

THE TRIBUNAL RESUMED ON THE 4TH OF NOVEMBER, 2010,

AS FOLLOWS:

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

Q. MR. O'DONNELL: Morning, Professor Andersen.

A. Good morning.

Q. Professor Andersen, as we're aware, one of the kind of key concerns of the Department -- sorry, I should say the key concern of the Department, was that the criteria set out in the RFP, Clause 19, be respected and adhered to and used as the basis for the evaluation of the applicants, isn't that right?

A. Yes, that was also my clear recollection of the approach from the Department.

Q. Yes. And I think, in addition to that, the Department made it clear to you that they had to be -- they had to be able to produce a result that was as transparent as possible for people to read and absorb and understand?

A. That's correct.

Q. And I think, in that regard, when you reached what ultimately became Table 15, which was the table with all the As and Bs and Cs, the grades in it, you were satisfied, from your analysis of that table, that you had come up with a winner; you could see, if I could put it that way, the winner?

A. Yes.

Q. Sir, if you just turn to the last tab, which is the last report, and I think if you turn to Table 15.

A. That's tab number?

Q. I beg your pardon, it is Tab Number 30, and it's page 43.

I should explain to you, Professor Andersen, that, in Ireland, we have an end-of-school examination called the Leaving Cert, and everybody does it - well, I think everybody does it. I don't know if Mr. McDowell did it; I think he may have just done the Matriculation instead. But in modern days, everybody does it. And we are graded A, B, C, D, E, occasionally, and those grades are then converted into what are called points, and, depending on how many points you get, will depend what course you can go and study in third-level education?

A. Okay. I wouldn't be familiar with that at the time.

Q. But we think in terms of, if somebody gets an A, or I know that it's more sophisticated now, but when I was doing the Leaving Cert, I am afraid I didn't get any As, but if I got a C in English, that would convert into 3 points.

A. Okay.

Q. And a B would be 4 and an A would be 5, and so on. And so

we tend to think, when we look at tables of As and Bs and Cs, we tend to think of converting them into numbers, it's easier to read that way for us, perhaps because we are used to the Leaving Cert and those types of transferring of marks, or grades to marks. So if you look at page 43 --

A. Sorry, just on that one. Will that mean that it's difficult for an Irish person to understand what Bacon writes in his reports?

Q. Well --

A. Because he writes that he is struggling very much, and I just wonder when it is so easy for you, as an Irishman, to go from letters to numbers, that he is flagging a number of problems with that.

Q. Well, he -- certainly, he -- there are a number of questions over what Professor Bacon --

CHAIRMAN: Well, Professor, I am not considering Dr. Bacon's report, so I am interested in your views.

A. Okay, that's fine.

MR. O'DONNELL: Well, then we can move on. But if we turn to page 43 and Table 15 in the report, the final report, we can see that the summary of the marks awarded, if we just looked at it in As, Bs and Cs, we can see that A3 has four As, four Bs and three Cs.

A. Yes.

Q. And we can see, looking at A5, that A5 has seven As, two Bs and two Cs?

A. Yes.

Q. And I take it that you are saying that, looking at that, that you would regard it as fairly obvious that somebody with seven As and two Bs and two Cs was ahead of somebody who had only four As, four Bs and three Cs?

A. That's correct, on a quick reading of it, but people having been involved in the actual scoring, the evaluators, so to speak, they would have a sense of whether As, Bs and Cs were big or small A, B, and Cs. And as I have explained earlier to this Tribunal, there is, what we call, a confidence interval around any letter.

Q. I understand. Can I suggest to you, Professor Andersen, that the job of converting an A to a 5 and a B to a 4 and a C to a 3, does not lose precision or accuracy; however accurate the granting of an A grade is, is as accurate and as precise as granting a 5, would you agree with that, given that with we are not marking in percentages? In other words, if I say that instead of using A, B, C, D, E, I use 5, 4, 3, 2, 1, that the granting of an A is -- there is a band, I suppose, within which one can get an A, and you might be right down at the bottom of the A band or you might be up at the top of the A band, but it's an A. And

in the same way, a 5, you could be just inside the 5 mark or you could be up near the top of the 5 mark, but a 5 is a in the same way as an A is an A. There is no lack of precision or there is no change in precision, change in accuracy, in awarding a 5 instead of an A or a 4 instead of a B, once you have chosen that model, would you agree with that?

A. I think the answer is yes, but I'll just try to explain what my position is, if that's helpful to you.

The confidence interval, or the big or small A, is, in actual fact, the same whether you start with letters or numbers. So when I have given evidence earlier that, for instance, an A -- let me take the example of a B, for instance, that that could range from 2.44 to 1.44, somewhat like that, in terms of a big or a small A, if you understand -- sorry, sorry, it should be 4. B is, in essence, a 4, but it could range then from 3.45 to 4.44, statistically, whether it was a big B or a small b.

Q. Yeah, I understand.

A. That confidence interval, as I term it, is the same as with numbers as it is with letters, so if you award -- if you had awarded a 4 initially, the confidence interval would have been the same in a statistical sense, it would still range from 3.45 to 4.44, if you understand.

Q. Yes.

A. So, in a sense, in a statistical sense, it may be the same whether you start with letters or numbers. But what I was addressing as a concern, that is that when you convert from letters to numbers mechanically, you lose -- you may lose the scoring of big As or small As or big Bs or small Bs, if you understand.

Q. I do.

A. So my concern is not about the confidence interval around letters or numbers, as such, but it's on the conversion.

And then if you look at the -- I fully take on board that you have a points system here. But let me just flag one of the concerns I have, based on my experience, which is purely statistical and not related to the mark-giving system you have here in Ireland. What you arrived at was -- what we arrived at was points, as you rightly pointed out, but the way the scoring took place was to score on a scale, on a 5-point scale, and then you have a statistical problem when you move to a point-based system. Let me try to explicate a little bit. If you take the three highest-ranked applicants as they are recorded in Table 17.

Q. Yes.

A. That's on page 49.

Q. Yes.

A. Now, you will see that A1 comes in with 362 points, A3 comes in with 410 points and A5 comes in with 432 points. Now, ideally, in my way of looking at this, which I admit is purely a statistical way, it would have been, for me, a better way to present if they were presented as 3.42, 4.10 and 4.32 respectively.

Q. Why would you have done that?

A. That's because the applicants were scored on a 5-point scale.

Q. I understand, I understand. Well...

A. I am not saying that what is here doesn't make sense; what I am saying is that you lose something in this conversion process.

Q. Well, Professor Andersen, if you believed that this conversion would have made the remotest difference to the outcome or the ranking of any of the individual applicants, would you have used this conversion process? In other words, if this conversion had the effect of changing the result, would you have allowed its use?

A. Well, I didn't have that in mind at all. What we did was simply to do the exercise as suggested by the Department and it came out with the results which we see is recorded here. So it's clearly one way of, in my view, it's one way of testing the initial scoring that was recorded.

Q. Did it, in your view, have any effect whatsoever on the outcome that A5 wins, A3 is second and A1 is third?

A. Yes, to some extent, in the sense that it was a consolidation of the result already arrived at.

Q. Exactly, it confirmed?

A. It confirmed, yes.

Q. But it certainly didn't change the result?

A. No.

Q. And it didn't reduce the gap between any of the parties?

A. No. There is still the same ranking of the applicants, yes.

Q. Because Mr. McDowell said -- well, sorry, firstly, I should put to you a piece of transcript that was in the booklet of transcripts yesterday, and I wonder if we could get back the booklet of transcripts that Mr. O'Callaghan presented yesterday. I don't know if it's still available. There is only one page of it that I want to refer to, so I am happy if it can be dealt with by putting it up on the screen.

It's in Mr. Brennan's evidence, which is in Tab A, and it's page -- day 163, page 125. And perhaps if I just read that out to you. This is Martin Brennan's evidence being examined, I think by the Tribunal, but I may be wrong about that.

"I wasn't convinced that you could come to that conclusion

by that route because it ignored the weightings. And I started to explore the question of, can we find a mathematical model that would give us a more robust and a more transparent outcome? And I stood up at either a whiteboard or a flip-chart and I started to draw the diagram which you now have, of numbers raw from the data that was there in grades, to explain why I was thinking the way I was thinking. And that's how that table evolved. I had no idea, when I started to do it, what it is going to look like, but I figured it was essential that it be done.

Question: And when you arrived at that, when you had carried out that exercise, was everybody agreed to use it?

Answer: All the people present agreed that it was the right thing to do.

Question: Did anybody have any difficulties with it? I mean, since it wasn't what was envisaged in the original plans for the competition?

Answer: It's clear that Michael Andersen's starting point was that it was unnecessary to do it. I took the opposite view. I figured that I couldn't stand over a result that couldn't be modelled into the numbers in the weightings applied."

Now, when you were questioned by Mr. McDowell, it was being suggested to you that there was an argument over this and that Mr. Brennan won and, in a sense, that you lost. Now, what I am suggesting to you is that there was a discussion, at the end of which it was agreed that this process be adopted, albeit that you were, to use your own phrase, not particularly fond of it. Now, do you agree with that, or do you think that there was a row?

A. I fully agree. There was certainly no row and there was certainly no dispute. It was, as always during the entire process, a very good team work with different people bringing different things to the table and ending up with a presentation as transpired. So I fully stand over that.

Q. Right. So there was no suggestion that your will was overborne or in some way that you were bullied or pushed around?

A. No, not at all.

Q. And you accept that Mr. Brennan's motive for doing this was to come up with a result that was, on its face, more robust and more transparent than, to his eyes, the grade-based Table 15 was?

A. He doesn't use the word "robust," really, so I think that Mr. Brennan --

Q. He said it in his evidence but he may not have said it to you.

A. Okay. But I think the result was already robust, if I may

use that expression. That would be my view at least, and that was also how I perceived his view. So I perceived his view to be more of a presentational matter only.

Q. I just want to take you to an extract of the cross-examination by you, by Mr. McDowell, on day 379. I think day 379, question 71. I don't know if that -- if we can, again, put it up on the screen. I don't have copies of it, but we can produce a copy of it, if it's of assistance. And he says at question 70.

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

Answer: That was something which had to be assessed by aggregated results coming in.

Question: I appreciate that. It's just that, I mean, it looks like a grid, and then you say to yourself, fill it out and put As and Bs and Cs and Ds and Es across it, and then you say, now, 'grand total, please', and to my non-mathematical mind or non-literary mind" -- he is being a bit unfair on himself on both counts, I think --

A. Yeah.

Q. -- "that the phrase 'grand total' seems a bit difficult to grasp, because it seems to be impossible to total three Bs, an A and a D, and to say that there is a total there, compared with three Cs, a B and an A. I don't see how you could actually arrive at grand totals in the bottom line there."

Could I suggest to you, Professor Andersen, that if an experienced senior counsel and man of the world of Mr. McDowell's eminence, couldn't see a winner, if I can put it that way, a grand total leading to a winner, out of that table, that it would be even more difficult to expect a member of the public reading this, or other civil servants who hadn't been involved, or even a Government minister reading this, and that that was why Martin Brennan suggested to make the result more transparent, and as you say, to improve the presentation of the result, that it was decided to convert from grades to marks; that, and, of course, the application of the weightings?

