

THE TRIBUNAL RESUMED ON THE 29TH OF OCTOBER, 2010,  
AS FOLLOWS:

CHAIRMAN: I have thought overnight and considered with Tribunal legal advisors the limited remaining time of Professor Andersen's availability for his testimony.

Whilst, necessarily, in the scheme of things, the proving of statements and other documentation means the Tribunal counsel must occupy a relatively substantial time in dealing with Professor Andersen, I accept and am mindful of the remarks that have been made by counsel for affected persons, and indeed by Mr. Lowry in person, to the effect that those persons must have an opportunity to adequately explore matters felt material with Professor Andersen.

There must also be some limited time left at the end for any matters that may arise by way of re-examination.

With this in mind, I am prepared to extend the sitting hours of next week by sitting from 10 o'clock until, if needs be, 5 o'clock. Obviously, a pattern on this basis will require that some interim breaks be allowed in ease of Professor Andersen, and I am of the view that if these arrangements are implemented, it should ensure that fair procedures are provided to persons who are in attendance.

Very good. We will resume Professor Andersen's evidence.

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

Q. MR. McDOWELL: Before we depart completely from the book of contractual documents in relation to the evaluation process, could I just draw your attention, Professor, to page 31 in Tab 4, which is your tender.

A. Tab 4?

Q. Tab 4, yes. Sorry, Tab 7, sorry.

A. Page?

Q. 31. And just briefly to confirm with you that your tendered sum for the services that you were proposing to supply to the Department was in the sum of £297,450, isn't that right?

A. That's correct, yes.

Q. And now, could I just bring you on to folder 8 -- Tab 8, rather, which is a single-page item, an announcement by Minister Lowry of the competition. It's dated 11 April, , and the only portion of it that I want to draw to your attention is, apart from the laudatory words about AMI, is the last sentence, that "The closing date for licence bids is the 23rd of June and the final decision is due to be announced at the end of October." That was the situation at that time, isn't that right?

A. Yeah.

Q. Now, without getting engaged in irrelevant detail, I think it is the case that subsequent to that and during the month of August, in particular, you became anxious that because of unforeseen complexities in the evaluation process, the competition itself, and the resources that AMI were putting into the matter, that you felt that the original tender sum was inadequate and that you drew this to the Department's attention, isn't that right?

A. That's correct.

Q. I think if we look at Tab 16, there is a fax from you to Martin Brennan and Fintan Towey setting out what, at that time, were the additional complexities and factors that you thought would require extra remuneration; is that right?

A. That's correct, yes.

Q. And it's fair to say, I think, on foot of that, that there was an exchange of correspondence in which the main response was the 29th of August, 1995, Mr. Brennan, Martin Brennan, writing back to you contesting your suggestion that you were entitled to extra remuneration, isn't that right?

A. Yes.

Q. And you, then, respond to that on 1 September, 1995, in a letter, which is to be found -- a faxed letter to be found at Tab 18, isn't that right?

A. Correct.

Q. And if I could bring you just to the second page of that, paragraphs 6 and 7, you say:

"We understand and acknowledge the budgetary constraints that you have outlined on several occasions. I also hope that you understand that the consultants in other GSM tenders are often funded differently in order to ensure that unforeseeable work is performed effectively, which is in the interest of the Minister, the Regulator, the winning applicant and the rejected applicants. It can be discussed, whether the present model in the present situation provides sufficiently for that.

"As a first step towards minimising our activities, we have rearranged our participation in the next PTGSM meeting in which Jon Bruel will not participate. The spreadsheets and the colour graphics will not be distributed now but will appear later in connection with the Draft Evaluation Report, and the Department is (with quick input from the Andersen team) to make the detailed preparations of the presentation meetings, which activities have not been described in our consultancy tender. The results of the preliminary quantitative evaluation will be presented orally."

At that point, you were scaling down the matter in view of

the inadequate resources, is that right, or proposing to do that?

A. Yes.

Q. And you propose, at the end of it, that there should be a discussion between you and the Department on these issues?

A. Yes.

Q. And I think there is a minute of a meeting dated 4 September, which is at Tab 19, which records a meeting between Martin Brennan, Fintan Towey, Maev Nic Lochlainn and you personally, to deal with these contractual matters, isn't that right?

A. Yes.

Q. And --

A. Yes, I have seen it now, yes, but --

Q. Did you ever see it before?

A. I didn't see it before, no.

Q. Well, sorry about that. But in the end, or to cut it short, both sides expressed their views fairly clearly and toughly to each other, I won't use the word "robust", but it was -- we have, on the first page, Mr. Brennan stating his extreme dissatisfaction, according to the note, in respect of certain matters.

A. Yes. I would like to qualify here that I do recall we have had a renegotiation. I do not recall him expressing extreme dissatisfaction, as such, to that extent. So the way -- having seen the minutes from these meetings, I -- you know, it's just my reflection that that could be part of civil servants' files, to put on file that they had, you know --

Q. Keeping himself right?

A. That's correct, a kind of life insurance, or whatever.

Q. Yes. And, for instance, on the second page, after the bullet points, when the points of dissatisfaction were mentioned to you, you were recorded as responding it was impossible for you to say in June whether the work would or would not be completed under the ceiling as you hadn't yet seen the tenders. And Mr. Brennan pointed out that this made a farce of the agreement reached and signed by both parties in June.

Do you recall that or is that put more strongly than you would put it?

A. I think it's put more strongly here, but I fully acknowledge that we had that discussion on this topic.

Q. And then it goes on: "Michael Andersen then proposed that he would invoice all activities under 109 as requested by DTEC; that he would complete a report within the agreed ceiling but that he may not be in a position to stand fully over its contents; and that AMI would adhere rigidly to the

letter of the AMI tender."

They record that "Later, however, Michael Andersen threatened not to complete phase 2 of the process (e.g. licence negotiations) if his budget ran out."

And they then record Mr. Brennan as then clarifying that you meant that he would submit a report with reservations and that there would be no quantification of the difference between candidate 1 and 2. And he records -- the minute records you as confirming that this could be the case if you were not allowed the budget to use adequate resources.

"He also pointed out that the resources had been removed from AMI (Irish GSM) team, e.g. Jon Bruel had not attended a meeting on the 4th of September."

So you were saying "it may be that we'll have to do a contracted job," is that a fair description of what happened?

A. That is a fair description. However, I would like to say that the section just above, starting with "Later, however..." I do not recall that one, but I recall the following, what is contained in the following section, that if adequate resources or sufficient resources was not there, we would stick to our tender, and our tender didn't say very much about ranking of the applicants, yes. So I fully stand over the second section here, but I do not have any recollection of the previous section.

Q. A note then appears "The lesser quality of recent AMI work had become apparent in the meantime." And I presume this wasn't discussed with you, but it seems to be a part of the note.

It says:

"1. Graphical comparisons of applicants/spreadsheets had not been distributed to the Project Group on 4 September as earlier promised by AMI.

"2. On 4 September, Jon Bruel had been replaced by Mikkel Vinter, a more junior colleague.

"3. Sub-groups (qualitative evaluation) had already taken place although the AMI tender says that the evaluation would proceed as follows: Quantitative evaluation, presentations, qualitative evaluation.

"4. Very poor notes of sub-group meetings which AMI had conducted without DTEC participation, were handed to MNL for distribution to Project Group.

"5. The initial phase of review/re-evaluation after the presentations would take place on Thursday, 14 September, when all evaluators would be exhausted after 4 days solid of meetings.

"6. No other evaluation meeting had been suggested by AMI.

"Martin Brennan made it clear that his primary objective in

meeting was to resolve the dispute and have the report and follow-up completed to the highest standard."

This, you might think, was a slightly sharp point. He said, "Ideally, he would like, he said, to be able to give AMI a clean bill of health in all respects, if he were approached by another administration for a reference after the event."

So did you see him putting pressure on you there, saying your reference depends on a different approach?

A. Yes, I see that, yes.

Q. And do you recall that that was said to you?

A. No, I do not recall it.

Q. I see. So it may not have been said but it's recorded in the note?

A. So it may not have been said, and I would also agree with you that what you read aloud from the previous page, page , that all the things in the parenthesis, they were, I can say quite clearly, they were definitely not said while I was present. So my interpretation of this document is that this document has been drafted rather deliberately in order to justify any increase in the budget to the consultants.

Q. An insurance policy of sorts?

A. Yes, life insurance.

Q. Well, in any event, I think you subsequently sent, under cover, on 5 September, 1995, further claims, and although you didn't specify a sum total, you seem to be, on the second page, from the fourth line and the sixth or last line, talking about an additional 90,000, 96,000 pounds; is that right?

A. Sorry, which page, page 2?

Q. Yes, I think if you look at line 4, you are looking for ,000 under the 139 code?

A. Yeah, that's correct.

Q. And then you go down to activities to be performed, budget projections, and these extra activities come to an extra ,845?

A. That's correct, yes.

Q. So you were floating the idea that around £96,000 would be required in total, or do they overlap, do those figures overlap?

A. It's 98,000.

Q. Sorry, 98,000.

A. Yeah, but that doesn't matter. It refers to a discussion that we had earlier where you said I actually demanded for more than I got, yes.

Q. On 14 September, Professor Andersen, I think that Mr. Brennan writes back to you and sets out what he expects

AMI to do. And halfway down the second page of the letter, he says: "In consideration for this work, the Department shall pay to Andersen Management International a total sum of £370,000."

And you, at the next tab, write back to him saying,

"Dear Martin,

"Thank for your letter of the 14th of September, 1995, concerning contractual matters. Having to dealing with a considerable number of voluminous applications and having to restore some of the information due to lack of comparability and having to rank the applications, including the nomination of the winner, most certainly requires more work than could be anticipated in our tender from 16 March, 1995."

So I'll just stop there to ask you, you are making the point that now being asked to nominate the winner was something that you hadn't envisaged at the time that you tendered?

A. Yes, that's correct.

Q. And you go on and say, "Nevertheless, we are willing to accept your suggested solution and the fixed consultancy fee of £370,000 for the agreed GSM consultancy services excluding our reimbursable expenses. We trust that you are aware of the fact that you will hereby achieve consultancy services at a very favourable price/performance ratio when compared with other EU GSM tenders.

"We look forward to the remaining part of the work."

So would it be fair to say that there had been a confrontation of sorts in which your capacity to finish the work in the way they expected you to do it, was in issue, but you are saying there, "We look forward to the remaining part of the work," you are saying on the basis of the ,000, which you thought was good value to them still, is that the situation?

A. The situation is not that there was a confrontation, I wouldn't say that. But the last thing you say is quite correct, that they got very good value for money, in my view.

Q. Well, I don't want to put words in your mouth, but if "confrontation" isn't a good phrase, things reached an impasse and you indicated that you were not going to nominate or rank the top applicants unless you were remunerated for that work?

A. Yeah, that's essentially what it says.

Q. And just for completeness' sake, that transaction, or that sequence of events brings us up to around 18 September, ?

A. That's correct. You know, you know, there was no deadlock

in the procedure. The work as envisaged continued throughout this contractual renegotiation, and I think that the contractual negotiation here was only something which went along with a few people from the Department and myself, so it didn't affect the rest of the team. They continued the work as expected.

Q. Okay. Now, could I bring you to another book completely, Professor.

A. Yes.

Q. Book 91. And I am not, you'll be glad to know, going to bring you through the book at great length.

A. Thank you.

Q. I am going to ask you to look at selected documents from it, and the first I want to draw to your attention is at Tab 15, and it's a note, a Department -- a Mr. McMeel's Department's note from the Department of Finance?

A. Yes.

Q. And it refers to a meeting of the Project Group for the second mobile telephony licence on 27 April, 1995. Could I just bring you to the second page, there is a discussion about auctions and the EU Commission's attitude to auctions, and, as usual, I think the Department of Finance always wanted to maximise revenue for the State as in every

--

A. That's their job, so to speak.

Q. If I could bring you, then, to the second -- or the paragraph at the top of the second page. It reads:

"Both Department of Transport, Energy and Communications and their consultants emphasised that they saw no way of evaluating the bids without some system of weightings. Every other country which has licensed a second mobile operator has used a weighting system. (The consultants seem sensitive to the inter-departmental policies associated with this aspect of the matter. Their evaluation methodologies include 'quantitative' and, separately, 'qualitative' evaluation, as well as a supplementary evaluation.)"

That was the Department of Finance's take on what the structure of the competition at that point was?

A. Yes, at this stage, yes.

Q. Now, could I bring you forward, for a moment, to Tab 18, and this is a document emanating from AMI and sent to Sean McMahon, who was the head of the Regulatory -- the Regulatory Division in the Department of Transport, Energy and Communications, and he is a member of the Project Group. And you are saying to him, you are sending to him, under that cover sheet, proposals in relation to quantitative and qualitative evaluation of the GSM

applications, isn't that right?

A. Yes.

Q. I think in your introduction in the third paragraph, or the second paragraph, you say: "The document comprises two parts. The first part describes the quantitative evaluation procedure, including the selection of dimensions/indicators and the scoring model. The second part is a description of the qualitative Evaluation Model, including the evaluation process and a guide to the award of marks."

And the text continues:

"As both quantitative and qualitative evaluation will be performed, the guiding principle will be to work with a manageable set of aspects, which is essentially identical, i.e. marketing aspects, technical aspects, management aspects and financial aspects. In addition to these aspects, which form a common denominator in both evaluations, the qualitative evaluation also deals with the risks, i.e. the sensitivities of the business cases in relation to the evaluation criteria outlined in paragraph of the RFP document."

And you go on to say:

"Each aspect is broken down into dimensions and each dimension is subsequently broken down into indicators," and we know about sub-indicators and the like.

Just, the only reason I draw that to your attention, Professor Andersen, is to elicit your agreement, if I can, with the notion that although the quantitative and qualitative evaluations were considered to be separate processes, it was, nonetheless, considered important that they should deal with the same subjects, with the exception of the risk evaluation which was peculiar to the qualitative evaluation; is that right?

A. That was the intention at this stage. You will appreciate that we are talking about a date prior to the EU intervention and at a stage where this document has been developed where the tender had a more auction-like structure than was later on the case.

Q. Page 2 gives the procedure for the quantitative evaluation process, and it describes the steps as:

"1. A set of dimensions and indicators has been selected for the quantitative evaluation process. An assessment, including a point-scoring method, will be defined for all indicators. The same set of dimensions, indicators and point-scoring must be used for all the eligible applications.

"2. All the selected indicators will be assigned a weighting factor. The weighting factor has been decided by



means of discussion.

"3. The score for each indicator will be a value between 5 and 1 (both included) with 5 being the best score. All scores will be rounded to the nearest integer.

"4. Uncertainties regarding the scoring of points may be dealt with in the qualitative evaluation.

"5. The result of the quantitative evaluation should be considered with due respect to the significance of differences in the total sum of the points assigned."

Could you just explain what that is, because I note that the public servant who noted it says "yes," but what does that actually mean?

A. That was what we went over the other day with the weighted variants.

Q. I see. The next page dealt with paragraph -- sorry.

"6. A Memorandum comprising the salient issues of the quantitative evaluation will be annexed..."

That was intended at that time, too, wasn't it?

A. Yes, at that stage but not later on.

Q. Now, in relation to the dimensions in the quantitative evaluation, I think the next page shows a suggested overview of the dimensions/indicators relating to the RFP document in the descending order set out in paragraph 19; is that right?

A. That's correct, but only for the quantitative part.

Q. And can we just, for instance, in relation to credibility of business plan and the applicants' approach to the market development, you set a number of dimensions and then you look at the indicators which will eventually -- it is eventually proposed to score; is that right?

A. That's correct; again, in the quantitative evaluation. So if I could just be helpful in trying to bring you through the three different columns here. What appears on the left-hand column is a more or less direct quotation from one indent in paragraph 19, and that evaluation criterion has then been broken down into three dimensions; namely, market development, experience of the applicant and financial key figures, and, yet again, the right-hand column states which indicators have been defined for quantification ex ante, you could say, where you see that there is one indicator for market development, as such, and subsequently, you see there sub-indicators also, because that actually came out, the two sub-indicators, but that could have been shown in the fourth column here, and then one indicator for experience of the applicant and two indicators for financial key figures.

Q. I see. Well, now, just there are a couple of points that I just wanted to draw to your attention there, one of which

is the second-last dimension -- or, sorry, issue, is "performance guarantees," do you see that there?

