

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. McGonigal 1 - 443

THE TRIBUNAL RESUMED AS FOLLOWS ON THURSDAY, 22ND MAY, 2003, AT 10.30AM:

CHAIRMAN: Mr. Coughlan, you had concluded, and Mr. Fitzsimons, in the established sequence

MR. FITZSIMONS: I have no questions for the witness.

CHAIRMAN: Mr. McGonigal.

FINTAN TOWEY WAS EXAMINED BY MR. MCGONIGAL AS FOLLOWS:

Q. MR. MCGONIGAL: Mr. Towey, there are a few matters

I'll try and get your assistance on in relation to some of the matters arising from your evidence.

First of all, just to try and put something in context. Andersen Management International were, so far as the Department were concerned, the experts engaged to assist and to consult with?

A. Yeah, that is correct.

Q. And so far as the Department were concerned, as I understand it, this was the first occasion upon which they had had to carry out a competition of this nature in this way?

A. Yes, I believe it was.

Q. So to that extent, they were significantly dependent upon the advice and work which Andersen Management carried out?

A. Yeah, that's right. I would have seen a number of roles for Andersens, but mainly in providing a guiding light in terms of process expertise, but also in

bringing telecoms market expertise and financial and legal expertise to this process.

Q. I appreciate that. But equally, so far as the process originated and developed, it was very much a learning curve for the Department as they went along?

A. That's true.

Q. And as they went along, they would have become aware of problems and issues which had to be resolved at the time that they arose?

A. Yes.

Q. And some of these issues and problems would have been issues which were identified either by Andersens, or more probably by yourselves in relation to how things were working?

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

Q. And in trying to resolve those, you may have initially had a view of your own, but you would have consulted with Andersen in relation to arriving at a solution?

A. I believe that would be generally true in describing the process.

Q. Now, just generally for me, and I know you have done this already to some extent, in a sort of layman's explanation, can you assist me in relation to the difference between a quantitative and a qualitative evaluation?

A. Well, as I understood it, the quantitative evaluation was designed to extract from applications hard figures

that could be compared and that could be fed directly into a model which would then lead to a comparison. The qualitative evaluation, on the other hand, would allow for the exercise of judgement in relation to those figures, but would also allow for issues that couldn't be expressed in terms of figures to be taken into account.

So, for example, there were significant elements in relation to the approach to market development which we came to assess which could not be assessed on the basis of figures. For example, the applicant's approach to customer care, the applicant's approach to customer segmentation, the research undertaken by applicants. All of these were obviously very important factors in comparing applications, but they weren't something that could fit into a hard quantitative model. So if I can draw that together: the quantitative model was based on the hard figures. The qualitative was a much more wide, a much wider comparison which could take other factors into account.

Q. In a crude way, is it a fair difference to sort of say that quantitative involved numbers and figures and multiplications, combinations of that, whereas qualitative involved not only possibly the use of figures and tables, but more importantly, the exercise of judgement upon various different things?

A. That's correct.

Q. So in that sense, when one comes to look at a weighting system, is it right to say that looking at a quantitative and qualitative, particularly as we do in this competition, that quantitative necessarily requires a weighting system; whereas qualitative doesn't require, necessarily, a weighting system?

A. I think that you could take the view that a qualitative model doesn't require a weighting system if you didn't have the particular circumstances of this competition, where we had a prescribed descending order of priority.

Q. Let me stay with the general first, Mr. Towey, because I just want to try and get a few things clear in my mind, and if you want to develop or elaborate, please do.

But, insofar as one can say that quantitative necessarily requires a weighting system and qualitative doesn't necessarily require a weighting system, would it equally be correct to say, or a valid proposition, that if you require, during the course of a competition, if you realise that you require a weighting system for the qualitative, that you would necessarily use the quantitative weighting system which you had already agreed; do you understand?

A. I do, I understand what you are saying, and, yes, I mean, I think that that is logical, or if I can put it

another way, that if one used a different weighting system, then you know, it may give rise to question marks.

Q. And just apropos of that, I want to try and get clear in my mind one other thing: In relation to the relationship between quantitative and qualitative, am I right in understanding that you asked the question of Andersens as to whether you should get a similar result from both?

A. Yes.

Q. And can you just tell me what your answer was again?

A. The answer, when I posed that question, whether the quantitative and qualitative models would normally give rise to the same result, the response of the consultant that I put that question to was that was rarely the case.

Q. Well, in a very crude sort of a way, can one then say that if you have a valid quantitative result showing X, Y Company Limited as the winner, you would not necessarily, or you wouldn't expect at all to see that company coming through as the winner on the qualitative side?

A. On the basis of what the consultant said to me, yes, that's correct.

Q. Now, turning then to the particular, and I suppose where I want to really start is at the document of the 17th May of 1995, which was the first document

producing the model, on which Andersens produced the model, and it's in the weighting book, which is Book 54, and I think it's Tab 1.

A. Yes.

Q. Now, this, first of all, was Andersen Management International's first document in relation to producing the quantitative and qualitative evaluation of the GSM applications, isn't that right?

A. Yes.

Q. And a document produced by them in Copenhagen?

A. That's correct, yes.

Q. And apparently, based partly on previous competitions in which they had been involved?

A. I believe that's the case, yes.

Q. Although it had to be adjusted by reason of the fixing of the criteria by the Government prior to Andersens' involvement?

A. Yes.

Q. And I understand am I right in understanding that the fixing of the criteria in advance of Andersens getting involved caused some problem in relation to producing the model which they came up with?

A. I would say that's true, yes.

Q. Now, is it also right to say that in the production of this document, that, as it appeared on the 17th May, that there is no contribution at that stage by the Department?

A. No, this was an Andersen production.

Q. That's what I mean, that there was no involvement by the Department?

A. Correct.

Q. And is it also right to say that when the Department met with Andersens at the PTGSM meeting on the 18th May, that effectively this was the first opportunity that the Department had of discussing and understanding what was written down here?

A. That's true, yes.

Q. Now, I'll come to the meeting in a moment, but if you can just help me with a couple of matters first of all.

On page 3 of 19 of the document, it sets out the dimensions assessed in the quantitative evaluation, and there is a table there on the left-hand side, of which is the paragraph 19 criteria?

A. Yes.

Q. And they then have been divided into what have been called "dimensions", as can be seen. And in relation to the first two, the first was divided into three dimensions and the second was divided into two dimensions?

A. Yes.

Q. The rest remained one criteria, one dimension?

A. Yes.

Q. And then the indicators for the dimensions was a



further division, and most of them had more than one, or some of them had more than one indicator at this stage?

A. That's right, yes.

Q. Now, is there a relationship, when you are marking or doing something with these, is there supposed to be a relationship between them all? In other words, the process, as I understand it is, that you score you deal with the indicators first?

A. Yes.

Q. And then you come to dimensions?

A. Yes.

Q. And then you come back to criteria?

A. Yes.

Q. And is that the way it's supposed to happen?

A. That's the way I understood it would happen, yes.

Q. So if you have a set of weightings fixed for the criteria, do they then travel down towards the indicator pro rata, if you like?

A. Well, yes, the indicators would have to reflect the weighting at the criteria level, yes.

Q. So that if you fix a weighting of 30 for the first item, is it right to say that the total of the weighting for the indicators should be 30?

A. To preserve the logic of the model, yes.

Q. And if you don't do that, then you don't preserve the integrity of the model?

A. I think that's true, yes.

Q. So that the first thing one has to do, and is absolutely essential, is to fix the weighting for the criteria?

A. Yes.

Q. And then having done that, as a matter of calculation without agreement, one takes it further down the line?

A. Yes.

Q. So that in this particular case, as we'll see later, the two in relation to dimensions, the two that some consideration would have to be given to was the first two: the credibility and the quality?

A. Yes.

Q. Now, the next page that I just want you to help me with is the last page, page 19 of 19?

A. Yes.

Q. Now, am I right in understanding that this relates to the qualitative evaluation?

A. It does, yes.

Q. And what actually is this table?

A. This table, as I understand it, is designed to bring together an agreement at the level of aspects and an overall total in relation to the comparison of applications on a qualitative basis.

Q. Now, the aspects, as such, that was a creation of Andersens?

A. Yeah, Andersens' view on the way, the appropriate way

to look at applications was on the basis of a division into aspects, and that, for example, was the basis on which he proposed guidelines for applicants in relation to how their applications would be structured. So this was Andersens' view of how applications should be structured and evaluated.

Q. Now, I just want to try and be clear on this. Clearly Andersens are the only ones that can explain it to us properly, but there is no reference there to the criteria, in the sense that there is no column with the criteria on the left-hand side, as we saw in the quantitative section?

A. That's true, yes.

Q. And as I understand it, this is because Andersens had taken the criteria and recast them as aspects?

A. As aspects and dimensions, yes.

Q. And the way in which he recast them was to identify five categories of aspects?

A. Yes.

Q. Which he said would cover the criteria which had been fixed by the Government?

A. Yes.

Q. And those aspects were then divided into dimensions, and then further into indicators?

A. The division into indicators in the qualitative wasn't explicitly here, but it was intended, yes.

Q. Now, just one thing I am not clear about, and I just

wonder if you can help me on this; if you complete the exercise and score this document as it is, how do you translate that then into the criteria, which is what the Government asked you to do?

A. Well, that's a difficulty, and I think in fact that's a difficulty that we encountered in practice, that in looking at this, unless you take guidance as to how you unless you decide the relative importance of the different dimensions here, then you can come up with a range of possible conclusions as to the overall ranking.

Q. But am I right in understanding that that, as a problem, didn't surface at this stage, but surfaced later, on the 28th September?

A. That's absolutely true.

Q. So that in an odd sort of way, I suppose, it is fair to say that as the competition progressed to the 28th, this underlying problem existed, but had not been then identified?

A. That's true. I mean, it wasn't identified in terms of a discussion at sub-group or group level until the 28th September. I, at sometime before this, as I said in evidence, had come to a view that a weighting model had to be brought to bear in relation to this table.

Q. Now, that document then was discussed, as we know, Mr. Towey, on the 18th May of 1995, and the PTGSM meeting, as at Book 41, Tab 64. And if you could just

turn to that for me for a second.

A. I have it.

Q. Now, first of all, this was a meeting primarily conducted or addressed by Andersens explaining the document and how the model was to work, isn't that right?

A. Yes.

Q. And as that was done, people not only began to understand, but also began to make their contributions in relation to changes that they thought would be appropriate to this document?

A. Yes.

Q. And those changes are set out and suggestions were set out on the first page of the minute of the 18th May, and also on the second page?

A. Yes.

Q. Now, if you go to the second page, and the middle of page there it says, "Paragraph 4: Reference can be made on the file to the formulae agreed."

A. Yes.

Q. Now, paragraph 4 is on page 16/19.

A. Yes.

Q. And what the minute says is, "Reference can be made on the file to the formulae agreed."

A. Yes.

Q. Now, as I understand what paragraph 4 is there saying is, that the formulae which was agreed was the formula

for the criteria which is 30, 20, 15, 14, 7, 6, 5, 3,

isn't that right?

A. That's correct, that's what was agreed.

Q. And that's to be seen in the document of Maev Nic Lochlainn's of the 31st May of 1995, which was handed in separately, but I think you are familiar with it?

A. I am.

Q. Now, that was agreed, obviously, at the discussion group on the 18th May?

A. Yes.

Q. And can you assist me as to how that happened or how it came about or...

A. My memory of the means by which we reached that agreement was that Michael Andersen put his proposed weightings and the criteria on a flip chart; that we had a discussion in relation to that, and I think we may, I think we agreed some modifications. I can't say exactly what the original proposal was, but I think I have a memory, for example, of the 15, 14 weighting of tariffs versus the licence fee. There was obviously a constituency within the Project Group that attached a lot of importance to the licence fee.

Q. But, in relation to the explanation and the way in which it was dealt with, and the flip chart was produced, was that a flip chart which referred to not only the criteria, but also the dimensions and the indicators?

A. Only the criteria.

Q. So that what you were trying to agree was simply the criteria?

A. It was absolutely the criteria.

Q. Now, the indicators which are shown there on Table 16, the indicator weightings, they weren't agreed?

A. They weren't agreed in the context of the overall weighting model. I don't remember precisely whether we had any discussion of the weights at the indicator level, but when we came to reaching an agreement on the weighted model, that agreement was at the level of the criteria.

Q. Now, in relation to that agreement in relation to the criteria, was that agreement on the criteria based on the proposition that in any further division of weightings between dimensions and indicators, it would revert back it would start with the criteria weighting?

A. Oh, yes, yes.

Q. So that in respect of the tariff 3, I think, which was for frequency efficiency, if that had to be divided into if that was going down into dimensions or into indicators and had to be divided, it was divided within the figure 3?

A. Yes.

Q. And the significance of the way in which this is recorded, "Reference can be made on the file to the

formulae agreed," was acknowledging the confidentiality which was to attach to the weighting system?

A. Yes, that's right.

Q. And as I understand it, the only place that that document was now being held was with Maev Nic Lochlainn in wherever she was holding it, or kept it safe. She locked it up somewhere is my recollection?

A. Yes, that certainly was the case. In my mind, I am trying to think whether there would have been another copy circulated to the other divisions, and I am not absolutely sure on that point just right now.

Q. Well, I think there may not have been, but I mean, I am subject to correction, but certainly she was the keeper of the weighting document, there is no doubt about that?

A. Yes.

Q. And if I am right, and we can ask her herself, but if I am right in that, that this was the document which was kept by her and not circulated because of its confidential nature. There is a possibility that that document, or the contents of it, weren't then in the possession of the Andersen Management people in Copenhagen?

A. It's possible, it's possible, but I mean, they would have the

Q. Michael Andersen would have known about it and would



probably have remembered it?

A. Yes.

Q. But I actually am not thinking of him or Mr. Bruel, I think who was the other person at this meeting yeah I am thinking of the people back in the office in Copenhagen who would be doing other work independent of them.

A. Yes.

Q. Now, the other matter that I want to just draw your attention to in relation to this meeting, Mr. Towey, is that towards the end of the second page, you will see there the availability of first of all,

"Logistics/work plan," that paragraph, you will see:

"AMI proposed presenting an interim evaluation report, based primarily on the quantitative results.

Resources from DTEC/DFinance angle would need to be clarified, but would best be reserved till after the quantitative stage."

Now, two things about it: it appears clear from that, and presumably it was appreciated at the meeting that the significant work, in fact if not all of the work, on the quantitative side of things was probably going to be done or was going to be done in Copenhagen?

A. Yes.

Q. And that when that work was completed, which was sometime around early September, the 4th September, AMI would come back to the PTGSM to report on that

work by way of an interim report?

A. Yes.

Q. The other thing is that, "Resources from DTEC/DFinance." It was clear at this early stage that people were not going to be able to give their full time to this process at this time because of the nature of other work within the Department?

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

Q. And in fact, you appear to be the only person who was going to be involved full-time in the evaluation?

A. Yes.

Q. Martin Brennan would be available as required, maintaining the constant overview, and staff from Finance, Regulatory and Technical would be available as required?

A. Yes.

Q. So at an early stage, Andersen, so far as the quantitative was concerned for the moment, Andersens were clearly going to be doing all of the work in relation to that in Copenhagen?

A. Yes.

Q. You were going to be full-time engaged in the process?

A. Yes.

Q. Which involved coordinating and learning and contributing everything that it would involve?

A. Yes.

Q. And other people from the various departments would be

involved when required and when available?

A. Yes.

Q. Now, following that, Mr. Towey, the next document that

I just want to turn to is the document of the 8th June of 1995, which was discussed on the 9th June of 1995.

Now, in principle this evaluation document was the bringing together of the discussions which had taken place on the 18th, and acknowledging the changes which had been suggested by members of the Department?

A. Yes.

Q. And all of the changes I think, which had been identified on the 18th, were incorporated within this new document of the 8th June?

