

THE TRIBUNAL RESUMED ON THE 28TH OF OCTOBER, 2010,
AS FOLLOWS:

MR. McDOWELL: I propose to deal with Mr. Andersen's recent statement about the indemnity, but I think, in that context, I should, before I open that statement, read to the Tribunal a letter which the Tribunal Solicitor received today, and it's dated the 27th of October, 2010, and reads as follows; it's from Maples Solicitors, who act for Mr. Andersen in these matters, and it reads as follows:

"We refer to the statement of Mr. Andersen delivered by fax on the 25th of October, 2010." And that's the indemnity statement, as I call it, Chairman.

"We wish to refer to paragraph 23 thereof and to make a correction thereto. We note that Ms. O'Brien made the assertion in the Opening Statement that the Tribunal put the AMI report of June 2002 and the third quantitative analysis of the 2nd of October, 1995, to a number of departmental witnesses. In the time available,

Mr. Andersen is not in a position to contradict this and, therefore, withdraws the assertion in paragraph 23 and the implication that witnesses were only led to the second quantitative analysis. In the circumstances, we would be grateful if you would please identify the day and date of

the transcripts where these documents were put to witnesses."

And that will be done, but I think it's important that before we go on to that matter, that the -- that the Tribunal should be aware of that withdrawal.

And the second point, Chairman, just in relation to housekeeping matters, is that in relation to the availability of Professor Andersen, Maples have also sent a letter today indicating that he is not going to be available on any date in the immediate future, in the proximate future, and that if we do not conclude, effectively, our proceedings by next Friday, that he wouldn't be available until the second half of 2011 to assist the Tribunal.

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

1 Q. MR. McDOWELL: Now, I think as has been just said, Professor Andersen, you provided the Tribunal, in recent days, with a supplemental statement in relation to the indemnity matter, isn't that right?

A. That's correct.

2 Q. And I think it's been circulated, but since I want to put it on the public record, I think we'll have to go through it, and that's subject to the correction and withdrawal

that you have already signalled.

You say: "The purpose of this statement is to explain the context for Michael Andersen's wish and need to have an indemnity.

"Background:

"I established the Andersen Management International on the 1st of November, 1991. It carried on business very successfully over the next number of years. I was Managing Director and effectively 75% shareholder in AMI. In 1999, I entered into discussions with Merkantil Data and these discussions culminated in the sale of AMI to them in April of the year 2000. For a period after 2000, I acted as consultant to AMI.

"In 2002, I encountered very serious difficulties with the new owners of AMI. They were unhappy about the prospect of me assisting the Tribunal. They withheld payments due by them to me in order to put pressure on me to make sure that I would only be involved if Merkantil Data could recoup all their costs of any kind. This dispute resulted in an arbitration. The new owners had put AMI up for sale and were concerned that my assisting the Tribunal could result in an exposure for the company which would damage or destroy the prospects of its sale. The new owners had held back consideration in relation to the sale by me to them in

the light of this concern.

"By letter dated the 30th of November, 2002, the Tribunal wrote to my Danish solicitor 'that there is a real potential that negative conclusions could be drawn.' This is also likely to give rise to considerable disquiet both in this country and elsewhere."

And you attach a copy of that letter, which we'll come to.

We might as well go to it now. It's at the end of the statement. And it's a letter written to your solicitor by the then-Solicitor to the Tribunal, John Davis, dated 30 November --

A. Sorry, I just need to have a copy of it. I don't have it here.

3 Q. And it's addressed to your Danish lawyer, Mr. Pals, in Bech-Bruun.

A. Sorry --

4 Q. Have you got it?

A. No.

5 Q. It should be attached to the end.

A. It's not here. It's not in this version. I have it.

Thank you.

6 Q. This is a letter from Mr. Davis, the Solicitor to the Tribunal at the time, and it says:

"Dear Mr. Pals,

"I refer to recent correspondence and, in particular, your letter of the 29th of November, 2002. Once again, lest there be any doubt about it, the Tribunal is seeking your client's assistance in his personal capacity. It is not requesting your client to represent AMI. A letter to this effect will be sent to AMI/Merkantil Data. You will be aware that Mr. Andersen is an extremely important witness to the Tribunal to examine aspects of the evaluation process and, in particular, the treatment of financial aspects of the various applications. The Tribunal sittings are due to resume on Tuesday next, 3rd of December, 2002. The Tribunal views Mr. Andersen's failure and the failure of AMI/Merkantil Data to assist the Tribunal and, in the case of Mr. Andersen, to attend at its meetings, with disquiet. This is also likely to give rise to considerable disquiet both in this country and elsewhere. Of course, neither Mr. Andersen nor AMI/Merkantil Data, as they are outside the jurisdiction, can be compelled to attend. However, in view of Mr. Andersen's early indications and the early indications of AMI that they'd be happy to assist the Tribunal and having regard to the extent that the Tribunal has been prepared to accommodate Mr. Andersen in practical matters concerning fees, expenses, timetables, and so forth, and having regard to their current stance,

there is a very real potential that negative conclusions could be drawn concerning Mr. Andersen's involvement and the involvement of AMI in the process.

"It is only fair to warn you that there is a risk that this type of conclusion could be drawn in the absence of evidence of your client or the evidence of AMI/Merkantil Data in connection with the process.

"Yours sincerely

John Davis."

And going back to your statement, you say:

"In early 2003, the Tribunal obtained an opinion from Peter Bacon which alleges" and you say "without any justification that the Evaluation Report with regard to the award of the second GSM phone licence, that the Evaluation Report was seriously and fundamentally flawed. The Tribunal appears to have adopted that criticism in a letter to me dated 26 March, 2003, in which it states that its tentative view that the report was fundamentally flawed and this may reflect poorly on the authors of the report.

"I was aware that Persona had made a complaint to the EU Commission, and had become aware by 2003 that Persona had issued proceedings against the Irish State with regard to GSM2. I met with Tribunal lawyers on 29 October, 2003, and I communicated to them clearly my need for an indemnity if

I was to give evidence at the Tribunal. This requirement was clearly understood by the Tribunal lawyers. It is very clear, even from the Tribunal's own minutes of this meeting, much of which I dispute, that the Tribunal's -- that the Tribunal understood my need for an indemnity. Indeed, Mr. Healy suggested at the meeting that he might obtain a waiver from the new owners of AMI. I made this request in circumstances where my proposed involvement was against a backdrop of arbitration with AMI's new owners and a complaint and possible litigation by Persona. Such an indemnity was required so as to guarantee that the costs in terms of time, lawyers' fees and other expenses of appearing at the Tribunal, would be met in an expeditious and straightforward manner. Such an indemnity was also required so as to protect me against any third-party claims that could arise from my participation in the Tribunal. These concerns were underscored by the Tribunal's 2003 criticisms of the evaluation process.

"The Tribunal sought to persuade the Government to provide me with such an indemnity (see Tribunal correspondence dated 10 March, 18 June, 23 June and 12 August, 2004) in particular, in the letter of 23 June, 2004, the Tribunal said that 'To date, the Tribunal has been unsuccessful in persuading the State to provide an indemnity. It cannot

now be suggested that this request was unreasonable or unjustified, given that the Tribunal asked, albeit unsuccessfully, the Government to provide one.'

The next section of your statement is:

"Tribunal fails to procure indemnity:

"For reasons of which I am unaware, the Government did not furnish such an indemnity. Such an indemnity was not forthcoming from the Tribunal, either. On 28 September, 2005, and again on 27 October, 2005, I made it absolutely clear that, in the absence of an indemnity or alternative appropriate insurance cover, I would not appear to give evidence at the Tribunal. Notwithstanding this, from 2001 to 2003 I provided very substantial assistance to the Tribunal. I attended nine private meetings. I spent very significant amounts of time reviewing documentation from 1995 and 1996 to do with GSM2 and prepared memoranda and other information for the Tribunal. However, I have consistently maintained that whilst I was prepared to give evidence to the Tribunal, I required a satisfactory indemnity first.

"The provision of an indemnity:

"My Danish solicitor, Mr. Carsten Pals, was contacted by Mr. Tom Reynolds, a solicitor with Digicel, and therefore an associate of Denis O'Brien, on 8 April, 2010, with

regard to establishing whether I would be willing to give evidence to the Tribunal. Given that the Tribunal, I believe, continues to have a mistaken view of the Evaluation Report, and indeed has never resiled from the tentative view referred to above, I explained to Mr. Reynolds that I would be willing, and indeed always was willing, to give evidence to the Tribunal. I explained that I remained extremely concerned at the criticism that was made by the Tribunal of the evaluation process and, therefore, of me. In those circumstances, I reiterated what I had always maintained at the Tribunal, that it was necessary for me to receive an indemnity in respect of the evidence that I would give both in respect of the costs of giving evidence and in respect of any third-party claim that might be made by any third party.

"Mr. Pals and Mr. Reynolds arranged to meet with me. That meeting took place on 9 April, 2010, and lasted approximately two-and-a-half hours in total. Subsequent to the meeting, an indemnity in the form furnished to the Tribunal was provided to me by Mr. O'Brien through Mr. Reynolds and Mr. Pals on the 13th of April. I have made clear my requirement for a full indemnity to the Tribunal since 2003 and addressed the cost issue since 2001. I have also approached the Department with regard to

an indemnity, but without any response. However, particularly in the light of the content of the letter of the 26th of March, 2003, which, for the first time, suggested that the Tribunal was holding a tentative view that the report appeared to be flawed in a number of ways and indeed to make and claim a number of seriously fundamental flaws, my conviction that such an indemnity was required was endorsed. The Tribunal refused to provide such an indemnity itself and was unable to secure one from the State, despite having requested it. This tentative view has the very real capacity to damage my professional reputation. Accordingly, when Mr. Reynolds contacted Mr. Pals in April 2010, I expressed an interest in discussing a mechanism whereby I could address the misconception of the Tribunal whilst obtaining an indemnity.

"It is well-known that Mr. O'Brien has been very anxious that I would give evidence to the Tribunal in view of the evaluation process -- of my view of the evaluation process.

In the circumstances, it is entirely understandable and, I would suggest, predictable, that he offered to give me the indemnity which both the Tribunal and the State had heretofore refused to do. Given my concerns, it is also entirely understandable that I would accept it. For the

avoidance of doubt, I have consistently taken the view since 1995 that the evaluation process was properly conducted. The provision of any indemnity does not and has not affected this conviction in any way whatsoever.

The existence of that indemnity has been disclosed to the Tribunal on a voluntary basis. The Tribunal is apparently taking the view that this disclosure was 'belated'. No questions were asked of me when my statement of 13 April, 2010, was furnished to the Tribunal via Mr. O'Brien's solicitors. It was clear from that event that that contact had been made on behalf of Mr. O'Brien to me and the Tribunal did not seek to investigate the nature of that contact. I had no difficulty with disclosing the indemnity that I had -- had I been asked. I was not. When the issue was raised by the Tribunal in correspondence with my Irish solicitors, the Tribunal was told about it. A copy has been furnished to the Tribunal. I have not, as has apparently been suggested, attempted to hide the fact of it." Is that right?

A. Correct.

7 Q. "Yesterday, 25 October, 2010, was the 15th anniversary of the delivery of the final Evaluation Report. Both the result of the evaluation and the final report was handled collectively by 17 Irish civil servants and seven

consultants from AMI and was adopted unanimously. The participants represented valuable and state-of-the-art expertise within their fields of operation at the time and there is absolutely no doubt that the core GSM2 evaluation in Ireland was at the level of international best practice at the time. The evaluation came out correctly and the result that A5 had submitted an application which was the best application according to the evaluation criteria and one of the best I have ever seen.

"The Tribunal has been consistently reluctant to accept this and has proceeded on a number of mistaken bases."

Here we come to paragraph 23 that we mentioned earlier.

"I have repeatedly made it clear that it is imperative to use the correct version of one of the draft documents concerning some of the selected aspects of the entire evaluation. I refer in particular to the so-called results of the quantitative evaluation. The correct version did not place Persona at the top, but an applicant called A6.

Despite this, numerous witnesses and also Peter Bacon were furnished with the wrong draft version and from time to time -- and from time to time as if the draft was the final document. This has severely distorted and unnecessarily protracted the decade-long GSM module of the Tribunal."

Now, you have with withdrawn those remarks, have you?

A. The remarks on "numerous witnesses," yes.

8 Q. Sorry, are you withdrawing the whole paragraph or are you withdrawing just the reference to "numerous witnesses"?

A. I am withdrawing the reference to "numerous witnesses".

That's how I interpret --

9 Q. We'll come back to that later when I finish your statement.

"I have had to retain both a Danish solicitor and, subsequently, an Irish solicitor, together with barrister, and I simply could not afford to do this without the indemnity. This will now effectively allow me to give evidence here at Dublin Castle, the following few days, and therefore, to get read into the record and set in stone, one, that A5 was collectively, by 17 Irish civil servants and seven international consultants, assessed, on a unanimous basis, to be the best application; and, two, that neither AMI nor I ever saw any evidence of wrongdoing by Mr. Martin Brennan or his colleague civil servants with regard to the evaluation. They were civil servants of a very high calibre and I would like to emphatically state that I fail to find any justification for the hostile approach of the Tribunal to the evaluation process in which I was involved 15 years ago.

"Conclusions:

"The Tribunal has been aware since 2001 that I required an

indemnity in respect of my costs and, since 2003, that I required a full indemnity to include third-party claims.

The Tribunal obviously recognised the need for an indemnity in circumstances it sought one for me from the Irish Government but failed to obtain one. The indemnity is required not least because of disputes with Merkantil Data, but also because of claims made by Persona to the European Commission and against the Irish State with regard to the GSM2 licensing process. A satisfactory indemnity was forthcoming from Denis O'Brien and, therefore, this cleared the way for my appearance at the Tribunal. The need for an indemnity has been a longstanding precondition to me giving evidence at the Tribunal. The Tribunal failed to obtain one for me. Denis O'Brien has provided one. I am now in a position to correct the very many apparent misconceptions with regard to GSM2 licensing process under which the Tribunal lawyers are labouring.

"I did not conceal the existence of the indemnity of 13 April, 2010. The Tribunal was swiftly informed about it when I was asked about it and indeed the Tribunal has a copy of the indemnity. The fact that 17 Irish civil servants and seven international consultants adopted a unanimous result of an evaluation process which was at the level of international best practice at the time, remains a

fact that I have consistently emphasised to the Tribunal since 2002." Is that right?

A. Yes.

10 Q. Now, could we just clarify what you have just said now.

The letter that I read to the Tribunal at the beginning, which perhaps you should have a copy of --

A. Yes, please.

11 Q. -- says: "In the time available" -- at paragraph 3 --

"Mr. Andersen is not in a position to contradict this and, therefore, withdraws the assertion in paragraph 23 and the implication that witnesses were only led to the second quantitative analysis."

Are we -- are you saying that the rest of that paragraph you stand over?

A. Yes. What I tried to express with the letter sent is that Jacqueline O'Brien presented, in the opening remarks, a statement that the third version was presented by the Tribunal in an opening remark and also put to witnesses, and having checked that with my legal team, I can see, or they can see and I can see that the correct version might have been put to some witnesses. However, if we take the opening -- if we take the Opening Statement on day 156, I am now referring to 3 December, 2002, the wrong version was put in that opening remark, because it reads - I am now

quoting from page 101 - "While the quantitative evaluation indicated that the application by A3" -- I'll not mention the name for the moment -- "had the highest score," etc. So in that statement, the wrong version of the draft was presented.

12 Q. Do I understand you to be saying that the third version to which you make reference was, in fact, the correct version?

A. Well, I don't know how we shall deal with the term "correct," because the fact is that there was never produced a final version, but the third version was the latest version.

13 Q. I see.

A. Let me just try to explain a little bit here. There was a working process going on on the quantifications. There were three draft versions of a document of this work in progress: the first version, the second version and the third version. Now, the second version places A3 as the applicant with the highest score at the time, but the third version places A6 with the highest score. So the discussion here, if I can assist you, is, should one present a second version of a document with works in progress to applicants and to Mr. Bacon, and so forth, or the third version, where I am stating that I think the most reasonable thing is to present the last version of a

working document.

14 Q. Well, now, you have referred to the Opening Statement on day 156, and you have -- have you yourself seen that Opening Statement and read it in its entirety or are you relying on matters told to you by your solicitor?

A. I have not read it in the entirety, no.

15 Q. Perhaps I could read you a passage that begins at page 13 of it and ask you for your opinion of the passage and whether you want to vary your evidence, having considered it.

The passage begins at the bottom -- have you got the transcript?

A. I have got a transcript, but I am struggling to find the correct page.

16 Q. Well --

A. Because it's not numbered, the version I have.

17 Q. Well, if I can bring you to page 13 of the transcript.

A. The problem I have is that there is no page numbers on the version I have.

18 Q. Well, "day 159" is written at the bottom of it.

A. Okay, but then I am not sitting with it; I am sitting with 156, day 156.

19 Q. Day 156, yes, and I am asking you to look at page 13 and 14 of that transcript. It's day 159 I am asking you to look

at.

A. But I am not sitting with 159; I am sitting with 156.

20 Q. I see. So we'll have to get you a copy of the transcript for day 159. I am told that this is an Opening Statement delivered in December 2002 at the commencement of the inquiries in relation to these matters.

A. Yes, I fully accept that.

21 Q. And this has been posted on the Internet, this Opening Statement, so it should have been available to you.

A. Yeah.

22 Q. And I am told -- Ms. O'Brien tells me it's a continuation of the same Opening Statement that you referred to earlier, which is at 156. It's a continuation of the same Opening Statement.

A. Okay.

23 Q. And at the bottom of page 13, the following reads -- the statement reads as follows:

"On 2 October, 1995, Andersen Management International introduced a third quantitative report and the total weighted scores and arranging of that date were:

A1: Score 273. Rank 6;

A2: Score 2.90. Rank 5;

A3: Score 3.19. Rank 2;

A4: Score 3.09. Rank 3;

A5: Score 3.01. Rank 4; and

A6: Score 3.41. Rank 1.

"Andersen Management International has furnished a Memorandum to the Tribunal concerning the quantitative analysis which was carried out in the course of the process. They have informed the Tribunal that the change in the separate quantitative evaluation rating, the development in the scoring of the applicants over the time period of the three different versions of the separate quantitative evaluation document, can be illustrated as follows."

And then there is a total weighted scores and ranking and they provide three tables which cover 30 August, 1995, 20 September, 1995, and 2 October, 1995, and I have already opened those particular weighted scores and ranking.

"AMI has, so far, not been able to find, in its files, narratives, i.e. discussions or correspondence concerning the changes in the outcome of a separate quantitative evaluation."

It goes on to say: "When comparing differences in scoring and ranking between the three drafts of the document on a separate quantitative evaluation, it should be taken into consideration that the number of quantitative evaluation indicators forming the basis for each evaluation result are

different for the first draft compared to the two subsequent drafts; hence, 14 quantitative indicators are being scored in the draft of 30 August, whereas the number of quantitative indicators are only 13 in the drafts of 20 September and 2 October, 1995, respectively. This is due to the elimination of the indicator, number of roaming agreements, which indicator was found ill-suited for qualifications.