A. Yes.

Q. And the indicators that you were proposing for performance guarantees was the blocking rate and the drop-out rate, isn't that right?

A. Yeah. You see, when you say "you" proposed, I think it was a collective process, because that had already been discussed here in the Steering Group.

Q. Well, I am just suggesting to you that there was, later, some discussion as to whether performance guarantee really did mean just the blocking rate and the drop-out rate, that it also could comprehend financial performance bonds and things like that, isn't that right?

A. That's correct.

Q. So that I am just suggesting to you that this was a very technical set of indicators for performance guarantees; it wasn't what many lay persons might think were performance guarantees?

A. Yes, and it was something, if I can assist you with the philosophy behind this, it was something which the Steering Group and AMI, at this stage, thought could be quantified in a rather -- quantified and scored in a very easy fashion, so that could take the indicators in the right column here and almost mechanically then arrive at a result which would then be justifiable to what the criticism from the EU, that, you know, it should be -- you know, it should not only be the licence fee that counted.

Q. So it was -- you say that they were technical issues which would be more easily comparable, and secondly, they had the advantage, in your mind, that they wouldn't be seen as a barrier to entry, whereas a big performance bond would be or could be seen as that; is that right?

A. No, that is not such what I am trying to say. What I am trying to say is that this Evaluation Model here is rather mechanical, and it is an expression, it is in accordance with a design of the tender of this stage where it was more auction-like based where there was no cap on the licence fee and where you could then subscribe to a --

Q. I understand.

A. -- design, where it was easy, everything was easily quantifiable.

Q. Your reference to the EU was in relation to the nonexistence of a cap on the licence fee?

A. Yes, and also reference to my discussions both in the Steering Group but also what was conveyed to me about the approach from the Department of Finance, because what I was told, as a consultant, was that the Irish civil servants,

at this stage, were very much in favour of this auction-like type evaluation.

Q. Okay. Can I bring you, then, to just internal page 8, and --

A. Page 8 of the same document?

Q. Yeah. And the second-last paragraph, which reads: "The relevant indicator is the number of international roaming agreements planned by the applicant ultimo year 2 after the licence award. If there is no detailed information available on the proposed number of international roaming plans, even after presentations by the applicants, this indicator will not be scored."

So, at that point, there was a clear understanding that this might end up a redundant indicator; is that right?

A. Yeah, you see, that was the problem we were struggling with already at this stage, as consultants to this process, that in the RFP document at paragraph 19, one of the criteria was international roaming plans, and we had never, in other tenders, seen an evaluation criterion like that.

Q. Now, could I bring you to internal page 15, which suggests dimensions for the financial key figure indicators, solvency and internal rate of return, and I think on those two issues, you have -- or the document sets out proposed scores for both solvency and IRR by reference to percentages in both cases, isn't that right?

A. Yes.

Q. And I think we will find out later that the IRR method of calculation was changed to reflect, was it an OECD -- the median of 11%, it was deviation from a mediation of 11%; is that right?

A. Yeah. You see, throughout this document, there are different scoring methodologies, and what we adopted in the Steering Group, Mr. McDowell, was that we would not use the renormalisation formula for the IRR; we would use another formula that was adopted in the Steering Group.

Q. Could I just stop you here and ask you in relation to these key figures. Neither of them would, in fact, relate to, for instance, the financial standing, negative equity or whatever aspect of any of the applicants?

A. Sorry, how do you arrive at 9?

Q. No, neither of them?

A. Neither of them --

Q. Neither of these two indicators would differentiate between a company which was financially immensely strong and a company which was in debt to start with, or a member of a consortium; it wouldn't pick that up, isn't that right?

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

Q. And I think --

A. Fair to say, because I want to support your point, because what is here is that here you have the business case information. It doesn't tell anything about the applicant, as such, or the participants in the applicant. So I think you are right, fully right.

Q. So, I mean, bearing in mind that we are reducing, in the quantitative process, everything to numerically calculable indicators, and I think it is the case, and correct me if you don't agree with me and please tell me if you do, that the quantitative process envisaged would never, from the very beginning, have raised a red flag over somebody whose financial worth was negative, or something like that. It just didn't arise in this context. I am just talking about the quantitative aspect.

A. You are stating yourself so categorically with saying "never". It's not -- it's mainly -- I want to be as exact as possible here. It's mainly correct, but it needs to go with a qualification that if you look at the solvency indicator, the solvency indicator is, to some extent, dependent upon the equity inserted in the business case for this operation. So that could lead back to the financial strength of the applicants behind. But it's not directly, it's indirectly.

Q. It's indirectly, because, in effect, the solvency would be calculated by reference to the capital which was to be injected into the licensee by the consortium members, isn't that right?

A. Yes.

Q. And this wouldn't test the capacity of people to inject the capital; it would merely say, assume the capital is injected, these are the solvency ratios that would be achieved, isn't that right?

A. Yeah. I agree -- I want to be as precise as possible, yeah.

Q. Now, I think the next page deals with vote-casting and weight matrix, and a number of indicators are set out there, isn't that right?

A. That's correct. That is, in fact, the indicators from the quantitative approach, yes.

Q. And what's proposed there is the forecast demand indicator would have a 10, a weighting of 10%, or whatever?

A. Yeah, you will see that this was an ongoing process, so, at a later stage, that indicator was broken down into two sub-indicators.

Q. I fully appreciate that. But at that stage, those were the weightings which were proposed for the indicators, and they were later, I am fully in agreement with you, sub-divided, in some cases, into sub-indicators, isn't that right?

A. I think so, but there were -- you will see, later on, that there were discussions on these weightings.

Q. Yes, I am coming to that. I'll come to the discussions later, but at the initial stage, this was the first proposal, that's what I am saying?

A. Yeah, if you go back to, for instance, AMI's tender, which you posed questions about yesterday afternoon, I believe, you will see that there was already, in AMI's tender, some suggested weightings.

Q. I am not suggesting that these were the first weightings that you proposed.

A. Okay.

Q. I am suggesting that these were the first weightings which emerged after your -- after you were awarded the contract but before it was actually signed up; is that right?

A. It's probably correct, but I am not fully aware of the audit here.

Q. Now, then, on the next page, there is a procedure for the qualitative evaluation, and you see, I think -- it reads:

"Despite the 'hard' data of the quantitative evaluation, it is necessary to include the broader holistic view of the qualitative analysis. Other aspects such as risk and the effect on the Irish economy may also be included in the qualitative evaluation, which allow for a critical discussion of the realism behind the figures from the quantitative analysis.

"The following describes some of the major steps in the qualitative evaluation process:

"1. The eligible applications are read and analysed by the evaluators.

"2. Eligible applications are evaluated by way of discussion and analyses.

"3. When deemed adequate and necessary, in-depth supplementary analyses will be carried out.

"4. Initially, marks will be given by dimension.

Afterwards, marks will be given by aspects. (Sub-totals).

"And finally, to the entire applications (grand total).

"5. When the dimensions are assessed, the evaluators should, as far as possible, use the same indicators as used during the quantitative evaluation. New indicators may be defined, however, if the existing indicators are not sufficiently representative for the dimensions to be evaluated.

"6. During the qualitative evaluation, the evaluators must take the results from the quantitative evaluation into account and only compensate when necessary in order to make fair comparisons between the applications."

"7. If major uncertainties arise (e.g. in accordance with

step 4 of the quantitative evaluation or due to incomparable information) supplementary analyses might be carried out by Andersen Management International in order to solve the matter.

"8. The results of the qualitative evaluation will be contained in the main body of the Evaluation Report. The results of the supplementary analyses will be annexed to the report."

So that was what was intended at that time, isn't that right?

A. That's correct, yes.

Q. Now, again, without spending too much time, the next page shows a guide to the award of the marks in the qualitative evaluation, and we see that there are new dimensions there. I think the other risk one, at least, and the experience, these are two new indicators; is that right?

A. Yes.

Q. At the bottom of the list there.

A. Sorry, page?

Q. This is page -- the next page, 19, last page of that indent. There is a table there.

A. Yes, that is correct.

Q. Could I just ask you in relation to this guide. The one thing that I find slightly mystifying, and maybe you could help me: Given that it was to be an A, B, C, D and E marked in that, what could really appear in the grand total, Professor, column at the bottom? What did you envisage could really appear as the grand total of As, Bs, Cs and Ds?

A. That was something which had to be assessed by aggregating the results coming in.

Q. I appreciate that. It's just that, I mean, it looks like a grid, and then you say to yourself, fill it out and put As and Bs and Cs and Ds and Es across it, and then you say, now, grand total, please, and to my non-mathematical mind or non-literary mind, the phrase "grand total" seems a bit difficult to grasp, because it seems to be impossible to total three Bs, an A and a D, and to say that there is a total there, compared with three Cs, a B and an A. I don't see how you could actually arrive at grand totals in the bottom line there.

A. Okay. But if you don't understand it, I mean, then I have a problem.

Q. No, no, but I am just asking you could you elucidate it for the Tribunal. Just try and persuade the Chairman that it's possible to do it. I don't see how it is. That's all I am saying.

A. Okay. I'll try to do it to the best of my ability, but you

will appreciate that this, you know, this is obvious to me, so maybe we will have to spend a little bit of time on it --

Q. If I am missing the obvious, please tell me, and tell me how you would imagine it's done.

A. Okay. Each evaluator would have handed out, shortly after the reception of the applications, a bunch of documents with the evaluation matrix here with the reader's guide and a number of other things to -- in order to be able, for each individual evaluator, to process.

Q. I now understand. What you are saying is that if each individual evaluator filled this out and there were, at the end of it, say, if there were eight people in the group, or whatever, eight Bs, you'd record that in the grand total, or eight As and eight Bs and eight Cs, so that it wouldn't actually involve adding the letters to each other; it would just mean quantifying the number of letters scored, is that it?

A. No, I was just going to explain the evaluation process. I am not there at the moment.

Q. Go ahead.

A. Okay. Within each aspect, you have one of several dimensions. Then, it's a kind of a bottom-up approach. It's a little bit of the opposite of what you are suggesting, really. It wasn't such that each evaluator was asked just to put in the grand total. It was the opposite process. It was not a bottom-down, it was -- it was not -- it was a bottom-up process where each sub-group assessed one dimension by way of defining a number of indicators, a total of 56 indicators were defined and that led forward to the scoring of each dimension. When each dimension then had been scored, then you would look at each -- the score of each dimension and say how will you then score the technical aspect, the marketing aspect, the financial aspect, the management aspect, and so forth? And then when you had looked at the different aspects, you would then see what would a reasonable grand total then be.

Q. Oh, it's an impressionistic grand total, is it?

A. A judgement call, I would say.

Q. Now I understand it.

A. So...

Q. Would the -- and if you don't like the word "impressionistic," but it's a rough grand total of some kind, is it?

A. No, I wouldn't call it "rough," because it is based on experts sitting there, having read the applications, having spent an enormous amount of time also discussing and evaluating, etc., so it is an informed, an informed scoring

you have, and each evaluator would be able, you know, to discuss, among themselves, and so on. So it was a process where I don't believe the word "impressionistic" catches it.

Q. Well, it's a process whereby, if you have three As, two Bs and three Cs, somebody says that, in reality, is best reflected by B, or something like that, is that the idea?

A. That is pretty much the idea, because, I mean, if you don't arrive at an aggregation, if you don't aggregate, you would never reach the grand total, you see.

Q. I think that's as close as you're ever going to get with me, I don't know about the Chairman, in understanding this process, but it's not an exact science.

CHAIRMAN: I'm not questioning your credentials in that matter, Mr. McDowell, but I think I have the gist of what you have stated, and I'll consider it.

Q. MR. McDOWELL: Now, there follows, at Tab 19, a meeting of the GSM Project Group on the 18th of May, in which a number of -- there was a consideration of a presentation of the AMI Evaluation Model, and it's stated that its confidential nature was emphasised.

"It was agreed that three copies would be left in Dublin in the hands of Fintan Towey, Sean McMahon and Jimmy McMeel. Lock-and-key security would apply at all times.

"AMI distributed copies of the draft model."

Is that the document we have just dealt with, that model?

A. Yeah, that must have been that document.

Q. "After initial study, the group had no major difficulty with the chosen format and a page-by-page scrutiny ensued.

The following points were agreed:

" -- paragraph 3.1: An indicator was added to represent active minutes. Figures should be as at the end of Year 4.

" -- paragraph 3.2: The indicator should measure a combination of roll-out in excess of 90% and speed of rollout. The paragraph should clarify that it's outdoor coverage that would be measured.

" -- paragraph 3.3: There should be a measure of the tariffs in which applicants plan to launch, as well as some measure as to how they plan their tariffs at a later point.

AMI were to reconsider that, how to measure competitiveness.

" -- paragraph 3.4: The number of roaming plans in place after 2 years was considered."

And again, in that, that's subject to the fact that roaming fell out completely in the end, isn't that right?

A. That's correct.

Q. "The issue of coverage in the border area is to be ignored. The formula is to be adjusted to be more in line with Irish



experience. TRT are to advise AMI in this matter."

Who are TRT?

A. That was the technical department, I think.

Q. "TRT approved the formula, as long as applicants have no doubt as to how to derive the reserve capacity figure.

This calculation is detailed in the tables supplied.

" -- paragraph 3.7: The formula was approved."

And it goes on and it discusses a number of different paragraphs, but there seems to be a careful consideration of each of the paragraphs, of your presentation, isn't that right?

A. That's correct. It was a very detailed discussion.

Q. And then they say: "The qualitative evaluation was to provide a common-sense check on the quantitative Evaluation Model. This part of the Model would need to be clarified further before evaluation begins. If a later challenge were to reveal that any two persons among the evaluators proceeded with a different understanding of the process, then the entire evaluation process could be put in question."

"AMI proposed presenting an interim Evaluation Report, based primarily on the quantitative results. Resources from the two departments would need to be clarified but would best be reserved till after the quantitative stage."

"Availability of DTEC and D/Finance staff was discussed."

The following commitments were made:

" -- Fintan Towey would be almost full-time.

" -- Martin Brennan would be available as required, maintaining a constant overview.

" -- staff from the Department of Finance, from the Regulatory Section and the Technical Section would be available as required.

"Everyone would strive to maintain an overview by focusing particularly on their own area of expertise."

A. Yes, you will appreciate that I didn't draft these minutes. I didn't see them at the time. So what is written in the paragraph you read aloud on the middle of this page is actually not fully in accordance with the Evaluation Model document.

Q. Yes. But it was sent to the attendees, according to the last note, and it was cc'ed to the attendees?

A. Pardon?

Q. The very last line in the document says it was sent out to the attendees.

A. I don't think I got the minutes.

Q. In any event, that meeting was a meeting of the 8th of May, and -- of the 18th of May, and there follows a file note which was in evidence earlier in this Tribunal, I

understand, from Ms. Nic Lochlainn, where she sets out her note of the weightings by dimension which were agreed at the meeting of the 18th of May: 30, 20, 15, 14, 7, 6, 5,

. Does that -- would you agree that that was an accurate note of what was agreed in relation to the dimensions?

A. Yes, I think it is an accurate note, yes.

Q. Now, can I move quickly on to Tab 23, which is a minute of the eighth meeting of the GSM Project Group, at which I think you and Mr. Bruel were noted as attending, as well?

A. Yes.

Q. Mr. O'Donnell wants me to clarify that the previous note of Ms. Nic Lochlainn does refer to weightings and didn't mention dimensions?

A. Yeah, that's correct. So it was not entirely exhaustive, if I may use that expression, but they were not inaccurate.

Q. No --

CHAIRMAN: And there were eight dimensions -- or there were eight criteria?

A. Yeah, it went along to give weightings to the criteria but not to the dimensions.

Q. MR. McDOWELL: Now, at the meeting of 9 June, there was the consideration of matters relating to the Commission challenge, European Commission -- possible European Commission challenge, and a consideration of maximum fees, isn't that right -- or maximum licence fees, and the like? Caps were mentioned at that stage?

A. Yes, you see, based on my recollection, that was not the only concern from the Commission. I had, at that time, regular communication with the Commission myself on other assignments, so the concern of the Commission was not only the non-capping of the licence fee, but it was also other elements of the entire tender, such as whether the first licensee, namely Eircell, which was a so-called bond licensee, had no fees imposed, and also the access conditions to the infrastructure of Eircom was a concern of the Commission. So there were several concerns, actually. I know it's -- in the understanding of it, it's very easy to say that the concern of the Commission was the non-cap of the licence fee, but it's not fair to say there was several other concerns from the Commission.

