

THE TRIBUNAL RESUMED ON THE 3RD OF NOVEMBER, 2010,
AS FOLLOWS:

CONTINUATION OF EXAMINATION OF PROFESSOR MICHAEL ANDERSEN
BY MR. O'CALLAGHAN AS FOLLOWS:

MR. O'CALLAGHAN: Good morning, Chairman. Good morning,
Professor.

A. Morning.

Q. Professor, we were looking at Book 91 yesterday. Can I ask
you to take it out again and go to Tab 24, please. At
Tab 24, Professor, is the qualitative evaluation document
and quantitative evaluation document that you sent to the
Department on the 8th of June, 1995, isn't that correct?

A. That's correct, yes.

Q. And if I could ask you to go to page 17 of that document,
you will see that the quantitative weightings are set out
there, isn't that so?

A. That is correct, yes.

Q. And we know that the weightings are wrong because they add
up to 103, isn't that correct?

A. That's correct also, yes.

Q. Now, you sent this document to the Department on the 8th of
June, 1995, and am I correct in stating that there was a
meeting on the following day, on the 9th of June, 1995?

A. It's correct that there was a meeting, yes, but I cannot
see from my records whether I actually sent the document
beforehand. What appears here is that it is printed out on
the 8th of June, which I think means that it's printed out
with these shadow texts around it, across all pages, and
obviously the one which is inserted here is Sean McMahon's
edition. So I am just opposing -- objecting what you are
suggesting, that I actually sent it prior to the meeting.
I would, typically, have had one copy for each of the
Steering Group members and then they would be collected
after the meeting again.

Q. Well, I am right in saying, Professor, that certainly you
had this document and the members of the Project Team had
this document at the meeting on the 9th of June, 1995?

A. That's correct. They got it handed out, yes.

Q. And can I ask you, were the weightings which are set out on
page 17 of the document, discussed at the meeting on the
th of June, 1995?

A. No, I don't think they were discussed, for several reasons,
really. One is that when you look -- I think we were over
this on yesterday afternoon -- when you look at the
minutes, it transpires that very much of the time at that
meeting was consumed with the EU intervention issue, as one
thing, and then the claim, the sudden claim that came from

Vodafone. And moreover, as the figures add up to 103, I would be quite certain that people around the table would have picked that up during the meeting, and then, also, that it would have been recorded in the minutes.

Q. Could I ask you to look at the minutes of that meeting, Professor, which are at Tab 23, and it confirms the evidence which you have just given, because we can see that the first three pages, or, rather, the first two pages relate to aspects of the European Commission issue, and then the third page deals with other issues and correspondence with Vodafone. And then on the fourth page, there is a very brief mention of the Evaluation Model, isn't that correct?

A. That's correct, yes.

Q. And there are only two bullet-points listed under the Evaluation Model, and they state: "This was approved as presented with correction of one minor typo on page 6 of . Further comments, if any, to be forwarded to Maeve Nic Lochlainn within a few days of the meeting."

And would you agree with me, Professor, that if the weightings had been discussed at the meeting of the 9th of June, it is very likely that the mistake on page 17 of the document, adding up to 103, would have been referred to and noted in the minutes?

A. Yes.

Q. Could I now ask you, Professor, to go -- sorry, just while we are on Tab 23, Professor, and I'll just look at that time now because I'll be coming back to it presently. Underneath "Evaluation Model," there is a subheading called "Work Plan". Do you see that?

A. Yes.

Q. I want to read out what that says. It says, "This was not discussed in depth. The point was made that at least 4 weeks could be required to get political agreement for the decision on the successful candidate."

We know, Professor, that, subsequently, you produced a Gantt chart which lists a period of four weeks for political consideration, isn't that so?

A. That's correct.

Q. Would I be correct in stating that the basis for that inclusion in your Gantt chart was what was stated at this meeting on the 9th of June and which is recorded in this minute?

A. No, I don't think so. I think I was over this with Mr. McDowell, and my recollection of this Gantt chart is that it would be a standard thing for my co-team leader, Jon Bruel, to have such a period, about a month, inserted in any of the work plans we dealt with in tenders in and

around these years.

Q. But certainly, the record of the minutes indicates that it was stated at the meeting that four weeks could be required but four weeks was not absolutely necessary, in accordance with these minutes, isn't that so?

A. That's how it reads, yes.

Q. Could I ask you to go to Tab 30, please. This is a note from Maev Nic Lochlainn to the Project Group member, dated the 17th of July, 1995, in which she says, "Please see attached correspondence regarding recent developments in the competition for the granting of a GSM licence." And she refers to a copy of a letter sent to the applicants informing them that some of the original terms of the competition had been revised and correspondence with Telecom Eireann."

She continues:

"Following the change in the competition terms it will be necessary to amend the Evaluation Model and the weighting of selection criteria. It is intended to achieve agreement on proposed changes by way of written procedure."

And can I ask you, Professor, this is an indication of a change in the weightings; that arose as a result of the European Commission issue, isn't that correct?

A. Yes.

Q. And if you go to Tab 31, you will see a fax from you and AMI to Mr. Towey, dated the 20th of July, 1995.

A point is being made by the Tribunal that you should have been communicating information not simply to Mr. Towey and to Mr. Brennan, but to every member of the Project Group.

Was it your practice, when you were communicating with the Project Group, simply to communicate through either Mr. Towey or Mr. Brennan, Professor?

A. That was the practice, and I think that is documented in a number of fax cover-sheets, yes.

Q. And if I can just take you to the message on --

A. And could I say, for very good and normal reasons, because you will recall that Mr. Martin Brennan, he was, in addition to being head of a division in the Department, he was also the denominated Chairman of the Steering Group, and Fintan Towey, he was the Secretary of the Steering Group, so it would be very normal procedure, a very normal procedure for me to have contact with precisely these two people.

Q. And would you agree with me that it wouldn't be feasible for you to be sending faxes to nine individuals in Ireland every time you wanted to communicate with the Project Group?

A. Well, I would have objected to that because that would not

have been practical. That would have been too bureaucratic.

Q. On this fax cover-sheet dated the 20th of July, 1995, which is some 14 days before the bids are received, there is a note at the top in handwriting which says "I advised Mr. Andersen that this is in order." And what you say in the text of the note, in the second part of the note, is as follows:

"Roughly speaking, we suggest that the quantitative evaluation is carried out in August, the qualitative evaluation in September, together with the presentation meeting and that the Draft Evaluation Report is elaborated during the first half of October. The amount of time from the closing date to the draft report has not been changed." And again, you still intend to have the quantitative assessment, although you haven't seen the bids yet, isn't that so?

A. That's so, yes.

Q. And this attaches your Gantt chart, and we will see, on the second page of the Gantt chart, there is the reference to weight for the political decision?

A. Yes.

Q. And you are not telling this Tribunal, Professor Andersen, that that was put in because you were told that the Minister will have to consider this for a month?

A. No, definitely not.

Q. Could I now ask you to go to Tab 32, please, Professor, and this is a further note from Maev Nic Lochlainn on the 27th of July, 1995, in respect of the revised weightings. And she says that "There is advice received from Andersen International indicating their preference for reducing the fee weighting by three percentage points and increasing the weighting for tariffing for a corresponding amount. And then "There is written communications from others supporting the change."

On the next page, we have your note dated the 24th of July, , where you state, I'll just open the first paragraph:

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

So you are proposing a change in the revised weightings as

of the 24th of July, isn't that so?

A. That's correct, and a change which would still respect the notion of the criteria in paragraph 19 set out in descending order of priority. So you'll appreciate that there was a limit as to how large percentage spaced weightings you could reallocate from one criteria to another criteria.

Q. Then, if I could ask you to go to Tab 34, Professor, we have what's been referred to as the Maev Nic Lochlainn note on the weightings, and it's a note to file in which she says:

"The new revised weightings, as agreed in recent telephone conversations with Project Group members and as later confirmed in written communications received from each interest represented on the group, are as follows: 30, 20, 11, 7, 6, 5, 3."

Now, Mr. McDowell said to you on Friday afternoon, Professor, that the Tribunal is deeply concerned about the weightings going to 10, 10, 10. Do you share that concern?

A. No, I do not share that concern.

Q. What is your evidence to the Chairman as to the basis of the weightings going to 10, 10, 10?

A. Well, my evidence is that, first of all, what the Tribunal has stated over and over again is that the weightings should have been 7.5, 15 and 10 for the three dimensions related to the first mentioned criteria in paragraph 19, namely credibility of the business plan and the applicant's approach to market development, but these add up to 32.5%, and what is stated here, as a file to the note, is that the first criterion should carry 30 percentage spaced weighting. So my evidence is that that approach is not correct, that is mistaken because it is in accordance or in contrast with this note to the file.

Q. And is it your evidence that you believe the weightings of 30, 20, 18, 11, 7, 6, 5 and 3 were appropriate weightings to apply for the purpose of this evaluation?

A. Yes.

Q. And, of course, at this time, Professor, on the 27th of July, 1995, no bids had been received, isn't that so?

A. That's correct.

Q. So if the weightings were being amended to, or rather, if it was being suggested that the amendments were being implemented to facilitate a particular bid, that just doesn't stand up to any logical scrutiny, does it?

A. No.

Q. Could I ask you to go to Tab 35, and you'll see that a letter was sent out to Esat Telecom, and indeed to all the other applicants, trying to find out further information.

That letter was sent on the 31st of July. And at the next tab, Tab 36, Professor, the reply comes in from Esat. And I just want to open the three numbered paragraphs in that reply of the 4th of August, 1995.

They say, "The name of our consortium: Esat Digifone.

"The following names who go to make up our consortium:

-- Communicorp Group Limited

-- Telenor

-- institutional investors.

"We do not wish the names of the institutional investors to be released at any stage.

"3. The fact that we have submitted a tender for the GSM competition."

Could I ask you, Professor, as an evaluator, did you need to know the names of the institutional investors in the Esat consortium who, at the time of the bid, did not make up any part of the consortium but whom it was stated would take over 20% of the company once the licence was awarded?

A. I would say it was not a necessary condition in order to conduct our evaluation that we did know the names of the individual institutional investors, so we could proceed with the evaluation without knowing the identity of the institutional investors. Of course, needless to say, Mr. O'Callaghan, it would always be an advantage if we got as much information as possible.

Q. Could I ask you, Professor, to look at Book 93 briefly, and if you could just keep the Book 91 available. I was going to ask you to go to Tab 4 of Book 93.

A. Sorry, which tab, please?

Q. Tab 4, please, Professor.

A. Yes.

Q. And this is the draft report that is dated the 3rd of October, 1995. Could you go to page 3 of that, and this gives an overview of the key characteristic of the applicants. In respect of each applicant, a pie chart is included, and do you see the pie chart on page 3 which identifies the participants behind A1, Professor?

A. Yes, I see it.

Q. You can see that 25% of that consortium was made up of three named individuals?

A. Yes.

Q. Would it have made, do you believe, any significant difference to that bid if those individuals were other equally wealthy or equally solvent individuals?

A. I don't think I quite understand the question. Is it if they were wealthier?

Q. No, the issue we are looking at here is that the Tribunal has a concern that institutional investors who are

identified in the Esat bid were subsequently changed for IIU?

A. Yeah, I know.

Q. Do you see that as being a problem at all, that IIU, equally solvent, came in afterwards to replace the previously proposed institutional investors?

A. No, I do not see it as a concern, as such, in the sense that we are here talking about a kind of funding aspect of an application, or a business case, rather than people bringing operational experience into the consortium. But that having been said, it would always be better for me, as an evaluator, if the identity is known than if it is not known.

Q. And if you --

A. Let me just try to expand on this, because in the A1 consortium, you have three named persons who I perceived to be Irish businessmen, but when the A5 application states that there were to be four institutional investors, it might be so that they were not Irish businessmen, for instance.

Q. And I think --

A. I don't know whether that is at all stated, but I am just reflecting, and, in fact, I am trying to substantiate my point that identification is better than no identification. I hope you see what I mean.

Q. Yes, and is it fair to say that you had a pro-Irish, not agenda, but instinct, when you were looking at this competition, that you felt it appropriate that the consortium should include an Irish element?

A. No, because that would contravene EU legislation, but it could be relevant in relation to adaptation and knowledge about Irish circumstances and contingencies. However, as I said initially, this is not a big point when we are discussing the funding of a business case and the corporate finance, etc. My point is more tied to the backers that brings about operational experience to the consortia.

Q. And if you look at page 6 of the document you are looking at, Professor, you will see that we have the pie chart for Esat Digifone, and, of course, at the time the bid was submitted, the Esat Digifone consortium was 50:50 Communicorp and Telenor, isn't that correct?

A. That's correct.

Q. And what you are saying to the Chairman is that what primarily interested you, if there was a change in an operational aspect of the bid such as if Telenor were to move out, that would be an issue of concern to you, as an evaluator?

A. That would be a concern, yes, and a far bigger concern.

But as we also went over, I think it was yesterday, we had seen in the subsequent GSM3 tender in Ireland, that even though AT&T went out of the Meteor consortium at some stage, that was -- that was, in actual fact, of no concern under the investigation by the High Court and Supreme Court.

Q. Could I ask you to go to the next page, Professor, page 7, which contains a pie chart of the A6 consortium, and you'll see that 40% of that consortium is made up of an independently administered trust. Did you need to know significant detail about that trust while you were evaluating these bids or did you just regard it as another venture capital aspect to the bid?

A. I think it was the latter, yes.

Q. Professor, while I am on Book 93, could I ask you to go to Tab 5 and deal with a point that was raised by Mr. McDowell in his examination of you, and, in particular, could I ask you to go to Annex 10 of Tab 5, and unfortunately it's not numbered as an entity, Tab 5. At Annex 10, there is a reference to "Supplementary Analysis on Financial Risks". Do you see that?

A. Yes, I have it.

Q. Could I just open the last paragraph on that page which was referred to by Mr. McDowell, and this is an assessment of the A3 Persona bid by way of a financial risk. It says:

"In the financial plan (base case), the equity contribution is stated to be IR£40 million with a debt financing of £IR42.4 million. The applications did not include a sensitivity analysis regarding these figures, but the sensitivity analysis regarding the cash flow shows that the minimum cumulated cash flow increases numerically from minus 102 million Irish pounds to 255 million Irish pounds in the event of a two-year delay of a subscriber uptake.

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 twice as high as on the base case. If the ownership ratios are used as an indicator for the finance requirements, the following equity requirements holds:"

And you can see, underneath that, Professor, that the equity is multiplied by 2 in order to calculate the worst-case financial requirements, isn't that correct?

A. That's correct.

Q. And then Mr. McDowell referred you to two pages further on, to page 4, and at the bottom of that page there is a similar assessment in respect of Esat Digifone, and it says: "In the period after a licence award Communicorp

will have between 40 and 50% of the shares. This may be diluted to 34% at a 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 two original partners will be high. If IR£52 million are used as the base case requirement and if 2 times IR£52 million is used as the worst-case equity requirement, the individual equity commitment for Telenor or Communicorp amounts to..." and then there is a worst-case scenario set out again, and, again, a multiplier of 2 is used to calculate the Esat Digifone worst-case scenario, isn't that so?

A. Yes, that's how it reads.

Q. And then Mr. McDowell brought you to Tab 7, which were the appendices for the later version final draft of the report, th of October. And if I could ask you to go to Appendix of that, please, Professor.

A. Yes.

Q. And the same paragraph is updated, but there is a significant change in respect of it which I wish to open to you, and you'll see it's the big paragraph above the table on page 3, "Assessment of A3," do you see that, Professor?

A. Just a second.

Q. Appendix 10, paragraph 10.4, "Assessment of A3"?

A. Yeah.

Q. And there is a large paragraph in the middle of that page which reads as follows:

"In the financial plan base case the equity contribution is stated to be 39.935 million Irish pounds with a debt financing of 42.4 pounds. The applications did not include a sensitivity analysis regarding these figures, but the sensitivity analysis regarding the cash flow shows that the minimum cumulated cash flow increases numerically from minus 102 million to minus 255 million Irish pounds in the event of a two-year delay of subscriber uptake. 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 twice as high as in the base case."

Now, would you agree with me, Professor, that what's new about that paragraph to the earlier version, is that they have done a sensitivity analysis regarding the cash flow, isn't that correct?

A. Yeah.

Q. And it reveals that there is an increase from 102 million to double that amount, or over double that amount, 255 million, isn't that correct?

A. Yes.

Q. And isn't that the reason why a multiplier of 2 is used in respect of A3, or would you agree with me?

A. Yes.

Q. Isn't that the logical reason?

A. I do agree, yeah.

Q. And then could I ask you to go three pages further on to page 6, where we have the same paragraph in respect of Esat Digifone, and if you could look at the last main paragraph on that page, on page 6. The report says:

"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 108 million to minus 156 million in the event of a two-year delay of subscriber uptake. 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. IR£52 million are used as the base case requirement and if 1.5 multiplied by IR£52 million is used as the worst-case equity requirement, the individual equity commitment for Telenor or Communicorp amounts to..." and they set out a figure, and a multiplier of 1.5 is used in that situation, isn't that so?

A. That's correct.

Q. But would you agree with me, Professor, the reason why a multiplier of 1.5 is used in respect of Esat, is because the sensitivity analysis regarding the cash flow shows that the minimum accumulated cash flow increases from minus 108 million to minus 156 million, which is an increase of 50%?

A. Exactly.

Q. So there is nothing sinister in this application or change to using a multiplier of 1.5 for Esat as opposed to using a multiplier of 2 for Persona?

A. That's fully correct. I also think that I tried to bring that message across that these multipliers were based on underlying sensitivity analysis, but maybe I wasn't sufficiently clear.

Q. No, no, I think it's important that the evidence is got out. Could I ask you now to go back to Book 91, please, Professor.

A. Yes.

Q. And if I could ask you to go to Tab 39 and actually still have Book 93 with you, Professor, I am afraid to say, and maybe just open Book 93 at Tab 1, and so you'll have two things in front of you, you have Tab 39 of Book 91 and Tab of Book 93. And Tab 39, Professor, are the minutes of the ninth meeting of the Project Group on the 4th of

September, 1995, isn't that correct?

A. Yes.

Q. And this is the first meeting of the Project Group after the tenders have been received on the 4th of August and have been assessed, isn't that so?

A. That's correct.

Q. And can you tell the Chairman briefly what was going on during the month of August? Obviously, a lot of work was still being done then?

A. Yes. Following the reception of the applications, a lot of work was, of course, started. One was that the evaluators were each doing what I called the critical reading of the applications, which amounted to an estimate of 6,000 pages. So that was -- that was one activity. Another activity was the admittance test or the test of whether the applications actually met the formal requirements in the RFP document, the 350 pages, and so on. Thirdly, a number of quantifications took place in several respects, really.

One was that all the quantitative information requested by way of the so-called mandatory tables were put into an electronic commutator model and then processed there, printed out to the evaluators. That was one part of the quantifications. Secondly, a number of graphics were to be produced, of which several can be seen in the minutes from the sub-group meetings and in the final Evaluation Report. And thirdly, also the quantitative evaluation.

Q. And it's recorded on the third page of the minutes of this meeting on the 4th of September, 1995, that five meetings of the sub-groups had already taken place. Do you see that, Professor, third page?

A. Yes.

Q. So that obviously must have happened throughout August as well, isn't that so?

A. Yeah.

Q. And the purpose of this meeting, as the note records, was threefold: First of all, you were to present the quantitative evaluation; secondly, there was to be a discussion of the presentations which were due to take place by the applicants; and thirdly, there was an outline of the future framework for the project, isn't that so?

A. Yeah. I mean, when I answered to your question before, I tried to describe some of the work already had taken place, but, of course, we were also in preparation of the future work, notably, of course, the presentation meetings.

Q. And I just want to open to you the record of this meeting under "Quantitative Evaluation." And it says:

"Prior to presenting the initial draft report of the quantitative evaluation..." and we know, Professor, that's

the one at Tab 1 of Book 93, isn't that correct?

A. Yes.

Q. "... Mr. Andersen first acknowledged certain shortcomings in the results gleaned so far from the quantitative scoring. The quantitative evaluation had highlighted some incomparable elements."

Before I open the four of them, would you agree with me, Professor, that the first thing you did at this meeting when quantitative evaluation was being discussed, was that you didn't even hand out what's at Tab 1. Before you did that, you said that there has been a problem with the quantitative evaluation process?

A. Exactly.

Q. And it continues:

"The quantitative evaluation had highlighted some incomparable elements.

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

And that's dimension 3. I won't open it to you. But could I ask you, Professor, to just look forward to Tab 40 of the Book 91, and go to the second page of Ms. Nic Lochlainn's handwritten notes.

A. Yes.

Q. And you'll see, sort of, about seven lines from the bottom, Ms. Nic Lochlainn records "A4" -- which, of course, is not Esat -- "A4 has not chosen their cheapest way to calculate their basket."

So isn't that an example of the problem that's identified in the first bullet-point of your minute?

A. Yes, clearly so.

Q. And the second bullet-point on the minute on Tab 39 is "IRR had not calculated in accordance with the tender specification in some cases."

Thirdly: "For certain cases, not enough information on roaming was supplied to score the application."

And again, could I ask you to just look forward at Ms. Nic Lochlainn's note at Tab 40, and go to the third page of it.

And the top half of the page, which, of course, this is the beginning of the meeting, it's only the third page of her note, she says "Roaming --

Difficult to evaluate.

This report is based on what the applicants say -- not entirely detailed information -- so delete this section as per page 8/21."

And the reference to 8/21 there is a reference to your quantitative and qualitative Evaluation Report that you submitted for the second time in June, isn't that so?

A. Yes. And I note that she would be particularly concerned

because she was the one who was drafting the minute -- participating in the sub-group on international roaming plans and she was also the one who drafted the minutes from the sub-group on this dimension.

Q. And the last bullet-point is: "Certain of the indicators proved highly time-sensitive, e.g. if scored in year 4 they showed one ranking, year 15 giving a completely different view."

And could I ask you just to look at Tab 1 of Book 93, Professor, and at page 5 of the Quantitative Evaluation Report. Now, can you tell me is that an example under dimension 11, when you can see the bottom part of the page refers to the 14-year planning period, is that an example, and I may be wrong about this, of how an indicator proved highly time-sensitive or not?

A. That's correct, it is time sensitive.

Q. And, you know, it shows one ranking after year 4 or 5 and a totally different ranking after year 14, isn't that so?

A. That's correct.

Q. And you continue back in the note at Tab 39:

"The highly sensitive nature of the quantitative scoring document was noted and copies are to be retained."

When the term "highly sensitive" is used in this context, Professor, what does it mean about the Quantitative Evaluation Report?

A. Well, it means that, given that there were a number of shortcomings, it would be unfortunate if this, or unfair if this document were circulated. And we had, all the time, tried to ensure that information like this would be kept within the group of evaluators.

Q. On the next page of the minute, it says:

"The meeting discussed each dimension of the scoring document in turn. The consensus was that the quantitative analysis was not sufficient on its own and that it would be returned to after both the presentations and the qualitative assessment."

Would you agree with me, Professor Andersen, that, in layman's language, what that is recording is that, at the meeting, people realised that there is a problem with the quantitative evaluation and it cannot be relied upon, and let's leave it to the side, or we'll come back to it, or we may come back to it in the future.

A. Definitely, that was the meaning of it. Maybe I should just draw your attention to the fact, on page 1 of these minutes, which, by the way, I have not drafted --

Q. Of course.

A. -- it reads, under "Quantitative Evaluation," I just want to re-open the second sentence. "The quantitative

evaluation had highlighted some incomparable elements, i.e." It says "i.e.," doesn't it?

Q. "i.e.," yeah.

A. So, as the minutes are not a total reflection of what has been said during such a meeting, I am pretty sure that I would also have flagged more statistical concerns than is recorded in the four indents below.

Q. And aren't these incomparable elements, four of which are recorded in this minute, exactly the type of concern that you expressed in your articles in 1991 and 1995 where you haven't had an input into the tender to begin with?

A. Exactly. This points back to the less-than-perfect RFP document.

Q. Can I just continue with the minute on the second page, where you say, "It was also agreed that the figures used by the applicants could not be taken at face value and needed to be scrutinised. Responsibility for such a scrutiny has not yet been decided.

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

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

So, even on this flawed quantitative assessment, all the parties were close -- or it was a close result at that stage, or ranking at that stage?

A. I would rather say that the message I would try to convey here was that you couldn't read anything out of the figures, really.

Q. Okay. And could I ask you to look at Book 93, as you have open, and go to page 7 of 7 of Tab 1.

A. Sorry, I didn't get that.

Q. We are at Tab 1 of Book 93, just the quantitative scoring. Page 7, the last page of --

A. Oh, yeah. Yes.

Q. And there is a number of problems with this quantitative assessment. First of all, the weightings, Professor, aren't I correct in stating they are not consistent with Maev Nic Lochlainn's note which we looked at earlier today?

