

A P P E A R A N C E S

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I N D E X

Witness: Examination: Question No.:

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY,
26TH JUNE, 2003 AT 11AM.:

CONTINUATION OF EXAMINATION OF MARTIN BRENNAN BY
MR. HEALY:

Q. MR. HEALY: Mr. Brennan, just to clarify one or two matters about the Copenhagen meeting on the 28th/29th September. I don't think we need to look at it, but if you look at the fax that was sent on the 21st, or if you are at the fax that was sent on the 21st, indicated that one of the jobs you were going to do was do the grand totalling; isn't that right?

A. Yeah.

Q. I think that we can agree that when Michael Andersen wrote to you about doing the grand total, he could only have in mind the aspects table?

A. I suppose, yeah.

Q. Because your misgivings about the letters hadn't arisen as, if you like, or crystallised as a concrete issue?

A. Yeah.

Q. Now, when you got to Copenhagen, it's your recollection that he had already done the aspects table, and probably done the up-arrow down-arrow table as well; they would have been 16 and 17 in the October the 3rd version of the report?

A. I don't think he could have completed them, because

there was certain elements of marking still to be done.

Q. Yes, that's right. That's right. Because you had to spend, I think, the first day that you were out there, maybe even some of the second day, finishing the financials, the marketing, I think, and something else?

A. I think I said before I am not sure exactly which ones, but there was an element of tidying up, and we almost certainly looked at the subject of performance guarantees, for the first time, maybe; I am not sure. But beyond that, I don't have a very clear recollection.

Q. You are right about that.

So then just to recap, he can only have had the aspects table in mind. When you got there, he couldn't have completed it because, as you have pointed out, there was work still to be done?

A. Yeah.

Q. But your recollection is, nevertheless, that it was he proposed it and the following table; that's your recollection, anyway?

A. My recollection is, throughout the markings, that the consultants led with proposals as to the approach to virtually all the markings. I can't say that I specifically recall, you know, that I can visualise Michael Andersen or one of his other people saying

"Should we do it this way or not?" You know, I don't have that detail of recall.

Q. But I suppose when you come to pulling together the grand total, you might have envisaged some role for yourself in it, but your recollection is that he tabled that as well?

A. It's very hard to be sure at this remove. I mean, it could be that it came out of conversations, but I don't recollect it that way.

Q. Well, I appreciate that, and I think it probably couldn't have, because you don't understand how we arrived at it; and people have I think Fintan Towey made an attempt to suggest or to interpret what that table meant, but I don't think I think I can put an interpretation on it, but certainly you don't feel that you can put explain how it came together; isn't that right?

A. Yeah, that's right.

Q. When the other markings were being done, the markings in the sub-groups from the people that we have heard who were members of them, it would appear that although Andersen made proposals, everybody had their own view right, wrong or indifferent as to how they arrived at the result?

A. Yeah.

Q. You relied on Andersen as the expert; isn't that right?

A. Yes.

Q. What's slightly confusing to me is when it came to the final round-up of the whole process, certainly you and Fintan Towey overrode Andersens' expertise in a sense, didn't you? You said "No, we are going to do it this way; we are going to do it our own way"?

A. "Override" is fairly strong. I articulated the view around the table that I couldn't see how you could arrive at a result that respected the RFP and the descending order and the weightings, based on letters. I couldn't multiply a B by 30 or by 10 or by 15 and add it to another C multiplied by 5 or whatever.

Q. You can't add apples and oranges?

A. I articulated that case at length, and we discussed what we might do about it, and the idea of doing it the way it eventually was done was certainly my idea. I was arguing "We have to bring this back to numbers before I can be satisfied with a result".

I made my case. Fintan Towey, I recall, supported the case I was making, and eventually I stood up, as I said here before, I stood up, I started doing it to prove it could be done, if you like.

Q. Well, you certainly were able to show it could be done. Proving it could be done is another matter, I think. We went through that, and I won't go through it again.

A. Okay.

Q. But you were understandably, at least to my mind, anxious to see a result that combined the scores you got and the weightings that you started out with?

A. Yeah.

Q. If you look at the quantitative tables, it was very easy to do that, wasn't it?

A. Yeah.

Q. Because you had numbers anyway. And even if you as in many cases, the quantitative scoring was reduced to a number, to so many decimal points, whatever, you still could multiply a number by a number in every case; and in general, if you multiplied a numerical quantitative score by a numerical weight, then you lost very little information in that transaction, isn't that right, and could you compare it with another number, multiplied by another numerical weight?

A. Yeah.

Q. Now, if the process had gone on as originally envisaged and you had a quantitative report and a qualitative report, and a qualitative report that you could use to go back to your quantitative report to adjust it or whatever, the situation would have been much easier, wouldn't it?

A. When you say the situation would have been much easier...

Q. Well, I have read the evaluation model, and it seems

to me that you started off with a quantitative report.

You got it. You knew, from the evaluation model, that it had potential limitations.

A. Yeah.

Q. I think we saw in Ms. Nic Lochlainn's evidence where a lot of these were even discussed, what the limitations were?

A. Mm-hmm.

Q. You got a result, good, bad or indifferent, on your quantitative evaluation. Then you carried out a qualitative evaluation, and then you went back.

Let's take an example: You went back to tariffs, say.

In the quantitative, you had an OECD basket, you had a much broader approach to it in the qualitative, and you could juggle around; you could say, "Well, we gave so-and-so a score of whatever there; maybe he didn't quite deserve that, and somebody who wasn't as good on the OECD basket, but who had a better package when we examined it qualitatively, should get a higher score", and you could adjust the quantitative. Isn't that right?

A. Yeah, but you are still back to then collapsing whatever it was, 50 or 100 indicators, back into 10 or 12. I mean, not having done it and not having seriously considered it since, I don't know whether I can share what you're saying or not. I mean, I can understand what you're saying, but I don't know

Q. You'd got to collapse 56, indicators because they already collapsed down to the same number of dimensions. Remember, you had the same dimensions whether it was quantitative or qualitative, and all those indicators, the 56 fed into the same number of dimensions. So you had scores on those.

I am only trying to work out how it was done or how it was envisaged it would be done; what did Mr. Andersen have in mind? It is extremely difficult; he will not come here and explain it, but and he clearly wasn't able to explain it to you to enable you to be able to explain it to me or any of the other witnesses. But it just occurred to me that if the quantitative was alive, then you would have had your numbers and you'd have had a basis upon which to apply your weights to generate, at the end of the day, a numerical a numerically credible result, if you like?

A. Mm-hmm.

Q. Was that was there anything like that, or did anything like that form part of your discussion in Copenhagen?

A. I don't think the idea of going back to the original quantitative table was raised at all.

Q. Fine. Mr. Andersen was definitely, to judge from evidence we have heard, your evidence as well, not enthusiastic about the numbers?

A. That's right.

Q. The conversion to numbers; isn't that right?

A. Yeah.

Q. Or the application of weights; isn't that right?

A. I think that's probably right, yeah.

Q. In any case, if we can't take it any further, you finished up your work in Copenhagen?

A. Yeah.

Q. And you came back to Dublin?

A. I actually went to Brussels, but I came back to Dublin after the weekend.

Q. You eventually were back in Dublin. You were back in Dublin by the 3rd October, anyway, because you were at an interdivisional meeting on that day?

A. Yes.

Q. Prior to going to that interdivisional meeting, you had a meeting with the Minister of some kind, because you were able to tell the meeting that the Minister wanted to accelerate the process?

A. Yeah.

Q. And you were also able to tell the meeting of the whole Project Group on the 9th October that the Minister knew the ranking of the top two, knew the shape of the evaluation, and there were a number of other points that you relayed to the meeting based on your conversation with him.

I'll just clarify one thing: Can you recall whether you had two meetings with him, or one?

A. I don't recall there being two meetings. I think, from the first time that I sat down with your team, I have been talking about three recollections. And I have never been able to expand it beyond that. I still think there were only three discussions.

Q. All right. But maybe it's easier if we don't focus on there being three. Let's look at this one.

A. Okay.

Q. You certainly had the project meeting records you having discussed or having had a meeting with him from which you were able to bring a number of propositions to the meeting of the 9th October?

A. Yeah.

Q. At the meeting of the 3rd, all you indicated was that the Minister wanted to accelerate the process?

A. Yeah.

Q. Is it possible you had two meetings, or are you still fairly firm in your recollection

A. Obviously I can't rule out that I had two meetings, but my recollection has always been around a total of three and one of them being in that time-frame. And I can't say whether it was the 2nd, 3rd, 4th, 5th, 6th, but if I relayed it on the 3rd, it must have been on the 2nd or 3rd. If I am right, the 3rd was a Tuesday, was it?

Q. The 3rd, yes, was a Tuesday.

A. And lots of Ministers don't come to Dublin on Monday,

so if it's of any interest...

Q. Right. So you would have seen him, you think, on the 3rd, before you went to the interdivisional meeting?

A. I think that's the most likely, but I don't have a recall of it.

Q. You had discussed these things with him, in any case, before you had discussed them with the Project Group?

A. Yeah.

Q. So if you look at it from your point of view at that point, you had a view as to what you had achieved in Copenhagen. You felt it had to be explained to the Project Group. You already told the Minister about it, and you told the Project Group, in fact before you explained it to them, that the Minister knew all about it and that what you conveyed to them seemed to suggest that he wanted it wrapped up fairly quickly and he wanted a report that didn't undermine itself.

A. Yeah.

Q. And there seems to have been some discussion, then or at an earlier stage, in which a reference was made to bankability in the context of the weakness of one of the or one or two of the applicants?

A. Yeah.

Q. I just want to get that sequence right.

Now, Michael Andersen was present at the meeting of the 9th; isn't that right? I think you can take it that's right.

A. Yeah, okay.

Q. And from looking at the record of the meeting, or the notes for the meeting, and from evidence of witnesses, it doesn't appear that he explained at that meeting, or if he did, no one else can explain how the result on the aspects table was arrived at.

A. Yeah.

Q. Now, there seems to have been a fairly lengthy discussion at that meeting, because the Ms. O'Keeffe's note of it goes on for quite a bit and refers to quite a number of sections and a number of pages of the report. I think the report was only available to people that morning. Some people may have had it earlier, from about the 6th, but some people certainly didn't have it until that morning, I think.

A. Yeah, that's possible.

Q. Now, if I just if you go to Book 46 for a minute.

If you go to Leaf 46.

At the meeting of the 9th, as I said, there was a fairly lengthy discussion; but to judge from subsequent meetings, there doesn't appear to have been any unanimity at that meeting either as to the report or as to the result.

A. Yeah, okay.

Q. And I was simply going to refer you to I am finding it difficult to turn it up now a passage in the

18th October version of the evaluation report where Mr. Andersen recorded that there was unanimity, but where a number of people struck it out, and it doesn't appear in the final version. So that would seem to confirm that there wasn't unanimity at that meeting.

Now, by the time the meeting of the 23rd came about, people had an opportunity to look at the 3rd October version of the report, and some people had an opportunity of only a few days to look at the October 18th version, so there was a better understanding of what the report involved. But I think that if you look at the notes we have of that meeting, of Sean McMahon, and if you look at the notes recorded by Billy Riordan and Donal Buggy on their versions of the 18th October report, there seems to have been a lot of confusion, even at that meeting, about how the result was arrived at, and in particular, a lot of confusion about weightings. Would you agree with that?

A. You are telling me that you have evidence from other people to that effect.

Q. I am just asking you, is that your impression?

A. I haven't looked at that evidence. I have said clearly here a number of times that unanimity was noted positively at some stage, but I don't recollect at what stage.

Q. I am not asking you about unanimity. I am just asking you, was there confusion about the weights on the

23rd, and the weightings, in your recollection?

A. My understanding, my recollection is that at some stage everybody was happy with both the result and the report. There was a time when people were happy with the result and not the report, but if you are asking me can I separate in time when those different bits fell into place, I can't. But it all came together on the 23rd/24th.

Q. You say people were happy. Well, people may not have been objecting; I am not sure you can say they were happy. Satisfied, maybe...

A. Well, you have separate evidence that Mr. McMahon would have had a preference for a different result for unrelated reasons.

Q. What I can't find is that on the 23rd, I can't find any record that anybody understood how the weights were applied, and I can't find any record, any record, now, that the Project Group were satisfied that the quantitative weights should be applied to the qualitative; and not just that, not just that single issue, but that anybody understood the split on the qualitative weights. Do you understand what I mean by "the split"?

A. You mean the 10, 10, 10.

Q. And so on.

Now, the reason I draw the 10, 10, 10 to your attention is that it's the one that's signalled in the

documents as causing a problem. And would you agree

with me

A. When you say "the documents", you mean Mr. Buggy's and

Mr. Riordan's

Q. Yes, Mr. Buggy's and Mr. Riordan's. My impression is

that if the 10, 10, 10 split I am just giving you

an opportunity to comment on this my impression is

that if the 10, 10, 10 split had been explained to

people, either by Mr. Andersen or by you or Fintan

Towey on the 9th October, it wouldn't have arisen as

an issue on the 23rd.