Q. Of course, yes. I am not suggesting otherwise. What I really wanted to bring you to was the last page of the minute, which says in relation to the Evaluation Model: "This was approved as presented, with the correction of one minor typo on page 6-21.

"Further comments, if any, are to be forwarded to Maev Nic Lochlainn within a few days." And --

A. Yeah, what I get out of this is a kind of a silent

procedure, so there was some kind of approval procedure outside the Steering Group.

Q. I think, if we move to Tab 24, we'll see that here was the draft which had come in from AMI on the 8th of June, the previous day, and presumably this was the draft that was approved, subject to the one minor typo which had been discovered, isn't that right?

A. Probably. If you say it, I'll take it for that. I haven't checked the two documents.

Q. Well --

A. Whether there are other changes, I don't know.

Q. This appeared to have arrived on the 8th and the meeting happened on the 9th, so I am suggesting to you that this was the document which was approved on the 9th, in all probability?

A. Basically, yes, but I think there are more changes than just one typo in this document. For instance, I can see that the weightings are different.

Q. No, no, I am saying that this was the document with different weightings which your AMI sent on the 8th, and it was approved on the 9th, that's what I am suggesting to you?

A. Okay.

Q. Now, and Ms. O'Brien says that that was the understanding of the other people, that this was what came in and this is what they considered on that day?

A. Okay, that's fair enough.

Q. Now, can I bring you to the internal page 17 of it. There is a table there, and it would appear, and I am not pointing the finger at anybody now, but it would appear that this was the beginning of a bit of defective arithmetic in the whole thing?

A. A bit of?

Q. A bit of defective arithmetic, adding up, it didn't add up?

A. Yeah, because it adds up to 103.

Q. But what was agreed was that the indicators would be divided into sub-indicators; for instance, that market penetration score 1 and score 2 would amount to 3.75 each; is that right?

A. That is how it reads here, yes.

Q. And previously, that had been 10 in the first document, isn't that right?

A. That's correct.

Q. And the next one was 7.5?

A. Yes, but you see, 7.5 is inconsistent with the note to the file made by Maev Nic Lochlainn, because that says 7%.

Q. So there is a problem here with that, as well --

A. So, you know, I don't have the full recollection of all

this.

Q. I appreciate that.

A. But something is wrong with these weightings.

Q. And I don't think anybody is going to dispute that with you, something is already wrong with this process, but nonetheless, those are the figures which were faxed over on the 8th of June, apparently.

MR. O'DONNELL: He did say, sir, that there was something wrong with the weightings. He didn't say there was something wrong with the process. I am just concerned with that.

CHAIRMAN: It's not going to be set in stone.

MR. McDOWELL: I am not trying to change the meaning of what you were saying. There was something wrong at this point --

A. I think we fully agree on that, yeah.

Q. Now, I think that the number of cells and the reserved capacity were also changed. The balance between them had been 15 and 5 and they were now put in at 10 and 10 respectively, isn't that right?

A. Yeah.

Q. And --

A. Which I think is also in accordance with what, finally, was the case.

Q. So that was correct?

A. That was correct, yeah.

Q. And solvency, which had been -- and IRR was at 15%, and sadly, for whatever reason, nobody seems to have noticed at the meeting or when this graph is prepared or matrix was prepared, that what's stated to be a grand total of 100 was, in fact, 103?

A. Yeah. I think that it represents the fact that the focus in the process was not very much on weightings; people concentrated on the -- would concentrate on the evaluation, as such.

Q. For instance, there were some deliberate changes which weren't accidental, for instance, such as the number of cells had previously been given 15 and was now being reduced to 10, and the points for reserve capacity had been doubled from 5 to 10 to give those two sub-indicators quality, isn't that right? And that was a deliberate, that wasn't just an accidental decision?

A. Probably, but -- you know, it's not recorded in the minutes, though, what you are stating now.

Q. You see, the point is that the draft was agreed as submitted, subject to minor typographical errors, isn't that right? And as I understand the evidence, I wasn't --

A. Are you talking about this document or the previous

document?

Q. This document, the one that was faxed over on the 8th of June was being approved on the 9th of June.

A. Okay.

Q. With this table attached to it.

A. Yeah.

Q. I am not trying to trap you in any way. As I say, that appears to have been what was agreed, isn't that right?

A. Yeah.

Q. Now, could I bring you forward now to Tab 72, and here is a note from Maev Nic Lochlainn, saying, "Please see over: Advice received from Andersen Management International indicating their preference for reducing the fee weighting by three percentage points and increasing the weighting for tariffing by a corresponding amount.

" -- written communications received from the Department of Finance, from Mr. Donal Buggy in Planning Unit and from T&R Regulatory Division indicating their approval with this change.

"In line with the written procedure agreed earlier, once it is indicated that this division also approves this amendment, then the new agreed weightings for the various criteria will be formally adopted.

"Submitted for approval and signature, please."

And there follows a memo from AMI, from you, I think, saying:

"Confidential memo on the adopted Evaluation Model.

"AMI has now had the opportunity to investigate whether the new fee structure" -- this, I presume, is the post-EU, this is the capped fee structure -- "should have any influence on the weighting in the quantitative Evaluation Model. We think there is not a strong need to change the weighting, but we would be slightly more comfortable with the weighting if three percentage points were moved from the indicator 'upfront licence fee payment' to competitiveness of an OECD like basket. Of course, this would better reflect a changed focus in the evaluation after the licence fee element has been semi-fixed.

"We do not, however, attach major importance to such a change, for two reasons. One is that we expect that most of the applicants will gain maximum points under 'upfront licence fee payment'. Even more important is the second reason: During the qualitative evaluation, we suggest to thoroughly investigate the tariffs aspects and its various links to some of the other indicators such as 'market development' (through price elasticity), the 'financial key figures' to be applied and 'risks' in order to assess the deal for consumers.

"Nevertheless, it cannot be neglected that no changes in the present weighting might lead to a slightly different ranking in the quantitative evaluation. For this reason, we prefer to move the said three percentage points between the two indicators, but we can also live with no changes.

"We are not inclined to suggest for dramatic changes in the weighting scheme, since that might be a bit unfair and untrue to the arguments which have been so successfully used vis-a-vis the Commission. If the outlined three percentage change in the weighting scheme is to be approved by a silent procedure, a deadline of the 3rd of August or earlier is necessary."

So a silent procedure is, you are saying, if you don't have a meeting, you have to put a deadline of the 3rd of August; is that right?

A. Yes.

Q. I think on the following pages, there is an indication that formal letters were required, formal sign-offs were required from Mr. McMeel, Mr. Buggy, from John McQuaid and Aidan Ryan, both -- collectively, and from Mr. Dillon of the Regulatory Division.

So it appears that you suggested this movement of marks after the EU inspired changes, if I may use that phrase, about it, and the capping of the licence fees, and everybody agreed to what you suggested?

A. Yeah. It comes out of the discussions we had with the Commission where we also had stated that, due to their intervention, we would proceed in a more beauty-like fashion than an auction-based fashion with this tender.

Q. And the next item is the same note from Ms. Nic Lochlainn, but, on this one, Fintan Towey says: "Advised weightings approved as recommended by AMI." This is the final sign-off on the matter, isn't that right?

A. Yes.

Q. And then there follows a memo to file dated the 27th, which is the same day, from Maev Nic Lochlainn, saying: "The new revised weightings as agreed in recent telephone conversations with Project Group members and as later confirmed in written communications received from each interest represented in the group, are as follows: 30, 20, 11, 7, 6, 5, 3."

Do you see that?

A. Yes.

Q. And that does total up to 100, I think?

A. Yes, and so did her previous note to the file, because the only changes are that there are movement between two of the weightings.

Q. So, at that point, is it fair to say that after the EU

intervention, and in light of the capping of the -- transformation of it from an auction-type competition to a beauty-contest competition, that the weightings set out in Ms. Nic Lochlainn's memo there had been approved across all of the interested parties on foot of a recommendation from you?

A. That's correct.

Q. Now, could I pause there to ask you this general question? Would you agree with the proposition A) that it was important that there should be clarity as to what the weightings were; that it couldn't be just left as a variable that shifted from day to day or was made up as you went along?

A. Well, it is better if there were clearness on the weightings than if there weren't. But you would always still have in mind that there was some implicit weighting in paragraph 19, as it was set in paragraph 19, that the evaluation criteria were set out in descending order of priority.

Q. I see. And when do you think that the question of the weightings next arose?

A. Oh, you are testing my memory here.

Q. Maybe it's easier for me to bring you through the sequence of events and we'll pick it up. I am not trying to test --

A. You know, at that stage, we are approaching the -- over the summer, we are approaching the postponed deadline for submission of applications and I would have had some discussions with the Department on the fact that we now moved from what I called a design-based with an element of auction, to what we have promised at the meetings with the Commission, to run a beauty contest according to the method called best application, so I would have had some discussions with the Department over the summer on that.

Q. Could I bring you to the ninth meeting of the GSM Project Group, which appears after Tab 39.

A. Yes.

Q. And on this occasion, the members of the group turned up, I think, and Mr. Brennan outlines the agenda, and the first thing is the Andersen presentation on the quantitative evaluation of the six applications and discussion of the forthcoming presentations and future framework for the project.

And the minutes record the situation at that point as being:

"Prior to presenting the initial draft report of the quantitative evaluation, Mr. Andersen first acknowledged certain shortcomings in the results gleaned so far from the quantitative scoring. The quantitative evaluation had

highlighted some incomparable elements, i.e.

" -- some applicants had not calculated OECD baskets to their best advantage.

" -- IRR had not been calculated in accordance with the tender specifications in some cases.

" -- for certain cases, not enough information on roaming was supplied to score the application.

" -- certain of the indicators proved highly time-sensitive, e.g. if scored in year 4, they showed one ranking, year 15 giving a completely different view.

"The highly sensitive nature of the quantitative scoring document was noted. Copies are to be retained by Mr. McMahon, Mr. McQuaid and Ms. Nic Lochlainn and Mr. Riordan. The remaining copies were returned to AMI.

"The meeting discussed each dimension of the scoring document in turn. The consensus was that the quantitative analysis was not sufficient on its own and would have to be returned to after both the presentations and the qualitative assessment. It was agreed that the figures used by the applicants could not be taken at face value and needed to be scrutinised. Responsibility for such a scrutiny has not yet been decided. The need to reflect a change in the weighting for the licence fee was highlighted. AMI committed to correct the model in this respect.

"Mr. Andersen concluded that the scoring at this stage was relatively close and that no conclusions could yet be drawn."

Now, just stopping there. Going back to what we were discussing today, earlier, this was at a time when you were looking for increased remuneration to cover the extra work which, on your view of things, had arisen, isn't that right?

A. Yeah, I think that was -- yeah, we are talking about the beginning of September.

Q. And, I mean, for instance, the phrase "Responsibility for such a scrutiny has not yet been decided," does that have any meaning in the context of your overall position that, at this point, you'd require extra remuneration to finish the project because of the extra work involved?

A. No, I don't think so. What I think transpires is that we were already here, at this stage, experiencing bigger problems with the quantifications that we had envisaged. As far as I recall, it was stated somewhere in the preparatory documents that we would finalise the quantifications already after three weeks, and here, on the 15th of September, we are one month after the submission deadlines.



Q. I see. Could I ask you to -- could the witness be shown the book of results and reports. Book 93 I think it is. Now, just in relation to this quantitative evaluation, it's obviously a draft at this stage and is stated to be that, and --

A. Sorry, where are we? Tab?

Q. Sorry, I didn't tell you. It's the first tab, Tab 1.

A. Okay.

Q. Dimension 1 there is market development. There are two sub-indicators there, which are billable traffic minutes and quoted number of SIM cards, do you see that?

A. Yes.

Q. And they are the two indicators for the first dimension, which is market development, at that point; is that right?

A. Yes.

Q. And the second dimension is the coverage speed and extent of demographic coverage, is set out in table number 2; that's the second dimension, isn't that right?

A. Yes.

Q. And dimension 3, the tariffs and competitiveness of an OECD-like GSM 2 basket is set out as dimension 3, and there is only one set of indicators and that's the -- that's as set out there, isn't that right?

A. Sorry, I didn't get --

Q. There is only one indicator for that?

A. Yes, correct.

Q. And the points are shown for each of the applicants at that point in draft form?

A. Yeah.

Q. Dimension 4 is the applicant's international roaming plan, which I think we later find is dropped, isn't that right?

A. That's correct.

Q. As it doesn't help at all because everybody had ambitious plans or no plans?

A. Simply --

Q. It was equality for everybody, anyway?

A. Okay.

Q. And dimension 5 is the radio network architecture (number of cells), and again, that's set out there.

Dimension 6 is the reserve capacity of the network, which had been adjusted, as we know, in June.

And dimension 7 is the quality of service performance, the blocking rate and drop-out rate. The phrase "performance guarantee" has been renamed "quality of service performance," is that right?

A. Yes.

Q. And it is divided into drop-out rates and blocking rates; there's two sub-indicators, is that right?

A. Yes.

Q. And dimension 8 is the frequency efficiency.

Dimension 9 is experience of the applicant, the number of experience occurrences for GSM2, GSM 1 in other telephone networks, as well as other telephone networks.

Dimension 10 is the licence payment upfront where, as you had predicted, everyone got top marks.

Dimension 11 is the financial key figures (solvency and internal rate of return).

And you have two indicators there, isn't that right?

A. Yes.

Q. I think you had a difficulty with the number of years for the internal rate of return, isn't that right?

A. That's correct.

Q. Because one part --

A. One applicant had used slightly different years, yeah.

Q. So what you had done is, you had cut everybody down to 10 years because one person hadn't put in the full 15, isn't that right, or is that right?

A. That's probably correct, yes.

Q. And you set out, then, in tabular form, the results from the previous tables. And if we go to page 7 of 7, the weights are set out, and these appear to be the weights as noted by Ms. Nic Lochlainn; is that right?

A. No, because --

Q. These are the 9th of June weightings?

A. That's exactly the problem, because they are not consistent with Maeve Nic Lochlainn's note. So --

Q. So, in fact, just stopping there --

A. They are not correct. So the weightings here are not correct.

Q. No. In fact, what happened there was that the whole process of adjusting the weightings that had happened in June/July, was, in fact, slipped out of the reckoning, and the unamended 9th of June weightings were applied at that point; is that right?

A. Yeah, I think so, I think that's correct, for the reason that the people working -- the consultant working with this would not be familiar with Maeve Nic Lochlainn's confidential note to the file.

Q. And just the 3% that you had taken from the licence fee, which is down at 14% there, should have been shifted as well, should it not, to --

A. Yeah.

Q. -- to the OECD-like basket, to bring it up to 18?

A. That's correct.

Q. So, at that point, the weightings, erroneous as they were, and the figures, as you say, problematic as they were,

indicated that A3 was the highest-ranked applicant with .48, isn't that right?

A. That's correct.

Q. And A6 was 3.19, coming second, and A5 was 3.13, coming third, isn't that right?

A. Yes.

Q. Now -- so we are back now, if we can just go to the meeting of the 4th of September, which is in the other book, at Tab , Book 91.

A. Yes.

Q. At that point, you had concluded, according to the minute, that the "Scoring at this stage was relatively close and that no conclusions could yet be drawn," isn't that right?

A. Yes. Where are we?

Q. Page 2 of that minute.

A. Yes.

Q. Just going back to what's written on that page: "The meeting discussed each dimension of the scoring document in turn. The consensus was that the quantitative analysis was not sufficient on its own and that it would be returned to after both the presentations and the qualitative assessment."

That was what was agreed on that day, the 4th of September, that it would be returned to?

A. Yeah.

Q. "It was also agreed that the figures used by the applicants could not be taken at face value and needed to be scrutinised."

As I said earlier, "Responsibility for such a scrutiny has not yet been decided.

"The need to reflect a change in the weighting for the licence fee was highlighted. AMI committed to correct the model in this respect."

So the point that I just pointed out to you just now was highlighted, that the 3% hadn't been shifted from licence fee to OECD bundle, isn't that right?

A. Yeah.

Q. Now, "There was a discussion of forthcoming presentations and a set of general questions for discussion of the presentations drawn up by Andersen was examined. Gaps in the questions were identified and new wording agreed.