A. Yes, that was how I perceived Mr. Martin Brennan's approach to this, that it was a presentational matter only. But I have to say, also, here, and I think that a man of Mr. McDowell's calibre, he grossly understates his own

intellectual capacity.

Q. Well, as I say, I would be inclined to agree with you there, Professor Andersen. But over the page, at question , I think you have explained -- sorry, at answer 75, you say:

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

Question: Oh, it's an impressionistic grand total, is it?

Answer: A judgement call, I would say."

And can I suggest to you that Mr. Brennan, in his anxiety to ensure that the result was presented in an easily digestible format and in transparent format, was anxious that the conversion from grades to numbers take place as well as facilitating, of course, the application of the weightings, so that there would be no danger of this appearing to be what Mr. McDowell described it as there, an impressionistic view of what the result was and who the winner was, but rather, that it would be clear, here is the result, here are the scores that everybody got and here we can see that A5's score is considerably better than A4's score?

A. Yes, that's correct.

Q. Do you think it was legitimate and reasonable for the Chairman of the Project Group and a senior civil servant who was charged by the State with the responsibility of overseeing this Project Group's work, was it reasonable for Mr. Brennan, in those circumstances, to insist on this presentation format?

A. Definitely. I mean, it was not only a matter, then, during the final process, to present Table 17 and do the conversion. There were a number of presentational issues which were discussed. For instance -- and I think that you now focusing on how to present the scores. But there was also discussion on how to present the final sections of the

report, there was also discussion about an Executive Summary, because he and some of his colleagues would like to have an Executive Summary, which I think is reasonable, but which we hadn't included in the report and nor in the synopsis.

Q. You are talking now about the first draft report and the discussions at the 9th of October?

A. Yes.

Q. I am going to come to that just in a minute. But just to be clear, I take it that you would reject the suggestion that this conversion of grades to marks in any way compromised the evaluation process or devalued the evaluation process in any way? I take it any suggestion to that effect, you would reject?

A. Definitely. I think what we are writing in the report, and that is driven by me, that is that this way of calculating the result is, I think I used the term "another model," but at least it is another approach and it just confirms the result already arrived at.

Q. Okay. Now, can we turn to the meeting of the 9th of October, and I think the minutes for that are back at Tab 26, and I think it's clear that yourself and Mr. Bruel travelled from Denmark to attend this meeting?

A. That's correct.

Q. And again, I think the meeting -- or Mr. Brennan and Mr. Towey and the other civil servants say the meeting went on for some hours. Their recollection is that you were there about two-and-a-half hours but not for all of the meeting, but that the meeting went on for some period after you had left, but that you were there about two-and-a-half hours. Their recollection is that --

A. My recollection is that we were there a short, a relatively short time, because there were these logistical problems with the flight, there was a delay of the flight out of Copenhagen, there was head-wind, which is, by the way, normal when you travel westbound, and then there was traffic jam in the airport, just to continue all our challenges here, and the last -- then, there was a subsequent challenge, namely that we thought that the meeting was in Kildare Street, which it usually was, but the venue had been changed to -- it transpires that it was Clare Street, I think, and then there was also a non-synchronisation of the winter and summertime issues between Denmark and Ireland, so, for some reason, we were only there for part of the meeting.

Q. I am not sure it matters a great deal, but of the order of -- I mean, you say not less than an -- you said an hour-and-a-half, they say two-and-a-half, and it's accepted

that you weren't there for the full meeting, but you were there for a substantial portion of it, but certainly not all of it?

A. That's correct, yes. And, you know, you didn't have a stopwatch, so --

Q. I accept that.

A. -- so we are trying to measure something here which is a bit difficult, really.

Q. I understand. And lest it be said that any stone is being left unturned by counsel for the Tribunal, we have, in the booklet, at Tab 29A, your invoices for the work done by AMI during the month of October?

A. Yes, that's tab number?

Q. 29A. I think it may just have a yellow sticker on yours as opposed to a tab number.

A. It isn't in my binder here, though, but it doesn't matter, it doesn't matter.

Q. We can get a copy of it for you.

A. Yes, and the question is?

Q. And if we turn to the third page of the invoice, we see, for the 9th of October, firstly your taxi fare from Dublin Airport to Kildare Street and your taxi fare from Kildare Street to Dublin Airport, your parking in Copenhagen airport. And then there is the, for the 9th of October, "JB," which was obviously Jon Bruel, "preparation and participation in meeting in Dublin and follow-up with MMA: .5." And 1,600 -- I think that's, of course, Danish kroner --

A. It definitely is, yes.

Q. Which is -- it's not pounds. So it's one-tenth, approximately; that's about £160, as it was then?

A. Yeah, something like that.

Q. Yes -- it was per hour. And then "MMA, preparations and participation in meeting in Dublin, plus follow-up: 7.5."

And that's at a rate of, as I say, about 200 an hour. And then the total rate is set across -- at the far side. Can you just explain -- I think, to be clear, Professor Andersen, my clients don't say that the meeting took seven-and-a-half hours, but your bill appears to suggest more than just attendance at the meeting?

A. Yes, that's quite clear, as you will see, that we get up, let's say, at 6 o'clock in the morning and we would return to Denmark at midnight the same day. So we would have a lot of time in lounges, and so forth, to do work on this project, which was still heavily loaded with additional work. So, in addition to the meeting time, you will have to take into account that there was preparation going on, reading of the report, etc., but then there was also

drafting of the remaining documents. For instance, I recall that the so-called Appendix 2, just to take one example, that had not been fully drafted at that stage, so we would probably use the spare time to draft that particular document. But it's clear from it that we are away from our base in Copenhagen, let's say, 18 hours, or whatever, but we also had an agreement with the Department that we were not going to invoice travel time, if you understand.

Q. I think your tender, as confirmed in your letter of the 14th of September, said you will only charge for work done, as opposed to travel?

A. Yes, we would not charge 16 or 18 hours, no.

Q. All right. So, let's go, then, to Tab 26, which is the actual minutes of the meeting, and "The Chairman, Mr. Brennan, opened the meeting by stressing the confidentiality of the Evaluation Report and the discussions re same. He also informed the group" --

A. Sorry, where are we?

Q. Tab 26. Sorry, unless there was anything more you want to say about the bill, I am moving on.

A. No, that's fine.

Q. "The Chairman opened the meeting by stressing the confidentiality of the Evaluation Report and the discussions re same. He also informed the group that the Minister had been informed of the progress of the evaluation procedure and of the ranking of the top 2 applicants."

Now, can I just stop you there. Do you think that the fact that the Minister had been informed, firstly, of the progress of the evaluation procedure, do you think that that compromised, or could have compromised, the evaluation process which you and the civil servants were taking part in

A. No, but I would like to qualify my surprise of these matters coming up to the extent they are, but it's not for me to assess, but I'll just give you my general understanding here.

It is a little bit like if the Minister is informed, then it might be a problem because somebody would put a question-mark on that: Why is he informed? If he had not been informed, if you take the opposite direction, you could equally well put a question-mark: Why is the Minister not informed? So, in my view, it's only natural, in a ministerial system, that you have, and you had at the time where no independent regulator was introduced and he was the ultimate boss, that he would be informed from time to time.

Q. I take it that if Martin Brennan had come to you and said "do you think we should inform the Minister of the progress of the evaluation?" you would have had no reason to prevent him or to advise him against doing that?

A. I would have said that would make sense.

Q. It would make sense for him to do it?

A. It would make sense, yeah.

Q. Had you seen, in situations in the past, had you seen ministers being kept up to date with what was happening in evaluation processes in other competitions?

A. Yes, that's definitely true. I couldn't imagine any tender in a European member country, let me just confine me to the jurisdictions that are comparable to the Irish case, that a minister was not informed during an evaluation process about how did the work progress, etc. So, normally, there would be status reports to a minister if an independent regulator was not instituted. Do you see the difference between a system where you have an independent regulator, then there is no recourse to the minister, so to speak, and therefore, the minister would not be informed in those jurisdictions, whereas if you do not have the institution of an independent regulator, then the minister is the ultimate boss and then he is also responsible -- let me just take an example from some other jurisdictions. There, they are responsibilities and accountability of ministers for all the work that is going on within the ministry. Do you understand what I mean?

Q. Of course.

A. But how could you -- I mean, if I were a minister, how could I undertake such an accountability and such a responsibility if I didn't know at all what was going on within such a commercially interesting and challenging thing than a GSM2 tender?

Q. Well, let's move to the next element of that, because I think that's where some of the questions from the Tribunal have focused, because Mr. Brennan says two things. He says, "The Minister has been informed of the progress of the evaluation." But he also says, "The Minister has been informed of the ranking of the top two applicants."

Now, again, firstly, as a matter of principle, would you have any difficulty with that kind of information being given to a minister?

A. I would, in principle, have no problem with any information being given to a minister.

Q. None at all?

A. He is the -- he has the ultimate responsibility for what is going on. So, I mean, if it were in some of the other jurisdictions, it would definitely have been so that, in

many cases, that ministers were, maybe, much more informed than is suggested here.

Q. And have you seen that in other jurisdictions, that ministers were given more detailed information --

A. Yes.

Q. -- in the process of the evaluation taking place?

A. I have seen both, and I have seen both more than this but also less than this.

Q. All right. But you don't have a problem with this level or more information being given to a minister?

A. No. I said, in principle, I would have no problem with it.

Q. Insofar as one can --

CHAIRMAN: Just one moment, Mr. O'Donnell. I think you said yesterday, Professor, that after the work that had been done in Copenhagen, you felt it important that there was still to be a full meeting of the PTGSM to decide whether to approve matters, or otherwise?

A. That is correct.

CHAIRMAN: And we now know that Mr. Brennan appears to have informed Mr. Lowry that Esat Digifone were first and it appeared Persona were second. I think you acknowledge that it was possible that the Project Team could have taken a different view. If they had changed it, it meant the Minister would have to have been told of a different outcome, would that be?

A. Yes, but when I say I have no problems with the information at this stage, it, of course, goes with the qualification that the work had not been finalised yet and a final report has not been adopted. So the Minister -- you know, a civil servant, acting in this universe, should, of course, be cautious to inform the Minister that a final report had not been drafted yet and be careful to explain where in the process the work was.

MR. O'DONNELL: Questions from the Tribunal have been put to witnesses from the Department on the basis that there would be a fear that, by disclosing this information to the Minister, the Minister would be able to get inside the evaluation process in some way and, in particular, it is suggested that he would be able to accelerate the conclusion of the evaluation process if he knew that his "favoured applicant" was ahead. That's the thesis that's behind some of the questions. I am not suggesting that it's a conclusion, but it's certainly a thesis that has been explored by the Tribunal. I certainly hope it's not a conclusion.

A. Okay. But my view, my take on this would be to focus on what my job was. My job was to produce reports on agreed dates.

