we can deal with it, we'll go to the note in due course; all right?

A. Okay.

Q. Perhaps not the 13th, but do you remember being at a meeting with Mr. O'Connell on the 15th?

A. Maybe. I don't have any specific recollection of it, but I do know I never met Mr. Digerud, so I don't know how I could have been at that meeting.

Q. That's very good.

Now, I think you were then asked for your knowledge if we go to Question 78 direct or indirect, of all steps taken by Esat Digifone or any person associated with Esat Digifone or by the Department on foot of the request that key questions be identified and draft answers prepared. And then we set out,

1. The questions identified.
2. The answers prepared.
3. The reasons for such answers.
4. The identity of all persons, including departmental officials, who had any input into the identification of questions and the preparation of draft answers.

You have informed the Tribunal that you had no knowledge of any steps taken by Esat Digifone or any persons associated with Esat Digifone or by the Department on foot of the request that key questions be identified and draft answers prepared, and therefore you can't provide any information on this query.

I think you were then asked for your knowledge of all meetings, discussions, or contacts of whatsoever nature between Esat Digifone or any person on its behalf and the Minister or the Department in connection with the key questions identified, the draft answers prepared, and the reasons for such answers or otherwise in the connection with the issue of the second GSM licence, and including meetings between Esat Digifone and the Department or the Minister on the 14th May, the 15th May and 16th May 1996, and recorded in attendances of Mr. Owen O'Connell, solicitor for Esat Digifone.

You have informed the Tribunal that you have no knowledge of any meetings, discussions or contacts of whatsoever nature between Esat Digifone, or any persons on its behalf, and the Minister or the Department in connection with the key questions identified, draft answers prepared, and the reasons for such answers, or otherwise, in connection with the announcement of the issue of the second GSM licence to Esat Digifone.

I think you were asked for your understanding of the terms on which IUU and/or Telenor provided funding for Esat Telecom to finance its obligations to contribute to the licence fee of $\text{€}15$ million paid by Esat Digifone to the Department on the issue of the GSM licence to Esat Digifone, together with the source or

the sources of their understanding.

And you say that you don't have a recollection of the specific terms in which IIU and/or Telenor provided funding to Esat Telecom to fund its obligations to contribute to the licence fee of $\text{€}15$ million paid by Esat Digifone to the Department on the issue of the GSM licence to Esat Digifone. However, as outlined in part 2 of this answer, you did have an understanding of the funding arrangements between IIU Esat Telecom and Telenor.

Turning to that question, your understanding regarding the funding arrangements between IIU, Esat Telecom and Telenor for all aspects of the funding of Esat Digifone Limited, including the source or sources of their understanding, you say that your knowledge and understanding of the funding arrangements between IIU, Esat Telecom and Telenor for all aspects of the funding of Esat Digifone Limited revolved around the exercise you performed at the request and under the guidance of Mr. Martin Brennan which culminated in your memorandum to the Secretary on the 15th May 1996.

The objective of this exercise was to provide Mr. Brennan with some financial advice on the competition of the Esat Digifone consortium and the financial strength of IIU Limited and Mr. Dermot Desmond. You have already described these, you say, in previous answers.

I think you were asked to identify all documents furnished to the Department in connection with the rights and obligations of the shareholders of Esat Digifone inter se in advance of the issue of the licence to Esat Digifone on the 16th May 1996.

And you say that as far as you can recall, the only documents that you reviewed in connection with the rights and obligations of the shareholders of Esat Digifone inter se in advance of issue of the licence to Esat Digifone on the 16th May 1996 were the shareholders agreement and the underwriting agreement from a financial perspective as part of the exercise which you were asked to carry out at the request of and under the guidance of Mr. Martin Brennan and referred to in previous questions.

I think you were then asked for all documents furnished to the Department in connection sorry, I beg your pardon to identify all documents furnished to the Department in connection with the project financing of Esat Digifone in advance of the issue of the licence on the 16th May 1996.

And you say that while you are not aware of the documents that were furnished to the Department, as far as you recall, all the documents which you received in connection with the project financing of Esat Digifone in advance of the issue of the licence on the 16th May 1996 were listed in your response to

Question 55.

A. I think that's actually Question 70 in this

Q. Question 70, and I don't think we need to

A. It's the same

Q. It's the same listed in Question 70.

I think then we go to Question 82, and I think you

were asked for your knowledge of the following:

1. All side letters entered into between the members of the consortia or any two or more of them in advance of the issue of the licence on the 16th May 1996.

2. All side letters entered into between Esat Digifone Limited or any shareholder of Esat Digifone Limited with the financial institutions which provided project financing to the company in advance of the issue of the licence on the 16th May 1996; and in each instance you were asked to identify the source of your knowledge.

And you have informed the Tribunal as regards 1, as far as you recall, the only documents that you were aware of as having been entered into between the members of the consortia or any two or more of them in advance of the issue of the licence on the 16th May 1996 are listed in your response to the previous questions.

As regards 2, as far as you recall, the only documents that you were aware of as having been entered into between Esat Digifone Limited or any shareholders of

Esat Digifone Limited with the financial institutions which provided project financing to the company in advance of the issue of the licence on the 16th May 1996 are listed in your response to the previous questions.

You were then asked for your knowledge of meetings between the Minister and/or the Department and the financial institutions who provided project financing to Esat Digifone at any time prior to the issue of the licence.

And you have informed the Tribunal that you have no knowledge of any meeting between the Minister and/or the Department and the financial institutions who provided project financing to Esat Digifone at any time prior to the issue of the licence.

You were then asked about the question of the consent of the Minister for Finance being obtained. And we needn't deal with that. There was no necessity for that.

I think you were then asked for your knowledge or whether you had any role in advising the Minister regarding a letter dated the 29th March 1996 from the Minister to the Chairman of the ESB. And I think you had no knowledge you have no knowledge or no role in that?

A. No.

Q. Likewise, as regards the Minister's dealing with the

European Commission in May of 1996, you had no role or no knowledge of that; is that correct?

A. That's correct.

Q. And then you were asked details of all dealings which you had with the Minister in connection with the affairs of Esat Telecom Limited or any associated company of Mr. O'Brien's. And you have informed the Tribunal, as far as you recall, you had no dealings with the Minister in connection with the affairs of Esat Telecom or any associated company of Mr. O'Brien; is that correct?

A. That's correct.

CHAIRMAN: Well, that concludes your statement, Mr. Buggy, so it's appropriate we adjourn for lunch and take up matters that you may be asked about at two o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AT 2 P.M.:

CONTINUATION OF EXAMINATION OF DONAL BUGGY BY

MR. COUGHLAN:

Q. MR. COUGHLAN: Now, Mr. Buggy, you joined the Department on secondment in June of 1995; isn't that correct?

A. That's correct, yeah.

Q. And I think the first meeting of the Project Group you attended was the meeting which was held on the 9th June, 1995?

A. That would be correct, yeah.

Q. It was the 8th meeting. And the minute of that meeting is to be found at Book 41, Divider 70.

Now, you can see the minute. The meeting records the or the minute records the attendance, and you're present. And then the meeting deals with contacts with the Attorney General re the GSM competition process, and then goes on to record discussions which took place about the problems which had arisen with the Commission; isn't that right?

A. That's correct, yeah.

Q. Then they have dealt with the Vodafone issue, which we needn't concern ourselves about at all here. Then if you go to the final page of the minute, you can see under the heading "Evaluation Model", this was approved as presented with correction of one minor typo on page 6 of 21. "Further comments, if any, to be forwarded to Maev Nic Lochlainn within a few days of the meeting". Do you see that note?

A. I see that, yeah.

Q. Do you remember seeing a copy of the evaluation model on that day which was adopted?

A. As far as I remember, there was one produced at the meeting, yes. I didn't retain a copy of it.

Q. No, no, that was the one that was adopted.

Now, I just wanted to you can get rid of that book now. And I suppose it would be handy if you could

just be handed Book 54, which is the weightings documents. And if you go to Divider Number 2.

A. Yeah.

Q. And this is the evaluation model which was presented and adopted at that meeting; it contains 21 pages.

And you will see that the first 17 pages deal with the quantitative model; isn't that correct? We have been through this with an awful lot of witnesses, unless you read through most of this

A. This was my first meeting of the Project Group, so I wouldn't have had a detailed understanding as everyone else.

Q. This was the document that was adopted that day. And if you go to page 17, you will see the table for the indicators and the weights that were applicable?

