

A P P E A R A N C E S

THE SOLE MEMBER: Mr. Justice Michael Moriarty

FOR TRIBUNAL: Mr. John Coughlan, SC

Mr. Jerry Healy, SC

Ms. Jacqueline O'Brien, BL

Instructed by: John Davis

Solicitor

FOR THE DEPARTMENT OF

COMMUNICATIONS, MARINE &

NATURAL RESOURCES: Mr. Richard Law Nesbitt, SC

Mr. Conleth Bradley, BL

Mr. Diarmuid Rossa Phelan, BL

Instructed by Matthew Shaw

Chief State Solicitors Office

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

Mr. Gerry Kelly, BL

Instructed by: Eoin O'Connell

William Fry Solicitors

FOR TELENOR: Mr. Eoghan Fitzsimons, SC

Ms. Blathna Ruane, BL

Instructed by: Kilroy Solicitors

FOR MICHAEL LOWRY: Mr. Roderick O'Hanlon, SC

Kelly Noone & Co.,

Solicitors

OFFICIAL REPORTER: Mary McKeon. SCOPIST: Anna Papa

I N D E X

Witness: Examination: Question No.:

THE TRIBUNAL RESUMED AS FOLLOWS ON WEDNESDAY, 9TH  
JULY, 2003 AT 11:00 AM:

CHAIRMAN: Ms. O'Brien.

MS. O'BRIEN: Sir, I think Mr. O'Hanlon may wish to  
make a submission before Mr. Ryan is called to give  
evidence.

MR. O'HANLON: Chairman, I appear for Mr. Lowry in  
this matter, and I wish to make a submission on his  
behalf, in particular, arising out of the documents  
which came to light last Thursday, namely, the letter  
and the Gantt chart and the Tribunal's response in  
relation to the submissions that were made by Mr.  
Fitzsimons and Mr. McGonigal in relation to that.

One, I'd adopt what they say, but more importantly, or  
what I would also say, is that it's not simply a  
matter which can be taken on board as another issue to  
be evaluated in determining the issue in relation to  
what's been called the acceleration process, or an  
attempt to accelerate the process, because what  
appears to have occurred is that witnesses have been  
sent questionnaires and have been questioned and  
witnesses have been examined where they are entitled  
to presume a fairness in relation to the questions  
that are put to them and there was a presumption in  
relation to a number of the questions that there had  
that the Minister might have been involved in it.

What was not put to them, and what was not disclosed to them, was a document which clearly showed that a timetable was set up prior to any possible involvement by the Minister and would completely exonerate the Minister, and it's not simply something which also has to be taken into account, but it reflects upon the manner in which those witnesses have been examined. And it taints the examination of them and their response where they ought to have been informed, in fairness to them, that this timetable, this documentary evidence setting out the timetable was in existence and ought to be considered by them before they respond to any inquiry as to whether there had been an acceleration of the process, and in the the issue of accelerating the process appears to have arisen out of a memo of one witness, which he is not in a position to attribute the source of it, where he notes the Minister wished to accelerate the process. He was not in a position to say exactly what is meant by "the process," in particular, whether it's the decision-making process or whether it's the announcement of the result of the process. And in those circumstances, it seems to me that what has come to light on Thursday should be taken on board as exonerating the Minister completely from any involvement in the timetable in relation to the decision-making process and the announcement process,

and that that issue ought not to be pursued further in relation to this. And that the Tribunal ought to take into account, not simply the content of it, but the fact that this document was not presented to the witnesses prior to them responding to inquiries as to whether or not there had been any acceleration of the process. And further, whether the Minister ought whether the Minister was involved and whether that process was the decision-making process or the announcement of the result, because from the transcripts it is absolutely clear that there is a complete ambiguity as to what is meant by "the process." But there is no ambiguity in the document that came to light last Thursday, and there is no ambiguity in the fact that that was not presented to the witnesses, and ought to have been presented to the witnesses before any questioning relating to that issue arose.

And I would be concerned that that is taken on board and noted and that the Minister is concerned that the letter and the chart was simply taken on board as another item to be taken into account, because in my submission, it goes beyond a matter which ought simply be taken into account. It's a matter which reflects upon the manner in which the witnesses, in relation to this issue, have been examined and cross-examined where this chart was not shown to them prior to that

issue being examined.

CHAIRMAN: Very good, Mr. O'Hanlon, I'll bear in mind

what you have stated to me in this regard. The matter

of any possible acceleration of the process at the

behest of Mr. Lowry or any other person is not, of

course, an actual issue in an inquisitional process.

It is an aspect of the inquiries that are being

pursued, and I have already indicated that whilst, of

course, I must forebear from expressing any final view

until all evidence has been heard, including that of

Mr. Lowry himself, I have already indicated that this

particular letter will carry all appropriate weight

along with any other aspects in the evidence

pertaining to this matter that should be properly

evaluated. I think it would be wrong for me to, in

any way, indicate that I should truncate this line of

inquiry. I will simply note your remarks, indicate

that the letter, along with all other potential

matters affecting this aspect will be given all fair

and due deliberate weight, and I will, in the end of

the day, when I have heard all the evidence, including

that of Mr. Lowry, I will be able to come to a

responsible, and I hope, proper view on this potential

aspect of the inquiry that has been touched upon.

I will not neglect what you have said, and thank you

for your remarks. Very good. We'll proceed to

evidence.

MS. O'BRIEN: Mr. Aidan Ryan, please.

AIDAN RYAN, HAVING BEEN SWORN, WAS EXAMINED AS FOLLOWS

BY MS. O'BRIEN:

CHAIRMAN: Thank you very much for your attendance,  
Mr. Ryan.

MS. O'BRIEN: Thank you, Mr. Ryan. I think you are  
the last member of the Project Group from whom the  
Tribunal is hearing evidence. I don't think you have  
been here for the evidence of other witnesses so it  
may be of assistance to you for me to indicate how I  
propose approaching your evidence. What I would  
propose doing, subject to your agreement, is to open  
your memorandum of intended evidence to you; that's  
the document to which you furnished replies in the  
last week. And in the course of doing so, Mr. Ryan,  
if there is any aspect of it that you wish to amplify  
upon or clarify, please feel free to do so.

And having done that, what I would intend doing then  
is to return to some aspects of the matters raised  
with you to discuss them in some greater detail, and  
in so doing I would intend opening certain parts of a  
small number of documents that have come before the  
Tribunal in evidence.

I don't know if you have a copy of your memorandum  
with you. In fact, there is your initial memorandum  
and there is a short supplemental memorandum that was  
furnished yesterday.

A. Yes, I have both.

Q. And just for the assistance of everybody else I don't know if they are in the books yet, but they will be put into Book 35, behind Divider 12.

Now, in your memorandum you state that the following replies have been prepared by you alone, other than having them reviewed by counsel for the Department.

While you have reviewed the files which you deemed were most relevant to the subject matter, you have had not had the opportunity to review all the files due to time constraints. You understand that the Tribunal is anxious for statements, and you furnished this statement reserving the right to correct or amend when you have had more time to consider the matters raised by the Tribunal. Due to the passage of time since the events, you cannot say that your recollection of them is perfect and it may well be that your recollection of some matters is stronger than others.

Now, you were firstly asked for your involvement, direct or indirect, together with your knowledge of the involvement of any other person in the selection of Mr. Martin Brennan to spearhead the second GSM licence process in the Department. And you have informed the Tribunal that you had no involvement in the appointment of Mr. Brennan as chair of the GSM Project Group.

You were then asked at paragraph 2 for your

involvement, direct or indirect, together with your knowledge of the involvement of any other person at the early stages of the process in the devising of evaluation criteria.

You answered as follows you state that you had some input into the early stages of devising the evaluation criteria. Your input was to the effect that there should be adequate representation of the technical criteria in the evaluation. Your recollection is that you had concerns in relation to the weightings and description of the technical criteria in the KPMG document dated 6th April, 1994. You state that these evaluation criteria were subsequently revised in the draft advertisements dated 26th April, 1994.

The next reference to the evaluation criteria can be found at aide-memoire dated November, 1994, the aide-memoire numbered 267, and the documents announcing the competition. "In terms of the quantitative model, the initial model was presented by AMI, discussed with the group and agreement reached by the Project team. The records showed that this took place at the 7th meeting on the 18th May, 1995 and approved at the 8th meeting on the 9th June, 1995. In respect of the qualitative criteria these were in line with the invitation to tender documents which had been published in March. The weightings were subsequently revised in July following the intervention of the EU



Commission." And is that correct?

A. That is correct.

Q. And I think, I should just make clear that you were in the radio telecommunications Telecommunications and Radio Technical Division at that stage?

A. That is correct.

Q. And you worked with Mr. John McQuaid?

A. Yes.

Q. So your particular interest in this entire evaluation process related to the technical matters?

A. Correct.

Q. Paragraph 3 you were asked for your involvement, direct or indirect, together with your knowledge of the involvement of any other person in the preparation of the initial draft tender documents. You state that you had some limited involvement in assisting Fintan Towey and Martin Brennan in the preparation of the initial documents. This input would have related to the amount of spectrum available for the successful applicant and advising them of certain restrictions that would apply to the use of such spectrum and other relevant technical matters.

A. Correct.

Q. And I think, in fact, that efficiency of spectrum use ultimately ended up as one of the criteria in the evaluation process?

A. One of the technical criteria, yes.

Q. Paragraph 4 you were asked for your knowledge of the involvement, direct or indirect, together with your knowledge of the involvement of any other person in the retention of KPMG as consultants to the Department in relation to the initial competition design and of the advice rendered by KPMG.

You informed the Tribunal that you were not a party to the recruitment of KPMG or of any of the advice provided by KPMG?

A. Correct.

Q. Paragraph 5 you were asked for details of all of your dealings with Mr. Lowry or appointment as Minister in relation to the GSM licences process, and you have answered that you had no dealings with Michael Lowry during the licences process?

A. Correct.

Q. You stated paragraph 6 you were asked for your knowledge, direct or indirect, of your involvement, together with your involvement of the your knowledge of the involvement of any other person in the finalisation of the evaluation criteria and in particular, (A) the selection of an open-ended licence fee structure, and (B) the deletion of financial capability from the evaluation criteria.

And you have answered that you did not support the concept of an open licence fee structure. And that you do not recall the deletion of financial capability

from the evaluation criteria.

A. Correct.

Q. Paragraph 7 you were asked for your role, if any, in the establishment of the Project Group and in the appointment of departmental and other officials to the Project Group.

You have answered that you were responsible for providing responses to technical issues raised by both the regulatory and Development Divisions in relation to the GSM from the start of the process. You stated that when John McQuaid joined the Department, he also contributed to this work and both you and Mr. McQuaid provided input into the process.

A. Correct.

Q. And I take this that when you say that, that you consider that your input primarily related to the technical features of the applications and the evaluation of those applications in terms of their technical features?

A. Correct.

Q. Paragraph 8, you were asked for your understanding of the role of the Cabinet or Cabinet Subcommittee in the GSM process and in particular, in the light of paragraph 2 of the Government decision of the 2nd March, 1995, namely, a recommendation would be put by the Minister to Government in time for a final decision on the granting of the licence to be made by

the 31st October, 1995.

And you have stated that your understanding is that the Evaluation Team would complete the evaluation of applications and report of the highest ranked applications to the Minister?

A. Correct.

Q. And as well, based on the terms of that resolution, and that decision of the Government, that your understanding would then have been that the Minister, in turn, would recommend make a recommendation to the Government?

A. Correct.

Q. Paragraph 9, you were asked for your understanding of the RFT document issued by the Department in March 1995, and in particular, paragraphs 3, 9 and 19 which provided as follows:

Paragraph 3: "Applicants must give full ownership detail of the proposed licensee and will be expected to deal with the matters referred to in the following paragraphs in their submissions."

And you have answered that your understanding was that the applicants would describe the entities that make up the bidding consortium, their percentage of ownership and information on the each of the participant entities, is that correct?

A. That is correct.

Q. Paragraph B relating to paragraph 9 of the RFP which

provided that applicants must demonstrate their financial capacity and technical experience and capability to implement the system as successful, and must include a business plan for at least the first five years in a complete technical proposal.

You have answered that your understanding was that the applicants should provide a technical plan for the implementation of a GSM network. In devising and preparing the plan the applicant should demonstrate their capability for the delivery of a GSM network and the plan should demonstrate how the applicant would address challenges for the successful operation of the network. The costs associated are the planned network should be addressed in the financial plan. The applicants were required to complete a number of tables as part of their application which would provide information on the business and technical plans. Is that correct?

A. Correct.

Q. And then finally, paragraph 19 which provided that the Minister intended to compare the applications on an equitable basis subject to being satisfied as to the financial and technical capability of the applicant in accordance with the information required herein, specifically with regard to the list of evaluation criteria set out in descending order of priority".

And this then listed the evaluation criteria and you

stated that your understanding was that the evaluation would be carried out in a manner which would have regard to the evaluation that was set down in a descending order of priority.

A. Correct.

Q. Paragraph 10, you were asked for your understanding of the purpose of the protocol adopted by the Project Group at its meeting on the 6th March 1995 for dealings with potential bidders during the tender process bearing in mind that all civil servants were bound by duties of confidentiality. And you have answered that your understanding of the protocol was that it would provide a consistent approach among members of the Project Team during the evaluation process?

A. Correct.

Q. Paragraph 11, you were asked whether you discussed the protocol with the Minister or otherwise advised the Minister regarding contacts with members of the consortia, and if so, the import of the advice given. And in accordance with your previous answer, you have stated that you did not have any discussions with the Minister.

A. Correct.

Q. Paragraph 12, you were asked for your role, direct or indirect, together with your knowledge of the involvement of any other person, at appointment of AMI

as consultants to the Project Group. You say that you were involved along with Mr. Martin Brennan and Mr. John McQuaid in selection of Andersen Management International to assist in the selection of the second GSM operator.

Paragraph 13, you were asked for your precise understanding as to the services to be rendered by AMI and the precise terms of their brief.

You answer that the services to be provided by Andersen Management International (AMI) were as described in their proposal and dependent on the requirement of the process. Your understanding was that AMI would participate in the work of the Project Group as full members of the Project Group.

Is that correct?

A. Correct.

Q. Just to clarify there, do I take it that your understanding was that the Project Group was in no sense delegating its function to evaluate the applications to Andersen Management?

A. No. It was a collective process where the Project Team and Andersen carried out the evaluation.

Q. Right. And Andersen, presumably, would act as specialist consultants and advisers to the Project Group?

A. Andersens had expertise which was beyond what the members of the Evaluation Team had, and they brought

that expertise to the Project Group.

Q. Right. Paragraph 14, you were asked for the identity of all persons who, to your knowledge, direct or indirect, had any involvement in the setting of the weightings which were attached to the evaluation criteria.

You have answered that the quantitative model was initially suggested by AMI and then discussed at the 7th meeting and approved by the Project Group at the 8th meeting. Your recollection in relation to the qualitative model is that the criteria weightings were agreed at the same time. The qualitative weightings were subsequently revised in July 1995, fee less 3 percent and tariffs plus 3 percent. That would have been after the EEC intervention, presumably, and the capping of the licence fee?

A. Correct. I think it was the 27th July.

Q. You state further that you agreed to this change by correspondence, that you were not aware of any person outside the Project Team and the consultants who had any input into the setting of the weightings. Is that correct?

A. Correct.

Q. I just wonder there, to pause, Mr. Ryan, if you could be slightly confused in relation to the weightings and insofar as you have stated that the qualitative weightings were subsequently revised, because I think



it's clear from the actual evaluation models themselves, that it was the quantitative weightings, and that the qualitative dimensions and indicators were not intended to be weighted in advance of the evaluation itself.

A. In terms of the weightings, the primary issue to do with the weightings stemmed from paragraph 19, and a hierarchy of weightings was put in place which would apply to both the quantitative and qualitative.

Q. I see.

A. And they were the weightings that had to apply right across the process.

Q. And do you recall when that decision was made?

A. I recall that following the intervention of the EU, that Maev Nic Lochlainn recorded the final weightings in a small memo, and had that agreed with all the various members of the Project Team.

Q. Well, I think the best thing for us to do is maybe postpone further discussion of it until we look at the documents and we can look at it then more closely, and you can indicate to me what your actual recollection was at that stage.

A. Okay.

Q. At 15, you were asked for the manner in which the weightings were devised. And you have answered that the initial criteria were developed following work by KPMG and the refinement of the criteria subsequent to

this work. It was your understanding that the listed criteria were in order of priority. Your understanding is that this approach remained up to and including the model used in the GSM2 competition. In relation to the specific criteria weightings used in the GSM2 process, these weightings were discussed and agreed by the Project Team and the consultants. Is that correct?

A. Correct.

Q. Paragraph 16, you were asked the date on which and person by whom you were informed of the individual weightings and you have stated that on the basis of the recorded minutes of the Project Group, your recollection is that the individual criteria weightings of both the quantitative and qualitative were agreed at the project meeting on the 8th and the 9th June; is that correct?

A. Correct.

Q. Paragraph 19, you were asked for the identity of all persons who, to your knowledge, direct or indirect, were informed of or otherwise aware of the weightings and the source of their knowledge.

You have answered that you do not recall anybody outside the Project Team and consultants who were aware of the criteria weightings, is that correct?