"Subsequent to the 2nd of October, 1995, draft, the three quantitative indicators, OECD basket, blocking rate and drop-out rate files were also dismissed from the separate quantitative evaluation due to inconsistencies in the relevant data that made a separate quantitative comparison of those data impossible of the final Evaluation Report, as well as the fact that the Evaluation Report does not contain any quantitative tables or figures concerning blocking or drop-out rates. The fact that the quantitative indicators were left out of the separate quantitative evaluations did not mean that these aspects of the applications were not evaluated, since they were taken into consideration under the holistic evaluation.

"It should also be noted that the average score fluctuates during the evaluation period concerned. The average score on 30 August was 3.12, whereas on 20 September, 1995, it

was reduced to 2.84, whereas on 2 October 1995, it jumps to

3.06. The reason for the fluctuation is that the separate quantitative evaluation was an ongoing process that was rerun over a considerable period of the total evaluation period; that is, almost until the settlement of the final result of the holistic evaluation. The reasons for the recalculation of the separate quantitative evaluation were to not only the changes in the number of predefined indicators applied, but also, in particular, the modifications that were made over time to the quantitative data provided by the applicants in the mandatory tables of the applications. During the first separate quantitative evaluation attempt, it was quickly recognised by the number-crunching team that the quantitative data provided by the applicants could not be taken at face value. In addition, it was not possible to compare the data among the applications due to the differences in assumptions made by each applicant when filling in the mandatory tables in the application. Accordingly, written questions were posed to the applicants in order to ensure that the quantitative data provided was assessed on the correct basis and that the basis for one application was comparable with the basis of the data in the other applications. See, for example, section C of the internal AMI memo of 16 August, 1995."

And it goes on then to consider those matters.

What I'm saying to you, Professor Andersen, that this Opening Statement was posted on the Internet and, quite clearly, that the passage in it to which you referred is not representative of the contents of the Opening Statement, and I am putting it to you now that it was very clear that when that Opening Statement was made in December of 2003 to this -- of 2002, to this Tribunal, that very clear and specific reference was made to all three drafts of the quantitative analysis?

A. I fully accept that and that was also why we furnished the letter through my solicitors the other day, or last night.

24 Q. You see, I asked you earlier were you confining the withdrawal to what's been put to witnesses, and you said no -- you said "yes," rather, because the Opening Statements made to the Tribunal didn't allude to the third version. Do you want to amend that now?

A. Well, what I want to make clear here is that we fully accept what Jacqueline O'Brien said in her opening remarks, I also think I said that before, and I fully accept that the third version was put on that particular day, 159, which you just read aloud. That having been said, however, I find it strange that in this, what appears to be the same opening remark, the same Opening Statement on day 156, it

reads: "A3" -- I'll not mention the name for the moment --

"had the highest score."

25 Q. That was true in relation -- I suggest to you that the matter was opened in chronological order and that it was made clear to the Tribunal that A6 was seen as -- sorry, yes, A6 was seen as the highest score in the third version, isn't that right?

A. That's correct, yes.

26 Q. So do you now withdraw the suggestion that you are simply talking about matters being put to the witness, but do you accept that this was fully opened to the Tribunal by counsel at the time?

A. Yes, I accept that the third version has been put openly, yes, but --

27 Q. And on the Internet?

A. Yeah, but I find it strange then, also, on day 156 is probably also on the Internet, that the opposite is said; namely, that A3 was the winner.

28 Q. The simple fact, I suggest to you, is that the Opening Statement in its entirety was put on the Internet, and there is no reason to believe, other than not reading it carefully, for you to make the assertion that this matter was in any way not brought to the Tribunal's attention at the time; it was dealt with comprehensively, wasn't it?

A. It was dealt with, yes, it was made public, I also accept that. No, I can only reiterate that we fully accept what Jacqueline O'Brien said in her opening remark the other day.

29 Q. But I have got to suggest to you that when I suggested to you that you seemed to be confining it to the fact that it had been put to witnesses, you pointed to the Opening Statement made to the Tribunal and said that it wasn't reflected there, and now we find that it was reflected there.

MR. GLEESON: That's not what he said.

A. Sorry, that's not what I said. That's a tweaking -- that's an unjustified tweaking of my words.

30 Q. MR. McDOWELL: Why did you refer to volume 156? What was the purpose of that reference?

A. Let me try to reiterate, then: What I said in the beginning is that, based on the Opening Statement from Jacqueline O'Brien, I was made aware, by her remarks, that the third version had been put in an Opening Statement to the Tribunal and also that it was put to witnesses. I then asked my legal team to see where are these -- where are the references, and so forth. We went through these references, and it is correct, as stated by Jacqueline O'Brien in the Opening Statement, that the third version

has been put to some witnesses and also that the third version appears in the opening remarks on day 159.

However, what I find strange, that was what I said, is that, on day 156, it is still recorded that A3s was the winner.

31 Q. I see. Well, can I suggest to you, you are now saying that you went through the transcript and verified that Ms. O'Brien's references were --

A. My legal team did.

32 Q. Your legal team did that?

A. Yes.

33 Q. But you, in your letter -- they, in their letter, say that, in the time available, you are not in a position to contradict this and, therefore, you withdraw the suggestion. So which is it?

A. Which of what?

34 Q. You've said to this Tribunal that your legal team went through the transcript to confirm whether Ms. O'Brien's references were correct or incorrect, isn't that right?

A. Sorry?

35 Q. You said, Professor Andersen, that your legal team had gone through the transcript to confirm whether Ms. O'Brien's references in her Opening Statement were correct or incorrect, isn't that right?

A. Yes, was correct, yes.

36 Q. But in the letter that they sent, they said that, "In the time available, Mr. Andersen is not in a position to contradict this and, therefore, withdraws the assertion on paragraph 23 and the implications that witnesses were only led to the second quantitative analysis."

So, your solicitors, having gone through this on your account, then wrote saying that they weren't in a position to contradict it in the time available and they were, therefore, withdrawing it. So which is it? Did they know that Ms. O'Brien was correct or did they know, or did they simply not know, they hadn't had time to check out the correctness of what she had said when they wrote this letter?

A. Well...

37 Q. Which is it?

A. Which of what?

38 Q. Which is it? Had they checked that she was correct by going through the transcripts before they wrote this letter or had they not had enough time to check it out and were they just simply saying that because they hadn't had time to check it out, they were withdrawing it in the circumstances?

MR. GLEESON: Mr. Chairman, before this goes any further, I

just have a couple of things to say. I didn't interrupt yesterday when Mr. McDowell cross-examined this witness about a discrepancy which he perceived between his evidence on day 1 and a statement submitted in 2002, some eight years ago. This witness is a foreign national. He is a distinguished academic in his own field. He comes from a legal system which is unlike ours. He is using a language which is not his mother-tongue. And for the second time now, we have had Mr. McDowell trying to engage this witness in what can only be described as a form of linguistic torture. This witness is not here to deceive or mislead anybody; he is here to give evidence on the substance of what happened in the evaluation process. And for Mr. McDowell to be adopting this type of cross-examination, I have no difficulty with him testing the credibility of this witness, but this is now being delivered in the unmistakable tone of a prosecutor addressing an accused person, something which Mr. McDowell has done successfully, no doubt, in the course of his distinguished career, but, in my respectful submission, it's utterly inappropriate for this type of cross-examination to be conducted. Professor Andersen pointed out to a discrepancy in the Tribunal's own Opening Statement dealing with the Department; it stated on day 156 that A3 was the winner and then it presented the

third version on day 159. But so be it. Professor Andersen was correct in what he pointed out in day 156, and he has accepted what Mr. McDowell has put to him on day 159. So if we are going to get hung up about an analysis of every line of every document and every word of every line of every document, we will never emerge from this process, and, meanwhile, this witness is being treated unfairly, and I don't criticise Mr. McDowell personally for what he is doing, he is acting on instructions, and, with the greatest of respect, sir, you are the client.

Mr. McDowell can only act in accordance with his instructions, and, in my respectful submission, it is not appropriate for him to be forensically drilling into words in documents in this way. Of course he is entitled to put the thrust of his objection to the witness, but we must move on, not only in the interests of fairness but in the interests of efficiency, and we are now on Day 3 of a limited time-span, and it seems to me that it is not in anyone's interests for this type of cross-examination to proceed. If we are going to go down this road, it will take not two weeks and not two months, but considerably longer to get through the vast amount of documentation that this has generated, and I really would ask you, sir, in the interests of efficiency, that there should be some time

deadline put in relation to the topics which have to be covered. There is a list of some 25 or 26 topics given by the Tribunal and Mr. McDowell has touched on one or two of them, but if this level of microscopic analysis is going to be entertained by the Tribunal, I fear we will never emerge from this process and I fear Professor Andersen is going to be subjected to increasing unfairness.

CHAIRMAN: Mr. McDowell has the dual task, on behalf of the Tribunal, of adducing, in the first instance, Mr. Andersen's evidence, recollection and assistance in relation to all matters that are relevant pertaining to the GSM. It has also been the practice in the course of examination of important Tribunal witnesses in the past, that in addition to adducing the account that a witness wishes to give, that certain matters may, in the course of the Tribunal's business or in the context of what a member of the public might be disposed to inquire about, that the weight of certain matters may also be tested. It has been the practice in the majority of such lengthy witnesses in the past, that these two categories will be taken in succession, first of all inviting the witness to confirm statements and give the best account of himself or herself and then addressing possible matters of weight. Because of the sequence that has arisen in matters, including the

indemnity, it has seemed that it is not realistic to rigidly demarcate those two categories, and, as a result, certain matters of possible discrepancies are being put. But I am, of course, anxious that we proceed with despatch, and I will simply ask of Professor Andersen, is there anything further that you wish to state on this particular matter?

A. Yes. Just a final remark. I don't quite understand this angry tone and the temper of Mr. Michael McDowell. I have come here to try to assist the Tribunal to understand what the evaluation is about. I am trying, to the best of my knowledge, to my recollection and to my professional background, to assist this Tribunal, and what transpires in the discussion, I simply fail to understand why we couldn't -- why I couldn't get an opportunity to get accepted for the simple explanation that I have provided a statement prior to the opening remarks from this Tribunal. Then we heard, or I heard specifically the opening remarks from Jacqueline O'Brien. It turned out immediately to me that there was -- there might be a discrepancy between what she had stated and what was in my statements already furnished to this Tribunal. I asked my legal team to check whether things were correctly recorded by me. It turns out that Jacqueline O'Brien was right in her opening remarks.

Accordingly, I asked my legal team to make a correction of my statement, and that has been done. There is no more to it than that. I think if this goes on in this particular way, that we have to spend so much time, when I am trying to sort things out in an easy and seamless fashion, it can take a very long time to get to the end.

CHAIRMAN: But your legal team had come back to you and said that this appeared the position, having examined the transcripts?

A. Exactly.

CHAIRMAN: And you have corrected such a matter as you have referred to and you have also made reference to another portion of the transcript?

A. Exactly. I am trying to act in a fair manner, yes.

39 Q. MR. McDOWELL: Professor Andersen, you recall that I asked you to confirm the contents of your redacted statement of April in relation to some of these matters on your first day of evidence, isn't that right?

A. Sorry, to what do I refer?

40 Q. Your original statement, your redacted statement to the Tribunal, dated -- which was the first document?

A. Yeah.

41 Q. And could I bring you to the passage at paragraph 52. You say: "As is clear from the records, I provided a very

considerable amount of assistance to the Tribunal on a voluntary basis over a lengthy period. I attended numerous private meetings with the Tribunal both in Dublin and in Copenhagen. I also prepared numerous documents for use by the Tribunal. During my first private meeting with the Tribunal, the Tribunal confirmed that nothing provided by me would be put into the public domain without my express approval. The Tribunal ignored this commitment to me and proceeded to make public reference to private meetings with me. They also posted a document marked, clearly, 'confidential' on their website without my personal knowledge or approval."

And is that the Memorandum that we dealt with yesterday, the Memorandum of 2002?

A. Yes.

42 Q. And just in relation to that, I think that was a document which you were paid approximately 20,000 euro for -- pounds for, by the Tribunal; is that right?

A. That's not correct.

43 Q. By the Department?

A. No -- yeah, it's correct that the Department paid but it's not correct that I was paid. I got no money whatsoever.

And it was AMI who drafted the document and also received this remuneration from the Department.

44 Q. Are you aware, for instance, that the -- that as a result of a Supreme Court decision - maybe you haven't been told about this - that the Tribunal is not in a position simply to keep private meetings private and not to disclose them to other interested parties, were you aware of that?

A. No.

45 Q. You weren't told that at any stage when you made your statement?

A. No, and I wasn't told by the Tribunal, either.

46 Q. I see. "Moreover, a number of other documents written by my solicitor, Mr. Carsten Pals, and clearly marked private -- personal/confidential, have entered into the public domain on the initiative of the Tribunal without the consent of neither Carsten Pals nor myself. I also found my private meetings with the Tribunal's legal teams to be troubling. On one occasion, I was asked to meet with the Tribunal in private for a one-hour meeting scheduled for 18.00 hours on 30 April, 2002. I travelled to that meeting with colleagues from AMI from Copenhagen, but the Tribunal team didn't turn up until 20.17 hours. This necessitated us having to rebook flights and make accommodation arrangements on late notice. As was the case with all of the previous assistance that I provided the Tribunal, I wasn't reimbursed with any costs or expenses."

Just, can I ask you in relation to that, was that meeting here in Dublin Castle?

A. Correct.

47 Q. Is it the case -- can you now recollect from your memory that it had been hoped that Mr. Martin Brennan would be able to attend it but that he became indisposed on the day and that that was the cause of the delay?

A. I recall that Fintan Towey was at that meeting, so he was present.

48 Q. Because I am suggesting to you that no rudeness was intended to you on that occasion?

A. Pardon?

49 Q. I am suggesting to you that you weren't treated rudely on that occasion?

A. I don't accept that.

50 Q. I see. You say in paragraph 54: "I specifically recall that at the meeting of 30 April, 2002, as Tribunal counsel were clearly rather excited and satisfied by what they regarded as the results of the quantitative evaluation which they erroneously felt established A3 Persona as the winner, I recall that AMI informed them that they were using the wrong version of the quantitative scoring chart."

Now, I'll just stop there and say, at that meeting, this was prior to the production to the Tribunal, was it not, of

the third version of the document?

A. That was prior to that meeting, yes.

51 Q. And you say that you recalled informing them that they were using the wrong version of the quantitative scoring chart?

A. Yes.

52 Q. And did you say there was some other version, is that what you told them?

A. Yes, that there was a third version of this work in progress, yeah.

53 Q. And just as a matter of interest, in relation to that third version, do you accept, from your perusal of the transcript, that all of the civil servant witnesses said they never had it and had no recollection of it?

A. No. That's not the impression I have. I have not seen all the transcripts, but I don't think that all civil servants have been through a process where they were presented with the third version.

54 Q. No, I am not suggesting that; I am suggesting that -- well, I'll -- maybe I should be more exact in my words -- that no civil servant who was examined, recalled seeing this document, and that it wasn't present on either the Department's files or the Department of Finance 's files.

MR. GLEESON: How can the witness answer that question? He is being asked a question about the transcripts.

MR. McDOWELL: I am asking the witness, are you aware that no witness who has given evidence to this Tribunal recalls having seen this third version?

A. No, I have not been through all transcripts with all witnesses, then I should have used many months more for preparation here.

55 Q. I am not suggesting you should, but I am suggesting to you that before you draw an adverse inference, that no civil servant who gave evidence in this Tribunal recalls having seen this document.

A. How should I know? I have not attended these meetings here at Dublin Castle.

56 Q. And you say: "In fact, the correct version" -- your sentence continues: "In fact, the correct version does not have Persona as the applicant with the highest score."

Isn't that right?

A. Yes.

57 Q. And is that a reference to the third version?

A. Yes.

58 Q. And you call the third version the correct version; is that right?

A. Yes. I think I have explained that this morning, on two occasions, that there was -- we are talking about work in progress. There was never a final report, and my point is

that if you are to, at all, go into this, then you should use the last draft version of a work in progress rather than the second last.

59 Q. I understand that completely.

"Although I have brought this to the Tribunal's attention time and time again, they continue to rely on this inaccurate version and claim that Persona won the quantitative evaluation."

are you standing over that statement now in view of what we have dealt with this morning?

A. I think that I can stand -- I will stand over that, yes, because I participated in a number of additional meetings and had dealings with the Tribunal, and I have never seen, in my communication with them, that they have corrected this. And moreover, if I can just expand a little bit on that: I looked into, at some stage, into Peter Bacon's report, and what I see in both his report from 2003 and 2005 is that he makes his table on the basis of the second version of that report and not on the third version. And let me just continue to make this perfectly clear. I mean, not only me, but also other people involved in the private meetings here at Dublin Castle stated the same thing to me. I mean, Carol Plunkett, for instance, who acted for AMI, she came back to AMI and said that she couldn't convince

Jacqueline O'Brien that there was a different result, and it was the same with Lisbeth Bork, she came back and said the same thing, also, after a private meeting with the Tribunal.

60 Q. "I cannot understand why the Tribunal has proceeded to consistently misrepresent this matter when this has been corrected time and time again, including having been corrected in a lengthy and detailed Memorandum as provided to the Tribunal on 20 June, 2002."

And that Memorandum was read into the Opening Statement, wasn't it?

A. Yes, or at least part of it.

61 Q. And I ask you why you allege that the Tribunal has sought to misrepresent the situation?

A. The reason for this is that what you are trying to -- is that what you want me to answer?

62 Q. No, I am asking you why you are maintaining that the Tribunal has consistently misrepresented the position as regards the existence of the third document even though it's been corrected time and time again?

A. Well, I think it's -- it is -- it's part of the working hypothesis of this Tribunal that A3 should have been the winner, so therefore, in my view, over a number of examples, A3 has been declared by this Tribunal, and in

private meetings by the legal team, as the winner of this quantitative studies.

63 Q. Did you, for instance, ever attend a meeting where the third version was discussed with the Tribunal?

A. No, I didn't. I didn't -- if you take the memo on, was it 20th or 30th of June, I think that that was delivered at a meeting where I was not present, at a meeting where John Breslin was present and Carol Plunkett was present and also Lisbeth Bork was present.

64 Q. Do you remember any meeting in the office of Mr. Pals where this document was produced and discussed?

A. Yes, that was in October 2003.

65 Q. And I think that it's very clear that it was produced and discussed, because there is a fax of it to your solicitor, Mr. Carsten Pals, isn't that right?

A. Of that document?

66 Q. Yes. You have just been shown it now by Mr. McCullough.

A. Yeah, yes.

67 Q. And you were at that meeting, isn't that right?

A. That's correct.

68 Q. And this was sent to your solicitor and marked for his attention?

A. Pardon? I didn't get the question.

69 Q. It was marked for his attention; do you see at the top of

it, "attention Carsten Pals"?

A. Yes.

70 Q. So I am suggesting to you that it is not fair to describe the treatment of the Tribunal of this document as one in which they have sought to conceal it or pretend it's not there or to wipe it from the record in any way?