Q. Yes.

A. So no acceleration, I would accept no acceleration of the work I was responsible for.

Q. To be fair to you, Professor Andersen, you had already agreed that you were under fair workload and you were going to have to produce a report on the 3rd of October, which you had produced, another one on the 18th and a final one on the 25th, and you had enough to be doing within that timetable, I take it, without having to do it earlier?

A. That's what I am looking at, and, in actual fact, we had an obligation to produce a report on the 17th of October, but we were so heavily loaded that we didn't manage to bring it on the table until the 18th. So it shows the load there, but also the obligation, as you state.

Q. Well, the other, I suppose, element of the thesis of the -- behind those questions, is that, in some way, by communicating to the Project Team that the Minister had been told what was happening and had been told what the ranking was, that this would, in some way, lead the Project Team not to bother to debate this or to discuss it or to say, "well, sure, if the Minister's been told how things are going, sure there is nothing more for us to do, we might as well just go ahead with it." That's the thinking that appears to inform some of the questions that are put by the Tribunal to the departmental witnesses.

A. Okay, that's the 'Yes, Minister', or what I call the anticipated civil servant reaction to what they perceived was a wish from the Minister approach.

Q. Yes, and it might even be more subtle than that; it might be that, "well, he's been told what the current position is, and the next line is, he wants to announce the result quickly, as soon as everything is finalised, so, sure what more is there for us to do?" would be the kind of, the feeling that the questions appear to tribute as being a possible sensation that the Project Team group would have been experiencing, that, in effect, they would have not bothered or given up. That's one element of it. Now, firstly, do you think that's a plausible scenario with this Project Group?

A. A scenario of civil servants being impacted or being pre-emptive, or what is it exactly you are asking?

Q. In essence, that once they were told that the Minister had been told what was happening and had been told the ranking, that they would give up debating the matter because the Minister had been told and there was no need to go any further with it?

A. No, I don't think that that was the case in a sense that the discussion took place on both the 9th of October and

also on the 23rd of October, as we have seen.

Q. All right. Can I ask you this: Do you think the fact that the group were told that the Minister had been told the progress and the top two ranking, I am not sure that they were told the names, that the Minister was told the names, but do you think that the fact that the group were told this, do you think that that affected the way in which the group carried out their responsibilities on the 9th of October? Did it make them carry out their duties in any different way, so far as you are concerned?

A. Well, it's difficult for me to answer 'yes' to your question, because we don't have the litmus test for what you are saying. I don't have the placebo test in front of me.

Q. I understand.

A. But what went on both on the meeting on the 9th of October and also on the 23rd of October and in between these meetings, was what I would characterise as a normal working and decision-making process.

Q. All right. So you didn't get any sense from the Project Group members, either individually or as a collective group, that they were now doing, in some way, the Minister's bidding, or were anxious to finish this because the Minister had been told what was happening?

A. No, I did not feel that.

Q. All right. There was no, can I suggest to you, there was no change in atmosphere between the way in which meetings had been conducted in April, May, June, July, August and September, and these meetings now, and in particular the first one on the 9th of October, there was no change in atmosphere as to the way in which those meetings were conducted?

A. No, not in the general framework of it, but it was a process which was heavily loaded with work and new things coming up all the time, so it would be difficult for me to say that all Steering Group meetings resembled one another. Because we have seen from previous documents, of previous meetings of minutes, there was always an overwhelming thing about new issues suddenly popping up. Let me just say, you have the EU intervention, it consumed a lot of attention. You suddenly had 230 questions from interested applicants; that consumed some attention. Then, you had a claim, a serious claim from the Vodafone consortium, which was a justified claim on a lack of level playing field in this market. So that also attracted some attention. So if you take the meetings, so to speak, one by one, it was not like no unforeseen things coming up in this process, and this also makes it difficult just to talk about standard

Steering Group meetings.

Q. I understand. Well, let's just look at the minutes and we might look at the notes of the minutes. Sorry, I should finish with the last sentence in the opening.

"The Minister is disposed towards announcing the result of the competition quickly after the finalisation of the Evaluation Report."

Can I take it, Professor Andersen, that that comment to the Project Group had no effect on the way in which they were doing the work either, given that everybody knew that the deadline for the delivery of the report in its final form was the 25th of October, and that that hadn't changed?

A. Well, here, I would be minded, in answering, to go a little bit into the working process.

Q. Yes.

A. Because what onlookers are not able to see here, is what were the underlying work process like, and you are posing me a question about the dispositions, the activities, and so forth, of the Irish civil servants. Now, here you have to take into account that most of the work had already been performed at this stage, and if you look at evaluations in the ten so-called sub-groups, that work had been finalised. So most of the Irish civil servants, they were not, at this stage, having a heavy workload with this part of the evaluation, or this part of the -- during this, at this stage of the process, except for, maybe, I recall that the financial people had some additional tasks to do by way of track recording, and also, as we saw one of the days, there were additional work to be done on the so-called financial analysis, which is recorded in Appendix 10 to the Evaluation Report.

Q. That's right.

A. So most of the work was done, so the concentration of the civil servant was, at this stage, very much on the presentation of the results.

Q. Of the results?

A. And of the report, yeah. I don't know whether that answers your question, but it is the background to it that's important for me to stress.

Q. All right. And the note says: "The discussions of the Evaluation Report -- the Draft Evaluation Report put forward by AMI was examined in detail."

Would you agree with that, that it was examined in detail?

A. Yes.

Q. "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."

Would you agree that a range of suggestions in relation to the manner of presentation were put forward?

A. Yeah, this is my principal recollection of this meeting. This is that there were no disagreements with the marks, and maybe that's also recorded in the minutes here --

Q. Well, we'll just go through it. "The agreed amendments included..."

A. So my recollection is that there was much focus on presentational matters.

Q. This is a note of the entire meeting, not just simply the meeting --

A. Yes, I know --

Q. -- the part of which you attended, but the entire meeting.

A. Yes.

Q. And the agreed amendments included:

" -- inclusion in the body of the main report of the proposed appendix in relation to the evaluation methodology.

" -- an expansion generally of the justification for the award of marks to the various indicators.

" -- revision of the financial conformance appendix to a more explanatory format.

" -- inclusion of an Executive Summary and an annex explaining some of the terminology.

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

And then it says: "AMI also indicated that the supplementary analysis in relation to interconnection and tariffs which had yet to be provided, did not suggest that it would be necessary to revise the award of marks."

And again, these were all amendments or suggestions in relation to the presentation, which were going to be your responsibility to undertake and to incorporate into the next draft report, isn't that right?

A. Yeah, that's correct.

Q. And then under "Future Work Programme:

"It was agreed that AMI would provide the first draft of parts of the report which had not been included in the first draft of the overall report for comments before submission of a complete second draft the following week."

So again, that was something that was going to be a responsibility from AMI?

A. Yes.

Q. And then the next tab is the handwritten notes which had been put into typed form. And it's clear, firstly, that there are contributions from a number of the personnel at this meeting. There is contributions from Mr. Brennan,

Mr. McMahon, Mr. McQuaid, yourself, Mr. Riordan, Mr. Towey. And there may have been other contributions from other persons whose names don't appear on the list, but who may have been people responsible for some of the comments that are contained in these notes?

A. Yeah. For instance, Jon Bruel, my co-team leader, yeah.

Q. You recall him making comments in the course --

A. Yes.

Q. I see. And it may well be that there were other civil servants who participated in this. If I can just, again, put to you some of the thesis that appears to have underlined some of the questions put by the Tribunal to the civil servants. Would you agree or disagree with the proposition put by the Tribunal that, in effect, further consideration or scrutiny of the ranking that had emerged and was apparent from the report, was suppressed in this meeting by, presumably by Mr. Brennan or Mr. Towey? Do you follow the question?

A. That Martin Brennan and Fintan Towey --

Q. And/or Fintan Towey, yes.

A. -- they should have suppressed comments and said that nobody could suggest any additional work or any additional...

Q. Yes, they suppressed any further considering of the ranking or any further scrutiny of the ranking, any further examination of the ranking?

A. Okay, that didn't -- if it took place, it didn't take place while I was present.

Q. Did you feel in any way that people's ability to participate in discussion was suppressed by Mr. Brennan or kept down?

A. No. As I explained yesterday, I think that his working style was an open working style and that he invited comments rather than stating that comments should not be given, to take an example.

Q. Again, Professor Andersen, you have seen -- you have been involved in very many of these kinds of competitions. You have worked as a civil servant yourself and you have seen civil servants interacting. Do you think you would have recognised suppression of comment or some form of censorship or some form of attempt to stifle discussion if it had occurred in your presence?

A. Yes, I think so, because I was quite familiar with working together with civil servants, so I would have had a good grasp of it. But I also think, in all fairness, I have said, during Mr. McDowell's examination of myself, that there was some kind of tension between a few people, which I interpreted as being part of this carrier game you have

when you know that an entire reorganisation is going to take place shortly, but I didn't think that that had impact on the evaluation and the scoring, and so forth.

Q. And it's been suggested by the Tribunal that, by virtue of the putting together of the tables on the 28th of September by the AMI and the -- Mr. Brennan and Mr. Towey, and coming back with that in a report in its format on the 9th of October -- sorry, in its format of the 3rd of October report as presented to the meeting of the 9th of October, that that meant -- that that led to a situation where the Project Team were deprived of making any real or substantial input into the process of evaluation. What do you say to that?

A. That is not the case. I think we had an open discussion. And if I can go back to the meeting recorded at Tab 26, I can give you an example, if you like?

Q. Yes.

A. If you go to the second page of that.

Q. This is Ms. O'Keeffe's notes, yes -- Ms. O'Keeffe's minutes, yes.

A. Yeah. Just under the two indents, it states:

"AMI also indicated that the supplementary analysis in relation to interconnection and tariffs which had yet to be provided did not suggest that it would be necessary to revise the award of marks."

But, you know, following that, we did have a very open discussion on the award of marks to, for instance, A5. And it subsequently also transpired that when we stress-tested the figures from the marketing section of the applications with information from the financial sections of the business cases, then it actually turned out that A5 was scored relatively low on tariffs compared with the mark that had been given by the sub-group. So we would have a discussion on marks, based on such information, but that didn't lead to any revision of the marks, though, but it just demonstrates that we were down into the details here; do you understand what I am saying?

Q. I do.

A. So I am also a little bit worried about what was said -- was it yesterday? -- about a rubber-stamp exercise. I mean, there is a lot of work going on and we are down into each and every detail in this.

Q. You see, I have to -- to be fair to you, Professor Andersen, what the Tribunal's questions have suggested is that, really, Mr. Brennan and Mr. Towey and you put together this table, which showed this result, and that you, in effect, imposed this ranking and this result on the Project Team, that you imposed it on them?

