

A P P E A R A N C E S

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I N D E X

Witness: Examination: Question No.:

Fintan Towey Mr. Coughlan 1 - 505

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 15TH MAY,

2003 AT 11AM:

CONTINUATION OF EXAMINATION OF FINTAN TOWEY BY

MR. COUGHLAN:

A. Mr. Coughlan, could I ask if it's your intention to come back to the point we were at yesterday evening or if you are moving on to a different subject?

Q. MR. COUGHLAN: No, no, I'll come back.

A. Is it your intention, though?

Q. Yes. Do you want to say something first?

A. I believe we were talking about the question of the inadequacy of the quantitative analysis in comparison with the qualitative analysis. And I felt that by way of demonstrating that, it might be useful to focus for a moment on the tariff indicator, and to do that, I believe that I would need to look at the evaluation model agreed in June and the tariff indicator in the quantitative analysis.

Q. Yes, very good. Well, I'll come back to it, if that's all right maybe we'll just go to it. That was the tariff indicator that's in the weightings book; isn't that right? Book 54, I have been told; is that right?

A. I have it, yes.

Q. It's the 21-page document; is that right?

A. Yeah. In relation to tariffs

Q. Just bear with me now for a moment, and I'll get it

out.

Yes, the second draft, what page?

A. On page 7 of 19.

Q. Page 9 of 19 was the first that was the first evaluation.

A. Pardon me. I am sorry.

Q. It would be easier if we went to the second one.

A. Yes.

Q. That would be page still page 7 of 21, do you think?

A. It's the tariffs dimension of the one

Q. Yes, it is page 7 of 21, dimension tariffs, indicator, competitors of an OECD-like GSM2 basket?

A. You'll see that there it says in the quantitative analysis the comparison will be based on an indicator suggested by the OECD, and it will draw upon tariffs as at the end of Year 4 of the applicant's proposal.

And it goes on further then to say that the information and definition of this OECD basket will be found in the specification for the tender document, Table 8, Item 28.

Now, I think it's useful to look at that in turn, but so what this is saying here is that there will be a formula which is set out in this other place, and it's based on tariffs at the end of Year 4, okay? So if we can look briefly at the specifications for the tender, I trust that you know where they are in the

document specifications, yes, it's the supplementary information memorandum of the 12th May.

Q. That would be, I think, I'll just have to I'll just check the chronology, and we'll get the book that's it's in now. I think I anticipate the point you make, because it's described in some of the narrative about the limited Book 41, Tab 63, I think is the specification

A. Okay.

I don't believe it's at Tab 63.

Q. Is it not? You are right; that's the preliminary draft licence.

A. I think it was part of the supplementary memorandum, but not the particular part that I am interested in now.

Q. Could you just assist me: Was it before or after the response to the questions posed by prospective applicants?

A. It was following that; it was the response to those questions was on the 28th April. There was then a supplementary memorandum issued on the 12th May which contained a number of elements, including mandatory tables and a draft licence, for example. It's the mandatory-tables part

Q. Sorry, we have the draft licence. We don't seem to have the mandatory table.

CHAIRMAN: I think if you could just give me the gist

of the matter that you'd be anxious, and we can look up any necessary documents at a later stage.

A. Sorry, I thought the documents might be ready to hand.

By all means, I can describe the point that I am making.

The point that I am making is that in the mandatory tables, the formula which is set out for this OECD basket is, I believe, something like one-third of the initial charges, the initial charges being the connection charge or the up-front charge that you pay as a new customer to join a network. One-third of the annual subscription charge, which is the rental, the monthly rental, by twelve. Plus, I believe, 15 plus 1,500 minutes per month, the cost of 1,500 minutes per month of peak rate call charges; okay.

So the point that I wanted to make is that what this indicator is capturing is the usage charges faced by somebody who uses their mobile phone for 50 minutes per day for outgoing peak calls. Now, if you make a conservative assumption that somebody who makes 50 minutes of outgoing peak calls during the day, they may make some more in the off-peak period, so one hour a day, let's say, of outgoing calls. If you further assume that, in the round, one receives as much by way of incoming calls as one makes by way of outgoing calls, this tariff indicator is capturing only a part of the market where the customer uses their phone for

about two hours per day. Okay?

In relation to this customer who uses their phone for about two hours per day, it is capturing the tariff charges only for the peak period, so it takes no account whatsoever of the off-peak charges, and sorry, there was another point which has slipped my mind for a moment sorry, yes, the other point is it takes only account of the peak charges, but it also takes account only of the forecast tariff rates at the end of Year 4 of the business plan. So there is a whole volume of information in relation to tariffs that is not captured.

CHAIRMAN: You are saying it postulates a rather exceptional customer rather than a representative one?

A. That's correct. And this is why I am pointing to our view that this quantitative evaluation was extremely restricted. There are similar examples across other indicators; I think perhaps that's the most extreme example. And you have to remember, of course, that tariffs accounted for 18% of the weighting.

Q. MR. COUGHLAN: I understand that. What we are talking about here is that which was identified for the quantitative analysis only provided for a limited period of use; am I correct?

A. How do you mean, "a limited"?

Q. You are saying that it would only cover somebody who might have used the phone for two hours in the day?

A. Yes.

Q. And that what was then projected was that it would be those projections were taken forward to Year 4 for the quantitative purpose?

A. It was the Year 4 tariffs that are fed in the model.

Q. And you are saying that in the there were wider matters which could and should be considered in relation to tariffs, and that these were considered in the course of the qualitative evaluation. Would that be to round up what you are saying?

A. What I am saying is that you couldn't possibly defend the use of that sole indicator for tariffs. You couldn't defend that as a fair tariff analysis. And that that principle applies equally to the quantitative model.

Q. Yes, I understand the point you are making. And I think it was always envisaged that the quantitative, of itself, would not necessarily be sufficient, isn't that right, and the qualitative model was developed for the purpose of further analysis to try and bring a more comparable evaluation into being; isn't that right?

A. Well, it was always clear that the qualitative analysis, the qualitative evaluation would take account of all the information in the quantitative evaluation.

Q. Yes, I understand that, but would develop, where

necessary, further indicators in order to have a fairer comparable evaluation. That was the purpose?

A. Yes.

Q. And I understand the point, but just looking at the and I think in fact, in fairness, in the methodology applied, Mr. Andersen, when he deals at Book 46, Tab 47, I am dealing with the appendices to the second draft report. This is the first time do you remember, this isn't contained in the first draft report because it wasn't available. The methodology.

A. Yes.

Q. So the first time it appears is in the second draft report; isn't that right? The first time it appears in a report?

A. I suspect that's the case, yeah.

Q. You can take it that that's not a trick question.

It is the case.

A. Okay.

Q. And you see at page 5, then I think we were looking at this yesterday takes the commencement of the third paragraph there: "Furthermore it became clear during the evaluation that a number of indicators in the quantitative evaluation were either impossible or difficult to score, e.g. the following". And then he lists the four matters: international roaming, blocking/drop-out rate, tariffs and the licence fee. Well, the licence fee didn't matter in any event,

because that was neutral or negative. It was the same.

A. Yes.

Q. You could either score it or you needn't score it; it didn't affect the bottom line. Isn't that right?

A. Yeah.

Q. I understand that. And he then goes on to elaborate matters relating to tariff in subsequent portions of this. So I think we get the flavour of what was being stated about the limitations, I suppose

A. I think the point that I wanted to be absolutely clear on that apart from whatever Mr. Andersen might have written here, I wanted to be I want to make it clear that you know, my recollection, in relation to my frame of mind, was that the quantitative analysis was a very, very deficient instrument.

Q. I know that's your view. And you said it was rejected, and in your own mind, you had rejected it.

I understand that. I understand that.

A. Yes.

Q. All I am asking to you look at are the four matters which are identified in the report. The licence fee, of course, it was included here, but it's irrelevant for the purposes of the analysis, either quantitative or qualitative; it was the same?

A. Yes.

Q. It was the same for everybody.

A. Oh, yes.

Q. It was a neutral matter?

A. Yes.

Q. Now, there was no deficiency about it; it was just there, and it was neutral. Then saying, concerning, on the other three areas which Mr. Andersen identified as difficulties or impossibilities of conducting a quantitative analysis in relation to

A. Yeah, that's what he is describing

Q. Tariffs is the main one; isn't that right? It's ranked third in order of importance, and even on the weightings, it was to be 18 the revised weightings, it was to be 18 after the licence fee dropped to 11.

A. Yes.

Q. And I note the point you make, then, that the qualitative evaluation considered far more matters?

A. It did indeed, yeah.

Q. Far more matters. And in relation all I am asking about in relation to that particular evaluation, concerning the top two, anyway, the A5 and A3; that was one where A3 came out ahead of A5, isn't that right, even on the qualitative evaluation?

A. In the qualitative evaluation, yes, it did.

Q. In relation to international roaming, which was, you know, not as important it was 6 on the weighting; they both scored the same on the qualitative, as far as I can see. They both got a C. You can take it

that that's correct.

A. Yes, okay.

Q. And then on the blocking/drop-out rate, and I take your point about blocking and drop-out rate in the first instance being considered from the technical point of view, but in fact, in relation the performance guarantee took that place, and it takes the place on the table, as we see, and in that, A5 got an A and A3 got a C, but it was accounting for 5 points or

A. Yeah, but you do take the point that it wasn't a representative indicator of the selection criteria.

Q. I take the point, because I discussed it with a colleague of mine last night, because we were looking at the table, and I was trying to digest what you were saying yesterday, and we understand and take the point.

A. Yes.

Q. So all I am asking you is that was there when this is what Mr. Andersen was contending for as being the reason whereby the quantitative evaluation withered away, these four particular matters, isn't that right, as we can see in the report

A. That's what he is setting out, yes.

Q. And I think it's what he set out on the 4th September as well; when he presented the quantitative evaluation in the first instance, he identified these four areas

as being ones that presented

A. Yeah, I suspect that was recorded in the meeting report.

Q. You can take from me that it is.

A. But there is another point, which is that I believe there was a general view at that meeting of the Project Group, in having looked at the outcome of the quantitative evaluation, was that it was restricted and an inadequate basis for a decision. I think that was an additional point, apart from the technical problems that Mr. Andersen understood.

Q. Well, what's recorded at the meeting was that the quantitative analysis was not sufficient on its own, and that it would be returned to after the presentations and the qualitative assessment.

A. That's correct.

Q. That seems to be the discussion?

A. That's correct.

Q. So there was no rejection of it at that time?

A. That is correct. That was of course yes, that was the view taken at the time before the Project Group had really got into touch with the nuts and bolts of the qualitative evaluation; that's correct, yeah.

Q. And I can understand, because even, you know, in the course of the Tribunal conducting its inquiry into this, you do start to learn about things and how things evolved and what things mean. And I can

understand. You also were on a learning curve. None of you had done this before; isn't that right?

A. That's correct, yes. Except for Andersens, of course.

They were the guiding light.

Q. Except for Andersens, but just in identifying you see, I still have difficulty in understanding why there was no return to the quantitative as was envisaged in the model

A. Okay.

Q. bringing to bear on it the judgements which had been formed in the qualitative; do you understand?

A. Yes, I do understand, yes.

Q. And to say, as you quite rightly say there say, take the tariffs, and you say, "right, the tariffs produced" I am not going to get it, I can get it out, but whatever results the tariffs produced in the quantitative

A. Yes, okay.

Q. You say, "Well, look, we took an awful lot more indicators into account, and on the basis of that, whilst we don't interfere with the actual score which was awarded on the raw data in the quantitative, unless it was inaccurate or something of that nature, nonetheless we are going to say that we can adjust that quantitative in terms of its ranking, based on the rankings which emerged based on what was produced from the raw data in the quantitative

analysis".

Do you understand me? If somebody got, say, if somebody got a 4.6, if somebody got a 3.2, you could look at it and sort of say, "Well, you know, that's not fair in those circumstances. We are going to adjust it there". Is that not what was understood by the interplay? Or am I wrong?

A. Well, I mean, the interplay, I believe I understood was that we could, as a result of the deeper qualitative analysis, go back and correct any inaccuracies in the quantitative model. In other words, that we would ensure, as a result of the qualitative analysis, we would ensure that the quantitative analysis was done on an accurate basis; okay? But I don't think it necessarily means anything more than that.

Q. Very good.

A. Now, if you take the particular instance that you are talking about, could we have revisited the quantitative analysis in relation to tariffs? Now, I have covered the ground already as to how inadequate it was as an indicator. Now, to try and go back to that indicator and in some way modify it or convert it into a tariff comparison that we could stand over, I don't see how that possibly could be done. I mean, as a tariff as something that was purporting to be a tariff analysis, it was past praying for. It was past

praying for. I mean, you couldn't do anything with this sole indicator that would convert it into a fair tariff comparison.

Q. Couldn't you do it this way, or could you do it this way I am asking you. Could you say that's what the result in the quantitative produced, and by virtue of a narrative, describe that we did further analysis, and say that in the view of the PTGSM, that award of, or a scoring, whilst it is the result of what happened, does not adequately reflect the fair and comparable evaluation between the various applicants?

Could you do that and give your reason why?

A. Well, in theory we could, in theory we could, but in fact what we did was we said at the general level that the quantitative model was inadequate. That's the view we took. So while we could have done things the way you are suggesting, what I had in my mind in reality was, on the one hand we had this very restricted indicator on tariffs in the quantitative model, and on the other hand a far more comprehensive comparison in the qualitative model in relation to tariffs. Wasn't it self-evident, wasn't it self-evident that the quantitative model was inadequate?

Q. Well, it was it doesn't say "inadequate". What it says is that it wouldn't necessarily it was limited, I think is what it's described as, limited.

A. Yeah.

Q. Did you ever go back and I am not going to, because it wasn't done, I am not going to try and figure out how a result might have been effected, but we do know that there was a quantitative evaluation. Take international roaming, for example, which was one they both got a C, both A3 and A5?