"Questions are to be sent to the applicants on the 5th of September. It was agreed that the issues such as costs of security interception could be discussed with the eventual winner and would only be briefly flagged at these presentations.

"Andersens are to draft specific questions for each applicant. The Department of Transport, Energy and

Communications and the Department of Finance evaluators will also prepare applicant-specific questions as appropriate. Questions during the presentation should be asked in order, i.e. general strategy, marketing, technical, management, financial and then other. At the Monday morning preparatory meeting, Andersens will provide an outline of the underlying philosophies and weak points of each application.

"It was agreed that the sweeping of the conference room for potential bugging devices before for each presentation was desirable. To assist the Evaluation Team, it was decided that it would be preferable to tape each presentation with the consent of all applicants. The provision of such facilities would be organised by the development section.

"Each applicant would be asked to provide a hard copy of any slides or visual material and the time limit of three hours for each presentation would be absolute."

Then going back to the future framework of the project.

"10 sub-group meetings for qualitative evaluations had been proposed by AMI. 5 had already taken place."

I'll just ask in relation to that, in relation to the ones that had already taken place at that stage, the 4th of September, how many had been attended by civil servants from Ireland?

A. I cannot see from the documentation how many were, but I believe it is a matter of fact that when you look at my memo to Martin Brennan from the 15th of August, which we went about two days ago, some dates were inserted, and you asked me specifically when, from when did the Irish civil servants begin participating. Now, if we see that memo, that was in order for me to progress the work because we had time constraints, so what we did was to mention the groups, and then I said to my own consultants: What you can do here is, until the Irish civil servants are ready to come on board, is that you can start the preparatory work in each sub-group. So, for instance, I think that's part of the documentation in other binders, you will find that what the Danish consultants then did was, if we take international roaming plans, or whatever, they would have provided memos on the preparatory work for arriving at the scorings. For instance, I recall, concerning roaming plans, a huge table was produced with a lot of factual information in each cell of that table, but no scorings were naturally discussed or suggested at that stage because that was not to be done by the consultants.

Q. Well, I am instructed that the evidence shows that, in fact, no Irish civil servants attended any of the qualitative evaluation sub-groups until after the meeting

that we are actually talking about, the minutes of now, until around the 6th of September at the earliest; is that right?

A. What -- no, I don't know whether it's correct. What I can say is that --

Q. I don't want to have a debate with you on it.

A. I think it's important, because what is a matter of fact here is that on the 6th and, I believe, the 7th of September, a considerable number of meetings take place in Copenhagen, and the Irish -- there are travel tickets, and so forth, stipulating that they were present. According to my recollection, if you take the technical sub-groups, they had had meetings earlier than the 6th of September. They didn't come to Copenhagen on cold and they had actually worked prior to the 6th of September. That is my recollection.

Q. I don't know whether much turns on it, but I am instructed that the evidence was that, prior to the 6th of September, the Irish civil servants did not attend the sub-group meetings, but maybe not too much turns on it?

A. That's correct with regard to international roaming plans, for instance, but I don't think that that is correct with regard to the technical part of the evaluation.

Q. I see. We can't solve that now.

"AMI committed to provide the Department with documentation on these earlier sub-group meetings."

That suggests they required to have documentation because they weren't there, doesn't it?

A. Yes.

Q. "Project Group members were welcome to contribute/suggest amendments to the scoring."

What does that mean, "Project Group members were welcome to contribute/suggest amendments to the scoring"?

A. I don't know what it means. I am not the author of this and I don't see -- I do not understand what is meant by this sentence.

Q. Well, this was minuted to you, as I understand it, at the time?

A. No, no. I can say, quite clearly, I didn't receive all minutes, and I have, in my files over this, I have seen no minutes. It might be that I have seen one or two, or whatever, but I did not receive minutes on a regular basis.

Q. Just for clarity sake, which files are these are you referring to when you say "my files"? Are you referring to AMI files or personal files?

A. Let's just say AMI's files.

Q. Not your own files?

A. No.

Q. And you are saying that, in AMI files, there aren't copies of the minutes, is that what you are saying?

A. Yeah.

Q. Now, "Andersens outlined a timetable for the remaining 5 sessions and personnel were nominated to attend. Mr. Towey and Mr. Riordan are to attend the financial and performance guarantee meeting. Mr. McQuaid and Mr. Ryan are to attend the radio network, capacity of the network and the frequency efficiency sessions.

"Andersens stated that the qualitative scoring of dimensions would take place in the sub-groups. Scoring of aspects would take place after the presentations.

Mr. Brennan, however, specifically requested an opportunity to revisit the qualitative evaluation of dimensions after the presentations."

So there is Mr. Brennan saying that "when the presentations are in, I want to go back to the qualitative analysis," isn't that right?

A. That's what it says, yes.

Q. "The group would have an initial discussion on the qualitative evaluation scoring on the afternoon of the 14th of September. Gaps would be highlighted and the extent of the need for supplementary analyses assessed.

"A date of the 3rd of October, 1995, for the delivery of a draft qualitative report was suggested by Andersens.

"A discussion on the question of the backbone network as proposed by many of the applicants also took place. It was concluded that very little could be done until a successful applicant had been chosen."

And that's signed by Ms. Nic Lochlainn there, isn't that right?

A. That's right, yeah, on behalf of Nuala Free. You will see -- what I was saying --

CHAIRMAN: Those two ladies shared the --

A. Yes, but I just want to make you aware of the fact that the civil servants might have been under some constraints on their side, because if you look through all of the minutes, I have remarked that it's different persons who are actually writing the minutes, and, according to my recollection, Maev Nic Lochlainn, for instance, she was a civil servant with an academic background, but Nuala Free and Margaret O'Keeffe, and maybe, also, others, they didn't appear to me to have a longer educational background, so were more office assistants.

Q. MR. McDOWELL: Can we take it that, at that situation, a fair summation is that nobody has said that the quantitative evaluation is grossly defective and needn't be relied on, it can't be stated at that point that it had

withered away, if those minutes are in any way to be relied upon?

A. I do not agree, because if we take the minutes on face value, it is recorded quite meticulously that I highlighted a number of incomparable elements. So shortcomings were certainly flagged at this stage to the Steering Group.

Now, this didn't mean that the quantifications were stopped; I mean, the work still progressed, but a flag was raised in order to indicate that we were not living in a perfect world here.

Q. I can see that. But can I suggest to you that the first paragraph of the second page of the minute which says "The meeting discussed each dimension of the scoring document in turn. The consensus was that the quantitative analysis was not sufficient on its own and that it would be returned to after both the presentations and the qualitative assessment."

That that is a very large distance away from saying it was now becoming redundant or withering away in the eyes of the participants at that meeting?

A. Well, I don't think you are putting it correctly to me, with all due respect. When it is later stated that something withered away, it is said that a separate quantitative evaluation withered away, so -- and if you look carefully into the words here, because I think they are reiterated at some stage, it says here "The consensus was that the quantitative analysis was not sufficient on its own..."

Q. "... and that it would be returned to after both the presentations and the qualitative assessment."

A. Yes, correct.

Q. So I am suggesting to you, and, I mean, it's obviously a matter of words used, but I have to suggest to you that nobody, at that point, would say that it had withered away on the 4th of September?

A. But here, again, I have to object, Mr. McDowell, because you are not presenting me -- this to me in an objective manner, because we have been over this a hundred times.

What withered away was a separate report on the quantitative approach; it was not the quantitative approach withered away, all of it. It is a matter of fact that the indicators we are talking about here, the 13 or 14 indicators defined for the quantifications, they were integrated into the holistic approach, so a number of these indicators, they were actually taken -- they were returned to and taken into account during the evaluation. So what withered away was a separate report on the quantifications.

Q. I just want to understand that. Are you saying that the

intention to have a section of the final report with a separate indication of the quantitative analysis, in other words the final quantitative report, that that idea was withering away, or had withered away?

A. That withered away during the process, yes.

Q. Well, I am asking, are you saying that it happened on the 4th of September?

A. I am stating that it is beginning here because it states "The consensus was that the quantitative analysis was not sufficient on its own..."

Q. It was never going to be sufficient on its own, according to the tender document that you put in. It was always going to be -- there was always going to be two legs to this process, and, when the two were compared, there was going to be a holistic overall evaluation of both, isn't that what the intention was?

A. The intention -- no, when a document was tabled like the document we went over before with the quantifications where you took me through the different dimensions and indicators there, it might have been a reasonable expectation that that part of the work would have culminated in a clearly identifiable separate report appended to a final Evaluation Report, it could have been, you know, part of one of the 14 appendices to the final report, but everybody could see, already, here, on the 4th of September, that something was seriously wrong with these quantifications, to the extent that the justification for a separate report could not be justified, and therefore, I put very much attention to the word that -- the words that "The consensus was that the quantitative analysis was not sufficient on its own." It is consistent with my recollection of it.

Q. Well, you are asking the Tribunal to take the view of the events as you have described and the record that has been presented, that, in fact, this evidences a common understanding by everybody in the Project Group, or a consensus, not everybody, obviously not everybody has to be in a consensus, but a general understanding that there would not be, or there was not likely to be a separate quantitative report embodied in the final report of the group, is that it?

A. Yeah, that is how -- that is my recollection of it. Then, it might easily be so that other participants to these meetings, they have had other perceptions, whatever, but I am here to give evidence about my perception of it. My perception is I came to the meeting. The second draft version which we went through before, was on the table. I went meticulously through some of the distortions, some of the statistical problems with these quantifications and the



conclusion was that we should not -- we should not see this as something which was sufficient on its own and which was subject to us making -- beginning to make a self-contained report of the quantifications. So, what transpired afterwards, after that meeting, that was -- I went home, together with Marius Jacobsen and Mikkel Vinter, who also participated in this meeting, and Mikkel Vinter, he was requested to continue the quantifications, but we had envisaged already at this stage that a separate report was not going to transpire.

Q. So you and Marius Jacobsen had arrived at a view in your own mind, whatever about everybody else at the meeting, that there wouldn't actually ever be a separate quantification report, is that what you are saying?

A. That is what I am saying, and it's crucial to discuss here, I think, because if we are to understand this evaluation process correctly, it also coincides with the fact that we then had to attach even more value to the qualitative and holistic evaluation.

Q. So I just want to summarise --

A. Do you see that?

Q. I see that. I see where we are. So you are saying and you are asking the Tribunal to take as your evidence that, after that meeting and after that presentation, when yourself and Marius Jacobsen and Mikkel Vinter go back to Copenhagen, that in your mind and Mr. Jacobsen's at the very least, and possibly Mr. Vinter's, I don't know, that although the work on the quantification process would continue in the hands of Mr. Vinter, there would not be a separate quantitative report embodied in the overall final report; is that right?

A. Yeah, that's my recollection of it, yes.

Q. And can I ask you, at this stage, is it your evidence that the other participants at that meeting, that some or all of them agreed with this proposition, or was it just purely your private reflection as you went off to Copenhagen?

A. Well, my evidence is that it's more the latter, but I wouldn't like your wording that it's a pure private speculation, or what you said. There may be differences in people's perception here. It was a complex process. 24 people were involved. It could only be natural that there were different perceptions of things, but I am here to assist the Tribunal by giving my evidence and my perception of it, and my perception is quite clear. Severe problems had already, at this stage, been identified with the quantitative techniques here, and that was tabled by me and that was important as a project leader for me, because that would have an impact on how you actually allocated the

resources in the remaining period of this evaluation, because more resources then had to go into the qualitative or holistic evaluation, holistic evaluation comprising the elements that were possible to continue with from the quantitative techniques and that merged into the holistic evaluation where qualitative things were also addressed. And you remarked, before, that there were these -- underlying this or in parallel with this, there were these contractual discussions, and if you understand my point as a project leader, I am trying to lay this on the table to you as precisely as I can, if you see my point of view. I had a limited amount of resources. Now, I see that we can not see -- we will never come to see the light at the end of the tunnel with the quantifications, then I would like to allocate more resources to the holistic evaluation, including supplementary analysis, and so forth.

Q. Just, I mean, I obviously can't dispute what was going on in your mind at the time, and I am not suggesting to you that you hadn't arrived at that view.

A. Okay.

Q. But it would appear that from a fair reading of that minute, that the view that you had privately formed in your own mind was not one which was generally accepted because they were talking about the need to reflect a change in the weighting for the licence fee was highlighted and AMI committed to correct the model in this respect.

A. Yes.

Q. If the table was never to appear in a final report, why would you bother correcting the model at that point?

A. But that is precisely as I said, that we continued the work with the quantifications.

Q. I see. Would you agree that it was intended to return to them again at a later point?

A. Yes, definitely.

Q. And who did you think was going to return to them at a later point?

A. Well, that was the Steering Group.

Q. And do I take it from that, again, that you envisaged that work would be done to correct the unfortunate error that is referred to in that third paragraph that we see on the screen, and that the corrected model would be brought back to the Steering Group?

A. Yes, but I would not -- I think, if we look at what transpired and we look at the minutes, it was not only a matter of changing a weight; it was also a matter of this -- these quantifications being very difficult to execute at all, and you will appreciate that, at this stage, we had not sent out the written applicant-specific

questions to the applicants. So it would naturally be so that some more corrections would come into the quantifications. So we did continue the work with the quantifications. However, it was clear in my mind at this stage that the evaluation could not be finalised as intended with the quantifications. That's important for me to state.

Q. Well, bearing in mind that you arrived at this important conclusion, can you tell the Tribunal, as best you can recollect now, and I agree it's a long time ago, when you first imparted this view of yours to the Project Team, the Project Group itself?

A. Well, in my recollection, I am beginning to flag it on the 14th of September, I am beginning to flag my concerns. But, you see, it was a complex process. Many participants were involved. At some stage on a subsequent -- on subsequent Steering Group meetings, we had quite open discussions about this, how to proceed. That's natural in a process like this. So I do not recall a definite point in time where we said, well, this is not going to work, but it emerged gradually.

Q. Could I ask you to go back to the contract book for a moment, please, and to Tab 21. You see the deal you did and accepted on the 14th of September was on foot of a letter sent to you by Mr. Brennan, and on the first page, at the third bullet-point, it says that "AMI shall submit, by a target date of the 3rd of October, 1995, unless an alternative date is expressly approved by the Department prior to the said date, a first draft of the Evaluation Report, along the lines set out at step 18 of the tender submitted on the 16th of March, 1995. The Evaluation Report shall contain a quantitative and a qualitative evaluation of all applications and the result of supplementary analyses undertaken. The report shall rank the top three applications for the GSM licence in order of merit according to the criteria prescribed by the Department, while detailing the differences between the applications which form the basis of this ranking. The Evaluation Report shall also nominate a winner..."

Now, it would appear that Mr. Brennan, at that point, was saying to you he expected a draft, a first draft of the final report, containing a quantification report, to be submitted on the 3rd of October, 1995, and that, on that basis, he was agreeing to remunerate you in the increased amount, isn't that so?

A. I think he doesn't state that there should be a separate quantitative report, though.

Q. It says: "The Evaluation Report shall contain a

quantitative and a qualitative evaluation..."

A. Yes, but he doesn't state that it should be a separate report.

Q. Can that be? He says "a quantitative and a qualitative." He didn't say a quantitative and qualitative evaluation; he said "a quantitative and a qualitative evaluation".

A. Yes.

Q. And I suggest to you that, on a fair and natural reading of that, he expected to receive a draft final report on the 3rd of October which would have a quantitative evaluation in it of the applications?

A. Yes, but, you know, I cannot tell you what he had expected. You will have to put that to him.

Q. Well...

A. I think I have tried to be helpful with regard to what transpired on the 4th of September, that we actually faced problems with these quantifications.

Q. Yes.

A. It also says in the following section of what you read aloud "the report". It doesn't talk about two reports.

Q. That's the --

A. If we get down to the semantics of it.

Q. I don't want to interrupt you. It's the draft report that you were to submit on the 3rd of October was to have a quantitative evaluation and a qualitative evaluation in it?

A. Yes.

Q. Isn't that clear?

A. That is what it says. But it doesn't say that there should be a separate quantitative report. It says "the report".

Q. It says "The Evaluation Report shall contain a quantitative and a qualitative evaluation."

A. Then it goes on to say "the report". As I read it -- let me -- just allow me to explicate how I read this. "The report" is not in plural, it's in singular. So I would expect this to be one report, not two reports.