A. Yes.

Q. The only reason I am bringing your attention to this is because when we come to the evaluation report, the second draft, I think, there are some notes made by you, we believe, or that were made by Mr. Billy Riordan as a result of something you may have said, according to Mr. Riordan; but it's just that it brings us back to these weights again, so that's the only reason I am bringing them to your attention at the moment.

A. Okay.

Q. And then, if you go over the page, it sets out the

procedure for the qualitative evaluation process. And it is set out there, and again, we have been over this. And you go then to page 20 of 21, and it sets out the guide to the award of marks on the qualitative model.

A. Yes.

Q. And as you correctly stated in your memorandum on this, the matters were divided into aspects and dimensions; isn't that correct?

A. That's correct, yeah.

Q. And then if you go over the page, then, page 21, and it deals with the interplay between quantitative and the qualitative evaluation. "Initially the quantitative evaluation is conducted in order to score the applications. This initial score will be given during the first 3 weeks after the 23rd June."

That date had to be changed after the intervention of the Commission, anyway, and it was put back, but "This initial score, together with number-crunching performed on the basis of Excel spreadsheets, will then form the basis for the presentation meetings and the qualitative evaluation.

"When the bulk of the qualitative valuation has been performed, however, the evaluation will conversely form the basis for the recalculation of scoring applied initially if mistakes, wrong information or similar incidentals can be documented. The results of

both the quantitative and the qualitative evaluation will be contained in the draft report with annexes to be prepared by the Andersen team."

Now, what happened then was that in August, the applications the closing date was the 4th August, and the applications were received, isn't that right, the bids were submitted?

A. That's correct, yes.

Q. And in the first instance, did you get a chance during the month of August to have a read of the bids yourself, or did you just if you did look at anything, was it just the financial aspects of matters you looked at?

A. My recollection is I only looked at the financial aspects of it.

Q. Right.

A. I think it was a very cursory review.

Q. During the month of August?

A. During the month of August, yeah.

Q. And you went on holidays then; you were on holidays in the first three weeks of September?

A. Yeah.

Q. And you weren't at any of the presentations?

A. No, I wasn't.

Q. And you didn't participate in any of the financial sub-groups, or you didn't participate in the financial sub-groups, which you probably would have if you

hadn't been on holidays?

A. I would have thought so, yeah, but I didn't, yeah.

Q. Now, you weren't present, then, on the 4th September at a meeting of the PTGSM when the when Andersen presented the first quantitative evaluation

A. No, I wasn't, no.

Q. report.

And you were unaware as of that time as to how the trends were?

A. Yeah, unaware, yeah.

Q. And you have stated in your memorandum, and in evidence this morning, that you have no recollection of any decision being made at any time to abandon the quantitative evaluation; isn't that correct?

A. I wasn't at a meeting that the decision was taken, no. I think, if it happened, it happened while I was on holidays.

Q. You didn't know anything about it, in any event?

A. Not at that time. When I came back, I would have been informed that the qualitative had taken precedence.

Q. Yes, I understand the qualitative, but you had never been at a meeting or you had never been informed by anybody that the quantitative had been abandoned?

A. No, not from my recollection, no.

Q. Now, of course, in the intervening between the 9th June and you going on your holidays, or between that and the closing date, there had been a revision of the

weightings to take into account the question of the capping of the fee?

A. Exactly, yeah.

Q. And that was agreed?

A. That was agreed.

Q. And noted?

A. Yes.

Q. Now, can I take it that the next time that you had any involvement in the matter then was you carried out, when you came back from holidays, together with Mr. Billy Riordan and I'll come to those documents in due course some review or consideration of financial matters?

A. From recollection, my first involvement when I came back was looking at the draft financial section of the report, which purely the financial section which was sent to us by Andersens, just those few pages. I don't remember anything before that.

Q. So that would have been around the period that the around the 3rd to the 9th October?

A. It would have been the end of September, the first few days in October, yeah.

Q. The first few days in October?

A. Yeah.

Q. And you had a look at that; is that correct?

A. That's correct, yeah, yeah.

Q. Do you remember doing anything about it?

A. Again, from recollection, I would have gone through it, read it, and I suppose you could call it a sanity check; based on my knowledge of everything else, did it make sense to me, what they were saying in the draft report? Was it consistent?

Q. Right. And do you if you just bear with me for a moment. I think it's Book 42, Tab 125.

Are they your notes?

A. The first two pages are, yeah. Starting off, "Executive Summary Up Front", yeah.

Q. And you can see, if we come dealing with page 37, for example, "Deep pockets backers have sufficient financial strength in their own right."

A. Yes.

Q. Can you help us as to what that note means, or your understanding of it?

A. Well, I don't particularly remember the reference being written down here, but I would have thought what we were doing was clarifying what was meant by "deep pockets".

Q. Is that the backers?

A. The backers, yeah.

Q. And then you go to page 38 this is based on an analysis of the first of a portion of the first draft evaluation report; isn't that correct?

A. Yeah, I don't remember whether it's actually the extract that we would have received before the 3rd

October report came out, or whether it's actually the 3rd October report.

Q. Right.

A. I don't have and I don't see I have been through this a few times already before, and I don't see anything in it that can say definitively one way or the other which version it was, as such.

Q. All right. Well, you can see that obviously you were doing this in conjunction with Mr. Billy Riordan, were you, or do you believe?

A. Yeah, from memory, I think myself and Mr. Riordan met before the 9th October meeting, probably an hour or two before it, just to get together our own thoughts on it. But I think, from reading these notes, I suspect these are actually my notes of the actual meeting.

Q. Of the actual meeting?

A. Yeah. Because, if you go to the end of it, it says "Grammatical errors to Margaret." Which that would presumably is a comment that was made at the end of the meeting, which maybe Martin Brennan saying if anyone has any grammatical errors, send them to Margaret.

Q. Do you think that therefore you would have just made this note at the meeting, or would you have prepared a note and added something to it at the meeting?

A. It could be either, to be honest. I don't know.

Q. Because if you just look at the setting-out of the table

A. Yeah.

Q. for example, do you think you would have prepared that before the meeting, or was it something that you would have done at the meeting?

A. Again, I don't know. Given that I wasn't retaining a copy of the report, it might have been something that I jotted down at the meeting so that I'd know what was on the financials; but it could have been a copy before the meeting that I didn't want to mark up and therefore I wrote it down myself on a piece of paper. It could be either. It could be either.

Q. Well, you can see there that you if this was done in conjunction with Mr. Riordan, you were looking at certain of the grades which had been awarded; isn't that correct?

A. That's correct, yeah.

Q. On the financial indicators.

A. On page 38.

Q. On page 38 of the report.

And if you take, for example, there in relation to A3, for example, the question of liquidity, there is a line through "D", and there is perhaps a suggestion that that might be a "C", for example?

A. Yes, I see that, yeah.

Q. If you go down then to A2 on P

A. PBDIT: Profits before depreciation interest and tax.

Q. Perhaps you are making a suggestion that that should be a C rather than a B?

A. I don't know whether it was my suggestion or not.

Q. Well, it is a suggestion arising from yourself or Mr. Riordan

A. Or from the Project Group.

Q. Well, you were the financial people, weren't you?

A. We were, yeah.

Q. Would it seem

A. With Andersens.

Q. Would it seem more likely that this type of suggestion might be coming from yourself and Mr. Riordan, and/or Mr. Riordan?

A. Well, it's back to when the note was actually drafted, and I don't have a recollection of whether it's before the meeting or at the meeting. Being the financial people, yes, it would seem that they would have more of an opinion on this than others, but ...

Q. And then if you go across, then, you'll see there "A5" on the question of financial strength, where there is a B crossed out and a C being suggested; isn't that right?

A. That's right, yeah.

Q. And then if you go to A6, where there is an A for liquidity and there is a D being suggested there; isn't that right?

A. That's right, yeah.

Q. And then when you go to the bottom line on this, then, there is a suggestion that the C for A4 should be perhaps be a D, and that the B for A5 should perhaps be a C, and the C for A6 should perhaps be a D; isn't that right?

A. That's what the page says, yeah.

Q. Sorry, it's your writing.

A. I know it's my writing.

Q. I'm asking you about it.

A. It's not my view. That's what I am saying. It's not my view. It's what I wrote down at the time. I can't remember whether it was my view or not. However, I would say to you that if it was my view, and being the financial person, if I wasn't happy with the response I received to it, I would have brought it forward for further consideration. I think I have responded to the Tribunal on that in written form.