A. I take your word on it.

Q. You can take that.

A. Okay.

Q. That's kind of neutral as well, so as between those two at least. I am not talking about the other applicants, but as regards those two, that again, in terms of just like the licence fee was neutral, it affected everybody. As between A3 and A5, if they both got a C on the qualitative, and it was impossible to score it on the quantitative, do you understand me, that rendered that particular aspect of the quantitative report neutral as between those two as well; isn't that right?

A. Yes.

Q. It couldn't be scored

A. I understand what you are saying.

Q. Do you understand the point I am making?

A. I do, but I mean, the fact that it couldn't be scored isn't I don't think it's a fair basis on which to decide, well, insofar as the quantitative analysis

goes, that then means it's neutral, if you know what I mean. The licence fee certainly was neutral. Okay?

Q. Yeah.

A. The problem in scoring in relation to roaming meant that we couldn't score it, but I don't think that that's a basis on which to decide that it was neutral as far as the quantitative evaluation goes. It's a basis on which to decide that you can't make the quantitative analysis work.

Q. Right. I see the point you are making. But do you see the point that I am making: As regards the top two, if there was no difference on the qualitative analysis, it didn't affect the overall outcome of the quantitative analysis. In other words, it didn't give either of them an edge on the quantitative analysis if it couldn't be scored. If they were both, as a result of a qualitative analysis, standing at the same level, neither of them got an edge on the quantitative.

I am just trying to understand about this quantitative. Where its deficiency was such I appreciate the wider range of indicators, but I am just trying to come at it in a common-sense sort of way

A. What you are suggesting, though, is that we might have come back to the quantitative evaluation, quantitative evaluation, and tried in some way to force it to work.

Q. No, no. To interplay, to understand. You see, when

you started off, nobody thought that they were going to reject the quantitative analysis, as you said.

Now, I don't see it reported anywhere that this was rejected, but it was in your mind, and all I am taking is your evidence about in your mind. It's not recorded that it was rejected, but

A. Let me add to that that it's my view that it was a shared understanding that we had gone on to something deeper, wider and better than the quantitative analysis.

Q. But who was that shared with?

A. No, it's my view that that was a shared understanding.

Q. I beg your pardon; it's your view?

A. In other words, I understood that you know, we were agreed on this.

Q. Sorry, yes, I see what you are saying. But what I am trying to do is now, Andersen has described the withering away, so this is the official position, because the report is the position; isn't that right?

A. Yes, it is.

Q. And Andersen says it withered away, and he points out the four areas whereby it was difficult or impossible to score them?

A. Yes.

Q. We agree, forget about the licence fee?

A. Yes.

Q. The point I am making is that as regards a separation

of, say, the top two on the quantitative, if it had been revisited?

A. Okay.

Q. To try and understand, if you could; if it couldn't be scored, and if neither of them did better in the qualitative do you get my point?

A. Yes.

Q. It's neutral as between the two of them in the qualitative, and if it hasn't been scored in the quantitative, neither of them is getting an advantage in the quantitative either. Do you see the point I am making?

A. I take the point you are making.

Q. That's all I am trying to understand.

A. I understand the point you are making.

Q. Right. And then likewise, that then leaves us with a situation, if that could be done, that meant that the 11 for the licence fee and the 6 for the international roaming in the quantitative didn't affect the result, or couldn't affect the result of the quantitative evaluation, as between the top two, anyway; isn't that right?

A. Well, that's on the basis of the suggestion you have made, which is

Q. I am just wondering, could that have been done?

A. That the roaming would have been neutral. Now, so I mean, I understand what you are saying, but the

Project Team never came back to the quantitative model and looked at it in that way.

Q. I understand that. Andersen advocates a position here. He was advocating such a position from about the 4th August. He is now, in fact, in this, providing the reasons why the quantitative withered away, and I am just trying to test whether the reasons are real reasons or rational reasons. We are then left if it could have been done that way we are then left with the performance guarantee, which couldn't be scored, and that amounted to about 5, 5 points, or 5 or 6, or whatever.

A. Yes.

Q. And there was a difference between them on that which was an A and a C?

A. A D, was it?

Q. An A and a C: A3 a C, and A5 an A. Sorry, this is on the performance guarantees sorry, the blocking and drop-out rate, the performance guarantees, I think.

A. Okay.

Q. Now, if you were to even to apply a hard figure, that would be a 5 against a 3, or something like that, or 0.5 and 0 point, whatever type of scoring he was using in the quantitative model. And then you come to tariffs, and I know that you took into account far more matters.

A. Yeah.

Q. But again, that was an area A3 came out ahead of A5, is that right, on the qualitative?

A. Yeah.

Q. I am just really trying to understand this justification, if it be a justification, being made by Andersen here in the report for the withering away of the quantitative. I want it to be always borne in mind, you were the one that suggested at the meeting of the 9th that the quantitative table be included in the report.

A. Yeah. But I mean yes, I mean, I was quite clear that we should put it in on the basis that

Q. I am just trying to understand how that could have affected the outcome. It could have; I accept that. But how could that have affected the outcome of the quantitative evaluation?

A. How could which? I am sorry if I am not concentrating.

Q. I'll go through it.

Andersen gives this justification. There are four matters, he says, that couldn't be scored?

A. Yes.

Q. We have been through them.

A. Yes.

Q. Now, you get a result. You couldn't score these four.

He is effectively offering this as a justification for, he uses the expression, the withering away, the

abandoning, whatever, of the report.

A. Yeah.

Q. When you look at it in any detail at all, it's very hard, I suggest, to understand how those particular difficulties could have caused the withering away of the quantitative report, in that they may have slightly, or may even have significantly, but it looks as if perhaps only slightly affected the output of the quantitative. That's all I am suggesting.

A. I think I understand what you are saying.

Q. Do you see the point I am making?

A. I think

Q. I'll go one step further

A. To the extent that what we are talking about here is the technical deficiencies in the model, and you know, there were more general deficiencies which perhaps are not described here; but for example, I have given you a very clear view as to what I saw as being a major deficiency in the tariff analysis.

There was a similar major deficiency in relation to the financial analysis. A huge deficiency in relation to the market development analysis. The model was deficient across a large number of the selection criteria, a large number; and perhaps that does not emerge clearly from this particular description here, but what I am saying to you is that what I am describing to you is my recollection of my frame of

mind in relation to the deficiencies, and I believe

that that was a shared understanding.

Now, you can see that what this text is saying is, it concludes that the quantitative analysis withered away, and I believe that that was a shared conclusion, that everybody understood why we were not hanging on to this quantitative evaluation. I believe that was understood.

Q. Perhaps you yourself have used the expression that you believe that it was rejected. You see, it's the language used here by Andersen that I am interested in at the moment. The one thing that it didn't do was wither away. It was there. The quantitative evaluation was there, wasn't it? There is no doubt about it?

A. It was, yeah.

Q. Now, I can understand if it was there and it was rejected, and there were reasons or an explanation as to why it was rejected.

A. Yes.

Q. Everyone could follow it.

A. Yes.

Q. That's not what Andersen says, is it? He is saying that it withered away, and that does not appear to be what happened.

A. Okay, well, I suppose let me give you a view.

Q. Yeah.

A. I think you could argue as to whether the phrase "withered away" is a good description or not. It may be the case that one could find words to better describe what happened. My view, my clear view, as I have said a number of times already this morning, is that this quantitative analysis had a very limited, very limited value. I also believe that that was a shared view; that it was clear to everybody who participated in this evaluation that it was a subset of the qualitative evaluation, which was much wider, much more comprehensive, more robust, more defensible.

Now, insofar as the conclusion from this text is that the quantitative evaluation wasn't pursued the quantitative evaluation isn't important; it has withered away I don't think that anybody was particularly exercised about the way the reasons for that were expressed in the context of the overall report that we were trying to reach agreement on. If you understand the point.

Q. I do.

A. That's my view.

Q. All I am trying to ask you about now is because what we have is a report.

A. Yes.

Q. And the report is supposed to be a reflection of what happened; isn't that right?

A. Yes.

Q. Now, one could also, I suppose, then, in trying to understand what happened, look to minutes of meetings, or any incidental notes or memoranda which may surround them, in trying to come to an understanding of what happened?

A. Yes.

Q. And there was no doubt that the whole purpose of the competition was to allow for transparency; isn't that right? That was so that there would be even no perception of a bias

A. Yes.

Q. in relation to the outcome; is that right?

A. Yes.

Q. Now, I then go to the report, which I would believe, and perhaps you would agree I would be entitled to believe, would contain the a true reflection of what happened.

A. Yes.

Q. But because we are involved in this inquiry, we have looked at all other matters as well?

A. Yes.

Q. Now, I cannot see, in any recorded decision in the minutes of the PTGSM, a decision taken to the effect that the quantitative evaluation was rejected. Isn't that right?

A. Yes.

Q. I cannot see anything in any of the surrounding notes,

other than the note of Margaret O'Keeffe on the 9th, where there is a debate going on where you are proposing something and you think that it's Andersen is responding in relation to something, so there may have been some discussion or debate going on; we know that.

And now we look at the report, and Andersen says that it's withered away. How can anyone know what actually happened about this in any formal sense?

A. Well, you have the report of the meeting where there is a recorded view on the part of the Project Group that it was seen, the qualitative evaluation was seen to be limited.

Q. The quantitative?

A. Pardon me, yes, the quantitative is limited. That's a view that's recorded.

Q. I know that.

A. When you look at what was contained within the quantitative analysis and when you look at what's contained within the qualitative analysis, you can see that all of the elements of the quantitative analysis are taken into account in the qualitative analysis.

Q. I know that as well.

A. So it's self-evident, when you look at them, that the qualitative analysis is wider, better, more holistic, more robust. And then when you come to the report, and you see a statement that the quantitative analysis

has withered away, then I think it's quite clear that the Project Team, having formed a preliminary view that the quantitative analysis was limited before having engaged in any qualitative evaluation, before having looked at the range of indicators that would be developed in the qualitative evaluation, then I think you can reasonably infer that nobody on the Project Team felt that the quantitative analysis had anything to add.

Q. Right.

CHAIRMAN: Would it not have been a more complete account of the process for report purposes, in accordance with the Andersen model, that you might have set out on the basis that you recall, that there was a quantitative analysis and a particular outcome derived from it, but on taking up, in accordance with the model, the more detailed and comprehensive analysis of the qualitative appraisal, you felt that it could not be the the former could not be relied on and a decision was made to discard it? Would it not have been preferable to have said that?

A. That's essentially what I was looking for at the Project Group meeting later on, and I can certainly now see the value in having included that.

Q. MR. COUGHLAN: Because, looking at it this way, I suggest to you that one could also reasonably infer that a query had been raised by Andersen in a memo to

you and Martin Brennan on the 21st September asking a question about the quantitative evaluation. You say there was no discussion about it in Copenhagen at all?

A. No, I don't recall any.

Q. So that being the case, and your belief being one thing that it was rejected, although we don't see any record of it, and Andersen then describing that it had withered away and given particular reasons why it had withered away, without stating what it had produced in terms of an outcome; that one could reasonably infer that what was being done here was the driving on with the output of you, Martin Brennan and the Andersen people in relation to the qualitative evaluation, and that which subsequently was discussed, or may have preceded the output of the evaluation table that's Table 16 and that that was being presented as the result and was being driven through, and that any presentation of the quantitative evaluation or of its output would have caused huge difficulties to anyone reading this particular report, in that they would ask themselves the question, without an explanation being given in the report: "What is going on here? We have one result here; we have this other result here".

A. Well, I dealt before with the issue of whether something was being driven through or not, and I don't agree with the use of that verb in the particular context of what we were trying to do.

Q. Right.

A. We were trying to reach an agreement on an evaluation report. Now let me hypothesise for a moment that there was a preferred result. In that case, where there was a clear paper trail showing a quantitative analysis where Persona was ranked first

Q. Where whom?

A. Where Persona was ranked first, where there was a whole Project Team that was aware of that fact, if one was seeking if one was seeking to push a preferred result, wouldn't it make far more sense to deal with that issue? To deal with it head on in the report?

Q. Or to deal with it by Mr. Andersen, who was the author of the model, effectively, describing problems with it after the model had been adopted; and remember, he had the experience of doing this on two previous occasions

A. Yes.

Q. and getting Mr. Andersen, at the meeting of the 9th, to argue vigorously against a suggestion coming from you and coming from you, I accept, bona fide in this regard getting Mr. Andersen to argue vociferously against it, the inclusion of it?

A. Well, I won't speculate on the use of the phrase of getting Mr. Andersen to do something.

Q. Well, Mr. Andersen did it, as you say; that's what you believe?

A. Sorry, getting Mr. Andersen to do something has connotations. And I am not going to speculate on that, because you know my view on that; okay?

Q. Okay.

A. What it seems transpired at that meeting is that I had a view that the quantitative evaluation should be included in the report, and that, as the Chairman has suggested, that we should incorporate text setting out our view on why it was inadequate.

There was a different view on the part of the consultants, on the part of the expert, that the model was inadequate, that you couldn't his view, it seems, was that you couldn't present this model because of the deficiencies.

Q. I suggest

A. So it's a difference of view and how you present it. My view is you put it in and deal with it. His view was no, you say why it was inadequate.

Q. It was astonishing that he would take the view that the model was inadequate, because this was his model, and it was probably the model a model or a similar type model, that is a quantitative model, which might have been used on some other occasion, it may have been. Perhaps not exactly the same, but he would have used a quantitative model. I don't think it was new to him to use both a quantitative and a qualitative model?

A. No, I don't believe so, I don't believe so.

Q. It would be astonishing to think that he would consider the model inadequate. And what he does in this methodology is not say that the model was inadequate, but to say that it proved impossible or difficult to score certain matters because of lack of information in some cases or incomparability because different information was furnished by different applicants

A. What he is saying is the application of the model doesn't work. I mean, I think it's correct to say

Q. The application in these, and he gives the four instances?

A. Yes.

Q. And we have been through those, and I don't want to go over them again. And I am just trying to understand how, in those four instances, the outcome or the output or ranking from the quantitative model could have been affected. That's all I am asking. It seems the whole thing seems astonishing, because of the stated reasons of Mr. Andersen. I take your point

A. I mean, that's a very extreme phrase to use, in my view, "astonishing", in relation to what I have described.

Q. Not what you have described. I am saying what Mr. Andersen it would seem astonishing that he would

say that the model was inadequate, because he designed the model. The model was inadequate. The application of the model is what he is describing here

A. That's the application of the model, and what he proposes in the report is that, "having realised that the evaluator decided that the foundation for a separate quantitative evaluation had withered away".