Q. Nobody was suggesting that there should be two reports. What you are contracting for and getting extra money for, I suggest to you, Professor Andersen, was that you would submit, by the 3rd of October, a draft final report, singular, which would contain a quantitative and a qualitative evaluation of the applications.

MR. GLEESON: Before that question is answered, I'd like to know if we have now reached the point where Professor Andersen is, in effect, being accused of a breach of contract? Because that appears to be what Mr. McDowell is dancing around at the moment. Bearing in mind that he had a contract with the Department, the other contracting party has specifically indicated that there was no breach of

contract; on the contrary, that he fulfilled his contract satisfactorily. So I just don't know. If this is an allegation of breach of contract, let's have it.

Otherwise, I don't see the point of this.

CHAIRMAN: I have no contract jurisdiction, and this is a matter that has merited inquiry.

MR. GLEESON: Well, sir, with respect, I have no difficulty with Mr. McDowell saying "Look, the final report does contain or doesn't contain such and such a thing." But he appears to be basing this on the contract, as if there is, in effect, a breach of contract by Professor Andersen or by AMI. Now, that is not an appropriate matter to be putting to this witness, in my respectful submission. He is not here acting on behalf of AMI.

CHAIRMAN: It is merely -- it is the case, I think, Professor, that, at an earlier stage, you had emphasised that the combination of quantitative and qualitative did tend to maximise the validity and reliability of the result? I appreciate you are saying that things had changed in your perception?

A. That is -- that's -- I think we went over that yesterday. We also went over the fact that we used the term "holistic valuation," that was mentioned several times in the AMI tender.

CHAIRMAN: And the other word, "heuristic," is the same thing as "holistic," is it?

A. I would say so, to some extent, yes.

Q. MR. McDOWELL: To make it absolutely clear, Professor Andersen, I am not in the slightest worried about whether you are or are not in breach of your contract.

A. Okay.

Q. But I am making a point which perhaps has escaped Mr. Gleeson but may not have escaped you, and that is that if Mr. Brennan thought, on the 4th of September, that the prospect of a quantitative report -- or quantitative evaluation, rather, was withering away, he certainly didn't seem to reflect that in his letter to you of the 14th of September, where he, having been confronted by a situation in which you said that, on the existing budget, you couldn't deliver all of his expectations, he was setting out exactly what he wanted you to do in return for the increased sum of money. And that's the point I am making. It's nothing to do with breach of contract at all. This is what his expectation was.

A. Okay, but I am not in a position to clarify what his expectations or his conception of this was.

Q. I see. Well, now, moving on from that, if I may, we are now at the -- we have now completed the ninth meeting of

the Project Group on the 4th of September, and the qualitative -- the presentations and the qualitative analysis is about to start; is that right?

A. Yeah, it's a matter of terminology here, because, in essence, the qualitative evaluation more or less starts already when the applications are received, because there is a very huge amount of reading and -- reading and preparatory work. So when you use the term "The qualitative evaluation starts in and around this period," I think you refer to the scoring. Can we agree on that?

Q. Sorry? I am sorry? I was distracted.

A. I'll just try to reiterate, then. You put to me, before, that the qualitative evaluation started around this time. Now, I am saying to you the qualitative evaluation actually starts once the applications are received. All the evaluators got a package of material in order to facilitate and help the evaluation. They did the reading, they did a lot of preparatory work. So what you mean when you say that the qualitative evaluation started was rather that the scoring started, the scoring process started.

Q. Well, at Tab 31 of this book, this is the 91 Book --

A. Yes.

Q. -- we have a tracking of when the qualitative evaluation would take place, don't we?

A. Pardon?

Q. Do you see the Gantt chart?

A. Yes, I see it, yes.

Q. And if you look at page 2, I think it's described as step : "Qualitative Evaluation."

A. Yes.

Q. And it's pencilled in to start between the 20th and 27th of August?

A. Yeah.

Q. And to proceed until mid-October, or around the 15th of October; is that right?

A. That's correct. And what I am telling you is that before the -- that's the third time I am coming to this now. You said that the qualitative evaluation started around the 4th of September.

Q. I wasn't suggesting that.

A. I am saying to you the way we -- Gantt chart or not, the way we, in actual fact, proceeded, was to rocket-start the evaluation once the applications were received, and then what took place around the 4th of September, that was that the scoring process started.

Q. I mean, what about the sub-groups? Were they -- as I understood it, the sub-groups that were engaged in the qualitative evaluations didn't contain any Irish membership

until after the 4th of September meeting?

A. We have been over that before. I think that a couple of sub-groups were started by way of management consultants doing some preparatory work in August. But when the Irish civil servants actually started to participate in the groups, I cannot find that in the records, but my recollection, which I also stated earlier this morning, was that, for instance, international roaming, that started with some preparatory work done by two consultants in Copenhagen. So the meeting there in, probably in August, didn't transpire, whereas if we look at the technical sub-groups, they started quite early, actually.

MR. McDOWELL: Now -- I am going to go on to a different topic, Chairman.

CHAIRMAN: It's getting close to lunch. Just one general query in conclusion, Professor Andersen. At this time, you were not, of course, living in Dublin. You attended meetings and did other duties relating to the Irish GSM and then you returned to your headquarters of the company in Copenhagen?

A. Yes.

CHAIRMAN: And obviously, this was also a factor in that the mandatory tables had been factored into your computer system?

A. Correct.

CHAIRMAN: It was the case that you were, of course, conducting a number of other competitions at this time, but were giving a substantial amount of your time to the Irish project?

A. Yes, it was a substantial task, so we were working more or less full-time, at least some of us, as consultants.

CHAIRMAN: Yes. Very good. We'll take up further matters at 2 o'clock. Thank you.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:

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

Q. MR. McDOWELL: Now, Professor Andersen, would you look at Book 93, which I think is going to be produced to you now.

You will find the first indent in Book 93 --

A. Sorry, which tab are we at?

Q. Tab 1.

A. Tab 1, yes.

Q. Is a quantitative evaluation for Irish GSM2, and it's given a date, a printout date, on the top, of the 30th of August, ; do you see that?

A. Yes.

Q. Can you tell the Tribunal who generated that report?

A. Yeah, I would think that that was Mikkel Vinter, as he -- as he is registered as the participant to the Steering Group meeting on the 4th of September and it was his task, basically, to produce these documents.

Q. And I think it's reasonable to infer from that that this report is the one that was brought to the 4th of September meeting, is that right?

A. Yeah, I think so.

Q. And this quantitative report goes through the various dimensions by indicator and sub-indicator and attributes marks to each of the applicants, A1 to A6, isn't that right?

A. Yes.

Q. And it would appear that when we get to page 7 of this report, that the numbers that are seen on page 7 are based on the earlier decision as to how weightings should go between the various indicators, isn't that right?

A. Yes, it seems to, yes.

Q. And just from your analysis, are the numbers shown -- the weightings shown on the top of A7, correct or incorrect, at that point?

A. Here?

Q. Yes.

A. The weightings are not correct.

Q. And in what respect are they not correct?

A. They are not -- as I told you this morning, they are not in accordance with the note to the file made by Maeve Nic Lochlainn.

Q. I see. And I think that that -- the OECD basket should be , is that right?

A. That's correct.

Q. And the number 10 should be 11 rather than 14, isn't that right?

A. Yes.

Q. Apart from that, do they add up to 100, regardless of the transfer of those three points, can you confirm?

A. Then, I need a calculator. It's easier for you to tell if they add up or they don't add up.

Q. It looks to me, and I just want to be sure, I don't want to put something wrong to you, it looks to me as if they add up to 103%?

A. That's my concern, yeah.

Q. Now, are we correct in saying that although at the meeting on the 4th of September, it was identified that the 11 and the 18 had been wrongly inserted, it was not identified at that point that there was also another underlying problem in that the -- however the weightings were readjusted, they were still adding up to 103?



A. I don't think that that was --

Q. Detected at that stage?

A. Detected at that stage, no, you are correct.

Q. Stopping there. If a mistake had been made in previous months to have a total weight of 103 rather than 100, technically speaking that was fairly easily corrected, was it not?

A. Yeah, technically speaking, yes.

Q. You multiply them by -- you divide them by 103 and multiply them by 100 and you get a slightly --

A. That's correct, technically speaking.

Q. They could be proportionately adjusted if anybody picked it up, is that right?

A. They could, or the right figures could just have been inserted, yeah.

Q. Now, I'll stop there and just point out to you that, at that point, on that initial consideration, the rankings seemed to have been that A5 -- sorry, A3 was the leading applicant, followed by A6, followed by A5, followed by A1, followed by A4, followed by A2. That seems to have been the ranking at that point?

A. That's the ranking, yeah.

Q. And as was pointed out, they were fairly closely grouped, in any event; is that right?

A. Fairly closely grouped, but also on a basis of methodology, which, when applied, generated inefficiencies.

Q. Now, subsequently, Mr. Vinter -- just, I should, as Ms. O'Brien points out to me, ask you to note and agree with the following proposition: that the difference between A3 and A6 was a 5.8% margin; are you aware of that?

A. It's probably correct when you say it.

Q. Now, after that meeting, presumably Mr. Vinter went away to look at the quantification process again by himself, isn't that correct?

A. Yes.

Q. And this is despite the fact that you and he and Mr. Jacobsen have concluded among yourselves that, for various reasons, you don't believe there will be a quantitative evaluation set out, as such, in the final report, you don't think that will happen?

A. No, that was not what we went over this morning.

Q. Sorry?

A. That was not what I said this morning in evidence.

Q. Separately, a quantitative evaluation would not be separately set out, is that what you are saying?

A. Yeah, that was what I said this morning.

Q. So that nobody reading the -- in your view, a report was likely to emerge in which nobody reading it would be able

to see the quantitative evaluations separately marked and scored?

A. As a separate report, as a separate self-contained report.

Q. Or even as a table in the report; it was not proposed to include it, is that right?

A. We didn't discuss this at this stage, yeah.

Q. Well, I mean --

A. What we discussed --

Q. Is there much difference between what we are discussing? I mean, a separate self-contained report or a table in an overall report, is there much difference if, in fact, the table could appear in a final report?

A. There is some difference as whether you generate a separate report, as I said this morning, for instance as part of the appendices to the main report, or whether you produce a table. That's a difference, there is a difference there.

Q. I see. Now, Mr. Vinter goes off and does his homework again, so to speak; is that right?

A. Yes, that's correct.

Q. And we have the next tab, which is Tab 2, is a quantitative evaluation dated the 20th of September, 1995, and on the top right-hand corner of it is "B. Riordan, final version" written on it. You don't accept that that was the final version, obviously?

A. No, no, definitely not.

Q. But it appears that Mr. Riordan had it in his possession, in any event, after the next meeting of the group. I may be wrong in that. It may have been given to Mr. Riordan in Copenhagen. Do you know?

A. No, I have no recollection of that.

Q. You have no idea how he got it?

A. Pardon?

Q. You have no idea how Mr. Riordan got it?

A. No.

Q. I see. But anyway --

A. I know that I was in -- I think he was in Copenhagen twice.

Q. And again, on this occasion, the weights, if we go -- basically, the same procedure is followed through, is it not?

A. It's the same underlying model, yes.

Q. With some reworked input data, is that right?

A. Yes, correct.

Q. But when we come to the weights page, at this point the figures have been adjusted, is that not right?

A. They are different. I don't know whether they are adjusted. They are different from the previous quantification.

Q. And have you any understanding as to why they are

different?

A. No, not really.

Q. Have you ever inquired as to why a different series of weightings have been applied or what Mr. Vinter was doing producing the second, a second and different table of weightings?

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

Q. I am told and -- I am told, and my mental arithmetic is not good enough on this occasion, that they do, on this occasion, however, add up to 100.

A. I know, I have checked that myself. They add up to 100 here, but, you see, they are uneven figures, or at least they are with two decimals. We have never used anything with two decimals. So I am struggling a little bit to understand this, but what is clear to me is that they are wrong.

Q. Now, at this point, I have got to suggest to you that the difference between the first table and the second table is that the roaming, the 6% which was available for roaming, has been taken out, and that the other numbers have been proportionately reweighted upwards, up to 100?

A. That might be a sensible proposition. I can, at least, see that the roaming is not there.

Q. The roaming is gone and they add up to 100 and they seem to have increased in value?

A. Yes.

Q. So I think the rational conclusion is that the two operations have been carried out to two decimal points. One is that it has been numerically adjusted so it adds to , and the second is that the 6%, which was previously allocated to roaming, or the 6 marks previously allocated to roaming, have been reallocated across the other weightings, isn't that right?

A. Yeah, that's right. I don't know whether there are other changes, I cannot recall whether there are other changes, but they are the changes you are suggesting.

Q. So, what actually happened, I suggest to you, is the fact that the original numbers added up to 103%, no adjustment was made for that. These, now, add up to 100%, and, effectively, the previous numbers were recalculated to get them to add up to 100, subject to a redistribution of the additional value of the roaming points?

A. That's how I understand it also, yes. So I think we are on the same page, yeah.

Q. Now, in relation to the tariffs to licence fee reallocation, has that been picked up?

A. The 11.7%?

Q. Yes.

A. No, I don't know, I don't recall it, I don't recall that that was particularly picked up. But it's obvious from a reading of this that the figure is wrong.

Q. Pardon?

A. It is obvious from a reading of this that the figure is not correct.

Q. Which figure is not correct?

A. The licence fee payment.

Q. At 11.7%?

A. Yeah.

Q. Why is that wrong?

A. Because it came in at 11%.

Q. But what has -- so, what has happened here, clearly, is that a portion of the 6 percent for roaming has been added to the 11 percent, isn't that what's happened?

A. That's maybe what has happened, yes.

Q. So before you say it's wrong, everything has been uplifted to receive the deleted 6%, isn't that what's happened?

A. Yes.

Q. Now, you say that a third valuation report was prepared on the 2nd of October --

A. That was the 2nd of October. The 17th is just the printout date.

Q. Sorry, I am being confused by the dates here because this was printed out in 2002, so I thought I was back in August for a moment.

A. Exactly, yes.

Q. In relation to that, Professor Andersen, it's noteworthy, is it not, that we are back, in this third report, to a different set of weights at the end, isn't that right?

A. That's right.

Q. And it would appear that the third set -- the third set of weights has had the 6% taken out, all right, but the result is that we are now -- they total up to 97%?

A. Yeah.

Q. Is that right?

A. They arrive at a total of 97, yes.

Q. Now, can you cast any light on this at this stage, as to how this recurring series of cumulative and different miscalculations is taking place in the quantification report?

A. Well, I think it's pretty obvious from the process that we had a young consultant, Mikkel Vinter, working on this, and he simply used the wrong weightings over time. How he changed the weightings is, maybe, clear from the documents, but it's not something which I can recollect from the time. So what transpires here is, actually, that I only became aware of this when Maev Nic Lochlainn sent a fax to me in

or around the 5th or the 6th of October. I don't recall the exact date, but it was around that time.

Q. Well, can I ask you, was it intended, in the final stages of the drafting of the report, to rely on this third version of the quantification report as part of the holistic evaluation of the result?

A. No. I think I explained already this morning that concerns actually started already on the 5th of September when the version from the 30th of August was brought to the Steering Group. Already, at that stage, we had detected a number of inefficiencies.

Q. I appreciate that. I thought that -- maybe I am misunderstanding you, but I thought that although you say that returning to Copenhagen after the 4th of September, you thought there would be no separate item in the --

A. Separate report, separate self-contained report.

Q. -- separate self-contained report on quantification in the final result, nonetheless you were indicating to the Tribunal that you did, however, expect the process still to have regard to the results of the quantification as part of the holistic evaluation that would eventually give rise to the ultimate report?

A. Yeah, that is correct, and I think that that is also described quite thoroughly in Appendix 2 to the Evaluation Report.

Q. But I am asking you to which table were those who were expected to engage in a holistic blending of quantification and qualitative evaluation, to which quantitative table were they expected to have regard?

A. Well, I can try to assist you by explaining how the process went on. The process was like this: That when these quantifications were produced, each evaluator got a copy of these quantifications, and you also remarked yourself that, obviously, Billy Riordan, for instance, he has had such a copy. So when he went, he and other evaluators went to the evaluation sub-group meetings, they would have a copy of this document, they would also have a copy of graphics prepared for them, they would have a copy of the printout of the mandatory tables from each applicant, and they would have had the -- a copy of the reader's guide, with a number of suggested indicators to be scored, or to be looked for when reading the applications. So I am just trying to be as helpful as I can to explain how things went on. What happened then when it became clearer and clearer that a self-contained separate report on the quantifications could not take place, was that, in the evaluation sub-groups, the indicators which could be scored on the basis originally envisaged in this document and the underlying Evaluation

Model document, they were dealt with and scored. Do you understand that process?

