

THE TRIBUNAL RESUMED ON THE 27TH OF OCTOBER, 2010,
AS FOLLOWS:

CHAIRMAN: In the context of yesterday's application in relation to the Tribunal's retention of Mr. Michael McDowell, and the extempore ruling then given by me, I have not, given the time factors and the necessary ongoing work in relation to Mr. Andersen's examination, been in a position to prepare a full or written or reasoned ruling on the matter, but I wish, at this juncture, only to add the following brief observations:

Mr. Michael McDowell is not part of the deliberative process of this Tribunal. Because of the circumstances that arose in relation to hearing the evidence of Mr. Michael Andersen, Mr. McDowell has been retained to conduct Mr. Andersen's examination as an experienced and senior barrister. Whilst he will obviously exercise his professional skills as to the manner and sequence in which that examination is conducted, he will, nonetheless, act on the instructions of the Tribunal and will, on the completion of Mr. Andersen's evidence, cease to have any further involvement in the remaining work of the Tribunal. As I have been led to believe, through correspondence from Mr. Desmond's solicitors, that an application is likely to be made at or about this time in the Four Courts to the High Court judge entrusted with Judicial Review matters, I have conveyed to Mr. Shaw, Mr. Desmond's solicitors, my wish that these short additional remarks be conveyed. Very good. Mr. McDowell?

CONTINUATION OF EXAMINATION OF MR. MICHAEL ANDERSEN BY
MR. McDOWELL AS FOLLOWS:

Q. MR. McDOWELL: Professor Andersen, yesterday I asked you, at the close of business, whether you would have the opportunity, yesterday evening, to look through this question-and-answer memorandum and acquaint yourself with its contents, and have you had an opportunity to do that?

A. Yes, and I was familiar with them beforehand because I worked quite a bit to make them as exact as possible over the foregoing weeks.

Q. Can I ask you, in a general way, are you happy with the answers that you have given?

A. Yes, of course.

Q. And there is nothing in it that you want to correct or say is wrong, or whatever, something that occurred to you last night that you want to say "no, I would prefer not to say that"?

A. No, not when I saw it last night, but of course I would like to have them read into the record.

Q. I see. Well, fair enough. Well, bringing you, then, to question Number 6, which is on page 6 of the document -- sorry, I had assumed I'd got to 5. No, I should bring you back to question number 5.

A. Yeah.

Q. You were asked by the Tribunal to give your analysis or understanding of the RFP document and, in particular, paragraphs 3, 9 and 19, isn't that right?

A. Yes.

Q. And you pointed out, at paragraph 5.1, that AMI didn't prepare the RFP. It had been prepared by KPMG and was issued on the 2nd March, 1995, long before AMI were appointed as consultants, isn't that right?

A. Correct.

Q. And secondly, you say that AMI, presumably like others who had to use the RFP, other applicants, had to rely on what they considered its literal meaning to be, and your view was that the RFP was far from an ideal document in terms of inviting applications by way of tender for the award of a GSM mobile phone licence. And you set out some of the principal difficulties with the RFP documents, in your view, the first being that it contained no direct or express two-stage evaluation process comprising an initial admittance test of a substantial nature allowing distinguishing between eligible and non-eligible applicants, with the possibility of rejecting the latter, as was best international practice at the time. It would have been consistent with best international practice for the RFP to stipulate substantive minimum criteria as regards financial matters, for example by way of solvency and/or ability to self-finance.

Secondly, the information requested was not specified at an appropriate level of detail.

Thirdly, some of the criteria in paragraph 19 were formulated in a way that differed considerably from international practice of the time, and you give the example, the approach to tariffs and the approach to market development, notably because those criteria are formulated in a rather broad fashion; is that right?

A. Correct.

Q. Next, that some of the criteria combined several criteria within one criterion; for instance, credibility of business plan and applicants' approach to market development. Next, other criteria were not usual or even seen in other tenders such as international roaming plans.

Next, that weightings were to the specified. It was merely asserted at paragraph 19 that the various criteria were listed in descending order of priority.

And you go on to say that the exact status of the monetary bid was obscured, bearing in mind the paragraph 4 of the RFP which said that the minimum initial fee for the licence would be 5 million Irish pounds, and applicants are free to offer a higher amount to win the right to the licence.

Paragraph 19 of the RFP, which provides 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 herein, required herein, and specifically with regard to the list of evaluation criteria as set out below in descending order of priority.

And then you point out that paragraph 8 sought firm commitments with regard to the approach to a competitive market, thereby implying that firm commitments were not required for other matters.

Paragraph 9, you point out that use of the words "should" instead of "shall" or "must," thereby implying to applicants a voluntary element which had not been intended by the authors of the RFP.

And the next paragraph, J, in your paragraph, says, the fact that a considerable amount of the descriptions and offerings provided in the applications on the basis of the RFP document, would be difficult, if not impossible, to convert into binding requirements for acquiring the licence.

You go on, so far as AMI was concerned, it interpreted the RFP as setting out the evaluation criteria at paragraph 19 and nowhere else.

AMI interpreted paragraph 3 in its references to full ownership details as not part of any admittance requirements, albeit that it was discussed at some of the PTGSM meetings at which AMI was present. Likewise, AMI interpreted paragraph 9 in its reference to financial capacity, technical experience and performance guarantees as not part of any admittance requirements.

AMI also found the reference at paragraph 19 to the Minister being satisfied as to certain matters, as unhelpful because it didn't identify the basis upon which the Minister was to be satisfied.

And, in brief, you say AMI and the applicants and the Departments had no choice in the matter. They all had to work with the RFP, which was deficient and did not accord with international practice.

Now, paragraph 6, you say Andersen -- you were asked Andersen's analysis of the distinction in paragraph 19 between the requirements as to financial and technical capability and the evaluation criteria set out in pointed

paragraphs in order of priority.

And your reply to that was: As already noted, the question of financial and technical capability was not presented in the usual manner consistent with best international practice; namely, as part of a two-stage process or minimum requirement process. In addition, financial and technical capability was not defined, nor was it defined by the PTGSM. As regards the relative priority attached to each, the RFP had to be taken at face value. Although financial and technical capabilities were not expressed as admittance or threshold criteria, they were part of the evaluation of the applications by the PTGSM. In the event, there was no question-marks with regard to the technical capabilities of either of two highest-ranked candidates, A3 and A5.

However, there were financial issues concerning both of them, and consequently, AMI specifically referred to this in the Evaluation Report; is that right?

A. Correct.

Q. Question 7 asked for precise details of the manner in which the requirement of the RFP document were reflected in the Evaluation Model devised by Andersens and, in particular, the requirements of paragraphs 3, 9 and 19.

And you reply: As noted above, AMI did not consider the paragraphs 3, 9 and 19 set out the evaluation criteria as such. AMI interpreted the RFP as setting out the evaluation criteria at paragraph 19. The indents at paragraph 19 of the RFP were referred to as criteria which were, furthermore, grouped under four aspects. They were broken down into 1, dimensions; 2, indicators; and, at times, 3, sub-indicators. The nucleus of the evaluation was then commenced by the establishment of ten sub-groups, each dealing with one of the dimensions outlined in paragraph 19 of the RFP. And you set out, in bullet-points there, a list of those; is that right?

A. Correct.

Q. And you say, in the event, the licence fee dimension was evaluated by the financial sub-group; is that right?

A. Yes.

Q. And, I mean, just to clarify that; of course, whereas the RFP, as issued, spoke in terms of a minimum licence fee which people were entitled to exceed, as a result of the European Union's intervention a totally different approach was taken at that issue, isn't that right, that there is a cap on the --

A. Exactly, a cap became the way to meet with some of the EU requirements, and, in the context of that, I think it is in the documentation -- underlying documentation, that AMI then expected all the applicants to offer the maximum, and

therefore we didn't want to set up a separate sub-group concerning this particular dimension. So just to handle it in the financial sub-group.

Q. In the event, they did, isn't that right?

A. And in the event, they did, yes, so we saved some time and effort there.

Q. So there was no comparison necessary, obviously?

A. Yeah.

Q. Now, you go on to say that this methodology was approved by the Project Team and it was methodology which AMI had used consistently in other tenders internationally, and you set it out, it was set out in an appendix to the -- or two appendices to the Evaluation Report.

At paragraph 7.4, you say: Paragraph 19 of the RFP created the descending orders of priority at Project Group level, each of the criteria contained in paragraph 19 were weighted and this was done before the applications came in on the 4th August, 1995. Furthermore, weightings were attached to indicators in connection with the quantitative exercise in accordance with paragraph 19, and you give an example, in relation to criterion 1. Credibility of business plan and applicant's approach to market development was afforded 30% of the weighting. In connection with these criteria, there were three dimensions and each received a weighting of 10. However, at sub-group level, where they were only dealing with each dimension whose weighting had been predetermined by the Project Group, the sub-group defined the indicators and sub-indicators and then scored them after discussion and assessment of the quantitative information and agreed the results. No weightings were fixed ex ante at this level and the final scores were reached by consensus. In short, in each sub-group, the final analysis of the scoring of the indicators was done by unanimous agreement. It did not matter that the weightings applied by each of the five evaluators of each of the indicators in every group and sub-group may have been different, provided the final result was unanimous. The key was that the final result concerning the scoring of each indicator and other scorings was agreed on the basis of consensus.

You go on to say the weightings remained constant throughout the process, save for the following changes:

. In the light of the intervention of the European Commission.

. If the weightings were changed, the weighting related to the licence fee was reduced from 14% to 11% and the tariffs increased from 15% to 18%. This change was reflected in a note to file by Maev Nic Lochlainn setting

out the revised weightings, dated 27th of July, 1995, and you gave the weightings contained in the 8th of June, 1995, quantitative model were wrong in that the total of the weightings amounted to 103 instead of 100, I take it, and that did not reflect the said note in the file.

Notwithstanding the fact that this mistake was acknowledged at the time, this is -- a mistaken model was carried through to the draft report of the 3rd of October, 1995, and, however, this error was corrected in the subsequent draft of 18 October, 1995, and in the final Evaluation Report of 25 October, 1995.

Just in relation to subsequent draft of 18 October, 1995, is that the document, the third document to which you made reference in your --

A. Yes, I believe, yes.

Q. -- in the statement we dealt with yesterday, your Opening Statement; is that right?

A. Yeah, one of the documents, yes. There are three drafts.

Q. Yes, and just, and we will have to come back to it, but I just have to ask you at this point: It was supplied, as I understand it, to the Tribunal by AMI in 2002?

A. Sorry, I didn't get the question.

Q. Are you talking about the Evaluation Report or are you talking about the quantitative results?

A. Well, the weightings in the core Evaluation Report, the main document, remained, you know, the same in the 3rd of October version, the 18th of October version and the 25th of October version. However, in one of the appendices to the report dated the 3rd of October, some weightings occurred on just one page where they summed up to 103, and therefore, everybody could see, right away, that some mistake was there. Somebody had inserted wrong figures and they were then corrected accordingly.

Q. Well, we'll go back to that at a later stage.

Going on to paragraph 7.7, you say: As set out above, these were the only changes made to the weightings. While the documents surrounding the meeting of 9 October, 1995, which discussed the draft of the Evaluation Report of 3 October, 1995, contains a reference in the minutes of the meeting to the weightings in Table 17 being wrong, this is because Table 17 in the draft report of the 3rd of October contained the wrong weightings, adding up to 103 and not . This accounts for the final draft version of the 18th of October, the Evaluation Model to be found at document book Number 47, containing different weightings from those contained in the draft of 3 October, 1995. This is the reason for the amendment and the only basis for anybody commenting that the weightings in the draft of 3rd of

October were wrong.

Paragraph 7.8, you say: Between the 3rd and 18th of October, 1995, the only changes made, other than that described above, are those referred to in Maev Nic Lochlainn's fax of 6 October, 1995, to Michael Andersen. The Draft Evaluation Model at Appendix 3, dated 18 October, , complies entirely with the original weighting intentions. The original Evaluation Model contained the following weight:

A) credibility of business plan and approach to market development, 30%, subdivided into three dimensions each carrying 10%.

B) quality of technical approach, 20%, subdivided into two dimensions, each carrying 10%.

C) tariffs, 18%.

Licence fee, 11%.

coverage, 7%.

International roaming plans, 6%.

Performance guarantees, 5%.

Frequency, 5%.

As can be seen from page 2, paragraph 3.3 of the final Draft Evaluation Report of 18 October, 1995, each of the criteria was subdivided into the following dimensions:

A) market development, experience of the applicant, financial key figures.

B) radio network architecture, network capacity.

C) tariffs.

D) licence payment, not given its own sub-group.

E) coverage.

F) international roaming plans.

G) the quality of service performance

H) frequency efficiency.

Each of the agreed weightings attached to these dimensions are consistent with the weightings of the chart at Appendix of the Evaluation Model Draft dated 18 October. In short, the weightings have remained constant throughout and are those contained in Table 17 at page 49 of the final Evaluation Report.

Now, you are happy with that as a description?

A. Yes.

Q. I am just indicating to you that we will have to come back to that at a later stage, but we can pass from it now and I will come back to it at a later stage.

A. Yes, that's fine.

Q. You were asked then for details of Andersen's involvement, together with their knowledge, direct or indirect, of the involvement of any other persons in the drafting of the information memorandum issued to entrants on 28 April,

, and, in particular, that portion of the memorandum which responded in the following terms to a question posed by Esat Digifone as to how financial capability would be assessed and whether there was any specific criteria.

And the query from Esat Digifone was as follows:

The answer was as follows: The financial capability would be assessed by reference to the proposed financial structure of the company to which the licence would be awarded if successful, the financial strength of consortia members and the robustness of the projected business plans for the second GSM operation. Full details of the criteria which would be considered in the assessment of financial capability will be elaborated in the supplementary memorandum to be issued by the Department giving guidelines for submissions of applications.

And you were also asked to provide full details of the criteria which were intended to be elaborated on, as indicated in the information memorandum, together with the date and the manner in which such criteria were elaborated.

And you reply to that: The information memorandum was issued by the Department on 28 April, 1995. It was prepared by the Project Group. AMI had, you say, limited input. While AMI commenced work on the GSM2 project in April, they were not formally appointed as consultants until 9 June. Consequently, AMI had limited input on the information memorandum. AMI is not aware of any parties, other than the civil servants of the Departments, being involved in the drafting of this memorandum.

Twelve parties purchased the tender document. Nine of them elected to pose questions and there were a total of 230 questions posed by those nine parties. Several of those requests for further information were, in truth, comprised of more than one question. The responses to all the questions were made available to all the parties who purchased the tender document. The answer to the specific question on financial capability was eventually drafted by the Department, taking into account input from AMI. AMI drafted input, which is dated 25 April, 1995, with the following header: Re input to memorandum concerning how the financial capabilities is going to be assessed, the question posed by Esat.

You say: Although AMI's suggestions were not fully adopted, AMI was not dissatisfied with the final wording at the time. Supplementary guidelines were issued to all applicants on the 12th of May, and, as far as AMI is concerned, this was the last opportunity before submission date to seek to ensure that data would be supplied by applicants according to a uniform request. A consortium,

which included Vodafone, claimed that the interconnection terms were not sufficiently clear in the RFP. AMI considered that this criticism was valid. It, therefore, made a number of benchmark studies on this in order to demonstrate to the PTGSM that this claim had a major impact on the financial analysis of the business cases, and this was dealt with in the minutes of the meeting, of the eighth meeting of the Project Group, dated 9 June, 1995. It was suggested that Vodafone were trying to make the point that the fee -- with the fee of 20 million, together with high interconnect rates, it was too risky to invest, in which case the fee could be reduced. It was, accordingly, decided by the Department and AMI to circulate further additional information on this particular issue, stating that the indications in the RFP on this issue would be a matter for commercial negotiation within six months of commercial operations, subject to arbitration by the Regulator.

Paragraph 9, you were asked for details of Andersen's knowledge, direct or indirect, of the consideration given by the Project Group, or any individual member, to the draft response of the Esat Digifone query prepared by Andersens dated 25 April, 1995, and, in particular, the matters which prompted or contributed to the adoption of the formulation in the memorandum rather than the formulation proposed by Andersens.

And the reply that you give is that you are not aware of the precise consideration given by the Project Group or its individual members or any other person to the draft response prepared by AMI on the 25th of April to the query by Esat Digifone, and that you weren't privy to the process by which a decision was apparently made by the Project Group or the Department that the AMI draft should be amended. Is that right?

A. Correct.

Q. Now, at question 9A you were asked for full details of the purpose of the supplemental information memorandum dated 12 May, 1995, entitled "Guidelines for submission of applicants to become the second operator of GSM mobile telephony within Ireland" and of the attached mandatory tables, the extent to which Andersens drafted or an input to the guidelines on mandatory tables, details of how the guidelines and mandatory tables were intended to assist the comparative evaluation of applications received.

And your response to that question is: The purpose of the information memorandum dated 12 May, 1995, entitled "Guidelines for submission," and we have the title already, and the attached mandatory tables, was to ensure that the

applicants had a framework within which to set out their applications and worked on the basis of a uniform request. It is Michael Andersen's recollection that certain members from AMI, namely John Bruel, Michael Thrane and Michael Vinter, drafted the mandatory tables in conjunction with people from the Project Group. These mandatory tables were also examined by the Department and the Department of Finance. Both the guidelines and the mandatory tables were meant to "improve" the RFP document in a sense that the RFP document had hardly any information requirements listed. The idea behind these supplementary efforts was to achieve the following results:

Firstly, that the applications were structured in roughly the same way; for example, with marketing, financial, technical and management aspects in different binders.

B) that the applications were to be structured in a way that the same type of information would appear on the same uniform headings.

C) that a certain amount of statistical data was collected.

D) that it would be possible for the evaluators to ascertain if information deviated from a common standard, making it easier to address by requesting corrections or seeking additional information.

As set out above, John Bruel, Michael Thrane and Michael Vinter of AMI drafted the mandatory tables in conjunction with people from the PTGSM. These mandatory tables were examined and approved by the Department. Notwithstanding the fact that AMI was retained relatively close to the submission deadline, the drafting of the guidelines and the mandatory tables was intended to assist the comparative evaluation of applications because it was hoped that information submitted by the applicants in response to the guidelines and mandatory tables would be such that the Project Group would be better able to compare the applications. It would never have been possible to have an absolute comparison, but a sense of uniformity in the applications was required so that a comparison could be made in order to evaluate the candidates.

The 10th question -- is that right; you are happy with 9A, are you?

A. I am happy.

Q. Going on to question 10, they asked you for a full explanation of the Evaluation Model prepared by Andersen and, in particular, the quantitative and qualitative approach, what these approaches entailed, the distinction between the two approaches and the way in which the outcome of the quantitative approach was intended to shape, influence or impinge upon the qualitative approach. And

lastly, the relative weight that was envisaged would be attached to each approach in the overall evaluation. And the response is as follows: The Evaluation Model is explained in detail in the Evaluation Report and its appendices. That is the primary reference for the information requested under this heading. What follows is a summary of key points. The RFP did not specify an evaluation methodology, nor did it indicate specific weightings to the evaluation criteria set out in paragraph , beyond indicating that they were listed in descending order of priority. The Project Group approved the Evaluation Model on 9 June, 1995, that is before the expiration of the original deadline of 23rd June, 1999, which was, thereafter, suspended until 4 August, 1995, due to the intervention of the European Commission.

The Department's starting point was to conduct a quantitative evaluation. This means an evaluation conducted by way of hard data, measurable according to a scale based on equal intervals of Arabic numerals. It became clear that a self-contained or separate quantitative evaluation was not going to be possible. This arose for the following reasons:

Firstly, the EU Commission intervened and mandated a standard beauty contest.

Secondly, some of the hard data provided by the applicants was often not readily comparable on a like-for-like basis.

Thirdly, the Project Group made the point that around 50% of the weightings would be lost due to a lack of statistical liability, i.e. can you measure? And you give examples of the impossibility in relation to scoring applicants on page 5 of the Appendix 2 of the final Evaluation Report, dated 25 October, 1995.