Q. We have been through these four headline reasons which

A. Yes.

Q. And I am still at a loss to understand how that would have caused the withering away of the quantitative.

That's all I am trying to understand. That's what it's what I think is astonishing is astonishing in that sense.

A. Okay. And what I set out to you to do was to try and demonstrate to you that it was a very restricted model, and that is very clearly my memory of it.

Q. Very good.

A. To some extent, this text may not describe that in a comprehensive way. If I set out to describe the inadequacies of the model, I believe I could do so in a more comprehensive way than is set out here, and what I am saying to you is that it is my view that that was the shared view of the Project Team, that the model was inadequate.

Q. Well

A. And what I am suggesting is that while the conclusion the conclusion is that the value of a quantitative model had withered away. That was a shared conclusion. The actual reasons may not be the same as are written down here. In my case, in fact, I would say that the reasons aren't exactly as written down here. There are other reasons in my mind that we have talked about all morning.

Q. Now, as we say, we see no record of a rejection or a withering away, whatever?

A. Yes.

Q. And this particular we know then that the final report was produced, isn't that right, dated the 25th?

A. Yes.

Q. And you had gone through, with your colleagues and with Mr. Andersen, a process of textual amendments, isn't that right, having gone through the report, and that was to be the final report?

A. Yes.

Q. And this particular text is continued into the final report?

A. I expect so, yes.

Q. So can we take it that this is the official statement, so, about it; that that is the final report?

A. I am assuming in that case it's the final report.

Q. You can take it it is; that text is carried in the final report.

A. Yes, that's the final report, yes.

Q. And it, at the very least, does not accord with your belief of what happened, isn't that right, that there was a rejection?

A. There was clearly an implicit rejection.

Q. Very good.

Now, just coming back to a matter which we were dealing with yesterday, and it's this whole question which appears in the first and second drafts of the report, the Table 17/18 issue.

A. Yes.

Q. And particularly on Table 17 and 18, the weightings applicable to the dimensions; do you know that particular

A. Yes.

Q. And we had a long discussion about that yesterday. You told us that you believed that there was a discussion in Copenhagen where that was arrived at, that particular weighting of the dimension?

A. Yes, yes.

Q. And you don't recollect whether you told anyone else in the Project Group that those weightings, particular weightings for the dimensions had been agreed in Copenhagen. We don't see it recorded anywhere, anyway?

A. Do I recollect the discussion at the Project Team where we set out that decision and the reasons for it?

It took place over seven years ago, and no, I don't.

But in the Project Group in the report, the weighting is clearly set out.

Q. I know that.

A. And I would expect that the Project Team, knowing that we had agreed a weighting and a modified weighting at the dimension level, would have seen the way in which we carried out the evaluation. Indeed, if you look at the Project Group, I mean, quite a large part of the Project Group was directly involved in evaluation sub-groups and therefore had an understanding of what was done. For example, in the technical sub-group, they took a view that the 20% be broken down 10 and 10.

So without recollecting it, I am quite sure that it was made clear to the Project Group. I'd be surprised if it wasn't. I you know, I'd be surprised if nobody in the Project Group who hadn't been directly involved, if nobody looked at it and asked the question, "How was this arrived at?"

So while I can't recollect it, I would be very, very surprised if it wasn't laid out clearly.

Q. Right.

Now, I just want to ask you about one or two things about that. Maev Nic Lochlainn I think Maev Nic Lochlainn worked directly to you, is that right, on this particular PTGSM?

A. Yes.

Q. And again, just and I understand it's seven years ago, but from one of the original meetings of the PTGSM, where work was being allocated, I think you were effectively assigned virtually full-time to the PTGSM, or you were the person who was to be most available or more available than others; is that right?

A. I think that's probably true, yes.

Q. I think that's right. And was Maev Nic Lochlainn effectively, then, assisting you, would that be, in the day-to-day work

A. I mean yes, in a general sense, yes.

Q. Now, can we take it that you would have kept her informed, to the best of your ability, of things that transpired, even if they are not noted?

A. I think so, yes.

Q. Now, I should say here that Ms. Nic Lochlainn is going to come back to us about some matters, but if you could look at page or, sorry, Book it's the weightings book, Book 54. And it's Divider 9. And this is a fax which Ms. Nic Lochlainn sent to Mr. Andersen on the 6th October 1995, which would have been perhaps two days after the first draft report was received.

And she says: "Two items for your attention, please.

Please see qualitative scoring for technical aspects

as recorded by John McQuaid which follows Annex A.

This does not correspond with technical aspects subtotal detail on page 44 of the draft evaluation report. I believe it is a typo. Marketing aspect scores have been duplicated by mistake."

Now, in fact, do you remember when we were looking at the first draft evaluation report, and do you remember under the subtotal on Table 16, there was an A/B where there had been four As for the technical?

A. I do, yes.

Q. In fact that seems to be a reference to that; and when we come to the second draft in the final report, there is a correction, because it changes to an A. So just so there seems to have been a response to that.

And then: "2. Please see attached list of criteria and weighting as agreed by the Project Group prior to the 4th August 1995.

"Could you please clarify how these relate to the weights as detailed on page 17/21 of the document of 8/6/95 which were to be the weights underlying the quantitative evaluation? Page 17 also attached at Annex C and to page 7 of the draft quantitative report (see section on weights at Annex D) e.g. OECD basket" we needn't concern ourselves about that particular one at the moment.

If you go over two pages and you see Annex B, that is

the criteria in the descending order; okay? Do you see that?

A. Yes.

Q. And then she sends, then, that which was adopted on the 9th June, with the revision, you can see, for the 18 and sorry, for the 15 and the it's the adopted, or the revised adopted weightings. Do you see the 11 for the licence goes in instead of the 14, and the 18 up there for the tariffs?

A. Yeah.

Q. Instead of the 15.

Now, you can see that she is obviously raising a query of Andersen, isn't she, about the weights?

A. Oh, yes, yes.

Q. No doubt about that?

A. Yes, no doubt about that.

Q. And what she is saying is that the weights that were adopted prior to the 4th August were the quantitative weights, and she in fact shows sorry, were the weights adopted prior to the 4th August, and the quantitative weights which underlie the underlie them?

A. Underlie the weighting of the quantitative analysis, yeah.

Q. So as of the 6th October, Maev Nic Lochlainn, who worked directly to you, does not appear sorry, did you know she sent this?

A. I don't recall it, no.

Q. Well, it looks as if she, at least, as your direct assistant or subordinate and as a member of the Project Group, does not appear to have been aware of any discussion in Copenhagen on the 28th which brought about a revision of the weightings for the dimensions, isn't that right, on the basis of that?

A. Yeah, that could be I mean, I would expect her to ask a similar question of me, you know.

Q. Well, we have a record there of her asking Andersen; right?

A. Yes.

Q. She hasn't been able to tell us what response she got to that, although she must have got some response, because she got a response on the John McQuaid query which results in the table being changed, it was a typo, the A/B?

A. Okay, yes, yeah.

Q. Now, there is one member, and she had to in the witness-box, she was unable to assist the Tribunal as to what response, if any, she got in relation to that, and is to come back to the Tribunal.

A. Yeah.

Q. Right?

A. Yeah.

Q. Now, I think I did bring your attention to a memorandum which Mr. Donal Buggy sent to you on the

3rd April of 1996, when you enclosed a draft letter, drafts of letters which had been sent to the disappointed applicants?

A. Yes.

Q. And in that in fact, it was my fault yesterday, in fact I had these pulled out separately, but they are also contained in Book 56. These particular documents are contained in Book 56. I'll just get it for you now.

Tab 3. Do you have the hard copies there?

A. I have the one that was handed to me.

Q. Do you see the draft letter, and we dealt yesterday with the final paragraph on the first page, but if you just go over to the table, then

A. Yes.

Q. which you attached to that draft letter which you sent, or you gave to Mr. Buggy?

A. Yes.

Q. And you can see there that you have the selection criteria, and then you have them broken down to the dimensions. And these were the award of grades or marks, grade awarded this happens to be Persona you did similar drafts for others?

A. Yeah.

Q. Then you have the weighting applied; then you have the breakdown as per dimensions, do you see that, in the next column?

A. Yes.

Q. And then the score. But we needn't be so concerned about the final column.

Now, in fact, in Mr. Buggy's handwriting, both in relation to the credibility of business plan and the technical matters there, do you see that?

A. Yeah.

Q. He has little arrows, and he has noted "Was the split agreed"; do you see that?

A. Yes.

Q. And in the first page of his memorandum, yes, the first page of his memorandum to you, where he is going through the letter, under "General Comments to All Letters" page 5, "Weighting applied: Was the split of market development, financial key figures and experience and radio network architecture, etc., specifically agreed, or was it just considered indicative?"

So there is another member of the Project Group who, even as late as April 1996, after the final report was obtained, appears to have does not appear to know whether a split was agreed or wasn't agreed by the Project Group?

A. I think it's clear in the report, I think it's clear from the report that there is no question that that breakdown was indicative. That's clear in the report.

Q. That the breakdown was indicative?

A. Yeah. Sorry, Mr. Buggy's text, am I right in saying

Q. He was asking, was it agreed?

A. Was it specifically agreed, or was it just considered indicative? What I am saying is if you look at the report, it's clear that not only was it not indicative, but that it was a central part of the means by which the decision was made. So the report makes it clear, really, is all I am trying to say to you.

Q. Yes, sorry, I take your point.

Wait, now; the report makes it clear it wasn't indicative. What the report is purporting to state is that it was agreed, is that right or it doesn't say it was agreed; it just has them in. What the report has

A. It was agreed in the sense that it was an agreed report.

Q. Hold on a second, now. Here is a member of the Project Team asking a question as to whether it was agreed. If he doesn't know whether these were agreed, how can it be an agreed report? That's what I am asking you.

A. I am surprised that he may not have been clear about the point in April '96. What I am trying to figure out is whether he was present at the meetings where the final report was agreed. And that, I can't be

absolutely clear on.

Q. Nobody saw the final he didn't see the final report. Mr. Sean McMahon didn't see the final report.

This is the problem here. You see, the Project Team never saw the final report.

A. The final report was agreed on the night of the 24th

Q. The Project Team never saw the final report. Mr. McMahon in his evidence says that he subscribed to supporting the matter if he was satisfied with the final report. He never saw the final report. He never saw it.

A. Never, or not before the decision was announced?

Q. Ever, until the matters arose with the Tribunal. Ever. And he was the de facto Regulator. He never saw the final report.

A. Well, I mean, that would surprise me. And certainly, certainly, I mean, the final report was available to him. There is no question about that.

Q. He never saw the final report. As I understand it, Mr. Buggy never saw the final report. We didn't ask Mr. Riordan.

A. Obviously I don't know of any reason why these people would not have seen the final report.

Clearly

Q. We know Mr. McMahon never saw it. He told us.

A. Okay. I mean, I am taking your word on what Mr.

McMahon's evidence was. I suppose, really, all I am saying is that there was a near-final report which was discussed line by line, more or less, on the night of the 24th. Some amendments were agreed. Armed with that knowledge, I mean, it is clear that the Project Team agreed on those amendments in order to arrive at a final report. And a final report, as soon as it was available to us, meaning to my division, it would have been available to any member of the Project Team who wanted it.

Q. That's a different thing to sending it to somebody, isn't it? If it was to be available to sign off on it, he wanted to see it, that was his view about the report Mr. McMahon?

A. I am not clear that was his view.

Q. That's the evidence he gave.

A. My recollection is that we had agreed, on the night of the 24th October, everything that was necessary to agree in order to arrive at a final report. In my recollection, there was no doubt about that. This was a final report.

Q. Just now, because the query Mr. Buggy is raising with you there it's Book 56, and this book contains a copy of this second evaluation report which Mr. Buggy seemed to be working on, and it also seems to contain one which Mr. Riordan was working on.

A. Sorry, Book 56, is it?

Q. Book 56.

A. I don't think I have that one at the moment.

Q. Now, behind Tab 1 is Mr. Buggy's copy, and if you go

to page 50, this contains Table 17.

A. Go to Tab ... ?

Q. Tab 1, page 50.

A. Page

Q. 50.

Now, do you see there, and perhaps this, you see,
explains Mr. Buggy raising the question with you in
April. Do you see Mr. Buggy has blacked out the
split?

A. I do, yes. It is a copy blacked out, as distinct
from highlighted?

Q. It's blacked out.

Now, of course, this particular copy of the evaluation
report was the one which contained the evaluation
model with the table on the quantitative model, the
weighting table on the quantitative model, altered;
isn't that right? This is the one of the 18th; this
is the first

A. I take it that that's yes, I think... I think so,
yes.

Q. And if one was reading right through and saw the
evaluation model and saw the text referable to Table
18 here, where Mr. Andersen says that the quantitative
weighting which had been agreed prior to the closing

date was applied here, one might believe, yes, that that was the quantitative weighting which was applied here, just reading the report and looking at the table in the Annex 3 to this report; is that right?

A. I see what you are saying, I think, yes.

Q. Now, Mr. Riordan, if you go to Tab 5, and if we go to page 50. We have a problem with Mr. Riordan on this.

Mr. Riordan has many notes.

A. Has many?

Q. Notes made around the place. He doesn't recollect whether it was he can't remember whether it was he himself or somebody else said to him, but he has it noted anyway; right? And do you see there, the square box: "Not agreed by Project Group". Do you see the split, the arrow going to weights?

A. I am sorry, I was looking at Page 51.

Q. The box page 50.

A. Yes.

Q. "Not agreed by Project Group", and then "No reason why the 10 should be split in this way"; I presume the 10s should be split in this way; do you see that?