A. Correct.

Q. Paragraph 18, you were asked for details of all steps

taken by the Project Group to protect the confidentiality of the weightings. And you have answered that your recollection is that no copies of the agreed weightings were made or circulated. Your understanding is that the agreed weightings were kept in the Development Division for security reasons.

A. Correct.

Q. Paragraph 19, you were asked for your role in and knowledge, direct or indirect, of the intervention of the European Commission, including the manner in which the intervention was resolved, the capping of the licence fee at  $\frac{1}{2}$ 15 million and the reweighting of the evaluation criteria in the light of the capping of the licence fee.

And you have answered that your understanding of the role of the EU Commission was as discussed within the Project Group and documented in the meeting records.

You did not attend any of the meetings with the Commission. Is that correct?

A. Correct.

Q. Paragraph 20, you were asked for your understanding of the evaluation model adopted by the Project Group and in particular, (A) the qualitative and quantitative approaches.

You state that the quantitative model provided an opportunity for information provided in the bids to be considered and presented within a narrow set of

parameters, namely a set of formulae. This model, while mainly being numerically based, gave a first cut at analysing the information provided. This approach allowed the evaluators an opportunity to get familiar with the bids and to help tease out the differences in the approaches of the various bidders. It was never considered at any stage of the process that the quantitative model would produce the final result. Is that correct?

A. Correct.

Q. You state that you continue by stating that recognising the limitations of the process, the quantitative analysis was used as an input into the qualitative process. The qualitative process formed a higher level of evaluation and allowed the evaluators to assimilate, examine and judge not only the quantitative data, but the approach credibility and integrity and the non-numeric information provided in the bids.

A. Correct.

Q. You stated that differences between the two models, for example, were highlighted by the treatment of performance guarantees and they served to illustrate the limited scope of the quantitative model.

You state that in the quantitative model, it was proposed to measure performance guarantees using blocking and drop-out rates. The information provided

in the bids did not allow these quantities to be measured in an equitable way and they were subsequently dealt with by way of a supplementary analysis. The final report shows that using the qualitative model, the performance guarantees dimension was dealt with by way of investigating the applicants general dealing with the concept of performance guarantees as well as procedures and performance as for addressing non-compliance with guaranteed performance targets. The qualitative model allowed the flexible to score the performance guarantee dimension where the quantitative model had failed.

A. Correct.

Q. It's interesting there that you should mention performance guarantees, because Mr. Martin Brennan, the week before last, when he returned to give evidence on a second occasion, he indicated in the course of his evidence that when devising the evaluation criteria, it was his intention that performance guarantees should be a measure of the comfort that applicants were prepared to give the Department of their commitment to rolling out the network and to meeting the targets in their applications in accordance with the time scale envisaged and he had never, in fact, envisaged that it would be measured at all by reference to blocking and

drop out rates and I think he was somewhat puzzled that the indicators of blocking and drop-out rates had been approved by the Project Group when approving the overall evaluation model.

Do you recall there being particular discussion on that point at any stage in the meetings of the Project Group?

A. I recall that there were discussions and that was the original intention and in fact, not the original intention, it was the intention. However, when you look at the quantitative model, there was an effort to try and quantify matters maybe in a technical nature, or certainly in a nature that allowed for figures and formulae, and I think what was happening was that there was an attempt to produce a result under the heading of performance guarantees in that both blocking and drop-out rates would be a measure of how well the network was performing, and it was a numerical it could be analysed numerically.

Whereas in hindsight, with the data that was provided, we were not able, even numerically, to conclude a result, and in the end of the day, from the qualitative perspective, performance guarantees were measured in terms of parameters which were not numerically based. So it just serves to show the limited value of the quantitative.

Q. I suppose it also serves to show in that you attempted

to score performance guarantees quantitatively and numerically, how it was intended that both forms of evaluation, both the quantitative and the qualitative would complement each other, wouldn't that be the case as well?

A. Yes.

Q. Now, at (B) you were asked, what these approaches entailed and by "these," there was reference back to quantitative and qualitative.

And you have answered that the quantitative evaluation involved extracting the relevant data from the bids and applying the data to formulae which produced a result which was described by way of a letter ranging from the best which was awarded with a grade A, to the worst, which was awarded with an E. These results were subsequently converted to numbers, aggregated together, taking account of their respective weightings to produce a final result. The consultants carried out this work and the results were presented to the Project Group.

And again, Mr. Ryan, I wonder are you slightly confusing yourself between the quantitative and the qualitative? I am not trying to catch you out or criticise you in any way. When we look at it perhaps you'll want to revise that impression.

A. Yes, I think I will.

Q. You go on to say at that time, qualitative approach

was carried out by a number of sub-groups. The sub-groups were made up of members of the Project Group and AMI. You participated at the technical sub-group. At this sub-group, each bid was examined in respect of each of the technical indicators. The relevant sections of the quantitative analysis was also examined as part of the process. This was followed by a discussion where a consensus was reached in respect of a comparative scoring of the various bids. This result was recorded by the members of the sub-group, and the consultants in the form of letters ranging from the highest score A, to the lowest score, E?

A. Yes. I am more satisfied with that section.

Q. Then at C, you were asked for the distinction between the quantitative and qualitative approaches. And you stated the differences between the quantitative and qualitative processes and you have listed them and numbered them from 1 to 11.

Number 1: The quantitative evaluation to the level that it could be completed was carried out by AMI.

2: The results of the quantitative were derived by the application of pre-agreed formulae.

3: The quantitative evaluation served as a first cut representation of the information provided by bidders.

4: The quantitative model is a more simplistic approach than the quality qualitative model.



5: The quantitative evaluation served as a guide and input to the qualitative evaluation.

6: It was recognised from the start that the quantitative evaluation had a number of limitations in its scope and application and was never going to give a final result.

7: The extent of these limitations increased during the quantitative process where a number of indicators could not be measured in an equitable manner.

8: The qualitative evaluation allowed the flexibility to address the shortcomings of the quantitative evaluation.

9: The qualitative evaluation would allow for a complete discussion among the members of the sub-group in order to achieve a conclusion.

10: The qualitative evaluation allowed for strict following of Section 19 criteria.

11: The results of the qualitative evaluation only would produce the final result.

A. Correct.

Q. I suppose, again, in listing those differences, you are listing them in terms of your impressions during the course of the evaluation itself as opposed to what was intended at the outset. Would that be fair to say?

A. That was my understanding as we went through the process.

Q. Because clearly the result of the qualitative only would produce the final result. Your comment there, that clearly wouldn't be in accordance with the evaluation model that you adopted on the 8th June, would it?

A. I would disagree with that. I would have to see those documents. My understanding always was that the qualitative model would produce the result.

Q. Well, we'll leave it over till we look at the documents. That's the fairest way of doing it.

A. Okay.

Q. Paragraph 21, you were asked for your involvement, if any, in the sub-groups which conducted the qualitative evaluation. If you had any such involvement, the sub-groups of which you were a member and details of the precise manner in which the sub-groups evaluated the entrants.

You have answered that you were a member of the sub-group that evaluated the dimensions radio network, architecture, network capacity, coverage and frequency efficiency; they were the same sub-groups of which Mr. McQuaid was a member?

A. Correct.

Q. You say further that in relation to performance guarantees, you were party to discussions in relation to the difficulties in the technical measurement of the indicators in the quantitative section of the

performance guarantees. These are the blocking and drop-out rates that you were referring to again?

A. Yes.

Q. These indicators were subsequently revisited in the supplementary analysis contained in the final report.

You were not a party to the awarding of the scores for performance guarantees in the qualitative section.

Those discussions that you had in relation to the difficulties in the technical measurement of those indicators of blocking and drop-out, do you recall whether those discussions were within the meetings, the formal meetings of the Project Group or were they on some other occasion?

A. I think they would have been both, within the Project Group meeting and in separate meetings with the mainly technical people.

Q. And those separate meetings, do you recall when those separate meetings might have occurred?

A. I recall that we would have discussed some of this in Copenhagen.

Q. That would have been between the 7th and the 9th September when you were there?

A. Between the 6th and 7th September, when we were in Copenhagen with John McQuaid and the consultants.

Q. I see. Paragraph 22, you were asked for your knowledge, direct or indirect, of the progress of the actual evaluation process to include the source of

your knowledge, and in particular, but not exclusively in relation to the following:

A: The outcome of the quantitative evaluation.

You say that in relation to the outcome of the quantitative evaluation, AMI were responsible for the collation of the relevant data and the presentation of the results. During the project meetings, the limitations of the quantitative evaluation was discussed.

B: You were asked for your knowledge of the difficulties encountered in scoring certain indicators in the course of the quantitative evaluation. And you have answered that a number of indicators posed difficulties due to their unsuitability or inability to extract the relevant data from the bids. The indicator entitled number of roaming agreements blocking rate, drop-out rate and tariffs are cases in point.

And then at C: The decision that the qualitative evaluation should be decisive and should take in precedence to the quantitative evaluation, and you have answered that it was your understanding from the start, that the qualitative model would take precedence over the quantitative model.

Again, we can return to that when we look at the evaluation model and perhaps we can trace the basis for your understanding.

A. Okay.

Q. And D: The decision not to score the other aspects, and in particular, the indicators of credibility and sensitivities. And you have answered you do not recall this decision. Your concern was that the technical criteria should be adequately represented.

And at paragraph 23, you were asked whether you were kept informed of the trends and/or ranking emerging from the evaluation process during the course of the process, and if so, the precise matters of which you were informed, by whom you were so informed and when you were so informed.

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

And you have answered that as a member of one of the sub-groups, you were aware of the outcome of the sub-groups that you participated in. You were not aware of the results of the other sub-groups until you received a copy of the first evaluation report dated 3rd October, 1995.

A. Correct.

Q. Paragraph 24, you were asked for the approximate date on which and the person by whom you were informed of the final result of the evaluation process.

And you have replied that you cannot recall exactly when you got sight of the report. You attended on the 9th October, meeting number 12, and you have had sight

of the documents and the results at that meeting, is

that correct?

A. That's correct.

Q. Paragraph 25, you were asked for the approximate date on which you were furnished with a copy of the first draft evaluation report and you have referred to your previous answer, which is that you cannot recall.

A. Correct.

Q. Paragraph 26, you were asked for details of your views regarding the draft evaluation report, together with details of your understanding of the contents of the report and in particular, the following:

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

B: The manner in which the other aspects of the consortia had been addressed, i.e. the indicators of credibility and sensitivities.

C: The qualifications expressed by AMI regarding the ranking of the top three entrants.

D: The overall presentation of the material.

And you answer as follows: You state that as you only participated in the technical sub-groups your main attention was on verifying that the correct scores in relation to the technical sub-groups were accurately recorded in the report. As you did not participate in

the financial and business sub-groups, you were not in a position to comment on those issues.

In relation to the presentation of the material, you recall that work would be required to improve the presentation aspects of the report and to clarify the use of language in the report. In terms of the scoring provided in the report, the results were accepted by the Project Group. Is that correct?

A. Correct.

Q. Paragraph 27, you were asked for details of all of your discussions, if any, with any member of the Project Group or any departmental official regarding the contents of the draft report. And you have answered that any discussions that you have had in relation to the report were with the other members of the Project Team and members of AMI.

Could I just ask you there in passing, do you recall that outside the formal meetings of the Project Group on the 9th October, the 23rd, we think also the 24th October, whether you had bilateral contact, or contact otherwise than within the confines of a formal meeting of the Project Group with any members of the Project Group?

A. I would have met members of the Project Group in my normal course of work.

Q. Of course.

A. Outside the context of the GSM licensing process.

However, I think what you're asking me is did I have discussions outside this group concerning the GSM process, and the answer is I do not recall having any.

Q. Okay. Paragraph 28, you were asked for details of all matters discussed and raised at the Project Group meeting on the 9th October, 1995 and including in particular the following:

A: The statement made by Mr. Martin Brennan in relation to the Minister's state of knowledge regarding the outcome of the competition.

You state that you recall Mr. Martin Brennan advising the Project Team that the Minister had been informed of the progress of the group.

B: Statements made by Mr. Brennan regarding the Minister's views of the draft evaluation report and/or the approach which should be adopted in drafting the final report.

You have answered that you have no recollection of any opinions of the Minister being provided at the meeting.

C: The requests made by certain members of the Project Group that further time was required to consider the results.

And you have answered that you have a recollection that Mr. Sean McMahon expressed concerns at the presentation aspects of the report.

D: The request made by certain members of the Project



Group that it was necessary to revisit the qualitative evaluation.

And you have answered that your recollection is that Mr. Sean McMahon had a number of queries in respect of the presentation of the report and that he asked a number of questions to assist in his understanding of the results of the qualitative evaluation. Is that correct?

A. Correct.

Q. And finally, E. The request made by certain members of the group that consideration should be given to the appropriateness of the awarding the licence to Esat Digifone having regard to the Department's experience of Esat Telecom. And you have answered that you have no recollection of the appropriateness of the awarding of the licence to Esat Digifone being discussed. Is that correct?

A. Correct.

Q. Paragraph 29, you were asked for your understanding as to the status of the evaluation following the Project Group meeting of the 9th October, 1995, and in particular, the steps to be taken in progressing the evaluation.

And you have answered that your recollection is that the result in the draft evaluation report was accepted. However, the Project Team provided a number of suggestions to improve the presentation of the

report. Your understanding is that AMI would continue to complete any sections that were not completed, is that correct?

A. Correct.

Q. Paragraph 30-A, you were asked whether you had received or otherwise were aware, directly or indirectly, of notes made by Mr. Sean McMahon on a copy of the minutes dated the 17th October of the meeting of the 19th October.

And you have stated that you became aware of Mr. Sean McMahon's notes dated 17th October in the last few weeks. So presumably, you weren't aware of them at the time?

A. No.

Q. B: You were asked whether, to your knowledge, direct or indirect, the contents of the handwritten notes were raised at any subsequent meeting of the Project Group or of any members of the Project Group or otherwise discussed with any other person, and if so when and the name of each person present or each person involved.

And again you say that you do not recall the contents of the notes being raised at subsequent meetings.

A. Correct.

Q. And finally, you were asked for details of the subsequent meetings referred to in the handwritten notes made by Mr. McMahon including the date of each

such meeting, the persons present, the matters under discussion, the outcome and whether any such note, attendance or minute of any such meeting was kept, and if so by whom. You state that you recall a project meeting stopping and Mr. Martin Brennan, Mr. Sean McMahan and John McQuaid leaving the room to seek a meeting with Mr. John Loughrey, Secretary General of the Department. Your recollection is that within the hour, Mr. Brennan, Mr. McMahan and Mr. McQuaid returned and the meeting resumed. You have no recollection of the details or conclusions of the meeting being discussed with the rest of the Project Team.

A. Correct.

Q. Paragraph 31, you were asked for your knowledge, direct or indirect, of your involvement or the involvement of any other person in the decision made to accelerate the date on which the result of the evaluation was announced by the Minister.

You have answered that your recollection is that Mr. McQuaid and yourself were of the view that the process should be completed as soon as possible. Your understanding is that the highest ranked applicant had been identified and accepted by the Project Group and that the report should be completed in a satisfactory manner and the process should be concluded.

A. Correct.

Q. Paragraph 32, you were asked for your knowledge, direct or indirect, of or your involvement or the involvement of any other person in any approach made or request made by you, Mr. Sean McMahon, Mr. Martin Brennan, or any other member of the Project Group to Mr. John Loughrey on or about the 23rd October 1995, for further time in which to consider the draft evaluation report.

And you have stated that you recall at one of the project meetings Mr. Martin Brennan, Mr. Sean McMahon and Mr. John McQuaid leaving the room to seek a meeting with Mr. John Loughrey, Secretary General of the Department, your recollection is that within the hour, Messrs. Brennan, McMahon, McQuaid returned and the meeting resumed. You have no recollection of the details of the meeting being discussed with the rest of the Project Group.

Is that correct?

A. Correct.

Q. Paragraph 33, you were asked for your recollection or knowledge, direct or indirect, of Mr. Loughrey's response to such request or approach and in particular, whether it was your understanding that further time would be available for the Project Group to finalise the evaluation.

And you have answered that you have no recollection of being advised that extra time would be made available

to complete the evaluation. Your understanding was that work would continue until the group were satisfied with the presentation of the report and that this work would be concluded in an efficient manner.

A. Correct.

Q. I suppose, just looking at your answer there, that it was your understanding that the work would continue until the group were satisfied with the presentation, and that the work would be concluded in an efficient manner, I suppose that really would be tantamount to the provision of extra time, bearing in mind that the documents and records show that Mr. Brennan had informed the meeting on Monday, the 23rd October, that the Minister had wanted a result on that day?

A. No. I would disagree with that assessment. My understanding was that we had a draft report. The result had been accepted, and what needed to be done was that the report tidied up, the English improved in it, and that the document be put together in such a way as it would read coherently. And it was just a matter of arranging whatever meetings were necessary to go through each page, satisfy ourselves that we were happy with the content of the document, and that would be the end of the process.

Q. But you were going to have all the time you needed, subject, obviously, to working within the confines of efficiency, to finalise the report; is that right?

A. Yes.

Q. That was your understanding?

A. We had time to finish the report. However, from my perspective, there was an interest in finishing the report as quickly as possible to try and conclude the process. I saw no point in spreading this out over weeks, when, if it could be finished in a reasonable time manner, that that should be done as soon as possible.