A. That's correct, they are not consistent.

Q. And secondly, this is not, or could not be described as a result in any respect, could it?

A. No, it couldn't.

Q. And even if you were going to place some reliance upon this unreliable document, it is clear that A5 is in the top three, and all the entities are fairly closely grouped, isn't that so?

A. Yes, but as I also told Mr. McDowell during his examination, you should be a little bit cautious when you say that something is close here, because the closeness needs to be seen in conjunction with the underlying statistical uncertainty.

Q. So your evidence to the Chairman, Professor, is that this quantitative assessment that was presented to the meeting on the 4th of September, 1995, was unreliable and problematic?

A. Yes, to cut it short, yes.

Q. Could I now ask you to go back to the note in Book 91. I don't need to go into the section about the forthcoming presentations as of yet, and if you could go to the third page where it says "Future Framework of the Project".

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

Q. The third page on Tab 39 of Book 91.

A. Okay.

Q. It's the note of the meeting of the 4th of September.

A. Yes, I have it.

Q. And you will recall that there were three issues on the agenda at that meeting, the third was the "Future Framework of the Project". And I just want to open this. It says:

"10 sub-group meetings for the qualitative evaluations had been proposed by AMI. 5 had already taken place. AMI committed to provide the Department with documentation on these earlier sub-group meetings. Project Group members were welcome to contribute/suggest amendments to the scoring.

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

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

Mr. Brennan, however, specifically requested an opportunity to revisit the qualitative evaluation of dimensions after the presentations. The group would have an initial discussion on the qualitative evaluation scoring on the afternoon of 14 September. Gaps would be highlighted and the extent of the need for supplementary analyses assessed.

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

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

applicant had been chosen."

Isn't it apparent, Professor, that when the future framework of this project was being discussed on the 4th of September, 1995, there was no mention of the quantitative evaluation?

A. That's correct.

Q. And doesn't that indicate that, in fact, this meeting evidenced the commencement of the withering-away of the quantitative evaluation process?

A. Yes, this is clear at this meeting, correct.

Q. Could I ask you now to go to Tab 42, please, and at Tab 42 there is a record of a meeting, of the tenth meeting of the Project Group on the 11th of September, 1995. Aren't I correct in stating, Professor, that the presentations by the applicants took place on that week?

A. That's correct. So that would probably be the main focus of this Steering Group meeting.

Q. And if you go to the next tab, Tab 43, you will see that you have the eleventh meeting of the Project Group on the Thursday of that week, and, by that stage, all the presentations have been made, isn't that correct?

A. That's correct.

Q. What was the purpose of the presentations, Professor?

A. Well, the purpose of the presentation meetings was for the evaluators to see the applicants, see their expertise, hear their response to the questions predefined by the evaluators and also to test the applicants' ability to provide qualified answers on the spot, so to speak.

Q. Could I ask you --

A. I would say that if I compare with other evaluations I was involved in, we always used presentation meetings like the ones which took place in Ireland, and found that this was a valuable way to deal with it.

Q. Could I ask you to go to the second page of the minute at Tab 43?

A. Yes.

Q. And just in the middle of that, underneath the bullet-points, there is a reference to the following:

"Mr. Brennan also stated, and the group agreed, that no further contact between the Evaluation Team and the applicants was possible, although access to the Minister could not be stopped."

Do you recall Mr. Brennan stating that, that there shouldn't be any contact between the Project Group and the Evaluation Team and the applicants?

A. No, I don't recall that.

Q. Would that be standard practice, that there shouldn't be contact between the evaluation committee and the applicants

during a competition?

A. Between who?

Q. Between the Evaluation Group, the Project Group. I think in Denmark you called it the Steering Group?

A. Oh, yeah, oh, yeah, no contact should be entertained whatsoever.

Q. And no evidence has been adduced before the Tribunal of any such contact. Are you aware of any contact between the Project Group and the applicants?

A. No, I am not aware of any contact.

Q. And there is a mention, as well, that "Contact with the Minister could not be stopped." Aren't I correct in stating that the Minister wasn't a part of the Project Group, isn't that so?

A. No he wasn't.

Q. And the note continues:

"AMI said that while all the applications would be scored, greater resources would from now on be expended on the leading applications. Two distinct groups had emerged:

-- those with a good score to date,

-- and those whose ranking was such that further intensive evaluation was deemed unnecessary."

And if I could ask you Professor, just to jump forward to Tab 43, and you'll see that we have Mr. McMahon's notes of that meeting, and you'll see, in the middle of it, on the left-hand side, there is a reference to "MA". Do you see that, Professor?

A. Yes.

Q. And it says: "Michael Andersen: Okay: 2 groups, A1, A3, A5."

Underneath that, it says:

"A2, A6, A4, not waste too much resources."

A. Yes.

Q. So is it fair to say that after the presentations and as of the 14th of September, 1995, it had been decided by the group that, really, this competition is between three of the applicants?

A. To some extent, yes, but I will have to say here that it has been suggested that we didn't continue the evaluation on A2, A4 and A6 respectively, and that was not the case. The evaluation continued with all six applicants, and, for that sake, also taking the reference case from Eircell into consideration, also. But it is, as stated here in the minutes, so that most resources and most focus was naturally put on the three applicants who were highest ranked at this stage, namely A1, A3 and A5.

Q. And at the bottom of that page, there is a reference to how to progress the evaluations, and at the bottom it says:

"AMI listed the next steps as:

- . Finalise the qualitative scoring and award marks on the dimensions.
- . Perform initial scorings of the aspects.
- . Perform supplementary analysis in blocking, drop-out" and other details I don't wish to go into.

But certainly the way forward, as far as you were concerned on the 14th of September, was you were to score these applicants qualitatively, isn't that so?

A. Yes. Qualitatively and holistically, you could say, because, you know, when there is these terms here -- when we are doing the -- when we use the term "qualitative scoring," we are actually referring to scorings in the ten sub-groups. And I know that it is a colloquialism to term that as qualitative evaluation, but that is not fully what it deserves because, as I went through with Mr. McDowell when we opened, so to speak, middle or the core of the evaluation, final Evaluation Report, and when we looked at, let's say, the tariff dimension, including OECD basket as one of the indicators, we actually found out, during his examination, that during the evaluation and scoring in that particular sub-group on tariffs, both qualitative and certainly, also, quantitative techniques were used. I hope I am making myself relatively clear here.

Q. You are making yourself clear, yes. You are making yourself clear, Professor.

A. Okay.

Q. Could I ask you to go to the next page of that note, where it says, first paragraph: "The scoring of the marketing, financial and management dimensions would take place in Copenhagen next week."

And we'll come back to this, but that is the week beginning Monday the 18th of September, 1995, isn't that correct?

A. Yeah...

Q. Well, you can take it from me it is.

A. Yeah.

Q. Now, I want to ask you, Professor, some questions about the presentation made by Esat. And before I do, I want you to look at a document for me, which is in Book 92, Tab 5, if Mr. Brady could give it to you. Book 92, Tab 5, Professor. This is a letter dated the 10th of July, 1995, submitted with the Esat bid. It is a letter from Mr. Massimo Prelz of a company called Advent International. Had you heard of Advent International as of the summer of 1995, Professor?

A. Yes, I would have heard about Advent several times because Advent is a venture capital company, as I understand it, based on capital inserted, in particular, by international telecom operators, or at least some of the backers of

Advent International is from international telecom operators.

Q. And would you agree with me that, in 1995, it was a reputable and solvent company?

A. Yes.

Q. Could I just open the second page of this letter which is addressed to Mr. Martin Brennan, and there's a subheading, "Advent's commitment to the GSM licence application," it says: "We have reviewed the business plan prepared by Digifone in connection with its application for the second GSM licence and consider its operation of the second GSM cellular system in Ireland to be an attractive and viable project. The application to you by Communicorp sets out how it is intended to inject new equity into Digifone on the licence being granted to it and shows the Advent Funds as 5% shareholders, participating in the 20% holding which has been allocated to institutional investors. We are delighted to have the opportunity of investing directly in Digifone as well as our indirect investment in the company through Communicorp and Esat Telecom.

"The said application also shows Communicorp Group remaining as a 40% shareholder in Digifone and being required to provide up to 30 million Irish punts to fund that 40% equity participation. We can confirm that we have offered that amount to Communicorp to enable it to fund its obligations."

Now, Professor, I don't know whether you recall reading this letter? Probably not, considering it's 15 years ago, or do you?

A. I think I would be aware of Advent's participation and backing, to some extent, but I would not be familiar with the exact amounts set out here.

Q. Would you agree with me, Professor, that the last paragraph I read out to you reveals, on any plain understanding, that Advent had committed IR£30 million to Esat -- to the Communicorp Group?

A. Are you making reference to the second-last section?

Q. Yes, the paragraph I just read out. "We can confirm that we have offered that amount to Communicorp to enable it to fund its obligations." And that's a reference to the 30 million Irish punts to fund the 40% equity participation?

A. Yeah, that's a confirmation, yes.

Q. Can I now put to you, Professor, a small section of the transcript from the presentation by Esat which was read into the record of this Tribunal on day 171. I'll just hand up a copy to you, Chairman, and your team and to the others. And if I could ask you, Professor, to go to page of that transcript from day 171, and this is a -- this

is a record of the presentation by Esat in September 1995, and at the bottom of page 60, Professor, you are identified, and it says:

"Michael Andersen: I'd just like you to repeat for me the Advent's interest in Communicorp. You say that is going to be up to, was it 47% voting power-wise or --

Denis O'Brien: -- Equity. It's going to be up to 47% equity. But in terms of voting, the other 53% has three times the votes of Advent. So we, you know, the Irish shareholders in Communicorp will always have control of Communicorp.

Michael Andersen: Okay. That also means that if you have what they have right now up to 46 and that escalates up to million, then you have to have some other capital in from some other side, as far as I can see.

Denis O'Brien: No, no, because the full capital requirement for the investment is initially 21.6, I think it is, plus a line up to 30, so they have said, day one, they are guaranteeing 30 million. So you have a little bit of fat in that. You have, in fact, from the point of view, you have about 8.5 million pounds of fat in that particular commitment.

Mr. Denis O'Brien: Yes, but it's an irrevocable commitment of fat, if you know what I mean."

I just want to take you back, Professor, to the second-last entry from Denis O'Brien, where he says "They have said, day one, they are guaranteeing 30 million." In light of the letter from Advent that I read out to you, do you believe that Mr. O'Brien's representation at that presentation was accurate?

A. Yes, I believe so, because it's stated in the letter as a confirmation and he stating there is a line up to, yeah.

Q. Could I ask you now, Professor, to go back to Book 91, please.

A. And that was tab?

Q. We are moving on now to Tab 46, and this is an internal note in the Department of Finance, but could I ask you to go to the third page in that tab, and this is a note of Mr. Jimmy McMeel from the Department of Finance and it was generated at the meeting on the 14th of September, 1995.

A. Yes.

Q. And do you agree with me that this records that, at this stage of the process, A3 and A5 are in the lead with A1 coming in third place. That's his account of it at that stage, isn't that so?

A. Yeah, yeah.

Q. And do you agree with me that that's an accurate assessment of where the competition was as of mid-September 1995?

A. Yes, I just want to recapitulate; is he stating that A5 is Number 1, A3 is number 2 and A1 is --

Q. No, I think what he is doing is, one thing is clear is that he stating A1, Irish Mobicall, is in third place?

A. That's correct.

Q. And the other two that are referred to, A3 and A5, are both described as doing well?

A. Yeah, that's how I read it, yes.

Q. So it's a fair assessment to say, as of mid-September 1995, this -- and I know this was not finalised because the other parties were being evaluated, but certainly, at this stage, in the lead were Persona and Esat Digifone, with Irish Mobicall in third place, at that stage?

A. Yes, but I think I need to qualify my answer here.

Q. Please.

A. This is Jimmy McMeel's note.

Q. Yes.

A. Jimmy McMeel, he was not a member of any of the sub-groups, so he would not be familiar with the evaluation and the scoring taking place in these ten sub-groups.

Q. But it's a record of what he was told, or what he took from the meeting of the 14th of September?

A. I don't know what he took it from, but I am just stating the point because my evidence is that, at this stage, we are talking about the 14th of September, isn't it so?

Q. Yes.

A. At this stage, I think that several of the people who were participating in the sub-groups, they would have -- they would have detected or they would have expressed the view that A5, or had the view, maybe they didn't express it, or whatever, but they would have had the view that A5, during the scoring process, received better scores than A3, but also, of course, that A3 received better scores than A1. So I am just putting forward to you, Mr. O'Callaghan, that this is Jimmy McMeel's perception, as such; it's not necessarily reflecting what went on in the evaluation sub-groups.

Q. Correct. Professor, could I now ask you to go to Tab 47 of Book 91, and if, also, you could have open Tab 2 of Book 93. Now, we know that the second quantitative evaluation, which is at Tab 2 of Book 93, that that was carried out by --

A. Sorry, just a second. You are really testing my simultaneous capacity here.

Q. I apologise. I am under time pressure, I regret to say.

A. Book 93, which tab?

Q. Book 93, Tab 2.

A. Okay. Yes.

Q. This is the second quantitative evaluation. And your evidence is that this is prepared by Mikkel Vinter, isn't that so?

A. That's correct.

Q. So obviously he was the person who was doing quantitative evaluations for you, isn't that correct?

A. That's correct.

Q. And he continued doing it, even though the process of it withering away, we have seen, commenced in mid-September, or, sorry --

A. Yeah.

Q. Earlier, where we looked at the previous meeting.

A. Yes.

Q. And then that's generated on the 20th of September, 1995, and then at Tab 47 of Book 91, we have a fax from you to Martin Brennan and Fintan Towey, dated the 21st of September, 1995, isn't that so?

A. That's correct.

Q. And it's about the work programme for the next approximately ten days, and under A, there is the remaining award of marks to the ten dimensions. So it is clear in respect of that, Mr. Andersen, do you agree that there is no mention in that to MV, Mikkel Vinter, and the importance of his quantitative assessment, isn't that so?

A. That's correct, there is no reference.

Q. So although Michael Vinter has done this work on the 20th of September, it's not part of the driving process of the assessment of the competition at this stage, sure it's not?

A. That's correct. And what you have in Tab 2 here, is with, for instance, Billy Riordan's note on the first page at the top, so it's probably his printout version of something that he may have requested from Michael Vinter directly.

Q. Okay. But rather than open it, it's not mentioned under A in your fax. And then under B, there is the reference to "Scoring of the marketing aspect, financial aspect and other aspects." It says, "It is suggested that the award of marks to the remaining aspects is decided at a meeting, Thursday 28th. The meeting may either be a conference call or a meeting in Copenhagen."

Then, at the bottom of the page, it outlines how "We need to make some risk investigations, of which the following are proposed... "

And there is an outline there of risks in respect of each of the applicants, isn't that correct --

A. Yes.

Q. -- from A1 down to A6. And it's just noteworthy in A6, Professor, that it says "Possible non-conformance with the EU rules to be further investigated by TI, lack of Irish

touch (MMA)."

Doesn't that indicate that you thought there was an importance to an Irish touch, or what does that record you as stating, Professor? What did you mean by "lack of Irish touch"?

A. Well, I think that has been tested quite a bit in the so-called Orange case. What we meant at the time with "local touch" in a country was whether national market research had been executed; whether, let's say, cell planning investigations were actually based on local conditions in a country, and stuff like that.

Q. Okay.

A. Local adaptation.

Q. It then continues underneath A6: "Other risks might be identified and dealt with later in the process.

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

"If there is no immediate unanimity, it is suggested to score the other aspects and the dimensions under this heading."

Now, without jumping around from book to book, what's been stated there is that if there is unanimity, we don't have to score the other aspects element, and that other aspects element is in your proposed qualitative evaluation in the report that you had prepared, isn't that so?

A. That's correct.

Q. And it's at the bottom of that table it says "other aspects," and beneath that there is risks to -- "effect on the Irish economy," isn't that so?

A. That's correct.

Q. So what you are stating here is that if there is unanimity, we don't need to score that, and we know, when we look at Tab 93 -- sorry, Book 93 -- if you look at Book 93, Tab 4, page 44 --

A. That's the same binder?

Q. It's in Book 93, Tab 4, page 44, Table 16, do you see that?

A. Yes.

Q. And isn't it correct to state that the "other aspects" and "the effect on the Irish economy," isn't marked in that draft of the 3rd of October, 1995?

A. That's correct.

Q. And doesn't that indicate or confirm that there was unanimity in respect of the classification of the two best applications? Because if there isn't unanimity -- if there

is unanimity, they won't be scored?

A. Yes, that's correct.

Q. Back, now, to Tab 91 -- Book 91, Tab 47, there is "The grand total is to be scored at the meeting of the 28th of September."

A. Sorry, which tab?

Q. Tab 47, the second page of Book 91.

A. Yes.

Q. And at the bottom of the second page there is a reference to "The grand total is to be scored at the meeting of the th of September." And we can come back to that in due course, Professor.

But then on the next page, page 3, and I don't want to open it in detail to you, but again, there is no reference to the initials "MV" and Michael Vinter and the quantitative report on that page, I believe, Professor?

A. No, there is no such reference.

Q. And if you go to the next page, there is some questions to the Department which are recorded. And the questions, I suppose, are:

" -- should the identified meeting, September 28, 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?"

And then a fourth question for the Department:

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

A. Yes.

Q. Isn't that an indication of you recognising that "What are we going to do with this quantitative evaluation process that has not worked? How are we going to deal with that in the report?"

A. Exactly.

Q. Tab 48, please, Professor.

A. Yes.

Q. This is the letter that Mr. Shipsey opened to you from IIU, the company associated with Dermot Desmond, and it was sent in to Martin Brennan in the Department, and Mr. Brennan, as you can see from the next tab, 49, sent it back immediately, and says, "The Department has already made it clear that applicants shall not be permitted to provide any further material."

Now, do you believe what Mr. Brennan did was the correct thing to do?

A. Yes.

Q. And do you believe that this letter from IIU, at Tab 48, that that should have been brought to your attention?

Well, did Mr. Brennan do the right thing in not bringing it to your attention?

A. I can see it can go both ways here. Poor him, his inner dilemma, he can be criticised if he brings it to my attention because he did return the letter in accordance with what I believe was the correct rule in this competition, but he could also be criticised for the opposite. So I see the dilemma he is in here.

Q. But -- I fully accept your answer. But is there any suggestion that if you got this, if you were shown this letter, that you would have said "Esat are disqualified from this competition"?

A. No, no, we wouldn't have been allowed to do that, so it would have, practically speaking, no impact.

Q. Could I ask you to go to Tab 51, please, Professor.

A. Yes.

Q. And this is your letter, again addressed to Martin and Fintan, because they are the lead people that you were dealing with, isn't that correct?

A. Yes.

Q. It is dated the 3rd of October, and what you do is you are attaching the first draft of your report dated the 3rd of October, 1995, isn't that so?

A. Oh, yes, here we have it. I was asked yesterday whether we sent it electronically, but I think this is in accordance with what I said yesterday, that we actually went along with hard copies.

Q. You say, "Attached to this letter you will find two hard copies of the Draft Evaluation Report. One is made personally for you, each with shadow text. We suggest that PTGSM members wishing to read the document do so on the 5th floor in your offices, as the document is a sensitive document."

So again, Professor, doesn't that indicate that when you sent things to Martin Brennan and Fintan Towey, you were, in effect -- that's how you communicated with the Project Group?

A. Yes, because they constituted the chairmanship and the secretariat, these two individuals.

Q. Now, the next tab, Tab 52, we have the fax to you from Maev Nic Lochlainn dated 6th October, 1995, and attached to that fax are a number of appendices. And she says -- I'll just deal with the number 2, if I can.

"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 weightings as detailed on page 17/21 of the document of 8 June, 1995, which were to be the weights underlying the quantitative evaluation? Page 17 is also attached (at Annex C) and page 7 of the draft quantitative report (see section on weights at Annex D) e.g. OECD basket is weighted .96%, does this correspond to 18% for competitive tariffing as agreed by the group?"

If I could ask you to go to the last page of that tab, which is, although it's difficult to read, it is Annex D in her letter.

A. Yes.

Q. And what that is, Professor, is the last page of the quantitative evaluation from the 20th of September, 1995, isn't that so?

A. Yes.

Q. So you are being informed, on the 6th of October, by Ms. Nic Lochlainn, that the quantitative assessment of the 20th of September, 1995, the weightings are incorrect, isn't that correct?

A. The weightings are?

Q. Incorrect?

A. They are incorrect, yes.

Q. And, in particular, if you look at the fourth one down, the .96, that's incorrect?

A. That's incorrect, yes.

Q. And she is telling you that on the 6th of October, 1995. And you have a meeting, three days later, in Dublin, on the 9th of October, 1995, isn't that correct?

A. Correct.

Q. And your evidence is that you brought along the third Quantitative Evaluation Report to that meeting on the 9th of October?

A. Yes.

Q. And maybe this is unfair to the Tribunal, but the Tribunal may question that, as to whether it was brought along, but your recollection is that it was brought along, isn't that so?

A. Definitely.

Q. But what we do know is that you were told on the 6th of October that there was a mistake in the weightings, and we know, when we look at the third Quantitative Evaluation Report, that that mistake in the weightings has been corrected, you are aware of that? We'll look at it, it's at Book 93 --

A. Well, I wouldn't over-emphasise the importance of these weightings.

Q. I know.

A. Because, for the simple reason that both of the weightings here in Annex C and Annex D to Maev Nic Lochlainn's fax, they were never used materially in the evaluation. So my point was also to Mr. McDowell when he examined this issue, that we have expended a lot of time in this Tribunal by looking at figures that have never been used.

Q. Okay. So it was an academic exercise really --

A. A purely academic exercise, yes.

Q. And it played -- although the quantitative, the third quantitative assessment was brought along to the meeting on the 9th of October, it played no role in that process?

A. Not at all, no.

Q. Could I now ask you to go to Tab 53. This is a note of the meeting, of the twelfth meeting of the Project Group on the 12th of October, 1995?

A. Yes.

Q. And, at this meeting, you had with you your first draft, which obviously had already been sent to them, but your first draft was being considered at this meeting, isn't that so?

A. Yes.

Q. And under the discussions of the Evaluation Report, it says: "The Draft Evaluation Report put forward by AMI was examined in detail. A range of suggestions in relation to the manner of presentation of the results were put forward by the group and AMI undertook to incorporate these in the second draft. And the agreed amendments included the following..."

Then the last bullet-point on the second page:

" -- collaboration of the reasons as to why the quantitative analysis could not be presented as an output of the evaluation process."

Isn't that a record of the fact that a quantitative evaluation was not and could not be relied upon, but it needed to be, in some respect, elaborated upon?

A. Yeah, exactly. And also, that the issue was actually discussed at the meeting.

Q. And what is your recollection of the meeting of the 9th of October, 1995, when your report was presented and it was evident that Esat, A5, had won the competition?

A. My recollection of that meeting was that some energy, or a lot of energy was expended on how to change the report in a more user-friendly fashion or a fashion which would accord with how the civil servants would like it to be for their presentational purposes. So, you know, something with

tables, something with Executive Summary; for instance, we spent some time discussing whether there should be an Executive Summary or not. Obviously, there wasn't an Executive Summary in the 3rd of October version of the Evaluation Report. So my recollection of that meeting is that the main part of the discussion, while I was present together with my co-team-leader, Jon Bruel, was expended on these presentational matters, and that the scorings from the ten sub-groups and the scorings in the tables, that they were accepted.

Q. And --

A. And also, of course, taking Maev Nic Lochlainn's fax to me from the 6th of October into consideration.

Q. And at Tab 54, Professor, there is a typed note of handwritten notes kept by Ms. O'Keeffe of that meeting on 9 October, 1995, and that accords, would you agree, with the evidence you have just given in that there was no one standing up objecting to A5 or saying this cannot be so, isn't that correct?

A. That's correct.

Q. And if you just look at Tab 54, if you go to the second page, there is a note under "Quantitative Evaluation," and it says:

"The view is the quantitative evaluation should not be performed separately but taken into account in main report.

"Already agreed that 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 scoring indication.

Data not reliable for comparison purposes.

To be left over for discussion.

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

So, again, that is a further recognition of the unreliability and problematic nature of the quantitative evaluation, isn't it?

A. Yes.

Q. And if we go to the next page, page 3, you say, under your name, "Tables 16, 17 and 18 reflect discussions in Copenhagen. If different weighting used to prove, you get the same result with different approach."

And that is still your evidence to this Tribunal?

A. Yes.

Q. And at the bottom, there is a reference to Fintan Towey, where he says:

"Should we not include quantitative analysis upfront?

Quantitative analysis too simplistic to give results.

. Scoring.

. Would like to stick to the Evaluation Model.

"Should quantitative analysis be shown? Would have to open discussion again. Quantitative evaluation unfair and impossible. Figure impossible to compare."