Q. Well, let's look at one or two of them so. Could you take the the first one we come to there on A3 for the liquidity, for example, could you help the Tribunal, as a financial person, as to why there might be a suggestion there that that D should become a C, for example?

A. Well, I think we need to go to the actual report and figures. This is the report of the 3rd October.

Q. Yes. Page 38.

A. Liquidity in this instance was defined as being the current assets as a percentage of the current liabilities, and each of the applicants was ranked or graded vis-a-vis predefined bands. And you see in the narrative on page 48, there, where they talk about below 100, above 100, and above 200. And then if we look at A3, where the narrative says "was slightly worse than A2, with six years below 100, and consequently A3 has been awarded a D."

And I think, then, if you note back on the handwritten page, page 39, first paragraph, "A3 more or less the same, as two years greater than 200", and that was a C was pointed out there. And I have no recollection of it, but I assume there was a discussion on this point at the Project Group meeting, and it was decided by the Project Group to leave it as a D.

Again, I have no recollection of it, I would have thought if I had a strong view on it, I would to this day have a recollection

Q. Can I ask you this, why do you think that if you have no recollection of it, of such a discussion taking place, why do you speculate that such a discussion took place at the Project Group?

A. Because it's on these notes.

Q. I know it's on the notes. You don't know whether these notes were made before you went into the meeting, isn't that right, and that you added to them

at the meeting?

A. Yes, that's correct.

Q. You don't know whether you made them at the meeting?

A. If I made the notes before I went to the meeting, I would have raised it at the meeting.

Q. Did you?

A. I have no recollection of it; that's what I am saying.

But there is no point in making the notes unless you do.

Q. You have no recollection of it at all?

A. No.

Q. None?

A. None. None whatsoever.

Q. Zero?

A. Absolutely zero.

Q. Right. Do you have any recollection why the suggestion of a C rather than a B for A5 for financial strength might have been suggested?

A. Other than what it says on the page, where it says "Communicorp doesn't have sufficient financial strength for its 50% share", that it might be marked down to a C. Again, I have no recollection of a discussion on that at the Project Group meeting. I would have thought it would have been a significant issue if I wasn't happy with what was being said about it, and therefore, I would believe that I would remember it today. Again, I have no recollection of

it.

Q. I just want to be clear about this now. You and Mr. Riordan but you in particular, because you hadn't even been at any sub-groups your sole interest was in the financial matters; isn't that right?

A. Exactly, yeah.

Q. Nothing else?

A. Nothing well, nothing else, yeah.

Q. Nothing else. And you have absolutely no recollection of anything that happened at all; is that what you are saying?

A. I am not saying I have no recollection of anything at all about this particular issue.

Q. About any of this particular calculation?

A. About this particular page, about this table and these changes, as to who suggested them, what the discussion was, and what the outcome was.

Q. I see. And that's your answer?

A. What I would add to that, though, is if I did have a problem at the time with what was being suggested, I think I would have remembered it today.

Q. I see. Well, let's just look at it now. For example, let's take that B and the suggestion of that C.

A. This is on A5, is it?

Q. On A5.

A. Yeah.

Q. The reason might be, as you have said, that if Telenor

were, and everyone accepted, good for it, they were financially strong, and Communicorp were not good for it, they were financially weak, and whether the split was to be 40:40:20 or 50:50, whatever one's view about it was, one might readily understand that the suggestion that with only 50% of the consortium being strong, that the grade of a C might be appropriate rather than a B, mightn't one?

A. I think you have to compare them to the other grades as well.

Q. Pardon?

A. You have to compare it to the grades of the other applicants as well. Because these are all ranked compared to each other as such. So I would like, without going through them all in detail. If you go to A3, which has three members of the consortium that got an A, one of which was a weak member and two of which were strong

Q. I beg your pardon? Say that again.

A. One of which was a weak member and two of which were strong, so it got an A; so on a comparative basis, you are looking at a B for A5, or you are looking at A6 which got a B, and you have to look at their members.

So what I am saying is, it wasn't looked in isolation for each person; it was compared how weak or strong were they compared to everyone else.

Q. Let's just take that as an example. We can readily

see Irish Mobicall gets an A; isn't that right?

A. That's A1, is it?

Q. A1.

A. Yeah.

Q. All strong members. They were the financially, the strongest of all, in that there wasn't a weak link amongst them; isn't that right?

A. That's right.

Q. You then, for example, you look at A3 and how that might have been arrived at. You had two strong members; isn't that right?

A. Yes.

Q. And you had one member which made up about 26% of the consortium; isn't that right Persona?

A. Made up 26% of Persona.

Q. Made up 26% of Persona, one member, Sigma, made up 26 percent of Persona, or thereabouts; isn't that right?

A. Yeah.

Q. You had a submitted concluded shareholders agreement with the application from them; isn't that right?

A. I wasn't involved in the detail of that, so I am not aware of that.

Q. And in that shareholders agreement, it was accepted that in the event of Sigma not being able to subscribe, that the other two would subscribe proportionately. That's what you had in the application; isn't that right?

A. I accept your word for it. I wasn't involved in looking at the shareholders agreement.

Q. So therefore, one might, on a qualitative assessment, say, "Well, there isn't a weakness there, so therefore it's an A". One might?

A. Yeah, I don't have a problem with your argument there, yeah.

Q. One then goes to A5; no doubt about it, Telenor blue chip, no problem in relation to strength there at all Telenor?

A. Yes. No, I agree with you.

Q. Communicorp, nothing. So therefore it's weak; isn't that right?

A. And that's what the report said, yeah.

Q. No concluded shareholders agreements at this stage?

A. Again, I wasn't involved in looking at shareholders agreements, so...

Q. No means whereby one could make, on a qualitative assessment, say that this is now a 50% or a 40% weakness, leave the financial institutions out of it, as between the two main players; isn't that right?

And one could reasonably see why one might suggest a C, and one can understand there may have been an argument about it; but one can see why there might be a C relative to the other two which got an A in those circumstances. Isn't that right?

A. You could also see why they got a B on the same

argument, Telenor

Q. Just explain that to me.

A. Telenor being a strong partner.

Q. One strong partner?

A. Yeah, so they have been marked down. But it's a degree of how far you mark them down.

Q. Right. You think that there was discussion sorry, you don't know whether there was discussion about this, do you?

A. I can't remember a discussion on it.

Q. We have been through, with other witnesses, a verbatim note of Ms. Margaret O'Keeffe of this meeting, and maybe I am wrong, but I can't see any reference to any discussion about this at that meeting. And hers seems to be the lengthiest note of the meeting; the minute was rather shorter. So if it's not noted by Ms. Margaret O'Keeffe, it seems that the discussion may not have been at the meeting on the 9th October at all; it may have been something that yourself and Mr. Billy Riordan did before the meeting or after the meeting.

A. Like I say, I don't remember the discussion at the meeting. And if there is no evidence I know where you are coming from, but as I say, I don't remember whether it was at it or before it. I suspect it wasn't after it. I suspect it was either before or at it.

Q. And what explanation do you believe you were given about these? Or do you have any recollection at all?

A. I have no recollection of what the explanation was, no. Again I come back to the point that if I wasn't happy with the explanation, or if I wasn't happy with the grade, I think I would have been bringing it further, and I suspect that the rest of the Project Team would also have been bringing it further on the basis

Q. Can I ask you this for a moment, now: You didn't even know that there was a concluded shareholders agreement in relation to A3, did you, submitted at the bid? And you were on the financial side of things.

A. I hadn't reviewed of that. Remember, I wasn't involved in the financial sub-group.

Q. You didn't know what the position was between Telenor and Communicorp?

A. No.

Q. How could you have been happy with any explanation if you weren't familiar with the full situation?

A. Andersens were involved in that part of it, and they would have given us a verbal update as to what the position was.

Q. Can I take it that you just accepted Andersens' word, so?

A. In this instance, yes.

Q. You see, when you look at this, and you look at the

whole table, what you or you and Mr. Riordan or Mr.

Riordan and you noting it are not just suggesting alterations of some small individual matter, but that what you were suggesting is an amendment to the overall or the bottom-line score. Do you see that?

A. Yes.

Q. Do you know what explanation you would have got to satisfy you about that?

A. Well, it would revert back to the individual. The proposed changes on it, if the individual proposed changes weren't actually changes, then the bottom line doesn't change.

Q. Why do you say that?

A. Because

Q. Did you just tot up the grades, or did you exercise any overall judgement? Do you know how this was arrived at in the first instance?