Q. I follow what you are saying --

A. And I am trying to make it as clear as I can. We are conducting a rather complex evaluation, maybe five or six thousand pages of applications in total, maybe 10,000 different numbers, or an even higher number. We are trying to structure this process. We had envisaged from the beginning that the Evaluation Model could also include these mechanical quantifications, and Mikkel Vinter was the nominated consultant to carry out these mechanical quantifications, but as it went along, it became apparent, not only to me, I think, but to all evaluators, that they couldn't finalise this part of the evaluation with a separate self-contained report, so what we did was to import everything we could in the holistic evaluation.

Q. I follow that. But can I just bring you back to the evidence we have already had in relation to this particular document yesterday?

A. Yes.

Q. And can I remind you that you think you brought this to the table on the 9th of October, that you didn't -- that if you showed it -- that you may have shown it to a number of Irish officials, but that you took it away from the table and that it was never circulated, isn't that right?

A. That was my recollection of it, yes, and you will also appreciate that, at that meeting, it was confirmed that there was not going to be such a thing as a separate self-contained report on the quantifications.

Q. So I am asking you which -- when you do say that the qualitative evaluators had regard to the results of the quantitative weightings, which of these three successive versions do you say they had regard to?

A. Whom are you talking about?

Q. The people who are engaging in the sub-groups on the quantitative evaluation who you say had these copies made available to them, like Mr. Riordan, which of these copies do you say that, in the last analysis, the people who made the holistic evaluation, had regard to when they came to their conclusions?

A. I would think either the first or the second draft. It depends on where you are in the process.

Q. Now, can I stop you there, and I don't want to re-open healing wounds between us, but you played -- you laid a lot of emphasis on the fact that the Tribunal team had ignored this third document unfairly, but now you are saying to the Tribunal today that, in fact, those people who did have regard to it in their holistic -- in taking part in the

holistic valuation of the applicants' reports, only had regard to tables 1 and 2, isn't that right?

A. That's -- you know, what you are setting here is wrong, at least in two respects, at least.

The first thing is that the third version was tabled, according to my recollection. That's number one.

Number two is, and we can reiterate the discussion we had yesterday, number two is that during private meetings with the Tribunal, so we can go over this again, the Tribunal said that the -- that A3 was the winner, and I made the Tribunal aware of the fact that A3 was not the winner of any evaluation and not even on the quantitative basis, and, you see, just to -- just to be very precise on that: that understanding was never taken on board by the Tribunal, you see.

Q. Now, can I ask you to be equally precise with me on this: Is it or is it not your testimony to this Tribunal that the people who had regard to the results of the quantitative evaluation are most likely to have regard to either the first or the second version and not the third version, in arriving at their holistic evaluation of the applicants' applications?

A. I wouldn't be able to say that because, you know, the quantifications done by Mikkel Vinter, they were in his computer systems, so it was open to anybody in the sub-groups to request information from him, and, depending on which day they had requested information from him, they have got the latest version.

Q. I have to suggest to you, Professor Andersen, that you have already answered my question in one sense, in that you said it was more likely that those evaluators in the sub-groups would have been relying on versions 1 and 2?

A. Yeah, and that refers to the fact that if you take the time when the evaluation was conducted, if you can follow me on that, the second version appears, obviously, before the third version. I don't know when Mikkel Vinter, in his computer system, has made the different changes, but if you look at the time sequence of this, the evaluation started already in the end of August with initial preparatory work and then the scoring took place from around the beginning of September and until the middle of September, but I would not disregard the fact that the evaluators also coming to Copenhagen, they were free to come to Copenhagen and go into the computer system.

Q. So you say it's possible that Mikkel Vinter printed out a copy of the document that you brought to the table on the 11th of October, separately, and it may be that some of the sub-groups saw it and had regard to it in arriving at their

sub-group evaluations, is that it?

A. Yeah, that is what I am trying to say, because you see that Billy Riordan, he has obviously asked Michael Vinter to make a printout at some stage, and he did get a printout.

Q. You see, as I understood it, the sub-groups were effectively finished their activities on the 20th of September, is that right?

A. Most of the work was finished, but it is -- so that you can see from the audit trail, that the evaluation did not stop at that stage; there was still work to be done. There were additional reports and minutes from each sub-group and there were also adjustments made by different sub-groups.

Q. You see, I am wondering, in these circumstances, how you can really say that it's a reasonable likelihood that the third version which you brought to the meeting of the 9th of October, could have been relied on by the members of the sub-group when there is no copy in any Irish public service file of that third calculation?

A. Yes, but just because there is no copy, doesn't mean that they haven't had access to the information.

Q. Well, it's remarkable, is it not, that they seemed to disappear? If they did have them in their possession, that none of them bothered to store them?

A. Well, I don't know how much documentation there is in the Department. I can see -- if you look at what is recorded as minutes from the sub-group meetings, I take it that most of these reports, they are actually from AMI's files, when AMI assisted this Tribunal with furnishing of minutes of these meetings.

Q. Can I ask you, is there a copy of the third version in your personal files or your AMI files, however you describe them, which was actually made in 1995?

A. Yes, there is a file in the computer system --

Q. No, is there a copy, a physical copy, a printed-out copy dated back to 1995?

A. Yes, but I hope you will appreciate that, as I have explained to the Tribunal on earlier occasions, not during this evidence but in private meetings, that I don't have my personal files.

Q. I appreciate that. I am just asking have you ever seen version 3, a version -- a piece of paper printed in 1995 which has version 3 on it?

A. I am quite definite about that, yes. Yes, I have.

Q. Printed in 1995?

A. Yes.

Q. And is that the document you brought to the table in October 1995?

A. Yes.



Q. And where is it gone to?

A. That document, that document must be in the AMI files.

Q. It appears that they had to print this one out in 2002?

A. Yes, because the same document is on an electronic file, you see.

Q. Well, the others were all on electronic files, as well, weren't they, the two earlier versions?

A. Yes.

Q. You see --

A. So --

Q. You told us that you want to neutrally assist the Tribunal. Can you help me on this?

A. Yes, I'm trying to.

Q. No, no, can you help me on this -- wait till you hear it -- is it not very likely, from the sequence of events that we are now discussing, that the people who carried out the qualitative evaluations in the sub-groups had access to one of the two earlier computations of the quantitative result rather than the version that you brought to the table on the 9th of October and took away with you?

A. You said "more likely". If we take it in terms of chronology, I think that if you -- and if you take the work in process into consideration, people looking into this in August, they would have the first version, or at the end of August. Later on, they would have, in September, the second version, in the first part of September. And once the second draft had been produced, I take it from Mikkel Vinter's work that he has worked on this, inserted figures in the computer model which then generates a third version. And what I am trying to tell you here is that every sub-group member had -- you can see that from some of the correspondence -- had direct access to Mikkel Vinter so they could phone him right away and they could request material. He was the so-called number-crunching guy and whenever an evaluator wanted any analysis or any quantification, they just asked Mikkel Vinter, and you will appreciate that in -- was it the 18th or 19th of September? -- there were evaluation sub-group meetings in Copenhagen.

Q. Just for completeness, the third report shows an A6 in top position, isn't that right?

A. That's right, yes.

Q. And shows A5 in fourth position?

A. Shows?

Q. A5 in fourth position?

A. Yes.

Q. The second report shows A3 in first position and A5 in third position?

A. That's correct.

Q. And the first report shows A5 in third position and A3 in first position?

A. Yes.

Q. And as regards the relative merits of A3 and A5, if any consideration were to be given to these quantification reports, taking into account all of their frailties, it is remarkable that, in all three of them, A5 was -- sorry, A3 was ahead of A5, isn't that right? Two places ahead of A5.

A. Yes, you say "remarkable," but you don't pay attention then to what I have explained about the statistical differences with this, one being what we went across, I believe it was yesterday, with the sum of weighted variances and the inference you can draw from that; but secondly, also, that approximately 50% of the indicators were more or less lost in this exercise.

Q. Well, you say approximately 50% of the indicators were lost, and I know that that's just a top-of-the-head figure.

Do you stand over it?

A. Yes, we can go through it -- I think we should go through it then.

Q. Could you show me the 50% that were lost?

A. Yeah. If we take them one by one.

Q. Yes. Which one do you want to start with?

A. It will just come as top of my head, it's not something I have prepared, so I hope you will agree with me I take it in general terms in order to assist you.

Q. I am not going to hold you to the 50% figure, but I would just like to know; you have used it on a number of occasions and I just want to know is it substantially correct or is it just a guess?

A. Now, if -- the most -- the first, most obvious, thing, is that the international roaming agreement was not there, that's the 6%.

Q. That's 6% gone, yes.

A. Then we take the blocking and drop-out rates, and let me just try to expand on this just so that we know the problems -- I mean, obviously you were not there during the evaluation, but I would like to assist you by explaining how it went along, because blocking and drop-out was originally envisaged to be scored, obviously. The figures that came in, they were not comparable, and then a separate set of questions went out to the applicants in order for them to explicate their figures, and, as a supplementary analysis shows, this exercise actually ended up in figures being even less comparable, and that is -- let me just take one example.

We couldn't come across equal assumptions, equal

assumptions, for instance, with regard to the -- let's take blocking, if you take blocking as an example --

Q. Could I cut you short for a second?

A. Yes, but I want to explain this to the --

Q. How much does this account for in percentage terms?

A. Sorry?

Q. How much does blocking and drop-out rates --

A. That accounts for 5%.

Q. 5%?

A. 5%, yes.

Q. So 5 and 6 is 11%?

A. So now we are at 11%, yes. Then, we have the OECD basket, where we faced a serious problem, that the applicants had not inserted the most favourable figures concerning the applicable year.

Q. And was that not taken into account by Mr. Vinter in the last, the A6 -- the A6 winner third version, was the OECD basket recalculation for A6 not taken into account in that outcome?

A. He may have done that, but it still leaves the statistical problem of whether, once applicants had given information, whether you can then use different figures than they have actually inserted.

Q. Before we depart from that, have you looked at the third version to which you have drawn our attention in your original statement to this Tribunal? Have you looked at it to see whether it does, in fact, readjust the figures to take into account the OECD data and to give the most favourable treatment to each of the applicants?

A. No.

Q. Well, would you do it now?

A. I have not done that analysis.

Q. Would you do it now, please? It's in front of you there. It's dimension 3 in each of the reports.

A. Oh, yeah, he has inserted the figures, yes, but it is abundantly clear, from a supplementary analysis conducted, that the figures here were not comparable, and that is also stated quite clearly in the Evaluation Report, if you go to Appendix 2 of -- maybe we should do that. In Appendix 2 of the Evaluation Report, it reads: "For this reason, it would be unfair to applicants to award marks to only one single indicator OECD basket," and, you know, this comes out of the fact that --

Q. Sorry, where are you now? Appendix? Which appendix are you in?

A. We saw --

Q. And where are you quoting from in that?

A. Well, I am -- page 5 of Appendix 2.

Q. Yes.

A. On the middle of the page, the third indent.

Q. Concerning tariffs, is it?

A. Yes, concerning tariffs. I'll just read it aloud: "It turned out that two applicants, namely A4 and A6, have provided wrong information and, furthermore, that A1 and A6 and partly A5 have been compared with the rest on an incomparable basis, as A2, A3 and A4 all suggest metering and billing principles which do indeed increase the actual bill the customers have to pay for a specified amount of traffic."

Q. And it concludes: "For this reason, it would be unfair to the applicants to award marks to only one single indicator, the OECD-like basket, without taking all the other tariff aspects into consideration."

A. Yes. So here you have two things, really: You both have problems with relation to statistical reliability and statistical validity. Statistical reliability being how do you measure? Is your measurement consistently precise so that you can at all calculate something which is correct? And secondly, statistical validity, does it give meaning? Does what you have measured really measure something which has value? And, concerning this, we are actually faced with both problems. Do you see, we both had the problem of statistical reliability and statistical validity? I am purely importing things from the statistical theory, but, I mean, anybody who would look at this on a scientific basis, if I may use that expression, would not see such a scoring as something which you can rely on.

Now, that was the OECD basket.

Q. And what does it account for, 18%?

A. 18%. Then we have the licence-fee payment.

Q. Well, that could hardly be unfair as between the applicants?

A. Yeah, but what is stated in Appendix 2 is that the licence-fee payment do not discriminate amongst the applicants at all.

Q. That's true, but it can't produce any unfairness as between them, either?

A. That's right, that's right, but still, if you want to arrive at a robust result, it is a problem.

Q. But you knew from the very beginning that the licence-fee payment wasn't going to just -- wasn't going to distinguish them. You said that you didn't expect them to do other than to bid the entire amount?

A. That's right, but you'll appreciate that this model was developed before the EU intervention.

Q. Yes, but even when you anticipated they would all be the

same, you didn't say "we'll have to abandon the quantitative analysis on that basis"?

A. No, not on that specific basis, but I think it's not fair for you to suggest, if that is what you are coming at, that we didn't take into account that there was this EU intervention, and that the fact that the licence fee was capped actually generated a major alteration in the focus of the evaluation and the overall evaluation design.

Q. I mean, I suppose it was theoretically important in that somebody could have put in a 5 or 10 million bid, but, I mean, in fairness, that's a possibility, but assuming that everyone was likely to bid 15 million, no unfairness was done comparatively, isn't that right?

A. Yes, but I think we are approaching this in a different manner. What I am trying to say is that already, before the figures are inserted, this model has left some of its validity, if a reasonable expectation could be there that all applicants would come in with a maximum licence fee offer.

Q. But it would appear that Mr. Vinter did his level best to accommodate all of the four points that had arisen there insofar as they were problematical.

A. He did --

Q. The international roaming was gone and redistributed?

A. As I said, he approached it on a mechanical basis. So should I move on to some of the other indicators?

Q. Yes.

A. Yes. You see, it's up to you how much we shall go into this, but concerning --

Q. If you want to place approximately half of the value --

A. No, because -- yeah, and I am coming to that. I am just looking for myself to find out to what level of detail I should go into here. You see, concerning each indicator, there was defined different kinds of scoring methodologies. Concerning some indicators, there was a renormalisation model. Concerning other indicators, there were intervals defined with predefined points to score if applicants reached this and that level, and, in third instances, third scoring methodology was used.

Now, just to take one example. When we developed this model, there was agreement in the Steering Group that Year would be a very reasonable figure, both if you do the renormalisation but also if you use other kinds of scoring methodologies. So, if you -- if we, for instance, take the renormalisation methodology, which we can go into more detail about, but, from time to time, they use year number , and that's also applicable to other indicators. Now, taking year number 4, Mr. McDowell, seems to be a very

reasonable thing when you discuss in a Steering Group prior to having seen the applications. Year 4 is a year, in any mobile operation, when the commercial launch has been there, customers -- some customers have been gained, the operator has got a foothold in the market, and then you would like to see how is the applicant performing on this and that indicator.

Now, it turns out if, after a statistical test in AMI, that using Year 4 was, in some cases, a very distorting factor, because if other years had been used you could have produced a number of other results.

Q. Was that discussed among you?

A. Pardon?

Q. Was that problem discussed among you?

A. Yes, it was.

Q. What solution was come up with?

A. Well, the solution we came up with was that as around 50% of the weightings had been lost due to --

Q. In relation to the Year 4 issue?

A. Pardon?

Q. In relation to Year 4, what solution was proposed, the problem with Year 4 comparisons?

A. Okay, I think no solutions. I don't recall any solutions being proposed rather than not to continue with a self-contained separate report on this matter.

Q. I see. Can I ask you, Professor Andersen, to look to Tab 4 of the book that we are dealing with at the moment?

A. Yes. But maybe while you are finding it, I'll just do my own calculations --

Q. I'm asking you to go to page 4.

A. And you said how could you possibly arrive at 50%? When I count, it's then 16% for roaming, 5% for blocking, 18% for OECD, 11% for the licence fee, and then I say due to this problem we had with Year 4, I say that, okay, now we are close to 50%. You just wanted me to give a general impression how could we arrive at 50%? That's how we arrived at 50%. So I hope I have answered your question.