A. That's a strange proposition. I don't understand it. And I am not -- I do not stand over such a proposition.

Q. You reject it?

A. I reject it, yeah.

Q. And that, in effect, the Project Group were reduced to rubber-stampers, or functionaries or 'yes men'?

A. No. What has been said yesterday was that I was the rubber-stamper.

Q. But I think the thesis behind the Tribunal's questions suggests that the Project Group were in a similar position, that they were -- they had this ranking imposed on them and that they were just regarded as functionaries or people who were just told "sign here"?

A. That was not the case.

Q. And it's suggested that there was no -- or no proper debate about the way in which the quantitative evaluation was going to be discussed -- sorry, was going to be treated, I beg your pardon, at the meeting of the 9th of October?

A. Yes.

Q. And do you say that there was no proper discussion or that there was a proper discussion between the civil servants and yourselves?

A. We had already had a proper discussion on earlier occasions at Steering Group meetings in September, so this was not new. So, as I see it, or I recall it here, it was, again, a matter to revert to these earlier discussions about the deficiencies of the quantifications, and that discussion was certainly addressed, and then there was also the presentational issues attached to that.

Q. Yes. Well, I suppose there are two things. Leaving aside presentation. There was still a concern, can I suggest to you, especially as voiced by Mr. Towey, who of course was one of the people who had been at the 28th of September meeting, about "how do we deal with the quantitative evaluation?" If you look at Tab 27, page 3, we can see Ms. O'Keeffe recording Mr. Towey's concerns: "Should we not include quantitative analysis upfront?" Then he says, "Quantitative analysis too simplistic to give results." But isn't he, Mr. Towey, putting forward the suggestion there that, notwithstanding the difficulties, very grave, very serious difficulties with the quantitative analysis, that we should still put it in there and indeed include it upfront?

A. No, he is recorded to have stated the opposite, that it should not be included --

Q. Well, I may be reading it wrong, but he said "Should we not do it?" suggests to me "is that not the way we should do it?"

A. Okay, but --

Q. He, I suppose, accepts that the analysis is too simplistic?

A. But if you look through this and also go to the next page, he is recorded to have stated that "Figures impossible to compare."

Q. I agree with you, Professor Andersen. He says it's difficult.

A. You know, maybe it's -- semantics are important to some extent, because who is writing these handwritten notes? Is it one who is very skilled and has been through such similar processes earlier? And, you know, could a word here or there be wrong?

Q. I don't know. She seems to be an experienced civil servant?

A. Pardon?

Q. She seems to be an experienced civil servant, Ms. O'Keeffe. Well, just over the page, as you said,

"The scoring:

Would like to stick to Evaluation Model."

And then it says: "Should quantitative analysis be shown.

Would have to open discussion again. Quantitative evaluation unfair and impossible. Figure impossible to compare."

Can I suggest to you that there was certainly, that this indicates there was a debate, a discussion --

A. Yes.

Q. -- as to whether or not the quantitative analysis should be shown (separately), or whether, in fact, because it was so unfair, impossible, of so little value, that it really didn't merit being shown as a second report, at least as a separate report. There was a discussion or debate that was going on in this meeting of the 9th of October?

A. Definitely. And where I would be most -- where I would have my focus, would be what is recorded as the second issue here on top of page 4, that is the Evaluation Model.

Q. Yes.

A. What would we have said earlier on in the Evaluation Model about how to present such things. And I think what we actually did, or at least what Jon Bruel and I did, but I think that must have been together with the Steering Group, that was we actually checked the Evaluation Model and what we had set out beforehand that we would do.

Q. I see. But it seems, Professor Andersen, that criticisms of the quantitative Evaluation Model and the quantitative analysis, come from the -- firstly, from Mr. Towey, who says it's too simplistic, at page 3. He says it's unfair, he says it's impossible, and the figures are impossible to compare, at page 4. He says it's not reliable and he says

it becomes less and less. Then, Mr. Riordan joins in, and he says, at the end of the passage where he is quoted, or not quoted but recorded, he says "Because of uncertainty, cannot trust quantitative."

And then under the words "Quantitative:

Ranking is probably now different. (Annex D).

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

So it does appear that there was a considerable debate amongst a number of people, including people who are on secondment to the Department of Finance, who were the Department of Finance voice there?

A. Yes. So, I mean, it also -- it's also relevant in relation to what you talked about concerning suppression, because it seems to me, based on these notes, that that's also a documentation of the fact that there was an open dialogue.

Q. Yes, these notes record an open discussion about a variety of different issues of concern to the civil servants, both the representatives of the Department of Transport, Energy and Communications and the Department of Finance, and that this, certainly there was an eight-page list of notes, so it seems to have been a reasonably in-depth discussion of these matters?

A. Yes. And that's also how I recall it, that it was a good, rather normal, working process, with people ventilating their views.

Q. Freely?

A. Freely and in an open atmosphere and reasonable decisions taken.

Q. And I take it, therefore, that you reject the suggestion, therefore, that there was in some way any attempt to suppress discussion or to impose a ranking or to reduce the Project Team to mere signatories?

A. Yes.

Q. All right. Now, I think we know that the programme required that additional work be done by you in order to prepare the second report, which was due to be presented, as you say, on the 17th of October. I think there were additional works for you to have to do, and can you tell us what you recall occurring between the meeting on the 9th of October and the -- sorry, there is one other issue I should come to, which is the issue of the weighting at the meeting of the 9th of October, I beg your pardon, before we leave it.

Firstly, it's suggested by -- well, the questions put by the Tribunal appear to suggest that the weighting, the issue of the weighting was something that had been changed

at the meeting of the 28th of September in that the 7.5, , 10 had been changed to 10, 10, 10. I know you have commented on this before, but can you just give us your impression of to what extent that was something that was a matter of concern at the meeting of the 9th of October?

A. I don't think that that was of any concern at the meeting on the 9th of October.

Q. All right. Okay.

A. So I think the --

Q. It was raised, it was clearly raised. I mean, I think it was -- we see page 3 of the notes --

A. Yes, exactly.

Q. "Table 17 different from agreed weighting." Undoubtedly, it seems to have been recorded as being raised?

A. Exactly. And I think that everybody agreed that, in one of the appendices, more specifically Appendix 3, weightings were recorded which summed up to 103, and already, for that reason, a number of people could see that that was not correct. And it might even have been tabled before, either by the Department or by myself, because we know from the audit here that Maev Nic Lochlainn sent a fax to me on the th of October.

Q. Yes.

A. So part of that have already been taken up, you know, prior to the meeting.

Q. Certainly, any issue about -- whatever issue about weighting that arose at the meeting of the 9th, it certainly wasn't regarded as sufficiently important to make it into the official minutes written by Ms. O'Keeffe, and the only discussion that we see of it, that I can see, is at page 3, where, in her handwritten notes, she says:

"Weighting:

Table 17 different from agreed weighting."

Then there is a paragraph about overall presentation.

And then your answer is:

"16, 17, 18 tables reflect discussions in Copenhagen. If different weighting used to prove you get the same result with different approach."

Can I just ask you to elaborate on that comment there, if you wouldn't mind?

A. Yes. First of all, I think that the weightings in Table 16 and 17 were the correct weightings, and it transpires that it was in the appendix that something was not correct. And then I think that if you take something I have seen in the documentation, I think it's, maybe, Mr. Bacon's report, but that doesn't matter. It was not such that tables 15, 16 and 17, they just -- they were all the same, so to speak.

Table 15 recorded the scorings as agreed in the sub-groups

and according to the four aspects methodology.

Q. And that work had been done before the meeting of the 28th of September?

A. Far before, yes.

Q. Yes. So that couldn't have been changed?

A. That couldn't have been changed.

Q. Right.

A. And so, Table 16 inserts the weightings agreed and recorded by Maev Nic Lochlainn in a note to the file, and, using that weighting, you arrive at the same ranking as is recorded in Table 15. And then I see -- I don't see it the same way as Bacon does, because if you then take Table 17, that's yet another method to try and calculate based on numbers instead of letters, and that's still -- you still arrive at the same end result. So it is very clear to me that Table 15, 16 and 17, they are different ways to arrive at a result?

Q. Okay.

A. And -- but I would like to take it in full.

Q. Please do, yes.

A. Because you can speculate, as was the case under my earlier examination, whether it would have changed the result if you had used other weightings, for instance, the weightings of 7.5, 15 and 10, and we did that analysis and it didn't change the result.

Q. And --

A. But I don't acknowledge that they were -- they would have been the correct weightings to use, as I think we have been over here again and again in this Tribunal --

Q. I understand that --

A. 7.5, 15 and 10 add up to 32.5, and that is not in accordance with Maev Nic Lochlainn's note to the file, the %, where she records 30%.

Q. But I think, am I right in thinking, Professor Andersen, that as a way of showing anybody who wanted to stick to .5, 15, 10 as being what they regarded as the appropriate weights, even though you say that everybody knew this was wrong, you said, look, even if we apply those bogus weights, those inaccurate and inappropriate weights, we still don't change the ranking, we don't change the result?

A. That's correct.

Q. And that's what that comment there means, "If different weighting used to prove you get the same result with different approach."

Could I just ask you the next line underlying that:

"Paragraph 19 was regrouped to reflect that."

That, I presume, is obviously a reference to RFP paragraph , and this is, therefore, a reformatting from aspects and

dimensions back to the criteria outlined in paragraph 19.

A. Yes, I think the recording here is maybe a bit unfortunate, because the regrouping of paragraph 19 is like you do something which is different from an initial point of view or starting point, or something that was done subsequently to drafting Table 16, 17 and 18. But that was not what took place, that was not the work process. The work process was that the scorings of Table 15 was produced initially, and then Table 16 and 17 were drafted thereafter. So that was the sequence.

Q. And then the word --

A. And I don't accept the word "regrouping" because it is something like -- yeah, I think --

Q. I think the award of the marks had been regrouped, rather than the paragraph?

A. Something like that.

Q. I think in Table 16 we see the award of the marks are regrouped in the final report. And then the phrase "Have to apply a numerative approach."

I am taking it that that is your comment reflecting -- well, sorry, it's under your name, but it's your comment reflecting what Martin Brennan was anxious to achieve by way of presentation, which is that "We will show in numbers, to make it easier to digest, how this result was arrived at and how the different applicants did and who was the winner and who was second and who was third, and so on"?

A. I think that's a fair interpretation.

Q. And the last comment I just want to make in relation to these notes, is that, underneath that, there is a comment: "If 3 tables gave a different answer MB said further analysis would be required and seek to re-examine."

A. Yes.

Q. In other words, if there was a problem with these tables, that if there was a different result, people were free to say "Well, have another look"?

A. Yes. I think that shows that the Steering Group was comfortable with the ranking arrived at in the draft report.

Q. And just to return to page 1 of the report under "Agenda," after the words "Agenda - Draft Report and Future Work Programme," but underneath those words there is "Good working draft produced on time.

Annex should be part of the main report.

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

I am not sure who said this, but certainly it seems to be a comment on what the presentation of the report was and its

method of the context of its style and the accuracy of its content, rather than whether or not there was a problem with the result?