A. Yes.

Q. Perhaps it should say 30.

A. Yes.

Q. He has no recollection of whether he brought it up at the meeting or not.

A. Well, I mean, it would suggest that it would have

arisen.

Q. He says it could have arisen in many ways, even in a discussion with Mr. Buggy, because they did have discussions he thinks either somebody said it or he said it; right? "Not agreed by Project Group"

A. Of course, I mean, it could have become redundant as well, you know, if the breakdown was explained at the Project Group. That would be another possibility.

Q. Well, you then go over the page, and again this is an exercise which was done by Mr. Riordan. And do you see the split there: 7.5, 15, 10?

A. Yes.

Q. And that does conform with the text which was the application of the quantitative weightings?

A. That's correct, yeah.

Q. No doubt about that?

A. No doubt.

Q. And if he was told to if somebody told him to forget it on page 50, you know, that it wasn't agreed, that the breakdown there, nonetheless, it appears to have been done on the next page, where it is described "These weightings came from the quantitative weightings", and he'd got the split there?

A. Sorry, where is that described?

Q. Do you see page 51, sorry, the text?

A. We are talking about page 51 is what you are describing as Billy Riordan's

Q. Do you see there the weightings as from Table 17, do you see the weightings, the split of the weightings, and then written beside it

A. "Replaced blocking/drop-out rates"

Q. You see page 51? Have you got that?

A. In Billy Riordan's handwriting.

Q. In Billy Riordan's handwriting, page 51.

A. Yes.

Q. You see the typed-in weights?

A. Yes.

Q. 10, 10, 10. You see written beside them on the left, 7.5, 15, 10; do you see that?

A. I see that.

Q. And those are the weights which were applicable to the quantitative

A. Indicators, right, yes.

Q. Isn't that right? And that's what the text says also, the quantitative dimensions, the quantitative dimensions; not indicators, dimensions?

A. Which text is that, I am sorry?

Q. Are you looking at the text which says "In order to check the results, the quantification of the results has been carried out eliminated by Table 18. The quantitative scoring of the applications generates the same ranking." Do you see that?

A. Yes.

Q. And we have been through that particular exercise

yesterday; I am not going to go over it again. If you are exercising the judgement in relation to Table 17, if the different weighting is applied?

A. Okay, yes.

Q. Now, again, there is another member of the Project Group, is that right we have Ms. Nic Lochlainn raising the query, we see Mr. Buggy's position, and here is Mr. Riordan?

A. Yeah.

Q. So if there was any agreement in relation to this matter, it was only an agreement between you and Martin Brennan and perhaps Michael Andersen; isn't that right?

A. I don't think there is any basis on which you can say that whatever concerns these people may have had or some lack of clarity there may have been at this point, I don't think you can conclude that those issues weren't resolved.

Q. How were they resolved?

A. There was agreement on the report.

Q. How were they resolved? Was it explained to them that was it explained to them that there was a deviation from the dimensions in relation to the first criterion?

A. I have said to you I don't recall specifically the exchanges at the meeting. So I can't tell at that level whether what exactly the exchange was. But

it's clear, it's explicit in the final report that the
breakdown under this first criterion was 10, 10, 10.

Q. Explicit; it's explicit?

A. Yes.

Q. Right. And is the reason for it stated in the final
report?

A. I don't believe so.

Q. You don't believe the reason is stated?

A. I don't believe that the basis for the decision that
was taken to adopt a 10, 10, 10 split is elaborated in
the report.

Q. Right. When you were at Copenhagen with Martin
Brennan, was there a conscious deviation from the 7.5,
15, 10?

A. I don't believe there was. I think we took a view,
based on the dimensions that we were looking at and
the range of indicators, that the appropriate split
was 10, 10, 10; that's my belief.

Q. But only those three people: you, Andersen and Martin
Brennan. Isn't that right?

A. Well, we were the people who were bringing this
forward in order to bring back a proposal to the
Project Group.

Q. The whole team had agreed the previous one? The whole
team?

A. The whole team, right.

Q. Fastidiously recorded by Maev Nic Lochlainn, gone

through a process of even making contact with people in relation to the revision, which was fairly self-evident?

A. At the level of the criterion.

Q. No. We have been over this over and over again, and I showed you the memorandum of Ms. Nic Lochlainn, didn't I? Didn't we open it yesterday, her memorandum to Mr. Brennan, where she records the agreement in relation to the weightings and what underlaid them? Isn't that right? Haven't we been through that? Didn't she send a fax to Michael Andersen on the 6th October in exactly the same terms? And in the memorandum to Martin Brennan, she said those that were agreed in relation to the quantitative arising from so we have been over that.

A. It's my view that the weighting of the selection criteria applied to both the quantitative and the qualitative models.

Q. Look, that is not what I am asking you about.

A. Yes.

Q. What this says is that you were applying the quantitative this is what this says the quantitative weightings. That's what this says.

A. "This", meaning the text?

Q. The text. Isn't that right?

A. That's what the text says.

Q. And somebody has altered the historical record of the

quantitative table in this particular draft of the report; isn't that right? They have altered the historical record?

A. I understand what you mean, yes.

Q. It couldn't be a mistake. Somebody had to consciously alter it?

A. I understand.

Q. Right. And the final report, which is in somewhat different format, and I'll come to it in due course, records Table 17 as being the result; isn't that right? Sorry, what we see in this draft is Table 17; that is, the letters with the weight attaching to it.

Isn't that right? You can take it that that's what the body of the text says; right?

A. Well, that was my understanding of the Project Group's view, yes.

Q. And the table is the same table that was created in Copenhagen; isn't that right?

A. I think so, yes.

Q. And those weights are in it, and they were put in them in Copenhagen; isn't that right?

A. Yes.

Q. And you have explained to me how a judgement you believe that a judgement gave rise to the bottom line in that table, and we went through a discussion about how, whilst you have no absolute recollection, that a judgement probably evolved by looking at the big

hitters, the top three criteria, and we have been

through all of that?

A. Yes.

Q. And that's how a judgement could be exercised, because

you couldn't put actual multiplications on it?

A. Yes.

Q. And that had come through the first draft and the

second draft, and it was described as a conformance

test; isn't that right?

A. I think that's true, yes.

Q. And all that happened, as a result of any discussions

which took place on the 23rd, was that it was stated

that this should be stated to be the result, isn't

that right, this table; the Table 17 we are talking

about, the letters and the indicators?

A. Okay, yes.

Q. And it goes on in the text then to say, and I'll come

to it, that the judgement, the result, or the

judgement, whatever you wish to call it, was arrived

at by a process of discussion, isn't that right,

that's what the text says?

A. Yes.

Q. And that was the discussion which took place in

Copenhagen?

A. I mean, I would need to look at the document to be

clear on exactly what you are saying.

Q. The discussion was the one which took place in

Copenhagen, wasn't it?

A. The initial discussion on the scoring, yes.

Q. Now, you have stated in your formal evidence that the evaluation report it's at page 34, Answer 57

"The evaluation report was in my view an accurate account of the evaluation process in which I had participated"; isn't that right?

A. Yes.

Q. Now, can I take it that you read the first draft?

A. Yes.

Q. You read the second draft?

A. Yes.

Q. And you were the man in the firing line in relation to all of the textual amendments which gave rise to the final version; isn't that right?

A. Yes.

Q. And you read the whole thing?

A. Yes.

Q. You read the whole report when it arrived?

A. Yes, I believe so.

Q. Well, in any event, can we take it that you read the second draft completely? You had to, I suppose, if you were going to be the one that was to be involved in any subsequent changes.

A. Yes.

Q. Now, if you go to I am back to Book 46 now, and these are the blank evaluation reports that I have

and you go to Tab 47, that's the second draft of the evaluation report, and it's the first one

A. 47, the appendices?

Q. Yes, the appendices. And Appendix Number 2, we have been dealing with it already this morning; it's the methodology?

A. Yes.

Q. And that describes what happened, isn't that right, how the whole thing was done?

A. Yes.

Q. Annex 3 then gives the evaluation model?

A. Yes.

Q. So in looking at both of those, one should be able to have a reasonable understanding of the whole thing; isn't that right?

A. Yes.

Q. Now, would you go to page 7 of Appendix 2; the methodology applied?

A. Yes.

Q. And the marking of the application and the nomination of the best applications; do you see that?

A. Yes.

Q. Now, go down to the final paragraph on that page.

"The report aims at nominating and ranking the three 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.

"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, etc.

conversion of marks to points."

So Mr. Andersen here is clearly describing the methodology which was applied, and it is in conformity with the text under Table 18 in the body of the report; isn't that right?

A. Yes.

Q. Now, that's in the draft.

A. Yes.

Q. You say that there was a discussion which deviated from that particular weight, isn't that right, in Copenhagen?

A. Yeah.

Q. Mr. Andersen doesn't describe it there. He says that

something quite different happened, that which happened in the body. Isn't that right?

A. Yes.

Q. Right. But, interestingly, in this particular draft, we see for the first time that there has been and I'll use the term an "unauthorised", because we know that there was no decision taken by the PTGSM, an unauthorised alteration of the weights for the quantitative model, isn't that right, in this particular draft? Unauthorised?

A. There was never any agreement on the changes

Q. Therefore it was unauthorised; isn't that right?

A. It wasn't agreed.

Q. It wasn't authorised?

A. Okay, in that

Q. Did anybody authorise it? Did the PTGSM have a meeting and authorise this?

A. No, no, it didn't.

Q. So we now have a situation where there has been this interference with the historical document, but what it does is it purports to match up with the weightings which are contained in Table 17 and Table 18; isn't that right?

A. Yes.

Q. Right. Now, let's go to the you had the meeting on the 23rd. We have seen other people's interventions, and I should just throw into the melting pot something

for the moment, something which My Friend Mr. Fitzsimons drew to my attention this morning in relation to the evidence of Mr. McMahon, when My Friend Mr. Healy was asking him about the note made by Margaret O'Keeffe on the 9th, you know, under the heading "Weightings Not Agreed"; do you know that note?

A. Yes, I know the note.

Q. That Mr. McMahon said that that note was wrong or erroneous; that it was the correct weightings.

It's Day 207, page 100, Question 439.

"It's under weighting. It says "Table 17 different from agreed weightings" but then we look at Table 17 we see effectively the 30, 20, 18, 11, 7, 6, 5, 3 which is the schedule B detail which we have seen the 27th July. So whatever the remark meant, so far as you were concerned, it's wrong, because the weighting here are actually right.

Answer: Yes, they are correct weightings.

Question: So we can pass from that."

So the only point I make about that is, I suppose we hadn't gone into this question in great detail of following it through the reports as we have now, and perhaps we can ask Mr. McMahon you see, Mr. McMahon only ever saw the first draft report at the meeting on the 9th. He was trying to read it at the meeting of the 9th. So any, perhaps, detailed consideration

which himself and Mr. O'Callaghan would have given to matters arose from this second report, which does have a table which contains weightings which conform with that contained in Table 17 and 18.

So I just I am putting that into the melting pot for the moment. My Friend drew it to my attention.

A. Okay.

Q. Now, if there was discussion which gave rise to an agreement after this draft was received, and we know that there was a meeting on the 23rd, and there was a discussion which resulted in substantial textual amendments, in fact, to the extent that Table what's Table 16 in this report drops into a different position; and you send a text to Mr. Andersen and suggest two new chapters and the text for them. But there is nowhere disclosed in that that the weighting on Table 17, or the weighting in Table 18, arose as a result of any agreement of the PTGSM; isn't that correct?

A. No, there is no record of it, but I mean, it's clear that people within the Project Group were alert to the issue of the importance of weightings.

Q. I understand that. Because, you see, if you go to Tab 50, that contains the final version, the 25th October.

A. Okay.

Q. Now, I'll come to the text of the report to show where

table where the old Table 16 appears in this final version and where the old Table 17 and of course you are right, the Table 17 and the Table 18, the old Table 17 and 18 contain the weightings and the split 10, 10, 10. But this final version, and you say you read the whole draft of the second version, also contains in the "Evaluation Model" section, which I think is Appendix 4 in this sorry, I beg your pardon, no, it's not it's Appendix 3 in the final version.

A. Tab 51, yes.

Q. Tab 51, page 10.

A. Yes.

Q. That contains the altered historical document, do you see that, as being the weights for the quantitative model? It's exactly the same as in the previous draft?

A. Yes, okay.

Q. And it conforms with the weightings in the Table 17/18, we have been through that, in the previous draft.

A. Okay.

Q. Now, in the main body of the report, which I will go through with you after lunch, because, in fact, there is a replacement of a chapter or there was an added chapter and things are moved around, but if you go to Appendix 2, the methodology applied.

A. Yeah.

Q. That's at page 7. And it says that "The report aims at nominating and ranking the three best applications.

This has finally been achieved through:

"1. Qualitative award of marks to the 6 applicants

with respect to the 56 indicators outlined in

Chapter 4 of the main report.

"2. Qualitative assessment of applications according

to the marketing, technical, management and financial aspects.

"3. Validation and finalisation result 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."

Now, you read through the whole of the second report.

There was a meeting on the 23rd and the 24th; we'll

come to that in due course. There was substantial

textual amendments made. If the other members of the

PTGSM had agreed to a revised division or split in

relation to the first criteria, as you think might

have happened you are not saying it happened; you

think might have happened, or you say it's implicit?

A. It's implicit, in my view.

Q. How is it contained in the final report that the

methodology involved a validation by the application of qualitative marks to the quantitative weights agreed prior to the closing date?

A. I don't believe that's recorded.

Q. It's in the report. That's what's in the report.

That is what is in the report, Mr. Towey.

A. Sorry, the application of the I see what's in the report, yes.

Q. So we have no reference in the report to what you are contending for, that there must have been an agreement about a revision of the split. We have a removal from the report of what Mr. Andersen describes under Table 18 of the application of the quantitative; isn't that right? We have an unauthorised alteration of the quantitative table in the evaluation model in the report, which coincides with what is on Table 17 and 18, and we have a statement in the report that the validation, the result is a result of the application of the qualitative marks to the quantitative weightings adopted before the closing date.

