

A P P E A R A N C E S

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I N D E X

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THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 10TH
JULY, 2003 AT 11AM:

CONTINUATION OF EXAMINATION OF AIDAN RYAN BY
MS. O'BRIEN:

Q. MS. O'BRIEN: When we finished off yesterday,
Mr. Ryan, we were just discussing the
interdepartmental meeting of the 3rd October. The
next thing I want to bring you on to is the first
draft of the evaluation report which was received in
the Department, we know, on the 4th October and which
you think you probably received on the morning of the
9th October, which was the morning of the Project
Group meeting. That was the following Monday.

A. Yes, as I said, I can't remember exactly when I
received the document.

Q. Can I take you to Book 46 and Divider 34. It's the
first Divider in the book. And that's the first draft
evaluation report, dated 3rd October, 1995.

A. That was Book 46?

Q. Book 46.

A. That the first, the draft evaluation report, is it?

Q. Yes. At Book 46, it's in the first divider, Divider 34.

A. Okay, I have the draft, October 3rd, in front of me.

Q. If you just go to the first page after the front page, that's a table of contents and it shows you how it was laid out. There was firstly an introduction. The second section was the key characteristics of the applicants and there were two subsections there, one that described the applicants and their composition, and the second which dealt with their basic philosophy. And I think there was a distinction between cost leadership and market leadership; we don't need to go into it.

The third subsection then set out the comparative evaluation of the applications. And that set out, I think, in tabular form, the results of the qualitative evaluation.

And if I just refer you to page 10, you'll see that's the third section, and that was broken down, I think, into four subsections corresponding with the four aspects which were defined in the evaluation model.

Do you see that?

A. On page 10?

Q. On page 10, yes.

A. In the marketing section.

Q. The first subsection dealt with the marketing aspects,

and you'll see there, I think you were involved in the coverage sub-group and it shows the scoring for coverage, and then it shows a total, a subtotal score for all of the marketing aspects taken together.

A. Yes.

Q. And each of the four aspects were dealt with in that way, and if I could just refer you to page 23, which I take it would have been the one of particular significance to you, because it dealt with the technical aspects.

A. Yes.

Q. And you see on page 24, the subtotal for technical aspects is presented in the form of a table showing each of the four dimensions of that technical aspect and the subtotal.

A. Yes.

Q. And that, I think, reproducing the table we were looking at yesterday in annotated form. You recall that, where Mr. McQuaid had inserted the totals?

A. Yes, I recall.

Q. And each of the four aspects, I think, was treated in that way, and then there was there was a narrative explaining the results.

Now, if you go to page 43, the final section of this draft was headed: "Summary Concluding Remarks and the Recommendation." You say: "It has been clearly stated in the tender documents that the licensing

method is the so-called best application. With the application of this method, the evaluation has been based on the evaluation criteria outlined in paragraph 19."

It then goes on to state: "This report aims at nominating and ranking the 3 best applications on the basis of the evaluation. This has been conducted by way of four different models, which can be briefly summarised as follows:

"1. The results on the basis of the evaluation of the marketing, technical, financial aspects. (qualitative award of marks).

"2. The results on the basis of business case sensitivities, risks and credible issues (qualitative assessment).

"3. The results on the basis of a regrouping of the criteria (qualitative award of marks).

"4. The results on the basis of the application of a quantitative scoring model (conversion of marks to points).

"5. A last comparison of the best applications."

Then it went on to deal with each of those approaches in turn in, I think, five separate subsections.

And you see firstly, the results based on the aspects, dimensions and indicators. It states: "Prior to the closing date the criteria outlined in paragraph 19 of the RFP document were grouped as marketing aspects,

technical aspects, management aspects and financial aspects, as a logical and consistent continuation of the tender documents, including the requested structure laid down in the tender specifications. In addition, a number of dimensions were identified in order to properly cover each aspect. Furthermore, a number of so-called indicators and sub-indicators have been defined in order to cover the dimensions."

And then it shows at Table 16, a summary of the marks awarded, and that effectively reproduces the marketing matrix which was shown in the qualitative section of the evaluation model that had been adopted by the Project Group, isn't that right?

A. Yes.

Q. It says: "The marks awarded under each aspect and each dimension are outlined in Table 16 whereas the award of marks to the indicators and sub-indicators appears in Chapter 3.

"As seen from Table 16, the evaluation has produced the following results concerning the 3 best applications.

1. A5
2. A3
3. A1

with the indicated ranking.

"The difference A5 and A3 is approximately the same as the difference between A3 and A1."

Now, we know that all of this was done in Copenhagen, wasn't it; that table was produced?

A. The tables were produced in Copenhagen, correct.

Q. And there was no direct input from you as a member of the Project Group into that table?

A. Into the collating of the information?

Q. Yes.

A. No, it was presented to us.

Q. And you have no direct input into the computation of the grand total?

A. No.

Q. Can you tell me, from your recollection, what you were how it was explained to you that that grand total was arrived at?

A. My recollection is that Andersens would have kept the records of the various sub-groups, and initially that would have been at indicator level, and they would have put together the results up to dimension level, and if there were weightings involved, they would have applied the weightings. At dimension level, they would apply the weightings again as appropriate, and they would build up the total result based on the section 19 criteria.

Q. And is that what you were told at the meeting about this, about Table 16, or are you speculating now that's what you would have been told?

A. That would be my recollection. I cannot remember

exactly who said what or what was said. It is my understanding from my recollection.

Q. And tell me, were you told, do you recall, whether numerical weightings were applied to each of those dimensions in Table 16 to arrive at a subtotal for the four aspects?

A. By numerical weightings, you mean that the weightings were multiplied by a figure?

Q. Yes.

A. I don't recall being told, but my understanding would be that they were.

Q. That would have been your understanding?

A. Yes.

Q. But you don't recall it?

A. I don't recall it.

Q. And would that understanding possibly have arisen from the fact that that's what you and Mr. McQuaid did in relation to technical aspects?

A. That is possible.

Q. Then at 5.2, "Requesting the results based on the business case sensitivities, risks and credibility," and that's just a descriptive section.

If we go on to 5.3, "the results based on a regrouping of the criteria". It says: "In order to investigate whether the conclusions of the evaluators are consolidated on the basis of paragraph 19 of the RFP document, the evaluators have carried out a separate

conformance testing.

"The basis for the conformance test is the agreed interpretation prior to the closing date, where the 7 indents of paragraph 19 were operationalised into 11 dimensions."

Over the page, it then presents it in tabular form and over the page it says: "As the 11 dimensions are essentially the same as in Table 16, the only distorting effect of Table 17 could be the scoring of the aspects, which was also agreed prior to the closing date. It appears, however, that the scoring of the aspects has not had a distorting effect during the implementation of the evaluations, since the end results remain the same.

"From this, it can be concluded that the 3 best applications are the following:

A5,

A3,

A1,

with the indicated ranking."

Now, what did you understand the reference there to a conformance test to mean? What were you told at the meeting?

A. I cannot recall it being specifically discussed.

Q. You can't remember?

A. No.

Q. But I think it's clear, isn't it, from the words used

that this was a form of presentation of the results;

it didn't present any different result to what was in

Table 16?

A. Yes, that would be my understanding.

Q. The data, raw data, from Table 16 was simply brought

across without the subtotals and inserted for each of

A1 to A6?

A. Yes, it was categorized in a different manner.

Q. Now, it appears from that table that weightings were

applied; do you see that?

A. In Table 17?

Q. Yes.

A. Yes, the weightings have been clearly identified.

Q. What explanation were you given as to how those

weightings were applied to arrive at the grand total,

because again, this was all done in Copenhagen how

they went about it, the actual mechanics of arriving

at that grand total?

A. Again, I don't remember it being actually explained,

but my understanding on the basis of my recollection

at this stage, is the same answer provided earlier,

that the weightings would have been multiplied in the

same manner as we did in Copenhagen.

Q. Could you just expand on that a little, because I am

not clear as to precisely what you mean.

A. That in the case of the grades, the grades would be

changed to numbers. The numbers would be multiplied

by the appropriate weighting and the summation would take place.

Q. And would you then convert it back?

A. And then at the end you convert back to a grade.

Q. And do you recall that you were told that in the course of any of the meetings in which you discussed this table?

A. At this stage, the level of detail at the meeting, it would be hard to recall.

Q. Are you just assuming that that's the way it must have been done because of the impossibility of multiplying numerical weights by lettered grades?

A. Certainly I would accept that that is impossible.

Q. If you go over then to 5.4, that's the results based on a conversion of marks to points.

It says: "Also a weighting mechanism was agreed prior to the closing date for quantitative purposes as evident from both Table 17 and 18." I think that's a reference back, would you agree with me, to the weightings that were applied to Table 17?

A. Yes.

Q. It's intended to cover both the weightings in Table 17 and 18?

A. Yes.

Q. It says: "If the marks (A, B, C, D, and E) are converted to arabic points, (5, 4, 3, 2, 1) it could be calculated which applicants came out with the

highest score measured by points, although such a calculation distorts the idea of a qualitative evaluation.

"In order to check the results, this quantification of the results has been carried out."

And it sets out in tabular form the exercise described in that paragraph and that's Table 18.

A. Yes.

Q. Then over the page it says: "Illuminated by Table 18 the quantitative scoring of the applications generates the same ranking of the applications, thus also this method led to the following nomination of the 3 best applications:

A5

A3

A1

with the indicated ranking."

A. Yes.

Q. If you just go back over the page, and we see Table 18 there and the conversion of the grades to effectively points, although that conversion isn't shown, the application of the numerical weightings and the totalling of the scores?

A. Yes.

Q. And isn't that really the step that you were describing when we were referring to Table 17, that you convert the A, B, C, D and E to 5, 4, 3, 2, 1, and

you apply the numerical weights. You get your total and then you convert back?

A. Yes.

Q. So, in fact, that, as you saw it, would have been a step taken in the production of Table 17?

A. Yes.

Q. It's not as far as you were concerned, that wouldn't have been a separate conformance test, would it?

A. I don't think I would have used that language if it was just illustrating the results in a slightly different manner.

Q. But it is a step, wouldn't you agree with me, as you have just said, in the production of Table 17, as you described it?

A. It is a step, yes.

Q. Because I suppose you would agree with me, you couldn't see any other way of arriving at the grand totals in Table 17, otherwise, than by carrying out the exercise which is illustrated in Table 18 and converting back?

A. Yes. The issue that had to be dealt with was how to merge letters and numbers.

Q. Because it was exceedingly difficult, wasn't it?

A. I wouldn't describe it as exceedingly difficult. It's just a calculation that had to be carried out.

Q. Yes, but it's the only way you could have done it,

isn't it?

A. Yes. I think it is the way to do it, yes.

Q. As far as you saw it, it would have been impossible to provide numerical weightings to the lettered grades to arrive at those grand totals of B arrow down, C arrow down, B, B arrow down, B arrow up and C arrow up otherwise than by the operation that you described to me?

A. Yes, the mathematical operation.

Q. Now, you see the weights actually, before I get to the weights, can I just refer you to a reference in the paragraph above Table 18. You'll see there that Mr. Andersen, because this is his draft that he was proposing to the Project Group, has said that in his view, such a calculation distorts the idea of a qualitative evaluation.

A. Yes.

Q. And that's a fairly strong caveat, isn't it?

A. I don't necessarily agree. I think that the reference to the distortion is the fact that we had to use some sort of mathematical calculations and numbers, where the qualitative scoring didn't use numbers, but to bring together the effect of the grades and to produce a result, numeric calculations had to be carried out. And I think that is all he is trying to refer to there.

Q. Do you remember that being raised and discussed at any

meeting of the Project Group?

A. I recall discussions taking place in relation to the presentation of the results. I recall references being made to the fact that the weightings hadn't been clearly identified in, I think, Table 16. And there was an attempt by the Project Team to try and make this document as clear in that it could be, and for somebody reading, if they were to sit down and do the calculations and given the importance of section of paragraph 19, that the weightings should be clearly identified and visible to the reader.

Q. So you don't recall, therefore, any discussion of Mr. Andersen's caveat, although such a calculation distorts the idea of a qualitative evaluation?

A. No, I don't recall any discussion on that. I think it's a turn of phrase that was used.

Q. Just a turn of phrase?

A. Yes.

Q. A turn of phrase which the consultant, who you selected and which you were whose services you were utilising as an expert on these matters saw fit to include in the final summary and conclusions of this report. You saw it as just a phrase that he put in?

A. Yes, because all he was trying to do was merge and deal with the issue that there was letters and there were numbers and they had to be integrated in some fashion to produce a result.

Q. Isn't that the whole problem with this entire evaluation as it is presented, Mr. Ryan? That what you had was purely a result based on grades and that you wanted to apply the quantitative weightings to them as a group? Isn't that the problem?

A. I don't see it as a problem. It's just a methodology for delivering a result.

Q. It was certainly never anticipated in the evaluation model, was it?

A. I am I wouldn't necessarily agree with that. At some stage we knew we had weightings to apply. These weightings had to be applied. And if anybody had thought of it at that stage, how were the weightings going to be applied, you would need some numerical analysis.

Q. You certainly would, and that's why I presume you had the quantitative evaluation, so that you could apply numbers to numbers.

You see here

A. But that just to go back to that point, again that was within the limitation of getting a first cut on data, extracting data from folders and getting an understanding with a limited qualification that applied to the quantitative analysis.

Q. Yes, of course.

You see there below 5.4, below the heading, "The results based on a conversion of marks to points," it

says: "Also a weighting mechanism was agreed prior to the closing date for quantitative evaluation purposes

A. Sorry, can I

Q. Just below the heading 5.4, "The results based on a conversion of marks to points" sorry, on page 46.

A. Okay.

Q. It says: "Also a weighting mechanism was agreed prior to the closing date for quantitative purposes as is evident from both Table 17 and 18."

A. Yes.

Q. And that's referring to the 10, 10, 10, 10, 10, 18, 11, 7, 6, 5 and 3 weightings which were applied and shown in both tables 1 and 18, isn't that right?

A. Yes.

Q. Now, can I refer you now to Appendix 3, Annex 3 to this report Divider 35 it's the next Divider, and Annex 3 begins three pages on. It's the fourth page of that set of annexes. Do you see that?

A. What page in Annex 3?

Q. Page 1 of Annex 3.

A. Okay, the evaluation model.

Q. The evaluation model.

A. Okay.

Q. And Annex 3 effectively reproduced the evaluation model that you agreed on the 9th June. That's the evaluation model as per the draft evaluation model

that came before the group that was dated the 8th

June. You recall that?

A. Yes.

Q. Now, can I refer you to page 11 of that document.

A. Yes.

Q. Now, that, on page 11, that reproduces the weighting table that was shown on page 17 of the evaluation model. You see the weighting table that we looked at yesterday?

A. Yes.

Q. Now, you see the weights that are there, market penetration score 1, 3.75; market penetration score 2, 3.75; speed and extent of delve graphic coverage 7.5; if I take you down to number of cells, research capacity, we were looking at those yesterday, they are shown as 10 and 10. Number of network occurrences in the mobile field. That experience of applicant shown as 10. Then solvency and IRR each of them at 7.5, do you remember that?

A. Yes.

Q. And that accurately reproduced the table?

A. That was the same table, yes.

Q. And those were the weights that were approved by the Project Group?

A. They were the weights that were presented in that document and recorded, yes.

Q. Now, do you notice that those weights do not accord

with the weights that were applied in Table 17 and

18

A. Yes.

Q. If I take you back to page 45 and 46, do you see that?

A. Yes.

Q. And I can just point you to the differences: Firstly, market development is shown as 10, whereas according to this, it should have been 7.5. Financial key figures are shown as 10; and in the model as approved, they were each 7.5 amounting in total to 15. The split is different to the split that was agreed by the Project Group. Do you see that?

A. Yes, but correct me if I'm wrong here, or a misunderstanding, the table on page 11 of Annex 3 refers to the quantitative.

Q. That's correct.

A. Whereas the table contained in 16, 17 and 18 all refer to the qualitative.

Q. Well then, can you tell me why it states, on page 46 I have just drawn your attention to it but I'll bring you back to it a weighting mechanism was agreed prior to the closing date for quantitative purposes as is evident from both Table 17 and 18." Do you see that?

A. Yes.

Q. And I simply want to draw your attention to the fact that the weightings as shown in the table on page 11

in Annex 3 as accurately as are accurately reproduced from the evaluation model do not accord with the weights as shown in Table 17 and 18?

A. Yes, I accept that point.

Q. And that's what I want to draw your attention to for the moment.

Now, that's the evaluation report that was made available to you on the 9th October. Now, that issue in relation to the weights, which I just referred you to, the fact that they didn't appear to be consistent, seems to have been raised by Maev Nic Lochlainn prior to the meeting of the 9th, because she would have had access, presumably, to the report from the 4th or perhaps the 5th October, and she clearly went through it carefully and she raised a number of matters by way of fax with Mr. Andersen. And if you have Book 54 there, Mr. Ryan, I can refer you to it. It's Book 54 at Divider 9.