A. I expect so, yes.

Q. Now, so far as the table of the quantitative evaluation, that hadn't changed in the main, and nor indeed had the marketing aspects changed on the 20th/21st; neither of those two tables had changed in substance, isn't that right?

A. Yes.

Q. Now, so far as that meeting was concerned, which is at 41, Tab 70, that meeting was mainly concerned with other matters with matters other than the evaluation report?

A. That's correct, yes.

Q. And in fact, all it says in relation to this is that the last page that "This was approved as

presented, with the correction of one minor typo on page 6/21. Further comments, if any, to be forwarded to Maev Nic Lochlainn within a few days of the meeting."

A. Yes.

Q. Now, just in relation to that, if you turn to page 17/21, you'll see there the indicators for the quantitative criteria are set out. And opposite them is a list of weights.

A. Yes.

Q. Now, first of all, those weights were not discussed or agreed on the 17th May?

A. I can't say whether there was any discussion on the 17th May of any individual weights. But certainly there was no agreement on a package of weighting at indicator level.

Q. Now, equally, there was no discussion on the 8th June in relation to those weights?

A. I don't recall any discussion on the 8th June.

Q. The only weighting which had been agreed was the weightings for the criteria?

A. That was the level at which I recall an explicit agreement within the Project Group, yes.

Q. Now, is it wrong for me to believe that when the note here says that "This was approved as presented," that what was being approved here was the evaluation model, as opposed to the weighting for the indicators?

A. Well, the document I don't recall the meeting as such, but the document was presented by I imagine the document was presented by Andersens, and that the model as a package was agreed by the Project Group.

Q. I understand that. But what I am trying to understand is, as I read this on one level, there is a distinction between the evaluation model and the weightings?

A. Yes.

Q. If there was no discussion on these weightings, I can understand the evaluation model being agreed, but not the weightings?

A. Yes, yes. I think in our agreement it's implicit that we agreed the package.

Q. You see, I am wondering about that, and obviously this document was produced again in Copenhagen, isn't that right?

A. I am sorry, when you say "produced again in Copenhagen"?

Q. The document which came on the 8th June was a document which is prepared by Andersens?

A. Yes.

Q. And clearly Andersens put in those weightings on the indicators?

A. Yes.

Q. And on one level it's clear that they couldn't have been agreed, because the document is wrong?

A. I understand what you're saying, yes.

Q. It's wrong on two counts, isn't it, Mr. Towey? It's wrong because it doesn't add up to 100?

A. Yes.

Q. And it's wrong because it doesn't relate back to the weighting criteria?

A. Yes.

Q. So if you were amending or trying to in some way interfere with the weighting on the criteria, would you not expect there to have been a specific agreement and understanding in relation to that?

A. I think had we realised the inconsistencies you have pointed to, that we would certainly have taken a different approach at this meeting.

Q. But don't the inconsistencies, in fact, highlight the fact that, first of all, there was no discussion on those indicator weightings?

A. It does, yes.

Q. And secondly, that insofar as all of you at the meeting were concerned, none of you paid any attention to those weightings at that meeting?

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

Q. Now, the person who can answer the question fully is, in fact, somebody from Andersens International, and can explain whether that is, as I would suggest, a mistake, or whether, as you might, or at least the Tribunal might suggest, could be indicative of a new

agreement. But, certainly what you can say, apart from highlighting the inconsistencies, is, insofar as that weighting, if it had a validity, was concerned, it certainly wasn't treated with the same confidentiality or secrecy with which the weighting agreed for the criteria was treated?

A. That's true.

Q. Now, it's equally true to say, as we discovered, that the weightings which were referred to in the final report for the indicators and also, in fact, referred to in the report of the 18th for the indicators, those weightings would correspond back to the criteria. The weightings on the indicators do you remember the document Mr. Coughlan suggested to you, the historical document which was changed, and which those weightings, when you actually look at them, and if you put them on this page, make complete sense in relation to the criteria weighting?

A. That's correct, yes.

Q. So it would not be unreasonable, would it, to draw a possibility that what was intended was that the weightings on the indicators, as referred to in Annex 3 of the report of the 18th and the 25th, should in fact have been the weightings here when this document was produced to you on the 8th June?

A. Yes.

Q. And if there is validity in that, then it would mean

that the quantitative evaluation which took place in

August was in error based on the wrong indicators?

A. The quantitative evaluation which took place on the

4th September

Q. No, no, the quantitative one which was carried out

by

A. Andersens, yes.

Q. on, I think it was the 20th August, was based on

the wrong indicator weightings. If you turn

to 30th August, I beg your pardon if you turn to

Tab 6 of the weighting book. Do you have that?

A. I have that, yes.

Q. And you see that they have used the weightings there

which are set out

A. In the model of the 9th June.

Q. in the model of the 9th June. Now, if two

things: first of all, if I am right in relation to

the correct weighting indicators, those are the wrong

indicators to have been using?

A. That follows, yes.

Q. And as they stand, are they not also wrong because of

the fact that they are 103 rather than 100?

A. Certainly I believe it would not have been the

intention of the Project Group.

Q. So what we can say straight away, at the moment, and

we need Andersens to sort it out, is that whatever

validity the quantitative test had on the 30th August,



it is not a true test?

A. Well, it has some flaws in it. I think that had the Project Group been aware of these inconsistencies, it would have taken some action to correct them, yes.

Q. Absolutely, I have no doubt I am not suggesting that that wouldn't have happened. But I am simply looking at it trying to look at it, Mr. Towey, as a test result, and on the face of it, it is flawed for a number of reasons. It appears it could be flawed for a number of reasons, isn't that right?

A. Yes.

Q. And clearly whoever did the test is the person who can clarify those issues, isn't that right?

A. Yes.

Q. And for reasons which we'll go into shortly, because the quantitative version was taking a hit by reason of its inadequacies which were becoming apparent, the weightings as used may not have got a lot of attention at that stage anyway?

A. Oh, I believe not, no.

Q. So that in effect, is it right when you say that, that you believe not, that not a lot of weight was given to this result anyway?

A. I think at the time it was very clear that this wasn't a reliable result for a number of reasons which Andersen himself outlined, and that there was a clear understanding that it was inadequate and that we

needed to move on here to the more substantial evaluation.

Q. Now, just to follow through properly, Mr. Towey, in relation to the weightings, they then were changed because of the licensing permutation. And we can see at Tab 4, I think it is, there are a number of documents there?

A. Tab 4, yes.

Q. First of all, I am not sure that you have all these on that tab, but you may have. The first one is a letter from Maev Nic Lochlainn to Mr. Brennan of the 21st July?

A. I don't seem to have that one.

Q. That's Book 52, Document 26. I thought this had been all put together at some stage.

A. Yes, I have that document.

Q. Now, that says that, "The 7th meeting of the GSM Project Group on the 18 May approved the following weightings for the quantitative evaluation of the selection criteria for GSM competition."

And she then sets out the criteria and the weightings.

"Subject to further comments being submitted the 8th meeting of the GSM approved the paper on the evaluation model presented by Andersen International with the correction of one minor typo. No written submission was received, so it can be taken that the model has been approved.

"A single copy of the evaluation model is being held securely in the division.

"Please indicate your approval of the above as a basis to proceed."

I just draw your attention again to the use of the words "evaluation model" I appreciate that if one wants to you can include within the model the indicator weightings, but I am suggesting that, in fact, the interpretation is that it is the model being approved and not the weightings as set out in the indicators. You understand the point, I think?

A. I understand the point, yes.

Q. Now, following that then, there is the changes in relation to the licence, and they are I think, in Tab 4, and they include a document from Andersens of the 24th July of 1995?

A. Yes, that's correct.

Q. And then a document from Maev Nic Lochlainn in relation to the weightings of the 27/7, which is to all and sundry to you initially and which you approve?

A. Yes.

Q. And then there are letters from Mr. Buggy confirming his agreement to the change?

A. Yes.

Q. And Mr. McMeel, I think it is?

A. Yes.

Q. And then Mr. Dillon, on behalf of the Regulatory Division, isn't that right?

A. Yes, that's correct.

Q. And then either on that tab or the next tab, there is a note from Maev Nic Lochlainn of the 27/7 fixing the criteria weightings at 30, 20, 18, 11, 7, 6, 5, 3?

A. Yes.

Q. Now, it's clear from that bit of documentation, correspondence and discussion, the significance and seriousness which was being attached to the weightings, and I must suggest that that adds to the fact, to the argument or suggestion that, in fact, the indicator weightings, as set out on the 8th June, were never agreed?

A. Other than in the agreement of the model as a package, but there was never an explicit agreement in my memory.

Q. Now, in actual fact, by reason of the, let's put it as potential defects, or recognised defects in the indicator weightings of the 30th August quantitative evaluation, those mistakes are, in fact, carried through in relation to all of the quantitative document tests as we have them, being the 20th September, which is at page 7, and the document of the well, it is two dates; one is the 17th June, 2000. It relates to a test which may have been carried on the 2nd October, 1995, to which some

reference has been made. But it's clear from looking at those quantitative analyses, that figures which have defects were used in those two tests and therefore, they suffer from the same problem as the first one; that they aren't true tests?

A. Yes, I understand what you're saying.

Q. So that isn't it a fair comment, just before I get onto the, to your own criticisms in relation to the quantitative analysis, albeit unknown and without having paid much attention to it, it would appear clear that the quantitative analysis results, as shown in the documents, couldn't be relied upon in any result because they're untrue to some extent?

A. Yeah, I understand what you're saying. Now, on the 4th September when the result of this, the result of the quantitative model was presented to the group, I think it's fair to say that I don't think we were aware at this stage of the, at that stage of the kind of flaws that you are pointing to in the model, nor did we look at those issues in any way. What we discussed was the inadequacies of the model as put forward by Michael Andersen. That was the extent of the discussion at that point.

Q. I understand that. Don't get me wrong, Mr. Towey. I am not criticising. I am simply trying to understand. But I am also trying to make clear that in relation to some of these documents upon which propositions may or

may not be based, that they in fact aren't true

documents, in the sense that the, it is arguable that

the proper criteria or weightings weren't used?

A. There are flaws which the Project Group would have taken a different view on had they been aware of them.

Q. Absolutely

A. I am quite confident in that view.

Q. Absolutely. And I am not suggesting for a moment otherwise, but I am taking the situation as it is and as we see it. There is absolutely no doubt, from the way in which other work was done by the Department, that had a necessity arisen for greater attention to the quantitative analysis, then those flaws would have been found and the results would have been the tests would have been changed?

A. I think that's true, yes.

Q. But by that stage, in a sense, from the 4th September onwards, the quantitative analysis had taken a knocking, if not been put out of the game all together, virtually?

A. It certainly had taken a knocking, and as I said in my evidence, I don't believe it ever resurfaced as a point of discussion at sub-group or Project Group level.

Q. Because it had lost the confidence of the entire Department team?

A. Yes.

Q. And they had no faith left in it, to a certain extent, isn't that right?

A. I think that's true, yes.

Q. Now, I'll just leave that for a moment, Mr. Towey, because what I want to do is just move on a bit in relation to the competition itself, and go to the meeting of the 4th September, which I will find for you now in one second. It's at Book 42, 95.

A. Yes, I have it.

Q. Now, a lot had happened in the meantime between June of '95 and July of '95 and September, in that the applications had closed, the documents had been dispersed and work was being done, a lot of it by Andersens, but equally members of the Department had parts of the various applications and were trying to become familiar with them?

A. Yes.

Q. And the purpose of the 4th September was to be presented by Andersens with the interim report on the quantitative analysis, and to discuss other matters in relation to it?

A. Yes.

Q. Now, in dealing with the quantitative analysis, as it does there, on the first page, inter alia well what it says is: "Prior to presenting the initial draft report of the quantitative evaluation, Mr. Andersen first acknowledged certain shortcomings in the results

gleaned so far from the quantitative scoring. The quantitative evaluation had highlighted some incomparable elements." And this then gives four examples.

Now, you already, to some extent, were elaborating on that in your discussions with Mr. Coughlan, but for my benefit, could you just outline to me the way in which, and why, you saw the quantitative analysis as being of little benefit?

A. Well, it was primarily because of the extent to which it was restricted in its ability to compare applications. So primarily, for example, the qualitative evaluation incorporated 56 indicators, 56 different elements on which applications were compared. The quantitative evaluation, on the other hand, compared applications only in relation to 13 indicators, 13 different elements of applications.

Within the quantitative evaluation, some of the indicators that were chosen did not provide a fair comparison between applications. And I have taken, in particular, the instance of the tariff comparison, where the indicator was based solely on tariffs at the end of the fourth year of the business plan, so that it didn't take account of tariffs at any other point in the business plan, and it calculated the cost in tariff terms to an extremely high user of the service.

In fact, it was a user who would make 1,500 minutes of



outgoing peak calls per month which, I think in my previous evidence, I suggested related to a customer that would be on the phone for both incoming and outgoing calls for about two hours per day.

Now, in the context where we were talking about the introduction of a new competitor to the market for the purposes of driving market development, and at that stage I think we were looking at the probability of somewhere between a quarter of a million and half a million mobile phone users by the turn of the century, which was four years forward from then, clearly it was not a realistic assumption that or it was not realistic to compare tariffs for a very small portion of that market, the very, very high user segment, therefore, the tariff analysis ignored a whole swathe of the target customer base for these applicants. I think that's probably the best example of the deficiency of one of the indicators in the quantitative analysis.

But there are, I think, similar problems with some of the other indicators.

Q. If we just look at the if we go back to one of the if we go back to the 8th June and look at the indicators for the quantitative evaluation, is it possible, from recollection, to look at that and say, or indicate to me which of the indicators were flawed for the purposes of the analysis which...

A. I think I'd need to think about that a little more again, but the tariff one was one that struck me in particular as being wholly inadequate. The main difficulty with the other ones is the fact that it was looking at a restricted element of the application.

Q. But it's clear, again, from the minutes of the 4th September, that as a result of the explanation given to the team by Mr. Andersen, that there was agreement, as we see from the top of the page, that the quantitative analysis wasn't going to be sufficient on its own?

A. That's correct, yes. I am sorry, if I could just come back briefly on something. Sorry, the other area where the indicator was flawed actually was in relation to performance guarantees, where the chosen indicators in the quantitative analysis in fact represented important elements in relation to the technical plan, but they don't reflect what the Department had set out as to what it was looking for from applicants in relation to the performance guarantees criterion.

Q. I think it was also defective in relation to roaming agreements?

A. In relation to roaming, the difficulty was in actually calculating a figure to feed into the model. So it was a slightly different problem, but it was a problem with the model.

Q. But I think it ended up, in fact, that it wasn't considered at all, certainly in one of the analysis, the second analysis?

A. Yes, I think that's correct, yes.

Q. But, it says here, "The consensus was that the quantitative analysis was not sufficient on its own, and that it would be returned to after both presentations and the qualitative assessment."

Is that effectively a polite way of saying that 'We have no confidence or faith in the quantitative analysis, and that we are going to focus largely, if not completely, on the qualitative analysis'?

A. I don't think that our view at that stage was quite as definitive as you put it. I think that at that stage it was clear to the Project Group that this was quite a limited analysis, and that you know, we need to look at wider issues. Beyond that, I don't think there was any agreement beyond that.

Q. Well, would it be fair to say that it's a different way of saying that the quantitative analysis was withering away?

A. I can't say that we would have thought of it in those terms at that stage.

Q. You mightn't have used that expression at that time, but it's not far removed from it?

A. We certainly saw it as being very limited and deficient, yes.

Q. Now, clearly there was also, as one can see from the next paragraph, problems arising from the fact that figures which had been given by applicants couldn't be taken as they had been given, and needed scrutiny?

A. Yes.

Q. And that was causing a problem in relation to the analysis as well?

A. Yes.

Q. And equally, that meeting highlighted the fact that the weighting of the licence fee hadn't been changed, and the model would have to be corrected in relation to that?

A. Yes.

Q. Now, "Mr. Andersen concluded that the scoring at this stage was relatively close and that no conclusions could yet be drawn." What does that mean? And what is he drawing that from, as a matter of interest?