Q. But you were going to get the time you needed to be satisfied that the report was presented in a manner that was acceptable to the members of the Project Group?

A. Yes. There was no time limit.

Q. You said there earlier, I think in your answer, Mr. Ryan, that the result had been approved by the Project Group. When, as far as you recall it, was that the position, that it was approved that there was unanimous support, if you like, for the result?

A. My recollection is that we worked on three draft reports. I think the first one was dated the 3rd October. The second one was dated the 18th October. And then the final version was the 25th. And from the process of working through the documents on the 3rd, I do not recall that there was any change in the results. The results were presented; the Project Team looked at the content of the results, and there were

no reservations, there was no queries. As far as I was concerned, it was accepted. And in fact, if I recall, from the technical perspective, there was a correction that had to be made on the 3rd October, there had been a typing error, and that was corrected.

So the tables were examined in some detail, but in terms of the content of the result, as far as I was concerned, that was it. We had seen the result, and nobody was raising any queries in respect of the result. However, they were raising queries in respect of the presentation of the document, both the results and in the narratives that were leading up to the results.

Q. Well, as far as you were concerned on the 3rd, as you have said yourself, your principal interest in all of this was to ensure that the technical features that you had been involved in assessing, were accurately reported, isn't that correct?

A. That is correct, yes.

Q. And you checked that very carefully. I think Mr. McQuaid has given evidence that you and he went through the technical aspects, as they are known in the report, line by line, to ensure that each score was correctly given and that each table correctly represented the result of your work, isn't that right?

A. That is correct.

Q. And you're quite right, I think, a correction had to

be made to the total for the technical aspects in what was, I think, Table 16 in the draft report of the 3rd October, isn't that right?

A. Without seeing the table in front of me, I just recall there was a line which I think was copied from some other group, it was just a typo, and we had our own notes at the time, and we had gone through the calculations and we presented and drew the attention of the group to what we saw and understood to be a typing error.

Q. And I think we know that the ranking in the reports, the various version in the reports, didn't change from the draft report of the 3rd to the draft report of the 17th to the final report of the 25th. And we know that, the ranking didn't change.

But are you absolutely certain in your evidence that there was unanimous support for this result on the 3rd October? And I should tell you why, because in the second draft of the report dated 17th October, there was, in the inclusion of a reference to unanimous support for the result in the meeting of the Project Group on the 9th October, and it's quite clear that the inclusion of that reference in the draft was not supported by the Project Group, because that reference was removed from the report?

A. Sorry, could you explain that to me again, please.

Q. I can of course, and again I'll go through it later on



when we come back to discuss it. But in the second draft of the report, there was a reference inserted by AMI to unanimous support for the result having been obtained at the meeting of the 9th October. And that reference was taken out of the report following the meeting of the 23rd October. And it's clear as well from some of the copies of that draft on which which we have which are annotated with comments from various members of the Project Group, that the members of the Project Group were not agreeable to that reference being included in the report. So I am just drawing your attention to that, and I am wondering are you correct in your recollection when you state that there was approval for the result running from the 9th October to the 23rd October and through each version of the draft report?

A. Well, my recollection is that the results were presented. There was no disagreement in terms of the results, and the work afterwards concentrated on the presentation of the report. That is my recollection.

Q. I see. If that is your recollection, is it possible that your recollection in this regard could be wrong?

A. Anything is possible.

Q. Well, if the notes we have are correct, and there is no reason to assume they aren't, wouldn't it suggest that your recollection may be flawed?

A. Without seeing the notes in front of me, it is possible.

Q. We'll look at them later on.

A. Okay.

Q. Now, I think we'll return to your memorandum and we were at paragraph 34.

You were asked for your knowledge, direct or indirect, of your involvement or the involvement of any other person in the decision made by the Minister on or about the 24th/25th October 1995, that the result of the process would be announced on the 25th October 1995.

You have stated that you have no knowledge of the manner in which the decision was reached by the Minister to announce the result on the 25th October 1995. Your recollection is that at the final meeting of the Project Team on the 23rd or 24th, the final amendments were agreed by all of the Project Team and Mr. Fintan Towey was tasked with the responsibility of working with AMI to ensure the agreed amendments were included in the final version. As far as you were concerned, the process had been concluded at that meeting and that the announcement of the result was a matter for the Development Division to arrange. Is that correct?

A. Correct.

Q. Paragraph 35 you were asked for the date on which,

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

You have answered that your recollection is that you received a telephone call from somebody in the Development Division in the morning of the 25th stating that the announcement would take place at 3pm in Kildare Street.

A. Correct.

Q. Paragraph 34, you were asked for details of all meetings of the Project Group or of any of the members of the Project Group on the 24th/25th October, the purpose of such meeting, the matter under discussion and the outcome of such meetings.

You have stated that your recollection is that the final meetings of the evaluation took place on the 23rd or 24th October and that the meeting did not conclude until around 23:00 hours. Your recollection is that the Project Team went through the report, made amendments to the presentation aspects of the report and concluded that this was the final version of the report. The task that remained at the end of the meeting was for the agreed amendments to be included in the master version of the report held on the AMI computer network.

In relation to the attendance list, you have a recollection of Mr. Brennan, Mr. Towey, Mr. McQuaid,

Mr. McMahon. You have a recollection of Mr.

O'Callaghan leaving the meeting at around 19:00 hours.

In relation to AMI representatives, your recollection is that they were present for the initial part of the meeting and returned to Copenhagen in the afternoon.

Is that correct?

A. Correct.

Q. Paragraph 37, you were asked for the precise date on which and time at which a final decision was made by the Project Group regarding the result of the competition and the name of each person who was present or was otherwise a party to such decision.

You have answered that your recollection of that, the final decision was taken during the latter stages of the meeting that went on until 23:00 hours on the 23rd or the 24th October of 1995. In respect of the attendees, your reply in 36 above describes your recollection; that's the recollection that you have just related a moment ago?

A. Correct.

Q. Paragraph 38, you were asked the precise date on which and time at which the evaluation report was approved and/or adopted by the Project Group and the name of each person present or who was otherwise a party to such approval or adoption.

You have answered that the evaluation report was approved by the Project Team at the late meeting on

the 23rd or 24th on the basis of the agreement

amendments being included in the final report.

A. Correct.

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

of or your involvement or the involvement of any other

person in the discussions between Mr. Brennan and Mr.

Loughrey on the 24th/25th October 1995 whereby Mr.

Brennan conveyed to Mr. Loughrey the result of the

evaluation process.

You have answered that you were not a party to nor do

you have any knowledge of Mr. Brennan communicating

the result to Mr. Loughrey. Is that correct?

A. Correct.

Q. Paragraph 40, you were asked for your knowledge,

direct or indirect, of or your involvement or the

involvement of any other person in discussions between

Mr. Loughrey and the Minister on the 24th/25th October

1995 whereby Mr. Loughrey informed the Minister of the

result of the evaluation process.

And you have answered that you were not a party to nor

do you have any knowledge of any discussions between

Mr. Loughrey and the Minister. Is that correct?

A. Correct.

Q. Paragraph 41, you were asked for your role in or your

knowledge, direct or indirect, or the role of any

other person in the preparation of the following

documents: The recommendation to the Minister dated

25th October 1995; secondly, the briefing note to the Minister, rather the outcome of the evaluation process; and thirdly, the memorandum to Government dated 26th October, 1995.

And you have answered that you had no role in the preparation of any of the documents listed in this question.

A. Correct.

Q. Paragraph 42, you were asked for your knowledge, direct or indirect, of the contents of the document dated 23rd October prepared by the Regulatory Division, the purpose for which the document was prepared, whether the document was formally circulated and details of any action taken on foot of the document.

You have answered that you were not aware of the document entitled "Views of the Regulatory Division," dated 23rd October, 1995, and you have never seen the document until it was brought to your attention as part of the this process.

A. Correct.

Q. Do you recall looking at that document in the last week or ten days?

A. Yes.

Q. And do you recall the contents of it?

A. At the moment, no.

Q. Do you recall that these were views that Mr. McMahon

and Mr. O'Callaghan appeared to share based on the document in which they were calling into question not just the presentation of the report, but the actual result contained in the report?

A. I have some memory of the layout of the document, but...

Q. We'll have a look at it.

A. We can have a look at it, yes.

Q. At paragraph 43, you were asked for your understanding of the composition of the Esat Digifone consortium which won the evaluation process, and the respective shareholdings of the participants.

And you have answered that your understanding of the composition of the Esat Digifone consortium was as set out in Section 31 of the final evaluation report.

A. Correct.

Q. And what was that, Mr. Ryan?

A. Without the document

Q. Well, apart from the report itself, at the time what was your understanding of the composition of that consortium?

A. All I had to go on was whatever documents information that was contained in the drafts. As I did not participate in the financial groups, I did not know the detail of what was going on. So I only had an overview and that overview was provided by whatever information was contained in the draft evaluation

document.

Q. I see. Paragraph 44, you were asked for your knowledge, direct or indirect, of or your understanding of the role of the Cabinet or the Cabinet Subcommittee in the ultimate decision as to the outcome of the evaluation process.

You have answered that your understanding is that the Project Team selected the highest ranked applicants and that this result would be communicated to the Minister, the Cabinet Subcommittee and the Cabinet for their decision. I think we have covered that already.

A. Correct.

Q. Paragraph 45, you were asked for details of all information, if any, provided by you to the Minister regarding the evaluation process during the course of the process together with details of all communications by you to the Minister and of all communications by the Minister to you during the course of the process. Again, you have reiterated that you had no direct, written or oral communications with the Minister during the course of the process.

A. Correct.

Q. Paragraph 46, you were asked for your knowledge, direct or indirect, of or all dealings, meetings or communications between the Minister and any member of any consortium or any person associated with any member of any consortium during the course of the



evaluation process. You have answered that you have no knowledge of any communication between the Minister and any consortium member.

A. Correct.

Q. Paragraph 46, you were asked for the date on which and circumstances in which you first became aware of the involvement of IIU Limited or Mr. Dermot Desmond in the Esat Digifone consortium. You were asked for your understanding as to the precise nature of the involvement of IIU at that time, and the source of such knowledge and understanding.

And you have answered that you have no recollection of when you became aware of the involvement of IIU Limited and Mr. Dermot Desmond in the Esat Digifone consortium.

A. Correct.

Q. Paragraph 48, you were asked for your knowledge, direct or indirect, of a letter dated 29th September, 1995, from Mr. Michael Walsh of IIU to Mr. Martin Brennan.

You have answered that you did not see the letter dated 29th September from Mr. Walsh of IIU during the evaluation process.

A. Correct.

Q. Can I take it that, again, is another document that you have only seen in the course of preparing your answers to the memorandum?

A. Yes.

Q. Paragraph 49, you were asked for your knowledge, direct or indirect, of or your involvement or the involvement of any other person in the decision made to return the letter of the 29th September 1995 to Mr. Denis O'Brien on the 2nd October, 1995 without retaining a copy of the letter on the Departmental file.

You have answered that you did not have any involvement in the decision made to return the letter dated 29th September to Mr. O'Brien without retaining a copy of the letter on file?

A. Correct.

Q. Paragraph 50, you were asked whether you had any knowledge, direct or indirect, regarding any involvement or interest or any potential involvement or potential interest of IIU Limited or Mr. Dermot Desmond in Esat Digifone consortium as of the 25th October 1995.

And you have answered that you have no recollection regarding any involvement or otherwise of IIU Limited or Mr. Dermot Desmond in the Esat Digifone consortium as of the 25th October, 1995.

A. Correct.

Q. Paragraph 51, you were asked for your knowledge, direct or indirect, of any dealings between Communicorp, Esat Telecom, Telenor and IIU Limited/Mr.

Dermot Desmond regarding their respective liabilities to subscribe for the capital of Esat Digifone Limited.

And you have answered that you have no recollection regarding knowledge of any dealings between

Communicorp, Esat Telecom, Telenor and IIU/Mr. Dermot

Desmond as to their respective liabilities to

subscribe for the capital of Esat Digifone Limited

during the evaluation process.

A. Correct.

Q. Paragraph 52, you were asked for the date on which and

the circumstances in which you first became aware of

the 20% shareholding in Esat Digifone Limited held by

IIU was to be held beneficially for Mr. Dermot

Desmond. You have answered that you have no

recollection of the day on which and the circumstances

in which you first became aware of the 20%

shareholding in Esat Digifone Limited held by IIU

Limited which was to be held beneficially for Mr.

Desmond.

A. Correct.

Q. Paragraph 53, you were asked for your knowledge,

direct or indirect, of or your involvement or the

involvement of any other person in all steps taken by

the Department, whether alone or in conjunction with

the Department of Finance, to satisfy itself as to the

financial capability of Esat Digifone Limited prior to

the issue of the licence.

You have answered the assessment of the financial capability of Esat Digifone consortium was undertaken by a sub-group made up of members of the Department, the Department of Finance, and AMI. You were not a member of that sub-group?

A. Correct.

Q. Paragraph 54, you were asked for details of all dealings and discussions which you had with the Minister, with Mr. Martin Brennan, with Mr. John Loughrey, with Mr. Sean Fitzgerald, or with any other person arising from the involvement of Mr. Dermot Desmond in Esat Digifone Limited. And you have answered that you had no dealings or discussions with the Minister, Mr. Brennan, Mr. Loughrey, Mr. Fitzgerald or any other persons arising from the involvement of Mr. Dermot Desmond in Esat Digifone Limited?

A. Correct.

Q. Paragraph 55, you were asked for details of all previous dealings which you had both in your personal and professional capacity with Mr. Michael Walsh and with Mr. Dermot Desmond.

And you have answered that you had no previous dealings, personal or professional, with Mr. Walsh or with Mr. Desmond.

A. Correct.

Q. Paragraph 56, you were asked whether to your

knowledge, direct or indirect, the consent of the Department of Finance was obtained to the issue of the, licence and if so when, how and with whom such consent was obtained.

You have answered that you have no knowledge as to whether the consent of the Department of Finance was obtained in relation to the issue of the licence.

Your recollection is that you only assisted in the drafting of some of the terms of reasons?

A. Correct.

Q. I suppose those would have been the technical provisions in the licence?

A. They would have been the technical provisions, correct.

Q. The use of capacity and design

A. Mainly to do with the spectrum that facilitated the operator to provide the service.

Q. Paragraph 57, you were asked for your knowledge, direct or indirect, of, and your role or the role of any other person advising the Minister regarding the letter dated 29th March 1996 from the Minister to the Chairman of the ESB.

And you have answered that you had no involvement regarding any advice given to the Minister in connection with that draft letter.

Paragraph 58, you were asked for your knowledge, direct or indirect of, or your role or the role of any

other person advising the Minister regarding the Minister's dealings with the European Commission in early May 1996 regarding the complaint made to the Commission by the Persona Consortium and the application by the Consortium for provisional relief restraining the Government from issuing the licence to Esat Digifone.

You have indicated that you had no involvement whatsoever with those dealings of the Minister and the Commission.

A. Correct.

Q. Paragraph 59, you were asked for details of all dealings which Mr. Ryan had with the Minister in connection with the affairs of Esat Telecom Limited or any associated company or of Mr. Denis O'Brien.

And you have answered that your time in the Telecommunications and Radio Technology Division of the Department, you were responsible for the management, use and licensing of parts of the radio spectrum. You would have been involved in working with Esat Telecom Limited in the design and subsequent licensing of their radio-based telecommunications link network. You would have also worked with the broadcasting station, 98FM, in assisting them with the design and licensing of their studio transmitter link and outside broadcast link requirements.

A. Correct.

Q. And that completes your principal memorandum of intended evidence. And you furnished the Tribunal, yesterday, with a short supplemental memorandum, Mr. Ryan, and I don't know if you have a copy of that with you in the box?

A. Yes, I have.

Q. I know it has been circulated, Sir, but I am not sure it's yet within the actual Book itself, but the supplemental memorandum has been circulated.

You were asked simply one matter in that supplemental memorandum. You were asked for your recollection of discussions in the Project Group relating to weightings at any stage in the process, and in particular, your recollection of any discussions in relation to the breakdown of the weightings at the later meetings of the Project Group.

And you have answered that you recall that during the early part of the last or second last meeting of the Project Team on either the 9th October or the 23rd October, 1995, that one of the accountant members of the Project Team, Mr. Buggy, or Mr. Riordan drew the attention of the Project Team to differences in weightings between the quantitative and qualitative models in relation to the criteria that addressed the marketing sections contained in the draft final reports which were being discussed at the Project Group meeting.

You recall that Mr. Towey provided an explanation in relation to this, and that the explanation that was provided by Mr. Towey was accepted in the meeting.

In relation to the detail of Mr. Towey's explanation,

"I cannot recall the details but I can recall that Mr.

Towey's explanation did not give rise to additional

debate on the issue." Is that correct?

A. That is correct.

Q. Then we'll come back and discuss that when we are

looking at the meeting of the 9th and the 23rd

October, but I presume if there was so much issue that

arose like that in relation to the application of the

correct weightings, if the group was satisfied with

the explanation that Mr. Towey provided, I presume it

would have prompted the entire group to scrutinise

very carefully what was said in the report to ensure

that the report accurately recorded and reflected the

actual weightings applied?

A. I think that is a fair assumption. It was just

something that was drawn at an early stage to the

meeting groups attention that there was a difference,

and it was dealt with immediately.

Q. When you say early stage, what are you referring to

there, Mr. Ryan?