A. I understand what you are saying, yes.

Q. Doesn't it only suggest one thing, Mr. Towey: a complete cooking of the books to put this together?

A. There is no question of that.

Q. I'll come back to it after lunch.

A. Absolutely no question of that.

Q. I'll come back to it after lunch, and you can tell me

and think about it how this exists.

CHAIRMAN: But, as with the abandonment of the quantitative report, any revised weightings that were decided upon were decided upon, in your own words, on an implicit basis. That's the words you used in both matters this morning?

A. Yes, there was an explicit agreement in Copenhagen, and as I say, it's implicit in the report that it was agreed at the Project Group level. I expect there was some explanation of it, because I would expect Project Group members to be alert to this issue. But unfortunately I can't recall discussion of it.

CHAIRMAN: Ten past two.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

MR. COUGHLAN: Sorry, Sir, just I was in discussion with Mr. Nesbitt and Mr. O'Donnell.

CONTINUATION OF EXAMINATION OF FINTAN TOWEY BY

MR. COUGHLAN:

Q. MR. COUGHLAN: I just want to come back to just before lunch, Mr. Towey.

A. So do I, Mr. Coughlan

Q. I want to deal with it because your counsel had indicated a level of upset on your part by the way I put a question, doesn't it only suggest one thing: A cooking of the books

A. Yes.

Q. Now, I am inquiring and I am inquiring and I am asking that question along those lines that looking at it, one could ask the question, doesn't it suggest that?

That's one thing it suggests?

A. If you are asking if you are inquiring as to whether it's a fact that the books were cooked, or there was a cooking of the books, I want to make it absolutely clear that I reject such a suggestion, and indeed I resent any such suggestion in the context of the role that I had in this process.

Q. Well, the inquiry and the findings will be made by the Sole Member at the end of the day.

Now, what I want to continue the inquiry along is this: Can you give me some other explanation or suggestion as to how this situation came to exist?

A. What situation are you talking about? Are you talking about the situation

Q. That Andersen says in the report, in the methodology, that the quantitative weighting was applied.

A. Yes.

Q. The quantitative weighting on the tables that we have seen in the evaluation in the second draft and in the final version are not the same as in the first draft; isn't that right?

A. In relation to the indicators, yes.

Q. In relation to the quantitative

A. Sorry, in relation to the quantitative, yes.

Q. Now, but they are in conformity with what appears in Table 17 and Table 18; this is the one in the second draft and the final version?

A. Yes.

Q. There is no record of any discussion. There is no record of a decision being made about the question of re-jigging or resplitting the weighting in relation to the dimension for the first criteria, isn't that right, anywhere?

A. No record of discussions, yes.

Q. Now, you were upset, and your counsel brought it to my attention, about the question and the way I put it.

And that is a question that I put, and I say it is a legitimate line of inquiry to ask; doesn't it

MR. NESBITT: Perhaps, Mr. Chairman, I might assist Mr. Towey and hopefully Mr. Coughlan. The difficulty we had, and we represent the range of witnesses who are giving evidence on behalf of the departments to this Tribunal to assist, is a difficulty we flagged already.

A series of suggestions have been made at the opening of the Tribunal as part of the module, and in the second opening that took place, that the Tribunal would be going in certain directions. There is a vast amount of documentation; events that have taken place, things that occurred in the course of the process to award the second GSM licence, and each witness that

comes in has a little part to play in that, and we are here full time looking at all the documents, and it's difficult for us to follow it. But witnesses who come in, having come from their jobs doing other things and having been asked to look at bits and pieces of the documentation, really need some idea as to what the Tribunal are trying to achieve by the lines of inquiry. And this morning, coming up to lunchtime, was a prime example of how it can be unfair to a witness such as Mr. Towey to make suggestions, and I am grateful for Mr. Coughlan indicating that this was something that it was a theory that he might have had; it doesn't mean that Mr. Towey had done anything wrong, but that is not the perception that is out there when one reads what is said.

What is being said is that the books have been cooked. That means some civil servant has acted to change the record, change the result, whatever way one wants to put it. With the greatest of respect, it's unfair to Mr. Towey to make such an allegation, or even inadvertently to make such an allegation, without at least giving him the chance of what is in the mind of the Tribunal as to what might be wrong with the process.

There seems to be three or four pieces of information that are currently being examined in detail by the Tribunal today, and the first bit is this: that in

the June Andersen analysis, there was a document that shows a series of weightings, and that's the document that adds up to 103. So on its face, we all know that whatever the truth about that document is, is it's in error in some way that has yet to be explained.

Nobody knows how it got to be the way it is, because Mr. Andersen isn't choosing to assist.

The second thing that happens is that when the first evaluation report comes out is, again in the appendices, a document of a similar nature, again, has the mistake, and Ms. Nic Lochlainn asks that it be looked at and changed, and in the second evaluation report it was changed, but what is also crystal clear is that when one comes to look at the criteria that is divided

MR. COUGHLAN: I am loath to interrupt My Friend.

My Friend has just stated that it was changed in the second evaluation report. There is no evidence of that. Mr. Towey's evidence has been completely to the opposite in relation to that. I am just reluctant, My Friend slipping in something in submission he is making to you there, that it was changed as a result of some sort of intervention.

MR. NESBITT: I'll come back to that, Mr. Chairman. I am satisfied that the mistake of 103 was corrected.

But I'll pass from that and come on to the point I want to make.

What is also crystal clear is that from the very first evaluation report, the fact that there was a criteria of 30 that was divided 10, 10, 10, through the three dimensions that hung under the criteria, is crystal clear. And it seems to me the question that's being sought and inquired into by the Tribunal at this point in time is: How did that come to be? Was this somebody intentionally changing that division in some way that it was inappropriate or not? And it would be much easier if those sorts of concepts or theories were put out there and somebody said "We are wondering about this; can you help us?"

Because that's not the way it's being put to Mr. Towey. He is being brought through it incrementally jumping from page to page, from place to place, from time to time, meeting to meeting and never once being told the theory we're working on and there is nothing wrong with having a theory what we are wondering, possibly, is did you change that intentionally, or did somebody change it intentionally?

And I think, with respect, if it was put that way; that somebody was prepared to say "Here is what we are worried about, and can you help us" as opposed to picking and choosing and ending up with the allegation that occurred before lunch, that Mr. Towey or somebody else may have cooked the books.

It's unreasonable and unfair, Mr. Chairman. I know you will sit down and look at all the evidence at the end of the day. But Mr. Towey has to leave the witness-box and see the event that takes place in the media arising from an allegation such as that. It's unfair, and it doesn't need to happen. That's the complaint I have.

I think Mr. Towey is doing a very good job as best he can to assist the Tribunal, and I'd just ask and I have asked for it before: If there is going to be this level of inquiry and concern about events that took place, somebody might just give us, in rudimentary terms, what is the theory that's being worked to, so we can come in with whatever evidence we have. Fortuitously, Ms. Maev Nic Lochlainn is at the back of the Tribunal today, just fortuitously; she will be giving evidence about these matters which I think are going to show the thing in quite a different light. That is fortuitous. I didn't know this allegation was going to be made today. I couldn't go and seek assistance from my witnesses to find out could I make it better, but we will be able to lead evidence about that.

So that's why it's unsatisfactory and why I stand up yet again to say, if I am not being told, for the purpose of representing these witnesses, what the current theory is there is nothing wrong with the

Tribunal having a theory what the current approach is, we can't help, and we end up with what happened this morning taking place.

That's what I want to say, Mr. Chairman.

CHAIRMAN: Well, my understanding of the process is that if one takes the examination in detail of the several public service witnesses in its entirety, it is not the gravamen of what is being put by Tribunal counsel that there was wilful or intentional corruption. There is a painstaking examination into the entire process that took place, and if, on occasions, a remark that may subsequently be clarified, or maybe even corrected or withdrawn, is seized upon in reports, obviously, as I have observed before, the Tribunal does not control the manner in which these events are reported.

I think anyone who has been present at the entirety of the examinations and I appreciate that for Mr. Towey, as for Mr. Brennan, because of their respective central roles, the examination has been a long and quite arduous business for anyone who has been present in the entirety, I think such a person would have to conclude that the examination, in its overall content, is restrained, dispassionate and fair. And on some of the occasions that matters might, on one view, be deemed potentially pejorative, may have been raised, they have generally tended to be clarified.

But there are serious matters that have to be inquired into. And whilst I am expressing no view provisional, let alone final it seems to me that some of the matters being examined today are pretty central to the aspects that require to be examined in this phase of the Tribunal's sittings.

So, whilst I will be anxious to ensure that witnesses who have a difficult and arduous position, like Mr. Towey, do not have that made any more difficult, I feel that the examination must proceed on the lines in which it has been proceeding, which, in its general terms, has been proper and restrained.

And as I understand it, in the observation, Mr. Coughlan, before lunch, it wasn't the gravamen of the matter that you lastly put that there was some active, wilful or wrongful corruption

MR. COUGHLAN: I wasn't making any allegation against Mr. Towey. I was putting a question to Mr. Towey. I was saying that, looking at all we have looked at this morning, doesn't it appear that the books were cooked? That is a question I am putting.

Q. And I am suggesting to you that it's not an unreasonable question to put to you. And what I am now asking, and I understand how upset you were over lunch about the matter, and what I am asking you is, can you give me some explanation to assist the Tribunal as to how the final report and the

methodology it describes and the alteration of the tables could have occurred?

A. Well, in the final report, the final report, I believe, sets out the outcome of the qualitative evaluation in a reasonable degree of detail. And I think, in reading the qualitative evaluation and the final scoring of marks, it is evident, the methodology that we applied in arriving at that result.

In the case of the breakdown of the weighting, again, that was set out explicitly from when the first evaluation report was prepared by Andersens; and while I accept what you have said earlier, that the basis for that decision may not be clearly set out, the outcome of that decision is clearly demonstrated. And all in all, I believe that the report fairly reflects the evaluation that was carried out in good faith.

Q. Well, if the report fairly reflects it, I want to go back again: The table was altered. Isn't that right?

A. Yes.

Q. And it's not the table that was adopted prior to the closing date?

A. That's correct.

Q. There can be no doubt about it but that that table conforms with the weighting, the split of the weighting on Table 17; isn't that right?

A. That's correct, yeah.

Q. And the report does state that in Table 17, that

and in Table 18, because the same split is that what was done there was the application of qualitative scoring to the weighting adopted in the quantitative evaluation model prior to the closing date. It does state that, doesn't it?

A. It does state that, yes.

Q. You can see how difficult it is to marry what you are saying with what's contained in the report, can't you?

A. In relation to the table which you suggest was altered, I don't know of any reason why that would be altered. But a suggestion has been made that it may have been a consequence of correcting the fact that the figures in the June evaluation model didn't add up to 100. Now, personally, I don't actually know why a different weighting may have appeared, why that weighting may have been changed. But that has been suggested as one possibility.

In relation to the reference in the report to the quantitative weighting, I have said to you before that I was clearly of the view that the weighting at the level of the selection criteria applied equally to the quantitative and qualitative models.

Now, if you look at the qualitative model, it is clear that it is stated that the indicators are not weighed on an ex ante basis. Clearly, at that stage, the indicators, in fact, hadn't been elaborated, so they couldn't be. But as a model that was going to lead to

a decision, there is no question in my mind but that that was always going to lead to a decision in accordance with the evaluation criteria laid down by Government in descending order of priority. And you will know from the exchange of letters with the Department of Finance from early in the process, March/April, that I was always clearly of the view that in order to apply that model, you had to have a weighting mechanism.

Q. I agree. I agree that was the position you were advocating with the Department of Finance; I agree.

A. Yes.

Q. There is no difficulty, and I perfectly understand that. It's the question of the alteration of the split that's really the issue, the particular issue in the first criteria.

A. Okay. Let me say, I was there when this breakdown was agreed, 10, 10, 10. And my recollection, in general terms, was that we took the view that the dimensions within the indicator had equivalent had equivalent value, and we agreed on a 10, 10, 10 approach. I think that objectively stands up. In fact, if you look at the selection criteria and then you take a view, is 10, 10, 10 a reasonable weighting of the dimensions here to or a reasonable weighting to reflect the importance of the underlying dimensions? And I think that absolutely stands up.

Now, if you then look in the quantitative model, and

the figures that add up to

Q. 7.5, 15, 10

A. Yes, that model that adds up to 103

Q. Which was renormalised

A. Yeah. Now, Andersens, in doing that, obviously took a

view that the 30 marks available for the first

selection or the marks available for the various

selection criteria should be broken down. Now, I

don't think that within that, there was any element of

a conscious decision, an explicit conscious decision,

actually, on the part of Andersens or the Project

Group, as to the breakdown between the three

dimensions in the first criteria. I mean, if that was

the logical thought process, then clearly somebody in

Andersens would have taken the 30% available and would

then have set about the task of breaking it down

between three dimensions and would have come up with

15, 10 and 7.5.

Q. That's what was done, wasn't it?

A. Well, this is the point. I don't believe

Q. But that's what was done. You see, all I am trying

A. The 30 marks were broken down between five indicators,

and the total of those indicators does not equal 30.

Q. In the quantitative

A. What you are suggesting now is that there was a

deliberate decision in relation to dimensions. What I

am saying is that I don't believe there was such
it's implicit, I agree, but I don't believe there was
such a deliberate decision. And when we came to
looking at the breakdown in Copenhagen in the
quantitative evaluation, which is vastly different,
because under that heading we were looking at
something of the order of 20 indicators, something of
the order of 20 indicators feeding into this, and we
took a view on 10, 10, 10.

Now, I don't recall, I don't believe that we looked
back at the quantitative evaluation in that context
and that that decision was taken as a view which, I
believe, objectively stands up at that time.

Q. I understand what you say you remember happening in
Copenhagen. It's not recorded; isn't that right? It
is not recorded?

A. The basis or the no.

Q. And there is no record of an agreement of the PTGSM in
relation to such an approach to weighting, a split in
weighting; isn't that right? I think you can take
it

A. I think it's quite difficult to say that the Project
Team agreed the final report which explicitly, in all
of its versions, clearly set out the 10, 10, 10 split
and say that the Project Team didn't agree with it.