A. I follow what you're saying.

Q. And you're obviously familiar to some extent with the

Billy Riordan/Donal Buggy notes, whether they are

their own notes or their recording of other people's

contributions?

A. When you say I am familiar to some extent, are you

assuming that I have been following the transcripts?

Q. Are you familiar with some of them? Because I'll just

do the headlines of it, if you like.

A. In recent days I had somebody pick out references to

me in the weightings and so on in the transcripts, and

I paged through them. I don't know how comprehensive

that exercise was, so I have some idea of what you're

at, but I am not saying I have it in detail.

Q. Okay. Well, I think the best way is to bring you

through one or two features of the weightings issues

as recorded by Messrs. Buggy and Riordan. If you go to Book 56, or if somebody can get you Book 56.

Have you got a copy of it?

A. I have Book 56.

Q. If you look at Leaf 1, which I think contains I think it's Mr. Buggy's version of the report, or Mr. Buggy's notes on the version of the report that he had, and if you go to page 14, and can you see the table on page 14, can you?

A. Yes, Table 1, yeah.

Q. Now, if you look at that table, it seems that the exercise that was being carried out, either by Mr. Buggy or which was being carried out by somebody and which he was recording, involved applying to the subtotal of the marketing aspects the weightings that are contained in, you know, the final tables; do you understand me?

A. Yeah.

Q. If you apply the weights to those, and if you do that exercise, if that is a valid exercise, then one of the problems that he seemed to identify is that A3 appears to get a B on the printed record, and A5 gets an A/B; whereas if you do the tot or do the calculations and apply the weights now in a way that Mr. Andersen would not approve of, you get a different result. The result switches around; right?

A. Yeah.

Q. Now, that's if you apply the specific concrete weightings.

A. Mm-hmm.

Q. Even if you don't apply them, you might wonder how the result was arrived at, but that's the first thing I want to draw to your attention.

If you go to Page 51 sorry, I beg your pardon, if you go to page 50, you see that in the left-hand column the weights have been deleted in the case of the first two multi-dimensional criteria; do you see that?

A. Yeah.

Q. Now, Mr. Buggy, in a note which he made in 1996, when he was commenting on various drafts that were going to be sent, various drafts of letters to be sent to the disappointed applicants, raised queries about where the split came from.

A. Yeah.

Q. And he clearly didn't seem to know, or the record suggested that he didn't seem to know in 1996 where it came from.

A. Mm-hmm.

Q. If you go on to the next page, you'll see where he simply carried out the exercise that you described, but then he applied the B-up and the B-down to that; do you see that?

A. Yeah.

Q. And came up with a slightly different result?

A. Mm-hmm.

Q. I think, in fairness, Mr. Riordan, when he was describing that result, described A5 as a higher B-up than A3, I think.

A. Yeah.

Q. Now, before asking to you comment on it, if you could just go to Leaf 5, which contains Mr. Riordan's notes, and if you again go to page 14, Mr. Riordan was either carrying out or recording the fact of somebody else carrying out a somewhat similar exercise to the one noted by Mr. Buggy in relation to this table.

Now, there are two interesting things about this:

Firstly, the weights that are put in here accord with the evaluation model; do you see that?

A. Yeah.

Q. Where you have the 7.5

A. Mm-hmm.

Q. for market development, and 7.5 for coverage.

Market development was one of the three dimensions in the first criterion, one of which was 7.5 in that evaluation model; and do you remember coverage was always 7.5 in that evaluation model, in that evaluation model?

A. Yeah, okay.

Q. And again, using different weights, he seems to, interestingly, in carrying out an exercise which, as I

said, I think Mr. Andersen disapproved of, reversed

the scoring.

Now, if you then go to page 50, Mr. Buggy notes in a

box on the Mr. Riordan notes in a box in the

left-hand corner "Not agreed by Project Group"; do you

see that?

A. I do, yeah.

Q. With an arrow down, it seems, to the 10, 10, 10 split?

A. Yeah.

Q. And then on the right he has "No reason why the 10

should be split in this way." Do you see that?

A. Yeah.

Q. Sorry, that should read, Ms. Nic Lochlainn corrected

me on that, "Why the 10s should be split in this way";

do you see that?

A. Yeah, okay.

Q. On the next page, then, he carries out an exercise

where he inserts into the conversion of marks to

points the weightings as contained in the evaluation

model?

A. Mm-hmm.

Q. And the same on the following page; do you see that?

A. Yeah.

Q. Now, I understand from Mr. Riordan that he made these

notes as he went along?

A. Yeah.

Q. During the meeting?

A. Okay.

Q. And it would seem to suggest that he had problems, or at least he had certain impressions about the weighting at the beginning of the meeting, at page 14, and he seems to have had the same grasp of the issue when he got to page whatever it was, the page I just referred you to there 51. So that if this problem had been explained on the 9th, he'd surely have understood it. And if it was explained at the outset of the meeting on the 23rd, he wouldn't have had the same problem by the time he got to Page 51, because the 7.5 is something he wouldn't have been running with any more. He'd have realised that was wrong; he can't run with that.

And what I am suggesting to you is that that would seem to indicate significant confusion about weightings right up to that date up to that moment?

A. Certainly it seems to indicate significant discussion.

Q. Well, I have made the point about Mr. Buggy still not understanding it, or not having a clear picture of it in May of '96. So if the matter had been concluded by a discussion, one would have expected him to have known by May of '96, that's not a problem; we sorted that out.

We discussed this before without having had access to these documents. I want to be careful when I say that. We have always had the documents. It's only as

you go on you see the relevance of all of them, and when we discussed this the last time, we weren't looking at these documents.

A. Okay.

Q. The split, I think, you'd agree and Mr. Fintan Towey certainly agree, the split on the first criterion is a very important one because it could have a very significant effect in bringing the top two closer together, changing the result marginally, or at least prompting further scrutiny of them?

A. Yeah.

Q. And what I am suggesting to you is that with this degree of, as I suggest in any case, confusion about weights and it not being addressed, or at least not being addressed in a form that we can see, would that indicate there was a lot of pressure, whoever it was coming from, just to wrap it up, get it finished?

A. Was the pressure assuming there was pressure, which is a reasonable assumption to make, was the pressure coming from Andersens, who wanted to get out of it, or

Q. Maybe.

A. Or was it coming from outside sources, I don't know.

It was clear when we had the contractual dispute with Andersens that at the end of that, we came to a work plan which happens to coincide with what's going on right now.

Q. I am going to produce that letter in a minute, because it's one of the things you want me to mention.

A. Not so much one of the things I wanted you to mention; just a thing I became aware of recently. I thought it was relevant to show that we were working, to some extent, to a timetable agreed with Andersens in September.

Q. Which brought you right on to the 25th, in fact; isn't that right?

A. Yeah.

Q. Just put it on the projector. You are probably familiar with it now, but I'll give you a copy of it anyway.

A. Okay.

(Document handed to witness.)

Q. "Dear Michael, "Thank you for your letter" have you got it it's a letter from you to Michael Andersen on the 14th September, which would have been, I think, at the end of the presentations; isn't that right? You can take it it's the last day.

A. Yeah.

Q. And there was a Project Group meeting on that day as well.

A. Yeah, okay.

Q. "Dear Michael. "Thank you for your letter of the 5th September in

relation to contractual matters."

Just to put that in context, the 5th September was following a meeting it seems to have been a frank exchange at which there was a frank exchange of views on the 4th September; do you remember that meeting?

A. Frank exchange of views between whom?

Q. Between you and Mr. Andersen about how things were going.

A. Yes.

Q. "Thank you for your letter of the 5th September 1995 in relation to contractual matters.

"Firstly I want to reiterate our disappointment that events have unfolded in the manner now under discussion. The legal contract which we have jointly signed clearly envisages a ceiling of £297,450 for the completion of the activities stipulated in the tender from Andersen Management International submitted on the 16 March, 1995. You are aware that several of the items which you consider to be additional to the project would, in our view, be reasonably considered to be intrinsic to the evaluation process to which your tender relates.

"Nevertheless, our primary objective is to have the evaluation completed in a professional and timely manner, to receive a comprehensive evaluation report which fully satisfies the professional standards of Andersen Management International and to receive

professional high-quality advice on completing the licensing process. It now appears that this objective cannot be achieved without either incurring additional cost or undesirable departure from the prescribed time scale for completing the process. We are therefore willing to consider a compromise solution which will have the effect of achieving the required consultancy assistance at a fixed price.

"It is therefore proposed that Andersen Management International shall

" complete all the steps outlined in the AMI tender submitted on the 16th March 1995.

" carry out such supplementary analyses as are considered necessary by AMI along the lines identified in the minute from AMI dated 5th September 1995.

" submit, by a target date of the 3rd October, 1995, unless an alternative date is expressly approved by the Department prior to the said date, a first draft of the evaluation report along the lines set out at Step 18 of the tender submitted on the 16th March 1995. The evaluation report shall contain a quantitative and a qualitative evaluation of all the applications and the results of any supplementary analyses undertaken. The report shall rank the top three applications for the GSM licence in order of merit according to the

criteria prescribed by the Department, while detailing the differences between the applications which form the basis of this ranking. The evaluation report shall also nominate a winner and shall explain why the three applications not ranked do not qualify for ranking.

" the final evaluation report" do I take it that it's implicit in that that you wanted a ranking of the top three and then no ranking of the others?

A. I think that's right.

Q. That was the compromise.

" The final evaluation report shall take account of comments provided by members of the GSM Project Group. It is anticipated that comments from the GSM Project Group on the draft evaluation report shall be provided to AMI by 10 October 1995.

Following consideration of such comments, AMI shall produce a further draft evaluation report in the format described above for the draft evaluation report by 17 October, 1995. This further draft evaluation report shall be discussed at a meeting of the GSM Project Group within six days. The final evaluation report taking into account the views of the GSM Project Group shall be submitted to the Department by AMI by 25 October 1995, unless an alternative date is expressly approved by the Department prior to the

said date.

" Carry out such further work which is not expressly specified at this time but which would generally be considered reasonable in order to ensure a favour and objective evaluation of the applications for the GSM licence.

" participate in the preparation of a draft licence and in the licence negotiation process as outlined in the tender of the 16 March 1995.

"In consideration of this work the Department shall pay to Andersen Management International a total sum of IRi½370,000.

"In the event of any dispute arising between the Department and Andersen Management International, Andersen Management International shall complete the work outlined above and the Department shall pay monies to Andersen Management International in accordance with this agreement, and a legally binding arbitration mechanism shall be executed following completion of the project. This mechanism shall involve the appointment of an arbitration board", etc.
etc.

I don't think we need to concern ourselves with the rest of it.

MR. McGONIGAL: Just one matter, Mr. Chairman, before My Friend continues. I would like an explanation as to where this letter comes from. It does seem to have

some serious significance in relation to the way in which this inquiry might have been conducted, having regard to the contents, and particularly the fact that at a very early stage, T, it would appear that Andersens and the Project Team, or at least Andersens and Mr. Brennan, had set up a programme as early as September in relation to the way in which Andersens would report the results of this competition.

I am also concerned that it seems to impact directly on the position of the then Minister, and I am concerned of that because of the fact that the Minister, qua Minister, is not represented in this Tribunal, and yet this letter would have serious impact on that position and on his responsibility at that time.

It is a letter which seems to have fundamental information, and it seems extraordinary that it's coming to light at this late stage, bearing in mind that we have been led to believe that the Department material was already in the hands of the Tribunal and vice versa. So I would like some explanation, Mr. Chairman.

CHAIRMAN: Well, it will certainly be inquired into, Mr. McGonigal; but quite clearly, the matters of contractual differences over remuneration between the State and Andersen Management International were alluded to in some detail in the course of Mr.

Coughlan's opening, and they have been reverted to at various stages. But I certainly accept it's a pertinent matter, and it will be inquired into.

MR. McGONIGAL: It's not contracting bit that concern me, Mr. Chairman; it's the fact that as of this date, it would appear that it was agreed long before there had been any intervention by the Minister, or indeed anyone else, that the reports were given particular days in which they would be concluded. It also appears to be the fact that the 25th October was to be the date of the result unless there was specific agreement given by the Department to extend that date, and in the light of some of the inquiries carried out by the Tribunal in relation to a lot of the Department witnesses, this runs totally contrary to those lines of inquiry. And it is for that reason that the significance of this letter must be emphasised.

CHAIRMAN: It won't be neglected.

Q. MR. HEALY: I think you mentioned this letter to the Tribunal last week, and certainly the State Solicitor sent it to the Tribunal on the 17th June, which I think was last week; is that right?

A. Well, let's be clear about this: My understanding is that Ms. Nic Lochlainn tumbled upon this letter in researching for her appearances here. She mentioned it to me, and I mentioned it to the legal team, but I think it was always in the documents that were

disclosed to the Tribunal by the Department. So, you know, just when you said given to you on the 17th June, you always had it but hadn't adverted to it, apparently.