Fourthly, it became clear to the evaluators reviewing the last draft version of the quantitative evaluation on 9 October, 1995, that it severely lacked statistical validity, i.e. does what you have measured have value? as it generated a 6 as the applicant with the highest score, despite the fact that A6 was not among the three highest-ranked applications. Accordingly, the PTGSM took the view that the quantitative evaluation did not make sense as a separate evaluation. It was subsequently integrated into a holistic evaluation comprising a quantitative and qualitative evaluation.

Just stopping there. Are you saying that the final quantitative evaluation which showed A6 as the -- as having the highest points, was considered by the Project Group?

A. Yes, that is how it reads, isn't it?

Q. Yes, well, I know that's how it reads, but is that your

recollection?

A. Yes. It is, yes.

Q. That the final version, as we have described it, was made available by you to the Project Group, is that what you are saying?

A. That's correct.

Q. Because -- you are clear on that? I just want to be a hundred percent. You are saying the one which showed A6 as the highest quantitative winner, if I may use that phrase, was shown -- was printed out and shown and circulated to the members of the Project Group?

A. Yeah, I will definitely not say it was a winner, as you say.

Q. Well, whatever...

A. That's not --

Q. I was putting it in inverted commas. I know you don't like that language.

A. Okay. But, you know, the way it proceeded and with the challenges we were faced with, as you have just read aloud, and I have tried to meticulously describe, wouldn't generate a winner on that basis.

Q. I appreciate that. I was using the phrase as the person with the most marks.

A. Okay, okay.

Q. Now, can you -- I just want you to be clear about this, though. Are you saying that the analysis, the quantitative analysis, the last of the quantitative analysis which showed A6 as getting the most marks --

A. Yes.

Q. -- was definitely circulated to the members of the Project Group?

A. You are asking me before on my recollection, and I am here to give evidence. My recollection is that that particular version was brought to the Project Group meeting on 9 October, 1995.

Q. I see. Now, you say, accordingly, the PTGSM took the view that the quantitative evaluation did not make sense as a separate evaluation. It was subsequently integrated into a holistic evaluation comprising a quantitative and qualitative evaluation. Appendices 2 and 3 to the Evaluation Report contain a description of the evaluation methodology and how it was applied. The methodology comprised both a quantitative and a qualitative element. The quantitative element was initially conducted by AMI staff as part of a number-crunching exercise, where data, supplied by applicants, was processed into tables, spreadsheets, graphics and other computation of data. The qualitative element required a more subjective evaluation

of what you term soft information. It became clear that the evaluation could not proceed on the basis of a separate quantitative evaluation as around 50% of the quantitative evaluation was unusable. Despite further information sought in the guidelines, the evaluators did not have the information that could compare each candidate on a like-for-like basis; hence, a separate quantitative evaluation withered away. It is abundantly clear, however, from the Evaluation Report, that although a separate quantitative evaluation was no longer viable, a quantitative evaluation formed part of the overall evaluation process. For example, Appendix 5 of -- page 5 of Appendix 2 of the final Evaluation Report provides as follows:

Essentially, the evaluators decided that all the results of the evaluation should be presented in one comprehensive report, as is the case with the main report, such that the results of the evaluation, both quantitative and qualitative techniques, should be presented in an integrated fashion. The report goes on to say that: Consequently, the evaluators have used the information generated by the number-crunching of the mandatory tables and other quantification as valuable input in the integrated holistic evaluation. In the main report, this is reflected in chapter 4 in several ways. First, the quantification appears as tables, graphics, figures, etc. And second, all clearly quantifiable indicators have been taken into consideration and have been scored. On page 5 and 6 of Appendix 2 to the Evaluation Report, it goes on to list all of the 14 quantifiable indicators which were taken into consideration in the evaluation of the applicants. Another important issue in considering the nature in evaluation was the intervention by the European Commission which vetoed the auction element of the licence fee. This stressed the evaluation had to be conducted by what was, and is, described in public procurement terms as a beauty parade, i.e. evaluation of applications by reference to criteria, many or all of which might require a subjective evaluation. Prior to this intervention by the EU, the civil servants in the Department were more comfortable with an evaluation that entailed high levels of quantification. AMI understood that this was because this would avoid accusations that the Irish Government considered the licence fee more important than its placing at item 4 in the descending order of criteria at paragraph 9 of the RFP. However, the role of the quantitative analysis necessarily declined after intervention by the EU which necessitated a more standard beauty-contest approach. The Project Group

decided that the quantitative and qualitative elements of the evaluation should be reported on in the evaluation document at one and the same time. This was consistent with the holistic approach taken by the Project Group and was to evaluate by reference to quantitative data where possible and by reference to qualitative issues. The quantitative approach entailed the compilation of hard data from applications and their presentation in a format whereby quantitative evaluation by reference to numerics could be carried out. As set out in page 6 of Appendix 2 of the final Evaluation Report: It -- referring to the quantifiable data -- is thus limited to clearly identifiable figures as expressed by applicants and does not have the capacity to take account of considerations such as market research, planning, management, preparedness, credibility, etc. In the event, following receipt of the applications, it became clear that a number of the 14 indicators in the quantitative model were either impossible or difficult to score.

The qualitative approach entailed an evaluation of soft data from the applications and the evaluation of such by reference to alphabetic scoring. The quantitative approach entails an evaluation by reference to hard quantifiable data. A qualitative approach entails evaluation by reference to soft information, leading to an informed subjective evaluation. For example, a criterion which requires an applicant to tell his evaluators the speed at which he intends to roll out the coverage will be relatively easily measured in terms of area population and quality of coverage on defined periods of time or milestones. On the other hand, asking applicants to tell the evaluators what their approach is to market development will necessarily entail evaluation of the applications in a manner which cannot easily or at all be measured in terms of quantity or hard data. Rather, it will call for evaluation of soft information to do with marketing, branding, target customers, etc.

The quantitative evaluation was not intended to shape, influence or impinge, using the words of the question, upon the qualitative evaluation. It was clear that there could be no separate quantitative evaluation. The approach taken was holistic; that is, that there was a quantitative and qualitative evaluation. No relative weights were ascribed to the quantitative and qualitative analysis. However, two points should be noted: Firstly, particularly after the intervention of the EU Commission, it was clear that the evaluation process was going to be a beauty contest. Secondly, the quantitative analysis was done so as to

inform the qualitative analysis, but it was not and could not be determinative. As noted above, the evaluation comprises both quantitative and qualitative approaches. Question 11, you were asked to indicate the manner in which weightings attached to the evaluation criteria were devised, and, specifically, the reason for attributing 30% of the marks to credibility of business plan and the applicant's approach to market development in circumstances where 15% of the marks were attributed to the approach to tariffs being approached by the applicant which must be competitive, bearing in mind the prominence given to tariffs and the value to the consumer in the Minister's public statements.

And your response was: In addition to the response below, please refer to the response to question 7 for more information on the weightings. To recap: The RFP did not ascribe weightings to the criteria set out at paragraph 19. It merely dictated that they were listed in descending order of priority. The weightings to be ascribed to those criteria, referred to in the Evaluation Model as dimensions, were decided by the Project Group. AMI did not ascribe weightings. The Project Group assigned those weightings. In ascribing those weightings, the Project Group had to, and did, adhere to the requirements of paragraph 19 in that the weightings had to descend in value according to their ranking in the RFP. It's incorrect to say that 15% of the marks were attributed to the approach to tariffs being prepared by the applicants which must be competitive. The tariff dimension accounted for 18% of the weighting which had been adjusted after the intervention of the EU with regard to the auction element.

As set out above, the only other adjustment to the weightings was to correct the error in the Draft Evaluation Report of 3 October, 1995, because they added up to 103. All the weightings to the criteria listed in paragraph 19 of the RFP respected the fact that the Irish Government had decided the criteria were set out in descending order of priority. As indicated earlier, the prominence given to tariffs and value to the consumer in the public statements from the Minister carried no influence in the evaluation and in the design of the evaluation; rather, this was seen as a political statement. AMI obviously had no role and wasn't privy to the approval, preparation or issue of public statements by the Minister. This was a matter of policy by the Minister. AMI had no policy role whatsoever in the process.

Then you were asked for the identity of all persons who, to Andersen's knowledge, direct or indirect, had any

involvement in the setting of the weightings which were attached to the evaluation criteria.

And you answered that. You say that all of the individuals who were members of the PTGSM and the Department. The weightings were agreed by representatives from the Department and the PTGSM. The only influence from AMI in relation to this was to advise the Department and the PTGSM to respect the fact that the Government had decided that the evaluation criteria in paragraph 19 were set out in descending order of priority.

Then you were asked for the identity of all persons who, to Andersen's knowledge, were informed of, or otherwise aware of, the weightings, and the source of their knowledge.

And you state that Michael Andersen, that's you, is not aware that any person, apart from AMI staff and members of the PTGSM, were aware of the weightings ascribed by the PTGSM to the evaluation criteria.

And you were asked at question 14 to give Andersen's knowledge, direct or indirect, of all steps taken by the Project Group to protect the confidentiality of the weightings and, in particular, to protect unauthorised access to the weightings.

And your reply was: The following steps were taken to protect the confidentiality of the weightings: The evaluation document was circulated on a personal and confidential basis. All documents were printed out, with the recipient's name printed on each page. Members of the Project Group had the option of delivering the document back to AMI or to shred it or to keep it in a secure place. When Project Group adopted the weightings, the curtains of the meeting rooms were drawn down and the blackboard was cleaned in order to remove notes of weightings written on it. In circumstances where reference was made in documents to weightings, copies were returned to AMI or retained by named persons. The Project Group elected that the weightings should not be inserted in the guide to the award of marks matrix and Maev Nic Lochlainn was instructed not to include the weightings in the Project Group minutes but to record them separately without putting them into general circulation.

At question 16A, you were asked whether, in the course of or assisting or advising the Department in connection with the resolution of the objection of the European Commission to the provision for an open-ended licence fee in the evaluation criteria, Andersens were furnished with a copy of Commissioner van Miert's closing letter dated 14 July, , or a copy thereof, or any advanced version of that letter, and, if so, the date on which it was received and

the source of it.

And your reply is: AMI was familiar with some of the communications with the EU Commission and Michael Andersen had personally participated in meetings in Brussels in order to help resolve the pending conflict and the potential commencement of infringement proceedings against the Irish State. However, you do not recall whether AMI was provided with a copy of Commissioner van Miert's closing letter of the 14th of July or a copy or an advanced version of that letter, is that right?

A. That's correct. I think it's correct, also, here, to state that I have asked the Tribunal to see this last version of the letter but I have not received the last letter yet.

Q. I think it's in one of the document books that you have, but I'll get you the --

A. No, no, it isn't.

Q. If we have slipped up, we'll certainly correct that. Now, at question 17, you were asked for full details of all budgetary remuneration issues and/or disputes which arose between Andersens and the Department from the date of Andersens appointment to the completion of the evaluation process, including, in each instance, the manner in which such issue or dispute was resolved and the extent to which such resolution impinged on the evaluation process or the analysis undertaken by Andersens, whether directly or indirectly.

You answer that question at length. You say:

"AMI submitted a tender on the 16th March, 1995, to act as consultant to the Department in connection with the evaluation of applications for the GSM2 licence. AMI's tender document was successful. However, it wasn't until 9 June, 1995, that the Department and AMI entered into a formal written contract for the provision by AMI of consultancy services to the Department. It was agreed that AMI would work within the following Terms of Reference as set out in Annex A to the AMI document dated 16 March, :

- : To elaborate work plans in compliance with the timetables of the tender;
- to detail the Evaluation Models which are to be used and suggest Evaluation Models which are in line with the procedures in other European GSM tenders and which fulfil the EU requirements on transparency, objectivity and non-discrimination;
- to perform the main part of the evaluation of the applications;
- to draft an Evaluation Report, and to be available for extra services, for instance, within the area of interconnection, licence negotiations, drafting of press releases and unforeseen events.

You say as the process got underway, however, the

Department required AMI to undertake work which was well outside AMI's tender. In particular, the involvement of the EU Commission and their disapproval of the auction element of the process, as appeared from RFP with regard to the licence fee, required a significantly greater workload for AMI than was originally provided for in the contract. It was clear that the auction-inspired process envisaged by part of the RFP was unacceptable to the EU Commission and instead what was required was a de facto beauty contest. This greatly increased AMI's workloads for the following reasons, and you set out a series of reasons there, which, unless you want me to read them out --

A. I think we need to because --

Q. Okay. Evaluating seven application business cases was more than the expected three to five applications. In addition, the applicants had provided much more documentation and background information than was normally the case. Second, the admittance procedure consumed a few more resources than anticipated. Jens Dunn from the team, thus participated in this part of the work as well as with extra calculatory work.

Third, in order to compare the applications on a fair basis, it was agreed with the Department to pose written applicant-specific questions in accordance with the provisions made at paragraph 16 of the RFP document. Fourth, working with a semi-fixed GSM2 licence fee, it was increasingly important to draw the attention to the deal for consumers. For this reason, it was decided to increase the marketing part of the evaluation and, in particular, concerning fair comparisons of the tariffs. Thus, Michael Thrane was involved in more than initially expected.

Next, that because of the fact that one of the applicants, A5, used 1995 to 2009 as the planning period, whereas the other applicants used 1996 to 2010 as the planning period, a number of recalculations had to be approved by the Department to take place. And you refer to your letter dated 21 August, 1995, and the response from the Department on 22 August. Some of the applicants had not reinvested after ten years, as required in the tender specifications, and AMI had to look at that as well. It was also decided that it was necessary to carry out more supplementary analysis than initially foreseen.

You say that on the 14th of June, the Department and AMI agreed an amendment to the contract, which reflected, primarily, developments involving the EU Commission. Later, during the process, it was necessary to, once again, make an amendment to the terms of the contract with the Department. This was as a result of work that was not

envisaged by the Department, including receipt of more applications, (7), including the business case from Eircell, than assumed or anticipated (4 or a maximum of 5) complaints from interested parties, the inadequate nature of the original tender documents and the Department's delay in allocating personnel resources to the sub-evaluation groups.

You say there was less-than-perfect preparation by the Department prior to AMI's involvement in the tender process and this made it necessary to pose and evaluate applicant-specific written questions to the applicants in order to compare the applications on a fair basis.

Moreover, in a letter to Mr. Martin Brennan dated 5 September, 1995, AMI identified 12 activities which AMI asked to be invoiced under a separate code as additional work. There were exchange-rate issues concerning the fact that AMI's underlying calculation and commercial terms of cooperation was carried out in the Danish currency, whereas payments were made in Irish pounds, and the exchange rate developed unfavourably for AMI at this time.

Next, the further changes were agreed on 14 September, , and resulted in agreement of a total fixed fee of ,000 as requested by the Department. This agreement was recorded in a letter dated 14 April, 1995, from -- 14 September, 1995, from Martin Brennan to AMI and to a fax dated 18 September, 1995, from AMI to Martin Brennan. When you say, just there, £370,000 Irish as requested by the Department, was that the figure that they suggested and were you asking for more or is that -- are you suggesting that this was the figure that they came up with without a bargaining process?

A. I think it came out as a part of a bargaining process or renegotiating process where we agreed on the 370.

Q. I see. So can we take it from that that you were, in fact, looking for a greater increase but this was what was compromised on?

A. Yeah, I think so.

Q. Now, AMI was also retained at this time by the Department to prepare a separate report on the regulatory regime for telecommunications business in Ireland and it was wholly separate from the GSM2 process. All contractual differences were settled amicably. The contractual issues did not impact on the level of service AMI provided or make any impact on the deadlines agreed over time.

Paragraph 17A, you were asked for details of all modifications made to the Evaluation Model or evaluation methodology adopted by the Project Group in June 1995, including the weighting matrix, consequence on the capping

of the licence fee evaluation criterion, and of all the advice given and recommendations made by Andersens in that regard.

And you said that the Project Group had discussions on the change in nature of the tender in the direction of a more standard beauty-contest tender in the light of the direction by the EU Commission. As set out above, the Project Group decided to change the weightings of two dimensions, namely the licence fee and the tariff fee moving 3%, and I think you have given that already.

A. Exactly.

Q. Moreover, it was agreed that more resources were to be allocated to the qualitative evaluation. AMI advised the Project Group that the Irish civil servants should be well-informed as to what the qualitative evaluation entailed and also advised that AMI should reallocate resources from the quantitative evaluation to the qualitative evaluation so that it would essentially be Michael Vinter only who was tasked to address the quantitative Evaluation Model.

And at paragraph 17B you were asked for details of the impact of the deferral of the closing date for receipt of applications from 23 June, 1995, to 4 August, 1995, on the projected time-frame of the evaluation process.

And your answer is: The impact that was there was a shorter time-frame for the evaluation process. The evaluation process was always to be finalised by the end of October 1995. Therefore, if the closing date for the receipt of applications remained at the 23rd of June, 1995, the evaluators would have had over four months to evaluate the applicants. However, the impact of the deferral of the closing date to 4 August, 1995, meant that the projected time-frame for the evaluation process was reduced and the evaluators had just two-and-a-half months to complete evaluation.

Is that right?

A. Correct.

Q. Now, you were asked for the date upon which and the manner in which it was determined that each entrant should be admitted to the evaluation process, together with the details of the criteria applied for and Andersen's input and their knowledge, direct or indirect, of the input of any other persons into such determination.

And your answer to that is that AMI's input was in the form of a report containing a conformance testing of the applications against the formal requirements of the RFP document. And you refer back to paragraph 4. The closing date of the submissions was 4 August, 1995. As noted

above, there was no substantive preliminary or threshold requirements for admission on the evaluation process in the form of a formal two-stage process, as was best practice internationally. Moreover, AMI noted that no procedure was instituted in the RFP document in case an application was rejected. Once an application was received, together with the necessary application fee, it was, in reality, admitted to the evaluation process according to the RFP document. The method of evaluation is described in detail in the Evaluation Report, and apart from members of the Project Group and AMI's role as consultants, and leaving aside any advice that might have been obtained for the Department from the Attorney General's Office or outside counsel, Michael Andersen is unaware of any third party having any input into the evaluation process.

Paragraph 19, you were asked for details of each and every respect in which the Project Group's initial views of the applications arising from the quantitative evaluation were confirmed by the verbal presentation as recorded in the minutes of the eleventh meeting of the Project Group on the September, 1995.

And you reply: The Project Group had a meeting on 4 September, 1995, the ninth meeting. It recorded that the consensus was that the quantitative evaluation was not sufficient on its own. In the meantime, of course, the EU Commission had indicated its requirement that the process should be an auction of the licence -- should not be an auction of the licence but should be in the nature of a beauty contest. At the PTGSM meeting on 14 September, , a very considerable amount of work in the evaluation of sub-groups had already taken place and the presentations from the applicants had just been completed. Thus, the PTGSM and, notably, the evaluation sub-group members and the participants in the presentation meetings were focused on ventilating views. Although Michael Andersen tried to convey the message that everything was open, there was a clear sentiment among some civil servants that A5 and, to some extent, A3, had done a very good job and that A1 would qualify for the licence. Likewise, it was the general consensus that the other applicants were somewhat far behind.

Now, at that point you put down the phrase "everything was open," you have quotation marks there. Is that just a matter of style or are you quoting from some other source?

A. Well, it would, you know, be a -- it would be a sentence said because not to preempt anything and preempt, you could say, further analysis and further work.

Q. I am just asking you, is it a quotation from something else

or is it just you coining a phrase, I just want to know?

A. Well, as I see it here, you know, I have no very clear recollection at this stage about how this sentence came about, but I believe, reading through the documents, that somebody has written that as either part of the minutes or part of handwritten comments during the meetings and quoting me for having said that. It's not a quote from myself, or a quote I have inserted.

Q. I mean -- well, I mean, is it any document or is it the minutes or what kind of -- what's the quote from? Is it a quote from notes of the meetings, or what?

A. Yes, that is what I suggest.

Q. You think it's a quotation from notes or minutes of the meeting; is that right?

A. Here, it's taken as a quote from either minutes from the meeting or handwritten notes from the meeting from other members than myself.

