

THE TRIBUNAL RESUMED ON THE 1ST OF NOVEMBER, 2010,

AS FOLLOWS:

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

CHAIRMAN: Thank you for your punctual return, Professor.

I hope it was not too much of a rush getting home and back.

A. I have looked forward to this today, thank you.

Q. MR. McDOWELL: Professor, just briefly before we get back to where we were on Friday, there was one little bit of housekeeping I wanted to do with you, and that is, do you remember you said you'd get the invoices, the invoices in respect of the legal services, have you brought them?

A. Yes, I have brought them. They are in Danish, unfortunately, so I think they should be translated, or whatever.

Q. No, it's all right. If you can arrange for your solicitor to give them to Mr. Brady in the Danish form, that will be fine by us.

A. My solicitors -- my legal team have them.

Q. Yes, good. Well, I'd ask that they are given to Mr. Brady, because I want to deal with them, if I can, today.

Now, we were on the fax that you sent on the 21st of September to Martin Brennan and Fintan Towey, and you had indicated to the Tribunal that you anticipated that the meeting you were seeking on Thursday, 28th of September, which was a week after the fax date, would be in

Copenhagen, isn't that right?

A. Either in Copenhagen, actually, or in a conference call.

By the way, I don't know, is there a fax cover-sheet to this Memorandum?

Q. I don't know, but it seems to be at the top, it seems to be -- it seems to bear a date: 22 September, 1995, 13.28.

A. Yeah, okay.

Q. And you also indicated to the Tribunal that you envisaged at that time that it would be a meeting of the PTGSM; is that right?

A. Yeah, that's my recollection and that's why I would like to see the -- if there is a fax cover on it.

Q. And may I ask you, as well, in that context, did you envisage that the entire PTGSM would either come to Copenhagen or engage with you on a conference call, is that what you envisaged?

A. Yes, that was my intention.

Q. Well, it certainly was not your intention that you'd have a meeting between yourself, Jon Bruel, Martin Brennan and Fintan Towey; it wasn't a four-person meeting?

A. Well, if I couldn't get a PTGSM meeting, for whatever reason, then that would, maybe, have been the second-best solution. You see, it flows through the Memorandum which you read into the record, part of it, half of it, on Friday, that a lot of work is going on. I think it may also be helpful for your understanding of the process that there was so much work to do. So my focus in this was to get to a draft report on 3 October, because I was contractually bound to come with a first draft version of the evaluation on 3 October. So that was my clear focus.

Q. Yes. And in support of your view that -- in support of your view that the -- you envisaged it being a process in which the entire group would be involved, if you look at the second page of that fax and the bottom five lines of it, you say: "If there is a clear understanding between the Department and AMI of the classifications of the two best applications, it's 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 and the dimensions under this heading. A decision has to be taken at the meeting of the 28th of September."

So you did envisage a unanimous decision being made on the 28th of September, isn't that right?

A. Yeah, that's what I am asking for.

Q. And although you say you have no recollection of any meeting taking place on the 28th of September in Copenhagen, it must be, must it not, that something was done in response to that fax, because the issues that you raised in it had to be dealt with, one way or another, isn't that right?

A. Definitely. I fully accept that. And I also think I have stated as clearly as I can that I do not reject the possibility of a meeting, but, 15 years ago, I have to make reservations and not try to reconstruct my memory, if you understand. I don't want to do that. And it's, you know, A) the entire AMI team, they were working -- we were

working days and nights at that time to finalise the work, so I don't think it was -- if something transpired in Copenhagen, it would probably not only be me and Jon Buel, but maybe, also, other consultants from AMI side.

Q. Yes, and the last line there on the screen, and on the page, is: "The grand total is to be scored at the meeting of 28th of September."

This, clearly, was not just an intermediate meeting; this was the very serious meeting that you were envisaging happening, isn't that right?

A. Well, I do not want to under-stress and not over-stress either the importance of these things. I think it has to be read into the context of me, as a team leader of the consultants, trying to pressurise my client to allow me to finish the work or to progress the work.

Q. I fully understand that, because you are saying in the third-last line there, "A decision has to be taken at that meeting," and you are very clear that the grand total is to be scored at that meeting. So, in effect, that meeting, when you wrote this fax, at any rate, whatever happened later, you envisaged that meeting being the -- probably the most serious and conclusive meeting of the process, isn't that right?

A. No, no. That is why I think it's over-stressed.

Q. Okay. Tell me why that's not fair?

A. That's not fair if it transpired that it was not a Steering Group meeting, because I would envisage that whatever work that was done by the consultants and put into the a report, the most important meeting I could envisage was when the

Evaluation Report was to be adopted.

Q. By the Steering Group?

A. By the Steering Group. So, in my perception of importance in the context of such meetings and such activity between a client and the consultants, the most important thing for me would definitely be when the reports were to be approved or disapproved, or whatever.

Q. Yes, but I have got to suggest to you, you have told us already, and I presume you are not going back on it, that you, when you sent that fax, envisaged that the meeting of the 28th would be of the entire Steering Group, that's what you told us?

A. That was what I called for.

Q. Yes, and that's what you envisaged, isn't that right?

A. Maybe, maybe not, because what we are talking about here is a consultant trying to pressurise his client to come up, you know, with as much as possible. You see, I am, principally, demanding a Steering Group meeting in Copenhagen, but knowing, knowing how it was in 1995 here in Dublin with civil servants, it might have been so that it was an unrealistic expectation on my side. You will recall that they have to apply for flight tickets, and so forth, in a bureaucratic procedure in order to go abroad. They had no mobile phones, etc. It was not as it is today to go abroad for these civil servants. So, maybe, maybe it was a bit unrealistic of me to expect that there could -- that a full Steering Group meeting in Copenhagen could transpire.

Q. Well, so you are qualifying what you said on Friday. You said on Friday that you expected it would be the full Steering Group; now you are saying that this was an

unrealistic expectation, is it, or desire, or whatever?

A. No. I think what I said on Friday was that I called for a PTGSM meeting. I didn't say that I expected it.

Q. I don't want to contradict you. I think, on Friday, you led me to believe, certainly, that you envisaged that it would be a meeting of the entire Steering Group when you sent that fax.

A. Okay. But --

Q. Is that not what you said?

A. Then so be it. If I have said it, I have said it. I don't want to dispute that. But what I am saying is that I am calling for something which is demanding for my client to live up to.

Q. I see.

A. Yes, let's have it.

Q. I said -- and this is at page 120 of Friday's transcript.

You said, "And that was" -- it starts with Question 435:

"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 this -- that they would attend a phone conference call from Dublin together or did you envisage that you were going to deal solely with two addressees of this letter?" And you said -- you answered me initially, you said, "Can I say two things here: One 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 we went through it." And I said, "I appreciate that." You said, "That's number one. Number two is, of course, I would like to

answer your question." "And you continue: "It was envisaged by me that it should not be two persons, it would be the entire Steering Group. I don't know whether that is stated, but maybe you can help me."

That is what you said on Friday.

A. Okay.

Q. And I am just wondering why you say today this is a bit unrealistic of you?

A. Well, I am stating it because obviously a Steering Group meeting did not transpire. So I think what I am -- what is fair here is to reflect on why didn't it transpire. Maybe it didn't transpire because it was an unrealistic expectation.

Q. I see. But it was an expectation. You are using the word "expectation" now and --

A. Or a call. Maybe it was an unrealistic call for me.

Q. I see. Now, would you have expected the Project Group to be informed of the substance of that fax when you sent it to the two addressees, or was it for their private information?

A. I think that the work pressure, the workload was so high and so intense at this stage that I would not have many expectations seen from a helicopter perspective as to how this was processed.

Q. Well, let's --

A. So it's a client/consultant communication. It is clear from the contract I had, or AMI had with the Department, that the Department was the client. So, in the first place, it is in order to progress the work with the acceptance of the client.

Q. Well, Professor Andersen, you have just told us that you did expect -- you did anticipate that there would be a meeting of the entire Project Group on the 28th of September, and I am asking you did you believe that when you sent that fax, that it would be kept private to the two addressees and would not be communicated to the other members of the Steering Group? I am asking you about what you thought happened. Forget about being in a -- would happen, rather; forget about helicopter perspectives.

A. I would have full confidence that my client would take care of it in a manner as was consistent with their view as to how this should be processed. I am here to get the input from -- as a client to them, to my work process.

Q. I see. You see, I am asking you, Professor Andersen, really, whether, if you did, as you said earlier, envisage that the entire Steering Group would meet on the 28th of September, whether by conference call or in person in Copenhagen, if that was your expectation, how you could possibly think that it would have been appropriate for the two addressees of this letter not to circulate it to the other members of the Steering Group, given that it set out what you anticipated would happen at that meeting?

A. But I don't know whether they have circulated it or not.

Q. That's the whole point. I am asking you why would they not circulate it? Why would you not expect them to circulate it if you were not, in fact, asking for the whole Project Group to get together on the 28th, either by conference call or in person in Copenhagen, to carry out the business that you envisaged and set by way of agenda in that letter?

A. But are you telling me -- I need to know that -- are you

telling me that they didn't circulate it?

Q. Yes, I am.

A. Okay, because I am struggling to understand where you are coming from.

Q. Well, I am just asking you what your expectations were of the letter?

A. My expectations would always be that once the report was drafted, then it should be approved or discussed in the Steering Group, because that is said in the contractual letters, that I had an obligation to produce a report taking into consideration the views of the Steering Group.

Q. Yes, so now, can you tell me now, reflecting on that, and I have informed you that it wasn't circulated to the other members of the Steering Group, can you tell me was that in accordance with your expectations, when you sent that fax, that it would be kept private to the two individuals and that they would come to Copenhagen themselves?

A. No, I don't know what my expectations were 15 years ago.

Q. Well, we do know that your expectation was that the entire Steering Group would get together on the 28th of September, whether in conference call or in Copenhagen, isn't that right?

A. That's what I have -- I thought, when we opened this document, I thought it would have been stated explicitly that I called for a PTGSM meeting. It is not stated explicitly, but as my approach would have been, I could -- I have said, also, on earlier occasions, that what I recall is that there were some telephone -- there were some telephone conference calls and I would be a kind of consultant who would like to put pressure on my client in

order for me to progress the work. But whether my client would then deal with that unilaterally between the Department and myself or whether my client would call the Steering Group meeting or would have some kind of silent procedure, whatever, that was definitely not in the top of my head at that stage. I was so focused on getting the work done.

Q. So is it -- I mean, I don't want to in any way fence with you unnecessarily. Are you now saying that it was a matter of indifference to you whether the whole Project Group engaged in the process of -- attended the meeting where the grand total was to be scored and where the decision was to be taken, it was a matter of indifference whether the whole Project Group attended that or just two representative of the Department?

A. Definitely not. That is not what I am saying. What I am saying to you, based on my recollection 15 years ago and having read these documents, is that, principally, I would have looked to have a Steering Group meeting, because otherwise, otherwise some of what is in here would not have made sufficient sense.

Q. And looking at the last line there, "The grand total is to be scored at the meeting of the 28th of September" --

A. Exactly.

Q. -- surely you weren't envisaging that that would be done by four people?

A. No.

Q. So it does follow that the meeting of the 28th of September was not to be one, in your mind, attended only by four people?

A. Four or six, or whatever the number was, but at least a meeting without the whole Steering Group being there. And I think if I can just make reference to what we have said earlier, AMI did not score the applications, so when there is a notion here, which you have read aloud a couple of times, that the grand total is to be scored, you can see me, as consultant, or AMI as a consulting firm, trying to put pressure on the client, saying "You need to score this."

Q. I see. But let's be very, very clear, because I don't think there is any point in walking around this issue, let's cut to the chase: You did not envisage that there would be a meeting in Copenhagen involving four people at which the grand total would be scored, is that right?

A. That was at least not my starting point, that's correct.

Q. Well, did it ever become your end point, that you were agreeable to the grand total being scored by four people in Copenhagen?

A. Well, that is indirectly what you are telling me, that it became the end point.

Q. I am asking you did it ever become your end point? Did you ever agree to that process, that the grand total would be scored by four people in Copenhagen?

A. If it were the end point, I would have had no other option than accepting it if I were to progress the work and finalise a draft report on the 3rd of October in accordance with my contract.

Q. Would that have been -- well, you would have done that reluctantly, I assume, bearing in mind what you have told us?

A. I would have done it on a kind of pre-emptive basis in a sense that the contract I had with the Department, in the additions there, quite clearly stated that the report should take into consideration the views of the Steering Group and it was also clear from the process that it was not AMI, but it was the Irish civil servants who scored.

Q. That's the whole point, isn't it? If it was the Irish civil servants who were going to score all these subtotals and totals, it would be remarkable, indeed, if only two of those civil servants, in fact, carried out that function, bearing in mind that they had set up an elaborate Steering Group, isn't that right?

A. No, because maybe you are overstating the importance here, because the scoring had taken place over a longer period of time and I think that there was no real uncertainty left here, or no major uncertainty left here in the process.

Q. I see. Now, can I bring you to the last page of this fax in which you pose, at paragraph (f), questions to the Department.

A. The last page, yes.

Q. And you say, "AMI has the following questions to the Department:

" -- should the identified meeting September 28th be conducted by means of a conference call or a meeting in Copenhagen?

" -- does the Department wish to score 'other aspects'?

" -- given the time-frame and the fact that we are not yet

ready to begin the drafting of the report, will it be acceptable for the Department that AMI produces a non-edited report to be received by the Department by fax late October 3rd?

" -- how do we integrate the quantitative evaluation in the report (we prefer to leave this question unanswered until we have the final results)?"

Can I stop you there. "We," I take that's a reference to AMI, is it?

A. That's correct.

Q. "... prefer to leave the question" -- of how you "integrate the quantitative evaluation in the report...unanswered until we have the final results." Would you explain that?

A. I can explain what actually transpired.

Q. No, just explain than sentence, what you meant by it.

A. Yeah, but you are asking me to try to explicate things --

Q. I am asking you, Professor -- sorry, Professor, I have to interrupt you. I am not asking you to explain what transpired. We have heard you on that.

A. Okay.

Q. I am asking you what you actually meant when you put that clause into that letter?

A. Well, what I meant is what is said here, that we prefer to leave this question unanswered until we have the final results. This means that I am asking my client to progress the remaining work also on the scorings, and then when we are going to present the results, we will decide how to integrate the quantitative evaluation in the general

presentation. That is how it reads.

Q. And you say, "We look forward to receiving the answers and will proceed as stipulated in this Memorandum."

A. Mmm.

Q. So you were asking the Department, or the two people in the letter, you were informing them that this is -- this was how you proposed to deal with the matter, isn't that right?

A. That's correct. I think -- I don't see any inconsistency with that in a sense that I am working on behalf of AMI, having a client in the Department, and we simply need to get answers to some of these questions in order to progress the work, otherwise I would not be able -- if I didn't have the answers to these questions, it would be difficult for me to progress the work and deliver according to the contract.

Q. Now, could I bring you to the next divider, which is a letter from Professor Michael Walsh, the Managing Director of IIU?

A. Yes, I am not sitting with the binder so I need to have the --

Q. I am sorry, it's 48. This is a letter from Michael Walsh to Martin Brennan in the Department, dated 29th September, , indicating that his company -- referring to the recent presentation by the Esat consortium to the Department in relation to their proposal for the second GSM cellular mobile phone licence, referring to what happened during the presentation, and saying that "This company, IIU, had arranged underwriting on behalf of the consortium for all of the equity (circa 60%) not intended to be subscribed for by Telenor. In aggregate, the consortium

now has available equity finance in excess of £38 million.

"We do not foresee any additional need for equity.

However, we are confident that if such equity is required, we will not have a difficulty in arranging it."

Now, did you ever see that letter at any relevant time before this Tribunal started up?

A. No, I don't recall having seen that letter.

Q. And --

A. So I don't think I have seen it.

Q. And were you ever told about it by the Department?

A. I don't recall being told.

Q. And we know that Mr. Brennan writes back, at the next divider, 49, to Denis O'Brien, returning the letter which he received from IIU, and he says, "I refer to the ground rules of the competition as outlined at our recent meeting with you on Tuesday, 12th of September. The Department has already made it clear that applicants shall not be permitted to provide any further material to supplement their applications, except where expressly requested to do so by the Department.

"Accordingly, the additional material received from you on Friday last is enclosed herewith. It shall not be taken into consideration in the evaluation process."

Does that accord with your memory, that no such -- no weight or no knowledge of that was put into the process?

A. Yeah, that would be in accordance with my view that such a

letter should be sent immediately, yeah.

Q. I see. Now, you worked on a draft report, you were working away on a draft report to be submitted by the 3rd of October. That was your contractual deadline we heard from you on Friday, and today, that was -- you regarded that as an important date to get the draft in, isn't that right?

A. Yeah.

Q. Looking at your fax of the 21st of September, do you believe that the draft report that you did furnish on the 3rd of October could have been written without some meeting of the kind that you envisaged happening in the intervening period?

A. It could have been submitted without a meeting, but then there should have been a telephone meeting. I don't know whether you distinguish --

Q. A telephone conference meeting.

A. Yeah.

Q. But you envisaged that, before you did your draft report, that there would be another meeting of the Project Group, isn't that right?

A. Yes, and I think, you know, even if such a meeting had transpired, which it obviously did not, but if it had transpired, there might even have been a necessity for other kinds of contact between me, as a client, a consultant, and the Department. I hope you will appreciate that there are so many questions in this, that you cannot just solve this very quickly, so there would have been -- it would have been quite normal, in a process like this, that I had contact with my client from time to time.