A. Sorry, Book 54.

Q. Divider 9. Do you have that?

A. Yes, I have that.

Q. You see that's a fax from Maev Nic Lochlainn to Michael Andersen. It's dated 6th October. It says:

"Michael,

"Two items for your attention.

"1. Please see qualitative scoring for technical aspect as recorded by John McQuaid which follows

(Annex A). This does not correspond with the technical aspect subtotal detail on page 44 of the draft evaluation report I believe it is a typo, marketing aspect scores have been duplicated by mistake."

I think that was a typographical error. It was subsequently corrected. We don't need to dwell on it.

"2. Please see attached list of criteria and weighting as agreed by the Project Group prior to the 4 August 1995 (Annex B).

"Can you please clarify how these relate to the weights as detailed on page 17/21 of the document of the 8th June 1995 which were to be the weights underlying the quantitative evaluation? (Page 17 is also attached at Annex C)." And you'll see at Annex C, she has attached the table which was, in fact, reproduced in Annex 3, save that the changes were made for tariffs and licence. Do you see that, 3.75, 3.75, 7.5 the only difference is that the tariffs were changed from 15 to 18, and the licence fee was reduced 14 to 11; do you see that?

A. Yes, yes.

Q. Then she says: "Page 17 is also attached at Annex 3 and to page 7 of the draft quantitative report (see section on weights at Annex D) e.g. OECD basket is weighted at 15.96%, does this correspond to 18% for competitive tariffing as agreed by the group?"

And she includes then one of the pages from the quantitative report of the 20th September of 1995. Do you see that?

A. Yes.

Q. And she is raising an issue in relation to the weightings which were applied. Do you see that?

A. Yes.

Q. Now, there doesn't appear to have been any written response to that fax. But it may have been aspects of it may have been discussed at the meeting on the 9th October. Do you recall Ms. Nic Lochlainn raising these documents or these documents being tabled at the meeting of the 9th October?

A. I do not recall them being discussed or tabled. Certainly the cover sheet I do not recall.

Q. The Annex A just related to the typographical errors and the total for the technical aspects. We referred to that yesterday in fact. You needn't concern yourself.

A. Yes, I recall that issue being raised. I mentioned it yesterday as well.

Q. Yes. But you don't recall these documents being tabled?

A. I don't recall these pages being tabled together; that the annexes are made up of documents that were used in other locations in the evaluation process and I remember seeing them at some stage, but to this

particular case in point, no.

Q. Can I refer you now to the minutes of the meeting of the 9th October, and we have two sets of minutes: We have the formal record of the meeting, which is at Book 42, Divider 120; and we have a more full record from Ms. Margaret O'Keeffe's notes which she took at the time and in the course of the meeting. That's Book 42, at Divider 120.

A. Yes, I have 120.

Q. And it records the report was dated the 17th October. And it lists the attendees. It says the Chairman opened the meeting by stressing the confidentiality of the evaluation report and the discussions re same. He also informed the group that the Minister had been informed of the progress of the evaluation procedure and of the ranking of the top 2 applicants. The Minister is disposed towards announcing the result of the competition quickly after the finalisation of the evaluation report."

Under the heading: "Discussions on the Evaluation Report.

"The draft evaluation report put forward by AMI was examined in detail. A range of suggestions in relation to the manner of presentation of the results were put forward by the group and AMI undertook to incorporate these in the second draft. Agreed amendments included:

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

" an expansion generally of the justification for the award of marks to the various indicators

" revision of the financial conformance appendix to a more explanatory format

" inclusion of an executive summary and an annex explaining some of the terminology

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

"AMI also indicated that the supplementary analysis in relation to interconnection and tariffs which had yet to be provided did not suggest that it would be necessary to revise the award of marks.

"Future Work Programme:

"It was agreed that AMI would provide the first draft of parts of the report which had not been included in the first draft of the overall report for comments before submission of a complete second draft the following week."

And that was the formal report of that meeting which was drawn up on the 17th October.

Now, if you go over the page to 121, we have the verbatim note of the meeting prepared by Margaret O'Keeffe, and she actually corrected some errors that

had been made in this in the course of her evidence on the 28th May. And I wonder, do you have the corrected version in your book? I think they were all circulated and they were certainly inserted in our books, but I am wondering is the corrected version is in your book?

A. The suppose the obvious question is how do I know the corrected version?

Q. Because in bracket below the title it says, "corrected by Ms. O'Keeffe in evidence on the 28th May 2003".

A. No.

(Document handed to witness.)

Q. Now, it dealt with confidentiality and the agenda, and I just want to bring you over to the second page, if you wouldn't mind, to deal with some of the more specific matters that were discussed. You can see there that there is a heading, "Quantitative Evaluation".

"View is quantitative evaluation should not be performed separately but are taken into account in main report.

"Already agreed that international roaming should not be used.

"Hard to score the block out and drop-out rates.

"Tariffs well-defined basket of tariffs metering billing should be a score indication.

"Data not reliable for comparison purposes.

"To be left over for discussion.

"If included it will give a false confidence in some figures."

That suggests, does it not, there was a discussion at that stage about the results of the quantitative evaluation?

A. Yes.

Q. And there was discussion as to whether it should or should not be included?

A. There was a discussion how to deal with the limitations that were beginning to apply to the quantitative evaluation.

Q. And it says there, "To be left over for discussion"; would that indicate to you that no decision was made at that juncture of the meeting? It says:

"Data not reliable.

"To be left over for discussion.

"If included, it will give a false confidence in some figures."

A. I am not sure from reading that whether that could be interpreted as to be left over for discussion at a later stage in that meeting or at

Q. I think it probably was a later stage of that meeting.

I am just drawing to your attention the fact that there seems to have been a discussion there, but no decision appears to have been taken at that stage.

A. Okay.

Q. Would you agree?

A. It appears so, yes. I don't disagree.

Q. Then "M. Brennan:

"Would proceed in the way Andersen suggests and would strengthen the report, the annex on methodology should cover this and become main report."

Then Mr. McMahon had some comments on the overall presentation.

Then "Mr. McQuaid: Page 44 correct, okay evaluation model appendix. Quantitative analysis arrow up, report based on qualitative analysis.

Concluding remarks (page 44). Are tables 16, 17 and 18 of equal importance."

And it looks there as if Mr. McQuaid was dealing with the correction to start with on page 44, and then he went on to raise a query about the importance, relative importance, of Table 16, 17 and 18. Would you agree?

A. Yes.

Q. And over the page, there is a heading, "Weighting," you'll see there it says: "Table 17 different from agreed weighting."

A. Okay.

Q. So it seems that at least somebody in the Project Group looking at this report picked up that the 10, 10, 10 split was different from what had been agreed; would you accept that?

A. Yes, that is possible, yes.

Q. There doesn't appear to have been any further detailed discussion of weighting in the course of this meeting.

Mr. McQuaid, further on, on page 6, he queries that and suggests that the weighting in the tables in Section 3 should be shown because people would then be able to verify the results as shown. There doesn't appear to have been any further discussion of the weightings of Table 17. Do you see that?

A. Yes.

Q. Then below that, if we skip over all the presentation.

"Michael Andersen: 16, 17, 18 tables reflect discussions in Copenhagen." Of course that was your understanding that they did reflect discussions, wasn't it?

A. Yes.

Q. "If different weighting used to prove you get the same result with different approach."

"Paragraph 19 was regrouped to reflect that.

Have to apply numerative approach.

"3 tables give a different answer. MB said further analysis would be required and seek to re-examine."

And then below that, Billy Riordan: "Methodology stitched back closer."

And:

"Fintan Towey.

"Should we not include quantitative analysis up front?"

Quantitative analysis to simplistic to give results.

"1. The scoring.

"2. Would like to stick to the evaluation model.

"Should quantitative analysis be shown. Would have to open discussion again. Quantitative evaluation unfair and impossible. Figure impossible to compare.

"Chain of events, evaluation model 80% deals with quantitative evaluation.

"Results of quantitative evaluation not reliable.

"Quantitative analysis became less and less.

"Should be explained in methodology report and wording is important."

Presumably, this is referring to what became Annex 2 to the final report the actual methodology that you used?

A. Yes, okay.

Q. Then: "B Riordan: Are Andersen happy to go forward with the position as it is now?

"They are sufficiently happy.

"Aim is to conduct the evaluation in such a way that 10 more people would come up with the same results.

"Because of uncertainty cannot trust quantitative.

"Quantitative:

"Rank is probably different now (Annex D)."

Wouldn't that suggest to you that Annex 2 to Maev Nic Lochlainn's fax may have been referred to at that stage, or was referred to at that stage of the

meeting?

A. It's possible, yes.

Q. "50% of the weighting is lost due to scoring that can not be used and quantitative analysis has been undermined.

"It is not necessary to publish the original."

There seems to have been quite a lengthy exchange there in relation to the inclusion, or otherwise, of the results of the quantitative evaluation as a separate evaluation?

A. Yes.

Q. There seems to have been quite a lively debate on the issue?

A. Yes.

Q. Would I be right in thinking that there appeared to be two schools of thought: One school of thought being that you should show the result of the quantitative evaluation and explain why you weren't relying on it; and the other school of thought being that you shouldn't show it?

A. Yes, both of those opinions were voiced.

Q. I think I am right in thinking from your memorandum, that you would have been in favour of actually showing the results of the quantitative evaluation?

A. Yes, I would have been in favour of showing as much as possible.

Q. This is, I suppose, because it was done and you should

show it?

A. Yes.

Q. And explain what the difficulties were with it?

A. Yes.

Q. Were you convinced by the argument that the quantitative analysis results should not be included as a separate result in the report?

A. Yes, I was, because of the limitations, as I have mentioned earlier; the whole thrust and objective of what was trying to be achieved in the quantitative analysis just fell by the wayside and the attempt to achieve a coherent result failed.

Q. What was the difficulty in stating that in the report?

A. My understanding is that there is an explanation in the report of the various indicators that were attempted to quantify and that the limitations that applied to those and, in fact, if we take block out and drop-out indicators, we were not able to do anything with it, and in fact, my recollection is we carried out a supplementary analysis to try and deal with this issue, and again, it also failed to produce a proper result.

Q. But the question I asked you was: What was the difficulty in showing the result of the quantitative evaluation and including that explanation? I am not criticising you. I am just in difficulty here myself,

because I don't quite understand what the problem was.

A. The difficulty was so fundamental in trying to extract the data from the bids in some of these indicators in

the quantitative, that I would have had difficulty

Q. Mr. Ryan, please, I understand exactly what the

difficulties were that you were encountering. I

understand exactly you have explained them what

the problems are with the tariffs and the roaming and

the block-out and the drop-out. What I am asking you

is and it appears that it would have been your view

and your preference what was the difficulty in

explaining the limitations in the quantitative

evaluation while showing the result in the report?

Why was the results of the quantitative evaluation not

shown and explained in the way that you have

suggested?

A. I didn't think that it was appropriate to produce any

results.

Q. Wasn't the main difficulty in all of it, Mr. Ryan,

that the result of the quantitative, when shown,

didn't put Esat Digifone in first place. It didn't

put Esat Digifone in second place. It put Esat

Digifone in third place?

A. Absolutely not. That was not an issue at all.

Q. If that wasn't a problem, then why, on the 21st

September, when Mr. Andersen raised this issue, did he

suggest that the Project Group leave over a decision

until the results were available? Why should the treatment of the results of the quantitative evaluation be dependent on what the results were?

A. Maybe if you could show me the document

Q. I showed it to you yesterday. It's Book 42 it's the one we discussed yesterday Book 42 it's the one we are looking at at the moment.

A. Which tab?

Q. Book 42, Divider 111, the fax I referred you to yesterday afternoon, 21st September, 1995 from Mr. Andersen to Mr. Brennan and Mr. Towey.

A. I have 111. Where exactly?

Q. If you go to the final page, page 4, "Questions to the Department," if you go to the fourth indent, fourth bullet point, "How do we integrate the quantitative evaluation in the report? (We prefer to leave this question unanswered until we have the final results)?"

A. Yes, in terms of the final results, my recollection was that supplementary analysis was going to be carried out again, I come back as an example to an area which I was very familiar with, was the drop-out and those parameters and that supplementary analysis was carried out at a very late stage, so there was a continuing effort to try and come to grips and produce as much information in a coherent manner as possible, and even at the last stage, that failed.

Q. And you're saying that's why you were waiting until

the results were available?

A. They were results that were still rampant and it was work that was still to be done as far as I remember.

Q. And when was that work to be done?

A. It was done towards the end what date is this the 21st September my recollection, it would have been done after the 21st September.

Q. And when was it completed?

A. I can't recall the exact date.

Q. You can't recall?

A. No.

Q. And it was blocking and drop-out it constituted, I think, 5% of the weightings on the quantitative, isn't that right?

A. But this was typical, and ones which I would have been particularly familiar with.

Q. So that was the meeting then of the 9th October?

A. That was the meeting

Q. Of Monday, the 9th October. Now, I think it's clear from that that there was still there was a lot of confusion, wasn't there, within the Project Group as to the quantitative, the qualitative, the weightings, what should or shouldn't be included?

A. I wouldn't describe it as confusion. I would describe it as a discussion of how the evaluation had developed.

Q. Well, would you agree with me, that there was clearly

a need on the part of the members of the Project Group for explanations?

A. Yes, there was a discussion.

Q. On matters on which they were not clear?

A. There was a discussion taking place, yes.

Q. Now, that was the week of Monday the 9th, commencing Monday, the 9th October, and what you were then expecting was a second draft report, isn't that right?

A. Yes.

Q. And I think that second draft report was dated the 17th September, which was the Tuesday of the following week. I think it was received in the Department on Wednesday, the 18th December. Excuse me, Wednesday the 18th September?

A. September, yeah.

Q. Do you recall during that week, that would have been the week commencing Monday the 16th September, did you receive any information to anyone from any party as to what the Minister's intentions or desires were with regard to bringing this decision to Government?

A. My only recollection is as provided in, I think, in the minutes of that meeting. I don't have them in front of me. I am assuming it's that meeting.

Q. Yeah, the minutes of the 9th October, but I am just wondering in the following the meeting of the 9th October, between the 9th October, and the 23rd October, when you next discussed the evaluation

report, do you recall receiving any information from any source regarding the Minister's intentions about bringing this matter to Government?

A. This is between the meetings?

Q. Yes, between the meetings.

A. No.

Q. Mr. O'Callaghan was informed by Mr. Towey on the Tuesday, the 17th September, the Minister wanted to bring the matter to Government on the 24th sorry, October I am mixing my months up, the 24th October, which was the Tuesday after your meeting of the 23rd, did you know of anything of that nature?

A. No, I wasn't aware of the telephone call to Mr. O'Callaghan and certainly Fintan Towey did not telephone me in this regard.

Q. And Mr. McQuaid had no information for you?

A. No, and I believe he would have clearly discussed it with me. Our offices were adjacent to one another.

Q. Now, Mr. O'Callaghan received the draft report of the 17th on the Friday of the week it arrived. That's the 20th. Do you recall at all whether you, in the technical division, received a copy of that report on the Friday or at any time in advance of the meeting of the 23rd October?

A. At this stage, I could not recall exactly when I got the report.

Q. We certainly haven't been able to find on the

technical division files any copy of the draft report with annotations on them, so perhaps it's the case that you didn't receive it until the morning of the meeting?

A. It is possible, but I cannot help you in that regard.

Q. You don't remember?

A. I don't remember, no.

Q. Now, could I just refer you, firstly, to the

draft a plain copy of the draft of the 18th

October. That's at Divider 46 of Book 46.

A. 46 of 46?

Q. Yes.

A. Yes.

Q. I just want to draw your attention briefly to some of the changes that were made.

If you go to page 6, first of all, which is part of the introductory chapter. It's 2.4, the marking and nomination of the best application, do you see that?

A. Yes.

Q. On page 6. If I take you to the second-last paragraph, and this was a new insertion into the report. It says: "A draft report discussed on the 9th October has, following the incorporation of comments from the PTGSM culminated in this final report.

"As unanimous support was given by the PTGSM to the results of the evaluation, Andersen Management

International was requested to submit this final report. It was also decided to present the quantitative and qualitative parts of the evaluation in an integrated fashion in accordance with the agreed procedures (see Appendix 2 and 3)."

Could I just ask you, first of all, what does that term "Agreed procedures" refer to?

A. I have to admit I was asking myself the same question.

At the moment

Q. You can't be of assistance?

A. I can't be of assistance unless maybe I look at appendices 2 and 3.

Q. We can look at those later. Appendix 3 is simply the evaluation model and Appendix 2 sets out the methodology that you actually followed and we'll look at those in due course.

Just ahead of that you see the middle sentence, "As unanimous support was given by the PTGSM to the results of the evaluation, Andersen Management International was requested to submit this final report." Now, that was deleted from the final version of this report, Mr. Ryan, because the members of the Project Group were not in agreement with that statement?