Q. It wasn't your note?

A. It wasn't my note, no.

Q. Now, you were asked, at question 20, to give the composition of each of the ten sub-groups which met to conduct the qualitative evaluation of indicators, including the date and place in which each of the sub-groups met and the duration and manner of their deliberations. You were also asked for the weightings attached to each indicator and, where appropriate, sub-indicator of each dimension assessed in the qualitative evaluation, and you were, thirdly, asked for the time at which persons by whom and the manner in which the weightings of such indicators and sub-indicators were fixed, including the input, if any, of Andersens.

And you responded as follows: As set out in paragraph 17 of this response, the PTGSM was divided into ten sub-groups dealing with each of the following distinct issues, and you set out those which we have already dealt with.

Each of the ten sub-groups was, therefore, equal to the ten dimensions identified. This was decided by the Project Group. AMI wrote to the Department on the 15th of August in order to get the work in the sub-group initiated and a response was received the following day with a decision to start the work in the sub-group with two-hour meetings, as follows.

You then set out, in a table, the dates and the times at which the sub-groups were to meet?

A. Correct, that's fine.

Q. And just, they all appear to have been on the 29th of August, 30th of August, 1st of September, then some of them th of September, 7th, 8th and -- 8th of September; is that

right?

A. Correct.

Q. Just, can you indicate to me who, typically, were at these, in terms of members of the Department, who would have been present at these?

A. I will answer here that that comes in some of the following sections which we are going to read into the record.

Q. For instance, in particular I want to ask you, was there any Department person present for the market development meeting and the coverage meeting on the 29th of August?

A. Yes, this was what I answered before, that this comes in the following sections which you are going to read into the record.

Q. Just --

A. It comes in some of the following sections, the answer to that, so the question is yes, there were -- you know, there were members from the Irish civil servants in each of these groups.

Q. At those meetings on the 29th?

A. On the 29th?

Q. Yes, and the 30th?

A. Okay. I don't recall particularly those meetings, but if you look at the -- if you look at some of the minutes of meetings from these groups, you can see that there were members from the civil servants from, I believe, the 6th of September and onwards.

Q. Does that mean, and I don't want to force words into your mouth, but does that mean that the minutes record the presence of civil servants from the 6th of September onwards?

A. Sorry, could you repeat the question?

Q. Are you saying that the minutes record the presence of Irish civil servants from the 6th of September onwards? I am not trying to trick you; I am just asking you, are you saying to the Tribunal that the minutes that you have seen record the presence of Irish civil servants at meetings from the 6th of September onwards?

A. I am trying to be as helpful as I can, you know. What I have -- what you have here are not minutes; it comes from a memo that I had written to the Department, so it's not correct, with all respect, Mr. McDowell, to take it as minutes.

Q. No, I am asking you are you making the point that you are -- that there is a record of attendance of Irish civil servants at meetings from the 6th of September onwards but not before that time, is that what you are saying?

A. It's not what is said here. What is said here is that I wrote to the Department on the 15th of August in order to

get the sub-groups started.

Q. I know what's said here, but I am just asking you, from your recollection now, doing the best you can, is it your impression that the Irish civil servants were present from the 6th of September onwards?

A. Yes.

Q. And not before that?

A. I cannot see, from the records, that they were present before.

Q. I see. Now, I think you said that, after those meetings, subsequent meetings were held after those meetings so that each sub-group would typically have met three times and have had inter-member communications and discussions between those meetings, as well as contact in the number-crunching team -- to the number-crunching team. The number-crunching team is Mr. Vinter; is that right?

A. Correct.

Q. And he was a one-man team, if I can use that phrase about him; is that right?

A. Yeah, essentially, yes.

Q. Now, the weightings ascribed to each dimension were determined by the Project Group. In addition, you refer us to paragraph 17. Each of these sub-groups dealt with each of the dimensions identified in the RFP. However, for practical reasons, licensed payment was treated in conjunction with financial dimension and the same individuals comprise the Project Group GSM sub-group assigned to evaluate each of these. The technical sub-groups had finished their work around 14 September, , in Dublin. The marketing, financial and management sub-group finished their work the following week in Copenhagen.

What date do you think those meetings took place in Copenhagen?

A. That was the -- as I recall it, the 18th and the 19th of September.

Q. Just, Ms. O'Brien reminds me that the Irish civil servants, in their evidence, said that they thought it was the 19th and the 20th rather than the 18th and 19th. Are you --

A. Sorry, which dates?

Q. Ms. O'Brien reminds me that, in evidence, the Irish civil servants said that their recollection was that this meeting took place on the 19th -- these meetings took place on the th and 20th of September, and not the 18th and 19th.

A. That may very well be the case. In actual fact, they also came twice, they also came on an earlier occasion.

Q. Now, you said most preparatory work and meetings took place in Dublin, although some facilities were provided in

Copenhagen, also. The quorum of the meetings was at least three people who had to be present at each of the sub-group meetings. There had to be at least two civil servants at each sub-group in order to vote and score the applicants. Typically, there were also two AMI consultants in each sub-group. The meetings would, in most cases, start off with AMI consultants presenting work, some of the results from the number-crunching and quantification work, thereafter suggesting indicators and sub-indicators based on the reading and initial analysis of the applications. Following discussions, supplementary analysis, etc., the sub-group members would then proceed to award marks. The duration of the sub-group meetings would differ widely depending on the prepping of the sub-group members, the nature of the dimensions in question, etc. Following the final meeting, AMI would typically draw up a note which recorded the salient observations of the sub-group, in a manner that could be easily transferred to the Evaluation Report when the time came to prepare it. However, the Irish civil service also took the lead sometimes and drafted limited portions of the report; for instance, Maev Ni Lochlainn drafted the language in the report on applicant's roaming plans and Fintan Towey drafted the language in the report dealing with the financial dimension and performance guarantees. Members from other sub-groups were welcome to participate in any other sub-group meeting as the meetings were not closed. Several members took advantage of this, including myself. All the groups were configured with members from both the Irish civil service and the AMI staff. The discussions in the groups were open-minded and reached consensus in an iterative process in regard to the scoring of the 56 indicators. The different members were also welcome to comment on the results arrived at in other sub-groupings or the sub-group reports circulated. After the sub-group reports had been drafted, circulated, commented on and approved, the main body of the reports would often be imported into the final Evaluation Report. There was no ex ante weightings attached to the indicators and sub-indicators. Each sub-group produced a unanimous marking in connection with the applicable dimension. In addition, 17 civil servants and seven consultants all agreed the result of the evaluation process.

Question 21, you were asked for precise details of the difficulties which were encountered in scoring certain indicators in the course of the quantitative evaluation as recorded in the minutes of the Project Group meeting of the 14th of September.

And you reply: Difficulties associated with scoring certain aspects are explained in response to question 10. After a long session in the Project Group on the 4th of September at which those difficulties were discussed, Project Group concluded that the separate quantitative evaluation was not sufficient on its own. Details of the difficulties are described in the minutes of that meeting and also at Appendix 2 of the Evaluation Report. However, version 3 of the quantitative evaluation was brought back to the meeting of 9 October, 1995, and fully considered. We refer to Lisbeth Bork's memorandum forwarded to the Tribunal by Carol Plunkett on the 20th of June, 2002. The question of revisiting quantitative assessment was, in any event, not contained in either paragraph 19 of the RFP or the Evaluation Model. It was, however, fully considered during the qualitative evaluation phase and was reflected in the final Evaluation Report.

Isn't that right?

A. Yes.

Q. Details of all advices, you were asked for, and recommendations made by Andersens to meet the difficulties encountered in scoring indicators in the course of the quantitative evaluation, together with details of all steps actually taken to meet such difficulties.

And your response is: See the response to question 10 with regard to the quantitative evaluation. Michael Andersen doesn't recall any specific advice or recommendation given by AMI with regard to the quantitative evaluation. However, for purely statistical reasons related to the low reliability and validity of the quantitative evaluation, AMI was in agreement with the Project Group decision not to issue a separate quantitative evaluation document. This is very clearly based on the fact that A6 came out with the highest score in the third draft while the holistic evaluation went in the direction of A6 not being among the best three applications according to the holistic evaluation. The quantitative evaluation was, at the same time, perceived as very much the idea of some of the civil servants in the Department and the Department of Finance, driven by the desire to run an evaluation of more of an auction-based nature than in a beauty-contest fashion. I'll just stop there to say: Are you, in that reply, asking the Tribunal to infer that there was more emphasis and more interest in the quantitative evaluation at civil-servant level, rather than -- that that's where the pressure was coming from for concentrating on the quantitative evaluation?

A. That is correct. When we look at the beginning of the

evaluation process, when AMI was just retained, that came as a wish from the civil servants, but it didn't transpire throughout the entire evaluation, and as is also read into the record here, the evaluation methodology was further developed following the intervention of the EU Commission.

Q. And could I ask you -- we'll deal with that later, but could I ask you, just briefly, you are saying that the quantitative evaluation was, at the time, perceived as very much the idea of the civil servants and the Department of Finance, and I am just asking you, in relation to that issue, does that indicate a view on your part that it was not something that you would have done or given much -- as much weight to if you had been left to your devices?

A. That is fair to say because it's a matter of priority, and when I started the cooperation with my client, I met a clear wish to, you know, give the quantitative evaluation approach a higher priority than I had envisaged at the time.

Q. Now, it was recognised that a separate quantitative evaluation was of no value. Some of the applications received insufficient -- contained insufficient information. For this reason, questions were issued on 24 August, 1995. Answers were received in or about 4 September, 1995. Many of these did improve the ability of the evaluators comparatively to assess the applications. However, these answers also demonstrated that the applicants had used widely differing assumptions -- had widely differing assumptions in terms of key elements of their bid. For example, metering principles, initial call charges, etc. The same applied to blocking and drop-out rates, as discussed under paragraph 22C1 below.

And you say the use of such differing assumptions was, in AMI's opinion, attributable, to a significant degree, to the ill-defined manner in which the evaluation criteria had been presented in the RFP. It would not have been appropriate to go back to the applicants again and seek further information one more time. In beauty contests of this kind, the opportunity to extract further information is limited as the information which is furnished becomes more and more tactical as the applicants are aware that written applicant-specific questions during the culmination of an evaluation process are to be used in the evaluation process. Some applicants could, therefore, typically provide figures and/or kinds of information that they perceived would result to the award of more favourable scores to them, such as including unrealistic and inflated figures would be provided.

At 22A, you were asked for details of all matters or

factors which prompted the recommendation made by you to the Project Group on the 14th of September, 1995, that the applications should be divided into two decisions in terms of their further evaluation and that greater resources should be directed to the evaluation of the first division applicants, that's A1, A3 and A5. You were asked for the factors and considerations which underlined the division of the applicants in that manner.

And you responded: In light of the fact that the Department changed the contract with AMI so that the focus should be to identify and rank the top three applicants, AMI felt it natural to concentrate resources on the first three -- first division of the applicants. This was particularly so when the evaluations were already advanced around 14 September, 1995, and where two different leagues were clearly identifiable. In addition, you say, please look at the answer to paragraph 19 above.

The factors and considerations which underline the division of the applicants were as follows:

- A) all sub-groups had advanced their work, as is evident from the draft sub-group evaluation reports; and
- B) the impression formed by the evaluators following the stress-testing of the applicants during the presentation meetings;
- C) the answers received to the applicant-specific written questions;
- D) the number-crunching exercise.

Then you were asked what your knowledge, direct or indirect, of what prompted Martin Brennan to observe to the Project Group meeting on 14 September, 1995, and recorded in the minutes of the report of that meeting, that, "Whilst no further contact should be had between the Evaluation Team and applicants, access to the Minister could not be stopped." And you say that you had no knowledge of what prompted him to make that statement regarding access to the Minister; is that right?

A. That's correct.

Q. And just while we are on that, whereas you say that you had no knowledge of what prompted him to do it, did that statement create any impression in your mind at the time? Did it worry you in any way?

A. No. I have no recollection of it, really.

Q. I see. Now, paragraph 22, you were asked to identify 22C, all factors and considerations underlying your recommendations of the 14th of September, the supplementary analysis could be conducted in relation to blocking/drop-out rates, financial analysis comparing Sigma Advent, adherence to EU procurement rules and tariff and

interconnection.

And your answer to that is: The recommendations concerning blocking and drop-out tariffs and interconnections was based on the fact that different quantitative assumptions in the applications might have had an impact on the evaluation result. AMI had identified the need to do something specific in these fields at an early stage and sent a memorandum to Fintan Towey on 5 August, 1995. This memorandum foresaw -- 15 August, 1995. This memorandum foresaw not only the need for written application-specific questions, but also the need for additional and supplementary analysis. Fintan Towey approved this on 16 August, 1995. Subsequent developments included the response to written applicant-specific questions only confirmed this need. The background for the supplementary analysis on adherence to EU procurement rules was based on risks identified by Tage Iverson, who reviewed the evaluation and who was also present at the presentation meetings. The reason for a supplementary and financial analysis was based on the work in the financial sub-group, the input from the presentation meetings and the discussion in the Project Group.

Paragraph 23, you were asked for precise details of the evolution of the decision that the qualitative evaluation should be decisive and should take precedence to the quantitative evaluation, and you say the premise upon which this question is presented is not accepted. It was never intended that a quantitative evaluation should be relegated to or displaced by a qualitative evaluation; rather, the evaluation comprised a combined quantitative and qualitative evaluation. Accordingly, it is incorrect to assume that the qualitative evaluation, as such, would be decisive on its own or have precedence over the quantitative evaluation. And you refer the Tribunal back to question 10; is that right?

A. Yes, I am just wondering, it reads "Accordingly, it's incorrect to assume that the qualitative should have precedence over the quantitative..." yeah, that's correct.

Q. Are you happy with that?

A. I just wonder whether the qualitative and quantitative have been exchanged.

Q. Oh, I see.

A. So, I think it's, unfortunately -- I would like not to mix it up because I am trying to be helpful to assist the Tribunal here, but I think, in assisting the Tribunal, I have mixed up the two words, so it should read --

Q. It looks like that.

A. Okay, it should read "Accordingly, it's incorrect to assume

that the quantitative evaluation, as such, would be decisive on its own or have precedence over the qualitative evaluation." Sorry for that.

Q. You were asked about your knowledge of any other person of the decision that the qualitative evaluation should be decisive and should take precedence, and you refer them back to the previous question.

You are asked again in question 25 about details of all discussions between Andersens and members of the Project Group on that issue, and again you go back to question 23 and your answer given.

At paragraph 26, you are asked for precise details of Andersen's role in and knowledge, direct or indirect, of the evolution of the following decisions: The decision not to score other aspects of the Evaluation Models, i.e. the indicators of sensitivity and credibility, and the decision to confine the consideration of the indicators to comment within the body of the Evaluation Report as referred to in a letter dated 21 September, 1995, and as referred to in the Evaluation Report.

And at 26, you say other aspects was not an evaluation criterion numerated in paragraph 19 of the RFP. AMI, therefore, took the view, as consultants to the Department, to support the Department and the PTGSM in their view that it would be unfair to apply scores or marks to this criterion. Moreover, there is an issue in respect of terminology. It is not correct to suggest that sensitivities and credibility were separate indicators in the evaluation. They were not among the 56 indicators. Finally, it became clear, towards the end of the evaluation, that the sub-groups, during their evaluation, had already taken risk factors, sensitivity and credibility factors into account in the evaluation. Sensitivity and credibility were discussed in the Evaluation Report. This is an unremarkable thing for AMI, as consultants, to do. Moreover, the Project Group had approved the contents of the Evaluation Report, including the discussion of sensitivity and credibility. The Project Group unanimously approved the Evaluation Report.

Now, at question 27, you were asked for details of all matters which prompted Andersens to issue the letter of 21 September, 1995, together with details of all discussions between Andersens and any member of the Project Group or any other person regarding the contents of the letter, together with details of all matters which prompted or influenced Andersen's view, as recorded in the letter of the 21st of September, that consideration of the indicators of sensitivities and credibilities should be confined to

comment within the body of the Evaluation Report.

And your answer to that is that, by mid-September 1995, the technical parts of the evaluation, that is the radio network architecture, coverage, network capacity, performance guarantees and frequency efficiency, had been completed at sub-group levels. The remaining dimensions, namely financial, marketing and management issues, had been significantly progressed and were very nearly complete.

The last and few remaining sub-group meetings were scheduled to take place in Copenhagen on the 18th and 19th of September, 1995. Michael Andersen personally drafted the agenda for these meetings. Those meetings took place in Copenhagen as scheduled. Following these meetings, the major elements of the results of the evaluation emerged.

In this context, AMI authored a memorandum dated 21 September, 1995, primarily as a logistical exercise to facilitate the progress of the evaluation to enable AMI to complete the Evaluation Report and to ensure that AMI was not working in the dark in this regard. The report had to be completed under considerable time pressure. In addition, it was necessary for AMI to obtain and, where appropriate, reflect feedback from the Department on the contents of the Draft Evaluation Report. For example, Michael Andersen recalls that Martin Brennan and Fintan Towey told AMI that the so-called grand total should be scored according to the guide to the mark-giving. The guide -- the guide to the mark-giving was contained in the model presented in June 1995 by the Department. (See Appendix 3)

At question 28, you were asked for details of the analysis and investigation undertaken by Andersens or the Project Group or any other person in assessing the indicators of sensitivities and credibility, and you say the sensitivities and risks were not indicators. Indeed, there was no definition in the RFP of sensitivities and risks, and sensitivities and risks were not an evaluation criterion set out in paragraph 19 of the RFP. However, as part of the overall analysis by the sub-groups of the Project Group, sensitivities and risks were part of their evaluation. Reference is made to the answer to question number 26.

The treatment of sensitivities and risks is described at chapter 5 of the final report and notably in Appendices 9 and 10 of the Evaluation Report. Michael Andersen was not involved in these investigations. To the best of Michael Andersen's recollection, Tage Iverson, a noted top-level civil servant from the Danish national Telecom Regulator, John Bruel and Michael Thrane of AMI and Fintan Towey of

the Department and Billy Riordan and, to an extent, Donal Buggy from the Department of Finance, were involved in this aspect of the evaluation.

Question 19, you were asked for your understanding of the precise status of the data comprised in the tables of the quantitative evaluation, the status of the rankings resulting from the quantitative evaluation, the manner in which the qualitative evaluation was applied to the data comprised in the tables arrived at final ranking in the Evaluation Report, and your reply is: This was what was presented -- this is what it was presented to be; namely, raw data. There was no ranking resulting from the quantitative evaluation. (See response to question 10 with regard to the quantitative evaluation). As already noted, the evaluation comprised both a quantitative and a qualitative evaluation. As noted above, there was no separate quantitative Evaluation Report. Accordingly, there was no ranking resulting from quantitative evaluation that was carried out by PTGSM. It is correct to say that the -- sorry, it is incorrect to say that the qualitative evaluation was applied to the data comprised in the tables in order to arrive at a final ranking of applications. The evaluation, as explained above, was a holistic one, which comprised a combination of quantitative and qualitative evaluation techniques.

And you were asked at question 30: Please provide details of the supplementary final analysis conducted in respect of Advent, Communicorp and Sigma as referred to in the minutes of the eleventh meeting of the OSM Project Group on the 11th of September, 1995, and the results of such analysis. And you say: Three years of negative solvency, i.e. an excess of liabilities over assets on its balance sheet, combined with the comparatively weak financial position of Communicorp Group, based, among other things, on a relatively low level of equity capital, were identified as risks attached to Communicorp. Similar risks were identified in connection with Sigma. It was decided between the 9th of October, 1995, and the 18th of October, 1995, that Billy Riordan of the Department of Finance and Michael Thrane and John Bruel of AMI should perform a supplementary examination in the form of conducting a number of credit checks. This analysis is comprised in Appendix 10 of the final Evaluation Report. Furthermore, Billy Riordan and, possibly, Donal Buggy and other individuals in the Department of Finance undertook the responsibility of making some other investigations. Michael Andersen recalls that these investigations showed that Sigma had mortgages and charges registered against it.