Again, that is a further note that the quantitative evaluation was regarded as being unfair and impossible, isn't that so?

A. That is so, and I believe it was the collective view of everybody involved. So I know it's stated for one person here, but I believe it was the collective view. There was nobody who said "Well, we want to have," for instance, a separate report on the quantitative.

Q. And we can see just where we are, underneath "F. Towey," again the second entry says "Results of quantitative evaluation not reliable." Do you see that, Professor?

A. No.

Q. Page 4. Under "F. Towey," second line: "Results of quantitative realisation not reliable." Then, further down, underneath "B. Riordan," the last entry for him: "Because of uncertainty, cannot trust quantitative."

A. Yeah.

Q. Underneath that, "50% of the weighting is lost due to scoring that cannot be used and quantitative analysis has been undermined." Which is the point you emphatically made to Mr. McDowell, isn't that so?

A. Correct.

Q. Could I just now --

CHAIRMAN: It might be a time, Mr. O'Callaghan, to take ten minutes. He has been going an hour-and-a-half.

A. Thank you.

THE TRIBUNAL ADJOURNED AND RESUMED AS FOLLOWS:

MR. O'CALLAGHAN: Thank you, Professor.

Q. MR. O'CALLAGHAN: Professor, it's your evidence that the Project Group was unanimous that A5, Esat Digifone, should win the competition?

A. Yes.

Q. Could I ask you to go to Tab 63, which contains a series of briefing notes for the Minister prepared by Maev Nic Lochlainn, and rather than go through them in any great detail, I want you just to go to the very last page of that tab, which is the final page of a briefing note for the Minister on the recommendation regarding the best applicant in the GSM competition.

And, in fact, if you wouldn't mind, Professor, would you go to the fourth-last page of that tab, which is the first page of that briefing note?

A. Sorry, we are at Tab 63?

Q. 63, yes. And the fourth-last page in 63. It's entitled "Briefing note for the Minister."

A. Yes, I have it.

Q. "Evaluation of the applications:

" -- initial evaluation showed that A5 and A3 stood head and shoulders above the rest.

" -- detailed examination has shown that A5 is clearly the best application."

Do you agree with those words expressed in that briefing note, Professor?

A. Yes, I do agree.

Q. It continues: "Evaluation of the top two applications in light of para 19 of the tender document."

I will just read out a small part of this:

"1. Credibility of the business plan and the applicant's approach to market development.

" -- A5 is better because it:

" -- has detailed, well-advanced plans for brand development and market expansion.

" -- is consistent as between projected tariffs usage levels and revenue streams.

" -- demonstrates high degree of preparedness."

Do you agree with those sentiments expressed there, Professor?

A. Yes, I do agree.

Q. Now, could I ask you to do what I'd asked you to do initially, which is go to the very last page of that tab, which sets out the conclusion and recommendations of the briefing note to the Minister. And under "Conclusions," it states:

"Disregarding the criteria where both scored the same, A5 is superior to A3 in five out of six cases, including in respect of the two most important criteria, i.e. market development/credibility of business plan and technical approach.

" -- where A3 is judged to be better than A5 as regards tariffing, it is noted that A5 scores a very close second.

" -- hence, it is clear that, evaluating in accordance with the criteria set out in paragraph 19 of the tender document, A5 has the best application."

It there proceeds to recommend "The GSM Project Group is therefore unanimous in its recommending that the Minister should enter into licence negotiations with the A5 consortium.

" -- should negotiations with A5 fail, the Minister should enter licence negotiations with the applicant ranked second, namely A3."

Do you agree with those conclusions about the competition

expressed in that note, Professor?

A. Yes, I agree.

Q. Has anyone ever presented to you, Professor, a credible reason as to why Esat should not have won this competition?

Are you aware of any reason why Esat shouldn't have won this competition?

A. No, I am not aware of any reasons, no.

Q. Could I ask you to go to Tab 65, please, and this is the note of Mr. McMahon that was prepared before the meeting of the 23rd of October, and, in it, he expresses some reservations, although he does note that he agrees that A3 and A5 are the front runners. They agree that A3 and A5 are very close, but that they are unable to come to a conclusion as to which, in fact, is ahead.

Mr. McMahon never expressed any concerns like that at the meeting on the 23rd, did he?

A. No, he didn't, not while I was present.

Q. And I think in your answer to Mr. McDowell, that you suggested that maybe the Regulatory Department had a bit of an issue with Esat Digifone, would that be fair to say?

A. That's an understatement, maybe, even.

Q. And I think it may have related to issues of no relevance to this Tribunal, concerning auto-diallers and how Esat Telecom was dealing with the Regulator, would that be correct?

A. I wouldn't know, really, but that's probably so. But I think it's relevant to the Tribunal that he flagged these regulatory concerns because, as I explained under the examination by Mr. McDowell, I think that you could actually draw the opposite inference from his concern than the inference he would like to draw. The inference he would like to draw was that maybe the licence -- maybe the licence should not be awarded to A5 because they could be difficult to handle regulatorily. Where I said that he should have drawn the opposite inference, that because you were going to introduce competition in the Irish market, everybody would know that there will be a lot of regulatory struggle. You could see that from all other GSM operators introduced in other member countries, that a number of regulatory issues arose.

Q. I don't intend to go through with you, Professor, some of the documents to which Mr. McDowell referred, indicating some concern on the part of finance officials or regulatory officials, because your evidence is clear that there was unanimous agreement at the Project Group, isn't that so?

A. That is so. And it was so when I was present and it is also stated in the final Evaluation Report.

Q. Could I ask you, therefore, to jump forward to Tab 73,

which contains a note from the Secretary of the Department, John Loughrey, to the Minister, about the GSM competition. And I just want to open the second paragraph of that note, where Mr. Loughrey states:

"I am fully satisfied that the process in selecting the potential holder of this licence was carried out in a scrupulously fair and professional way."

Do you agree, Professor, from your vast experience in such competitions, that the competition for the second mobile phone licence in Ireland was carried out in a scrupulously fair and professional way?

A. Yes, I agree.

Q. Could I now ask you to jump forward to Tab 84, please. And obviously the competition result was announced on the 25th of November [sic] by the Minister. And your evidence is that you encouraged him -- you encouraged the group to make the announcement, isn't that so? That the Minister should announce it?

A. No, I don't think that that is sufficiently concise.

Q. Okay.

A. What I gave as advice was to the Chairman of the Steering Group, that he and -- in his co-work with the Minister, should move on to announce the winner as soon as possible or sooner rather than later. So I had no contact with the Minister, so I was not advising the Minister, as you are suggesting. That's the point I would like to get across.

Q. I apologise. My language was loose there, Professor. I meant to refer to Mr. Brennan, that you made that recommendation to him?

A. That's fine, yeah.

Q. Of course, politicians generally get criticised for delaying in making decisions, but do you agree with me that, by announcing this result without delay, and promptly, the Minister did absolutely nothing wrong?

A. That's correct.

Q. And you are aware that this decision was brought to the Cabinet Subcommittee that included the Irish Prime Minister and Deputy Prime Minister and Minister for Social Welfare, are you aware of that?

A. No, I was not aware at the time, no.

Q. And that Subcommittee approved the decision.

A. Okay, but I was not aware of that at the time.

Q. At Tab 84, there is a note of a meeting between Esat and the Department back on the 9th of November, 1995. What was the extent of your involvement, Professor, after the competition result was announced on the 25th of October, ?

A. I would say it was marginal.

Q. You are noted as being at this meeting.

A. Yes, I was at this meeting on the 9th of November, together with Mr. Tague Iverson from my own team.

Q. And did you have much involvement in the process after this meeting on the 9th of November, 1995?

A. No, only very limited to two or three or at least a few action points. One was that we held meetings with what we labelled disappointed applicants. There was also, at some stage, a telephone conversation between Fintan Towey and myself, and there may have been a third action point, but I do not have the full record here in front of me.

Q. The transcript records the announcement by the Minister on the 25th of November. Of course, that should be the 25th of October, sir.

Could I ask you now, in terms of the meetings with the defeated applicants, what was the atmosphere in those meetings, do you recall?

A. Now you are asking me about an average, which is difficult for me to give, because the atmosphere was different from --

Q. One to the other?

A. From one to the other.

Q. Do you recall the Persona meeting?

A. Yes.

Q. What was the atmosphere at that like?

A. I think the atmosphere from Persona was aggressive.

Q. What was its complaint?

A. Well, I wouldn't recall which issues they specifically took up, but what I did recall, what I do recall from the meeting with Persona was that Tony Boyle was there, and he was obviously very disappointed, and then I also recall that I actually took the plane from -- out of Dublin Airport in the afternoon, and it transpired that when I came to Schiphol - that was at a time when there was no direct flight from Dublin to Copenhagen, so I went over Schiphol - I actually met the members from the Unisource consortium. Unisource was a member of the Persona consortium. And I had a little bit of small talk with these members from Persona -- sorry, from Unisource, and they stated to me, quite clearly, in the airport of Schiphol, that they would not pursue any complaint and they thought that they had got a sufficiently clear explanation as to why they had lost the competition or why they didn't win the competition.

Now, Persona, you will recall -- sorry, the Persona consortium consisted of several members, and the operator in that consortium was Unisource, and Unisource was, at that time, some kind of amalgamation or some kind of

cooperation between KPN of The Netherlands, Swisscom from the -- Switzerland, and Telia from Sweden. And what I do recall in the airport of Schiphol was that I spoke with one person from Telia and one person from KPN who had just been present at the meeting the same day.

Q. And they were perfectly satisfied with the explanation that had been provided to them at the meeting with the Project Group/Department?

A. They were very satisfied. They directly expressed that to me, and they said that if any further communication was going to take place, it was not going to involve them because they would withdraw from the Persona consortium, or the Persona entity.

Q. And the aggressive approach from Persona at that meeting, what did it entail? What were they threatening?

A. I am trying to be as helpful as I can, but I have no -- you will appreciate it's so many years ago --

Q. Of course.

A. And I recall the aggressive tone, but I do not recall the specific issues taken up there.

Q. Were you aware that a complaint was subsequently made by Persona to the European Commission?

A. Yes. And that was, by the way, maybe the action point I was looking for before when you asked me about subsequent work after the 9th of November, because I was asked by the Department about my view with regard to the Persona complaint or the potential Persona complaint.

Q. And had you experienced previously, Professor, complaints by defeated applicants in mobile phone competitions to the European Commission?

A. No, I hadn't.

Q. Could I ask you to go to Tab 87, please, and this is a fax from you to the Department, dated 15th of September, 1996, in which you set out a Memorandum on the evaluation of the evaluation of the GSM2 tender in Ireland. Was this sort of a review document that you prepared for the benefit of the Department?

A. Yes, that was also one of the action points. I believe it was something with the Department and myself going over any remaining action points, and then it appeared that we had promised the Department to come up with, so to speak, an evaluation of the evaluation.

Q. And if you look at page 5 of that document, Professor, at the bottom of the page there is a section entitled "The Overall Evaluation Model and Techniques" in which you say, "Prior to the closing date the PTGSM had discussions on how to evaluate the application and it was agreed to proceed as follows: The general method to be used was the so-called

best application method which was often dubbed 'beauty contest'."

And that is, Professor, the type of the evaluation that you had described in the articles I opened to you yesterday which operated in Denmark and other countries, isn't that so?

A. Yes, that's correct.

Q. And then on the next page, there is a section 5, "The Nomination of the Best Application," and just at the bottom, you say, "The Evaluation Report aimed at nominating and ranking the three best applications. This was finally achieved through:

"1. Qualitative award of marks to the six applications with respect to the indicators closely linked to the evaluation criteria listed in paragraph 19 of the tender document.

"2. Qualitative assessment of applications according to the various marketing, technical, management and financial aspects.

"3. Validation and finalisation of the results through four different weighting and scoring techniques, which all generated the same results."

Next page:

"It emerged from this final part of the evaluation that a clear winner could/should be nominated."

And you stand over that today, Professor, isn't that so?

A. Yes, I do.

Q. And then just in the next page, page 8, if I could ask you to look at the second paragraph beneath the subheading "Procedural Effectiveness," and you say:

"This has further been supported by the fact that the Minister has not interfered or tried to exert influence on the outcome of the evaluation which has entirely been the responsibility of the Project Team GSM. This has also been supported by the fact that no political or arbitrary matters have been mixed up with the evaluation."

That's a statement you made in February 1996, Professor, and do you still stand by it today?

A. Yes.

Q. Professor, I am finished Book 91, which is the good news; and unfortunately, the bad news is I have another book that I will need to take you through.

A. That's fine.

Q. The book detailing evidence given by other individuals at this Tribunal, and my solicitor will hand out a copy of it now, Judge.

A. Which binder are we talking about?

Q. It's a new book, Professor Andersen.

Professor Andersen, you will no doubt be aware that this Tribunal has inquired extensively into the GSM competition and award of licence. Throughout the course of this inquiry, it has questioned a considerable number of civil servants, including, on my count, 15 from the Department; two from the Attorney General's Office; one, I think, from the European Union; and five members of Cabinet at the time. I don't propose to go through the transcripts of each and every one of them, but what we have done in this book is compiled some of the relevant extracts from the evidence given to the Tribunal and there is only certain parts of it that I'll be referring to. But I just wanted to get some commentary and answers from you in respect of issues raised.

And the first witness whose evidence I wish to refer you to, Professor, is Mr. Martin Brennan, who gave evidence to the Tribunal for 25 days, and if you could go to Tab A, sub-Tab 1, I just want to give you an indication of why it is you are here and why it is the Chairman is inquiring into this process.

And if you look at Tab A1, page 26 is the first page, and at question 24, counsel to the Tribunal, on day 163, said the following -- I think it's important just to open this to you just to give you a context -- he says:

"Now in the course of the evidence, Mr. Brennan, it may appear that either the Tribunal or that I am suggesting or making criticisms of the process. I want to make it clear that this is not intended to undermine the process but to try to understand why it may have taken a particular route at a particular point in time, as to why, for instance, you took one route when that route was open to you. I am not saying the other route was in any way invalid or I may be suggesting that the route you took was invalid, but I am not interested in invalidity and I am not interested in whether you exercised a judgement to go one way or the other way, but whether your decision to go one way or the other way was in any way influenced or the result of an intervention by a third party or was, I think in the words of Mr. Michael Lowry when he was Minister, 'massaged' in any way."

So you can see what this Tribunal is interested in, Professor, isn't that so?

A. Both yes and no. There is a lot here on what the Tribunal is not interested to pursue, which, by the way, does not accord with my perception on the Tribunal inquiries. But what they are essentially interested in, it says here, is only whether Michael Lowry did any 'massage'.

Q. And I think you raise a valid point, Professor. But do you

recall whether Mr. McDowell, during his five days of questioning of you, asked you whether you are aware of any influence or massaging by Mr. Lowry?

A. No, he didn't.

Q. And would you agree with me that his five days of questioning seemed to concentrate more on the fact that he was inquiring into what route was taken during the evaluation process?

A. That's correct, and, I mean, there is a little bit of, to some extent, second-guessing what's happening, and that has also been the way the Tribunal has approached me in my entire communication earlier on in this, yes.

Q. Could I ask you to go two pages forward, to page 55 - the pagination is in the top right-hand corner - and on day , at line 14 -- you'll see, Professor, the lines on the left-hand side.

A. Yes. I just lost the reference.

Q. Page 55, it's the third page in.

A. Yes, I have it.

Q. And line 14 there is an answer from Mr. Brennan, where he says:

"Because before the involvement of Andersens, I would go so far as to say we hadn't clearly thought out how we were going to evaluate at all. There was the Andersen structure that got us to the whole business of scoring," etc.

Could I just ask you, is that a fair account of what happened, the evidence there given by Mr. Brennan about that the Department was really dependent upon Andersens to provide information about scoring?

A. I think, to a very considerable extent, he is right, because the Irish civil servants, they would not, at this time, have executed any evaluation before in this field, in this highly complex and specialised field, and I also recall that Martin Brennan did rely very heavily on the advice provided by AMI.

Q. And in fairness to the Irish civil servants, there was no reason why they should be in a position to evaluate a process that they had no previous involvement in, is there?

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

Q. They had no previous involvement in scoring GSM?

A. No.

Q. So there is no reason why they should be knowledgeable about how to score it?

A. Exactly, exactly.

Q. Could I ask you to move forward a number pages, about seven pages, to page 111. Again, it's the evidence of Mr. Brennan on day 163, and it refers to the presentations. If you could just go to line 12, the question from counsel

to the Tribunal is:

"Question: So in the first hour they'd hammer home what they felt was the main points of their application. They then deal with your queries, and then, as you say -- mainly technical, I think, and then you had some other questions from different members of the Project Group really stemming from their different areas of expertise, would that be right?

Answer: Yes. I think, while I chaired the meetings and adhered to the structure, that Mr. Andersen probably led the meetings in the second half."

Is Mr. Brennan correct, Professor, where he says that, in the presentation meetings, that you probably led them in the second half?

A. I think we had different roles during the presentation meetings, and that Mr. Brennan, on behalf of the Steering Group, would have made a general welcome address to each of the individual presenters. But when this came to some of the questions, I do recall that I played a more active role.

Q. Could you go to the next page, please, Professor. You are aware there was some confusion as to the date of the meeting in Copenhagen, Professor, aren't you?

A. Yes.

Q. This may provide some assistance. And if I could take you to line 12, where counsel to the Tribunal is reading from a part of the statement of Mr. Brennan, I think. And he says:

"The note dated 21 September, 1995, Tribunal document , gives some feeling for the outcome of that meeting and the work still being done at that stage, and we'll examine it in detail in due course.

"A further and very definitive meeting took place at AMI office in Copenhagen about ten days later, where the relevant further analyses were considered in detail and scoring carried out as appropriate. My recollection is, at that, that there was a lively debate at the meetings in Copenhagen but that the markings were eventually the subject of consensus.'

"At the first meeting, when you say 'that there was a lively debate at the meetings in Copenhagen', are you referring to both meetings?

Answer: Yes.

Question: The 18th and 19th and presumably the 28th and th?

Answer: Yes.

Question: And at those meetings were you dealing solely with the areas of the evaluation process that you have

described, marketing, management, and I think it's marketing and management, isn't that right?"

And I think if you go down to line 16, Professor.

"Was he there at the second meeting?"

Answer: The meeting on the 29th?

Question: Yeah."

So you don't believe that the meeting was on the 28th, isn't that correct, Professor?

A. Well, what I have said in evidence is that I have no recollection of a meeting on the 28th.

Q. Is it possible it was on the 29th? Because there seems to be some confusion with Mr. Brennan as to the date of it, as well?

A. It might be, it might be.

Q. If you go to page 125, answer of Martin Brennan at line 5:

"We were -- but to the extent that a lot of work had been done the previous week or ten days earlier. Now, Andersens were of the firm impression that there were so many As and so little D and Es that the result was obvious in the case of A5."

Is that a fair account of how you viewed the evaluation of the competition, that since Esat had all these As, they were clearly the winner?

A. Well, it's very reductionistic here, isn't it --

Q. Of course.

A. -- taking into account that we have read some 6,000 pages and written hundreds of pages, and so forth. But the essence of it is correct.

Q. Could you go to Tab 2 in that booklet, and page 104. And at line 7, counsel to the Tribunal questions Mr. Brennan as follows:

"Question: Did you envisage at the very beginning that the report of this Project Group would, in fact, be put together by somebody who was, to some extent, on the margin of the group as regards its day-to-day decisions, that is Andersen, or would you envisage that would come from the Department itself?"

Answer: I think it was always going to be a report from Andersens."

Isn't that an accurate reflection, that the Department was dependent upon you providing a report and that that would form the basis of the evaluation?

A. That is very accurate. We had a contractual obligation to be the drafters of the report.

Q. And on the next page, page 105, at line 15, counsel to the Tribunal says:

"Question: Did the other members of the group, do you think, I am asking you for your impression whether they

felt Andersens were an independent advisor to the group or an actual integral member of the group?

Answer: Well, I think that they were engaged in a joint project; there was us and them."

Do you agree with Mr. Brennan's assessment that you weren't part of the group but you were assisting the group?

A. Yes, that's correct.

Q. Could I now ask you to go to Tab 3, page 93, line 10. This is an answer from Mr. Brennan, where he says:

"I would say that we in the civil service side expected that we were paying Andersens to do what I'll call the donkey work."

Isn't that a fair assessment of what you were being asked to do by the civil service and what you contracted to do?

A. Please explicate to me, then, how you view, or how you interpret the term "donkey work".

Q. I don't know, do you have a donkey in Denmark?

A. Yeah, we do.

Q. Well, it's a hard grafting work that people such as barristers have to do in order to earn a living, that type of work. It's hard work.

A. Yeah.

Q. Unseen, unrewarding work, stuff that Mr. O'Donnell does here all the time.

A. I think some intellectuality was put into the work, also. So, with that qualification, it's okay.

Q. Fair enough.

Could you go to Tab 5, please, Professor, and if you could go to page 64 of that, and line 6.

Answer of Mr. Brennan:

"As I was trying to say this morning in all of this, we had engaged expensive consultants with lots of experience and they were guiding us as to what was appropriate to do.

Question: But wasn't this a fairly critical thing for you in that it was -- one of the twin pillars of the whole application was financial capability and technical capability? If you were going to score anything, and you made it clear from the very outset, I think it's made clear that these were things that would be scored, and then when you get to the completion of the evaluation, in some way you decide you don't need to score them."

Just in terms of the answer of Mr. Brennan there, you were guiding the Department as to what was appropriate to do, isn't that correct?

A. That's correct. So I fully back up his response.

Q. Could I now ask you to go to page 69 in that tab. You may recall earlier today we discussed the slight antipathy that the Regulatory Division may have had towards Esat Telecom,

and at page 69, line 13, there is an answer from Mr. Brennan which appears to corroborate that. He says: "I think, and I have repeated this a number of times, it was partly because Mr. McMahon's side didn't participate in any of the sub-groups or any of the marking, so they were further behind the game than anybody else. They were also, undoubtedly, more negative, more negatively inclined towards the emerging winner, I believe, and I have said this before, in the opening days, for unrelated reasons, because they were dealing with them on day-to-day basis, and I can't see how a consideration like that could have been validly taken into account in the evaluation."

And that confirms the evidence you gave about half an hour ago to the Chairman, isn't that correct? Or do you believe it does?

A. Yes, I agree with the message that Martin Brennan is sending across here, and I don't want to over-interpret his words because they might have been said quickly or under a lot of questions under long days, and so forth, but just to explicate my understanding of it. I am not -- I do not fully agree if the wording "negatively inclined" do comprise an element of bias, for instance, because I didn't perceive Sean McMahon to be biased against A5. I just thought that, you know, he made a statement which he thought was reasonable; namely, that they would be difficult to handle regulatorily, but that has nothing to do with him being negatively inclined, as such, towards A5 or any of the bidders.

Q. Just beneath that answer of Mr. Brennan, counsel for the Tribunal continues:

"Question. I mean, you are entitled to that view. I think Mr. O'Brien had a different view himself. He wanted his track record taken into account, didn't he? If you look at his presentations, isn't that -- I think he devoted a significant amount of his time to his reputation in Esat Telecom?

Answer: I mean, whatever judgement one might make of that, he did start to excite the telecommunications market when he started the first move towards competition, and competition was part of the bible to which the Department was operating at that stage. I mean, Mr. McMahon was the guardian of licences and what was allowed under licences, so he had the luxury of being able to take a different view, and he was taking it based on different information." Were you aware at the time, Professor, that Mr. O'Brien had been the first person to "excite the telecommunications market"?

A. Yes, I was aware of that.

Q. And would you agree with Mr. Brennan's assessment of Mr. O'Brien contained in that answer?

A. Yes, I agree.

Q. Okay. If you go to Tab 6, please, and page 22, and line 9. Question from counsel to the Tribunal:

"Question: Were there tensions between the Department and Mr. Andersen?

Answer: There were certainly tensions during the week, in which we had a contractual row, but my view is, as soon as we solved that problem, there was no longer any tensions. I thought we worked well as a team."

Would you agree with that assessment that you did work well as a team?

A. Yeah, I have exactly the same impression, that it was a very good team work.

Q. Could I now ask you to go two pages forward to page 95, line 12. Answer of Mr. Brennan:

"Answer. I mean, I have made it clear a number of times that Mr. Andersen strongly recommended that the decision should be announced as soon as it could be announced, once it was arrived at."

And that corresponds with your evidence to the Tribunal, Professor, isn't that so? Or --

A. Yes, the meaning is the same. I have said sooner rather than later, or as soon as possible.

Q. Could I now ask you to go to Tab 7, and page 121, bottom of the page. Question at line 24:

"Question: Your evidence, anyway, Mr. Brennan, is that, if I have you right, you don't believe then that Minister Lowry interfered with the adjudicative process at all in any respect?

Answer: Correct.