A. My recollection is that when we arrived at the

meeting, the Project Team would have sat down and

there would have been a period of time at the



beginning of the meeting where people were would either have got the document at the meeting, and would have been getting familiar with the document, maybe checking the sections that they were particularly interested in, and my recollection is at the time was that I was studying the technical section when one of the accountants made this comment and drew the Project Team's attention to a difference in the weightings, and that is what drew my attention and the reason why I remembered it, and at that stage, I think all of us opened up the relevant pages. And I just have a recollection of looking at the first, the top level dimension which I think relates to credibility of business plan, or marketing section. And that the discussion centred on that aspect, and that Mr. Towey, who would have been familiar, I think, with that sub-group, provided an explanation. It certainly wasn't in the technical aspect; it related to the marketing and business side.

Q. That would have been an explanation provided to the group. But it would have been an explanation to a question specifically raised, as far as you recall, by either Mr. Buggy or Mr. Riordan?

A. Correct, yes.

Q. And at the time, you say that you would have been looking at the report, you might have just received it?

A. Yes.

Q. Is that correct?

A. Yes.

Q. How long at the beginning of each meeting would you have to look through the report and to absorb it before the meeting commenced?

A. It depended it was some people may have had the document earlier than others. The reality in the Department was that the three divisions were working in three different buildings. The meetings were generally held in Kildare Street which would have been the home of the Development Division. And in our case, we had to come from O'Connell Street and from the Regulatory Divisions's perspective, they would have had to travel from Ely Place to the meeting. So because there was travel, sometimes the meetings may not have started on time. We may have been waiting for everybody to turn up. Some people may have had the document beforehand. It depended. And if the document was circulated at the meeting, it is possible there could be up to half an hour where people would be studying the document and getting familiar with it.

Q. Again

A. It depended.

Q. We'll look at it when we are looking at the documents and we can probably discuss it more meaningfully at that stage.

A. If I could just reiterate the point on 20-B, the approach in the qualitative and quantitative.

Q. 20-B

A. On page 7. It is something that you raised as you were going through the document.

Q. Yes.

A. And I must apologise that it is an actual error on my part in the explanation of the quantitative evaluation, and maybe it was because I only had a few days to prepare this document and hopefully we'll clarify it.

Q. That's understandable entirely.

Now, Mr. Ryan, just looking through the minutes of the Project Groups right from the 6th March through to the 23rd October, it appears that you attended each and every one of the Project Group meetings?

A. That is correct.

Q. And you were there in your capacity as an Assistant Principal working within the Telecommunications and Radio Technical Division?

A. I was there in my capacity as an assistant staff engineer in the telecommunications radio technology division.

Q. And you and Mr. McQuaid were both drawn from that division?

A. Correct.

Q. And as we said, the technical matters were your areas

of particular expertise and particular interest in terms of the evaluation process?

A. Yes.

Q. And what I propose doing, unless there is anything you want to draw my attention to, I propose skipping over the first four meetings after the announcement of the evaluation process. That's the two meetings in March and the two meetings in April, which were taken up with the appointment of Andersens as consultants, they were taken up by, I think, an exchange of correspondence with the Department of Finance regarding the appropriateness of actually weighting the criteria, and they were also taken up with the adoption of, I think, the protocol that was referred to in the course of your memorandum.

A. Yes.

Q. And what I propose doing, is going straight to the meeting of the 18th May, which is where Andersens presented their evaluation model proposed evaluation model. And perhaps if I could just refer you initially to the report of the Project Group meeting, and that's in Book 41, at Divider 63. I think I am mistaken it's Divider 64. And do you have that document before you?

A. Yes, I have it.

Q. And I see there from the attendances, as I said you were present at all meetings, but Mr. Ryan was present

with you

A. Mr. McQuaid.

Q. I do apologise. Mr. McQuaid was also present?

A. Yes.

Q. And this would have been a significant meeting because the evaluation model which, if you like, was going to be the cornerstone of this whole process, was being presented by Andersen Management, is that right?

A. Correct.

Q. And we can just see, without opening it in too much detail, we can see there was clearly a fairly lengthy discussion of the proposed evaluation model?

A. Yes. I think the Project Team were getting familiar with the evaluation model.

Q. So there was a discussion between all of you and presumably, Mr. Andersen was explaining it to you?

A. Yes.

Q. Can I refer you, then, to Book 54, which actually contains the draft evaluation model that was being discussed at that meeting of the 18th May, and the draft is in Book 54, at Divider 1.

A. Yes, I have it open here.

Q. We can see from the cover page to the model and I should say that the copy that we have was found in Mr. McMahan's files and the manuscript annotations are in Mr. McMahan's hand. So you can just ignore those for the moment.

A. Yes, I recognise them.

Q. You can see it's addressed to Sean McMahon. We can see from the cover page that you were part of the circulation list for this evaluation, draft evaluation model, and the version is dated the 17th. The meeting at which it was considered was the 18th and I don't know whether you can recall, perhaps you can or you can't, whether you would have received this in advance of the meeting?

A. I cannot recall at this stage.

Q. If I just refer you to it briefly enough. You see it's a lengthy enough document. There are, in all, I think, 19 pages in this version of the draft. And if I just refer you briefly to the introduction. It said that: "It's been decided to apply both a quantitative and a qualitative evaluation model to the eligible applications, the document constraints information concerning both of the models and intends to give a complete description. It comprises two parts. The first describing the quantitative evaluation procedure, including the selection of dimensions and indicators and the scoring model"

A. Sorry, can I just ask you exactly where you are reading from.

Q. Sorry. I am reading from page 1.

A. Which paragraph?

Q. I have started at the introduction. I have read

through the first two paragraphs already. The first paragraph: "As both the quantitative and qualitative evaluation will be performed, the guiding principles will be to work with a manageable set of aspects, which is essentially identical." He then lists the four groups of aspects which you will be familiar with. He says: "In addition to these aspects which form a common denominator in both evaluations, the qualitative evaluation also deals with risks, i.e.. the sensitivities of the business cases in relation to the evaluation criteria outlined in paragraph 19 of the RFP document."

It then goes on to state "that each aspect is broken down into dimensions and each dimension is subsequently broken down into indicators. The chosen division of the evaluation criteria into aspects, dimensions and indicators, is based on the framework described in the proposal from Andersen Management International, and the reader is assumed to be familiar with the contents of this proposal." Do you see that there?

A. Yes.

Q. You would, I take it, when you got this draft evaluation model, you would have been reasonably familiar with the proposal that had been made by Andersens, because I think you were part of the team, the sub-group of the Project Group that actually that

actually dealt with the tendering by Andersens and the selection

A. The selection of Andersens, yes.

Q. So you would have been relatively familiar with that document. So can I take it, therefore, that it came as no surprise to you that Mr. Andersen was proposing both a quantitative evaluation and a qualitative evaluation?

A. That is correct.

Q. Because that's really what he said he was going to do?

A. Yes.

Q. This is his tender document?

A. Yes.

Q. Now, over the page, on page 2, he dealt with, in 6 points, the procedure for the quantitative evaluation.

He says: "The following steps describe the procedure for the quantitative evaluation of the applications

"1. A set of dimensions and indicators have been

selected for the quantitative evaluation. An

assessment including a point-scoring method, will be

defined for all indicators. The same set of

dimensions, indicators and point-scoring must be used

for all the eligible applications.

"2. All the selected indicators will be assigned a

weighting factor.

"3. The score for each indicator will be a value

between 5 and 1 (both included) with 5 being the best



score. All scores should rounded to the nearest integer."

Maybe it's there you were getting confused between the

A to E, Mr. Ryan, it's understandable?

A. Yes.

Q. "4. Uncertainties regarding the scoring of points may be dealt with in the qualitative evaluation.

"5. The results of the quantitative evaluation will be considered with due respect to the significance of differences in the total sum of points assigned." I think we have already said that that probably means the highest score is the best.

"6. A memorandum comprising the salient issues of the quantitative evaluation will be annexed to the evaluation report."

Do you see that?

A. Yes.

Q. If we can turn over the page, the next part of the proposed draft evaluation model was headed:

"Dimensions assessed in the quantitative evaluation."

And in this, I think you'd agree with me, that Mr.

Andersen was setting out his proposals for how each of the evaluation criteria should be split up into the

dimensions linked to that evaluation criteria, and

each of those dimensions then would also be related to

an indicator or indicators for that dimensions?

A. Yes.

Q. And there was three columns in that table: The first showing the evaluation criteria, the second showing the dimensions linked to that, and the third showing the indicators for the dimensions. Can I just draw your attention to one or two features of that.

You'll see that apart from the first two criteria, that's credibility of business plan and quality and viability of technical approach, none of the other criteria are what might be described as multidimensional. They were all related to a single dimension only isn't that right? apart from the first two?

A. Yes, a single dimension, yes.

Q. And each of the dimensions, with the exception I think of performance guarantees and possibly financial key figures, were also related to a single indicator. In the case of financial key figures, what was proposed was indicators of solvency and IRR and in the case of performance guarantees, blocking rate and drop-out rate. And I think they were to be separately measured?

A. Yes.

Q. So, if you like, there was a split, in terms of dimensions solely in the case of credibility of business plan and quality and viability of technical approach.

A. Yes, and these were the highest marked criteria in

section 19, yeah.

Q. I suppose your particular interest would have been the dimensions and indicators proposed in the case of the technical approach criterion?

A. Yes.

Q. So you would have been carefully, I take it, scrutinising this to ensure that radio network infrastructure and capacity of the network were the two approaches, yet dimensions by which the quality and viability of technical approach should be assessed?

A. Yes.

Q. And again, I suppose, you would also have been scrutinising the proposal that radio network infrastructure be measured by a number of cells and the capacity of the network be measured by reserve capacity?

A. Yes. That's not to say that we also would have had an interest in coverage.

Q. I was about to go there.

A. Okay.

Q. And I take it also that would have been your interest also: Coverage and also frequency efficiency?

A. And performance guarantee in that they related to blocking rate and drop-out rate.

Q. And in looking at those, I take it that you would have wanted to satisfy yourself that the policy of the

Government which was that these applications should be evaluated in accordance with the evaluation criteria and in the descending order as shown in the published RFT form, that that policy was being put into effect by the Project Group in adopting these indicators as indicators and building blocks, if you like, in the evaluation process itself?

A. Yes.

Q. And I think it's clear from that evaluation, draft evaluation model, that these were the indicators and dimensions that were being proposed for the quantitative evaluation?

A. Correct.

Q. If we just go over the page then, I think page 4 and 5 of that document just deal with, really, what's in the table in narrative form. And then proceeding on from that, there is the heading "Dimensions and indicators" at the top of page 6, and in the case of each of the indicators for the quantitative evaluation, Mr. Andersen has proposed a formula by which that indicator should be measured?

A. Correct.

Q. I don't think I am going to pause on those at all. I think I am going to move on fairly rapidly to page 16. And at 4, Section 4, is the vote-casting and weight matrix. It states: "That the following table shows how the votes will be given for each of the indicators

in the quantitative evaluation. A list of the various is included." And that table appears to set out what Mr. Andersen's proposals were for the weighting of the indicators.

A. Yes, these are the weightings for the indicators, the lowest level.

Q. And these are the weightings for the indicators in the quantitative evaluation?

A. Correct.

Q. And if I could just refer you to indicator 5 and 6, because, again, they are the indicators for which in which you would have had a particular interest. You see that number of cells, which was the indicator for radio network architecture. His proposal, taking it on a base of 100 rather than 1 because I think it's easier, would that it be scored at 15 or weighted at 15?

A. Correct.

Q. And in the case of reserve capacity, which was the indicator for capacity of network, his proposal was that it be weighted at 5?

A. Correct.

Q. So I suppose implicit in that is Mr. Andersen's interpretation that the number of cells is three times as important as reserve capacity; wouldn't that be fair to say, given that that was his proposal?

A. Yes, but recognising that this was, I think, the first

time we had seen the document and we had to start somewhere.

Q. Yes, absolutely. And, in fact, you changed that, didn't you?

A. Yes.

Q. In the end, both number of cells and reserve capacity were equal?

A. Yes.

Q. Do you recall actually discussing that 15, 5, 10, 10 split, Mr. Ryan, because I think at the time you were heavily involved, were you not, in negotiations with Eircell?

A. That is correct. I was familiar with the quality of the Eircell network at the time. And I did have concerns that reserve capacity is an issue which has to be clearly addressed in the design of any mobile network, and I would have discussed with Michael Andersen and his team, and with John McQuaid, revaluing these two indicators. I felt it would have been more appropriate to revalue them and my recollection is that it went to 10, 10.

Q. That's right. Now, can I ask you there when you were saying you were discussing that with the AMI people and with John McQuaid, was that in the context of the meeting, this meeting of the 18th May when you were looking at this material?

A. I cannot recall exactly when, but I would assume that

it was at the meeting.

Q. You don't recall any separate meetings between yourself and Mr. McQuaid and the Andersen people?

A. No.

Q. So do you have a recollection, probably at that meeting, because as you say it probably has to have been at that meeting, that you had a discussion in which you would have been indicating that as far as you were concerned, on the basis of your knowledge of the importance of reserve capacity gleaned from your dealings with Eircell, that number of cell and reserve capacity should be equally weighted?

A. Yes. That it would be more appropriate to weight them equally.

Q. So that meant that that, of course, because the overall criteria weighting of that criterion was 20, you were simply changing the split from 15, 5 to 10, 10. That discussion and the acceptance of your argument didn't have any forward impact on the overall weighting of either the dimensions or the criteria?

A. No. The that is correct. The absolute rule is was that we must stay within the 20% allocated for the technical criteria, or technical dimensions and indicators, and all we did here was change the relative importance within the technical dimension.

Q. What I just want to explore with you and tease out with you a little bit more is that it appears that the

overall weighting of the criteria were changed by the Project Group from the proposals that were being made here by Mr. Andersen. Because what Mr. Andersen if you add up these weightings at indicator level, Mr. Andersen was proposing that the weightings be 30, 20, 15, 10, 5, 5, 5. Ultimately, they were changed.

A. Result of the intervention of the EU Commission?

Q. No, no, this is by the time you got to the 8th June, when you actually approved the evaluation on the 8th June, model on the 8th June, and indeed on the basis of a note made by Maev Nic Lochlainn at the end of May, it appears that the overall weighting of the criteria derived from these indicators was changed; it was changed from 30, 20, 15, 10, 10, 5, 5, 5 to what was ultimately agreed. And what I just want to ask you is: You were saying there in your evidence, that it was agreed by the group that you could tinker, if you like, with the weightings of the individual indicators, the number of cells and reserve capacity, that you could change those from 15, 5 to 10, 10, provided you stayed within the overall parameter of 20?

A. Of the Section 19 criteria of which I think for the technical was 20.

Q. Yes, it was 20, but the fact of it being 20 was derived from this evaluation model. So what I am really trying to get at



A. No, I think the 20 came first. And then the figures came afterwards.

Q. I see. So your recollection is, and I just want to be clear on this, that you discussed the overall weighting, or agreed the overall weighting of the evaluation criteria first and then you looked at what the individual weightings of the indicators should be?

A. Just in terms of getting the order, if I can this document was produced

Q. This was discussed by the Project Group meeting on the 18th May. It was dated the 17th May. Maybe if I just give you or put up on the board a table I can put up on the board a table that we've prepared showing the proposed weightings in accordance with Mr. Andersen's evaluation model that you discussed on the 18th May and the weightings as ultimately approved by the Project Group on the 8th June. Now, those weightings on the 8th June, of course, were subject to the subsequent alteration of the plus 3 and minus 3, but you could just ignore that for the moment, because I think it would just

A. Okay.

Q. If you see there what we have done is we have taken on the left-hand side the evaluation criteria as listed in paragraph 19. Do you see that?

A. Yes.

Q. The second column is the dimensions linked to each

evaluation criteria.

A. Yes.

Q. The third is the indicators for the dimensions.

A. Yes.

Q. Now, the fourth column is the weights at indicator level that were proposed by Mr. Andersen in the evaluation model of the 17th May; that's the one that we are discussing at the moment and it was discussed by the Project Group on the 18th May, do you see that?

A. Yes.

Q. 10, 10, 5, 5, 10, 5, there is the number of cells at 15, reserve capacity as 5, do you see that?

A. Yes.

Q. The next column is the total of the indicator weights for each criterion as proposed by Mr. Andersen in the model that was discussed on the 18th May.

A. Yes.

Q. You see it was 30, 20, 15, 10, 10, 5, 5, 5. Do you see that?

A. Yes.

Q. Now, the next column is the weights at indicator level that were prescribed and provided for in the evaluation model that you discussed and approved on the 8th June of 1995, and you see there the variation in the two technical indicators where

A. Plus the frequency efficiency one seems to have changed as well.

Q. Yes, do you see that?

A. Yes.

Q. And then the final column in that table, and again I

hope this assists you, shows the total of the

weightings for each of the evaluation criterion on the

basis of the weightings for the indicators as proposed

in the evaluation model discussed and approved on the

8th June. Do you see that?

A. Yes.

Q. Do you see there the change?

Now, there was a slight problem. I think everybody

has accepted it was just a mistake. People overlooked

the fact that the final one added to 103 rather than

100, but you see the changes that were made there, the

30, which I think probably was always intended to

remain a 30, became 32.5. The 20 remained the same

for the quality and viability of technical approach,

although there was a change in the split weightings at

indicator level.