A. Well, I don't recall specifically, but I presume that what he is I presume that he was sounding sort of a note of caution about this presentation.

Q. Well, this was the 4th September; there was work being done on the qualitative side, I think, alongside at this stage, was there?

A. There was preparatory work obviously, but I don't think any sub-group meeting had taken place at this stage. The first sub-group meeting I think was on the 6th September, yes.

Q. Now, just turning over the page then, to the future.

In actual fact, the first sentence of that paragraph says that, "Ten sub-groups for the qualitative evaluations had been proposed, 5 had already taken place." So it would appear that some of them may already have taken place by the 4th September?

A. I understand what you are saying or why you draw that view. I think I need to explain that.

Andersens had been anxious to make progress in relation to the qualitative evaluation, and they had asked that people come to Copenhagen for the purposes of sub-groups at some point, I think it may have been towards the end of August.

Now, I don't recall exactly the reasons why people didn't travel to Copenhagen at that time. But Andersens did some work independently, and I mean, this was a reflection of what they were saying at this stage; that they had independently carried out five sub-group meetings, which what that really meant was that only the consultants were there in Copenhagen, but all of those issues were revisited.

Q. I appreciate that, and one can see that from the various some of those documents that have actually arrived through them, you can see the meetings or considerations which may have started in August and then carried through on the 6th September and on to the 13th and beyond?

A. Yes, okay.

Q. But clearly the what I am really getting at is that however advanced or unadvanced the work on both the quantitative and qualitative side had been done at this time, which was the 4th November, Mr. Andersen was, at that stage, indicating that things were close and you couldn't draw conclusions?

A. Yes.

CHAIRMAN: 4th September, I think, Mr. McGonigal. I think you said the 4th November. Obviously it's September.

MR. MCGONIGAL: I beg your pardon, yes it is. Thank you, Chairman.

Q. Now, clearly, equally, at this meeting, the AMI people were being requested to furnish documentation to DTEC in relation to matters on the qualitative committees which had taken place up to that time?

A. Yes.

Q. And equally he was indicating to people that they could contribute and make amendments to the scoring at that time?

A. Yes.

Q. And was that something that was available to the members of the PTGSM all the way through the competition?

A. No. The results of sub-group meetings weren't circulated to all members of the sub-group as

standard, or sorry, all members of the Project Group as standard. Now, in relation to these particular ones, and I think these papers were provided to the Department by AMI, I can't say specifically whether they were circulated or not. These were the first ones.

But, for example, the reports on the sub-groups on the technical analysis, I didn't actually see those myself.

Q. Well, can I take it from that, that in relation to sub-groups, that the scoring was done in the sub-groups for the particular dimension, or aspect that they were concerned with, and that the result remained with the sub-group, but the total passed on, if you like, to the coordinator?

A. Yes.

Q. Is that right?

A. Well, I mean, Andersens were the coordinator, yes.

Q. So that in reality, only those who were involved in particular sub-groups would be in a position to understand and appreciate why particular gradings were given for particular indicators?

A. Yes. I mean, I understand what you're saying. There was a report of each sub-group which ultimately became the explanation of the award of grades which appeared in the evaluation report. But beyond what is contained in those reports, it is only the members of

the sub-groups that would have the knowledge, yes.

Q. Now, the next paragraph deals with, "The qualitative scoring of dimensions would take place in the sub-groups, and scoring of aspects would take place after the presentations."

Can you just explain what that is saying there and what that meant so far as the PTGSM was concerned?

A. I am not sure exactly, in the sense that I presume that the timetable for the presentations was agreed at this stage, so it may have been that it was envisaged that it would be possible to score all of the dimensions before the presentations, and that then the scoring of aspects would be returned to after that, but the time-frame seems a little bit tight. That seems to be what was envisaged.

Q. When you say "the time-frame seems to be a little bit tight," what do you mean?

A. I mean that this meeting was on the 4th September, the presentations were scheduled for, I forget the exact date, but I think it's something like the 12th to the 14th, so the time-frame between the 4th and the 12th seems a little bit tight to complete the scoring of all of the dimensions. But nevertheless, that seems to be what was the intention.

Q. And I think the meetings did take place on the 6th and 7th prior to the 12th, and there was a lot of work done between the 4th and the 12th?



A. There was work done on the performance guarantees and financial dimensions, and on the technical side, I think that work may have been done as well at that time.

Q. When you say that the time-frame seems a little tight, one of the things that interests me is that the group seems to have been put under certain time pressure by Andersens in relation to getting things done?

A. I think that Andersens were anxious to keep the project moving forward, yes. I think that they were conscious of the time-frame that had been laid out for the process, and of course, at this stage, there had been a delay because of the suspension of the competition arising from the problem with the licence fee.

Q. And apropos of that, in relation to the time-frame, on one reading of all of the documents, it would seem that the time-frame which Andersens were working towards was the end of October?

A. I would expect that's true, because I know that at a couple of points the Project Group took a view that there was a need for time for political considerations arising from the report, and I think in one instance, the Project Group took a view that six weeks was necessary. I think somewhere else it suggested that four weeks was necessary.

Q. But leaving aside for a moment the question of

political considerations, if a period of time had been deducted from, we'll say the period from August to November, then the real time that we are talking about, in the sense of what period of time was available to the PTGSM, from the documents, it would appear that they were only giving themselves to the end of October?

A. Yes, I think the end of November was the ultimate time-frame and the end of October was the Project Group's time-frame.

Q. And even within that time-frame, it's clear that Andersens were putting their own pressures to get it finished even quicker?

A. They were certainly keen to move the project forward. Whether they foresaw beating the end of October deadline, I can't say.

Q. Well, there is, and I'll come to it later, a document which suggests that in fact they might have anticipated that the report of the 18th October was or would be the final report?

A. Okay.

Q. So that it would seem that there is a possibility that they were working within a shorter time-frame, let me put it that way, than the time which had been given to the

A. Yes, I understand what you're saying, yes.

Q. And that pressure to complete included not only the

competition, but also the finalisation of the report?

A. Yes.

Q. And in fact, it seems to be, not only as you have articulated there, that trying to do the dimensions before the 12th was itself giving a very short period of time, but in the next paragraph we see that a date of the 3rd October for a delivery of a draft qualitative report was suggested by Andersens, is another time constraint, if you like, that they are putting on themselves and on the PTGSM?

A. Yes, yes, I understand, yes.

Q. I mean, on one view, isn't it reasonable to say was it necessary on the 4th September to fix the 3rd October as a date for a draft qualitative report?

A. Yes, I think well, I mean, I think Andersens were always very sensitive to ensuring that we were working within a project time-frame.

Q. Absolutely. But it was their choosing, their pressure, and they were putting that on the team?

A. Yes, I mean, I think that is their date. That's what that suggests, yes.

Q. Now, as you have indicated I am not going to go through everything, Mr. Towey, because a lot of it has already been dealt with, but I do want to go to the meeting of the 14th September, acknowledging that in the meantime there had been a number of subcommittee meetings, and the presentations, and the subcommittee

meetings you had attended on the 6th and 7th I

think

A. Yes.

Q. when quite when a number had taken place?

A. Myself and Billy Riordan, yes, we attended the sub-group dealing with performance guarantees, and a sub-group dealing with financial, the financial dimension, but that of course was revisited again.

On the technical side, which I didn't attend, a number of sub-groups in fact the technical evaluation was completed.

Q. Now, just in relation to sub-groups, can I ask you this: how were they conducted?

A. In practice, Andersens made a proposal in relation to the indicators which should be examined in order to arrive at an overall marking for the indicator. Some discussion took place as to whether that was a fair whether it was an adequate range of indicators, or whether the particular or proposed range of indicators excluded any element of applications which should be compared in order to ensure fair comparison. And in all cases, to my knowledge, the proposal put forward by Andersens in relation to indicators included all of those that had been envisaged in the quantitative model, and expanded on those.

On the basis of agreement on the indicators, Andersens

proposed the award of marks to each of the applicants pursuant to each of the indicators. And the group then discussed the reasons for the proposal, and a view was taken as to whether there was general agreement or otherwise, whether a given grade should be changed, or whether it was accepted and agreed. And on that basis, all of the indicators first were scored by way of consensus, and then an overall score according for each dimension was agreed, again on the basis of consensus, and on the basis of discussion as to which of the indicators, for example, were more important, and which should implicitly, therefore, be given more weight.

So the bottom line, the overall scoring was agreed on the basis of a consensus to that kind of process.

Q. So it wasn't simply a case of Andersens producing a document and saying, 'This is the way we see it should be done. These are the marks that should be given' and everyone sort of saying, 'Yes, we agree with that,' and passing on?

A. No, no. I mean, there was discussion and debate and an exposition of the reasoning. In some cases, and my memory isn't entirely clear on this, in some case I say, and I am not sure in all cases, Andersen actually produced a document setting out their reasoning as a document that may have been the draft outcome. Yes.

Q. So Andersens produced a document together with the

table, and people read it and then discussed it?

A. Yes.

Q. And discussed not only the merits and demerits of the indicators, but also in detail discussed the merits, demerits of giving particular marks to particular grades to particular indicators?

A. That's correct, yes.

Q. And I mean, it was a healthy discussion, it wasn't a fixed discussion?

A. Oh, it was a lively discussion, yes. I mean, everybody had read the applications, and you know, had views based on that reading, so there was it was an active discussion, yes.

Q. So that, and in many cases the grades which Andersens had started with were changed as a result of the discussions?

A. Yes.

Q. So that nobody who was trying to fix or cook the result could do so in advance at all of those meetings?

A. No.

Q. Or even during them?

A. No well no, I mean, you know, at the meetings there were a number of parties present and issues were argued out, so there was a consensus on an objective basis as to the award of grades for each indicator.

Q. And nothing appears to have been taken for granted, a

person would have to present his case as to why he thought that somebody should get a C instead of a B or whatever, isn't that right?

A. That is correct, yes.

Q. So that the grades that were given for each of the indicators and each of the dimensions in relation to the qualitative assessment can, in that sense, be said to be true results of the discussions and input by the PTGSM members that were there?

A. That's right, yes.

Q. And is it your view, and your opinion, that in relation to the input by all of the members at those sub-groups that you attended, that they were all acting with honour and integrity in relation to the work that they were doing?

A. Absolutely. That was the case, yes.

Q. And there was no question of any of them, to your knowledge, being led by the nose, either by someone inside or outside, as to what should happen?

A. No, no. I mean, in each case, as I say, there was an explanation as to the reasons why a particular grading was proposed, a discussion of that, and ultimately an agreement.

Q. So that in relation to the grading of the indicators and the dimensions, you are happy that in relation to those results, they are true, and accurately reflect the discussions and work put in by Andersens and the

PTGSM?

A. Yes.

Q. Now, this meeting on the 14th September, which is at Tab 104 I think you have it, do you?

A. Yes.

Q. On the second page, it deals with the review of the current position, and then towards the end of the page it deals with how to progress the evaluations. And it says: "The assessment of the technical dimensions was complete. T&RT Project Group members had attended all but one of the sub-groups and were happy with the conclusions." And that they were to score the technical aspects by close of business on the 14th September.

Can you just explain what that means? Is this the movement from dimensions to aspects?

A. Yes, I think that is yes, yes, I think that is correct.

Q. They were hoping to do that on that particular evening, obviously?

A. Yes.

Q. And then they listed the next steps as, "Finalising the qualitative scoring and awarding marks on the dimensions." So clearly some of the work which they had hoped to be done by the 12th hadn't been completed, isn't that right?

A. Yes, that's correct, yes, yes.



Q. And then performing the initial scoring of the aspects, which was delayed anyway until after the 14th?

A. Yes.

Q. And then there was supplementary analyses in relation to certain matters which had yet to be completed?

A. Yes.

Q. Now, "It was also identified that the scoring of the marking of the financial and management dimensions would take place in Copenhagen next week." And that DTEC would appoint the appropriate personnel to attend. AMI would provide the first draft evaluation report on the 3rd October. This would be discussed by the group on the Monday, 9 October. The three DTEC divisions would supply any written comments prior to that meeting. Following that, AMI would produce a second draft report by 17 October."

Now, that is, in fact, setting out a very full schedule in relation to the work that remained to be done?

A. Yes.

Q. And that was being done on the 14th September?

A. Yes.

Q. At a time when the dimension marking hadn't been completed?

A. Yes.

Q. The aspects marking hadn't been completed?

A. Yes.

Q. And all of that was going to be done in the next week or so?

A. That's right, yes.

Q. But at the same time, Andersens were setting the course for the future by saying that they would have the first draft report for the 3rd October?

A. That's right, yes.

Q. And that would be discussed at the meeting of the 9th October?

A. Yes.

Q. So on the face of it, that seems to suggest to me that once this meeting of the PTGSM was completed, was finished, that the next PTGSM meeting would be the 9th October?

A. Yes.

Q. And everybody who was at this meeting on the 14th was aware of that?

A. Yes.

Q. So that whatever input they were to have in relation to matters which had to be completed between the 14th and the 9th, they would have to make themselves available, if they could, for the period of time that intervened?

A. That's correct, yes.

Q. And it was equally clear at this meeting, I take it, that the dimensions and indicator groups that had to

meet, they were identified in this document anyway, and it must have been identified for everyone at the meeting, that they knew which ones remained to be marked?

A. I think that was understood, yes.

Q. And the invitation was there for people to effectively send the appropriate persons to do these meetings in the following two weeks, isn't that right?

A. Yes, I believe it was open to people on the Project Team to participate or nominate people to participate in the sub-groups, yes.

Q. Now, clearly, again, there is, on one view, time pressure being exerted by Andersens in relation to the speed and amount of work that had to be done within the period of time available?

A. Yes.

Q. Isn't that right?

A. Yes. I mean, Andersens were, as I say, very diligent about maintaining the project schedule.

Q. But they were also diligent in ensuring that the pressure was kept on the PTGSM members to get on and do the work that had to be done in the shortest possible time?

A. They were keen to move ahead, yes.

Q. So that as of the 14th September of 1995, certainly in Andersens' mind, they had a very clear path of what they were going to do and when they were expected to

have it done by?

A. Yes, yes.

Q. And all of the PTGSM members who were at that, would also have been aware and be conscious of that time

A. Yes

Q. pressure.

A. Absolutely, yes.

Q. Now, what happened, I think, then, Mr. Towey, was that on the 17th September, which is at Tab 109

A. Yes.

Q. Mr. Andersen sent a programme to you, to Mr. Brennan, to Billy Riordan and Maev Nic Lochlainn, who were the significant people in relation to the meetings that were to take place?

A. Yes.

Q. Is that right?

A. That's correct, yes.

Q. And is it right to say that from the fact that it was sent to the four of you, that he saw you four as being the people who would be involved in the scoring of the dimensions of the sub-groups that remained to be done?

A. I think I had been informed that that was the case, yes.

Q. And again, those meetings took place on the Tuesday and Wednesday, the 18th and 19th September, and they were sub-group meetings in relation to market development, tariffs, roaming, marketing. And then on

the Wednesday there were marketing aspects, financial aspects, and management aspects?

A. Yes.

Q. Now, do you have a clear recollection of those two dates at this remove at all?

A. It's not particularly clear, no.

Q. But am I right in reading this as the Tuesday seems to be devoted towards scoring dimensions?

A. Yes.

Q. And that Wednesday is devoted towards scoring aspects?

A. Yes, I see that, yes.

Q. That would tie in, to some extent, would it not, with the meeting of the 4th September, which talked about trying to get the dimensions done before the 12th, and doing the aspects after the 14th?

A. Yes, yes.

Q. Not being able to finish the dimensions before the presentations, they had to be done first?

A. Yes.

Q. And then the aspects would be done after that?

A. Yes.

Q. Is that a possible, a probable understanding?

A. Yes, I think that's probably an accurate understanding of the intention.

Q. So what can we say as of the 19th September in relation to the sub-groups and the scoring of aspects?

A. I am not sure as to whether scoring of aspects took

place on the 19th. That's something that I am not clear on. There were some of the dimensions where the scoring was not complete and needed to be revisited, so, for example, I think some further work was necessary on the financial dimension. And I gather, also from the documents, that some further work was also necessary on the marketing dimension. So the question of reaching an agreement at the aspects level, I can't say I recall what happened in that respect.