Q. I see.

A. If not every day, then, let's say, every second or every third day.

Q. But you are not suggesting that there was a teleconference in the interim at which the Project Group and yourself carried out the functions that you had envisaged for the meeting of the 28th of September, in your fax of the 21st of September?

A. Well, I think I have said that I struggle with my recollection but that I am quite certain that some telephone conference was there.

Q. Of you and the entire Project Group?

A. No, not of the entire Project Group, no.

Q. Could it be just a telephone conference on your account between yourself and Mr. Towey and Mr. Brennan?

A. For instance, for instance, and there could also be other AMI consultants present and there could also be Maev Nic Lochlainn, for instance.

Q. We know that you -- we know that you submitted, and if you could now go -- if I could bring you to Book 93, please.

Could I bring to you page -- first of all, could I bring you to indent 4 and page 40.

A. Page?

Q. 40. This is an analysis of sensitivities, risks and credibility factors, do you see that?

A. Yes.

Q. By the time you wrote that chapter of the draft report, wouldn't it have been necessary that you would have had to have come to a view as to whether you were or you were not going to score the additional items, the very issue that you raised in your fax of the 21st of September?

A. Yes.

Q. So there must have been some discussion and some agreement with somebody in the Department that led you to the belief that you weren't going to score some of these sensitivities, isn't that right?

A. Yeah, I fully agree.

Q. And we know that this was not a meeting with the entire group because no such meeting took place?

A. Yes.

Q. So does it follow from that, that it's, in all probability, arising from a discussion with Mr. Brennan and/or Mr. Towey?

A. Not necessarily, because risks and sensitivities was dealt with also by Billy Riordan and Donal Buggy of the Department and was also dealt with by Jon Bruel and Michael Thrane of AMI.

Q. So you think it could have been with Mr. Riordan that the agreement not to score these items was arrived at?

A. He could have been involved in it, yes.

Q. I see. Now, again, on page 43, there is a reference, it says: "This report aims at nominating and ranking the three best applications on the basis of the evaluation. This has been conducted by four different models, which can briefly be summarised as follows:

"1. The results on the basis of the evaluation of the marketing, technical, management and financial aspects (qualitative award of the marks).

"2. The results on the basis of business case

sensitivities, risks and credibility issues (qualitative assessment).

"3. The results on the basis of a regrouping of the criteria (qualitative award of marks).

"4. The results on the basis of the application of a quantitative scoring model (conversion of marks to points).

"5. A last comparison of the best applications."

That's the procedure that you believed had been agreed at that point, that the evaluation would be done by four different models, is that right?

A. Yes.

Q. And may I bring you then to the next page, where we have paragraph 5.1. You say:

"Prior to the closing date, the criteria" -- sorry, it's on the same page, it's the introductory material.

"Prior to the closing date, the criteria outlined in paragraph 19 of the RFP document were grouped as marketing aspects, technical aspects, management aspects and financial aspects, as a logical and consistent continuation of the tender documents, including the requested structure laid down in the tender specifications. In addition, a number of dimensions were identified in order to properly cover each aspect. Furthermore, a number of so-called indicators and sub-indicators have been defined in order to

cover the dimensions."

And we go, then, to the next page, and we see a table, 16.

Is that right?

A. Yes.

Q. And I have a more legible copy of it up on the screen, and perhaps -- I don't know whether you have a copy of it because --

A. I can see it. Thank you.

Q. And you have set out in a tabular form there the letter grades attributed to each of the contestants under the various dimensions, isn't that right?

A. Yes.

Q. And if I could just ask you to go over the page to page 45 for a moment, to a second table in paragraph 5.3. Do you see the table there?

A. Yes.

Q. And there you have, actually, a similar table based on a regrouping of the criteria in which you have gone back to the 10, 10, 10 weighting that we were talking about on Friday, isn't that right?

A. I don't know what you mean by "gone back to".

Q. Sorry, you have it. You have inserted 10, 10, 10?

A. Yes, and it's not -- sorry, just in order to be concise, it's not the criteria but it's the dimensions that are listed here.

Q. Yes. And each criterion, I mean, for instance, if you are looking at -- let's take A3 and A5 for a moment, A5 has an A there in market development and A3 has a B?

A. Yes.

Q. And that difference between them was going to be weighted by reference to a weighting of 10 for that category, isn't that right?

A. Yes.

Q. And likewise, the next one, where A3 is equal to A5, they are both Bs, and again, 10 was the weighting given to that situation, isn't that right?

A. Correct.

Q. And if we come to the experience of the applicant, A3 has A and A5 has B, isn't that right?

A. Yes.

Q. So, on one view, just stopping there, both of them have two Bs and an A, isn't that right?

A. Yes.

Q. And each of the letters has been given the same weighting by weight of 10, isn't that right?

A. That's correct, yes.

Q. And therefore, just stopping at that point in the analysis, they were both equal?

A. No, you couldn't say that.

Q. Well, they were getting the same -- the A had the same value in each, is that not right?

A. No, because here you would not take -- in your way of approaching this, you would not take into consideration what we discussed on your second day of examination; namely, that when we deal with this scoring by way of letters, you would have some, what I call it, confidence interval around each letter. So you could have a big -- you could have a big A and a small b, for instance. So, just, you here quote one A and two Bs for both A3 and A5

respectively. You could not arrive at the conclusion, as you now seem to do, that they are then totally equal.

Q. You couldn't be sure of that?

A. No.

Q. I see. But if, instead of having 10, 10, 10 on the left-hand column, you had weightings of 7.5, 7 and 18 respectively -- 7.5, 15 and 10 for the first three --

A. Yes.

Q. -- it would certainly be significant, wouldn't it, if different weightings were applied?

A. Now, there are two things in this. One is what you mention as the 7.5, 10 and 15. And then you say it's significant if different weightings are applied. Now, to me, that's two different things, and I just want to freeze the picture here.

It may have made no difference, if you distinguish between , 10, 10, and 7.5, 15 and 10, it may have made no difference, depending on how the underlying scoring was related to were they big As or were they small As? So that's one thing. But a second thing I want to make you aware of here is that you say it is significant when you change weightings. You know, if the weightings were wildly different, you know, it may be -- it may have been significant, I don't know

Q. A weighting of 7.5 is exactly half of a weighting of 15, isn't it?

A. That's correct.

Q. And it's hardly likely to be utterly insignificant that one of the dimensions had a weighting of twice the other?

A. But, you know, if you look at whom you may suggest -- sorry, which dimension you would suggest should have had the 15 weighting attached to it, the financial key figure --

Q. Yes.

A. -- if I understand where you are coming from, I don't accept it is as you would suggest because that would have been -- that would have implied a change to Maev Nic Lochlainn's note to the file, so I don't accept it, but let's just continue for the sake of the argument. If financial key figures had attached a weighting factor of , it may have made no difference, as such, because both A3 and A5 scores a B.

Q. I see. Well, anyway, we'll come back to it because --

A. Okay.

Q. We'll come back to it because you are saying it may not be material or it may be material?

A. It may or may not. I mean, it's fair to say, yeah.

Q. Now, could I ask you to move on to paragraph 5.4?

A. Yes.

Q. And here, it's stated, the first sentence says: "Also an agreed weighting mechanism" -- sorry, "a weighting mechanism was agreed prior to the closing date for quantitative purposes as evident from both Table 17 and 18. If the marks (A, B, C, D and E) are converted to Arabic points ( 5, 4, 3, 2, and 1) it could be calculated which applicants come out with the highest scores measured by points, although such a calculation distorts the idea of a qualitative evaluation."

A. Yeah.

Q. I see. So here is a table which you say, subject to a warning this could have a distorting effect --

A. Exactly.

Q. -- you say if you do the 5, 4, 3, 2, 1 process, this is where you end up, isn't that right?

A. Exactly.

Q. Now --

A. And I state specifically "... although such a calculation distorts the idea of a qualitative evaluation."

Q. Because you told us earlier that Mr. Brennan wanted something like this done and you were reluctant to do it because of the distorting potential?

A. I said I was not particularly fond of it.

Q. I see, yes. Now, just can I ask you two things. We are, at that point, very clear that the weighting mechanism was agreed prior to the closing date, isn't that right? That's what you say in the first sentence?

A. Yes.

Q. So whatever weighting --

A. I think so.

Q. Be it right or be it wrong, it must have been agreed prior to the closing date, that's what you understood to be the case at the time?

A. Yes.

Q. And can I just simply bring you down to this, albeit franked with a warning about possible distortions; at the bottom, you arrive at numerical totals of 432 and 410, 362, and 347, isn't that right?

A. That's correct. That's a point-based way of doing it, but, you know, I'll not reiterate what I have already said about

some of the problems, but there are more problems than the problems we discussed some days ago, with this.

Q. I appreciate that. But just would you bear with me and agree that the difference, say, between A5 and A2, on the basis of a 10, 10, 10 weighting shown there, is less than %; it's 22 over 500, which is less than 5%?

A. It's probably correct. I take it you are correct, yeah.

Q. And I would remind you that I think it was on the 14th of September, you said that when you were looking at the quantitative evaluations -- 4th of September, rather, that the fact that, at that stage, A5 and A3 were 5.7 apart, was too close to rely on?

A. I said they were close and I also said to you, I think it was yesterday, when you asked me whether it was close in the quantifications where the difference detected there of %, and I accepted that, but please be aware that that closeness is also dependent on the statistic, the underlying statistical uncertainty that you have. So if you understand my point, then, you know, a big difference, just for the sake of the argument, could be, still be a close race if the underlying statistical uncertainty was huge, whereas a small difference, if the statistical uncertainty was not there at all, could be big, or could not be close.

Q. Now, can I bring you to Annex 2 of the 3rd of October draft, the first draft?

A. So that's Tab 5?

Q. Yes. Sorry, it's Annex 2 I want to ask you about at the moment, which deals with the methodology applied. Had you, at that stage, provided a -- had you actually done Annex 2

at that point, or was it still awaiting drafting?

A. It says on page 1 of Annex 2, in parentheses, "not fully drafted." So I take it for what it is, that I had drafted something, but not everything else. But, you know, it's a little bit like if I ask you questions about what do you recall 15 years ago --

Q. I am not asking for precise recall.

A. Okay. So let's say it was half done, or whatever.

Q. Could I bring you, then, to Tab 7.

A. Yes.

Q. And, in particular, to internal page 4.

A. Yes.

Q. And, in particular, to the fourth paragraph. And here, this is your draft as of the 18th of October, and it says:

"A draft report discussed on the 9th of October has, following the incorporation of comments from the PTGSM, culminated in this final report." Now, this isn't the final report, as we know, but --

A. The final draft --

Q. -- the draft?

A. Exactly.

Q. Yes. This is what was proposed to be put into the final report.

A. Yeah.

Q. "As unanimous support was given by the PTGSM to the results of the evaluation, Andersen Management International was requested to submit this final report. It was also decided to present the quantitative and qualitative parts of the evaluation in an integrated fashion in accordance with the agreed procedures."

Now, you, between the 9th and the 18th, are proposing a Draft Final Report to be delivered on the 3rd of October which states that unanimous support was given to the results of the evaluation, isn't that right?

A. Yes.

Q. And we know, we'll come to it eventually, that that piece was taken out, isn't that right? Your final report never mentioned "unanimous support," isn't that right, or have you forgotten that?

A. It's probably correct, but I would then think it was with reference to the 9th of October meeting.

Q. No, we'll see, in the end, that "unanimous" was taken out and "consensus" was put back in.

A. Okay, okay. But I have not a full recollection on this.

Q. I am not trying to trap you at all, Professor.

A. Should never do, you should never do.

Q. I am just putting to you that, somehow, you envisage -- as of the 18th of October, you are saying that on the 9th there was unanimous support for the outcome, and, at a later stage, you adopt different language and say that it's on the basis of a consensus approach, isn't that right?

A. Okay, okay. I take it for correct when you say --

Q. I am asking you in relation to your understanding when you were drafting on the 18th of October, how you believed that there was unanimous support at that point for the findings? You were proposing this for adoption and I am just asking you on what basis you thought there was unanimous support for the findings?

A. Well, on the basis of several things, really, when I

comment on this. I don't know whether this is actually my language or whether it is sentences I got from the PTGSM or the Department. That's one thing. But secondly, my participation in the Steering Group meeting on the 9th of October was such that I sensed that there was support and no dissenting views on that particular Steering Group meeting.

Q. So I just want to be clear about this. Your sense of the meeting of the 9th October of the Steering Group was that there was unanimous support for the rankings as they were then known, is that it?

A. That is how I recall it, yes. And I have a particular kind of recollection of this meeting because there was so awkward logistic matters here. We thought that -- Jon Bruel and I went to that meeting and we thought that the meeting was going to be in Kildare Street, and we were already coming late because there were head-winds with the plane towards Dublin and there was also, at that time, a difference in winter and summertime exchanges, which is not there today, but it was such 15 years ago, and we waited for a long time in Kildare Street but it transpired that the meeting was going to take place in another place, maybe Nassau Street, or whatever, but we didn't know, so we just waited for a long time in Kildare Street. So when we actually came to the meeting, it was a rather short participation by Mr. Jon Bruel and myself.

Q. Well, now, can I bring you to Book 91, please, and can I ask you to go to Tab 50, please.

A. Yes.

Q. And this appears to be a note by Mr. Sean McMahon of a

meeting between the divisions within the Department on the 3rd of October, 1995?

A. Yes. And?

Q. And it says -- on the second page, it says, his note of GSM at point 4 in the margin is: "Minister wants to accelerate process.

Legalities more complicated.

Draft report now imminent.

We need to discuss and digest.

Agreed 1 copy we let it stay here" -- and that's at an address, "44" -- "and discuss it in confidence." Right?

A. Yes.

Q. So this is looking forward to a draft copy of your report, isn't that right?

A. Yes.

Q. And at this stage, the Minister is indicating that he wants to accelerate the process, or so Mr. McMahon is noting down?

A. Okay.

Q. I see. Now, I think if we go to the next tab, 51, on the 3rd of October, which is the same day as that meeting, you and -- you send a fax to Mr. Brennan and Mr. Towey?

A. I actually think that the meeting took place, Mr. McDowell, on the 9th of October, and this letter shows that I sent the report on the 3rd, yeah.

Q. And it says "Received 2.30 on the 4th," for whatever reason, so maybe different times or time zones and faxings, or whatever, we don't know about that. But you say: "Attached to this letter you will find two hard copies of

the draft realisation report. One is made personally for you each with shadow text."

And that means that each page had a shadow on it which was unique to the recipient, isn't that right?

A. Exactly.

Q. As a security measure.

"We suggest that the PTGSM members wishing to read the document do so on the fifth floor in your offices, as the document is a sensitive document.

"We look forward to discussing the document at 9th of October. Meanwhile, we continue with the remaining work." Isn't that right?

A. Yes.

Q. And if I could bring you, then, to the next divider, which is a fax from the Department to you, from Maeve Nic Lochlainn, dated 6th of October, 1995.

A. Yes.

Q. And she says:

"Michael,

Two items for your attention, please:

"1. Please see qualitative scoring for technical aspect as recorded by John McQuaid" -- so she is giving you qualitative scorings as recorded by John McQuaid -- "which follows Annex A. This does not correspond with the technical aspect subtotal detail on page 44 of the Draft

Evaluation Report -- I believe it is a typo, marketing aspect scores have been duplicated by mistake (on page )."

Then the second paragraph is: "Please see attached list of criteria and weighting as agreed by the Project Group prior to 4 August, 1995 (Annex B).

"Could you please clarify how these relate to the weights as detailed on page 17/21 of the document of the 8th of June, 1995, which were to be the weights underlying the quantitative evaluation? (Page 17 is also attached at Annex C) and to page 7 of the draft quantitative report (see section on weights at Annex D) e.g. OECD basket is weighted 15.96%, does this correspond to the 18% for competitive tariffing as agreed by the group?"

Do you remember receiving that document?

A. Yes.

Q. And I think Annex A, which is with the next page, sets out Mr. McQuaid's marking of the technical aspects, isn't that right?

A. That's right.

Q. And he has used a quantificatory method, I think, there, isn't that right, you can see --

A. You are probably making reference to what he is writing in the left-hand column --

Q. Yes.

A. -- about what we call subweightings.

Q. Yes.

A. Yeah, that's correct.

Q. And moving, then, to Annex B, here is Ms. Nic Lochlainn sending you something on which is written "Weighting agreed by the group prior to 4 October, 1995."

A. Yes.

Q. Isn't that right?

A. That's correct. I think that is consistent with Maev Nic Lochlainn's note to the file which we went over.

Q. So she is actually pointing out to you there that the 10, , 10 approach that you used in the table that we discussed earlier, is not in accordance with what was agreed with the group prior to the 4th of August, the closing date of the 4th of August 1995, isn't that right?

A. No, I think she is making the opposite point, really. I think she is making the point that what is contained in Annex C, which is 7.5, 15 and 10, is not in accordance with her note to the file, so she is precisely making the opposite point.

Q. These don't distinguish the 10, 10, 10. There is 30 at the top, isn't that right?

A. Oh, yes, but she is making -- you know, she has -- I take it that she has seen the evaluation, Draft Evaluation Report from the 3rd of October, and then she sees that, in one of the appendices, there would be a listing of the weightings from the quantitative exercise summing up to , and that put her on alert, so that she is -- she says something is wrong here.

Q. Yes. And she appends an extract from your proposed quantitative model which had been amended in manuscript, isn't that right?

A. Exactly, exactly.

Q. And she is pointing out to you that there is a discrepancy between the two sets of weightings, isn't that right?

A. That's correct.

Q. Now, did you reply to that at any stage, or did you consider it?

A. Well, I think it's a reasonable expectation that we would have discussed that at the Steering Group meeting on the 6th of October.