A. From what particular point of view?

Q. How the bottom line was arrived at in the first instance in relation to the dimension finance.

A. My understanding is that it was done by looking at each of the individual grades and coming up with the number of As, Bs, Cs and then work out an average as to what the total result would be.

Q. Who told you that?

A. I believe either Mr. Brennan or Mr. Towey.

Q. Told you that?

A. Yes.

Q. And were you told that's how it was arrived at in relation to all matters?

A. I don't believe I was told that. I don't believe the question arose.

Q. You see, Mr. Brennan's or Mr. Towey's evidence to the Tribunal in relation to qualitative assessments carried out was that grades were awarded, and then a judgement was exercised as to which were the more significant or the more important of the various indicators, and that then another judgement was exercised to arrive at the bottom line. That's not what you were told, to your recollection?

A. To my recollection, yes.

Q. That's not what you were told?

A. Exactly, yeah.

Q. So you believe you were told that all you did was you totted up the As, Bs, and Cs, and you arrived at an average, to your recollection?

A. From memory, yeah.

Q. And you believe you would have been told that by either Mr. Towey or Mr. Brennan; is that right?

A. Or possibly Andersens, but of those my understanding is that this was done at a meeting in Copenhagen at the end of September.

Q. Do you know when it was done, this particular exercise on this table? It was done on the 28th September; did

you know that?

A. No. Well, only from the transcripts I have seen so far.

Q. It was done on the 28th September in Copenhagen by Martin Brennan, Fintan Towey, Michael Andersen and perhaps Jon Bruel.

A. Okay.

Q. You weren't there?

A. No.

Q. Billy Riordan wasn't there?

A. I don't think he was, no.

Q. He wasn't. And you don't know what explanation you were given

A. I have no recollection of it, no.

Q. if any?

A. Well, I have no recollection, so therefore ...

Q. Now, if you go to Divider 124. Was this prepared by you, this memorandum?

A. Myself and Mr. Riordan, yeah.

Q. It's to Jon Bruel, isn't it?

A. And Michael Andersen, yeah.

Q. And it's regarding the first draft of the evaluation report?

A. Yes.

Q. It's dated the 9th October.

A. Yeah.

Q. And it reads "Further to our discussions this

afternoon, as promised, we set out below our particular queries on the financial section of the report."

Did you and Billy Riordan have a separate discussion with Michael Andersen and Jon Bruel, to your memory, apart from any discussion which took place at the Project Group? Could that have happened?

A. From memory, I don't remember having a separate discussion. When I read this now, I read that as part of the discussions at the Project Group meeting, but I don't have any recollection of making a separate call.

It's not to say I didn't, but I don't have any recollection of it on the same day.

Q. Then we go to "Need to expand the narrative on each of the paragraphs on pages 36 and 37." Whose is that note? Is that your writing?

A. That's my handwriting.

Q. What does it read? "Now satisfactory"?

A. That's what it says.

Q. What does that refer to?

A. I imagine what it is, it's either looking at the next draft of the report, I went back to this memorandum to see that all the points were addressed or else a subsequent phone call with Michael Andersen or John Bruel, but I suspect it was the second draft of the report.

Q. All right. Then "Need to replace 'deep pockets' with

an alternative phrase throughout the document." Then there is "Replaced".

A. Yeah.

Q. That seems to be more consistent with the second report, doesn't it?

A. Yeah, I didn't look the words "deep pockets"; I don't think they were appropriate to a report. So ...

Q. Then "Page 38, paragraph 2 doesn't refer to Sigma's financial concerns. For consistency with Communicorp, should they not be mentioned." Then it has "Not included, not material given size of other"

A. "Consortium members", I think.

Q. "consortium members." What's that?

A. Well, I can only imagine that it's on page 38, whereby they talk about A3, and they don't mention the fact that Sigma has is a weak partner. And I was raising the point, should they actually refer to the weakness of Sigma, for consistency? Presumably the answer I got back, it hasn't been included because it's not material.

Q. It is referred to in subsequent versions of the report, isn't it?

A. Is it referred to in that page.

Q. It may not be referred to on that page?

A. It is referred to elsewhere in the report, all right, yes, yeah.

Q. Then bullet point "Recheck liquidity on A6 with

reference to the number of years the ratio falls below 100 (see page 38, paragraph 3). If this changes the grading, then please consider the consistency of the revised grade with those attributed to the other applicants." Then there is what's that?

A. "Outstanding", I think.

Q. "Outstanding.

"Page 39, paragraph 3 doesn't refer to A2, A3 and A5 when A3 is given a different grade to A2 and A5. Also please recheck A2, as it would appear that it has a ratio of 2 or less for 5 years and therefore merits a grade of C."

A. It says "No, on rounding it appears as 2, but it is actually greater than 2 okay."

Q. Page 39, "Could you please supply workings for the following calculations:

" operating cost per SIM card okay

turnover in percentage of investments okay.

If you have any queries you can contact" yourself or Billy Riordan; is that correct?

A. That's correct.

Q. Now, when do you think that went off? Did it go off on the 9th?

A. I would have thought so, yeah.

Q. And these notes would have been made when you received the next draft of the report; would that be

A. Or as I said, a subsequent phone call. But I think

possibly, possibly, the next draft of the report.

Q. All right.

Now, if you go to the next draft of the report, and I

think the best place to look at it would be in

book it's the one with it's your copy of the

or the one with your notes on it; I think it's in

Book 56 might be the best place to find it.

Do you have one?

A. I have one, yeah, I hope. Yeah.

Q. Now, you see can I just confirm that if you flick

through it, that is your handwriting, is it, on the

A. Well, I actually I have my own copy of this from my

own files, but if you turn a page on the screen, I'll

tell you whether it is or not.

Yeah, that's my handwriting, yeah.

Q. And when would you have made these notes, do you

believe? Would this have been at the meeting of the

23rd?

A. It could either be before the meeting, if I got the

report before the meeting, or actually at the meeting.

Q. Right.

A. I think no, I can't remember whether we got this

draft before or not.

Q. If you go to page 18, and you see the table at the top

of page 18?

A. Yes, I do, yeah.

Q. This is the dimension market development; isn't that

correct?

A. Yes, it is.

Q. It's marketing, under the and do you see that note there?

A. The handwritten note?

Q. "Does A5 gain an advantage by being ambitious as opposed to realistic?" Can you be of any assistance to the Tribunal as to what is meant by that?

A. It's my handwriting, all right. I don't know whether it was a comment made by others at the Project Group meeting or by myself. I would suspect, on balance, it was at the Project Group, because I wasn't interested in the other sections other than the financial one, so I don't think I would have been writing that down.

Q. Right. Now, if you go to page 21, you see the table, the dimension coverage?

A. Yes.

Q. And there you see the text underneath, the first paragraph "The summary of the marks presented in Table 3 shows that the indicators 2 and 3 and 4 slightly influence the picture provided by the marks, the roll-out plan. A3 is raised to the highest rating, where also A5 remains, due to the excellent performance on the other indicators, while A1 then it's crossed out in total is awarded a B "Only warranted" is the alteration primarily due to an unconvincing site acquisition preparation." Then

there is a handwritten note, do you see that?

"Implies a weighting"; do you know what that is about?

A. The words you have actually read out implies there is a weighting in the table.

Q. Yes, but do you know, was that some comment you made?

A. No. Well, I don't know for definite, but again it's on coverage, so it would have been my area. It would have been someone else mentioned that, probably.

Q. Right. If you go to page 28, "Technical Aspects"; do you see the table?

A. Yes.

Q. And then you see the note "What is the weighting? Works without any" do you know where that came from or what it means?

A. It appears to imply there is no weighting applied to this table. Being crossed out, I don't know whether that means that everyone was happy with it or whether there actually is a weighting applied to it, I don't know.

Q. You can't assist the Tribunal as to what your note is referring to there?

A. No. Again, I was just writing down what was being said. All these points, because I was missing through the September period, I would have been jotting down notes to try and get up to speed.

Q. Again, if you go to page 31, the dimension network capacity, can we take it that the note that you're

making there is just jotting down what you may have heard at the meeting rather than you making any contribution yourself or having a view about it?

A. Exactly, yeah.

Q. Right.

A. And you see there there is a note to be checked by John, so that's somebody was obviously going off to check that.

Q. Right. Again, page 31, the note again is just something that you heard somebody say; is that correct?

A. Sorry, page 31?

Q. Page 31, at the top of the page 31, there is a handwritten note.

A. Top of page 34, is it?

Q. I beg your pardon, 34, I beg your pardon.

A. Yeah, that's a handwritten note, yeah.

Q. If you go to page 38, it begins "The financial aspects..." We have the financial key figures and the licence payment; isn't that correct?