Question: You don't, in fact, believe that it was possible that Minister Lowry could have interfered with the adjudicative process in any respect?

Answer: Correct."

And that confirms the evidence you gave this morning, isn't that so, Professor?

A. Yes.

Q. And the note which you wrote in February 1996?

A. Yes.

Q. Could I ask you now to go to Tab B, which contains evidence of Mr. John Loughrey, who, at the time of the competition award, was the Secretary of the Department. "Secretary," in Ireland, means he was the lead civil servant in the Department.

And at page 97, at Tab 2, Mr. Loughrey gives an answer on day 187 of the Tribunal, at line 12, on page 97, and he

says:

"I went through how, in fact, even though the Department's learning curve had started effectively from a blank sheet of paper, how Andersens were the leaders in this niche market, how, in fact, they had no connection with Ireland, how the advice would have been given in a most disinterested way, how the committee operated, and, finally, coming to an iterative process, how they came to a unanimous result."

And would you agree with the Secretary of the Department's account that, really, the Department started with a blank sheet and you provided assistance to them on it?

A. The meaning of it, yes. It wasn't effectively a blank sheet because they had prepared, together with external consultants, the RFP document, etc. But, in 1994, when they started the process, it was probably from a blank sheet, yes.

Q. If you could go to the next page, Professor, page 98, you will recall that yesterday I asked you if you were aware whether a competition result had ever not been announced by a minister or a government, and you said you weren't aware. But if you look at the bottom of that page, at line 27, Mr. Loughrey states as follows:

"It would be very difficult to see how he" -- and that's a reference to the Minister -- "or the Government could alter this decision by going to another applicant, that their only alternative would be to say that they had decided not to go ahead on this basis, actually, because I believe they didn't have an alternative, and that was my belief, clearly-held belief. I possibly, obviously, spoke about the promoters as well, and I would have said, clearly, and this is no slight on Mr. O'Brien, but I clearly regarded the ballast in this ship as Telenor, because we had gone through this before. I actually regarded Telenor at the time as the leading-edge company in the world in cellular telephone."

Would you agree with Mr. Loughrey's assessment of Telenor as being the leading-edge company in the world in cellular telephone, or are you qualified to give an answer?

A. I would have qualified it to say, one of the companies at the leading edge. They were equal among the best, but to say that they were best among equals, that's, maybe, an over-statement.

Q. Can I ask you to go to Tab 3, please, Professor, and this is day 90, when Mr. Loughrey was questioned about the financial capacity of Esat Digifone and its financial health, and if you could look at page 55, at line 12, Mr. Loughrey says the following:

"And I believe myself, given the seriousness in which they approached the job, given the expertise of Andersens, if there had been an application which stood out for its provocatively capricious inability to bank-roll their proposals, they wouldn't have qualified under the so-called prerequisite of Clause 19."

Just in general terms, Professor, if there was an application that clearly didn't have the financial capacity to perform the network roll-out, would they have won the competition?

A. No, they would not have won the competition, I believe.

Q. And financial capacity was taken into account, as we know, in this competition, isn't that so?

A. That is correct, it was taken into consideration during the evaluation. But I sense that the question from the Tribunal legal team here is maybe a bit different, because they are talking about what is termed a prerequisite of Clause 19, and that's something different than whether a financial evaluation actually took place during the core evaluation.

Q. I understand that, Professor. Could you look at Tab 4, and this is a question at line 15, on the only page in Tab 4, where counsel to the Tribunal says.

"Question: Now, when we come to the announcement of the winner, when it was decided to announce the winner, it seems to me that that initiative to announce the winner, when the announcement took place, came from you and from the Department, as informed by other members of the Department, not from the Minister. Although he did not disagree with the initiative suggested by you.

Answer: I can't -- I can't know or certainly can't be certain of what the Minister's own, if I may say so, stand-alone attitude towards an early announcement of the decision, but I know for certain that what my own attitude was, and I think that's documented, and my own attitude was: to move as quickly as possible. That was at my initiative. I urged the Minister to act as quickly as possible."

Obviously, you are not aware of what the Secretary said to the Minister at the time, but certainly, his advice corresponds with what your advice would be, Professor, isn't that so?

A. It corresponds perfectly well with my advice, yes.

Q. Could I now ask you to go to Tab D, which is the evidence of Ms. Nic Lochlainn, and if you could go to Tab 1 within that, and page 85, and at page 85, a section of Ms. Nic Lochlainn's statement to the Tribunal is being read out at line 26, at the bottom of page 85, and she says:

"As far as I seem to recollect at the moment of writing, a number of difficulties were encountered with the quantitative evaluation, and so the focus of the evaluation became the qualitative evaluation, where there was flexibility to use supplementary indicators and to complement supplementary analyses if this was deemed necessary in order to make a fair comparison. As my own role was peripheral in this matter, I have no specific memory as to the detail of dealings, discussions or meetings undertaken by others with AMI regarding this decision."

And the evidence of Ms. Nic Lochlainn there, Professor, does that accord with your recollection of what happened with the quantitative evaluation?

A. Yes, broadly speaking, yes.

Q. Could I ask you to go to page 88 of that tab, and line 11. The answer of Ms. Nic Lochlainn, she says:

"Answer: My recollection is that there was a clear recommendation from Andersens that there was a problem with the quantitative part of the evaluation. I can't recollect when a decision was made or who made it.

Question: I am not criticising that. I am really trying to draw on what you stated here to suggest that while you had a role and other people may have had a role, they had been given a role in the Project Group. A number of major decisions seemed to have been taken by a much smaller group of people who were, as it were, driving the project, would that be right?

Answer: Well, since I am not certain when the decision was taken about the quantitative bit, I can't say.

Question: But you weren't involved in it, were you?

Answer: I don't, I don't recall that I was involved.

Question: Yes. So it was taken without your involvement and it doesn't appear to have been taken at a Project Group meeting. I am not criticising anyone for that. All I am saying is that the Project Group doesn't seem to have operated on the basis that every member of the group took part in every decision, but rather, there seems to have been a Steering Group, if you like, perhaps of Mr. Brennan and Mr. Towey and Andersen maybe, would I be right in thinking that that was a possibility?

Answer: The phrase 'Steering Group' would suggest something quite formal. I don't think there was something quite that formal.

Question: I am not suggesting something quite that formal, but that was how it actually operated?

Answer: I am comfortable that the discussion that took place about the quantitative evaluation at the group, which

was a reasonably large group, gave everyone who was there, at least in my recollection, a clear understanding that there was a problem with that part of the evaluation, and that, in fact, that the general understanding was, that to proceed to keep giving that a level of weight in the process, would, in fact, have been unfair. I think that was the recommendation from Andersens."

And do you agree with her account of what happened in respect of the quantitative evaluation?

A. Yes, I agree.

Q. And do you think, as had been suggested previously by counsel to the Tribunal, that there was this separate Steering Group of yourself, Mr. Towey and Andersens, who were effectively driving this ship on your own?

A. No. I just want to make it clear, Mr. O'Callaghan, when I have used the term "Steering Group" from time to time, I use it on a synonymous basis as the term PGGSM or PTGSM.

Q. Could I ask you to go to the next tab, Tab 2. There is only one page in it, day 225, line 12:

"Question: And it would seem clear, but possibly needs to be said, Ms. Nic Lochlainn, that there seems to be running throughout that, absolutely no suggestion of anyone controlling, dictating or influencing your mind in the way in which you should arrive at a result?

Answer: None whatsoever.

Question: And it was, as they say, all your own work?

Answer: Yes."

And again, do you agree, Professor, with her account, that nobody outside was trying to interfere with the work of this Project Group?

A. Yes, I am --

Q. That you are aware of?

A. I am actually stating two things. I have not at any stage seen any influence being exerted, and I think I would have picked that up. But I also think that yesterday, with Mr. Shipsey, there was no feeling from my side that there was an anticipated reaction from the civil servants in order to do a kind of silent 'Yes, Minister' thing. So the exertion of influence can have two appearances; one can be direct exertion of influence, but it could also be an anticipated reaction from civil servants, and I did not discover neither of those.

Q. That's the question I was going to ask you, Professor. Could you go now to Tab E, which is the evidence of Mr. O'Callaghan, and, in particular, could you go to page in that tab. This is evidence he gave on day 197. At line 5, he gives an answer:

The question is:

"Question: As I understand your evidence, you didn't actually deal hands-on with those evaluations, is that right?

Answer: That's correct. My recollection is that the quantitative evaluation was carried out by AMI, using their own personnel, as I recall, and the qualitative evaluation was carried out by -- essentially by 10 sub-groups, which were comprised of AMI personnel in respect of five of them and a combination of AMI personnel and departmental in respect of the other five, but I was not party to any of the sub-group meetings and did not evaluate, therefore.

Question: There is nothing sinister in that, as far as you are concerned?

Answer: Nothing whatsoever. It was as I had explained earlier to Mr. McGonigal, it was simply a matter of resources. These meetings were taking place in Copenhagen, and we simply, because of our other responsibilities, we didn't have the time to devote to it.

Question: Indeed. But as far as you were concerned, you had understood how the process was going to take place in relation to the qualitative evaluation and the quantitative evaluation, and you had no complaints?

Answer: No, I had no complaints and no difficulties with it."

And can I ask you, Professor, does that evidence correspond with your belief that there was no objection within the Project Group to the withering-away or the change in evaluation arising from the fact that the quantitative evaluation was so unreliable?

A. That's correct. And I think that from earlier quotations from -- it's Maev Nic Lochlainn's evidence we are looking at here, isn't it?

Q. This is actually Ed O'Callaghan.

A. Oh, Ed O'Callaghan, okay, but it is correct that there was no objection at any stage. But I would like to make you aware of the fact that what transpires around line 6 and 7, and onwards, does not accord with neither my recollection nor what I think is in the underlying documentation, because it is a matter of fact that Irish civil servants participated in all of the 10 sub-groups.

Q. Could I ask you to go to Tab F, please, Professor --

A. But maybe that's just another explanation of -- or explication of the fact that Ed O'Callaghan, like Sean McMahon, they did not participate in the 10 evaluation sub-groups, and this, then, also demonstrates that they had actually not fully understood the underlying process.

Q. Could you go to Tab F, which is the evidence of John McQuaid, and page 47, first page, line 10:

"Question: Now, can you tell us whether or not there was any outside pressure on your group or on any of its members?

Answer: There was no outside pressure whatsoever.

Question: Was there any political pressure?

Answer. No political pressure at all."

Does that accord with your evidence that there was no political pressure, that you know of, put on the Project Group?

A. That's a question to me?

Q. Yeah.

A. No, there was no political pressure.

Q. The next tab, Tab G, is the evidence of Sean McMahon. And on the first day of his evidence, Professor, a short Opening Statement was made by counsel to the Tribunal, and there is probably only one or two parts of it to which I wish to refer you.

If you go to page 9 of Tab 1, it is day 205 of the Tribunal, and at line 19, counsel to the Tribunal says:

"All of this should be viewed in circumstances in which, from information made available by civil servants and from documentation made available by the Department, it would appear that the Minister intervened in what was supposed to be a sealed process on a number of occasions. It also appears from information made available to the Tribunal from other sources, that is to say from participants, that the Minister had intervened or had access to the process."

Now, there are obviously rules, Professor, about the individuals who are members of the Project Group not being allowed to be in touch with applicants, isn't that so?

A. Yes.

Q. Was there any rule that the Minister had to refrain from any contact with applicants, that you are aware of?

A. No, not that I was aware of, no.

Q. If I could now ask you to go to page 12, and at the bottom of page 12, line 28, counsel to the Tribunal says the following:

"Most of the Evaluation Model, both as initially presented and as ultimately adopted, dwelt on the quantitative analysis. I don't, at this stage, know how many pages were devoted to the quantitative as opposed to the qualitative, but I think, somewhere in the course of a Project Group meeting, it was stated that 80% of the model dealt with the quantitative analysis. I am now informed that, in fact, 17 of the 21 pages in the draft of the Evaluation Model as ultimately adopted, dwelt on the quantitative analysis, and three on the qualitative and one on the interplay between the quantitative and the qualitative.

"The Evaluation Model as ultimately adopted also entailed the application of weightings to the various evaluation criteria. I propose to deal with the question of weightings separately.

"As I said, the model as adopted does not appear to have been followed. While there are a number of small and perhaps insignificant deviations, the major deviation from the model appears to consist in the abandonment of the results of the quantitative evaluation. The failure to conduct a qualitative analysis for the purpose of reviewing or reforming the quantitative evaluation was also something that appears to have been abandoned. While the precise nature of the interplay between the quantitative and the qualitative evaluation is not absolutely clear from the model, it seems that, ultimately, the evaluation process entirely jettisoned the quantitative report."

Now, that is an excerpt from day 205 here, Professor, of an Opening Statement made by counsel to the Tribunal, and, in the first instance, he relies upon the fact that 17 out of pages in your Evaluation Report deal with quantitative, and that, therefore, that means that quantitative must be a much more important part of it. Do you have any comment to make upon that assessment of the report?

A. Well, I have a comment both on that particular percentage but also what you read aloud as a whole. I am seeing this for the first time, you will appreciate, but this, this represents an entire distorted view on what went on in the evaluation and also what was intended. It is really distorted.

Q. In what way do you believe it is distorted, Professor?

A. You know, we can take it one by one, or maybe this will be too long. I don't know how the -- I mean, to what level of detail you want me to respond, because it could be a very long response.

Q. I'd like the answer you wish to give.

A. Okay. Now, first of all, I think it has been made very clear that, initially, there was an auction-type design element in the overall understanding of the Evaluation Model. So, initially, before the intervention of the EU, as we have been over here in the Tribunal, there was, at the initiative of, in particular the Department of Finance, a certain interest as to devote considerable attention to scoring methodologies of indicators in a quantitative fashion.

Now, obviously after the intervention of the EU, this evaluation took a clear direction to adopt a beauty contest type of tender, and that was also a little bit supported by the contract to AMI, which stated in one of the paragraphs

that the Evaluation Model was to be further developed, and that, by the way, came as late as in June of 1995. So if you look at it in that way, you cannot take a quantitative figure like 80%, just counting pages, or whatever, and then say that 80% of the evaluation should be quantitative also. I think that it is abundantly clear, when you go down in the document and also in the decisions taken by the Steering Group, that what we call the qualitative evaluation, was to be the decisive in the entire evaluation, and there were also procedures instituted in what is printed as Appendix 3 to the Evaluation Report, as to how the holistic evaluation should proceed. We can go into details of that if you like.

So what you have here at the top of page 13 represents a total misunderstanding on both what was intended and what actually also took place during the evaluation.

Now, looking down at that particular page here, which, as I said to you, I haven't seen before, there are used a number of terms which shows or displays at least some kind of misunderstanding and maybe also an underlying attitude which is not correct or does not accord with actual facts.

Let me just mention some of the words.

You have "abandonment" in line 21, but the results and what was actually put into the evaluation was not abandoned, as we have been over a number of times.

Then it says in line 22, "the failure to conduct," and then it says again in line 25, "Performing the quantitative evaluation was also something that appears to have been" again "abandoned." Then in line 29 you have the word "entirely jettisoned". "... it seems that, ultimately, the evaluation process entirely jettisoned..." you know, it's strong words from an opening remarks, or whatever this represents, but I don't think it catches what actually went on and also what was intended

CHAIRMAN: I think I am pretty clear, Professor, on your own evidence, as to what you describe as to the circumstances in which you came ultimately to conduct what you have asked me to accept was a holistic report that did not abandon quantitative elements. So I think you have made that reasonably explicit in your evidence.

A. Okay. But let's leave it at that then.

Q. MR. O'CALLAGHAN: In conclusion, you do not accept the accuracy of the analysis contained in this Opening Statement?

A. No, not at all.

Q. Could I ask you now to go to Tab 2 of Mr. McMahon's evidence, and we know Mr. McMahon was presented in documents as being an individual who had a concern about

the result; you are aware of that, Professor?

A. Sorry, Sean McMahon?

Q. Sean McMahon. There was an indication that there were documents supporting a view that he was not entirely satisfied with the result, do you recall that?

A. I recall that, yes.

Q. This is the evidence he gave to the Tribunal as opposed to what's contained within documents. And page 53, which is the third page of Tab 2, line 13:

"Now, can I take it as fact, Mr. McMahon, that you have complete and utter faith that the work which your colleagues did in those subcommittees was done both independently and without any outside pressure of any kind?

Answer: Yes.

Question: And that the results that they came to in those subcommittees and which formed the basis of the first draft report, were honestly, sincerely and properly arrived at after fair work done?

Answer: I believe so, yes.

Question: And insofar as that is the result, you are happy to endorse that result?

Answer: Indeed I did endorse it.

Question: Now --

Answer: Without actually signing anything.

Question: Without actually signing anything?

Answer: I did endorse it, yes.

Question: I appreciate that. And you are 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."

I just want to bring that to your attention, Professor, because it hasn't been brought to your attention before, but it's clear from that, do you agree, that Mr. McMahon endorses your view that the correct result was reached and that he approved of the result of the award?

A. Okay, I appreciate that, because what he is stating here is in full accordance of my perception of his position when I was present during Steering Group meetings.

Q. Could I ask you to go to Tab H, which is the evidence of Mr. Jimmy McMeel on day 209, and at line 12, he gives -- sorry, line 8, there is a question:

"Question: And that was, as I understand it, understood by the people who were involved in the process?

Answer: Yes.

Question: And were you happy with that?

Answer: I was happy. I was happy that the process was done in good faith. I was not involved in any of that detailed evaluation myself, but I was happy that this was done in good faith by competent people.

Question: But you understood broadly how it was being approached, although you weren't hands-on?

Answer: I understood, yes, that the thing was being elaborated on by means of indicators."

And the happiness indicated by Mr. McMeel in his evidence, does that correspond with your view of the general happiness of the Project Group once it was apprised of the fact that A5 seemed to be winning the evaluation?

A. Yes, it does.

Q. Could I ask you to go to Tab I, which contains the evidence of Fintan Towey. And at Tab 1 of that, page 13, if you go to line 27, there is a question:

"Question: Now, I beg your pardon, before Andersens presented this quantitative evaluation, this first quantitative evaluation, I think it was always understood that the quantitative evaluation by itself would never be enough, isn't that correct?

Answer: Oh, yes, I think so.

Question: And the Evaluation Model, that was clearly understood, isn't that right?

Answer: Yes.

Question: And there were certain shortcomings highlighted in it, and I think the meeting decided on that occasion that it would be returned to after the presentation and after the qualitative analysis was carried out?

Answer: Yes."

And Mr. Towey's evidence there, Professor, about there being certain shortcomings highlighted in the Quantitative Evaluation Report, the first one, that corresponds with the evidence you have given to the Chairman, isn't that so?

A. Yes.

Q. Now, if you could go to page 33 of that tab, and line 17, this is back on day 215, counsel to the Tribunal says at line 17:

"Now, I'll come to, and I'll ask you, because we are trying to understand what actually occurred at the sub-groups and how the sub-groups approached their work."

Were you asked, Professor Andersen, by Mr. McDowell, questions about the sub-groups or how the sub-groups worked, was that an area upon which you were interrogated upon?

A. No, we didn't, during Mr. McDowell's examination, go into

the inner workings of the sub-groups.

Q. Could I ask you to go to page 55, line 18, a question from counsel to the Tribunal:

"When you went to Copenhagen on the 28th -- 27th/28th, whatever that time was, did you have any discussion, and in fairness to you, Mr. Towey, I want to say, you were the one who's noted at the meeting of the 29th of wanting the quantitative model or the quantitative evaluation in the report?

Answer: Yes.

Question: But do you remember any discussion about the quantitative evaluation in Copenhagen?

Answer: None.

Question: Do you know if Mr. Brennan had any discussion with Mr. Andersen when you weren't present?

Answer: Well, I have no knowledge of such a discussion. I couldn't rule it out, but I very much doubt it.

Question: So Andersens said nothing at all that you can recollect about the quantitative evaluation?

Answer: I don't recall. I don't recall him doing so.

Question: Because you know from papers which you received from the Tribunal or which Mr. Shaw received from the Tribunal, that Mr. Andersen furnished to the Tribunal a document which he says was a quantitative evaluation which was run, I think, on the 2nd of October of 1995, and it gives a completely skewed sort of position, although it still ranks Persona as number 2, it brings somebody else who wasn't in the running at all up to Number 1 and still has Persona ranked above Esat Digifone?

Answer: Okay.

Question: Now that was never produced to the Department, we know. It's not in any Department papers. Nobody ever remembers seeing it. It doesn't seem to have formed part of any discussion at the meeting of the 9th, 23rd, or at any meeting?

Answer: Correct."

Now, the proposition being put by counsel to the Tribunal in that exchange, Professor, is to the effect that the third Quantitative Evaluation Report, upon which you have given evidence, was never produced to the Department. Do you agree with that?

A. Well, my evidence is that I tabled it on the meeting in the Steering Group on the 9th of October.

Q. And it's your belief that you brought that along with you --

A. Yes.

Q. -- to the meeting on the 9th of October, isn't that so?

A. That's so, yeah.

Q. And counsel to the Tribunal seems to rely upon the fact that it's not in Department papers. Obviously, the second Evaluation Report remained within Mr. Riordan's possession, but could it have been the case that you collected up the third Quantitative Evaluation Report at the end of the meeting on the 9th of October?

A. That would be in accordance with what I did on earlier occasions.

Q. So that would explain why it isn't within the Department papers, isn't that so?

A. That's probably correct. But I would just like to go to line 10. I note the word "... completely skewed sort of position." I am just flagging here what kind of language is used. I mean, I am just surprised to see this kind of language.

Q. Could I ask you to go to -- well, what surprises you about the language, do you mind me asking, without trying to generate friction in the Tribunal?

A. Well, I know from my own dealings with the Tribunal which kind of language was used, but I am surprised to see that this kind of language is also coming into the evidence when these people are questioned or examined.

Q. Could you go to Tab 3, and if you could go to page 31 at the end. It's the last page in that tab, actually, I think, Professor.

A. Sorry, Tab 3?

Q. Tab 3, page 31, but it may be out of sequence. It's the last page in that tab.

A. Okay.

Q. And this is questioning of Mr. Towey.

A. Okay. Yes, I have it.

Q. Line 2:

"Question. As far as you were concerned, in relation to Minister Lowry, do you think that he could have a sufficient understanding of how the project was working to have intervened to change the way the Project Group were doing its business?

Answer: No. To my knowledge, all he received were superficial progress reports. I don't believe he had any level of depth of understanding of the detail of the process or how it worked.

Question: Did you ever see anything or suspect anything that would make you believe that the Minister either was trying to impact on the outcome of the deliberations of the Project Group or would have been in a position to do so?

Answer: No, I didn't."

And can I take it, Professor, that that corresponds with your evidence to this Tribunal?

A. Yes, it does.

MR. O'CALLAGHAN: Chairman, I regret to say I am not going to finish by 1 o'clock, as you had requested me.

CHAIRMAN: Well, I think, Mr. O'Callaghan, we might just go on 'til marginally after ten past and see how close we are.

MR. O'DONNELL: I am happy for Mr. O'Callaghan to take up some of my time, if that's appropriate, and it may be that we'll have to renegotiate all the times at a later stage, but -- well, hold on, I see the Tribunal counsel shaking their heads. Mr. McDowell had five days on his feet, and I have been allocated five hours and I am for the Department. So the whistle was never blown when Mr. McDowell was on his feet, so let's just see how we go. I am happy, for the present, to allow Mr. O'Callaghan -- I gather he may be another hour, at the maximum.

MR. O'CALLAGHAN: I certainly won't be finished at ten past one, Chairman.

MR. O'DONNELL: So there is no point, I would have thought, simply going on now for another ten minutes in the hope that it will finish by ten past one. I would suggest if we come back here at 2 o'clock and if Mr. -- I gather

Mr. O'Callaghan may be another hour, and let's see how we go. We may not need to have a row about this because it --

CHAIRMAN: I had indicated, Mr. O'Donnell, that of course I accepted that counsel could, within the demarkation lines I had indicated as a mode of assistance, they could agree to share time, and if -- and I have no doubt you are also aware, Mr. O'Donnell, that matters that have been covered fully will not need to be traversed afresh by you.

MR. O'DONNELL: Absolutely. And I am also conscious of Mr. Lowry's position, that he is a lay litigant, in effect, and he has to be accorded a degree of time, but I suspect that he will also feel that a lot of ground here has been covered. So what I am saying is, let's just see. For the present, I don't think that it would be appropriate that Mr. O'Callaghan be cut off at the knees, or any other part, and forced to stop now, and that he would simply be allowed to continue, I gather for what would be another hour. But I see no point in simply saying if we go another ten minutes, he'll finish his examination.