Now, I just want to ask you, before we pass from that, are you sure that that decision was made between the 9th and the 18th?

A. Which decision?

Q. The decisions referred to in paragraph 30.2 there?

A. Yes, and there was also -- it's also a matter of fact that there were conducted such track recording as stated here.

Q. The next query to you asked you to provide details of the following: The conclusions reached by Billy Riordan following investigation of Advent, Sigma and Communicorp, together with which Andersens were in agreement, because you refer to that in a letter dated 26 September, 1995, from Andersens to Mr. Riordan; the subsequent discussions regarding these conclusions and how they should be incorporated in the risk analysis, the actual manner in which these conclusions were incorporated into the risk analysis and whether these matters were referred to in the draft or final Evaluation Reports.

And your answer to that is: Michael Andersen has not seen these conclusions and, accordingly, is not in a position to comment on their content. Michael Andersen was not privy to discussions between Billy Riordan and Michael Thrane and John Bruel, who are the AMI personnel who drafted this part of the report. Michael Andersen was not privy to the actual manner in which any conclusions by Billy Riordan and subsequent discussions regarding them were incorporated in the risk analysis. Potential risks for A3 and A5 were referred to in the Evaluation Report.

You were then asked for the date of the meeting attended by Martin Brennan and Fintan Towey in Copenhagen with representatives of Andersens at which the results of the evaluation were consolidated and the ranking emerged, which ultimately became the ranking of the Evaluation Report, together with the names of all persons present.

And your answer to this is: According to Michael Andersen's recollection, the ranking of the best three applicants gradually emerged in September 1995 around the time of the presentations and its aftermath, and very strongly at the end of the Project Group sub-group meeting session in Copenhagen on the 18th and 19th of September, . At this stage, bearing in mind that the five technical groups had already finalised their entire work the week before and that the results of the five remaining sub-groups were also finalised, leading forward to a complete scoring of all ten dimensions, only one final mark to an aspect and the grand total was outstanding. Both these marks could be assessed as the weighted sum of dimensions in the case of an aspect and the weighting sum

of the aspects in the case of the grand totalling. Michael Andersen does not recall any further meeting with Martin Brennan and Fintan Towey in Copenhagen, other than meetings on the 18th and 19th of September, 1995. According to Michael Andersen's diary, he and John Bruel were in Sweden on the 28th of September, 1995. Neither Martin Brennan nor Fintan Towey were present with them in Sweden. Michael Andersen and John Bruel were in Sweden on other business. Michael Andersen recalls a conference call around that time, but a formal Project Group meeting did not, to the best of Mr. Andersen's recollection, transpire.

Now, I just stop there. I mean, this is a matter of some importance. What you are saying there is there's a meeting, in respect of which Mr. Towey and Mr. Brennan have given evidence to this Tribunal, in Copenhagen, after the 18th and 19th of September, 1995. As far as you are concerned, that meeting never took place?

A. Yeah, I can see in my calendar that I took to Sweden on the 28th of September, and, according to my calendar, I was also in Sweden on the 28th of September.

Q. Well, apart from your calendar, here you are aware that these two men have said that there was a meeting in Copenhagen at that time, at which, to their recollection, the results of the evaluation were consolidated and the ranking emerged. Are you saying that, regardless of what date, it was not later than what you described as the meetings of the 18th and 19th of September, 1995?

A. That's correct. What I recall is that there were Irish civil servants in Copenhagen two times: one time in early September, as we have discussed earlier, for sub-group meetings, and then on the 18th and 19th of September -- I know that Jacqueline O'Brien states that it's the 19th and 20th, we went over that before, but according to my recollection, it was the 18th and 19th of September.

Q. So -- I just want to be clear about this. A meeting later on in September at which the evaluations were consolidated and the rankings emerged which ultimately became the rankings of the Evaluation Report, that simply did not happen, as far as you are concerned, such a meeting in Copenhagen?

A. I have no recollection about it and I have tried, because it's 15 years ago, I have tried to ask, also, my colleague at the time, Mr. John Bruel, whether he has any recollection, and he doesn't have any recollection, either.

Q. Can I ask you, does it appear to you as a likely kind of meeting that two people would come from Dublin and that you'd consolidate all the results from the various groups and evolve a ranking? Does that strike you as the kind of

thing that might have happened, that two civil servants from Dublin would come to you and have that meeting with you?

A. Well, what I recall is that there is -- there were some telephone meetings - well, at least one conference call. It might be likely, it might not be likely, I don't -- you know, it's not for me to speculate. I am here to give evidence and try to assist the Tribunal with my recollection.

Q. Yes, I accept that.

A. And, you know, it would be easy, but unfair of me, to say that it was likely but I have no recollection of it.

That's the problem I have.

Q. But in terms of the structure of the competition and the processes and the procedures that were adopted, would it be likely that two people would attend a meeting with you at which these critical -- these critical calculations would be made and critical determinations made about the result of the competition?

A. Well, I would, in principle, see no problems with meetings and discussions between AMI and the two persons you mention, because they were the clients of AMI, and it is only natural that there is a lot of discussion between a consulting company and a client. So that is likely. But I don't accept the way you word the question about, you know, finalising the scoring, finalising the ranking, etc., because the way it was construed was that the PTGSM, namely the steering group, should also be involved at least at some stage. So any --

Q. I --

MR. GLEESON: Let him answer the question.

MR. O'DONNELL: He's got to be allowed to answer.

CHAIRMAN: I don't think Mr. McDowell is interrupting. He has had full latitude to answer. Let's, please, not get into that.

MR. GLEESON: Sorry, Mr. Chairman, he was in the middle of an answer.

CHAIRMAN: Proceed, Mr. Andersen.

A. The decisive thing in an evolution methodology is the one we applied, is whether all the people who were involved in marking and scoring, whether they actually agreed with the scorings, and all work prior to the 3rd of October version of the Evaluation Report could only be preparatory work.

Q. MR. McDOWELL: You see, you have used the phrase, and I am just reading from the screen, that "I don't accept the way you word the question about, you know, finalising the scoring, finishing the ranking, etc., because the way it was construed is that the PTGSM, namely the steering group,

should be involved at least at some stage." And I am asking about that phrase, "at least at some stage"; what did you mean by that?

A. Well, the way that this was organised, I think the term "construed" may be a wrong word for me to use, so the way it was organised was that the Department was my client, and my client had opted for having a steering group involved in this process, so it would only be natural for us, during the working process, to say, well, we have had these ten sub-groups. We can calculate the results of the work of these ten sub-groups and we will try to put that together in a report and then present it to the steering group.

Q. Yes, but you see the point --

A. So that could be, you know, a further, you could say, qualitative check or if -- you know, of the work.

Q. I am asking you a different question, Professor Andersen.

A. Okay.

Q. Maybe -- I am asking you to explain the phrase you used, that the PTGSM would be involved "at least at some stage". What did you mean by that phrase "at least at some stage"?

A. Well, I could refer to many documents, but let me just take one document. The document on the 14th of September, 1995, you would recall that there was an obligation for me, as a consultant, and for AMI, as the consulting firm, to take any views from the PTGSM into account in the Evaluation Report. So we would know, already, during the work, that the results of the work should be presented in an Evaluation Report and that that report should be presented at the level of the steering group and that we were then obliged to take into account views expressed by this steering group.

Q. You see, you said "at least at some stage". I am asking you what you meant by that phrase when you employed it there, that "the steering group should be involved at least at some stage"?

A. If you look --

Q. I mean, what did you mean by the words "at least"? What are you trying to convey by that phrase?

A. I am trying to convey that any work in and around that time would have to be processed due to the speediness of this, whether we could have a steering group meeting or not. So what I mean by "at least at some stage" is that I knew that there was going to be a scheduled steering group meeting on the 9th of October. So I would know that, at least at that stage, there would be a Project Group meeting.

Q. But in the meantime, there was nothing to stop you having a meeting with your client, the Department, in the form of two civil servants, at which the evaluations would be

consolidated and which the rankings would emerge?

A. That would only be natural, but as I have told you, I have no recollection of such a meeting, but it would be only be natural that a consulting company, working so hard and working under such a time pressure and -- have some discussion with their clients from time to time. That would only be natural, in my view. In essence, I don't see how you could actually progress the work without having a dialogue between a consulting firm and the client.

Q. Well, in relation to -- do you remember, at any stage at that point, having -- it being necessary to have a meeting of any kind with Mr. Brennan and Mr. Towey in late September?

A. That is abundantly clear from the communication, because I wrote a memorandum dated the 21st of September where I requested either a meeting or a telephone conference call.

Q. I see. So what you are saying is that you expected that there would be such a meeting?

A. No, that's not what I am saying.

Q. Or a conference call?

A. Exactly, that's what I am saying, and what I recall is that we had a conference call.

Q. I see. And you say you recall a conference call with -- who participated in it?

A. People from the Department.

Q. Could it have been Mr. Brennan and Mr. Towey?

A. Probably, but maybe also other people.

Q. I see. Now, you were asked to outline how the tables numbered 16, 17 and 18 in the first Draft Evaluation Report dated the 3rd of October were generated.

And your answer to that is: Table 15 was the result of the work in the evaluation sub-groups expressing the unanimous vote of the evaluators. Table 16 was subsequently drafted after Table 15 and contains the weightings agreed by the Project Group. AMI undertook to regroup the dimension in the same order as they appear in paragraph 19 of the RFP with the agreed weightings attached to each dimension.

Table 17 converts the marks to points. And then you say: The idea to work with numbers instead of letters came from some of the Irish civil servants and was discussed also during the last evaluation meeting in Copenhagen on the 18th and 19th of September, and AMI, therefore, undertook to establish Table 17 subsequently. AMI did not disagree with taking this type of presentation into the report, "although such a calculation distorts the idea of a qualitative evaluation." That's in quotes. What do you mean by that, that it distorts the idea of a qualitative evaluation?

A. That is -- that is because the idea of the qualitative scoring was to base it on the A, B, C, D scores or grades and that was how the work took place in the evaluation sub-groups.

Q. Your reference, you said that this came from some of the Irish civil servants. Can you recall was this Mr. Brennan; did he suggest a change from letters to numbers?

A. I think it was him who suggested it, yes, that's my recollection, and I didn't oppose it.

Q. Could he have said to you words to the effect that looking at the result in letters left him in the dark as to what the ranking actually was among the participants, that he couldn't understand -- that he couldn't see a result in the letters?

A. He couldn't or?

Q. Yes, could he have said that to you?

A. No, I don't think so.

Q. Well --

A. Or let me put it in that way: I don't recollect it.

Q. What explanation do you recollect him giving for asking you to shift from letters to numbers?

A. I recollect an explanation that it was easier to comprehend.

Q. Maybe we are talking about the same thing.

A. Okay.

Q. That he couldn't see a result in letters but he could see -- it would be easier to see a result in numbers?

A. I think he could see the result in letters also, but it was easier for him to comprehend with figures.

Q. I see. You did comment that you didn't disagree with that type of presentation, but you qualify that by using a phrase in quotation marks "Although such a calculation distorts the idea of a qualitative evaluation." How does it distort it?

A. That was what I tried to answer before, that the scoring philosophy was to go around with A, B, C, D, the A, B, C, D, E scale, sorry, we have to have the E also, and when you convert, it can be a little bit mathematical here, but if you convert from letters to numbers, how should you convert? Well, it was decided that the conversion should be on the basis that E was equal to 5, D to 4, etc., but that leaves a mathematical problem behind because E was, for instance, the score for an applicant not giving any information or not providing anything, if you understand. And when you convert with 5, 4, 3, 1, then you do not start from a zero. So there would always be the issue of how to convert letters to figures. This is just one, you know, qualification of my concern.

CHAIRMAN: Professor, am I correct in my rather simple understanding of part of this, is that if you take A, B, C, D, E, you might be talking of five bands, of which the top one would be 80 to 100, is that correct?

A. Sorry, what -- excuse me, what do you mean by 80 to 100?

CHAIRMAN: If you are taking five grades, A, B, C, D, E, would they be five divisions of 20 out of 100?

A. Yes, I think so.

CHAIRMAN: And it occurs to me again, and I may be being too simplistic in this, that you may have, perhaps, if somebody gets 81 out of 100 and somebody else gets 79, there is only 2% difference, but if you convert it to grades, it's a whole grade?

A. Yeah, I think that's fair to say, that's fair to say.

Q. MR. McDOWELL: And you are left, aren't you, also, philosophically, with the problem that if somebody has, say, three Cs, a B and an E, and you are comparing them with somebody who has a D, two Bs and two Cs, or something like that, that it's very, very difficult to look at them and say, well, I am going to decide their order, the order of their merit, without attributing some weight to how an E compares -- how, say, two Ds compare with one E and one B, isn't that so?

A. Yeah, that's correct, yes, and that was the reason for my, we'll say, concerns about this conversion, so I didn't object, as such. I think it is -- you can do, you know, all kinds of conversions you would like, you can present things in many ways, but my preference would be to go along with Table 15, as originally envisaged.

Q. But it does, of course, have the effect that somebody using the Chairman's example, who figuratively has scored 19 in an exam, is given the same mark as somebody, or the same numerical value as somebody who has written down nothing on his exam paper, who gets a zero, if you hand out a value for the class E, isn't that right?

A. That's right, yes. And there is one problem more. If we -- if you look at how you go along with letters, you would have an interval around a letter, which means that if you take a B, for instance, a B could be, in a numerical sense, anything from 3.45 to 4.44, that's an interval around a letter, which you, when you assess it by way of judgement, you can say, well, there were, let's say, two very strong As, two very strong Bs and a little C, and then you can see, well, how is your general judgement when you are going to a final score then? Whereas that is a little bit lost when you just mechanically convert letters to numbers.

Q. I mean, I think it would be fair to say that letter grades -- would it not be fair to say that letter grades

are soft, whereas numerical values are artificially and perhaps distortingly hard, is that the point you are making?

A. At least in an evaluation like the one we have here where there were no very clearly defined evaluation criteria and where everything was worded as we have just been through in paragraph 19 of the tender documents, yes, that's my answer.

Q. Now, the one thing I would just -- again, I don't want to put words in your mouth, but can you assist the Tribunal; is it your evidence that you were reluctant to switch from letters to numbers in your own mind intellectually?

A. That's fair to say, yes.

Q. And would you add to that that if asked was it a good idea, you'd have said no, it's not a good idea, really?

A. No, I was asked, I was asked, and I also said that I was not -- I think I used the phrase I was not particularly fond of that exercise, so I didn't resist it.

Q. And can you recall when that conversation took place, Professor?

A. Yes. According to my recollection, that was on the 19th of September when we essentially finalised the evaluation. At that stage, on the 19th of September, you will appreciate, from the records, that all the meetings in the sub-groups had been held, all the scores had been given.

Q. Well, what about the financial evaluation at that point?

A. That had also been finalised.

Q. Well, are you sure about that now?

A. In the financial sub-group, yes.

Q. And had all the work been done? Was everybody happy with the results of the sub-group?

A. According to my recollection and according to the information that I got, yes.

Q. Now -- so in relation to the transformation from letter grades to numbers, you believe that this was suggested to you by Mr. Brennan on either the 18th/19th or 19th/20th of September, depending on what days the meeting took place, and the Tribunal is to draw the inference that you were not -- you expressed, if not opposition to it, the view that you weren't fond of that proposal?

A. I said I was not particularly fond of it but I wouldn't resist it, yes.

Q. And was that on the basis that you thought it was potentially distorting, to use the phrase you use here, "such a calculation distorts the idea of a qualitative evaluation"?

A. Yes, distorts the idea of going with letters, yes.

Q. Now, you are asked at paragraph 33 to give your

understanding, as of the date of the meeting in Copenhagen, of the deadline for presentation of the Draft Evaluation Report and final Evaluation Report and the intentions of the Minister or the Department regarding the announcement of the evaluation result, together with the source of their understanding.

And you say: This question is premised on AMI's understanding by reference to the date of the meeting in Copenhagen. As noted above, Michael Andersen's understanding is that there was no physical meeting at which he was present with Martin Brennan and Fintan Towey on the 28th of September, 1995, in Copenhagen. The dates and deliveries of the draft report and final reports were set out in contractual amendments in the letter from the Department dated the 14th of September, 1995. AMI's ultimate deadline for the furnishing of its final Evaluation Report was the 25th of October. It was agreed as between AMI and PTGSM that the first draft of the Evaluation Report would be furnished by the 3rd of October. Is that right?

A. That's correct.

Q. And then you are asked details of all advices given and recommendations made by Andersens regarding further supplementary or confirmatory analysis which would be appropriate after the completion of the qualitative evaluation and consolidation of the scores.

And your answer to that is that AMI requested further analysis to be done at the time of the presentations. This was adequately addressed by the appropriate sub-group and AMI and Mr. Andersen had no residual concerns at the time the report was finalised. AMI requested no additional analyses. This is because there was a clear result; namely, A5 was considered to be the winner on a unanimous basis by the Project Group and there was unanimous adoption of the Evaluation Report.

You were asked for details of all dealings which you had with Martin Brennan, Fintan Towey or other -- any other departmental official regarding the delivery of the first Draft Evaluation Report, the final Draft Evaluation Report and the final report by Andersens.

And you say that AMI delivered the final Evaluation Report on the contractually-agreed date of the 25th of October, , which was set out in the letter from Martin Brennan to Mr. Andersen dated 14 September, 1995. The drafts of these reports were also delivered on the contractually-agreed dates.

You are next asked for details of all matters discussed and raised at the Project Group meeting on 9 October, 1995,

including, in particular, the following:

Mr. Brennan's statement in relation to the Minister's state of knowledge regarding the outcome of the competition; statements made by Mr. Brennan regarding the Minister's views of the Draft Evaluation Report and/or the approach that should be adopted in the drafting of the final report, and, in particular, the Minister's view that the report should not undermine itself and/or that the project should be treated as bankable, as recorded in the contemporaneous note of the meeting kept by Ms. Margaret O'Keeffe.

Secondly, discussion on the quantitative results and how those results should be integrated into the Evaluation Report.

Third -- sorry, fourth, the discussions of the weighting of information -- sorry, weighting of dimensions as shown in tables 17 and 18 of the first draft report.

Fifth, the request made by certain members of the Project Group that consideration should be given to the appropriateness of awarding the licence to Esat Digifone, having regard to the Department's experience in dealing with Esat Telecom.

Lastly, discussion of section 4 of the first draft report and the analysis of the risks, sensitivities and credibility as outlined in that section and as analysed in Appendix 10.

And you give your answer to that as follows:

Michael Andersen's recollection of matters discussed at the PTGSM meeting of the 9th of October, 1995, is as follows:

A) it should be noted at the outset that the process had not completed by the 9th of October, 1995, as the Evaluation Report had not been finalised. However, the principal results of the evaluation had emerged by mid-September 1995. It was considered by the Project Group logical that the Chairman of the Project Group should give a briefing to the Minister as to the process of the evaluation -- progress of the evaluation. The decision to do so was not Michael Andersen's, nor does he believe it was made by AMI. However, neither he nor AMI had any objection to this. AMI representatives were present at the meeting of the 9th of October, 1995. However, Michael Andersen has no recollection of any statement dealing with an alleged state of knowledge on the part of the Minister regarding the outcome of the evaluations. Michael Andersen does not recall Mr. Brennan outlining any alleged view that the Minister had in relation to the Draft Evaluation Report. As regards the concepts of the bankability, AMI, together with delegates from the Department of Finance, introduced this concept at an early stage in the working of

the financial group.

I'll just stop you there. When you say that you introduced the concept of bankability, was it you personally or was it other members of AMI?

A. I think it was other members of AMI.

Q. And did they make -- in any of the internal documents of AMI, is there any, to your knowledge, is there any record of bankability being introduced by your colleagues in AMI as a concept in relation to this award of the licence?

A. You know, based on my recollection, there would be ample evidence, because it was a term generally used by AMI consultants.

Q. But I am asking you is there any record of it? If it was so generally used, is there any record in AMI, or was there, to your knowledge, of anybody from AMI actually proposing this concept?