A. That is not what I am saying. I am saying that the Tribunal has misrepresented this matter because, in numerous instances, the Tribunal has carried their work along on the basis that A3 was the winner of some part of the evaluation.

71 Q. Just while we are at it -- sorry, I don't want to interrupt you...

A. We can also go to -- if you take -- if you take what I am writing on, at paragraph 58 of this statement, where reference is made to the provisional findings, I think it flows through the entire provisional findings that the Tribunal is based on an assertion that A3 was the winner of part of the evaluation, otherwise the Tribunal could not arrive at these hostile things which are recorded and misunderstood things which are recorded in the provisional findings.

CHAIRMAN: Professor Andersen, I am going to make my report on the evidence, and it seems to me, if I can perhaps

summarise a couple of the main points that you have made, you have said that there were frailties in the quantitative analysis --

A. Yes.

CHAIRMAN: -- which induced you to take a certain view, but you have also said that insofar as reliance should be placed on the quantitative analysis, it should be cumulative, the third version should be ascribed more weight than the earlier ones?

A. Correct.

CHAIRMAN: But you have then said when you discovered A6 coming out on top, this induced you to have additional misgivings?

A. Exactly.

CHAIRMAN: And did that seem to you a matter that perhaps should, nonetheless, have been conveyed to the Project Team?

A. Yes, and it certainly was at the time.

CHAIRMAN: So this was all part of your analysis?

A. That was definitely part of my analysis. And it is fully correct to state that there were some methodological problems with these quantifications which ultimately meant that there was never produced a separate report on the quantitative techniques.

72 Q. MR. McDOWELL: Just briefly, could I just briefly, at this point, refer you to the last page of that document.

A. Which document, sorry?

73 Q. The one that you just have in your hand, the document that was sent to you, the third version of the quantitative analysis.

A. Yeah.

74 Q. I think we heard that the second version of the quantitative analysis was considered defective because the combined total of the weightings reached the figure of 103%, isn't that right, and it had to be adjusted?

A. That is correct, that the 103 occurred at some stage, but I don't think whether that's applicable to the third version.

75 Q. I think that, in fact --

A. Or the second version, rather.

76 Q. I think that when we look at the third version, the 6%, which had been wrongly included for roaming charges, was not taken out?

A. That's correct.

77 Q. And when you add up all the weightings on the left-hand column, curiously you end up with 97 rather than 100, so this couldn't have been even remotely considered a correct version, isn't that right?

A. That's correct. So if I could just qualify what I mean by

"correct" so that we are not misunderstanding each other here. By "correct," I am not referring to the analysis, the weightings or the result, as such, as being correct and final, but when I used the word "correct," I was talking about how you go along when you deal with different kinds of versions of documents. Where I think that -- when I use the word "correct," I made reference to the fact that I think it's correct to use the last version of a document.

78 Q. I see. But in the other sense of "correct," you don't stand over it as correct?

A. Not at all.

79 Q. And I think just so that it should be seen in context, the version that you have there shows A5 -- which applicant was A5?

A. That was Esat Digifone.

80 Q. And it appears in fourth place in that analysis, isn't that right?

A. That's correct, yes.

81 Q. Could I ask you just in relation to the financial key figures, which I think are at 10A and 10B --

A. Yes.

82 Q. -- and the 15% that was collectively given to them, was that, in your view, correct or incorrect or defensible?

A. Are you talking about the weightings or the result?

83 Q. The weightings.

A. The weightings here are not correct. So there are numerous problems with, also, this document, as was the case with the second version, and if I could just make a final statement on the -- if you look at the bottom to the right, you will see the sum of weighted variances, that's a figure that goes to 0.96, and when you have a variance at that level, taking into account that you have actually not included international roaming plans as one of the indicators and also that some of the indicators actually score on a preliminary basis here, come out with the same result without any discrepancy; namely, blocking rate and drop-out rate and also the licence fee payment that we discussed the day before yesterday, then as a weighted sum of variances at 0.96 is relatively high, and I would then say to you, as a statistical means of measurement, that you should not proceed with such a kind of evaluation and attach a very big importance to such an evaluation.

84 Q. Just briefly, did I understand your evidence yesterday to be that this document was produced at the meeting of 9 October and discussed by the members of the Project Team who were there?

A. Well, my recollection of it is that I brought it to the table on the meeting of 9 October, but it was already the

sentiment of the Project Group or the Steering Group that we should not proceed due to the statistical problems which I have just briefly explained.

85 Q. So that we are not linguistically misunderstanding each other, the phrase "brought it to the table," you can table a document, which means to circulate it, or you can bring it physically to the table and not circulate it; which do you think you did on this occasion?

A. My recollection is that I brought it to the table rather than circulated it beforehand.

86 Q. So can we take it, then, that your best recollection now is that you didn't circulate it and that the Irish civil servants didn't see it?

A. Yes, they wouldn't have seen it before the meeting, that's correct.

87 Q. And would they have seen it during the meeting?

A. I believe so, that's my recollection, that I had it and showed it and that we -- that I reiterated my statistical concerns of progressing the document.

88 Q. Did you bring a copy of it for each of them or did you just show around one copy and take it away with you again?

A. I think it's the latter. That's my recollection. I hope you will appreciate that you are asking me about things 15 years ago.

89 Q. I appreciate that.

A. That's my recollection.

90 Q. I am only trying to resolve the issue as to --

A. Yeah, and that's also --

91 Q. -- the apparent discrepancy in recollection and the absence of this document from State files.

A. Sorry, was there a question?

92 Q. I am only trying to do that. I am not trying to test your memory. I am just -- it seems that we are arriving at a consensus position that you certainly brought it to the meeting with you?

A. Yes.

93 Q. That you may have handed it around the meeting to some or all of the people, but that you took it away with you and that they were not given a copy, is that it?

A. Yeah, I can also work on the basis that if it had been circulated, the document should have had a cover page with each recipient on it, and, as it doesn't have that, I am pretty sure that it was not circulated beforehand.

94 Q. So just in case anything turns on this, as a matter of probability, on your account, you brought it with you to the table; you are fairly sure of that, is that so?

A. Yes.

95 Q. You may or may not have handed it to individual civil

servants for them to look at, but if you did, they handed it back to you, one copy of it, and you took it away from that meeting?

A. Yeah, we are talking about things 15 years ago. That's -- and you used the word "probable," that's the most probable thing, yeah.

96 Q. Just in case something turns on it later, I think at the top of the document there is a date, dated 17 June, '02, and it would seem to suggest that it had been printed out on that day to help with the AMI Memorandum that came to this Tribunal, isn't that right?

A. That's exactly correct. It is such that when you print these documents out of -- in this case, the AMI files, then the printout date comes out on the top of the page. And as it reads here, I think it has been printed out on 17 June, 2002, which seems to be in accordance with the fact that the -- that the Memorandum from AMI went to the Tribunal either on that day or a few days after.

97 Q. Well, I think on that day, I think, whatever, or a few days after, yes, you are right.

So just to finish on this area. In respect of this document which you say hasn't been given sufficient prominence in the conduct of this Tribunal, you believe that it probably was never copied and given to the Irish

civil servants?

A. The Irish civil servants have, I believe, discussed it with me at the meeting, but I am not -- I am -- recollection 15 years ago, whether they have got a copy or they haven't got a copy, that's my difficulty.

98 Q. Well, to use your own probabilistic approach, which is obviously the best you can do, if you had done copies for everyone, you would have individualised them, isn't that right?

A. Yeah, that was when -- if it was sent out beforehand, that's correct. And so that I am pretty sure, as I said before, that it was not circulated prior to the meeting.

99 Q. And you think it may have been shown, you think it probably was shown to some Irish civil servants at the meeting; is that right?

A. Yes.

100 Q. I do have to ask you in that context then; I mean, I know you have put a different construction on the term "correct" and I think there is no difference between us in relation to that, but it isn't the case, I think you'd have to agree with this, that it isn't the case that there was a correct version, but that the Irish civil servants -- or, sorry, that the Tribunal lawyers kept using some incorrect version, despite repeated warnings?

A. This is where I struggle a little bit because what I sense of the Tribunal is, from very beginning when we discussed this issue, that the Tribunal legal team was happy to see A3 as the winner and, therefore, pursued that. And that was not only myself, you know; it was also -- if you take the whole sequence, it was Carol Plunkett who also stated to me that she was a personal friend with Jacqueline O'Brien, but, still, she was not able to get her to the third version and the fact that A3 was not the winner and to get her to the fact that there were statistical problems there. It was also discussed quite heavily with Jerry Healy, but he was also of the opinion that A3 was the winner. And then when you read Peter Bacon's report, you see that he also quotes both in his 2003 report, but also the -- sorry, the 2005 report, A3 as the winner in this context. And when I then moved on, later, onto the provisional findings, you will also see that there are an underlying thesis that something was fundamentally wrong, and that, therefore, what I see there is that they are still operating, in the legal team, a perception as if A3 was the winner of this never finalised part of the evaluation and which could not be justified on statistical grounds and which I have only given a few, but I am fully prepared to give you a lot more on the statistics of why

you could not, you know, nominate any candidate on the basis of this analysis.

101 Q. But I think what could be said, though, and what can't be gainsaid, is that on all three versions of the quantitative analysis, it was the case that, as between the two candidates that emerged on the qualitative holistic evaluation as the top two, that, in all three versions, A5 was behind A3, isn't that right?

A. That's as it reads, yes.

102 Q. Whether A6 was or was not yo-yoing up and down to first place or sixth place, doesn't make much difference; the relative order of those two was always that A5 was always behind A3, isn't that right?

A. That's as it reads, yes.

103 Q. I think, in fairness to you, your statement, the same statement, at paragraph 57, says: "I should confirm that I never told the Tribunal I was unwilling to give evidence. I have been approached by parties before the Tribunal who inquired if I would be willing to give evidence. I confirmed that I would be so willing -- I was so willing. My decision in this regard has been very considerably influenced by recent developments in the Tribunal which I have become aware of through the media. It did occur to me there were very many parallels between the recent evidence

from the officials of the Office of the Attorney General
and my personal position and experience with the Tribunal.

I am willing to give evidence under oath to the Tribunal,
despite the fact that I am not in any way compelled to do
so, for the simple reason that I believe that it is in
alignment with the public interest to get all factual
errors and misunderstandings cleared before a final report
may be published by the Tribunal."

Now, can I just ask you in relation to that paragraph, why
did you not mention that the chief log-jam for you giving
evidence here was that no one would indemnify you, and why
did you, in that paragraph, give the impression that the
reason that -- you said, "My decision in this regard has
been very considerably influenced by recent developments in
the Tribunal which I have become aware of through the
media." Why did you not, if you were giving a fair account
and an impartialled and a neutral account, as you say you
are giving, mention the fact that the day you signed that
document, you received an indemnity from Mr. O'Brien which
cleared away the obstacles that you have now mentioned in
your indemnity statement?

A. Sorry, could I get a quarter version of the question?

104 Q. Sorry, I'll make it shorter. This paragraph that I am
putting to you doesn't say that one thing that you were

absolutely insisting on, which was an indemnity, had now been provided to you, and that that was -- the absence of an indemnity was, in the past, the only thing that held you back from testifying in the Tribunal. And instead, you deliver, via Mr. O'Brien's employee, Mr. Reynolds, you deliver a statement to this Tribunal which implies that you have changed your mind about testifying, or your willingness to testify, by reason of recent developments in the media.

A. You are stating something, but what is the question?

105 Q. I am putting it to you for your comment.

A. But please, what is the question?

106 Q. Well, if you want me to put it in a question, I will put it this way to you: Is it not the case that that paragraph suppresses the fact that your position had completely altered because you had been offered an indemnity by Mr. O'Brien and that was the sine qua non for giving evidence in this Tribunal?

A. Well, both things has a clear influence. I have always stated that I would not, in any case, give evidence to this Tribunal, given the hostility I have met by the legal team over the years without an indemnity. That's point one.

Point two is that, even if I had an indemnity, would I then give evidence at all?

So, when I followed the development, in particular, in particular as it is written here, the way I read in newspapers and information in the public domain, the way this Tribunal had dealt with Mr. Nesbitt where there were, you know, parallels, I perceived, to what I had experienced, then I said, okay, then I will come and give evidence so that this Tribunal can set the record straight with regard to these important matters on the evaluation process.

107 Q. I see. Well, if you read paragraph 56 and 57 of your statement together, you say:

"Ultimately, I had decided that I was not prepared to continue to provide further voluntary assistance to the Moriarty Tribunal, given the hostile and inappropriate treatment that I was exposed to during the period in which I dealt with the Tribunal. It is my view that this was a deliberate ploy on the part of the Tribunal legal team. It is absolutely clear to me that the Tribunal legal team did not agree with the evidence that I was prepared to give to the Tribunal which supported the integrity of the second mobile phone licence process. My conclusion in this regard was confirmed some years later when I learned of the Tribunal's interaction with Mr. Peter Bacon and the course of action that the Tribunal had taken. I regard the

Tribunal's actions in this regard to have been extremely inappropriate."

Are we to take it from that paragraph that you had decided that, because of hostility from the Tribunal's legal team, you would not be voluntarily testifying, even if they gave you an indemnity?

A. It does state here "further voluntary assistance."

108 Q. Yes, and that includes coming here and testifying, doesn't it?

A. Yeah.

109 Q. So I am just asking you, was not that paragraph and the other paragraph I read out to you, designed to convey to the public, to whom this statement was issued over the Internet subsequent to your signing it, that what had changed your mind was recent developments in the media and a parallel, as you say, between the way others were treated, the officials in the Department of -- the Office of the Attorney General and your own position was dealt with by the Tribunal, isn't that what you were trying to imply in those two paragraphs, that they had changed your mind, those issues?

A. I think it's -- you are posing a question in that very long fashion. You said something about me giving something over the Internet. I have not given anything --

110 Q. I did not say anything about you doing it.

A. I have not published anything over the Internet.

111 Q. I know you haven't, Professor, and I didn't suggest you had. But I do suggest that you know full well that the statement you signed to the Tribunal was made available by some of the intermediaries or some or other of the intermediaries through whose hands it passed on the way to this Tribunal, and published on the Internet, isn't that right, you know that?

A. No, I don't know that.

112 Q. You never heard that?

A. No.

113 Q. You have never heard - I just want to be clear about this - that your statement, your unredacted statement, was posted on the Internet after you handed it over to Mr. O'Brien's representative?

A. No. When was that?

114 Q. It was done shortly after -- sorry, I'll have to be accurate on this. It was referred to in media reports on the 15th of April. Were you aware of that?

A. I was aware of that, but I was not aware that, as you said, that it was posted over the Internet.

115 Q. And were you aware that, last week, it was posted on the Internet?

A. No.

116 Q. On Mr. O'Brien's site?

A. No, but -- okay.

117 Q. You are not aware of that?

A. No.

118 Q. In its unredacted form?

A. No. But I heard you saying that, as if I posted it over the Internet in April --

119 Q. Don't worry --

A. -- and that's not --

120 Q. Don't worry. No, I didn't do that, I didn't suggest that to you, and if you look at the transcript later, you'll find that I didn't. But I am suggesting to you that anybody reading that statement would have no idea whatsoever that the log-jam on which you had insisted for a number of years prevented you testifying before this Tribunal, namely your insistence on an indemnity, had now been removed?

A. Yes, the indemnity was there, and that, combined with, you know, the fact that I got the -- had got the provisional findings earlier on in 2008, responded to the provisional findings, not received any answers to the provisional findings, still having the threat hanging over my head with the Tribunal accusing myself of having to go under

disquiet, not only in this country but also elsewhere, and having participated in making an Evaluation Report which was fundamentally flawed, as it was stated in letters to my solicitors, and me not being able to get through with facts that portrayed a correct version of what went on in 1995 as instituted by the provisional findings which I believe to be a culmination of bias.

121 Q. And I ask you now why it was that, in those two paragraphs, you didn't say that while you had previously been requesting an indemnity and it had not been forthcoming, it had now been provided to you and that this took away the inhibition that you had considered you were under previously?

A. But listen, here you -- I don't understand the questioning technique here, because you make it sound odd. I have, all the time, since 2001 and reiterated in 2003, said that I would not give evidence to this Tribunal without an indemnity. From 2001, it was the cost element of an indemnity, and after the hostility of the legal team was accelerated, I said, in 2003, that I needed a full indemnity. So, the Tribunal, having this statement in its hand, would know that I would not come to give evidence without an indemnity.

122 Q. I see. So -- and I don't want to put words in your mouth

now and be --

A. No, you should never do.

123 Q. I won't do that. So will you tell me now, Professor Andersen, that are you saying, it's your sworn testimony that the Tribunal, when it received this document through Mr. O'Brien, that it should have immediately understood that you had, in fact, also been furnished an indemnity by Mr. O'Brien?

A. Well, I am not the one who will say what the Tribunal should have been able to do or not should have been able to do, but I think that any reasonable onlooker looking into these documents, seeing that I always consistently requested an indemnity in order to give evidence, when such a man then says "now I will give evidence," how could anybody think that I will give evidence without an indemnity? I would fail -- I think a reasonable onlooker would fail to understand that.

124 Q. I am not going to argue with you; I am merely saying that you are asking this Tribunal to accept the proposition that you understood that, when they read this statement, they would also conclude, or guess, that you had received an indemnity, as well?

A. Yeah, and the Tribunal was already aware, I believe, by way of a communication in 2005, I don't recall the correct

dates, but, at that stage, Telenor had approached me and also Esat Digifone had approached me to give evidence. So there was, you know -- the Tribunal couldn't come with this from cold.

125 Q. So we're to approach this question of an indemnity on the basis that you believe that any reasonable person, knowing what had happened, would have known that Mr. O'Brien had furnished you with an indemnity?

A. Or at least that I had an indemnity.

126 Q. From somebody?

A. From somebody. It could have been from Denis O'Brien, but it could also have been from Telenor or from any other party.

127 Q. Well, bearing in mind that your statement came via Mr. O'Brien, would you not think that if they were to assume that an indemnity had been given, that it was most likely that he was the indemnifier, is that what you are saying?

A. Yeah, that's what I am saying.

128 Q. Could I ask you to look at Correspondence Book A, and, in particular, a letter -- we are going to distribute Book A now, and I am asking you to look at the letter which appears after Divider 59 in that book. And the first item there is a letter from Carsten Pals to Stuart Brady, the

Solicitor for the Tribunal, saying: "For your information, please find enclosed a copy of a letter dated 5 July, 2006, and a letter of 12 September, 2008, from William Fry to me, and my letter of 24 August, 2006, to William Fry."

And the letter from William Fry is the next page in that indent, and it says, it's -- and they were then your -- they were then Mr. O'Brien's solicitors, isn't that right?

A. Yes.

129 Q. And they were -- this letter is addressed to your lawyer, and says:

"Dear Mr. Pals,

"We act on behalf of Denis O'Brien, Chairman of Esat

Digifone consortium, which won the second GSM licence

competition in Ireland in October 1995. Your client was a

consultant to the Irish Government's Project Team which ran

the second GSM licence competition. Esat Digifone was

ultimately awarded the second GSM licence in May of 1996,

but the competition and the award of the licence has since

been the subject of a public inquiry being conducted by a

Tribunal, Mr. Justice Michael Moriarty, on behalf of the

Irish Parliament.