Q. So are you saying that by reason of the Project Team
agreeing the final report, it is thereby implicit?

A. Well, what I am saying, and what my evidence this morning actually was, that I am handicapped by a lack of memory in relation to the exchanges in relation to the detail of the Project Group report.

So, in other words, I can't say that I recall that there was a discussion where this was generally agreed as being acceptable. But I am suggesting to you that taking account of the group of civil servants present, their understanding of the gravity of what we were looking at and the decision that we were taking, I am suggesting that some discussion must have taken place in relation to this.

Q. You see, we know about Ms. Nic Lochlainn's recording of the discussions about weightings, and there is it's amply recorded; isn't that right?

A. Sorry, when you say "Ms. Nic Lochlainn's", which ones are you talking about?

Q. First of all, there is the discussion which took place at the meeting on the 18th, and the meeting on the 9th June 18th May, and the 9th June

A. Yes, yes.

Q. We have seen her memorandum to Mr. Brennan, isn't that right, at the end of July, where and I'll take it slowly.

It was where she had them broken down, 0.10, 0.10, and the whole thing came up to 1, which was 100; do you remember that particular table, or don't you?

A. I am I'd prefer to see it just now, if you don't mind.

Q. Very good. Book 52, Tab 26.

Do you have that?

A. Yes, sorry, I do have that, yes.

Q. Do you see there she is recording matters, isn't she?

A. Yes.

Q. And she goes on to make the comment about the adoption of the evaluation model presented, and that's 6/21.

A. Yes.

Q. So we see her recording all of that?

A. Yes.

Q. We also see her, I think you can take it there is another document it's just the technical revision; this is the fee item and the tariffs, where the fee item becomes 11 and the tariffs 18. We see that recorded as well?

A. Yeah. I believe I approved that.

Q. You can take it that that is recorded.

A. Yeah.

Q. Now, there is no record, and what I am suggesting to you, that if there was an agreement on such a major issue as the weightings in relation to the qualitative matter, insofar as they would reflect a different split, that that would be recorded in great detail and the agreement of the members of the PTGSM recorded, as we have seen all through here in Ms. Nic Lochlainn's

notes.

A. But this records the weighting model for the evaluation criteria for the selection criteria. I mean, I agree, it doesn't record anything in relation to

Q. It records the weighting for the quantitative evaluation; that's what it does, doesn't it? Now, I am not saying that they are not the same as the criteria. What she says is they record the quantitative evaluation of the selection criteria. Do you see that?

Now, the problem is this: that there is no similar record of the split which you and Mr. Brennan say was agreed in Copenhagen.

A. Yes, I understand.

Q. And the only document we can see is when the first draft of the report is furnished and the evaluation model is contained in it in Annex 3. It contains what was agreed on the 9th July 9th June, I beg your pardon for the quantitative?

A. Yes.

Q. And then the text, both in the first two drafts and clearly in the evaluation methodology, says that it was that weighting, the one adopted for the quantitative model, was the one that was used on Table 17/18. That's what it says.

A. Yes.

Q. And then we come to the final report, and the text under the table which describes that is not there; but in the evaluation methodology, we are told, with a different table to the one which was adopted, a different table to the one which was adopted on the 9th June

A. Yes.

Q. we are told that that is the quantitative, which purports to be the quantitative weighting.

A. Yes.

Q. That the quantitative weightings were applied to the qualitative scores. That's what the final report says; isn't that right?

A. That's what the draft report says.

Q. And the final one. We read it out before lunch.

A. Okay.

Q. The final report says exactly the same thing.

A. Okay.

Q. Now, I have been over it with you now, I think, and we have come to the position of the final report. Can you please explain to the Tribunal how the report says, and that is the record, that the quantitative weightings were applied?

A. Well, I believe that it would more accurately state that the weightings agreed for the selection criteria were applied.

Q. The report states that the quantitative weightings

were applied. Please explain to me how that can be how that comes to be stated in the report. You read the full draft report?

A. I did.

Q. You were the one involved indicating and dealing with Andersen on all amendments to the final to bring about the final report; isn't that right?

A. I can't say exactly on all amendments, but okay.

Q. Well, most of them?

A. Yeah, I understand. Yeah

Q. There is no suggested textual amendment to that statement in the report, that the application of the quantitative weightings right, do you understand?

A. Okay

Q. But

A. I can only say that if I had understood that reference fully in the way that you are now that you're now putting it to me, I think that I would have taken a different view of it, in the sense that the quantitative weightings were agreed down to the level of indicator. It was a full breakdown, down to the level of indicator.

Now, you can't actually apply those weightings in the qualitative model, because if you apply the weightings at the indicator level in the quantitative model, there are indicators that you can't attribute any weighting to at all. If you understand what I mean.

Q. I want you now to stop for a moment and think about what's in the report. The report contains a statement that the weightings adopted for the quantitative model before the closing date were applied to the scoring on the qualitative table; isn't that right?

A. Yes.

Q. That's fairly simple to understand, I would have thought, but that's what it says, fairly plain; isn't that right?

A. I understand what you mean, yes.

Q. Isn't it?

A. I understand what you are saying, yes.

Q. But you see, the final report and the draft of the 18th does hang together by stating that the quantitative weightings were applied to the qualitative scorings, if you go to Annex 3, and that contains the quantitative weighting table, and it says that that's what was agreed before the closing date for the competition. The report does hang together then, because those weightings are in conformity with the split of the weightings which is contained on Table 17 and 18.

So it's not that there is some internal mistake in the report. The report actually hangs together. But it hangs together because somebody has altered the table in the evaluation model.

A. Well, as I have said to you, I mean, I am not aware as

to why that would have happened. And certainly, my view would have been that in reproducing a historical document, it should have done so loyally. That would have been unquestionably my view, without question.

Q. Because if and we have been over this if it contained the split of weightings in the historical document, and if the report, as it says, applied a quantitative weighting, that is the split, and it's really only in the first criterion that this is significant

A. I know.

Q. It could have had the outcome I am not saying it would, necessarily, but it could have had the outcome of either inhibiting you calling a ranking, you could have taken one could have taken the judgemental view on Table 17 that because of the first ranking criteria, that you just couldn't call it, or it could have brought about a different result. I am not saying that it would have necessarily done either of those two things, but these are matters that judgement had to be exercised in relation to by the full PTGSM if the table, if the report were to be correct in recording the quantitative weightings as were adopted; isn't that right?

A. I understand what you are saying.

Q. Do you see what I am inquiring about?

A. What happened was we took a view as to how the

weightings should be broken down on the first selection criterion. We took that view on the basis, as I said, that we felt equal importance should be attached to the three dimensions.

Q. I know; you have told us that.

A. We had, I believe, created Table 17 first, where we had a view of the first-ranked applicant. We had a view on the ranking, because

Q. I can understand. Everyone is entitled to have a view, but that view could not be a view which would decide the outcome of a competition because that's an impressionistic view. The whole purpose of having this type of competition and designing it was to ensure that any perception of bias or impression would determine the outcome of the competition. It had to be one, and this was the whole purpose of it, that it was objective and transparent?

A. But what I am telling you is my understanding of how it happened; that we formed a view in looking at the letters and the weightings as to how as to what the result might be, and then we clearly had a view that in order to make this absolutely transparent, we had to apply numbers to it.

Now, we could see that that implied a difference of over 4% between the first- and second-placed applicants. We could see what the underlying reasons for that differences were, and we have been through

them: that Digifone was superior in some respects; Persona was superior in one respect, on tariffs; but all in all, we could see the reasons arising from our analysis for the result.

Now, of course we knew at this point that there was a separate credibility sensitivities analysis, which was coming towards a conclusion, and we knew that the view emerging from that was that it would not nothing was emerging from that which would serve as a basis on which we needed to revisit the markings or to question the result. That was the view that was emerging.

Now, on that basis, we were satisfied that we had produced a result which, in our view, stood up at that time, in our view, which stood up. We didn't look at the question of whether, if we had applied a different system, it might have given rise to a different result. We didn't, in my recollection, have any discussion about the correspondence between the breakdown of the weighting for the first dimension into 10, 10, 10, and whatever had happened in the quantitative evaluation. I don't recall any discussion whatsoever in relation to the quantitative evaluation at that point.

Q. I wasn't asking about the quantitative evaluation at all at that point. I was asking you about the breakdown or the split of the weightings.

A. Yeah, and that's what I am telling you, my best

recollection of what happened and the reasons for it.

Q. Now, when you had the indicators and all the indicators had been scored; isn't that right?

A. Yes.

Q. By then, by the time, sometime on the day of the 28th, anyway?

A. Yes.

Q. Was it then, you say, that you had a discussion whereby you arrived at a split on the dimensions for the criteria? It had to be, didn't it?

A. Sorry, say that again.

Q. Did you have all the indicators scored before you arrived at a discussion of the breakdown of the dimensions for each

A. The indicators were scored, yes.

Q. They were all scored?

A. They were scored.

Q. Doesn't that, just in terms of a procedure, present its own difficulty? Because if you have all the scores on the indicators, the result can certainly be determined if you then decide on what weights would be attached to the various dimensions. Do you see the difficulty with that?

A. Yes.

Q. But if you had applied, as the report says, the quantitative weightings, they had all been agreed before any indicator had been scored, isn't that

right, the quantitative weightings?

A. I understand what you mean. You are talking about the weightings at dimension level implied by the quantitative weightings, yes.

Q. And it's that sort of protection which provides the objectivity and transparency in the process, isn't it? You then apply the scores to them. But if you have the scores and you decide on the split of the weightings, you can, effectively, create an outcome?

A. I understand what you are suggesting, but I have told you my recollection of how this happened. And again, I mean, within the quantitative model, the weightings determined or implied by the dimensions I mean, in that case, the available weighting for the first selection criterion was being broken down into five indicators; two for market development, two for financial matters, and one for experience. If there was a more balanced range in other words, if it was two indicators, two indicators, two indicators, it may well have been it may well have been the case that the breakdown chosen or suggested by Andersen and endorsed by the Project Team would have been different.

This is what I am trying to say in relation to the weightings in the quantitative model; that those weightings were decided on the basis of the available indicators. So whoever, in Andersens, proposed a

breakdown, was looking at the question from the point of view, "How should I break down these marks between these five indicators?"

And what I am saying is that it was a different question that was that we were looking at in the qualitative evaluation. In other words, we were focusing more specifically on the dimensions: What do we do at the level of the dimension?

Q. No proposal came from Andersen about the application of weightings; isn't that right? They opposed it?

A. About the the creation of Table 17 and 18?

Q. They opposed that?

A. Andersens were initially opposed to it.

Q. They opposed it?

A. Initially.

Q. There was a discussion, and your view and Martin Brennan's view prevailed; isn't that right?

A. Yes.

Q. Now, so we can take it that if there was any agreement on the breakdown 10, 10, 10, it wasn't something that was proposed by Andersens. It was proposed by you and Martin Brennan, isn't that right?

A. Well, I can't say that that was the case. Because I mean, you know, we dealt first of all with the principle of regrouping the criteria according to the evaluation criteria in paragraph 19. Then we moved quickly we did a scoring; then we moved quickly on

to the question of converting the letters into scores.

Now, I mean, I think that first of all, the issue of regrouping the criterion in accordance with paragraph 19, I think that stands up objectively, and I think that was fully endorsed, in fact, by the Project Group, and I think I have seen something in Mr. McMahan's papers that confirms that.

Now, having established the principle that we were going to go in that direction, I can't say who made the proposal in relation to 10, 10, 10.

Q. In relation to the first indicator, there were three dimensions identified; isn't that correct?

A. Yes.

Q. That was market development, experience of the applicant, and financial key figures.

A. Yes.

Q. And the indicators adopted were: Market penetration score 1, market penetration score 2 isn't that right?

A. Yes.

Q. Experience of the applicant. Number of network occurrences?

A. Yes.

Q. Financial key figures, solvency and IRR, isn't that right?

A. Yes, that's right.

Q. Now, in the model of the evaluation in the first

draft of the evaluation model

A. Okay.

Q. which was discussed on the 18th May of 1995, what was there was a discussion about it, obviously, because we know you went through line by line.

A. Yes, we did.

Q. And Andersens were asked to go off and produce a new table based on the discussions; isn't that right?

A. Yes.

Q. And to expand the qualitative aspect of the evaluation model; isn't that right?

A. Okay.

Q. Now, in the model, the first draft of the model submitted, the weights for the first criteria, when brought back to indicator level, did have a split of 10, 10, 10 to dimension level, did have a split of 10, 10, 10, in the first draft submitted?

A. Yeah.

Q. That was not adopted, that draft?

A. Yes.

Q. And Andersen went off, so therefore, there must have been some discussion which gave rise to Andersen going off and, in the second draft, giving the split of 7.5, 15, 10; and leave aside for a moment the question of whether it added up to more than 30, but what it clearly represented was that financial key figures were to be given a weighting twice that of market

development. Isn't that right?

A. Yes, I understand that, yes.

Q. And that must have arisen as a result of the discussion which took place on the 18th?

A. I don't recall a discussion of those matters.

Q. Well, that's what the paper trail shows, anyway.

Initially the split was 10, 10, 10, and on the adopted model, what was adopted was financial key figures having twice that of marketing, and experience of the applicant remained at 10 in those circumstances. But in any event, it was twice

A. But they didn't add up.

Q. No, that's actually beside the point; it was from the judgemental point of view, they were twice that of marketing.

A. Right. So what you are saying is

Q. That's what was adopted.

A. Let's be clear, what you are saying is we adopted a model in June which had a weighting in it, which implied that there was a discussion in the Project Group and agreement, and at the same time, you are saying to me we adopted an evaluation report with a breakdown in it, and that doesn't imply any discussion or agreement?

Q. I am not saying that. I am asking to you explain it.

A. I am trying to

Q. The report is the transparent one. I am trying to

understand, because the report says that you applied the quantitative weightings that were adopted before. All I am asking is, there is no record that this model was changed, that there was an agreement to change it. That's all but it was changed. We know that.