A. Yes.

Q. The tariffs remained at 15; there was no change there.

Licence fee was increased from 10 to 14. Do you see

that?

A. Yes.

Q. Coverage was reduced from 10 to 7.5. International

roaming was increased from 5 to 6. Quality of service

performance, which I think is performance guarantees,

remained at 5. And frequency efficiency was reduced from 5 to 3.

A. Yes.

Q. Now, it's clear, I think, that the Project Group would have had to alter and amend the weights being initially proposed at criteria level by Mr. Andersen, because, of course, they didn't reflect the descending order of the evaluation criteria, because you had two groups; you had two weighted at 10 and you had three weighted at 5. Do you see that?

A. Yes.

MR. MCGONIGAL: Just one matter, Mr. Chairman, it may have some relevance. That table, in fact, ignores and I don't think it should the note of the 18th May sorry, the note of the 31st May which says that it was agreed at the meeting of the 18th May that the criteria were agreed at 30, 20, 15, 14, 7, 6, 5, 3.

And that is not reflected on this chart. So that there should, in fact, be an added column between the 17th and the 8th June reflecting the agreement of the 18th May, which, in fact, shows what was agreed on the 18th May in relation to the criteria. So that chart is, in fact, misleading from that point of view, because it suggests, by innuendo, that there was no other agreement relevant to this issue between the 17th and the 18th and that is not a correct fact. And if one introduces the agreement which was reached on

the 18th May, then you automatically have the lower figures, which are the 14, 7, 6, 5, 4, and they're then carried through on the meeting of the 8th June and it highlights the change, changes which had taken place between the first criteria and the fifth criteria. So that chart is misleading, and I think the witness should be aware of the 18th May agreement first.

CHAIRMAN: Well, it's difficult to get every element in, Mr. McGonigal.

MR. MCGONIGAL: I appreciate that.

CHAIRMAN: But I certainly won't lose sight of that.

MS. O'BRIEN: Sir, it's precisely the point that Mr. McGonigal makes that I am trying to address and explore with this witness as to when the revised weights, i.e. weights other than those proposed by Mr. Andersen, were agreed and, in fact, the chart is not intended to be, and I would suggest is not in any way misleading. It's simply indicating what was in both evaluation models and there is no question of the witness in any way, I would submit, being confused by the fact that reference hasn't yet been made to what was noted by Ms. Nic Lochlainn on the 30th May, and indeed I'll be referring the witness to that for his assistance.

CHAIRMAN: Two o'clock. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF AIDAN RYAN BY

MS. O'BRIEN:

MS. O'BRIEN: Thanks, Mr. Ryan. Before lunch we were

just discussing the deliberations of the Project Group

on the 25th May, and in particular, in relation to the

proposed weightings, weightings proposed by Mr.

Andersen for the indicators in the quantitative

evaluation. And we were looking, in particular, at

page 16 of the draft evaluation model, which was

tabled at that meeting; and in particular, the

weighting proposed for the two indicators for the

technical capacity criterion, and those two indicators

were number of cells and reserve capacity, and what we

were particularly discussing was the fact that Mr.

Andersen had proposed that these be weighted at 15 and

5 respectively, and that ultimately, the weights that

were agreed and approved for those indicators by the

Project Group were 10 and 10.

And you indicated in your evidence before lunch that

you can recall having the discussion of the relative

weighting of those two indicators, that it was your

preference, based on your knowledge of dealings with

Eircell, that they have equivalent weightings because

of the importance, in your mind, of reserve capacity.

A. Correct.

Q. And I think you indicated that within the parameters

of the overall weighting of 20, that it was agreed that the split be 10, 10 rather than 15, 5. And what I was trying to explore, or endeavouring to explore with you before lunch, is whether you can recall whether there were two separate exercises: Firstly, the agreement for the weightings at overall criterion level, and then secondly, discussion of what the split should be of those weightings between the indicators where there was more than one indicator, or whether you recall that this was, if you like, a single exercise. And that's, I think, what I was trying to explore with you.

A. In short, I cannot recall the exact details of that meeting.

Q. Can I take it, though, from what you said to me, that there must have been quite a lengthy discussion given that you were analysing them and considering them at indicator level, and that you were clearly discussing the relative importance of indicators within the overall criterion?

A. Yes. As I said earlier, this is a document that the consultants would have brought, and in the context of the background and setting the scene, this document would have been used as a way for the Evaluation Team to get au fait and familiar with the process.

Q. Of course. Of course. Now, can I ask you as well whether you recall, and presumably well, you may or

may not, but do you recall a similar discussion to the discussion you had on the weightings of the indicators for the technical criterion of a discussion of the weightings for the indicators for the first criterion:

Credibility of the business plan?

A. No, I do not recall.

Q. Because, you see, those weightings were also changed.

And I'll just draw your attention to how they were changed. In the model as proposed by Mr. Andersen, there were three indicators for credibility of business plan: There was forecasted demand, and you'll see that's the first one there at number 1, and he proposed that that should have a weighting of 10.

And then if you go down to 10: Number of network occurrences in the mobile field, you'll see there is just a 10 written to the left of that in the written annotations, that was the indicator for the dimension of experience of the applicant, and there you'll see it was proposed that that should have an equivalent weight of 10. Do you see that?

A. Yes.

Q. And then if you look at the final two indicators: Solvency and IRR, which I understand is internal rate of return, what Mr. Andersen was proposing there, as you see, was that they should have equivalent weightings of 5 each, making a total weighting for the dimension of financial key figures at 10. Do you see



that?

A. Yes.

Q. Now, ultimately in the evaluation model, as approved, the weightings for those were as follows: Firstly, forecasted demand was reduced from 10 to 7.5; number of network occurrences was left at 10; and solvency and IRR, they were each increased to 7.5, making in total, 15, do you see that?

A. Yes. I can follow your changes, yes.

Q. You can follow what I am saying?

A. Yes.

Q. So presumably what that did was, that reflected the thinking of the Project Group including Andersens, following on from discussion as to the relative importance of those three indicators within the overall criterion of credibility of the business plan; would you agree?

A. All I can say is I can see that there are different figures on the different documents. I do not recall an extensive or any debate in relation to the changing the weightings in respect of number 1, 10 and 12 and 13. My only recollection is in respect of the change of the weightings in respect of the technical criteria.

Q. Yes, I suppose that's understandable enough, because that was your particular area of expertise and that was the particular area in which the Project Group was

looking for an input from you, wouldn't that be

reasonable to assume?

A. It would be reasonable to assume that they were leaving the technical criteria to ourselves, but that's not to say that other members of the group from various sectors wouldn't have had comments to offer in relation to the others.

Q. Of course, but you would have been taking the lead in relation to the discussion of those indicators?

A. On the technical, yes.

Q. You wouldn't have been taking the lead in the discussion of the indicators on the business side?

A. No.

Q. Now, can I just ask you as well in relation to the second of those indicators, which was the indicator for coverage, and that was one of the sub-groups in which you were involved and I think in which the technical people had an input, that was speed of demographic coverage for class IV hand-held terminals, and in the initial proposal, Mr. Andersen was suggesting a weighting of 10, and you'll see that was reduced to 7.5 ultimately in the model that was approved. Now, do you recall discussion of that?

A. No, I do not recall a discussion on that particular change. All I remember is that we kept going back to adhering to the criteria, the priority criteria in respect of paragraph 19 I think you call it.

Q. You were doing it, of course, by way of indicator, isn't that right?

A. That had gone to the lowest level, at the indicator level, yes.

Q. So while your discussion was at indicator level, is it your evidence that you were referring back to criterion level?

A. At all stages there would be a reference back to the fact that the criteria level priority list was still being adhered to because some of those indicators were grouped and it wouldn't be immediately obvious.

Q. But your discussion of the relative weightings was, if you like, at the building block level, at the indicator level?

A. Yes.

Q. And it was really where there was more than one indicator or where there was multi-dimensions, the only way you could get back to the weighting of the criteria was by adding them up?

A. Correct.

Q. Can I take you on to page 17 then of the draft model, and this was the procedure for the qualitative evaluation process. It's stated that: "Despite the hard data of the quantitative evaluation, it is necessary to include the broader holistic view of the qualitative analysis. Other aspects such as risk and effect to the Irish economy may also be included in

the qualitative evaluation which allows for a critical discussion of the realism behind the figures for the quantitative analysis.

"The following describes some of the major steps in the qualitative evaluation process." And it then lists those.

" 1. The eligible applications are read and analysed by the evaluators.

"2. The eligible applications are evaluated by way of discussion and analyses.

"3. When deemed adequate and necessary, in-depth supplementary analyses will be carried out.

"4. Initially, the marks will be given dimension by dimension. Afterwards marks will be given aspect by aspect (subtotals) and finally to the entire applications (grand total).

"5. When the dimensions are assessed the evaluators should, as far as possible, use the same indicators as used during the quantitative evaluation. New indicators may be defined, however, if the existing indicators are not sufficiently representative for the dimensions to be evaluated."

And I think as you had said in your memorandum, that you did use quantitative indicators also in the qualitative evaluation.

A. Yes, correct.

Q. "6. During the qualitative evaluation, the evaluators

must take the results from the quantitative evaluation into account, and only compensate when necessary in order to make fair comparisons between the applications.

" 7. If major uncertainties arise, e.g. in accordance with step 4 of the quantitative evaluation or due to incomparable information, supplementary analyses might be carried out by Andersen Management International in order to solve the matter.

"8. The results of the qualitative evaluation will be contained in the main body of the evaluation report.

The results of the supplementary analyses will be annexed to the report."

And then if you just turn the page again, it says:

"Guide to the award of marks." And this is a guide to the award of marks, I think, for the qualitative evaluation, isn't that correct?

A. Yes.

Q. It says: "In order to give the mark-giving, a matrix has been elaborated below. The dimensions and indicators are not weighted ex ante." So I think that's clear that they weren't to be weighted in advance

A. Of receipt of tenders.

Q. of the actual evaluation. "The marks will be awarded according to a 'soft' 5-point scale (A, B, C, D, E) with A being the best mark. Averaging will be

made after consensus among the evaluators."

Now, can you tell me what you understood that to mean, that marks will be awarded according to a soft 5-point scale, A, B, C, D, E?

A. My understanding of that is that the results would be recorded as one of those letters instead of figures.

Q. So it wouldn't be hard scoring; it would be by reference to levels?

A. To a grade.

Q. And what would the grade represent?

A. The grade A would represent the highest level right down on a linear pattern to grade E being the lowest score.

Q. So they would be relative scorings then, as you saw it, would that be right?

A. Relative to one another.

Q. Relative to one another?

A. Yes.

Q. So the best would get an A, the second best a B, the third best a C, the fourth a D and so on; is that correct?

A. Well, that when you were assessing something, you would give a very good if you deemed that the applicant should get a very good mark, they would get an A, and similarly, as you go down the scale, the marks would be lower.

Q. And do you remember, from your work in the sub-groups,

did you always give an A, irrespective of the overall standard?

A. No, no. An A was considered to be a very high quality application.

Q. Was there any instance in a sub-group where, when you were evaluating an indicator, that you decided, we're not going to give any A on this indicator to any of the applications because none of them are good enough?

A. I can't remember whether we actually did that or not, but that would be the process, that we felt that everybody had a very good application on this particular point, they would all get As, but there was no obligation to give an A, B, C, D or E.

Q. And this wasn't numerical marking in the same way as you marked you intended to mark the quantitative evaluation, isn't that right?

A. No.

Q. It was, if you like, relative in relative terms, it would have been less precise than the quantitative scoring?

A. Correct. It didn't have the harshness of an application of a formula which produced a numeric result.

Q. Now, just going back to what we were discussing a moment ago in relation to the awarding of grades. In deciding whether you would or wouldn't mark an A, would you have an absolute standard in determining

that?

A. Be an absolute standard by reference to what?

Q. Well, an absolute standard that you would have decided upon before you assessed the actual applications?

A. I think in the minds of the evaluators, we would particularly in the technical sub-group which was the only one I participated in, we would have had an understanding between ourselves from our own experiences of what was a very good level and what was not such a good level.

Q. So I suppose maybe the technical indicators lent themselves more to an absolute standard, would they, than the other indicators?

A. Certainly I think it was easier, based on the experience of the people that participated in the technical group. As I said, I am not an accountant, I wouldn't be qualified to pass any judgement on financial criteria.

Q. I see.

A. Or judgements.

Q. Then below that, there was the matrix referred to in the narrative, and at the top there was the aspects and dimensions and each of the earlier dimensions that had been identified in the quantitative evaluation had been regrouped under aspects?

A. Yes.

Q. Isn't that right? And just across the top of the



matrix, provision was made for entries for each of

what was assumed would be five applications?

A. Yes, at that time it was before the receipt of the six tenders.

Q. Yes. And then the idea was, presumably, that for each of the dimensions identified there, you would insert a grade for each of A1 to what ultimately became A6 and then you would subtotal those and arrive at, at the end of the day, a bottom line, a grand total?

A. Correct.

Q. In fact, I think we have seen from a manuscript entries made by Mr. McQuaid on a copy of this table, the work you did on the technical aspects and we can look at that later.

A. Okay.

Q. And that was the proposed evaluation model that was discussed by the group on the 18th May.

Now, can I just refer you to the note that Mr.

McGonigal raised this morning. If you have that same book before you, Book 54, if you just go to Divider

1A. Is there a Divider 1A in your book? It's just the next Divider.

A. Yes.

Q. And you see there is a note to file there made by Ms. Nic Lochlainn?

A. It is actually blank, but I have another folder with, I think, the relevant a note to file agreed at the

meeting of the 18th May 1995.

Q. Yes. You can see there it's "Note to file" it's stamped confidential. "Agreed at the meeting of the 18 May 1995. 30, 20, 15, 14, 7, 6, 5, 3." And it's dated the 31st May 1995, and it's signed by Ms. Nic Lochlainn. And I think her evidence was that those were the overall weightings for the criteria agreed at the 18th May

A. These were the high level weightings.

Q. And that she made that note and she placed it on the file and obviously she stamped it with the word "Confidential"?

A. Yes.

Q. And if I could just draw your attention to the fact that the weightings of the first three criteria were unchanged from the overall weightings proposed by Mr. Andersen in his evaluation model.

A. Yes.

Q. Based on an addition of the weightings at indicator level?

A. Yes.

Q. It's the 14, 7, 6, 5 and 3 which are, or constitute the revised weightings?

A. Yes.

Q. And obviously they were subsequently changed again and we'll refer to this in due course.

At the next meeting of the Project Group then, on the

9th June, and I can refer you to the Project Group record report, which is at Divider 70 of Book 41; the matter of the evaluation model again arose, although it certainly wasn't the principal, or anywhere near the principal matter considered at the meeting. It looks as if, in the interim, Mr. Andersen took on board what had been agreed at the meeting of the 18th May. He prepared a revised evaluation model, and that was tabled at the meeting of the 9th June. I just want to ask you, can you remember this meeting, Mr. Ryan, at all? What was primarily discussed was the dealings with the Commission, but I am just wondering can you remember

A. Yes, I remember a discussion on the developments of the Commission.

Q. Do you remember at all whether the revised draft evaluation model was received by you in advance of that meeting? Because it's actually dated the 8th June, and the meeting was on the 9th June.

A. I cannot recall.

Q. If I can bring you directly to the final page of that report. You'll see there is a subheading there "Evaluation model," and there are two bullet points.

1: "This was approved as presented with correction of one minor typo on page 6/21."

Below that, bullet point: "Further comments, if any, to be forwarded to Maev Nic Lochlainn within a few

days of the meeting." Do you see that?

A. I see that, yes.

Q. I think that records in a formal way, the approval of the evaluation model that was discussed at that meeting?

A. Yes.

Q. Do you recall the discussion at that meeting, because you'll see there, it appears somebody picked up a minor typographical error on page 6, so that would seem to suggest that there might have been quite a close scrutiny of the revised evaluation model?

A. I cannot recall who came up with this comment, and if I had a look at page 6

Q. We'll have a look at it now in a moment.

A. Okay.

Q. Now, if you go back to Book 54, the one that you were working on, and you go to Divider 2, you'll find a copy of the evaluation model that appears to have been discussed at that meeting. The revised evaluation model.

A. Sorry, what book is this?

Q. This is Book 54, called the weightings book it's the smaller book from which we were working on. Do you have it there, Mr. Ryan?

A. Number 2, yes, same document as before.

Q. It's the next Divider, Divider 2.

A. Okay.

Q. It's the version dated the 8th June, 1996.

A. Yes.

Q. As I said, this appears to be the model that was approved at the meeting on the following day, the 9th June.

Now, there were a number of minor changes in it and there are some more significant changes. And if I can just refer you to what I think are the more significant changes that I want to draw to your attention. And if you go, firstly, to page 17. And page 17 presents the same table for the quantitative evaluation as had been in the first draft evaluation model, but with the revised weightings, do you see that?

A. Yes.

Q. And again I'll just draw your attention to the two indicators in which you had a particular interest.

Number of cells, you see there that's been reduced 15 to 10; and reserve capacity has been increased from 5 to 10. So that's the equivalent weighting and presumably reflects the discussion and agreement of the Project Group on the 25th May. And can I just draw your attention, also, to the weighting for the indicator coverage. You will see that had been proposed at 10. It's now been reduced to 7.5.