A. That's correct, yeah.

Q. And you make a note there "Why in brackets change?"

This is everyone getting an A

A. A brackets, just there is no need for the bracket, yeah.

Q. Then if you go to page 41, the note, the table first of all, can you say what it means?

A. Well the table is what we looked at earlier.

Q. Yes, I know that, the handwritten note.

A. Sorry, which particular handwritten note?

Q. Well, can you just go through if you go down over the table.

A. Over the table there is a number of numbers appears to be brought down to a smaller figure with a grade beside it, and I think what I was doing here was applying numbers to the grades and working out, to try and see whether I was happy with the overall grades.

Q. This is something you were doing yourself, you believe, is it?

A. I think I was doing it myself, but I think, if I remember correctly at the Project Group, I think there was a general discussion on and there is actually an overall table at the back, showing if you converted the grades to actual numbers.

Q. So it would have been in that context, really, you'd have been doing that, you believe?

A. Well the same idea behind it, yes.

Q. Now, if you go to the sensitivities, risks and credibility factors, page 44; was this you say there is an asterisk, "Mention separately valuable project". Do you see that?

A. Yes, I see that.

Q. Then down under the third paragraph is crossed out "Redraft clear" what's that?

A. "Redraft clearer statement", it looks like to me.

Q. Then under that, "In the case of A3" do you know, was that something you were making a contribution to, or noting what somebody was saying?

A. It's possibly what somebody was saying, changing a word, I just jotted it down, yeah.

Q. Right. If you go to page 48, do you see the table, the summary of the concluding summary of the marks awarded? Do you see that?

A. Yeah, Table 16, yeah.

Q. You have a note up above it?

A. Yeah.

Q. "Should this table not be in the order of criteria as laid down in paragraph 19 of the RFP."

A. Yeah, I think I remember a discussion on that at the Project Group meeting where it was felt that we should the final table should be in line with what the RFP was saying.

Q. Did anybody say anything to you about it, that it wasn't or that it was?

A. Well, I think the point would have been made that, while it's not in the same order, it is covering the same issues, yeah. I don't know what happened in the final report, but I think we

Q. This moved in the final report?

A. Yeah, I think what I have written on the top, I think it was a decision of the Project Group to make it into

the order of the RFP.

Q. And then if you go over the page, the result based on regrouping of the criteria, should this be "Primary

Result"? Do you see that?

A. Yes.

Q. And then if you go to page 50, then

A. Which is in the order of the RFP.

Q. Yes. And do you see you have in there, you have 30 written, isn't that right?

A. Yes.

Q. 20?

A. Yeah.

Q. And then 18. And then the others are blotted out, but they are the minor ones?

A. Yeah.

Q. What's that about, do you know? What's crossed out there and 30 put in? And what's crossed out there and 20 put in?

A. Well, I am guessing it's 10, 10, 10 is crossed out, but I can't remember work it out from the copy I have.

And I am not sure, I presume it's 10 and 10, coming to

the 20. What I think it relates to is the fact that

the original allocation of the weightings was 30, 20,

18, 11, and then credibility of business plan and

market development has been split out further.

Q. Yeah, but why would you cross out 10, 10, 10? What was that about?

A. Well, I think so it was about the fact that that whole section was 30 in the initial weightings, and the question was, you know, should it be split 10, 10, 10, or should it just be 30?

Q. Or should it be just ... ?

A. 30 in total for the whole credibility of business plan and market development.

Q. Well, it was. It was 30.

A. Yeah.

Q. Why did you cross out 10, 10, 10 there? Was there some discussion going on about weights here? Did you not have a table which showed that split, which was the one adopted back on the 9th June, showing that split wasn't 10, 10, 10?

A. I think that's why there was a discussion on it, yes, yeah.

Q. Do you remember that?

A. I do remember a discussion about the 30 vis-a-vis the split for 10, 10, 10, yeah.

Q. No, no, no. The 10, 10, 10, which was different to that which was adopted: Were you given any explanation that what had happened in Copenhagen was that a whole new approach to weightings had been adopted in relation to the qualitative evaluation?

A. I don't have any recollection of a discussion I don't have any recollection of a discussion about a whole new way of weighting.

Q. Well, we know from the model which was adopted and we'll come to in due course, because as late as, I think, April of 1996, you in fact raise a question about this again, when draft letters which were being prepared for the disappointed applicants were being prepared and they were sent to you for your consideration. I'll come to it in due course. And you raised a question with Fintan Towey to which you do not appear to have received any response, as to whether the split of 10, 10, 10 was ever agreed, or whether they were just indicative?

A. Do you want me to respond to that now or?

Q. Yes, you can.

A. From memory from that, they were the letters that were going to be sent out to the unsuccessful applicants, which the draft that I saw from Fintan Towey had the 10, 10, 10 split. From looking at my files, I had no final report on my files. I had no final decision. I couldn't like, at that stage I couldn't remember what was the agreed position, and part of my role in the Department would have been to send back comments like that so that Fintan would go off and check that he was happy. It's not that I would have expected a response from Fintan on it.

Q. But you had no recollection of 10, 10, 10 being a split ever agreed; isn't that right?

A. I had no at the time I did the comments on the

April '96 document, I would have things moved on; I would have been doing a hundred and one other things. I have nothing on file to say that's the split.

Q. You specifically raised it. Was this agreed, or was it purely indicative? You raised it in that form.

We'll come to it in due course in any event; you needn't worry.

Now, were you aware that the report Appendix 10 of the report; it's just to get your view.

A. This is in Tab 2, is it?

Q. Yes, it is. It's Appendix 10. And page 7 of Appendix 10, it's just that you have made a note. This of course is at a time when it was believed that Advent sorry, this is at a time when the Department were told that Advent would be the people who would be funding or providing funds to enable Communicorp participate in their equity requirements in the company.

It commences: "This may result in a situation of instability or a situation where the control of Communicorp is transferred to Advent." Sorry, I'll read the whole thing, in fact.

If we deal with the page 10, or page 1 of Appendix 10, under the introduction.

"As stated in the main evaluation report, the two top-ranked consortia have members who presently do not have the capital required to finance the GSM2

network".

And you have a note, "Very negative introduction."

A. Yes.

Q. What did you mean by that? It was true, wasn't it?

A. Well, it is a negative

Q. It was true specifically in relation to A5, whatever about the position as regards A3 with its shareholders agreement. But, that they had they both had members who presently do not have the capital required to finance the GSM2 network. Isn't that right?

A. That's what I have I don't know whether I had a problem with that or whether somebody else in the Project Group had a problem with it.

Q. Oh, I see.

A. But you are right, it is a true statement.

Q. It was factually correct?

A. Yeah.

Q. Do you remember Appendix 10 being discussed at the meeting?

A. No. Just looking through it here now, I don't remember any of it.

Q. Okay, well, we'll continue on anyway.

"The consortia members, who thus need capital for the funding of the GSM2 consortium, have "secured" this capital by various instruments, including the shareholders agreement and letters of commitment from investors."

That's a correct statement of fact; isn't that right?

You had the shareholders agreement in the case of Sigma or Persona, and you had what had been presented to the Department of letters of commitment from investors and various increments. You had the letter also from Advent to the Department; isn't that right?

A. I have no reason to dispute it, yeah.

Q. "This analysis discusses the risks due to lack of funding. It further suggests means to close the uncertainty related to financing.

"The risk analysis includes a brief assessment of A2, A4 and A6 and a more detailed assessment of the three top ranked consortia, A1, A3 and A5."

Now, we needn't concern ourselves with A2, A4 and A6. They are not in the

A. Okay.

Q. in the reckoning.

If we go then to page 3: "The consortia members of A3 and their share distribution is as follows", and it sets them out Motorola, Unisource, Sigma and the ESBI the ESB.

"The initial shareholding by Irish investors will be 46.7%. The application includes no intention of share flotation.

"Sigma Wireless was formed in 1991, following a management buyout of Motorola Irish distribution activities. The principal activities of the company

are the exclusive distribution of sale of Motorola radio communications products and systems in Ireland.

"Motorola is 49% shareholder in a joint venture with Telecom Eireann called Airpage, which provides the only nationwide paging service in Ireland.

"In the financial plan (base case), the equity contribution is stated to be 39..." just short of 40 million, "with a debt financing of 42.4 million.