Q. Okay. But can we say as a starting point, that all of these meetings took place?

A. Oh, yes, yes. Sorry, the meetings did take place, yes.

Q. And that the subject matter of those meetings is as identified in the memorandum, to the best of your recollection at this time?

A. Oh I believe so, yes, yes.

Q. So that as of the 18th/19th September, does it appear that to a large extent, possibly not completely, but to a large extent, the scoring of the dimensions had been completed, some of the aspects may have been scored, and there may have been some aspects which still needed to be done?

A. I think that's accurate.

Q. And we had identified the people who were to be there on the 18th and 19th?

A. Yes.

Q. That was known to everyone?

A. Yes.

Q. And those were the people who were involved in the scoring on these two days as it was capable of being done?

A. That's right, yes.

Q. And they would have been aware of what remained to be done, whatever it was?

A. Yes.

Q. And you are not clear as to what it was?

A. I think there is a further document that we have seen in the papers that shows that some further work needed to be done on the marketing dimension, and that the results on the financial dimension needed to be confirmed, but I think it was a note for Mr. Andersen.

Q. They actually are in the evaluation book documents.

A. Okay, yeah.

Q. And we'll come to them if necessary. But I am just trying to get a picture, as we go along, Mr. Towey, of how the whole thing was shaping up in relation to, having regard to the availability of different people, how the dimensions and aspects were being scored to have some involvement from the PTGSM, together with the involvement of Andersens, who were the main controllers, if you like?

A. Okay. The scoring of dimensions was almost complete

at this point. I don't have a specific memory on the scoring of aspects.

Q. Now, moving on then, to Tab 111. Now, what this document first of all, it is addressed to yourself and Mr. Brennan.

A. Yes.

Q. And in the first part it is identifying the work that had to be done in the remaining award of marks for the ten dimensions.

A. Yes.

Q. And we can see there that they identify the nature of the work that has to be done and the deadline that they have imposed on having it done by.

A. Yes.

Q. And that, I think can you say at this remove whether all that happened in the way that is suggested?

A. I believe it did, yes.

Q. Now, the second B is scoring of the marketing aspect, financial aspects and "other aspects", and it's suggested that the award of marks to the remaining aspects is decided at a meeting of Thursday 28th, so it appears that certainly those aspects still had to be scored?

A. Yes.

Q. And just to be clear, the marketing aspect and the financial aspect were two specific aspects. "Other



aspects" refers to the category called "Other Aspects".

A. That is correct.

Q. Which was never scored?

A. That's correct.

Q. And which also doesn't, on any view, seem to have a relationship to the criteria which were set by the Government?

A. In our view, it was implicit within them as being, it wasn't something which we could score as an additional criteria, in the sense that the criteria had been set down already, but to the extent that there was an issue, a credibility issue or a risk issue in relation to a specific criteria, it would be open to us to take that into account in deciding the marking of that criterion.

In the event, we did not return to the marking under the qualitative analysis to reflect the credibility and risk factors, because the overall assessment was that that led to a similar ranking of the applications.

Q. But whatever the reason, the reality is that the "other aspects" wasn't scored?

A. That's correct, yes.

Q. But is it equally correct to say that the marketing aspects, the technical aspects, the financial aspects and the management aspects; that those four aspects

incorporated all of the material in the eight criteria

fixed by the Government?

A. Yes.

Q. So that by not scoring "other aspects," you are not omitting any criteria from the Government's direction?

A. Oh, yes, I think that's absolutely correct, and it's the other way of looking at it, that we didn't score "other aspects" because there wasn't a criteria, yes.

Q. Precisely. Thank you. It's much more simply put than I put it.

Now, the meeting, then, of the 28th was being set up as the meeting, as the day upon which the scoring would happen, and other matters would be tidied up?

A. Yes.

Q. And that was necessary to be done prior to the production of the first draft report of the 3rd October?

A. That's correct, yes.

Q. So that until that had taken place, the 3rd October report which had been promised on the 14th September, couldn't be drafted or completed until that meeting had taken place?

A. That's correct, yes.

Q. And the purpose of that meeting was, as I understand it, to bring together all that had happened prior to this, and to finalise certain marketing aspects and financial aspects and discuss other matters that had

to be discussed?

A. That's correct, yes.

Q. Now, on the bottom of the second page of this document, in the paragraph commencing: "If there is a clear understanding between the Department and AMI of the classification of the two best applications, it is suggested not to score "other aspects", the risk dimensions and other dimensions, such as the effect on the Irish economy. In this case, the risk factor will be addressed verbally in the report."

Now, that was something which was written by Michael Andersen on the 21st September to yourself and Mr. Brennan. Can you help me as to what it meant in the context of the competition?

A. Okay. Well, I think what he meant was within the evaluation model that he proposed, it provided for the it envisaged the possibility of a score in relation to "other aspects". Now, I think that in the model that he had drawn from previous experience, that there was a weighting, something like 20% each for each of the five aspects, marketing, financial, management, etc., so his frame of mind was that it was possible to award a score here.

Now, I am not sure why he is suggesting that he is suggesting in this paragraph that it not be scored but dealt with verbally in the report, while at the same time later in this memorandum, he is asking the

Department do we wish to score it.

CHAIRMAN: You said "verbally in the report"; that's a little bit of a non sequitur.

A. Sorry, that's actually Andersen's words here, he says "In this case the risk factor will be addressed verbally in the report." So...

Clearly what he was suggesting though, was that the risk factors would be analysed separately from the scoring. That's what he was suggesting.

Q. MR. McGONIGAL: So that that was something that had to be discussed at the meeting of the 28th?

A. Yes.

Q. And focused mainly on the area of other aspects?

A. Yes.

Q. So that if there wasn't agreement between, for example, yourselves and Andersen Management in what they were suggesting, then it was understood that other aspects might have to be scored?

A. Yes. My understanding is that if it wasn't clear as to the ranking, and obviously he is focusing on the two best, because I think at this point, it was clear that there were what the two leading applications were, and that the task of the evaluation now was to objectively divide these two applications. I think what he is suggesting is that if the scoring under the qualitative analysis isn't agreed as being a sufficient basis to divide them, then the question of

scoring of the credibility and risk factors would need to be looked at.

Q. I wonder if you could just go to the evaluation model, Mr. Towey, of the 8th June, just for a second, to help me understand this. And page 20/21 which sets out the table of aspects and dimensions.

A. Yes.

Q. Do you see there towards the bottom of that it has the "other aspects" and then "Subtotal" and then "Risks (effects on the Irish economy)"?

A. Yes.

Q. Does that help to explain it?

A. Yes. I mean, that's what he had in mind, yes.

Q. Just one question I want to try and understand is this: this aspects model which had been produced by Andersens

A. Yes.

Q. in one sense takes out the column criteria which you might have thought would be there?

A. It does, yes.

Q. And it substitutes in its place this model based on aspects?

A. It does, yes.

Q. Now, it is possible, I presume, that that might more truly reflect the models which he had done on previous occasions, and therefore of which he had complete knowledge of?

A. I believe that's the case, yes.

Q. But equally, in relation to those models, without knowing the details one can't say, but one would have anticipated that the "other aspects" would be scored?

A. Yes.

Q. Now, the fact that "other aspects" doesn't cover the criteria under paragraph 19, on one view would mean that it would have to be left out in scoring the criteria if you were following the Government's model the Government's suggestion?

A. Well, that was the view that we took. I mean, that was the view that we took, that it wasn't possible to score "other aspects" on a stand-alone basis because it wasn't a criterion.

Q. Within the Government

A. Within the Government, yes.

Q. So on your view, there was a very good reason for leaving it out?

A. Oh, yes.

Q. And just to clarify further for me, I take it that that very good reason was explained probably at the meeting of the 9th October as to why there was no aspects, was it?

A. Well, I can't say that I specifically recall, but certainly I think the logic of it is clear, and had it arisen, it would have been made clear, no question.

Q. And then the balance of that identifies, first of all,

that there was going to be a scoring on the 28th September. And on the next page, it talks about the supplementary analysis which still had to be done and were all going to be done by the 28th September?

A. Yes.

Q. And again, we see there the first draft report and the basis upon which it was hoping to deal with it?

A. Yes.

Q. Now, over the page it has then, "Questions to the Department", and the first one is:

"Should the identified meeting of September 28 be conducted by means of a conference call or a meeting in Copenhagen?" And that was determined by having the meeting in Copenhagen?

A. Yes.

Q. "Does the Department wish to score other aspects"? reflects to the matter that we have just discussed, which was discussed on the 28th and decided on the 28th?

A. Yes.

Q. And then the next bit is: "Given the time-frame and the fact that we are not yet ready to begin the drafting of the report, will it be acceptable for the Department that AMI produces a non-edited report to be received by the Department by fax late October 3rd?"

Now, "given the time-frame", seems to indicate on one view that Andersens, by reason of the fact that they

weren't able to have the report in the way that they wanted for the 3rd, felt under pressure already?

A. Yes. Again, I mean, they were diligent about sticking to the time-frame, so they were anxious to produce I mean, this would be consistent with their general

Q. It's consistent in another way, Mr. Towey, in this sense; that not only was Andersens putting the PTGSM under pressure to get on with the work and get this concluded as quickly as possible, but also they considered themselves under pressure in relation to not having done having work done by the time that they said they would have it done, and seeking to have a marginal different way of presenting it, if you like?

A. Yeah. I mean, I think when I read this in the light of what you have been saying, I see that what AMI is saying here is that because the sub-group meetings were a bit later, the draft report mightn't be as advanced as they had originally anticipated on the 3rd October.

Q. But I mean, looking at it objectively, somebody could stand back from it and say, you know, what was their rush? Why were you all putting yourselves under pressure? And this, after all, was before the 28th September?

A. Yes.



Q. And Andersens were pushing you, Andersens were pushing themselves. They wanted to have the report, they wanted you to have considered it by the 9th, and they wanted to have a second report on the 17th?

A. Yes.

Q. So is it fair to say that on one view, there was considerable pressure being put on the entirety of the team, effectively by themselves, whether consciously or unconsciously?

A. Yeah, I think that certainly Andersens, as I said, were very diligent about sticking to the project time-frame. I think that the Project Group would also have been, you know, were also committed to that time-frame.

Q. And then the next bit is, "How do we integrate the quantitative evaluation in the report?" Which became the subject of serious discussions

A. Later, yes.

Q. particularly on the 9th and following.

A. Yes, that's true.

Q. With you arguing forcibly for some kind of warts and all production, if you like?

A. That's right, yes.

Q. And the rest of the team not being so happy with warts and all, can I put it that way?

A. Well, I think it's probably correct to say that they were more receptive to Mr. Andersen's argument that

because it was, because it was essentially flawed, it had deficiencies, that it was preferable to put in a description of those deficiencies and leave the actual outcome of the model out of the report.

Q. Now, the next matter of substance, Mr. Towey, is the meeting of the 28th. And there seems to be no record available in relation to that at all?

A. The meeting of the 28th September in Copenhagen?

Q. Yeah.

A. Well, I mean, the outcome of that meeting is what was reflected in the draft evaluation report.

Q. I understand that, but that isn't my concern

A. A separate record, no.

Q. Absolutely. But that's not my concern. What is interesting me is this: that it seems to go without saying that the meeting of the 28th, having regard to the people that were at it, and the matters that were discussed, must have generated an amount of paper, shall I put it that way?

A. It did, yes.

Q. And you all would have had, not only going to the meeting, you and Mr. Brennan would have had files with you, but also probably notebooks or paper on which to write?

A. Yes.

Q. And equally, Andersens were coming to the meeting presenting material and things which possibly you and

Mr. Brennan would not have seen up to that time?

A. They would have produced new documents on the financial dimensions, marketing dimensions.

Q. Because there was a lot of work done since the last time you were there?

A. Yes.

Q. And all of that had to be given to you and digested.

So clearly at the meeting of the 28th, there would have been a lot of paper, and all of you would have been making notes one way or the other, either on those or on fresh

A. Yes.

Q. Did Andersen have a policy of trying to gather together their material at the end of a meeting the material at the end of a meeting?

A. No, I don't recall a policy of doing that. I am trying to remember what the approach was. I don't I mean, I don't there wasn't a fixed policy of gathering all of the papers, for example.

Q. I understand that, but I am just curious, because in a subsequent competition which they were involved in, they sort of identified the security and the keeping of documents, and I just wondered to myself whether that mightn't have applied to this because of the missing documents, I'll put it no further than that, that there appears to be in relation to a lot of things that obviously happened?

A. Okay, I understand what you mean, yes. I mean, it was clearly agreed that Andersens would keep a complete copy of the paper trail in relation to these meetings.

Q. And that would have included a paper trail of the material of the 28th?

A. Yes.

Q. Now, so far as the meeting of the 28th is concerned, one of the documents, if not in fact the major document, produced to you was the table showing the dimensions and aspects and the scoring?

A. Yes.

Q. And had you seen to the best of your recollection, had that been made available to you prior to the 28th, or was it something that Andersens brought to the meeting and said 'Bringing everything together, this appears to us to be the result'?

A. Sorry

Q. And I don't use "the result" in result terms, I am using it...

A. I know. This is the table in the form of Table 16

Q. Yes.

A. that was proposed at the meeting by Andersens, I believe, yes.

Q. So they produced that and said, 'There you are' as near as makes no difference?

A. They produced a table which obviously the scoring of dimensions was clearly agreed at that stage. At the

aspect level, the scoring of aspects was clearly implied by the dimensions. On the marketing aspects, I am not clear whether that had been scored previously or not. But since the marketing dimension was just finalised on that day, it mustn't have been.

I don't believe that they proposed an overall ranking, a grand total. I think this is the point that we got into a discussion about.

Q. I want to come to that, because I just I am just not a hundred percent clear what might have happened, but

CHAIRMAN: Probably, Mr. McGonigal, a suitable time before you get on to that, for us to break for lunch.

One matter, Mr. McGonigal, I might perhaps ask for your assistance and that of Mr. Nesbitt. The one remaining substantive Project Group member, who has now reverted, again, to the private sector, has a number of travelling difficulties, and he is provisionally on stand-by for tomorrow. I would be grateful if you would perhaps discuss with

Mr. Coughlan over the end of the lunch interval, what are the realistic probabilities I obviously accept this is an important witness, and you and Mr. Nesbitt have matters that must be fairly put, but I don't want to keep the other individual needlessly waiting around tomorrow, and my view would be that if we can accommodate him by the post-lunch session tomorrow,

we'll have him, but I don't want to keep him until

three or four o'clock.

MR. MCGONIGAL: I understand, Mr. Chairman.

Mr. Coughlan has spoken to me about this already, and

I understand that his idea is that you might interpose

Mr. Buggy to allow his statement to be read through,

and would delay a further examination and

cross-examination until a more suitable time, and I

would have no difficulty with that, if it's of

convenience to the Tribunal just to get it moving.

CHAIRMAN: Well, we'll consider it after lunch in any

event. Five to two then. Thank you.

THE TRIBUNAL THEN ADJOURNED FOR LUNCH

THE TRIBUNAL RESUMED AS FOLLOWS AFTER LUNCH:

CONTINUATION OF EXAMINATION OF FINTAN TOWEY BY

MR. MCGONIGAL:

Q. MR. MCGONIGAL: Just one small point, Mr. Towey,

before I go onto the just to deal more with the

28th. I just want to I know I have already drawn

attention to it, read it out, but I just want to draw

attention to the fact that in the minute of the 4th

September, dealing with the 3rd October, what it says

is that, "A date of the 3rd October for the delivery

of a draft qualitative report," okay?

A. Yes.

Q. Whereas on the 14th September, it had become the draft

evaluation report?