A. Yes, I see that.

Q. Now, another one I think you'd have had an interest in

is frequency economy figure. Do you see that one is just below block-out and drop-out rate?

A. It was reduced from 5

Q. It was reduced 5 to 3?

A. Yes.

Q. In fact, 3 was the overall weighting because it was the only indicator on the quantitative side for that criterion?

A. Correct.

Q. If I just draw your attention again to the three indicators of credibility of the business plan, you see the market forecasted demand has now been split in two indicators, each weighted at 3.75, totalling 7.5, which is a reduction from 10, do you see that?

A. Yes.

Q. Number of network occurrences remained at 10, and solvency and IRR were increased from 5 each to 7.5 each, making a total increase from 10 to 15?

A. Yes, I see that.

Q. That appears to be the weighting, certainly at area level, that was approved at that meeting?

A. It appears so. It's recorded that way.

Q. Just one thing I want to draw your attention to. I think Martin Brennan and Fintan Towey's view was that it was just a mistake that for some reason wasn't picked up, but that in reweighting these indicators, it would appear that the total went over 100 and in

fact the total, although shown as a hundred, was 103.

Do you have any recollection of that?

A. I recall that happening, and my understanding is that it was a numeric data error and that these figures did not add up to the 100.

Q. It would have been simple enough to correct that, wouldn't it, while still respecting the relative weighting of the indicators?

A. Respective weighting of the criteria or of the indicators?

Q. Both of them?

A. Of both, yes.

Q. Now, if I can take you over the page, just the procedure for the qualitative evaluation, I think the only change there was, in fact, on page 19, where an additional subparagraph was included. It said: "The draft report is to be presented and discussed among the essential persons identified by the Department on this. On this basis, Andersen Management will be asked to propose a final report." And I think, certainly, the evidence of other witnesses has been that they understood essential persons to be members of the Project Group?

A. Yes, I agree with that.

Q. Then on page 20, there has been no change there, which is the guide to award of marks in the qualitative evaluation that's the one we discussed?

A. Yes.

Q. Can I just take you then to the final page, because in the final page, page 21 of 21, a new section has been added. Do you see that Section 7?

A. Okay.

Q. It's headed "The Interplay Between the Quantitative and the Qualitative Evaluation." It says:

"Initially, the quantitative evaluation is conducted in order to score the applications. This initial score will be given during the first three weeks after the 23 June." Obviously, that had to be delayed because of the ultimate delay in the closing date.

"This initial score together with number-crunching performed on the basis of excel spreadsheets will then form the basis for the presentation meetings and the qualitative evaluation.

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

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

Do you see that?

A. Yes.



Q. Isn't it clear from that, it was contemplated, was it, there would initially be a quantitative evaluation.

That quantitative evaluation would form the basis for the presentation meetings and the qualitative evaluation, and when the qualitative evaluation was complete, there would be a revisiting of the quantitative evaluation and the results of both evaluations would be contained in the report to be produced by Andersens?

A. Yes, that was the intention.

Q. And there is nothing at the evaluation model stage, is there, that suggests that the qualitative evaluation should take in precedence to the quantitative?

A. I think from the language used there that it is implicit in that the quantitative would feed into the qualitative, and that there may be some element of a recheck.

Q. A recheck of the quantitative?

A. Of the quantitative, but that the quantitative was the decision-making process.

Q. The what?

A. The quantitative sorry, the qualitative was the decision-making process.

Q. Well, I can't see where it says that in the model, Mr. Ryan, that you adopted and approved that day. Maybe if you'd like to show me where that's stated, it would be of assistance.

A. If we look at Section 7, we talk about initially the quantitative evaluation is conducted, and as we go through that paragraph, this forms a basis for the presentation meetings and the qualitative evaluation.

It's feeding into the qualitative evaluation.

Q. Yes, that's correct. It forms the basis

A. "For the presentation meetings and the qualitative evaluation."

Q. Yes.

A. So it is the basis it is at a lower level than the qualitative evaluation.

Q. But would you not agree with me it then goes on to say: "That the qualitative evaluation will then be fed back into the quantitative"?

A. Yes, strictly speaking, that is correct, but that is just a checks and balances, that it doesn't create any inconsistencies. It doesn't take away from the fact, in my view, the qualitative evaluation was the process.

Q. I see. Notwithstanding the fact that in a 21-page document, all but four pages of those 21 pages were devoted to explaining how the quantitative evaluation would proceed?

A. Correct, but at the time, the process was starting the project members and the Andersens team were becoming comfortable with the process. They were trying to explain how the process was going to move

forward and here we were coming up with a model based on formulas, limited application which was called the quantitative, and that this would feed into the qualitative where the real decisions were going to be made.

Q. Do you remember Mr. Andersen's tender document, Mr. Ryan? I think you told me this earlier this morning, that you did.

A. I have seen it at some stage.

Q. Because as you have said yourself, you were part, I think, of the group that selected Mr. Andersen. Now, can I just refer you to some of the provisions of the tender document. It's in Book 41, and you'll find it at Divider 49. I am not going to open all of this document to you, I can assure you of that. But I presume it's a document that you and everybody else involved in selecting Andersens would have had a thorough knowledge of?

A. Yes. I recall this is the submission document provided by Andersens.

Q. And Mr. Andersen, in this document, made it clear that what he was going to propose was that you adopt both a quantitative evaluation and a qualitative evaluation, isn't that right?

A. Yes.

Q. Now, can I just refer you to page 8 of it. And in the earlier pages he had indicated in some detail how he

would go about defining dimensions and defining indicators, right? And dealing with the evaluation criteria, and if you are on page 8, it's just the second paragraph after the table. He says: "Having specified the above-mentioned evaluation criteria, it will be possible to develop preferably two evaluation approaches.

"1. One way to go is to compose (one or more) models based on a system of points whereby the values of the different applications can be scored, for example, according to a scale of arabic numbers connected to each specified performance criteria, application 1A has 3.5 points more than application A2 which has 5 points less than application A3, etc.

And then secondly, "another way to go is to award qualitative marks, for example, A, B, C, D to the applicants' performance areas which will finally allow for a simple ranking of the applications." There in bracket I think by way of illustration he says:

"Application A1 is better than application A2." Then he goes on to say:

"In both models it is difficult to make the addition of the measured performance, since the added results are highly dependent on the weighting of the different evaluation criteria which do not by nature belong to an interval scale. The addition of results at the bottom line will inevitably contain some arbitrariness

except for the proposed licence fee payments which is normally easy to assess in an objective and transparent manner. It should, therefore, be considered to use both methods in order to maximise the validity and reliability of the calculated results. Attention should also be paid to the collation process. One extreme is to let different participants in the Evaluation Team calculate their own results" which he describes as the 'independence' method. "Another extreme is to gather the participants to common sessions in order to discuss and agree on the calculation. (A 'Delphi' model)

"Independent of which evaluation model the Department finally chooses, we recommend that supplementary analysis should be carried out where no immediate descriptions among the applications can be made.

"After discussions and decisions, it is suggested that the consultants prepare a final memorandum on the chosen evaluation model before the evaluation commences. In addition the consultants offer to use a proprietary computer model in order to validate the scores."

Now, isn't it clear from that that he is suggesting that both models, be it quantitative or qualitative, carry with it a degree of arbitrariness and in order to exclude that, as far as possible, that his

recommendation was going to be for the Department to adopt both forms of evaluation?

A. Yes, in the context that this was a tender document.

My understanding that Andersens were exploring the different approaches and the different models that were available.

Q. Can I ask you then as well to refer to page 17. It's page 17 I don't know if you have it there yet you'll see at paragraph 5, it's headed "Specific comments and suggestions concerning the evaluation models."

And he says: "The nucleus of the evaluation is to apply the adopted evaluation models on the admitted applications. In fact, we expect all applications to be substantially better than the minimum requirements and it is, therefore, likely that 4-5 applications will be admitted to the in-depth material examination during both the quantitative and the qualitative evaluation. One of the advantages of having both a quantitative and a qualitative evaluation is that they often turn out with the same end result"

A. Is that they often turn out

Q. "Is that they often turn out with the same end result, which will be a strong argument for the validity and the reliability of the procedures behind the nomination of the highest ranked application. In addition, the quantitative evaluation will generate a

wealth of useful 'Hard data,' which can serve as a fact base for the later coming qualitative evaluation."

A. Yes, so again, to reiterate my point, the quantitative evaluation will generate a wealth of useful data which will serve for a fact base. It is just feeding into the latter qualitative evaluation.

Q. And isn't it also quite clear from that, Mr. Ryan, that he is saying that one of the advantages of using both evaluations is that they often turn out with the same end result; that a result is what is being sought from both forms of evaluation?

A. Yes, they both generate a result, but I think that the value of the result of the qualitative is still higher than the value of the quantitative.

Q. Is there can you point to me anything in the evaluation model that you adopted as part of the Project Group which states that, apart from your own impression or your own understanding, is there anything objectively from the model that you adopted that states that, or that you want to point me to?

A. Sitting here, I am at a disadvantage in not being able to pull out an exact document, but...

Q. Would you like to look at it over night and we can come back to it tomorrow morning if you'd prefer?

A. Please. Okay.

Q. Now, I think I have already referred you to the note

that Ms. Nic Lochlainn made on the 31st in which she noted the weights that were adopted by the meeting on the 18th May, and, in fact, it appears from the documents we have seen, that Ms. Nic Lochlainn did keep a very careful and thorough record of all of the decisions of the Project Group in relation to weighting. And can I just refer you to a document which is in Book 52, 26. I am not going to ask you to open. I have a copy here that I am going to hand up to you, because I think you have enough books already.

(Document handed to witness.)

But it's in Book 52, 26. And you will recall in the meeting notes, the record of the meeting of the 9th June where Ms. Nic Lochlainn records the approval of the Project Group of the evaluation model that there was also provision made for people to make submissions to Ms. Nic Lochlainn in relation to the evaluation model if they wished to. And it appears from this record, that she, having received no further comments or submissions, that she made this formal record on the 21st July, and I'll just open it to you.

It says: "The 7th meeting of the GSM Project Group on the 18th May 1995 approved the following weightings for the quantitative evaluation of the selection criteria for the GSM competition."

You see there she lists:

"Credibility of business plan 30;



quality and viability of technical approach, 20;

approach to tariffing 15;

licence fee proposed, 14;

timetable for coverage, 7;

extent for international roaming, 6;

performance guarantees 5;

efficiency of spectrum usage 3.

"Subject to further comments being submitted in writing to myself, the 8th meeting of the GSM Project Group approved the paper on the evaluation model presented by Andersen Management International with the correction of one minor typo on page 6/21. No written submission was received and so it can be taken that the model has been approved.

"A single copy of the evaluation model (marked with Fintan Towey's name) is being held securely in the division.

"Please indicate your approval of the above as a basis from which to proceed with the evaluation of tenders for the GSM licence."

A. Yes.

Q. That seems to be, if you like, the formal step of copperfastening the approval of the weightings and the approval of the evaluation model that Ms. Nic Lochlainn records that she had received no further comments?

So this was a record, as I understand it, of the

weightings for the quantitative model at the criteria

level?

A. Yes.

Q. That's what it says: "The quantitative evaluation of a selection of criteria"

A. At the criteria level, yes, okay.

Q. Now, subsequent to that, there was, as you say, a further slight tweaking with the weightings arising from the resolution to the EU intervention, in that the licence fee was capped at  $\frac{1}{2}$ 15 million, and I think 3 points were therefore docked from the licence fee bringing it from 14 down to 11 and those 3 points were added to coverage, increasing it to 18, and again this was confirmed by a note of Ms. Nic Lochlainn that she made to the file, and that's in Book 54, 5, that's the small weightings book, which is in front of you, that we were looking at the evaluation model. You'll see it's dated the 27th July.

And states:

"Note to file:

"The new revised weightings as agreed in recent telephone conversations with Project Group members and as later confirmed in written communications received from each interest represented on the group are as follows:

"30, 20, 18, 11, 7, 6, 5, 3.

"Signed Maev Nic Lochlainn,

T&R development," dated 27th July 1995.

A. And these weightings would apply to both the quantitative and qualitative.

Q. Well, that's not clear, is it, from the note, because her earlier note referred purely to quantitative weightings.

A. Yes.

Q. I think in your memorandum of intended evidence, you indicated that you could recall, if you like, a written procedure, whereby you were consulted. You and Mr. McQuaid were consulted at the plus 3 and minus 3 and that you confirmed your agreement to it?

A. Yes.

Q. I think that alteration had been proposed by Michael Andersen?

A. Yes.

Q. So I think, therefore, the position, as per the closing date on the 4th August, was that the weightings were as specified in the evaluation model adopted on the 8th June as varied by written procedure and as recorded in Ms. Nic Lochlainn's note on the 27th July. Would you agree with that proposition?

A. Yes, I would agree.

Q. Now, I think the closing date of the competition was on the 4th August. And there were six applications received by the Department?

A. Yes.

Q. And I think the intention was that during the month of August, members of the Project Group would familiarise themselves with the applications and I suppose would make a particular study of those areas in which they had a specialised expertise?

A. Yes.

Q. So I suppose in your case, Mr. Ryan, that would have involved taking away with you the technical sections of each of the applications and making a review of those?

A. Yes, that is correct. Though we would have read all the applications.

Q. Yes. Now, I think the next milestone, if you like, in the process was a meeting of the 4th September, a Project Group meeting of the 4th September, and you'll find a record of that in Book 42, at Divider 95.

I think this was, in fact, the first Project Group meeting that you had had since the closing date of the competition?

A. Yes.

Q. And again both you and Mr. McQuaid were at it, and I suppose the significant part of this, and the significant at the time feature of this Project Group meeting was that Mr. Andersen presented the results, the first draft results of the quantitative evaluation, and he says: "Mr. Brennan outlined the agenda:

"1. The Andersen presentation on the quantitative evaluation of the six applications.

"2. Discussions of the forthcoming presentations.

"3. The future framework for the project.

"4. Quantitative evaluation prior to presenting the initial draft report of the quantitative evaluation, Mr. Andersen first acknowledged certain shortcomings in the results gleaned so far from the quantitative scoring. The quantitative evaluation had highlighted some incomparable elements:

"Some applicants had not calculated OECD baskets to their best advantage." That was the indicator for tariffs?

A. That's right.

Q. "IRR had not been calculated in accordance with the tender specification in some cases." That was the financial key figures?

A. Yes.

Q. "For certain cases, not enough information on roaming was supplied to score the application.

"Certain of the indicators proved highly time sensitive, e.g. if scored in Year 4 they showed one ranking, year 15 giving a completely different view."

I suppose there were temporal differences in that?

A. Yes.

Q. It says: "The highly sensitive nature of the quantitative scoring document was noted. Copies are

to be retained securely by Mr. McMahon, Mr. McQuaid, Ms. Nic Lochlainn and Mr. Riordan. The remaining copies were returned to AMI.

"The meeting discussed each dimension of the scoring document in turn. The consensus was that the quantitative analysis was not sufficient on its own and that it would be returned to after both the presentations and the qualitative assessment."

That's really exactly what the evaluation model contemplated, isn't it, Mr. Ryan?

A. Sorry, could I have that question again.

Q. That's really precisely what the evaluation model contemplated, isn't that right?

A. Yes, that is correct.

Q. "It was also agreed that the figures used by the applicants could not be taken at face value and needed to be scrutinised. Responsibility for such a scrutiny has not yet been decided.

"The need to reflect a change in the weighting for the licence fee was highlighted. AMI committed to correct the model in this respect." I think that refers to the fact, and I'll discuss it with you more fully in a moment when we are looking at the result, that AMI had incorrectly applied the 14 weighting for licence fee, rather than the reduced weighting of 11. It was just a change that needed to be made?

A. Okay.

Q. "Mr. Andersen concluded that the scoring at this stage was relatively close and that no conclusions could yet be drawn."

A. Yes.

Q. That's what it says.

A. Yes, I accept that.

Q. It doesn't in any way suggest, does it, that the Project Group made a decision to abandon the quantitative evaluation on the 4th September, does it?

A. It is just indicating that there are problems, things aren't working out as had been intended.

Q. Problems with three of the indicators?

A. At that stage, three of them had yes, they have identified three, and then a temporal problem in the fourth bullet point.

Q. It's just not clear what that pun relates to, the temporal difficulty?

A. I think it relates to a number of indicators.

Q. I see. We'll have a look at it when we are having a look at the report.

Then there is discussion of forthcoming presentations.

I want to just jump over that for the moment. And

then: "Future framework of the project.

"10 sub-group meeting for the qualitative evaluation had been proposed. 5 had already taken place."

Can I just ask you about that: The five that had already taken place, presumably there had been no

representation from the Project Group on any of those sub-groups?

A. Sorry, that there had been no representation from

Q. From the Project Group, from the civil servants on the Project Group?

A. I can't recall who went to Copenhagen when all I can say is that we went off the 6th September or on the 6th September.

Q. I think you can take it from the evidence of other witnesses, that there had been no civil servants as part of those sub-groups.

A. Okay.

Q. "AMI committed to provide the Department with the documentation on these earlier sub-group meetings. Project Group members were welcome to contribute/suggest amendments to the scoring.

"Andersens outlined a timetable for the remaining 5 sessions and personnel were nominated to attend.