CHAIRMAN: I am not suggesting that he be cut off at the knees, or any such surgical process, Mr. O'Donnell. In the context of the witness, in any event, having had three hours, I'll avail of your helpful suggestion and we'll seek to conclude Mr. O'Callaghan's examination satisfactorily at o'clock. Thank you.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:

CONTINUATION OF EXAMINATION OF PROFESSOR MICHAEL ANDERSEN
BY MR. O'CALLAGHAN AS FOLLOWS:

Q. MR. O'CALLAGHAN: Afternoon, Professor.

Could I ask you to go to the book we were looking at before lunch, and Tab J of it, please. At Tab J are excerpts of the evidence of Mr. Buggy, and I just want you to look at the second page, which is page 86.

A. Yes.

Q. Line 26:

"Question. Did you ever see anything that suggested that the Minister was attempting to influence how the group was treating its task in trying to achieve an equitable result?

Answer: Not on this issue and not on any other issue while I was there."

That conforms with the evidence you have given to the Tribunal, Professor, isn't that correct?

A. Yes, it does.

Q. Can I now ask you to go to Tab L. This includes evidence given by former Irish Taoiseach, John Bruton, on day 279, and at Tab 4, he says:

"I have regarded the integrity of the Irish public service as one of the most important elements in the democracy of this State and its probity and its ability to attract investment. The fact that we have a civil service, unlike that in other countries, which is non-political, which is extremely trustworthy, perhaps slow in its decision-making but slow for the reason of ensuring that its decisions are entirely proper at all times and in this sort of matter I would have relied implicitly at all times on the probity and the professionalism of the Irish civil service, both in the Department of Transport, Energy and Communications and in the Department of Finance, which were the particular departments involved in this, but in general as well."

Do you agree, Professor, with the assessment of the Irish civil service and its integrity, stated by the former Irish Taoiseach there?

A. Yes, I agree.

Q. Could I now ask you to go to Tab M, and I'll just identify to you, on page 83 of Tab M, there is evidence given by a former member of the Irish Cabinet, Mr. Proinsias De Rossa, and at line 5, it is said to him:

"Question: But you had considerable experience of the civil service during your time in Government and I presume you are happy that this competition was to be run by the civil service?

Answer: Oh, absolutely, yes, yes.

Question: You trusted them and their integrity and their independence?

Answer: My primary experience of the civil service would have been, obviously, in my own department. I have nothing but the height of praise for them.

Question: Therefore, you'd be happy that this was appropriate, that this competition would be given to them as a sealed process and would remain a sealed process?

Answer: Yes."

And do you agree, Professor, that from your understanding and involvement in it, the process did remain a sealed process?

A. Yes, I agree.

Q. And then there is other references by politicians to the integrity of the civil servants, to which I don't propose to refer you, but they are there.

But could I ask you to go to Tab Q, please, Professor.

A. Yes.

Q. And before I open Tab Q to you, I should point out to you that at least 15 civil servants from the departments and five members of the Cabinet and two officials from the Attorney General's Office, have given evidence to the Chairman on this GSM process, and none of them has given evidence supporting the contention that the process was interfered with or massaged with by the Minister. The only evidence that this Tribunal has heard suggesting some wrongdoing in respect to the process, is evidence that was given on day 304 by Mr. Tony Boyle, who is from the Persona consortium.

A. Okay.

Q. And I would ask you to go to his evidence, which is at Tab Q, and, in particular, if you could go to page 57, the third page in, and if you could go to line 19.

A. Yes.

Q. And the question is:

"Well, if you look at the first document, which is a meeting that you held with the Tribunal in May of 2001.

Answer: Okay.

Question: If you turn to paragraph 7 of that.

Answer: Yes.

Question: At paragraph 7, you are quoted as saying: 'As far as Tony Boyle is concerned, the reality is that strings were pulled by Loughrey, Lowry and Brennan. They constructed the criteria, weighting, and effectively had Andersens rubber-stamp them. Whoever had access to the weighting of the criteria won the competition'."

Do you believe, Professor, that you and AMI simply acted as a rubber-stamp in this process back in 1995?

A. Definitely not. And what is stated here is not in accordance with what other members or former members of the

Persona consortium has conveyed to me, because other members of the Persona consortium, as I told you this morning, said to me that they had trust in the process and they had nothing to complain about. So, I mean, this must be a personal thing, a personal view on behalf of Mr. Tony Boyle, and not representing the original applicant.

Q. Do you understand the meaning of the expression "strings were pulled"? It means that something was inappropriately interfered with or corrupted or massaged, as was the word used by the Tribunal?

A. Yes, some kind of illegitimate thing going on --

Q. Illegitimate interference?

A. Yeah.

Q. From your knowledge of the process, were any strings pulled by Loughrey, Lowry and Brennan?

A. No, definitely not.

Q. Could I ask you to go forward two pages to page 59, line 5, where Mr. Boyle is being questioned by counsel to the Department, Mr. O'Donnell. And it says:

"Question: Mr. Boyle, this is an allegation against Departmental Officials, leave aside Mr. Lowry, against Departmental Officials of pulling strings. It's hard to think of a more serious allegation to be made against a Department Official, isn't that right?

Answer: It depends what you -- pulling strings doesn't indicate anything incorrect. I didn't suggest there was anything incorrect. Pulling strings -- I mean, what's 'pulling strings'?

Question: Is there a correct way to pull strings?

Answer: Presumably civil servants make decisions all the time --

Question: Is there a correct way to pull strings?

Answer: I am not a civil servant.

Question: Would you not agree that it is a pejorative description?

Answer: I certainly didn't indicate -- I certainly didn't indicate here -- I didn't, by its nature, indicate that there was anything incorrect there.

Question: Well, do you withdraw the allegation then?

Answer: No. I said they constructed the criteria, the weighting and effectively had Andersens rubber-stamp them." And is it your evidence that it is wrong to suggest that Lowry, Loughrey and Brennan constructed the criteria, the weighting?

A. That is wrong, and it is also wrong to say that Andersens rubber-stamped. Because if I understand the expression "rubber-stamp" correctly, it's something like somebody not being actively part of something but just stamping

something, without having given any kind of substantive input into what went into the convolute, or whatever. But I think we went over, yesterday, a number of descriptions on how the work actually progressed in the core evaluation, of which I was not examined during the five days with Mr. Michael McDowell, and this description which I gave, and backed up by documentation in all the binders, is everything else than I can imagine than just being rubber-stamping something.

Q. And in respect of the complaints of Mr. Boyle, your evidence to the Chairman is that the -- or certain other elements of the Persona consortium certainly would not have shared his view on this issue?

A. Definitely not. They have said the opposite to me on the very day when we had the meeting with Persona.

Q. Could I ask you now to go to Tab S, please, Professor. When did you first hear of Peter Bacon, Professor?

A. I have never heard of Peter Bacon, unless you refer to when the Tribunal first, with some considerable delay, sent me a report drafted by him.

Q. And I think that was in 2005, isn't that correct?

A. I think if you want to be specific about the dates, then we need to look into the documents, because what transpires is that I had a meeting with Mr. Jerry Healy from the legal team of the Tribunal on the 29th of October, and I don't recall when the report was sent, but prior to that meeting, I had had a letter from Mr. John Davis from March of 2003, and then, with some considerable and very inexplicable delay, I received some documents which were supposed to be minutes of meetings, and they came in two bunches really, but they came with -- they came one-and-a-half years or so, I don't recall exactly, that's why we need to look at the days, one-and-a-half years, or something, after that meeting on the 29th of October had transpired, and either in between or at the same time, I received, for the first time, a document which purported to be a document by Peter Bacon, and that was the first time I ever heard about his name. So if you look at the meeting, the whole-day meeting in Copenhagen on the 29th of October, not with one single word the name of Peter Bacon was mentioned, neither to me nor to my Danish solicitor, who participated in the entire meeting.

Q. I'd very much like to look at that meeting, Professor, but unfortunately, by ruling of the Tribunal, I am precluded from looking at it, so I can't go into that with you.

A. Okay.

Q. Could I ask you to look within Tab S, page 141, and the pagination is at the bottom right-hand corner. And this is

the questioning of Mr. Bacon on day 353, which was the 8th of May, 2008, and page 1. And I know, Chairman, you will stop me if you feel I am not entitled to refer to this transcript, but I believe I am, since it is on the record.

CHAIRMAN: It's a transcript, yes, Mr. O'Callaghan, I think you have surmised the effect of my ruling. I certainly don't purport to shut you out from referring to what was said in an open transcript.

MR. O'CALLAGHAN: Line 1:

"Question: You do. And the second recorded comment then, I think it may be JC, which may be a reference to Mr. Coughlan, he is recorded as saying 'difference between draft and final reports disturbing'?"

Answer: Yes.

Question: Do you recall Mr. Coughlan making a comment along these lines?

Answer: Yeah.

Question: At the end of the minutes of that meeting then, I don't want to go through all of it, you are quoted, if the minute is accurate -- I am afraid I am looking at it as an excerpt in my own notes. It is the comment:

'Everything points to Andersen having been manipulated. He was pushed around. He was the servant of the Steering Group.'

Answer: Yeah.

Question: Now, that is the best record we have of what was said at the meeting two weeks after your draft report of 14th March, 2003.

Answer: Yeah."

And just to put that in context, Professor, before I ask you a question; there was a meeting between Tribunal counsel and Mr. Bacon, and a handwritten note or minute of that meeting was kept, and within that handwritten meeting-note there is a reference to how Mr. Bacon says that "Everything points to Andersen having been manipulated. He was pushed around. He was the servant of the Steering Group."

What do you say to that, Professor?

A. Well, I am really alarmed about such a remark. I mean, I think that my entire evidence here, now running into day number 7 or 8, must show to anybody in this room that AMI and also myself put a lot of effort into the evaluation, and that we were actually in the driver's seat of the core evaluation. So I am really alarmed. I have not seen this comment before, I have not heard about it, so this is really alarming. I take it that this is the same, in essence it's the same as you have been quoting Mr. Tony Boyle to have said?

Q. Well, it is Mr. Bacon giving an interview to the Tribunal counsel after he has reviewed the Evaluation Reports that were prepared by AMI, and his assessment of those reports is that you were manipulated, pushed around and effectively you were the puppet of the Steering Group; is that correct, Professor?

A. That's not correct.

Q. And we know from the excerpt I have just read out to you, that on the 18th of March, 2003, the Tribunal received a draft report from Mr. Bacon into the mobile phone competition and the work you did. Have you seen that report, Professor?

A. I have seen both his report from 2003 and also a report from 2005, but what I'd try to say before was that his report, obviously, from the 18th of March, 2003, I didn't see that at the time. I didn't see it at the time, either, in October in Copenhagen. It was sent to me sometime after that, but that is -- I mean, that can be cleared up by looking into the communication between the Tribunal and my Danish solicitor.

Q. Professor, do you remember your solicitor or yourself receiving a letter from the Tribunal in March 2003 in which the Tribunal told you that it was its view, a tentative view at that stage, that your work in the evaluation process was "fundamentally flawed"?

A. Yes, I do certainly recall, yes.

Q. Now, you don't have that letter in front of you, but it was sent on the 26th of March, 2003.

A. Yes.

Q. And what it says is -- and I'll just read out three sentences from the letter -- it says:

"From the Tribunal's current reading of the report, it would appear that much of the analysis is unsatisfactory. Moreover, the Tribunal has obtained some expert assistance for the purpose of scrutinising the report and this has confirmed the Tribunal's tentative view that the report appears to be flawed in a number of ways and indeed may contain a number of seriously fundamental flaws."

And that rings a bell; you recall receiving that letter, Professor?

A. I definitely recall it, yes.

Q. And that letter was sent eight days after the Tribunal received the draft report from Mr. Bacon on the 18th of March, 2003, and the expert referred to in it is, in fact, Mr. Bacon. And what I want to ask you is, do you accept the Tribunal's then tentative view and the view expressed by Mr. Bacon, that your work was fundamentally flawed?

A. No, I don't accept that at all.

Q. Could I ask you now to go page 145 in the evidence of Mr. Bacon, and, at line 19, there is a question, and again it is a quote from the notes of the meeting between the Tribunal and Mr. Bacon.

The question is:

"Question: And then there is a question: 'How would we draw up judgement?' That is attributed to you. There is a quote: 'Asking us to consider a direct criticism of the process.' That is attributed to you. And then there was another quote, and I am just selecting here rather than going through it verbatim, 'Asking us to criticise. 'Maybe' could be the answer."

Having looked at Mr. Bacon's report, do you believe that it does or do you agree that it is critical of your work in this process?

A. I think that it is distorted, that's a better expression.

Q. Why do you say that, Professor?

A. Because it is very obvious to a reader of Bacon's reports that he is progressing, or has been progressing his work with underlying documentation, which is not fully correct. So, I mean, if he has been given wrong documents or not working from an error-free fact base, then he would also arrive at a result or a presentation in the report of things that are not correct.

Q. Could I ask you to go to page 146, please, Professor, and line 24. Again, it begins with a quote from the note of the meeting between Tribunal counsel and Mr. Bacon:

"Question: 'How would we draw up judgement and a choice interpretation or conspiracy?' If this is typical of the language that was being passed between people at the meeting, there was a level of engagement between you and the people you were meeting that is inconsistent with the notion surely, Dr. Bacon, that you were an independent expert?"

I just want to stop there, and ask you, Professor, the suggestion that there may have been a conspiracy at the heart of the award of the second GSM phone licence, do you agree with that?

A. No, not at all.

Q. Do you agree with me that there is no evidence suggesting any such conspiracy?

A. No, not any evidence that I know of.

Q. Could I ask you now to go to Tab T --

CHAIRMAN: I am just a little concerned, Mr. O'Callaghan.

I am not, of course, suggesting that, as counsel for Mr. O'Brien, you can't seek to elicit the matters that you consider are important, but from my recollection of Dr. Bacon's evidence, I do think that his testimony was

that the reference to "conspiracy" came from him rather than from Tribunal counsel, and I think even on page 151 of the extract that you have included, your predecessor, Mr. McGonigal, is recorded as having questioned Dr. Bacon on the basis, at 700, "I want to suggest to you that your work was done for the Tribunal on a partisan basis and not an independent basis?"

And the witness's response was: "Look, you can put all these propositions, you know, that you like. You know, I know what I did for the Tribunal and what my colleagues that contributed to me did, you know, and, at the outset, when I was questioned, Mr. McGonigal, that, you know, I am around long enough to know that if I am led by the nose and if you think that I can't form or that any technical expert couldn't form a judgement about that process on the quantum of information that was provided, you know, you are mistaken. There was very considerable briefing provided with respect to us being able to provide independent advice under the headings that we engaged ourselves to do so." Now, I have consciously, Mr. O'Callaghan, sought not to interrupt your examination and I am conscious you have sought to move things in an expeditious and business-like fashion, but I do merely feel that that matter, it's desirable that will there be a little balance.

MR. O'CALLAGHAN: Okay. Then maybe if we go to page 152, Chairman, there is a further reference to "conspiracy," which I should open. It's question 703.

Mr. McGonigal: "And the quote, if it's correctly attributed to you about Mr. Andersen having been manipulated, can have absolutely no application to Mr. Lowry, as far as you are concerned?"

Answer: I don't know.

Question: You don't know?

Answer: Well, how -- you know...

Question: As far as you are concerned, can it?

Answer: As far as I am concerned.

Question: It can have no application?

Answer: No.

Question: I see. And the word 'conspiracy' was also used and I take it you make no allegation against Mr. Lowry in relation to that, either, and that you have no business linking the word with Mr. Lowry, good, bad or indifferent?

Answer: That's correct."

And that may fit in with what you were saying, Chairman. Could you go to Tab T, Professor, which is the evidence of Billy Riordan.

A. Yes.

Q. And line 22 on the first page:

"Question: At any stage in the process did you ever have the feeling that you were either being disregarded or being overborne by others?

Answer: No."

And again, that conforms with your awareness of how the Project Group behaved, isn't that so, Professor?

A. Yes.

Q. And if you could go to page 134, this deals with some of the issues that were raised by Mr. Riordan at the time.

Line 20:

"Question: In relation to the events that were made known to Mr. Andersen, would you have been paying attention to whether or not those issues were corrected or dealt with or looked at as you came to the draft report of the 3rd of October and the draft report of the 18th of October?

Answer: I think I would have checked the issues that I raised, yes.

Question: Do you have any recollection of any issue that you raised not having been dealt with in some satisfactory way to you?

Answer: No."

And if you can just drop down to line 15 on that page, 135:

"Question: Is it fair to say then that whatever happened on the 9th of October and whatever occurred in relation to the issues that you and Mr. Buggy raised after the meeting of the 9th of October, you feel that the evaluation presents the process in an appropriate way, in an appropriate way to describe as the final result of the process?

Answer: Yes.

Question: And do you think it's fair to say, in those circumstances, that when we see the final Evaluation Report and we see how it was arrived at, what we are looking at is something that represents the consensus view of the people working on the evaluation?

Answer: Yes.

Question: So when we read in page 6 of the final Evaluation Report, at the second-last paragraph of page 6: 'An initial draft report was discussed by the PTGSM on the 11th 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 report. This report reflects the consensus view of the PTGSM as to how the results of the evaluation should be presented in the final report', you are happy with that statement?

Answer: Yes."

So do you agree with me, Professor, that that evidence from

Mr. Riordan confirms that he was happy with the outcome of the competition and the meeting of the 9th of October?

A. Yes, that's very clear, and that is also in accordance with what I perceive was his participation and what he expressed and not expressed at the Steering Group meetings.

Q. And on the very last page in the book, page 143, at line , Mr. Riordan is asked:

"In relation to the winner being the Digifone consortium, do you have any doubt as to that being the appropriate outcome of the process?"

And his answer is: "No."

So would you agree with me that that confirms any documentary suggestion that Mr. Riordan may have opposed the award of the competition to Esat Digifone, is not supported by his evidence?

A. That's correct.

MR. O'CALLAGHAN: I had, proposed, Chairman, asking the witness questions on the O'Callaghan production book and, in particular, I had proposed asking him questions about the documents at tabs 7, 11, 15, 16, 20, 21, 31, 41 and 42 of that book, Chairman, the latter two, 41 and 42, being the Tribunal's typed record of the meeting between Mr. Andersen and the Tribunal in Copenhagen in October , I think it was -- 2003.

However, in light of your judgement, and I would ask for clarification on this, sir, I assume I am precluded from asking the witness questions on those documents which were produced to us under the O'Callaghan production rule?

CHAIRMAN: Yes, I have given my ruling, Mr. O'Callaghan, and given my reasons.

MR. O'CALLAGHAN: And I had also proposed, Chairman, in respect of the witness statement of Mr. Andersen -- just bear with me one second, Chairman -- I'd also proposed asking the witness questions in respect of those paragraphs in his witness statement which were opened in direct examination by Mr. McDowell and which contained references to his meetings with the Tribunal and which gave evidence about his assessment of the Tribunal's interaction with him on the GSM licence, and I, again for the record, sir, would like to ask whether I am precluded about asking the witness about those particular paragraphs?

CHAIRMAN: Similar ruling, Mr. O'Callaghan. For me to hold in your favour on this would be implicitly reversing myself by the back door. I have indicated that Mr. Gleeson had particular reasons for alluding to those matters, and I confirm my ruling.

MR. O'CALLAGHAN: And I am conscious, Chairman, that I am under time pressure, and if I had greater time available to

me, I would go into the book which I have prepared on Mr. Peter Bacon, but in light of your ruling, sir, I propose to, under objection, end my cross-examination now.

CHAIRMAN: Thank you. Mr. O'Donnell?

MR. O'DONNELL: Sir, we have prepared a booklet of documents which we'll be covering, but while I distribute that booklet, a lot of documents have already been opened and dealt with by Mr. O'Callaghan in his examination, so while I can circulate the booklet, in fact we won't need to go into them in the kind of detail I had previously anticipated.

THE WITNESS WAS EXAMINED BY MR. O'DONNELL AS FOLLOWS:

Q. MR. O'DONNELL: Mr. Andersen, you should have a booklet of documents there?

A. Yes.

Q. As you are aware, Mr. Andersen, my name is John O'Donnell and I appear as counsel for the Department of Transport, Energy and Communications, as it then was, and also for the Department of Finance. And at the outset, Mr. Andersen, I think it's appropriate to confirm that the evaluation process was carried out by not just one, but two Departments; that is, the Department of Transport, Energy and Communications, and the Department of Finance, isn't that right?

A. That's correct.

Q. And I think it is important to recall that the representatives from the Department of Finance were not simply accountants who were on secondment, who were, of course, part of the Department of Finance group, but there was also Mr. Jimmy McMeel, who was a civil servant working in the Department of Finance and he was part of the evaluation process?

A. That's correct, yes.

Q. And I suppose that is of significance when one comes, later on, to look at some of the suggestions made in the course of examination by the Tribunal of witnesses.

Now, Mr. Andersen, I think you, as we all have heard, have the view that the RFP could have been better designed than it actually was?

A. I think I have used the expression "less than perfect".

Q. Yes. And I think you also indicated that you were aware that the Department had engaged consultants to assist them in the drafting of what turned out to be the RFP?

A. That's fair enough, yes.

Q. And you may not know who that consultant was, but I think it's certainly knowledge to everybody here that that consultant is Mr. Roger Pye, and his CV is at the first tab of your booklet?

A. Yes.

Q. And as you can see, he was a man who, back then in 1995, was somewhat older than you, but he was a partner in KPMG Information and Communications Industry and Practice, and he has, under his experience, he has a career of over 20 years' experience of information technology. And over the page, you will see that his telecommunications sector experience embraces almost all west European countries, Bulgaria, Hungary, Hong Kong, Australia, India and the South Pacific, the USA, Canada and the West Indies, western South Africa and the Arab countries. In recent years, he has been heavily involved with telecommunications, reregulation, privatisation and sectoring restructuring. And then they set out -- he sets out a list of his engagements. But if you turn over the page to internal page 101, you will see the last arrow-head there is "Review of approaches used by EC Member States to granting of mobile communication licences as a key input into the EC Green Paper on mobile communications, formulation of recommendations concerning future industry structures and extent of competition, the rights and obligations of mobile operators concerning own infrastructure, national and international interconnection, relationships with resellers and providers of value added services; recommendations concerning the procedures to be adopted in granting mobile licences."

So I think you were aware already that a Green Paper -- the Green Paper here had been written at the time that the competition was held?

A. Yeah, I was fully aware.

Q. And Mr. Pye was clearly a contributor to that Green Paper?

A. Yeah.

Q. And therefore, can I suggest this to you, that although, as you say, the RFP wasn't perfect, it wasn't unreasonable for the State to decide to engage Mr. Pye of KPMG as the person who they called upon to assist them in drafting the criteria that ultimately became the RFP?

A. No, it wasn't unreasonable. That's also a far-reaching statement. I think that his qualification is very much centred around policy issues, telecom policy issues.

Q. And he would not -- I think you described yourself as having a niche interest or a niche expertise, whereas his would have been a broader expertise?

A. Yeah, our -- his expertise and my expertise is somewhat complementary, that's what I am trying to say to you.

Q. But you couldn't criticise the State as being irresponsible or in some way falling back on the job, by engaging Mr. Pye as opposed to somebody else; they didn't do anything wrong

by engaging Mr. Pye, it was a reasonable decision for them to take?

A. No, no, I have not suggested at any time.

Q. And you don't suggest it now?

A. I don't suggest it now, no.

Q. And I think your view is that the preferable situation is that there would be -- that the two stages would be performed by the same consultant, i.e. that you would have the same consultant dealing with stage A, which is the designing of the criteria, and stage B, which is the carrying-out of the evaluation process; that's your preference?

A. That's the optimal thing to do, yeah.

Q. And I think, to be fair, if you turn to Tab 2, you'll see that Mr. Pye was invited to tender, and did tender, to become the consultant to this process, and you'll see his letter of the 17th of March of 1995. So having provided the Department with advice and assistance in relation to the drafting of the criteria, he then did apply to be the consultant. And I don't think it's necessary for the Tribunal to see his application. But, as you are aware, the decision to accept tenders was based on what I think the Department describe as the most economically advantageous tender. While it wasn't based on price alone, price was certainly of some significance to them?

A. Yeah.

Q. And you are aware that your tender was considerably lower than Mr. Pye's tender?

A. Yeah, I have been made aware of that subsequent to 1995.

Q. And I think the minutes record that Mr. -- the KPMG tender was regarded as being too expensive?

A. Well, just looking on the front page of their proposal, I think it states that it is not only KPMG, as you suggest, or seem to suggest, but it also Warburg and Clifford Chance --

Q. And Clifford Chance, Solicitors, yes.

A. -- and I would know, be very familiar with, for instance, Warburg, because I have cooperated with them on other assignments, and I would know that a consortium like this would always generate a rather costly proposal, if I may use that expression, or at least with prices that would be considerably higher than the prices we were actually offering and quoting from AMI.

Q. I think, to be fair, Professor Andersen, you wouldn't criticise the Government for trying to get value for money?

A. Definitely not.

Q. And --

A. So, I am not proposing that, you know, that just because

something is more expensive, that it is of equal quality.