Q. I see. We'll come to that, but, I mean --

A. But you are asking me about my recollection, and I don't have --

Q. You don't recall?

A. I neither have a clear recollection, nor in, I think, there is, in the files, a response from me, but that would, maybe, be natural, because she is sending this on the 6th of October, and we knew that we had --

Q. You were coming to Ireland on the 9th, Monday the 9th?

A. Yeah.

Q. I see. Now, the next item is at Tab 53 -- excuse me, to get it in a logical sequence, I am going to go to another document first, to Tab 57.

A. 57?

Q. Yes. And this is a note which we now know is a note of Donal Buggy?

A. Okay.

Q. Right?

A. Yeah.

Q. Of the meeting of the 9th October. There was a meeting in the morning time before the general meeting of the 9th

October.

A. Okay, so that is from the civil servants' preparatory meeting?

Q. Yes.

A. Okay.

Q. These were the accountants who were to review the work; Mr. Buggy was one of the accountants, isn't that right?

A. Yes, he was on secondment, like Billy Riordan.

Q. And he goes through the material that he had received that day, and, in particular, on page 38, his note shows a change to the gradings for A3, A5 and A6 in relation to the financial, what I call the financial and accounting indicators, isn't that right?

A. It's the first time I see this document, actually. And so -- yeah, it is right when you say it, but I have not seen that document before.

Q. I see. Well, just, I just want to point out some things to you because obviously you have never seen this before and I fully appreciate that if you say that, but it was referred to in the evidence in the case, but obviously you haven't been in a position to keep a close eye on it, and I think a copy was sent to your solicitors, but you haven't had time to look at this, is that right?

A. I have not digested this particular document but I am fully prepared to discuss anything you want to discuss.

Q. Well, you'll see that in the matrix of letters by reference to the various indicators on the left, there have been changes made on his analysis, people have been down-marked and up-marked, and he leaves -- he, for instance, in respect of A3, he increases their grading from D to C in

respect of liquidity; in respect of solvency and financial strength, he reduces Esat from B to C; and he, likewise, on liquidity, downgrades A6 from A to D, and he notes "Telenor" -- in relation to page 38, second paragraph, he notes: "Telenor and Communicorp" he goes C from B "as Communicorp doesn't have sufficient strength for 50% shares."

Now, and I think you'll see at the bottom, across the bottom line, he, in his own writing, has the rankings A, C, B, D, C and D, across the bottom, that's how he had arrived at it at that time. Right?

A. Yes.

Q. And he says, also he says at the bottom of the next page, I mean, he has a number of typographical things, but at the bottom of the next page, at page 44, in relation to Table , he says, "This may change as a result of changes to Table 15," and he says he hasn't had time yet to read the annex to the report, isn't that right?

A. Yes.

Q. Now, Mr. Riordan made notes of a meeting he had with Mr. Buggy on the same morning, and this is to be found at the next tab, which is Tab 58?

A. Yes.

Q. And again, he carries -- notes the same alterations in relation to strength, liquidity, IT, etc., and comes up with the same matrix of marks at the bottom?

A. Yes.

Q. And on "strength," he says: "A5, Communicorp has negative -- has minus IVE equity," which I believe is negative

equity -- "as does A2's partner. This should indicate a C for A5 surely."

And on the following page, he says, at page 40: "Does the third paragraph suggest that the Minister should seek a further equity injection for Communicorp?"

And he makes a question, at the bottom, in relation to some text on page 40, which I don't think is particularly relevant to this. But in any event, there are these two financial accountants, assigned to the Department of Finance, reworking your matrix in private before they go to your meeting of the 9th of October?

A. Yes.

Q. Do you remember them raising any of those points?

A. No, not at all, and I think I would have been remembering it if they had brought it up while I was present, because I was, in the beginning, a member of the financial sub-group, so it looks strange to me because there was this financial sub-group running, and I think the Irish participants there was Billy Riordan and Fintan Towey.

Q. Well, on the assumption, I am just saying on the assumption that these aren't fabrications, clearly there was a discussion between them, because both of them have similar notes of a meeting they have had on that morning, isn't that right?

A. I fully agree that's how it looks, yeah.

Q. Now, can I bring you to the next tab, which is tab 59.

This is a Memorandum given to yourself and Jon Bruel, dated the 9th of October, 1995, by Mr. Buggy and Mr. Riordan, and

I think, in fairness, it was faxed to them on the 10th, so it's not something that would have been raised at the meeting.

A. That's fine.

Q. And it raises a number of issues there, isn't that right?

A. Yes.

Q. Including the markings for the various participants, isn't that right?

A. Yes.

Q. Now, do you remember -- I think the fax sheet, which is the next item there, or maybe -- yes, the fax sheet suggests that it's the 9th of October; maybe it got to you only on the 10th of October?

A. It doesn't matter, it's the same time.

Q. It's the top right-hand, sent 9.15 a.m. on the 10th of October.

A. That's fine.

Q. So can you indicate whether you recollect ever receiving that or acting on foot of that?

A. What would be typical for me to do with such a fax, which I must have had in my hand at the time, would be to deliver it to Jon Bruel. Jon Bruel was the advice project leader and he was a member of the financial sub-group, and the quantifications, so I would have handed it over to him and then say "fix it".

Q. But it does, in fact, on the face of it, refer to suggestions put forward -- sorry, I am at the wrong one -- it refers to the "discussions this afternoon"?

A. Yes, that's what it says in the top, yeah.

Q. Have you any recollection of those discussions?

A. Well, I think I have -- for instance, the deep pockets I can recall, because it was AMI who had introduced this notion of deep pockets, so I think I recollect that, to take an example.

Q. Do you recollect having a meeting with them where you discussed the matters of concern to them?

A. Not at this time.

Q. I see.

A. Not at this stage, no.

Q. Okay.

A. I would believe that Jon Bruel and I participated for one or one-and-a-half hours in this meeting, so -- yeah, it was concentrated, maybe, on the bigger issues.

MR. McDOWELL: Judge, we talked about a comfort break.

CHAIRMAN: I think I had indicated, Professor Andersen, and I am sure you won't disagree with me, that three hours is too long for a witness to have a continuous session, so I think we'll take a ten-minute break.

A. Okay, that's fine. That's helpful. Thank you.

THE TRIBUNAL ADJOURNED AND RESUMED AS FOLLOWS:

Q. MR. McDOWELL: Thanks, Professor. Now, I was asking you in relation to -- first of all, in relation to the legal invoices, are you in a position to hand them over, please, at this stage?

MR. GLEESON: My solicitor hasn't brought them with her

this morning, but we will give them.

CHAIRMAN: Well, I stressed, Mr. Gleeson, there is no suggestion of any impropriety in this; it's just part of the overall fact-finding picture, so I'd be very grateful, perhaps, if your solicitor could do her best to make them available at the very earliest vantage point because we are making reasonably good despatch on dealing with the Professor's evidence and it would be my preference that we have them as soon as Mrs. Preston can possibly manage.

MR. GLEESON: Very well.

MR. McDOWELL: It would be my desire, I have to say, Chairman, to be in a position to read and understand them by 2 o'clock, so if Mrs. Preston could make arrangements to have them delivered --

MR. GLEESON: Sorry, I don't understand how this has suddenly become a nuclear issue. They are in Danish and we will bring them as soon as we possibly can. I mean, there is to-ing and fro-ing between the Tribunal and the legal representatives who are here. I mean, one of the things that we were promised the other day was a list of transcript references to when the third quantitative report was put to civil service witnesses. That has now -- that facility has now been withdrawn by the Tribunal. So there is not always a quid pro quo on these things, but we are going to do our best to produce these documents and they will be produced sometime later today.

MR. McDOWELL: Chairman, I have to say this: I asked for the original invoices to be brought. I apprehend, from what My Friend is saying, is that he is having them translated before he'll hand them over to me. I intend to have my own translation done, and I'd appreciate if they would, just simply, give us what they have and they can have their own translation and take their own instructions on them, but there is no reason why we should be delayed. I am trying to speed up the process of the Tribunal. I don't want to have to carry on until tomorrow to deal with this issue, and -- but I will if I have to, because I don't propose sitting down before I have dealt with it.

CHAIRMAN: Let's all exert our utmost to give effect to that.

Q. MR. McDOWELL: Now, could I bring you to the minute of the meeting of the 9th of October. It's at Tab 53 and Tab 54.

And firstly, at Tab 53, these are minutes of the meeting of the 9th of October, 1995, and they include a manuscript amendment, which apparently was inserted at the following meeting, and it was agreed to be included in the meeting which is at the top of the page, and it reads:

"Note at next meeting that Billy Riordan asked AMI if they were now happy that the financial tables were correct. AMI said that they were sufficiently satisfied that the tables were reasonably correct and that any error would not have a significant impact on any of the grades awarded."

So this was a retrospective amendment of the minutes apparently at the request of Mr. Riordan, that it should be -- that the minutes should show that he specifically asked AMI were they happy with the financial tables and that AMI had said that they were sufficiently satisfied that the tables were reasonably correct and that any error would not have a significant impact on any of the grades awarded. Do you remember that conversation taking place?

A. Vaguely. Vaguely, yeah.

Q. And the minutes read: "The Chairman opened the meeting by stressing the confidentiality of the Evaluation Report and discussions re same. He also informed the group that the Minister had been informed of the progress of the evaluation procedure and of the ranking of the top 2 applicants. The Minister is disposed towards announcing the result of the competition quickly after the finalisation of the Evaluation Report."

Now, just stopping there. Did it surprise you at that point that the Minister had been informed of the progress and the ranking of the top two applicants?

A. No, that didn't surprise me.

Q. I see.

A. I think it was a natural thing to do.

Q. I see. So when was the ranking that the Minister -- we are now being told effectively that the Minister has been informed of the ranking prior to this meeting opening. So when was that ranking finalised?

A. The ranking of the top two or the top three?

Q. The top two applicants. The Minister had been told about it -- or top two or top three, it doesn't matter. The Minister had been told about it prior to the meeting, and I am just asking you when had that process been finalised so that the Minister could be told about it?

A. I think it's a process that goes on from the middle of September and then until the first Draft Evaluation Report is there on the 3rd of October. So I would not be in a position to state any specific time where the ranking is there, but it's predominantly so that the ranking is stated in the 3rd of October version of the Evaluation Report.

Q. So --

A. This is the first, I would say, rather fully-fledged document where this ranking transpires.

Q. And had the PTGSM considered the document of the 3rd of October, to your knowledge, as a group, prior to that time?

A. No.

Q. So the Minister had been told of the ranking as in that document before the group to whom it was -- by whom it was to be considered, had considered it and decided whether they agreed with it or not, is that right?

A. Well, I don't know. Maybe you are sitting with information which I don't have. It isn't what it reads here, because we are talking about the 9th of October and a report which has been furnished to the Department on the 3rd of October, so as I read this, this could be between the 3rd of October and the 9th of October, but if you have other information...

Q. The point I am asking you to comment on is that the Project Group itself had not had an opportunity to consider this

report and to say whether they agreed with it or not, prior to this time, but the Minister had already been told effectively of the result?

A. Okay, I see that point, yes.

Q. And do you think that is appropriate?

A. Well, if we take it that this was an important decision to be taken by the Minister of this country, you know, I would not be surprised if a Minister was interested in hearing how the work proceeded with such an important process.

Q. Now, there is a note of the meeting, which is at Tab 82, I'd ask you to look at, it's the same note of the same meeting, and this is Mr. McMahon's handwriting on the second page of it?

A. Okay, it says "O'Callaghan" on the first page.

Q. Yes. "It's probably too late to change this report, but our intervention at subsequent meetings made clear we did not subscribe to unanimity at this meeting. We expected the qualitative assessment to continue from that time. The report, while it probably highlighted the best two candidates, had a long way to go."

And that's signed by Mr. McMahon.

A. Okay.

Q. What have you to say about that?

A. Well, that comes as a little bit of a surprise to me because I have -- he has not addressed this while I was present on the 9th of October meeting, and neither had he expressed that in subsequent communication to me.

Q. I see. It comes as a surprise to you that Mr. McMahon would have recorded that?

A. Yes.

Q. In relation to that meeting?

A. Yes.

Q. And it comes -- there was nothing, you say, that he said or did that would have indicated to you that, although the report had "probably highlighted the best two candidates, it had a long way to go" and that the qualitative assessment was to continue onwards from that day?

A. No, because if he had said that, also with the notion that the report has a long way to go, that would form part of a critique against a report that I have drafted, so I think that I would have picked that up, whereas it's something different with the 23rd of October meeting when he actually kind of shell-shocked me, I clearly recall that, because there, he said something in the meeting where I was present and which I do recollect quite clearly.

Q. Well, if I could bring you, now, to a typed version of Ms. O'Keeffe's verbatim handwritten note of the meeting --

A. At tab?

Q. Of the 9th of October. It's at Tab 54. And her note says: "Minister knows.

Shape of evaluation and order of top two.

Minister of State does not know.

Quick announcement."

So that corresponds with the official minute, doesn't it except that the information that the Minister of State --

A. "Minister knows.

Shape of evaluation and order of top two." Yes.

"Minister of State does not know." That's the Taoiseach  
or --

Q. No, Minister of State is Parliamentary Secretary, he is one  
down from the Minister.

A. Okay, okay. "Quick announcement," yeah.

Q. Then it says "Agenda.

Draft report

Future work programme: A. Producing draft number 2.

"Good working draft produced on time.

Annex should be part of the main report.

Object: To get feedback on context style of report,  
content accuracy.

"Report too brisk. Critically needs more elaboration and  
reasoning more significantly. Few lay readers but they  
will be critical -- terminology needs to be explained.

"Michael Andersen brought appendix on supply, on tariffs  
and interconnections.

Descriptions on methodology still missing."

And that's true; the methodology section, as we know,  
wasn't ready at that stage?

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

Q. "Different groups examined dealing with the commissions,  
etc.

Relevance of annex dealing with conflict.

Full discussion needed on Annex 10.

Minister does not want the report to undermine itself, e.g.

either a project is bankable," I presume, or not.

Do you remember that being said, that the Minister doesn't want the report to undermine itself, that either the project is bankable or not, or words to that effect?

A. I think we were over that the other day. I don't have any specific recollection of this, but I would not be surprised if it had been said.

Q. Now, you propose certain changes to the letterings on page and page 44 of the report, is that right?

A. Yes.

Q. I think they were typos?

A. Yes. I think some of them are also recollected in Maev Nic Lochlainn's fax to me from the 6th of October.

Q. Yes. And there is -- her note of the quantitative evaluation on the second page is: "View is quantitative evaluation should not be performed separately but are taken into account in the main report.

Already agreed international roaming should not be used.

"Hard to score the block-out and drop-out rates.

"Tariffs -- well-defined basket of tariffs.

Metering -- billing should be a score indication.

Data not reliable for comparison purposes.

To be left over for discussion.

If included will give a false confidence in some figures."

So there was to be further discussion on that issue at that stage, is that right?

A. Yeah. And I think that would not be unnatural because it was still a work in process.

Q. And Mr. Brennan is recorded as saying, "Would proceed in the way Andersen suggests and would strengthen report, the annex on methodology should cover this and become the main report."

And Mr. McMahon said, "Would like to see more of a user-friendly overview -- confidence should ooze out of the report -- the document will be read by the Secretary and the Assistant Secretary -- the Minister's programme manager (no technical) Department of Finance."

And then John McQuaid says, "Correct, okay Evaluation Model appendix, quantitative analysis" -- and he has an arrow going upwards -- "report based on qualitative analysis," I presume to go into the report based on qualitative analysis. "Concluding remarks (page 44)." He asks the question: "Are tables 16, 17 and 18 of equal importance?" Under "Weighting," she notes that it's noted that "Table 17 different from agreed weighting."

And later down the page, you say -- you are recorded as saying: "16, 17, 18 tables reflect discussions in Copenhagen. If different weighting used to prove you get the same result with different approach."

Could you have said words to that effect that the Table 16, and 18 reflect the discussions in Copenhagen?

A. Yes, I could have said that, yes.

Q. And then there is a discussion: "If 3 tables gave a different answer MB said further analysis would be required and seek to re-examine."

"Michael Andersen:

It is difficult to make a report with detail and easy to read. He would prefer to leave the report in the present format with a long letter on front rather than an Executive Summary.

"Executive Summary will pull the main report up to the front, give an overview of the technical data."

So you preferred an introductory letter rather than an Executive Summary?

A. Yeah, in order to minimise the reworking of the document, really. Here, you have a consultant who would try to get to the end as soon as possible, I believe.

Q. And then Mr. Towey says, "Should we not include quantitative analysis upfront?" And he seems to get a reply, "Quantitative analysis too simplistic to give results."

And on the next page, Mr. Riordan says, "Are Andersen happy to go forward with the position as it is now?"

They are sufficiently happy.

AMI is to conduct the evaluation in such a way that" -- or maybe it's "The aim is to conduct the evaluation in such a way that 10 more people would come up with the same

results.

"Because of uncertainty cannot trust quantitative."

And there is a statement in relation to quantitative.

"Ranking is probably different now (Annex D).

"50% of the weighting is lost due to scoring that cannot be used and quantitative analysis has been undermined.

"It is not necessary to publish the original."

Mr. Riordan says, "Do we carry out any further assessment of the validity of the information presented?"

And Martin Brennan says, "Some validation has already been done."

And then there is more discussion there.

Can I bring to you remarks of John McQuaid, noted on page

--

A. Yes.

Q. -- where he says, "More attention should be given to the points that weightings were used."

And then at the end, "Too brief, no complaint" --

"too brief," maybe, "that no complaint with contents.

Fax copy with grammatical errors.