Q. Oh, I see.

In any case, if you just go to the part of the document that I think is of

MR. FITZSIMONS: I wonder, Mr. Chairman, for the record, could I associate myself with Mr. McGonigal's comments. And I assume that the Tribunal will now withdraw the various suggestions and contentions to the effect that the process was accelerated, because it's quite clear from this letter that as early as 15th September, 1995, the 25th October 1995 was intended to be the termination date for the process.

The suggestions regarding acceleration are made with reference to the date at the end of November.

You will recall, Sir, that that was fixed as a closure date, an extended closure date, but it appears that the parties had intended, as of this date, to finish considerably earlier.

CHAIRMAN: Well, there are no contentions or suggestions, Mr. Fitzsimons. The Tribunal is inquiring. This is a further aspect of the more critical events of the latter stages, and as I have indicated to Mr. McGonigal, it will be taken fully on board and will be fully appraised in the context of

whatever eventual findings may appropriately be drawn.

Q. MR. HEALY: Can we just clarify one or two things about it. I don't think this in any way departs from the original plan; isn't that right? The original plan was that you'd have everything, and there'd be about a month or several weeks for consideration before it went to Government; isn't that right?

A. I don't know, without documents, whether the original plan was as specific as this.

Q. No, but wasn't the original wasn't there a critical path?

A. There was a there were various critical paths at various times, yes.

Q. And I think there was a critical path, was there not, which indicated ultimately that the result would be available by the end of November, but it left about a month, I think, for consideration, isn't that right, of the report?

A. A month/five weeks, yes.

Q. A month to five weeks. And that would be in accordance with this, wouldn't it?

A. Yes, but I myself attached a lot of significance to this letter when it was brought to my attention some weeks ago.

Q. Yes, but I am just saying that is in accordance with this. This is in no way inconsistent with the critical path; isn't that right?

A. I really don't know without checking.

Q. I see. All right.

A. I suspect that there is some alignment there, yes.

But it is quite specific in terms of the dates, and it was the plan that was followed subsequently.

MR. MCGONIGAL: It doesn't make any reference to November '95

CHAIRMAN: Well, I'd prefer that we proceed with the taking the evidence in sequence, and you'll have an opportunity to fully canvass it in a relatively short time, Mr. McGonigal.

Q. MR. HEALY: I just want to be clear about it. Am I right in thinking that this is consistent with the critical path? Is that your recollection? Or is it your impression that it's not consistent with it?

A. I don't know one way or the other without having the critical path in front of me. I mean, I have a recollection of two or three different critical paths, and there was an amended critical path after we had done business with the Commission, and if that could be found and looked at, it could answer the question black and white.

Q. Let's be clear about it: Why aren't there public statements being made, right up to the 24th November, that the result would not be known until the end of November right up to the 24th October, that the result would not be known until the end of November?

Isn't that right?

A. I can recollect something being said in evidence to that effect, but I have forgotten to whom it was attributed. I mean, we have been through parts of this before; I have said here, and I think Mr.

Loughrey confirmed that we got the strongest of advice from the consultant that we couldn't hang around with this result for other reasons, and as soon as it was available, it should be put out, and so on. So I myself don't know what significance you are attaching now to the November sort of time-frame.

Q. I don't either. I am just trying to ask you

A. I am simply saying when I saw this letter, I was surprised at it, and I thought it was a very significant piece of paper.

Q. Why?

A. Because it set out exactly, to the minute, the time-frame we followed afterwards, we and the consultants.

Q. Right. Why did you tell the meeting of the 3rd October, then, that the Minister wanted the process accelerated?

A. I don't know.

Q. You would have written this letter two weeks beforehand?

A. Well, my signature appears on the letter. As always in the civil service, the letter, I suspect, was first

drafted by Mr. Towey, was perfected either by the Attorney General's Office or the Chief State Solicitors Office because of having had a contractual dispute about a contract which they had an input into and so on.

So yes, I signed the letter. But clearly I didn't recall it until it was brought to my attention again very recently.

Q. Did you discuss this letter with anyone? Did you discuss it with the Minister?

A. This letter?

Q. Mm-hmm.

A. I don't believe there was any discussion

Q. Does this letter contain I presume in the content, does it contain what was agreed at the meeting, which was the 4th September, wasn't it?

A. I think, and I have said this before, Mr. Towey and I conducted the contractual dispute with AMI so as not to pollute the atmosphere in the wider group. And we came to certain conclusions, and my understanding now is that this letter is a record of those conclusions.

Q. Right. What it envisaged was that you'd complete if you look at the bullet points

complete all the steps outlined in the tender.

carry out the supplementary analyses.

submit by a target date of the 3rd October we

had that already from the minutes of meetings a

first report; is that right? It wasn't actually formally made available to everybody until the 9th, but I think it was dated and probably sent to you on the 4th, is that right, of October?

A. I am happy to let the record speak for itself in relation to that.

Q. The evaluation report was to contain a quantitative and a qualitative evaluation of all of the applications; is that right?

A. Yeah.

Q. So presumably at that stage you were satisfied that it was going to contain both a quantitative and a qualitative?

A. Yeah.

Q. Notwithstanding, I think, some of the things that have been said in evidence.

And it was to nominate a winner and explain why the three applications not ranked did not qualify for ranking. So presumably, at that stage, you were satisfied you were in a three/three situation?

A. Mm-hmm.

Q. The comments from the Project Group on the first draft evaluation were to be provided to AMI by the 10th October; is that right?

A. Yeah.

Q. The meeting was on the 9th. The comments, I suppose, consisted of the meeting of the 9th; would that be it?

A. Yeah, I don't know the extent to which they were followed up in writing, but I know at the 18th they certainly were. The 10th, I am not sure.

Q. Well, there is no documentation, so we have to assume it was whatever happened at the meeting of the 9th, I suppose.

A. Okay.

Q. They were to be considered, and you were to get another draft by the 17th, and then a further draft to be submitted by the 25th; isn't that right?

A. Yeah.

Q. Unless an alternative date was expressly approved by the Department prior to that date; isn't that right?

A. Yeah.

Q. Right. So presumably, if there was any pressure on, you could have said to Mr. Andersen, "Look, don't worry about the 25th, the 26th, the 27th; the 28th will do"?

A. Yeah.

Q. The 28th wasn't writ in stone in that sense as compared to the 27th or the 28th, whatever?

A. Yeah, but I'd be fairly confident that part of the dispute discussion with Andersens was around the quantum of resources that they could afford to deploy within the budget, and stuff like that. And we were taking the view: "You have a contract, we'll give you some extra money, but we do want the job done".

So a compromise of doing it by the 25th may well have been influenced by what he was prepared to put into the process.

Q. Yes.

A. But I have forgotten the question.

Q. But that surely couldn't have we know that by the 25th, Mr. Loughrey never had a copy of the report.

It's far from clear that there was a copy in the Department. I don't think that, when you had the whip hand, according to this document, that you were going to stick Mr. Andersen to the 25th or that he was going to

A. Absolutely not. If he came back and said "It can't be done", or "There is something else I need to look at" and we agreed an alternative date, that would be fine.

Q. But if you wanted to be sure that you had a physical hard text on that date, and if you wanted to present it to the group prior to presenting it to the Minister, a few days weren't going to matter, were they?

A. I think that's probably true, yeah. But I thought I understood that Mr. Towey said that there was a physical copy in the Department on the 25th, but I don't have that first-hand.

Q. He is basing that, I think, on the documentation.

A. Is he? I don't know. He has always been fairly convinced of that.

Q. Mr. Loughrey certainly didn't have a copy.

A. That's possible.

Q. According to his own evidence, anyway.

A. Okay.

Q. And I suppose, if there was a copy, you'd have made it available to Mr. Loughrey or to the Minister in physical terms. The Minister wasn't going to read it, but...

A. Yeah... I don't know.

Q. Are you aware, or do you recall a reference, maybe it was made in the Opening Statement, to a note made by Mr. Arthur Moran of Matheson Ormsby Prentice of a meeting he had on the 10th October, 1995, at which he had a discussion with Mr. Per Simonsen; and he recorded on that note, which is at Book 48, Tab 74 I'll put it on the overhead projector to make it easier; I'll get you a copy as well.

You see the top of the note, it says "10th October" on the left-hand side, "A.M.", standing for "Arthur Moran"; it seems to have been a short attendance?

A. Yeah.

Q. I'll just read through it all quickly.

"Per Simonsen with" somebody else "MI"

Michael Irvine, I think, another solicitor in the same firm of Matheson Ormsby Prentice.

"Esat Digifone Limited

"Bid to Department in writing and verbal proposal

Communicorp".

Then on the right-hand side it has "Michael Walsh,
Dermot Desmond, International Investment Underwriters
will underwrite the Irish part of the bid."

Underneath that, "Political contacts"

Underneath that, "Motorola less jobs".

Then underneath that, "Shareholders
agreement Telenor drafted: William Fry.

1. Communicorp 37.5%
2. Telenor 37.5%
3. IIU new part 25% and underwrite Communicorp
i.e. in a dual role.

"IIU letter to Department and understanding between
Telenor and IIU.

"Complete and negotiate agreements on award of
contract you would talk to 3 firms of lawyers.

"Schedule finalise agreement within 2 weeks.

"Decision end November 1995 in fact decision 2/3
weeks.

"Andersen Consulting Denmark EU procurement rules
observe.

"15 million ceiling", and I can't read the bottom of
it.

Now, do you see where there is a reference, in about
the fourth-last legible line, to "Decision end
November"? Do you see that?

A. Yeah.

Q. "In fact decision 2/3 weeks"; on the 10th October, three weeks was the 24th October, isn't that right was the 31st October, sorry, two weeks was the 24th October; isn't that right?

A. Yeah.

Q. That was the day after the Project Group meeting of the 9th October, in fact, do you see that, at which you mentioned that the Minister knew the result, and it was some one week after the interdivisional meeting at which you'd indicated that the Minister requested that the process be accelerated; do you see that?

A. Yeah.

Q. Now, in your discussions with the Minister about accelerating the process, would you have mentioned, do you think, your letter or your agreement with Andersen to get it all for the 25th?

A. I just don't know.

Q. I suppose, if there were things you could undoubtedly discuss with the Minister without in any way affecting the process, it was how you were getting on with Andersen?

A. Mm-hmm.

Q. Whether it was costing you more money or not, costing you less money, or whatever?

A. Yeah.

Q. So there is a possibility you might have discussed those things with him?

A. In theory it's possible, but in terms of how we were getting on, how much we were paying them, it's not something he would have been the slightest bit interested in.

Q. I suppose if you felt that Mr. Andersen was going to have his work done for you in around the 25th, that might have been something you might have conveyed to him?

A. It might have been, yeah.

Q. One way or another, if what's contained in Mr. Moran's attendance is correct, Mr. Simonsen seems to have been very well informed, doesn't he?

A. You could you certainly could draw that conclusion from that.

Q. And that information was certainly not information that was being given to the applicants; would I be right in that?

A. That's true, yeah.

Q. And wouldn't I be right in thinking that bearing in mind your sensitivities to political pressure and so on, that would be the last thing you'd tell applicants? Isn't that right?

A. Certainly I wouldn't have volunteered the information to applicants.

Q. You'd keep them guessing as long as you could so there'd be less pressure on you; isn't that right?

A. Yeah.

Q. I'll try to get the critical path

A. Are we finished with this book, yeah?

Q. Is that book

A. 48.

Q. Yes, we are, yes.

Now, I think we came on to that in the context of my question to you about, as I saw it, allowing the sort of confusion about weights to reign and still wrapping up the process, and I was suggesting to you that that indicated a degree of pressure and that you, or the members of the team who were happy with the result, just wanted it wrapped up, notwithstanding that degree of confusion.

And what I'd suggest to you is that there must have been significant pressure, because you weren't under any time pressure; even with the 25th date there, there is still plenty of time. A week would not have caused a problem at that stage; isn't that right?

A. Yeah, okay.

Q. Do you remember the last time you were giving evidence, we were trying to work out what happened on the 23rd, 24th, 25th, as regards meetings?

A. Mm-hmm.

Q. And one of the first things about that issue, if you like, that we discussed was the evidence that has been given and at that time was going to be given by Mr. McMahan about the extra time that he understands he

got from the Secretary. You didn't have any memory of it. The Secretary didn't have any memory of it. But he had a note of it?

A. Mm-hmm.

Q. Since then he has given evidence that that extra time was in fact given as a result of a very lengthy meeting, one or maybe two hours, he said. Does that in any way jog your memory about the meeting?

A. I'd be surprised if it was two hours, that's for sure.

Q. Well, if you don't remember it, I suppose that's all you're saying?

A. That's all I am saying, yeah.

Q. But you don't still have a memory of it?

A. I accept that the meeting took place, because I mean, the people who gave evidence about it, there is more than Mr. McMahon I mean, the meeting clearly took place, is what I am saying.