CHAIRMAN: While we are proceeding to that, Professor, in the many competitions that you have been involved in internationally, and I think you have used your dual evaluation approach --

A. Yeah.

CHAIRMAN: -- was it unusual to have to, in effect, regard the quantitative evaluation as having withered to the extent that you could not rely on it as a separate or self-contained unit of the evaluation? Just from reading of the GSM3 matter in which you also acted, I seem to recall that both qualitative and quantitative did proceed,

and one or two other continental competitions that I briefly glanced at seem to have gone on that basis. So I am just saying, was it a rather exceptional stage that you had to, I don't say abandon, but to desist from, as a separate unit, part of your methodology?

A. Thank you, Mr. Chairman. Yes, I think it was rather exceptional because, in most cases, we would be able to finalise a robust quantification if we had a quantification included, but due to the problems we have encountered during this particular evaluation, I could not defend, on purely scientific statistical grounds, to arrive at a final report or a final result, and I think mainly, if that is of assistance to the Tribunal, that it points back to the less-than-perfect RFP document.

Q. MR. McDOWELL: I see. Could I bring you to your Draft Final Report, which is at Tab 4 of the book we are dealing with now, the first draft of your report.

A. Yes. Which page?

Q. Page 20. And it reads:

"Both refinements of the OECD-like basket come out with A6 as the cheapest and A2 as the most expensive operator. In order to award the specific marks to the applications, the following indicators have been defined: the initial charge, the basket comparison of a consumer user profile, the basket comparison of a business user profile, the definitions of the peak and off-peak periods, the metering and billing principles suggested, special tariff offers, international roaming surcharge, international call charges and the OECD-like tariff basket."

Then you set out a table in which there has been marks for each of the applicants by reference to the dimensions in relation to tariffs and there is a subtotal at the bottom.

And you say: "The award of marks is summarised in Table 4, including the marks awarded to each indicator under the tariff dimension. In general, A6 proposes the lowest tariffs, waiving the subscription charge due to a certain consumption of traffic minutes, whereas A2 proposes the highest tariffs."

And if we look at that particular graph or table, it does bear out some of the findings of the quantitative report, as well, does it not? It's consistent with it?

A. Yes, it does take a number of things from the quantifications, because when we did this evaluation in the sub-group, you will see from the previous pages, page 19, and also page 18, that a number of quantifications were done and the tables -- the figures you have here, figure 12 and 13, they would have been available, produced by Mikkel Vinter to each evaluator in the sub-group. So the

quantifications were clearly very much used, yes, and so was, also, the OECD basket.

Q. And it looks as if the version 3 of the OECD basket was used for the purposes of this calculation, isn't it?

A. Yes.

Q. The version that you brought to the table on the 9th of October and took away with you?

A. Yeah, but maybe we could just compare. Does it generate the same result?

Q. Well, it seems to, in that A is 6; and B -- B goes to A3; and A4, A5 and A1 all come in with a C; and A2 with a D; so it's roughly comparable, isn't it?

A. Yes, it's roughly comparable. But you will see that we tried to use the indicators as much as we could, and we then, in order to avoid distortions, we also tried to look into other years than just Year 4. If you look at figure , you will see that the sub-group had been provided with not only the figures in Year 4, which comes out of the quantitative document, but also with all the other remaining years of the 14-year planning period.

Q. And do you see three paragraphs below that table that I was asking you to look at, the paragraph says: "The difference between A3 and A5 is quite small, which has been confirmed by a supplementary analysis (see Appendix 6). It could be questioned whether the low tariffs proposed by A6 is consistent with, for example, its revenue projections and an IRR at an appropriate level. The answer to this question, however, has been transferred to the risk analysis presented in chapter 4."

Isn't that right?

A. Maybe I should just explain. There is a huge amount of underlying work here because what we did was not to take the tariffs at face value, we also went into the other parts of the business plan and tried to see how many minutes does a mobile operator in this plan project and then what is the revenue stream in terms of minutes of call-charge revenue and subscription revenue, and, Mr. McDowell, when you add subscription revenues and call-charge revenues up and divide that up into the applicable traffic minutes, you will, quite clearly, quite easy, mathematically, see what would be the average hourly call-charge, and that was really the litmus test, but it demanded a huge amount of work, which you, when you are reviewing this and when you are examining me, you are not able to see all that underlying work, but you can see it with the remarks on A6 that we have found some inconsistencies.

Q. Could I bring you to page 22, and the paragraph which says



"The OECD-like basket defined in the tender specifications has been used as the last indicator with the quote of tariffs in Year 4 as the basis for comparison. A4 and A6 did not quote their most advantageous tariffs for the defined OECD-like basket, but the evaluators have recalculated their baskets which leads to a more favourable result than these applicants deserve, based on their own quotations?"

A. Exactly.

Q. "Consistent with the graphs of figure 11, A6 has been awarded an A, A3 a B, A1, A4 and A5 all have been given a C, whereas A2 has come out with a D concerning this indicator."

A. Yeah. This is really, really crucial, what you read aloud here, because this tells a lot about how the evaluation actually went along. I fully admit that it's difficult to see how the evaluation went along when you just look at some of the various models and descriptions and --

Q. I am not suggesting it's easy, Professor Andersen.

A. If you see here, this is the crunch of what a holistic evaluation actually contains.

Q. Yes, I see that completely, but I can't see with such ease why, in these circumstances, the tables that had been generated for the quantitative evaluation should be left out of the report, given that they actually mirror these things in quantitative form?

A. But, you see, in order to cut my response, which I think you'd like to have here short, I would say, then, you are the only person who could not see it. Twenty-four other people could see it and they were the experts in the evaluation.

Q. I see. Well, can I bring you to page 45 of that document.

A. Yes.

Q. And can I bring you to Table 17.

A. Yes.

Q. And, in particular, can I ask you about the weightings which are set out in 17?

A. Yes.

Q. Are they the weightings which were as originally proposed or are they as amended? 10, 10, 10?

A. I'll try to explain how --

Q. First of all, would you answer the question and then explain. Are they the weightings that were being dealt with by Michael Vinter and the weightings that Ms. Nic Lochlainn recorded?

A. No, definitely not, definitely not.

Q. Sorry, are they?

A. Definitely not. You can see that they are different. But

they are in accordance with Maev Nic Lochlainn's note to the file.

Q. Sorry, you are saying they're in accordance with her note to the file?

A. You know, this morning, we went through two notes to the files, having discussed what went on in Steering Group meetings. Maev Nic Lochlainn, helpfully, made two notes to the file, and --

Q. We'll get them out now. The weights that are shown there, there is 30, 20, 18, 11, 7, 6, 5, and 3; is that right?

A. Yes, that's correct.

Q. And internally, is the 30 distributed in the same way as was agreed by the Project Group? It's 10, 10, 10, here, and I am asking you was it -- is it the same as was agreed by the Project Group?

A. I think so, yes. That's my recollection.

Q. You believe that the Project Group agreed 10, 10, 10, do you?

A. Well, let me put it in the following way: Maev Nic Lochlainn, she made a note to the file where she recorded the weightings attached to each criteria in paragraph 19.

Q. Yes.

A. Will you accept that?

Q. Yes.

A. Now, in only two instances these weightings had to be broken down. Concerning the first criteria, which I think we have been over some other days here, it read something like "Credibility of the business plan and the approach to market development." Now, she records in her file that this particular criterion carries a weight of 30%. Can you find that?

Q. It's there, yes.

A. It reads 30% -- it should read 30%. I admit it doesn't say "percent," but it's meant to be percent.

Q. No, no, we are assuming it's percent.

A. And it adds up to 100, anyhow, so I don't think --

Q. There is no argument between us on that.

A. What is here then, you know, in this report, you will see market development at 10, you will see financial key figures at 10 and you will see experience of the applicant. They were the three dimensions which were attached to this criteria under indent number 1. And you will see that in this Evaluation Report, this subdivision of 10, 10, 10, it transpires through not only the 3rd of October Evaluation Report, but it also goes on in the 18th of October report and also in the 25th of October report.

Now, coming to the technical part, you will see that Maev Nic Lochlainn, she quoted 20%, Mr. McDowell, she quoted

%, and that is also subdivided by 10, 10, here, and, yet again, you will see that these weightings, they were carried through the whole way, both in the 3rd of October and the 18th of October Evaluation Report, and finally, also, in the Evaluation Report on the 25th of October.

Q. And --

A. So what I would like to state here is that the -- some of the other weightings we were through are not correct. The correct figures are the correct figures which appear here consistently correct in the Evaluation Report, all these three times. However, in the appendix to the document which you have opened to one of the appendices, I believe it was Appendix 3, the figures added up in that figure to , we have been over this before, but that is one of the appendices to the report, and no scoring has been taking place on the basis of that wrong figure in that appendix. So in order to assist you in this examination, I just want to make you aware that that table was not correctly inserted, simply not correctly inserted. But I hope you will appreciate in your examination, Mr. McDowell, that when you look at Table 17, and you can also look at Table , because you have the same weightings there, in all three reports, 3rd of October, 18th of October and 25th of October, these three weightings, they are consistently the same.

Q. Do you remember at the Project Group meeting, an Evaluation Model was approved on the 9th of June?

A. Yes.

Q. And do you remember the weightings which were internally attributed to the -- to individual dimensions, internally how they were divided?

A. No, I don't recall it specifically.

Q. Maybe I should remind you, then, because we may be at cross-purposes in relation to all of this.

A. You are arriving at the 7.5, 15 and 10, and that's what you want to --

Q. Yes, exactly.

A. -- want to discuss with me. I am fully prepared to take that discussion, please.

Q. Now, would you indicate how this is reconcilable with those figures?

A. Well, the figures from the 8th of June, I don't see them as the correct figures.

Q. No, but the internal values that were given, 7.5%, 7.5 and -- 7.5, 10 and 15% were the top three figures, isn't that right?

A. Yeah.

Q. And how are they reflected in the first three figures here,

, 10, 10?

A. But I am telling you that I don't believe the figures, in the first place, were correct.

Q. Now, hold on a second. The group puts their mind to how they want to attribute the weights of the -- in June of ?

A. Yes.

Q. And they say, "no, we want to reallocate the weights in a particular way," and instead of having, roughly, 10, 10, 10 approach, they decide they will have 7.5, 15 and 10 as the allocation between these three weights, or criteria, isn't that right?

A. If they decided that, yes.

Q. They did decide that. Isn't it abundantly clear that they decided that?

A. But, you see, what I am telling you is that these figures were not correct.

Q. No, you are saying they didn't add up to 103, is that -- or they added up to 103, is that right?

A. That's correct, also, yes.

Q. But in what other sense were they incorrect?

A. But they are incorrect, in essence, that they record 7.5, and 15. That is --

Q. What was incorrect about a decision on the Irish civil servants -- hold on a second -- what was incorrect about it?

A. Well, I am drawing the simple conclusion that everybody has agreed that it was the 10, 10, 10.

Q. Hold on a second now. We'll come to that. If you want to finish, do.

MR. GLEESON: He must be allowed finish.

CHAIRMAN: I mean, I think you agreed, Professor, you didn't make the decisions. You advised, and if the group, perhaps unwisely, wanted to alter a weighting, I suppose you had to go with that?

A. I am trying to be as helpful as possible and I have failed to understand if we should have, you know, an awkward discussion about this. I am trying to present evidence based on what happened 15 years ago.

MR. McDOWELL: I accept that.

A. And I must reserve some kind of uncertainty, because otherwise I would not be, I would not be -- it would not be realistic to any person to recall exactly what happened this and that day and was it 7% or 7.5%, as we discussed with the coverage the other day.

Q. I am not suggesting that you have total recall. I am not suggesting --

MR. GLEESON: He hasn't finished his answer.

CHAIRMAN: We'll keep this calm and pleasant, Mr. Gleeson.

A. I very much appreciate that.

CHAIRMAN: This is an important aspect and I really do welcome your assistance.

A. Then I can be more helpful, Mr. Chairman. Thank you for this approach. What is very obvious to any reasonable onlooker here is that we have, in Table 17 and also Table , figures that, point one, add up to 100; two, are consistent with Maev Nic Lochlainn's note. And we also have the clear decision from 24 people involved here that these were the correct weightings. Now, I can fully acknowledge, if you want to chase up with me, if I may use that language, where is the audit trail and are there any inefficiencies in the audit trail here, and, at this point, I am trying to be helpful to you, Mr. McDowell --

Q. I appreciate that, Professor --

A. -- that there were wrong figures inserted, and I cannot, you know -- you know, it's 15 years ago. We have, at least, maybe 5,000 figures in this process, flowing around. We have, also, the case that we actually did not pay very much attention to some of these weightings, for the following reason: If people in the evaluation process saw the -- let me see. If it was extremely transparent, if I may use that expression, I know it's an unfortunate expression, but if it was fully transparent, let me use the word "nevertheless," then the evaluators could move on, based on a kind of tactical scoring. That if we now score this applicant with B instead of a C, more points will be earned, whatever.

So, as a project leader, I have two things to say to you here in evidence to help you assess this as examiner,

Mr. McDowell: One thing is that it's the -- the audit trail is not perfect, that's number one, but, as a project leader, I was not overly concerned because, as it went along, this process was not subject to what I call tactical scoring.

Q. Thank you for that. You say that the figures which were agreed in June were incorrect, and you say that, at some point, it was unanimously agreed that they were incorrect and that 10, 10, 10 would replace them, is that right?

A. Yes.

Q. Would you mind telling me the point at which this group which had varied the figures to the 7.5, 15, 10, decided unanimously to abandon that and to go for 10, 10, 10? Who was present and in what circumstances that decision was made?

A. Yes, but this is here where I am struggling with my memory, because I cannot give you an exact date, I cannot give you

an exact time. I cannot, 15 years ago, recall precisely who were present and stuff like that.

Q. Well, you have said everybody agreed with it?

A. And I am perfectly willing to be as helpful as I can, and it was helpful that you, Mr. Chairman, also supported that, but there is a limit as to how much I can drive out of my memory.

Q. Well, I appreciate that, but this is a very important point, Professor --

A. Yes.

Q. -- and I am not being nitpicking, because the source of the decision to go back to 10, 10, 10, is, the Tribunal, I am instructed, a topic on which they are deeply concerned, and I am asking you now to indicate, doing the best you can, 15 years after the event, who do you say made that decision and when, because you have said to me it was unanimously agreed, but who made the decision to go back to 10, 10, 10?

A. Well, this is what I am saying; I can try to speculate, but I have no clear memory of when that decision was taken.

What I can see is that these figures here, these weightings here and also subsequent -- also subsequent versions of this document, they appear to be the same. But if I am to try to assist you, you will appreciate that in one of the previous documents on the Evaluation Model, you have the , 10, 10 for the credibility of the business plan and the market development, and, in another, you have the 10, 10 for the technical, but it's in two different versions of that document.

Q. Yes, I think we have gathered that. But I am asking you, Mr. Vinter is operating on the basis of the figures which were agreed in June, doing his best with all his mathematical problems, he is doing his best with that allocation of weightings, isn't that right?

A. That's right, yes.

Q. And he is still doing it, he is still doing it well into September, isn't that right? All his -- in his charts, he never goes for 10, 10, 10, isn't that right?

A. He doesn't, no.

Q. So he doesn't think that they have been abandoned when he does the work which you bring to the meeting on the 9th of October?

A. Pardon? What's the question?

Q. When he did the calculations in version 3 of the quantitative analysis, he hasn't gone back to 10, 10, 10, has he?

A. No, he hasn't, that's correct, that's fully correct, Mr. McDowell. So I understand the problem you are seeing, I fully understand where you are coming from, but I hope

that you also understand that I am coming from a situation where I can see what the end-result was. I can see how it went along in the different versions of the Evaluation Report in October. But it would be highly unfair of me to come up with an exact date and exact time of a date and with an exact number of persons who have decided. I have made it quite open to you, because I want to be as helpful as I possibly can to this Tribunal, that there is an inadequacy here in the audit trail. I have not been able myself to find out precisely when that decision was taken, if a decision was taken. It could also be that it was just in my head that when we had the discussion back on the 18th of June, and Maev Nic Lochlainn made the note to the file that we, at that stage, had already agreed that it should be 10, 10, 10 and 10, 10, but I cannot --

Q. Let me stop you there --

A. Let me just finish.

Q. Excuse me, we can't go on forever on a stream of consciousness. I am entitled to ask questions and not to have a stream --

A. Then I'll stop. I am not, Mr. Chairman, trying to entertain a stream of consciousness; I am trying to be as helpful as I can. I have stated that it's not reasonable for -- to expect that I am able to recollect everything after 15 years.