"We are aware that your client has given some assistance to

the Tribunal but subsequently indicated that he was not

prepared to attend and give evidence at the public inquiry

unless he receives a full indemnity both of his costs and any liability he might ultimately be found to have, either as a result of the Tribunal's inquiry or as a result of litigation arising from the award of the licence.

"We are concerned, on behalf of Denis O'Brien, that in the absence of your client's evidence, the Tribunal will be deprived of factual evidence from the single individual who was most closely associated with the design and running of the competition. Specifically, it would be deprived of certain of his views on the Esat Digifone bid and, more particularly, whether he experienced any form of interference from the Minister who had overall responsibility for running the competition, Mr. Michael Lowry.

"The Tribunal have engaged a person who they will be presenting as being an expert, a Mr. Peter Bacon. He has prepared a report, and this report may be criteria of Mr. Andersen and his team's work and may be introduced in evidence in his absence. Our client is very concerned that Mr. Andersen should have the opportunity to deal with all of this evidence and to try to ensure that the proper result is arrived at concerning the excellent work carried out by him and his team in the licence competition.

"Accordingly, therefore, in an attempt to provide the

Tribunal with his evidence, we should be grateful if you would confirm whether, even at this stage, your client might attend at public sittings of the Tribunal, or whether, as an alternative, he might provide evidence by way of affidavit or give evidence on commission before a Dutch court or before the Irish Tribunal in Holland in front of the Chairman, if that alternative can be arranged.

"We look forward to hearing from you. If you have any queries on this matter, please feel free to contact Mr. Owen O'Sullivan of this office."

We then come to a letter dated -- sorry, we come to a letter dated 24 August, which is at the last part of that indent, and it says -- it's a reply from your solicitor, saying:

"Dear Sirs,

"I have received your letter dated 5 July, 2006. As mentioned in my letter of 19 July, 2006, to you, I have, because of the holiday season, not been able to discuss your letter with my client until now.

"My client and I have previously communicated with the Tribunal on the indemnity issue.

"Furthermore, a new matter has appeared due to the new owner's liquidation of Andersen Management International.

We think the likely case is that it will now be difficult

to get access to all my client's and his colleagues'

personal notes and other documentation.

"My client has just recently received a report from

Mr. Bacon on some selected aspects of the evaluation. I

have advised my client at this stage not to comment on

Mr. Bacon's attempts to second-guess what took place over

10 years and which may not be based on the full

documentation.

"In order to keep everything transparent, my client has

requested me to send a copy of this letter to the Tribunal.

Please confirm that you have no objections against me

sending a copy of the letter to the Tribunal."

So that suggests that you were willing to be very

transparent with the Tribunal about this approach that was

made by Mr. O'Brien's then-solicitors, isn't that right?

A. I don't know what you mean by "transparent," but I

instructed my solicitor, Danish solicitor, to send it to

the Tribunal, yes.

130 Q. And --

A. And, you see, this was also in the context of having had

the meeting in 2003, which was a very, very awkward meeting

in Copenhagen, but which ended with Mr. Healy being very

adamant to seek an indemnity, and I believe he thought that

over the next couple of years, actually, also at a time

when you were Minister for Justice, but we didn't get an indemnity, so therefore, I was, you know, at the verge of closing everything down on my part because I couldn't see anybody, or see any light at the end of the tunnel of this.

131 Q. Now, I think that letter was acknowledged by Fry's, and at the following indent, Number 60, there is a reply from Mr. Pals, dated 8 November, 2006.

A. Yes.

132 Q. And he says: "I refer to your letter of 21 September, 2008, and our subsequent telephone conversation regarding your request for a meeting in Copenhagen.

"As you are aware, my client has previously rendered assistance to the Tribunal, and a meeting with you in Copenhagen, even if the purpose of such meeting is only a fact-finding nature, could influence on the independent role my client so far have had in relation to the Tribunal and the parties to the investigations carried out by the Tribunal. I, therefore, regret to inform you that neither my client nor I are able to participate in a meeting with you in Copenhagen."

Now, again, that was sent to the Tribunal, as well, isn't that right?

A. Pardon?

133 Q. The covering letter in Tab 60 shows that that letter was

sent to the Tribunal, as well?

A. Yes.

134 Q. So you are saying that, at that point, you were not willing to converse with Mr. O'Brien or his representatives in Copenhagen, even if the purpose of a meeting was only of a fact-finding nature, because it could influence the independent role that you had, so far, in relation to the Tribunal and to the parties carried out by the Tribunal, isn't that right?

A. Yes.

135 Q. So you were saying you weren't going to assist them --

A. Exactly --

136 Q. -- in a response to Mr. Bacon's report, because it could compromise your independence?

A. Yeah, I think that's very important that you state this.

However, there is just a thing which I think is incorrect in this letter. It reads -- but maybe you can assist me here -- it reads: "As you are aware, my client has previously rendered assistance to the Tribunal, and a meeting with you in Copenhagen..."

That should read "a meeting with the Tribunal in Copenhagen".

137 Q. I don't think it does, in fact, I think, although Mr. Pals' English is not a hundred percent right. He is saying:

"... and a meeting with you in Copenhagen, even if the purpose of such a meeting is only of a fact-finding nature, because it could influence the independent role..."

I think he is referring to a potential meeting?

A. Okay. I just want to make it abundantly clear that I did not have a meeting at that stage, no. Thank you.

138 Q. Well, in those circumstances, did it ever occur to you that you should, if you were concerned about your independence, take the initiative in drawing it to the Tribunal's attention that you now had an indemnity from Mr. O'Brien?

A. No. You will see, if you take what went on from 2003, and we can go through each of these phases, there were, first, this meeting in Copenhagen which I hosted and which ended up with the Tribunal wanting to assist me with an indemnity. That was what I told before. And then it went on during the subsequent years, over a considerable period of time, from 2003 to around this time, 2006, where an indemnity did not transpire. Afterwards, then, there are some important developments to which I would make this Tribunal fully aware.

One is that a ruling came from the Tribunal in 2007 with a very damaging factual error in it hurting my reputation, and I discussed that with my then-solicitor and he said "we must write to the Tribunal and make the Tribunal aware of

the fact that they are stating in a ruling some wording which has a defamatory effect on you as a person." So that was one development from the Tribunal, stating something which was factually incorrect in a ruling.

Now, secondly, I received, in November, or whenever it was, it was with some delay, the so-called provisional findings which were of a very hostile nature, and over all of the time I had dealt with the Tribunal, I could now see that the hostility escalated to a level where I could have no -- what could I call it? -- normal communication with the Tribunal. And I think that the fact that, from April, the middle of April to now, that over 80 letters from gone back and forth between my solicitors and this Tribunal, also makes it clear that it is very difficult, it is a very difficult position that I am in as a private foreign witness coming here. And therefore, the reason for a changed approach, if that is what you would look for, a somewhat changed approach, is fully justified, seen from my point of view, when the Tribunal had so little interest in getting down to the bottom of what really happened during the GSM2 evaluation back in 1995.

139 Q. I had asked you, though, did you not feel that if you put so much regard on your independent role, that you should have, as transparently as that letter which you furnished

to the Tribunal in 2006, taken the initiative and told the Tribunal that you had received an indemnity from Mr. Denis O'Brien? And I am asking you now, you say in your -- in the statement we went through this morning, that you didn't want to keep it secret; you would have willingly revealed the indemnity had you been asked about it, is that right?

A. That's correct, I have never tried to keep that secret.

140 Q. I see. And I am just wondering why, in those circumstances, you didn't consider that you should mention it in your statement or in your correspondence -- or send a letter saying that this indemnity had been now furnished to you?

A. I think we have been over this, and I have stated that, given the fact that the Tribunal knew that I would not appear without an indemnity, then it is clear that -- clear to any reasonable onlooker that I would not appear without this indemnity.

141 Q. Well, you heard the Opening Statement that Ms. O'Brien made on Tuesday, isn't that right?

A. Yes.

142 Q. And you heard her inform the Tribunal that Mr. O'Brien's own solicitor, Mr. Meagher, in this matter, had communicated with the Tribunal that he was unaware of this indemnity until the 20th September of this year. Can I ask

you, do you not consider it strange that both he, as the indemnifier, and you, as the indemnified person, never mentioned the fact of the indemnity to this Tribunal except when you were asked about it?

A. Well, it would be my expectation that the -- that this solicitor would also know that there was an indemnity, yes.

143 Q. Would you agree with me that you consider it strange that an indemnity to which you were party was concealed from a solicitor --

A. What do you mean by "concealed"?

144 Q. Kept -- not disclosed to a solicitor?

A. I think that's biased wording, hugely biased wording --

145 Q. A letter from Mr. O'Brien's solicitor to the Tribunal.

MR. GLEESON: Let him see that.

A. It's not a concealed letter.

MR. GLEESON: If it's referred to in the question, we should really put it to the witness.

MR. McDOWELL: Well, if My Friend wants to see the correspondence from Mr. Meagher, he is --

MR. GLEESON: I don't want to see a single document more than is absolutely necessary, but I take it if there is a factual basis for this question which the witness hasn't seen, then fairness surely dictates that he be furnished with the document.

CHAIRMAN: I think it is the case, Mr. Gleeson, that, in fact, Mr. Meagher has acknowledged, in correspondence, that his awareness was belated.

MR. GLEESON: I see. But how can this witness comment on that?

MR. McDOWELL: Well, I am asking the witness, you didn't offer this information to the Tribunal, isn't that right?

A. What information?

146 Q. That there was an indemnity. You never offered it to the Tribunal?

A. That is not correct.

147 Q. When did you offer this information to the Tribunal?

A. That was offered through my solicitors.

148 Q. In response to a letter sent to them, isn't that right?

A. Yes, definitely. I mean...

149 Q. What was the date of that letter?

A. You couldn't expect -- with over 80 letters back and forth, you couldn't expect me to sit here and recollect the exact date.

150 Q. Was month was it given? We'll come to it, don't worry...

A. Yeah, I can explain it quite clearly, how I see it. A lot of communication went back and forth between the Tribunal legal team and my solicitors, and the first time there was a discussion about my short meeting with Tom Reynolds

through Carsten Pals, my Danish solicitor, it transpired subsequently that the Tribunal asked whether there was any written communication between us, or whatever, and we then furnished, very quickly after that, the indemnity. I recall stating quite clearly to my legal team that this indemnity should be furnished to the Tribunal right away once we have got the request, and, as far as I recall, when two parties are involved in such an indemnity, the other party should also -- the indemnifier should also have an opportunity to state whether the indemnifier would also be in agreement with a swift disclosure of this to the Tribunal, and it was disclosed swiftly.

151 Q. Are you aware when and at what point you first sought from Mr. O'Brien or his solicitor, permission to reveal the document to the Tribunal?

A. Pardon, sorry?

152 Q. Are you aware when you first made an approach to Mr. O'Brien for his permission to reveal the indemnity to the -- the existence of the indemnity to the Tribunal?

A. No, I didn't make that approach myself. That was my solicitor who did it.

153 Q. I see. And had you any understanding in Copenhagen in April of this year as to whether you were free to reveal the indemnity to the Tribunal without the permission of

Mr. O'Brien?

A. No, that was not discussed.

154 Q. Did you understand that the indemnity agreement was confidential between the pair of you?

A. No, that was not my understanding, as such. There was no -- in my recollection and my understanding of it, there was no such a thing as confidentiality, nor the opposite.

155 Q. What's the opposite of "confidentiality"?

A. The opposite is that you will just disclose it. I mean, it was simply not discussed.

156 Q. I see. So you are telling the Tribunal that when you received the indemnity, and I think we know that you signed --

A. Yeah.

157 Q. -- you countersigned it, isn't that right --

A. That's correct, yes.

158 Q. -- that you had no understanding whatsoever as to whether this would be made public or kept private?

A. That's correct, because it was simply not, you know, discussed.

159 Q. And so you were free absolutely -- on that analysis, you were free to volunteer it to the Tribunal whatever you wanted to?

A. Yes, and I have also disclosed it on a purely voluntary

basis.

160 Q. And -- perhaps you'd look at a letter that Mr. Gleeson wants you to look at. This is from Messrs. Meagher Solicitors, signed by Mr. Meagher, and saying:

"Dear Mr. Brady,

"Thank you for your letter dated 21 September.

"The Tribunal is correct in assuming that we had not been furnished with a copy of the letter of indemnity dated 13 April, 2010, and had no knowledge of it when we wrote to the Tribunal on 14 April, 2010.

"Trusting this is the information you require."

A. Pardon?

161 Q. Can you read it?

A. Yeah, I can read it.

162 Q. Does that surprise you?

A. Well, surprise or not, I mean, this is something going on between solicitors, so I have no, really, feeling about it.

Whether he or others know, whatever, the fact is that it was important for me to get an indemnity. Whether anybody would know about that, that's secondary to me.

163 Q. But you do -- I don't know whether you appreciate that the letter referred to on 14 April, 2010, was the letter enclosing for this Tribunal the statement you had made and signed in Copenhagen?

A. Sorry, what's the question?

164 Q. The letter that's referred to there on 14 April, 2010,
is --

A. The letter from 28 September?

165 Q. No, the letter referred to --

A. Okay, referred to, yes.

166 Q. At the last few words of the second paragraph says that
they had no knowledge of the letter of indemnity "when we
wrote to the Tribunal on 14 April, 2010." You are aware
that that letter of 14 April, 2010, was the letter which
enclosed your witness statement to the Tribunal?

A. Yeah.

167 Q. And I am asking you, does it surprise you that they -- that
you had made a statement but not aware that you had
furnished an indemnity, the solicitors acting for
Mr. O'Brien?

A. I don't know whether it's for me to speculate whether I
should be surprised or not. It would depend on whether
this solicitor has had a clear understanding of my need for
an indemnity, and I don't know whether he had such a clear
understanding. If he had had a clear understanding of my
consistent request for an indemnity, then I would be
surprised, yes, but otherwise, if he is -- what shall I
say? -- a solicitor who had no long track-record in this, I

would not be surprised.

168 Q. Well, you have no doubt whatsoever, have you, that his client knew full well that you required an indemnity, because you discussed the matter with him on the 9th of April in Copenhagen?

A. What do you mean by my "client"?

169 Q. His client?

A. His client?

170 Q. Yes, Mr. Meagher's client, Mr. O'Brien, because Mr. Reynolds fully understood that you needed an indemnity and had produced a full indemnity to you on the 13th of April which was signed by Mr. O'Brien and which you countersigned, so you can have no doubt, I suggest to you, that Mr. O'Brien fully understood your requirement for an indemnity, isn't that right?

A. Yeah, that's correct.

171 Q. I am asking you that, therefore, in view of the fact that Mr. O'Brien fully understood you were requiring it, does it surprise you or does it not, or do you have no reaction to finding out that it was sent on by Mr. O'Brien's solicitors to this Tribunal, your statement was, without informing that firm of solicitors which has been acting for him for some time in these proceedings, that he has now indemnified you in respect of your appearance at this Tribunal?

A. I think I have already answered that question, and if I should qualify this, I can say that, as I understand my solicitor, the indemnity came not from the solicitor here, Meagher Solicitors, but it came from another office of Mr. O'Brien.

172 Q. Which office was that?

A. Well, as I understand my Danish solicitor, it came from his office in Dublin, but it was not, you know -- neither the indemnity nor the witness statement is from Meagher Solicitors.

173 Q. And can I ask you, on the 13th of April, when you countersigned the indemnity and when you signed, I think, your own statement of proposed evidence to this Tribunal, can you tell the Tribunal in what sequence you signed those documents? Which did you sign first, the acknowledgment on the form of indemnity or your statement?

A. I think it was rather simultaneously, but if there was a difference, it has probably been the indemnity first and then the statement afterwards.

174 Q. I see. And --

A. If you want a more concise answer, I need to go back to my files and see.

175 Q. Where did that happen, Professor Andersen?

A. That happened in Copenhagen.

176 Q. And who was present when you did countersign the indemnity and sign the statement?

A. There was nobody present. I mean, I just signed it.

177 Q. When you countersigned the indemnity, was there anybody present?

A. Pardon?

178 Q. Where in Copenhagen did it happen, first of all?

A. I don't know what you mean by "happen".

179 Q. Sorry, where did you sign the letter? Where did that happen in Copenhagen?

A. You know, this is very straightforward, according to the jurisdiction I come from. When you enter into such a thing as an indemnity, I have to sign. I just signed in my own office. That's it. There is no more to it than that. And in -- the indemnity is regulated by Danish regulation.

There is no such a thing as a requirement under Danish regulation that you have to have witnesses to this. So I am totally at a loss to understand why this is important.

180 Q. I am merely asking you --

A. I mean --

181 Q. I am not challenging the validity of your signature under Danish or Irish law, don't worry about that; I am merely asking you about the sequence of events and how it came that you signed this document in Copenhagen on the 13th of

April and who was present. Who delivered it to you for signature and who was present when you signed it?

A. But, you see, according to Danish legislation, which is applicable in this indemnity, it is totally irrelevant who were present and --

182 Q. I appreciate it may be --

A. But I am telling you now it came through Mr. Pals, as my solicitors has written to the Tribunal, I printed it out off the computer system myself. I just signed it. I gave it to my secretary to scan it and to send it along again.

It's so simple as that. I fail to understand why this is important, because, I mean, it's time-consuming to discuss these things, and there is so much on the core evaluation which is relevant to discuss. I had the expectation that I was coming here to help the Tribunal --

CHAIRMAN: We will get on to that, Professor Andersen, but it is necessary that I know a little more about the circumstances of this indemnity. So I welcome your assistance.

A. Okay.

183 Q. MR. McDOWELL: You are saying that you received it and printed it out; is that right?

A. Yes.

184 Q. So you received it electronically at your office from

Mr. Pals?

A. Yeah, that's what I believe is an efficient procedure, these days, without very much bureaucracy.

185 Q. Indeed. It arrived in a signed form. Mr. O'Brien's signature was already on it when you signed it; is that right?

A. Yes, that's correct.

186 Q. And you, then, printed it down -- it must have been scanned then in some way?

A. Exactly, yeah.

187 Q. And you then printed it down, signed it yourself?

A. Yeah.

188 Q. And scanned your signed copy and sent it back to Mr. Pals; is that right?

A. Yes. And I know you have asked that a number of times now.

Nobody was present. I signed the document. Nobody witnessed that I --

189 Q. No, don't worry, I am not going to --

A. And nobody took a -- you know, I know you have this tradition of having a witness also signing, but nobody did that on my behalf, and that's not necessary, according to Danish legislation.

190 Q. And no point is being made about that at all.

A. Okay.

191 Q. And you also, at that stage, having signed that indemnity, you then signed your statement of proposed evidence to this Tribunal; is that right?

A. Yes, I believe so, yes.

192 Q. And --

A. We have discussed that earlier, whether I signed or where I didn't sign. That was the first day, yeah.

193 Q. I think the copy that was given to this Tribunal bears your signature, so it would appear that you must have signed it and you told the Tribunal that you sent it to Mr. Pals; is that right?