Q. After that meeting, there seems to have been a meeting on the 24th.

A. Yeah.

Q. How that meeting came about is not clear. Mr. Towey said in evidence that his impression was that he didn't have to work. There was no pressure on him as regards the work he had to do on the 24th, when he left the meeting on the 23rd; do you understand me?

A. Yeah.

Q. He didn't have any recall of the week being given, but

he did recall that he was under no pressure to finish up when he left the meeting of the 23rd. So that may be consistent with time having been made available?

A. Yeah, okay.

Q. And then that on the 24th, he found that he was having to work and work all night, and work late into the night.

Mr. McMahon understood that work was going to be done on the report following the meeting and that the report was going to be made available for further consideration?

A. Yeah.

Q. Now, we know that didn't happen, and we know that the Minister in fact went to Government on the 25th?

A. Yeah.

Q. Mr. Towey was asked, I think, who had directed him to do the work on the 23rd I beg your pardon, on the 24th?

A. Yeah.

Q. And he didn't think it was Mr. Loughrey. Presumably it must have been you, wouldn't it, if it wasn't Mr. Loughrey? Because he didn't have any direct contacts with the Minister apart from one that he has mentioned?

A. Are you saying he had a clear recollection?

Q. I am not.

A. Or he was trying to piece it together?

Q. I don't think he has a clear recollection.

A. Because, I mean, you could run several hypotheses, that Mr. Loughrey told the Minister that he had given a few extra days because people made representations, and the Minister said, "Well, I'll prefer not"; that could have happened. I just don't know what happened. I speculated when I was here before that it would be in my nature, when we came back and said "We have an extra week now; let's discuss what we're going to do with that week so that we don't end with the same pass next week", so that that discussion would likely to have led on that it becoming clear that the issues could be resolved quickly.

Now, I said at the time that I was saying that speculatively, constructing it as a hypothesis that had some validity; but I don't know what actually happened.

Q. I suppose, if there had been the meeting as described by Mr. McMahon, it's unlikely that you'd have said, "Let's get the work done, and to hell with giving the report to people". If there had been, as it were, a deal done at a meeting, or a compromise worked out between people who had different views, that deal would have been kept, unless the Minister intervened. He was entitled to intervene at any time, wasn't he, surely?

A. Well, I just don't have the kind of recall that

ideally the Tribunal would like me to have.

Q. If the process was to be brought to a conclusion like that without, as it were, keeping the bargain, if I can put it in parenthesis, of letting Mr. McMahon see the report, would that indicate that it wasn't a civil servant who applied that pressure directly; it wasn't you saying "Let's wrap it up now because let's try and do it today rather than next week"? Does that indicate, as you speculate, it's more likely to have come from a Minister saying " Look, I want it today, I don't care what condition it's in"?

A. I just don't know. It would be unfair of me to point a finger in any direction, to myself or anywhere else as to what might have happened, but I have said before, and I'll say again, it would be in my nature to come back and say "what are we going to do so that we're not in the same position next week? Let's talk about the issues."

That would be my natural reaction to the situation in which I found myself. Whether that caused Mr. McMahon to change or whether some other influence came to bear, I just don't know.

Q. Well, his evidence is that he always expected to get the report.

A. Yeah.

Q. He never got it, in fact, but he always expected to get it. That was his evidence that was his clear

evidence.

A. Okay.

Q. And I am suggesting that you wouldn't have overridden that or are you telling me that you would have overridden it? I am not asking you to point the finger at anyone except yourself now.

A. As far as I am concerned, the report dated the 18th, plus the amendments that were agreed collectively and collated by Mr. Towey, constituted what was going to be in the final report anyway. And I mean, if I myself was checking the final report, I wouldn't be reading it de novo. I'd be checking to see what we had agreed to be changed was changed.

So to that extent, I don't know what gap you're suggesting in Mr. McMahon's documentation.

Q. His understanding was that he was to see the final report to satisfy himself that it was in a form that he was happy with and he has that criticism to this day, I think, if I can put it that way, and what I am suggesting is that when there was no problem about time you were well within the original critical path; you were in time in accordance with well, Andersen was in time, let's put it that way, in accordance with his he couldn't be criticised, in fact, if he couldn't have produced it on the 25th, because he had given it to you on the 18th, in accordance with your plan. So there was no pressure

on him, and a few days was not going to make any difference. And I am suggesting that you wouldn't have overridden whatever deal you had done in the lengthy meeting, as Mr. McMahon sees it, with Mr. Loughrey, just because you felt you should do it that way.

A. No, I wouldn't consciously override things like that.

But I am suggesting that if I came back and said "Let's talk about this; what are the issues? What will we do between now and next week", that that could have, and likely did, lead on to a discussion wherein it became clear that the issues could be resolved fairly quickly.

But I don't know. I am speculating, and I said that at the time when I first said that here. And there is I raised an issue earlier this morning about how much pressure was Mr. Andersen putting into the system to get him extricated, if he believed that he was burning resources at that stage, did he want to close it down quickly as well? I suspect he probably did.

Q. He wanted to be finished with it?

A. Yeah.

Q. Did you detect that he wanted to be finished with it in the course of the meetings of either the 23rd or the 9th, or the 28th/29th, in Copenhagen?

A. I can't be as definitive as that, no.

Q. To come back to the point I made to you earlier: Was

he becoming less enthusiastic about it now because it was not now the report that he had envisaged?

A. I have no evidence of that.

Q. And I am not suggesting that was because you were unhappy, solely, but he hadn't presented you with the report that you had stipulated for, either in the tender or in your letter of the 14th September; isn't that right?

A. Yeah.

CHAIRMAN: But each of the reasons that you have alluded to this morning, Mr. Brennan, for trying to quicken the process: Firstly, your own contact with the Minister; secondly, the remuneration compromise that you had entered into with Andersens; and also what you have just referred to as your own management style of seeking to be a doer and contemplating, even if there was a deferral, that you might seek to go ahead in any event if people agreed; none of these, I would suggest to you, would individually or collectively have over-ridden a situation if your team was just not agreed.

A. If the team didn't agree, we would have stayed at it. And I am very specific that unanimity was recorded within the group. Now, whether it was written down, I don't know, but the group did come to a unanimous conclusion.

Q. MR. HEALY: Yes, I think you did say to me on an

earlier occasion that people may have agreed, but whether that was from conviction or from a desire to just finish it up is another matter.

A. I think I did say something like that, yeah.

Q. How let me put it another way: If there were people at this meeting who weren't convinced, or at least didn't have explanations, as far as we can see, is it possible that they were simply saying, "Look, it was done in Copenhagen, and we'll accept what Martin and Fintan say about it, and that's that"?

A. I don't know what evidence you have about that.

Q. I beg your pardon

A. I don't know what evidence you have to that effect, but I mean, you have spoken to at this stage all the people concerned.

Q. I have evidence that I have no evidence that anyone understands the aspects table or how it was arrived at. And there seems to be no satisfactory explanation as to how the split on the weightings was either done or agreed to. That would suggest and that's what we started off on this discussion a fairly critical problem of understanding that persists down to this day.

A. I have one slight difficulty is that I have heard from some of my legal team that Mr. Ryan has fairly clear recollections in this area; and you're aware of what they are and I am not, so I consider myself to be at

somewhat of a disadvantage.

Q. I suppose I don't want to anticipate too much what Mr. Ryan has to say because he hasn't yet provided a formal statement. But he has indicated and I hope I am correct in this that he has a recollection of Mr. Buggy raising the issue, and that it being explained to him there was a 10, 10 split, at the meeting of the 23rd.

A. It's a difficulty for both of us now trying to deal with evidence that hasn't been presented. I just heard that he had fairly clear recollection, clearer than what was apparent in other witnesses.

Q. Yes, he has that recollection. The problem is it doesn't tally with Mr. Buggy's recollection, and it certainly doesn't tally with the record, because Mr. Buggy raised the same issue again in May '96; do you follow me?

A. I do, yeah.

Q. Bear with me for a minute, Mr. Brennan; I am trying to find just before I leave the matters we were discussing, I knew I had a recollection that some of the matters referred to in your letter of the 14th September had already been mentioned.

If I could refer you, for a moment, to Book 42, Leaf 104. I am going to try to find the critical path that might have been mentioned earlier on in the course of maybe your evidence or somebody else's evidence. I

think you are familiar with the dates, the end of November being the original target date; isn't that right?

A. Yeah.

Q. And the end of October being the original target date for completing the process?

A. Mm-hmm.

Q. And a month in between for, as the Minister called it, slippage, or whatever you want to call it, for consideration, I think Mr. Andersen called it, of the report; isn't that right?

A. Yeah.

Q. Now, so the completion of the selection process by the end of October was always, I think, part of the time line, wasn't it?

A. Yes.

Q. And I think that's consistent with the note of the meeting of the 11th the 11th meeting on the 14th September of 1995 where, if you go to the final page, you'll see a paragraph beginning "The scoring of the marketing, financial and management dimensions would take place in Copenhagen next week. DTEC to appoint the appropriate personnel to attend. AMI would provide the first draft evaluation report on the 3rd October."

That was in the letter; isn't that right?

A. Yeah.

Q. "This would be discussed by the group on Monday 9 October. The three DTEC divisions would supply any written comments prior to that meeting."

Do you see that?

A. Yeah.

Q. "Following that, AMI would produce a second draft report by the 17th."

A. Mm-hmm.

Q. So that's completely consistent with what's in the letter; isn't that right?

A. Yes.

Q. And then everything was to be finished by the end of October. You obviously brought that forward to the 25th in your letter?

A. The letter did say the 25th October.

Q. Yeah. Did you get any response, by the way, from Mr. Andersen, can you recall, to that letter?

A. I don't know.

Q. I just want to be clear about it, then: Apart from bringing the date forward to the 25th, there is nothing in that letter as regards the finalisation of the process now, mind you, the process the non-political part of the process over and above the critical path and what was agreed at the meeting of the 14th September?

A. That seems to be consistent with the meeting of the 14th September, yeah.

Q. I want to come now to the letter of the 29th September, 1995, the letter from IIIU to the Department that we discussed. And at the time we discussed it, we didn't have the benefit of Mr. Towey's evidence. Mr. Towey dealt with it in his evidence on Day 214 on the 8th May, 2003. I am not going to go into all of the evidence, unless you want me to; but firstly I'll try to summarise what he said, and if necessary, we can go into his evidence.

I don't think he had a great recall of this either, no more than you had.

A. Okay.

Q. But he speculated that he would have told you he had received the letter.

A. I read his evidence recently.

Q. Have you?

A. In the last couple of days.

Q. Well, then, you can correct me if I am wrong in any of this.

He speculated that he would have told you that he had received the letter, that he would have told you the contents of the letter, and that he would have told you his views as to what steps should be taken. I think he went on to say that he may well have passed on the letter so that you could read it, and his belief is that he and you would have agreed, after some discussion, a course of action to be taken in

relation to the letter.

A. Yeah.

Q. Now, I think the difference between his evidence and your recollection the last time that you gave evidence was that I think he suggests that he would have told you the contents of the letter. Your recollection the last time was that you hadn't got the contents from him other than that it was something to do with finance.

A. Yeah.

Q. Am I right in saying that he felt that he would have gone into the contents in some detail with you?

A. He certainly said that in evidence, and I acknowledged here before that I knew that his recollection was slightly different from mine.

Q. I appreciate that, and I am not trying to catch you out.

A. It's clear that my first contact with the subject was by telephone in any event, because if you recall, I was in Brussels and he was in Dublin. I think he told me that it had to do with the finances of the consortium, but I don't recall it being in more detail than that.

Q. He went on to say that he may have formed the conclusion from the letter that the banks were out of the equation. Do you have any recollection of him or of his expressing that view to you?

A. I don't really, no. I mean, the most constant recollection I have is of him strongly recommending it be sent back and me thinking about it and agreeing with it.

Q. I am sorry, I didn't get that last bit.

A. That he strongly recommended that it be sent back because of the rules of the competition, and I, on considering the matter, agreed with him.

Q. Having read the contents of the letter now, would you form would you have formed the impression would you now form the impression that

A. I don't have the letter in front of me right now.

Q. All right, I'll make sure that you have it. It's in Book, I think, 42, I think. Book 42, 113.

A. I have it now. You were asking me could I conclude from it that the banks were out of the equation? I don't know whether I could be as definitive as that, in the sense that he's talking about underwriting, on behalf of the consortium, the equity. It is at least possible that it was dealing with the same providers. I just don't know.

Q. Let me read out the relevant portion of Fintan Towey's letter Fintan Towey's evidence. It's Book 214, page 18, at question 43. Mr. Coughlan was examining Mr. Towey, and he says:

"Question: Now, this particular letter, which appears to be, in effect, informing you of underwriting on

behalf of the consortium of all of the equity other than Telenor's equity in Esat Digifone.

"Answer: Yes.

"Question: Includes the 20% institutions, isn't that correct, that particular letter there?

"Answer: It does, yes.

"Question: Does that strike you as strange?

"Answer: Not at the time, no.