A. In the context of this tender, I don't recall. There may be, there may not be. I don't recall.

Q. And if Ms. O'Keeffe is correct in saying that the Minister had a view that the project should be treated as bankable, and he used that phrase, or was a source of that phrase, is that something that -- is that something that is just coincidence, that AMI also thought the same thing?

A. Well, I think you have to take into consideration here that at that time in the middle of the nineties, there were tenders out for very many GSM operations throughout Europe, so there was a huge business of corporate finance going on where we, all the time, said, is this project bankable or is it not bankable? So if you look at the commercial reality on, you know, us being a consultant in this process, we would always use such a term. That was a general term used.

Q. Could I ask you in that context then, there is a record, apparently, of the group being informed of the Minister's view that the report should not undermine itself. Do you recollect that being said in your presence?

A. No.

Q. Would you have been surprised if that had been said?

A. No. I would fully accept if that had been said because it would only be natural that a Minister who is responsible for the ultimate evaluation -- he is the ultimate responsible also for the evaluation and for the licensing process, that he would have a defensible and good report that would not undermine itself. If I were a Minister, I would do the same. You, as a former Minister for Justice, would not have -- would also have been able to say the same to your civil servants.

Q. But what do you mean by the term "shouldn't undermine

itself"?

A. The conclusions should be -- the results should be robust, for instance. That would be my understanding of it.

Q. I mean, how would a report undermine itself?

A. For instance, if the result was not robust.

Q. In what sense robust? Decisive, is that it?

A. Well, you know, it's not my language. You are asking me about terms that other people are using, so I am here to give evidence. I am not here to speculate about the meaning of words that other people have used and which I had not heard at the time. I mean, it's very speculative now, I must admit, but I am willing to entertain it -- when you ask me, I answer, the result being robust.

Q. And I am asking you, generally speaking, since you say that any Minister would like a robust report rather than one that undermines itself, I am asking you, in those circumstances, what do you mean by the term "robust"?

A. What I would mean by the word "robust" is that the result of the evaluation, or any recommendation that comes out, can stand up to scrutiny. That would -- I mean, if the Minister has used these words, I don't know whether he has, but you say he said that at the time or is being referred to having said that at the time.

Q. He was recorded by one of the civil servants as having said --

A. That's fair enough. If that is the case, I can only see that that is an extremely logical way of expressing that he -- I mean he wouldn't have a report that came up with a recommendation that didn't stand up to scrutiny or was not -- did not have a robust result. I would have said the same if I were a minister, and, luckily, I have never been a minister.

Q. Tell me, regardless of in what capacity you were looking for a robust report, Professor, would a report be robust if two people, or two applications were very close to each other and the analysis suggested that they were close to each other and the analysis was qualitative rather than quantitative, would that be a robust report?

A. Well, speaking hypothetically, that's what you are asking me to do --

Q. Yes.

A. -- it would all depend on the circumstances. If two applicants were neck-and-neck, for instance, if I may use that expression, which was definitely not the case here because there was -- if you compare with horse-racing, it wasn't neck-and-neck here; one was a horse-length ahead of the other. But let me just try to answer your question if it were a neck-and-neck situation of only two applicants,

then I would look very much into whether the robust report would then be a report which had good documentation and also had acceptance from all the people involved. Now, I am referring to the fact that, in these kinds of evaluations, sub-groups were set down, scorings were made, many people were involved. In this case, 17 Irish civil servants were involved and at least seven consultants from AMI. So a robust report would be a report that, even if the applicants were neck-and-neck, that 24 people, on a unanimous basis, actually agreed that one was ahead of the other.

Q. That would be robust?

A. Yeah.

Q. I see. And you are saying that, in this case, it wasn't a question of, to use the horse-racing metaphor, them being ahead or a neck apart; it was a full horse-length between them?

A. Exactly.

Q. I see. Now, you say that AMI brought to the meeting of the 14th of October, 1995, a version of the draft quantitative tables and that AMI was told by the Project Group that a final separate quantitative Evaluation Report should not be produced and appended to the final Evaluation Report.

Was any reason given for that, that you can recollect?

A. Well, ample reasoning, which I think we have been partly through in this document, that the -- that a separate quantitative Evaluation Report had so many problems related to statistical liability and statistical validity that it was not defensible.

Q. I see. I just want to be clear about this. We are not talking about a hypothetical meeting; we are talking about an actual meeting, and you are saying that AMI was told by the Project Group, so it was -- if I may use the phrase, the Irish people there said "Don't do this, don't put in a final evaluation, a final separate quantitative Evaluation Report as an appendix to the final evaluation"?

A. Exactly, and I fully agreed with that decision.

Q. I see. But you are saying that it came from the Irish side of the table, so to speak, and you agreed with it?

A. Yes, because the way it normally works when you work as a consultant, is you present things, you discuss things, and then your client, or, in this case, the steering group, makes a decision. You can then agree or disagree. In this case, I fully agreed.

Q. I see. And then you say there was no discussion of the weightings while AMI was present. However, AMI gave a presentation as to how tables 15, 16 and 17 had emerged. Please also see the response to question 32A.

And you say that there was, at this stage, no request by certain members of the Project Group that consideration should be given to the appropriateness of awarding the licence to Esat Digifone, having regard to the Department's experience in dealing with Esat Telecom. That was never mentioned in your presence, is that what you are saying?

A. That's correct.

Q. And you say --

A. Sorry, let me just qualify it. That was not mentioned to me at this meeting, while I was present at this meeting, but it was mentioned at a later meeting, namely the meeting on the 23rd of October.

Q. I see. And who mentioned it to you? Who mentioned that in your presence at that meeting?

A. That was Sean McMahon, an Irish civil servant.

Q. Now -- and that was long after there was, in your view, a unanimous consensus had emerged, he raised that issue; is that right?

A. Yes.

Q. And you go on to say: However, Michael Andersen does recall that this letter was raised on the 23rd of October at its meeting held on that day. The issue was raised by Sean McMahon. Michael Andersen understood that Mr. McMahon's main role was to deal with regulatory responsibilities. However, Michael Andersen recollects that Mr. McMahon did not participate in the evaluation and did not participate in evaluation sub-groups. Neither did he participate in the presentation meetings.

Are you sure about all of that, that he didn't participate in the presentation meetings?

A. My recollection is that he didn't participate but that it was -- it may have been Ed Callaghan, one of his colleagues, who participated from that particular Department.

Q. You say that you expressed your clear view that the question of whether or not a proposed licensee was or was not difficult to deal with from a regulatory point of view or whether affiliated companies were such, was not a legitimate criterion according to which a candidate could be assessed as part of the evaluation, and even if one could legitimately frame a criterion, which seemed highly questionable, there was no such criterion in the request for proposals document. As set out above, AMI was only present during part of this meeting during which considerable -- you expressed considerable satisfaction -- sorry, during which considerable satisfaction with the Draft Evaluation Report was expressed regarding its substance and the message was conveyed to AMI that a final

separate quantitative Evaluation Report should not be produced; and, 3, that you should continue your work according to your work programme and that there were presentational issues, such as language and the way the final results were to be presented, which would have to be addressed. But there was no specific discussions, you think, on risks, sensitivity and credibility while AMI personnel were present at the meeting; is that right?

A. That's right.

Q. And Appendix 10 contains a few changes from the 3rd to the 10th of October. It remained unchanged from the 18th to the 25th of October, as far as you are concerned; is that right?

A. Correct.

CHAIRMAN: I think that might be an appropriate time for us to rise for lunch, Mr. McDowell. If it suits you, Professor, could you please be back at five past two.

MR. LOWRY: I beg your indulgence for half a minute, Mr. Chairman. As you know, I have a complication because I also have Dail duties to attend to, and if I could ask just to make a point - it will only take me half a minute - arising from yesterday's proceedings, I would appreciate if you'd allow me to do that. I can't be here in the afternoon and I cannot be here tomorrow because of my Dail commitments.

CHAIRMAN: Could I commit you to half a minute?

MR. LOWRY: Half a minute. It was during the course of Ms. Jacqueline O'Brien's Opening Statement yesterday, and I quote, and she stated in that Opening Statement, "As already mentioned, the purpose of this inquiry is not to rerun the second GSM competition or to reassess the applications of the various candidates. The purpose of the Tribunal's inquiry is to endeavour to establish to what extent the competition was conducted as originally envisaged. In this respect, the Tribunal has already examined and we wish to reconsider the extent to which the competition was interfered with or capable of being interfered with or was influenced by outside considerations and, in particular, by any involvement or influence of Mr. Michael Lowry. What the Tribunal has already examined, and will now wish to consider, is to the extent to which it is relevant -- in the course of Mr. Andersen's evidence -- is the extent to which the process was susceptible to influence."

Now, just one point I want to make here, Mr. Chairman, is this: that two words crop up from that Opening Statement of Ms. Jacqueline O'Brien, and they are "capable of being interfered with," and the second sentence is "susceptible

to influence."

Now, I would ask, Chairman, that, in due course, and at the earliest opportunity, before I get the opportunity to examine the witness and before this line of inquiry proceeds any further, could you please confirm for me and inform me under which section of the Terms of Reference is this line of inquiry mandated? I would ask you to communicate with me at your convenience.

CHAIRMAN: I'll note that and act on it. Five past two.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF PROFESSOR MICHAEL ANDERSEN
BY MR. McDOWELL AS FOLLOWS:

Q. MR. McDOWELL: Professor Andersen, I want to ask you about inquiry 37, which is on page 32 of that document you have at the bottom, and in that inquiry, you were asked for your understanding as to the stage which the evaluation had reached following the Project Group meeting of 9 October, , and, in particular, whether any further significant steps were required to be taken to finalise the evaluation and, if so, to provide full details of such steps.

And I think your reply to that is: The evaluation had reached an advanced stage by 9 October, 1995, the award of marks had been checked. However, some additional steps were still outstanding. One was that it was agreed with the Department that Mr. Tage Iverson, the renowned civil servant from the national Danish Telecom Regulator, should be released from some of his duties and seconded to make a quality review of the evaluation process. This entailed that he would "walk through" the Evaluation Report and underlying documentation. Second, some of the supplementary investigations were still to be finalised and documented; for instance, the status of the appendices at this stage, by way of example, the supplementary analysis on tariffs, interconnections and the effects on the Irish economy.

Third, and as described as step 20 of the AMI tender document of 16 March, 1995, AMI had suggested that a draft licence should be prepared. AMI discussed this with the Department, the idea of issuing a draft licence to all applicants, including the favourable offerings contained in the applications submitted by applicants, and sending these out for comments, to be received prior to the agreed 25th of October deadline. However, as matters turned out, the full work was not executed on this task and AMI drafted a supplementary analysis instead and this is contained in Appendix 13 of the Evaluation Report. As the appendix also illustrates, a number of other supplementary analyses were

conducted. Finally, all of the above were to be taken into account in the final version of the Evaluation Report.

Can I just ask you, arising out of that, you say that a draft licence, it was originally thought that a draft licence would be prepared by you, is that right, for issuance?

A. No, I don't think that the licence necessarily should be prepared by us, but we had suggested that a draft licence be prepared.

Q. I see.

A. You will recall that the Department had also retained legal advice, and we were not, in AMI, giving any kind of legal advice.

Q. I see. Now, at query 38, you were asked for your understanding, as of the 9th of October, of the deadline for the finalisation of the Evaluation Report and the intentions of the Department and/or the Minister regarding the announcement of the results of the evaluation process. And you answered: AMI was to deliver the final report on October, 1995. AMI advised the Department to announce the result of the evaluation process as soon as the Evaluation Report was finalised.

I asked you yesterday was that always your intention, to advise them to announce the results as soon as the evaluation had been completed and I asked you whether you were aware of any intention for a period to elapse after that during which the matter would be brought to Government, do you recall that?

A. Yes, I recall you talking about a four weeks period, or something like that.

Q. Yes. And do I recall correctly that you said that you were not aware of any such proposal?

A. I was not aware -- I don't recollect to have been aware at the time of such a four weeks period, no.

Q. You see, my difficulty in that answer is that I understand that you prepared a Gantt chart in this matter?

A. We always did work by way of Gantt charts, that's correct.

Q. And my understanding is that the Gantt chart that you revised in -- I think on the 14th of July, clearly shows that you would deliver the report on the 25th of October, but that there would be a four-week period to the corresponding date in November for a decision to be made in relation to the matter?

A. I take it for being correct when you say it, but I was not aware of this four weeks period. I didn't draft the Gantt charts myself. That was definitely John Bruel who did that.

Q. I see. So...

A. So I clearly recall, my advice was to finalise the result as early as possible after the Evaluation Report having been finalised.

Q. You see, I am instructed that you sent a Gantt chart on the 14th of July, dated the 14th of July, to Fintan Towey in the Department of Transport, Energy and Communications...

A. I take it for being correct when you are saying it.

Q. I can have you shown the document in a moment.
(Document handed to the witness)

MR. SHIPSEY: If this is a document which is in the booklets, if we could be referred?

MR. McDOWELL: We have a few spare copies here. It's in book 91 -- sorry, 31 -- book 91, page 31.

And that this fax has your signature on it?

A. That's correct.

Q. And that attached to it is the Gantt chart?

A. Yes.

Q. And what you say is,

"Dear Fintan,

"I spoke with Martin earlier this morning concerning the planning of the evaluation. I have understood from John, who is now on holiday, that he has forwarded a copy of the revised time schedule to you. If that is not the case, please see the enclosed Gantt chart, our latest version. Roughly speaking, we suggest that the quantitative evaluation is carried out in August, the qualitative evaluation in September, together with the presentation meeting, and that the Draft Evaluation Report is elaborated during the first half of October. The amount of time from the closing date to the draft report has not been changed."

And that's your signature underneath that, isn't that right?

A. That's correct. I hope you see, also, that I make reference to the fact that it is Jon Bruel who has drafted the Gantt chart.

Q. If you look now at the steps, which are steps 1 to 55 shown on the next page?

A. Yeah, 43.

Q. Before you get there, can I just show you -- ask you to look at step 13, the quantitative evaluation, and I presume that's number-crunching; is that right? C-R-U -- number C-R-U --

A. Step number 10?

Q. Step 10, yeah.

A. That's correct.

Q. And it says that that is to happen in the month of August, effectively, isn't that right, the first three weeks of August?

A. Yes.

Q. And there are a number of things underneath it then, that the Excel sheets have to be checked and non-comparable data has to be rectified, that there has to be a first assessment, there has to be a discussion of disagreements, a second assessment, formulate the report on the quantitative evaluation first draft, circulate the draft, comment and return it, and then to evolve a final version of the quantitative report, and that was all to happen in the month of August, isn't that right?

A. Yes.

Q. And then the next phase of the operation, if I may call it that, is to deal with the presentations, isn't that right?

A. Yes.

Q. And that would occupy the entirety of the month of September with the various steps that are set out there, isn't that so?

A. Yes.

Q. And on the next page, we see that the qualitative evaluation is to commence in August and to go on until roughly the 15th, or whatever, of October, halfway through October, isn't that right?

A. Yes.

Q. And its steps were the qualitative evaluation before presentations, that that should happen before the presentations take place; that there'd be a qualitative evaluation after the presentations; there should be a meeting concluding the evaluation; there should be specific areas for supplementary analysis isolated and meetings, I presume; and then there should be a supplementary analysis ending up in the reports; and finally, that there should be a qualitative report sometime around the 10th to the 15th October, is that right?

A. That's correct.

Q. And then step 17 shows the -- a production of the Evaluation Report, isn't that right? It's at number 35.

A. Yes.

Q. And there was to be discussion of that in the grouping in October, isn't that right?

A. That's correct.

Q. And then the final report is at step 40 there, and it was the second and final draft report were to be available in early, sort of mid-October. And then the next thing is --

A. Yeah, end of October.

Q. I was just looking at step 40. And then there is --

A. I see that as the end of October, not the mid-October, but I don't mind.

Q. It seems to me to cover the 15th to the 22nd, but, however,

it doesn't -- we are not going to argue about this. But the next one is "status report - report approved". And then "wait for political decision". And that shows that, up to the 25th of November, a period of four weeks had been permitted, isn't that right?

A. Sorry, was there a question?

Q. I am asking you about 43, item 43 there.

A. Yes.

Q. It says "Wait for political decision".

A. Yeah, it says "wait for political decision" and then there is --

Q. The period at which the "wait for political decision" ends is around the 25th of November, isn't it?

A. Yeah. That's how it looks, yeah.

Q. So I'll now ask you to refresh your memory, having seen that, and to revisit what you said yesterday, that you never understood that there was to be a period during which the report was to be considered at political level and a decision made about it, of four weeks?

A. You see, I am not aware of a formal four weeks decision period at the governmental level.

Q. I know that you are unaware of the Irish Government procedures, but I am suggesting to you that what was proposed there was that when the final report was produced on the 25th of October, a further period of four weeks was to be allowed in order that the political decision could be made in relation to the -- as to whether the report was being accepted and implemented, isn't that right?

A. Yeah, I think that that would be quite a normal thing for Jon Bruel to insert such a period, yeah.

Q. You see, I am suggesting to you it wasn't just simply that Mr. Bruel inserted it, but that everybody knew that this report, once it was finalised and approved by everyone in its final form, would then be, so to speak, sent upstairs for consideration at Government level so that a decision would be made, one way or the other, whether to implement it or not, and that a four-week period was provided for that decision-making process at Government level to occur, and that everybody knew that at all times in this process?

A. I don't know whether everybody knew that, but it would be a standard thing for AMI to include a period for political decision, that's for sure. And when I answered your question yesterday, you know, it was the context of whether I gave advice to public -- to publicise or to go public with the decision sooner rather than later, and that was my clear advice.

Q. Well, I have got to suggest to you that you gave us the impression yesterday that your advice was that it should be

done as soon as possible?

A. Yes.

Q. And that, therefore, it didn't surprise you at all, as happened on this occasion, that there was -- no lengthy period was provided for Government consideration of your report?

A. Well, I think you should take several things into account here in order to get the record straight. This document which you have now opened goes into the process far earlier than substantial changes to the contract between AMI and the Department. So that's one issue, one thing which should be borne in mind, that all the deadlines we are looking at here, they were effectively changed by the change of contract in September 14th, for example, where there was this. Then, secondly, I would, as in several other tenders internationally, always tend to work with a methodology where we committed us to as long procedures as possible, and could work be finalised earlier rather than later and could a result be made publicly available sooner rather than later, then it would be an advantage, because having too much time between the finalisation of an Evaluation Report and then a public announcement of a winner, that could give rise to all kinds of speculations, rumours and also be detrimental to the process. So with those two things in mind, you know, I think it was only natural that things proceeded as they proceeded.

Q. Did you make a Memorandum on the events relating to the Irish GSM2 tender for the Department in January 2002, for the assistance of this Tribunal?

A. January 2002, I think AMI did a Memorandum, yes, and I may have given input to that. I would need to see the document if I am to comment further on this.

Q. Perhaps I can hand you a copy of it.

A. You see, I would not like to just comment on documents which I have not seen. This one, I recall it, yeah, it's a lengthy --

Q. This is in the O'Callaghan production Book 2, for any of my colleagues, at Tab 2. And just, could I ask you to look at page 2 of it for a second. It says: "This Memorandum is an internal working paper meant for the Irish Tribunal of Inquiry (Payments to Messrs. Charles Haughey and Michael Lowry) hereinafter the Tribunal only" --

A. Sorry, the version I have doesn't have a page 2.

Q. Well, page 3, sorry, it's page 3.

A. Okay.

Q. And I am looking at paragraph 1.1. And it says that it's an internal working paper made for the Tribunal. "The Memorandum should be considered confidential and it may not

be communicated to any third party in any shape or form without Andersen Management International prior consent." It goes on at paragraph 1.2, it says: "This Memorandum has been prepared at the request of the Tribunal by AMI. This Memorandum is made to supplement the prior general overview provided by AMI in the Memorandum of July 2001, entitled 'Confidential Memorandum on Andersen Management International's involvement in, and some cornerstones of, the GSM2 tender in Ireland'."