A. That's correct.

Q. And aren't I right in thinking that not one single civil servant from either the Department of Transport, Energy and Communications or from the Department of Finance, challenged the result, the outcome, as portrayed in the draft report, at this meeting on the 9th of October?

A. That's correct.

MR. O'DONNELL: Sir, it's just half past eleven.

CHAIRMAN: I think you said you were moving on to operations from the second report.

MR. O'DONNELL: I am, yes.

CHAIRMAN: All right, we'll take ten minutes.

THE TRIBUNAL ADJOURNED AND RESUMED AS FOLLOWS:

Q. MR. O'DONNELL: Professor Andersen, sorry, I heard murmurings from the bench in front of me, and I should, just as a matter of completeness, say -- ask you to just look at page 5 and 6 of Tab 27, Ms. O'Keeffe's notes, because the word "weightings" are mentioned on those pages, and I think I said that, but I have been corrected, they were mentioned, page 5, under the headline on page 20, it says "Weightings should be given.

Are indicators weighted?"

And then --

A. Sorry, where are we?

Q. I beg your pardon, Tab 27, page 5, internal page 5.

A. I see it now. "Weightings should be given.

Are indicators weighted"

Then John McQuaid, page 6, says:

"Without visibility of weightings looks unreasonable.

It should be explained, stressed that the main focus was on capacity of the network infrastructure.

More attention given to the point that the weightings were used."

So, again, there is -- I think there is, I suppose, the use of the phrase "visibility" is again part of the presentational issues that seem to be of concern to the civil servants who were attending this meeting

A. Yes. However, I think we need to be very clear here, because this is subject to misunderstanding.

Q. All right.

A. What is addressed here were the two quotes you are making or the two references you are making, that's what we call sub-weightings.

Q. I see. Maybe you'd explain that?

A. You know, we have been over, for instance, Maev Nic

Lochlainn's note to the file, etc. Weightings attached to each evaluation criteria and weightings attached to each dimension. This is not what is recorded here on page 5 and page 6. This is weightings attached to each indicator and sub-indicator.

Q. All right.

A. So that's a completely different matter --

Q. So it's nothing to do with 7.5, 15, 10, or your 10, 10, 10?

A. Nothing to do with that. If you recall, for instance, Maeve Nic Lochlainn's fax to me from the 6th of October, you might recall that in one of the four or five annexes she has, she has a copy of John McQuaid's recorded scoring of the technical aspects, and, on that -- in that particular annex, you would have seen that he attaches quantitative weightings to the indicators, and when we use -- when we use the term "weightings" in connection with indicators, we normally call them sub-weightings. There was no requirement whatsoever in this process to also quote the sub-weightings, present the sub-weightings. I know it was the attitude of John McQuaid, I fully understand his point, but it would have changed no scoring if we had done it and it would only have been a presentational matter.

Q. I see.

A. And just so that you fully understand it, this was also discussed in the Orange case where the five Supreme Court judges came to the conclusion that you can only use sub-weightings to indicators in the light of having seen the applications.

Q. Yes.

A. So, you know, several things need to be said as explicitly as it can here in order to avoid confusion on this. So, point number one is that these weightings were the sub-weightings discussed.

Point number two was that these sub-weightings were not decided ex ante; they were decided in the light of having seen applications and in full accordance with what we always did as consultants and was international best practice.

Q. Professor Andersen, just, and now --

A. I hope, because it's important because it might confuse if I am not giving these --

Q. I understand and I fully appreciate your assistance. There is one thought that I suppose I should put to you, because it does seem to permeate some of the thinking that lies behind, or appears to lie behind the questions put by the Tribunal. The Tribunal's questioning suggests a critical attitude towards the suggestion that the Project Team weren't consulted in full in advance of the meeting on the

th of September, that their permission wasn't sought, that they didn't -- they weren't all invited along to the Copenhagen party and that they -- they weren't told about the -- the suggestion is, they weren't told about the meeting of the 28th of September until the 9th of October. Was there any, if I can use it, the phrase, "whinging" at the meeting of the 9th of October, that this meeting had taken place in Copenhagen and that the members of the PTGSM, the other members of the PTGSM hadn't been invited or hadn't been permitted to participate?

A. What do you mean by the term --

Q. "Whinging" is giving out -- complaining.

A. Okay. No, there was no complaint. Thank you for explaining it. There was no complaints.

Q. So there weren't complaints from the PTGSM that they hadn't been asked or hadn't been invited to participate?

A. No.

Q. All right. If we move then to what happened the -- between the 9th and the 23rd of October. You clearly had a programme of work to undertake, isn't that right?

A. That's correct.

Q. And you were still the element of the team, if I can use that phrase, you were still the driving force behind the putting together of the next report, the next draft of the report, isn't that right?

A. Yes.

Q. And can you recall what work you and your team did between the 9th and the 23rd of October?

A. Yes. There were several action points, really.

Q. Your bill certainly suggests --

A. Yeah -- where are we?

Q. Tab 29A suggests that there was a considerable amount of additional work done on every day between the 9th --

A. Yeah, let's just take them along. It says "Modification and alignment of graphs, finalising supplementary analysis. Modification and alignment of graphs. Recheck of financial key figures. Preparing graphs for reports, final overview of technical part of Evaluation Report, report writing." Then there are some reviews, that's probably some of the language.

"Consistency checks. Review report. Drafting, legal aspects. Consistency checks, review report. Logistics, draft report. Extracting licence conditions from the A5 application, consistency checks again. Review of report. Communications with Dublin."

Q. I think you said that while you had anticipated that you would have your draft ready by the 17th of October, that it was, in fact, and I think that was what had been envisaged

in the letter, the amendment to the contract in the beginning of September, that while you had envisaged that the draft report would be supplied on the 17th, was it, in fact, supplied on the 17th?

A. No, it was supplied on the 18th.

Q. All right. So there was a day lag?

A. Yeah. So if I could just take the overview of these narratives, which may not be sufficiently precise, because we were -- they were for informational purposes only, as we were -- at this time, worked on a fixed-fee structure. But let me just try to provide the gist of what we were doing. We were doing some track recording and we were also working on the financial supplementary analysis on finance and the underlying sensitivity analysis, and then it reads that we were doing a number of graphics and we were checking consistency, and there were review processes also involved in this. So people reading the report, like, for instance, say, Iversen, coming up with review comments and looking into the legal aspects also, and there were also people checking the figures in the reports.

Q. I see "HHP review of report," and I think you suggested that that was something to do with language. Could you just explain that to me?

A. Probably, yeah.

Q. Who is HHP or what was HHP?

A. That's an acronym for Hillary Hapswit Poulsen; she was a linguist.

Q. All right. So it's getting the English in it right?

A. Yeah, or getting it to a better level than it was at.

Q. All right. And do you remember when that report was furnished -- was given to, I beg your pardon, was given to the Department, was brought, was provided to the Department?

A. No, I have no clear -- you are asking me about logistical matters 15 years ago.

Q. I am wondering if you did remember. It's not a matter of particular importance, but...

A. I think, you know, the report on the 3rd of October, I saw in the documentation that that report was sent with two named shadow text on it, two copies by courier to Dublin. And that document then helped me recollecting it, if you understand -- or you can reconstruct it, whatever, but I have no clear recollection on how this particular draft was delivered.

Q. Okay. And your bill suggests that you did -- you were working, notwithstanding that you had supplied the report, you were continuing to work on certain elements; for example, on the 19th, there was further review of the

report, logistics in respect of the final draft. You had reviewed the draft on the licence issues yourself.

Mr. Iversen was drafting the Memorandum. Then, on the 23rd, you have your flight, and then --

A. That's the date when the flight ticket was paid.

Q. It's for the 23rd, I beg your pardon.

A. It also records in the narratives that it's the 23rd, actually.

Q. And then there is further review. Mr. Bruel appears to have had a conversation with Martin Brennan about the generation of the report, and there is also a discussion with you?

A. Yes.

Q. Mr. Jacobsen reviewed comments on the GSM draft licence, and you reviewed the draft licence, and you were also, apparently, in communication with Dublin during that period? You held a separate meeting with Tage Iversen on that day and he then did more drafting and discussed the matter with you further after that?

A. Yes.

Q. And there is then a further review on the report on the 23rd, the linguist review, and also, you are listed as having assisted in drafting the rejection letters. Can you just explain how it came to be that you were going to draft the rejection letters?

A. Well, if you go back to AMI's tender, original tender, we had offered to produce rejection letters, and that was an instrument in order to, I mean, give grounds for losing applicants not being the winner.

Q. All right. And then on the 23rd, then, we see your taxi in Ireland; there seems to have been another linguistic review by the linguist; there was a review of the calculation of A6's solvency by Jens Dohm; and then preparation and participation in meeting in Dublin?

A. Yes.

Q. And you -- I think you record that the preparation and participation as being the same figure as it was for the previous meeting on the 9th of October, which is 7.5, but that includes preparation, not simply participation?

A. Yeah, that's right.

Q. Now, perhaps we might then turn to the meeting, the minutes of the meeting of the 23rd of October, which is at Tab 28?

A. Yes.

Q. And there is only one representative from AMI, which is yourself, but there are representatives from all -- from -- obviously, from DTEC, from the Department of Transport, Energy and Communications, both on the development and on the regulatory side; Mr. Buggy is there, Mr. McMeel, the

civil servant, career civil servant from the Department of Finance, Mr. Riordan is there --

A. Yes.

Q. -- and Mr. Ryan and Mr. McQuaid are also there from the technical side of DTEC. So there is a fairly good turnout from the civil servants?

A. Yes.

Q. And there is a correction or a corrigendum at the top of the note, which says:

"Mr. Billy Riordan noted for the record that Mr. Jon Bruel of AMI had stated at the previous meeting that he was sufficiently satisfied that the financial tables, as evaluated, were adequate and true. Reference to this statement had been omitted from the minutes of the previous meeting in error."

In fact, if we look at that tab, which is Tab 26, we do see a handwritten note at the top of Tab 26:

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

Then there is an arrow to that, "Agreed to be included".

Can you just refresh my memory on what that discussion was about, albeit that it was a discussion between Mr. Riordan and Mr. Bruel?

A. I think there was no -- or I assume there was no long discussion here; it was simply a matter of Billy Riordan being sufficiently happy himself that everything was in good order.

Q. And he wanted it recorded that Mr. Bruel had indicated that the financial tables were accurate?

A. Yeah.

Q. And adequate and true?

A. Yeah.

Q. Okay. So there was then a discussion of the draft report, which is, of course, the second draft report. Now, again, Professor Andersen, I suppose I'd better, for the sake of completeness, ask you: Was there any attempt, that you could discern, to suppress discussion or to impose a result on the PTGSM by Mr. Brennan or Mr. Towey or by you or by anyone?

A. No, not while I was present. I mean, it was the same as we discussed with the meeting on the 9th of October, that the meeting was conducted by way of this open style, usually pursued by the Chairman, Martin Brennan, and there was a, you know, free exchange of views at that meeting.

Q. And I think the record says "Views from Regulatory,

Technology and Department of Finance..."