"Question: The likes of AIB and Standard Life and these sort of institutions hardly need to be underwritten, did they?

"Answer: No, no, I mean I think my general

"Question: In fairness

"Answer: No, I don't believe that I interpreted the letter as suggesting that they were going to underwrite those banks which had been mentioned in the application. My understanding was that they were undertaking to back Communicorp to the extent required and also to take up the 20% available for institutional investors."

Do you see that?

A. Yes.

Q. Do you have any recall, having seen that now or having read his evidence, of any discussion along those lines?

A. I don't, no.

Q. If you look at the letter today, do you see the point

that Mr. Towey was making in his evidence?

A. Not with the clarity that you seem to do, to be honest.

Q. Do you see it with the clarity that he seems to see it?

A. I don't know how to respond to the question.

Q. He says that I think, if you read his evidence, he was asked whether you thought what he thought, and he said he didn't think so. He was asked whether he had discussed it with you, and he said he couldn't say.

Just to take up one matter that was taken up with him:

He was asked whether he had heard of IIU. Did you have I think I may have taken that up with you before.

A. I don't recall being aware of the existence of IIU.

Q. They were just newly in existence anyway.

A. Okay. I mean, one comment I would offer and you can attach whatever weight you like to it is, and this struck me when I first saw this letter, which was when it was reproduced in one of the newspapers or whatever, the logo is interesting. I'd love to see it in colour; a logo is something a logo like that, I would be looking at and say "I wonder what it's meant to mean?"

And that would have stuck with me; I'll put it like that. So on that count alone, I am reasonably confident that I didn't see that headed paper back in

1995.

Now, you can attach whatever weight you like to that...

Q. I can understand that point, and I think it's an interesting point. But is it not also likely that instead of showing you the letter, Fintan Towey would simply have read it to you; and then you'd never have seen it, but you would have been aware of its contents?

A. That's certainly possible.

Q. You see, if you look

A. That's possible, certainly, in the context of our main contact about it being by phone from Dublin to Brussels. My recollection is that he told me it was to do with the financing of this particular application. He seems to recollect that he may have told me more than that. Does that amount to reading out the letter, I just can't say.

Q. Did you give any thought to asking Mr. Andersen whether you should rule it in or out?

A. I don't believe I did, no.

Q. Do you recall that in the course of the presentations, when issues about further documentation arose, at one point you said, I think, "Mr. Andersen is the ultimate referee; we'll ask him about this" I think it was in relation to Irish Mobicall. You canvassed his view on it?

A. I mean, I was very clear at the end of those presentation meetings, "Don't call us, we'll call you; we don't want any more information". And that seemed to be agreed, at least on our side of the table, and that's the basis from which Fintan recommended and I agreed that we sent back the letter.

CHAIRMAN: But recalling that rather trivial Irish Mobicall matter recollect I think it was one of the representatives of that consortium wanted to send you a spreadsheet the following day, and you initially consulted Mr. Andersen, who advanced a somewhat negative view, and then a few minutes later, perhaps very sensibly, you said, "Well, it's a very small concession; we'll let you do it on this occasion". And perhaps it's in that context that I was anxious to hear your answer to Mr. Healy on a potentially significant situation with one of the leading contestants. Might it have made sense to consult Mr. Andersen as to whether this was outside the rules of the competition or not?

A. Well, I'd say it's a reasonable question to ask now, looking back at the process. It didn't occur to me at the time.

Q. MR. HEALY: Even though at the time, I think you would have known that Mr. Andersen had some concerns about Communicorp's finances; isn't that right?

A. Yes.

Q. Would this letter have caused you to be more or less concerned about their finances?

A. I was more concerned about the impact of the letter on the selection process; if we took it into account, were we damaging the integrity of the process? The letter, as I said before, had plausible deniability because if we took that course, they could say, "Well, we didn't send you any letter; it was sent by somebody else", you know. Those kind of things were on my mind, but not I don't remember at all considering whether this improved or disimproved

Q. If those things were in your mind, did it ever occur to you to simply write to Esat Digifone and say "What does this letter mean? Does it mean that you're in more trouble than we thought you're in, or does it mean that you're better off? What are you trying to say to us?"

A. I didn't go that step.

Q. Now, I now want to refer to a document that I think you weren't referred to before; it's a draft letter which was never sent

CHAIRMAN: Just before you leave the letter sorry, Mr. Healy and it remains your evidence that you think it's likely you didn't actually see it noting Mr. Towey's evidence, that he may have shown it to you because you might have remembered the logo, but one way or the other, you didn't apprise that Mr. Desmond

was in fact listed as the principal of the company at the bottom of the letter?

A. No, I did not.

CHAIRMAN: Is it a fair comment that from Mr. Desmond's point of view, having had his identity attached to this new and unknown company, and having had the letter written to Mr. Towey, it would have been it would have seemed to Mr. Desmond somewhat improbable that the principals of the competition wouldn't have known he was asserting some sort of interest?

A. Well, I recall Mr. Shipsey interrupting my previous evidence to make that point. But beyond that, you have to judge for yourself, I suppose, at the end of the day, what significance you attach to his intervention and to all the evidence.

I mean, I am not trying to be smart or unhelpful, but I don't believe I saw the headed paper. I don't believe I saw the letter. Therefore, I don't believe I adverted to Mr. Desmond being involved at that time.

MR. HEALY: I want to just come to a related letter. Maybe if I am going to move on to it, I'll wait till after lunch.

CHAIRMAN: Two o'clock.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF MARTIN BRENNAN BY

MR. HEALY:

CHAIRMAN: My apologies, Mr. Brennan, and to other people present, for the late start. There were some matters of correspondence and documents that had to be attended to over lunch.

MR. HEALY: Just before I take up your evidence, Mr. Brennan sorry for the delay, Sir. It was to some extent prompted by some small logistical problem, but also by my anxiety to deal with one matter. And the suggestion made this morning by Mr. Fitzsimons when he associated himself with McGonigal's remarks, I don't have any difficulties with Mr. McGonigal's remarks, but it was something Mr. Fitzsimons said that I think I should respond to.

And he indicated that the Tribunal should withdraw the suggestion or the various suggestions and the contentions to the effect that the process was accelerated because it is quite clear from this letter the letter we mentioned this morning that as early as the 15th September, the 25th October was intended to be the termination date for the process.

Now, I think as I mentioned this morning, the Tribunal has didn't have that letter, or hadn't turned up that letter, but has never ever sought to suggest that the Project Group were not, on the basis of the documentation available to the Tribunal, aiming for the end of October. This was always their aim, and in

Mr. Coughlan's Opening Statement, he referred to the Minister's statement in the Dail in which the Minister referred, in response to queries to the effect that there had been undue haste, to the fact that a Gantt or flow chart had been prepared by the consultants in the context of the relaunch of the competition indicating that a final report was to be submitted in the week beginning the 22nd October, which is the week referred to in the letter of the 14th September.

That was in a context where it was envisaged that ultimately there would not be an announcement of a result until the end of November, but where the gap between the end of October and the end of November was

I think I am quoting to some extent from Mr. Brennan's evidence as well to take account of slippage, and to allow time for political consideration.

Now, it was mentioned I think also in the course of the original evidence, or the initial evidence given by Mr. Brennan, in which Mr. Brennan I think agreed with me on more than one occasion that it had always been envisaged that a result would have been available by the end of October, and in the course, I think, of also of Mr. Loughrey's evidence, this was referred to, not in the context of a Gantt chart, which was mentioned by the Minister, or in the context of a flow chart, both of which expressions I think were used by

me in my questioning of Mr. Brennan, but in the context of a critical path, all of which were designed to arrive at a report at the conclusion of the evaluation process; that is to say, so far as it concerned the officials and the consultants by the end of October.

And there is another document I tried to find all the documents in which this was mentioned. There are innumerable documents, but there is one in the books we have referred to already Book 42, and at Leaf 80 of Book 42, you'll find a document consisting of a memorandum from Fintan Towey of the 30th June of 1995 to Mr. Brennan in which Mr. Andersen or in which Mr. Towey is setting out a new timetable in light of the EU intervention, and he says in that document, at paragraph 6: "Thus, assuming the formal communication is received from the Commission on or before Wednesday of next week, i.e. the 5th July, the new closing date could be set at Friday the 24th July. Andersen Management International have indicated that the final evaluation report could be prepared by Monday the 16th October. A final Government decision on the new licence should be possible by Tuesday, 28 November. The overall slippage in the competition process therefore would be only four weeks, which is not a significant price for the imprimatur of the Commission."

Now, I brought that to the notice of Mr. Brennan in the context of a line of questioning to do with why almost six weeks was being left after the due date for the final evaluation report before a Government decision could be announced. As we know, in fact, the closing date was the 4th October, not the 28th July; and we know from the other documentation, including the documentation I mentioned this morning, that ultimately the critical path focused on the end of October or the beginning of the final week or at some point in the week in October which obviously would have been any time in or about the 22nd onwards.

Now, if necessary, I can ensure that any of the other representatives present are referred to every single one of the references in which these points are made, but I don't want to delay on it now.

MR. MCGONIGAL: Could I just make one point. I am grateful to My Friend for elaborating on that. I don't want to say anything in relation to what he said; I'll consider that at a later stage. But what I do want to make point about is that I am disturbed that we have received another document of the 30th June, '95, which is the Gantt sheet, which I don't believe has been with us before and does seem to bear some relationship to the way in which the process was carried out or planned to be carried out from AMI.

Now, I have been reluctant to seek all of the

documentation, and I am still reluctant to seek all of the documentation that was given to the Tribunal; but today we have had an example where two significantly relevant documents have, at a very late stage, come to light, and I do want to express my concern that there is a danger, and a real danger, becoming apparent: that there are documents in the possession of either the Tribunal or the Department which may have a relevance to some of the issues and which may have been overlooked, or are being overlooked.

And I am seeking an absolute assurance without wanting to look at the documents myself, but if I have to, I will an absolute assurance that a proper check of every single document which the Department has in relation to these issues will be checked to see that there is no relevant document being left behind.

And I am sorry to have to say that, but because of the fact that these two significant documents are coming to light at a time when a lot of inquiry has been which would not have been necessary had we had sight of these before.

CHAIRMAN: I don't agree, Mr. McGonigal, that these documents significantly change a picture that has already been advanced in evidence and in the opening by Mr. Coughlan. The Tribunal is, and will at all times, be vigilant to see that out of the vast amount of documentation that was furnished to it, that

limited portion which is of material relevance to the terms of reference and to the interests of persons who are represented will be brought to public attention.

I'll say no more on it. Let's proceed.

MR. FITZSIMONS: I wonder, Mr. Chairman, could I make a point, just for clarification.

I think Mr. Healy missed the point of my intervention.

The point of my intervention in relation to acceleration was as follows: There has been quite a lot of cross-examination of witnesses, entirely for the purpose of inquiry, and matters have been put to them on the topic of acceleration arising from what was said or not said during the month of October. But the point of this document of the 14th September is that it demonstrates that a timetable was fixed as of the 14th September, and it was not brought forward.

In other words, the timetable fixed on the 14th September was strictly adhered to.

So that was the point I was seeking to make. Maybe it didn't come across properly when I made it, but just for clarification, so I am not perhaps on the same wavelength as Mr. Healy on this point, just for clarification, Chairman.

CHAIRMAN: Perhaps it will suffice that I will indicate that I'll note it as one of the factors which must be carefully evaluated in assessing the time-frame.

MR. FITZSIMONS: Thank you, Chairman.

Q. MR. HEALY: Are you familiar, Mr. Brennan, with any of the evidence given by Mr. Buggy in the last few days?

A. I touched I dipped into it.

Q. Do you recall that in the course of Mr. Buggy's evidence

A. Before you go on to that, could I say, because it might be of interest or helpful, in relation to the Mr. Towey minute that's on the screen, you'll notice that it's addressed to me and to Runai Aire. Runai Aire is civil service shorthand for the Minister's private secretary, so the Minister was, at that stage, aware that you know, mid-October was you know, I just thought I'd mention that in case it escaped anyone.

Q. And the Gantt chart that I referred you to, I think a long time ago, was based on the same notion of the week of the 22nd October; isn't that right?

A. Yeah.

Q. Now, I'll come back to I may come back to one or two things in '95, but I just want to go on for a moment to 1996 and to a matter that was mentioned in the course of evidence given by Mr. Buggy.

Do you recall that Mr. Buggy was asked about two documents that were found on the files and that disclosed, firstly, that there was a cutting on the file I think it was from the Irish Times, of the

28th February, 1996 it's Book 58 I am not going to ask you for Book 58, Mr. Brennan, because I've got a separate copy of the document for you.

Did you get a folder of documents like this this morning?

A. Not this morning, no.

Q. I think you gave it back yesterday.

A. I gave back a folder yesterday, yeah.

Q. You have the newspaper article; do you see that?

A. I do, yeah.

Q. And with it, you have a graphic; do you see that?

A. Yeah.

Q. Now, when Mr. Buggy was giving evidence last week, the Tribunal was trying to find out whether the graphic which is adjacent to the article in the files was the result of an examination of the article, and if so, whether it occurred in February of 1996; because if it did, it would mean that the Department was in possession of information in February of 1996 concerning the full makeup of Esat Digifone and the shareholdings of Esat Telecom, Telenor, IIU and so forth.