I am not making any judgement about the combination of price and quality. I am only making the point that if you have a niche, an experienced niche consultant like AMI, and you then see a proposal from a consortium based on KPMG, one of the largest auditing firm and acting out of London, I propose that was that was the base of Roger Pye. And then you have Warburg, principally based in Switzerland but also based in London, and Clifford Chance, I am not so familiar with them, but --

Q. They are a solicitors' firm in London.

A. -- since they are a consortium, with all other things being equal, quote a higher price than AMI.

Q. And for what it's worth, Professor Andersen, Mr. Pye's tender was in excess of £1m.

A. Okay.

Q. So yours was very good value at that. Then I think we have referred to the fact that the letter inviting you to tender made it clear, at Tab 4, that it was the most economically advantageous tender. And paragraph 4 -- Tab 4 then deals with the RFP, and I don't propose to deal with that in detail at this stage, save, I suppose, to make it clear that you were aware at all times of what I might call the sacredness to the State of the criteria set down in paragraph 19 of the RFP?

A. You said "the sacredness"?

Q. The importance, the essential importance that they were -- that the eight criteria laid down in the RFP, paragraph 19, were the golden rules that had to be followed and had to be complied with?

A. Yes.

Q. And while I think they were using your AMI Danish model which was based on aspects, then dimensions and then indicators, the Government of Ireland said, "Well, we don't mind how you do it, provided you honour the Irish Government's list of criteria"?

A. Correct.

Q. And I suppose that's what we see in your tender, which is at Tab 7, is how you convert, or propose to convert, the criteria into aspects, dimensions and indicators?

A. Yes.

Q. And that is, I suppose, a degree of, I won't say tension, but there is, I suppose, throughout the process of evaluation, that is a dynamic that is occurring, that, on the one hand, the Government are saying, well -- and the civil servants from the Department of Transport, Energy and Communications and the Department of Finance are saying "We have to stick to the criteria," and you are saying, "Yes,

but here is the way I assess those criteria, here is the way I break up those criteria, by looking at aspects, dimensions and indicators." That's what's going on throughout that process?

A. I see no difference, as such, in what you are suggesting. I mean, the criteria in paragraph 19 and then the way that you could define aspects and, subsequently, dimensions, were not in conflict with one another.

Q. No, but there was -- can I put it this way: They were different labels being applied by the aspects, dimensions and indicators, to the label that was being applied at paragraph 19, which is criteria. It was, simply, labelling, but it was a different type of labelling?

A. But let me, just for the sake of the argument, assume that the Department had retained the KPMG consortium, they would have had another kind of model of how to progress the work. Obviously, I haven't seen their proposal, so I don't know what their underlying model would have been looked like, but --

Q. They'd have done the same thing as you or they'd have done something else rather than just those criteria?

A. They would have put something in order for coming from the criteria listed at paragraph 19 and then to a work process, where you have to progress the work. That's what I am suggesting.

Q. Okay. Could we just look at your tender, which is at Tab 7, just -- I know we have gone over it on occasions, and there are just one or two aspects I want to go through. Firstly, in drafting this tender, you refer, on a number of occasions, at six or seven pages, to the importance of paragraph 19 of the RFP, because you recognise that that is the -- they are the golden rules, the important issues that have to be resolved for the Irish Government as part of this evaluation?

A. Yes, definitely so. In most other countries, in most other jurisdictions we would work in, you would start the liberalisation process by adopting legislation, a new bill, whatever, and then you would have the evaluation criteria set in stone, either in the bill itself or in remarks to the bill, or whatever the legal mechanism might have been in a parliamentary process, and so forth. That was not the case in Ireland. What was the case, as I perceived it from the beginning, was that the Government had adopted, in particular, paragraph 19. So that was what we had to work -- that was the basis of our work, equal to the importance it would have had, or almost equal to the importance it would have had if a separate new bill had been passed in the Dail.

Q. So you were treating it as the equivalent of legislation or draft legislation?

A. Yeah, basically, basically.

Q. You also, actually, just in that context, you made an interesting point in your statement to the Tribunal on the 14th of February, 2002. You said that, "It is demonstrably clear in the extracted tender documents that there was no uniform international practice with regard to GSM2 and GSM3 evaluation criteria weightings," etc.

And you said, "This is also consistent with AMI's experience in that the evaluation criteria typically reflect the national telecommunications policy. Vice versa, if the national telecommunications policy has not been set in stone, it is difficult, or maybe even impossible, to achieve a high degree of transparency."

A. You see, that was what we discussed with the EU Commission at the time, also, when drafting the Green Paper, because the EU Commission, they would like to go some way in making recommendations as how Member States should go along with these tenders when liberalising the GSM market. But on the other hand, Member States were reluctant to sell out of national subsidiarity, so the compromise in that process was that the Green Paper does mention the best application method or the beauty contest, it is often dubbed, but it was then left to the individual Member States to exercise their national subsidiarity in this field.

Q. And so the State, in drafting and putting out these eight criteria, was entitled to reflect its own national policy in putting together these?

A. Yes.

Q. Even though the European Union might have preferred a more uniform list of criteria?

A. Yes. And even though I also have some indirect qualification of it by saying that it was less than perfect, because if you look at the tender processes throughout Europe during these years, Ireland came in as one of the last, if not the last Member State. And naturally, during such a process, which was kicked off by the GSM process in Denmark as far back at 1990, where it started five years earlier, there would have been a development in the best application method drifting towards criteria that was more and more precisely mentioned, and with weightings being clearer and clearer indicated to applicants.

Q. And I think, in fact, I think Ireland did develop, so that by the time GSM3 came along, the weightings, for example, were published?

A. Definitely.

Q. And I think, also, they may have used numbers rather than grades at that stage, ultimately? I may be wrong about that. I seem to remember that from somewhere.

A. I think that both was actually used.

Q. I see. But so, to some extent, the practice was evolving rather than fixed in stone?

A. Exactly.

Q. And as you rightly say in your statement to the Tribunal in February 2002, there was no uniform international practice at this stage?

A. Correct.

Q. Now, if I could just ask you just to look at one or two elements of your tender, and if you just turn to page 11, and it's part of, obviously, section 3, which is the -- in effect, the way in which the evaluation takes place. But closing the process, you say, "We suggest that all the results of the execution should be gathered in a comprehensive evaluation document," and we know what that is. But can I just, having gone throughout the various hash lines, if we just go to the paragraph there at the end:

"Furthermore, we suggest to include the draft licence to the nominated, highest-ranking GSM2 applicant."

And can I suggest to you that that meant that the role of the evaluators was not simply to just look at these evaluations, but actually to ultimately rank and come up with a winner; otherwise, it would have been somewhat pointless?

A. No, I wouldn't draw that inference from this sentence here. I wouldn't.

Q. All right. What inference do you draw then?

A. Well, I think it subsequently transpired that the Department, that is your client, accepted my view that this tender did not specifically mention the task to nominate a winner.

Q. All right. So it didn't have to nominate a winner, but it had to produce some sort of order, I suppose finishing order?

A. That's a long discussion which -- of which Mr. Martin Brennan and I went back to, years ago, during the contractual renegotiation. So it was definitely, at some stage during the contractual negotiation, my point of view that there wasn't this obligation to nominate a winner.

Q. All I suppose I am suggesting to you is you can see how the Department thought, or may have thought, that the ranking would have been included?

A. That's fine. That's fine with me.

Q. All right. Turning over to page 16, and at page 16, under

"Other Comments," you refer, the last major paragraph, you refer to the flexibility of the -- of your approach to your involvement in the process and to the degree of liaison with the Department?

A. Yes.

Q. And you have, in fact, emphasised, while that flexibility is in relation to your liaison and also to the degree of your involvement, you have emphasised in your evidence the flexibility of the model which you were designing, isn't that right?

A. Exactly.

Q. And I think it may be the view that some people might take from some of the questions posed by the Tribunal to you and to other people, that there was a very rigid model that could not be deviated from and that had to be stuck with at all times, that that was the kind of model that you had designed, is that correct?

A. No, that's not correct. The model was flexible. And if I could just lead you back to the tender process which you opened.

Q. Yes, I am still there, I haven't left it.

A. I would say that it was a general perception, I think, in Europe, and also, in particular, in the Commission, otherwise they wouldn't have taken the steps to indicate that they were minded to initialise [sic] infringement procedure against the Irish State in that there was this kind of auction element in the Irish tender with an uncapped licence fee, for instance. And I am pointing to this because among the tenders that came in on the Department's table back in the beginning of 1995, there could also have been tenders that were of a more financial nature and would like to pursue a very distinctive auction-like model in this. Now, I made you aware of the, not fully explicated name of the KPMG tender, namely the fact that there were two investment banks on board also.

Why are there two investment banks on board in a consultancy tender? That's probably because, or they could be because, somebody out there perceived this to be an auction. But we, at AMI, we took the deliberate decision to pitch with a rather flexible model, and, in hindsight, that might have been very useful for your client, because if we had pitched based on an auction-like model, what would then have transpired, once you had the EU Commission intervening? So because of the flexibility, it was possible for us to be on board as consultants under both design types and to keep the process going.

Q. And can I ask you, Professor Andersen, was that flexibility as to the model that you were using, did that flexibility

apply to the use of quantitative evaluations and the integration of quantitative evaluation data into the qualitative evaluation and the holistic examination of the applications as a whole?

A. That applied to the overall model, I would say.

Q. I see. Just staying with paragraph 16 -- sorry, page 16, I beg your pardon, you say: "We also have a flexible approach in relation to the liaison with the Department during the course of the assignment. As we see it, it will not be adequate for the Department to outsource all the work. We would rather suggest that we have the primary responsibility for performing the work and duly delivering the required output but with close reference to the Department."

A. Yeah, so here we have the donkey.

Q. Yes, exactly. And you are taking responsibility for the drafting and the performing of the work and the drafting of the report, but you then have to ensure that the civil servants are working with you?

A. Exactly.

Q. And I think -- I mean, I am not sure that it matters whether the Tribunal regard you as being an actual member, or not, of the PTGSM, but you have said, in your own statement and your evidence here, you were centrally involved, you were critical to the process, you were -- they were heavily reliant upon you?

A. Yeah, I think to a considerable extent we were also the drivers of the process, because I think over the last days, you have seen, throughout the documents, that we say now we need this and that decision in order to progress the work now, we need resources from the civil servants to do this, and that, now, we need a decision, etc., etc., etc. We are the drivers of the process.

Q. Yes. And I think, in fact, it's your suggestion in this paragraph the GSM Steering Group that is adopted by the Department, that you say, "Well, why don't you set up this Steering Group that would deliver output to us?" And then we see in the last sentence, "Addressed to, e.g., a GSM Steering Group with participation from the Department."

A. Yeah.

Q. So that's your idea, as well?

A. At that time when drafting this proposed, I don't think that we would be aware that there was already a Project Group on GSM going on. We had very limited knowledge on the organisational structure of this.

Q. Just one more issue, just in relation to the evaluations.

I think you say, a page back, at page 15, you say "The most demanding step, however, is the qualitative evaluation."

And you make that statement there even in your tender bid, but, as it transpired, was that the way it turned out?

A. That was exactly the way it turned out, yeah. But if you understand my position, when I, together with my colleagues, were to pitch here, we are pitching for a job which has an auction element. So, you know, you need to have -- what do you call? -- a little bit of everything.

You need to have both -- you need both to display your expertise to deal with auction-like elements where you progress an evaluation on the basis of a mechanical, mathematical formula, so to speak, but also to do the qualitative assessment, and, as is mentioned in step 17, take a holistic approach into this.

Q. There is just one other page I just want to draw your attention to, is page 31 of your tender. And I think we can see that that page, it sets out -- it's your budgetary and contractual projections. And you set out your price. I think you should have that. Do you see page 31?

A. Yes, I do.

Q. You set out the price, and I think we have -- you have two columns: you have TOR -- on the left-hand side, you have TOR and TOR with a plus beside it, and then in the bottom you say, "TOR is Terms of Reference, the main part of the evaluation. And TOR plus is the TOR including the participation in the drafting of the licence."

So I think it's fair to say that your anticipated cost included participation in relation to the drafting of the licence. Your fee, the quoted fee, you hoped to do both the evaluation and the drafting of the licence for the ,000-odd?

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

Q. And then underneath, I think you say: "We offer to provide the Department with a detailed specification of the actual amount of time spent on the project by our consultants.

The Department will thus be able to check on our activities hour by hour. We do not invoice travel time or any other time when we do not work on the project, i.e. only hours efficiently and effectively spent for direct project purposes will be invoiced."

Is that a fairly standard kind of a clause to be putting in?

A. That would be the standard way that we did it, yeah. And I also think that transpired when we got the job, that we acted in accordance with what is stated here.

Q. I think we did receive monthly bills from the -- the Department, I should say, the Departments received monthly bills from your firm --

A. Exactly.

Q. -- setting out the costs, and so on? And then the only other point, Mr. Andersen, is your team, and you send a CV of all the team members, and it's about -- I think it's about 10 pages further on, and I don't want to dwell on this, but with the exception of Mr. Vinter, you are the youngest -- Mr. Vinter is younger than you, but everyone else on the team is older than you?

A. Yeah.

Q. You have, as we know, a mix of regulatory experience and civil service experience as well as technological experience within that team?

A. Yeah. You see, the way we composed the team was that we should have -- we should cover expertise within marketing aspects, technical aspects, financial aspects and management aspects, and, in addition to that, we also included Mr. Tage Iversen, who was working with the national Danish Telecom Regulator at the time. So it was specifically -- the team was specifically put together in order to cover all the aspects that we have said in this proposal were important. And furthermore, as I explained with Mr. Shipsey, I also deliberately tried to compose the delivery of expertise in such a way that we would both have expertise gained from the regulatory side but also from the business side, the commercial side.

Q. And, Mr. Andersen, could I just ask you just in relation to this team. I mean, this was -- the CVs speak for themselves. They have a degree of experience, both of life and of technology, mobile phones, competitions, they have a considerable degree of experience, this team?

A. Yeah.

Q. Far, far more than the civil service in Ireland had at that time?

A. Yeah, I would put it in the following way: That all members of my team had considerable experience with GSM tenders before. So I did not propose just one single consultant who had not any experience. You know, from time to time, you will see consultancy services delivered where you have, let's say, one experienced or two experienced, and then you have a number of inexperienced or less experienced, but there was no such a thing here; everybody had experience.

Q. All right. And given that, Professor Andersen, if one or more of the Irish civil servants was being manipulated in some way, even without their knowing it, so that there appeared to be a concerted effort to arrive at a particular result, do you think the likes of Mr. Jacobsen and Mr. Feddersen and Mr. Bruel would have picked that up, would have sensed that?

A. Definitely, because they were very experienced with such kinds of processes, and you could also mention myself --

Q. Well, I was going to come to you in a minute.

A. Okay.

Q. But, I mean, insofar as there is a team, you are the captain, but these are very experienced players on that team?

A. Very experienced players, yes.

Q. And if they had -- if these highly experienced, and, as you say, some of them some years older than you; I think

Mr. Jacobsen had been born in 1929, or something like that, he was a good few years older than you?

A. That's correct.

Q. Thirty years older than you, I think. In those circumstances, you would have -- would have expected them to come to you?

A. Definitely, and they would have come. We spoke very much together, worked together every day, so they would have come to me if there were any suspicion or any, you know, any sign anywhere.

Q. All right. That's something I'll have to go back to when we look at what happens in September and October. There is just one other question, just while I am talking about your experience. You had worldwide experience, you yourself had worldwide experience of mobile telecommunications and you have even more experience now, and you have worked within the EU and you have also -- have you worked in Africa?

A. Also in Africa, yes.

Q. And in the Far East?

A. Yes.

Q. And you have worked in the Baltic States. Have you worked anywhere else?

A. We also worked in the US, so it was... yeah, a total of 48 countries, really.

Q. All right. And I am not asking you to name any place, but have you, in any country, seen attempted interference in a competition of this type or a competition along these lines?

A. Well, that would be the case in some of the developing countries we have been involved in. In Africa, for instance.

Q. And can I suggest to you, Professor Andersen, that having had that experience, you would recognise interference, even if it was a subtle type of interference, you would recognise interference or an attempt at interference if you saw it?

A. Yes, of course I would say, because there was this experience where we had advised governments in many

different jurisdictions and many countries on different development stages, so that was one thing. Another thing was that I had personally had contact with ministers, telecom ministers, in a number of countries where we advised, so I would be familiar with the process, but also the potential influence a minister might generate. And as a third thing, I think it was said by Mr. O'Callaghan yesterday, he tried to make me, maybe, even better with my degree than I actually am, because he said that I was a doctor, and I corrected him and I said a Ph.D., but I think, with all respect, it is, maybe, noteworthy that my initial degree, my degree and Ph.D., not talking about my business degrees, but my initial degree at the level of Ph.D. is in political science. So, you know, what was read aloud earlier today about me being manipulated, me being a rubber-stamp type of thing or me being subjected to influence that I was either aware of or not aware of, you know, that's far out, to say the least.

Q. Far out?

A. Yeah.

Q. Far out. Okay. All right. Can we just move to Tab 8, and all I want to do in respect of Tab 8, which is a letter to you, I think again before the contract has been signed, but indicating to you that you have been engaged as the consultant, the entity who is going to provide consultancy advice, and I think this letter indicates to you that a number of questions have been raised in relation to this award by prospective applicants and it's necessary to initiate the process of preparing those responses, and so Mr. Brennan is sending to you those questions, saying, "we want your help in responding to these"?

A. Yes.

Q. And so, to be fair to you, even before your contract was signed, it was clear that you were engaging in the process of assisting in the preparation of these responses to applicants; you were engaging in the evaluation process even from as early as the 7th of April, if not before?

A. Exactly. I think there was a good team work already from the beginning.

Q. Okay. And then if we turn over the page to Tab 9, we can see the document, and I'll come back to that in a minute, but if I just ask you to look at tab -- that's the document that sets out the quantitative and qualitative evaluation and it sets out the numbers for the quantitative evaluation, and we'll come back to that in a minute. But could I just ask you to turn to Tab 10, which is the minutes of the meeting of the 18th of May of 1995?

A. Yes.

Q. And just, I know people have been through this, but there are just one or two things that I want to draw out from you in relation to this.

Firstly, I think there was considerable concern about ensuring the confidentiality and security of the documents that were being prepared by AMI, isn't that right?

A. That's correct.

Q. And is it reasonable -- and just looking at the first two bullet-points, it says: "Prior to presentation of the AMI Evaluation Model, its confidential nature was emphasised. It was agreed that three copies would be left in Dublin in the hands of Fintan Towey, Sean McMahon and Jimmy McMeel. Lock-and-key security would apply at all times.

"AMI distributed copies of the draft model. After initial study, the group had no major difficulty with the chosen format and page-by-page scrutiny ensued."

Can I take it then, from that, that it's likely that, perhaps because of security if for no other reasons, you brought these copies with you and distributed them at the meeting, rather than fax them in advance where you would have no control about where they would go?

A. Exactly, that was the method we used, and I think even when we then distributed documents, they would carry shadow text, as we called it, on each page with individual names on. But notwithstanding the fact that we would have done that during the Steering Group meetings, we would not have sent the documents, typically, beforehand; we would distribute them in the meetings and then we would collect them after the meeting. So, in terms of security, that was the highest obtainable security level I could think of.

Q. What you presumably meant as a result, that the only time members of the relevant departments of the Department of Finance and the Department of Transport, Energy and Communications had to look at them, was at those meetings?

A. Yes.

Q. All right. And just one other issue in relation to that meeting. If you turn over the page, we see the last paragraph, and it's headed "Availability of DTEC and D/Finance staff was discussed and the following commitments made:

"Fintan Towey almost full-time involvement in evaluation.

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

"Staff from D/Finance, T&R Regulatory, T&R Technical, to be available as required."

So the only person who was going to be your full-time liaison on this, was going to be Fintan Towey, though Martin Brennan was also available on tap, as it were?

A. Yeah.

Q. And then the other staff were required when it was decided that they were needed, but not otherwise?

A. Correct.

Q. And so when we come to what happened in late September, it wasn't unnatural or inappropriate that Mr. Brennan and Mr. Towey, who are the full-time, if I can put it that way, civil servants working on this, would meet with you?

A. No, I don't see any problems in that. I have tried to state over and over again during these days that if somebody thought that it was a mystery that I had contact with Martin Brennan and Fintan Towey, they do not understand how such a process works, because no consulting firm could execute work without speaking with the client, and therefore, I would typically speak with either both of them or one of them every second or third day, or whatever. And I think there is ample written communication to demonstrate that there was this constant dialogue between the client and the consultant.

Q. Yes. And just over the page, we see the weights, and we have been through this already, but, of course, those weights relate to the criteria, there are eight weights, and they are the weights that relate to the criteria that are set out in paragraph 19. And I think, over the page, then, the next tab is Tab 11, and it's the minutes of the meeting of the 9th June of 1995, and again, you have been through this in detail, but I suppose there is -- it may be worth pointing out that Mr. O'Connor -- of the people who were in attendance, Mr. O'Connor, Mr. Buggy, Mr. Riordan and Mr. McMeel all have some form of accounting qualification, I am sure you knew that in relation to Mr. Riordan and Mr. Buggy, and my understanding is that Mr. O'Connor and Mr. McMeel also have that, and perhaps not surprising, given that Mr. McMeel works in the Department of Finance, they would be regarded as particularly numerate?

A. Yeah.

Q. And yet, it is the position that, at the end of a long meeting, not one of these people with accountancy training, paid sufficient attention to the document which was being presented, which was the quantitative evaluation weightings, to pick up that the numbers were wrong and that they didn't add up, and that they were, in fact -- that 103 was, in fact, the score, rather than 100?

A. Yeah.

Q. And that the weightings in respect of the first dimension was 32.5 rather than 30?

A. Yeah. But maybe the explanation is as simple as documents

handed out at a meeting and collected again immediately after a meeting, and therefore, if it actually transpired, as was the case on the 9th of June, that a number of other issues were discussed, notably the EU intervention and the claim from Vodafone, that not very much attention was paid to it.

Q. All right. I don't think anybody is saying that they weren't discussed in some way, but the level of focus or attention was reduced because most of the attention or focus was on these other pressing matters?

A. That's correct.

Q. And, Professor Andersen, just to go back, if I might, to Tab 9, which is the model that was sent, the qualitative evaluation. We know that the number of dimensions was, for the quantitative evaluation, was of a different order to the number criteria. I think there were 11 or 12. Was it dimensions? I am sorry, maybe I am wrong. In the quantitative evaluation, I think there were 11 dimensions?

A. Yes, but that was also the same in the qualitative or holistic. I just want to make you, here, aware of the fact that when we have 10 sub-groups, one of the sub-groups, namely the financial sub-group, dealt both with the financial figures, or the financial evaluation, and with the evaluation of the licence fee, the licence fee being, if you understand where I am coming from, the eleventh dimension.

Q. Yes, there was no real evaluation to be done of the licence fee because everybody paid --

A. Yes, but it still represented what we called a dimension.

Q. I understand. But I think it is true, isn't it, Professor Andersen, that so far as the quantitative evaluation is concerned, there were -- that was then divided down into, from the dimensions, into 14 indicators?

A. That's correct.

Q. Whereas the qualitative evaluation was broken down from the dimensions into --

A. 56 indicators.

Q. Exactly.

A. Yes.

Q. And that's significant, isn't it?

A. Yes, it is. It shows something about the difference between a quantitative evaluation and a holistic evaluation.

Q. Yes, it shows, might I suggest, that you couldn't crudely just transpose the weightings from the 14 indicators onto the 56 indicators or sub-indicators?

A. I don't know what it shows. I can only reiterate that we have expended quite some of the Tribunal's time, valuable

time, by discussing weightings for the quantifications. But, as things went along, these weightings were never used, so we are expending a lot of time on things that did not have any material effect.

Q. Well, that is true, Professor Andersen. But it may not surprise you to hear that the Tribunal, in the past, has spent a lot of time with other witnesses on this issue.

A. Okay, I appreciate that.

Q. And we know that the weightings for the quantitative evaluation were fixed in advance, whereas the weightings for the qualitative evaluation were not fixed in advance, or this phrase that keeps being used, *ex ante*, were not fixed in advance?

A. You are talking about the indicators?

Q. Yes.

A. That's fully correct.

Q. Why was that? Why did you keep it flexible so far as the qualitative evaluation was concerned?

A. Well, if you are going to execute a holistic evaluation, then you are not able to, point number one, identify exactly all of the 56 relevant indicators *ex ante*, that is to say to identify --

Q. In advance --

A. -- all the 56 indicators and then put them into paragraph of the RFP document. That's one thing.

And secondly, there is also the question of how will you attach what we call sub-weightings -- I know that that is also a term used by the Tribunal legal team, so they know what that is -- you are not able to attach sub-weightings to, let's say, 56 indicators before you actually have the deadline. And I think in all, in all clearness, also, to you, so you understand where I am coming from, we had --

Q. You are not guaranteed that I'll understand it, but I'll try.

A. But I'll just inform you, then, that we had exactly the same discussion in the so-called Orange case, where it is stated in the Supreme Court decision that five Supreme Court judges of this country fully understood and backed up that you can only define the indicators and set the sub-weightings in the light of having seen the applications. You cannot do that *ex ante* in a holistic evaluation.