A. If you say so. I can't remember that there was a large debate about it.

Q. I see. Well that's certainly the evidence which the

Tribunal has heard.

A. Okay, I accept that.

Q. It runs counter does it not, to your suggestion that there was agreement amongst the Project Group on the 9th October with the result as proposed in the draft report?

A. Well, my recollection is that the results were presented in a tabular form in respect of the various tables. In the course of the meeting, they would have been examined and at no stage was it did anybody raise any objections or explain that there were any difficulties. In the technical case we have just gone through, there was a typing error which we brought the attention of the Project Team and the consultants, which was corrected. The other representatives of the various sub-groups, who had done work in preparing that those results, were there, and there was no disagreement or question of the results as presented.

Q. Is that really your recollection, Mr. Ryan? Is that really your recollection?

A. Yes.

Q. Are you quite certain?

A. As certain as I can be seven and a half years later, yes.

Q. Because it is at variance with what the Tribunal has heard from other witnesses: From Mr. McMahon, from Mr. O'Callaghan. Mr. Buggy and Mr. Riordan also

confirmed that they were not in agreement to this phrase being included in this report, "Unanimous support". Mr. McMahon went so far as to send a note to Mr. O'Callaghan to seek to change the minutes of the 9th October to record that they did not support the result on that date. And that's why I am giving you an opportunity to indicate whether that really is your clear recollection.

A. My recollection in terms of Mr. McMahon, Mr. McMahon did not give me any note or I do not remember him circulating any note to any other members of the Project Team. I do recall Mr. McMahon one of the difficulties I recall in terms of Mr. McMahon was that he had not been at any of the Project Group meetings in Copenhagen. And I know he had a number of questions where he was trying to understand, within his own mind, some of the results. As I recall, he did not raise any objections to any of the results at that meeting.

Q. At which meeting?

A. At the meeting of the the first draft evaluation report.

Q. You see, Mr. McMahon's evidence, Mr. Ryan

A. Sorry?

Q. Mr. McMahon's evidence, sworn evidence, was that he did not subscribe to this result until the 11th hour, on the night of the 24th, the evening of the 24th,

when no further time was available to the Project Group and he agreed that he would go along with it provided certain amendments were made to the report; that he expected to receive a revised draft report so that he could consider it further, and he never did.

And that was his evidence.

A. I am not disagreeing with his evidence. All I am saying is I recall, at that last meeting where we did have a long meeting, as I recall, it went on quite late in the afternoon in the evening in fact, where we had gone through the report page by page. And at that stage my understanding was his comments related purely to the presentational aspects of the report.

Q. Oh, I think they did by then. I think you are probably right in that.

A. And the focus from those meetings, as we moved forward, the results were presented on the 9th. I do not recall any attempt to change those results.

Q. Now, can I refer you to appendix 2 to this draft report. I'll refer you to page 7 of appendix 2 sorry, appendix 2 is at the next Divider, Divider 47. And the heading at 2.5 is "The Marking of the Applications and the Nomination of the Best Application." Do you see that?

A. I am sorry, you're at

Q. Appendix 2. I am very sorry the next Divider, Divider 47.

A. Yes.

Q. And you'll see there is appendix the first page is just a cover page. Then appendix 1 is Table of Appendices and the third page is headed "Appendix 2: The methodology applied." Do you see that?

A. Yes.

Q. Now, if I could just take you on to page 7 of that appendix. You see it's headed "The marking of the applications and the nomination of the best application." Do you see that?

A. Yes.

Q. And that set out how the Project Group went about nominating the best application. And that's the Project Group's record of what they did.

Now, can I take you to the bottom of that page. You see the last paragraph it says, "The report aims at nominating and ranking the 3 best applications. This has finally been achieved through:

"1. Qualitative award of marks to the six applications with respect to the 56 indicators outlined at Chapter 4 of the main report.

"2. Qualitative assessment of applications according to the marketing, technical, management and financial aspects." Do you see that?

A. Yes.

Q. "3. Validation and finalisation of the results through:

" regrouping of the criteria to more directly reflect the selection criteria outlined at paragraph 19 of the report.

" application of the qualitative marks to the weightings agreed prior to the close of the competition for the quantitative model.

" analysis of sensitivities, risks and credibility issues focusing in particular on the three best applications.

" conversion of marks to points as a final check."

Do you see that?

A. Yes.

Q. Doesn't that state clearly that you applied the qualitative marks to the weightings agreed prior to the close of the competition for the quantitative model?

A. Correct, yes.

Q. Now, can I take you on then to and I should say that that part of Appendix 2 remained unaltered in the final version of the report.

Can I take you on then to Appendix 3, and again directly to page 10, and you recall Appendix 3 was the Appendix which purported to reproduce the evaluation model agreed by the Project Group on the 9th June.

A. Yes.

Q. Now, do you see the table there?

A. Yes, page 10.

Q. Do you see the changes that have been made to it?

I'll take you through them. Market penetration score 1 as approved on the 9th June was 3.75. And it's shown in the Appendix in the previous report was 3.75. That became 5. Market penetration score 2 was changed from 3.75 to 5. Speed and extent of demographical coverage was changed from 7.5 to 7. And if you go down to the last two entries, solvency and IRR, each of those was changed from 7.5 to 5. Do you see that?

A. Yes, I see changes, yes.

Q. Can you throw any light on, or can you be of any assistance to the Tribunal as to when that was done and why it was done?

A. Well, first of all, I just want to say that I am at a slight difficulty in that these indicators relate to sub-groups that I did not participate in.

Q. That's nothing to do with it, Mr. Ryan. Sub-groups have nothing to do with these indicators. I'll take you back again, if you want me to, to the evaluation model that we discussed at length yesterday, and it was agreed by the Project Group on the 9th June. This Appendix purports to reproduce the evaluation model. And it purports to set out, in tabular form, what was on, I think, page 17 that was changed as between the draft report of the 3rd October and the draft report of the 18th October.

A. Yes.

Q. And what I'm asking you is: Can you assist the Tribunal as all as to when that was done or why it was done? Because I'll tell you why. And it's a matter of some concern, I think, probably to you, as much as anyone else. That gives the impression that the weightings applied to what were Tables 17 and 18 were in accordance with these weights. And that's why I am asking you, can you be of any assistance?

A. I think that was a long question. Again, if I could come back to what I said about the sub-groups. I want to draw a clear distinction, certainly in my mind, between the quantitative and qualitative.

Q. Yes.

A. In the first of all, in terms of weightings, the mantra for the weightings was set by section 19 sorry, paragraph 19. Going into the competition, everything had to fall within that. In the quantitative model, as we move forward in the early part of the process, weights were recorded which, from what you showed to me yesterday, there appears to be some differences in the weights recorded at an early stage at indicator level this is at indicator level as opposed to what is recorded here.

Q. That's right.

A. If I understand the process correctly in terms of time, the sub-groups that handled the quantitative sorry, the qualitative evaluation used

weightings in the market development area, and this was an area which I did not participate in and that's why I think this is relevant. They appear to have used 10, 10, 10, and what appears to have happened here is that in the quantitative model, the weightings have been aligned with the qualitative weightings that have been used that were used by that particular sub-group in Copenhagen.

Q. Are you saying that somebody altered the historical record of what was agreed to make it coincide with the weightings that were applied?

A. I am not altering a historical record is not what

Q. Let me just read it to you here, Mr. Ryan, so there is no confusion, because I don't want you to be confused.

If you go back to the previous page, page

A. Sorry, which page are we on.

Q. Page 9 of Appendix 3. In fact, why don't we first look again at the model that you approved, because I don't want to confuse you in any way. If you go back to Book 54, and if you go to Divider 2. And let me take you to page 16 of that.

It says: "4. Vote-casting and Weight Matrix." Do you see that?

A. Yes.

Q. It says: "The following table shows how the votes will be given for each of the indicators in the

quantitative evaluation." Do you see that?

A. Yes.

Q. Nothing to do with qualitative, is it?

A. No, that's quantitative, correct.

Q. And if you go over the page, you see the table there.

3.75, 3.75, 7.5, and the two last ones, 7.5 and 7.5.

Do you see that?

A. Yes.

Q. Now, that is what was reproduced in Appendix 3 of the first draft of the report that I referred you to. Do you need me to refer you to it again so that you can be clear?

A. Please.

Q. Yes, I will of course. If you go to Divider 35 of the same Book 46

A. Sorry, 35 of which book?

Q. Book 46. If you go to Annex 3.

A. Yes.

Q. It's headed: "3.4: Vote-casting and Weight Matrix.

"The following table shows how the votes will be given for each of the indicators in the quantitative evaluation."

A. Yes.

Q. And if you go over the page, you see the table there, which is identical to the table on page 17 of the evaluation model that the Project Group adopted. Do you see that?

A. Yes.

Q. And you see below that there is a note "Credibility of business plan," and that note also reproduces the note that was below the table in the evaluation model?

A. Okay.

Q. Do you see that, do you?

A. Yes.

Q. And that accurately reproduces what was in the evaluation model, would you agree with that?

A. Yes.

Q. Now, can I take you back to Appendix 3 in the second draft report of the 18th October, and that begins on page 9. "3.4: Vote-casting and Weight Matrix

A. Sorry, page 9 of, which folder?

Q. Of Appendix 3.

A. Which Divider?

Q. It's Divider 47. Do you see that?

A. Yes.

Q. Page 9, the bottom of the page: "3.4: Vote-casting and Weight Matrix.

"The following tables show how the votes will be given for each of the indicators in the quantitative evaluation." Do you see that?

A. Yes.

Q. Over the page we have the same table and we have the same note, and you see the five changes that have been made in the table, Mr. Ryan?

A. Yes, I see changes, yes.

Q. Do you see the five changes? 3.75 has been changed to 5. 3.75 has been changed to 5. 7.5 has been changed to 7. 7.5 has been changed to 5. 7.5 has been changed to 5.

A. Yes.

Q. Now, this table relates to, solely to the quantitative evaluation weightings, isn't that right?

A. Solely to the quantitative, yes.

Q. And hasn't that been changed, Mr. Ryan?

A. It appears to have changed, yes.

Q. That's all I was asking you, Mr. Ryan. It appears to have been changed?

A. Yes.

Q. And what I am asking you is, can you throw any light on when that was done or why it was done?

A. I think this issue relates to the supplementary evidence that I provided yesterday, where I recall, as I said, one of the accountants drawing an explanation, or drawing our attention to changes in weightings. And while before that, probably each of the members of the Project Team were looking after their own sub-group areas, for want of a better word. I recall looking up these pages and seeing this difference, particularly in the market penetration score 1 was the first one that was mentioned, and that appears to have been changed from 3.75 to 5. And after that an

explanation was given by Fintan Towey, and beyond that, the level of detail I just cannot remember.

All I remember was that there wasn't much debate.

Some explanation was provided as to the or some justification for the change of weights, but as I keep coming back to on the sub-groups, my main focus was on the technical areas and the weightings that applied to the technical areas and not having spent time in Copenhagen, particularly in the number of days and hours that would have been involved in those sub-groups, I would be a little bit slower at coming up to speed with any changes in weightings that would have occurred in those areas.

Q. So are you saying to me then, that when somebody raised this in the course of a Project Group, that there were differences in the weightings applied

A. Yes, I recall at some stage when we got the draft report that the accountants

Q. That you checked whatever document was in front of you, did you?

A. Yes, I had the draft evaluation report in front of me at that stage.

Q. And that you checked that and you saw that there were changes?

A. I recall them it was highlighted as a change. And I recall looking at these market penetration scores, and after that, my the explanation in terms of what

Fintan Towey said and the conversation that

immediately followed just doesn't strike me.

Q. Can I ask you we'll come back to that discuss it in detail, but can I ask you that when you say you looked at the report, were you looking, do you recall, at this table in Appendix 3 or were you looking at Table 17 and Table 18?

A. I think it was the comparison between 17 and 18 and this table, because we had that report; it was the one report we were looking at.

Q. You see, Mr. Ryan, from the annotations on Mr. Riordan's report, it appears that he certainly was querying what the weights were, and those annotations are on his copy of the report of the 18th October; the second draft report this report that we are looking at at the moment. Are you with me?

A. Right, okay.

Q. Now, Mr. Riordan can't remember whether he raised this himself or whether this was something that somebody else raised and he just took it down. But his recollection is that he made these annotations on the report of the 18th October at the meeting of the 23rd October. Are you with me?

A. Okay. So it was the later meeting.

Q. I am simply referring you to the fact that it was the 23rd October. That's Mr. Riordan's recollection, so far as it goes.

A. Okay.

Q. Now, the Appendix of the report of the 18th October, which is a report on which Mr. Riordan was working and making his annotations, didn't show any difference between the weights which were applied to Table 17 and 18 and the weights in the table shown on page 10 of the Appendix, because they had already been changed to conform with the weightings in Table 17 and 18.

A. Yes.

Q. So that would seem to suggest that you couldn't have checked this table and seen a difference, because the report you were considering was a report of the 18th October, isn't that right?

A. It was the report first of all, what I want to say is I can't remember which one of the accountants. It was just one of the accountants that brought this up. And secondly, I cannot recall exactly which meeting it took place in.

Q. And are you suggesting to me that Mr. Fintan Towey, in his explanation, explained and stated that they had decided to change, after the fact, the weightings shown in this table?

A. I can't offer any explanation as to what Fintan Towey said.

Q. You don't know what he said?

A. I can't remember at this stage. All I remember was an explanation was provided.

Q. And you can throw no light whatsoever on when this was done or why it was done; isn't that your evidence?

A. That is correct.

Q. Now, can I refer you to the report on which Mr. Riordan made his annotations. It's Book 56. And it's Divider 5 of Book 56.

A. Yes, October 18th.

Q. Yes, do you see that?

A. Yes.

Q. And this is the copy of the report on which Mr. Riordan made his notes. So this report can only have been discussed, and these notes, on the basis of his evidence, can only have been made in the course of the meeting of the 23rd, Monday the 23rd, because this report wasn't available for the earlier meeting, Mr. Ryan, isn't that right?

A. Yeah.

Q. Are you with me?

A. Yes, I am with you.

Q. Can I just refer you briefly to page 6 again. You see Mr. Riordan has put a line through, "As unanimous support was given by the PTGSM to the result of the evaluation. Andersen Management International was requested to submit this final report." Do you see there is a line through that?

A. Yes.

Q. And if I just take you on then to page 14, you'll see

the table there showing the subtotal for marketing

aspects, do you see that?

A. Yes.

Q. Now, if I can just refer you briefly to the annotation

that appears that Mr. Riordan made. Do you see on the

left beside, "Market development, coverage, tariffs

and international roaming plan," he appears to have

made an entry in respect of the numerical weightings?

A. Yes.

Q. You see 7.5, coverage 7.5, tariffs 18, international

roaming plan, 7.5." Do you see that?

A. Yes.

Q. And they were the agreed weights as shown in the at

indicator level in the evaluation model adopted by the

Project Group on the 9th June?

A. Yes.

Q. And what he seems to have done there is to

redistribute those weights on a base of 100%. So for

market development it's 18.5, coverage is 18.5,

tariffs is 44.4, and international roaming plan is, I

think also, 18.5. Do you see that?

A. Yes.

Q. So that they'd be on a base of 100 so that he could

multiply them out?

A. Yes. They were the relative weightings obviously

chosen in that sub-group, yes.

Q. No, they were the weightings in the quantitative

model?

A. Yes, this is the quantitative.

Q. You see he has carried out an exercise there again of converting As, Bs, Cs, Ds and Es, to 1s, 2s, 3s, 4s, and 5s. And he has come up with a total, do you see that, at the bottom? He has 1.77 and 1.565; do you see that?

A. Yes.

Q. Do you remember that exercise being discussed in the course of the meeting on the 23rd October?

A. No.

Q. Do you see it reverses the result, but you have no recollection of it?

A. I have no recollection it reverses the result as I understand it in respect of the marketing aspects only.

Q. Yes.

A. Yes.

Q. But you have no recollection of that being discussed at all?

A. I have no recollection of this being discussed, no.

Q. Now, if you go to page 48, you'll see that Mr. Riordan has put a line through Table 16; do you see that?

A. Yes, I see a line through it, yes.

Q. Now, if you go on to page in fact, I think Table 16 was ultimately taken out of the summary of the results and was put back into the Section 3 which dealt with

the actual commentary on the evaluation process, but

we'll look at that.

If you go on to page 50.

A. Yes.

Q. And you see at the top of the page there, Mr. Riordan

has notes: "Not agreed by Project Group". Do you see

that on the left with an arrow down to

"Weight" do you see that?

A. Okay.

Q. And do you see on the right there he has: "No reason

why the 10s should be split in this way."

A. Yes, I see that.

Q. If you go over the page, to Table 18, you see he has

carried out the same exercise, but applying the

weights that were agreed, the 7.5 and 15 and 10 rather

than 10, 10, 10 split, do you see that there?

A. Yes.

Q. And you see applying that exercise numerically on

Table 18, he has a result: 82% for A3, 86.4% for A5,

do you see that?