A. Yes.

Q. So, in other words, Andersens seemed to be moving the process along, in the sense that, on the first view, there was the view that 'We'll have a qualitative report and look at that', and that was then changed by them to the full draft report by the 14th September?

A. Yes.

Q. Now, moving then to the 28th September, and I want to try and get an understanding in relation to this meeting for a number of reasons. First of all, in relation to what had to be done at the meeting, as I understand it, the first thing that had to be done was the finalisation of the scoring of the marketing and financial aspects?

A. Yes.

Q. And also, a view had to be taken, or was a view taken at that time in relation to other aspects, or did that come slightly later, or can you recollect?

A. Well, I think I mean, in response to Mr. Andersen's memorandum of the 21st February, that I would have made our view in relation to the scoring of other aspects clear, that is that we would have to look at the scoring if the assessment of other aspects done by Andersens gave rise to the possibility that it might result in a change in the rankings, and my understanding is that in the process in Copenhagen on the 28th, that it was the view expressed by Andersens

that nothing in the analysis they were doing would lead to a change in the rankings.

Q. No, I understand a lot of that. But what I am actually trying to sort out in my own mind is the mechanics, if you like, of the operation.

A. Okay.

Q. In the sense that when you go to the meeting on the 28th, the one thing that isn't available when you go into the meeting, as I understand it, is the Table 16 as it now appears in the report?

A. Yes.

Q. And the reason for that was because you still had to do the marketing and financial aspects?

A. Yes.

Q. So the first order of business, so to speak, was to get that resolved?

A. Complete the scoring on the dimensions. And we haven't actually mentioned the tariff dimension, but I think finalising the scoring on the tariff dimension was one of the things we did first.

Q. So the first job was to finalise the scoring?

A. Yes.

Q. Now, as a result of that, you then had a table which included the marketing aspects, the technical aspects, the financial aspects and the management aspects?

A. Yes.

Q. Now, am I right in thinking that after that, what you



all then did was to work out a grand total?

A. Well, firstly, on the question of I mean, all of the aspects other than the marketing aspects were self-marking. Okay?

Q. Yeah.

A. And I think that's evident when you look at the table.

Q. Yeah.

A. I am not clear as to whether we had previously done a marking in relation to the marketing aspect. I am not quite clear about that, but I know when we looked at the question of how we arrive at a grand total, that immediately we had the problem as to how we would respect the order of priority of the criteria.

Q. No, I understand that. I am not trying to move away from that, but what I am trying to understand is that before you get to that moment, so to speak, you had to score your grand total. You had to arrive at a grand total for all of the consortia?

A. For all of the applications?

Q. Yeah.

A. Well, this was what I am not sure about; that maybe we did. I mean, I know that at the end of the meeting we had produced a marking in relation to Table 16. So I don't know whether, at this point, we tried, by some process of consensus, to look at whatever the grand total line might suggest. I find it difficult to

Q. Reconstruct

A. recall the exact sequence of events, because my main memory of this is that we had a problem.

Q. No, I understand where you are coming from. What I am trying to see is, if I can understand, in the first instance, where Andersens may have been coming from and how that impacted or related to positions you or Mr. Brennan may have been putting, and how this then developed from that.

A. Okay, okay.

Q. You see, I don't know if you had an opportunity of reading Mr. Brennan's evidence in relation to this, but on Day 163 at 223, he said that: "We were, but to the extent that a lot of work had been done the previous week or ten days. Now, Andersens were of the firm impression that there were so many As and so little Ds and Es that the result was obvious in the case of A5."

A. Yeah.

Q. Now, interpreting that here, to me that would seem to suggest the possibility that when this aspects table was completed, including the grand total, that Andersens at least were able to say, 'There is your result, there is the best applicant it's A5.'?

A. Oh, I think that Andersens were of that view, I mean, yes yes, I mean in the sense that, I mean, across the different ways we looked at it, the same result emerged.

Q. What interests me is this: That in the way that Andersens had arrived were arriving at that result in the sense of that conclusion, were you and sorry, were you disagreeing with his conclusion or were you saying, 'I can't see it', or what were you saying?

A. Well, I am afraid I can't recall at that level of detail because I am not sure when exactly we marked this Table 16. And I can't remember when we actually marked it.

Q. You see, the thing that interests me is this, Mr. Towey: Is that that Table 16 is the table that was in the evaluation model?

A. Yes.

Q. So that so far as Andersens were concerned, it would seem a probability or a possibility that they saw the finishing of that as producing a result?

A. Yes, they did.

Q. Which they would then proceed to do the draft report on?

A. Yes.

Q. Which they were waiting to do?

A. Yes.

Q. So that as that meeting progressed, certainly so far as Andersens were concerned, subject to what they might say, the primary focus of their intention would be, 'We must finish the aspects table first'?

A. Oh, yes, yes.

Q. And in finishing the aspects table first, that would include doing a grand total score?

A. Yes.

Q. Isn't that right?

A. That was their view.

Q. Now, are you saying that it didn't happen that way, or are you saying there is a possibility that it could have happened that way?

A. Well, what I am saying is that it was at this point that I recall that we had that we had I felt there was a difficulty in arriving at a result that would show that we clearly respected the descending order of priority. Now, how did we go from there on the day? Did they go directly to Table 17 and 18? I am not sure. Or did we, at Andersens' request, move forward to come to some view based on Table 16? I am not clear on that.

Q. But can I help you in this way: that you say that "I recall that we had we had I felt there was a difficulty arriving at a result that would show that we clearly respected the descending order of priority", is it a fair is it a possible interpretation of that, that you weren't disagreeing with what Andersen was saying that Table 16 showed, but what you were saying was "Where is the criteria that we were told to do the competition under?"

A. Yes, that's I mean, that is the issue, the clear link with the criteria.

Q. And that you were of the view that to go back to the PTGSM, even though Table 16 was in accordance with the evaluation model, that you felt that you had to have the criteria identified one way or the other?

A. Yeah. I mean, this was a clear view, that we needed to have a way of arriving at a ranking that could be directly related to the evaluation criteria.

Q. Now, apropos of that is, at the same time, in the course of the discussion that may have taken place at that meeting, was also the question of the turning it into a numerical result?

A. Yes.

Q. And as I understand it, Mr. Brennan also, in the bit that I have quoted, is claiming credit for generating that idea, and I think you are too, but certainly, if we take both your evidence, between the two of you, one of you thought it up and acted upon it and produced it?

A. Yes. I recall he produced a table, yes.

Q. On a flip chart or something?

A. No, just his own notepaper.

Q. Now, as I understand it, Andersens were against that?

A. Yes.

Q. And that was why was that?

A. Well, it was difficult we had difficulty in

understanding what Mr. Andersen's opposition was at this point, in the sense that we felt that the arguments were incontrovertible, in the sense that we were bound to respect the criteria; that we had a weighting model which was agreed before the closing date, and that one could only produce one could only come up with the result of the application of the weighting model by using figures rather than numbers, and coming up with a clear view as to the difference between the different applications.

Now, Mr. Andersen's opposition to it initially seemed to be based on his wish to stick with the Table 16 approach. I had difficulty discerning anything more in his arguments than that.

Q. And that presumably was based on the fact that that was what he set out to some extent, subject to what he says himself, based on what was set out in the evaluation report?

A. Yeah, that he wanted to stick with the qualitative model.

Q. And he thought that everyone else should.

Now, in relation to that, once you moved to Table 17, leave out the 10:10:10 for a second?

A. Okay, yeah.

Q. The scoring of the grades that appear in that table were taken from the scoring of the sub-committees that had taken place before that. Everything that was

there except the aspects totals, if you like?

A. Yes, yes.

Q. Was any consideration or when that was drafted was any consideration given to leaving that as it was and scoring it in some way without going back on numbers, or did the two things come together?

A. Well, I believe we scored initially by discussing the award of grades of letters, and comparing we began by comparing what we saw as the best two and coming up with a view as to which was better and what grade should be given to that, and so on, through the applications. And I believe it was at that point that the question of, look, coming up with a model that transparently showed, you know, showing in a more transparent way how we arrived at this ranking and using figures rather than letters was the solution.

Q. And when you show and when you say "showing", are you using that as meaning showing not only to your colleagues in the PTGSM, but also to anyone who read the final report?

A. Yes, yes.

Q. So that a concern is it fair to say that there was a concern that to leave the tables in A, B, Cs, even though in the opinion of the PTGSM it showed a clear result, it wasn't necessarily going to be accepted as a result by the world at large which could be seen to be a result? Do you understand what I mean?

A. Yeah. I am not sure that we thought about it in those terms, but certainly we had a view that Table 17 could be seen as somewhat opaque, and that we needed to make more clear what was the differentiation between the applications.

Q. Now, at that stage then, you bring in the weightings to get the actual figures?

A. Yes.

Q. And

A. Sorry, no, we had introduced the weightings at the point where we yes, we had done it before then.

Q. They come into the calculation, let me put it that way?

A. Oh, yes, they do. They do, yes.

Q. In the situation of the weightings, the first thing that we have to acknowledge really is that there were no weightings agreed for the qualitative process?

A. That's correct, yes.

Q. But at the same time, we had weightings for the quantitative process and if we were to have integrity between the two, the same weightings would have to be used?

A. That was my view, yes.

Q. And then what happened is that the weightings of the criteria were divided down to dimensions in this particular table?

A. Yes.



Q. And that included the division of the 10:10:10?

A. Yes, it did.

Q. And that's how you arrived at the numerical result which showed to anyone that wanted to see it, that there was a clear result numerically?

A. Yes.

Q. But even allowing for it, am I right in understanding that it was all of your views that whether you looked at Table 16 or Table 17, that there was also an alphabetical result similar to the numerical result?

A. If you looked at Table 17, yes, there was a result based on letters rather than numbers, yes.

Q. And so far as Andersens were concerned, it would appear from, certainly from what Martin Brennan says, that they were satisfied that A5 won on the aspects model as well?

A. Oh certainly, yes. I mean, they were of the view that the same result emerged from what they described as all three.

Q. Now, just trying to move it forward, Mr. Towey. A lot had happened at this meeting which had to be brought and was going to be brought to the attention of the PTGSM?

A. Yes.

Q. In relation to the tables, how they had been arrived at; all that kind of explanation was going to have to be done at the next meeting of the PTGSM?

A. Yes.

Q. Which was fixed for the 9th October?

A. Yes.

Q. At the same time, by reason of the time-frame that had been put in place by Andersens, and by agreement with everyone else, they were going ahead with the draft report, which they wanted to try and have by the 3rd, and nearly made it, to enable it to be discussed on the 9th?

A. Yes.

Q. Now, the effect of the draft report was, and part of it, was to indicate a result?

A. Yes.

Q. So that as of the 28th, allowing for the fact that there was still to be a correction, if you like, done, or an approval put on what had been done, a result had been arrived at by those on the 28th, which was then translated into writing, and had to be moved to the 9th to be explained?

A. That's right, yes.

Q. Now, subsequent to that, it was clear in your minds, and certainly, presumably, in the minds of the balance of the PTGSM, that what was going to be produced to them on the 9th was open for discussion, upon which their views would be listened to and considered?

A. Yes.

Q. And in places accepted or not, as the case may be?

A. Yes.

Q. And nobody was shut off from that process?

A. No, it was my view that it would be an open process.

Q. And that included the ability to review the work in relation to the markings, for example, as they applied to the aspects or the grand total, and equally to the total on the dimensions of Table 17?

A. Absolutely. There was no restriction on any questions. I mean, it was open to anybody in the Project Team to raise any issue.

Q. So that, yes, so far as Andersens were concerned, 'We had a result.' Your view was, 'We have a result, but my team have to approve of what has been done and give it the okay'?

A. Yes.

Q. Isn't that right?

A. That's right.

Q. Now, at that stage the position still was that so far as Andersens were concerned, report by the 3rd, meeting on the 9th, second report on the second draft report on the 17th?

A. On the 18th, yes.

Q. I beg your pardon, the 18th?

A. Yes.

Q. And I think they saw that as being, they may have seen that as being the final report?

A. I think he may have initially presented it as the

final report, or was it draft final report

or sorry, I am not sure.

Q. Not only that, but I think they anticipated that it would be the final report, or may have considered it in that light?

A. I think there is some document that suggests that

Q. I just want to draw your attention to it because it's interesting because I hadn't seen it really before, and it's Book 46, Tab 45. That's comments on the presentation of the results by AMI on the evaluation of the GSM applications. And the only bit I want to draw your attention to is on the second page, the second-last bullet point.

"The fact that the draft report discussed on the 9th is following the incorporation of the comments of the group on the presentation of the results of the evaluation process culminated in this final report."

Do you see that?

A. I do, yes.

Q. Now, it's not conclusive of anything in one sense, but it is indicative of perhaps the mind of AMI that at that stage, they envisaged at some stage that the draft report which was to be discussed on the 9th would result in a corrected report which would be the final report?

A. The final report, yeah. I think that was a frame of mind all right, that they had. I think I have seen

some document that suggests that.

MR. COUGHLAN: Sorry, just to clarify. I don't think that is an AMI document. I think that's a Maev Nic Lochlainn document, I think.

MR. McGONIGAL: There are Maev Nic Lochlainn comments on it.

MR. COUGHLAN: This is Donal Buggy writing received from Maev Nic Lochlainn

CHAIRMAN: Either way, you can look at it, Mr. Towey, and see what its likely origin is.

A. Sorry, I mean, this document Mr. Coughlan is correct in relation to this document, okay? But this comment suggests that what we are suggesting to Mr. Andersen is an amendment in relation an amendment which suggests that the next version will be the final report.

Now, I think I have seen some other document that suggests it was Mr. Andersen's frame of mind at the time that we would move from this version of the report to the final report.

CHAIRMAN: Well, I note the point.

Q. MR. McGONIGAL: It's not vital, Mr. Towey. I just draw attention to it.

Now, that means then, as we move from the 28th, Andersens had an amount of work to do which was, which included the draft report to prepare for the 9th. And just before I leave the 28th, just one small point

that I just want to discuss.

AMI's view in relation to the numerical side of things in relation to Table 17 and Table 18 was that, they put a health warning on it that it distorted the process, or the report. Do you remember that?

A. The idea of a qualitative evaluation, I think is what it says.

Q. Am I wrong, or is it right to understand that as meaning that you shouldn't really bring numbers into a process which is based on letters in the first place?

A. I think that may have been his I think that was his view. But in the context of the discussion we had on the 28th September, we put the view that in order to make the result transparent, that we needed to do this, and ultimately he accepted that view.

Q. At the same time, explaining his position within the report on that basis?

A. Yes.

Q. Now, just turning then, to the meeting of the 9th October. You have given a lot of evidence in relation to that, and it was in the first instance, a significant meeting, in the sense that not only the report, but the result a result and the basis upon which sorry, the report and a conclusion and the basis upon which the conclusion of the ranking had been arrived at was going to have to be explained to the PTGSM to obtain their approval?

A. Yes.

Q. And do you recollect that meeting as such?

A. I don't recollect the detail of the meeting in terms of the exchanges, but I mean, I recollect in general terms that the meeting took place, that the report was presented and there was some discussion.

Q. And was there an open and healthy and full discussion in relation to the issues which were clearly arising and had arisen from the amount of work that you had done on the 28th?

A. Well, it certainly was open. And I mean, the context was clear, in the sense that we were putting to the group the first draft evaluation report containing the outcome, containing in one place for the first time the outcome of all the sub-groups in relation to the various dimensions, and also, the tables in relation to the overall ranking.

Q. And was there also a discussion in relation to the aspects table versus the other two tables?

A. I don't remember the detail of the discussion, and I can't be clear as to whether that was discussed at that meeting. But I know from the records that I have seen, that it was clearly discussed, if not at that meeting, then at the meeting on the 23rd.

Q. And in relation to discussions which may have come up, was there an opportunity there for persons to deal with any of the rankings or sorry, grades which had

been awarded at the 28th, if they had wanted to?