A. That's right, yes.

194 Q. Well, could you have, and just for accuracy sake, could you have sent it to Mr. Reynolds and merely cc'ed Mr. Pals?

A. I don't recall.

195 Q. You don't recall?

A. No. Are you talking about the statement or are you --

196 Q. The statement, yes.

A. It might be, yes, that's -- I know from the discussion we had that Mr. Reynolds had offered to take care of the logistics of this statement, so I definitely sent it to him, yes.

197 Q. I'll just -- Mr. Brady will just show you your note covering that.

A. Yes, that's helpful, yes.

198 Q. And it does appear that you sent it directly to Mr. Reynolds and you cc'ed it to Mr. Pals; is that right?

A. Yes.

199 Q. And when you say that Mr. Reynolds had agreed with you that he would handle the logistics of it, what did you understand that to mean?

A. Well, here, we are actually back to things which you have asked before, so could I refer to what I have said previously, or do you want me to reiterate that, at that stage, I had no Irish solicitors. We didn't know the procedure of your working with the drafting of statements and how you use the Arabic number system and what the logistic is of bringing a statement to the Tribunal, etc., etc., etc., and Carsten Pals, my Danish solicitor, stated to Mr. Reynolds that it would be helpful if he could assist in that regard.

200 Q. I see.

A. I think we have been over this before, but if there is something new, I am happy to take on new questions.

201 Q. Not at all. Maybe if I ask you the following: Did you understand, when he said he would handle the logistics, that he would also furnish your statement, Mr. Reynolds would also arrange for your statement to be furnished to a

number of interested parties in Ireland, including the present Attorney General and many of the parties to these proceedings? Did you understand that he was going to do that?

A. No, I don't -- as I said before, I am not familiar with the procedures, you know.

202 Q. I see.

A. So I asked my Danish solicitor whether he thought that it was an appropriate procedure and whether we could move on on that proposition, and he said that that was -- he advised me that that was the correct way to handle it, and he had been my solicitor since 2002.

203 Q. And when you wrote to Mr. Reynolds, "Let us speak tomorrow regarding the further progress of this matter," did you -- I think that's at midnight, more or less, is it, that you have sent that, 23.19, a quarter past eleven at night?

A. That's correct.

204 Q. You said, "Let us speak tomorrow regarding the further progress of this matter." Did you speak the following day to Mr. Reynolds about this?

A. No, no, I didn't.

205 Q. Is there any particular reason? Did you attempt to speak to him?

A. I would like to hear whether, you know, the Tribunal had

received or when the Tribunal had received the statement, and, due to the time differences, that was made by way of SMS. I think that -- I am not fully aware, but I think that Tom Reynolds was in another time-zone.

206 Q. I see. So can we take it from your evidence that you wanted to speak to him further on the following matter regarding its transmission on to this Tribunal; is that right?

A. Yes.

207 Q. But you didn't, for some reason, you didn't speak to him the following day?

A. No, I SMSed with him.

208 Q. And what was the substance of your SMS discussion the following day?

A. That was, you know, something like the following -- I don't have the exact formulation.

209 Q. I am not asking you for that.

A. But just to -- it was something like: Has the statement reached the Tribunal?

210 Q. And did you get any confirmation that it had?

A. Yes, he confirmed, yes.

211 Q. Did he tell you that he had sent it out to a number of other interested parties at the time?

A. No, I don't think so.

212 Q. Had you authorised him to do that?

A. No, the -- I think the -- if you talk about authorisation, and stuff like that, that would have been something to be dealt with by my Danish solicitor, Carsten Pals, and Mr. Tom Reynolds.

213 Q. Did Mr. Pals tell him to circulate it to other parties other than the Tribunal?

A. I don't know what Carsten Pals has agreed with Mr. Reynolds.

214 Q. And since you have given evidence to the effect that you would have expected the Tribunal to infer from the fact that you had not made a statement and were proposing to come to the Tribunal to give evidence or were willing to do so, that you had received an indemnity, is it fair to ask you was it your state of mind at the time that anybody else who saw this statement, who was party to this Tribunal, would, likewise, infer from your provision of this statement to the Tribunal that you were -- that you had been indemnified by Mr. O'Brien?

MR. GLEESON: That's an impossible question to answer, with respect.

CHAIRMAN: Well, have you a view on that?

A. I didn't understand the question.

215 Q. MR. McDOWELL: I am just asking you, given that you have

told us that you believe that once the Tribunal became aware of this statement, that they should have inferred from the fact, the terms of the statement, that you had been given an indemnity, probably by Mr. O'Brien, do you say that applies to anybody else who would have received it?

A. Well, what is a matter of fact is that the indemnity issue has been discussed between myself, my solicitor and this Tribunal over a number of years. So I think we have been over that. But this is information which is not in the public domain, I believe. So how should -- I could guess whether, let's see -- one person said there were 34 legal representatives here. How should -- and there are also visitors in this room. How should I know whether they would be aware that an indemnity was in place when I sent the statement? It's very hypothetical for me to say that the person on the second row below with the red tie, that he should be aware. I don't know on what basis he should have been aware of an indemnity.

216 Q. Now, could I ask you in relation to your own attitude to the indemnity agreement that you had signed, you have said that it was neither confidential nor the opposite, isn't that right?

A. When the indemnity was agreed, there was no such a thing, I

recall, as to keep it secret, as was discussed by the Tribunal in the Opening Statement. So, therefore, I felt it only natural, as soon as my legal team said that there is now a request from the Tribunal whether there are any documents, and so forth, in this, to furnish the indemnity swiftly, and that was done, you know. If you see it from my point of view, there is no obligation for me to file or to send an indemnity to the Tribunal, but, in the interest of transparency, I specifically elected, myself, to say to my legal team, send this indemnity right away to the Tribunal so that the Tribunal knows exactly that there is an indemnity and also the terms of that indemnity. So it's not only the fact of the indemnity, but it's also the terms that were important for me, because let me just try to expand here. What is important in the indemnity, from my point of view, is that it gives the assurance that I have always sought on the insurance cover and also with me being able to retain legal expertise, which I was not able to do otherwise, but there was no such a thing as any remuneration to myself in that regard.

217 Q. Yes. Now, could I ask you to look at -- it's ten to one now, Judge. Maybe, do you want to --

CHAIRMAN: You are getting on for five to. I think we will resume at 2 o'clock.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF PROFESSOR MICHAEL ANDERSEN

BY MR. McDOWELL AS FOLLOWS:

218 Q. MR. McDOWELL: Mr. Andersen, we have heard from you that you prepared the statement that you gave to the -- that you sent to Mr. Reynolds for onward transmission to the Tribunal on the 13th of September, that you prepared that statement over a four-day period from the 9th to the 13th of September, is that right --

A. Yeah.

219 Q. Or, sorry, the 13th of April, 2010. Sorry.

A. Yeah, I think it's five days.

220 Q. Five days.

A. It's the 9th, 10th, 11th, 13th.

221 Q. Five days?

A. Five days, yeah.

222 Q. Can I ask you this: You also said that you had previous material available to you, including documentary material and notes you had made in anticipation of making a further submission to the Tribunal over the previous 15 months or 16 months, is that right?

A. Yes, dates dating back to the response I gave in December 2008, yes.

223 Q. And you said yourself and Mr. Pals were not very au fait with the structure and outline of a statement that you would make to the Tribunal, isn't that right?

A. Correct.

224 Q. And was I correct in thinking that Mr. Reynolds, the solicitor working in Digicel, was in a position to give you some assistance with the kind of -- the overall shape and the kind of topics you would have to deal with in respect of your -- in your statement?

A. Yes. Just on an overall level.

225 Q. Yes. Did you have any other assistance from any other person at all in drafting this statement?

A. No, not except for what I discussed with you, I believe it was yesterday, when I told you that I had worked together with Jon Bruel on drafting the response document back in December 2008, and he and I had found the, you know, underlying documentation.

226 Q. I want to put it to you that this document is remarkable in one respect, in that the standard of English and the -- is remarkably high, it's perfect English, your statement, as far as I can see?

A. Yeah.

227 Q. Did you get anybody to polish it up or to look over -- you have said in the witness-box that you aren't one hundred

percent fluent in English, and I am just asking you, did you have anybody who might assist you to tidy it up and make it perfect in terms of English grammar?

A. Yes, yes, Carsten Pals reviewed the document and also communal language changes.

228 Q. Has he better English than you?

A. I don't know whether he is better than I am, but he would probably have somebody in his office reviewing the English. That's the normal for his office, that whenever he wrote the letter to the Tribunal, it also went around some language check.

229 Q. So you said, I just wanted to put this to you, the quality of English in this is explained by A) you own efforts, B) Carsten Pals' efforts, and C) somebody in his office who would have ironed out any linguistic inadequacies, is that right?

A. Yes, and you would appreciate that some of the wording is actually taken from previous documents, including the response document from December 2008.

230 Q. Now, can I ask you, in relation to this document -- you said, earlier, that you had at all times understood that you were under no obligation to keep secret the indemnity document, isn't that right? Did you feel free to reveal it to anybody who asked you about it?

A. No, not -- no, in my mind I had no reservation of making the indemnity publicly available.

231 Q. Did you feel that, in order to do so, you were required to get the permission of Mr. O'Brien or his solicitors?

A. Well, I discussed it with my legal team and they said that, you know, it was a courtesy matter to ask whether there were any objections from O'Brien to -- or his solicitor, to furnish the Tribunal with the document. So, you know, I made the instruction to my solicitors that "I would like this document furnished to the Tribunal, please do it, please proceed to do that."

232 Q. And when did you do that, Professor?

A. Oh, now, I am struggling with the --

233 Q. I am not asking you the exact date.

A. August or -- I would think it was around -- in and around August, but --

234 Q. About August, you told your solicitors to make it available to the Tribunal; is that right?

A. Yes, based on the communication with the Tribunal, yes.

235 Q. But prior to that, you had given them no such instruction, is that right? Prior to August, you had given nobody any instruction to --

A. No, I hadn't given them instructions to furnish the document, but I had always said to my solicitors that, as I

was concerned, I had no reservation of furnishing such a document to the Tribunal.

236 Q. I see. Now, could you be shown Book B? And could I ask you to go to Tab 11, the letter after Tab 11, please.

First of all, maybe I should ask you to go to the letter behind Tab 10 from your solicitor, Mr. Pals, to the Tribunal, and I just want to draw your attention to the third paragraph on the first page of that letter.

Mr. Pals says: "I do not think it is appropriate in these circumstances to refer to an itemised and comprehensive set of conditions. My client is not approaching the matter on that basis. He has no preconditions with regard to the award of costs, etc., but he and I naturally expect that he is by no means discriminated against compared with other similar witnesses. At present, he is simply seeking information from the Tribunal, information to which he is clearly entitled. He needs to know how the Tribunal intends to proceed in relation to the matters properly raised. None of these requests were in any respect unreasonable. It's for the Tribunal at first instance to advise my clients of its approach in these matters."

And these were really logistical matters in relation to your costs, and things like that, at that point, isn't that right?

A. Okay. Yeah, probably. When you say it, I take it.

237 Q. And the Tribunal replied to that letter, and I just want --

I don't want to bring you through all of the letter, but the next tab, Tab 11, is where that reply is to be found.

And it says: "The Tribunal finds it difficult to understand the statement contained in your letter under reply that your client has always been prepared to give sworn evidence to the Tribunal and your assertion, reinforcing that statement, that he has already communicated that preparedness several times to the Tribunal. This is not correct. Mindful of the Tribunal's desire to endeavour to secure your client's attendance, the Tribunal does not wish to embark on a quarrelsome exchange of correspondence. At the same time, the Tribunal believes that it would be a foolish waste of its resources to ignore its history of dealings with your client in its efforts to secure his attendance in the past.

"The Tribunal is not seeking to avoid responding to your client's requests for information, and so forth, but does wish to avoid a repetition of its extensive dealings with your client over a number of years in order to secure his attendance, all of which came to nothing. You will be aware that these efforts failed to secure his attendance when the main stipulation subject to which his attendance

was made conditional, i.e. the provision of a comprehensive Government indemnity for loss, could not be provided. Your client was informed of this on the 13th of May, 2005. When he did not reply, the Tribunal wrote to your client on the 25th of May, 2005. Again, there was no response to that letter.

"The stipulation that your client's attendance to give evidence would be conditional on such a wide-ranging indemnity, was first raised by you, on behalf of your client, in your letter dated the 28th of October, 2003, and again at a meeting with Tribunal lawyers on the 29th of October, 2003. Prior to that, your client, while raising a number of other matters which he contended precluded him his giving evidence had, in respect of the requirement for an indemnity, sought such an indemnity merely in relation to costs. By the 29th of October, 2003, however, what was stipulated for was an indemnity of a wholly different character, not an indemnity as to costs from the Tribunal but an indemnity as to loss from the State. This is a situation in which the Tribunal does not wish to find itself in endeavouring to meet Mr. Andersen's requirements for his proposed attendance on this occasion."

And it goes on to talk about how they were willing to conclude arrangements for your attendance.

And at that stage, I presume you were shown that letter by your solicitor, by Mr. Pals, were you?

A. Yeah, I think so, too, yeah.

238 Q. Did it occur to you at that point that the Tribunal could not have been aware that you were now indemnified by anybody, including Mr. O'Brien?

A. Well, I think it's clear through the lines here, behind the lines, that the Tribunal must be aware that I had some kind of indemnity, so my recollection of this entire correspondence is that I discussed the indemnity with Carsten Pals and I also said to him that I have, you know, nothing against making the indemnity publicly available or available to the Tribunal.

239 Q. Well, he replies on the next tab, and he deals with provisional findings, costs and expenses between 2001 to date, costs and expenses of future dealings with the Tribunal, and then, finally, under "Other Issues Raised," he said: "The fact of the matter is my client has never said to the Tribunal that he was unwilling to give evidence as well as he has never stated that he would decline to give evidence.

"The Tribunal's remark that its dealings with my client 'came to nothing' is incorrect. My client provided an enormous amount of assistance to the Tribunal, particularly

in 2002 and 2003. He travelled from Copenhagen to Dublin to meet the Tribunal on a number of occasions. He met with the Tribunal's legal team for a full day in October 2003.

He provided lengthy written materials to the Tribunal over an extended period. It is also clear that the Tribunal did not wish to engage with my client when he wrote to the Tribunal in 2010 and again in December 2008.

"It is correct to say that my client raised issues with the Tribunal in relation to his attendance as a witness. The fact of the matter is that these issues were never fully or appropriately addressed by the Tribunal. However, to my knowledge, my client never refused to give evidence and never stated that he declined to give evidence. My client's view (as expressed in his statement as submitted to the Tribunal) is that he does not believe that the Tribunal's lawyers actually wanted him to give evidence before the Tribunal.

"Given that my client has now, on several occasions, expressed his willingness to give evidence, I see no further need to further debate the question of my client's former attitude towards giving evidence to the Tribunal. At this point, it is, however, unclear to us as to whether these issues relating to prior dealings with the Tribunal remain relevant to the evidence to be given to the Tribunal

by my client or whether the Tribunal is focusing solely on the actual second mobile phone licence process. It would appear to us that these matters are not relevant to the matter being inquired into by the Tribunal; namely, the second mobile phone licence process. However, if this is not the Tribunal's view, then this should be confirmed at this point.

"Can the Tribunal please confirm whether it intends to raise these issues with my client in his evidence or during public sittings of the Tribunal? If so, can the Tribunal please confirm the purpose of pursuing such matters at public sittings of the Tribunal such that my client can prepare his evidence or response as appropriate. My client has strong views on this matter. However, he does require confirmation from the Tribunal as to whether these matters remain an issue when he gives evidence."

Now, I stop there just merely to ask you this, Professor Andersen: Given that they had asked in their letter, or raised in their letter, your attitude to an indemnity, it seems that, and I am suggesting to you that this letter was designed to say that you were willing to come and talk about the mobile licence award process and that your preference was that there would be no discussion as to previous dealings between you and the Tribunal or any

raising of the issue of the indemnity again, isn't that right?

A. That's correct, that what I saw as a clear preference in this stage was I could have a clean sheet with the Tribunal and just start focusing on the GSM evaluation, which was my -- and which is my area of expertise.

240 Q. I see.

A. So concentrate on the substance.

241 Q. Yes. Now, eventually, as we know, you retained an Irish firm of solicitors to act for you, isn't that right?

A. Yes, and that comes out of this communication here because

I didn't personally find that the communication between my

Danish solicitor and the Tribunal moved forward to a

situation where matters were clear, the logistical matters,

and so forth, were cleared. And also, you will recall that

this letter, or this correspondence which you opened, deals

with the media speculation; there was an article from the

well-known Irish journalist, Colm Keena, whether I had

informed him or not, that was the claim that the Tribunal

made, the fact being that I had not entertained an

interview with him, and, later on, there were more dealings

about the communication with the media. And at that stage,

I thought that, then, I needed to retain an Irish

solicitor, also. You know, I am relatively naive here in

April. When I first wrote to the Tribunal with the -- or gave to the Tribunal the information that I would come as a witness, my intention was to come without legal representation because I thought that I could come at a normal Tribunal, where I could just come and concentrate on the factual matters in and around the evaluation: "How did it proceed? Which techniques did you use? How did you arrive at results?" And so forth. But during the very, I would say again, hostile communication tone that there is in these letters, and I hope you will acknowledge that, I came to the conclusion that I was not able to do this without Irish solicitors, and once I then contacted Irish solicitors, they said to me, "You can't do this without having barristers on board also because this is the style," and so forth.

242 Q. So we are where we are?

A. Exactly. But my intention, I would like -- now, you are coming in as a new man in this and I really appreciate this because you can look at this in a neutral fashion.

243 Q. I am glad to hear you say that.

A. At least you have the possibility of doing it. Whether you will do it or not, I don't know. But I am telling you, Mr. McDowell, that my initial intention was to come here alone. That shows how naive I am in this context.

244 Q. I think it is true to say that the Tribunal envisaged you giving evidence in June or July initially, isn't that right?

A. That's correct. We discussed that and I offered to come in June. That was obviously of short notice. The Tribunal would like me to come in July. I had planned a family holiday and July is the --

245 Q. I am not raising a criticism of you at all.

A. Okay.

246 Q. But on the assumption that the Tribunal did not infer from receiving, via Mr. Reynolds, your proposed Statement of Evidence, assuming that they did not infer from that that someone was now indemnifying you, would you agree with me that it seemed odd that you were saying "I was always willing to come and, by the way, I will come now, and, please, I'd prefer if we don't refer to our difficulties in the past. Just let me come and testify"? Does it not occur to you that if they did not know of the indemnity, that the Tribunal would be mystified as to why you were claiming in your written statement that you were always willing to come and making no mention of the indemnity issue?

A. Well, I have never intended not to inform the Tribunal that there was an indemnity in place. Never.

247 Q. And in fairness to you, you have said that you assumed that they understood that you must have got an indemnity if you were turning up?

A. That is correct.

248 Q. But I am asking you now, just asking you now, on the assumption that they didn't make that assumption, that they didn't understand that you must have got an indemnity from somewhere else, do you consider, on reflection, that they would regard with suspicion somebody who said "I was always willing to come and let's not talk about the past"?