The applications did not include a sensitivity analysis regarding these figures, but the sensitivity analysis regarding the cash flow shows that the minimum accumulated cash flow increases (numerically) from minus 102 million to minus 255 million in the event of a two-year delay of subscriber uptake.

Although this figure represents a possibly unrealistic event, a combined set of events influencing the business case in a negative direction could lead to a situation where the need for finance is twice as high as in the base case.

"If the ownership ratios are used as an indicator for the finance requirements, the following equity requirements hold." Then they set them out, and they set out the estimated worst-case equity.

"Although the financial strength of ESBI is not revealed in the application, the shareholders agreement states that the ESBI will get all the necessary backing from the mother company ESB.

Therefore the financial strength of ESBI seems well secured.

"Unisource and Motorola are both financially strong companies. Sigma is the weak partner with an equity capital of €1 million. The application does not state how Sigma is going to provide the necessary funds.

But the presentations revealed that they have a letter of commitment from an Irish investment bank, AIB, as a matter of the tender procedure. This piece of information can only be interpreted as a willingness to secure the necessary capital. Furthermore, nothing definitive about the price of such commitment with respect to gaining equity in or control of Sigma has been stated. However, Sigma's existing shareholders cannot be expected to give away a majority part of the shares. This is because the shareholders agreement (see the text box below) leads a way out of the funding problem. It states that if one of the shareholders is not capable of providing the required guarantee for a loan, the other shareholders may provide the necessary backing.

"The shareholders agreement thus provides Sigma with a tool to guarantee Sigma's funding. Sigma may still decide not to use this opportunity due to other reasons. One reason could be that the financial burden imposed by the ownership of Persona is of such a magnitude that it might cause Sigma's bankruptcy.

This may happen if Sigma does not increase its equity capital to a level which will cover the initial losses in Persona during the period of the first years.

Therefore, there is a need for an injection of further equity capital in Sigma if it shall persist as a stable partner in the consortium. This aspect is not addressed in the application, and it leaves an uncertainty about the ownership of Sigma.

"If Sigma is not able to provide the necessary funding, the shareholders agreement states that the failure of the shareholders to subscribe to its pro rata share in a subsequent share capital increase shall result in dilution of the proportionate shareholding percentage of such shareholders. Thus, the consequence is that Motorola, ESB and Unisource get a higher stake. This may lead to a situation where Persona is controlled by non-Irish partners."

Then the provisions are set out in the box. I needn't go through that.

"To conclude, the weak financial position of Sigma will not lead to financial problems for Persona but may lead to a different ownership structure of Persona, either directly, through the division of its shares, or indirectly, through the ownership of Sigma.

"This uncertainty can be limited by a proper set of licence conditions, as example the following type of conditions are suggested:"

Then it says

" requirement for minimum equity capital for Sigma.

" requirements regarding the voting powers in

Persona.

" requirements regarding the loan to Sigma and their conditions."

There is only one thing I'd like to ask you about there, because we have seen it mentioned a number of times. There was no requirement or nobody was viewing this process as one which required the company to remain in Irish ownership; isn't that correct?

A. That's correct, yeah.

Q. Now, if you go to A5, assessment of A5.

"The consortia members of A5 and their share distribution of the existing corporation Esat Digifone is as follows:

"50% Telenor

"50% Communicorp (3/4 held by Advent International.)

"At present Telenor has current assets of 350 million.

" the financial strength to provide the necessary financial backing of its wholly-owned subsidiary of Telenor Invest.

"Communicorp is a new company which has invested heavily in telecommunications infrastructure and has a very weak balance sheet which needs capital injection before it can support the shareholder equity commitments stated in the shareholders agreement."

Now, do you know, was there there was no shareholders agreement, or did you ever see one?

A. I wasn't involved in looking at it, so I never saw it.

Q. Then there is an extract from the shareholders agreement:

"In the period after a licence award, Communicorp will have between 40% and 50% of the shares. This may be diluted to 34% at a later stage, where up to 32% of Esat Digifone's equity is made available to public institutional investors. Even with only 34% shareholding, the financial commitment of the two original partners will be high.

"The applications did not include a sensitivity analysis regarding these figures, but the sensitivity analysis regarding the cash flow shows that the minimum accumulated cash flow increases numerically from minus 108 million to minus 156 million in the event of a two-year delay of subscriber uptake.

Although this figure represents a possibly unrealistic event, a combined set of events influencing the business case in a negative direction could lead to a situation where the need for finance is 50% higher than the base case. 52 million are used as the base case requirement, and if 1.5 by 52 million is used as the worst-case equity requirement, the individual equity commitment for Telenor or Communicorp amounts to" it sets it out.

"This equity commitment cannot be met by Communicorp today. According to a letter of commitment to the Department of Transport, Energy and Communications dated 10 July, Advent has committed to fund up to 30 million in support of Communicorp's 40% shareholding.

The letter of commitment does not clearly state what the 'price' would be if the commitment should be brought into life, but according to the presentation, the price would be close to a 75% stake in Communicorp. Furthermore, according to the information given in the presentation, the control will be still in the hands of Irish investors (Denis O'Brien), as his shares bear a three times higher voting power.

"The legal basis for this commitment has not been included as part of the application's supporting material. Taking into account the very high proportion of Communicorp's intangible assets (most of this is goodwill) the risk of a dispute about the share ratio between O'Brien and Advent seems evident.

"This may result in a situation of instability or a situation where the control of Communicorp is transferred to Advent. It could also lead to a situation where the commitment of Advent cannot be fulfilled.

"The size of commitment by Advent does not cover our worst-case estimate of the equity requirement at a

constant 50% ownership of Communicorp. In a worst case scenario the requirement for further funding is expected to arise two/three years into the project.

At this stage Advent will already have invested the committed figure, and it is judged to be very unlikely that Advent will retreat, as this could lead to a hundred percent loss of the investment funds.

Therefore it can be concluded that the major risk is related to the possible instability of Communicorp or to the transfer of power to a non-telecommunications investor.

"This uncertainty can be limited by an appropriate set of licence conditions. As examples, the following types of conditions are suggested:

" requirements regarding the share of ownership and voting power in Communicorp

" requirements regarding the equity of Communicorp".

Now, do you see there you have made a note, "Very negative"?

A. Yes.

Q. Is that your note of your view, or can you assist the Tribunal?

A. I don't know whether it was my note. It is a negative statement, and it's a negative way of looking at it, but I don't know whether it was my view or someone else's view, like the Project Group. And I don't know, actually, if it was changed in the final report

either.

Q. Well, it doesn't no, it wasn't.

A. Okay.

Q. But it doesn't appear to have this particular appendix does not appear to have been discussed at the meeting of the PTGSM on the 9th October. The only annex which appears to have been discussed at that meeting, from the notes we have, is Annex 4.

A. Was it even available on the at the 9th?

It was, actually, yeah.

Q. Annex 10 was?

A. No, I don't have any recollection of it being discussed at that meeting.

Q. Well, the only note we have of a discussion of an annex relates to Annex 4 at the meeting. And in fact, do you know your own handwritten notes, which were either made before the meeting of the 9th October or at the meeting of the 9th October, or a combination of both?

A. Yeah.

Q. On the second page of that, just above the words "Grammatical errors to Margaret", there is an arrow: "Annex not read yet, no time."

A. Okay.

Q. Now, do you know when you would have read the annexes?

A. I think the annexes would have been read between the 9th October and the 23rd October. That was the next

meeting, wasn't it?

Q. Yes, it is, yeah.

Did you discuss them with anyone?

A. No recollection of discussing them with anyone, no.

Q. It was indicated at the meeting on the 9th October that there would be need for a full discussion on Annex 10. Obviously it hadn't been read. Do you remember any discussion about Annex 10, ever?

A. No.

Q. Now, this was in your area of expertise; isn't that right?

A. Financial area, yes.

Q. Yours and Mr. Billy Riordan's?

A. Yes, but I have no recollection of having actually discussed it. I don't know; did the detailed minutes of the 18th say it was discussed?

Q. Of the 23rd?

A. Sorry the 23rd, yeah.

Q. No. The minutes don't say it, anyway. It's a very short minute, so I am not and the other documents which we look at around that period would be Mr. McMahan's notes, and there is he doesn't note it, anyway, in his notes that there was a discussion of Annex 10. You have no recollection of it ever being discussed?

A. No recollection, no.

Q. Now, when you looked at the first draft of the

evaluation report, that's the report of the 3rd October, did you only concern yourself really with your area, the financial aspects, perhaps looking at risks and sensitivities, that area? Would that be the area of the report that you would have concerned yourself with?