First draft of chapters on methodology along with 2nd draft of report.

-36 hours.

nd report to be of quality to be shown to the Secretary."

Sorry, I missed a point in relation to page 40, which deals with financial sensitivities and risks.

A. Sorry, which page?

Q. Page 6, at the bottom of page 6.

A. Yes.

Q. It's written down in relation to page 40: "Should be presented in a more balanced way.

Financial risks.

No doubt that A5 will survive.

A3 of agreement that if one shareholder does not come up, the others will pay. Put in requirements in licence conditions. If things don't go as planned, a lot more expenditure may be required. Problem not unique to anyone. More balanced statement.

The project will survive. No one consortium is weak in itself.

Each member of the consortium brings different elements."

And that's obviously a discussion of the text which you had put in about -- both in relation to Sigma and in relation to Communicorp's financial situation, isn't that right?

A. Yes.

Q. And you said that if it was redone, there was no doubt that A5 would survive; was that agreed at the meeting, or was that said at the meeting?

A. Where is that stated?

Q. Just at the second from the top.

A. I have really no clear recollection --

Q. You can't recall that?

A. -- on this particular issue. What my general -- my general recollection is that there was a discussion, different people had their views, so there was an open expression of input from the various participants, but there was nobody at the meeting, while I was present, who disagreed with the scorings and the ranking.

Q. Well, on the next item, the next tab is Tab 55, there is a note in relation to the GSM group by Mr. McMahon, dated the 14<sup>th</sup> of October, 1995, and he says, "We have Draft Number 1 of AMI which recommends A5, A3, A1 in that order." Then, in brackets under that, he says, "They are not easy to read.

Only limited number of copies. We've" -- and that's "(TRR)," his own regulatory division -- "not had a chance to read in full."

And he says, "Martin Brennan goes through some points. Michael Andersen" deals with page 23, paragraph 44, page 1, "See changes.

No changes to AMI recommendation as a result.

Report reflects quantitative and qualitative evaluation."

So that's a record by Mr. McMahon indicating that he hasn't had a chance to read the report sufficiently, isn't that right?

A. Yeah, yeah. But I was not aware of that at the time.

Q. Now, the next item are notes, again, of the same meeting, and they are Mr. Billy Riordan's notes of the same meeting.

A. Sorry, which tab are we at?

Q. We are at tab 56 now.

A. Okay.

Q. I am sorry that the quality of this --

A. I am not able to read most of it, really.

Q. Well, I'll do my best to draw your attention to bits which I have had time to study.

And it's a meeting in Clare Street --

A. Oh, it was in Clare Street, okay.

Q. Is that the place that you were mentioning?

A. Oh, yeah, yeah, because we thought that the meeting should have been in Kildare Street, so, okay, yeah, there it is.

Q. And the first item there on draft report:

"Description of process should be in the body of the report.

More elaboration required in many areas.

Terminology needs to be explained.

" -- Annex 10 needs to be revisited. Should there" --

sorry, I can't read that -- "be eliminated?! -- "Should those consortia be eliminated? Need to say that the project is bankable and that in an overall context both the consortia have sufficient resources.

" -- need to avoid undermining the conclusion."

So that's his account of what the Minister is saying, that it needs to say that it's bankable and you don't need to

undermine the conclusion, isn't that right?

A. Yeah.

Q. Now...

A. Though, does it say that it says specifically the Minister?

Q. No, we have heard from others that it was the Minister who said --

A. That's right, that's right.

Q. -- that it shouldn't undermine itself?

A. But that's only the last indent. "Need to avoid undermine the conclusions".

Q. And at the bottom of the page there is a note: "Executive Summary would be useful.

Note:

Andersens are sufficiently satisfied that the figures are as finally stated or as reasonable and fair basis on which to proceed. They stated that any further amendments which might arise would not make any difference to the evaluation.

"Further analysis is not considered necessary. MB believe that this has been done effectively."

Is that right?

And over the next page, there is a portion saying: "Next week, 16/10, 2nd draft." Is that right?

A. No, I cannot read it. Oh, yes, that's the last indent on the page, yeah.

Q. Did you, at any stage, keep notes yourself of any of these meetings, Professor Andersen?

A. I think I would have made notes directly in the Draft

Evaluation Report, yeah. I normally take some notes from meetings.

Q. Now, I think we'll just take a look at Annex 10, at this point, of the report, that we were considering at the time.

A. So that's tab?

Q. It's in the other book, it's Tab 5 in the Book 93.

A. Sorry, was it Annex 10?

Q. Yes. Now, could I just bring you briefly to what appears:

"As stated in the main Evaluation Report, the top two ranked consortia have members who presently do not have the capital required to finance the GSM2 network.

The consortia members who thus need capital for the funding of the GSM2 consortium have 'secured' this capital by various instruments including the shareholders' agreement and letters of commitment from investors.

"In this analysis, we discuss the risks due to lack of funding. We further suggest means to close the uncertainty related to financing.

"The risk analysis does not include an assessment of A1, A2, A4, and A6. The financial strength of A1 is in the assessment of the financial aspect awarded the highest mark and is not seen as a risk. The financial strengths of the three other consortia, A2, A4 and A6, have not been taken into account in the risk analysis because the overall scoring already places them among the three lowest-ranking consortia."

So you are concentrating now on A3 and A5, isn't that right?

A. Yeah, and I think that was a sensible thing to do.

Q. And in relation to A3, which is the Persona, I think, consortium, is that right --

A. Yes.

Q. -- you point out in the third-last paragraph, "Sigma Wireless was formed in 1991 following a management buy-out of Motorola's Irish distribution activities. The principal activities of the company are the exclusive distribution and sale of Motorola radio communication products and systems in Ireland." And you then go on to analyse Motorola. It says: "A 49 percent shareholder in a joint venture with Telecom Eireann called Eirpage, which provides the only nationwide paging service in Ireland.

"In the financial plan (base case), the equity contribution is stated to be IR£39 million-odd" -- just nearly 40 million -- "with a debt financing of 42.4 million. The applications did not include a sensitivity analysis regarding these figures, but the sensitivity analysis regarding the cash flow shows that the minimum accumulated cash flow increases numerically from minus 102 million to minus 255,000,000 in the event of a two-year delay of subscriber uptake. Although this figure represents a possible unrealistic event, a combined set of events influencing the business case in a negative direction could lead to a situation where the need for finance is twice as high as in the base case.

"If the ownership ratios are used as an indicator for the financial requirements, the following equity requirements hold," and they are set out in tabular form.

"Although the financial strength of ESB International is not revealed in the application, the shareholders' agreement states that ESBI will get all the necessary backing from the mother company, ESB. Therefore, the financial strength of ESBI seems well-secured.

"Unisource and Motorola are both financially strong companies who have ample funds for this -- for them small project.

"Sigma is the weak partner with an equity capital of only 1 million Irish pounds. The application does not state how Sigma will provide the necessary funds, but the presentation revealed that they have a letter of commitment from an Irish investment bank, AIB. As a matter of the tender procedure, this piece of information can only be interpreted as willingness to secure the necessary capital. Further, nothing definitive about the price of such commitment with respect to gaining equity in or control of Sigma has been stated. However, it is unlikely that Sigma's existing shareholders will give away a majority part of the shares. This is because the shareholders' agreement (see the text box below) gives a way out of the funding problem. It states that if one of the shareholders isn't capable of providing a required guarantee for a loan, the other shareholders may provide the necessary backing.

"The shareholders' agreement thus provides Sigma with a tool to guarantee Sigma's funding. Sigma may still decide not to use this opportunity due to other reasons. One reason could be that the financial burden imposed by ownership of Persona is of such a magnitude that it might cause Sigma's bankruptcy. This may happen if Sigma does not increase its equity capital to a level which would cover the initial losses in Persona during the period of the first years. Therefore, there is a need for an injection of further equity capital in Sigma if it shall persist as a stable partner in the consortium. This aspect is not addressed in the application and it leaves uncertainty about the ownership of Sigma.

"If Sigma is not able to provide the necessary funding, the shareholders' agreement states that 'failure by a shareholder to subscribe to its pro rata in a subsequent share capital increase shall result in dilution of the proportionate shareholding percentage of such shareholder.' Thus, the consequence is that Motorola, ESB and Unisource get a higher stake. This may lead to the situation where Persona is controlled by non-Irish partners."

And you then set out a text there, is that right?

A. Yes.

Q. And just, there are two sentences, identical sentences in Danish; perhaps you'd just help me with that?

A. I can translate them for you, if you like.

Q. What do they say?

A. They say "Michael, this text is only shown on the screen, not when you print out."

Q. So that's addressed to you, obviously, by whoever did up the table?

A. Yes.

Q. Now, "To conclude: The weak financial position of Sigma will not lead to financial problems for Persona but may lead to a different ownership of Persona either directly through the division of its shares or indirectly through the ownership of Sigma.

"This uncertainty can be limited by a proper set of licence conditions." And it suggests three requirements that can be dealt with.

Then you go on to A5, and you say, "Consortia members of A3 and their share distribution" --

A. It's an error, it should read "A5".

Q. Should be "Telenor and Communicorp."

"With current assets of half a billion Irish pounds Telenor has the financial strength to provide the necessary financial backing of its wholly-owned subsidiary, Telenor Invest.

"Communicorp is a new company which has invested heavily in telecommunications infrastructure and has a very weak balance sheet which requires capital injection before it can support the shareholders equity commitments stated in the shareholders' agreement."

And you set out, there, notes on the shareholders' agreement.

And a total equity -- was there, in fact, a shareholders' agreement?

A. I don't recall. I think so, because otherwise it -- there could not be made reference to it.

Q. "A total equity requirement of 52 million is described as a commitment to keep a 40:60 equity/debt ratio. This commitment will require that the shareholders provide cash for new ordinary shares. The increased share capital shall be subscribed by the parties' pro rata shareholding. The inclusion of new shareholders, where four are mentioned by name, is described.

"A condition for the inclusion of a new investor is the need to agree with the principles of the shareholders' agreement. Provided the consortium wins the licence, the two consortia members have agreed to reduce their shares to a minimum of 40% by allowing three to five institutional investors to hold a maximum of 20% of the shares. Telenor and Communicorp have agreed that as new shareholders will be chosen, of two or more of the following companies:

" -- AIB

-- Investment Bank of Ireland

-- Standard Life Ireland

-- Advent International plc.

"It is the shareholders' intention to go public with a pro rata reduction of the shareholders. 34% will be held as a minimum by Telenor and Communicorp. This will be arranged either by increasing the share capital or by transfer of shares."

Then you have extracts from the shareholders' agreement there, isn't that right?

A. Yes.

Q. And on the next page, I won't go into the detail of that, but on the bottom of that page, it's stated: "This equity commitment cannot be met by Communicorp today. According to a letter of commitment to the Department of Transport, Energy and Communications, dated the 10th of July, Advent has committed to fund up to 30 million in support of Communicorp's 40% shareholding. The letter of commitment does not clearly state what the 'price' would be if the commitment should be brought into life, but, according to the presentation, the price would be close to % stake in Communicorp. Further, according to the information given in the presentation, the control will still be in the lands of the Irish investor (Denis O'Brien) as his shares bear a three times higher voting power.

"The legal basis for this commitment has not been included as part of the applications supporting material. Taking into account the very high proportion of Communicorp's intangible assets (most of this is goodwill) the risk of a dispute about the share ratio between O'Brien and Advent

seems evident.

"This may result in a situation of instability or a situation where the control of Communicorp is transferred to Advent. It could also lead to a situation where the commitment of Advent cannot be fulfilled.

"The size of commitment by Advent does not cover our worst-case estimate of the equity requirements for Communicorp. In a worst-case scenario, the requirement for further funding is expected to arise 2-3 years into the project. At this stage, Advent will have already invested the committed figure and it is judged to be very unlikely that Advent will retreat as this could lead to 100% loss of the invested funds. Therefore, it can be concluded that the major risk is related to possible instability of Communicorp or to the transfer of power to a non-telecommunications investor.

"This uncertainty can be limited by an appropriate set of licence conditions. As examples, the following types of conditions are suggested:

" -- requirements regarding the share of ownership and voting power in Communicorp.

" -- requirements regarding the equity of Communicorp."

So you are saying there that the major risk is the possible instability of the company or the transfer of power in that

company to a non-telecommunications company, isn't that right?

A. Yeah, that's what it says.

Q. Now, could I ask you in relation to the previous table, could I ask you to help me with one point?

A. Yes.

Q. You see -- you say, "In the period after a licence award, Communicorp will have between 40 and 50% of the shares. This may be diluted to 34% at later stage where up to 32% of Esat Digifone's equity is made available to public or institutional investors. Even with only 34% shareholding, the financial commitment of the two original parties will be high. If IR£52 million are used as the base case requirement and if twice IR£52 million is used as the worst-case equity requirement, the individual equity commitment for Telenor or Communicorp would amount to..." and then you set out what the figures would be, isn't that right?

A. That's correct.

Q. Now, so, in other words, in both cases, you have used the same multiplier of 2, isn't that right?

A. I think it's 2 to 3, but it's actually based on real sensitivity analysis conducted by the team of consultants.

Q. I see. And could I bring you just briefly to the final version of Appendix 10, which is at Tab 7 in the same book, and, in particular, to bring you to Appendix 10.4 -- paragraph 10.4. Do you see that, 10.4?

A. Yes.

Q. And do you see that, in the middle paragraph, you say, "In the financial plan base case, the equity contribution is

stated to be 39.9 million Irish pounds, as previously stated." You say, "Although this figure represents possibly unrealistic event, a combined set of events influencing the business case in a negative situation could lead to a situation where the need for finance is twice as high as in the base case."

And that's your worst-case scenario which is set out in the table 1, isn't that right?

A. Exactly.

Q. And there is no change there. But moving on a few pages to page 6, dealing with Esat, you -- in similar wording, you say, having analysed the situation," you say, "Although this figure represents a possibly unrealistic event, a combined set of events influencing the business case in a negative direction could lead to a situation where the need for finance is 50% higher than the base case. 52 million Irish are used as the base case and if 1.5 times 52 million is used as the worst-case equity requirement, the individual equity commitment for Telenor or Communicorp amounts to..." and it's set out in the table, the worst-case scenario.

Could I ask you, where did the reduction from 2 to 1.5 as the multiplier for the worst case, come from in relation to Esat at that point?

A. I would not recall.

Q. Are you aware of any study which gives rise or justifies that?

A. I know that there were underlying sensitivity studies going on, yes.

Q. Because it does seem to make the worst-case scenario

significantly less worse, if I may say that, for Esat, and I am just asking you, or the Tribunal is anxious to know, why did -- why was 2 applied as a multiple in one case and .5 in a final draft in relation to -- in relation to Esat?

A. I have no specific recollection of this, but most probably it's because that was shown in underlying sensitivity analysis.

Q. You can't recollect?

A. No, I mean...

Q. Somebody, in the interval, decided to produce, if I may use the inelegant phrase, a better worst-case scenario for Esat, is that right?

A. Yeah, I see what you mean, but I have no recollection of it, really, and I was not the drafter of this document.

Q. I see. Yes. Now, in the second report, can you tell me about the evaluation, the changes in the Evaluation Model and the weightings which were presumed? We are in Tab 5, page 10 of Annex 3.

A. So, Tab 5, page 10?

Q. Tab 5, page 10 and 11 of Tab 5.

A. Yeah.

Q. This is in the Evaluation Model?

A. Yes.

Q. Do you see on page 11, in particular, what I refer to as the weightings which were agreed on the 8th of June, are set out in the right-hand column?

A. Yes, for the quantifications.

Q. Yes. And I am just asking you, why would that be done at that stage if you were of the view that they had been abandoned at sometime in the interval?

A. Why I would -- you say that they were abandoned?

Q. No, you said -- I mean, I don't want to go over all this again, but do you remember we went through this on Friday at some length and you said that you couldn't find the audit trail and you couldn't really explain how the 10, 10, distribution of weightings had been used by you, bearing in mind that, in June of that year, they had been altered to the values which are shown on the screen now. And I am just asking you why, if you had such an understanding, did they appear in the text of a draft of the final report as late as the 3rd of October?

A. Well, I think they are wrong here, because they are not summing up to 100, they are summing up to 103, and whether they may be correct for the quantifications, the quantitative exercise, they are not the correct weightings for the holistic evaluation, because these weightings are not in accordance with Maev Nic Lochlainn's note to the file.

Q. But neither is the 10, 10, 10 in accordance with Maev Nic Lochlainn's note to the file, either, is it?

A. What you can state here is that the 7.5, 10 and 15, for the first criteria, they sum up to 32.5, I believe, and that is in conflict with Maev Nic Lochlainn's note to the file.

Q. I think she had 7 instead of 7.5, isn't that right?

A. No, she had 30 instead of 32.

Q. But, I mean, you are not saying that Maev Nic Lochlainn's note justified 10, 10, 10 as the balance, are you?

A. Well, there is no documentation to support that, but that was my contention, yes.

Q. Well, do you believe that everybody else in the group

shared your view of this matter?

A. No, because you read aloud, earlier, that somebody said, I think it was Margaret O'Keefe, in her handwritten note, that the weightings in Table 17 was not correct.

Q. And had Maev Nic Lochlainn not brought to your attention, on the 6th of October, in a fax, that you had used figures which were not the ones agreed prior to the closing date of the competition?

A. Yes, she brought that to my attention but I drew the opposite conclusion of the conclusion you were drawing.

Q. What did you conclude?

A. Well, I concluded that the -- that her note should make me aware that the weightings here, on page 11, were not correct.