A. No, I wouldn't have any suspicion, because here you have a man coming and stating: Could we make a clean sheet instead of hostile communication? And then it turns out -- this is just to illustrate my personal frustration in this -- it turns out that it takes in excess of 80 letters between my solicitors and this Tribunal to get me here in the witness-box.

249 Q. Exactly...

A. You know, it was beyond any imagination I have ever had.

250 Q. Exactly, and how many letters do you think were exchanged before the existence of an indemnity became apparent to the Tribunal?

A. You know, there were no letters exchanged. There was, as I explained, there was a meeting --

251 Q. How many letters had exchanged in that correspondence with Mr. Pals and Ms. Preston before you finally volunteered, as you put it, that you had an indemnity from Mr. O'Brien?

A. Okay. A number of letters, I would say.

252 Q. Well, I would suggest a vast number of letters had exchanged?

A. That's probably in the middle of the exchange, or whatever, but still --

253 Q. And --

A. But still very well ahead of me being here. That's the point I am making.

254 Q. I appreciate that. But I am making -- I am asking you a different point. I am suggesting do you not regard it as strange that, in all of that correspondence with Mr. Pals, who the Tribunal are reminding him about all the problems about an indemnity and the exchange of correspondence with Ms. Preston, that nobody ever volunteered to the Tribunal: By the way, Professor Andersen has now got an indemnity?

A. If matters had proceeded in what I would consider in a normal context, you know, the indemnity would -- both the indemnity and maybe, also, my suggested attendance here in September could have transpired earlier, but the letter you have just read partly aloud from, it's very demonstrative in this case. I am offering to come here and give evidence

and then the Tribunal starts shooting at me with claiming me to have informed an Irish journalist in The Irish Times that -- feeded him with information to an article, which I haven't. So, you see, right when I volunteer to enter into discussion with the Tribunal through my Danish solicitor, the first thing I get is to get bullied, if I may use that expression.

255 Q. Can I bring you to Tab 37, and a letter from Mrs. Preston

-- to Mrs. Preston, your solicitor, from the Tribunal

Solicitor, and it reads as follows:

"Dear Mrs. Preston,

"I refer to your letter dated the 20th of August, 2010, in

response to the Tribunals's letter of the 13th of August,

2010. I am instructed to respond to you as follows:

"The Tribunal has every reason to be concerned over your

client's belated disclosure of dealings with Mr. Tom

Reynolds, a solicitor employed by Digicel Limited, a

company controlled by Mr. O'Brien. That concern is

unconnected with the provision of your client's statement

through Messrs. Meagher & Co., Mr. O'Brien's solicitors,

although the Tribunal finds that mode of provision unusual,

having regard to the established course of dealing between

the Tribunal and your client's Danish solicitors, Messrs.

Bech-Bruun.

"The Tribunal is unclear as to your reference to contact made by other persons, presumably with your client, and would be obliged if you would clarify that matter.

"You are incorrect in stating that the Tribunal has made any allegation or formed any view that in disclosing information regarding dealings with the Tribunal to Mr. Reynolds, your client has breached the confidentiality of the Tribunal's procedures. It appears to the Tribunal that it must, nonetheless, be observed that it is a novel proposition, implicit in what you suggest, that disclosure to a person, who happens to be a qualified solicitor, does not constitute a breach of confidentiality."

And it goes on for a whole page discussing confidentiality and disclosures and the like. And then it says, at the bottom of the second page:

"Your letter of the 20th of August, 2010, is unclear as to what assistance Mr. Reynolds rendered to your client, the extent of the disclosure made to Mr. Reynolds, or the interactions between your client, or Bech-Bruun, his solicitors, with Mr. Reynolds, or any other person on his behalf, or the form in which confidential information ultimately contained in your client's statement was provided to Mr. Reynolds. That absence of clarity is at variance with your client's approach when contacted in 2006

by Mr. Denis O'Brien's then solicitors, William Fry, when he required their consent to the provision to the Tribunal of copies of all correspondence which had passed to ensure that those dealings were transparent to the Tribunal.

"The confidentiality of the information disclosed by your client to Mr. Reynolds belongs to the Tribunal, and the Tribunal is not only entitled, but is obliged, in protecting the integrity of its procedures, to investigate the full extent of the disclosure which has been made. The purpose of that confidentiality is to enable the Tribunal to conduct its inquiries in an orderly manner while protecting and upholding the constitutional rights of affected persons. It is, accordingly, of paramount importance to the Tribunal to secure and protect that confidentiality."

And then they said: "The Tribunal wishes your client to make full disclosure of all his dealings with Mr. Reynolds, whether through his Danish solicitors, Bech-Bruun, or any other agency, and, to that end, the Tribunal wishes to obtain from your client a full narrative account addressing the following:

"1. Details of all interaction by or on behalf of your client with Mr. Reynolds, including the date, manner and circumstances of all such interactions."

Now, I stop there because they were looking for an account by you of your dealings with Mr. Reynolds.

And your solicitors then reply that -- first of all, your solicitors are sent a letter on the 3rd of September seeking a reply.

"I refer to the Tribunal's letter of the 24th of August last to which a response has not yet been received. I am instructed to write to you as follows:

"The Tribunal is anxious to proceed with arrangements connected with your client's forthcoming attendance as a witness at the Tribunal. As the Tribunal is constrained from corresponding with your client in relation to substantial matters until the recent confidentiality issue is resolved, the Tribunal would ask you to furnish your client's response to the Tribunal's letter of the 24th of August without delay."

And that was replied to on the 3rd of September by Mrs. Preston in the following terms:

"We refer to the above matter and to your letter of the 24th of August, 2010.

We, too, are anxious to proceed with arrangements in regard to our client's forthcoming attendance as a witness and in that regard had hoped to be in a position to respond to your letter today but were unable to do so.

"We expect to be in a position to provide our response early next week."

And the next week, the 6th of September, a letter comes -- sorry, it's a Monday -- Monday, the 6th of September, a letter comes, and at the bottom of the first page, the following is stated: "As the Tribunal had failed to secure the attendance of Mr. Andersen to give evidence before the Tribunal, it seems extraordinary that the Tribunal should take any adverse view in relation to the assistance of Mr. Reynolds in this regard. Details of the very limited interaction between Mr. Reynolds and Mr. Andersen have already been given to the Tribunal."

Now, is that true? At that stage, had any details of you sending him an executed indemnity letter, had that already been provided to the Tribunal? And it's described as "very limited," and the statement there is: "Details of the very limited interaction between Mr. Reynolds and Mr. Andersen have already been given to the Tribunal."

A. I think some details had been given, yes.

256 Q. Oh, some details had been given?

A. Yeah.

257 Q. You don't interpret that as full details?

A. If you mean the indemnity?

258 Q. It hadn't been given at that stage?

A. No, it hadn't. That's what I am coming to.

259 Q. So we'd have to read down a few lines -- sorry, just in case you think I am misleading you -- you have to read down a few lines, and then, for the first time, the indemnity is mentioned?

A. Yeah, okay.

260 Q. "At this meeting, the content of a preliminary statement drafted by Mr. Andersen was discussed, together with the possibility of Mr. Andersen finalising the statement in the previous days which was perused by Mr. Pals' office and was subsequently sent to Mr. Bruel."

I just want to stop you there. "At this meeting, the content of a preliminary statement drafted by Mr. Andersen was discussed, together with the possibility of Mr. Andersen giving evidence with an indemnity from Mr. O'Brien. As a result of this meeting, Mr. Andersen finalised the statement in the following days."

So, at that stage, it was being suggested that you had brought a statement to the meeting in Copenhagen on the 9th of April. It was discussed. And you were going to finalise it over the following days, isn't that right?

A. No, that's not correct.

261 Q. What you said earlier to me is correct?

A. Yes.

262 Q. This is a misunderstanding?

A. Yes.

263 Q. All right, I am not --

A. Not a misunderstanding. I think if you go further on in the communication here in this binder, you will find a full explanation from Maples and Calder on this matter.

264 Q. "As a result of this meeting, Mr. Andersen finalised the statement in the following days, which was perused by

Mr. Pals' office and was subsequently sent to Mr. Bruel.

The statement was then furnished to the Tribunal by Messrs.

Meagher as offered by Mr. Reynolds."

Now, at that point, that was the first the Tribunal -- will you accept from me that was the first the Tribunal knew that an indemnity had been offered and accepted between yourself and Mr. O'Brien?

A. Yes, that's the first -- probably the first time it's in direct information and furnishing procedure instituted, that's correct.

265 Q. And you had told us earlier that you had told your solicitors at some stage, "give them it, give them -- tell the Tribunal about the indemnity and send it to them"?

A. I had left it in your hands to some considerable extent.

Not that I did not have any influence on it, it's not that,

but I have said to my solicitors that before I go into the

witness-box at the Moriarty Tribunal, we need to give -- we are to give the Tribunal the indemnity.

266 Q. I see. Well, that, I mean, slightly differs from what you said earlier because you did say earlier that, in August, you said "give to them" --

A. No, you asked me to guess when it was sent and I said around 80, 80-plus letters in the correspondence. So, you will appreciate, you asked me to guess when it was sent, and I said it was sent -- I think my recollection was that it was sent in August, but now it appears it's in the beginning of September.

267 Q. Oh, I see. Well, then, we are saying that this was the -- it was in response to this letter that you gave them an instruction, is that right? This was the first time that the issue arose between you and your solicitor?

A. No, no, I had said already to Carsten Pals, and also discussed when I retained Irish solicitors, that the indemnity was to be furnished to the Tribunal prior to me entering the witness-box.

268 Q. I see.

A. So, you see, the case here is quite different, really. I come from a position -- I know you are not formally part of the -- a permanent part of the Tribunal legal team.

269 Q. That's right.

A. So you -- you are, as I said before, able to assess this at helicopter level. If you go through what has happened since 1995 -- or, sorry, in particular, 2001 and onwards, every detail of that communication, and you also read into the communication after I had elected to give evidence here, I have had the impression that this Tribunal did not want to have my evidence.

270 Q. I see. I think you have made that point and I am not trying to close you off, but the -- if I could bring you down the page, because the subject changes after the mention of the indemnity at the top. But the third-last paragraph on the page says "The indemnity is contained in a letter from Mr. O'Brien to Mr. Andersen dated 13 April, 2010. The letter is confidential and, in the circumstances, we require Mr. O'Brien's consent to its release to you. For Mr. Andersen's part, he has no difficulty in releasing it to you and looks forward to Mr. O'Brien's confirmation in this regard. We assume you will request this from him."

So this was saying it's confidential, "and we require

Mr. O'Brien's consent before we give it to the Tribunal.

Mr. Andersen has no problem about giving it to you and

looks forward to Mr. O'Brien's confirmation in this regard.

We assume you will request this" -- that's the confirmation

-- "from him."

So I am suggesting to you that whatever about your attitude about it being neither confidential nor the opposite, your lawyers took the view, on reflection perhaps, that it was confidential. And I am asking how -- did you give them that impression, that it was a confidential document?

A. I don't even recall whether the indemnity itself says it's confidential or not. I am just saying, from my point of view, that I have had no problems of sending it to the Tribunal and, in fact, something more stronger than that, that I will not enter the witness-box without a disclosure to the Tribunal.

271 Q. Well, in fairness to you, it is marked "Strictly private and confidential".

A. Yeah, yeah, but, you know, I have learned, through my Irish dealings, that when it's stated "Strictly private and confidential," then it means send it to everybody. That's the inference I draw from my experience with the Tribunal from 2001 and onwards.

272 Q. I am sure the old joke about "I have received this in confidence and I am telling it to you in confidence" applies.

A. Yeah, yeah.

273 Q. But it does appear that your lawyers, as soon as you

discussed this matter with them, immediately said "This is confidential." Isn't that right?

A. Yes.

274 Q. And it appears, therefore, that your earlier statement to me that you didn't regard it as either confidential or the opposite of confidential, was a view that only you had, so to speak, on your side of the equation?

A. Sorry, what's the question?

275 Q. Only you had that view, that you were free to mention it to anybody that you wished to mention it to?

A. I think that this is a non-significant matter of formality.

That's my impression of this.

276 Q. I see.

MR. GLEESON: Sorry, before we go any further, I mean, we are now, it appears, heading towards some sort of a mini-inquiry on the legal advice that Mr. Andersen obtained. The Tribunal has the indemnity. It can question him about the terms of the indemnity. The circumstances in which this indemnity came to be given have been given in evidence. What is the point of an inquiry as to whether there is a discrepancy between what his solicitor thought attached by way of confidentiality and what he thought; how is that necessary to this inquiry?

CHAIRMAN: Mr. Gleeson, I will look on some information in

relation to the time-frame of what has taken place since relations commenced earlier this year, as material to my consideration. I am not envisaging that it will be pursued at any inordinate depth or length.

MR. GLEESON: Thank you.

277 Q. MR. McDOWELL: In any event, we know that Mr. O'Brien's solicitors did consent to the matter being brought to the attention of the Tribunal, isn't that right?

A. That's correct, that's correct.

278 Q. Before it was furnished to the Tribunal, it was the subject of some publicity in the newspapers; were you aware of that?

A. No, not at all, because -- and I am actually a little bit sad of getting that question --

279 Q. I wasn't --

A. No, I'll just expand a little bit here, because in the correspondence we have been through up to the 6th of September, this Tribunal's legal team has claimed two things, two instances that I had some dealings, or whatever --

280 Q. I am not suggesting -- Professor Andersen, I have to interrupt you, I am not suggesting that you gave it to the media.

A. Okay.

281 Q. Because the media coverage, in fact, makes it very clear that it was Mr. O'Brien mentioned to the media the fact that such an indemnity had been given.

A. Okay. Thank you.

282 Q. Now, could I bring you on to Tab 44?

A. Yes.

283 Q. And a letter from Maples and Calder, and again that letter says -- it points out: "There is nothing inconsistent with what was stated in our letter of 9 April, 2010, and in the letter under reply." I think it's the 9th of August because Maples and Calder weren't on the scene at that stage. "The 'preliminary' statement to which we referred is the statement which was furnished to you by Messrs. Meagher. We described it thus because we anticipate a fuller statement being furnished by Mr. Andersen in due course. There was no draft or other version of this statement. There is no other documentation which relates to that meeting. For clarity, we confirm that the entire meeting took approximately two-and-a-half hours. Mr. Reynolds attended for approximately three-quarters of an hour and the balance was spent with Mr. Andersen and Mr. Pals reviewing the statement.

"We have no difficulty with seeking consent from

Mr. O'Brien to the production of the letter of 13 April,

2010," which is the indemnity letter.

Again, this letter strongly suggests that the preliminary statement which they'd said was discussed at the meeting in Copenhagen, is the letter -- is the statement furnished by Messrs. Meagher & Co. They say "Mr. Reynolds attended for approximately three-quarters of an hour and the balance was spent with Mr. Andersen and Mr. Pals reviewing the statement."

Now, it seems that that's not a fair description, from what you have said, of what actually happened. It's an inaccurate description or a mistaken description, is that right?

A. What is inaccurate?

284 Q. That there wasn't -- the statement that you furnished from Mr. Meagher, through Mr. Meagher, was not the statement which was being reviewed and discussed on the 9th of April, because it didn't exist on the 9th of April; it was only composed over the following days?

A. Yeah, it was documents on the table, yeah, as I have discussed.

285 Q. They say there were no other documents at that meeting, and that's why the Tribunal began to wonder how there could be no other documents, how the statement which you now say was drafted over five days inclusive, didn't exist at the time,

and how there is reference to reviewing a statement and considering a statement at that meeting if there were no other documents, as Mrs. Preston says, in her letter, that there was -- and I just want to be accurate about what she says. "There was no other documentation which relates to that meeting..."

A. That flows through the entire communication. I mean, both the Tribunal and also my legal advisors, they can have different kinds of speculations, etc., and then that can cause another ten letters, or whatever. So that's clearly why it could amount to 80-plus letters in this correspondence.

286 Q. I see.

A. So I was not very involved in -- I tried to concentrate, on coming here, to give evidence on the substance.

287 Q. And just, could I ask you, just briefly, in relation to the indemnity which you obtained from Mr. O'Brien, could I ask you briefly, could you just tell us in relation to the -- I think you'll find that indemnity letter, when it was furnished, at 44A in the same book.

A. Okay. Yes, I have it.

288 Q. You will notice on the first page of that letter, that it's franked "Received 20 September, 2010, Meagher Solicitors".

A. Yes.

289 Q. And I just want to ask you one question about its contents.

At page 2, the following appears: "I understand that you have already incurred legal costs and expenses in terms of your dealings with the Tribunal in the period 2001 to date.

I assume that your lawyers will engage in discussions with the Tribunal in relation to your position as regards the reimbursement of these costs as incurred to date prior to your actual giving of evidence to the Tribunal.

"In the event that this matter in relation to your costs as incurred to date is not resolved bilaterally with the Tribunal to your satisfaction, then I confirm and agree that I will personally discharge any such reasonable legal costs and expenses as incurred by you to date on an indemnity basis subject to the presentation of all appropriate documentation to me in this matter (legal invoices, etc.) necessary to support such claims for reasonable costs and expenses.

"Please note that this liability in terms of all reasonable legal costs and expenses incurred to date is subject to a maximum ceiling of €30,000. Any liability arising under this section of this letter shall be discharged, in line with the above, within 30 days after the giving of your first day of sworn evidence before the Tribunal."

So the situation is that you had incurred costs between

2001 and the 13th of April, is that right?

A. Yeah, out-of-pocket expenses for my Danish solicitor, yeah.

290 Q. And the Tribunal has sought details of those, of those expenses from you and invoices in respect of them, since the Tribunal is to pay for them, you are seeking that the Tribunal should pay them, isn't that right?

A. Yeah.

291 Q. And have you been able to produce those details of the legal costs between 2001 to date, those outstanding legal costs?

A. I think a lot of details has been produced. I am not familiar with the exact status right now, but the Tribunal has asked whether, you know, I had actually paid -- there are ten invoices, let me just try to be meticulous here, because you are asking --

292 Q. I don't want to pressurise you now.

A. You are asking so --

293 Q. Can you produce them?

A. You have raised the question. It's important for me, because there could be some suspicion, I don't know, otherwise the question is posed. There are, I can say to this Tribunal, ten invoices over the years, and then we have informed the -- I think Carsten Pals or my Irish solicitors has informed that there are these ten invoices

over the years. Now, just for you to consider the tone between the Tribunal and myself through my solicitors, the Tribunal has asked to confirm whether I had actually paid these invoices, maybe making the suspicion that I was trying to do a claim for things that had not been paid, whatever. And I don't know what the status is. I hope that they have confirmed that I had paid --

294 Q. What the Tribunal wants to receive, Professor Andersen, is, simply, this: The Tribunal wants to receive a record of the services in respect of the period in question, what the services were and when they were rendered, that's what it wants to receive. And it wants to know -- it wants to see the original invoices from your solicitors and it's asked this a long time ago and it hasn't been given them yet.