A. But isn't it evident that we didn't apply the weightings that were contained in that the weightings implied by that June evaluation model?

Q. It's absolutely obvious that you didn't apply the weightings, because, when you look at the report, you didn't. But if you had we have been over this over an over again

A. We have.

Q. we know that

A. I don't know what the result would be, actually, if you applied

Q. I thought we had a discussion about this yesterday. You said that Table 17 was the significant one.

A. Yes.

Q. Isn't that right? That you couldn't multiply a weighting by a letter?

A. Yes.

Q. But what you did was, when you looked at the table, and you'd say to yourself, well, respecting the descending order, the three top ones are the really big significant ones?

A. Yes.

Q. They are equal on the first criteria?

A. Yes.

Q. A5, you say, was a grade, grade and a half stronger on the technical, and that that was second in the order of importance?

A. Yes.

Q. And tariffs was third, and in that, A3 was a grade stronger than A5?

A. Yes.

Q. So, leaving aside the first criteria where they were more or less equal, applying a judgement the other ones there, equal, or they are small enough not to perhaps be of major significance?

A. Yes.

Q. But that in applying a judgement in relation to these, technical is more important than tariffs, so therefore, they having scored higher maybe a grade, maybe a grade and a half over A3 on technical, that that is superior to the A3's scoring it over them by a grade on tariffs, so therefore arriving at a judgement; you can arrive at a bottom line where

A. That's it.

Q. As I understand, that's what you said?

A. That's correct, yes.

Q. And I think we were over it then, that if the different weighting was applied in fact you would have come out with, particular tell you, A

A. I know what you are saying. You would be trying to balance different things. In other words there would be a suggestion that Persona is ahead on the first one, and that Digifone is ahead on the second

Q. Digifone on the second, the third, and trying to exercise a judgement in relation to it. You might say, you know, they are so close as virtually impossible to call there, because we can't ignore that the first criteria is the most important criteria in the descending order of the Government's priorities?

A. Yes, I believe we discussed that. I recall that we discussed that. But the point sorry, there is a point I want to make

Q. First of all, you did agree that that could, I am not saying would, could have been a way a judgement might have been arrived at it's too difficult to call, or one may have shaded it over the other?

A. Well, I mean, without looking at the transcript, I am not going to say exactly what I said. But I mean, I am clear that in the scenario you are setting out, there would be that Digifone and Persona would have been closer. There is no question about that.

Q. All right.

A. Now, what I wanted to add is that obviously, in that judgmental exercise that we did, we were clearly thinking of letters in terms of points in any event.

I mean, it was effectively a mathematical calculation,

and we

Q. I see.

A. and we were clear that in order to make it transparent, that there had to be a conversion of the grades to points.

Q. Could I just now take that slowly; that in relation to Table 17, it was, in effect, a mathematical calculation? Is that what you are saying?

A. What I am saying is, as I described to you

Q. No, you just said something there now, Mr. Towey. Are you saying that in doing Table 17, it was a mathematical calculation?

A. What I am saying to you is that in looking at the superiority of Digifone in relation to technical capability, they were a grade and a half ahead.

Persona were a grade ahead

Q. On tariffs

A. and I am saying that that's effectively and tariffs and technical were of course close enough. So what I am saying is that there was effectively a mathematical calculation at work in the kind of analysis that I did.

Now and I mean, that was essentially the basis for converting the grades to points; that the view that Martin Brennan first put forward, which I agreed with, was that in order to make the overall ranking transparent here, we should do it in figures.

Now, to get back to the point I started at, all I am saying is if you applied the different weighting you have suggested, I don't know if that gives rise to a different ranking, because I haven't done it.

Q. Now, in exercise I am asking you to exercise, and I think we were over this over and over again, in the exercise of the judgement, because let me tell you this, that in the final report, it is stated, and we must take it that that's the record, that this table here was arrived at by reason of discussion?

A. Oh, yes.

Q. And that the numbers were something which arose then subsequently?

A. Yeah, yeah, it was a discussion.

Q. Now, a discussion could only be so, arrive at the exercise of a judgement to arrive at the bottom line; isn't that right?

A. Yes, okay.

Q. I thought you agreed that that's

A. Yeah, I am telling you how I reasoned it out from my point of view.

Q. And all I'm asking you there is that if you put I don't care what number you put in, but if you put because this was a judgement matter, if you put, for financial key figures, something which is twice that of market development, that's all I am saying, just look at it that way.

A. Yes, it renders that redundant as a divider between A3 and A5.

Q. Overall, no, the way you look at it there, you calculated it that they were they cancelled each other out, they were neutral, they were the same in relation to the first criteria, on the 10, 10, 20 split. If financial key figures is double that of market development, experience of applicant is

A. Slightly more important

Q. slightly more than market development. That A becomes more valuable, and you would just in the exercise of a judgement, you would find, if you started thinking about it mathematically but not sort of with precision, you'd say that in those circumstances, A3 shade it

A. It would

Q. I could go into the actual numbers, and I think it comes out at 0 point I have it

A. It would shade it. I know what you are saying, but

Q. Okay, they shade it there. You can't in exercising a judgement, and bearing in mind the importance of Criteria Number 1, because the Government said it's in descending order, you say, "Well, they are ahead there on the first criteria", maybe half to a full grade, but nevertheless, they are ahead; you can't ignore it.

You then come to technical, and you say, "Digifone are ahead there", you said a grade and a half,

thereabouts, and then you come to tariffs, which is the third. I am not saying that necessarily you would have to have this result, but in discussing it, one could, in arriving at a judgement in relation to these matters, that they more or less cancel each other out, bearing in mind the importance of the various criteria. Do you understand the point?

A. I understand what you are saying, and my view is that I would have been a little bit reluctant to arrive at a judgement like that without applying figures to get a picture.

Q. Well, did you apply figures to this one, is the evidence you gave yesterday; that you arrived at it in that sort of calculation?

A. Yeah.

Q. Did you apply figures to this one to arrive at a bottom line?

A. No, we devised the bottom line first.

Q. Arising out of ... ?

A. A discussion.

Q. A discussion?

A. Yes.

Q. Along the lines we have been just been discussing?

A. Absolutely, yes.

Q. But on the basis that on the first criteria, they cancelled each other out, more or less?

A. Yeah.

Q. So you were down to technical and tariffs, really, as the big ones to

A. Yeah. I know what you are saying, that we may have arrived, by way of a discussion, at a view as to how you might rank it, with a different weighting for the first criteria. I know what you are saying.

Q. And it's really just that, that you see, that was the importance, that is the importance, you see, to the question of these weightings and how they are described and how they are used and recorded.

That's why I am asking you about this. I am not necessarily saying that Esat Digifone wouldn't have won; I am not saying Persona would have won. It could have been that they were so close as to that you had to do further work, or put it up to your political superiors or their decision in relation to the matter.

You know, it could have involved but you know, more significantly, because you had plenty of time, if you had all come back and you didn't need to have this done until the end of November on the critical path, this could all perhaps have been teased out, and all of these matters which I am now raising, arising out of the report, could have been considered and thrashed out.

But the problem for the Tribunal is to find, stuck in the report, this table which purports to be the one adopted on the 9th June.

A. Yes.

Q. Which does conform with that.

A. Yeah.

Q. Now, you don't know who created that change in that table; is that correct?

A. I don't know. I mean, I speculated on a possibility. I speculated on a possibility.

Q. But you don't know?

A. I don't know, no. It didn't feature in my consciousness that here was something that was different; and had I known, I believe that I would have I have no doubt I would have insisted on faithful reproduction of the historical document.

Q. Because insofar as the report represents what happened in the process and we are told that is the official record of it; that's what happened.

A. Yes.

Q. Somebody, and I choose the word very carefully now, consciously changed the table?

A. Yes. I mean, you know, I don't believe the table was changed by accident. But

Q. I am trying to find out who, and why, you can see; so if I use the expression "cooking the books", you can see the line of inquiry I am pursuing, what's prompting it

A. Yeah, but you are obviously not favouring the interpretation that it may have been an innocent

change, a change made innocently.

Q. You have just said it wasn't it had to be made.

How could it have been

A. Somebody made the change; somebody had to make the change. I am not doubting that.

Q. How could it have been made innocently? That was never adopted on the 9th June, never.

A. You can't what I am saying is you can't rule out what I speculated upon as a possibility: that is, that a view was taken that the 103 was wrong and that that should be corrected.

Q. Yeah, I can understand, you know, sort of changing what they call the normalisation, I think; we have seen that sort of concept being mooted somewhere. I could understand that. But you see, it's changed, and it reflects exactly what is contained in the Table 17?

A. Yes.

Q. That is and whatever numbers you come up with on the weighting by changing the 103 to 100, or whatever sometimes I wonder why it would have made any difference, in one way, because you could just divide by 103 and multiply by 100, so I don't think there is anything much in that. But I understand the point you are making. But it's the fact that financial key figures are weighted the same as market development, and not twice as significant as them, and that experience of the applicant was 50% more than

market that's the one I am finding very hard to understand.

A. Well, I have given you my explanation as to how it was arrived at.

Q. Because what's there, and what's represented in the report, gives you the ability to form that sort of judgement, you say; but a different weighting could have inhibited you from arriving at a judgement in terms of a ranking 1, 2 or 3. They would have been, on a judgmental basis, that somebody else might have had to make the decision; perhaps your political masters.

A. A different weighting may have given rise to different consequences, different issues. We didn't speculate upon it at the time. And as I say, beyond what we have done live here, I haven't worked out figures on the weighting, the alternative weighting, put it that way.

Q. Now, you read the draft report, didn't you?

A. I did, yeah.

Q. Surely you must have read the Annex 3 in the evaluation model and saw the table with the weighting on it?

A. Certainly I mean, certainly I would have read it; but I mean, I would not have viewed the reproduction in Annex 2 of the evaluation model previously agreed. You know, it's not something in other words, it's

not something I would have read at great level of detail in the sense that you know, I mean, you look at the annex. It's including a historic document that's agreed, etc. It's not new text describing what we have done in an evaluation. So, I mean, you can understand

Q. All right. I understand that. The methodology in Annex 2 was not in the first draft, so you couldn't have read it in the first draft?

A. Yeah.

Q. Can I take it that when the second draft came in, the methodology is something that you would have read?

A. I think so, yes, yeah.

Q. The methodology in that draft clearly states that the quantitative weightings were applied to the qualitative marking?

A. It does, yeah.

Q. Do you remember reading that?

A. I don't remember reading it, but you know, I mean, my view, when I saw a reference to weighting, what would have come to my mind would have been the weighting at the level of the criteria.

Q. I know, but we know that the quantitative both in the text and the methodology, and all I am asking you is this: that in the final report, it still says

A. It is, yeah.

Q. And you were the one who were more intimately involved

in at least communicating with Andersen about any textual changes to reflect, so as you said yourself, that the report would be an accurate account?

A. Yes, yes. That was my evidence.

Q. It's at the very least, I must suggest to you, a bit of a mess, isn't it? At the very least?

A. I think that's a bit extreme.

Q. You don't think it's a bit of a mess?

A. No.

Q. Do you agree it's inaccurate?

A. I think it's inaccurate, yes. I think it would more accurately have had a reference to the weighting for the selection criteria.

Q. Do you agree it's wholly inaccurate?

A. I don't think wholly inaccurate

Q. In describing what purports to be an agreed result, wholly inaccurate?

A. I don't agree with that at all. I don't think that is in any way justified.

Q. Now, just look at what was done in this final report.

And I am going to come back, in a moment, to the note of Mr. O'Callaghan, because perhaps it can be read in a different or better context.

The aspects table: Has your recollection improved as to when that was scored?

A. Sorry, this is Table 16?

Q. Yeah, the original Table 16.

A. I don't recall our discussion on the 28th, but in looking at the report, I wondered if, when we had if, when we had reached a decision on the scores under the marketing dimension, whether we may have done a totalling for the marketing aspect on a provisional basis, that we were coming back to it.

That possibility crossed my mind

Q. Which report are you talking about?

A. Sorry, the evaluation report.

Q. Which one?

A. The final one.

Q. Ah, the final one. All right, if we look at the final one, because the final one well, we'll deal with it in a moment, but the final one differs from what appears in the drafts; isn't that right?

A. I don't know.

Q. All right.

A. Can you give me a reference, please?

Q. Yes, indeed. It's Book 46, same book. Tab 50.

A. Yes.

Q. And we can go to Chapter 4, page 14. And there is the comparative evaluations, which are in the same form as in the second draft; do you see that?

A. Yes.

Q. And then, if we go to page 43, you see it has "Summary of Results".

A. Yes.

Q. "The agreed marking throughout this chapter for the marketing, technical, management and financial aspects are summarised in the following table."

Then it sets out this is now Table 15; it's the old Table 16. All right?

A. Yes.

Q. And it says, the text continues underneath:

"The agreed marking throughout this chapter for the marketing, technical, management and financial aspects are summarised in the following table.

"Based on the qualitative evaluation methodology adopted by the PTGSM, an overall award of marks to each application has been agreed. It is noteworthy that the award of marks according to this methodology supports the recommendation reached at Chapter 7, where applications are ranked according to the evaluation criteria set out in paragraph 19 of the tender document."

The text is altered completely, isn't it? Because what happened in the first draft of the evaluation report and the second is that this is presented as the result; isn't that right?

A. Yes, I understand.

Q. And the subsequent table is presented as a conformance test and the next one as a test on the conformance test, if I could put it that way.

A. Yes.

Q. Now, why was that changed?

A. Well

Q. What you I beg your pardon?

A. I mean, my recollection is that it was our clear view that the decision would have to be clearly justified by reference to the to paragraph 19, and the descending order of priority. And that had to be the decision basis on which we arrived at our final decision.

Q. And wasn't this particular model, or methodology, which was adopted by the PTGSM, designed to do that?

A. Designed it was. I mean, it was designed for the purposes of providing an evaluation tool that would lead to a decision; but in practice, when we came to the point of a decision, we took a view that it was necessary to regroup the criteria more transparently in accordance with paragraph 19 and to apply a weighting.