A. Yes.

Q. And he has converted those below into two B ups, do

you see that?

A. Yes.

Q. Do you remember that exercise being carried out at the

Project Group on the 23rd?

A. No, I do not.

Q. You don't?

A. And I am just trying to go back to Table 17, I just see the weightings there agreed: "Not agreed by Project Group."

Q. "Not agreed by Project Group." On the right he has: "No reason why the 10s should be split in this way."

A. Correct me if I'm wrong, this is the qualitative results, and my understanding is that the qualitative results would the qualitative weightings would have been agreed at the Project Group meetings in Copenhagen in relation to the qualitative.

Q. You see that's not what the report says. The report says that these are the quantitative weights being applied at dimension and indicator level. If I take you again to page 50 of the same report.

A. Page?

Q. Page 50 of the report we're looking at at the moment.

You see below the heading: "The results based on a conversion of marks to points."

"The weighting mechanism was agreed prior to the closing date for quantitative purpose as evident from both Table 17 and 18." You see, the report says that you applied the quantitative weightings?

A. But the confusion and maybe this is a lack of understanding on my part here is that this is the qualitative and in the qualitative, that sub-group would have gone in with the 30 being relating to

that section from paragraph 19. And there is weightings there, 10, 10, 10 which may have been selected by that Project Group, I don't know. That would have been Table 17. And then on Table 18, there is references to 7.5, 15 and 10, which are figures that come to mind as being derived from the quantitative.

Q. Mr. Ryan, you told me yesterday you couldn't remember whether you applied any numerical indicators in the course of the qualitative. You said you thought you might have, but you couldn't remember.

A. That I couldn't remember, sorry

Q. You said you couldn't remember applying indicators applying weightings at indicator level.

A. At indicator level, yes.

Q. You said you couldn't remember doing it.

A. Yes, that's correct.

Q. Now, what they were weighting here was the dimensions, do you see that?

A. Yes, that's a higher level.

Q. And the criteria were being weighted here?

A. Yes.

Q. This was not part of the qualitative evaluation. If you go back to Table 16, Table 16 is the result of the qualitative evaluation, isn't it?

A. Table 16, 17 and 18 are results

Q. Just bear with me for the moment because I can only go

on what the report says, and the report says that in Table 17 and 18, that you applied the quantitative weightings. Now, if we go to Table 16 first, nobody is clear what weightings were applied to achieve those subtotals. Mr. McQuaid was clear enough, but no other witness has been able to assist the Tribunal as what weightings were used to come up with those subtotals.

A. My understanding is that the same weightings as is recorded in 17 were used in Table 16, but they just weren't illustrated.

Q. Why weren't they shown if they were used? And why doesn't the report say they were used if they were used?

A. I don't know.

Q. It's enormously confusing, isn't it?

A. There is an element of confusion.

Q. Let me just take you again to what your report says.

Your report says that a weighting mechanism was agreed prior to the closing date for quantitative purposes as evident from both Table 17 and 18," and Annex 2 to the same report, Appendix 2 says that you applied the quantitative weightings to the qualitative marks.

I'll take you to Annex 2 again if you want me to remind you of it. Page 7 of Appendix 2. It's at Divider 6 of this report.

A. Divider 6

Q. Of this sorry, Divider 6 of this book. If you go

to Appendix 2, page 7. It says: "The report aims at nominating and ranking the 3 best applications, this has finally been achieved through:

"1. Qualitative award of marks to the six applications with respect to the 56 indicators.

"2. Qualitative assessment of applications according to the marketing, technical, management and financial aspects.

"3. Validation and finalisation of the results through:

" regrouping of the criteria to more directly reflect the selection criteria outlined at paragraph 19 of the report.

" application of the qualitative marks to the weightings agreed prior to the close of the competition for the quantitative model."

A. For the quantitative, yes. But is Table 16 correct me if I am wrong, my understanding is Table 16 and 17 and 18 are all referring to the qualitative model.

Q. Well, the qualitative model never provided for Table 17 and 18. It looks as if Table 17 and 18 were some form of mongrel that were agreed

A. Sorry, some part of

Q. Some form of mongrel table that were agreed by Mr. Brennan and Mr. Towey with Mr. Andersen in Copenhagen, because they are certainly not in the evaluation model that was agreed by the Project Group. What's in the

evaluation approved by the Project Group is the matrix which then becomes Table 16.

All I am trying to get at here with you is your recollection of what explanation was given by you, and whether you have any recollection of an exercise of the type which is recorded in Mr. Riordan's annotations being carried out at Project Group.

A. I think to answer that question in short, I have no recollection of the figures as recorded here in this is Billy Riordan's document

Q. Yes.

A. being presented to us, and to my mind the figures that he uses there, I have difficulty in understanding.

Q. Now

A. what he is doing here.

Q. Can I come back to your recollection of what was discussed in terms of weightings which, as you say, must have been at the meeting of the 23rd, because this draft report on which the annotations are made, wasn't available till the 23rd.

Now, can you recall, as best you can, what you say happened?

A. In respect of the comments I have made already, is that what you want me to go over?

Q. No. As you indicated in your supplemental memorandum, your recollection of one of the financial people

raising a

A. My recollection is that at some stage in the process, we had certainly I had a draft evaluation report in front of me, and that one of the accountants drew the attention to the group of differences in weightings between the quantitative and qualitative. At the time I was this was brought to our attention, I was studying the section that I was most familiar with the technical. I immediately changed the pages to what one of the accountants was referring to, and the weightings that were being discussed were relevant to the marketing sub-group people. And it certainly had nothing to do with the technical, and at that stage, I had I just tried to retain an overview and understand what the issue was, and all I can recall is that an explanation was provided by Fintan Towey in respect of these comments and on the change in weightings that was brought up by one of the accountants. I have no further recollection.

Q. You say it was in relation to the marketing sub-groups?

A. Well, the marketing I remember opening up the page, and on the quantitative

Q. Would it be page 14 that you were referring to? If I could just refer you to page 14 of Mr. Riordan's annotated report of the 18th, because that's the marketing

A. Let me find page 14 first. Is this in the annexes or in the main report?

Q. It's the main report, sorry, Divider 5.

A. I have it now.

Q. They're the marketing aspects, and that's the subtotal

A. No, it wasn't that page that I remember opening up.

Q. So you remember the page you were opening up?

A. I remember looking at one of the big tables where the marketing I think the term was used in maybe Annex 3 it's broken up into two indicators.

Q. Do you remember was it the Aspects Table, as we call it, Table 16, or was it the B-up-B table, which is Table 17 or was it the numerical table?

A. No. It was the table in the annex that I have a clear recollection of opening up.

Q. The table in the annexes?

A. The quantitative

Q. evaluation as shown in the Appendix?

A. In the appendices, yes.

Q. You remember that that's what you were looking at?

A. I remember seeing the two market penetration there is two indicators used in the marketing area and the reference referred to that section, and the difficulty I had was, I was not completely familiar with the indicators that applied to the marketing people; that would have been for them to deal with.

Q. If you weren't applying the quantitative weighting, because if you were applying the quantitative weighting at indicator level, that was all agreed, wasn't it, on the 8th the 9th June, when you adopted the model of the 8th June?

A. At the 8th June, a series of weightings were recorded for the quantitative.

Q. Yes.

A. And they fell within the section the paragraph 19 criteria, and there was a set of figures recorded, yes.

Q. But if you were applying the quantitative weightings, you had to apply what was agreed, isn't that right?

A. Again, this is coming back to a slightly different

Q. It's a very simple question, Mr. Ryan. If you're applying the quantitative weightings, don't you apply what you agreed as the quantitative weightings? There may well be an explanation you want to give me, I'll be happy to hear it, but I just want you to answer that question.

CHAIRMAN: Surely that's so, Mr. Ryan, Ms. Nic Lochlainn is punctilious about recording weightings agreements.

A. There were weightings recorded and I would expect that they would be applied.

Q. MS. O'BRIEN: And they were the quantitative weightings, weren't they?

A. The quantitative, yes.

Q. And you say you recall one or other of the financial people raising this?

A. Yes.

Q. The extraordinary thing is neither of them can recall it.

A. It was a long process, and the only reason I recall it was that I was surprised that somebody made a reference to weightings at that stage.

Q. And you see, Mr. Fintan Towey, who you say gave the explanation, he can't recall it either. You can't be of assistance there?

A. I can't be of assistance, no.

Q. In fact, Mr. Buggy, one of the financial people, in April of 1996, he was wondering why the 10, 10, 10 split was being applied in a memo that he sent to Mr. Brennan in relation to proposed drafts of letters to disappointed applicants.

A. This is

Q. The following April he didn't understand where it came from.

MR. NESBITT: Mr. Chairman, I think with the greatest of respect, that is not an appropriate analysis of what his evidence says at all, and it's impossible that this witness is being put in a position of being asked to comment on statements of the witnesses other evidence other witnesses' evidence; that simply

does not reflect what happened. Mr. Buggy did not present that April memo in that way and I'll go back and get what he said, but it was not that way. I am sorry to intervene.

CHAIRMAN: It's unnecessary to do that, Mr. Nesbitt.

It's merely another factor that has to be borne in mind and I'll give you an opportunity to clarify that in your own questioning. It's something of which, in any event, I take it that Mr. Ryan would not be aware.

It would suffice, I think, to put the fact that neither of the three persons who attended at the meeting, at that stage, none has testified in accord with the recollection advanced by Mr. Ryan.

Q. MS. O'BRIEN: At the meeting itself on the 23rd October, Mr. Ryan I am just going to refer you to the minutes that we have for that that's at Book 43, at Divider 132.

A. Sorry, 43

Q. 43/132. There was, firstly, a corrigendum from Mr. Riordan in relation to the financial tables.

It then went a heading: "Discussion of draft report".

"The meeting then proceeded with a discussion of the draft AMI report. Views from regulatory, technology and D/Finance all indicated that while there was general satisfaction with the detailed analysis in the final result, the presentation in the draft report of that analysis was not acceptable.

"Hence the discussion focused on the detail of the report. A re-ordering of certain sections of the report, together with some textual and typographical amendments was agreed.

"Future work plan:

"Amendments to certain sections remained to be finally agreed. These were to be agreed within the Irish members of the group on the following day." That would seem to suggest it was on the 24th, wouldn't it?

A. Yes.

Q. "And Mr. Brennan was then to be deputed to come to final agreement with AMI with respect to the final text of the report."

And that, in fact, formal note wasn't drawn up until the 12th December, do you see that?

A. Yes.

Q. About two months after the fact. It was a very short report of a fairly lengthy meeting.

But what we do have or a very lengthy meeting I should say.

What we do have are notes made by Mr. McMahan, handwritten notes, made in his own journal?

A. Yes, okay.

Q. And they are at Divider 134 of the same book. Would you have kept notes like that yourself, Mr. Ryan, in the course of the meeting?

A. No. It wasn't my style to keep notes. Unlike Sean

McMahon. Sean McMahon kept notes of virtually every meeting he went to.

Q. And you wouldn't keep any note of anything that was agreed. Any change made in the report? You see, as I said in the technical division

A. What would often happen is, as I said, you have to be conscious we were in different buildings and if we had some amendments or I had some amendment, I would have given the document with the amendments to whoever was doing the changes or whatever, but in terms of keeping documents in our building, no, I didn't keep notes.

Q. You wouldn't have even kept a record of the discussions on the technical aspects of the evaluation?

A. No, no.

Q. We have reconstituted these handwritten notes in typed form just so that they'd be easier for people to read.

I'll just refer you to them. "GSM group 23rd October 1995.

"MB notes that we only just" it should be: "Notes that I've only just seen final draft report that Minister wants a result today, that he hasn't been promised one.

"M Andersen admits that award of marks could be different.

Discussion: Quite clear that people are still at odds about quantitative, the qualitative evaluation,

weighting, ranking, grading, points, etc."

So whatever your views were, Mr. Ryan, it's clear that Mr. McMahon's impression was that there was a lot of confusion and people were still at odds about qualitative, quantitative, weightings, ranking, grading, etc. Do you see that?

A. Yes.

Q. "Me" - that's Mr. McMahon referring to himself - "we (T&RR) can't justify the conclusion by reference to the draft that we have seen (i.e. last one). It's too close and report is not clear enough." Do you see that?

A. Yes.

Q. "4.1. More text needed to explain (basis of Table 1) " agreed. I made point that bottom lines of tables doesn't explain the weightings, etc."

That was, in fact, the point that Mr. McQuaid had taken up at the previous meeting where he had suggested that the weightings in the qualitative tables throughout Section 3 should be shown?

A. Should be shown, yes, for clarity.

Q. Yes, for clarity.

"3.2 I raised the EU procurement point. Much discussion of Appendix 11. I am not happy that we're using this in a relevant way.

"Much discussion about my point as to how to explain result in question.

" Agreed that text will have to explain it.

" note that it was conceded by Martin Brennan and Michael Andersen that different types of weightings were used, sometimes none, sometimes 'feel' to arrive at bottom line.

" much discussion about bottom of summary. 4

different methods my point, we didn't use 4

different methods, only one. The grading (i.e. AMI in Copenhagen) simply regrouped."

And, of course, he was correct in that; there weren't four different methods used?

A. Yes.

Q. "Me, MB, SF, J. McQ when to see sec at 3.30. Agreed that report not clear enough to support decision.

QED!"

And you have a recollection, don't you, of Mr.

McQuaid, Mr. McMahan, Mr. Brennan, the three COs leaving the meeting?

A. Yes.

Q. Do you remember when they left the meeting, whether you were aware that they were going to see the secretary at that stage?

A. Yes, I knew they were going to see the Secretary.

Q. And was that because they announced to the entire meeting that they were going to see the secretary or was it for some other reason?

A. No. My recollection is that they said they were going

to see the Secretary.

Q. Do you recall what prompted them to go and see the Secretary at that point?

A. No. I wasn't aware that they were going to see the Secretary. It just happened that I think the meeting might have broken for a break and they said they were going to see the Secretary.

Q. Well, why would they have been going to see the Secretary? Surely you would have questioned what the purpose was?

A. At the time I wasn't sure why they were going to the secretary.

Q. Was it not something to do with looking for more time? Hasn't Mr. Brennan indicated to the meeting at the beginning that the Minister wanted a result that day, because he hadn't been promised one?

A. I have no recollection of the reference to a result being produced that day. As far as I was concerned, I was going into a Project Group meeting and we were going to do whatever work we could within that time span. I don't have any recollection that we had to have a result that day.

Q. You don't recall on the 23rd, being under any pressure to produce a result?

A. No. I recall that we had a meeting. There was the issue of moving the report advancing the report, trying to conclude with it, trying to conclude the

project, and finishing the project and moving on to do our normal work that we carried on in the Department.

Q. Do you remember Mr. Andersen at this meeting? Because there seems to be some confusion whether he was at it.

He appears to have been at it

A. I have seen references to 23rd, 24th. The exact dates I am not clear. I just remember one long meeting that went on and my recollection is that Michael Andersen was there in the morning, but I don't remember him being present in the afternoon, and I can only surmise that he flew back to Copenhagen, and this was not unusual for him to take an afternoon flight.

Q. Would Mr. McQuaid, when he came back from meeting the Secretary, not have confided to you that it had been indicated that further time would be available?

A. My recollection is that the three men in question came back; they sat down, and the meeting continued. I don't recall an actual explanation that we have or a declaration "We have another week" or "We have two weeks" or whatever. The meeting continued, I am not even sure I was even sitting beside Mr. McMahan; the room was quite big

Q. I said Mr. McQuaid.

A. Sorry, Mr. McQuaid. I don't remember getting feedback from Mr. McQuaid as to what happened at that meeting.

Q. Then over the page it says: "On our return agreed final decision should not be on Table 16. This

resulting from both our meeting with the secretary and independently by the group in our absence. It should be Table 17 and 18. They can't agree on whether same weights went in. It seems MB dreamt them up during qualitative evaluation."

So you can see there that the issue of weightings was certainly a live issue right up to the very end of Mr. McMahon's note of the meeting of the 23rd October?

A. Yes, it appears from this note.

Q. Now, do you recall having a further meeting then on the 24th October, that may have commenced around 5 p.m. in the evening?

A. I can't remember the exact dates. I just remember a long meeting that went on and finished 10/11 o'clock at night.

Q. And you say you can't remember the dates, but can you remember two separate meetings?

A. No.

Q. You can't?

A. No.

Q. I see. And what was your understanding at the end of the long meeting, if you like, the final meeting, whether it be on the 23rd or the 24th, what was your understanding of how matters stood?

A. My understanding was, at the end of that meeting we had gone exhaustively through the report page by page. Amendments had been recorded by Fintan probably, or

Maev, I can't remember who exactly recorded what was agreed. My recollection was that, towards the end of the meeting, that there was agreement that this was the final report. We had gone through it; that all that remained was for those amendments to be included in the final report and then that was it.