A. Okay. But I am not --

295 Q. Is there any difficulty about furnishing the ten invoices?

A. Not at all, not at all.

296 Q. Can we assume we'll have them tomorrow then?

A. I will have to ask -- I'll have to ask my Irish solicitor.

MR. GLEESON: Sorry, Mr. McDowell --

CHAIRMAN: It's a matter that can possibly be addressed in re-examination at a later stage if that arises.

MR. McDOWELL: My Friend may not see the point of it, but, Chairman, as you know, I have been instructed to ask the

witness in relation to this issue and to secure production of details of the legal services that he was provided with by Mr. Pals in the period prior to the 13th of April.

CHAIRMAN: Yes.

MR. McDOWELL: And that's all I am asking the witness to produce.

MR. GLEESON: Could I just assist Mr. McDowell. Mr. Pals has been asked to produce these invoices not only by Professor Andersen but by his Irish solicitors. That information has been requested. But I don't understand how this can be germane to the current inquiry. I simply don't understand.

MR. McDOWELL: There is a particular reason, but I don't intend to indicate it now, Chairman.

Now, so, in essence --

MR. GLEESON: What is the reason?

MR. McDOWELL: Sorry, I am not going to indicate the reason now and I am very definitely not going to do it and no amount of muttering will make me do it.

MR. GLEESON: Sorry, this is not muttering. If this is another trap being set for Professor Andersen, let's have it out in the open. This is not an adversarial procedure; you've said so yourself yesterday, Chairman. Mr. McDowell is now laying a trap for some future attempt to embarrass

this witness. Let's have the reason why this is so important. Let's know.

CHAIRMAN: There aren't traps, Mr. Gleeson. As you are aware, the Tribunal has expressed an anxiety to know the details of these particular invoices and there is an anxiety that these matters be made available at the very earliest vantage point, and I'd welcome your assistance in that regard.

A. If there is a suspicion, then, I mean, I am --

CHAIRMAN: There is no suggestion --

A. Yeah, but, listen, I have these invoices in my office at home. I am going back tomorrow afternoon with the flight out of Dublin here, so I have to leave at four o'clock.

But when I come back, I will have -- I will try to look for these ten invoices and then we can bring them on the table, if that is what can satisfy you.

MR. McDOWELL: Now, you'll be glad to know, Professor Andersen, I am moving on to substantive matters.

A. Okay, very good.

297 Q. And I'll ask you to look at Book 90. First of all, have you got that book, Professor Andersen?

A. Yes.

298 Q. This is a book of documents to deal with the RFP and tendering process. Could I ask you, firstly, to go to a

letter dated 2 March, 1995, which is Tab 6 in the book, and at Tab 6, there is a letter to AMI arising out of expressions of interest in AMI to be considered for this as a tenderer in this process, isn't that right?

A. Yes.

299 Q. And it's a letter signed by Martin Brennan, and it's addressed to you -- or addressed to the secretary, rather, of the company, and I'll just ask you to confirm that "you were invited to submit a detailed cost proposal and tender for the assignment for not later than 5 p.m. on Monday, 20 March, 1995, that it should be set in two parts dealing with selection and licence drafting, the latter being optional at our initiative. The proposal should spell out your timetable and approach to the task in sufficient detail as to be readily understood. It would be of considerable assistance if you were to describe the tasks as you interpret them in a concise draft of formal Terms of Reference for the engagement which will include a statement of what will be delivered. In this context, I attach for your information a copy of the RFP document for the GSM licence. You should note that this is provided on a confidential basis for your own use only. Licence bidders are required to purchase the tender documentation."

So the invitation to tender that was sent to you on that

occasion was one with which you were totally conversant yourself, isn't that right?

A. What does "conversant" mean?

300 Q. That you read it carefully before you tendered?

A. Yes. I don't know whether you mean this document or you mean the previous documents. There was a prequalification phase, also. What are you referring to, this letter or the prequalification?

301 Q. It's a competition. It's a circular headed "Competition for a licence to provide digital mobile cellular communications GSM in Ireland." The RFP document.

A. Yeah. I mean, that -- we were familiar with the fact that there was an RFP document, yes, correct.

302 Q. And --

A. If that is the question.

303 Q. And just to make -- to clarify things. The RFP document set out exactly what the evaluation criteria, as they then were considered, were to be, isn't that right, although they changed?

A. Both yes and no. I think it's correct to say that the RFP document, at paragraph 19, did set out the evaluation criteria. But when you say that the evaluation criteria was changed, that is not correct; I think they remain constant throughout.

304 Q. Well, I was looking forward to the European Union's intervention at a later stage.

A. But, you see, the European Union intervention didn't change the evaluation criteria at all.

305 Q. No, not the criteria -- but it did change the auction element, isn't that right?

A. That's correct, that's correct. The nature of the competition was changed due to the EU intervention. But what is difficult here, and also for our forth-going cooperation in understanding this, is that the criteria themselves, they were not changed.

306 Q. Paragraph 19 criteria, is that what you are saying?

A. Yeah.

307 Q. Now, can I draw your attention to paragraph 9 of the RFP document?

A. Yes, then I need to have that document.

308 Q. Have you got it?

A. No.

309 Q. Sorry, it's at Tab 6, Book 91, Tab 6.

A. Yes.

310 Q. And it reads:

"Applicants must demonstrate their financial capacity and technical experience and capability to implement the system if successful and must include a business plan for at least

the first five years and a complete technical proposal."

Now, that seems to be a mandatory requirement, does it not?

A. Yes, a vague mandatory requirement, yeah.

311 Q. Well, I mean, when you say it's vague, the phrase that they "must demonstrate their financial capacity and technical experience and capability to implement the system if successful..." isn't that right?

A. Yes, and then I attach considerable importance to what follows "... must include a business plan for at least the first five years and a complete technical proposal." You see, if you compare with other tenders at the time, you could have tender documents that were, let's say, 100 pages or 200 pages, whatever, with requirements as to how a business plan should be put together, different kinds of requirements. What you see here is solely a sentence.

312 Q. I know it's solely a sentence, but, for instance, I suggest that you are not suggesting that an applicant could decide not to submit a business plan. And are you saying, however, that the first mandatory requirement, that they "must demonstrate their financial capacity and technical experience and capability to implement the system if successful," that that is a softer obligation than the obligation to provide a business plan for the first five years and a complete technical proposal?

A. No, I am not suggesting that.

313 Q. I see. So it is equally hard as a mandatory requirement, is it?

A. Yeah, what I was trying to get at is that what we, later on, came to struggle with in the evaluation, or in the process, was that this sentence is generally very vague in the information request to the potential applicants, and what I also said before is that in some of the similar tenders around this time in Europe, you could have a tender document with numerous pages specifying specifically which requirements there were.

314 Q. Well, going back to Clause 3, which says that "Applicants must give full ownership details for proposed licensee and will be expected to deal with the matters referred to in the following paragraphs in their submissions..."

Do you agree or disagree with the proposition that the proposed licensee's full constitution, in terms of who would own it and in what proportions, was something which they had to state?

A. It is stated that full ownership details should be given, yes.

315 Q. For the proposed licensee?

A. Yeah.

316 Q. So that -- I have got to suggest to you that, reading

paragraphs 3 and 9 together, it was mandatory on two counts: Firstly, that the proposed licensee's full ownership, in other words the members of whatever company or consortium that was proposed as a licensee, should be identifiable and clear, isn't that right?

A. Exactly.

317 Q. And secondly, that the applicants would have to show their financial capacity and technical expertise and capability to implement the system if they were successful. So, in other words, they had to identify the owners or the consortium members of the licensee, for a start, and they had to demonstrate that those owners/consortium members had the financial capacity, technical expertise and capability to implement the system if they were successful?

A. Yes, that's how it reads, yes.

318 Q. And would you agree with me that the applicants, in those circumstances, that their financial capacity was something of central importance to the competition in respect of which you were being asked to tender?

A. It was of importance, yes, and of considerable importance, yes.

319 Q. I'll put it this way: If some very clever university professor of communications had a great idea and wrote in from the Faculty of Electronic Engineering in University

College Dublin, or something, and said, "this is how I would do it," you might say this is good, he has a beautiful system, he has a beautiful idea, but it doesn't -- it's not eligible, he hasn't told who the licensee will be. He certainly hasn't demonstrated, from his room out in University College Dublin, that he has any financial capacity to deliver this very good idea, isn't that right?

A. Yeah, that would not be -- come through as a winner in the licence process.

320 Q. And I know that didn't happen, but if something like that had happened, he would have gone into the wastepaper basket, wouldn't he?

A. That's interesting to discuss, as such, because if it had happened, then you will have to appreciate that, in this RFP document, there were no rejection procedures, and therefore, if the applicant you are talking about came in with, let's say, one page instead of 350 pages, whatever, you know, we would have been stuck with a very, very serious problem, because what should we have -- what should we have been doing? I can say, in normal RFP documents, at the level of best practice internationally, which this was definitely not, you would have instituted a rejection procedure stating precisely that, in the case of non-conformance with the tender document, the applicant

would be put on notice and would get, let's say, one week to rectify his/her application, and then we could -- the evaluators could reassess whether, on that basis, an application could then be admitted to the evaluation, as such. That would be a standard procedure. And then after, you know, let's say one candidate had been rejected for not meeting the requirements of the RFP, then there should be instituted a legal complaint procedure. But, one, there was no rejection procedure, and there was no real complaint procedure in this --

321 Q. Did you point that out at the time, that this was unusual and that this was a departure from best standard?

A. I think that we -- as soon as we came on board as consultants, we made our client aware of the fact that this RFP document did not stand up to international best practice.

322 Q. I see. Now, can I bring you to paragraph 19 of the document, which is the one that sets out all the criteria in descending order of priority?

A. Yes.

323 Q. And, Professor Andersen, you'll see the first two lines say:

"The Minister intends to compare the applications on an equitable basis," and then there is what I suggest to you

is an all-important qualification, "subject to being satisfied as to the financial and technical capability of the applicant," and then it continues, "in accordance with the information required herein and specifically with regard to the list of evaluation criteria set out below in descending order of priority."

And I am suggesting to you -- and again, if you feel at a disadvantage linguistically, or whatever, tell me and we won't push it much further -- that it was very, very clear that what the Minister proposed that his competition process would do, would be to compare the applications on an equitable basis, subject to being satisfied as to the financial and technical capability of the applicant. And therefore, that the brilliant but unresourced professor in UCD was not entitled to have his brilliant scheme looked at on an equitable basis because he will have put up nothing by way of being -- satisfying the Minister as to his financial capability?

A. The problem is, here, that there are no defined criteria as to how the Minister should be satisfied.

324 Q. Well, I'll agree with you on that. But on the other hand, it was stated that his obligation to compare the applications by reference to the criteria set out in descending order was expressly made subject to his being

satisfied as to the financial and technical capabilities of the applicants?

A. That's correct. That's how it reads. But the point I was getting at is, actually, that if you look at the evaluation document, you can find nowhere where it is stated that the applicant has to have, let's say, a solvency degree of 20% throughout, or whatever, and what we had seen in a number of other RFP documents in Europe was that there was a two-stage process.

325 Q. And that didn't exist here?

A. That didn't exist in this document. That is what you are stuck with, so to speak.

326 Q. No, but what I do say -- I agree with you that there doesn't seem to be a formal two-stage process, but it does, I suggest to you, make very clear that your entitlement to have your application considered equitably by reference to the criteria set out in descending order was subject to an overall requirement that you -- that the applicant satisfy the Minister as to the financial and technical capability of the applicant, not of somebody else but of the applicant?

A. I fully agree.

327 Q. Now, what I am going to suggest to you, therefore, is that -- and this, obviously, you know where I am going, anyway

-- that as the competition proceeded, that the financial --
satisfying the Minister as to the financial capability of
the applicant seemed to transmute from what appears to be a
serious overriding obligation to one in which bankability,
at the end, comes in, and an applicant, although
financially of negative value, was entitled to succeed by
saying, "look, there'll be plenty of people who will give
us the money and buy shares in this company once we get the
licence awarded to us and that's where we are going to go
during the examination of the competition"?

A. Yes, I am fully aware of that, and you will also recall - I
don't want to preempt the discussion in any way - but you
will recall that a marker is put down in the Evaluation
Report and that relates to this sentence "Subject to being
satisfied as to the financial and technical capability."

328 Q. Yes. But I am -- you see, I am suggesting to you that the
entitlement to be considered and compared equitably was
dependent on being able to satisfy the Minister, and that,
really, the -- it's putting the cart before the horse to
say "we'll examine everybody's capacity and then we'll say,
now, this is the order of success, these are the most
eligible licensees in the following order, now it's up to
them to satisfy the Minister as to their financial capacity
or to create their financial capacity at this point"?

A. Financial and technical -- in principle, also technical capability.

329 Q. Now that you mention it, that very point arises, that, I mean, if a whizz-kid financier who wouldn't know a screwdriver from a telephone and had no technical capacity, came along, he wouldn't -- just because he was able to put something out on paper, wouldn't allow him to be considered. He couldn't say, "Well, I'll have to get in other people who know how to do this. I don't know how to do it. I don't have the capacity to do it"?

A. Yeah, I would like to qualify your statement a little bit as to how we understood it: Because there was no two-stage process instituted here, because there were no rejection procedures instituted either, then we might have had to include him in the evaluation with his screwdriver from Dublin technical university or institute, or whatever --

CHAIRMAN: Sorry to interrupt you, Professor Andersen. I understood you to say on the first day that, of the six eventual consortia, some, perhaps three, completely fulfilled the 350-page requirements and others only were outside them marginally and it seemed perfectly sensible that you exercised a discretion to allow them into the eventual full assessment?

A. Exactly.

CHAIRMAN: And none of the six consortia could be described as hopeless or the equivalent of three football teams coming in with no expertise?

A. That's right.

CHAIRMAN: So I suggest to you a hopeless application might have been properly regarded as such?

A. Yeah, fully correct, Mr. Chairman. And therefore, luckily, the situation that Mr. McDowell is describing didn't arise.

But if it had come up, this scenario, then we would have faced difficulties of rejecting such an applicant, but, in the end, once the evaluation was over, we would have had to state that this applicant was simply not financially and technically capable of implementing such a project.

330 Q. MR. McDOWELL: So to use a horse-racing analogy, any horse that got to the starting line was allowed complete the field?

A. Yeah.

331 Q. Is that it?

A. Yeah. That's a good analogy.

332 Q. Now, could I bring you to your tender document, which is to be found at Divider 7 in that booklet, the little booklet.

A. Yes.

333 Q. And it says: "With reference to your invitation from 2 March, 1995, to submit a detailed and costed proposal, you

will now find attached to this letter our proposal submitted in six copies. As agreed, we have presented our integrated approach, together with a clear indication on the bottom of page 2 of the optional part of the requested proposal in relation to licence drafting," etc.

"Conducting GSM2 tenders is often a far more complex, difficult and time-consuming task than even many professionals may expect. For this reason, we have tried to describe our part of the work in as much detail as possible, comprising, for example, a work programme of 23 distinctive steps (section 4), an abbreviated draft Gannt outline of the expected day-to-day progress of the work (Annex D), and detailed examples on how we suggest the applications to be evaluated in accordance with paragraph 19 of the RFP document (section 5, tables 2 and 3).

"As is also evident from our proposal, we offer to utilise our proprietarily developed GSM computer models and programmes at no extra costs for the Department. We have computer-based project planning tools, advanced models for the quantitative and qualitative evaluation and a comprehensive security and document handling system, each exclusively focused on the GSM tenders in European countries.

"However, we consider our main asset to be our GSM

consultants. We are all ready and 100% motivated to work closely together with the Department to successfully execute the GSM2 tender.

"We hope that you and your evaluators have the opportunity to read, discuss and compare and evaluate all the efforts we have put into our proposal in order to get a 'flying start' in this challenging GSM2 tender, and that we thereby have proven to the Department to be the candidate of choice."

Now, you set out in the following pages and in the annexes, how you proposed -- how your tender proposed that you would, if successful, deal with the competition, isn't that right?

A. Yes, that was the style we adopted to go in a relatively long way to describe how a work programme could take form.

334 Q. And --

A. And I hope you appreciate that, at this stage, and before we were retained, the RFP document had already gone out, and therefore, in order to win this tender, we would like to offer to the Department a relatively detailed proposal so that they could press the green button, so to speak.

335 Q. Now, at this point -- and, I mean, I fully understand it if that's your response -- did you feel it was appropriate to point out that there wasn't a preliminary qualification

procedure or did you think that, politically, it would be foolish to start criticising the document before you --

A. It's all a matter of style. Let's just, for the sake of the argument, say that when you first meet the Tribunal --

336 Q. I am not criticising you --

A. -- you would not start criticising the Tribunal when you are going to have the job to examine me. So it's a little bit the same.

337 Q. The same kind of thing.

A. Yeah. If I had started throwing dirt on the Department, you know, I would never have got the job, and I wanted the job.

338 Q. I am saying all of that in ease of you. You wouldn't expect, in this circumstance, to start criticising the RFP document?

A. No.

339 Q. But had you it in the back of your mind that you would raise, if you did win the competition, the need for a preliminary qualification mechanism?

A. Definitely not, because that would be too late, it would be too late to do that, and therefore, we opted for another procedure, I don't know whether you'll come to open these documents at some stage, but what our approach was, that once we came on board as consultants, which was relatively

late, we said, okay, the RFP document has already been sent out to interested parties and there is only -- what was there? -- six weeks, or whatever, to a submission deadline, then you are not allowed to do anything very dramatically, but what we could do was to make some kind of additional specifications. Now, we have just been over that the RFP document didn't hardly contain any specifications, so what we could do was to come with additional specifications, or specifications, really, in order to increase the possibility of being able to compare the applications. And now I am referring to the so-called guidelines and mandatory tables.

340 Q. So you set out in this document precisely how you proposed going about the evaluation process once -- if you were successful, is that right?

A. Yes.

341 Q. I think if we could look at paragraph 3.2: "Based on the existing" --

A. Sorry, in which?

342 Q. Page 6.

A. Thank you. Yes.

343 Q. Maybe I can shorten it by going to page 8. But in any event, it's part of your preparatory work; you have to frame the work as you describe it, is that right?

A. Yeah.

344 Q. And you say that "Based on the legislation, no other than the concessionaire has so far been allowed install, operate and provide voice telephony in Ireland. Thus, the first cornerstone of a successful introduction of a GSM duopoly is a consistent, legal and regulatory GSM framework."

And you deal with "experience from other GSM tenders underscoring the importance of avoiding changing criteria during the preparatory and executing phases."

So I just stop there. You are saying at that point that "experience from other GSM tenders underscores the importance of avoiding changing the criteria during the preparatory and executing phases"?

A. Correct.

345 Q. So you can't move the goalposts once the game starts, is that a fair analogy?

A. That's a fair statement. And paragraph 19, where the evaluation criteria were, had been made publicly available.

346 Q. I see. Now, could I bring you on, then, to page -- I think you go through the dimensions, the marketing dimensions, the technical dimensions, the management dimensions, and then, finally, the financial dimensions, and here you deal with financial dimensions, such as the amount the applicant is prepared to pay for the right to the licence -- this was

at a time when there was only a minimum payment, isn't that right?