Well, firstly, is it your recollection that all three of the -- sorry -- well, they are not three, but all three of those sectors, the two sectors from within DTEC, from the Department of Transport, Energy and Communications, and, of course, separately, the Department of Finance, were views expressed by all of the personnel at this meeting?

A. Yes.

Q. And it says: "The views all indicated that while there was general satisfaction with the detailed analysis and the final result, the presentation in the draft report of that analysis was not acceptable."

A. There was no suggestion that it was not acceptable. There was consent and a satisfaction. Can I just say --

Q. Can I just understand that? What is suggested in the note is that there was general satisfaction with the detailed analysis and with the result, but there was agreement, it appears, that the presentation of the draft report was not acceptable; in other words, work had to be done on a presentational basis to improve this report further?

A. That's correct. That's correct. Although I don't recall it stated in -- worded in that particular way, but the essence of it is probably correct, that there were presentational issues again, yeah.

Q. All right. And that seems to have followed a similar pattern to the pattern that was apparent at the meeting of the 9th of October?

A. Yes.

Q. Everybody said "Look, we're happy with the result, but we need to clean up the presentation of this"?

A. That's correct.

Q. And the note suggests that "Hence, the discussion focused on the detail of the report. A re-ordering of certain sections of the report, together with some textual and typographical amendments, was agreed."

A. Yes.

Q. Now, one of the points that's been put to you is that the attitude of Mr. O'Callaghan and Mr. McMahon, as reflected in notes put to you, does not suggest a degree of consensus, or agreement with the result. So perhaps it's appropriate now that I would put the relevant extracts of the testimony of those witnesses. Perhaps if I can start first with Mr. Ed O'Callaghan. And I think we have printouts of the -- I don't know if you have been given a copy of these transcripts?

A. No, not yet.

CHAIRMAN: Are these separate extracts, Mr. O'Donnell, to what Mr. O'Callaghan put before us in the course of his

examination yesterday?

MR. O'DONNELL: I cannot recall. I think they are, sir. I am not absolutely certain about that, but we have them on separate pages, in any event. Day 197, page 44. We'll get it up on the screen and we'll have a look at it. It's day , page 44.

A. Yes.

Q. And if I could just start with question 169 at line 8:

"Question: So indeed, can I ask you to look at the third-last page of the document. The third-last page is dealing with the concept of 'Final scoring according to the evaluation' is one heading. I think you will see, underneath, the authors indicate Table 17 would appear there. You obviously would have read this document through, I assume, and would have been happy that that was the way things should be?

Answer: Yes. I mean, the fact that I made suggested changes in the various parts of this document, right through to the end, would suggest that I had gone through it all, and I didn't make any -- I didn't make any suggested changes to that page, so I can only assume that I had no difficulty with it."

And I suppose, Professor Andersen, any suggestion that might have been put to Mr. O'Callaghan that he was in some way compromised or handicapped, he is here saying, "well, I made suggested changes to the document," so there can't be any suggestion that he didn't have enough information available to him in that regard. He certainly, can I put it like this, he never suggested, in your presence, that he was in some way handicapped or was unable to agree with what was in the documents?

A. On the contrary. I have the same impression as he tries to bring across here; namely, that he had read the draft report and that he agreed with it.

Q. The next question is:

"Question: And without wishing to state the obvious, if we come down to the next subheading 'The result based on conversion of marks to points', and again, how it was done seems to be pretty simple to understand, and again, what was to be put in after that was Table 18, and you, again, had no reason to be concerned or wishing to query that?

Answer: No, although I see there is a typo in it, in the second line, 'arable' should be Arabic. I obviously didn't spot that. No, but to answer your question, as I didn't make a change there and I assume I read it, then I would have had no difficulty with it.

Question. It would have been a matter for the Department of Agriculture, I presume" -- I think that's a joke based

on 'arable', but that aside -- "so at this point in time, in respect of scoring, you had nothing material to add, did you?

Answer: No, I didn't, and I can't see how I could have been in a position to offer anything very substantive on the scoring.

Just to recap, the Department had engaged an international firm of consultants, at quite a cost, and internally within the Project Team we had experts in specific areas on the technical side, and we had two accountants; and so the process of assessment and evaluation and scoring was carried out by people who were expert in their field. And this process was carried out and completed, as I understood it, in Copenhagen. So I was not going to get into a position where I would be making any suggestions about altering that.

Question: And just to use a phrase you have used, a neutral expression, the front runner was clear from the scoring, was that right?

Answer: I think the front runner was clear from the first draft report, which was received on the 9th.

Question: And can I suggest to you that nothing you were anxious to achieve by way of -- without wishing to denigrate what you have said, word-smithing the report, so it was a report of quality which was deserving of people of your intellectual ability and the intellectual ability of the other people in the process. Nothing that was going to be done there was going to change the front runner?

Answer: No. As I said last week, I drew a distinction, and I'll say it again, I was distinguishing between the result and the report, and my involvement in the matters we are talking about, concerned the report and how the report was going to be written and how it was going to be a narrative that would stand up very, very clearly against the order of merit.

Question: So if we take it from that, that at this point in time, and at the time which you learnt a final form of report had come into existence, you had nothing you wished to say which was intended to or was designed to unseat the person who was announced as the winner?

Answer: Certainly not, I had nothing like that to say."

Does that accord with your memory of the attitude of Mr. O'Callaghan at the meeting of the 23rd of October?

A. Yes, it does.

Q. And therefore, can I suggest to you that any suggestion that that's a rationalisation now of a position that he might have taken in October, that that's incorrect; that this is consistent with and entirely in keeping with the

attitude he displayed at your meeting with him on the 23rd of October?

A. That's fully correct.

Q. And we know that Mr. O'Callaghan did engage in a further meeting with members of the civil servants to further, if I can use the phrase, polish-up the wording of the draft report on the 24th of October?

A. Yes, but that was not while I was present in the meeting.

Q. No.

A. But all this is in full accordance with my recollection of it, and I think I have stated earlier that it was important, both for me but of course also for Martin Brennan, as the Chairman of the Steering Group, and indeed for everybody, to find out was there agreement or was there disagreement. And what is the clear recollection of this, is that there was agreement on the result and on the report, concerning the report, though that was subject to some additional presentational matters. And the only dissents, if I may use that expression, or potential dissents, that was flagged by Sean McMahon.

Q. We'll come to him now.

A. Okay.

Q. Firstly, I think you are aware that Mr. McMahon was head of the Regulatory Division of the Department?

A. Yes.

Q. And so, in his capacity as head of the Regulatory Division, had considerable experience of Esat outside of the mobile phone licence application?

A. Yes.

Q. And I think you have indicated that while Esat's trailblazing, if I can put it that way, approach, was an approach of which they were proud and were anxious to be taken into account, to some extent the Regulatory Division might have felt that Esat were, I don't know if you know the phrase, a thorn in their side --

A. Yes.

Q. They were a bit of -- they were difficult, they could be hard to handle. I make no comment on whether that's right or wrong, but certainly there was a perception amongst certain people in the regulatory system?

A. Yes.

Q. But Mr. McMahon is a highly experienced civil servant?

A. Yes.

Q. And you, very fairly, said, at the outset, that you had considerable respect for all of the civil service and, in particular, you praised it as being of people of the highest integrity?

A. Yes, that also includes Sean McMahon.

Q. Yes, and just so that there is no misunderstanding about what Sean McMahon's approach to this was. Mr. McMahon's evidence was that while he felt that Esat winning was -- could lead to regulatory difficulty, he, at no stage, ever said that because of a potential anticipated regulatory difficulty, they shouldn't be given the licence?

A. Well, that is not precisely as how I recollect it, so maybe we should just walk over that, or go through that.

Q. Yes.

A. He raised the regulatory concern, which we have addressed earlier in front of this Tribunal. And I perceived that concern he had as being something that he would have liked to see another front runner than A5.

Q. All right.

A. He was not disputing the scorings, that's not what I am saying.

Q. And he wasn't disputing the result?

A. He wasn't disputing the result. But if he could decide on his own, if I may put it in that way, he would have preferred another winner than A5, due to the regulatory challenges he was going to face.

Q. Or he felt he might face?

A. Yeah. And let me just try, then, to continue, because there is a flow in this which is important, because subsequent to us having got that attitude out in the meeting room from him, because he flagged it very directly, we discussed with him that the concern he had did not relate to paragraph 19 of the evaluation document, and the concern was, therefore, not a concern that we could take into account in the evaluation, as such. So, with that discussion, we had around that in mind, I recollect him to be fully satisfied and supportive of both the report and the result.

Q. I just want to draw your attention to an aspect of his testimony -- it's day 207 -- I am sorry, Chairman, I thought I had copies of this to distribute, but if Ms. Moriarty could put it up on the -- I can give her my copy.

If you just look at question 407:

"Question: But you could see in Table 18 as it then would have been --

Answer: Yes, I could see in Table 18, it's just that I had hoped that the ordinary person reading it from text, or whatever, why.

Question: That's why, I understand it, you are saying to the Tribunal that you don't question who was the winner. What you question is the way in which the report was presented and the fact that, although you see -- you can

see the final report now, and I'll bring you through that shortly, you just felt that it could have been brought back to you, and it probably could have been a better document in terms of presentation?

Answer: Oh, yes, yeah.

Question: But if it had been brought back to you, you weren't sitting on any piece of information that you needed to say 'By the way, you have to got to put this in because that makes a difference'?

Answer: No, I had no such information. In fact, the opposite. I had satisfied myself, on the evening of the rd, that further analysis was not going to affect it."

Does that attitude expressed in his evidence, his sworn evidence here, does that correspond with your memory of his attitude at the meeting on the 23rd of October, 1995?

A. Yes.

Q. And I take it, therefore, that you would reject any suggestion that his evidence now was simply a rationalisation, and that he, in fact, had taken a different position in October of 1995? I want to just put one other passage of the testimony to you in that regard.

Question 286, line 15:

"Question: But isn't it equally clear from that, Mr. McMahon, that whatever detail you felt was still to be done, you're completely satisfied that it was not detail that was going to interfere with the result?

Answer: Yes, that's fair enough. I think the best way to put that is as I have put it, I believe, in my submission, that further analysis -- I did satisfy myself completely that further analysis was not going to change the result."

And, again, that's your understanding of his attitude, that he wanted more work done in the report, but the result was not in doubt, was not in issue?

A. Well, he didn't flag, while I was present, that there was a need for additional work. What went on while I was present, in addition to what I have already said, was that there was some kind of -- what can I call it? -- explanatory challenge for us to do vis-a-vis people who had not participated in the core evaluation.

Q. I understand.

A. And by "the core evaluation," I mean the work in the ten sub-groups, including the scorings. And it was a matter of fact that Sean McMahon had participated in nothing of this.

Q. Yes.

A. And therefore, it was also only understandable for me, coming to Dublin, that where he could have some comments and where he gave comments, that was on the presentation, that was related to presentational matters. It was not

related to scoring matters or matters centred around the core evaluation.