MR. O'DONNELL: Chairman, it's just half past. Maybe we could take a short break.

CHAIRMAN: Ten minutes, if that suits you.

A. I appreciate it. Thank you.

THE TRIBUNAL ADJOURNED AND RESUMED AS FOLLOWS:

Q. MR. O'DONNELL: Mr. Andersen, the next item I want to deal

with is the contract, which is at Tab 12 of the State's booklet. And all, I suppose, I want to draw your attention to in respect of that is at page 2 of that, and subparagraph (a), where you are required to develop an Evaluation Model, and, I suppose, a couple of things to be said about that. Firstly, the development of the Evaluation Model, given that, as you frankly acknowledge, you had considerably more expertise, you and your team had considerably more expertise than the civil service, while the responsibility for the development of this Evaluation Model was, in reality, that of AMI, wasn't it?

A. Yes, we were the drivers of it, yeah.

Q. You were the architects of the Evaluation Model. And likewise, I think the suggestion that it might be further developed during the evaluation, gave you an opportunity to adjust it as was appropriate in the circumstances?

A. Exactly. And, I mean, notice would be taken here that the contract was signed as late as the 9th of June.

Q. And I think it's reasonable that, even, certainly at that stage, you had done, in the past, you had done quantitative and qualitative evaluations, but in a statement which you made to the Tribunal in the course of an interview in October of 2002, you said, "As a consultant, you have to follow demand. When civil servants in Europe were looking for consultants to do GSM competitions, they had no experience, but they all thought there should be some ex ante quantitative analysis. Therefore, we pitched on the basis of a quantitative evaluation, but, at the back of our minds, knew that the qualitative would be more important."

A. Yes. From where are you quoting, by the way?

Q. Your statement of the 28th of -- an interview that you did with Mr. Healy on the 28th of October, 2003.

CHAIRMAN: Are we going into this, Mr. O'Donnell? I thought I'd made a ruling on it.

MR. O'DONNELL: Well, I am not going into it in any area of controversy, simply to say that he was aware that there was -- it's not going to be about bias. Simply, that he indicated to your counsel that, at that stage, he was aware that while he was pitching on the basis of quantitative, and he indeed said he knew that the Department of Finance wanted a quantitative evaluation, he always knew that the qualitative evaluation was going to be the more important and the more significant, and that's what he said to your counsel.

And I think, Professor Andersen, in that interview, I think you said, obviously when you were faced with the difficulties that you were as a result of the criteria, it

would have been open to you to say, "Well, this is too difficult for me to continue. I am going to break my contract and leave." That was one option. Or the other option was to develop the model in such a way as to make the model work.

A. Yes, you have two options, really: you can either break away, as you said, but you can also stay loyal with your client and try to solve problems, try to overcome challenges, and so forth, and we definitely took the latter approach.

Q. And, Professor Andersen, it shouldn't be necessary to say it, but I obviously have to put it to you: I am sure you agree that the development of the model by you, in the course of the months of April to October, was not a development that was designed to favour one participant or any one applicant?

A. Definitely not.

Q. All right.

A. Definitely not. And I also think that the people involved in this process, with them seeing the challenges that we all had during such a process, well, they said, some of them being later on responsible for similar processes in the so-called ODTR, that they would like to draw on such particular expertise as was demonstrated in this tender.

Q. So, from the outside, it was regarded as -- in the future, this was regarded as an appropriate Evaluation Model; it wasn't one that was criticised subsequently outside of the Tribunal, it wasn't criticised as being inappropriate or in some way designed with weaknesses?

A. On the contrary, on the contrary, we overcame the challenges, and I think that your client actually also got an extra asset out of the process, which has not been discussed here, disclosed here at the Tribunal, and that was that, in addition to finalising the GSM2 tender, there was also a considerable build-up of competence within the Department with respect to GSM knowledge and to tender knowledge.

Q. The civil servants learnt from their experience with you?

A. Exactly.

Q. I see. Professor Andersen, I don't need to deal with tabs or tabs 14. They deal with the change in the weightings following the intervention of the European Union, or I think it was the Commission, as it then was, in relation to the licence fee, save to say that at the last page of Tab 14, the weights are again set out, the new revised weightings are set out at that page and recorded by Maev Nic Lochlainn?

A. Yes.

Q. But they are the weights for the criteria?

A. They are the weights for the criteria, yes.

Q. And at that stage, of course, there is still no weights applied or decided on the qualitative evaluation?

A. Pardon?

Q. At that stage, there is no weighting of any sort decided on or agreed upon in relation to the qualitative evaluation?

A. Well, I see that this is very relevant to the qualitative evaluation, the holistic evaluation, so I wouldn't say 'yes' to your question.

Q. Okay. But these are the weights that are ultimately applied to the qualitative evaluation, but there is no formal agreement at this stage as to how the qualitative evaluation weightings are to be broken down in respect of indicators and sub-indicators?

A. No, not at the indicator and sub-indicator level, that's correct.

Q. Now, can I ask you to turn to Tab 14A, at least I hope you have a 14A in your book.

A. Yes.

Q. And that's a document that is a memo from Mr. Fintan Towey, dated the 10th of August of 1995, to the entire GSM Project Group. It's a two-page document.

A. No, I don't think I have that document.

Q. It may be in at the back of 14. Sorry, it may be behind . It may be just -- I understand it has a yellow, a separate yellow tab, and that's a two-page Memorandum to the GSM Project Group from Mr. Towey?

A. Yes.

Q. And the only thing I want to draw your attention to is the paragraph 2 of that on the first page, which is -- sorry, I'd better open paragraph 1 and paragraph 2.

"As you are aware the applications for the licence to become the second GSM operator have been distributed and Andersen Management International has commenced the evaluation process. Andersens have reported to this division on the conformance of the applications with the requirements in relation to number of pages, validity of contents for 180 days, etc. This division has now concluded that all six applications are valid and this will be confirmed to the applicants shortly.

"2. The GSM Project Group meeting on 4 September will consider the following:

" -- Andersen's report on the outcome of the quantitative analysis.

" -- Andersens draft questions, including any supplementary information requirements, to be put to applicants in advance of oral presentations in mid-September.

" -- the approach to the qualitative analysis focusing in particular on areas where the quantitative analysis has proved to be deficient, and

" -- arrangements for detailed liaison with Andersens on the qualitative analysis."

It seems clear that as far back, therefore, as the 10th of August, the civil service involved in the evaluation process were aware, presumably through their communications with you, that the quantitative evaluation was deficient; that there were problems with the quantitative evaluation?

A. Yes.

Q. And that this was something that, rather than a suggestion that it was suddenly sprung on them as civil servants at some meeting in October, that this is something that Mr. Towey is bringing to their attention as far back as the 10th of August, even before the presentations have been made. That there are -- the word "deficient," that the quantitative analysis has proved to be deficient?

A. Yeah, that's already six days after we had received the applications.

Q. So even by looking at the applications, you can see there are deficiencies, the quantitative analysis, this is going to be problematic?

A. Yes.

Q. And then, over the page, we see Tab 15, which is an internal memo by you to various people in the -- in AMI, and it is a memo which has incorporated into it, in italics, the result of your discussion of these various proposals with Fintan Towey?

A. Yeah.

Q. And if I just look at it. It's addressed to Jon Bruel, Marius Jacobsen, Ole Feddersen, Michael Thrane and Mikkel Vinter?

A. Yes.

Q. And can I take it that these are the people from whom action is required?

A. Yes.

Q. And who is BL?

A. BL, that's Biacad Ludas (phonetic), that was the project secretary in my company, because it's also written in parenthesis "(Bookings)". That's because she was to book the flights and the hotel and stuff like that. So having this document in her hand, she would know how to order flight tickets and arrange booking of hotels.

Q. Okay. So this was giving her details of what was required, but also, I suppose, significantly, the addressees were the people who were expected to do -- to perform certain tasks?

A. That's correct.

Q. All right. And then you set out, and I don't think it's necessary to go through in detail what has been set out in your proposals, although, as it's clear, you have identified, at paragraph C, that through the concerted efforts of the AMI team, a number of uncomparable matters have been identified, and you -- I think we have dwelt on that and we don't need to dwell on it any further.

But, if you just turn over the page --

A. Sorry, can I ask you about the, you know, the nature of this document? What does it say in handwriting on the top right side?

Q. I think the top, this is a copy from counsel's brief and that's a note made by me.

A. Okay.

Q. So that's --

A. Because, at the bottom of it, it seems that this document comes from AMI.

Q. Let me come back to you in respect of that.

A. Maybe it doesn't matter.

MR. McDOWELL: It's Andersen's document, Chairman, and it also appears to be written in English intended for circulation among Danes, which is slightly odd.

MR. O'DONNELL: Well, I don't know if it's being suggested -- it's certainly been circulated in the past to the Tribunal. I don't know if Mr. McDowell is suggesting now that there is something --

MR. McDOWELL: No.

MR. O'DONNELL: Well, I just didn't understand the basis of the objection to it. Well, if there is no objection, we'll continue dealing with it. Paragraph E on the second page --

MR. McDOWELL: If the witness is asked to testify in relation to it, that its nature should be identified since it comes from, apparently, Andersen records.

MR. O'DONNELL: Well, we can come back -- as I said, we can come back to the source of it. Certainly, the handwritten note may be perplexing you because that's a handwritten note made by me. The handwritten note at the bottom, I don't know what the source of that is, but we can find out.

A. That's fine.

CHAIRMAN: Do you recall, Professor, sending this Memorandum to your colleagues, yourself?

A. Yes, I do. I can say that it is my normal style to write in this way where I request some decisions and some action points and then I would write with italics what has been decided.

CHAIRMAN: Yes. Well, everybody knows the entire AMI personnel have extremely competent English, but would it be

usual, for an entirely internal memorandum, not to communicate with fellow nationals in Danish first?

A. No, not in a project like this. We would communicate in English, normally.

CHAIRMAN: I see.

Q. MR. O'DONNELL: I think the original of this document didn't have the italics in it, because that was the one that was sent, that you devised before you had had your conversation with Mr. Towey?

A. Exactly. That is what I am trying to explain, that before this document, there was a document without italics.

Q. And that's the one that has been referred to in evidence before, but having had your telephone conversation with Mr. Towey, you then added these details in italics --

A. Exactly.

Q. -- confirming, for example, that I think in paragraph A, we can see that the proposals about meetings had been confirmed and that bookings are to be made, and so on?

A. Yes.

Q. Yes. Just at paragraph E, you outline that "It had been decided to begin the qualitative evaluation as follows, with sub-group meetings concerning each identified dimension. Each sub-group should comprise of at least three persons," and so on, and we have been through that. But if I just ask you to look at the paragraph underneath: "The chairman" -- and, in each case, the chairman of the sub-group was going to be an Andersen man, if I can put it that way?

A. No, I think that was actually changed later on.

Q. All right. But at this stage, certainly the proposal was the chairman would be responsible for ensuring the quorum, he would be introducing the agenda, he would be suggesting indicators and sub-indicators, he would suggest an initial award of marks and he would make minutes to feed into the reporting phase at a later stage?

A. Yes.

Q. So certainly, this record proposes that the persons nominated, the underlying persons -- I take the point that it may have changed later -- proposed that these people be responsible for these tasks?

A. Yes. As it actually transpired, if you would like to hear that --

Q. Yes.

A. -- it was such that we didn't have a strict chairman role in the groups. The quorum, which is here mentioned as three at least, was further explained as at least two Irish civil servants should be present in each of the 10 sub-groups, and it actually transpired that there were also

at least two AMI consultants every time.

Q. I see.

A. So, four people, at least, were in these sub-groups. And then it is stated here, if you look at the underscored, the initials that is said that AMI personnel effectively were to draft the minutes from each sub-group meetings, but as it transpired -- and as it transpired, AMI did that most of the time. But it is a matter of fact that, for instance, Fintan Towey, he drew up some minutes regarding finance and licence fee question, and that Maev Nic Lochlainn drafted the international roaming plan.

Q. She did roaming, I think that's right, I think that's right. All right. But I suppose what it indicates is that the process is moving ahead but that you are very much taking ownership and control of the -- moving the project along and making sure that everyone comes with you?

A. Yeah, we were in the driver's seat, so to speak, yeah.

Q. Now, the next tab is Tab 16, and it's the meeting of the 14th of September. And I think at this stage it was clear -- I think, again, you have been through the detail of this, to some extent, already, and I don't propose to go over it again, but if I just ask you to turn over to the third page of that document, and it says "The ten -- Future Framework of the Project: Ten sub-group meetings for the qualitative evaluation have been proposed by AMI. Five have already taken place. AMI committed to provide the Department with documentation on these earlier sub-group meetings. Project Group members were welcome to contribute/suggest amendments.

"Andersens outlined a timetable for the remaining five sessions, and personnel were nominated to attend."

And you set out that "Mr. Towey and Mr. Riordan are to attend the financial and performance guarantees and Mr. McQuaid and Mr. Ryan are to attend the radio network, capacity of network and frequency efficiency sessions."

Then you set out how you propose the scoring would take place, and it would be proposed that there would be initial discussion on the qualitative evaluation scoring on the afternoon of the 14th of September, and that the date of the 3rd of October is suggested for the draft qualitative report.

But I think it's fair to say that, at this stage, again, the shortcomings, as they are described, in the quantitative evaluation, are becoming ever more apparent?

A. Yes, that's correct.

Q. And the minutes set out the concerns of the, I suppose the Department and -- the two Departments and yourself in relation to those?

A. Yes.

Q. All right. Now, can I just talk to you just briefly about the contract negotiations that you had, and they are dealt with in the following pages, and again, they have been through this in some detail already, but I suppose just given that you were negotiating with the Department, it's appropriate that I cover them, to a brief degree, with you. Tab 17 is your letter to the Department setting out the works that have already been done and the additional activities that are to be required and the budgetary projections. And I think Tab 18 is a note, an internal note within the Department updating Maev and Martin on what's called "the Andersen dispute," which is the issue about fees. I accept you may not like the description of it as a dispute.

A. No.

Q. But it's a discussion, certainly?

A. Yeah.

Q. And can I suggest to you that the three headings in respect of which you were looking for additional funds, were, firstly, you had done more additional work which came to ,768. That's the first item identified at Tab 18. The second is the additional items identified of some 66,845. And the third item was some 32,133 for works to be done by Mr. Tage Iversen. I don't know if you see those?

A. Yes, I see that, yes.

Q. And I think it was ultimately agreed by you that you would accept a sum of in or around -- while that was the sum you were looking for, of 130, you ultimately agreed that you would accept a sum added onto the initial sum of 295, a sum of 370, so just over -- about £75,000 onto what you had already received?

A. Yeah, getting a little bit over half of what we required, so some horse-trading must have been going on there.

Q. Yeah, I think that's exactly what it was. But let's put it like this, Professor Andersen: Some people in our line of business say that a good settlement, a good agreement, is one which neither side is really happy with. But this wasn't a settlement that you were desperately unhappy with; you were happy to continue?

A. Yes. We were sufficiently happy to continue.

Q. Yes, okay. And so, at that stage, you were -- while that negotiating was going on, you were still attending meetings of the Project Group. And if I turn to Tab 19, we see what is happening on the 11th of September, which is the tenth meeting of the Project Group. I don't know if you have Tab ? And, again, I think while the agenda is outlined by Mr. Brennan, this was -- the purpose of the meeting was to

discuss a strategy plan for the presentations, but, again, you are giving advice, you are recorded in the third paragraph as advising the group how the presentations should be dealt with: that the opening questions to each applicant should be easy so as to give the presenters a chance to warm up and they should also be informed that they may have time to confer on questions if the need arose?

A. Yes, you see, it's the little bit the same story again, that we had tried that several times before --

Q. Yes.

A. -- and the Irish civil servants had not, obviously, been in such a process before, so they would not have conducted similar type of very important commercial presentations by big international and national companies on this matter.

Q. You had, if I can put it this way, you had done this, performed this exercise, many, many times before?

A. Yes.

Q. The Irish civil servants hadn't, so you were showing them how it was done?

A. So again, we were in the driver's seat.

Q. Yes. And then the next tab is the meeting on the 14th of September of 1995. And I think we know that it was clear, at that stage, that considerable variation was now apparent between the applicants as a result of the presentations?

A. Yes.

Q. And is it your evidence, Professor Andersen, that, even at this stage, you could distinguish between the leading group, which is A5, A3 and A1, and the secondary group, which was the remainder, the other three?

A. That was very clear, yes.

Q. And you set out then, you then list what the next steps are to be taken?

A. That's on page 2.

Q. Yes, the bottom of page 2, how to progress the evaluations, and you then list out the next steps to be taken:

"Finalise the qualitative scoring and award marks on the dimensions, perform initial scoring of the aspects, perform supplementary analysis in blocking and drop-out, financial analysis concerning Sigma, Advent, adherence to EU procurement rules, tariffs and interconnection."

And then you say, "The scoring of the marketing financial dimensions would take place in Copenhagen next week. DTEC to appoint the appropriate personnel to attend."

So just stopping there on that. Can I take it that, at that stage, as always, you are happy to leave it to DTEC, that the Department of Transport, Energy and Communications

--

A. Well, I think that that is not what is stated here.

Q. All right.

A. As I recall it, Irish civil servants were not automatically allowed, even allowed to travel abroad in 1995.

Q. That's right.

A. I also said they even didn't have a mobile phone; that was too expensive. So it was widely different from what you would perceive today, 15 years after.

Q. As you rightly say, mobile phones were in short supply, there was no Skype, there was little or no --

A. There was no Internet for them, no electronic communication.

Q. No e-mail?

A. Yeah. I think this should be --

Q. No video conferencing?

A. Yeah, no video conferencing.

Q. Yes.

A. So it's just to put it into perspective, because people can think why didn't they do this, why didn't they do that, etc.? So the working conditions were widely different from what they are today, and what this sentence says to me, according to my recollection, is that before committing to have civil servants at meetings in Copenhagen, some approval procedure had to apply, because you should not read the sentence in such a way that we didn't know which civil servants were going to participate --

Q. Oh, no, that wasn't what I was suggesting at all.

A. Because that could, maybe, be read into the sentence.

Q. I think what it means is that, and precisely what you say, that sanction had to be obtained by the Department for personnel to travel. They would have to justify it as being an appropriate expense for the Department to incur in sending these people off to Copenhagen?

A. Exactly.

Q. But I think, also, I think it's also -- the next sentence is important: "AMI would provide the first Draft Evaluation Report on the 3rd of October."

So, as far back as the 14th of September, everybody knows that the first draft of the Evaluation Report was going to be provided on the 3rd of October, that it is clear then that that was what was going to happen, and that this was going to be discussed by the group on Monday the 9th of October?

A. Yes.

Q. So that timetable is then set out. And then following -- then the three DTEC divisions would supply any written comments prior to that meeting. Following that, AMI would produce a second draft report by the 17th of October?

A. Yeah, which was then, actually, the 18th of October, so...

Q. Yes. And I think it's fair to say that the personnel who attended this meeting, in addition to four people from your office and in addition to nine people from the Department of Transport, Energy and Communications, there are also two personnel from Finance, being Mr. Jimmy McMeel and Mr. Billy Riordan?

A. Yeah.

Q. And then I think on the same day, the letter from Mr. Brennan to you in relation to the contract, the discussion that you had been having over fees, issues, and I think that sets out the works that's been required of you, isn't that right?

A. That's correct.

Q. And it sets out the target date of the 3rd of October for the first report, first draft of the Evaluation Report, and it requires the ranking of the top three applications for the GSM licence, it requires the nomination of a winner. And then, over the page, it says: "The final Evaluation Report shall take account of comments provided by the members of the GSM project." And it then says -- it provides for the provision of a further Draft Evaluation Report "shall be discussed at the meeting of the GSM Project Group within six days. The final Evaluation Report, taking into account the views of the GSM project, shall be submitted to the Department by AMI by the 25th of October, unless an alternative date is expressly approved by the Department prior to the said date."

A. Yes.

Q. And therefore, it was made clear to you that this report had to be submitted by you, and that you were, I suppose, under pressure to make sure that it was done before the 25th of October, because there wasn't going to be an extension granted unless it had been agreed in advance?

A. It was a contractual obligation, I would say, yeah.

Q. And if you just look at the last paragraph of that page, you see, "For auditing purposes, the Department would welcome the submission by Andersen Management of a table in the format outlined at Table 4, page 31 of your tender, but indicating the work hours actually spent on each task. This new table should only include hours worked to date on the Irish GSM project."

And then he says: "Where significant deviation from the original forecast is apparent, the underlying calls for deviation should be included." And then over the page, it says: "Please acknowledge your acceptance of this fair and reasonable proposal." Well, I suppose it's no surprise that Mr. Brennan thought it was a fair and reasonable

proposal. And over the page, then, you accept --

A. Yes.

Q. Now, from the questioning that has been put by the Tribunal to certain witnesses, it may be thought that the Tribunal would have a concern that, at this stage, the process of evaluation was being undermined, or was being made vulnerable to influence, including ministerial influence at this stage in early September. What do you have to say to that?

A. I cannot recognise that from what actually went on. So you are suggesting that there was some political influence at this time, is that what you are putting to me?

Q. Well, the questioning of witnesses suggests that because the Evaluation Model changed, that that rendered the evaluation process vulnerable to being undermined or to being influenced by outside influences, including, perhaps, Mr. Lowry?

A. Okay, but --

Q. That's the proposition that I am deriving from the various questions that have been put by the Tribunal to various witnesses?

A. Okay.

Q. I need hardly tell you it's not a proposition I am advancing or standing over for a minute, but it is a proposition that I am drawing from the questions that have been put by the Tribunal to various witnesses, that in some way, because the methodology changed, or was developed, as was permitted under the contract --

A. Oh, okay --

Q. -- that that rendered the evaluation process vulnerable to being undermined or to being interfered with by outside forces and/or, in particular, to the Minister. What do you say to that?

A. First of all, thank you for explaining --

Q. And I am sorry if I was clumsy explaining it.

A. Because now I think I understand the question. Well, I say to this that this is a very surprising theory or statement, and it is a bit theoretical, because just because you further develop a direction of a process or because you do A instead of B, it doesn't necessarily say that -- it isn't necessarily such that you are more disposed to influence if you take direction A instead of direction B, do you understand what I am struggling with?

Q. I certainly understand it. I am just hoping that the Tribunal does.

A. You know, let's say we had taken another direction than the reasonable direction we took when we met the challenges in this process, then we could have been, or the civil

servants, or whoever is criticised here, could have been equally criticised; do you understand my point?

Q. Yes.

A. When you are discussing influence in this universe, you know, influence can happen everywhere; it's not a matter of whether you are following method A instead of method B.

Q. Yes. So do I take it, then, that your evidence is that any suggestion that a change in the methodology used to evaluate the applicants, that any suggestion that that change could render the process vulnerable to interference or to outside influence, that such a theory would be wholly misconceived and misguided?

A. But we are entirely on cross-purposes here, because you are talking about a change in the process, is something, you know, dramatic, whatever. That's not how I perceive it. We had a flexible Evaluation Model, as we discussed. We had, in the original AMI tender, several places mentioned the word "holistic evaluation". What transpired was a holistic evaluation. Now, several places, we have also decided and described that a separate self-contained report on the quantifications would not transpire, and it is also said -- I know that, for instance, Michael McDowell might not have read Appendix 2 to the Evaluation Report when he examined me, or he may have, whatever, but it is stated, quite clearly, there, together with Appendix 3, that what we actually did during this evaluation was in accordance with the provisions in Appendix 3. So there was no deviation, there was no change. So, you know, I am struggling to answer your question, because I do not accept the premise on which you base your question; do you understand my challenge?

Q. Professor Andersen, you have no difficulty persuading me it's an unsustainable premise, but from the questions that have been asked by the Tribunal, it's been suggested that, for example, the dilution of the effect, the suggested dilution of the effect of the quantitative evaluation, that that constitutes a change which left the process open to interference or, in some way, improper influence. I presume -- what I understand you to say is, firstly, there wasn't a change; secondly, insofar as the development of the model may be regarded as a change or a development, let's use that word, that that did not, of itself, render the process vulnerable in any way?

A. At least the first thing you stated is correct, that there was not such an animal as a dramatic change, or whatever, or inconsistency, or whatever.

Q. All right.

A. Concerning the second thing, I would rather put it in my

own words than in your words and just say 'yes' to what you are saying. You see, let's assume that that 10% of the resources had been reallocated from the qualitative evaluation in the sub-groups to a beef-up of the quantitative techniques, let's just assume that for the sake of the argument.