A. Exactly.

347 Q. "The ability to provide low tariffs, the degree of financial solidity, including the initial equity offered to the new company, cash-flow profile assessing the necessary period in order to achieve break-even of the discounted cumulative cash-flow, and the internal rate of return."

So that was one of the -- those were the financial dimensions, subject to the fact that one of them dropped out, largely speaking, which was the licence fee dimension, isn't that right?

A. Yeah.

348 Q. And you observe immediately after that "Obviously, most attention should be given to the evaluation criteria outlined in paragraph 19 of the RFP document underscored above."

And --

A. I hope you will see that above where you have the four, in each section we have tried to underscore the same wording as was used in paragraph 19.

349 Q. To bring about a correspondence between the paragraph 19 criteria --

A. Yes.

350 Q. -- and the dimensions that you would normally bring or propose to a Government licensor, or whatever it is?

A. Correct.

351 Q. Now, I think you discuss, then, the whole idea of evaluation criteria, aspects, dimensions, indicators and sub-indicators, and I think everybody has a grasp of that, so we don't have to go through that, unless you want to say something in particular about it?

A. Fine.

352 Q. But you then say "It's possible to develop two evaluation approaches." Right?

A. Yes.

353 Q. "One way to go is to compose (one or more) models based on a system of points whereby the values of the different applications can be scored, e.g. according to a scale of Arabic numbers connected to each specified performance criteria (application A1 has 3.5 points more than application A2, but 5 points less than application A3)," etc.

"Another way to go is to award qualitative marks (e.g. A, B, C, D) to the applicant's performance areas which would finally allow for a simple ranking of the applications (application A1 is better than application A2)," and we have discussed all of that, the difficulties with numbers

and letters, already.

A. Exactly. But I just want to make you aware of the fact that, over these two indents, it reads, as the overall entrants: "As evident from table 1, each evaluation criteria can be detailed in a rather precise manner.

However, there will be, of course, always a need for a general holistic approach in order to be able to assess the overall performance ability."

And you have used, yourself, the word "holistic approach" earlier in your examination, and I just want to make you aware that "holistic approach" is a term mentioned several times already in this tender.

354 Q. Yes. And, for instance, looking at things in the round rather than becoming -- you know, the business of not seeing the wood for the trees?

A. Exactly, exactly.

355 Q. In any event, you have to -- whether it's a helicopter height objectivity, or whatever, you have to be in a position to draw back from something and look at it in the round, isn't that right?

A. Yes.

356 Q. Another way, as I said, to afford quantitative marks.

"In both models it is difficult to make the addition of the measured performance since the added results are highly

dependent on the weighting of the different evaluation criteria (which do not by nature belong to an interval scale). The addition of results at the 'bottom line' will inevitably contain some arbitrariness, except for the proposed licence fee payments (which is normally easy to assess in an objective and transparent manner). It should, therefore, be considered to use both methods in order to maximise the validity and reliability of the calculated results. Attention should also be paid to the calculation process. One extreme is to let different participants in the Evaluation Team calculate their own results (the independence model). Another extreme is to gather the participants to common sessions in order to discuss and agree on the calculation (a Delphi model).

"Independent of which Evaluation Model the Department finally chooses, we recommend that supplementary analysis be carried out where no immediate discrimination among the applications can be made.

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

And then you go on to "Setting the Stage":

"The second cornerstone deals with tailoring of the calculatory assumptions and the itemisation of the applications, in particular the quantifiable aspects, which are, so to speak, setting the stage for important parts of the remaining tender process. The assumptions and itemisations have to be tailor-made, as it will probably not be adequate to copy existing annexes from other countries."

So that's part of the process of the work you had to do?

A. Yes.

357 Q. Then there was the executing part, if I can deal with that, on page 10.

It says: "The evaluations of the applications and the applicants constitute the third cornerstone of the tender."

So if I may just pause as to where we are now. We have intellectually decided what kind of competition we are going to have. We have then done preparatory work to try and set up weightings, and the like, and to attach values to things and to set up a system for comparison, isn't that right?

A. Yes.

358 Q. And then the third stage is this stage of executing part, the evaluation of the applications?

A. Exactly, what happens once the submission deadline is

there.

359 Q. And here we have -- you say: "Considering the possibility of 8 applications multiplied by, for example, 350 pages, excluding technical and promotional appendices, there is an initial need for establishing auxiliary tools like conformance testing against formal requirements and the correct use of (calculatory) assumptions..."

I'll just ask the first thing there. Here you say "Considering the possibly of 8 applications..."

I had understood your evidence earlier to say that you had had to have an uplift in remuneration because you'd imagined that there would be three to four or --

A. I think I said four to five, actually.

360 Q. And -- but your tender was based on eight; is that right?

A. No, it's just a hypothetical thing. It says "Considering the possibility... "

361 Q. I see.

A. It's not what the hourly calculation was based on.

362 Q. Anyway, we'll move on from that.

A. And maybe I could just say that you are also, in this instance, you have the 350 pages, which is equivalent to the maximum which we just saw in the RFP document. However, the fact being that the applicants, they submitted much, much more than 350 pages, or at least some of them,

but they supplied that information as appendices, so some of the applications ran over 1,000 pages.

363 Q. Now, you say "There is an initial need for establishing auxiliary tools like conformance testing against formal requirements." Could you just tell us what that means? Is that not some kind of entry disqualification mechanism?

A. I think it is, I think that is what is meant, yes.

364 Q. So that even if you weren't going to criticise the RFP document, you were saying that given that there could be up to eight applications, "There is an initial need for establishing auxiliary tools like," effectively, "a conformance testing against formal requirements"; that a qualification procedure of some kind is needed?

A. Yes, that is what it reads. However, I hope that you will agree that -- I mean, this is written prior to having seen the applications and this is, as every tender you will see from a consultant wishing to have a job, trying to describe things in a promotional manner, and also as, you know, as a consultant who can do the job.

365 Q. Yes, I mean, I agree, and I am not suggesting to you that you should pick holes at this stage in the RFP that you were dealing with, but it does seem to suggest, does it not, that even though you had already identified a deviation from best international practice, that there was

no formal qualification process with a disqualification mechanism attached to it; you yourself were saying that because you could have up to eight applications, there would have to be something like that in that there would have to be conformance testing against formal requirements because you considered that that would be a necessary thing, you referred to it as "an initial need"?

A. Well, it's worded in a conditional way, isn't it? Or, at least, that is how I meant it.

366 Q. It's worded -- we won't argue about that, but it's saying --

A. If you have eight applications then you need to establish some auxiliary tools.

367 Q. Well, you would hardly know that until the process was closed, until the closing date?

A. Pardon?

368 Q. You'd hardly know how many horses were in the race until closing?

A. Exactly. And the reason why I said this about the promotional element in any consultant trying to pitch for the job, is that you can make your prospective client aware of the fact that this can actually be a very demanding task. We did that, and we also tried, maybe, to consider, you get eight applications, how will you then -- I mean,

deal with that. I don't think the client had that in mind at the time.

369 Q. And you say -- the next paragraph, you say: "The next step will be to relate the applications to the evaluation criteria and to apply the chosen Evaluation Model(s). As this is often a complex task, some interaction with the applicants will probably be an advantage. The applicants' presentation of their application should be based on predefined guidelines prepared by the licensor with the assistance of the consultants.

"Having clarified remaining questions, our evaluation techniques will reveal where the applications are close to being equal, and where major and critical discrepancies appear. The important areas in which critical and decisive discrepancies appear will be subject to supplementary analyses. It might, for example, be difficult to assess whether the applicants' approach to tariffing is competitive, and therefore, section 5 provides an example of how a supplementary analysis can be carried out within this particular area."

Well, for instance, I ask you, Professor Andersen, in this case, a relevant example: If comparison of the various applications revealed that one or more of the applicants contained consortia members that were -- that had negative

equity value or had extremely doubtful financial survivability by themselves, does this paragraph mean that where major and critical discrepancies appear between the applications which are close to equal, that a supplementary analysis on that issue might be desirable, or would be desirable?

A. Yes, this is what it means.

370 Q. And I think "Other potential areas of supplementary analysis include frequency, economy, cell planning, traffic-handling, roll-out plan, internal rate of return or contribution margins. Sensitivity analysis will also be carried out in order to assess, inter alia, cross-cutting coherence of each application and risks of project failure."

And then it's stated: "In addition to such analyses, a supplementary analysis of the applicants' track record will be carried out. Emphasis will be placed on the consortia's proven technical capability and ability to attract a substantial amount of binding financial resources in order to finance both the offered licence fee payment and the network investments."

So there is an example where a supplementary analysis was clearly flagged in the case of somebody -- the whole issue of the capacity of somebody to raise money?

A. Yeah, do they have sufficiently strong or deep pockets, yeah.

371 Q. "The results of applying the chosen Evaluation Model, the supplementary analyses made and the track record investigations/verification will be presented in separate documents."

Isn't that right?

A. Yes.

372 Q. Now, I think the next bit deals with the -- closing the process, and it says: "We suggest that all the results of the execution phase should be gathered in a comprehensive evaluation document. The document should, inter alia, comprise the following issues:

" -- a general comparison of the underlying philosophies of each application (e.g. on the one hand, projects containing high investments, sophisticated technical applications and services, targeting inelastic parts of the business segments, and, on the other hand, projects containing lower initial investments, the provision of only the required basic and supplementary GSM services, targeting broad parts of the business segments and the most price inelastic parts of the residential segments).

" -- a general overview of the competitive environment, commenting on each business case, competitiveness compared

to, for example, the expected business cases of GSM 1, TACS, and the like, with some sensitivity.

" -- a general comparison on the basis of the selected and detailed evaluation criteria outlined in paragraph 19 of the RFP document.

" -- a detailed and specific evaluation on the basis of the chosen score system and/or the award of marks.

" -- a profound elaboration of the specific evaluation."

What does that mean, "profound elaboration"?

A. Well, an explication.

373 Q. And what's the specific evaluation, what's that a reference to?

A. That is a term that is used in the previous indent, also.

So I take it that --

374 Q. It doesn't matter, it may not mean much.

A. I take it that it's the evaluation in general. I don't attach specific importance to the word "specific" here.

375 Q. And then "Conclusions, suggestions and recommendations":

" -- appendices with resumes of the results of the supplementary analyses and the track record and investigations and verification."

Then you say: "Furthermore, we suggest to include the draft licence to the nominated highest-ranking GSM2 applicant. Such a draft licence should be based on the

binding offerings exposed in the nominated applications concerning, for example, financial requirement in particular regarding solvency and solidity, network roll-out, proposed tariffs, the use of designated frequencies, legal structure, legal tapping, and an outline of the vast number of bearer, tele-supplementary and value added services to be supplied."

So you were suggesting at that point that a draft licence should be offered to the nominated highest-ranking GSM2 applicant to tie them down to the commitments they had apparently made in their bid, is that a fair description?

A. That's correct, that's how it reads.

376 Q. And, in particular, to tie them down to financing requirements in relation to solvency and solidity, that's one of the things you said should have been drawn up?

A. That's part of it, yeah.

377 Q. And "Additionally, we provide a final status report on the evaluation phase."

So I think you then have a diagram of your cornerstone work, and you then, if I can bring you on to page 14, the executing part, you elaborate on what you have previously said. And you say at step 9: "The specific plan of action, the draft in Appendix D states who is in charge of what in relation to the submitted applications. The

analysis is commenced as soon as the applications are received. The first part of the work is to register the applicants and to check whether they conform to the formal requirements, such as the ceiling of 350 pages, excluding appendices.

"Once this task is performed, the applicants are formally admitted. This means that they can be seriously evaluated. We expect all applications to conform to such a degree that they should be admitted."

So, at that point, you are saying that you really do think that there wouldn't be disqualifications; is that right?

A. Precisely, because there was no two-stage process and also because there was no rejection procedure.

378 Q. "Also, a preliminary assessment of the fulfillment of formal and non-formal minimum requirements such as a reasonable degree of geographical coverage, a not-too-protracted roll-out, etc., as is to be conducted."

Now, "As an entrance to the in-depth evaluation, a lot of critical reading is necessary. The exact amount is, of course, both dependent on the number of applications (we would expect 4 to 5)..."

A. Yeah.

379 Q. "The next step is to perform the quantitative evaluation, which can partly be obtained by utilising our GSM

number-crunching model and partly by the use of a more formal security system." And that's referred to in section 5, isn't that right?

A. Yes.

380 Q. And then they say: "Having familiarised with the application, at that stage it will be necessary to have the presentation meetings."

And then the most demanding step is at step 15, the qualitative evaluation, and you say that that should proceed in such a way that it comprises a number of different aspects, such as marketing, technical, financial management and legal aspects and that a number of dimensions, indicators and sub-indicators would be delivered for them. And the scoring methods -- one of the scoring methods you suggest is "to award marks during a ballot. If agreements concerning the award of marks cannot be reached or if there is any remaining doubts, we suggest that supplementary analyses be carried out."

Just stopping there. That idea of a ballot, maybe I am naive or misreading it, does that mean that you ask each person individually who is doing the scoring or is a member of the group or sub-group, to privately, secretly, hand in their marks and then bring them all together so that people don't just simply do this collectively? In other words,

that you don't just sit around the table and say let's award an A or let's give 5 marks here. You get each person by ballot to privately assess the project and then collate the ballot results?

A. No, that is not what is intended here. What is intended here is, I think, to describe what actually also transpired; namely, that people, the nominated people in their respective sub-groups come up with their vote, come up with their suggested grading of specific indicators.

381 Q. What does the reference to "ballot" mean, "to award marks during a ballot"?

A. I think it's a description of how we suggested that the scoring should take place in the sub-groups. Maybe a "ballot" is a misleading word or not fully comprehensive word to describe what we were trying to say here.

382 Q. If you read it with the following sentence "If agreements concerning the awards can't be reached" -- in other words, if there is a difference between how people see it -- "or if there are any remaining doubts, we suggest that supplementary analyses be carried out." In other words, that it does appear that this suggests that you score -- award marks during a ballot, that if there's a disagreement which can't be dealt with, that a supplementary analysis is carried out. That seems to be what's proposed there,

doesn't it?

A. Yes. And if we go back to what you have read in, read before on page 8, if we go back to page number 8, the second-last section, the last -- the second-last sentence reads: "One extreme is to let participants in the Evaluation Team calculate their own results (the independence model). Another extreme is to gather the participants in common sessions in order to discuss and agree on the calculation (a Delphi-like model)."

And then I think that what we suggested here in step 15 was actually the latter method.

383 Q. I think you go on then to say that "Before the tender process is closed, an important step is the preparation of the complete report documenting the results of the evaluations." Sorry, I should have brought you to step 17, I think I may have missed that. It says "Last but not least, a holistic approach is appropriate in which both the quantitative and the qualitative evaluation is integrated and overall aspects are taken into account in order to meet the objectives set out by, for example, the Minister."

And you then set out the closing process, the final report:

"Together with the Evaluation Report, a final status report will be prepared in order to service the Minister. This report will comprise a survey of the evaluations in which a

clear matrix confronting the evaluation criteria and the characteristics of the applicants appears. Along with the elaboration of the Evaluation Report, we will assist in the drafting of the licence..." and you go on to deal with that.

"Once the Minister has nominated the best application as the winner, everything is prepared to enter the licence negotiations in a professional manner."

Now, can we say, safely, from that, that at that time and before difficulties arose with the quantitative evaluations, it was your intention to have a quantitative evaluation followed by presentations followed by a qualitative evaluation to integrate the two in a holistic manner, and the two reports, the quantitative and the qualitative report, in a holistic manner, and to arrive at a result? That was your plan?

A. I think that's how it reads. That is how the description is. Maybe it was a little more like a simultaneous processing of quantitative and qualitative than you describe, but it's -- I agree, in broad lines, with what you are saying.

384 Q. Well, can I bring you, if you would, please, to the Gantt chart which is attached to your specification, and it's at the end of Annex D. And that is a Gantt chart, isn't it,

similar to one -- well, it's not similar to one, but it's the same kind of idea as the one we considered earlier?

A. Yes.

385 Q. And it does appear to me that if you look at, for instance, the quantitative process, steps 13, that the quantitative is conducted in periods 8 to 9, and the qualitative, the presentations take place slightly overlapping with the quantitative, and that the qualitative takes place, largely speaking, after the quantitative analysis has been done, is that a fair description?

A. Yeah, that is how it reads as an example here, but you will, also -- if you go into the different steps, you will recall that you read aloud that one of the steps was what we call critical reading of the applications. So, for instance, if you look at the qualitative evaluation, step 15, it would start around week 18 in this Gantt chart formally, but that would be the voting procedure, the scoring procedure in the sub-groups. The actual evaluation and the preparation before that by way of, what we call critical reading, would start already, as soon as the applications were received.

386 Q. And just to return to, on the following page, to return to a topic that we dealt with yesterday, I think that you'll see that the assessment was supposed to take effectively

four weeks?

A. Yeah.

387 Q. And that when the assessment concluded, there was to be an approval by the Minister phase, isn't that right?

A. Yeah, that was what I told yesterday, that Jon Bruel, he would insert this in any normal Gannt chart he had to do.

388 Q. Again, how many weeks does the approval by the Minister appear on that? How many weeks does it take?

A. Pardon?

389 Q. How many weeks was it projected at that time that the approval by the Minister would take?

A. We were over that last -- yesterday, I believe.

390 Q. It hasn't changed, in other words? It's still four weeks, isn't it?

A. Yeah, that was what I told you also yesterday, that Jon Bruel normally --

391 Q. We were looking at a different Gannt chart yesterday, but it hadn't changed between the two; it was still four weeks?

A. Exactly, and still Jon Bruel would do the same in every tender we send out to different clients in Europe at that time.

392 Q. I see. Now, I think you have made it clear that your own view is that the quantification process -- or, sorry, the quantitative analysis and the qualitative analysis were

separate processes designed to, one -- to be undertaken in the hope that they would confirm each other and that they would mutually reinforce the validity of each other, isn't that right? That's the hope, that's the desired outcome?

A. That's the hope. But the integration, or the combination of the two was not necessarily a consecutive process, because what we did when the evaluation started was to provide each participant in the sub-groups with what we called a reader's guide and that reader's guide also contained the document on the Evaluation Model and that would also, in the beginning of August, include a number of quantifications. So each evaluator would have the readings from the applications and be able to make notes on what we call the reader's guide, qualitative notes, but would also have quantitative input throughout the process.

MR. McDOWELL: I think at this stage, Chairman, it's just coming up to 4 o'clock and I am going to be moving on to another topic tomorrow.

CHAIRMAN: All right. In the circumstances of a relatively long sitting, is 10.30 tomorrow morning convenient for you?

A. Yes.

CHAIRMAN: Thank you very much, Professor.

MR. GLEESON: Before you rise, Chairman, Professor Andersen has indicated that he has a flight to catch tomorrow and he

wouldn't be able to sit beyond 4.15 in the afternoon if you were minded to sit late.

CHAIRMAN: That seems a reasonable estimate, and I don't see why we shouldn't abide with that, Mr. Gleeson.

THE TRIBUNAL ADJOURNED UNTIL THE FOLLOWING DAY, FRIDAY, 29TH OF OCTOBER, 2010, AT 10.30 A.M.