Q. Professor Andersen, just one remark there that you also spoke about in relation to the meeting of the 9th of October. You said none of these issues were raised while you were present, though we know you weren't present for the entirety of the meetings. You had worked with the civil servants from the Department of Transport, Energy and Communications and the Department of Finance since in or about April of 1995?

A. Correct.

Q. You had, at that stage, been involved in 12 previous meetings, this being the 13th, according to the records anyway.

A. Okay, that's fine.

Q. You had, presumably, spoken on the telephone on numerous occasions to various -- to Mr. Brennan and Mr. Towey, and you had also engaged in the various sub-group meetings, not all of them, but you were certainly in some of them where you met the various civil servants?

A. Correct.

Q. And can I suggest that there was no reason for any of the civil servants to fear you or to be afraid to speak their mind in your presence?

A. No, I couldn't see any reason for that.

Q. These were senior civil servants who had been in the Department a considerable period of time. You were -- I think you were 35 or 36 years of age. You weren't as senior, if I could put it that way as delicately as I can --

A. I was considerably younger at that time, yes.

Q. Well, we all were. But more to the point, I suppose, you would have been certainly younger than some of the civil servants, and certainly --

A. That's correct.

Q. Put it this way: You weren't in a position to dictate how these civil servants would do things?

A. No, not at all, and that would not be the role of a consultant, either.

Q. I understand. And I just want to avoid any lingering doubt that the Tribunal might have that in some way you -- that nobody said anything to offend you or to criticise the draft of the report while you were there, but as soon as you were gone, people might feel, "oh, well we can talk now, Mr. Andersen is gone, and really, this report, we don't like it at all." I mean, that's -- what I am asking you is, is there any reality to it? I can't see it, but I am asking you.

A. No, I don't see any reality in that. But can I just, for the order of clearness, understand then -- I mean, there is one argument which was tabled yesterday, that I was manipulated, I was thrown around and I was only rubber-stamping.

Q. That's right.

A. But now, there is also the opposite view, that I could be dictating and that I could suppress and that I could, you know, bully, and stuff like that. So, you see, I am struggling a little bit to understand all these theories flowing around.

Q. Well, insofar as -- I suppose, Professor Andersen, you're as much at sea as I am in that regard, but the hypothesis is that comment was suppressed and scrutiny -- examination of the draft reports were suppressed, and that, in effect, the ranking was imposed. And what I am asking you is that is it conceivable that the civil servants might have been so afraid of you that they wouldn't have spoken their minds in front of you, but that as soon as you were gone, that they would be prepared to speak. Does that --

A. That's far out.

Q. Okay. By which I take it to mean, absolutely not?

A. Absolutely not, no.

Q. The civil servants, you have said that for the parts of the meetings on both occasions that you were present, the civil servants had had a full and frank exchange, a free, open exchange of their views in your presence?

A. Yeah, that was the working style, to have a free and open debate, and, as you rightly say, some of them were leaders of divisions. I mean, there were three divisions, at least, in this Department: there was the policy division, that was headed by Mr. Martin Brennan; there was the Regulatory Division, headed by Sean McMahon; and then there was the technical division, headed by John McQuaid. And they were all very skilled and very experienced and they would also have a higher rank than I had had when I was a civil servant.

Q. And that's significant, isn't it, in that you were dealing with civil servants to whose rank you had never reached, and therefore, far from them being cowed or in some way feeling inadequate or under your control, in some way --

A. There was no such thing as underdog or overdog, or whatever, no.

Q. Okay.

A. It was an assertive communication line we had, we had an assertive dialogue and an assertive exchange of attitude.

Let me say, not aggressive and not submissive, either. It was assertive.

Q. Yes, that nobody was afraid of speaking their minds and saying what they thought?

A. Yeah.

Q. And in that context, one of the suggestions is that the result was imposed because the civil servants, and in particular Mr. Brennan and Mr. Towey, were anxious to -- and were, to an extent, under the influence of their Minister, who was Minister -- who was then Minister Michael Lowry. And did you see any trace or suggestion of that?

A. No, not at all. And I have tried to address this in two ways on an earlier occasion, that you can either speak of some kind of direct influence if you detect, for instance, that one civil servant is acting on a specific order from, let's say, a minister or a higher-ranking official. That's what I call direct exertion of power or influence. And I certainly didn't see that. But there is also the other side of this coin, and that was what we discussed under the heading of 'Yes, Minister' on an earlier occasion, where the civil servants, in order just to please the minister, pre-empt what a minister would like to do, and, therefore, have an anticipated reaction in order to be as good civil servants as they think they could possibly be in the eyes of a minister.

Q. Right.

A. And the second is some very indirect way of influence, but I didn't see that happen, either.

Q. In your capacity as a civil servant, you are aware of the distinction between different departments within a government. There are, obviously, different departments in different ministries in Denmark as there is here?

A. Yes.

Q. And while Minister Lowry was the Minister for the Department of Transport, Energy and Communications, he wasn't the Minister for Finance, isn't that right?

A. That's correct.

Q. And yet, there were three representatives of the Department of Finance on this committee, being the two seconded -- sorry, I beg your pardon --

CHAIRMAN: I think it's the case that Mr. Riordan was Finance and Mr. Buggy was Mr. Loughrey's Department.

MR. O'DONNELL: I beg your pardon, two. I am wrong about that. There was two seconded, but only one was seconded from the Department of Finance, Mr. Riordan, who was seconded as an accountant but who was working with the Department of Finance, but there was also Mr. Jimmy McMeel?

A. Yes.

Q. And he is recorded as present and in attendance at this meeting of the 23rd of October, isn't that right?

A. That's correct.

Q. And do you recall him as a man who was willing to speak his mind and not afraid to be quoted or to say what he was thinking?

A. Oh, he was definitely -- what do you call it? -- a usual financial department-type civil servant who had absolutely no reservation of getting to the point and getting -- get his views across. You know, I think it's a general thing in European public sectors that civil servants from the departments of finance, they have inter-departmental, or inter-ministerial roles in order to get the budget as low as possible and the spending as low as possible, and therefore, you will often see that it is a special type of people that are recruited to these departments. They need to have, kind of, a bit more aggressive nature than other -- the average civil servant. And Mr. Jimmy McMeel, in my perception, was definitely such a classical-type Department of Finance civil servant, and I actually had the opportunity to be together with him several times at Steering Group meetings, but you may recall that Mr. Jimmy McMeel, he was also participating in the meeting with the European Commission on the 2nd of June.

Q. Yes.

A. So we would have had travel time together and we would have meeting time together and stuff like that. And I was personally also in the Department of Finance in Denmark, if you look at my CV, so I would clearly be able to characterise him as the man he was, namely a man who had no reservation of expressing his mind.

Q. And wouldn't it be lacking in logic to suggest that a minister from one department could persuade an entire Project Team of civil servants to come under his influence through certain members of his department, which would include members from another department who would, of course, be subject to the directions only of the Minister for Finance, with all the, I suppose, significance that the Minister for Finance has and the strictness that the Minister for Finance would expect of his own delegates?

A. That's correct. And maybe if I expand a little bit, I will have to say something which may not be so pleasant for DTEC to hear, but if you have the ranking of the different departments in a State civil service, I think most people would agree that the Department of Finance ranks a little bit over some of the specific other ministries because of their inter-departmental role and because they are part of the exchequer system.

Q. So, again, the suggestion that Mr. McMeel, as this career civil servant, would just go along with whatever everybody

else was saying, did he strike you as being that kind of person or did he strike you as a person who was willing to, if necessary, swim against the tide?

A. He would be the type who could swim against the tide, definitely.

Q. All right. Reference was made yesterday in the evidence to a note, a hand-note prepared by Mr. McMahon, and I think he indicated that it was a note that was to go on the file, if I can summarise it, if his unhappiness persisted, but, in fact, firstly, he never signed it for addition to the file, and secondly, it was never actually put on the file.

A. Okay. I didn't -- yeah, that's fine.

Q. And from your civil service background, can I suggest to you that while people may often prepare notes, the signing of a note and the addition of that note to a file is a solemn step in the civil service, and here it's a step that Mr. McMahon did not take?

A. There is a difference, yeah.

Q. And that, therefore, one can take it that whatever reservations, which he says were reservations about presentation which he had when he was writing that note, he, as the head of the Regulatory Sector of the Department, did not feel that these were matters that should be placed on file or recorded in any official way or brought to the attention of any other persons in that way?

A. Oh, I think that would be to go too far for me to comment, because you are asking me about his reflections, and his reflection is his reflections and I am not going to second-guess his reflections.

Q. All right. I accept that. But certainly, while one might scribble down a note of one's feelings or views at a particular time, that is, without more -- of far less significance than a note that is signed and attached to the relevant departmental file?

A. Yeah, that's correct.

Q. And I take it that you would take the same view in relation to Mr. O'Callaghan, that insofar as Mr. O'Callaghan had any concerns, there was no suggestion by Mr. O'Callaghan that a formal recording of his concerns about the result, as opposed to the presentation of the report, is indicative and corroborative of what you understood his mindset to be, which was that he was unhappy with the presentation but not unhappy with the result, and acknowledged that the result could not be changed?

A. That was generally how I perceived him. But you are stating that he was unhappy with the presentation.

Q. At the time, he was unhappy?

A. I think he was not sufficiently happy, but that's not the

same as he has expressed unhappiness.

Q. Yes, all right.

A. But maybe it's -- it comes to one and the same.

Q. Well, I suppose that will be for the Tribunal to decide.

But he felt that more work could be done, but he wasn't disputing or challenging the result?

A. But, you see, that's precisely the point here. So let's just go a little bit into that.

Q. All right. Yes.

A. Because we had a discussion on the meeting on the 23rd of October about whether more work should be done, more presentation should be done, etc., and my approach to this would be yes, you can always do more, no matter how much you already have done, you would always be able to do more if you have -- if you have that wish. The important thing is whether it would change the result. And that was not the case. So I think that everybody agreed that it was only a presentational matter.

Q. And in a sense, I suppose, Professor Andersen, you could be writing and rewriting -- I know you are the author of at least two books, isn't that right, yourself?

A. Yeah, more than that, but that's fine.

Q. At least two?

A. Yeah.

Q. And you are, even in 1995, you had written a number of articles, some of which have been quoted here?

A. Yeah.

Q. And I suppose you could be editing and re-editing and polishing and repolishing the words and make it more and more perfect and you could go on with that forever, if you had enough time, you could do that?

A. Yeah, that's correct. And, I mean, we are talking about a work in process, where every report was to be submitted, according to contractual arrangements, at specific dates, and that was the clear focus.

Q. And just, again, Professor Andersen, to put to rest any concerns which the Tribunal might have, the fact that there was a deadline to meet, was that creating a problem for people? Was that creating a problem over and above the fact that anybody, including us here today, have to meet a deadline?