A. I would have specifically concerned myself with the financial area, the whatever section it is; we were looking at it earlier 3.4, I think, financial aspects. I possibly read through the rest of it very quickly, just to get myself up to speed.

Q. Did you read the evaluation model, Appendix 3 of the report?

A. At the meeting for the meeting of the 9th October?

Q. Yes.

A. Very quickly, I think, but not in any great detail.

Like I say, I can't remember whether we got the report at the meeting or before that meeting.

Q. Did you notice or perhaps you didn't, because why would it have caused you any particular concern that in Appendix 3, the evaluation model is set out, and in effect, what it is is just a lifting of the evaluation model which was adopted on the 9th June, as one might expect, in total, including the tables and the weightings

A. I didn't

Q. which were adopted for the quantitative evaluation?

A. I don't remember noticing that specifically, but...

Q. That's what was in it?

A. I see that here, yes.

Q. When you got the second draft, which was the one of the 18th, what did you read in it? You obviously must have looked at Annex 10, because you made some notes on it; isn't that right?

A. Yeah. I think, from memory, I think I had a fairly good read of the whole report at that stage before the 18th the meeting on the 23rd.

Q. Were you comparing the two drafts, or did you just read the second draft on its own?

A. I think I would have probably, on the financial aspects side of the Section 3.4, I obviously would have been checking that in more detail than the rest of it, but I think I just read the rest of it straight.

Q. Did you notice that in relation to Appendix 3 in the second document, that somebody had altered Appendix 3 and included in it a table in the evaluation model which showed the weights as being different to that which were adopted on the 9th June?

A. I have no recollection of noticing that, no.

Q. Nobody brought it to your attention, and nobody discussed it?

A. I don't remember it being brought to my attention, no.
That's not to say it wasn't at a Project Group

meeting, but I have no recollection of it.

Q. Well, if anyone brought it to your attention, it would be corrected, I suppose, because you can't change something which was adopted, and you are recording it as being the historically adopted document. Isn't that right?

A. That's true, yeah.

Q. Isn't that so?

A. Yeah.

Q. So I now want you to be clear about this, Mr. Buggy: Was there a discussion about it at a Project Group meeting, or wasn't there?

A. And you are talking about specifically all of Annex 3, or it's the table you are talking about, is it, that adds up to 100?

Q. No, the table which gives the split, which was not the split which was adopted.

A. That table there, is it?

Q. Yeah.

A. I have no recollection of a detailed discussion on that at the Project Group meeting.

Q. When you say "a detailed discussion", do you have any recollection of any discussion?

A. No, I have no recollection of any discussion.

Q. You certainly, can I take it, would not have countenanced changing a historical document in what was purporting to be the official record of a process?

A. Unless there was a valid reason for it, but I don't see why you would. I don't know what like, as I say, I don't remember the discussion, so I don't know, I don't remember if there was

Q. Because the effect of this is quite significant; the effect of this is quite significant in the overall presentation of this process, Mr. Buggy. Let's be clear about it. This is being presented Mr.

Andersen, in the report, and the Project Group, are presenting on what were the old tables of 16, 17 and 18; the 16 table, which was in conformity with the evaluation model, whereby the qualitative evaluation was conducted on the basis of grading aspects.

A. Yes.

Q. And we then have a regrouping into what becomes Table 17, where there are grades on the in respect of the various dimensions; do you remember that?

A. Which is in line with the RFP? Is that that one?

Q. A regrouping?

A. Yeah.

Q. And are described. Then we have it turned into numbers, where you have to get the same result if you apply 5, 4, 3, 2, 1 to A, B, C, D, and E. These are described in the first instance by Mr. Andersen as conformance tests in respect of what he understood to be the correct way to do it; that was on the aspects table, and he even describes it, in the first

evaluation report of turning it into the grades in the table and applying a weighting to them, as being something which distorts the idea of a qualitative assessment. Do you remember that?

A. I think I remember it's actually that's noted in the report, I think. I don't remember a discussion saying that it distorts.

Q. No, it's in the report. Remember it in the report?

A. Yes.

Q. It's in that report, and it's in the report of the 18th?

A. Exactly, yeah.

Q. And you don't remember any discussion about it. Nobody else seems to remember a discussion about it either.

A. Yeah, no, I don't, I don't.

Q. Now, what Mr. Andersen goes on to describe in the report of the 3rd and of the 18th, and we'll go on to the final report as well, that the weights which were applied were the weights which were agreed for the quantitative evaluation prior to the closing date. He says that in the first draft, and he then includes the table of that which was adopted on the 9th June, the split of the weights for the quantitative evaluation; but that is not what appears on Table 17 in the first evaluation report, because the split is 10, 10, 10 for the first criteria.

A. Yes.

Q. And somebody changed the historical document to make it conform with the split which is contained in the evaluation report; do you understand me?

A. I do understand, yeah.

Q. Which is of significance in that it appears to be that somebody is trying to say that these weights were agreed beforehand, the split was 10, 10, 10, and this is what we applied on Table 16. That's what the report says.

Mr. Fintan Towey has told us that something else happened; that over in Copenhagen on the 28th, himself and Martin Brennan suggested such an approach and that Mr. Andersen in the first instance didn't agree with it, but they say was persuaded to it, notwithstanding what he later states in the report, that it has the effect of distorting the idea. Did you know that any of this type of discussion had gone on in Copenhagen on the 28th?

A. No recollection of being told that, no.

Q. Because if you go to Divider Number 5 in this Book 56, this is another copy of the evaluation report, and it has handwritten notes of Mr. Billy Riordan's. And if you go to Page 51 sorry, if you go to page 50 first of all, I beg your pardon, and Table 17.

Now, do you see there is a note up at the top there, "Not agreed by Project Group"? Do you see that?

A. Yes, I do, yeah.

Q. "No reason why the 10s should be split in this way."

A. Yeah.

Q. Now, Mr. Billy Riordan has no recollection, but speculates that he may have been recording what somebody else said, and perhaps you; do you have any recollection yourself of that?

A. I don't remember saying it. I don't as I say, I don't have any recollection of the whole

Q. All right. Then if you go over the page, you see the table again. Now, do you see the splits there put in in handwriting?

A. 7.5.

Q. 7.5, 15, 10; do you see those splits?

A. Yes.

Q. And you go down along, and they are back to the original?

A. They are back to the original.

Q. Do you remember having any discussion with Mr. Billy Riordan about these at all?

A. No, I don't, no, no.

Q. Right. So you don't remember any discussion at all about these weights, where they came from, how they came about? The split, that is.

A. No, I don't. I don't remember how they came about as the 10, 10, 10.

Q. Because that's what brings me on eventually to the

note that you send to Fintan Towey, you see. You

don't know how it came about?

A. Yeah.

Q. And you raise the question with Fintan Towey we'll

come to the document were these agreed, or were

they indicative? It seems perfectly reasonable, in

light of matters as they seem to have unfolded here,

what was adopted back in June of 1995: the split.

A. Yeah.

Q. You knew nothing about what happened in Copenhagen on

the 28th September 1995?

A. No, I didn't know, yeah.

Q. You weren't perhaps alive to what had happened in the

change of this table from the report of the 3rd to the

18th and into the final report?

A. Yeah, I didn't realise that.

Q. Right. Because I suppose the significance I am not

suggesting that it would necessarily have been any

outcome, but the significance, if you go to Page 51,

because of course this was a judgmental matter rather

than a hard mathematical calculation; isn't that

right?

If you go to Page 51, Mr. Riordan, in his note,

whatever he is noting, when he grades them, grades

both A3 and A5 as a B plus or a B going up; isn't that

right?

A. It appears to be what he has on the page, yeah.

Q. Now, he has no recollection of it, and you have no recollection of this particular matter being discussed, have you?

A. No, and not raised by him with me either.

Q. Right, you don't have any recollection of it, in any event?

A. No.

Q. Would you agree with me that, in fairness to you and to Mr. Riordan, the notes that both you and Mr. Riordan have made on the various documents seem to indicate some form of reasonable analysis of what was going on here, and you have no recollection of any explanations being afforded?

A. No, I have no recollection of the explanations, but

Q. If any?

A. If any, but if they were reasonable, you probably wouldn't remember it eight years later.

Q. I suppose could you think of a reasonable explanation as to why somebody would alter a historical document?

A. Well, that would be speculating at this stage. Like, as you say, they were altered in Copenhagen, was it?

Q. I am not saying the document was altered in Copenhagen.

A. No, no, the weightings

Q. Sorry, I don't know yes, it happened, physically happened in Copenhagen on the second report, yes. As

to who caused it or brought it about, the Tribunal has been unable to ascertain at this stage. It certainly happened over in Copenhagen all right, yes.