A. Oh, yes, it was open, open to anybody to raise anything

Q. And was there discussion, so far as you can recollect in relation to those grades or the totals, as they may be called?

A. I don't have a specific recollection of discussion at the level of grades, but it may have taken place. I am just not clear on the detail of exchanges.

Q. Clearly there were some because the note of Margaret O'Keeffe's note of the 9th October, which is at 121 I think, of Book 42, shows, at the bottom of the first page, Mr. Andersen referring to some changes on page 44.

MR. COUGHLAN: I think I have been through this and we have been through it in evidence already. That's a typo. It's where the, on the technical aspects, where there was an A/B on the aspect where there were four As, and I think Ms. Nic Lochlainn had already sent a document to Mr. Andersen pointing this out, and that that resulted in that particular typo's correction. I think we have been through that already.

A. Okay.

MR. McGONIGAL: I appreciate Mr. Coughlan's help.

Q. It does appear though, however minor the changes that Mr. Andersen brought to the attention, that the grades or the marks were gone through to some extent?



A. Yeah, that suggests that.

Q. Now, it also, and I am not going to go through the whole thing, it also appears that there was a significant discussion in relation to the quantitative evaluation?

A. Yes.

Q. And that was something where there were different views?

A. Yes.

Q. And I think your view was effectively outvoted, if I may use that expression?

A. Well, yes. I don't particularly recall anybody supporting my line, so I presume what happened was that when I had put my view, Mr. Andersen's response was generally accepted.

Q. But in reality, what happened here, and I think it can be seen from the changes between the 3rd October and the 18th October, was that the PTGSM went through the report in great detail?

A. Yes.

Q. And as they went along, suggested changes which they felt should be incorporated?

A. Yes.

Q. Under the limitation that, in fact, this was the first occasion on which some of them had seen the report?

A. Yes.

Q. Now, insofar as that meeting was concerned, at the end

of that meeting, not only had changes in relation to the report been agreed, but also no one had indicated any disagreement with the results as demonstrated through the tables?

A. No, no, there was no, in my recollection, there was no dissenting voice, so to speak.

Q. But even at that stage, am I right in understanding that between that date and the 18th October, there was still an opportunity for persons to indicate a change, had they so thought it was necessary?

A. Oh, yes. I mean, after the 9th October, it was open to anybody in the group to come back with any issues. I think that's clear.

Q. And then again on the 18th October, when the second report was discussed on the 23rd October, clearly there were huge problems in relation to sorting out parts of the report?

A. Yeah. I mean, the dominant view I think was that it wasn't clear in relation to the basis on which a ranking was being recommended.

Q. And is it wrong to say, Mr. Towey, that to a large extent, from the 9th to the 25th, late night on the 24th/early 25th, that the majority of that time was spent by the PTGSM in trying to finalise and put together a report which they would be happy with?

A. That's right, yes.

Q. And that was based, to some extent, on the time

constraints which they had indirectly self-imposed from the 4th September and the 14th September?

A. Well, I mean, it was consistent with it, in the sense that they were pushing for finalisation of a report, but clearly at that stage the Minister's wish that the report be finalised quickly was a dominant factor.

Q. Just in relation to that, this may be difficult for you to answer, but at some stage we know from some of the evidence, that the Minister was given the shape of the evaluation and the order of the ranking. Is it fair to say in relation to the Minister, that he would not have been aware of the nature or content of the discussions or problems that had arisen in relation to finalising the report?

A. I don't believe he would have been.

Q. I mean, he couldn't have, for example, been aware of the problems in relation to the quantitative analysis, or the necessity to explain all of that?

A. No. I mean, the Minister had no knowledge at a level of detail even remotely approaching that. My understanding of the Minister's level of knowledge was very much at that overview level, the progress report level, if I can call it that.

Q. The Minister qua Minister as opposed to Minister qua person?

A. Yes.

Q. Now, just in relation to that, at the end of the

24th/25th, when the final report came into your hand, were you, Mr. Towey, happy that the result as represented in that report was a true reflection of the work which had been done by the PTGSM as requested by Government?

A. On the 25th? Yes, yes. I mean, I was happy that the result was consistent with the Government's selection criteria, and I was happy on the night of the 24th that the Project Team was fully in agreement on the evaluation report to reflect that.

Q. And so far as you, yourself, were concerned, were you equally satisfied that all of the work which you had done, and you were the person fully involved in the process, that you had not been influenced by anything other than those things which you should have been influenced by?

A. I believe that to be absolutely correct; that it was an objective analysis.

Q. And you are happy to stand over that report and the result and the work which you had done?

A. Absolutely, yes.

Q. I just want to switch to something else for a moment, Mr. Towey, if you bear with me for a minute or sorry, just one thing before I leave that. Can I just draw your attention to a small point, but the October 3rd report, Annex 3, page 11. Do you have that?

A. I am sorry, do you have a reference? Is it a different book?

Q. Sorry, it's Book 42.

A. And divider?

Q. It's Divider I think it's 117. The October 3rd report. Annex 3. I just want to draw your attention I know Mr. Coughlan has been through this, but I just want to draw your attention to the weights that are there. That's the 103 weights again?

A. It is.

Q. And if you then go to the Appendix 3 of the October 18 report, page 10.

A. Is that report in this book? I don't think so.

Q. I am sorry, I have the three together, Mr. Towey. So I'll just get you it's in the evaluation book. You have it on the screen. That's all you need there, Mr. Towey.

A. Okay.

Q. What I just want to draw your attention to is the fact that the change in the weights in fact comes into the October 18 report; that's where the first change is?

A. Yes.

Q. And then that is copied through to the 25th?

A. To the final report, yes.

Q. And Mr. Coughlan was asking you how that had happened.

Now, he had been asking you on the basis that it first appeared on the 25th, but what I just want to explore

is the possibility that, and the answer may be the same, but could it have occurred at the 9th October meeting?

A. I don't recall, but

Q. I am sorry, I may have misquoted Mr. Coughlan. If I did, I apologise to Mr. Coughlan. I think he may have spotted the 18th. So I was being unkind to him, Mr. Towey.

A. I understand , yeah. Was there discussion of it at the meeting of October 9? I don't recall.

Q. Because certainly it appears I mean, first of all, it is the 103 which is in the October 3 report, so all of the errors have been revisited that had been in the earlier ones?

A. Yes.

Q. In hindsight, you will forgive me for saying, Mr. Towey, but if Esat Digifone had come first on the flawed quantitative analysis, can you imagine the blood that would have been spilt up here at this Tribunal?

A. I believe I believe I can.

Q. Thank you.

MR. COUGHLAN: First of all, I don't know how My Friend can put such a question, but I won't comment on it. It certainly doesn't help the query and sounds like a soundbite

MR. MCGONIGAL: No, it wasn't a soundbite and it

wasn't from Ms. Gleeson, but if it's taken as a soundbite, who is going to complain?

CHAIRMAN: Let's proceed.

Q. MR. MCGONIGAL: Now, what I wanted to go back to, Mr. Towey, is something I want to see if I can get your assistance on. And I want to look at the RFP document for a second.

What I wanted to ask you about, Mr. Towey, is do you have a copy of the RFP document? It's Book 41, 45?

A. I have 41, yes.

Q. Now, if you go to number 23 on that.

A. Yes.

Q. And it says: "Each application shall contain a statement that it will be valid as to its contents for a period of 180 days from the closing date for receipt of applications."

What does that mean?

A. The intention behind that, as I understand it, was that the commitments given in an application would remain valid from the time they were made through to the point in the process where a licence reflecting them might be awarded. In other words, that a winning applicant could not stand back from any commitments given.

Q. And was there something that how was it to be enforced, if I can put it that way for a second? I

want to talk about this in general because I don't quite understand what is meant by that.

A. Okay. What I think it was intended to capture was things like tariffs, roll-out plan, etc., and that the applicants that these commitments would remain valid and could be incorporated into a licence.

Q. Was it intended to cover something like ownership or changes of ownership?

A. Well, I don't think I ever particularly looked at it from that perspective, and I mean, I would have to I'd have to think a little bit about that, but I know that in the information memorandum that we issued on the 28th April, we did specifically say that we would be or sorry, that Minister's approval would not be unreasonably withheld for change of ownership.

Q. I understand that, and that actually is in Book 41, 61 on the answers on ownership. And what you said there was that the, "Second GSM operator shall obtain the written consent of the Minister prior to any major change in the shareholding or control of the transferring the whole or part of beneficial interest in this licence to a third party, where such change would substantially alter the identity of the licensee or could materially impair the ability of the licensee to comply with the provisions of this licence terms, "major change" and/or "substantially alter" shall be taken to mean a change in more than 45% of the voting



control of the licensee. This would require the prior written consent of the minister, such consent shall not be unreasonably withheld."

That I think, is what you are referring to?

A. That's what I am referring to, yeah.

Q. The other question, just before I go on is: In relation to the draft licence, a draft licence was furnished with the documents?

A. On the 12th May, yes.

Q. And in its commencement and duration it says that, "This licence shall come into operation on the" blank "day of" blank "1995." What I am curious to know is: was it the hope and intention of the Minister/authorities/PTGSM that the licence would issue within 1995?

A. I believe that that was our original objective.

Q. I appreciate that legal problems arose. But the original intention was that there wouldn't be a major delay between the announcement of the winner and the finalisation of the licence itself?

A. I think we believed it would take a few months to finalise the licence after the decision was made.

Q. And part of the purpose of furnishing the draft licence was to enable that to take place as quickly as possible?

A. Well, I think the main driving force behind providing the licence was to enable prospective applicants to

have a view as to how we were thinking in a regulatory sense, but I think it's also correct that having had a draft licence would have helped us to bring the process to a conclusion quickly.

Q. One of the things I am curious about, Mr. Towey, is in relation to the 180 days. Once the 180 days had expired and the licence hadn't issued, what was the position so far as you were concerned, or had you given it any consideration?

A. I never actually thought about that, to be honest. I mean, I never thought about it. But an applicant, after 180 days, would have a case.

Q. No, I am just curious, because I can understand the necessity for having a period of time where things were fixed, but I am curious as to whether anyone had given any consideration, because that situation actually arises in this case in this competition, in the sense that the 180 days had expired and the licence hadn't issued, so in theory, just for the moment, it is an interesting question.

A. I would say that the view was that this that within six months a licence would be issued. In other words, I presume that the 180 days was designed to capture that period from when the competition commenced to licence award, therefore it was envisaged that it would all be done within six months.

Q. And I think ultimately, anyway, that the Department in

their negotiations kept Esat Digifone to their

commitments as made in the

A. Yes. I mean, I think it's true that the consortium said clearly that they would stand by the commitments made in their application.

Q. Now, again I want to try and understand something in relation to the letter of the 29th September. You, on Day 214, told us what your view was, and Mr. Coughlan indicated of your view, at Question 50: "Might I suggest to you that you are the only one in the whole wide world that has interpreted the letter that way."

A. Yes.

Q. But, in the first instance, as of the time, that is the 29th September, you were the only person to see that letter?

A. I certainly saw it. I am unclear as to whether Mr. Brennan actually saw the letter or not, but certainly I believe we had a discussion about it, yes.

Q. But other than you and possibly Mr. Brennan, nobody else saw the letter?

A. Nobody.

Q. And the only people to see it after that were, in the first instance, as far as I can make out from the time scale, were the Tribunal people?

A. Yes.

Q. And the only people after that were the persons involved with the Tribunal?

A. Yes, okay.

Q. So that if one is looking to an interpretation for the time that the letter was received, you appear to be very nearly the only person who had a view, because you were the only person who saw the letter?

A. Yes.

Q. Now, in a general way I want to try and understand, Mr. Towey, so far as a consortia to this competition was concerned, and I am speaking generally, not particularly at the moment

A. Okay.

Q. if a situation arose where a change was coming about which could impact one way or the other on their application, what were they to do, if I can ask that question?

A. Well, I don't think that we had prescribed any arrangements in advance as to what they might do.

Q. But what you had done was to clearly say to all of the participants, 'Don't contact us, we'll contact you'?

A. Yes.

Q. But if a and again I am speaking generally if a consortia was to contact you, what was the remedy that you had in relation to such a contact, if you felt it was wrong?

A. There was no I mean, there was no sanction for what we might have regarded as a breach of the rules, so to speak.

Q. So that at best a number of alternatives could apply:

You could, in a theoretical sense, send it back, or alternatively open it up for discussion, or take some other remedy?

A. I can't think of many other options, but yes.

Q. And in fact, you chose the remedy of just sending it back?

A. Yes.

Q. Through Martin Brennan?

A. Yes.

Q. In the particular case, the letter of the 29th?

A. Yes.

Q. Now, in relation to the 20% which was to be given to institutions, in terms of the consortia, that appears to have been viewed by you as a financial aspect of the consortia?

A. That's the way I viewed it. I viewed it very clearly as a response to a perceived financial weakness in the application.

Q. And in that sense it is different, or am I right in thinking that it is different to the ownership or running the technical side of the process?

A. I didn't look upon it as an ownership issue. I looked upon it as a financing issue.

MR. COUGHLAN: In fairness, before the witness continues answering Mr. McGonigal's questions, Mr. Loughrey has furnished, and he has indicated he

had furnished to us previously, I take Mr. O'Connell's word about that, we are just checking that a note of a meeting that we discussed which occurred on the 29th April of 1996, which he had with Mr. Towey, and it might be of some assistance to Mr. Towey and to My Friend as to what was being discussed, because it may be relevant to the line of questioning. I don't want the witness to be in any way tied down to any particular answer without seeing the note, that's all. I asked Mr. Towey about a meeting on the 29th. I told him we had written to Mr. O'Connell to see if there was a note of that meeting. I think you remember that.

MR. McGONIGAL: I think we are at cross-purposes. I am the 29th September. You are the 29th April, are you?

MR. COUGHLAN: It's relevant. It may be relevant. I don't want the witness to be tied down.

Q. MR. McGONIGAL: Mr. Towey, we won't take you by surprise, and I certainly won't be taken by surprise, so I'll leave that for a moment until we both have an opportunity of seeing this. And I may come back to it.

A. Okay.

Q. I may come back to that issue at a later time.

But just sort of a question in relation to the financial side of things: Is it right to believe that

in relation to the documents which were furnished to you by the banks, for example, that very little, if any, consideration was given to those documents?

A. Very little. I think that's correct, yes.

Q. I mean, they appear to be aspirational to some extent, and one of them actually indicates that his interest is to be kept alive until the 15th November, '95?

A. I haven't looked at them in a while, but I take your word.

Q. Now, as I understand it, and I'll leave it at this until I get an opportunity of seeing this new material

MR. COUGHLAN: It's not new material, it came from you.

MR. MCGONIGAL: I beg your pardon?

MR. COUGHLAN: It came from your solicitor, that's all I am saying.

Q. MR. MCGONIGAL: I'll leave it until I see the other documentation, Mr. Towey. But just in relation to this, am I right in understanding that your view was that the 29th September should not have been sent in?

A. That was my view, yes. It was my view that it was an attempt to enhance the application, and that it was directly contrary to the rules.

Q. And that was regardless of what was the organisation that was named in the letter?

A. Oh, yes, absolutely.

Q. There is just one very small point, Mr. Towey, which I will draw to your attention, rather than take out the books, but you had a discussion with Mr. Coughlan in relation to whether or not AMI formed part of the Project Group?

A. Yes.

Q. And at page 1, paragraph 1 of the final report of the 25th October, it says expressly that, "AMI were part of the Project Group," and it is repeated at page 4.

A. Okay.

Q. Paragraph 2.1, paragraph 2 of 2.1, and also page 2 of paragraph 1 of the appendices, whatever appendices that is. Anyway, that's just for reference in relation to it. It's nothing major.

A. Okay.

MR. MCGONIGAL: I don't think there is anything else.

Thanks very much, Mr. Towey.

THE WITNESS WAS EXAMINED AS FOLLOWS BY MR. NESBITT:

MR. NESBITT: Thank you, Mr. Chairman.