MS. O'BRIEN: I'll have to refer Mr. Ryan, Sir, to the final version of the report itself.

CHAIRMAN: It's appropriate, I think then at this stage, just to break.

Just on the meeting, I think in your statement, Mr. Ryan, you said that your colleagues, the divisional heads, had gone to see Mr. McQuaid, that they were back within the hour. Does that mean that you accept that it may have been something in the vicinity of an hour that they were absent?

A. Yes. My recollection is that the meeting stopped. I don't remember leaving the room. I don't remember the meeting breaking up.

CHAIRMAN: Did everyone down tools for the entire period of the meeting with Mr. Loughrey?

A. They may have, or people may have continued studying the document. Certainly there was a tea break at that stage. People would have got into maybe smaller groups; they continued on, but I don't remember an extended period of time where we were wondering was this going to continue on? was it going to cease?

should we go home or what should happen? My recollection, it was relatively short the by the time they came back.

CHAIRMAN: Five past two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF AIDAN RYAN BY

MS. O'BRIEN:

Q. MS. O'BRIEN: Now, the final thing I want to ask you about is the final report itself, and you'll find that at Divider 50, in Book 46. I wonder is it there amongst all the books that you have? It's the book that has all the reports in it.

A. Yes, October 25th.

Q. Before I refer you to the contents of it, Mr. Ryan, can I ask you: Do you recall when you actually received a copy of this?

A. No, I can't recall.

Q. If I just take you to the second page of the report, do you see the table of contents?

A. Yes.

Q. I just want to draw your attention to two aspects of that.

You see Section 4, an additional subsection has been included which is entitled, "Summary of Results".

It's just in the table of contents.

A. Table of contents

Q. Section 4, and at 4.5, you see there is an additional subsection which is headed summary of results?

A. Yes.

Q. And there is also, in 6 and 7, they have been split up and section 6 became the final evaluation, and Section 7: "Conclusions and Recommendations"; do you see that?

A. Yes.

Q. Now, can I just refer you in passing to page 18 of this report. You see there is a very large table there, Table 2. The award of marks concerning the dimensions market development, and I just wonder when you were describing before lunch the conversation between one of the financial people and Mr. Towey in which you referred to a large table regarding marketing matters, is it possible that that's the table that you were referring to?

A. No.

Q. No?

A. No.

Q. Okay.

A. My recollection was the table had market penetration the market there was two indicators, to sub-indicators or two identifiable words to do with market penetration, and my recollection, it is one of the tables that I think is referred to in Annex 3. It certainly wasn't this one.

Q. I see. Okay. If I just take you on then to page 43 and you'll find the additional subsection in Section 4: "Summary of Results"?

A. Yes.

Q. And you see here that what was Table 16, which effectively was the results of the qualitative evaluation, had been taken out of the final section, and had been brought forward as a presentation of the results of the comparative evaluation?

A. Yes.

Q. And do you recall why that was taken out from the final section and brought back as representing the results of the comparative evaluation? If you like, why it was demoted?

A. In what respect do you mean by demoted?

Q. Well, it wasn't presented as being the output of the evaluation in terms of the presentation of the result.

It had been the presentation of the result and was brought back from the final section and was included here at the end, if you like, of the narrative section dealing with the details of the qualitative evaluation. I am just wondering, can you recall why that was done?

A. No, I can't recall.

Q. Now, if you go on to page 47, section 6 this is now the final evaluation, and this is the presentation of the result of your work.

A. Yes.

Q. It says it is now necessary to determine the rank of the application in accordance with the priority specified in paragraph 19 of the tender document. It is clearly stated in the document that the evaluation would be carried out on an equitable basis in accordance with the information contained therein and in accordance specifically with the evaluation criteria set out in descending order of priority.

"This report aims at nominating and ranking the three best applications in order of merit by reference to the evaluation criteria. That has been achieved by:

" extracting the marks awarded to each application under each of the eleven dimensions on the basis detailed in Chapter 4;

" grouping of dimensions according to the eight evaluation criteria;

" A award of an overall score to each application on the basis of the marks obtained for the eleven dimensions and determination of the appropriate ranking respecting the weighting formula determined prior to the closing date for the competition." Do you see that?

A. Yes.

Q. So what that's saying is that the weighting formula was agreed prior to the closing date was applied, isn't that right?

A. Yes.

Q. So far as the 10, 10, 10 split is concerned, that's not accurate, is it?

A. My understanding is that the weighting formulas that were agreed before the closing date were the weightings for the criteria as recorded by Maev Nic Lochlainn on her various notes.

Q. When we had the discussion yesterday, didn't you indicate to me that the discussion was at indicator level, and that you then added the indicator level weightings to come up with the weighting at criteria level?

A. Yes, there were indicator weightings, but the main issue was that the weightings for the criteria, the high-level ones, were the ones that were determined before the competition and they were absolute.

Q. And the indicator weightings were also determined

A. There were indicators recorded before the closing date yes, I think there was a document with indicator weightings recorded.

Q. We referred to it again and again now, Mr. Ryan. Don't tell me I need to refer you to it again.

A. No, there were weightings recorded, yes.

Q. Fourthly, "Validation of the results by converting the marks to points and calculating a numerical total score for each application." And finally:

" validation of the results by review of the

analysis of sensitivities, credibility and risks."

As I indicated to you, what had been Table 16, the Aspects Table, had been taken out of this section and put back as part of Chapter 4, and the result was now presented in terms of what was Table 17, but now numbered Table 16. Do you see that?

A. Yes.

Q. It sets out the table firstly, and then it says: "The marks awarded under each dimension are outlined in Table 16. The result in the grand total line has been achieved through a process of discussion to reach an agreed result taking account of the weighting of the evaluation criteria determined prior to the closing date."

Do you see that?

A. Yes.

Q. And do you recall that in both drafts that we have looked at, the draft of the 3rd and the draft of the 18th, that what was in table 13 was stated to be a conformance test; do you recall that?

A. Not particularly.

Q. Let me just show you again then. Let's go back to the report the draft report of the 18th. It's in the same book that you're in, it's at Divider 46. And if you go to page 49.

A. Sorry, what page? 49?

Q. Page 49, Divider 46, page 49.

A. Actually, for some reason, page 49 is missing from this book.

Q. Page 49, is it? Well then, I'll take you to the report of the 3rd, which is at the very first Divider, and that's at page 45.

A. Yes, I have the table now. Sorry, could you ask the question again?

Q. Do you see there it says: "In order to investigate whether the conclusions of the evaluators are consolidated on the basis of paragraph 19, the evaluators carried out a separate conformance testing.

The basis for the conformance test is the agreed interpretation prior to the closing date where the 7 indents of paragraph 19 were operationalised into 11 dimensions."

A. Yes.

Q. Okay. You recall now, that it was originally described in this draft and the draft of the 18th as a conformance test?

A. Yes, yes.

Q. You see here in the final report, there is no reference whatsoever to a conformance test, and now, what the group is saying is that: "The result in the grand total line has been achieved through a process of discussion to reach an agreed result taking account of the weighting of the evaluation criteria determined prior to the closing date." Do you see that?

A. Yes.

Q. When was the discussion that's referred to in section 6.1?

A. The only discussions that I can recall are discussions that took place at the various Project Group meetings.

Q. There was never any discussion at the Project Group meetings, was there, when you looked at A1 and you said, "well, there is a 10 there, a 10 weighting for a C; a 10 for an A; a 10 for a C; a 10 for a C; a 10 for a C; an 18 for a C; an 11 for an A; a 7 for a B; a 6 for an A; a 5 for a D; and a 3 for an A, so that comes to a B arrow down," was there?

A. No. These results were calculated by AMI and it was a collection of what was done within the sub-groups and presented.

Q. Well, there was no

A. Maybe I am missing the point. I am just very confused.

Q. There was no discussion as stated there, was there, between the members of the Project Group?

A. Okay, now no, my recollection is that the discussion related to the presentation of the results.

Q. Then it says: "Taking account of the weighting of the evaluation criteria determined prior to the closing date."

Now, the 10, 10, 10 there wasn't determined prior to the closing date, was it?

A. Yes no, sorry, it wasn't. The 30 was in this particular area, this was the market development, and I think this was the highest weighting and this had, before the closing date, for the qualitative aspect of it, had a dimension, or had a weighting of 30.

Q. But the 10, 10, 10 wasn't determined prior to the closing date?

A. No, that was probably done within the sub-groups.

Q. So to that extent

A. That sub-group.

Q. Well, there was no sub-group that dealt with market development, financial key figures and experience of the applicant, Mr. Ryan. Let's be clear on that.

There was no sub-group that dealt with those three dimensions, because the dimension financial key figures was part of the financial aspects, not the marketing aspects.

A. Okay, it certainly wasn't one of the sub-groups I wouldn't have dealt with it.

Q. Now at 6.2, the results based on a conversion of marks to points. "The results contained in Table 16 were converted to arabic points, (A, B, C, D, E converted to 5, 4, 3, 2, and 1 respectively) in order to determine an overall numeric score for each application case." Then it presents as Table 17 what had been Table 18 in the early year reports.

A. Yes.

Q. "As can be seen from the table, the scoring confirms the ranking established in Table 15 and Table 16."

A. Yes. My understanding, the difference between the two tables is just there is a conversion of the letters to numbers, purely to facilitate and demonstrate the mathematical perspective on the results.

Q. And the earlier caveat included by Michael Andersen, or Andersen Management International in both the drafts of the 3rd and the draft of the 18th had been deleted.

A. What exactly had been deleted?

Q. The statement that the that this technique, in his view, distorted the concept of a qualitative evaluation that's been deleted?

A. Yes, I can accept that.

Q. Now, can I refer you again to Appendix 2, behind Divider 51, it's at page 7.

A. Yes.

Q. You see there has been no change at all to what was stated in the draft. It says: "The report aims at nominating and ranking the 3 best applications. This has finally been achieved through:

" Qualitative award of marks to the six applications with respect to the 56 indicators outlined in Chapter 4 of the main report.

" Qualitative assessment of applications according to the marketing, technical, management and financial

aspects.

" validation and finalisation of the results

through firstly, regrouping of the criteria to more

directly reflect the selection criteria outlined in

paragraph 19.

" Application of the qualitative marks to the

weightings agreed prior to the close of the

competition for the quantitative model." Do you see

that

A. Yes.

Q. That's not accurate either, is it?

A. It appears that there is a difficulty with that. Yes.

Q. If I just refer you then again to Appendix 3 on page

10, which is just beyond that, which shows the

vote-casting and weight matrix for the quantitative

evaluation

A. Sorry, just two pages beyond it, is it?

Q. No, it's Appendix 3, sorry, Mr. Ryan, Appendix 3 which

reproduces purports to reproduce the evaluation

model. You'll see here that that compounds the

inaccuracy in that the inaccurate weightings for the

indicators is continued in this table in the final

report.

A. It is recorded there, yes.

Q. Thank you, Mr. Ryan.

CHAIRMAN: Any remaining questions we'll take a

sequence of Mr. Fitzsimons, Mr. McGonigal,

Mr. O'Hanlon and then Mr. Nesbitt.

Could I raise just perhaps very brief things with you while they are still in my mind, Mr. Ryan.

Basically, your evidence to the Tribunal, you are not seeking to offer any general expertise on the differences between qualitative and quantitative evaluations in competitions. You're simply offering your view in common with, I think, a number of other members of the Project Team, that in the circumstances that eventually transpired, the quantitative format appeared insufficiently reliable so you opted for the qualitative, and eventually based your result upon that?

A. Yes. We weren't able to carry through on the quantitative to produce a reliable clear result on the basis of information that was provided, and my understanding is that the best way forward was to pull back on that model. There was nothing clear that we could publish.

CHAIRMAN: Yes, you are not suggesting that as a general rule of thumb, I think competitions in various fields today contain a combination of the two formats.

A. Yes, that is correct.

CHAIRMAN: Now, just as regards your own specialised participation in the sub-groups, I think the matters that you have stated that you dealt with, apart from limited dealings with one other aspect, were the radio

network architecture, the network capacity, coverage and frequency efficiency?

A. Correct.

CHAIRMAN: And none of these were, if you like, tainted with the general inadequacies that you had felt maybe arose in the case of tariffs or roaming agreements or IRR?

A. Certainly I wasn't involved in those, but I was involved in the drop-out criteria in the quantitative, and as I put in my Memorandum of Evidence, was a clear example of the restrictions and limitations of that model and how we couldn't move forward with it.

CHAIRMAN: Well, my question to you in this context, Mr. Ryan, is this: Isn't it the case that on the quantitative test, or result that was produced by Andersens on the 30th August, 1995, that on those, and on the technical modules and on those four particular classifications, the same result has ultimately transpired, was arrived at comfortably; that in fact, it did transpire that Esat were comfortably ahead of Persona?

A. I can't recall, without seeing

CHAIRMAN: I don't want to put you straight back to all the papers again, but it does seem that on the even the points before you apply any form of weighting, that on radio network architecture, A5 got 3.22 as opposed to A3's 1.34; network architecture, A5

got 5 as against 3.08; on coverage, A5 got 5 as opposed to 4, and I think there was a very marginal reversal on the frequency efficiency. But in fact, I think the total of marks, even prior to any question of arguable weightings, was 16.35 as against 11.66?

A. Yes, that sounds correct. But, again, that decision was based, I think, on some of those. Indicators we picked Year 4, had we picked year 5 or year 6, it probably would have produced a different result, I just don't know.

CHAIRMAN: But even taking that, what I am asking you to consider is: Might not a combination of the two evaluations have enhanced the weight and persuasiveness of your result? They both arrived at the same conclusion reasonably clearly, and might it not have been preferable, in the context of the model that Andersens had given you, that you would have been able to set out that on these, these technical matters, pursued at both quantitative and qualitative level, they produced a reasonably resounding result in favour of Esat over Persona?

A. Ideally, I would agree with you, it would be better to try and include both. But with my understanding and the way that the figures were coming out and the way the results and the data was extracted, I didn't think it was a fair representation, irrespective of what result came out, using the quantitative.

CHAIRMAN: So, in the event, the entire benefits such as they were, the quantitative were discarded.

A. It just went away. If we could have included it and it was appropriate and fair and reasonable and equitable, we did try and include it, but just the nature of the beast, the way it worked out, I didn't think it was appropriate to put in those values, irrespective of the result that came out.

CHAIRMAN: Yes. As regards the final concluding Project Team meetings, it does seem I don't want to give you legal analogies but it seems that the Project Team worked somewhat like a Court of Appeal: they took a look at what the specialised project groups had done, they received and they inquired to varying degrees into how those particular sub-groups had conducted their inquiries into the various main classifications

A. To try and satisfy themselves, yes.

CHAIRMAN: Insofar as it is common case in that it was a very close finish between the top two, was there ever, at any stage, any attempt in the final project meeting, particularly the final October one, to actually as a jury, so to speak, to have a head count around the table to see what individual members might have felt was the favourite balance as regards between the top two competitors?

A. At the final meeting the final meeting mainly dealt

with presentational aspects, but at the end of it, I recall Martin Brennan turning around to everybody and saying, "Are we happy now with the result we have got and the work we have done?" And there was agreement across the table. And there certainly was not disagreement.

CHAIRMAN: All right. Mr. Fitzsimons?

MR. FITZSIMONS: No questions.

CHAIRMAN: Mr. McGonigal?

THE WITNESS WAS EXAMINED AS FOLLOWINGS BY
MR. McGONIGAL:

Q. MR. McGONIGAL: Just one aspect of the matter that I want to ask you, Mr. Ryan, in relation to the weightings. A short while ago you said to Ms. O'Brien:

"My understanding is that the weighting formulas that were agreed before the closing date were the weightings for the criteria as recorded by Maev Nic Lochlainn on her various notes."

A. Yes.

Q. I want to just look at that in a little more detail, having regard, also, to an answer you gave yesterday at 284, where you said where a proposition was put to you by Ms. O'Brien at 284:

"Question: So I think, therefore, the position is 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?

"Answer: Yes, I would agree."

I just want to look at those two answers in relation to the weightings scenario as it appears from some of the documents, because there is confusion in my mind, even if there is confusion in no one else's mind, and if you could go to two books: The weighting book, which is Book 54, and if you also have your own, Aidan Ryan document well, the other document then that I want you to look at is the minutes of the 18th May of 1995, which is Book 41, Document 64. And while that's being given out to you, Mr. Chairman, I have put together a number of charts in relation to the weightings which may be of some benefit, that may be of some relevance. They may be of no relevance and no benefit, but I just want to give them to you, Sir, and to the witness and to the other parties, in relation to this.

A. I have the minutes of the 7th meeting open in front of me. Was there some document as well you wanted on the weightings as well?

Q. If you go to the weightings book, and the first Divider, which is the 17th May draft of the evaluation report.

A. 17th May draft, yes.

Q. Now, I have also given you four charts, and if I just quickly take you through what they are. They are listed A, B, C and D, and the first chart A, is on the top left, you'll see "Criteria weightings" and on the right you'll see "Indicator weightings." Do you see that?