A. Yeah.

Q. Now, firstly, can I ask you whether you ever remember seeing that article?

A. I don't remember seeing the article, and I think it was in this context that I drew your attention to the

existence of a press cutting service in the Department, because basically, I mean, my fundamental position is all information is friendly.

Q. I didn't have I don't think the last time we discussed it I had this document.

A. No, I said in response to something you asked me, because you were asking me about a press release or something.

Q. I was, in a general way.

A. I said the Department had a press cutting service; it would be interesting to know if that document or the reference was in it. I passed that comment.

I suppose the basic point I would make about this, and I have thought about it since I knew it was becoming an issue, is I have said before the words that went into 1996, my focus went towards Brussels, and I spent a lot of time out of the country. I know, because I have checked, that of the 20 working days in February of 1996, I was in Brussels for eight of them, and I was in transit to Brussels for four further half-days.

So I was doing two and a half days in Brussels, two and a half days in the office. And in that situation, the likelihood of me going to the press cuttings when I come back is very slim indeed.

Now, at that time, the newspaper I purchased wasn't the Irish Times. So I don't believe there was much prospect that I actually saw that at the time.

Q. I follow. Would I be right in thinking that if you had seen it, it would have switched on some lights for you?

A. I think it probably would, yeah.

Q. Now, the graphic: Did you ever see the graphic until it was drawn to your attention?

A. I only saw it now for the first time. I don't know whose handwriting it is, even.

Q. All right. Well, I was going to ask you whether you had any part in directing or any recollection of directing Mr. Buggy to examine it, and whether any direction by you had resulted in the graphics; but if you can't remember the article, then presumably

A. That's correct, yeah. And by the way, I was specifically in Brussels on the 27th, 28th and 29th February as well.

Q. I see. But I suppose if that graphic had come to the attention of anyone involved in the project, you'd have expected it to be drawn to your attention?

A. Well, yes and no, in the sense that it was clear by then that responsibility for the actual issue of the licence and the licence negotiations had transferred to a large extent to Mr. McMahon's side and was being done by Ms. Finn, who didn't report to me, and I was brought back into it at a later stage.

Q. It's anticipating that I am asking you the question. You were brought back in when, amongst other things,

one of the important issues that arose was that you now knew that Dermot Desmond was involved and IIU was involved. It wasn't in fact even clear what way they were involved, and you were brought in; isn't that right?

A. Yeah.

Q. So inasmuch as it was something like that which occasioned your being brought into it in late April/early May, this is something which, if it had received sufficient consideration, would probably have occasioned your being brought in at this earlier point as well?

A. I think it probably there is a good chance it would have been mentioned to me, yeah.

Q. Do I take it, then, that at that time, you were not directing Mr. Buggy in terms of the tasks that he had to fulfil as part of his secondment to the Department?

A. No. Mr. Buggy, when he was in the Department, was attached to the planning division, and his services were generally available to people who had financial issues to test. And he had direct access to Mr.

Loughrey and did work directly for Mr. Loughrey.

Having said that, there was probably another accountant on secondment to the Department at the time who was actually physically in Mr. Loughrey's domain.

Q. Well, I think Mr. Buggy was actually I think I am right in saying that he said last week that he was

next door to him or close to him.

A. I see. Okay.

Q. Maybe I am wrong in that.

A. I have forgotten. We used to have two accountants on loan, one of whom was a kind of a Secretary General's Cabinet and the other of whom was more generally available to the Department under the broad direction of the Assistant Secretary in charge of corporate services. And I have actually forgotten which of the two slots Donal Buggy was in, but I think it was the planning one.

Q. Well, we know that ultimately Mr. Buggy was brought into the assessment of IIU/Dermot Desmond, I think, as far as we can see, on foot of a direction by Mr. Loughrey. And you didn't give him any direction, as far as you can recall, in relation to this, and you can't recall it at all in any case?

A. That's right.

Q.

If you look at the you don't have that file any more, I think the file of documents

A. No.

Q. the document I want to draw to your attention is a document mentioned in the course of Mr. Fintan Towey's evidence. And I don't have a reference for it at the time, so I'll put it on the overhead projector.

It came to the Tribunal as a handwritten note on

William Fry notepaper of Mr. Owen O'Connell acting as solicitor for Esat Digifone in connection with the licence negotiations, and it's dated the 29th April, 1996. And Messrs. William Fry prepared, helpfully prepared a typed transcript of what the document contains.

It came to the attention of the Tribunal because, in his Memorandum of Evidence, he referred to a telephone conversation he had had with Mr. Towey on that date, and when the Tribunal inquired further about it, I think he drew this document to the Tribunal's attention. And you'll see that it says

"Fintan Towey,

"Trying to hammer down paper trail between beneficial ownership as in bid and as now proposed: to determine whether there are any differences. Legal people involved.

"If Telecom interests held Esat Holdings and radio by Communicorp asset base of Communicorp reduced.

Doesn't know whether it would be a problem.

"Suggested meeting" and this, Mr. O'Connell indicates, suggests a reference to his having mentioned or suggested a meeting.

"Premature" he says he believes this to be Mr. Towey's response to a suggestion of a meeting.

He goes on: "The question is whether company to be licensed is the same as company that applied. Has to

be assured from a legal perspective.

"Haven't reached decision as to whether there is any difficulty or anything they want done differently.

"Warranties regarding ownership and financing.

Identifying institutional investors. Means ownership at date of licence.

"OO'C no difficulty with that at all."

Then I think the next thing seems to deal with something else altogether.

There is another part of the document then which is on a separate typed page, and it says: "KD" meaning Knut Digerud "POD here" presumably means a meeting in William Fry Solicitors. This is dated the 30th April of 1996.

It says "KD spoke Martin Brennan. Department problem reconciling original bid with actual position today.

"Full understanding of ownership; need to be sure financing is in place "Warranties" for this".

Then there is a graphic which has Advent 34%, Communicorp 40% Advent having 34% of Communicorp, Communicorp have 40% of Esat Digifone, Telenor having 40% of Esat Digifone, and then it says "Investment community 20%-32%."

If I could just deal with these documents in chronological order, dealing firstly with the document of the 29th April, 1996.

It would appear that Fintan Towey was saying that the

Department were trying to hammer down the paper trail

between beneficial ownership as in bid and as now.

Doesn't that seem to be what was in his mind

A. Yes.

Q. Judging from the note?

Now, if you go on to the other note, where Knut

Digerud says he spoke to you, and he records

"Department problem reconciling original bid with

actual position today."

Firstly, without asking you whether you recall what

that means, it's roughly the same point as was raised

with Fintan Towey; isn't that right?

A. Yes.

Q. Do you remember having a discussion with Knut Digerud about it?

A. Not specifically, no.

Q. It seems safe to say, judging from the other documents

we saw recording meetings which you and Fintan Towey

had with Mr. O'Connell and with Esat Digifone

executives, that you were expressing concerns about

reconciling ownership at the time of the licence with

ownership as of that date and with nailing down or

hammering down the paper trail?

A. Yes.

Q. Do you remember I'll pull it out, if need be do

you remember Mr. Arve Johansen's memorandum of the 4th

May, that I drew to your attention the last time you

gave evidence, in which he records that he was asked or that they were asked to explain how IIU came to take the place of Davys; do you remember that document?

A. I don't particularly remember it, but I mean, it sounds broadly familiar.

Q. His memorandum suggested that the Department were looking for an explanation as to how IIU came to be in the place of Davys.

A. Yeah.

Q. Now, from the documentation which we have and from the statements which have been made to the Tribunal, IIU/Dermot Desmond were involved in the transaction before you ever made your decision to grant the licence to Digifone?

A. Yeah.

Q. You weren't aware of that, I think; isn't that right?

A. I recall that from the Opening Statement.

Q. At this point, judging from the documentation, am I not right in saying that you never received a paper trail showing the full evolution of the involvement of IIU/Dermot Desmond in the consortium?

A. I think that's probably true, yeah. If you are talking about an evolution from back in September through to this point in time, I think that's true.

Q. From August sometime?

A. Yeah.

Q. Was there some reason why you didn't press for this, having regard to, for instance, what Mr. Arve Johansen says in his memorandum?

A. Remind me again.

Q. Seeking an explanation for the substitution of Davys with IIU?

A. I don't remember taking a conscious decision one way or the other.

Q. Judging from these two notes, certainly yourself and Fintan Towey, if I can put it, the Department seemed to regard this as fairly important?

A. I'd say that's fair comment, yeah.

Q. And yet it was never followed through, is my point.

Was there some reason for that, that you can recall?

A. I don't recall any particular reason.

Q. Now, around this time, as we said a moment ago, you began to take a more hands-on role in the completion or perfection of the process; isn't that right?

A. Yeah.

Q. And you'll recall that Mr. Buggy gave evidence about the task he was charged with in connection with assessing IIU/Dermot Desmond's involvement in the consortium?

A. Yeah.

Q. I want to refer you to Book 44. Mr. Buggy says that he had very little time to do this job and that the best he was able to do in the time available was to

conduct a desktop review. I think he had a few days to do it. He says that you were involved in his meetings with Mr. Pearse Farrell and Mr. Michael Walsh.

A. Yeah, okay.

Q. Now, your recollection when we were discussing this first we didn't have the benefit of his evidence was that you were there, as it were, as a civil service out-rider, and he was doing the meeting. He says his impression was that you had a much more involved role in the meeting.

A. I think I said before whether I did or not, I am quite happy to say it now there was a stage, I do recall, where there was a great reluctance to supply evidence in support of the state of Mr. Desmond's finances, and I was certainly brought in to intervene with Michael Walsh to make it crystal clear that no evidence meant no licence, and that that was what gave rise, I think, to Pearse Farrell, if that's his name, being brought in to deal with the subject of he was in some way, maybe a private accounting adviser as distinct from I have forgotten what his role was, but he was more a Dermot Desmond man than a company man, if I could put it like that.

Q. Yes.

A. But I mean, that's what I recall of my involvement. How deep it was beyond that, I don't know.

Q. Am I right in saying, then, that this was, as it were, the response to your push for more information?

A. I think it probably was, yeah.

Q. And can we take it, therefore, that the letter produced by Farrell Grant Sparks, by Mr. Pearse Farrell in which you are correct, he describes himself as a financial adviser and an auditor to Dermot Desmond, as it were, as opposed to merely IIU it was that letter that purported to contain the information that Pearse Farrell believed would be sufficient to satisfy you?

A. I can recall such a letter. What I don't recall is whether there was anything else.

Q. One of the things that Mr. Buggy was asked about, and I want to draw it to your attention. If you look at the memorandum that Mr. Buggy prepared it's at Leaf 221 of that book I mentioned a moment ago, Book 44. I don't know how good your copy is, but the copy I have here is not in fact the copy I have been working from, but

A. There doesn't actually seem to be a Leaf 221 in this version.

Q. I'll have to get you a copy, then.

A. Okay.

Q. Now, there was a general discussion in this memorandum of the firstly, the business plan of Esat Digifone that was putting into context the work that Mr. Buggy

was doing.

On to the second page, then, you'll see that in the final bullet point in the second page, Mr. Buggy says "To ascertain if DD has sufficient finances to support this project, we discussed the matter with Mr. Michael Walsh. He informed us that DD had already put IR£1.75 million into the company and has put in another 5 million this evening in advance of signing the licence.

"In order to satisfy us on the remaining 11.55 million, we received the following:

" a letter from Anglo Irish Bank confirming that DD has 10 million available to invest in Esat Digifone, including the 5 million put in this evening, and that this will remain available for the whole of 1996.

" an updated letter from Farrell Grant Sparks which confirms that DD is worth at least 40 million and which outlines, in general terms, some of the unencumbered assets totalling some 77 million which DD owns and which supports their opinion that he is capable of financing up to 40 million of this project."

And it goes on then: "Letters from Telenor", and so on.

Now, I want to draw your attention to the statement in that memorandum that "Farrell Grant Sparks confirmed

in their letter that DD was worth at least 40 million and which outlined in general terms some of the unencumbered assets."

Do you see that?

A. Yes.

Q. If you look at the letter which is in Leaf 220, do you have anything in Leaf 220?

A. Yeah.

Q. There is no statement in the letter that Mr. Desmond has unencumbered assets of that amount, or indeed of any amount, and I want to know whether you recall any discussion about whether these assets were encumbered or unencumbered.

A. No, I don't recall any discussion. I do remember reading being directed towards Mr. Buggy's evidence recently where you had a discussion with him about where he got the idea of unencumbered, and he said either from me or from Mr. Loughrey. I have thought carefully about that, and it's not something would have tripped off my tongue. I think I understand the concept well enough to not run with it without evidence, let's say.