Q. Mr. Towey, I am going to deal with a number of books you have been looking at, and I am going to include, so you can have them available, 41, 42, 43, 44, 46 and 52, and I'll try and take them in chronological order.

And the first document I want you to look at is Book 41, Divider 46.

A. I have most, but not all of those.

Q. We'll get them up to you as we go along. I think you



have certainly got Book 41?

A. Yes.

Q. Book 41, Divider 46 is the competition document effectively that you have been looking at earlier, and the sections I want to ask you about are: Clause 3, which you recall reads: "Applicants must give full ownership details for proposed licensee and be expected to deal with the matters referred to in the following paragraphs in their submissions."

Paragraph 9 which states: "Applicants must demonstrate their financial capacity and technical experience and capability to implement the system if successful, and must include a business plan for at least the first five years, and a complete technical proposal."

And then there is various other things that have to be included in that business plan, which I won't repeat, to save time.

And finally, I wanted to ask you to look at paragraph 19, that has featured heavily in the course of your evidence.

A. Yes.

Q. Now, paragraph 19, the first part reads: "The Minister intends to compare the applications on an equitable basis, subject to being satisfied as to the financial and technical capability of the applicant in accordance with the information required herein, and

specifically with regard to the listed evaluation criteria as set out below in descending order of priority."

And I won't read out the criteria. I'll come back to those.

The other thing I wonder if you could just bear in mind as we go through the evidence I want to deal with you now, is something that you'll find in Appendix 3 I think, of any one of the reports, the final evaluation reports. And for ease of reference, if you have Book 46, and if you have Divider 47, which are the appendices to the October 18th evaluation report, and you get to the third schedule, Appendix 3 it's then called, and page 2 of Appendix 3, you are going to see a diagram that listed the evaluation criteria in the first column, the dimensions linked to the evaluation criteria in the second column, and indicators for dimensions in the third column. And many of the questions I am going to ask you are going to be having things to say about that layout and what it meant for the way in which the competition process operated, and probably if you could have that available to you I'll come back to it from time to time.

A. Okay.

Q. Now, I just want to understand exactly what you wish to say about paragraph 19 of the competition document.

As I understand it, the first thing you want to say is

that the intention was to compare applications. So, applications would come in, they'd be considered, and compared?

A. Clearly, yes.

Q. And I think the second thing about the comparing of the applications was it was to be done fairly, on an equitable basis?

A. Yes.

Q. And subject to being satisfied as to the financial and technical capability of the applicant, which I assume is the person seeking to get the licence?

A. Yeah, I took that as a basis on which to disqualify applicants.

Q. That in accordance with the information required, you had to have regard to a list of criteria, which were called evaluation criteria, that were then listed in descending order of importance?

A. Yes.

Q. Now, we have heard a lot about the process of judging the competition, and one of the things we have heard said about the process is that it's a sealed process.

Now, I am not sure where the concept of it being a sealed process first comes from, but it's a concept that people have talked about.

A. Okay.

Q. And I just wanted to tease out with you exactly what you understood that to mean.

Now, I presume being sealed has a series of possible interpretations. Firstly, it could be sealed from information coming in, save in certain ways, or it could be sealed to stop information from getting out, and I want to tease out exactly what sealed meant in this competition process?

A. Yes.

Q. As I understand it for the purposes of being allowed be in the competition, you had to present a written application which was carefully prescribed in the terms of the competition document?

A. That's correct, yes.

Q. What it had to have in it, how long it could be, things like that, were all set out reasonably succinctly?

A. Yes.

Q. And I think when you sent out a document inviting people to tender, that was sent out in a format that could be filled in and returned to you, is that right?

A. Yes.

Q. So the process was a process in which the information that was going to be made available to your Evaluation Team was quite carefully prescribed?

A. That's right, yes.

Q. And as I understand the evidence you have given, that was because that was going to make it easier to compare one application with another?

A. That's correct, yes.

Q. That was the hope anyway?

A. Yes.

Q. Now, in relation to being sealed, there was a second opportunity to get information for the Evaluation Team. That was to be the oral presentation that was to be given to each applicant?

A. Yes.

Q. And we have heard what happened at those presentations.

Now, when we get to the letter of the 29th, which comes in, and you had to deal with, and you have just been speaking about now; where did you see that fitting into the process that we have just been talking about, the fact that there was limited ability to put in information to assist your application?

A. Well, it was a very clear view that it would have been a breach of the arrangements that we had put in place in relation to the process, in the sense that only the information only information specifically sought by the Department could be admitted. Only information, only visual, or sorry, information delivered at presentations within the arrangements prescribed by the Department. Any other material which may have been provided at the initiative of applicants was not, in my view, admissible.

Q. When we talk about the concept of a sealed process,

was the fact that there was this filtration system controlling the input of information into the competition process, is that part of the sealing you are talking about?

A. Well, I think the term "sealing of the process" perhaps emerged later than the actual time in which the process took place. But it was always clear that as far as contact with any external or interested parties was concerned, that that could only happen within the prescribed arrangements. So in other words, there was no question of information from within the process being shared with any interested parties or, as I have said, any information being provided to the Department at the initiative of applicants outside of the prescribed arrangements.

Q. So if that's your understanding of what sealing meant, when one talks of a sealed process, do you understand that to preclude you from talking to your senior officers in the civil service, your in-line managers, so to speak, insofar as you were required to do so to fulfil your obligations as a civil servant?

A. I mean, obviously in terms of within the Department, clearly everybody who was engaged in this process was sensitive to the confidentiality of the information that we were handling, and I think that's referred to in a number of places. So clearly the result of that is that nobody dealing with the process would have, I

suppose, gratuitously given information on what was happening within the process to other civil servants or superordinates, but to the extent to which superordinates wished to know what was going on within the process, that would have been entirely legitimate and entirely acceptable in terms of the way the civil service operates and manages its business.

Q. Okay. So just talking for yourself, and that's all I want you to talk about; that is your understanding and the position that you adopted throughout the course of the process?

A. Yes.

CHAIRMAN: Well, I think that's common case because we heard from Mr. McMeel that similarly three of his superiors had sought information, and nobody has suggested that that was for anything other than proper and bona fide reasons, and there were also some limited dealings with the Comptroller & Auditor General.

A. Yes.

Q. MR. NESBITT: Just coming back to Clause 19 in the competition document. When you read the first paragraph just before it listed the criteria, you don't see anything that's very helpful in relation to exactly how you are going to judge the information that comes in from applicants, other than that it's to be compared on an equitable basis, due regard being

had to the evaluation criteria. There is no issue of the method of testing or adding up or analysing the information, there is no issue of quantitative or qualitative approach?

A. No, only the descending order of priority.

Q. So when you were sitting down puzzling as to how you were going to actually judge the competition, other than knowing you had to be fair in your comparison and making sure you had due regard to the evaluation criteria, and that some were more important than others; you really had a largely free hand as to how you were going to approach deciding what would be the appropriate way to evaluate and choose a winner?

A. Yes.

Q. And I think the most substantial piece of assistance you had in that regard was Andersens, who were clearly there as experts in being involved in this sort of process?

A. That's right, yes.

Q. And from the evidence you have given over the number of days you have been in the witness-box, as I understand it, very little happened in the process that wouldn't have had some input from Andersens in the capacity that they retained to act in?

A. Absolutely, absolutely.

Q. Now, I wanted you to turn to Divider 46 of Book 41, which is a document Mr. McGonigal directed your



attention to sorry, not 46, it's Divider 64.

A. 7th meeting

Q. Yes, this is the 7th meeting of the GSM Project Group of the 18th May. And I am going to be relating this document again to something which Mr. McGonigal was looking at in Book 52, which are the draft Andersen evaluation models of the 17th May and the 8th June. And as you have said already, when we see the 7th meeting of the GSM Project Group, it's on the 18th May, and that was the day after the first draft of Andersens' evaluation model of the 17th May, and I want to ask you some questions about that.

A. Yes.

Q. Now, I think the first thing I wanted to ask you about related to the nature of the evaluation model as you saw it, and if you have Book 52, the evaluation model appears in two places: Divider 1 is the first one, the one of the 17th May; and Divider 2 is a later one of the 8th June, '95.

Now, I think it's important

A. Sorry, give me one moment because this particular version of Book 52

Q. Book 54. Sorry, it's my fault.

A. Okay.

Q. Now, although the two of these evaluation drafts are very similar, there is some changes that I want to draw your attention to, but for the purposes of what I

am going to say now, I am going to ask you to look to the second copy. I don't think there is any substantial change between it and the first. But page 1 of 21 pages, it's categorically stated at the very beginning of the document that there was going to be the application of a quantitative and qualitative evaluation model.

A. Yeah.

Q. And indeed, when we look at the minute of the GSM group of the 18th May, at Divider 64, on the second page, fifth bullet point down, we see the note, "The qualitative evaluation was to provide a common sense check on the quantitative model."

Now, can I just tease out a number of things from you in that respect.

Am I right in thinking that from the point of view of yourself and the other members of the Project Group, you were alive to the fact that when the competition applications came in, you'd have an amount of raw material, data that could be processed in effectively numerical terms to turn into the quantitative evaluation?

A. Yes, I think that was clear, yes.

Q. And would it also have been clear that if, for whatever reason, somebody didn't send in all the information that was required in the competition document, you were going to have holes in the raw

material that was to be processed?

A. Yes, but I don't believe we looked at that  
eventuality.

Q. But it would have been self-apparent to anybody  
looking at the process?

A. Yes.

Q. And I am going to come back to you about what happened  
in relation to the raw material. But this was raw  
material, effectively, to be number-crunched that's  
another phrase that's been given by another witness.

A. Yes.

Q. And this was a rather mechanical operation, as the  
Project Group members considered it, is that right?

A. I mean, once it was agreed, it was absolutely  
mechanical once the figures could be extracted from  
applications.

Q. And if we turn on to page 2 of the draft of June, we  
see, at heading 2: "Procedure For the Quantification  
Evaluation Process", and just talk about the second  
element which is: "All selected indicators will be  
assigned a weighting factor. If the qualitative  
evaluation turns out to document the factual basis for  
any parties scoring has been wrong, a recalculated  
scoring will have to be conducted."

Now, as I understand it, it must have been clear when  
you were reading that, that if the raw material hasn't  
been given in by applicants, they were going to be

disadvantaged in any quantitative scoring operation?

A. Oh, yes, yeah.

Q. And was it in your mind at that time that if there was disparity in presentation of information; in other words, people simply didn't give appropriate information or information the way it was requested, it was going to become difficult to carry out this equitable comparison of applications?

A. Yes.

Q. Was that something that occurred to you then or was it only later?

A. Well, I think it's something that we didn't think through at this time, in the sense that we were looking here at a model that had been put to us by Andersens, as our consultants, and I believe that, you know, to a large extent we were putting trust in their expertise, and the issue of looking at potential problems with the model, I don't think it's something we thought through at the time.

Q. Now, I think at this point in time two matters of importance had yet to become apparent. Firstly, at the dates we are looking at these drafts, the exact positioning of the tariff weighting arrangement was yet to be worked out, because it changed in the course of the process when everybody was going to score the same, isn't that right, or the risk

A. Yes.

Q. And secondly, you actually had no applications, because the closing date for applications was the 4th August, isn't that right?

A. That's right, yes.

Q. Now, if I could ask you to turn the page to page 3 of this particular document, you see under the heading, "Dimensions Assessed in the Quantitative Evaluation," you see then a matrix which listed the evaluation criteria, dimensions and indicators, and that's one and the same document as I asked you to look at in Book 46?

A. Yes.

Q. And this is the thing I am going to be coming back to on a number of occasions.

Now, if we turn on, in this particular booklet, to page 17 of that document 17 of 21 if we go to page 16 in fact, we see "Vote-casting and Weight Matrix", you see: "The following table shows how votes will be given for each of the indicators in the quantitative evaluation." And we come over the page, and there's been much said about the weightings that are listed down the right-hand column?

A. Yes.

Q. And they differ to the weightings that were listed down the forerunner of that, on page 16 of the draft evaluation at Divider 1?

A. Yes.

Q. I think you have seen that?

A. Yes.

Q. Now, as I understand your evidence, that particular table was effectively a matrix for indicating how information, when scored, would be presented and the weights were to be seen, because the information, when scored, would then be dealt with by having the weights applied to them?

A. Yes.

Q. Do you remember if, at the discussions of that draft or the discussions of the earlier draft, much attention was paid to the way in which the weights had been divided?

A. I don't have a particular recollection of a discussion in relation to some of the weightings. But I mean, the meeting where we first considered this did look at a lot of the issues of detail in relation to how indicators were constructed, for example. So, it may be that there was some discussion, but I certainly don't believe there was a wide ranging or comprehensive discussion, if I can put it that way.

Q. Okay. Now, can we move on to something. As I understand the evidence that's been given by the other witnesses, and the evidence being given by you, that as the process moved on, it became clear, and Andersens drew people's attention to this, that the information that had come in on the competition

application forms was giving difficulties in the number-crunching, because bits of it wasn't provided, or were not provided in a manner that was allowing for an easy equitable comparison to take place?

A. That's correct, yes.

Q. And Mr. Andersen, in fact, drew this to people's attention?

A. That's right.

Q. I'll be coming back to that in a moment. But that couldn't have been until after all the application forms had come in. So by necessity it had to be well after the discussions you had about these documents?

A. Yes.

Q. Now, if I could ask you then, to turn on to page 20 of 21. At this page, and it's effectively the same verbiage as is seen on page 19 of 19 of the earlier copy, the guide to the award of the marks was described as follows: "In order to guide the marking a matrix has been elaborated below. The dimensions and indicators are not weighted ex ante. The marks will be awarded according to a 'soft' 5-point scale.

(A, B, C, D, E) with A being the best mark. Averaging will be made after consensus among the evaluators."

In relation to being weighted ex ante, I know we have had some discussion about this; to be certain what you want to say to the Tribunal on weighting, what did you understand were the possibilities when this table

would be used for the presentation of an evaluation in qualitative terms in relation to weighting?

A. Well, I understood that this was going to take account of a wider range of indicators. Now, at the time when we looked at this at the May or June Project Group meetings, I am not sure exactly what view that I had of it and of the application of weightings to it. I am not sure how much time the Project Group spent actually considering this matrix.

Q. Okay.

A. But certainly, I know that when I looked at it later, I had the view that the application of weighting to this was necessary in order to in order that this qualitative model would work in the context of the evaluation criteria.

Q. The one thing we know about this table is it didn't actually have a column that would allow the weights to be put in?

A. That's correct, yes.

Q. So is it fair to put you, at this point in time of the process, as understanding that weighting could become an issue in relation to this, but you weren't putting your mind to it in any great depth?

A. I think it's correct to say that I certainly didn't put my mind to it in any great depth at this point.

Q. Okay.

Now, if we come back to the issues that arose as the



process went on. I am going to need to move to a second book, and that's Book 42, Divider 87, I think. Now, if we look at Divider 87, it's the document that we know about, which is the July final determination of the weighting to be accorded to the criteria, and nothing particularly turns on that, save that when one looks at the two draft evaluation reports which I have referred to, you don't see those weightings applied in the presentation of weightings insofar as it's relevant?

A. That's correct.

Q. If you could turn on to Divider 95, and this is again something Mr. McGonigal referred you to. It's the 9th meeting of the GSM Project Group of the 4th September of '95 and we have, in relation to quantitative evaluation, the following note being made: "Prior to presenting the initial draft report of the quantitative evaluation, Mr. Andersen first acknowledged certain shortcomings in the results gleaned so far from the quantitative scoring. The quantitative evaluation had highlighted some incomparable elements.

"1: Some applicants had not calculated the OECD baskets to their best advantage."

Now, I just want to tease out with you what that means.

If there was a problem with the information given

about the OECD basket, that was going to feed into the third criteria, and if I ask you just to use the Appendix 3 document that I referred you to in Book 46 as the model, if you have that in front of you. I think if you are looking at that model, you see the third criteria is the, "Approach to tariffing proposed by the applicant which must be competitive." It's described as the tariffs dimension, and in relation to the indicators for that dimension in quantitative terms you are told, "Competitiveness of an OECD-like GSM2 basket." And by July that had a weighting of 18?