A. Criteria weightings, and indicator weightings, yes this is for the quantitative.

Q. Well, we'll discuss that in a moment, Mr. Ryan. I just want to explain what I have done. I have taken the chart from page 319 of the evaluation model and set out the criteria from paragraph 19, together with the dimensions and the indicators, do you see that?

A. Yes.

Q. On the left-hand side, then, I have put criteria weightings for three dates being the 18th May, which was the first meeting in relation to the evaluation model; the 27th July, which was after the 8th June, before the 4th August, and at a time when the licence weighting was acknowledged; and then the 28th September, which was the date of the meeting in Copenhagen. Okay?

A. Yes.

Q. On the right-hand side then, I have the indicator weightings as they appear in, first of all, the 18th May, which is the evaluation model?

A. Yes.

Q. The second is the 8th June, which is the 8th June evaluation model document, and the 25th October is the final report.

A. Yes.

Q. And you'll see that on some of them in the first one for the 18th May under the indicator weightings I have a 5 plus 5. In two stages in the forecasted demand and solvency and IRR and that's recognised in further divisions that had been made?

A. Yes.

Q. Okay? The second document is document B, and that's an evolution of the evaluation report indicator weightings.

A. Yes.

Q. And that simply shows, as I understand it, the quantitative indicators on the left-hand side?

A. Yes.

Q. And the weights which applied on the 3rd October, in the report of the 3rd October, the 18th October, and the 25th October?

A. Yes, on the quantitative, yes.

Q. Okay?

Document C then is weightings for quantitative evaluation, and these, again, are the indicators on the left, and then the three dates referred to are the 30th August, the 20th September, and the 2nd October. And they are three quantitative analyses which appear

to have been taken in or around that time and are the results and the weights which were used. Okay?

A. Yes, I might just come back to it and let you continue, just that I try and understand exactly what's happening.

Q. Then the last one is the evaluation model showing the criteria, the aspects, the dimensions and then dimensions subdivided into indicators. And that was for the qualitative analysis?

A. Yes.

Q. Okay?

A. Yes.

Q. Now, what I want to do, Mr. Ryan, is try and understand how and where some of those figures may have come from. And the place to start appears to be the meeting of the 18th May.

A. 18th May if I recall, that's the first meeting where Andersens came along with the model.

Q. With the evaluation model?

A. With the first evaluation model.

Q. Absolutely.

A. Yes.

Q. When Andersens came along with their evaluation model, the only weightings that appear to be in that document are on page 16?

A. Page 16 oh, yes, I know it.

Q. Okay?

A. Correct.

Q. Now, if you go to the minutes of the meeting of the
18th May

A. Perhaps you can help me here.

Q. That's Book 41, Document 64.

A. Yes, I have them.

Q. And you go to the second page of that?

A. Yes.

Q. And you see paragraph 4?

A. Yes.

Q. "Reference can be made on the file to the formulae
agreed."

A. Yes.

Q. Now, if you would then go to Book 54, Tab 5

A. Sorry, 54?

Q. Tab 5. Or maybe it's Book 54 document 1A?

A. 54/5 contains the weightings

Q. What date?

A. Date, 27th July.

Q. No, no, if you go to document 1A.

A. Okay.

Q. Do you have that?

A. Yes.

Q. Now, what that says is: "Agreed at the meeting of the
18th May 1995: 30, 20, 15, 14, 7, 6, 5, 3."

A. There is just a page missing in 1A.

Q. That's okay, we'll get it for you.

A. Yes, 1A: "Agreed at the meeting of the 18th May 1995," signed by Maev and dated 21st May.

Q. Yes. And can you help me: Am I right in understanding that that note there is what is referred to at paragraph 4 in the minutes of the meeting, "Reference can be made on the file to the formulae agreed"? This is the formulae which was agreed

A. I am not sure whether the reference to formulae are either the weightings or the actual formulas that were included in the document.

Q. Okay. Let's look at that a little bit closer then. Would you go to paragraph 4 on page 16.

A. Which book is this now, please?

Q. This is the evaluation model in the weighting book, at Tab 1.

A. Separation folder which it's in Book 54

Q. Yeah, 1?

A. Page 16, yes.

Q. You see that seems to be Chapter 4, paragraph 4, vote-casting and weight matrix?

A. Yes.

Q. So do you see the minutes?

A. Yes.

Q. Paragraph 4?

A. Yes.

Q. They would seem to be referable to the same thing?

A. Yes, I agree with you.

Q. So the formula that is referred to in the minutes seems to relate to the formula under paragraph 4?

A. Yes.

Q. Now

A. That is clear.

Q. Now, look again then at the document of the 31st May

A. Sorry, where will I find that again?

Q. 1A, 54?

A. Yes, I have it.

Q. Now, that seems to be the weightings for the criteria?

A. Yes.

Q. Which is agreed at the 18th May?

A. Yes.

Q. That seems to be the only formula or formulae which has been produced as having been on the file, and what I am curious to know is: Is it a correct conclusion to say that the formula there referred to on the document of the 31st May is what is referred to in the minutes of the 18th May, at paragraph 4? That one and the same thing?

A. In short, I cannot be sure.

Q. I see. What else could it be?

A. In the paragraph, "Reference can be made on the file to the formulae agreed," could apply to either the note of the 31st May 1995, or it could refer to the table in number 4, vote-casting and weight matrix.

Q. How could it refer to that, as a matter of interest?

A. The reason why I am saying it is that it is included in paragraph 4, and if I look at paragraph 3.11, all the content of that seems to refer to the previous page which deals with solvency and IRR, and when we come to paragraph 4, I am just making an assumption that it seems to relate to the content of Section 4.

But that's only an opinion.

Q. No, I understand that and you are entitled to your opinion, but what is interesting me is this, Mr.

Ryan: You were at the meeting?

A. Yes.

Q. I had understood, and I may be absolutely wrong about this, that insofar as the weightings referred to on page 16 under the indicators are concerned, that they were not agreed, because they don't appear again anywhere else?

A. The agreement that was important to the group was the high level agreement that was recorded on Maev Nic Lochlainn's

Q. Now, what do you mean by that?

A. That there was a specific discussion on those weightings.

Q. Which weightings?

A. The 30, 20, 15, 14 and so on, and those weightings were derived from a discussion that took place where we had to live within the paragraph 19 rules.

Q. Absolutely. I fully understand that. And I was anticipating that you might have said that, because I think that seems to be the position. In other words, the weightings which are recorded by Maeve Nic Lochlainn are the only weightings which appear to have been agreed at the meeting of the 18th May?

A. Yes, they are the absolute weightings.

Q. Not only the absolute ones, but they are the only ones that appear to have been agreed?

A. Yes, I can accept that.

Q. So when you left the meeting of the 18th May, you left with a set of criteria and a set of weightings for the criteria?

A. Yes. And just to add, that those weightings would apply to both the quantitative and qualitative.

Q. We'll come back to that.

A. Okay.

Q. But I understand what you're saying.

Now, just stopping there for a second, can you go back to page 3, for me, of that evaluation model, where the chart is set out.

A. Page 3, headed: "Dimensions Assessed"?

Q. Yeah.

A. Okay.

Q. That's the chart which I have actually transcribed into chart A, but do you see there we have set out the evaluation model sets out the criteria, the

dimensions and the indicators?

A. Yes.

Q. What we know now is if it's accepted that the only weightings agreed at that meeting were the criteria weightings?

A. Yes.

Q. There must have been some discussion as to how you translate those criteria weightings down to through dimensions, down to indicators at that meeting?

A. From the quantitative perspective?

Q. It doesn't matter whether it's quantitative or qualitative. Ignore that for the moment. I am just talking in general terms. The position is this,

Mr. Ryan: You went to this meeting

A. Yes.

Q. And I don't mean this disrespectfully but probably not knowing a thing about quantitative or qualitative or weightings or how they were going to apply or not apply. Mr. Andersen produces an evaluation report which, in the first instance, he must explain to you its contents.

A. Yes.

Q. And he must explain to you how the thing is going to work?

A. Yes, though having said that I wish to reiterate that I did have some understanding of it, because this was the model he had proposed.

Q. I am not trying to catch you out and be difficult. I am trying to get an understanding for what might have happened.

Now, as part of that meeting, what you do is you agree the criteria weightings?

A. Yes.

Q. But you know from the meeting that the criteria weightings at some stage must become dimension and possibly indicator weightings?

A. Yes.

Q. Now, it seems to me probable that that must have been discussed and explained?

A. Yes.

Q. And it must have been discussed and explained how you get, for example, the first criteria which carried a mark of 30; how you get that back down to forecasted demand, number of networks, etc.

A. Yes.

Q. Was that discussed?

A. It was discussed that you had this high level number, for example, 30, which I think is the area we're talking about here, and that 30 would be broken down into dimensions, and below that dimensions, you may have indicators, and as you go down, the list could expand or whatever.

Q. Okay. But is it equally right to say that having done your expansion from criteria to indicators, if you

were to go backwards from indicators back up to

criteria, you would end up back at 30?

A. Yes.

Q. And that was clearly understood at that meeting on the 18th May?

A. Yes. That would be my understanding, yes.

Q. So that two things appear to have been agreed: One, the criteria weightings, and secondly, that whatever way they were to be applied, when you go down to indicators and come back up, you'd always finish up with 30?

A. Yes.

Q. You wouldn't finish up with 40 or 32 and a half or 27 and a half. You start with 30 and come back and down to 30?

A. Yes.

Q. Is that right?

A. It was a subdivision.

Q. And anything less than that, would be a mistake?

A. The sum of the parts should equal the total.

Q. Now, the other thing just in passing for a moment; it must have been appreciated at that meeting that the quantitative analysis was something which was going to be carried out in Copenhagen?

A. Yes.

Q. And that the PTGSM were not going to have an involvement, as far as I can make out, in the

quantitative analysis?

A. That would have been the understanding.

Q. It appears to be a number-crunching exercise?

A. Yes.

Q. You get the numbers from the application forms. You can have an input in analysing them, but basically it seems to be a computer exercise which is carried out in Copenhagen?

A. It's a mathematical exercise, extracting data.

Q. So that on one level the indicator weightings would not have been of great concern once you had agreed the criteria weightings?

A. Correct. The indicators were a lower level two lower levels in this case.

Q. Now, following the Maev Nic Lochlainn note of the 31st May, you go then to the meeting of the 18th June, which is the second book the second indent in Book 54.

A. 8th June, yes.

Q. Now, as has already been as you have already been taken through, the significance of this is, first of all, that it reflects the discussion which took place on the 18th May, and brings in the changes which were agreed at the 18th May; isn't that right?

A. Yes.

Q. Now, if you go to the minutes of the meeting of the 9th June sorry, it's 41/70?

A. Sorry, 41/7?

Q. 70.

A. Yes, 8th meeting of the GSM, yes.

Q. Now, the first thing we can say about this document is that it's an Andersen document and one which was prepared initially in Copenhagen?

A. Yes.

Q. In the main, what it does is it incorporates the changes, as I have already said, which were agreed on the 18th May?

A. Yes.

Q. Now, if you go to page 17 of 21.

A. Yes.

Q. Now, the first thing we can say, or am I right in thinking, that the first thing that we can say about the weightings which appear there is that they were not agreed on the 18th May?

A. Maev's document certainly does not record these weightings as being agreed on the 18th May. Her note refers only to the top level weightings.

Q. But not only that, Mr. Ryan, if you go to the chart A which I gave to you.

A. Sorry, just give me a second. Yes.

Q. Do you see the 8th June?

A. Yes.

Q. And we have set out the weights as they appear to the indicators?

A. Yes.

Q. Now, the first: Credibility of business plan, that, in fact, totals 32.5?

A. Yes, I'll accept that.

Q. And it's a fact

A. Yes, you add them up

Q. that that was never agreed?

A. Correct.

Q. Either at the meeting of the 18th May or at the meeting of the 8th June?

A. Correct.

Q. So clearly a mistake of some kind was made here?

A. There is an error, yes.

Q. Isn't that right?

A. Correct.

Q. And that mistake was a mistake which appears to have been made in Copenhagen?

A. Yes.

Q. And as such, can only be explained to us by Mr. Andersen or someone from AMI?

A. Certainly not me.

Q. But it seems to be the basis these weightings, though not agreed, appear to be the basis upon which the first quantitative analysis was carried out?

A. Yes.

Q. Now, it's that part of the thing that interests me, Mr. Ryan, because if we go to the minutes of the 8th

June, just to be precise; this was approved as presented with corrections, one minor typo on page do you have that?

A. 6/21, yes.

Q. Now, the evaluation model, which is referred to there my interpretation, and I ask you to comment on it is, that what was being agreed there was the model without the weightings?

A. That would be my understanding as well, yes.

Q. Because quite clearly, if you are saying that the criteria weightings were agreed, then the indicator weightings couldn't have been agreed because they disagree with the criteria weightings?

A. Yes, I kept coming back to the point that the high level weightings were the ones that were agreed and were recorded. We did have sight of this document. I can't deny it, and I have no wish to deny it, but as you have said, there appears to be errors in it and at no point was it intended that we would go above the 30, 20, 15, whatever the numbers were.

Q. Now, in fact, if you go to tab 4 of Book 54 or sorry, it's Book 52, document 26 no, it should be in Book 54.

A. Sorry, where do I look?

Q. Tab 4 evaluation of tenders for the GSM2 competition of the 21st July, Book 54.

A. Book 54, tab

Q. Tab 4.

A. Tab 4 in my book is entitled: "Mr. Towey's Revised Weightings." Is that correct?

Q. But is there not is the first page maybe I have stolen it from somewhere Book 52, document 26. Do you have that?

A. No, sorry.

CHAIRMAN: We'll get it up on the screen, it may suffice.

Q. MR. McGONIGAL: It's on the screen, do you see it there, to your right?

A. Yes.

Q. And what that says is: "At the 7th meeting of the GSM on the 18th May approved the following weightings ..."

Ms. O'Brien has already brought this to your attention

and taken you through the criteria weightings. And

that's dated the 21st July, and the paragraph which

she drew attention to was: "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."

As I understand it what was happening here was, what

we had here was the criteria weightings, it being

re-emphasised that these are the criteria weightings

which had been agreed?

A. Yes, these are the top level, absolute weightings.

Q. As you said the top level criteria weightings, and everything was to relate to them?

A. Yes.

Q. And anything which didn't relate to them was a mistake?

A. Yes.

Q. In actual fact then, if you look at the document C document C which I handed you a short while ago, which is the weightings for the quantitative evaluation

A. Yes.

Q. and you see there I have the 30th August and the weights set down?

A. Yes.

Q. And a total of 103?

A. Yes.

Q. Now, those are the indicator weightings from the 8th June. They do not correspond to the high level criteria weightings, and you would say that those were, those weightings were not agreed?

A. Certainly there was a problem, or there is a problem with them. As for what was exactly agreed or whether this was noted at the time, I cannot recall.

Q. And we have

A. Certainly, I should say, maybe the intention would be that we would never break the high level weightings.

Q. And we have shown there that they equally not only

about the weightings, but the total was 103 and not 100.

A. Yes.

Q. And then again the 20th September weightings, which were supposed to be a normalisation of something, and they are 100.01. And then the 2nd October go back to the 8th June, and they total 97, because the number of roaming agreements wasn't included; the 6 was taken out?

A. And wasn't redistributed.

Q. No. And in actual fact, Mr. Ryan, if you go to my chart A for a second.

A. Yes.

Q. On the right-hand side under the 25th October, I have put down the weightings, in effect, which were taken from the final report, where they show the 5, 5, etc.

A. Yes.

Q. Now, in actual fact, those weightings, when counted back to the criteria, correspond?

A. Yes.

Q. It does appear that that was done again in Copenhagen?

A. That the document was produced in Copenhagen? Yes.

Q. And those weightings were put in. Most people don't seem to have any recollection of a discussion in relation to it.

A. All the documents were prepared. The master copy was kept in Copenhagen.

Q. But the person who is best able and the only way we can get a true explanation as to why that is there or why that came to be there or whether it was discussed or not, is from Andersen or someone from AMI?

A. Yes.

Q. But in actual fact, there is no doubt, looking at it, that those weights would correspond with the high level criteria weights?

A. Yes. And I think those weights line up, be they quantitative or qualitative.

Q. Now, I just want to ask you about that, because I am just a wee bit concerned about one aspect of it that I don't quite understand, and you may be able to help me.

Would you go to the chart D which I produced.

A. Yes, I have chart D.

Q. Now, what I have produced there is the criteria, and then the way in which Andersen introduced aspects, dimensions and indicators?

A. Aspects, dimensions and indicators.

Q. Indicators and sub-indicators. Now, there is something I just want to try and understand, because I am not clear on it at all.

Assume for a moment that the high level criteria weightings which were agreed on the 18th May, were agreed for both the qualitative and the quantitative?

A. Yes.

Q. Bearing in mind, as I understand it, that at that stage, it was envisaged that a qualitative scoring would be carried out by letters rather than numbers?