We could have done it in the format of this table. I mean, we could have attached weightings to the dimensions here, and you know, arrived at the result we ultimately did arrive at on this basis. We could have done that. But we took a clear view that, had we done that, I suppose, that the Project Team would come back and or indeed anybody looking at the report would come back and take a view, "Well, you know, why is this not structured in accordance with

the decision criteria laid down by the Government?"

Q. So when you say "We could have done it on this table, but we took a clear view that we needed to do it on the regrouping", if we call it that for the moment?

A. Yeah.

Q. "Because otherwise the members of the Project Team could come back and say, 'Why isn't this structured, or structured in accordance with the Government'"

A. So that it would transparently stand up or be seen to reflect the descending order of priority in the selection criteria.

Q. And that was the view of both yourself and Martin Brennan?

A. Yes, and it was agreed by Michael Andersen.

Q. Right. In the first evaluation report, as we know, this was presented as the result; isn't that right?

A. Yes.

Q. And in the second draft, it was also presented in that way?

A. Yes.

Q. And the second draft contained that paragraph which stated that as unanimity had been subscribed for at the meeting of the 9th isn't that right?

A. Yes.

Q. It's at I can't find it at the moment, but we know it; I think it's in the second chapter yeah, page 6, Tab 46. I am just saying that I don't think you

need to open it.

A. All right, yeah.

Q. And it was further stated in that paragraph on page 6 that this was to be presented as the final report, because it's stated to be the draft final version, and the text states it.

A. Yes, okay.

Q. Neither the first draft, and following the discussion on the 9th, the second draft, ever describes anything other than the result being on the aspects table and the others being a conformance test; isn't that right?

A. I think that's

Q. You can take it from me, they are in the same so when are you saying that yourself and Martin Brennan, and supported by Michael Andersen, came to the view that the decision was to be on the old Table 17? That is, the regrouping and the application of a weighting?

A. Yes.

Q. When was that, do you say, done?

A. I believe there was a clear view on that

Q. That was done in Copenhagen?

A. Certainly it was our clear view in Copenhagen.

Q. Was that done is that what you say was done in Copenhagen?

A. The result was arrived at by way of ultimately Table 18, and it was only at that point, as I say, that we felt we had a result that could stand up in relation

to paragraph 19.

Q. Where was that done?

A. Pardon me?

Q. Where was that done? Was that done in Copenhagen?

A. Effectively, yes, yeah.

Q. Yes?

A. Yes.

Q. Where was that described in either the first draft of the evaluation report or the second draft, which is being presented as being the final version, or the final draft version? Where is that stated?

A. Well, I think it's clearly stated in the final report, I believe.

Q. The final report is a completely different thing. We have been through these drafts. You have told us that these reflect what happened in Copenhagen.

A. Yes.

Q. These say that a final result was arrived at on the aspects table, isn't that right, the first draft and the second draft?

A. Yes.

Q. And that subsequent tables are effectively conformance tests?

A. Yes.

Q. And is that what happened in Copenhagen?

A. Well, all of these tables were reproduced. It was my view that the result, in accordance with the

evaluation criteria, was the Table 18 result. That

was the view I took.

Now, I accept what's in the first and second drafts of

the evaluation report, and it suggests that Table 16

is the decision basis, and Table 17 and 18 are for the

purposes of conformance.

Now, my view then, and it is the view that I still

have, is that on the basis of Table 16, I couldn't

make a recommendation on the basis of Table 16 as

it's produced in the first and second reports, I

couldn't make a recommendation to the Minister or

Government which I could demonstrate as being directly

related to the evaluation criteria.

Q. Is that stated anywhere in the first draft?

A. No, I am giving you my view.

Q. Is that stated in the first draft?

A. No.

Q. There was a meeting on the 9th October, isn't that

right, of the PTGSM?

A. Yes.

Q. As a result of that, the second draft, but which was

intended the second draft, which is called the

final draft version and which contains that paragraph

which I have just mentioned, that unanimity had been

subscribed for, and that this was to be the final

report, Andersen were asked to present the final

report; isn't that right?

A. Yes.

Q. That, again, states that the decision was based on Table 16, isn't that right, and that the other tables were conformance tests?

A. I understand what you are saying, yes.

Q. Isn't that what the report stated?

A. I believe so, yes.

Q. How does it get into a position in the final report, then, that "Based on the qualitative evaluation methodology adopted by the PTGSM, an overall award of marks to each application has been agreed. It is noteworthy that the award of marks, according to the methodology, supports the recommendation reached at Chapter 7, where applications are ranked according to the evaluation criteria set out at paragraph 19 of the tender document."

Can you just tell me how that happened?

A. How that paragraph

Q. Yeah.

A. Well, I trust it was suggested by the Project Team, because my recollection was that all of the changes from the penultimate report to the final report were ones that were discussed by the Project Group on the 24th.

Q. You tell me about it now. You tell me how that came about.

A. Well, sitting here as I am now, I mean, I can't say.

Q. Mr. Towey, let me remind you, I understand it's seven years ago. You were in fact the full-time coordinator, effectively, of this particular thing.

A. Yes.

Q. If anybody should know anything about how and why things happened, it should be you, more so than anybody else in the whole project; would you agree?

A. I understand what you are saying.

Q. Now, how did that come about? Just tell me what discussion led to that.

A. Was this paragraph contained in the material sent to Michael Andersen on the 25th?

Q. Was this paragraph contained?

A. Yes.

Q. Yes, it was.

A. It was.

Q. What happened was this whole portion of the report was effectively rewritten. You suggested a certain approach to things.

A. Yes.

Q. I am asking why. Like, what prompted it?

A. Well, I mean, I have told you my view in relation to at the time, my view was that in Copenhagen on the 28th, we had arrived at a provisional result by way of putting the criteria in the order of the paragraph 19 criteria and applying the weighting.

Q. As a conformance test, as stated; isn't that right?

A. I didn't view that as a conformance test.

Q. Right, it was in the first draft; isn't that right?

A. It was in the first draft.

Q. Right. You said that you may have been instrumental in the inclusion of the paragraph in the second draft that unanimity had been subscribed for, etc.

A. Yeah, I said I couldn't recall, but I mean, I know that in the report of the Project Group meeting, there is a reference to unanimity also.

Q. You didn't, at the meeting of the 9th, make any statement to the effect that you disagreed with that portion of the draft which described it as a conformance test, did you?

A. I don't recall that I did.

Q. You don't recall?

A. I don't recall.

Q. There is no note of anyone saying that.

A. Yes, yeah, I understand what you are saying.

Q. You didn't say it?

A. I don't believe I did. I don't recall doing so.

Q. You see, I am suggesting that that is what happened in Copenhagen, because Andersen records that's what happened. You read it. You attend the meeting of the 9th. You make no intervention or interjection in relation to it, and it's brought into the this second draft.

Now, did you lead the discussion subsequently to say

that that's wrong?

A. You mean in terms of arriving at our comments on the penultimate draft?

Q. Mm-hmm.

A. I don't recall, but I certainly would have been clearly of the view that the decision basis was the table which clearly reflected the Government's evaluation criteria.

Q. Would you listen I asked you a question: Did you lead the discussion to say that that is wrong in the first draft and in the second draft, that the decision is not on that table, and they are not conformance tests? Did you lead any discussion and inform the people present that that was the position?

A. I can't specifically recall doing so. But certainly, I mean, it wasn't my view.

Q. The question is

A. The answer to the question is I don't recall.

Q. Did you initiate any discussion?

A. The answer to the question is I don't recall.

Q. And was it because well, first of all, even when we were going through these particular tables in the last number of days, all you can say is that you do not have a recollection of which was done first, the Table 17/18, the ones with the grades on them, anyway, and then coming back to the to what Andersen calls the decision table, the aspects?

A. Yeah.

Q. You can't remember which order that was done in?

A. I can't remember the order, no.

Q. Isn't that a fairly crucial matter?

A. It was crucial that we take a decision that reflected what the Government had laid down.

Q. Of course, and the evaluation model had been designed for that purpose. That's what Andersens were asked to do, wasn't it?

A. Yes.

Q. So could we get rid of that red herring for a moment.

That's what Andersens was asked to do, they were brought into as consultants. They were asked to design a model to take into account the Government decision; isn't that right? That's what they were asked to do?

A. Yes, they were.

Q. And they produced the model, and it was adopted; isn't that right?

A. That's right, yeah. That's correct, but it was always subsidiary to paragraph 19 in the evaluation criteria.

Q. Mr. Towey, when you got to Copenhagen, you told us that Andersen opposed what you and Martin Brennan wanted to do on Table 17 and 18, isn't that right, he opposed it?

A. Initially, yes, that's correct.

Q. Did he oppose it? Did he, when you suggested it, did

he say, "No, it's the wrong thing to do"?

A. He opposed it initially. We had a discussion, and he agreed.

Q. And he agreed, and he put a huge health warning around it in the first two drafts; isn't that right?

A. I don't think that it's accurate to say there was a huge health warning.

Q. All right. Well, if perhaps it's a matter of an understanding of language or a view about language, but would you not say consider that anyone who uses the expression "distort," that they are putting a serious question mark over this approach "distort"?

A. I would say that if that phrase had been used in isolation by way of drawing attention to a reservation, then that might be the case; but in fact the context of a report by Andersens, it was their own report, where they included several statements which confirmed that they supported the result that had been arrived at.

Q. Well, I suppose the Tribunal will have to form a view as to why, when Andersen would put in such a statement, that the effect of this particular method could have the effect of distorting the view of a qualitative analysis, and then agreed an amendment or accepted the deletion of it in the final report, the Tribunal will have to form a view about that as regards Andersen as well, of course. I understand

that.

A. Yes.

Q. Sorry, Mr. Fitzsimons comes at it again. He made that intervention, the idea of a qualitative the idea of a qualitative analysis. I think

MR. O'DONNELL: Rather than the evaluation itself.

MR. COUGHLAN: We have been through it over and over again. And I was over and over again what's contained in the methodology. In any event, I take Mr. Fitzsimons' point.

MR. FITZSIMONS: Mr. Andersen was making a conceptual point.

MR. COUGHLAN: Has Mr. Fitzsimons been informed of that by Mr. Andersen?

MR. FITZSIMONS: It's perfectly obvious from the text. From the plain meaning of the language.

MR. COUGHLAN: Right.

Q. Now, we then move to, and I am asking you about this table, this is the aspects table, and its position in the final report.

A. Yes.

Q. And I am asking you what discussion led to that.

A. I don't recall specifically the discussion. I mean, we had an intensive session on the night of the 24th, where we were agreeing very specifically the views of the Project Team.

Q. This was on the 24th?

A. Yes, as to what was necessary to bring this report to finality. And it was in the context of that discussion. I don't recall specifically, but I can tell you that my own frame of mind was that we were making a recommendation in accordance with the preordained Government criteria, and it is Tables 17 and 18 that clearly set out how we arrived at the decision, recommendation, in accordance with those criteria.

Q. Mr. Towey, I have just dealt with that with you. This model was designed and adopted around the Government's preordained criteria.

A. Yes, but it was always subsidiary to it. Do you have my note of the 10th August to the Project Team?

Q. I can't turn it up immediately, but I will, and I remember what you said in it, that you asked them to read they had the evaluation model, I think. You sent them the reader's guide as well?

A. That's correct.

Q. And you asked them to bear in mind the that it had to be decided on the basis of the Government criteria in descending order, or

A. Yes, exactly.

Q. I remember that. But this was designed to do that. This was what the purpose what was the purpose of employing consultants, and not do that, and then have to do something else yourself?

A. But Table 16, as I am saying to you, could only produce a result that could be stood over in the context of paragraph 19 if the weighting respecting the descending order of priority was applied. Now, that could have been done in relation to Table 16.

So in other words, you know, you could enter in the left-hand column the weightings. You could enter a further line underneath the grand total with the calculations it. Could have been done that way. But our clear view was that a better way was to restructure it into, as it happened, two new tables.

Q. You see

A. All that happened in relation to Table 16, really, was that we applied the views of the Project Team in relation to the evaluation criteria to it.

Q. The views of the Project Team?

A. In terms of the weighting of the selection criteria.

Q. Where was that? You applied you and Martin Brennan applied a view in Copenhagen, isn't that right, with Michael Andersen? Table 17 never changed.

A. I mean, we did, yes, and we brought that back to the Project Team.

Q. And any note that we have seen says we know that we have seen, and I'll show you a note in due course of Donal Buggy's where he is recording results should be on Table 17, or words to that effect, you know, but it's the discussion was around what to base the result

on, isn't that right, which table?

A. Well, I don't recall any discussion. I do have a recollection of and I am not sure whether it's a recollection of the time or if it's a recollection that arises from reading some of Mr. McMahon's papers

Q. All right, okay.

A. but I think in Mr. McMahon's papers, it is clear that he was of the view that there was we could only make a decision on the basis of the table, which clearly

Q. He was clearly of the view that Table 16 didn't give a result.

A. Okay.

Q. Sorry, that was the view he took, or it couldn't stand on Table 16, or words to that effect, that it didn't show you we know from Mr. McMahon's own notes that from way back, from seeing, perhaps more importantly, the second evaluation report, but reading the first one, he couldn't separate the first two. We know that all the way through.

A. Okay.

Q. But the adoption in this final report of Table 17 and representing that as being the result, the discussion which took place about these tables and which one should show the result, that was the discussion that was taking place, is that right, as far as you can

remember?

A. Insofar as I mean, insofar as I remember, there was a clear agreement that the recommendation should be based on a table that clearly reflected what the Government had asked us to do.

Q. Right. And that was the table that you and Martin Brennan had brought back from Copenhagen which had been described as a conformance test?

A. Yes, that's correct.

Q. All right. I now understand the point.

MR. COUGHLAN: I am going to move on, Sir, now, so it's perhaps a good time.

CHAIRMAN: Eleven o'clock.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,
FRIDAY, 16TH MAY, 2003 AT 11AM.