Q. And therefore, that you should go back to 10, 10, 10, is that it?

A. Yes, that's how I perceive her.

Q. You interpreted -- I just want to be clear about this, you interpreted her fax to you on the 6th of October as suggesting to you that you should revert to 10, 10, 10?

A. Well, she doesn't say it explicitly, but when she addresses her -- the inconsistency between Table 16 and 17, if I recall the numbers correctly, the table numbers correctly, and page 11 of Appendix 3, then I think that she was minded to say that the 10, 10, 10 in Table 16 and 17 were the correct one, and the weightings here at page 11 were not correct, or at least were not correct for the holistic evaluation.

Q. Well, are you suggesting that a different set of weightings was going to be used in the holistic evaluation from the

quantitative evaluation?

A. Well, when I look through this, it is very obvious, at page , that what you have here are the quantitative indicators. That's point number one. Point Number two is that they add up to 103 instead of 100, so something is wrong with these weightings. And point number three is that if you take the first criterion at paragraph 19, the credibility of the business plan and the approach to market development, then the underlying dimensions, they are weighted at 7.5, 15 and 10 respectively, which adds up to .5, and that is not in accordance with her note to the file, which accords 30%.

Q. But I just -- I don't want to flog a dead horse, but are you saying that you understood that you were being told to revert to your very original suggestion, which had 10, 10, in it, prior to June of 1995?

A. Not revert to, because I was already there, I was already there, so it's not a question of reverting, because the 10, , 10 was already in the main report of the 3rd of October.

Q. So you are saying that you had stuck to the original May weightings, and that the other weightings, in June, were an aberration, is that right?

A. Oh, I don't understand this language --

Q. Sorry, I won't use the word "aberration". Were a mistake?

A. Mistaken or not, it seems to be such that there were some weightings for the quantitative exercise which does not accord with her note to the file, and I think we went over this on Friday afternoon where we also saw that the weightings in the quantitative thing changed, for various

reasons. One reason was it added up to 103 and had to be normalised, that was one change. And another change was that the international roaming plans were taken out, that was the 6% weighting factor taken out, which then made a drop from 103 to 97, and then made another kind of normalisation problem. But, you see, that never transpired during the meetings because, as we have agreed, the quantifications were never finalised, so there was never an issue on these weightings for the quantifications, so we are back to her note to the file which was, yeah, the 30%.

Q. Could I ask you to look at Book 56 for a moment, and if you just look at the index to that book for a second, you'll see that, at item 5, the second draft of the Evaluation Report dated the 18th of October, 1995, containing handwritten notes of Billy Riordan, is set out there, do you see that?

A. Yes.

Q. And it's Tab 5, and could I bring you to page 50 of it.

A. Tab 5, page 50?

Q. Yes.

A. Yes.

Q. At the top of the page, you'll see, in handwriting, a box pointing to the weights saying "Not agreed by the Project Group"?

A. Okay, I cannot read that in my copy here, but when you say it, I take it for being fully correct.

Q. "Not agreed by the Project Group.

No reason why the 10 should be split in this way" -- "the s should be split in this way."

A. Okay, it doesn't say this in mine.

Q. Just on the right there, at the top.

A. It doesn't say it in mine.

Q. Perhaps if you look at the screen, you'll be able to read it more clearly.

A. It's a different version I have here.

Q. Move to the right now. "No reason why the 10s should be split in this way." Do you see that?

A. Yes.

Q. Are you looking at the wrong table? Maybe that's --

A. It's just I am taking it fully as it is on the screen, but I have a different version here. It's not copied through.

Q. It's not copied through, is it not? Well, I'll give you another version of Book 95. I am sorry about that. You were given a different copy.

A. Now I have it.

Q. I think you were looking at page 51, that was your problem, but we were looking at page 50.

A. Yeah, 50 or 51?

Q. It's 50 we are looking at.

A. Yeah, that's fine.

Q. So it does appear that Mr. Riordan was, in his notes of your 18th of October version, was querying the allocation of the weights in the manner in which you had done it?

A. Yeah.

Q. Did he ever bring that to your attention?

A. I don't recall it, no.

Q. And if we look over the next page, he does his own analysis, does he not, on the basis of corrected weights as he would see them?

A. Yes.

Q. And he does the mathematics that we are concerned with here, because that's where -- the one where the letters were converted to points?

A. Yes.

Q. And he comes up with figures, 72 marks for A1 -- 72%, 53% for A2, 82% for A3, 70.6% for A4 and 86.4% for A5, 69.4% for A6, and he converts them back to letters then: B minus, C minus, B arrow upwards, B minus, B arrow upwards and C arrow upwards, do you see that?

A. Yes, I see it.

Q. Did he ever bring those to your attention as his calculations?

A. No. I have never seen these.

Q. And you can see that, on the left-hand column, he gave the weights he used to arrive at those figures?

A. Okay. Yeah, it's not -- it's cut off in my version here, but maybe I can see it.

Q. It's just in the grey area on the screen there, you can see it?

A. Oh, yeah, to the left side, yeah. I thought you were speaking about the right side, but on the left side, yeah. There, you have the 7.5, 15 and 10.

Q. Yes. Now, I think it is the case that the text had suggested that the weights that were to be used -- the weights that had been used were weights which had been -- which were agreed prior to the closing date, if you look at the bottom of page 50, the last paragraph there?

A. Yes.

Q. And these were the quantitative weights, isn't that right?

A. Yes, but they are not in accordance with paragraph -- his

weights are not in accordance with page 11 of the evaluation document, are they? So if he is correct or his view is correct, there is still a discrepancy here.

Q. Now, were you aware that there was a controversy as to whether the report could be seen as misrepresenting the situation insofar as it was suggesting that the weighting mechanism used was that which was agreed prior to the closing date?

A. No, not a controversy, no. I don't recall that.

Q. Well, if you look -- could I bring you to the final version, the same table in it, which is to be found at Book , Tab 8.

A. Sorry, could I get the document?

Q. It's Book 93, Tab 8.

A. Sorry, now I have the correct book. Which tab?

Q. Tab 8, page 48.

A. Thank you. Yes.

Q. And here the 10, 10, 10 is used again, isn't that right?

A. Yes.

Q. And underneath it the wording has been changed. "The marks awarded under each dimension are outlined in Table 16. The result in the grand total line has been achieved through a process of discussion to each an agreed result taking account of the weighting of the evaluation criteria determined prior to the closing date."

A. Yes.

Q. So it's no longer claimed that it's done in accordance with it, but it's a discussion taking account of the weighting that is now the explanation as to why 10, 10, 10 is there, isn't that right?

A. Yes.

Q. Can you recall how that different language appeared?

A. No, I have no recollection.

Q. Because it does seem to suggest that whoever the author was, knew that the first report was misleading and that the second draft, which would continue to have 10, 10, 10 as the proportion of the weights in the first dimension, would now be just referred to as having been taken account of -- sorry, I am misstating myself -- that the text now was saying that it wasn't the original weightings as agreed before the closing date but that there was some kind of a discussion leading to an agreed result which took account of that weighting; that's what we are now being told, isn't it?

A. It looks like you are fully correct, that -- and what you are saying is consistent with what is stated here, that there has been a discussion.

Q. But who had that discussion?

A. And then if I may continue? That account had been taken to the weightings recorded by Maev Nic Lochlainn in her note to the file so that there is no inconsistency.

Q. But who had that discussion?

A. Probably at the PTGSM meeting.

Q. So you say --

A. Probably.

Q. You say at the PTGSM meeting, there was a discussion at which it was agreed to adopt 10, 10, 10 as the breakdown?

A. Well, I am just trying to base what I am saying on what you have put forward to me this morning. You put forward to me Margaret O'Keeffe's note that there was an issue on the

weightings. Although she just mentioned it in one sentence in a - was it a five page or a six page of handwritten comments, it is there somewhere. You have also made me aware that Billy Riordan, he had notes indicating that he had taken it up. Now, I don't recall it, but I don't recall him taking it up, but it looks like if weightings have been discussed, or has been an issue at the 9th of October meeting.

Q. I see. Now --

A. And it also looks like being a fact that when you move on to the later versions of the Evaluation Report, the reports on the 18th of October and the 25th of October respectively, the weightings remain the same.

Q. Now, could I --

A. So that could, for instance, be explained by the PTGSM members actually agreeing to the 10, 10, 10 and to the fact that these weightings were in accordance with Maev Nic Lochlainn's note to the file, etc., rather than being in disagreement.

Q. It would appear that there wasn't actually a change made in the main text of the report; it was only in the annex that this was reflected.

A. Yes, that's correct, because as Maev Nic Lochlainn pointed out in her fax to me from the 6th of October, she had detected this discrepancy and that there was an error in page 11 of the appendix.

Q. Now, can I bring you to the official minutes of the Project Group of the 23rd of October, 1995.

A. Yes, where do they appear?

Q. Perhaps -- I'll bring you, if I may, to 65 first, and then

we'll go to 66 and 67. Do you see Tab 65?

A. Yes.

Q. This is a note to Mr. O'Callaghan for the GSM file, "apropos our conversation on the 23rd."

A. Yes.

Q. And it embodies the views of the Regulatory Division of the Department dated the 23rd of October, 1995. And it reads as follows:

"On the basis of our readings of the applications, on our hearing of the presentations by the applicants and on the logic of the AMI report, insofar as we follow it:

"(i) we agree that A3 and A5 are the front runners.

"(ii) we agree that A3 and A5 are very close.

"(iii) by reference to the report alone, we are unable to come to a conclusion as to which (A3 or A5) is in fact ahead."

The next line is struck out "We have a reservation about listing A1 in third place having regard to its..."

A. Yes, that doesn't matter.

Q. "We feel strongly that the qualitative assessment of the top two applicants should now be revisited."

And underneath that in manuscript it's stated: "To be signed if the PTGSM insisted on finalisation of existing draft." And that's signed by Mr. McMahon that day.

A. Okay.

Q. Now, first of all, does that document surprise you, that the Regulatory Division of the Department agreed that A3 and A5 were the front runners, that they were very close, but that they were unable, on the 23rd, to come to a conclusion as to which was, in fact, ahead?

A. That surprises me completely because this is not in accordance with my recollection of that meeting. I have a relatively clear recollection of that meeting for the simple reason that I was shell-shocked about Sean McMahon's comment on that particular meeting.

Q. You might as well tell us what that comment was, because we'll hear it later?

A. His comment was that he was unwilling or he -- unwilling or unwilling, he was not minded to, or not fond of moving ahead with A5 because that might cause problems in the Regulatory Division, in a sense that A5 might be more difficult to deal with regulatorily than A3.

Q. I see. And that remark struck you as irrelevant to your process?

A. Exactly. Sometimes, you recollect something very clearly, and that's my recollection from that meeting.

Q. But, you see, I am suggesting to you that, far from the picture of unanimity that one horse had won this race by a margin, that you had never seen, in any competition among the 200 you have done in the world, that some of the people involved in it saw it very, very differently on that day, the 23rd of October, 1995.

A. Now you are quoting me indirectly for something which I have never said.

Q. No, but --

A. That's not a fair proposition, that I have never seen, you know, as clear a winner in 200 competitions than here. I have never said that, no. That, I have definitely not said that in evidence. I think we should actually go back, freeze the picture here and go back and see whether you quoted me correctly, because it's so important.

Q. I will check that up, because I thought you had said that.

A. It's very important.

Q. I thought you said you had never seen as clear a winner in of all the competitions you had run. I may be wrong in that.

A. No.

Q. I see. We'll --

A. I think we should freeze the picture.

Q. We'll come back to it. I don't want to misquote you.

A. That's fine, that's helpful.

Q. But, I mean, apart from that, apart from whether that language is or is not your language, would you agree with me that you did say that, or you gave the Tribunal to believe that, as far as you were concerned, this was the unanimous view of the project Steering Group?

A. That is correct, that's my clear point, and that is also stated in the report, in the final report from the 25th of October.

Q. We know that Mr. McMahon was present at the meeting to which you refer, and that he was -- his Regulatory Division's views are expressed, apparently, in that memo on the 23rd of October, 1995?

A. That's fine with me. It's very well taken on board by me

that he has written these notes, but it didn't transpire during the meeting while he was present. So I think -- you can chase it up in evidence with them, but my evidence is very clear on this, and that they didn't take this kind of thing up while I was present.

Q. Now, could I -- maybe we'll carry on after lunch.

CHAIRMAN: It's coming up to 1 o'clock, Mr. McDowell, so we will adjourn until 2 o'clock for lunch. Thank you very much.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:

MR. O'DONNELL: Professor Andersen can go back. There is just one point I want to draw to your attention. I spoke to Mr. McDowell about it briefly. Just in relation to the note of the views of the Regulatory Division which was put up for the -- on the screen just before lunchtime, I think it is -- in fairness to Mr. McDowell, he wasn't here when Mr. McMahan gave evidence and Mr. Callaghan gave evidence, but I think Mr. McMahan's evidence was that that note was prepared before the actual meeting of the 23rd, and I think it may be appropriate to note that. I appreciate I'll have an opportunity to examine this witness in due course, but it wasn't stated to Mr. -- Professor Andersen that this was a note that had been prepared before the meeting, yet the evidence on day 206, of Mr. McMahan, question 273 and the following questions, suggest that that note was made before the meeting, and, as I say, I am not trying to suggest anything; I am just anxious that the Tribunal bear that in mind and that if Professor Andersen is to comment on it, that that be borne in mind.

CHAIRMAN: Very good. Thanks, Mr. O'Donnell.

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

Q. MR. McDOWELL: Now, Professor, could I bring you to Tab 67, please.

A. Of book?

Q. Of the same book that we are dealing with, 91.

A. Sorry, tab?

Q. Tab 67?

A. Yes, I have it.

Q. And that, I am instructed, is a note made by Mr. Sean McMahon in relation to the meeting on the 23rd of October, , and clearly was made during and after the meeting, rather than before it. And it reads as follows:

"GSM group 23/10/95.

"M.B. -- notes that I've only just seen 'final draft' report.

" -- that Minister wants a result today.

" -- that he hasn't been promised one."

Then it notes that "Michael Andersen admits that award of marks could be different."

He puts in square brackets then: "Discussion -- quite clear that people here are still at odds about quantitative versus qualitative evaluation, weightings, ranking, grading points, etc."

Then he quotes himself: "Me: We (T&RR)" -- which is the Regulatory Division -- "can't justify the conclusion by reference to the draft that we have seen (i.e. last one).

It's too close and report is not clear enough."

"4.1. More text is needed to explain bases of table 1.

Agreed.

I made point that bottom lines of table doesn't appear" --  
I don't know what that word is -- something "weightings,"  
etc.

"3.2. I raised the EU procurement point. Much discussion  
of Appendix 11. I'm not happy that we are using this in a  
relevant way."

Then his note says: "Much discussion about my point as to  
how to explain result in subtotals.

" -- agreed that the text will have to explain it.

" -- note that it was conceded by Martin Brennan and  
Michael Andersen that different types of weightings were  
used, sometimes none, sometimes 'feel' to arrive at bottom  
line."

Next bullet point:

"Much discussion about bottom of summary. "4 different  
methods -- my point, we didn't use 4 different methods,  
only one. The group (i.e. AMI in Copenhagen) simply  
regrouped."

And he notes at the bottom of the page:

"Me, M.B., S.F. and J. McQ. went to see Secretary at 3.30. Agreed that report not clear enough to support decision." And he writes down after that "QED explanation mark." The top of the next thing is something to do with -- I can't read the first three items on the next page, I don't know precisely what they mean and I am not going to attempt to give any reading of it.

But he says that "it was on our return it was agreed" -- and I presume that is the return to the meeting -- "that a final decision should not be taken on Table 16.

-- this resulting from both our meeting with the Secretary and, independently, by group in our absence.

-- it should be Tables 17 and 18!? They can't agree on whether the same weights went in. It seems M.B. dreamt them up during the qualitative evaluation."

You have seen that note?

A. Yes.

Q. Firstly, were you aware that Irish civil servants, or that some of the senior civil servants departed the meeting, went and spoke to the Secretary of the Department and procured an agreement, at 3 o'clock, that the report wasn't sufficient to justify the conclusion, or wasn't in a state that would justify the conclusion or to support the decision, to use the phrase, and that they came back to the meeting, and that, independently, in their absence, it had been agreed that the -- that Table 16 was not, to use the phrase "Agreed final decision should not be on Table 16.

This resulting from both our meeting with the Secretary General and independently by the group in our absence." Were you aware that that had happened?

A. No, I was not aware, so I feel pretty sure that I must have left the meeting before they went to see the Secretary, or whoever, yeah.

Q. Well, can I put it to you this way: Looking at those notes, and allowing for the passage of time, would you agree with me that it could hardly be that there was unanimity at that meeting unless those notes were written to deceive some later reader?

A. Yes, this is where I am struggling because there was unanimity while I was present, but no issues like some of the issues he raises here flagged at the meeting.

Q. Well --

A. So I would agree that looking -- I will agree with you that looking at this note, it looks like some disagreement is taking place, but I hope you also appreciate that this was not flagged while I was present.

Q. I see. Well, if, for instance, Martin Brennan first noted a remark from Mr. McMahon that he had only just seen the final draft report, that must have been said in your presence, surely?

A. Probably, probably.

Q. And did that surprise you, that, you know, here this Project Group was meeting and that one of the senior people in the process had only just been shown it?

A. Surprise and surprise -- I was not overly surprised, but, of course, this would not be a normal thing if it were correct. At the same time, I will also have to put into

perspective, maybe, to give some kind of explanation, that, at the same time as I was running this competition, I also had an assignment to draft the new organisational structure, etc., on the establishment of an independent Irish telecom regulator, and it was clear from my studies that a new director had to be found to be director of what then transpired to be Office of the Director of Telecommunications Regulations and Sean McMahon, Martin Brennan and maybe, also, John McQuaid, they were positioning -- maybe some kind of positioning themselves for that future job, because everybody knew that there will be a complete reorganisation within a few months after this.