Q. Yes.

A. I mean, just because you make such a reallocation of resources and try to develop a model along the process, which would still be within the remit of the Steering Group and would also still be in accordance, I think, with the contract that AMI had, so nobody was breaking the contract and nobody was acting outside the remit we had, if that's an area that transpired. But if we had done that, just for the sake of the argument, such a process would have been equally susceptible to external influence, if I may use your language. So I don't see the point here. I see that every process you would have would be equally susceptible to influence. Just because you progress the work during an evaluation process like this, it doesn't mean that you are more or less susceptible to influence.

Q. So, in developing the model, that doesn't change the vulnerability or lack of vulnerability of the process?

A. No, if I should try to understand where the Tribunal is coming from -- Tribunal legal team is coming from, because this is very, very theoretical. If you pose the question to me: What would have been susceptible to extremely more influence or illegitimate pressure from outside parties, whatever? That could have been the case if, for instance, somebody had decided that you should take on another consulting firm, or if, let's say, the Minister had decided that, instead of the 17 civil servants involved, it should have been 17 new civil servants, maybe. But the way this evaluation fared, that was with the same civil servants, it was with the same consultants, it was with an execution of the evaluation within the agreed framework, it was within the remit of the Steering Group and the Department, and it was within the contract -- it was in the contractual framework between the Department and the consultants. So I am struggling to see the point you are suggesting.

Q. Okay. Well, I'll move on from it. But certainly, it's around this time, from mid-September onwards, that the Tribunal, in its questioning of witnesses, focuses on the process and what is referred to as changes in the process, and we will have to look at that in a bit more detail as time goes on. But let's deal with the documentation.

A. Yeah.

Q. Tab 23 is the work programme sent by you to Fintan, and

leaving aside the fax cover-page, we can see who the addressees of that fax document are: MB, FT, BR and MNL, which, by now, we all know is Martin Brennan, Fintan Towey, Billy Riordan and Maev Nic Lochlainn, so they are the four people who you are addressing this fax to?

A. Probably, because they were the four people that were allowed to travel to Copenhagen.

Q. Exactly. And they are the people who are expected to travel and come over and do the work?

A. Yes.

Q. And I think you set out what they do. They come over on Monday -- I think it may not have taken place on Tuesday and Wednesday, it may have been Wednesday and Thursday, but they fly over at 21.20, and the words "You are on your own," which I hope isn't a too-dangerous thing to be in Copenhagen, and then the work is then broken down for them the next day. But they were all, I suppose, tasks that Mr. Brennan or Mr. Towey or Mr. Riordan or Ms. Nic Lochlainn herself were going to be involved in, isn't that right?

A. That's correct.

Q. Yes. And so that's the reason why they are named, because they are the people who are expected to attend?

A. Yeah. I see that, you know, it's cc'ed to Jon Bruel and Michael Thrane from AMI side, but also other AMI consultants, as well.

Q. I think Mr. Thrane is the -- he is the chairman of the market development sub-group and tariffs, and Mr. Bruel is the chairman of the roaming sub-group. I think, certainly from your earlier chart, that's what would appear. I may be wrong about that.

A. I recall it differently. So we can walk through it if you like --

Q. I don't think it's necessary. But shall I put it this way: that they are the people who you expect to be involved at your side, Mr. Bruel and Mr. Thrane?

A. What I am saying is, there were probably more people.

Q. I think that's right, I think Mr. Vinter may also have been involved. Okay. Then the next document is the letter of the 21st of September of 1995, and again, that's addressed to Mr. Martin Brennan and Mr. Fintan Towey?

A. Yes.

Q. And it's cc'ed to the Andersen team members, so it's a general issue to the Andersen, to the AMI people, but the only people it specifies are Mr. Brennan and Mr. Towey?

A. Correct.

Q. And it sets various -- the first paragraph, paragraph A, sets various deadlines for work to be done. The first, I

think, the tariff dimensions have to be done by deadline Monday 25th. The dimension financial key figures, that has to be done with Mr. Riordan, it has to be done by Wednesday the 27th. Then you say, what I might call the technical elements, which are the radio and network architecture, capacity performance, frequency efficiency and coverage, they have been concluded.

And then in addition to the reports on the tariff and financial dimensions, the market development report is to be finished by Mr. Thrane, the report on roaming is to be finished by Maev Nic Lochlainn, and the report on experience is to be finished by yourself. These reports should be finally drafted by no later than Wednesday the th.

A. Yes.

Q. So I suppose that sets deadlines for works to be done. And then it says, paragraph B: "It is suggested that the award of marks of the remaining aspects is decided at a meeting, Thursday the 28th." I know that -- let's try and agree, let's try and fix on what we can agree about the 28th of September, or in or about that. Firstly, there is a programme of work set out by you, addressed to Mr. Towey and Mr. Brennan, as to what's to be done?

A. Yeah, as to what AMI was in the process of doing.

Q. And what remains to be done?

A. So it was in the interest of transparency or the interest of informing my client that we are now doing this and that work.

Q. Yes. And it's also suggesting that a further meeting is required, and the meeting, as it says at B, may be either a conference call or a meeting in Copenhagen?

A. Yeah.

Q. So we know that some meeting of minds, let's put it that way, whether or not it's a physical meeting, but some sort of meeting has to take place?

A. Yeah.

Q. Is it fair, Professor Andersen, to suggest to you that the conferencing facilities available in 2010 are very different to the conferencing facilities that would have been available in 1995? Mr. Brennan, I think, his memory is that he would have had a speaker-phone, that that's the top of what he would have had by way of conferencing facility?

A. Yeah, that's correct.

Q. And also, that I think you are perfectly satisfied that if Mr. Brennan and Mr. Towey were the only people to travel, you have no difficulty with that, because whatever was done at whatever meeting took place, was going to eventually

have to be ratified by the full plenary team?

A. On the 9th of October.

Q. And that's what happened on the 9th of October?

A. That had already been set in stone. We saw that earlier.

Q. Because the previous minute had already indicated that there was to be -- the Draft Evaluation Report was to be drafted on the 3rd, but not to be discussed until the 9th at a meeting of the PTGSM?

A. Yes.

Q. So nothing could happen, be it in Copenhagen or wherever, on the 28th of September, without it subsequently obtaining the imprimatur, the permission and the sanction of the full PTGSM?

A. Yes.

Q. You made the point that civil servants had to apply for permission to travel, and sanction wouldn't be granted automatically for civil servants to travel abroad?

A. At this stage, it was an honour if you got allowance to travel abroad as a civil servant, Irish civil servant. But I do recall that Mr. Martin Brennan, I am a bit unsure about Fintan Towey, but at least Mr. Martin Brennan, he had another meeting.

Q. He had a meeting in Brussels?

A. I recollect another meeting in Copenhagen, but --

Q. I am not sure that it matters, but his memory of it is --

A. Okay. So he was going abroad anyhow.

Q. He was going to Brussels, anyway?

A. Yeah. And then he could get a cheaper ticket, maybe, to go around Copenhagen.

Q. I know little enough about telecommunications, but next-to-nothing about air fares, but what is, I suppose, true, is that the chances of the entire PTGSM, all the civil servants being allowed to travel to Copenhagen, while it would have been a great trip, I have no doubt, the chances of the Department of Transport, Energy and Communications, and I suppose, more relevantly, the Department of Finance, allowing a trip like that, would have been somewhat minimal. That it's more likely that if such a request had been made, the Irish Government would have said, "Well, tell the Danish people to come over here"?

A. Yes.

Q. That makes some sense, does it?

A. It does make some sense.

CHAIRMAN: We can agree that much, Mr. O'Donnell.

MR. O'DONNELL: Yes. And the -- I suppose the other point that I should draw to your attention is at Tab 25, which are the expense claims made by -- sorry, your invoice, your

hourly invoice and the expense claims made by Mr. Brennan and Mr. Towey for their flights and their accommodation in Copenhagen, and that certainly reflects that they were in Copenhagen on the 28th of September and --

A. Okay.

Q. -- and it also seems to reflect that your bill, it seems to reflect a considerable amount of work done in September, on the 28th of September, by you and a number of other people in AMI in relation to the evaluation meeting. I don't know if you have that invoice?

A. Yes.

Q. So, I think to be fair to you, Professor Andersen, you said that if your non-recollection --

A. What I said, that my non-recollection should not overrule the recollection of Mr. Martin Brennan and Fintan Towey.

Q. That seems to me to be a very gracious way of dealing with it, if I may say so. Certainly, these invoices suggest that you and Mr. Bruel and is it Mr. Jens Dohm, is that Mr. Jens Dohm, JD is --

A. Yes.

Q. -- and Mr. Michael Thrane and Mr. Feddersen and indeed Mr. Iversen, carry out works on the 28th of September, which appear to have been done in Copenhagen, and it appears, also, that there was a meeting, an evaluation meeting, and Mr. Martin -- well, "Martin" is obviously Martin Brennan, and Fintan Towey, are referred to by name in that bill?

A. Yes. Could I just make you aware of what you read aloud from the additional contractual letter from the 14th of September. There, you read aloud that it was -- "Despite the fact that we had agreed on a fixed price" -- I am now making reference to the 370.

Q. Yes.

A. "Despite the fact that there was the 370, the Department actually asked whether we could still produce hourly invoices." And this is what is then reflected here.

Q. And I think that you would expect a Department to, I suppose, in trying to justify the money that it was paying to somebody such as yourself, to be able to show -- for Mr. Brennan to be able to show his own Department, and to be able to show the Department of Finance, "Look, this is the work he did and these are the bills we got and that's why we are paying what we are paying"?

A. Yeah.

Q. Okay. So I think what we agreed on is certainly some meeting of minds took place between you, various representatives of your -- various AMI personnel, including Mr. Bruel, Mr. Dohm, Mr. Thrane, Mr. Feddersen and some

work appears to have been also done by Mr. Iversen at a later stage, in or around the 28th of September?

A. Yes, it seems so.

Q. Okay. Now, I appreciate that given that you don't recall the meeting, it is probably pointless putting to you do you remember particular aspects of it. But if I can deal with it in -- deal with what has been said about that meeting in a particular way.

A. But let me confine myself, then, to what is actually written here. Because if you see JB -- that's Jon Bruel -- he records as "narratives, meetings and preparations".

Q. Yes.

A. "I recall evaluation meeting and drafting as a text." And then there is "Michael Thrane: A participation" -- that's on the next page -- "participation in evaluation meeting with Martin and Fintan Towey. Ole Feddersen records preparation of final Evaluation Report and Tage Iversen: "Preparation licence negotiations."

Q. And you are down for evaluation meeting of about four-and-a-half hours?

A. Yes.

Q. Evaluation meeting in Copenhagen?

A. Yeah.

Q. But what I want to look at --

A. Although I wouldn't attach too much weight to -- you know, as I just said, the hours we were recorded to ask to produce were still under a fixed-fee arrangement, so it was only for information purposes.

Q. I understand.

MR. McDOWELL: Chairman, I have to, at this stage -- I wonder would My Friend allow me to do so. It's all very well for Mr. O'Donnell to tiptoe around this issue, but the invoice he has produced to this Tribunal suggests that on the 27th of September, 1995, this witness spent four hours preparing for a meeting in Copenhagen. The meeting also suggests that this witness, on the following day, spent four-and-a-half hours at a meeting in Copenhagen, and the invoice suggests that other people that he has mentioned, I think some of whom he said had -- Mr. Bruel, he said, he told the Tribunal that he conferred with him and neither of them had a recollection of this meeting, that he also participated in a meeting on that day. And, with respect, it's all very well for the Department not to want to rub up Professor Andersen the wrong way in relation to this, but the clear documentary evidence is that, on the day prior to it, this witness spent a long time preparing for this meeting, charged his Department for it, and, on the day in question, he, Mr. Bruel and Mr. Thrane participated in the

meeting in Copenhagen. That's --

MR. O'DONNELL: Sir --

MR. McDOWELL: Sorry, let me finish my application -- that is abundantly clear from these invoices. And merely to say that there may have been some meeting of minds, does no justice to this Tribunal or to the Department. If it is the recollection, which it was in evidence, of witnesses, that such a meeting took place, and if it's the recollection of Mr. Brennan that he actually remembers, in Mr. Andersen's offices, working on a whiteboard and working out elaborate charts, for Mr. O'Donnell to do this pussy-footing, feather-duster approach and say there may have been a meeting of mind and for the witness then to say that you don't attribute anything to the hours because this is just a billing issue, is -- frankly, does no justice to the truth of the situation. And I would ask you, Chairman, to ask the witness -- to ask Mr. O'Donnell, if he is acting on his client's instructions, whether this invoice does not fully support the proposition that there was a meeting, a lengthy meeting on the occasion, which was prepared for the previous day and which the Department has been paid for -- has paid for and been charged for.

MR. O'DONNELL: Firstly, I think when I raised objections in respect of the way in which a witness was being examined by Mr. McDowell, I was told that I'd have my opportunity to put various points to this witness, and I am doing that, and likewise, in the same way, Mr. McDowell will have his opportunity to re-examine this witness, if he wishes to, about what is contained in this bill.

What is clear, and what this witness has said, is that he does not recollect the meeting, but that he will yield to the positive recollection of the Departmental witnesses, Mr. Brennan and Mr. Towey, that this meeting did take place. If that's what they say, he is not going to gainsay that. And it is -- I have to say I have never been accused of adopting a feather-duster approach before by anybody, and it is supremely ironic that it's coming from Mr. McDowell.

MR. McDOWELL: There is always a first time.

MR. O'DONNELL: Well, it is not an allegation that has ever been made against Mr. McDowell, either. So I have to say, sir, that this seems to be an interruption because Mr. McDowell couldn't contain himself, and, as a result of this, had to get up and object. And if I could just be allowed to continue with this witness and take him through what was happening and Mr. McDowell will be able to come back with his feather-duster in re-examination and deal with Professor Andersen at that stage.

MR. McDOWELL: It can't be laughed off at this stage.

Mr. O'Donnell represents a Department of State. His civil servants, who he is representing here, have given a clear account of a meeting that took place. He is now putting documentary evidence in a very elliptical way to a witness which suggests that everything that they have said is true, and furthermore, that the claim made by this witness that he was in Sweden on that day, to the best of his recollection, is entirely inconsistent with the fact that he billed the Irish Government for preparing for the meeting on the previous day and attending it over a number of hours on the day in question. And, with respect, it isn't appropriate for somebody who represents a Department of State to put to a witness simply that their recollection may not be ad idem or that there may have been a meeting of minds but not a meeting of persons, when the documentary evidence he has goes one hundred percent to prove that there was such a meeting.

MR. O'DONNELL: I object to Mr. McDowell telling me how to do my job.

CHAIRMAN: Gentlemen, given that it's been a day relatively short on pugilism between practitioners and given that you yourself have indicated a desire to try and narrow grounds on some factual matters, is it not correct to say that the preponderance of evidence, allowing for infirmity of any individual, seems to suggest that this meeting, the content of which, by any appraisal, was not unimportant, did take place in Copenhagen and that it certainly involved the witness and Messrs. Brennan and Towey?

MR. O'DONNELL: Yes, of course, sir. Sorry, I have never suggested otherwise, I have never resiled from that proposition. What I am not prepared to do is what Mr. McDowell would like me to do, is to beat Professor Andersen over the head and say "You are a liar, you are a liar, you say there was no such meeting when there was a meeting." What Professor Andersen has said are key things. Firstly, he has said his diary has a reference to a trip to Sweden; secondly, he has said he has no recollection of the meeting; and thirdly, he said, "if the two people from the Department have a positive recollection of it, then I'll yield to that." What I am suggesting to him is that this bill appears to corroborate and these expense claims appear to corroborate that, and it is then up to you, sir, Chairman, to decide whether or not there was a meeting in Copenhagen. What is clear, on a neutral basis, is that there was certainly agreement as to what was to be done, but I can't -- I think it is frustration of Mr. McDowell that he feels that he can't actually get at Professor

Andersen and say "you are a liar, you told lies about this".

CHAIRMAN: Ah, no --

MR. O'DONNELL: I am moving on from it now, in any event.

CHAIRMAN: It's not my hardest task to hold or to find as a fact that there was a meeting with the principals that we have heard of involved, on the 28th, so let's try and use the last 15 minutes to try and make as much progress as we can.

MR. O'DONNELL: I didn't raise the issue, as you will recall, sir; the objection was raised by Mr. McDowell, but I'll move on from the issue of whether or not the meeting occurred.

Q. But what is apparent is that, at this meeting, an approach was taken by the personnel who participated in it as to how the scores would be allocated. Now, it wasn't a decision by the Project Team, because that couldn't take place at whatever, this meeting, but it is clear that an approach was taken. And what is suggested by the Tribunal in cross-examination of departmental and other witnesses, is that this approach consisted of a number of different things.

Firstly, it is suggested that the existence of the meeting in September was concealed from the Project Team, from the other members of the Project Team. Now, do you agree or disagree with that as a proposition that has been advanced to various members of the Tribunal. Do you agree with that proposition?

MR. McDOWELL: It has not been suggested that the meeting was concealed from anybody.

MR. O'DONNELL: Well, with respect --

MR. McDOWELL: It was suggested by me to the witness that he expected --

MR. O'DONNELL: I am not talking about your suggestions.

MR. McDOWELL: Maybe it's somebody else's suggestions.

MR. O'DONNELL: It is, and for the past eight years it has been --

MS. O'BRIEN: I have been here when these witnesses have been taken and there is no question that it has ever been suggested to any departmental witness, to Mr. Brennan or Mr. Towey, that this meeting was concealed from any of their fellow civil servants on the Project Group. So it's as well if Mr. O'Donnell bears that in mind.

MR. O'DONNELL: It is suggested that this meeting took place without getting agreement from the Project Group and without the knowledge or authority of the Project Group. That is what is suggested. But what is also suggested is, it appears in the cross-examination of Mr. Fintan Towey by

Mr. Coughlan, and perhaps if I could draw your attention to a passage at day 218, page 59. Sorry, it's not page 59; it's page 57 onwards.

Firstly, Professor Andersen, the application of the weightings and the conducting of the score that took place at this meeting was a joint exercise; it wasn't an exercise taken by one person on his own?

A. No, that's correct, it was a joint exercise.

Q. So everybody who was involved is involved in the decisions that were made at this meeting. I just want to read out to you an extract from the transcript of day 218, page 57.

It's a question from Mr. Coughlan.

"Question: So we have no reference in the report to what you are contending for, that there must have been an agreement about a revision of the split. We have a removal from the report of what Mr. Andersen describes under Table of the application of the quantitative, isn't that right? We have an unauthorised alteration of the quantitative table in the Evaluation Model in the report, which coincides with what was on Table 17 and 18, and we have a statement in the report that the validation, the result is a result of the application of the qualitative marks to the quantitative weightings adopted before the closing date.

Answer: I understand what you are saying, yes.

Question: Doesn't it only suggest one thing, Mr. Towey, a complete cooking of the books to put this together?

Answer: There is no question of that.

Question: I'll come back to it after lunch.

Answer: Absolutely no question of that.

Question: I'll come back to it after lunch and you can tell me and think about how this exists."

And just before we move to the Chairman's remarks, what's your response to the suggestion made, presumably on instructions, by counsel for the Tribunal, that the process described here, in which with you were clearly participants, constitutes a "cooking of the books"? And I take it, Professor Andersen, that you are aware of the concept embodied in the phrase "cooking of the books"?

A. Not entirely, maybe, but I take it that it is something with changing numbers, changing figures, changing scores, whatever? Is that what it --

Q. It is, perhaps, even more serious than that. It is, in effect, a suggestion that documentary evidence is falsified or in some way altered so as not to give the true picture, but to give, instead, a different picture. If I am wrong in that, I am sure I'll be corrected by various experts on phrase and fable throughout the room, but I think that

that's what that phrase means, a deliberate alteration of documents to give a misleading and distorted picture?

A. Such a thing is a serious thing to say and that is certainly not in accordance with the work process.

Q. Now, the Chairman says, "But, as with the abandonment of the quantitative report, any revised weightings that were decided upon were decided upon, in your own words, on an implicit basis. That's the words you used in both matters this morning?"

Answer: Yes, there was an explicit agreement in Copenhagen and, as I say, it's implicit in the report that was agreed at the Project Group level. I expect there was some explanation of it, because I would expect Project Group members to be alert to this issue, but unfortunately I can't recall discussion of it."

So, insofar as the allegation of the "cooking of the books" is a pejorative description, an unworthy description, a description of, in effect, deliberately distorting the records or the documents, do you reject it as an allegation?

A. I fully reject it, yes, and it would not be able to take place because everything that we had agreed between the 1st of September and then the 9th of October, that's the phase you are moving into with your questions, that would be subject to approval by the Steering Group on the 9th of October.

Q. For the sake of completeness, sir, if you turn to page 59 of that transcript, I think I should just deal with this.

After lunch, Mr. Coughlan indicates that he had been in discussion with Mr. Nesbitt and myself, and he continues in cross-examination:

"I just want to come back to just before lunch, Mr. Towey."

To which Mr. Towey says, "So do I, Mr. Coughlan.

Question: I want to deal with it because your counsel has indicated a level of upset on your part by the way I put the question. Doesn't it only suggest one thing, a cooking of the books?

Answer: Yes.

Question: Now, I am inquiring and I am asking that question along those lines, that, looking at it, one could ask the question, doesn't it suggest that? That's one thing it suggests.

Answer. If you are asking, if you are inquiring as to whether it's a fact that the books were cooked or that there was a cooking of the books, I want to make it absolutely clear that I reject such a suggestion and, indeed, I resent any such suggestion in the context of the role that I had in this process."

And he concludes: "Well, the inquiry and the findings will be made by the Sole Member at the end of the day."

But I take it that you share Mr. Towey's evidence that he rejects any allegation of cooking of the books, any suggestion of it?

A. Definitely. No cooking would be possible in a situation where we were to have this Steering Group meeting on the 11th of October, and as also seen during your previous questions, there was an evaluation draft report to be submitted on the 3rd of October. So how can you -- I am struggling, intellectually, about understanding the notion of "cooking books" when everything is going to be fully transparent in a draft report to be submitted on the 3rd of October; how can cooking then take place?

Q. Well, I respectfully agree, Professor Andersen, but unfortunately, it's not for me --

Sir, it's --

CHAIRMAN: Well, I think we are coming close to the end. Just on the point that was discussed, the remark of Ms. O'Brien that it was not suggested that this meeting was concealed, you stated earlier in evidence, Professor Andersen, that because Mr. Brennan and Mr. Towey were effectively the chairman and the secretary to the Steering Group, that you looked on them as the clients?

A. That's correct.

CHAIRMAN: And was this the situation, that in seeking this contact with Mr. Brennan and Mr. Towey, you addressed it to them but did not directly inform the other members of the Project Team?

A. I think the approach was that with my memo from the 21st of September, I principally called for a Steering Group meeting. When that could not transpire, then the second-best solution would be what then transpired, probably, that we had a meeting with the chairman of the Steering Group and the secretary, full-time working secretary of the Steering Group, and then progressing the work, subject to a final approval on the 9th of October.

CHAIRMAN: Yes. But you left it really to Mr. Brennan and Mr. Towey as to whether they conveyed this message on to the other members of the Steering Group? Take, for example, somebody like Mr. Jimmy McMeel, the senior person from the Department of Finance, it was something that you felt you had discharged your remit in communicating with Mr. Brennan and Mr. Towey, and it was a matter then between you and them as to whether the meeting in Copenhagen, prior to the ultimate large Project Team meeting, was merely between yourself and the two of them, with perhaps some of your colleagues, or whether other persons were brought

along on behalf of the Steering Group?

A. Yes. You see, the standard operating procedure was that I never communicated directly from Copenhagen to the Steering Group. I don't find that in the documentation here. It was always a communication between the Department and me, because the Department was the client, so it was up to the Department to inform the Steering Group. Of course, from time to time I would have prepared documents which I brought along to Dublin, with copies to each member of the Steering Group, but that was then approved either by the Department, in advance, or agreed at a previous Steering Group meeting. So my standard operating way of communicating here was to communicate with Brennan and Towey.

MR. O'DONNELL: Just arising out of the Chairman's question, could I just ask you a question? You didn't regard it as in any way sinister or improper that only Mr. Brennan and Mr. Towey turned up?

A. No.

Q. And you didn't regard it as sinister or improper that the other members, the other civil servants, hadn't been told about this meeting in advance, because there was going to be a meeting of the full team on the 9th of October, in any event?

A. That's correct.

CHAIRMAN: I think we'll leave it there until 10 o'clock in the morning. Thank you very much.

THE TRIBUNAL ADJOURNED UNTIL THE FOLLOWING DAY, THURSDAY, THE 4TH OF NOVEMBER, 2010, AT 10 A.M.