Q. Anybody who has a mortgage understands the concept of it.

A. It's not a concept that I would have used without evidence; I'll put it like that.

Q. Yes. Well, can we just deal with it step by step,

then.

Firstly, you understand what it means: Somebody can have a paper title to any number of assets, but it's not much use if the bank owns most of those assets?

A. That's right.

Q. Maybe of some use, but not as much as it might appear on the face of things.

If you read Mr. Farrell's letter, I think it's one of the things that I am not asking you to read the whole letter, but if you look at his letter, it's one of the things that stands out that there is no account of what interest any banks or borrowers have in the assets or the list of assets set out in respect of Mr. Desmond, such as you'd normally find, and I think as Mr. Buggy agreed, accountants normally distinguish between encumbered and unencumbered assets, between net assets and gross assets, and I think he was quite clear about it, that unencumbered was a term that he as an accountant would use to mean assets that were not burdened with mortgages or borrowings.

What I want to find out is whether, firstly, you don't have a recollection, do you, of saying or not saying that to Mr. Buggy?

A. I don't believe there are any circumstances where I would have said, on the basis of this letter, that the assets were unencumbered.

Q. We are ad idem on that; the letter wouldn't be enough.

Having regard to what you said to me a moment ago
no information, no licence would I be right in
thinking that you wouldn't have accepted anyone's
say-so without some documentary proof or without their
being prepared to commit themselves in writing to that
effect before you would have conveyed to Mr. Buggy or
anyone else that the assets were unencumbered?

A. I certainly wouldn't have taken a view about
encumbered or unencumbered based on the evidence here.

Q. You would have wanted evidence, in other words?

A. I would have

Q. Wanted evidence?

A. I would have, yeah.

Q. So would it be your evidence, then, that as a matter
of probability, that didn't come from you?

A. I don't believe that came from me.

Q. Could I just ask you about the memorandum as a whole.

Do you recall Mr. Buggy discussing the memorandum with
you before he finalised it or before he gave it to Mr.

Loughrey?

A. I'd say there is a very good chance that I had sight
of it, that I read it.

Q. Right. Wouldn't it follow from that that the word
"unencumbered" would have jumped out at you as well?

A. Well, it's a note from an accountant, and I would have
thought an accountant wouldn't be using the word
lightly either.

Q. Yes, I accept that.

Maybe you weren't aware of the fact, but I think Mr. Buggy said that all the work he did on this, apart from his own calculations and so on, and his drafting, was done with you, I think the meetings, in other words, he had with Mr. Farrell, Mr. Walsh

A. I think I probably attended the meetings, yeah.

Q. So you would have had to assume that he got that information from somebody, or from somewhere

A. Yeah.

Q. other than in your company or from some document that you saw?

A. Not from a document that I saw. I think it's likely that he may have just asked about it at the meeting, but I don't know whether he did or not.

Q. Well, I suppose it's unlikely that an accountant would not have would have accepted simply a statement from somebody that assets were unencumbered without having, at the very least, a written statement to that effect?

A. Yeah, I don't know what relationship of trust would exist between one accountant and another, let's put it like that. I just don't know. But I would have expected that one accountant would expect another to give him an honourable answer.

Q. I accept that entirely. But wouldn't you have thought in light, as I said a moment ago, of your earlier

point: no evidence, no licence that he would have said "Fine; if those assets are unencumbered, would you please send me a letter to that effect", seeing as he had one

A. When I said "no evidence, no licence", I meant in terms of we were being told, "Sure everybody knows Dermot Desmond is good for it; why would you be bothered?" We said "No, sorry, that's not enough; you have to give us evidence".

The question is we met, presumably Mr. Farrell, isn't it? We met Pearse Farrell. He shared some information with us. There was obviously a discussion, and then Mr. Buggy is recording the outcome, if you like, and he is using the word "unencumbered". I would expect he would not be using it unless he had asked the question, say. Whether he would have then said "Well, give me evidence as well", I just don't know.

Q. Yes, I think that the letter followed, didn't it, on from the meeting; do you understand me? If you look at if you got you now have the documents in Leaf 221, haven't you?

A. I have, yeah.

Q. The first one is a memorandum from Mr. Buggy to Mr. Loughrey?

A. Yeah.

Q. The next one is a typed transcript of Mr. Buggy's

notes of a meeting of Mr. Buggy's notes, I beg your pardon, of the 13th May. It contains a sort of analysis; do you see that?

A. Yeah.

Q. The next one is dated 8.30am, Wednesday, 15th May 1996. Again it's a note; it's not clear that it's a note of a meeting, but the second part of it seems to be a preparation for or a note of a meeting. Do you see that?

A. Yeah.

Q. The next one is 15th May, 1996, 8.30am meeting with Michael Walsh. Do you see that?

A. Yeah.

Q. And then, if you look down to the fourth bullet point: "Letter outlining in general the assets supporting DD's financial position". Do you see that?

A. Yeah.

Q. That seems to suggest either that those documents were provided or were to be provided that day.

A. Yeah.

Q. And if, at a meeting either that day or the previous day with Mr. Pearse Farrell, a reference was made to unencumbered assets, wouldn't you have expected it to appear in the letter?

A. I suppose normally you would, yeah.

Q. I just want to refer you to one other aspect of this work, or these notes. Could you go to the meeting or

the note that's headed "8.30am meeting with Michael Walsh 15/5/1996", and if you go to the third bullet point; do you see that?

A. Yeah.

Q. "Bank confirmation on behalf of IIU stating 10 million available all of '96 including 5 million to be paid over today. What about when DOB comes up with the funds?"

Do you see that?

A. I do, yeah.

Q. Do you understand what that seems to refer to?

A. I don't have a good recall of it now, but I think we may have been broadly aware of fundraising activities that he was engaged in. I am not sure.

Q. Well, if you think about it, at this point the Department were insisting that Mr. Desmond's share of the company would be reduced to 20%?

A. Yeah.

Q. Therefore his share of the $\frac{1}{2}$ 15 million for the licence would have been 3 million?

A. Yeah.

Q. "The 5 million to be paid over today," in fact, was the following day it was paid over; isn't that right?

It may have been paid into the company that day was in fact 3 million by way of a contribution by way of Mr. Desmond's proportionate contribution to the licence fee of 15 million?

A. Yeah.

Q. And 2 million to pay for Mr. Desmond's proportionate share of Mr. O'Brien's responsibility for 6 million of the licence payment. I'll just go through those figures for you.

The licence payment was 15 million in total, 6 million each being 40% from Telenor and Mr. O'Brien, and 3 million, being half of that, 20%, from Mr. Desmond.

A. Yeah.

Q. Telenor paid their rateable proportion of Mr. O'Brien's share. He didn't have his 6 million, so they paid 4 million; and as Mr. Desmond had only half their share, he paid 2 million.

A. Mm-hmm.

Q. He was entitled to get that 2 million back from Mr. O'Brien when Mr. O'Brien came into funds, and in the meantime, he had a security. That document and that note would suggest that you were aware that Mr. O'Brien didn't have the money for the 15 million; not problems with his finance in general, but problems with his finance in the specific sense of not being able to pay for the licence.

A. I don't remember being aware of it as specifically as that.

Q. I'll just remind you of another document. Do you remember the notes that Mr. O'Connell kept of the meetings that you had with him in which references

were made to how you would prepare for the press conference announcing the handing over of the licence?

A. Yeah, I remember those in a general way, yeah.

Q. I am trying to turn up the document, but there are a number dealing with that point in which, if I could keep trying to remind you of it, in which Mr.

O'Connell recorded that the Department didn't want any statements made concerning Mr. O'Brien's finances which might have given the impression that the Department had some doubts concerning his finances.

Do you remember that?

A. I remember something in a general way, I do.

Q. Now, we know that there were general doubts concerning his finances, and some of them are mentioned by Mr. Buggy himself in this note; the fact that Mr. O'Brien hadn't yet raised, if you like, the capital, or raised a line of finance that was going to enable him to put up the capital to get the company up and running.

But there was this additional factor that seems to have been in play in the course of this discussion where Mr. O'Brien's inability to come up with the licence fee was being disclosed to the Department.

A. I don't remember it being put as graphically as that now.

Q. If it had been put as graphically as that, is it something that would have given you pause for thought?

A. I guess it's something that would have been discussed

between at least Mr. Buggy, Mr. Loughrey and myself, probably others.

Q. If I could just put this whole period into some wider context: When Mr. Andersen prepared the first draft of the report and when the final drafts, 18th and 25th, were being prepared, you recall that Mr. Andersen recommended, and I think based on fairly strong supplementary analysis contained in Appendix 10, that you would look for additional capital from Mr. O'Brien, indeed from all of the consortia members, and this was something which stemmed from what he saw as financial fragility or vulnerability stemming from Mr. O'Brien's lack of capital.

And we discussed the last day how that matter would perhaps more profitably have been disposed of immediately after the licence process was over and when the negotiations were beginning. But what I want to ask you is, judging from all that happened between November '95 and May '96, was it ever addressed, apart from the limited extent to which it was addressed as a side issue in Mr. Buggy's memorandum?

A. I don't know the extent to which I can recall all the bits and pieces, but I seem to remember references to Telenor volunteering to underwrite the entire project; is that right?

Q. Well, I think the documentation suggests that well, I better be careful about this your evidence is

that they volunteered. I think the documentation that we have records that they were asked by you to stand over the project, the way they put it, and this is a word you didn't agree with, was that you appealed to them off the record to stand behind the whole project.

A. I thought, maybe I am wrong, I thought Mr. Towey's evidence and as I say, I didn't read it all; I didn't read it thoroughly I thought he was putting it somewhat differently: that we had a meeting, that they talked about it in those terms, and I responded, "Would you give us that in writing?"

Now, I thought I picked the flavour of that from Mr. Towey's evidence; I could be wrong.

Q. In what context do you say that they volunteered to stand behind it? How would that what would have occasioned that? You are saying "I want somebody to do something about Mr. O'Brien's lack of money", is it?

A. I don't know. This would require the documentation or the evidence to be turned up, in the sense that I am either right or wrong in my idea that Fintan Towey put it that way; and if he did, I assume it was based on some recollection.

Q. I understand that it was asked for at the meeting but that there was no formal request for it. In other words, for instance, we know there was no documented request for it. We know that for a fact. There is no

documentation at all in which any focus, or which contains any focus on this issue identified by the evaluation report, and the only documentation which suggests that the matter was addressed at all is Mr. O'Connell's note recording that conversation I beg your pardon, Mr. Johansen's note recording that conversation.

A. I am kind of reluctant to respond to you on the hoof, because I am sort of trying to piece together different things that I have heard in the context of the Tribunal.

Q. I know that at the end of the day you got a guarantee from Mr. Desmond that he would pick up, if you like, or underwrite a proportionate part of Mr. O'Brien's obligation to subscribe to the capital, and Telenor undertook to be responsible, effectively, for all of the capital, both their own and what Mr. O'Brien couldn't come up with and what, if push came to shove, Mr. Desmond couldn't come up with?

A. What we are trying to probe now is what were the circumstances in which Telenor did that.

Q. We are trying to propose two things: Firstly, we are trying to put what happened with Mr. Buggy in context. You had a recommendation in the evaluation report subject to your doing something about the financial fragility identified in Appendix 10, so there was a financial problem to be looked at.

Here you were in May, a day or two before the licence, and as far as I can see, that problem hadn't been looked at. And in fact now you had two problems: You had Mr. O'Brien and you had Mr. Desmond, and the person who solved all of that was Telenor; would that be right?

A. You are kind of asking me to pull together a whole lot of different pieces of information, and I can't do it on the hoof, in the sense that I do recall the business of Telenor underwriting. You're saying it was an off-the-record plea by me. I thought Mr. Towey put it slightly differently, but I don't know without consulting the record.

Q. We'll find out exactly what Mr. Towey said, I suppose, is the best thing. My understanding in summary of what Mr. Towey said on Day 220 it's at page 108 of the transcript is that he recalls the exchange recorded in Mr. O'Connell's memorandum, where, as he puts it, you stated that if Telenor were willing to give a letter underwriting the entire project, that would be welcome, but according to him, this was not formally requested.

He says, at the answer to Question 367 on that day:

"I remember the exchange that is recorded in one of Mr. O'Connell's notes where Mr. Brennan said that if Telenor were willing to give a letter underwriting the project, that would be welcome, but that it wasn't

formally being asked for."

Doesn't that seem to tally with what Mr. Johansen recorded, an appeal off the record?

A. Yeah, I mean

Q. Well, let's just deal with that first. Isn't that if that's Mr. Towey's recollection, Mr.

Towey's qualification that if Telenor were willing to give a letter underwriting, it would be welcome, but

that it wasn't formally being asked for doesn't

that seem to accord with Mr. Johansen's note where it says they appealed off the record?

A. They seem to fit together, but I have some idea in my head that this was in the middle of a conversation

where Telenor may already have said, "Sure, we can do it anyway".

Now, eventually I am sure you'll be hearing from Mr.