Mr. Towey and Mr. Riordan are to attend the financial and performance guarantee meetings. Mr. McQuaid and Mr. Ryan are to attend the radio network, capacity of the network and the frequency efficiency sessions.

"Andersens stated that the qualitative scoring of dimensions would take place in sub-groups. Scoring of aspects would take place after the presentations. Mr. Brennan, however, specifically requested an opportunity to revisit the qualitative evaluation of



dimensions after the presentations. The group would have an initial discussion on the qualitative evaluation scoring on the afternoon of the 14 September. Gaps would be highlighted and the extent of the need for supplementary analyses assessed.

"A date of the 3rd October 1995 for the delivery of a draft qualitative report was suggested by Andersens."

So, in fact, the 3rd October was being contemplated at that stage as early as the 4th September, for the first draft report, isn't that

A. That would be after all the sub-groups had concluded their deliberation.

Q. But that date was being contemplated and referred to as early as the 4th September?

A. Yes.

Q. And it says: "A discussion on the question of the backbone network, as proposed by many of the applicant, also took place. It was concluded that very little could be done, until a successful applicant had been chosen."

I suppose that would have been a matter of particular interest to you and Mr. McQuaid, the backbone network?

A. Yes. Just in terms of the date, it appears that it's just a month later than this meeting.

Q. Yes

A. I can see no other relevance than that in it, that there was a month allowed to prepare for the first

draft report.

Q. Yes. But the 3rd October was being referred to as the date of delivery for the draft qualitative report as early as the 4th September?

A. Yes, correct.

Q. And it's apparent from these minutes of the 9th meeting of the Project Group.

A. Yes.

Q. Now, can I just then refer you to the draft qualitative report which Mr. Andersen tabled. That's in book 57, 7, but again I'm not going to ask you to go to Book 57 because you'd have too many books to manage and I think I can hand you up a copy of it.

(Document handed to witness.)

Now, I think the scoring here is done dimension by dimension, and where there is more than one indicator, I think it's included under the one dimension. You can see the first one is market development, and that shows market penetration score 1 and score 2, do you see that, on the first page?

A. Yes.

Q. I don't think there is any difficulty there with that, is there?

A. Not that I can see.

Q. Second is coverage, that would have been one that you had an interest in. And again, there doesn't appear to have been any difficulty with that, does there?

A. No.

Q. Now, if we go over to the dimension of tariffs, that's the OECD

A. Maybe if I could just go back to the coverage, there may have been an issue in what year you take the coverage.

Q. I suppose all you had to do was to decide it wasn't it, whether you'd do it in year 1, year 2, year 3 or Year 4?

A. Correct. I think the point that was being made in the minutes, the fourth bullet point of the minutes of the meeting of the 4th September was, depending on what year could produce a very different result.

Q. You could take an average of the four years, couldn't you?

A. Not particularly. I think that would be inappropriate, because the speed of roll out would be a critical issue.

Q. Do you remember that now, Mr. Ryan, as being a problem on the temporal side of the coverage, or are you just speculating at the moment?

A. No, no, it was an issue that was clearly discussed.

Q. Have you any record of that anywhere? Because there is no record in any Project Group meeting or any document that we have seen either in the technical division files or in the Project Group files that suggests that there was any difficulty with the

measurement of coverage on the quantitative side.

A. Specifically on coverage, no. But the point, the fourth bullet point that we had in the last document, would apply to coverage.

Q. Well, do you think that fourth bullet point then applies in every instant where there is any temporal input for any indicator, is that what you're saying?

A. In some of these indicators, it's applied more than others, but certainly in coverage, it was a key issue.

Q. I see. It was a key issue?

A. Yeah, it was discussed and it was raised as to what year to take it.

Q. And when was it discussed?

A. At one of the project meetings. I can't remember which.

Q. You can't remember which?

A. I can't remember which project meeting, no.

Q. The next one is tariffs. And that wasn't calculated, I, think to the best advantage by some applicants, enter that what was

A. That seems to be recorded in the minutes. Yes.

Q. Then dimension 4, the applicant's international roaming plan and the proposed number of roaming plans really, well, the information wasn't available and hence the indicator was not scored. So that wasn't scored

A. I think there was information available but how to

interpret the information that was provided proved to be very difficult.

Q. Well, again, we don't know that, Mr. Ryan. I don't know, do you recall this? Were you in any special group were you in one of the groups dealing with international roaming?

A. No, I wasn't dealing with international roaming, but I recall it from discussions that would have taken place.

Q. Radio network architecture. Now, I don't think there was any problem with that, was there?

A. Not that I recall. Again, the same issue crops up as to what year do you take the number of cells.

Q. Except it's defined here, isn't it, in Year 4?

A. Yes, but we had to define a level, but it was an issue that had to be dealt with.

Q. When was that defined, Mr. Ryan, as Year 4?

A. I cannot recall exactly what meeting

Q. We might check it. Maybe it's in the actual formula that you all agreed in the evaluation model. Is that possible?

A. I don't think so, because a lot of those formulation and this is just off the top of my head had some they were going through different each year. I think they did a calculation for each year and this was extracted from the mandatory tables. The question that came then for

the Evaluation Team was: What year to actually take the result. That is just off the top of my head.

Q. Well, I think in fact, if we go back to the I think if we go back to the evaluation model, I'll have to take you back to Book 54, the weighting documents, and this is the evaluation model that was approved and adopted.

A. Which Leaf?

Q. Book 54, I'll have to take you back.

A. Which section?

Q. Section 2, which is the evaluation model that was actually adopted.

Now, can I refer you to page 9 of that document.

You'll see 3.5: "Dimension: Radio network architecture. Indicator: Number of cells." I hoped to avoid looking at it in this detail, but I think we need to. It says:

"The cell planning serves as important evidence of the overall quality of the cellular network, which can be compared with the targets for quality of service, making the number of cells in operation a relevant indicator. This figure is not static, so the figure quoted should be ultimo 4th year after licence award."

"The following formula applies," so you see there the fourth year, in fact, was agreed in the evaluation

A. Yes, we made a decision to pick the fourth year, yes, that is correct.

Q. So isn't it possible and probable that the other discussions that you recall were actually discussions that occurred during the course of discussing the evaluation model?

A. This would have come up in one of the Project Team meetings.

Q. Well, the discussion of the fourth year must have been during discussion of the evaluation model, mustn't it, because it's here in the evaluation model?

A. Yeah.

Q. So isn't it likely that the other discussions that you are recalling were discussions during the course of discussing and in the context of the evaluation model?

A. Yes, that's possible.

Q. Now, then, reserve capacity, it's on the next page. This was the second indicator for the quality and viability of the technical approach, and again, apart from any point you want to make on temporal issues, there was no difficulty with that, was there?

A. No, just we recorded year 2, 3, 4 and 5 for some reason rather than just Year 4.

Q. Then quality of services, blocking rate and drop-out rate and then they're given for years 2, 3, 4 and 5 and 2, 3, 4 and 5, again?

A. Yes, again the same issue.

Q. Then frequency efficiency, number of SIM cards ultimo year 5, peak hour traffic ultimo year 5, GSM channels

demanded year 5 and as you have only measured that for year 5 I think we can take it it was year 5 was always intended, do you agree?

A. For some reason, which I can't remember, just to pick year 5 and we had to pick some time-frame and year 5 was selected for this particular indicator.

Q. And there was no difficulty with that?

A. No.

Q. Experience of the applicant, number of mobile network occurrences. Again, there was no problem with that, was there?

A. Not to my recollection.

Q. It's perfectly straightforward.

The licence payment, there was also no difficulty with that?

A. No.

Q. And then solvency: There was also no problem indicated in relation to solvency?

A. Not that I am aware of.

Q. There was a difficulty in relation to IRR?

A. I'd accept that.

Q. Pay part from the point you make in relation to temporal issues where indicators were measured for more than one year, there were only three indicators that there was a problem, isn't that right?

A. The three indicators being?

Q. Tariffs, OECD baskets is the tariffs, the roaming



agreements and IRR, the three that are specified in

the Project Group minutes?

A. And in terms of the reserve capacity of the network

and so on

Q. We said apart from the temporal issues?

A. Apart from okay.

Q. Can I just take you on to page 7 of that report,

you'll see there the list of weights that were

applied.

A. I see them.

Q. And I'll just draw your attention to the licence fee.

You'll see that was incorrectly weighted at 14%. And

tariffs were incorrectly weighted at 15%. They should

have been, I think, 18% and 11%. But can I also refer

you to the split weightings that were applied here,

because in this case, the split weightings applied

were those that were agreed on the 9th June and were

approved as part of the evaluation model. And if I

show you firstly, 1A and B, you see they were each

weighted at 3.75 amounting to 7.5%. Do you see that?

A. Yes.

Q. And the two split weightings for you, which are 5 and

6, were both weighted at 10%?

A. Yes.

Q. You see that number of network occurrences was

weighted at 10%, and solvency and IRR were each

weighted at 7.5, making 15%?

A. Yes.

Q. And these were the split weights in the evaluation model dated the 8th June?

A. As recorded in that document, yes.

Q. And as approved by the evaluation by the Project Group.

Now, you recall that in the minutes of the Project Group, the report of the Project Group, Mr. Andersen cautioned the Project Group that no final conclusion could be drawn on the basis of the quantitative evaluation results, and that the result was relatively close?

A. Yes.

Q. You'll see there that the result was A3 first, at 3.48; A6 second, at 3.19

A. Sorry, can I just ask exactly where are you reading from?

Q. I am reading from page 7 of the draft report that you're looking at. It's just there on the monitor.

A. Okay.

Q. You'll see the highest weighted score is 3.48, that was for A3. Looking along the line, the next highest weighted score was A6 at 3.19. And the third was A5 at 3.13.

A. Yes.

Q. And I think Mr. Andersen described that as being relatively close?

A. Yes.

Q. I think the percentage difference we have worked out between A3 and A5 on those figures was 5.8%.

A. I accept that.

Q. So that was the consideration of the draft quantitative report, and as you said, you then proceeded with your part in the qualitative evaluation?

A. Yes.

Q. And I think, as you indicated, you were involved in the sub-groups for radio network architecture, capacity of the network, performance guarantees, frequency efficiency and coverage. Perhaps not performance guarantees, although it was one of the technical aspects, I think Mr. McQuaid had doubts as to whether you and he actually participated in that.

A. That's right, we did not participate in the qualitative aspect of that.

Q. And I think Mr. McQuaid agreed that as far as he was concerned, when you both went off to Copenhagen between the 7th and the 9th September, that what you were doing was proceeding with the qualitative evaluation in accordance with the evaluation model?

A. Correct.

Q. I think he said that your groups, there were four members in your group: There was yourself, there was Mr. McQuaid, there was Mr. Marius Jacobsen, and Mr.

Ole Feddersen?

A. Correct.

Q. I hope my pronunciation is right. He said that you had those four separate sub-groups that ran over two days. They were kind of half-day sessions?

A. Correct.

Q. I just want to check with you whether your recollection of how you went about this accords with Mr. McQuaid's. Maybe I should just explain to you what Mr. McQuaid said that you did.

Now, his evidence was that the first thing you did was that you identified the indicators. And that having identified the indicators that you were going to use for each of these dimensions, you also identified sub-indicators?

A. Yes.

Q. And that you discussed those sub-indicators, and that you then graded each of the indicators on the basis of the sub-indicators from A to E?

A. Yes.

Q. He then said that to those indicators, you applied a numerical weighting in order to arrive at a total for the dimension?

A. Yes, I am aware he said that. But I am what I am not sure of is whether we did the weightings before we graded or afterwards. I cannot recall.

Q. But having graded the indicators, you did apply

numerical weightings to those indicators in order to arrive at the total for the dimension?

A. Yes.

Q. And in applying those weightings, Mr. McQuaid's evidence was that you couldn't apply a numerical weighting to a lettered grade so that you converted the grades of A to E to 1 to 5 respectively. You then performed the mathematical operation of multiplying the two numbers. You added it all up. You divided it and you arrived at a mathematical total which you then reconverted back to a grade.

A. Correct.

Q. Maybe we can illustrate this by just referring briefly to some notes we have of the sub-group on coverage.

And again, I think I have a copy of that for you so that you don't have to worry and bother yourself with another book, but for everybody else, it's in book 57/9, and I preface my remarks on this to you by saying that this is actually a report of a sub-group on coverage which took place on the 31st of August, which was before you and Mr. McQuaid were involved, because I think it was one of the sub-groups in which work had been done by Andersens. They agreed that they will provide the Project Group members with a report of the sub-groups, but judging from the totals which Andersen had and the totals that were in the report, it would appear that you and Mr. McQuaid were

in agreement with the approach that had been adopted by Andersens?

A. Yes. My recollection is that we examined the work that had been done by Andersens when we arrived in Copenhagen and we went over these results and satisfied ourselves, that they were appropriate.

Q. And if we just look at it briefly, so we can understand how you went about it. This is the dimension coverage. And although this wasn't part of the technical aspects, it was, in fact, I think, one of the management aspects, you and Mr. McQuaid and Mr. Feddersen and Mr. Jacobsen were involved because it was technical?

A. The nature of the beast is that it was technical.

Q. Yes. It says:

"The concept of coverage has been evaluated by means of the four indicators:

" roll-out plan

" radio link budget assumptions

" site acquisitions preparations

" special coverage provisions.

"In continuation of the evaluation possible risk factors within the suggested approaches to the described coverage has been recorded for later evaluation.

"Each of the indicators has been considered as composed of a number of sub-indicators. The proper

sub-indicators decided during the evaluation meeting are listed in the evaluation specification overleaf.

Indicators/sub-indicators not included here may have been transferred to the dimension 'Radio network architecture' for evaluation there."

That was your separate evaluation that you were doing of another dimension?

A. Yes.

Q. "The evaluation has been completed and marks have been assigned according to the rules specified in the document quantitative and qualitative evaluation of the GSM application Section 5 and 6.

"The resulting marks are the following."

On the left you have dimension coverage and at the top of the table you have A1 to A6. You then have the four indicators that you identified.

1. Roll-out plan.
2. Radio link budget.
3. Site acquisition.
4. Special coverage.

And for each of those indicators a grade has been given to each of A1 and A6.

A. Yes.

Q. And the total then is evaluation of coverage?

A. Yes.

Q. And then just over the page I am not going to go through all of these. I am just going to do one by

way of illustration. This shows how you arrived at the overall grade for roll-out plan.

Roll-out plan was your first indicator, and it appears that you divided that indicator into three sub-indicators.

"1.1. Early launch commitment.

"1.2. Coverage at launch. (Geographical and population)

"1.3. Time to cover 90% of population."

They were the three matters that you considered in order to come up with your overall grade for roll-out plan?

A. Correct.

Q. If you just go over the third page again just to illustrate that point. It shows how you extracted the information for those sub-indicators from the applications.

A. Yes.

Q. And the first is 1: to signify its roll-out plan; 1.1 was early launch commitment, and in each case for A1 to A6, you have inserted the date on which they committed to roll out their network?

A. Yes.

Q. So in the case of A1, it was the 1st July, 1996; in the case of A2, 1st October; case of A3, 1st July; A4, 1st July; A5, 1st October; A6, 1st December.

Below that, 1.2 is coverage at launch, geographical



and population; that was done by way of percentages.

So coverage 56%, 56/78; 40; 55, 80, 75. Again that would have been just raw data extracted from the applications, would it?

A. Yes.

Q. Then finally you have time to cover 90% of the population. Again, you have given a date to show when each of the applicants determined that they would cover or committed themselves to covering 90% of the population?

A. Yes.

Q. And in determining what grade each person would get, you made a value judgement arising from that information, isn't that right?

A. Yes.

Q. So you decided that A5 should get an A, because they were going to roll-out, albeit three months later, they were going to cover a greater population of 80%?

A. Yes.

Q. And I think Mr. McQuaid's evidence was that you did not apply numerical weightings at subindicator level; you dealt with that by way of discussion. Would you agree?

A. That is probably true. I cannot recall exactly.

Q. If we just go back to the front page where you have your table for the dimension coverage. In order to arrive at your total there, A for A1, C for A2, and so

on, you applied a weighting to each of the four indicators; is that right?

A. It is possible. I just don't know offhand.

Q. You don't recall that?

A. I suspect we did, but what the weightings are at this moment in time, I can't remember.

Q. I am not asking you to remember what the weightings were. I am just asking you, do you recall that that's what you did?

A. I recall we had weightings in doing the technical evaluation, but as to that specific table, I cannot recall.

Q. No, of course you couldn't, you couldn't recall the particular numbers, but what I am trying to get at is, in arriving at the score, at the overall grade for each dimension, do you recall that you applied weightings? Because if you remember for the technical aspects there were four dimensions, and Mr. McQuaid's well, his clear recollection, and perhaps it's not yours, was that you applied, the group as a whole, applied a numerical weighting at indicator level in order to arrive at a total for dimension level?

A. I would imagine that I did, I just can't remember absolutely.

Q. That's fair enough.

The

A. Certainly maybe if I could qualify. I remember applying the weightings in the specific technical criteria. It's just on this coverage one, I don't have a specific recollection.

Q. Right. And do you remember applying those at indicator level for the technical dimensions? Maybe if I take a table out

A. If you could show me a table from the technical.

Q. Now, the technical aspects are on page 28 of the final report, and I'll just see if I can why don't we take the dimension radio network architecture, which is on Page 29. I don't know if you have that book there, but we'll put it on the screen for you, Mr.