A. Yes.

Q. So if there is a problem with that particular method of scoring, 18 of the marks are now being given for a criteria that we are being told suffers from incomparable elements?

A. Yes.

Q. Is that what you understood to be the import of what Mr. Andersen was saying?

A. What I had understood was in the way applicants had calculated this, it was not they had not calculated it in a manner which reflected their best tariff packages.

Q. Now, the next bullet point is: "IRR had not been calculated in accordance with the tender specification in some cases."

Now, again using the list of columns of information of

evaluation criteria, dimensions and indicators I referred to you; as I understand it, the importance of trouble with IRR information meant that Criteria 1 was in trouble, because that was one of the indicators that was going to feed back to one of the dimensions that feeds back to the particular first criteria, is that right?

A. Yes, that's right.

Q. So it's not unreasonable to say that meant a criteria which was carrying 30 of the 100 marks or 30% of the weighting? It now had some difficulties in respect of it, according to what we have been told?

A. Yes.

Q. And then the next bullet point relates to: "For some cases not enough information on roaming was supplied to score the application".

Now, again using the document that lists criteria, dimensions and indicators, what we learn about that is roaming is seen to be the third-last criteria: "The extent of the applicant's international roaming plan."

And if that's in trouble at that point in time, the weight being given to that criteria was 6.

So just out of those three bullet points alone, we are looking at some 54% of the marks being likely to be in trouble for the attempts to equitably compare the applications on a quantitative model?

A. In terms of a direct application of the material, yes.

Q. Now, that must have been a reasonably devastating indictment to attempting to do things in a quantitative way, when you learnt of these problems?

A. Yes, that was a significant problem, yes.

Q. And did the quantitative marking approach really ever recover from that?

A. No, in the sense that at this point, I think Mr. Andersen himself presented the shortcomings, and they're clearly evidence. I think more significantly, though, perhaps, in the context of this meeting on the 4th September, is that at this point, we were dealing with live applications, which people had read, and while the evaluation model had previously been looked at in the abstract, in the sense that it was before the closing date, now people had a greater understanding of the volume of information which needed to be compared. And I think the most significant view to emerge from the Project Group meeting was the narrow nature of the comparison in the quantitative evaluation, and that there was a need to do a lot more work in order to equitably compare applications.

Q. Okay. So is it fair to suggest to you that at this point in time, it was a project and a process that you were involved in that was now turning to really relying upon the qualitative analysis of the applicants to be able to decide in equitable terms

which was the best?

A. Yes.

Q. Now, as I understand it, your evidence in that respect, and the evidence of the other witnesses is that qualitative analysis was going to take place or was eventually agreed to take place in sub-groups, taking different parts and working on them?

A. That's right, yes.

Q. And some members of the Project Group were not involved in any of those sub-groups, they just stood to one side and waited to see the results to discuss?

A. Yes, yes. And that was, I believe, by choice, having regard to their other commitments.

Q. People had lots of commitments and you did the best you could.

Now, before moving on to the way that was done and the way it developed, I just wanted to ask you a little bit about the process that you were involved in.

The process, as we have heard you say, was one to pick the person who was going to have exclusive rights to negotiate a licence. In relation to the process, had you ever been involved in a process like this before as a civil servant?

A. Not one of this kind, no.

Q. And was this a process that was quite a commercial thing to be doing, because effectively, you were reaching out to find private enterprise, individual or

company or business who would take a right to operate a mobile phone licence, but you were also choosing somebody you felt was the best person to do it, was going to have the best business plan, so it was akin to some sort of business decision as opposed to a simple strategic policy decision that might be normally what the civil service would be involved in?

A. Yes, I understand we were looking for the best commercial operator that would deliver on the policy objectives that we had for mobile communications.

Q. And was the fact that it was quite a commercial event something that was driving the way the Project Group would be looking at it? They were being more commercially minded in relation to looking at information, as opposed to a normal sort of dry approach to a policy matter in a department?

A. Well, I think I see a difference there, and certainly I mean, it was a factor in our recruiting consultants. I mean, it was expertise in looking at the commercial aspects was certainly an important consideration there, yes.

Q. And as you said before, Andersens certainly had their part to play in giving you assistance in understanding the market and the business and the way the whole mobile phone business would work once somebody succeeded?

A. Yes.

Q. Now, just coming back to the list of evaluation criteria, dimensions and indicators. You said before lunch that there were 13 indicators when the matter was considered from the point of view of a quantitative evaluation. I think I might have counted 14, but maybe I have double counted. Perhaps I could bring you down the indicators to see where I am missing one.

You had forecast demand, which was 1

A. You are looking at the earlier table which I think is on page 3. Yes?

Q. Under "Indicators" I think there is "forecast demand"

A. Okay.

Q. Have you got it?

A. I do, yes.

Q. Then number 2 is "number of network occurrences in the mobile field"; number 3 is "solvency"; number 4 is "IRR"; 5 is "number of cells"; 6 is "reserve capacity"; 7 is "competitiveness of an OECD-like GSM2 basket"; 8 is "upfront licence fee payment"; 9 is "speed"; 10 is "extent of coverage"; 11 is "number of international roaming agreements"; 12 is "blocking rate"; 13 is "drop-out rate"; and 14 is "frequency economy figures". Is that right?

A. Yes.

Q. Okay. So somewhere you may have glided two of those

together if you only thought there was 13. You'd agree there is 14 at that point?

A. Yeah.

Q. It's a small point. As you say, when we look at it in qualitative terms, there is 56, and as I understand the reason for that, you are actually looking at the sub-indicators that we can see appearing when one looks at the qualitative scoring tables that appear in the papers, is that right?

A. Yes, it's a wider range of indicators under each dimension.

Q. But all the time, insofar as one will ever get a mark flowing from raw material handed in, it's always going to be flowing up from the indicators that are relevant, and where you do it in qualitative terms, you had more indicators, and where you do it in quantitative terms, you have got less indicators?

A. That's correct.

Q. But you'll be seeing the same indicators the 14 indicators are going to be always looked at in both methodologies?

A. Yes.

Q. And I just want to understand exactly what you have to say about weighting. As I understand your weighting evidence, it's that the criteria were weighted as we see, 30, 20, 18, 11, etc.?

A. That's correct, yes.



Q. And then because you had three indicators for credibility of business plan and applicant's approach to the market development, that had to be divided up; you had to have some understanding as to how much you were going to give to forecast demand, etc.?

A. Yes.

Q. And we know what happened in relation to the quantitative analysis.

Now, in relation to the issue of weighting the qualitative analysis, your evidence is that the words "ex ante" in the draft left you seeing that that was a possibility in the future, you hadn't thought it through?

A. Yes.

Q. Now, I am going to bring you through what happened, but as I understand your evidence, you, from quite an early stage, formed the view there would have to be some division of the weightings of the indicators when looking at the qualitative analysis, is that right?

A. I did, yes, and I think, you know, it is clear from the early papers in relation to this competition and, in particular, the exchange with the Department of Finance, that I was I, and Martin Brennan, in that exchange, were clearly of the view that weighting was necessary that's in the exchange of letters with the Department of Finance in, I think, about April.

And, yes, when we looked at the evaluation models, I

didn't think this question through. But subsequently, I clearly formed that opinion, that weighting would have to be applied and was consistent.

Q. Okay. Now, in relation to just the meeting of the 4th September, which is at Divider 95 of Book 42, if I could just bring you back to that for a moment.

You have seen I have been talking about the quantitative evaluation of the bullet points and just pointing out the record of what Mr. Andersen said to indicate a quantitative evaluation had problems. And if you turn over the page you will see the following, which has excited some comment in the course of this Tribunal: "The meeting discussed each dimension of the scoring document in turn, the consensus was that the quantitative analysis was not sufficient on its own and that it would have to be returned to after both presentations and the qualitative assessment."

A. Yeah.

Q. Now, as I understand the evidence you have given, what in fact happened is it was never capable of being returned to because it was fundamentally flawed because of the way in which raw material had been provided in the competition process. You weren't going to find out the answer on a quantitative evaluation. You had to look somewhere else?

A. On a direct application of a quantitative evaluation, that is correct, yes.

Q. So whatever the aspiration noted there, the way things transpired was it wasn't possible to return to it, and it wasn't going to make sense for you to return to it?

A. Yes.

Q. And I'll bring you through what happened at the groups, but that's something you had realised, and is that the reality of what occurred?

A. That is.

Q. Now, if I can ask you to turn on to, I think it's Divider 121 of Book 42. Sorry, there is another thing. I think at this point in time, we are still this side of the oral presentations of the 11th September of '95, and that would have been another amount of information coming in, isn't that right?

A. Sorry, book

Q. Sorry, don't worry about that

A. Sorry, I lost my concentration.

Q. I had asked you to look at Book 42. In fact, where I want you to be in Book 42 is Divider 104.

Now, this was a meeting of the 14th September of '95, and it occurred some days, or in the week that the oral, shortly after the oral presentations had been made, and you see the beginning it's noted, "All the presentations have now been made," and it then continues. So at this point in time, insofar as raw material had come in to be analysed and a winner found, it was all now within the sealed process, isn't

that right?

A. Yes.

Q. And we see the second-last paragraph: "Mr. Andersen spoke about the success of the presentations generally. He felt that because AMI were well prepared from their earlier quantitative assessment they had attained the required information from all the applicants and the presentations had served to highlight considerable variation between the applicants."

I think it's also clear that the events that were to take place were listed, and the next step was going to be to finalise the qualitative scoring. And if you look at the bottom of page 2 of that note you'll see a heading, "How to Progress Evaluations," and then you see: "AMI listed the next step as finalise the quantitative scoring and award marks on the dimensions." And then: "Perform initial scoring of all the aspects" and finally "perform supplementary analysis in blocking/drop-out rate," and a number of other things?

A. Yes.

Q. And they also indicated, the scoring of the marketing, financial and management dimensions would take place in Copenhagen the next week.

So at that point in time, with all the information to hand, they were working to deal with the qualitative

evaluations as best they could, isn't that right?

A. Yes.

Q. And I also think that in that document we learn for the first time that you're working to present a first draft of the report, I think somewhere it says the 3rd October? I just can't put my finger on it.

A. It does, yes. It's on the final page. And it's the third line down in the first full paragraph on the page.

Q. Oh, yes. "AMI will provide the first draft evaluation report on the 3rd October." So it seems at that point in time, if there were problems with the quantitative scoring that were apparent then, and the qualitative scoring was the way things were going to go, and the report was going to be presented on the 3rd October, from your point of view, is it fair to say that this was obvious, that this draft coming out on the 3rd October was going to be a draft driven by the qualitative analysis?

A. Well, I certainly think at this time that I was clear the qualitative analysis was going to be the primary basis on which the report would be based and the decision would be based, yes.

Q. Now, if I could ask you to turn on to Divider 109. This was the events in Copenhagen on the 18th and 19th September, and I think you were involved in the tariff group, were you?

A. I was, yes.

Q. So you were there on that occasion?

A. Yes, I was.

Q. And was this a qualitative analysis that was taking place?

A. It was, yes.

Q. And did the issue of whether or not you'd weight the elements, the indicators, arise at that meeting, either in respect of tariffs or anything else that may have been discussed?

A. I don't believe that the issue of weighting arose at any of the sub-group meetings in relation to the dimensions.

Q. I suppose in relation to tariffs, because it only had one indicator, one substantive indicator, which was competitive of the OECD basket, it wouldn't be a sub-group that was likely to throw up that level of debate?

A. Well, when we looked at the tariff dimension in the qualitative evaluation, we had a series of indicators which we looked at in order to arrive at a marking of the dimension. I think there were on tariffs, I think there were, in fact, eight indicators. Now, whether or not we discussed the question of whether there should be a weighting of those, in other words, I don't recall that particularly arising, but what we did was we developed a view on the basis of a

consensus.

Q. Very good. Now, if we then move on to Divider 111, perhaps I could just ask you a couple of matters that arise from that.

This was a work programme that was issued by Andersen to yourself and Martin Brennan. And I will just, perhaps, ask you about the process. I mean, we see the process involving a large number of group, Project Group members?

A. Yes.

Q. You seem to have some role in the process as sort of trying to keep it on track, make sure people were moving forward and attending to it. Would that be fair?

A. Well certainly, yes, I would have been, I suppose, at the centre of the process in a sense in keeping my finger on the pulse of how

Q. I think "process" is rather sort of a word people use to describe the way businesses were run; this process, that process, and you talk about process change to make businesses better. Having a process is all very well, but you are going to need somebody to push it a little bit to make sure everybody involves themselves in it, isn't that right?

A. Yes. Certainly from the point of view of ensuring this process remained on track, it was the responsibility of my division; Martin Brennan, and me

essentially.

Q. And if you have people who were busy, the regulatory people were clearly very busy people, it's probably good that somebody like you was there to make sure that they would be involved as best they could?

A. Yes.

Q. And that's part of what you were doing and what Martin Brennan was doing?

A. Yes.

Q. So when you see you and him involved in moving the process along, that's simply part of what happens in these types of process?

A. That's true, yes.

Q. Nothing sinister about it at all.

Now, if I could ask you just to turn on to the third page of this. We get to a direction or an indication from Andersens of how they saw the report shaping up.

And this is the report that we knew was going to be destined to come in on the 3rd October, and it says that it's to be set up in the following way:

"Short synopsis of the first draft report can be outlined as follows:

"1. An introduction where the procedure aspects and the evaluation model, including the criteria are presented.

"2. Key characteristics." I can pass on that.

"3. A comparative evaluation of the applications



structured around the four aspects and based on the dimensions. Under each dimension, also the indicators will be mentioned. Each subsection of this chapter will be structured around the dimensions and the indicators identified."

Now, as I understand it, that's where you were going to be able to look and see the information that would tell you how the comparative evaluation had been done, and how the marks stacked up and what it would mean once you analysed all the marks together, is that right?

A. Yes.

Q. And then we move on to the issue of sensitivities and risks, and the general credibility of the applications will be mentioned, and finally there is going to be a short summary and conclusion.

So is it fair to say, that at that point in time it was clear that you would be looking to the evaluation in the part of the report that mirrored paragraph 3 to understand who was the winner, if that was possible to perceive from the report?

A. Yes.

Q. And I think then over the page we see a question being asked, there is five bullet points, and it's the fourth bullet point. It says: "How do we integrate the quantitative evaluation in the report (we prefer to leave this question unanswered until we have the

final results)?"

Now, what did you understand that to be signalling or flagging?

A. I am not sure exactly. I mean, I think it was just quite simply what do we do in relation to the quantitative evaluation that we have done, which was the 4th September.

Q. Because quantitative evaluation was one of the two parties of the evaluation, but we now all knew that it was in trouble?

A. Yes, yeah, yeah.

Q. So they seem to be parking it a bit at that stage. But did you have any problem understanding that?

A. No, I didn't have any difficulty. I mean, it was what do we do about the quantitative evaluation? But, I agree with what you are saying, that it was in the context that the evaluation report will deal primarily with the qualitative evaluation, what do we now do with the quantitative evaluation?

CHAIRMAN: We are almost on four, so perhaps we might defer the quantitative final requiem until tomorrow.

I should have made inquiries perhaps of the lady from Mr. Michael Kelly's, I should have offered you an opportunity, but do I take it by the absence of Mr. Fanning that it may not be your intention to ask questions on behalf of Mr. Lowry? Very good.

Well, it does seem that we will conclude Mr. Towey's

evidence clearly tomorrow, as the Tribunal has some other relatively separate urgent business to attend to, no doubt in common with yourself, Mr. Nesbitt, perhaps we'll revert to 11 o'clock in the morning.

Very good. Thank you.

THE TRIBUNAL THEN ADJOURNED UNTIL THE FOLLOWING DAY,  
FRIDAY, 23RD MAY, 2003, AT 11AM