I think it goes on to stress that this is prepared for the Tribunal only, isn't that right?

A. That's correct, yeah. That's what it says.

Q. And could I bring you now to page 32, and, in particular, I should start, I suppose, for completeness, at paragraph 7.6 on page 27.

"A large part of the quantifiable side of the applications was compiled prior to the posing of the written questions in presentation meetings. It is put into graphics by each evaluation sub-group in relation to the dimensions and aspects for which the sub-group was responsible. The material thus produced served as a basis for the applicant-specific written questions, the presentations meetings with each applicant and the further evaluations. This material was subsequently adjusted if the clarifications provided by the applicants in their written answers and oral presentations so required.

"Specifically concerning Esat Digifone's application, there were some calculation problems, albeit of an insubstantial nature, which required the evaluators of the financial aspect were required to perform some minor adjustments to the way the financial years had been presented by the applicant..."

A. Sorry, in terms of page, where are we?

Q. We are on page 28.

A. Yes.

Q. "... (i.e. Esat Digifone used 1995-2009 as the planning period, whereas the other applicants used 1996-2010). However, other applicants also had some insubstantial 'technical' deviations in their applications, such as, for example, the lack of inclusion in their business plan of reinvesting after 10 years.

"The PTGSM decided that all of the results of the evaluation should be presented in one comprehensive report, such that the results of the evaluation (both the quantitative as well as the qualitative evaluation techniques) were presented in an integrated fashion. In conjunction herewith, it was furthermore decided, prior to the closing date, that the qualitative evaluation should be

the decisive and prioritised part of the evaluation."

Do you remember saying that?

A. Yes.

Q. And do you agree with that?

A. Yes.

Q. "Furthermore, it became clear that during the initial phase of the evaluation, that 14 of the indicators identified in the Evaluation Model Memorandum were either impossible or difficult to score as part of the quantitative evaluation process laid out in the Evaluation Model. Due to this finding, the PTGSM decided '... that the foundation for a separate quantitative evaluation had withered away'."

And you quote the appendix of the report there.

"In order to illustrate the background to this, it was impossible to score quantitatively because of lack of information (concerning, e.g. agreements on international roaming), meaningless scoring when the renormalisation factor was processed (e.g. licence fee payment), or because of fundamentally incomparable quantitative information (such as blocking and drop-out rates and tariffs).

"The PTGSM was in dialogue with the applicants by means of written communication in order to be able to process the remaining quantitative indicators further, but it was impossible to obtain information to allow fair comparison of the applications. On the one hand, some of the information appeared to be unrealistic or over-optimistic information in some cases, such as blocking and drop-out rates. On the other hand, applicants could not be allowed to improve their applications.

"In order to speed up the work, AMI had set up a separate number-crunching team, who, without forming part of the core Evaluation Team, processed all quantifications. This meant that this sub-team worked without having read the applications and without having familiarised themselves with, for example, the reservations, non-binding nature or preconditions behind the quantitative figures forwarded by each applicant. Notwithstanding the fact that a considerable amount of their work was useful, some quantifications, which later appeared to comprise lack of fair comparability, were not used in the final evaluation.

"Consequently, it was decided by the PTGSM to perform the evaluation as an '... integrated, holistic evaluation...'

one is that quantification appears at tables, graphics, figures, etc. Another is that all the clearly quantifiable indicators have been taken into consideration and have been scored...' and accordingly, '... all the indicators defined for quantification in the Evaluation Model Memorandum have been taken into consideration, and, in compliance with the

Evaluation Memorandum, all the eligible indicators have been taken into consideration in the holistic evaluation. "Thus, the quantitative evaluation was limited to 'hard' quantitative commitments in relation to critical indicators associated with the selection criteria prescribed in the tender documents, i.e. paragraph 19 of the RFP. And non-quantifiable considerations such as market research, planning, management preparedness, etc., did not form part of the actual quantitative evaluation. In conjunction with the necessary limitation of the indicators under the quantitative evaluation, the qualitative evaluation was expanded in comparison with the 14 indicators identified according to the Evaluation Model Memorandum, so that the total number of indicators in the evaluation ended being 56 indicators, taking account of critical but non-quantifiable aspects of the applications such as, for example, performance guarantees, cell planning, market research, understanding of roaming, customer care, etc.

"As provided for in the Evaluation Model, the Evaluation Report states with regard to this procedure: 'As the Memorandum on the Evaluation had not changed, it was checked that this was also consistent with the Memorandum', e.g. with regard to indent 5, according to which the 14 indicators defined to be used during the qualitative evaluation could be supplemented with further indicators, if the already defined indicators were not sufficiently representative for the dimensions to be evaluated.

"Concerning the techniques applied in order to reach a decision on the evaluation of the indicators under the holistic evaluation approach adopted, these could be summarised as 'Assessments by consensus among the evaluations, elaborate evaluation analyses by means of qualitative and quantitative methods, award of marks (rather than the scoring by points, assuming an interval scaling), and averaging of marks by consensus'."

I'll just ask you there, "... award of marks (rather than the scoring by points, assuming an interval scaling)," how does that match up with the decision to go from letters to numerals?

A. I mean --

Q. "... award of marks (rather than the scoring by points...)"

A. I think we are a little bit at cross-purposes here because the evaluation in the sub-groups, which is defined in the document appended to the regulation report, talks about scoring in the sub-groups on the basis of letters, but what we discussed earlier today was something quite different. That was once we had arrived at the final results on the basis of the model as intended, then that presentation was

done by way of two tables with letters, and then, subsequently to that, a conversion of letters to numbers was presented. That is in the last table of the final Evaluation Report. So I think that we are totally at cross-purposes here.

Q. Perhaps we are. At paragraph 7.7, you deal with the Evaluation Report and the final evaluation result. And your memo says: "The purpose of the Evaluation Report was to convey the findings and recommendations of the evaluation by the PTGSM and the evaluators.

"An initial draft report was discussed by the PTGSM on 9 October, 1995. The incorporation of comments on the initial and subsequent final draft by members of the team in relation to the presentation of the results of the evaluation process culminated in a final Evaluation Report. This was finished on schedule and some five weeks before the Minister had stated that he would announce the winner. That the instruction from the Department to AMI, with regard to the deadline, had been that the final Evaluation Report, taking into the account the views of the GSM Project Group, should be submitted to the Department by AMI by the 25th of October.

"The overall evaluation and final marking of the applications led to the conclusion that three candidates could be nominated for the award of the licence in descending order of priority, with certain reservations with regard to each of the applicants. The three applicants were in the order of priority: Esat Digifone, Persona and Irish Mobicall.

"The reservations as to the highest-ranked applicant, i.e. Esat Digifone (referred to as A5) related to financial issues, e.g. the following comments:

-- "The financial plans, however, indicate some weakness against the background of market leader ambitions, in particular with a degree of solvency below 0% during some of the decisive initial years.

-- "A5's, maybe, weakest point is that it's not related to the application as such but to the applicant behind the application, as more specifically to one of the consortium members, namely Communicorp, which has a negative equity. Should the consortium meet with temporary or permanent opposition, this could be a worst-case scenario, would turn out to be critical, in particular concerning matters relating to solvency."

(And that is a reference to section 5 of the Evaluation Report.)

And the next section says:

-- "If the consortium behind A5 (i.e. Esat Digifone

shareholders) cannot satisfactorily cover the risks identified (but not scored), it is recommended to consider entering into licensed negotiations with A3 (i.e. Persona). "The three quotations stated all concern the issue of Esat Digifone's financial capability.

"Despite the apprehensions as to some of the financial conditions of Esat Digifone as the applicant, the evaluators chose to keep the ranking of Esat Digifone's application as the best application according to the evaluation criteria in descending order of priority, because, as was stated in the Evaluation Report, section 5: "The evaluators have concluded, having regard to the level of interest in the Irish competition for the GSM licence and the high profitability of mobile communications generally throughout Europe, that the project is fundamentally robust and, after a licence has been awarded, an attractive opportunity for corporate debt financiers. The evaluators have, therefore, formed the view that, subject to at least one of the principals having sufficient financial strength at this stage to ensure completion of the project, a potential financial weakness of one consortia member should not have a negative impact on the ranking of applications. It is important, nevertheless, to draw attention to the need to deal with this factor, where relevant, in the context of licence negotiations."

The next paragraph says: "The Evaluation Report's finalisation on 25 October, 1995, led to the announcement of the winner by the Minister the same evening. The decision of the winner of the GSM2 licence was made ahead of schedule. However, the Minister chose to make the decision public immediately upon making the decision. AMI does not know the reason for the swift announcement prior to the estimated time of "the end of November". Based upon AMI's experience, it is, however, in general, best to quickly announce the decision of who the winner is once the Minister has made the decision, in order to avoid unintended leakage and speculation, that the decision is often crucial to the involved applicants, of which many are publicly-listed companies."

Now, that's what you said in 2002, and I am just asking you, how does that square with your testimony to this court that you suggested that this should be released as soon as possible when, you know, eight years ago, your position was that, effectively, this came as a surprise to you and was ahead of schedule and that it was the end of November that the matter was to be released, or the decision was to be made public?

A. Yes, you see, I would like to clearly state that it's not

correct of you to say that I stated this, because this document was drafted by AMI, and I was also a co-drafter of this document, but it was not solely drafted by me, and it was handed in by AMI at a time when I was external consultant to AMI. Moreover, I would like to state that no matter what is written here, I recall it as my clear advice to Martin Brennan, as my client, to make the decision publicly available as soon as possible after the finalisation of the Evaluation Report. That was my statement and my advice and that is also my statement here today. May I just qualify it a little bit --

MR. McDOWELL: Sorry, excuse me, I do not need to be shouted at from behind. I don't need to be shouted at by --

MR. O'DONNELL: Sorry, he has interrupted because he is giving an answer that doesn't suit Mr. McDowell's thesis and doesn't suit the thesis that has been propounded by the Tribunal in the examination of witnesses before, that, in some way, the whistle was blown early on in this procedure. Mr. Andersen, because he is giving evidence under oath that it was his advice that the result be announced immediately it was available, he is entitled to expand on this, and because it doesn't suit this thesis, Mr. McDowell is trying to cut him down, and I am not going to allow that to happen.

CHAIRMAN: Mr. O'Donnell, it's not a criminal trial. Must you invariably introduce adversarial elements?

Mr. McDowell has drawn the witness's attention to some possible difference between accounts given on different occasions and I am utterly prepared to hear whatever exposition he wishes to give in that regard.

MR. O'DONNELL: I have absolutely no difficulty with those two points being put to him. What I do have a difficulty with is when this witness tries to give his answer and he is then cut across by Mr. McDowell because Mr. McDowell doesn't want him to expand on it because the expansion is inconvenient for the Tribunal's working hypothesis, in inverted commas.

CHAIRMAN: Never mind working hypothesis, Mr. O'Donnell. We are here to hear the evidence, to elicit the facts in an important witness, and I am anxious to hear what Mr. Andersen has to say.

MR. O'DONNELL: And so am I, Sir, and that is why I am not, with the greatest of respect to the Tribunal and of course to Mr. McDowell, I am not prepared to have a situation arise where an answer is given and he is then cut across when he is trying to give that answer, because it is certainly open to the inference, let's put that way, that

the answer doesn't fit in with the - and the phrase is the Tribunal's, not mine - the working hypothesis of the Tribunal.

CHAIRMAN: Noted for the -- for one of many occasions, Mr. O'Donnell. Now, let's hear the witness.

A. Thank you. I was going to expand by saying that if we look at the last sentence of this section, it states that "It is our experience that it is best to quickly announce the decision of who the winner is once the Minister has made the decision, in order to avoid unintended leakage and speculation, that the decision is often crucial to the involved applicants, of which many are publicly-listed companies."

Now, I believe that this further argument for my advice to Mr. Martin Brennan at the time, is stated here, and is also fully consistent with what I told you earlier today.

Q. MR. McDOWELL: Well, you see, I am suggesting to you, Professor Andersen, that it's not consistent with what you told us yesterday, and I am suggesting to you, in particular, that if you look at the footnote of that report, of which you were a co-author, it makes it abundantly clear that what I put to you yesterday was correct, and was understood by you at the time to be correct, when this document was produced, and that your evidence now is radically opposed to it.

MR. GLEESON: I think the witness should be brought to what he said yesterday, in fairness. If an accusation of this kind is going to be made, let's see what he said yesterday.

MR. McDOWELL: Very well, then.

Do you agree that you told me yesterday that you were unaware that a four-week period ending in late November had been provided for a political decision to be made on your licence?

MR. GLEESON: Sorry, can we refer the witness to the transcript, please?

MR. O'DONNELL: Page 128.

MR. GLEESON: It's page 128, question 38 and 39 -- 37, 38 and 39 on page 127 and 128.

MR. McDOWELL: I think we'll go back a little bit because if My Friends want the transcript opened -- on page 126, I put to you: "You say that you strongly advised Mr. Brennan, of the Department, on a number of occasions that once the Department was in possession of the final result via the final report, that it should announce that result as soon as was possible. This advice was based" -- I am quoting from your statement -- "This advice was based on AMI's extensive previous experience in such matters." It was your firm advice to Mr. Brennan that the result

ought to be announced straightaway. "I understand that this advice was taken and that the result was announced by the Minister on 25 October, 1995. I wholly endorsed this approach, reflecting, as it did, my clear advice to the Department." That's what you said yesterday and -- that's the statement you made to the Tribunal, and you agreed, yesterday, that that was correct.

A. Yes, that was my advice to Mr. Brennan, yes.

Q. And I said to you: "So you are saying that the speeded-up announcement was done on your express advice; is that right?" And you answered: "I wouldn't say 'speeded-up', but what we did was that we stuck to the timetable." And I asked you: "I see. Well, the timetable had been extended, hadn't it, due to the EU thing?" And you said: "No, that's not correct, actually." And I said: "We'll come back to that." And I went on to the next paragraph. "In fact, the timing of the conclusion of the licence evaluation process and the production of the final report was agreed between AMI and the Department in the contractual amendment letter of 14 September, 1995. This letter, as written by Martin Brennan, very clearly sets out the agreed contractual time-line for the provision of the two drafts of the final report on 13 and 17 October, 1995, with the provision of the final version on 25 October, . It was AMI who insisted on the inclusion of these dates in the amended contract." This is what you have told the Tribunal in your statement. "This contractually-agreed deadline was followed exactly as set out in the letter of September, 1995. The question of acceleration simply did not arise." And you answered: "Yeah, you see, it didn't arise."

I went on to quote from your statement.

"The evaluation process was conducted entirely in accordance with what had been agreed contractually between AMI and the Department on 14 September, 1995, and the dates reflected what AMI had pushed for in those contractual negotiations."

"So just to clarify that you are saying that you believed that the original time-frame of the 25th of October stood, and that you were, as late as the 14th of September, you were asked to produce the final report for that day, is that what you are saying?"

Answer: Exactly. I was" -- and I think that's the 14th of September.

A. That's correct.

Q. "I was asked to produce a report on the 25th of October, the final version, so everyone in the team knew at that time that the final report would be there.

Question: And going on from there, Professor, had you been aware that there had been four weeks provided for consideration at Government level of the outcome of the GSM2 process?

Answer: No. I was not involved in that part of the decision --

Question: Were you aware that it had been anticipated that it would be four weeks for the Government to decide?

Answer: No.

Question: Nobody ever told you that?

Answer: No.

Question: I see. Now, in fact, you were going on to say that the timing of the conclusion of the evaluation process and the production of the final report was agreed -- sorry, I am repeating myself now."

And I go on to deal with other matters then. I don't know if My Friends want me to quote any other portions to you. That's what you said to us yesterday.

A. Yes.

Q. And isn't it, very clearly, very, very wrong?

A. Pardon?

Q. Isn't it very clear that you were very, very wrong in what you told us yesterday?

A. No, I don't see that.

Q. Well, isn't it clear that the report which you co-authored, both in a footnote and in its substantive text, distances AMI from the decision to announce it immediately and remarks on the fact that you had originally anticipated that the result would not be made known until the 25th of November, the late November? Isn't that what the document clearly shows?

A. No, no, it doesn't. We will have to agree, Mr. McDowell, to disagree here.

Q. No, well, I don't think we can just leave it at that. Can you explain -- do you say you never read this report?

A. No, I haven't said that; I have said I co-authored the document.

Q. And are you saying that you never read it before it was submitted?

A. I have read it before it was submitted, yes.

Q. And if you had, in fact, strongly advised Mr. Brennan to tell the Minister to get out the result as soon as he received the final report, as you claimed in the statement you made to this Tribunal in this year, if that is the case, how could you possibly have agreed to that paragraph being written?

A. But, you see, I am placing my recollection on the last sentence of that section, you know. Generally, what we

advise, and what I advised, was to announce as quickly as possible.

Q. I understand that that's your general rule --

A. If I am allowed to finish. You see, I am here to give evidence. I am giving evidence under oath. I was the one who had the daily -- almost-daily contact with Mr. Brennan. I had phone calls with him. I had meetings with him. I know what I have said to him. I mean, you were not there, I assume. You were not listening to our telephone calls, you were not present at our meetings, I assume. I was there. I am giving evidence. I am giving evidence under oath that I advised Martin Brennan to announce as quickly as possible.

Q. I am asking you why you told the Tribunal yesterday that you had never heard that there was to be a four-week period for political consideration and that the matter was to be made public at the end of November? I am asking you now to say why did you say that yesterday when, in 2002, you co-authored a paragraph, which the Tribunal has before it now, saying the exact opposite, that you were well-aware of that situation and you did not know the reason why the Minister chose to deviate from his proposed date of publication? I am asking you to explain why you say one thing yesterday and wrote a totally different thing in ?

A. I don't think you are coming from a neutral position here when you examine me. You see, I said yesterday, quite clearly, that I didn't know that you had such an institution as a four weeks standard process of approving things in the Government. I was not aware of that. I was not aware of a political process taking four weeks, according to some predefined legislation or ruling, or whatever you may have.

Q. Professor Andersen --

A. I was not aware of that.

Q. -- would you read the first two sentences of the paragraph we are discussing, out yourself now?

A. What are you asking --

Q. Just read out the first two sentences, not the last sentence, the first two sentences.

A. But that has been read aloud.

Q. Just read it for me, please.

A. Page 32?

Q. Yes. The second paragraph, the first two sentences.

A. "The Evaluation Report's finalisation on 25 October, 1995, led to the announcement of the winner by the Minister the same evening. The decision of the winner of the GSM2 licence was made ahead of schedule."

Q. Stop there. How could you possibly have thought that?

A. Pardon?

Q. How could you possibly have believed that was true in 2002, in the light of your evidence yesterday?

A. You see, the Minister had already issued a press release prior to this, and, according to this press release, the announcement should take in November 1995. So the schedule which was publicly known at that time was that the winner would be announced in November, and I am just trying to be as helpful as I possibly can so that you can assess for yourself in a neutral position yourself what actually happened. I have made you aware of the last sentence of this section, and it would only be natural, in particular, I would say, in an Irish context, where we had already got to know that so many rumours were around and it was very difficult to keep things on a confidential basis, it was only natural, I think, for me, as an advisor to the Department, to say, well, once the Evaluation Report is there, then we would advise you to advise the Minister to announce as quickly as you can, and it fitted well in with what we have actually discussed already during the contractual renegotiation around the 14th of September, because it was adequate for, you know, any Minister, I would believe, and definitely for Martin Brennan, to be able to arrive at a result which was, let's say, before we went into November. November is the month where the Minister has stated in his press release that the result would be announced.

Q. Now, can I read to you the sentences as they go again.

"The decision of the winner of the GSM2 licence was made ahead of schedule. However, the Minister chose to make the decision public immediately upon making the decision. AMI does not know the reason for the swift announcement prior to the estimated time of the 'end of November'."