Q. So you think that some of the regulatory people were positioning themselves, or may have been positioning themselves, by the stance they were taking?

A. That is what I am suggesting. And I have told you this morning that I clearly recall something which, by the way, is not at all recorded in these minutes, and that was Sean McMahon's insistence on taking regulatory concerns into consideration in the evaluation.

Q. I see.

A. So what I sensed was, at the time, that there was some kind of tension in this, maybe, between Martin Brennan and Sean McMahon and maybe also with John McQuaid, to a lesser extent.

Q. I see. Now, can I bring you to Tab 71.

A. Yes.

Q. And this seems to be a fax which was sent to you from Fintan Towey on the 25th of October, 1995, is that right?

A. Yes.

Q. And as I understand it, that is the day on which the Minister announced the results, the 25th of October?

A. Yeah, in the evening, yes.

Q. And here we have Mr. Towey sending to you proposed amendments to the final report, is that right?

A. Yes.

Q. Again, I think that you actually considered these and sent back his fax to him, which is at Tab 72, with ticks in respect of the amendments that you agreed and were making, is that right?

A. Okay, yes.

Q. And there are just a few things where you came up with a different view, or didn't go along with his view, is that right?

A. Yes. But when you say "just a few," I still think that they were important.

Q. Yes, and we'll come to that. And these were sent back by you on the 25th. Can you work out, can you remember what time of the day these were sent back?

A. You see --

Q. I think it's 14.05, Danish time?

A. I think I actually saw on fax that there was a time inserted in a header, or whatever, that it was sometime during the afternoon that I sent my comments, and that, maybe, late morning, I had received from Fintan Towey.

Q. And just for completeness, and I am going to come back to them at a later point, I see on the -- that behind Tab 77, there is the cover sheet which you used to send back to them the final version of the report, isn't that right?

A. Yes. But there is discrepancy between the date recorded there and then the date of the fax machine in the header, because the date on my fax states 26th of October, but the fax machine states -- oh, no -- I cannot read --

Q. It is the 26th.

A. Okay. Maybe -- yeah, okay, it's the same, then. Yeah, sorry, it's the same.

Q. But just to put this in context; the Minister has, by the time you send the final version of the report, he has announced the winner, isn't that right?

A. The Minister has, sorry?

Q. Already announced the winner by the time you send that fax?

A. Yeah, I assume that, yes, that's correct because he did that on the evening of the 25th.

Q. So that the textual amendments that were the subject of the exchange of faxes between yourself and Mr. Towey, were directed towards producing what I think you later called a maculated [sic] copy, a tidied-up copy, is that right?

A. Oh, I don't recall that.

Q. I'll bring you to it. But a tidied-up copy, is that right --

A. Yes.

Q. -- of the report --

A. Yeah.

Q. -- came after the event, is that right, the final text came after the event?

A. Yeah, it looks so, yeah.

Q. And in relation to the matters that were the subject matter of proposed changes, there are a number of them that I just wanted to draw to your attention. That's probably more

convenient to deal with them at Tab 72, because that shows your reaction to the proposed changes. One of them that I just want to put to you is on page 6 of the original report.

A. Where do I find the original report? Which binder?

Q. Book 46, I think. Do you see the bullet-point second from the end on the second pages of suggested textual amendments?

A. Sorry, I am a little bit lost.

Q. The phrase was -- the fifth paragraph on page 6 was replaced with "An initial draft report was discussed by the PTGSM on the 9th of October. The incorporation of comments on the initial and a subsequent draft by members of the team in relation to the presentation of the results of the evaluation process has culminated in this final report."

A. Yes.

Q. And that replaced the paragraph "An initial draft report was discussed by the PTGSM on the 9th of October. The incorporation of comments on the initial and subsequent draft by members of the team in relation to the presentation of the results of the evaluation process has culminated in this final report. This report reflects the consensus view of the Project Group as to how the results of the evaluation should be presented in the final report."

I have to suggest to you that the sense of the report is being changed to suggest to the reader that the PTGSM had, in fact, approved the final report?

A. Well --

Q. And the phrase "has culminated in it" means that they

looked at initial drafts and this final report has emerged but the unsuspecting reader might assume that they had actually seen and approved the final report, but they hadn't, isn't that right?

A. But it doesn't state here that they have seen the final report.

Q. No, but --

A. But maybe it's the impression you get as a reader.

Q. The impression, I am suggesting, to an unsuspecting and casual reader, would be that the Project Group had approved the final report, because it says it culminates in the final report, isn't that right?

A. Yeah.

Q. But, in fact, we know that the Project Group hadn't seen this final report and we know that some members of the Project Group had apparently sought and obtained agreement to the postponement of its finalisation for a week, isn't that right?

A. Here, I am struggling a little bit, because I was not aware if any members had asked for a postponement, and, moreover, it was my impression that the PTGSM members had read the rd of October report. So what they hadn't been able to read, obviously, if that is the point you would like to make, is the changes in the report --

Q. Which were now being made?

A. Which were now being made, yes.

Q. May I bring you on to the bullet-point dealing with page , paragraph 3. It's about four or five pages later in that book.

A. Sorry, in the fax?

Q. Yeah. That suggests "deleting a paragraph at this point as the point is covered both in the material above and in the final recommendation," isn't that right?

A. Yes.

Q. And the paragraph 3 that was being deleted was "Although being assessed the most credible application, it is suggested to demand an increased degree of liability and self-financing from the backer if the Minister intends to enter licence negotiations with A5."

A. Yes.

Q. And do I note from your handwriting at the back -- at the side there, that you were not agreeable to that deletion?

A. That's correct, and --

Q. You were insisting on that paragraph remaining in?

A. Exactly. And it is my handwriting, I can confirm that.

Q. And you used the phrase before that you were insisting on that remaining in. Why were you insisting? In what sense were you insisting on it, and why?

A. In my view, it relates to what I have called a marker to be put down here for the Minister, and, in my view, it relates to issues you went over with me already the first day, because we have the RFP document where it is stated in paragraph 19, now I am just trying to do it by heart, that the Minister intends to compare the applications on an equitable basis, subject to being satisfied with the financial and technical capability.

Q. Now, I think, also, the Department was, at that point, seeking an insertion into the text, is that right, which is at page 44, "Insert a new paragraph 2 and 3 along the following lines..." and it's on the previous page of the

fax that we're dealing with?

A. Yes.

Q. And it reads: "A critical factor in any consideration of the credibility or risk analysis of applications is the capability of the principals to finance the project, including ability to meet any shortfall in the funding requirement due, for example, to unforeseen capital expenditure. In general terms, the applicants have provided comfort that appropriate funding arrangements are in place. The evaluators have concluded, having regard to the level of interest in the Irish competition for the GSM licence and the high profitability of mobile telephony generally throughout Europe, that the project is fundamentally robust and, after a licence has been awarded or granted, an attractive opportunity for corporate debt financiers. The evaluators have, therefore, formed the view that, subject to at least one of the principals having sufficient financial strength at this stage to ensure completion of the project, a potential financial weakness of one consortia member should not have a negative impact on the ranking of applications. It is important, nevertheless, to draw attention to the need to deal with this factor where relevant in the context of licence negotiations. These aspects are the subject of further elaboration in appendices 9 and 10.

"The assessment of credibility and risks has also taken account of:

" -- management proposals,

" -- preparations in relation to the development of distribution channel,

" -- preparations in relation to site acquisition and equipment procurement,

" -- consistency of penetration, usage, etc., with financial figures.

"In general terms, this assessment has sought to identify factors which may have the effect of undermining the projected development in the business plans proposed by the applicants."

And that text was suggested for insertion by the Department, is that right?

A. Correct.

Q. And that effectively is, if you like, the bankability concept being inserted?

A. Something like that. Now, you say "the Department," but it may be the Steering Group members.

Q. Well, the Steering Group members aren't privy, as far as we know, to the sending of this text. It's just --

A. It's one civil servant from the Department who sends the text, but as I recall the agreement, it's the 23rd of October Project Group meeting, he was the point of contact for gathering comments from the various Steering Group members.

Q. Well, you know that -- or it appears that after you left

that meeting, they went and they said they wanted more time to consider the result -- or to consider the report you had submitted, and we know now that they weren't given that extra time, that effectively the decision was to go on the 25th when this exchange of faxes is taking place?

A. Yeah, that's appreciated. And in this context, I could only assume then that the civil servant here, he has been even more meticulous to gather information from the various Steering Group members and, in particular, from Steering Group members who wanted extra time, but that's speculation on my part, so maybe we should just leave it.

Q. Yes, that is how you thought it was at the time?

A. Yeah, exactly.

Q. I see. Now, does it follow from the foregoing that prior to the ministerial announcement, your last dealings with the Department at that time was the exchange of material in relation to finalising the report on the 25th of October, which was finalised on the 26th -- or, sorry, the final text of which was agreed on the 26th between you and the Department, is that right?

A. Yes, I believe that there must have been, also, a telephone discussion, also. So it's not only a written procedure, actually. As you see some of the comments here, in particular the comments on page 6 or -- to page 6, I had a suggestion which was -- which is not how it reads in the final version.

Q. Well, I think this is -- is this on the bottom of page -- on page 6, final paragraph?

A. I am just trying to help you because I have come up with a suggestion here, and this -- my suggestion is not what is

in the final report, and therefore, I take it that, in addition to the exchange of these faxes, I must also have had a telephone conversation with the Department with my client.

Q. Well, you see, I am suggesting to you that --

A. Do you see what I mean?

Q. I see that, yes, because that suggestion wasn't gone along with, so there must have been some basis for that?

A. Exactly.

Q. But you were asking that a sentence should be inserted saying "Andersen Management International has followed the instructions of the PTGSM as to how the results should be presented." That's what you wanted put in?

A. Yeah.

Q. Is that right?

A. Exactly.

Q. And they wouldn't do that?

A. I don't recall, but what it ends up in is a different formula that it represents the consensus view of the --

Q. But you were, by that amendment, Professor Andersen, seeking to say that, in presenting this report as to how the results should be presented, you wanted it recorded that AMI were following the instructions of the Project Group, is that not right?

A. Exactly. And that relates back to what we have discussed over some days, in particular the conversion of letters to numbers.

Q. I see. And in other words, you wanted it recorded that, as regards matters presentational, you were operating on instructions?

A. Yes. In particular with regard to the conversion of letters to numbers, that was what I meant. And the final sentence which was inserted, then reads: "This report reflects the consensus view of PTGSM as to how the results of the evaluation should be presented in the final report." And I could clearly -- I mean, looking at the documents here, 15 years after, it is quite clear that the final sentence in the Evaluation Report is in good accordance with the contractual amendment from the 14th of September, because the contractual amendment from the 14th of September said that the final report should take into the view -- should take into account the views of the PTGSM.

Q. So, sorry, you are saying it should take into account?

A. Yeah.

Q. That what should take into account?

A. I am referring back to the letter from the 14th of September where a sentence which is quite similar to the one here in the final report, actually occurs.

Q. This is the contract letter, is it?

A. Yeah. I am just taking it from recollection. But it was on the top of my head at that time.

Q. And that is that the "Andersen Management International would complete all the steps outlined in the AMI letter submitted on the 16th of March, 1995, carry out such supplementary analysis are considered necessary by AMI along the lines identified in the minute from AMI dated the th of September, 1995, 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 as set out

at step 18 of the tender submitted on the 16th of March,  
. The evaluation shall contain a quantitative and qualitative evaluation of all the applications and the results of any supplementary analysis taken. The report shall rank the top three applicants 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 and shall explain why the three applications not ranked do not qualify for ranking."

And where is it that --

A. I am not having the letter, so it's difficult for me to...

Q. I'll present you with the letter, so.

A. I just believe it is somewhere.

Q. "The final Evaluation Report shall take account of comments provided by members of the GSM Project Group."

A. Yeah.

Q. "It is anticipated that comments from the GSM Project Group on the Draft Evaluation Report shall be provided to AMI by the 10th of October, 1995. Following consideration of such comments, AMI shall produce a further Draft Evaluation Report in the format described above for Draft Evaluation Report by the 17th of October, 1995. This further Draft Evaluation Report shall be discussed at a meeting of the GSM Project Group within six days. The final Evaluation Report, taking into account the views of the GSM Project Group, shall be submitted to the Department by AMI by the

th of October, 1995, unless an alternative..."

So it's "taking into account the views," is the phrase you are using?

A. That is what I am saying.

Q. But, I mean, that is slightly different from the phrase "following instructions" or "done on the instructions," but...

A. Exactly.

Q. But you wanted to put some clear blue water between yourself and the letters-to-numbers procedure which had been effectively imposed on you against your wishes?

A. I wouldn't say "imposed" on me, but, you know, I was not particularly fond of that exercise because I think it distorts the value of the holistic evaluation.

Q. And that text was in the report from the 3rd of October, was it not? Because we have traced its probable origin --

A. Yes.

Q. -- to the meeting of the 28th of September, or thereabouts, is that right?

A. Yes, yes, that's correct.

Q. Now, could I ask you, in relation to all of the material which suggests that there was unhappiness and a desire to revisit the matter and to analyse things further arising out of the meeting on the 23rd of October, is it your memory now that none of that was drawn to your attention at the time, the unhappiness of public servants, Mr. Riordan and other people, with the calculations, that none of that was ever brought to your attention?

A. I don't recall it, let me put it in that way. I have no recollection of it.

Q. And we do know that the word "unanimous" was taken out of the proposed text of the final report and the notion of "consensus" was brought in --

A. No, that is not correct, that is not correct. The word "unanimous" is, I believe, in one of several places in the final report. You are correct with regard to page 6 where the wording "consensus view" comes in, we have just been over that, but that is regarding how the report should be presented. That is a presentational matter only.

Q. I see. Yes.

A. But concerning the adoption of the scoring and the report, as such, the wording about a unanimous agreement or unanimous support is still there in the report.

Q. Well, bearing in mind the transactions shown by Mr. McMahon in his documents and in his notes, would it be fair to say now that, with the benefit of hindsight, there was no unanimity on the 23rd of October that this report was to be adopted in the form that it then was?

A. No, I don't think that would be fair. What would be fair is to ask them: "Did you back up the report? Did you back up the results? Yes or no?" I mean, take them into evidence; ask them, "do you support the report? Do you support the result or do you not support?" Because what I see in these documents, you know, I have been a civil servant myself, you know, they are making a kind of life insurance, is a term I have used before, or whatever, and I think it's fair to say if you take, for instance, Sean McMahon, he was not participating in any of the sub-groups, and I don't think he participated in the presentation meetings, either --

Q. So your general approach to seeing all of this material now for the first time is that they seem to have been in private, covering their back, is that it?

A. Something like that. Covering their back and a little bit of struggle between civil servants, that's how I interpret it, because --

MR. O'CALLAGHAN: Sorry to interrupt, Mr. Chairman. I think Mr. McDowell should point out that when Mr. McMahon came to give evidence on day 207, he was asked whether he endorsed the result? And he said he did endorse the result. And, more than that, he was asked, "And are you happy that that was the correct result and the right result?"

Answer: Yes, I am.

Question: And that is still your position?

Answer: That's still my view.

Question: And you are equally happy and satisfied that there was no outside influence that brought about that result?

Answer: Yes."

So rather than putting the documents to the witness, I think the witness should also be apprised of the evidence that was given by the civil servants to this Tribunal.

CHAIRMAN: He is entitled to the total position, yes.

MR. McDOWELL: That, of course, is a matter for My Friend to raise in cross-examination, if he thinks I am being

unfair. I am merely asking the witness for his reaction to these documents.

A. Yes, I was actually going to say that Sean McMahon, he was not -- he may not have been as familiar with the evaluation as some of the other Steering Group members were, because Sean McMahon was not part of any of the evaluation sub-groups, and therefore, it may have caused him more time to suggest [sic] the results once the reports were there.

Q. Now, could I bring you to Divider 81.

MR. O'DONNELL: I think, Chairman, the word "may have caused him more time to suggest," but I certainly heard it as "digest". I may be wrong, but just in the transcript it appears "to suggest the results..."

A. I said "digest," yeah.

MR. O'DONNELL: Well, that's what we thought you said, but it's on the transcript as saying "suggest," and obviously that can't be right.

CHAIRMAN: I doubt if revolutions will break out on that matter alone, Mr. O'Donnell.

MR. O'DONNELL: I am sure that won't happen, sir, but...

Q. MR. McDOWELL: Can I bring you to Divider 81, and this is a typed-up version of a document, which is the last item in Divider 81, which is a manuscript note, and this is a note from a Mr. Ed O'Callaghan.

A. Okay, yes.

Q. And this is a chronology that he created in relation to these matters.

"I learned that AMI had forwarded a first draft of final report in week ending the 16th of October, 1995. I asked Martin Brennan who they had recommended and he refused to tell me on the 6th of October. The report was not circulated that week. Sean McMahon told me the order of preference later that day.

"2. Did not see the copy of the first Draft Final Report until the 9th of October, 1995. I raised the question of what happens if there is disagreement and Martin Brennan said that most of the Project Team had been involved in the assessment which led to the ranking. Martin Brennan said that the Minister already knew the winner.

"3. Remainder of week taken up entirely with consultants on strategic alliance.

"4. 17th of October, 1995, informed by Fintan Towey that Minister wanted to" and, in brackets, "announce winner by end of October" was taken out -- "Go to Government the following Tuesday with the winner. Meeting of Project Team for 23/10 at 11.30.