CHAIRMAN: I appreciate that, Professor. You were just saying something about the Maev Nic Lochlainn dealing.

A. Exactly. And it may well be that we had already seen that, but that she didn't record the 10, 10, 10 and the 10, 10 concerning technical matters. I see, in evidence, that she has given evidence about the 10, 10, 10, 10, 10, five times, but what I am trying to say to you is, despite the fact that she has given evidence, I have no clear recollection of when that decision was taken.

Q. I appreciate that, and you have said that on a number of occasions, but I want to ask you a number of questions about it, Professor, notwithstanding that you have difficulties of memory. So just help me a little bit, please.

You would accept, I suggest, that to change the weightings after all the applications were in, would be a very serious step?

A. Both yes and no. What I said this morning to you was that if you look at all the documents and the remit the evaluators had, there was one clear obligation, and that was to respect the RFP document. Now, the RFP document states that there are some criteria and these criteria set out in descending order of priority. So coming to how I

believe the Department's mandate was when they executed this evaluation, I don't think there was any more specific mandate than to respect the descending order of priority of the evaluation criteria at paragraph 19. That having been said, however, it is very clear from the documentation that we have worked with weightings prior to the closing date, and that is also very clear from the two very specific notes that Maev Nic Lochlainn made to the file.

Q. Yes. I am suggesting to you, if you look at Book 91, and if you look at Tab 32 --

A. Sorry, could I have it, please? Oh, do I have it? Sorry.

Q. Tab 32. At that stage, Mr. Towey was sent a memo from Maev Nic Lochlainn, and she shows him the advice she had received from you on the 24th of July, and she -- you, in that, are suggesting a silent procedure to reallocate three points, isn't that right?

A. That is correct, that is what we went over this morning.

Q. And are you saying -- first of all, will you agree with me that the reallocation of weightings at that point was something which required to be carefully noted by all the participants?

A. Yes, that's clear --

Q. They all signed off on it?

A. That's clear from the audit trail, Mr. McDowell. We don't have to spend a long time about that. I have already said that. That's very clear.

Q. And I am suggesting to you that, at that time, it was everybody's understanding that it was 7.5, whatever, 7.5, and 10?

A. That was not my understanding.

Q. I see.

A. It was not my understanding.

Q. Well, did you think that Mr. Vinter was on a frolic of his own when he kept on applying these weightings in August and September?

A. I think that the challenge we have here with the audit trail is not so much Mikkel Vinter, because he was working in the dark on his own, so to speak.

Q. He was working with you, Professor?

A. Yes, but --

Q. He was showing you charts which you were seeing --

A. Yes.

Q. -- marked -- brought about, in your mind, a decision that a separate quantitative evaluation would have to wither away as a concept. You were looking at his charts and they were based on -- they were not based on a 10, 10, 10 weightings system at that point, and this is in late August/September of 2005 -- or 1995, sorry. And how can you say that it



wasn't your understanding at the time that Maev Nic Lochlainn received and carefully created a paper trail audit for your proposed changing, that that wasn't your understanding at the time as well, the same understanding that Mr. Vinter had?

A. Sorry, I don't understand the question.

Q. Okay. I have rambled on a bit so I'll put it succinctly. Mr. Vinter produces three reports for you, which you are very well conversant with now, you have studied them all and you are aware of the differences between them, isn't that right?

A. Yeah.

Q. And none of them reflect a 10, 10, 10 weighting as is seen in this draft report, isn't that right?

A. I think that's right, yes.

Q. And those date from late August to mid to late September --

A. 2nd of October.

Q. 2nd of October. Now, I am suggesting to you that it could not have been the case, even with difficulties of memory, that you thought at the time that the true weightings were , 10, 10; you'd have said, "Mikkel, you are getting this wrong every time. Would you mind getting the right figures down"?

A. Yes, but what I have said is that we didn't proceed with that evaluation, so it was, you know -- it doesn't appear to have been very significant with these weightings.

Q. Well, we'll come to the significance in a moment, Professor Andersen, but the first thing --

A. The significance of Mikkel Vinter's weightings.

Q. Sorry, he was actually carrying out the only, as I understand it, the only efforts at quantitative evaluation that anybody was carrying out at this point, is that right?

A. Yes, that's right.

Q. So it was significant how he applied the agreed weightings to his figures, wasn't it?

A. In particular, if the report was going to be finalised, but the report was never finalised, and what appears from the minutes and the audit trail is that I could not see, in my preparation for this evidence, that his weightings were very actively discussed, but what I could see is that, at Steering Group meetings, the weightings inserted into the Evaluation Model document, they were discussed from time to time.

Q. Were they not discussed, Professor Andersen, at the 4th of September meeting? Were they not carefully discussed at that meeting? And if it had been that everybody in that room thought we are on a 10, 10, 10 model, surely they'd

say, "Mr. Vinter, where are you getting these figures from? Where did you conjure up these figures from?"

A. Aren't we mixing up the Evaluation Model document and then his document?

Q. No, we are looking at the absence of any 10, 10, 10 weighting on his document and we are looking at his allocation of marks based on a different weighting, which you are now saying you don't think was correct at all?

A. But I am saying to you we have the 10, 10, 10 in the Evaluation Model document from May 9, 1995.

Q. We have a clear record that that was changed in June.

A. Yes.

Q. And when did it change back?

A. This is what I have tried to say to you, that if you look at the Evaluation Report on the 3rd of October, Table 17, the figures are -- the figures inserted there, they are the correct figures.

Q. But you say that, and I ask you why you say that? And you say they could have come from your own mind or they could have come from somewhere else, but you say that they are the correct figures. Why do you say that they are the correct figures?

A. I say that they are the correct figures because if you walk through the three versions of the evaluation document, the 3rd of October, 18th of October and 25th of October, they all remain constant, these weightings. So when the entire Steering Group and also the consultants looked at that, you have so many people looking at these figures and all agree that these are the correct weightings.

Q. I see. So it follows, from what you are saying, that at sometime after June 1995, it was agreed to revert to the 10, 10, 10 weighting by everybody, but you can't remember when it happened?

A. Exactly. I am trying to be helpful and say there are -- I cannot see in the -- in minutes, or elsewhere, when it was specifically adopted, and I have also stated to you that I cannot clearly recollect a point in time when that was. I hope -- I am trying to be as helpful as I can.

Q. The mystery, I have to put to you, about all of this, is that Mr. Vinter seems to have carried on on autopilot from June with the figures that had been agreed by everybody in June and nobody suggested to him that he should put in 10, 10, 10 in his document?

A. If that is correct.

Q. Isn't that so?

A. Maybe, maybe.

Q. On the 4th of September, they look at Mr. Vinter's evaluation and they -- all of them consider it carefully

and nobody says "Sorry, Mikkel, you have got this wrong. We agreed sometime since last June that we should be on a , 10, 10 allocation of marks"?

A. But, you see, here, I would then have to, when you pursue this so consistently, say that this is what you can have as a working hypothesis in the Tribunal legal team, that something was utterly wrong, the process was totally flawed, whatever. I am saying something different. I am trying to be as helpful to this Tribunal as I possibly can. I have stated that this is a hugely complex process. We have weightings which were agreed by 24 people as the correct weightings, and therefore, I fail to understand why, you know, you will bring to the table that this is not correct.

Q. First of all, I have to tell you that, on my instructions, the Tribunal has no working hypothesis that you claimed, that Persona won this competition. That's the first thing. I just want to tell you that.

The second thing is that --

A. I didn't say anything about Persona. I am talking about weightings.

Q. Yes. Well, the working hypothesis that the Tribunal has is that there is a very inexplicable reversion suddenly to 10, , 10, in October of 1995, and the working hypothesis of the Tribunal is that two Irish public servants have given evidence that they went to Copenhagen and met you on or about the 28th of September, 1995, and that that's where they believe this 10, 10, 10 emerged for the first time. That's the working hypothesis the Tribunal is working on at the moment because that's their recollection.

MR. GLEESON: There are about three or four questions in that submission. Are we going to break it down or just leave it?

Q. MR. McDOWELL: First of all, do you say there was no such meeting with Mr. Brennan and Mr. Towey --

A. I think --

Q. -- in Copenhagen?

A. I think we were over this the other day, so I can only reiterate what I have said. I have said that I have no recollection of a meeting in Copenhagen on the 28th of September. I will not reject the possibility of a meeting taking place, but, according to my calendar, and that is what I have done in order to prepare my evidence, to look into my calendar, I was in Sweden that day, and Jon Bruel, as I also told, I believe it was on the first day we discussed this, he also confirms that he has no recollection of such a meeting. But just because I have no recollection of a meeting taking place 15 years ago, it

doesn't mean that it didn't take place. And as I have written in my response to the provisional findings, I have the clear note that Martin Brennan, as a response to my Memorandum from the 21st of September where I requested a PTGSM meeting, that he was going to Copenhagen in another context, so it would be adequate for him to have a meeting, but, however, I recall -- I made evidence that I recalled it as a telephone conversation. That is what I can recall. But I do not reject the possibility of a meeting having taken place. I hope that's consistent with what you have recorded as my evidence.

Q. Bearing in mind, and in fairness to them, as I understand it, they clearly recollect that they went to Copenhagen on that day, and one of them went home via Brussels and the other went home directly to Ireland. That's my understanding.

A. Okay, okay.

Q. Via London, rather, to Ireland.

A. But as I said, I have also in my notes from previous that they were to attend a meeting in Copenhagen in - was it European telecommunications organisation? Or one of the other -- international organisations.

Q. And how, in terms of time, does that meeting relate to your first draft report, if it did happen? Just accept for a moment that the meeting did happen. It seems to have been five days before your first draft report was due, is that right?

A. Yes. You have given the answer yourself. It relates to five days before.

Q. And I take it that this report was at an advanced stage in your mind on the 28th of September?

A. It was at some stage. Whether it was advanced, I have no clear recollection, Mr. McDowell, you know, how many percentages of the report that were ready at that stage, but it was a work in process, yes.

Q. I mean, you were working towards an October 3 deadline, isn't that right?

A. Exactly.

Q. So you'd need to have done a good amount of work by the 3rd of September if you were to meet the deadline that Mr. Brennan had fixed for you, isn't that right?

A. Exactly.

Q. And what I am suggesting to you is, that it was at this stage that the decision of June 1995 was apparently reversed, and that in the text you produced on the 3rd of October, 10, 10, 10 became the allocation of weightings?

A. Well, I would like to state two things here: One is that that is not in accordance with something I can recollect,

that's point number one. And point number two: What you are suggesting, I don't think that that is found in some of the underlying documentation, because if you look carefully at my Memorandum to Mr. Martin Brennan from the 21st of September, I carefully -- it's a document which goes over several pages, and there is no discussion on the weighting, as far as I recall, in that document. But it would be helpful to open it so that we can check.

Q. It's Tab 47 in Book 91. On the 21st of September, you wrote to Mr. Brennan in the following terms, you said -- Mr. Brennan and Mr. Towey, and you cc'ed it to your own team members.

"Work programme for the next approximately 10 days.

"Some calculatory and graphical work" -- sorry, the first section is section A, the remaining award of marks to the dimensions.

"Some calculatory and graphical work needs to be done concerning the tariff dimension. Michael Thrane has the initiative to circulate the resulting graphics and suggests an award of marks to the new indicator as well as to the tariff dimension as a whole. Deadline: Monday the 25th.

"Concerning the dimension financial key figures, the existing calculatory work needs to be checked and reviewed by Michael Thrane/Jon Bruel as well as Billy Riordan and MT, together with BR to suggest a revised award of marks on the basis of reviewed figures. Deadline: Wednesday the th.

"The reports on the radio network architecture, capacity of the network, performance guarantees, frequency efficiency and coverage, have been concluded.

"In addition to the reports on the tariff and the financial dimensions, the market development report is to be finished by Michael Thrane. The report on roaming is to be finished by Maev Nic Lochlainn, and the report on experience is to be finished by" yourself. "These reports should be finally drafted no later than Wednesday the 27th.

Then you go on to "Scoring of the marketing aspect, financial aspect and other aspects.

It is suggested that the award of marks to the remaining aspects is decided at a meeting, Thursday the 28th."

Now, that's your suggestion.

A. Exactly.

Q. "The meeting may be either a conference call or a meeting in Copenhagen.

"The scoring of the financial aspect will be self-explanatory, whereas we need to consult each other concerning the scoring of the marketing aspect.

"Concerning the award of marks to the other aspects, we

suggest to proceed as follows:

"1. We need to make some risk investigations, of which the following are proposed.

"A1. No major risks are identified yet except for the Detecon issue and the potential conflicts in decision-making among three operators."

That's A1. That doesn't concern us.

"A2. Non-conformance with EU rules, procurement of equipment terminal subsidies to be investigated by TI, lack of understanding re European standards and technical matters to be documented by OCF and solvency ratio, together with the equity of Comcast and its Irish partners, have been identified as some of the risks. All risks taken together, the A2 application has a low degree of credibility and, for that reason, it is the present view of the Andersen team that we could not recommend that the GSM2 licence is awarded to the A2.

"The equity of Sigma and ESB is to be documented by Jon Bruel and Fintan Towey, and the potential abuse of dominant position or lack of competition due to relationships between, on the one hand, Motorola and Sigma, and, on the other hand, Telecom Eireann, has been identified as risks.

"In relation to A4, non-conformance with EU rules re procurement of infrastructure, unrealistic traffic assumptions, lack of understanding re European standards and technical matters to be documented by OCF and the approach to planning permissions are some of the identified risks.

"A5. Three years of negative solvency, combined with a comparatively weak financial strength of Communicorp Group, is identified as a risk. In addition, it might be a risk factor that A5 is to establish its own radio (backbone) network (OCF), but A5 seems to have a comparatively high degree of preparedness.

"A6: Possible non-conformance with EU rules, procurement and terminal subsidies and to be further investigated by TI, lack of Irish touch (MMA). In addition, it has been identified as a risk that A6, in its base business case, comes out with a negative IRR under some of the sensitivities identified.

"Other risks might be identified and dealt with later in the process.

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

"If there is no immediate unanimity, it is suggested to score the other aspects of the dimensions under this heading.

"A decision has to be taken at the meeting of the 28th of September."

I mean, there is no doubt that you are putting it up to them that the 28th of September is the day on which these matters have to be dealt with --

A. That's why I wanted you to refer to this document, so that we can look into it.

Q. Then the next one is "The grand total is to be scored at the meeting 28 September." Isn't that right?

A. Yes.

Q. And that that was -- can I just ask you at this stage, Professor Andersen, did you envisage, when you said a meeting, did you envisage that the Project Group would meet in Copenhagen, or did you envisage that the -- they would attend a phone -- a conference phone call from Dublin together, or did you envisage that you were going to deal solely with the two addressees of this letter?

A. Can I say two things here? One thing is that you are walking through this document on my initiative in order to sort out whether the weightings, the 10, 10, 10, was described by me, so that was the reason why we went through it.

Q. I appreciate that.

A. That's number one. Number two is, of course, I would like to answer your question. It was envisaged by me that it should not be the two persons; it should be the entire Steering Group. I don't know whether that is stated. But maybe you can help me.

Q. We are coming up to 4 o'clock and I am mindful of your aeroplane commitments and maybe you'll want to think about this. But maybe that's a good point at which to break, because I'll have to consider the answer you have just given me.

CHAIRMAN: I think -- it is not, I think, an important point, Professor Andersen, but you made one reference to 24 people having looked at weightings. I had thought you had seven consultants.

A. Seven consultants.

CHAIRMAN: And there were ten people on the PTGSM. I am not making a big deal of this...

A. Oh, yeah. Maybe as formal members of the PTGSM, you are probably correct, but there were other people seconded, there were other people also from the Irish side, Irish civil servants present, secretaries and minutes of meetings and stuff like that.

CHAIRMAN: Well, I am not making much of it. It's a somewhat tabloid sort of matter. Thank you for your assistance this week, Professor. I wish you a safe flight and the last week of your evidence we'll take up at 10 o'clock. I'll provide that you have a break mid-morning and mid-afternoon, with a view to satisfactory completion next week.

THE TRIBUNAL ADJOURNED UNTIL MONDAY, THE 1ST OF NOVEMBER,  
, AT 10 A.M.