If it was done on your advice, you certainly knew the reason. You had given strong advice to the Chairman of the PTGSM --

A. Yes, but --

Q. -- that he should do this?

A. Yeah.

Q. Are you saying that that is reconcilable with what you told the Tribunal in 2002 confidentially?

A. I think you have to take my evidence on a neutral basis here --

Q. Sorry --

A. -- as I read things and as I understand the drafting of this document, which I have co-authored, as you have correctly remarked. "Swift announcement," that relates, in

my interpretation of it and my recollection of it, to the fact that the Minister chose to announce the result the same evening as the Evaluation Report was finalised; that is, on the evening of the 25th of October. So what I read into this is that I don't know the reason, and neither, I think, neither does the AMI consultant, why the Minister chose to announce the result on the same evening or on an evening.

Q. Sorry, what it actually says --

A. You see, he could have chosen to announce, for instance, the winner the next day or so.

Q. I understand that that's your point, but I am suggesting to you that it's not true, Professor Andersen, because you say "AMI does not know the reason for the swift announcement prior to the estimated time of 'end of November'."

So you weren't quibbling about whether it was this afternoon or tomorrow morning; you are saying you do not know the reason why it was done prior to the estimated time of the end of November. That's what your sentence says, isn't that right?

A. Yeah, maybe your English is better than me. I can only explain what I read into it and what my advice was and why my advice was as it was.

Q. Do you think your memory is defective on this? Could that be an explanation? That, in fact, at the time, you did know that there was a November 25 deadline, but by the time you made your statement in April of this year, you had forgotten that?

A. Now, I am a bit confused. You say November 25th?

Q. The deadline of -- well, let's take a look at the --

A. But you said November 25th, 25th November is what you said.

Q. Let's take a look at the footnote, Professor Andersen. The footnote which relates to the phrase "end of November" is as follows: "See section 3 of the information Memorandum attached to the original RFP, according to which the original deadline for a decision to be made public was 31 October, 1995. However, due to the postponement of the closing date until 4 August, 1995, the deadline for making a public decision --

MR. SHIPSEY: He is reading from the wrong footnote.

MR. McDOWELL: I am reading from footnote 75.

MR. SHIPSEY: Well, the footnote at the end of the passage that he is referring to is footnote 76.

MR. McDOWELL: Sorry, 75. The footnote says, and this is the explanation given: "The deadline for making a public decision as to the winner of the tender in July 1995, set to be around the end of November 1995," and you refer to a letter of 14 July from the Department to the interested

parties and you give the exact reference in footnote 23.

Now, I am asking you, is this something you forgot about yesterday when you were giving evidence and you forgot about in April of this year when you were making a statement in those four days between the 9th and the 13th of April?

A. Sorry, what should I have forgotten?

Q. I am asking did you forget all of that material about the postponement of the announcement because of the EU intervention when you made your statements here yesterday to me and, indeed, in April when you composed your statement for the Tribunal in Copenhagen?

A. I want to be quite clear, what is it that you think that I have forgotten?

Q. I am asking you did you forget that all the participants had been informed by letter that due to the delay -- the putting back of the closing date for applications, that the announcement of a result was scheduled for the end of November and that they had been written to in this regard and that you'd co-authored a report that had recorded all of that?

A. Well, as I have said earlier, my recollection was that the Minister had made a press release stating that the result would be announced before the end of November. That's my recollection.

Q. You see, you saw the Gantt report which you were given now?

A. Yeah.

Q. And you personally faxed that to Mr. Towey, isn't that right?

A. Yes.

Q. And it provides this period from the 25th of October 'til late November for political consideration of the report once it was received by the Department, isn't that right?

A. Yes, as we went along -- as we went through earlier, yeah.

Q. And therefore, I suggest to you, that as of the date of that revised Gantt chart, which is 14 July, 1995, you well knew that the result of the EU intervention and the postponement of the closure date for applications meant that the period for political decision, having received the report, was now being put back to the end of November?

A. Yes, because I believed that that was part of, as I said before, a press release from Michael Lowry.

Q. And were you -- can I bring you to footnote 75. Were you aware that the information Memorandum attached to the original RFP had specified a deadline for a decision to be made public, being the 31st of October, but, to use the words of your co-authored report, "However, due to the postponement of the closing day until 4 August, 1995, the

deadline for making a public decision as to the winner of the tender was in July 1995, set to be around the end of November 1995." Have you any reason to doubt that you knew that to be the case at the time you sent forward that Gantt chart?

A. No. I mean, that is -- I think what is stated here and what is in the Gantt chart is in perfect correlation with one another, so I don't think you can say that there is any discrepancy there. Is that what you are trying to --

Q. I am not suggesting there is.

A. There is no discrepancy.

Q. And it is entirely consistent that the author of the Gantt chart and anybody who read the Gantt chart and the author of this Memorandum and anybody who read it, would take one view only of it and that was that AMI were well aware that the result of this competition was to be announced before the end of November and that a month was to be given to the Government to make up its mind on the issue, isn't that right?

A. That is both correct and incorrect. You see, it is formally correct in the sense you word it, but if you look at how AMI normally worked, and you can go -- you can make the exercise, if you want, through some of the other tenders we were involved in around that time in the nineties, we would, almost every time, try to set up a time schedule which had the meaning that, in the practical performance of the work, we try to finalise, let's say, one month before, or so, just approximately, and that is because, what I come back to again and again, what is stated in the last sentence of the second paragraph on 32, because of all the speculation and media and stuff like that. You see, as consultants to the Department, we were fully aware that we were consultants to a body which was under political control and which was part of the political arena in Ireland. So there, we thought that, you know, in many cases I have served, both at the time and also later, it is such that reports come out later than envisaged and a lot of speculation goes on. Now, we tried to do, in this case, the opposite. We tried to finalise the work well ahead of schedule, allowing, then, the receivers of the report to have some extra time or to do with it whatever they wanted, but still, under the advice, clear advice from me to Martin Brennan, that he could -- they could avoid a lot of speculation in the media, rumours going around, etc., if they announced the result sooner rather than later.

Q. This clear advice you gave to Mr. Brennan, when did you give it to him?

A. I think I gave it several times, but I wouldn't recall specific dates because I don't have notes of it.

Q. Did you ever share this view of yours with the PTGSM?

A. No, I don't think so. I don't think we took it up at the -- in the Steering Group.

Q. But, you see --

A. But, you see, there is nothing sinister about that. The Department was my client, so I was trying to deliver good advice to my client.

Q. But, as we know, Departmental Officials were seeking an extension with the purpose of finalising and reviewing the report, even within 24 hours of the date it was published.

Not everybody in the Department clearly understood that you had advised this to be done and that it was -- that your advice was going to be acted on, isn't that right?

A. I don't know, because I was not involved in any of the things you now bring to the table.

Q. You see, I am suggesting to you that the simple explanation of both the Gantt chart and this paragraph, which you wrote in 2002 when your memory was much better, Professor Andersen, is to the effect that "The decision of the winner of the GSM2 licence was made ahead of schedule. However, the Minister chose to make the decision public immediately upon making the decision." You go on to say: "AMI does not know the reason for the swift announcement prior to the estimated time of 'end of November'." Then you say: "Based upon AMI's experience, it is, however, in general, best to quickly announce the decision of who the winner is once the Minister has made the decision, in order to avoid unintended leakage and speculation, so that the decision is often crucial to the involved applicants of which many are publicly-listed companies."

And I am suggesting to you that, in 2002, you told this Tribunal, in a confidential Memorandum, that you were unaware as to why the Minister had, to use the phrase, "swiftly" -- made a "swift announcement prior to the estimated time of 'end of November'."

A. Yeah, you suggest, but what is the question?

Q. I am suggesting to you that you told this Tribunal, in , that you did not know the reason for it, but now you are putting out a different line and your line now is that you yourself were the person who came up with this reason?

A. Well, I think --

Q. This suggestion, rather?

A. I think we have been over this a couple of times, but I will gladly reiterate that -- what is my recollection of it, is that we were unaware of the swift announcement that is the -- that the Minister would announce on the same

evening. We might have been aware of that on the same day, or whatever, but when I gave Mr. Martin Brennan, from the Department, the advice to move on with this sooner rather than later, we didn't know that the Minister would announce the same evening. So that is what I read into this sentence.

Q. So you say, and you want the Tribunal to evaluate your evidence on this basis, that you say that the swift announcement that you don't know the reason for, is a reference to the fact that it took place on the particular day when he received the report rather than over the course of the next 24 or 48 hours?

A. Yeah, yeah.

Q. And that's the explanation you want the Tribunal to accept for why this appears in its 2002 report?

A. I don't know how, you know, these tribunals function, but I am here to give evidence about my recollection and what I gave as advice, and it was my clear advice to announce the winner sooner rather than later, and also, it is my evidence here that, yes, by swift announcement. I don't think I was aware at the time that the Minister would announce the result the same evening.

Q. So you are inviting the Tribunal to ignore the words "prior to the estimated time of 'end of November'," which is recorded in the paragraph?

A. Well, your English is probably better than mine, but I don't see the point here. It is -- by "swift announcement," a reference to the fact that the Minister did it the same evening, on the 25th October.

Q. And can I ask you this, Professor Andersen: If it was you who suggested this to Mr. Martin Brennan --

A. But it was, I have given evidence that it was.

Q. -- if it was you that did that, and that's a matter for the Tribunal to decide, but if it was you, why didn't you tell the Tribunal that in 2002 instead of co-authoring that paragraph?

A. But that has also been told to the Tribunal. We had several private meetings, a number of private meetings.

Q. And you say that, in those private meetings, you claimed that you were the author of the idea that it would go out that day?

A. No, not that day. Now you are misquoting me, Mr. McDowell, and you have to set the record straight, you know, not to tweak my words and to try to get something --

Q. Go out in the next 24 or 48 hours?

A. Sorry, what is the question?

Q. That day or the next day is what you said, earlier, you would have expected him to do?

A. That is just an expectation. That was not where I am coming from. Where I am coming from was that I was, you know, not aware that this swift -- by "swift announcement," it actually appeared to be on the same evening.

Q. Can you tell me, Professor Andersen, if that is your testimony, why it was when I --

A. But it is.

Q. I know it is your testimony --

A. But you say "if".

Q. Given that that is your testimony, Professor Andersen, why it was, yesterday, when I asked you whether the -- whether an announcement date in November had not been arrived at by license of the delay in the EU and the lengthening of the process, you didn't agree with me?

A. What didn't I agree with?

Q. You didn't agree with me when I suggested to you yesterday that there was to be a time for political reflection and that it was to be the end of November because everything had been put back because of the EU intervention, you said you didn't agree with me?

A. That was not how I perceived what you put to me. What you put to me yesterday was that there is a four weeks period instituted here in Ireland for adopting political decisions.

Q. I don't think I said that. I have read you out the text. I don't propose to repeat myself. You saw what the questions I put you, and I am just asking you why you said that you were unaware that any period had been provided, a four-week period had been provided for governmental or ministerial decision-making and that that had been extended to the end of November in order to facilitate the delay arising from the EU intervention, you said that that was not the case? You told the Tribunal that that was not the case.

A. Yes, I said that I was not aware of this four weeks period.

Q. But you had been aware of it.

A. No, no. You are missing the point then, or I am not making me sufficiently clear.

Q. Is it a memory lapse? Had you forgotten about that footnote and that paragraph when you testified here yesterday?

A. No, it wasn't on the top of my mind, but what I have testified, I have testified I was not aware of any four weeks period for adopting political decisions here in Ireland. That was what you put to me yesterday.

Q. What was the bar on the Gantt chart, beginning on the 25th of October and ending on the 8th of November, about?

A. I have told you that on an earlier occasion here today,

that that would be standard Jon Bruel work to put that in. That has nothing to do with AMI perceiving that there would be a four weeks period for adopting political decisions in Ireland.

Q. When I suggested to you that the time went back because of the EU intervention and that this involved delaying the matter by a number of weeks, you said I wasn't right. I said, "Well, the timetable had been extended, hadn't it, due to the EU thing?" And you said, "No, that's not correct, actually."

Now, had you forgotten about this when you said, "No, that's not correct"?

A. When we were discussing the timetable yesterday, I was answering on the timetable for AMI's work. Now you are mixing up two different kinds of timetables here.

Q. I think -- let's look at this. You say that you strongly advised Mr. Brennan of the Department -- we are on page 126 of yesterday's text -- you say that you strongly advised Mr. Brennan of the Department on a number of occasions that once the Department was in possession of the final result via the final report, that it should announce that result as soon as was possible. This advice was based on AMI's extensive previous experience in such matters. It was your firm advice to Mr. Brennan that the result ought to be announced straightaway. And we quote, "I understand that this advice was taken and that the result was announced by the Minister on the 25th of October, 1995."

Now, that's what you said was a correct account of what happened, that your advice was taken and that's why the matter was announced on the 25th of October, 1995. That's what you said yesterday.

A. Yes.

Q. And here we find that, in 2002, you say you have no idea why this decision was made, but, in fact, based on your experience, it's a good thing to do. Now, which is it?

A. I didn't say, before, that I had no idea. That is your words.

Q. You said, "AMI does not know the reason for the swift announcement prior to the estimated time of 'end of November'." That's what you said.

A. You said that I had no reason. You know, what is correct is that we had no reason or had no reason to know why the Department or the Minister would announce the same evening.

Q. I see. It's the same evening?

A. Yeah.

Q. And --

A. The evening of the same day.

Q. That's the -- the only thing to be read into that sentence

is that you had no idea why it was announced the same day, but you fully expected it to be announced within a matter of days; is that right?

A. Yeah, as I said before, sooner rather than later. I wouldn't know whether it was, you know, the same day, 24 hours or 48 hours, as you have said, or 37 hours, or whatever. My advice was sooner rather than later. I could not be familiar -- I could not, as an advisor, not living in Ireland, be familiar with the decision-making processes, the logistics, press conferences, etc., so it would be wholly awkward for me giving advice stating that they should do it within four hours or 20 hours or 29 hours, or whatever. That would not have been, you know, my way of giving advice. So it was to do it sooner rather than later and not leave room for all kinds of speculation.

Q. What does the word -- phrase "prior to the estimated time of 'end of November'" mean?

A. But, you see, I don't attach particular importance to the last part of that sentence.

Q. You see, what does the word "estimated" mean in it? Whether you attached importance to it, now, or not, what do you think it means, "estimated"?

A. You know, it was made publicly available that the result would come out in November, so, by "estimated" here, it was just sometime in November, not more than that. You know, I couldn't put more into it than that.

Q. You see, it wasn't just public press statements, was it, because we know that, because of the footnote, that each of the people who were involved in the process had been written to and told, written to in July of 1995, and this correspondence is referred to in the footnote in your report, indicating -- and it's in book 91 at page 29 -- indicating that, on the second page, "the fourth bullet-point of section 3 of the same document is revised by the substitution of '4th of August to end of November'..." do you see that?

A. Sorry, I have not got -- that is a letter to Mr. Hardiman of --

Q. Of Esat, yes.

A. Yes.

Q. And this is the correspondence which was referred to in the footnote to your report.

A. Is it?

Q. Yes. Because you refer, in the last brackets of the last sentence of the footnote, you say: "The letter of 14 July, , from the Department to the interested parties (exact reference in footnote 23)." And this is the correspondence that was sent out to the interested parties, isn't it?

A. Yes, that seems to be correct.

Q. And it says, on the third paragraph: "As a consequence of the above, the original terms of the competition require to be revised. The appropriate amendments to the competition document are detailed below." And the last bullet-point is: "The fourth bullet-point of section 3 of the same document is revised by the substitution of '4th of August to end November 1995' for '23rd of June to 31st of October, ' "

A. Yes.

Q. So it's not simply just a public statement by the Minister. Each of the applicants had been written to in July to tell them the consequence of the delay occasioned by the European Union intervention, isn't that right?

A. That's correct, yes, and that precisely underscores my point that, as everybody knew it, as the applicants knew that there was a deferred announcement, as the entire team of civil servants knew that we had time until November, then you could avoid very much speculation in the last few weeks if you were able to announce the result sooner rather than later.

Q. You see, I am suggesting to you that the phrase "estimated time of the 'end of November'" is a direct quotation from that letter and that the quotes around the words "end of November" are drawn from that letter?

A. Yes, but what is in quotation marks here is the word "end of November"; it's not "estimated time" that is in quotation marks.

Q. You have used the word "estimated time" and I have asked you, again, what you meant by the term "estimated"?

A. I don't attach particularly meaning to the word "estimate".

Q. Are you saying it's meaningless?

A. Well, it's a word there that could have been deleted without losing meaning.

Q. So it could have been "a swift announcement prior to the 'end of November'," is that right?

A. Yes, or you could have, maybe, "projected" would have been -- I don't know.

Q. Who was projecting the end of November as the time?

A. Or the announced, or whatever. I think the word "estimated" is -- I am not a language expert, and certainly not, for me, a foreign language, but I don't think it's an optimal word here. "Prior to the announced time, namely the end of November."

Q. You see, Professor, again, I give you this opportunity to say that your memory -- clearly, you had forgotten that you had co-authored that report and you had forgotten that a letter had been written out to people mentioning the end of

November, you had forgotten all of that yesterday, isn't that right?

A. No, I don't think so.

Q. Oh, you did know that yesterday when I asked you about whether there had been a delay? Which is it?

A. I don't understand the question.

Q. I am suggesting to you that you must have forgotten that you had co-authored that paragraph and that you knew, in July, that the end of November had been fixed for the announcement of the result, you knew that in July and you knew that the reason that that had happened and that there had been a change to the end of November was precisely because the EU had intervened in this matter and delayed things?

A. But, you know, I have known that all the time. What I think is relevant here is that, when we discussed it yesterday, you know, you were -- as I recall it, you were asking me about the schedule and asked about the schedule, I interpreted your question as being the internal project schedule and, more precisely, the changes that went along or the precise dates that were agreed on the basis of the document or the contractual letter from the Department to AMI on the 14th of September.

Q. When I asked you whether you were aware that it had been anticipated that there would be four weeks for the Government to decide, you said that you were not aware of that and that nobody had ever told you that.

MR. O'CALLAGHAN: We have been here now for an hour and 10 or 15 minutes dealing with the same paragraphs dealing with the same point. I really think we need to move on. I get the impression that Mr. McDowell is trying to trip up this witness as opposed to trying to extracting evidence from the witness.

CHAIRMAN: I am concerned that Mr. McDowell has to be given appropriate allowance --

MR. SHIPSEY: Sorry?

CHAIRMAN: As Chairman, having asked Mr. McDowell to take this limited portion, I am of a view that, as experienced counsel, he must be given appropriate latitude in addressing matters.

MR. SHIPSEY: Chairman, with respect, there is lots of experienced counsel in this court, and when Mr. O'Donnell intervened some 40 or 45 minutes ago, you asked Mr. O'Donnell or reminded Mr. O'Donnell that this wasn't adversarial. This may be Mr. McDowell's first time to this Tribunal, but the way this examination is being conducted is certainly not in accordance with the way Tribunal counsel had been conducting themselves in the course of the

or 17 days, or whatever Ms. O'Brien reminded me, that I was here for this module. This, sir, to me, as an experienced counsel, is being conducted in a wholly adversarial manner. This witness has answered and has been asked the same question over and over again, and I appreciate, sir, that you want to give your counsel latitude in relation to that, but there must be some limit to that, particularly, sir, if we are to have any opportunity over the next two weeks to ask any questions apart from the questions that Mr. McDowell is going to ask.

MR. GLEESON: I have to say, I have no difficulty with Mr. McDowell testing this witness's credibility, clearly, but there must be some limit to how far the Tribunal should permit Mr. McDowell to do so on the basis of one paragraph. I mean, there is a limited time available here.

CHAIRMAN: Well, I am anxious that we utilise the time.

MR. GLEESON: Precisely.