A. And I have no recollection of the explanations being given for it if there was any, as I say.

Q. You weren't even alive to it, perhaps, until we came to it now?

A. Yeah.

Q. Well, if these were Mr. Riordan's thoughts, or if he heard somebody talking about it, it certainly was on to something, wasn't it, on the question of the splits at least?

A. Well, unless he was given a reasonable explanation for changing them.

Q. Which nobody seems to have any recollection about.

Now, the one thing that we do notice is that in relation to the weightings, the meeting you were at on the 9th, the preceding meeting, the first meeting on the 18th, the revision of the weightings after the question of the EU intervention, they are all noted and recorded; isn't that right?

A. They are, yes, yeah.

Q. And that's all that's recorded as regards weightings?

A. That's all I have seen, yeah.

Q. Now, I am just trying to understand: You were at the meeting of the 23rd; isn't that right?

A. Yes.

Q. You have no recollection of Mr. McMahon, Mr. Brennan and Mr. McQuaid leaving the meeting and going to see Mr. Loughrey?

A. No, no recollection whatsoever.

Q. They appear to have been absent for some time. Mr. McMahon, perhaps an hour; that sort of length of time. Maybe even more.

A. I have no recollection of that happening during the meeting while I was there, and I presume I was there for all of it.

Q. Was the meeting in some way broken up into you know, did you have a cup of coffee, or did people go off, or can you remember I am just trying to understand what was happening at the meeting.

A. No, I have been trying to understand, as well, why I don't remember somebody leaving. Like, it would have been a long meeting, so we would have definitely broken for coffee at some stage, but I don't know whether

Q. They were the three main players. They were the Principal Officers, weren't they: Mr. Brennan, Mr. McMahon and Mr. McQuaid?

A. Yes.

Q. Do you remember Mr. Andersen being at the meeting?

A. No specific recollection. I don't know if he is in the attendance on the minute or not.

Q. Yes, and I'll tell you, Ms. Nic Lochlainn says if she

recorded him as being there, he was there; she is definite about that. Nobody seems to recollect when Mr. Andersen left the meeting. You don't even remember him being there, do you?

A. Sorry, it's just because I don't remember specifically who was at the meeting and who wasn't.

Q. You don't remember him leaving?

A. No, I don't remember anything unusual about it. So if he was to leave halfway through it, it would be unusual, yes, so I don't remember that.

Q. But you don't remember the three Principal Officers leaving for a period of time as well?

A. No. And I have seen that mentioned in some of the notes, and

Q. They seem to have been gone for about an hour, or perhaps even longer; they were off discussing matters with Mr. Loughrey.

A. Yes.

Q. You didn't know that that was going on, or ...

A. No, I don't remember anything about it. I can't understand, if we all sat there for the hour waiting for them to come back, or was it reconvened?

Q. You may have been discussing matters when they were gone.

A. I don't have any recollection of it. That's why I am just

Q. It would be significant, the three Principal Officers

leaving the meeting?

A. Yeah, it would be.

Q. Something you'd think you would remember?

A. Yeah.

Q. Do you remember whether the meeting went on late,
or ...

A. I don't, no. I don't remember. There was another
issue that I was working on around the same time which
was going on late as well. So there was a number of
meetings I was attending late on into the night, so it
wouldn't have been unusual if it went on late. So
that's why I wouldn't necessarily have remembered that
specific ...

Q. Right. Do you remember a meeting the next day, on the
24th?

A. No. From recollection, once I had finished on the
23rd, I don't remember reconvening any meeting after
that.

Q. Do you remember reviewing any textual amendments?

A. I may have done, but not I don't think it was as
part of a meeting. I might have been given pages, you
know, faxed pages back or whatever. I don't have any
specific recollection of that. My recollection is
that at the meeting of the 23rd, the Project Group
were happy with the result and asked Martin Brennan
and Fintan Towey, I think, to go away and to agree the
final form of the report with Andersens.

Q. That's what I don't understand. How could that be?

Form and substance are the same, aren't they, when it comes to something like a report which is dealing with an adjudicative process?

A. Yes.

Q. So you'd have to see the final report to make sure everything was right; isn't that right? Like, for example, look at the issues we have been looking at here, that we have a report which has a historical document which is wrong in it, for example, and has an impact on the whole substantive view of the report.

A. But the Project Team, on the 23rd, were happy with the result. When I say to go away and confirm the textual changes, it's changing words, yeah.

Q. No, but you see what was involved here was this process was to ensure that everything was to be done in an objective, transparent way; that it was reasoned. Isn't that right?

A. That's it, yeah.

Q. Not that you feel good or something, or you feel it should be the result; this looks like the best result, or that it has to be reasoned. Isn't that right?

A. That's it, yeah.

Q. So therefore the report has to stand up in its reasoning; isn't that right?

A. Yes.

Q. Whatever the view of any individual member is?

A. Yes.

Q. On that point alone, the report doesn't stand up; isn't that right? It contains a glaring inaccuracy?

A. The report contains a glaring inaccuracy?

Q. We have just discussed it, haven't we?

A. You are talking about the weightings versus what was agreed in June?

Q. Yes.

A. As I say, I have no recollection of it.

Q. Forget about your recollection now at the moment.

Doesn't it now don't you now know it contains a glaring inaccuracy?

A. Well, not if the Project Group is happy with it.

Q. I don't understand you, Mr. Buggy. What do you mean?

How can the Project Group be happy with a glaring inaccuracy in the report? Something was adopted, and the report stated that something else was adopted.

How can that how can you be happy with that?

A. There doesn't appear to be anyone suggesting changing it.

Q. Look, Mr. Buggy, maybe we have got our wires crossed here. A split was agreed on the 9th October, isn't that right, in relation to weightings

A. In June, yes.

Q. Isn't that right?

A. Yes.

Q. That's a fact?

A. That's a fact.

Q. The report states, first draft contained it, and it had that table in it; that was correct, that's what happened. Isn't that right?

A. Yes.

Q. You can't change what happened. That's what happened, that's what was adopted; isn't that right?

A. That was adopted on the 9th June, yeah.

Q. The second version of the report and the final report state that something else was adopted.

A. Yes.

Q. You can't be happy with that. It's wrong. It wasn't adopted.

A. I see your point about the word "adopted", yes.

Q. Isn't that correct?

A. Yeah.

Q. I can understand if you want to say that there was a proposal or that there was a subsequent decision made to do something else; that didn't happen. This is recording that this is what was adopted. A glaring inaccuracy, isn't it?

A. The use of the word "adopted", yeah.

Q. What was the glaring inaccuracy was the alteration of the figures in the split?

A. Sorry, the use of the word "adopted" creates the glaring inaccuracy.

Q. Now, looking at the note made by Mr. Billy Riordan,

whoever said it on Page 51 of his copy of the 18th, if his understanding, or somebody's understanding he was recording, was correct, that might have affected the view of the ultimate decision-takers here, which would be the Government; isn't that right? They couldn't split them on a grade.

A. If you ended up with that, yes, if that was the case.

Q. And this report sets out to represent their result to have been arrived at by the application of weightings which were agreed prior to the closing date and are specified in Appendix 3 as being the weightings which were agreed for the quantitative evaluation. Isn't that what the report sets out to do?

A. Yes.

Q. In any event, you had no dealings with Mr. Loughrey or Mr. Brennan or the Minister on the 24th or the 25th October 1995; isn't that correct?

A. None whatsoever.

Q. Can I take it you didn't even know the matter was going to be announced, or that the matter was going to a Cabinet Subcommittee or the Cabinet?

A. I didn't know the timing of it, no.

Q. What did you know?

A. Well, I knew it would have to go at some stage.

Q. At some stage, but at that time did you realise there was any urgency, at that time?

A. I don't believe I did, no, I don't believe I did.

Q. Right. You never saw the final report, did you?

A. No, not until this Tribunal.

Q. Until this Tribunal. And even as late as April of the next year, when you were asked to review some of the letters to disappointed applicants, you still hadn't seen the final report?

A. Exactly, yeah.

MR. COUGHLAN: I'll leave it at that today, Sir.

CHAIRMAN: We are just marginally short of four.

We'll resume at eleven o'clock tomorrow, if that's convenient, Mr. Buggy.

Thank you very much.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
THURSDAY, 19TH JUNE 2003, AT 11AM.