A. Yes.

Q. Was it explained, or how was it explained that the high-level weighting was of any use to the qualitative process at that time, that is in May?

A. Sorry, I have lost the point of the question. Perhaps you could repeat it.

Q. I am accepting that the high-level criteria, as agreed on the 18th May, was agreed for both the qualitative and the quantitative?

A. Yes.

Q. As I understand the process, the qualitative analysis was going to be carried out by reference to letters,

A, B, C, D?

A. Yes.

Q. Grades. Was it explained and how was it explained that the weighting criteria which was agreed on the 18th May, was to be used in the qualitative analysis on the 18th May?

A. I cannot recall exactly how it was explained to the group. From my own perspective, I understood the calculations that were going to be carried out, but as for the group, I don't remember the explanation

Q. Let's leave the group aside for a second.

A. Okay.

Q. Can I ask you how you understood it was to be carried out?

A. I understood that the letters, as transpired, would be converted into numbers, and those numbers would be multiplied by the appropriate fraction and then the summation would take place after that.

Q. And am I right in understanding that you understood that from the 18th May the first meeting when it was all discussed?

A. Yes, I understood it, yes.

Q. So clearly at that time, you had an understanding that at some stage in the future of this process, the probability was that that the letters would become numbers and the weightings would have a relevance?

A. Yes, because that is the only way I could understand that the weightings would have a relevance and that you had to merge numbers with letters and I didn't think of any other way. Maybe there is another way of doing it; I certainly didn't think of any other way and I don't recall anybody else suggesting any other way.

Q. Absolutely. Which explained that helps to explain why the criteria was agreed, because the criteria were the common feature between the quantitative and the qualitative?

A. The criteria were yes, correct, the high-level criteria, yes.

Q. In the quantitative, you were going to have X number of indicators. In the qualitative you were going to have X plus Y number of indicators, so the only common thread between the two was the high-level criteria?

A. Yes.

Q. And that is possibly why the weightings were agreed in that way the criteria

A. Well, the whole competition was built around the criteria weightings and it was advertised the bidders knew of those criteria. They also knew that they were prioritised, so the models used subsequently had to respect that priority list and it would be done by way of weightings, percentages that would respect and indicate the level of those priorities. It was quantifying the level of priorities.

Q. Thanks very much, Mr. Ryan.

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

Q. MR. O'HANLON: Mr. Ryan, from the time the decision was concluded you had no knowledge of the Minister's input into the announcement or when it was to be made?

A. No, I did not know when the announcement was going to be made.

Q. And insofar as the process up to the decision, you had no knowledge of any interference, direct or indirect, of the Minister?

A. No.

Q. Thank you.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

Q. MR. NESBITT: Perhaps I can just ask you to come back to Book 54. There is one thing I want to tease out.

I hope My Friend hasn't covered it.

If I ask you to look at the second divider, it's

2 we are looking at the Andersen evaluation model

draft of the 8th June of '95, and I just wanted to

tease out something that flows from pages 16, internal

pagination, on. I think if you look at page 16, that

you see, under the heading "Vote-casting and Weight

Matrix," the following verbiage, it says: "The

following table shows how votes will be given for each

of the indicators in the quantitative evaluation."

And we then turn the page and we see a listing of

indicators, and we have the 103 addition for

weighting, and Ms. O'Brien has taken you through that.

A. Yes.

Q. I think we can agree that whatever was being done

there, was an attempt to weight indicators in the

context of the quantitative evaluation which was to be

carried out?

A. Yes.

Q. Nor more than that?

A. Quantitative, yes.

Q. If we then turn the page to page 18, we go into a

different section of the report, at 5 we see the

procedure for the qualitative evaluation process. So

we are now going into the other way of trying to score the entries to the competition, isn't that right?

A. Yes.

Q. And at this point in time, we can turn on to page 20, and we see a guide to the award of marks, and as I understand it, in relation to the awarding of marks, we don't see anywhere, in that document, in relation to how you're going to score the qualitative approach, any attempt to weight or suggest there would be weighting for indicators. It simply isn't dealt with?

A. No. It specifically mentions on the second sentence the dimensions and indicators are not weighted ex ante.

Q. That just leads you to have to wonder how it's going to be done?

A. My understanding is that that would be done at the sub-group level where the relevant experts for the relevant aspects met.

Q. So what you did know what happened in any event, even if you didn't know it, was that in relation to the qualitative marking, it effectively went into the sub-groups?

A. Yes.

Q. And at that point in time, you had high-level criteria weighting, which was fixed in stone, because it was part of the provisions of the competition?

A. Yes.

Q. Paragraph 19?

A. Yes.

Q. And then you had, under that, aspects, which fell by the wayside, because that was an Andersen method of looking at and presenting to outsiders what they thought of the competition entrants?

A. It was a grouping, it was a way of grouping of people.

Q. I think we have been through it, other witnesses have been through it and you will see that was the way they were going to present their report. They felt the aspects was a way to look at things.

A. Categorise it.

Q. Yes. But the people in the Project Group didn't agree with that because that was not being true to the competition process that you were being asked to follow, to hang things under criteria?

A. The paragraph 19 should be clearly identifiable in its role.

Q. So, as far as you were concerned, you went off to your Project Group and you were faced, in the qualitative marking issues, with a dilemma: how did you decide to score what you were looking at?

A. Yes.

Q. And you knew the criteria had a weighting, and you could see you were forgetting about aspects, and you were looking at dimensions, and you had indicators under that?

A. Yes.

Q. And you had to decide how do we score these?

A. How do we weight them? How

Q. For the purposes of scoring for the purposes of having a result?

A. Yes.

Q. Now, you know what you did, as far as you can remember it at this remove, and other people in their groups did their thing and came back with an answer.

A. Yes.

Q. But would you agree with me that eventually you start to look at the draft evaluation reports that came from Andersens, the report of or the draft evaluation, the evaluation of the 3rd October, and then the 18th October, and eventually

A. The 25th, yes.

Q. the final one. Is it fair to say and I am concerned to be sure that this is what you want to say to the Chairman that by the time you go to look at those reports, it was clear on the face of the draft reports how the approach was being done to display and indicate how you had weighted the dimensions in relation to scoring on a qualitative basis?

A. Yes.

Q. You could read it and you could see it, and if there was criteria 1, there was 3 dimensions, 10, 10, 10

A. Yes.

Q. coming off the page? And if your criteria 2, there were two dimensions, 10, 10?

A. Yes, and that figure could be clearly related to the paragraph 19 criteria.

Q. So there could have been nobody sitting around the table at any of the project meetings that were looking at those drafts who did not understand what was being said by way of weighting at that point in time?

A. No, that was fundamental.

Q. Thank you very much.

THE WITNESS WAS EXAMINED FURTHER BY MS. O'BRIEN:

MS. O'BRIEN: Just a few matters.

Q. Can I refer you again, Mr. Ryan, to Divider 1 of the weighting book and to page 16.

A. Yes.

Q. Now, you recall when we were discussing this yesterday, I drew your attention to the fact that the indicator weighting for number of cells and reserve capacity was at 15 and 5, and in the model as adopted on the 9th June, that was changed to an equal split of 10, 10?

A. Yes.

Q. Do you remember you said to me that yes, you recall the discussion, that you were most concerned that within the 20, that they have an equal split?

A. Yes, I felt it was more appropriate to have a 10, 10 split.

Q. That the number of cells shouldn't be three times the weighting of reserve capacity, do you remember that?

A. Yes.

Q. And that's because you knew from the work you were doing at the time with Eircell, that reserve capacity was every bit as important as the network design, network architecture, isn't that right?

A. Yes.

Q. So, in fact, what you just said in evidence to Mr. McGonigal is entirely incorrect, isn't it?

A. In what respect?

Q. Respect of you stating to him that at one level the indicator weightings would not have been of great concern once you had agreed the criteria weightings. You said in evidence yesterday, they were of considerable, immense concern to you.

A. What I was trying to do here in changing from the 15 to the 5 is that I wanted I had formed an opinion on the indicator, at the indicator level. It was an opportunity to discuss the weightings, and I took the opportunity to line them up, and in doing that it was an opportunity for me to have it recorded and we would continue in the technical group to use this all the way through. I am not too sure that the other sub-groups were in the same position or had a view

Q. Okay. Let's just talk about you then. As far as you were concerned, the indicator weightings were very

important?

A. The indicators were important, but they were less important than the criteria.

Q. Well, they were important enough for you to want to change from 15, 5 to 10, 10, isn't that right?

A. Yes, it was an opportunity to change which I felt was appropriate and I took that opportunity.

Q. And that was recorded, wasn't it, in the subsequent evaluation model of the 8th

A. Yes.

Q. of June?

A. Yes.

Q. Which was discussed at the meeting on the 9th June?

A. Yes.

Q. And which was approved?

A. Which was approved yes, it was read and it was approved.

Q. As was the change in all of the other indicator weightings, isn't that right?

A. Along with the other indicators, the group saw what was in the document, yes.

Q. And isn't the table on page 17 of 21 of the final evaluation model approved by you that's at Divider 2, it's the same table; it's just the revision of it in the model that you actually approved.

A. Yes, I have the table, sorry, the question?

Q. Isn't that an integral part of the evaluation model?

A. It is a document that is associated, yes, it is part of the evaluation model.

Q. Not associated; it is part of the evaluation model?

A. It is part of the evaluation model.

Q. Doesn't the record of the meeting confirm that the evaluation model was approved as presented with a correction of one minor typo on page 6?

A. That is what is recorded, yes.

Q. So that entire model was approved at that meeting, wasn't it?

A. The document, as I said, and this cropped up before, was approved, yes.

Q. The document as a whole was approved?

A. Yes.

Q. Now, you said in reply to Mr. McGonigal that you always understood that on the qualitative side, that you would have to convert the grades A, B, C, D, E to scores of 5, 4, 3, 2, 1 in order to apply quantitative weightings, isn't that right?

A. In order to apply weightings.

Q. Yes, in order to apply weightings based on quantification?

A. Yes.

Q. Otherwise you couldn't do it?

A. I don't know any other way of doing it.

Q. And you would have understood that yourself from your own expertise and your own understanding of

mathematics and arithmetic and the use of numbers,
wouldn't you?

A. Yes.

Q. So nobody would have had to tell you that at the
meeting of the 18th May or the 9th June, would they?

A. No.

Q. That would have been instinctive to you?

A. Yes.

Q. And of course there is nothing, is there, in the
evaluation model, which you adopted to indicate there
would be any conversion from grades to numbers in
order to apply any weights, is there?

A. I didn't see anything written down.

Q. I can tell you that there isn't. And furthermore, the
evaluation model itself states that it intends to give
a complete description of the evaluation models.

A. Yes.

Q. And "complete" indicates that it's going to be a full
description with nothing omitted, isn't that right?

A. It's reasonable, yeah.

Q. Just one final thing I want to ask you: When, in your
earlier evidence, you were referring, again, to the
table which you say you looked at when one of the
financial people raised the difference in the
weightings that had been applied to the three
dimensions of credibility of the business plan, and
you referred to market penetration.

A. Yes.

Q. Now, I think you'll find that there is no reference to market penetration, as such, in the body of the report, and I think, in fact, where you'll find it is in Annex 3?

A. Correct, I actually have the page. On page 10 I certainly had that page open where there is a reference to market penetration score 1 and market penetration score 2, and that is certainly a page I recall opening at the time.

Q. Are you looking at the report of the 3rd or the 18th October?

A. The one I have open here is October 25th, the final version, page 10, in Annex 3.

Q. Well, let's look at the 18th version then, which is at 46.

A. Okay.

Q. Or somebody must have had it

A. Sorry, you are going to the version of the 18th October?

Q. Yes. If you go to page 10. I think you already agreed with me that it can't have been that particular one you were looking at, because the weights had already been altered from 3.75 to 5 in each case, isn't that right?

A. What I recall saying is that that was the page in which I looked at.

Q. That's the page you looked at?

A. Yes.

Q. Is it possible that you then also had a copy of the draft report of the 3rd October with you, or the evaluation model?

A. Not with me. I only had one document at that meeting.

Q. Well, isn't it possible then, that one of the financial people might have had either a copy of the evaluation model with them, or a copy of the earlier draft?

A. Yes, that is possible.

Q. The extent of your recollection is that it was either Mr. Riordan or Mr. Buggy?

A. One of the accountants.

Q. And you say that Mr. Towey provided the explanation.

A. That is my recollection.

Q. You can't tell us which one it was?

A. No.

Q. Thank you.

CHAIRMAN: Thank you for your evidence, Mr. Ryan.

THE WITNESS THEN WITHDREW.

MR. COUGHLAN: Mr. Loughrey please.

MR. O'DONNELL: Chairman, Mr. Loughrey has a difficulty tomorrow. I have no difficulty with him starting his evidence today, it may even be that we will all be able to finish with him today. But he has a difficulty tomorrow, so if by some chance we don't

conclude him today, I'd ask liberty that his evidence could be taken next week.

CHAIRMAN: There will be no difficulty about that, Mr. O'Donnell.

MR. O'DONNELL: He has been here for the last two days.

CHAIRMAN: Oh, I appreciate that. In fact my concern is if we have Mr. Hocepied present, that we do not detain or inconvenience him unduly.

MR. O'DONNELL: It may be that we'll finish him, I don't know. It may be that we may be all able to finish him...

CHAIRMAN: Thank you for coming back in any event, Mr. Loughrey.

JOHN LOUGHREY, PREVIOUSLY SWORN, WAS EXAMINED AS FOLLOWS BY MR. COUGHLAN:

Q. MR. COUGHLAN: I don't intend being very long with you at all. All I want to do is review a couple of matters arising from evidence given by witnesses who gave evidence after you were in the witness box to afford you an opportunity of dealing with evidence they gave, or if any of their evidence may have stimulated your memory. That's really

A. Of course, Mr. Coughlan, yes.

Q. And the first area, I suppose, and I'll try and identify the areas, if I can.

First of all, is the 23rd to the 25th October. That

period. And it relates to the three Principal Officers coming to see you and as to whether you have any further recollection, in light of the evidence which has been given by them.

A. Quite.

Q. I think then there is, I think you have received a transcript of a press conference which was in the Department files, which was the press conference of the 25th October. It's a brief note, and I think there are some references to you in it. I'll take you through those, they are minor enough.

A. I may have to refer I am not conscious I have seen that document, Mr. Coughlan.

Q. I'll take that with you slowly then.

I think and then another area that I'd like you to consider is the whole question of the memorandum which was prepared by Mr. Buggy on the 15th, with particular reference to the use of the expression 'unencumbered' in respect of the assets of Mr. Desmond?

A. Fine.

Q. I think I'll just identify those as the main areas.

A. That's fine. Thank you.

Q. Firstly, I think are you aware of the evidence in general terms which Mr. McMahon gave, Mr. Sean McMahon, that is, that the meeting that he went to with Mr. Brennan and Mr. McQuaid on the 23rd that's when they went to see you, he says, to ask for time;

that he has informed the Tribunal that that particular discussion or meeting with you may have lasted an hour to two hours; that type of time-frame?

A. First of all, and I am almost sort of I am sorry to say that I haven't read Mr. McMahon's transcripts but that was brought to my attention.

Q. I can bring it to your attention if you wish now.

A. No, that was brought to my attention, but even as you speak I am a little bit surprised because, not by virtue of any importance of my office, but my day was always very crowded. To encroach unexpectedly for two hours, I have no memory of that whatsoever, and of course Mr. McMahon, if he has taken a note of it, I am sure he is correct, but if you were to put it to me from cold, was my day encroached to the extent of two hours out of the blue, so to speak? I would have been surprised, let me put it that way. But that's not to say and my memory has not been jogged. I am conscious of the fact that Mr. McMahon and others, actually, are quite clear, crystal clear in their memory about this meeting, and therefore, I have no doubt whatsoever such a meeting took place.

I think probably, if it may be of help, Mr. Coughlan, my management style would never, ever have, in the company of more than one if there were more than one person in the room, ever to somehow pass judgement, if I may put it like that, I wouldn't think

it would be good practice. So I probably would have acted as a facilitator at such a meeting, it would have been my style to say, well, have you thought of this? Have you thought of that? Both sides if there were two styles for instance, I know Mr.

Brennan's style would have been anxious to get a move on, so to speak. Sean McMahon I am not saying Mr. Brennan wasn't reflective, perhaps more reflective in style, and I wouldn't have adjudicated on the spot, but I am quite certain if I had been asked for more time and it was put to me that this was quite important, I would have ceded the extra time, but this is all talking from first principles of what my style might be. I have no direct memory.

Q. If I ask you then if a meeting mightn't have lasted two hours, could your time have been engaged for up to an hour where there were various arguments being put to you?

A. I think that's possible actually. I mean to say it was around lunchtime I believe.

Q. Or perhaps after lunch?

A. Which probably I tended to go to a late lunch, so probably my diary wasn't fixed perhaps normally I don't make didn't make fixture, much earlier than three o'clock for principals because I tended to go to very late lunch. It's possible that it filled in sometime that would have been available to me at that

stage. So one hour, no, I wouldn't have had a problem. But I think two hours, I'd be surprised if it could have lasted two hours.