"5. Went to Brussels the 18th of October -- returned 19th of October. Read second draft report on 20th of October but not appendix.

"6. Informed at meeting of the 23rd of October that the Minister wanted to go to Government on the 24th of October and get clearance for winner. Sean McMahon and I said that we couldn't sign off on it as the report was deficient and had not been fully read. Martin Brennan, Sean McMahon and John McQuaid met the Secretary and a further week was agreed to consider the report. Meeting went on until .30 p.m."

Clearly, you had left by that stage?

A. By far.

Q. "7. 24th of October, informed that the Taoiseach had requested the Secretary (?) to expedite the position with a view to clearance by Government the following day. I went through drafting changes with Martin Brennan between 4 to p.m. Meeting at 5 p.m. Left at 7.15 p.m. -- drafting changes still being discussed and to be faxed to Michael Andersen.

"8. Minister met Sean McMahon and Martin Brennan and Secretary and Sean Fitzgerald. He was to meet party leaders re the winner. Heard at 4.45 that Minister was holding a press conference to announce the winner. He did no signing off on report -- we had no final report. No consensus asked for. No vote, effectively no decision by Project Team."

Now, does that surprise you?

A. Yes, it does.

MR. O'DONNELL: Sir, again, without wishing to interrupt,

Mr. O'Callaghan did give evidence. I accept that

Mr. McDowell --

MR. McDOWELL: I don't want My Friend prompting the witness.

CHAIRMAN: I think we are going to have that,

Mr. O'Donnell. We are taking it in sequence. I am well

aware of the evidence of both Mr. O'Callaghan and of

Mr. McMahan, and we are taking it in sequence.

MR. O'DONNELL: I am wondering why Mr. McDowell is not --

MR. McDOWELL: I am --

MR. O'DONNELL: Sorry, hold on while I make the objection,

then you can answer it. I am not clear why, in this case,

Mr. McDowell is only putting the document and is not

putting the explanatory evidence given by Mr. O'Callaghan,

in the same way as when Mr. McDowell examined Professor

Andersen about the document produced by Mr. Sean McMahan,

he didn't put to him Mr. McMahan's evidence. Now, I am

just anxious that if the Tribunal is inquiring fully, that

this witness be given a full picture by Counsel for the

Tribunal of what Mr. McMahan and Mr. O'Callaghan's position

was, and their position must, I respectfully suggest,

include their evidence here and I just -- I am asking the

Tribunal to bear in mind, because Mr. McDowell didn't do

it, I am asking the Tribunal to put to this witness,

because, sir, you are the client, that --

CHAIRMAN: Mr. O'Donnell, it was never going to go unnoticed. Obviously, I have heard both the evidence of the events at the time of the announcement and the subsequent evidence of the civil servants, but Mr. McDowell's initial duty on behalf of the Tribunal is to put the contemporaneous matters during Mr. Andersen's stewardship.

MR. O'DONNELL: But even if that's his initial duty, it would then, presumably, be his follow-up duty to put to him the oral evidence so that the witness is given an opportunity to comment on the complete picture of the evidence given by those two civil servants, rather than, simply, the documents, and I think that it's -- I am concerned, I'll put it no further than that, I am concerned that this witness is having an incomplete picture based only on documents, whereas, in fact, there is evidence, where these witnesses have given evidence about what those documents meant, and Mr. McDowell hasn't put those, and it appears isn't going to, for his own reasons. I assume --

CHAIRMAN: Whether or not he does, Mr. O'Donnell, you are hardly going to remain mute and I am hardly in ignorance of them.

MR. O'DONNELL: Well, I am anxious that -- I think it would be more appropriate that Mr. McDowell put it so that we would all have a picture that this is a neutral examination of Professor Andersen by Mr. McDowell where everything,

where all the cards are out on the table, rather than where some of the cards are not disclosed to Professor Andersen and have to be turned up later by counsel for the other participants.

CHAIRMAN: Proceed, Mr. McDowell.

MR. McDOWELL: Well, as the Tribunal well knows, I am putting these simply to elicit the witness's fresh reaction to them. It would be a matter for the Tribunal and the deliberative process of the Tribunal to evaluate the evidence on the basis of any re-examination that comes. It's not my function at all to ask this witness to evaluate the evidence of other people, and I am not proposing to ask him to do that.

Maybe you'd just give me your reaction to seeing that piece of paper?

A. Okay, I said I was surprised. And then I think the same applies to Ed O'Callaghan that applies to Sean McMahon, that not being deeply involved in the evaluation process. And just from your reading of it, it expresses some kind of frustration. That's how I read it.

Q. Yes.

A. It's a frustrated civil servant.

Q. Now, do you remember that you said, Professor Andersen, that notwithstanding what was in the 2002 Memorandum, that you believe that you advised that, as soon as the decision was taken, it should be announced immediately; do you remember that?

A. Yes, I think we discussed whether it was sooner rather than later or as soon as possible.

Q. I see. And do you recall did you say that at the Steering Group meetings?

A. No.

Q. To whom would you have given that advice, do you think?

A. That would have been to the Department, notably Mr. Brennan.

Q. And when do you think you would have told him that?

A. Well, I think we have been over this before. What I have said is that I would assume that I have said it several times during October. You would appreciate that I had a lot of contact with Mr. Martin Brennan, and also Fintan Towey from the Department.

Q. Could I ask you in relation to the Evaluation Model appendix to the final report, was it your intention, in adding it as an appendix, to convey to the reader that this was the Evaluation Model which had been agreed before the closure of applications? Maybe if I ask you, in the book, Book 93, to go to Divider 7.

A. Sorry, is it -- it's the final version of the report? Because I have my own version.

Q. It's the final draft version dated the 18th of October, , is what's written on it. Have you got Book 93 there?

A. No, I don't think so. No, I haven't got that book. Oh, sorry, yes, it's here. And it's tab --

Q. Tab 7. And these are extracts from the appendices to the th of October version?

A. Yes.

Q. Can I bring you, at first instance, to paragraph 4 --

sorry, to page 4.

A. Page 4 of Appendix 3?

Q. Yes, Appendix 2.

A. Appendix 2, okay. Yes.

Q. And there is a paragraph in the middle of the page there:

"A draft report discussed on the 9th of October has, following the incorporation of comments from the PTGSM, culminated in this final report."

That's the phrase we were looking at earlier?

A. Yeah.

Q. "As unanimous support was given by the PTGSM to the results of the evaluation, Andersen Management International was requested to submit this final report." That was actually deleted, was it not, in the end?

A. This whole section was deleted, yes.

Q. "It was also decided to present the quantitative and qualitative parts of the evaluation in an integrated fashion in accordance with the agreed procedures."

Was that incorporated in the final version?

A. Maybe elsewhere, but the whole section does not appear in the final version.

Q. And are you aware of any particular reason why it would be deleted?

A. Maybe it was part of Fintan Towey's comments, I don't know.

Q. I see. Now, could I bring you to -- could I bring you to the bottom of the page, the paragraph beginning "The PTGSM then requested the Andersen team to draft a Memorandum on the Evaluation Model to be applied prior to the first closing date on 23rd of June, 1995. At that time, there was no limitation on the amount to be offered to the right

to the GSM2 licence. Thus, the Evaluation Model should include some degree of quantitative evaluation in order to avoid a situation where the Irish Government could easily be accused of having prioritised the fee aspect higher than the ranking as the fourth criteria stated in paragraph 19 of the RFP document. The resulting document is basically Appendix 3." Is that -- that's where Appendix 3 comes from; it's a statement that you were asked, prior to the closing date, to set out the process and that the resulting document appears in Appendix 3, is that right?

A. Yes.

Q. And the next paragraph reads: "By the change of the fee structure" -- and you refer to section 2.3 above -- "the PTGSM decided to slightly change the relative weighting of tariffs and the licence fee such that the licence fee should count for 11% instead of 14% and that tariffs should count for 18% instead of 15%. The new weighting was, like the initial weighting, still in accordance with the ranking of the criteria outlined in paragraph 19 of the RFP document." Is that right?

A. Yes.

Q. Now, when you get to Appendix 3, Appendix 3 appears, on the face of it, to be an historical document, isn't that right?

A. Yes.

Q. And in Appendix 3, is set out, for instance, a number of tables, is that right?

A. A few tables, but are you referring to the scoring methodologies, the formula?

Q. Yes. In particular, I am asking you to go to page 10 of Appendix 3.

A. Okay, yes.

Q. And at that point, he had weights set out in the Evaluation Model table there, isn't that right --

A. Yes.

Q. -- for the vote-casting and weight matrix, and on the previous page, page 9, it says: "The following table shows how the votes will be given for each of the indicators in the quantitative evaluation." Is that right?

A. Yes.

Q. And they are set out on the basis of that table which, as we know, doesn't quite add up, isn't that right, or does it?

A. That is not correct. This table adds up to 100, yeah, it does.

Q. Who drafted that table?

A. I think that table comes on the basis of Maeve Nic Lochlainn's fax to me from the 6th of October.

Q. She didn't draft the table, presumably?

A. No.

Q. The figures come from her, don't they?

A. Yeah, exactly.

Q. And were they by way of correction? She was correcting the -- she was reminding you that these were not the same as --

A. The previous were not the correct ones, but here, they are, here the correct ones are recorded and these here are also the same as those who appear in the final report.

Q. Yes, these are the same, you say, as the ones in the final --

A. Yeah. You see, we are looking at -- here, we are looking at the report from the 18th of October.

Q. Yes.

A. And it is the same that appear in the final appendix to the final Evaluation Report.

Q. Yes. And in relation to those weightings, can I bring you to tab Number 8, please.

A. Yes.

Q. And can I specifically bring you to page 48 in that tab.

A. Yes.

Q. Do you say that the weightings that appear in the Table 16 correspond with the ones which you had in your Evaluation Model which we have just dealt with?

A. Yeah, that is how -- that is how I recalled it, that based on page 10 of Appendix 3 from the 18th of October, and then the weightings you have recorded here in both Table 16 and Table 17, I think that there are correspondence, yes.

Q. You think there is correspondence there?

A. May -- should we walk through it? Because if you take market development, for instance, that is 10, and that is the addition of market penetration score 1 and market penetration score 2. If you take speed and extent of demographical coverage, that's recorded as 7 and that's equal to coverage 7 in Table 16. If you take competitiveness of an OECD-like basket, that's recorded as on page 10, and tariffs is 18 in Table 16, also. If you take number of international roaming agreements, that's 6. If you take number of cells and reserve capacity respectively, that corresponds to indicators for radio network architecture and network capacity, which are also recorded as 10 in Table 16. Licence-fee payment, that's a little bit trivial because that's 11, both of them.

Roaming plans, we have. And then if you take blocking and drop-out, they were defined as performance guarantees, so two times 2.5 adds up to 5 in table 6, and frequency efficiency, that remains as 3 in both versions.

Q. I am going to show you now, if I can, a page from the -- page 17 of the Evaluation Model which was actually adopted by your group in June, yes, 9th of June, 1995. It's at Tab 24 of Book 91.

A. Sorry, tab number?

Q. 24 of Book 91, I am told.

A. What page?

Q. Page 17.

A. Page 17. Thank you. Yes.

Q. I don't know whether you can conveniently hold them together, the two tables?

A. Yeah.

Q. But, insofar as this is an historic document, the historic document that was adopted on the 9th of June, 1995, is the one which is being shown on the screen there, is it not?

A. That is Sean McMahon's version.

Q. Yes, but it's a thing printed out by AMI. Sean McMahon hasn't been writing his name sideways on it --

A. What is the question?

Q. I am saying that this is, in fact, what's shown on the screen, is the historic Evaluation Model which was adopted on the 9th of June, 1995?

A. Yes, subject to a silent procedure thereafter. This was what we saw from the minutes --

Q. And the silent procedure took some points off the licence fee?

A. Yes.

Q. And distributed them, those points, isn't that right --

A. Yes. And --

Q. -- to tariffs?

A. And then it occurs, as I believe we went over Friday afternoon, that Maev Nic Lochlainn sent this fax from the 11th of October, stating that when -- when she read page 11 or 12, or whatever, of Appendix 3 to the Draft Evaluation Report from the 3rd of October, then she could detect that something was wrong because the figures added up to 103, etc..

Q. But, I mean, I am suggesting to you that she never suggested to you that the figures 5 and 5 should appear on the right-hand column on page 10 of Appendix 3?

A. No, but what she did suggest is that there was something wrong and that the figures there were not in accordance with her note to the file.

Q. And I know that you have difficulty in finding an audit trail now for this paper, but may I suggest to you that, in fact, the Evaluation Model, even allowing for the text in it which says that you have redistributed the licence fees between tariff and the other item, that even allowing for that matter, it doesn't give any -- a clue to a reader that, in fact, the other figures had been changed, as well, since June?

A. That may be correct, but still, the figures inserted in the first Draft Evaluation Report were not correct.

Q. And I have got to ask you now, looking at the two together, you are telling the reader that the -- what appears in Appendix 3 as the Evaluation Model, was basically what was

agreed the previous June, but, in fact, it wasn't, because you were, for some reason, changing the figures in September of 1995?

A. But, you see, with all due respect to the audit trail here, it is so that when I perceived to be the correct figures were inserted in the 18th of October report, that was accepted by the Steering Group.

Q. Well, was it accepted by the Steering Group that you had inserted these correct figures, because a number of them are making notes on the draft reports that they have received, reverting to these figures?

A. I think the majority did not make any notes or suggest any discrepancy. I recall that you have taken up, was it Billy Riordan? He had written some handwritten comments which you went over with me earlier today, but, at the same time, I am not so certain that he believes that it was wrong what was there. Maybe it was just, you know, a personal exercise or a stress testing, or whatever, he tried, I don't know, but the point is that I have got no feedback from any person that the figures here, on page 10 of the report on the 18th of October, that they were wrong. So if people had thought that they were demonstrably wrong, then they should have told it. And if I was told that it was demonstrably wrong, then I should have recorded it. So it remains, I believe, a matter of fact, that the 18th of October and the 25th of October reports, they are with these figures.

Q. So what you are saying, in effect, and again I don't want to put words in your mouth, is that you believe that you came up with correct figures from where we don't know, and

that the Project Group acquiesced in the correct figures that you came up with?

A. No, no, that is not what I am trying to say. What I am trying to say is that it has been important to record weightings which were in accordance with Maev Nic Lochlainn's note to the file.

Q. And do you say that this --

A. And then there is, we might call it what it is, I mean, the Tribunal has stated in the opening remarks that they think that the weightings should have been 7.5, 15 and 10. This is your instructions, Mr. McDowell.

Q. Yes.

A. This is your instructions?

Q. That's right, yes.

A. But I am saying to you, over and over again, that what you have got as instructions from the Tribunal legal team is not in accordance with Maev Nic Lochlainn's note to the file, so something is wrong there.

Q. Is this the difference between 7 and 7.5, is that your point?

A. Yeah, because 7.5, 15 and 10, I hope I am not able to make that aggregation any longer because it adds up to 32.5%, and Maev Nic Lochlainn's note to the file clearly says 30%.

Q. So are you now -- are you saying that -- I just want to be clear about this --

A. Definitely. I want, as well.

Q. -- that you understood Maev Nic Lochlainn to be saying to you "Correct these," and of the figures that appear in that chart are the corrections you did on foot of what she said to you, is that your testimony?

A. On the foot of that and on the foot of my own reflections, because I think that she flagged something which is valuable and which is correct. So it's not only her, you know -- you should not make it -- let it make sound as if she instructed me to do something. I did it and the AMI team and AMI, as a consultant, did insert these figures because we thought that they were the correct figures.

Q. I see. And you say you thought they were the correct figures, but they do seem to correspond to figures which you proposed in May and which the Project Group had expressly rejected?

A. What do you mean by "correspond to"?

Q. Well, it's the same balance of 10, 10, 10 that existed in your original proposal to the Project Group, and they said no, they didn't agree with that. Back in May, you came up with a proposed Evaluation Report?

A. Yeah, that's correct.

Q. And they considered your proposed Evaluation Report and said, "no, we don't agree," and they came up with the formulation that was agreed on the 9th of June, isn't that right?

A. That's correct. But then what you saw there were figures that didn't add up to 100. That's the problem we then are struggling with.

Q. So then you reverted to your first understanding, which is , 10, 10, and regarded the 9th of June changes as a mistake?

A. Yeah, basically, basically.

Q. There is no difference with us on that.

A. Yeah, that's fine.

Q. So what you are saying is that you regarded what happened on the 9th of June as a mistake and then when you produced your historical account of what the Evaluation Model had been, that you went back to the figures that you yourself had suggested in May of 1995, because you thought they were correct?

A. Yes, you know, that's the reconstruction we are making here, because, as I also told you on Friday afternoon, that it's impossible for me to recollect exactly what date we are talking about, etc.

Q. You see, the point is that the reallocation of weightings from the licence fee, the 6 points that were added to -- 3 to tariffs and 3 to the other one, that was explained in the text, and I just wonder why it was that this reversion to your original proposal which had actually been overruled, is not referred to in the text at any point?

A. This -- we are struggling on common ground here, Mr. McDowell, because I haven't found the document where this is stated, and, of course, I would have liked to see that there was a document in a note to a file, or whatever, or an explication of this 10, 10, 10. But it appears that it isn't there. The document I am looking for is not there. But, on the other hand, I can also say that the .5, 15 and 10 is not correct, either.

Q. You see, in Appendix 2 you did actually set out the Evaluation Model, a description of the Evaluation Model and the technique -- page 4 and page 5, the bottom of page 4.

A. Tab 24?

Q. No, we are at Tab 7 in Book 93.

A. Okay.

Q. The bottom of page 4. And it says: "The PTGSM then requested the Andersen team to draft a Memorandum on the Evaluation Model to be applied prior to the first closing date on the 21st June, 1995."