Johansen and others, but that's the sense that I have

in my mind today. And I mean, coming back to the kind

of "deep pockets" approach, there is a fit there as

well, you know.

Q. There doesn't seem to have been any formal coherent

attempt to decide what strategy would be adopted to

deal with the passage in the evaluation report which

recommended that this matter be attended to; isn't

that right?

A. Yeah, I think what Mr. Buggy and I were doing was in

that context.

Q. What you were doing was assessing whether Mr. Desmond had the wherewithal for his contribution; isn't that right? Mr. Buggy I think was quite clear about that. He was assessing whether Mr. Desmond had the money. He did describe the context, but his only job was to see whether Mr. Desmond had the money.

A. But I mean, even on the face of these notes, it was wider than that.

Q. On the face of the notes, he describes the overall position; you are absolutely right. But the only the only investigations he carried out were into Mr. Desmond; isn't that right?

A. Well, in a sense that we were already satisfied about the finances of Telenor from very early on.

Q. Well, did you know you didn't know, for example, you don't recall clearly, that Mr. O'Brien does not seem to have had the money to pay for the licence and he had to rely on Telenor and Mr. Desmond to do it for him, notwithstanding public protestations to the contrary?

A. Notwithstanding what?

Q. Public protestations to the contrary.

A. Public protestations by whom?

Q. By the Minister, I think, and by I think by the Minister that Mr. O'Brien had the money, had the funds on the 30th April. If you were looking into Mr. O'Brien's problems, isn't that one of them you'd have

been looking into? At this meeting there seems to have been some reference to Mr. O'Brien's problems, but you don't seem to recall it.

A. I think what we were looking at was the financial robustness of the entity to be licensed.

Q. But you were doing this now with what, one day to go on the 15th May. You were going to give the licence the following day; you had a deadline already fixed. And you were trying to sort out the financial robustness of the consortium, and what you had to fall back on was Telenor?

A. Telenor and IIU and Mr. Desmond and so on, yeah.

Q. But ultimately Telenor, because you had insufficient information about Mr. Desmond, and it's not clear that you devoted any real attention to establishing what the position was with Mr. O'Brien; isn't that right?

A. I mean, I am still saying we are talking about the consortium: Can the consortium deliver the project?

Q. Well, it looks very like you were saying, can Telenor deliver the project if push comes to shove?

A. I don't know where we are going with this.

Q. Doesn't it seem like that? I know where we are going. Isn't that what you said at the meeting? Isn't that what Mr. Johansen says? And he says it in a critical way "We were appealed to off the record", according to him, to save this project. If that's correct, doesn't it suggest that it was Telenor was being asked

to back the whole project?

A. It suggests that the Department was trying to see that the consortium would work.

Q. But weren't you faced with a situation where you had insufficient information about Mr. Desmond, and you had, as far as we can see from what you tell me now, a limited amount of information about Mr. O'Brien, and it's not clear that you didn't know that he couldn't even pay for the licence on that day.

A. Yeah. When you say "insufficient information about Mr. Desmond", I thought it was the position that at the end of the Michael Walsh, Farrell Grant Sparks, etc., that Mr. Buggy was in a position to say it was okay.

Q. Mr. Buggy was in a position to say, as he said himself, as much as could be said based on a very limited examination. I think he called it a desktop examination with two days to go.

A. But I mean, his conclusion is clear enough, you know:

"Based on the discussion documented above and the letters received from the various parties as outlined above, the shareholders in Esat Digifone appear to have sufficient financial strength to ensure that Esat Digifone is financed in line with the expectations under the business plan, and the required debt financing appears to be available to the company."

I mean, that's the context in which I am trying to

answer your questions.

CHAIRMAN: But you were seeking to relate the eventual entity that got the licence to what had made the bid in all aspects.

A. Yes, we were doing that.

CHAIRMAN: And plainly, I am not saying Esat Digifone, but if some hypothetical consortium had, in the course of its application and presentation, advanced one very strong partner and two partners of very questionable strength, it would scarcely have fared terribly well in the contest.

A. Yes, but I still keep coming back to, from the very beginning, long before there were any applications, the consultants had a "deep pockets" approach to the process: If one in the consortium can do it, then it's

Q. MR. HEALY: I don't think it says that anywhere in the report, Mr. Brennan. What it says is that Digifone is a good consortium but that Mr. O'Brien has got a problem, and it should be addressed, and deep pockets wasn't the solution. It's not stated in that part of the report.

A. Not in that part of the report, but it's clear that AMI had a "deep pockets" approach to the evaluation, the financial evaluation of the consortia.

Q. I think, if you look at that carefully, and you can refer me to it if you like, what they were referring

to was deep pockets on the part of people standing behind each of the backers, not deep pockets on the part of one member of the consortia.

A. That's not my understanding of it.

Q. I think, if you have an opportunity of looking at it tomorrow, but if you'd look at it and see if my understanding is right, I'd suggest to you that my understanding is correct, that it was deep pockets on the part of the people behind the consortia. I think there was a reference at one point to a large German company which was deemed to have a lot of money, but not to be clearly seen to be supporting a German member of a consortium I forget which consortium do you remember that consortium?

A. There was something about one consortium

Q. It might have been Telia; I am not sure. If you can't remember

A. I mean, I can recall that there was a discussion about whether there was an appropriate link between a subsidiary of a German company and a parent company in the context of one of the applications; yes, I can recall that.

Q. You see, if you were adopting a "deep pockets" approach, and if it meant no more than what you're saying, all you had to do was look at Telenor. There was no need to bother yourself at all with IIU or Mr. Desmond or Mr. O'Brien or Communicorp. You only had

to satisfy yourself that Telenor had the wherewithal.

There was no need to look beyond them?

A. I think it's a bit more subtle than that. I think in extremis that one party was strong enough to carry the whole project.

Q. What I am suggesting to you is what you were doing in the dying days of the process was not checking out whether there were deep pockets, or seeing whether there was one person who, in extremis, could support the project, but you were looking at, in a very limited time-frame, at Mr. Desmond, and there was no proper consideration at all of Mr. O'Brien's capacity and no proper consideration of what Mr. Andersen or the Project Team, if you want to put it that way, had called for in the report more equity, more money from Mr. O'Brien. Isn't that what it means, isn't it?

A. I don't know. You are asking me to comment on a very wide subject without the documentation, and it's an impossible situation. But what I am saying is that we wanted to be satisfied at this point that there was 40:40:20 as declared in the application, and I think the conclusion in Donal Buggy's note was the basis on which a decision was taken.

Q. Could I refer you you can be thinking about it overnight, if you like to Leaf 50 of Book 46. If you don't want to pull out the book, if you don't have it, I'll put it on the overhead projector; it will be

easier. Page 44. You needn't worry if you don't have it.

A. I have Book 46 here.

Q. Leaf 50. And if you go to the second-last paragraph on that page.

A. Leaf 50, if you have the right book, the first page is the first page of the final version of the 25th October report?

Q. Yes, and if you go to page 44 of that

A. Sorry, page 44 of that, okay.

Q. You see that second-last paragraph: "Although being assessed as the most credible application, it is suggested to demand an increased degree of liability and self-financing from the backers if the Minister intends to enter licence negotiations with A5."

A. Yeah.

Q. Now, does that not suggest what I was suggesting a moment ago, or if it doesn't, tell me now. Tell me your understanding of it. I mean, that's all that really matters, is your understanding of it.

A. Well, the question is, are we talking here about the backers collectively or the backers individually?

Q. Well, you tell me.

A. It's open to either interpretation.

Q. Well, it's your report, not mine.

A. It's open to either interpretation.

Q. You think that that could mean from the backers in

general?

A. Yes.

Q. Well, what does "self-financing" mean? That would seem to suggest that each of the backers was what the author of that passage had in mind. The expression "self-financing"

A. "Self-financing", I would have said the provision of capital that's not borrowings.

Q. Yes, the provision of capital, all right.

A. It doesn't flow from that that it has to be by each of the individuals.

Q. I see. You think that it means the backers as a whole?

A. I am saying it's at least open to that interpretation.

Q. Wouldn't I be right in suggesting, though, that if the interpretation you put on the "deep pockets" principle was the relevant one, that that's where you'd have had it?

A. We have discussed the question of deep pockets in my evidence before. But I don't now have access to whatever documentation that arose in.

Q. It is true, and I want to refer you to another passage on that page which I think is relevant. If you go further up to the second paragraph on that page, and to the second-last sentence you are probably familiar with the overall page.

A. Yeah.

Q. "The evaluators have therefore formed the view that subject to at least one of the principals having sufficient financial strength at this stage to ensure completion of the project if a potential financial weakness of one consortia member should not have a negative impact on the ranking of applications. It is important, nevertheless, to draw attention to the need to deal with this factor where relevant in the context of licence negotiations. These aspects are the subject of further elaboration in Appendices 9 and 10." The ones I mentioned.

And then I think the same thing is being addressed here. But I think, even combining that passage with the passage I have drawn attention to and with what's contained in Appendix 10, I don't think that it deals with a situation where, at the start of the project, one of the backers didn't have the money to pay for the licence on the due date and had to borrow it from one of the others from both of the others. It may be that you would have been happy with that. I am not saying that you weren't entitled to ignore that, provided you considered it. But it seems to me that there was some opportunity to consider it; do you follow me?

A. Yeah, but it seems to me that you're taking these two quotations on this page, and you are seeing them as only being capable of one interpretation. And I am

not sure I am in a position to agree that that's the only interpretation, or that's even the correct interpretation.

Q. Okay. I am giving you an opportunity of putting your interpretation, and I am testing it. You are saying to me that it was sufficient to look to Telenor as a deep pocket to solve all the problems.

A. I mean, yeah, that paragraph, the bit you read out certainly has a "deep pockets" flavour to it, and it didn't come in here for the first time to paper over cracks. It was part of the AMI approach from very early on, is my recollection. Then it says "It is important nevertheless to draw attention to the need to deal with this factor where relevant in the context of licence negotiations."

What I am arguing is what was done vis-a-vis Telenor, IIU etc., is dealing with this issue.

Q. I see. I understand.

I suppose, if you were fully conscious or acutely conscious of the fact that in fact Mr. O'Brien had to borrow his portion of the licence fee from Telenor and Mr. O'Brien Telenor and Mr. Desmond, it's something you would have remembered, is it?

A. It probably is, yeah.

Q. I suppose it seems somewhat strange, if Mr. Buggy may have been aware of it, that it wasn't drawn to your attention specifically, because it's a somewhat

worrying thing to learn the day before the licence is due to be given, isn't it?

A. Yeah, I guess it is.

Q. I don't want to do any more today, Mr. Brennan. What I just want to finish off with you tomorrow and it might be of assistance if I tell you now. I just want to try to date your contacts with the Minister. You say you have an impression of three.

A. Yeah.

Q. I want to, in some way, just tabulate them and deal with one or two other letters, and that's all.

A. Okay.

Q. Thank you.

CHAIRMAN: Right. Well, obviously, Mr. Brennan, I can't speak for the other counsel who may have to question you, but I'd have some hopes we may conclude your evidence tomorrow. It certainly won't go beyond, at the very latest, Tuesday.

MR. MCGONIGAL: Just before you rise, Mr. Chairman, it might be appropriate for me to indicate, I have already mentioned it to your team before we rose, and I had mentioned it to some of the other legal teams, that it had been my intention to ask you to defer cross-examination certainly until we had an opportunity of considering Mr. Ryan's statement, because it is it obviously bears to some extent on the weighting issue, and I had in fact thought Mr.

Healy was going to finish today.

I also wanted to give further consideration to the letter of the 14th September. So that had been my intention, to ask you to defer the cross-examination.

I had discussed it with the legal teams before you sat at two o'clock, and subject to the Tribunal's position, I understood there might be some consent in relation to it.

CHAIRMAN: Well, it certainly wouldn't be my wish to handicap you in any way, Mr. McGonigal. At the same time, if I can avoid bringing Mr. Brennan back for a third occasion, I certainly will. What I anticipate is that Mr. Ryan's statement will be very appreciably briefer than the statements of Mr. Brennan, Mr.

Loughrey and some of the other persons who were very substantively involved at all stages, and indeed, I rather imagine it may be possible, if not tomorrow, certainly immediately after that, to furnish a quite limited memorandum based on the limited degrees of private meetings with the Tribunal. But it will certainly have a great deal less substance because of the nature of his involvement. It's not proposed to go into his view and confidentiality protocol and the like; it will be quite limited to the net matters on the technical appraisal that he attended to in conjunction with Mr. McQuaid.

So I'll see that that is made available at the

earliest opportunity, Mr. McGonigal, and I'll have a look at the situation in the round tomorrow. If it seems to me that you are that if fairness demands that your examination of Mr. Brennan be deferred, of course I'll have regard to that; but I don't want to commit Mr. Brennan to a third shift if I can possibly avoid it. We will reappraise it tomorrow.

Very good. Eleven o'clock.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
FRIDAY, 27TH JUNE, 2003 AT 11AM.