Ryan. It's Book 46.

A. Actually, I have Page 29, yes.

Q. Do you have that on Page 29?

A. Yes.

Q. We actually reconstituted that just to make it clearer and we'll just put it up there on the screen, you might be able to see it more clearly. You see:

"Number of antennae sites, number of cells, cell planning, POI

A. Points of interconnect.

Q. "Redundancy and Dublin area." And then you have your overall radio network subtotal for that dimension.

Does that assist you at all?

A. My recollection is that we would have used

weightings

Q. To arrive at that total to arrive at that subtotal?

A. I suspect we did use weightings. I just cannot be absolutely sure.

Q. That's perfectly understandable, Mr. Ryan. You can't be faulted for that.

Do you recall when you were in Copenhagen arriving at a total for the technical aspects where you added up all your dimensions to arrive at a total for that? I can refer you again to a document which may assist your recollection.

If you go to the weightings book that's the small Book 54 that we were looking at before and you go to Divider 9, you'll see there is a fax there from Ms. Maev Nic Lochlainn to Michael Andersen dated 6th October. And I am not troubling you with the contents of the fax, but included with that, on the next page, is a document which may assist you.

And what it is is, it's an extract from the evaluation model with the qualitative weighting matrix on which Mr. McQuaid has made manuscript entries showing the operation whereby the technical dimensions were weighted and were aggregated to give a subtotal for the technical aspects, do you see that?

A. Yes.

Q. You see he has shown there the actual weighting?

A. Yes.

Q. 35, 35, 20, 10. He has shown the grading for each of the applicants A1 to A6: C, C, B, B, A, D, etc.

A. Yes.

Q. Then he has shown the key at the bottom of the page, 1,E; 2,E; 3,C; 4,B; 5A?

A. Yes.

Q. And he has shown his totals in the figures just, the numerical figures, just below the C, D, B, B, A, C; do you see that?

A. Yes.

Q. And he has shown the conversion back. And at the top of the page he has made a note: "Technical aspects as noted by John McQuaid at meeting with Marius Jacobsen." And I wonder do you have any recollection of that exercise?

A. I have a recollection of us sitting down and working with the calculators.

Q. And do you remember when you did that, because Mr. McQuaid had some difficulties in remembering when it was?

A. I cannot recall exactly whether we did it at the end of the meeting in Copenhagen or we did it back in Dublin.

Q. We know that Mr. Jacobsen was certainly here in Dublin during the week that you were doing the presentations?

A. Yes.

Q. And is it possible that you might have carried out that exercise during that week?

A. Yes, that is possible, yes.

Q. You see the 35, 35, 20, 10?

A. Yes.

Q. Do you recall discussion between you on the application or selection of that numerical weighting?

A. Yes, I remember we had some discussion on it.

Q. And can you remember on what basis you agreed that that would be the appropriate numerical weighting that should be applied?

A. Again, based on the experience of the four of us, which would have been we would have come from similar backgrounds and had similar experiences, weightings would have been suggested, maybe modified slightly, and an agreement would have been reached.

Q. Now, Mr. McQuaid, again, he couldn't remember, but he speculated and again perhaps his speculation will assist you he speculated that in selecting those weightings, that you may have been seeking, in a rough or approximate way, to respect the quantitative weighting for each of those dimensions. Does that strike a note with you at all or strike a chord with you?

A. It strikes a cord, all right, yes.

Q. Do you remember actually having a face-to-face meeting with Mr. Jacobsen about this? Do you think it was a

meeting in person?

A. I would have had many meetings with Marius Jacobsen and John McQuaid. As you said, he was in Dublin for the presentations, and we were preparing questions for the presentations, and so on, so there would have been a number of occasions we would have met.

Q. I wonder, in looking at that table, does that assist you at all in relation to your memory of whether you applied numerical weightings at indicator level?

Because this shows the exercise of applying it at dimension level. I am just wondering does that assist your memory at all?

A. My conclusion would be that I do not recall what we did at indicator level.

Q. Okay. That's fair enough.

Now, I think the next milestone in the evaluation process after you returned from Copenhagen was a meeting of the Project Group on the 11th September. You'll find the report of that at Divider 99 in Book 42. And both you and Mr. Ryan (sic) were present in that, and that was I am not going to open the whole of the report, unless there is something you want to point to in particular, but that appears to have just been a meeting between you in advance of the presentations to decide on the strategy that you were going to adopt, and I see here that your division had a set of technical questions that you wished to put to

each applicant?

A. Yes.

Q. If I can just refer you to the very last paragraph, it says: "As a general rule it was decided that applicants will be given a last opportunity to provide clarification orally at these meetings. Further contact would be avoided. If it became apparent that clarification was essential after the meetings, contact would be initiated in writing by the Department. The applicants were to be informed in this regard." We have listened to the transcripts, certainly, of three of the presentations here and it seems clear that that was made very clear, patently clear to all of the applicants and appears to have been accepted by the applicants as well?

A. Yes.

Q. Now, I think the presentations ran from the Monday of that week, probably the Monday afternoon, until the afternoon, and after the last presentation, you appear to have had a post presentation meeting and the minutes of that are behind Divider 104 in the same book. It's just a few dividers on. And again, both you and Mr. McQuaid were present at that meeting, and I am just going to refer you to one or two matters in it.

Mr. Andersen had spoken about the success of the presentations and just over the page on the second



page you'll see: "The group agreed that the

presentations had served as useful exercise."

Then in bullet points are instanced the respects in

which it had been useful:

" The ability of each applicant to work as a team

had been highlighted.

" All applicants had been treated equally.

" The presentations had served to consolidate the

initial views on the applications arising from the

quantitative assessment.

" The importance both of a foreign applicant having

a good knowledge of the Irish scene, and an Irish

applicant having an understanding of the global

picture was noted.

" Some companies showed that they could take a

pro-active role in developing the market where

required."

You'll see there that the third point was being

emphasised and the third respect in which it was

agreed that the presentation has been useful is that

"they had served to consolidate the initial views on

the applications arising from the quantitative

assessment." So you will see there that the

quantitative assessment was still very much on the

table?

A. Yes, I think it is fair to say that it didn't show up

any major discrepancies in the information provided

and what had been gleaned from the quantitative assessment in that it had inasmuch as it had been completed at that stage.

Q. It went on to say: "Mr. Brennan also stated, and the group agreed, that no further contact between the Evaluation Team and the applicants was possible, although access to the Minister could not be stopped."

Do you have any recollection of that matter being discussed at the meeting, Mr. Ryan?

A. I remember no further contact with between the Evaluation Team. I don't have any recollection in reference to the Minister.

Q. You don't remember any discussion that might have prompted that reference to access to the Minister?

A. No.

Q. Then: "AMI had progressed the evaluation. AMI listed the next steps as:-

1. Finalise the qualitative scoring and award of marks.
2. Perform initial scoring of the aspects.
3. Perform supplementary analyses in blocking and drop-out.
4. Financial analysis concerning SIGMA/ADVENT adherence to EU procurement plans, tariffs and interconnection."

Then below that: "The scoring of 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. This would be discussed by the group on the Monday 9th October. The three DTEC divisions would supply any written comments prior to that meeting. Following that, AMI would produce a second draft report by 17 October."

Do you see that?

A. Yes.

Q. So clearly at that meeting, on the 14th September, it was being contemplated that the first draft evaluation report would be available on the 3rd October. That reiterates what was recorded at the meeting of the 4th, and that a second draft would then be provided by the 17th October.

A. Yes.

Q. You see there it said that the three DTEC divisions will supply any written comments prior to the meeting of the 9th October. Because the 9th October was being set, at this stage, as the first meeting at which you would discuss the draft evaluation report.

A. Yes.

Q. And I suppose it was contemplated by that that you would all have access to the draft report in advance of the meeting to enable you to review it, and to present in written form your comments on it.

A. Yes.

Q. And I suppose that would have been a sensible course to take, wouldn't it, in order to make that meeting of the 9th October, a fruitful meeting?

A. More meaningful, yes. It probably would have meant the meeting of the 9th October could be shorter.

Q. Precisely.

Now, I think after your attendance at that meeting, that

A. Sorry, which meeting?

Q. At the meeting of the 14th September.

A. Okay.

Q. You really had no further contact with this process until the 9th October, would that be right? That was when you discussed the first draft evaluation report?

A. I had been to Copenhagen and I had been back and the technical results had been fed into the AMI computer, yes, that is probably correct.

Q. Now, can I just ask you one or two things about the time, the intervening time. If you just go to Divider 110, because a second draft quantitative report was produced on the 20th September, and that doesn't appear to have been tabled at the meeting of the 9th October, and I am just wondering do you recall that you ever saw that, or that it was brought to your attention? Now, the only difference between this report and the previous one is that dimension 4, which

was international roaming, was excluded. That is the one that you couldn't score because insufficient information was given. So all they did was exclude that, and the weighting attached to that indicator of 6 was redistributed amongst the balance of the weighted indicators, inaccurately, but nevertheless, that was the intention.

A. I think given that the document is laid out in the same format as the earlier one, it would be impossible for me to recall when and where I would have got the second document as opposed to the first document.

Q. It certainly doesn't seem to have been tabled at the meeting of the 9th.

A. I can't recall either way.

Q. Well, it wasn't, because there is no reference to it in any of the reports of the meeting of the 9th October that we have seen.

A. Well, it's not recorded; that's all I can say.

Whether it was discussed or not recorded, I just don't know.

Q. If you just go over the page to Divider 111, there is a copy of a fax of the 21st September from Michael Andersen to Mr. Brennan and to Mr. Towey, and that was setting out the work programme that he was proposing for the following ten days. And I just want to bring you onto the final page of that fax. And these were, I suppose, significant in most instances,

significant questions that Mr. Andersen was posing to the Department and on which he was seeking an answer.

He said: "AMI has the following questions to the Department:

"1. Should the identified meeting on September 28th be conducted by means of a conference call or a meeting in Copenhagen?"

This was the meeting at which it was proposed that the initial decision on ranking should be agreed.

"2. Does the Department wish to score other aspects?"

"3. Given the time-frame and the fact that we are not yet ready to begin the drafting of the report, will it be acceptable to the Department that AMI produces a non-edited report to be received by the Department by fax late October 3?"

"4. How do we integrate the quantitative evaluation in the report? (We prefer to leave this question unanswered, until we have the final results.)"

"5. How do we proceed with acronyms/names concerning the applicants?"

Now, of those five issues, you will see three of them were of a substantive and macro nature. The first one was really asking the principal members of the Project Group, the Chairman of the Project Group and in effect, the secretary to the Project Group, Mr. Martin Brennan and Mr. Towey, how they wanted to arrange the meeting at which the initial ranking of the applicants

would be agreed. Secondly, whether the Department wished to score "other aspects" that was part of the qualitative evaluation. And thirdly, how they would go about integrating the quantitative evaluation in the report. And the suggestion there was they preferred to leave it until they had the final results.

Now, do you recall ever seeing this document, or do you recall ever being consulted either directly by Mr. Brennan and Mr. Towey, or indirectly by Mr. McQuaid, as to what your views as a member of the Project Group were in relation to those three matters?

A. I don't recall seeing the document: Number one.

Number two: The issues some of the issues that were raised, I recall discussions taking place.

Exactly when, I am not exactly sure. Certainly in terms of integrating the quantitative evaluation in the report, I remember discussions at some stage taking place. Without having the minutes of the meetings and so on in front of me, but I remember a discussion taking place on that.

The other aspects part of it, I don't have a recollection on that.

And I don't have a recollection on the conference call. Or a meeting in Copenhagen, I do not recall any discussion of another meeting in Copenhagen.

Q. Well, I think in fairness to Mr. Brennan and Mr.

Towey, I think they decided, or their evidence was that they decided themselves that they would travel to Copenhagen to have this meeting on their own with the AMI people, and I think they also confirmed that they decided that they wouldn't score other aspects. Mr.

Towey, neither Mr. Towey or Mr. Brennan have a clear recollection as to what decision was made in Copenhagen in relation to the integration of the quantitative analysis and the quantitative results.

But clearly that was discussed at the meeting of the 9th and we'll come to that.

A. Okay.

Q. Now, in your memorandum of intended evidence, I think you confirmed that you never had sight of the letter of the 29th September from IIU Limited signed by Professor Michael Walsh?

A. No.

Q. And you've only known about that in the last number of days when you were asked to deal with the issues?

A. Yes.

Q. And clearly if you didn't know about it, you can't have been a party to the decision to send it back on the 2nd October?

A. No.

Q. Were you aware that Mr. Towey and Mr. Brennan were going to Copenhagen in advance of 28th September to kind of put together an initial ranking?



A. At this stage, I can't recall.

Q. Now, they returned Mr. Towey, I think, was in the Department on Friday the 29th, and Mr. Brennan would have been in the Department on Monday the 2nd, which would have been a week prior to the first meeting that you had on the 9th to discuss the draft report. Do you remember having any feedback prior to the meeting that you attended to consider the draft report as to what the ranking was, or what the trend was? You know, did you hear word?

A. No, no, I don't recall having any feedback until I went to the meeting on the I think the 9th October and the draft of the 3rd October was available at that stage.

Q. So it wasn't until you saw that draft that you had any idea at all who was coming out on top?

A. No.

Q. Nobody had indicated to you in any informal way?

A. No. Again, you have to remember, I was located in a different building.

Q. I do of course, I am conscious of that.

A. It was something that we wouldn't have discussed in an open corridor, I wouldn't have.

Q. Now, there was a meeting of an inter an interdivisional meeting, Mr. Ryan, on the 3rd October.

We don't have any formal report of it. All we have is a handwritten note of Mr. McMahon from his own private

journal, and if I could just refer you to that. It's  
at Divider 116 of the book that we're using at the  
moment

A. Book 42?

Q. Book 42.

A. Okay.

Q. Now, as I said, this is an informal note that Mr.  
McMahon made in his own personal journal and he didn't  
take a list of attendances. But he has at the top:  
Meeting with T&RT, T&RR and T&RD. And he has it  
hand-dated 3 October 1995.

A. Yes.

Q. Now, in the course of that handwritten note, he has  
attributed certain comments to persons who were  
present, and it's clear from his attributions that Mr.  
Towey was present, Mr. McQuaid was present, and  
accepts that he was, Mr. McMahon obviously was  
present, and Mr. Brennan was present. And there is  
nothing in it attributed to you, and I wonder do you  
have any recollection of that meeting at all from any  
of the topics? There were topics obviously involving  
your division that were under discussion. You'll see  
there that was satellites, and there is quite a number  
of matters attributed there is a matter headed  
"Spectrum pricing want 95 I think," and there is  
something attributed to Mr. McQuaid, and then over the  
page there is "GSM".

A. Certainly, as you say, there is a number of issues which were particularly relevant to me, particularly number 2, W-A-R-T 95 was something that I would have been attending to rather than John McQuaid. Spectrum pricing: I had just produced a report on spectrum pricing. And I think at this meeting, we were maybe bringing Fintan Towey and Sean McMahon's division up to speed in terms of our views on spectrum pricing and how this would feed into the whole communications policy of the Department.

Q. And would it have been usual for you to attend these interdivisional meetings, would it have been your usual practice?

A. Yes.

Q. You see under the heading "GSM" there is a note there as to what Mr. McMahon records:

"Minister wants to accelerate process

" legalities more complicated

" draft report now imminent we need to discuss

and digest

" agreed copy leave it stay here" (that's

44) and

" discuss it in confidence."

Do you remember having an awareness that the report was imminent during that weaning before the 9th October?

A. I cannot recall.

Q. What I am just wondering is: Was there any unease on the part of you and Mr. McQuaid that you went to this meeting on the 9th October; the intention was that you would have had access to the draft report, not alone that you had access to it, that back at the meeting on the 14th September, it was being contemplated that you would have had time to make your written submissions in advance of the meeting. And I just wonder do you recall any unease or any concern or any, perhaps, impatience, on your part as to why you weren't getting access to this report, which it had now been agreed, would be kept in Kildare Street, but that you would have access to it?

A. No, I have no recollection of any impatience. I can't remember the other terms that you used there, but

Q. You have no recollection of Mr. McQuaid saying to you: "I wonder where that report is? They'd expect us to have absorbed all the technical parts by Monday, we haven't had a chance to look at it."

A. No. If the minutes of this meeting is anything to go by, the meeting seems to be primarily to discuss telecommunications issues which we were involved in and the GSM comment I notice is down at number 4. It's well down the list.

Q. You see, we know it came into the Department on the 4th, which was the Wednesday.

A. 4th

Q. 4th October. Just from the records we have. It came into the Department on the 4th, which is the Wednesday. But apart from Mr. Brennan and Mr. Towey, nobody has any recollection of actually having any access to it until the following Monday.

A. And the date of the 4th October was a Monday?

Q. A Wednesday.

A. A Wednesday. All I can say is I have no recollection of exactly when I got the report. But from John McQuaid's and my perspective, I have no recollection either that we had any difficulty or that we were getting impatient or whatever. We were just waiting for the report to come and whenever it came we would work on it.

Q. Sir, I'll be moving onto the draft reports now, so it might be better to leave it till tomorrow morning.

CHAIRMAN: You have covered quite a lot, Ms. O'Brien.

We'll see you in the morning, Mr. Ryan, at eleven o'clock.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
THURSDAY, 10TH JULY, 2003 AT 11:00 AM.