Now, I take it that that's the document you came up with in May, which was adopted -- or adapted on the 9th of June, is that right?

A. Yes.

Q. "At that time there was no limitation on the amount to be offered to the right to the GSM licence. Thus, the Evaluation Model should include some degree of quantitative evaluation in order to avoid a situation where the Irish Government could easily be accused of having prioritised the fee aspect higher than the ranking as the fourth criteria stated in paragraph 19 of the RFP document. The resulting document is basically Appendix 3."

And then you say that that were changes made to it because the 6% was divided between two different categories which received an additional 3%, and you say: "The new weighting was, like the initial weighting, still in accordance with the ranking of the criteria in paragraph 19 of the RFP document."

A. Yes.

Q. And I am just wondering why it is --

A. What is the question?

Q. I am asking you to explain to the Tribunal why it is that you make no reference to what happened in June in that the original proposals from Andersens were overridden by the

PTGSM?

A. Well, I can only try to reflect on it, but one, I think, reasonable reflection, is that it was not high priority since the weightings you are focusing quite a bit on, namely the weightings for the quantitative indicators, they were never used.

Q. But were they not used as --

A. They were never used in the sense of making either a final separate self-contained report or a table. So, my reflection here is that, you know, we have simply concentrated on matters that did have a material impact.

Q. Well, you see, the point I am putting to you is that it was clear that the weightings that you describe as having been used in the combined quantitative-qualitative analysis were represented to the reader of this report as those which were adopted prior to the closure -- the invitation for applications into the competition subject to the one change of the reallocation of the 6% between tariffs and the other category?

A. Yes, I can see your challenge, but I hope that you can also see my challenge, that we never came to use these quantitative weightings, or weightings attached to quantitative indicators. We had several Steering Group meetings where nobody took this up when I was present. I realise that Billy Riordan has written something in a column, but he didn't bring it up while I was present.

Q. Well, I have got to suggest to you --

A. And the openly person who took it up, that was Maev Nic Lochlainn.

Q. I have got to suggest to you that Mr. McMahon must have

brought it up at the meeting, because his report, or his account deals with him doing so.

CHAIRMAN: It's the half-time period, Mr. McDowell. I think if we are taking 12 to 15 minutes now, it's an appropriate time.

A. Thank you, Chairman.

THE TRIBUNAL ADJOURNED AND RESUMED AS FOLLOWS:

Q. MR. McDOWELL: Professor Andersen, is it fair to summarise your evidence in relation to the 23rd of October, 1995, as follows: That you arrived in Dublin for a meeting and the venue was changed and you went to Clare Street, is that right?

A. That was on the 9th of October.

Q. That was the 9th. I see. On the 23rd, there was no problem about that; you went to a meeting?

A. Yeah, it was in Kildare Street, but I don't recall, but they had no confusion on the venue.

Q. And you attended a meeting at which, on the face of it, there was no internal dissent among the Irish civil servants as to the report as outlined by you to them?

A. Yeah.

Q. And no complaint made to you that any of them had had insufficient opportunity to study the report?

A. Yeah, that's correct.

Q. Nothing of that kind was said in your presence?

A. Nothing that I recall, and if there had been some of the things recorded in, let's say, Sean McMahon's handwritten

note where he criticises elements in the report, I would have been able to recollect it, because I would be on alert if somebody criticises.

Q. Yes, and if -- and can you recollect what time you left that meeting to go home, roughly?

A. It would be something like 2 or 3 o'clock in the afternoon.

Q. Because we understand that around 3.30 the meeting broke for a while for the Secretary General of the Department to be consulted?

A. I would definitely have left at that stage, because I have no recollection whatsoever of somebody departing from the meeting, and that would be -- that would be a dramatic thing, don't you think?

Q. Well, it would, if some of the participants left and others remained on in the room.

A. Yes. So I would have been able to recall if I were present at that stage.

Q. So the Tribunal can understand your best reconstruction of events, you would have left before any such discussion about going to see the Secretary General about postponing a decision took place?

A. Definitely, and if I had been made aware of such a postponement, I would have been able to recollect it.

Q. And therefore, it seems to follow that when you left on the 17th of October, you believe that the Project Group was of one mind, roughly speaking, subject to whatever additional material they were talking about generating, is that right?

A. Yes. Of course, coming in as a consultant, you would be eager to get approval for the work that you have been working so hard to get across to the client and I recall at

that meeting that Martin Brennan specifically asked the Steering Group members: Do you agree on this report? Or do you agree on the scoring? I don't know the exact wording, but he asked whether Steering Group members were in agreement on the report.

Q. I see. And there was -- whatever happened, nobody said anything that you thought was --

A. There was no dissent while I was present except for Sean McMahon's, what I call, shell-shock on A5 and regulatory challenges he would face and/or the Regulator would face.

Q. Just to be clear about that, you say that Sean McMahon's shell-shock related to an irrelevant --

A. Yeah.

Q. An inadmissible issue, is that right?

A. Yes, for several reasons, really. It wasn't mentioned in paragraph 19, and it -- in a sense, it was a qualification of the different direction that he had thought to draw the inference that, then, A5 shouldn't have had the licence, but when you are going to introduce competition in a market and you have a State-owned monopoly, you should compete -- the newcomer should compete with, then you should actually draw the opposite inference than he drew.

Q. And is it your testimony then, in summary, that when you went back to Copenhagen and transacted business by fax with Fintan Towey and on the phone with Martin Brennan, that you were dealing with a united team back in Ireland?

A. Yes, yes, it was game over. My client had accepted the report. There were some minor -- there were some important changes, but these changes were agreed, etc., so it was just a kind of relief feeling, type of feeling that I felt.

Q. And neither Mr. Towey nor Mr. Martin Brennan ever told you that there were people who were looking for the matter to be put back for a week so that the results could be rechecked and re-evaluated?

A. No, that the evaluation should be opened again or?

Q. No, that they should be checked, that they hadn't had time to read the document, they were concerned that the parties were very close and they weren't happy with declaring a result on just a fresh reading on one day? Nobody said anything like that to you?

A. Nothing that I recall. But as I also said, I recall that there was a certain tension between some of the civil servants, and, being a civil servant myself, I know that, to some extent, that's a natural thing, so I didn't -- you know, it's about their carrier and a total reorganisation should take place, etc., so that was the, you know, what I analysed as the explanatory background to it.

Q. I see. And it is -- your testimony is to the effect that when you were dealing with Mr. Towey in respect of the draft amendments, that these were amendments which had the support of the PTGSM in Dublin, the textual amendments that he was sending backwards and forwards to you?

A. Yes, and I think that even what you read from Donal Buggy, also stated that he was a type of coordinator for comments from the Steering Group members.

Q. I see.

A. I know that his fax doesn't specifically state that he is coordinating, but, you know, it's a lot of comments and he was, at that stage, a hard-working, relatively young civil servant, and so I would expect that it was based on input

from others.

Q. And in relation to the two seconded accountants, Mr. Buggy and Mr. Riordan, neither of them ever drew to your attention the fact that they were themselves re-doing the tables and querying whether the letters at the end of them, the scores were right or wrong?

A. Yeah, I will tell you, quite frankly, that I am very surprised to see, for instance, Billy Riordan's comments, handwritten comments, because if he had said what he is writing down during a meeting when I was present, I would have been able to recollect it, you can be sure about that.

Q. Because they were quite complex analyses?

A. Yeah.

Q. And it wasn't just off-the-top-of-his-head stuff; a lot of effort had gone into that analysis?

A. Yeah.

Q. And going back to -- and I am not going to, don't worry, I am not going to ask you to recollect things which you have said you can't recollect, but going back to the period between the 21st of September and the 3rd of October, can you assist the Tribunal on this issue? Is it more probable than not that a lengthy, either telephone conference or face-to-face meeting of the kind described by Mr. Towey and Mr. Martin Brennan, must have taken place to bring about your October 3rd draft? That some kind of long-ish meeting, dealing with the points he had raised on the 21st, or some long telephone conference, must have taken place around that time to deal with those issues?

A. I feel pretty sure that telephone conference call took place, and I think I have stated that at least one, but

there may have been -- throughout that period, I would statistically, have been in contact with them every second or third day, or whatever. Now, concerning the meeting, the physical meeting you are addressing, I have stated that I have no recollection of it, but I wouldn't rule out the possibility of a meeting, either. And as they are civil servants with a high personal integrity, you have stated to me that they are quite -- they have been quite definite about that in evidence, that they went to a meeting, then it's probably more likely that a meeting took place, a meeting which I am not able to recollect, or a meeting which I did not participate in or a meeting in which I did not participate in, in whole, took place, than the opposite. I mean, I have no grounds to dispute, if they can show the tickets and if they say -- if they are very definite about some kind of a meeting, then I will not just let my non-recollection overrule their recollection, if you understand.

Q. Yes, but we can be certain of this, can we not, that whatever meeting or telephone conference took place around that time, it was a meeting of a small number of people and not the entire PTGSM?

A. Yeah, it was definitely not the entire PTGSM, that's for sure. And if a meeting took place, I don't know if it was Fintan Towey or Martin Brennan and others, but they are two, but on my side, due to the fact that I can see from my calendar that I was also, sometime of that day, in Sweden, whatever, not only myself but Jon Bruel and maybe, also, other consultants from the AMI team who were working on -- full-time on this project, must have been into the

equation.

Q. And can we agree, because of -- you did write the letter of the 21st of September --

A. Yeah.

Q. -- and you did set an exacting agenda that had to be dealt with by the 28th if you were to have your report by the rd --

A. Yeah.

Q. -- that the matters dealt with in your letter of the 21st of September must have been dealt with in one way or another --

A. Exactly.

Q. -- in the following week, roughly speaking?

A. That's a good point, because I got all the issues solved, one way or the other, yes, otherwise I would not be able to do my draft report. And if I had not been, let me just try to take that scenario, if I had not got the input which I felt I needed, I would then have written another telefax.

Q. And going to your letter of the 21st of September, can we agree that it is more probable than not that the grand totals were, in fact, scored either in the teleconference or the claimed meeting at that time, as you had suggested they would be?

A. Scored or not scored, I mean, what can be reconstructed is that a scoring was inserted and that would have been subject to approval by the PTGSM.

Q. So, I mean, the exact words, as we know, was "The grand total is to be scored at the meeting of the 28th of September." The grand total must have been scored before you produced the draft report, because you have the grand

totals in your draft report?

A. Yes, scored or preliminary scored or scored subject to confirmation at the Steering Group level.

Q. And is it fair to say that it must have been during that week that Mr. Brennan's insistence on the process of going from letters to Arabic numbers and back to letters again, that that process took place during that week, that that matter was decided on finally that week?

A. I think that it actually started earlier, because the discussion on this had started already during the meetings on the 18th and 19th of September also in Copenhagen.

Q. And can we take from all of that that the exact matrix of letters and numbers and letters translated back from numbers, did not come into effect until sometime between the 28th, or didn't come into existence until sometime between the 28th of September and the 3rd of October?

A. Well, the first place where we have a written record of it, that is in the report of the 3rd of October.

Q. Yes, and we know that it hadn't taken place by the 21st because you wouldn't have written it in that letter, that it needed to take place, isn't that right?

A. Yeah -- sorry?

Q. We know that -- based on what you said in your letter of the 21st, that the grand total would have to be scored on the 28th, we know that it hadn't already been scored?

A. That's correct.

Q. So it was sometime in that ten-day period that this scoring actually took place?

A. Yes, but I am reluctant to say "scoring," because I would say that it was a matter for the Steering Group to finally

do.

Q. And when did you consider that the Steering Group finally did it?

A. On the 3rd of October -- oh, sorry, on the 9th of October, having seen the report.

Q. Okay. And you say they actually did it in your presence during the portion of the meeting that you attended, by signifying, as far as you were concerned, acceptance of the outcome, is that right?

A. Yes. You know, maybe I am attaching much importance to the positive words, but I read in one of these memos, or I heard you read from one of these memos that it was a good report received on time, etc. That was the quotation. Now, I would have known, when you were addressing the period from the 21st of September to the -- let's say, to the 3rd of October or the 9th of October, even, that there had been no Steering Group meeting in that time span, so therefore, it would be important for me, as consultant, to get consent on as much as possible.

Q. I see. And can I ask you --

A. Imagine, if we just look at the report, we have around 50 pages in the main report and we have a lot of material also in the appendices. The Steering Group members, they would not, at that time, have seen all of this being put together. What we would, typically, have seen would have been minutes of meetings from the sub-groups. So it would be only fair of me to expect that the Steering Group members, they would read the report carefully and come up with their opinion, whatever.

Q. Now, it follows from all of that that the decision-making

event, as far as the -- as you are concerned, for the PTGSM, took place between, was it 11.30 and 2 o'clock, roughly, on the 9th of October, in your presence?

A. I have given evidence that, according to my notes, and I checked these notes when I had private meetings with the Tribunal back in 2001 and 2002, I was there approximately one-and-a-half hours, together with Mr. Jon Bruel.

Q. One-and-a-half hours; it was a lesser period than I was even describing?

A. Yes.

Q. And it must follow from all of that that it was during that period that you thought that you were getting their agreement to what was in your draft report?

A. Yes. And I have given you my recollection of it, that there were people saying this should be expanded, this can be reduced, etc., as you have in a normal working process and decision-making process concerning any report, but nobody was questioning the marks, the scoring, the grand total, etc., so what was left, in my view, was essentially two things: One was a pure presentational matter, you know, to present the report as wished by the Steering Group according to criteria they could work with in their own further process; and then there were some supplementary analysis and some track recording which was going to be executed. That was not entirely finalised at that stage.

Q. Does it follow, again, from all of that, that if there was a discussion of the kind described by Mr. McMahon in which he said, you know, "we can't justify the conclusions by reference to the draft that we have seen," i.e. the last one, that that took place after you left and while the

Irish civil servants were still in conclave among themselves?

A. Definitely, because I would perceive that as a critique against my report -- I use the word "my" report, it's not correct, but you know, so that would have been picked up by me.

Q. I see. Can I ask you, Professor Andersen, did you expect, at any point, that you would, in fact, meet the Minister to discuss the outcome with him and where you went with the outcome?

A. Essentially, yes, essentially, yes, for the following reason: At that time, no separate regulator was instituted in Ireland. Therefore, the ultimate reference for such a project would, in my view, be to a minister of a government, and a minister normally has, you know that much better than I do, but has a dual function being a political leader and also being the ultimate administrative leader, and if I look at some of the similar competitions I was involved in, both situations actually occurred with regard to such events, so it could be 50%, or whatever, but it would not be unnormal for me to expect to meet the Minister.

Q. I see. And that didn't happen on this occasion?

A. That didn't happen, no.

Q. I see.

MR. McDOWELL: Thank you, Professor.

A. Thank you.

CHAIRMAN: Thank you, Professor. In view of the

substantial progress and the long day and as we are now at twenty past four, I think it's probably preferable that matters of examination by other interested persons be taken up tomorrow, and perhaps I might, just for the couple of minutes, just try to seek some consensus as to the most realistic schedule. It occurs to me, Mr. O'Donnell, you will obviously have a number of matters to cover, that it might make sense if you went first dealing with --

MR. O'DONNELL: What we have, in fact, agreed between us, subject to the Tribunal, will be that Mr. Shipsey would go first, followed by Mr. O'Callaghan. I don't know whether Mr. Farren has any questions. Then it would be me and then Mr. Gleeson. But I understand that Mr. O'Callaghan may have --

MR. O'CALLAGHAN: I think I'll be about a day, Chairman. I should say, Chairman, I have a very short submission to make, though, which, if acceded to by the Tribunal, would mean that we could all be out of here by 11 o'clock tomorrow morning, and I think that would be a prospect that would appeal to everybody in the room, and I make the submission in all seriousness.

CHAIRMAN: Well, Mr. O'Callaghan, at the end of a long day, I don't think there is any likely submission that's going to persuade me to terminate the entire hearing of Mr. Andersen's evidence that has taken so long to arrange, and my preference would be that we take matters up in the morning, and I am perfectly prepared to abide what counsel

may have discussed as a realistic sequence of taking the evidence, and my preference would be that we sit early tomorrow and seek to take up the remainder of the evidence as realistically and expeditiously as possible.

MR. O'CALLAGHAN: Would you permit me to make the very short four-minute application in the morning, sir?

CHAIRMAN: If you feel you must, Mr. O'Callaghan.

MR. O'CALLAGHAN: I think it would be appropriate.

CHAIRMAN: I have every intention of, short of some remarkable day, a sect machine being excavated by you, I have every intention of proceeding with evidence at 10 o'clock in the morning. Very good. I perhaps should just make inquiry of Mr. Farren. I think you have notified the registrar that you are primarily holding a watching brief on behalf of Messrs. Buggy and Riordan?

MR. FARREN: Yes, Chairman.

CHAIRMAN: Is that your preference would be to exercise an entitlement to raise certain matters?

MR. FARREN: At this stage, I am not in a position to say but I suspect I will not be asking questions, but I'll reserve my position, if I may, Chairman. I'll have a very, very short number of questions if there are going to be any.

CHAIRMAN: Very good. And, Mr. Llang, a similar position  
in --

MR. O'BRIEN: Kevin O'Brien here, Mr. Chairman. I'll have  
no questions --

CHAIRMAN: -- on behalf of Telenor. Very good. I'll sit  
at 10 o'clock tomorrow morning. Thank you very much.

THE TRIBUNAL ADJOURNED UNTIL THE FOLLOWING DAY, TUESDAY,  
THE 2ND OF NOVEMBER, 2010, AT 10 A.M.