Q. Right. It seems to and you accept that it seems to have been the case anyway, that there was a discussion with you?

A. Absolutely.

Q. And that the view was expressed that there would be more time. That seems to be the how things evolved in any event.

A. Yes, I believe so.

Q. Now, that brings me on to another issue then that I wanted to ask you about, because I think Mr. Healy asked Mr. Brennan then, that that time period seemed to have, or the time allowed, seemed to have disappeared or moved on or became accelerated in some way. I think when Mr. Healy asked Mr. Brennan about it, Mr. Brennan expressed the view that if any pressure came on as regards time, it wouldn't have been coming from him in any event.

A. I don't think it would have come, if he says so explicitly, from him, but I think Mr. Brennan's style implicit in Mr. Brennan's operations always is a can-do attitude, and people can often pick that up, and I am not saying this happened for one moment. I am just once again speculating, that clearly I accept totally if Mr. Brennan said it didn't come from him.

Now, I suppose it begs the question, would it have come from me? I am not conscious of any such pressure, and had I granted additional time, and it's clearly recorded I did so, is I think I'd be conscious of the fact if somebody else countermanded it. Now, I am not so conscious. That's not to say it didn't happen, Mr. Coughlan, but I am not conscious of that.

Q. I understand.

A. And nobody would have had once again, I don't mean to sound hierarchial pecking order, but the bulk stopped with me from a management point of view, so the only person who could have countermanded that or attempted to countermanded that would have been the Minister, and had the Minister done so explicitly, I am certain it would have come back to me. So I am puzzled, because clearly I believe that the pace of work did pick up, so I am not sure whether this came sort of endogenously because there was a sort of almost a collective will, 'let's get it over the line' so to speak, because they had worked so hard, or there was some explicit either direction or instruction that I am not conscious of.

Q. You are certainly not conscious of it and you don't believe it would have come from you if you had given the time?

A. Absolutely.

Q. Right. I suppose just around that time as well, I

remember when you gave your evidence on the previous occasion, a memorandum we looked at I think it was Mr. McMeel to Mr. Doyle or maybe Mr. Doyle to the Minister about your Minister intending to go to Cabinet on the 24th, I think. You were unaware of that?

A. I was quite unaware of that.

Q. Now, I just want to ask you, because Mr. Towey has given evidence, and just for, to afford you an opportunity of dealing with some evidence he gave, not that he is suggesting that you were aware of it, but it was in the context, I think, that on the 17th October, Mr. Towey made contact with Mr. O'Callaghan, and informed him that the Minister wished to go to Cabinet the following Tuesday, which would have been the 24th I think. You can take it that that is so.

And when I asked Mr. Towey about it, I informed him that you had given evidence that you were unaware of this, and it was noted your surprise when you looked at the memo, Mr. McMeel's and Mr. Doyle's memo. And he said he found it extraordinary that anything could be going to Cabinet or that there was a plan to take anything to Cabinet without the Secretary knowing about it.

A. I think it would be if I were at my desk which I believe I was, it would be very unusual, let me put it that way. If it were just a matter it mightn't be

extraordinary and I don't want to get pedantic about this, if it were a matter of standard annual accounts of one of 13 semi-state bodies going to Government, it wouldn't have even crossed my desk, so in other words but if it were something as significant as this and this was a milestone transaction, I'd equally be astounded if that were the case.

Q. It may indicate that there was some communication going on with other civil servants in your Department of which you were unaware?

A. It may well be that, and once again I am not once again, I am just speculating, there are other avenues. Classically, the Runai Aire and you know, obviously with gaelic that's the Minister's private secretary would have had connections through, at middle management level and perhaps he or she, because I can't remember at the time, perhaps he or she would have said, "the Minister wants to get things moving as quickly as possible, how about X, Y and Z?" And it could have been something as simple as that which translates into the Minister's will. Now, I am only putting that forward as an idea. But I wasn't so aware, and if it were a definite decision to go to Government on, what I would call, a milestone project, it would indeed have been extraordinary.

Q. Could I ask you this: Even if the Minister intended to go to Government within five, six days, on a major

project, it's something you would have had expected

that you should know something about?

A. Oh absolutely. And very often I would sign the form, the urgency form for Government meeting in any event, and the payment work would come through me in any event. So, I am a little surprised that not Mr.

Towey doesn't is as sound as they come and he doesn't pick up vibrations incorrectly, so if he says so, I have no doubt he got it from a source that was plausible to him, that was plausible to him.

Q. I suppose what perhaps supports that is that that information must have been conveyed to somebody in the Department of Finance if a memorandum was going up along the line there?

A. I believe that's fair, yes.

Q. Now, I'll come back to the transcript we have of the press conference which took place on the 25th. That was at the announcement of the

A. Okay.

Q. And I suppose I should come to Mr. Buggy's evidence really, and sorry, there are two aspects of Mr. Buggy's evidence, I am sorry, I forgot to mention the first one when I spoke to you. The first one I suppose I'll take up with you, is the question of the use of the word "unencumbered" in relation to Mr. Desmond's assets in the memorandum. I don't think you need me to get the memorandum out.

A. No, and I have taken the trouble to reread the memorandum.

Q. And if I could just paraphrase what Mr. Buggy said in evidence.

He said that that word used by him would not have been put in by him of his own motion; that it would have to come as a result of receiving information from somebody.

A. Somebody of his experience, of course, that's automatic, yes.

Q. There were three possibilities, as he saw it: One was Mr. Pearse Farrell, who was Mr. Desmond's accountant; he only met Mr. Farrell in the company of Mr. Martin Brennan, and any further information or documents which needed to be obtained, Mr. Brennan would have obtained them. Mr. Buggy didn't have a direct contact.

Mr. Martin Brennan was another possible source and you were the third source that he speculated about.

He effectively excluded Mr. Farrell, because applying logic to the situation, if it had arisen in the course of the meetings that he had with Mr. Farrell, he believed that Mr. Farrell would have stated that in the letter which he sent to him which specified the assets of Mr. Desmond, if you remember?

A. Mr. Coughlan, I don't mean to intervene, but presumably, and this is absolutely at the discretion

of the Tribunal, I don't know if Mr. Farrell will be

asked in due course

Q. Mr. Farrell will be asked.

A. because it occurs to me that in interaction between

two very experienced Mr. Buggy was already booked,

so to speak, though he chose another career,

effectively, for a partner in Price Waterhouse Coopers

and of course Mr. Farrell's stature is self-evident;

that perhaps words were uttered in conversation that,

on reflection, were not put down on paper. I am not

assuming this for one moment nothing but good faith

with everybody concerned. That is a possibility. But

the other possibility is, of course, it could have

come from Martin Brennan, or it could have come from

myself, yeah, sure.

Q. And I am not going to debate the issue about Mr.

Farrell or as to why or that might not have been the

case. That's what Mr. Buggy has stated. We will hear

from Mr. Farrell. Mr. Brennan has stated to the

Tribunal that it didn't come from him. So I now have

to ask you, as being the third possibility, did it

come from you?

A. No, certainly it didn't, because the inference there

would be that I tried to, in some way, shape the

document that was coming upwards.

Now, one would have to say, you know, what was the

percentage for me in doing this? Can I look at it

from a most amoral point of view, what was the percentage for me if I were to shape such a document?

Now, I am categorically saying obviously it didn't come from me, but even if you were to look at it from an amoral point of view, I think when you were inquiring last time I was here, Mr. Coughlan, and it could be actually that I didn't get the clarity across that I should have, because I can't remember what I said word for word. But the thrust of what I was trying to get across at the time was that Mr. Buggy, I didn't say this explicitly, but he was a valued professional adviser, but I was the decision taker, I think I mentioned the word more than once, it was a judgement call that I made.

Q. Yes.

A. But and perhaps I didn't get it across. The judgement call I made was a quite different emphasis to Mr. Buggy's note. Mr. Buggy's note was redolent of: I spoke to Michael Walsh, in particular I spoke to Pearse Farrell and here is a list of the assets actually.

Now, it was an excellent piece of work done at very short notice, squeezed into two days and I thought it was an excellent piece of work. It is not in any sense a criticism of Mr. Buggy, but I wasn't too interested in a lot of what was in Mr. Buggy's note.

I think I got I hoped, and clearly I didn't get it

across with sufficient clarity is, if I may borrow a phrase from, let's say, real estate, I had three priorities: liquidity, liquidity, liquidity, and frankly, I didn't care very much whether the assets were unencumbered or encumbered because I saw them frankly as almost irrelevant. I suppose, if you see the assets were there like London City Airport now, it's a truism, they were either unencumbered, partially encumbered or not encumbered at all. Now, we don't want to get into sort of technicalities and I suppose if they were totally unencumbered they could be put up fairly quickly as collateral for borrowings but they weren't cash or near cash; I was interested in cash because my preoccupation with Mr. Buggy's note was nothing to do with Mr. Desmond's assets. It was to do with liquidity, and that's why I wanted to eke out as much, particularly from Michael Walsh, though I don't remember word I have only a hazy memory, but I know my preoccupation was liquidity, and particularly liquidity in the first year. And once again, I haven't gone back to the transcripts, but I think, and I hope that that's what I got across the last time, because if you look at liquidity for the first year and I looked at Mr. Buggy's note only this morning it's 36 million in the first year, 3 million clocked up to date, 15 million for the cheque, which Mr. O'Brien clearly wasn't in a position to put

in his amount on the day.

Q. Did you know that?

A. Yes, I believe I did.

Q. On that day?

A. I believe I did, yes.

Q. You did?

A. I think I would have taken it from the figures, yeah,

I think I did. Now, I can't be certain. It's easy to rationalise, as you know, Mr.Coughlan, looking back, but I believe I was, because the key line for me in KPMG's submission, which was about a week earlier, the key line for me in Mr. Buggy's note actually was clearly they were going to the market this is we are talking about Communicorp was going to the market and because they haven't completed the deal, we put no premium whatsoever on any value they're bringing to the Party at the moment. In other words, for Communicorp, their contribution was set at nil. Now, I think I recall saying to you, you know, very prudent of Mr. Buggy, or words to that effect, and it was very prudent. But in my own calculations in taking the decision, I did not accept that as realistic. Because I had dealt with financing of telecommunications when I was in Europe, albeit on the fixed line side, but I was familiar with the sector, I was familiar with the capital markets, and the minute Mr. O'Brien had a licence in his hip pocket, it's not

a matter of whether he had access to the capital markets or whether he would get funding; it was only a matter of when and on what terms.

Now, slight complication with Mr. O'Brien; in his entrepreneurial way he was rolling in some of the fixed line stuff with the Digifone financing, so that would have been a slight complication, but it was still a matter of when and on what terms he got the cash; not whether he would get the cash. So the key phrase for Mr. Buggy was "at this time" he was discounting it to zero. In my own decision-making process, I knew that Mr. O'Brien, of course, would raise the funds. Unless he set the bar so idiotically high for the capital markets that he was to shoot himself in the foot, and he is far too astute a businessman to do that.

So from that point of view, even if there were complications on the fixed line side and I think we touched on those and I am happy to explain further

Q. Mr. Fitzsimons touched on it more than I did at the time.

A. I believe so, and thank you, Mr. Fitzsimons, but we could expand on that if you like. But he could have decoupled if it was going to threaten his financing, all he had to was to decouple this small amount of fixed-line financing about 4 million, and quite frankly, on any sort of reasonable pricing, his

placement, if he wanted to, would have been oversubscribed 10 or 20 times, given it was the last duopoly cellular phone opportunity in Europe. So in my assessment, I was thinking of liquidity and if you look at that and I don't want to sort of go on about the figures the liquidity that was guaranteed, effectively, first of all, in aggregate by Mr. Pearse Farrell's measured and I say "measured confirmation" because it was the second time he was confirming. The first letter, in the old economist jargon, was, it was necessary but it wasn't sufficient for me. The second one was a very measured letter and no person of Mr. Farrell's stature would dream of putting a confirmation like that unless he could stand over it.

Now, I wasn't relying on that. I have to say I wasn't relying on that exclusively. But I was relying on that the cheque for 5 million straight away in Fry's was being signed straight away which covered the front-end cost for not only for Mr. Desmond, but the proportion that Mr. O'Brien wanted to write the licence cheque, but there was another 5 million locked in irrevocably with Anglo Irish and available until the end of 1996. In addition, cash at bank in total was 20 million. So there is little doubt Mr. Buggy's note proved conclusively to me that liquidity for the first critical year was more than adequately covered,

not only for Mr. Desmond, but for the underwriting of one-third of Mr. of Communicorp's any capital request to Communicorp in the first year.

Q. I am slightly confused now.

A. I am sorry, I went

Q. I understand what you said. I am slightly confused now about the decision of the process. Because, am I not correct because I was unaware that you were aware that Mr. O'Brien didn't have the money to pay for the licence on the day.

A. When I say I said to you a moment ago, you know, it's easy to rationalise retrospectively but I think looking at that note, because I looked carefully at the note and the backing documentation, I think it would have occurred to me now it is possible that you can a form of volition you can actually, you can get clarity in terms of retrospection that you don't, that you might not have at the time. But if you were to ask me, it is possible at least that I knew that, yes.

Q. That's what's causing me concern now, Mr. Loughrey, because you see, accepting the report, the Andersen report, it specified a certain method of dealing with the underlying frailty of Mr. O'Brien, isn't that right?

A. It did, yes.

Q. And that was to tie down the to tie down the equity

contribution that Mr. O'Brien had to make to tie it down as a condition, isn't that right?

A. I agree with everything you said, except the verb.

You said it specified. It didn't specify. It suggested. And there is a huge difference, Mr. Coughlan.

Q. Let's take the difference so. What it did was the report it suggested that the Government would enter if we take what the report did so, let's use your language.

A. Sorry, it's the language of the report actually.

Q. It suggested that the Government enter into negotiations with Esat in the first instance failing that?

A. Yes.

Q. One of the things of course which would have caused a failure is an inability to tie down Mr. O'Brien's equity involvement in the company, isn't that right?

A. That's correct, yeah.

Q. Now, that wasn't done on the 15th, and the first time you have said and I take it at the moment, and I take into account all the question of hindsight and all we have been through that there is a possibility that you were aware, as of that date, that Mr. O'Brien didn't even have the funds to pay for the licence?

A. I was certainly conscious in the broadest sense that

Mr. O'Brien wasn't in a position to make his contribution straight away, but I was equally confident that his he went ultimately for a convertible loan note placement in the United States would be successful and that's a judgement call I made.

Q. Yes, that was when Mr. Buggy was looking at Mr. O'Brien's finances, he discounted him completely because nothing was in place as regards finances at that stage?

A. And I think we have been through that, but I did equally say Mr. Buggy did say "at this time". Now, whether he said at this time frankly is irrelevant, because basically I was exercising judgement, and I believed myself that Mr. O'Brien's placement would have been successful, and there was no reason why it shouldn't have been successful even though he complicated his approach to the capital markets unnecessarily, I thought, but be that as it may, I knew it would be successful.

Q. So can I take it, therefore, that you, in exercising your judgement, so, if you were aware that Mr. O'Brien didn't even have the money to pay for the licence, the first capital requirement; that you, exercising your judgement, rejected the suggestion, if we use your term for Mr. Andersen's report, the suggestion in Mr. Andersen's report, that the way to tie down the

frailty in A5 [Esat], whom he had suggested the Government enter into negotiations with that you disregarded or exercised your judgement and disregarded Mr. Andersen's suggestion of tying Mr. O'Brien down?

A. I believe that the report had one essential duty, and that was to select the group that would be given exclusive negotiating rights. I also believed that there were suggestions after the supplementary analysis, and from memory now, this is digging deep into my memory, for instance, one of them was to have, to change the debt/equity ratio from 60:40 to 50:50. Now once again, I think I was conscious of that at the time, and I equally did not go along with that suggestion for the simple reason, I thought it was unreasonable, because the nature of the project was such, it could easily have been supported regardless on a 60:40 debt/equity ratio. So in essence, I am saying to you, these were suggestions but they didn't tie the discretion of the Department in negotiating the licence, and nor should have, frankly.

Q. I am afraid I am not going to finish with you today because, Mr. Loughrey, it came as quite a surprise to me when you said that you were aware, and it's just something I have to think about for the moment. There are a few more questions I want to ask you

A. I'd be happy to come back.

CHAIRMAN: I'd certainly facilitate you, Mr. Loughrey, if I thought it was a question of our sitting on for another half hour, but it's likely some other counsel may have something to ask of you and it's probably more satisfactory if we discharge it in the course of a half-day at a date convenient to you.

A. Thank you, Chairman.

MR. COUGHLAN: We will discuss the arrangements.

CHAIRMAN: Very good. We are in a position then to take up the other witness at the normal time tomorrow morning. Thank you very much.

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