MR. McDOWELL: I'll make My Friends happy and say I want to go on from this. But I do want to put to you that one inference that could be drawn from this disparity of accounts and disparity of treatment and the testimony you gave yesterday and the statement you gave in April, I want to put it to you fairly and squarely, Professor Andersen, that the position you now adopt, that the announcement of the result on the 25th was done on your strong advice, is at variance with the account you gave earlier to the Tribunal, and that you have changed your version of events to give cover to the premature or accelerated announcement of events by claiming that it was your responsibility, when, in 2002, you disclaimed knowledge as to why --

A. I strongly object to this interpretation, strongly. You start by saying that I gave advice to make this publicly available on the 25th of October. I have said over and over again that my advice over October to Martin Brennan was to announce sooner rather than later, or as soon as possible. I have not -- I have not, as you now suggest to me, said to him that it should be on the 25th of October, and the inference I draw from that is the opposite of what you are drawing.

Q. I see.

CHAIRMAN: Well, I have noted all your evidence, Professor Andersen, and I'll bear it all carefully in mind.

A. Thank you.

Q. MR. McDOWELL: Now, in relation to clause 38, or question , you say that -- we have dealt with that.

Question 39, I dealt with that, too.

The next substantive question is the precise date and time at which Andersens were first aware that the Minister

intended to announce the result of the evaluation process on the 25th of October, 1995, and your answer to that is that you do not recall the precise date and time when you first became aware that the Minister intended to announce the result of the evaluation process on the 25th of October, 1995. "However, as noted above, Michael Andersen had advised that it was desirable to announce the result of the evaluation as soon as possible. In addition, Michael Andersen wrote a memo to the PTGSM on the 23rd of October with the following suggestions:

"1. A personal call from the Minister should be made to the applicants explaining the decision.

"2. A rejection letter should be delivered by hand to the losing applicants.

"3. The usual press-handling should take place, such as issuing a press release, holding a press conference and controlling media coverage. Furthermore, AMI sent five detailed draft rejection letters, A1, A2, A3, A4, A6, respectively."

Is that right?

A. Sorry, I have lost --

Q. We are on page 34 of your memo.

A. 34, yes. That's correct.

Q. And at question 42, you were asked of your knowledge, direct or indirect, of all consideration given by the Project Group, by any member of the Project Group or by any other person, whether in consultation with Andersens or otherwise, to the qualification placed by Andersens on the financial capability of Esat Digifone and Persona.

And they want details, too, of the further investigations or inquiries which would have been required to enable Andersens to provide a report without any qualification or rider regarding the financial capability of Esat Digifone or of Persona.

And your answer to that was: "It was solely AMI who raised and insisted that the Evaluation Report contain a discussion of the financial marker attached in particular to A3 and A5. This was addressed by PTGSM and also by lateral communications between the Department and AMI. However, AMI's approach was to investigate this matter in cooperation with representatives from the Department of Finance. This was for several reasons. One was that the Department of Finance was responsible for the financial evaluation by the civil servants in PTGSM. Secondly, the Department of Finance had knowledge, expertise and access to resources and information which did not appear to be available to the Department. AMI insisted on a financial marker being retained in the Evaluation Report so that this

issue could be addressed in the licence negotiations. In fact, AMI's concerns regarding A3 were stronger than those regarding A5."

Now, could I just ask you in relation to that. Your answer starts with the words "It was solely AMI who raised and insisted that the Evaluation Report contain a discussion of the financial marker attached in particular to A3 and A5." Is the Tribunal to draw from that that nobody else wished that matter to be included at the outset?

A. No, I don't think that's the inference you can draw from this. There could have been other civil servants who actually agreed with this, and, in the end, it turned out that everybody agreed.

Q. Why did you say it was solely you who raised and insisted on it? The word "insist" means that somebody else doesn't want to do it but you are saying no, it must go ahead?

A. Insistence comes out of the fact that, on the 25th, I believe, or was it -- yeah, in and around the finalisation of the Evaluation Report, AMI received some suggestions for change in the report based on the Steering Group meeting on the 23rd of October, and I believe it was a six- or eight-page document with a number of changes, of which some could easily be accepted by AMI, but there was also a suggestion to take out some wording around this financial issue, and that it was, I said in my response, my written response to the Department, that I didn't agree with taking that out.

Q. Well, can you recall who it was who suggested that it should be taken out?

A. I think that my recollection is that it was Fintan Towey who sent the fax and he said -- he sent it on a collective basis on behalf of, you know, his colleagues in the Department.

Q. I am just asking, is it fair to say that when you say it was solely AMI who raised and insisted that the Evaluation Report contain it, that the insistence that you say was the sole view of AMI, was not shared by anybody else at the beginning, as far as you knew; is that right?

A. No. I think I should, maybe, expand a little bit on the sentence here, because it's a few words, and if it's important to the Tribunal, I will happily expand a little bit on it.

Now, AMI drafted the wording on what is here called the financial marker, so this is the meaning behind the wording "AMI raised," so I hope that's clear. Now, the word "insisted" is making reference to the fact that, in the fax from Fintan Towey, there was a suggestion, I think it was either by him or by the collective Steering Group, to

remove that section of the document, and there we said -- or I said that I didn't think that it was appropriate to remove that section

Q. Why do you use the word "solely" there, that's all I am asking you? Why do you say it was you alone who asked for this to be done?

A. You know, you are making this a little bit like a language test, and being a foreigner with not the native language, we can spend many hours on --

Q. Are you saying it doesn't matter?

A. Yeah, essentially, essentially, we are wasting our time.

Q. Fair enough. I don't want to waste your time. You are saying it's not significant?

A. It's not significant.

Q. I see.

CHAIRMAN: Just a moment, Mr. McDowell. When you talk about the Department of Finance members, you are referring to Mr. McNeill and Mr. Riordan, that they would have been people that -- they were the only two people, I think, that you had occasion to deal with?

A. Exactly. Fully correct, Mr. Chairman. They were the two representatives from the Department of Finance in the Steering Group.

Q. MR. McDOWELL: You were asked at question 42A to provide details of all matters discussed and raised at the PTGSM meeting of the 23rd of October, 1995, including, in particular, the following: The requests made by certain members of the Project Group that further time be provided for consideration of the results, the request made by certain members of the Project Group that it was necessary to revisit the evaluation, the departure of Mr. Martin Brennan, Mr. Sean McMahan and Mr. John McQuaid from the Project Group meeting to attend a separate meeting with Mr. Johnston Loughrey, then Secretary General to the Department, and Andersen's understanding of the outcome of that separate meeting.

And your testimony is that Michael Andersen does not recall any members of the Project Group stating that further time was required to consider the results, and, in addition, such a statement is not contained in the minutes of the PTGSM meeting on the 23rd of October, 1995. Moreover, there was no request made by certain members of the Project Group that it was necessary to revisit the qualitative evaluation, and this isn't stated in the minutes either.

Mr. Martin Brennan, Mr. Sean McMahan and Mr. John McQuaid did not depart from the PTGSM meeting during the time Michael Andersen was present at the meeting, and, as AMI was not informed about the meeting and was not given any

minutes from the meeting - this is referring to the other meeting, the separate meeting - AMI does not know that such a meeting took place and, therefore, cannot assist in the understanding of that meeting.

So you are saying that you have no recollection of anyone looking for further time or to revisit the evaluation?

A. That's correct.

Q. And that that was not raised when you were present at that meeting, by anyone?

A. That's correct. I was only present for a limited time and I was the only AMI member who was present at that meeting. Whereas, at the meeting on the -- on the 9th of October, one of my colleagues also participated in that particular meeting. I don't recall how long time I was present here, but I know from my travel tickets, and so forth, that we were present for only one-and-a-half hours on the 9th of October meeting.

Q. Well, can we take it from that there was no hint at all -- there was no hint at all in what -- in the part of the meeting that you attended, that any of the participants were looking for extra time or wanted to revisit some of the Evaluation Report, no indication by any of them of that?

A. No, not to me, no.

Q. I see. At Question 43, you were asked details of all Andersen's discussions, if any, with any member of the Project Group or with any departmental official regarding the contents, or proposed contents, of the draft or final Evaluation Reports, including any proposals made by any member of the Project Group or any departmental official for substantive amendments to the draft or final reports, including all dealings between Andersens and Fintan Towey or any other person regarding a draft document headed "Final Evaluation" and included on Mr. Towey's computer disc in connection with the possible incorporation of the draft report or any part of the draft report into the final Evaluation Report, and all dealings on the 25th of October, , between Andersens and Mr. Fintan Towey or Mr. Martin Brennan regarding the contents of the documents entitled "Suggested Textual Amendments" which was faxed by Mr. Fintan Towey to Andersens at 10.05 a.m. on the 25th of October, 1995, and faxed back by Mr. Andersen to the Department at 2.07 p.m. on the 25th of October with his annotated comments.

And your answer to that is: AMI had a number of discussions with Irish civil servants until the 25th of October, 1995, with regard to the finalisation of the Evaluation Report. AMI was not aware of what was included

on Mr. Towey's computer disc. Accordingly, AMI can't comment on this. The communication concerning so-called textual amendments is one which Michael Andersen recollects. There was a number of comments discussed between AMI and the Department, who Michael Andersen understood to be representing PTGSM, which were of a linguistic nature. However, two changes in particular were of such a nature that AMI either had to disagree or reformulate. One was the wish to restructure the presentation. This was agreed, however, with the final wording in the Evaluation Report stipulating this report reflects the consensus view of the PTGSM as to how the results of the evaluation should be presented in the final report; and another was with regard to identifying the risks concerning the financial capability of A3 and A5. AMI, who had identified these risks and formulated the subsequent implications impacting on licence negotiations, did not concede to the wish expressed in the suggested textual amendments to delete some of these comments. Could I ask you in relation to that statement, did you have any discussions as opposed to just simply receiving that suggested amendment in relation to the financial aspects? Did you discuss that?

A. That's my recollection, yes. It went the following way, according to my recollection, that I got the fax which we discussed before, I faxed back to Fintan Towey some of my comments and then we discussed it jointly over the telephone. That's my recollection.

Q. And question 44, I think it reads that they are looking for details of all inquiries conducted by Andersens or, to their knowledge, by any other person regarding the conclusion of the evaluators that, having regard to the level of interest in the Irish competition for the GSM licence and the high profitability of mobile phone communications generally throughout Europe and that the project is fundamentally robust and after a licence has been awarded and an attractive opportunity for corporate debt financiers, together with the precise results of these inquiries, if no such inquiries were conducted, details of the basis on which Andersen agreed to the insertion of the two additional paragraphs to page 44 of the report as proposed in the document's 'suggested textual amendments', faxed to them on the 25th of October, 1995.

And the answer is: It was quite clear that a GSM2 licence operated by one of the three highest-ranking applicants, would be a bankable project. By "bankable project," AMI meant that the undertaking which was operating -- the undertaking which was operating the mobile phone network

would have had little or no difficulty in attracting corporate finance for the project if required. AMI formed this view based on its extensive experience of the telecommunications business throughout Europe and internationally. AMI, therefore, had no difficulty in inserting the agreed paragraphs dealing with this issue and this was also in line with the understanding, both at the sub-group level and the PTGSM level, at times when AMI were present.

Is that your recollection?

A. That's correct.

Q. And just arising out of that, could I ask you, briefly, the notion of bankability --

A. Yes.

Q. -- this was the first time that phrase had been used in any written text; is that right?

A. I am not so sure about that. I think it appears earlier.

Q. This was coming from the civil servants to you, isn't that right, this proposed text about a bankable project? I am just asking you, was the notion of bankability ever referred to in any previous texts or drafts?

A. Yes, I think so. At least, I recall that we discussed it at the Steering Group meetings and we discussed, also, earlier today, that bankability was a term that was generally used by AMI consultants.

Q. And you are saying to me, I just want to understand that, that you think that the term was used in previous drafts?

A. I am -- you know, there are so many documents in this module, so, you know -- well, I think it has been used before, yes.

Q. Now, you were asked to provide full details of the grading and scoring of the evaluation criteria and, in particular, the mechanics of the aggregation of grades to give totals for indicators, sub-indicators and dimensions, the mechanics of the aggregation of the grades for each individual dimension to give the grand total and ranking shown on Table 16 on page 48 of the final report and the mechanics of the conversion of the grades for the individual dimensions shown on Table 16 to the marks for each dimension shown on Table 17, and the basis on which the conversion from grades to marks could be justified, bearing in mind that this involved a last-minute conversion of a process that had been based exclusively on a grading system.

And your answer to that is: All indicators were scored by the sub-groups and the results were presented in Table 15 under marks for aspects and dimensions. Subsequently, the ratings were, as per paragraph 19 of the RFP, were applied

and the result of this was Table 16. Finally, the grades contained in Table 15 and 16 were converted into numbers whereby alphabetical grading A, B, C, D, E, A being the best, was converted to numbers, 1 to 5 - 5, 4, 3, 2, 1 - 5 being the best and corresponding with an A. The conversion to numbers was not made in the last minute but had existed in the evaluation process as one of the possibilities of presenting the results ever since the meetings of the 18th and 19th of September, 1995, respectively. The results presented in Table 17 as the final report is one of the ways by which the end result was presented and stress-tested and definitely the one preferred by the Chairman of the PTGSM, who suggested this presentation methodology at the end of the evaluation of the sub-groups around the 18th and 19th of September, 1995.

So allowing for the 18th/19th, 19th/20th issue, you are saying that the letters to numbers issue was raised by the Chairman, Martin Brennan ; is that right?

A. That's correct.

Q. At the end of the meeting on the -- was it at the end of the meeting on the --

A. 18th/19th September, yes.

Q. The end of the evaluation, not the end of the meeting?

A. Yeah.

Q. And we heard this morning that you weren't fond of that transformation?

A. No, I said I was not particularly fond.

Q. The identity of the winner had emerged by mid-September, you say. You were asked about the knowledge, direct or indirect, of the precise date on which -- and time at which a final decision was made by the Project Group regarding the result of the competition and the name of each person who was party to such a decision.

And your answer to that is: The identity of the winner had emerged by mid-September 1995 after the presentations had been made. Table 15 was then drawn up showing A5 as the winner and contained in the Draft Evaluation Report dated 3 October, 1995, as Table 16. This Draft Report was approved at the PTGSM meeting dated 9 October, 1995. No one at the meeting expressed any concerns while Michael Andersen was present. At the subsequent meeting dated 23 October, 1995, as the final Evaluation Report was unanimously adopted by PTGSM, it appears that all of the PTGSM members present at the meeting unanimously approved of the result and the report. There appeared to be no objections subsequent to the meetings from members or participants who were not present at the meeting on the 23rd of October.

Now, could I ask you just in relation to that. When you

say it had emerged, you were asked, you know, the name of each person who was a party to the decision as it emerged, and what's your answer to that? Who were parties to the result as it emerged in mid-September 1995?

A. Well, I think that it was more or less most of the persons involved; people who had participated in the evaluation sub-groups could begin to form an overview of the aggregated results. Some would be more informed than others, however, depending on which kind of sub-groups they participated in. For example, if you take my own case and also Martin Brennan's case, Fintan Towey's case, Jon Bruel also participated in many groups, and there were, at that time, an exchange of information between sub-groups so that we would know around that time that, following the 18th and 19th of September meeting, that a result emerged.

Q. I see. And just, you say -- talking about exchange between sub-groups; what do you mean by that?

A. Sorry, I didn't get the question.

Q. You refer to exchange between sub-groups. What do you mean by that?

A. You see, in each evaluation sub-group, there was a task to draft -- to draft minutes, and these minutes were distributed through the Department and also kept in AMI. So, it was free for, you know, any -- anybody who wished to see the minutes from the different meetings, to do so.

Q. And can you recall now where you are? Who did you send them to?

A. No, I have no recollection of the logistics, but I do recall, for instance, that we had -- at the end of the presentation meetings, we had a Steering Group meeting on the 14th of September. At that time, all the results from the technical sub-groups were, what we call the technical sub-groups, were actually finalised, and one may think that that is just one group, or whatever, but I can inform you that that was five out of the ten sub-groups, they had finalised the work at that time.

Q. Now, just briefly, can I quickly go through the remaining questions because I think they are fairly straightforward.

Question 47 I don't think really should bother us.

Question 48, you were asked about Andersen's role in or knowledge, direct or indirect, of the role of any other person in the preparation of the following documents:

A) Mr. Loughrey's recommendation to the Minister dated the 14th of October, 1995.

B) the briefing note to the Minister regarding the outcome of the evaluation process; and

C) the Memorandum of the Government dated the 26th of October, 1995.

And your answer to that is: As Michael Andersen had given clear advice to announce the result of the evaluation process as soon as possible, AMI was in agreement with Mr. Loughrey's recommendation to the Minister.

I'll just stop there and ask you were you aware that Mr. Loughrey had made a recommendation to the Minister, since you say you were in agreement with, or is it just that you agree with it now you have heard about it?

A. It is the latter, I agree with it now that I have heard of it.

Q. "However, neither AMI or Michael Andersen assisted in the document referred to." I presume, is that the recommendation to the Minister, is it?

A. Yes.

Q. "Michael Andersen does not recall being aware of the briefing note to the Minister or the Memorandum of the Government at the time." So we can take it from that that you are saying that you were unaware at the time --

A. Yeah.

Q. -- of any of these steps?

A. If I can try to give you my recollection of it so I can be helpful to you in this respect.

It would naturally be such that there was an enormous amount of time pressure on AMI, on myself and also on my consultant colleagues to finalise the Evaluation Report to meet the agreed deadline of the 25th of October. So what we did was to do the quality checks, to do all kinds of extra work that was needed to, also to finalise the supplementary analysis, to present the graphics, which were to be coloured graphics, and so forth. In actual sense, it might seem trivial, but it was a huge task. So what we did was to concentrate entirely on the work that was our contractual obligation, and we simply made a cut-off and said the whole political process and advice from either the Steering Group or the Department to the Secretary or to the Minister and to the Government, etc., we kept out of that entirely.

Q. And you were asked about being aware of IIU Limited or Dermot Desmond being involved in the A5 consortium?

A. No, I didn't know.

Q. And you only mentioned Dermot Desmond, but I presume that you are saying that you didn't hear about IIU, either; is that right?

A. That's right.

Q. And then at paragraph 50, there is a letter from Michael Walsh of IIU, in 1995, and I think you are saying to the Tribunal you only became aware of that letter in the course of discussion with Tribunal lawyers; is that right?

A. That's correct.

Q. And again, you are unaware of a letter being sent by Denis O'Brien on the 29th of September or its being returned; is that right?

A. Yes.

Q. Returned to Denis O'Brien, isn't that right?

A. Yes.

Q. And I think on question 52, you are asked further questions about that matter in relation to IIU and Dermot Desmond, and you refer back to the previous letter, or the previous answer, and you say there was no queries or requests for clarifications addressed to AMI by anybody in relation to the ranking of the applicants after the event; is that right?

A. That's right.

Q. And then you were asked for details of your involvement or role in the licensing negotiations between the Department and Esat Digifone, and any services that you provided to the Department between October 1995 and May 1996.

And you say that AMI only participated in the first meeting with the highest-ranked applicants. "Michael Andersen was present at that meeting. Mr. Iverson also participated.

Prior to that meeting, AMI prepared a Memorandum on how to convert some of the favourable offers made by A5 in its application into a binding commitment in any licence that might be awarded to it. Mr. Andersen recollects that he briefly discussed the licensing both with Mr. Towey directly and also in connection with the meetings and disappointed applicants in which -- in which meetings Mr. Andersen participated."

Finally, in this Memorandum, you were asked whether Andersens were requested to assist the Department or advise the Department in connection with the extent to which the composition of Esat Digifone diverged in the composition of the Esat Digifone consortium by reason of the substitution of Mr. Desmond as the bidder of -- as the holder of 20% of the shares, and further questions about that.

And you say you were simply not requested to assist the Department in connection with potential changes to the A5 consortium; is that right?

A. That's correct.

Q. I see.

CHAIRMAN: I had contemplated at one stage sitting a little longer, but given the length of time that Professor Andersen has been in the witness-box and also the bicameral commitments of a number of legal advisors in the context of tomorrow morning, I'll adjourn now until half past ten tomorrow morning. Thank you very much.

THE TRIBUNAL ADJOURNED UNTIL THE FOLLOWING DAY, THURSDAY,
THE 28TH OF OCTOBER, 2010, AT 10.30 A.M.