A. I think that if you don't have a deadline, then things can go on for years and years or for months and months.

Q. You never said a truer word, Professor Andersen.

Professor Andersen, I just want to put to you some of the general propositions that the Tribunal put to some of the witnesses. It is suggested that the process that was undertaken at the meetings of the 9th and the 23rd, in

effect, that a decision was taken that the qualitative analysis was decided to be the sole determinant of the overall ranking and that the output of the quantitative analysis was rejected and excluded and was not determinative of the overall ranking. That's the proposition behind a number of the questions put by the Tribunal to witnesses from the Department, from both Departments, all of which they have disagreed with, but I'd like your views on that.

A. Okay, but that's not how things went along. We had an Evaluation Model, as we have discussed earlier, also with quantitative and qualitative aspects. We had the holistic evaluation framework. And what actually transpired throughout the evaluation, and also as documented in the final report, is not something which is in contrast with the decisions and the descriptions we had in front of us. So there is no such a thing as a dramatic change of the intended Evaluation Model.

Q. Right. It's also been suggested that the evaluation process, which was evolved on the 9th of June, 1995, i.e. the interplay between the quantitative and the qualitative evaluation, that that was dispensed with; that that was -- that interplay was forgotten about and effectively excluded?

A. That is completely nonsense.

Q. All right. And it's also suggested that the -- what the PTGSM were asked to do was simply to rank the two top applicants by looking at their relative performance in the qualitative analysis, and that nobody had ever decided to do that before. I appreciate there are two questions there. But it's suggested that, really, the quantitative was abandoned completely and that the ranking was done, based -- and analysed, based on their qualitative --

A. There are two errors in that statement. Error number one is that we were not ranking two applicants; we were ranking three applicants, and we also achieved that with the ranking of A1, A3 and A5 respectively. And then, secondly, there is an error in what you are stating about an abandonment --

Q. Or exclusion --

A. -- of something. Because what transpired is I think thoroughly recorded in Appendix 2 to the Evaluation Report, that the valuable work we had done on the quantifications, that was integrated in the holistic evaluation. So it was not so that the quantitative indicators, they were abandoned, and such that a lot of the intended work was abandoned or jettisoned, was also a term I learnt the other day. I am catching up so many new words --

Q. You are doing well.

A. Yeah. But that was certainly not the case. And I don't -- I, a little bit, I fail to understand why we are expending so much time on it in this Tribunal, because I think it is quite clearly laid out in Appendix 2 to the evaluation document.

Q. Well, to be fair, Professor Andersen, I have to put these matters to you because these were matters put to my clients, the civil servants from the two departments.

A. Okay.

Q. I know they weren't put to you directly.

A. Thank you for explicating.

Q. That's why I am doing it.

A. Okay.

Q. I think you have already said that the weightings, the decision of the Project Team to adopt the weightings that were used in the tables, that that, as far as you are concerned, was not a change or an alteration in a previously-agreed model?

A. Definitely not. I think what the Tribunal suggested in its opening remarks, that would have been a change of the weightings.

Q. Being what?

A. I said what this Tribunal stated in the opening remarks a number of days ago, that we should have used the 7.5, the and the 10, that would have been a change of the agreed weightings.

Q. And --

A. So it's the opposite of what you are suggesting. We did not change, but the Tribunal is suggesting that we should have changed.

Q. And there is one other aspect of the questions that have been put to the Tribunal -- to the departmental witnesses, which is about other aspects.

A. Okay.

Q. And maybe we could turn to that issue now.

A. Yes.

MR. O'DONNELL: Chairman, it's five to one. I am not going to finish before one.

CHAIRMAN: Well, you are not approaching what I say, utterly non-pejoratively, could be called your cadenza yet. You have still some matters to explore?

MR. O'DONNELL: Yes. I would anticipate being finished certainly before 3:00, but you will recall I did start later yesterday afternoon, but --

CHAIRMAN: Well, we'll perhaps -- it's just going on for ten to one now.

MR. O'DONNELL: I was reading it off the clock there. I

thought it was five to one.

CHAIRMAN: I think that's five minutes past. We'll say five to two. Thank you.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:

CHAIRMAN: I might just use the time to make inquiry of Mr. Farren?

MR. FARREN: Yes, Chairman, I am sure you'll be pleased to hear, and Professor Andersen will be pleased to hear, I'll have no questions for Professor Andersen. I have just one thing to say, which is to reiterate what was said in correspondence from Landwell Solicitors to the Tribunal Solicitor recently in a letter of the 22nd of October, which is that my two clients, Mr. Buggy and Mr. Riordan, are happy that the evidence that they gave to the Tribunal and any submissions made by the State departments that relates to their -- to them, or their evidence, are fully true and accurate and correct. That's all I am instructed to say.

CHAIRMAN: Thank you very much, Mr. Farren. Well, Mr. O'Donnell, sorry if we in any way sought to truncate your deserved lunch.

MR. O'DONNELL: I wish you would truncate it more often, sir.

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

Q. MR. O'DONNELL: Could we turn to the final report, Mr. Andersen, which is tab -- sorry, I beg your pardon, we have to do the suggested amendments, which are at Tab 29, and this version of the suggested textual amendments is the typed version with your ticks, your markings written beside the various typed versions. You should have it in the booklet --

A. Okay, but it's not in my book here.

Q. Tab 29?

A. No, unfortunately.

Q. I wonder if I can find another book.

A. Yes, I have it, thank you.

Q. I think there are only two issues, I suppose, I want to deal with you arising out of this report. The first is on the first page, and it's page (i), if you see it, it's about five bullet-points down. Final paragraph: "Replace with 'On the basis of the selection criteria adopted by the Irish Government and on objective, transparent and non-discriminatory qualitative comparison of the six applications received, the PTGSM unanimously recommends that the Minister enter into licence negotiations with applicant A5.' The manner in which this

recommendation is derived from the selection criteria, paragraph 19 of the tender document, is summarised at Table and 18 in Chapter 6. In the event of failure of these negotiations, the PTGSM recommends that negotiations on the award of a licence be opened with applicant 3 and subsequently, if necessary, with applicant 1."

And you have ticked that?

A. Yes.

Q. Can I suggest to you, firstly, obviously this is the result, the typed version, is a result of exchanges between AMI and Mr. Towey prior to this typed version having been produced, isn't that right?

A. Yes, it illustrates a work in process, really.

Q. Exactly. And so, therefore, it's not just Mr. Towey saying, "Well, this is the Department view. What do you think?" This is a process whereby he, having had conversations with you, is trying to reflect what you can agree, and has put that into that document, into this typed version?

A. Yes. I note the wording of the header. It says "Suggested Textual Amendments."

Q. Yes. And I think if you go back a page, you'll see, in the italicised print: "Michael, detailed comments as promised. Generally speaking, we would prefer if the references to 'marks' were changed to 'grades'. Also, the suggested revisions will necessitate revision of the table numbers and of the table of contents."

But I suppose that means that, as promised, here is a collaborative process whereby here you are, between you, coming up with these suggested textual amendments?

A. Yes.

Q. So this isn't the first time you would have seen or been aware of this proposal; you would have discussed it on the telephone in advance?

A. I think so. And certainly some of the comments, if not all, relates back to discussions we have had at the meeting on the 23rd of October.

Q. Can I suggest to you, therefore, that the use of the word "unanimously" was not -- how shall I put this? -- a bolt from the blue, it was not a complete surprise to you that this was contained within the text that was suggested to be put into the report?

A. Definitely not. It accords perfectly well with my understanding of it.

Q. In other words, your understanding of the meeting that you attended was that there was unanimous support for the result?

A. Exactly, yes.

Q. And so this represented your thinking as well as Mr. Towey and the other civil servants' thinking as to what the overall decision of the PTGSM was with regard to the result?

A. That's fair to state.

Q. All right. And then the only other issue that arises, I think, is at the bottom of the fourth page, I think, it's page 44, it's -- the heading of it is page 44, though I have no internal pagination for this because I think they are all paged 11. But if you see the bottom paragraph, page 44: "Insert new paragraph 2 and 3 along the following lines.

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

A. Yes.

Q. And again, can I suggest to you that this wasn't something that was just suddenly presented to you out of the blue, but, rather, was something that resulted from a discussion that had transpired, perhaps at the meeting, and certainly afterwards with Mr. Towey, and perhaps with others?

A. Very much so, and there would also be a further history to this.

Q. And perhaps you'll explain that to us?

A. Already, when we came on board as consultants to the Department in April 1995, we drafted input to some of the questions posed by interested applicants, and already, at that stage, for instance, I recall that we used the term "deep pockets" as one expression. And this philosophy of looking into how deep the pockets were in one or more of the consortium members, has already been in discussion or on the top of the minds since that time and was also discussed during the financial evaluation sub-group.

Q. And effectively, as I understand it, Professor Andersen, your position is that provided that one member of the consortia has deep-enough pockets, if the others don't have deep, or as deep, or even quite shallow, pockets, that doesn't really matter, provided one of the consortia has enough, and maybe that would be a rather crude way of putting it. Provided "at least one of the principals" has what you describe as "sufficient financial strength... to ensure completion of the project." Can I use, instead of "sufficient financial strength," does that mean deep pockets?

A. Yes.

Q. And I think you were at pains to point out that a consortia that had two people with deep pockets, wasn't going to necessarily get any extra marks. It was -- all they had to establish is that they had enough. They weren't going to get any additional marks if they had too much, or more than enough?

A. Yes, I will just check where we are in terms of the Evaluation Report, because this was to be inserted not under the scoring sections of the report but after, so the scoring issue that you address was not there.

Q. Well, I think it's dealt with in the tab, if we look at Tab 30, page 44 --

A. It's inserted on page 44 in section 5.

Q. Exactly.

A. So there is no scoring issue here.

Q. No. But I suppose the point is, this was -- it wasn't just something being presented to you by the Department, but it was your view that provided one member of the consortia had sufficient financial strength or deep pockets, that was enough, though obviously this matter should be drawn to the attention of people who were conducting the licence negotiations?

A. Yes, but, you see, you are addressing it in terms of scoring, and that was the question you put --

Q. Before lunch, I did that, and I want to come back to it, but what I was looking at, it was in the context of these amendments --

A. Here, it is a sensitivity issue.

Q. Let me come to the scoring, because you are right, I did propose to deal with the scoring. But I wanted to deal with this document before I dealt with the scoring, or non-scoring, and I'll deal with that in the context of the report, but --

A. I don't know whether I expressed myself sufficiently clear here because there is difference as to whether we are in the scoring section of this Evaluation Report or whether we are addressing general issues which might be of interest in order to describe potential risks or potential sensitivities to a mobile business operation.

Q. No, I think what I am addressing here, Professor Andersen, is a concern that's been expressed by the Department -- sorry, I beg your pardon, to the Department and its witnesses by the Tribunal in the past, that this paragraph that effectively suggested that provided one party had deep-enough pockets, any potential weakness within the other consortia members wasn't a problem, it wouldn't have a negative impact on ranking, but it would have to be drawn to the attention of the people who are responsible for the licence negotiations, that that concept, it was suggested to the witnesses, was, in effect, a device or a methodology which could be used to, on one view, conceal, or certainly assist in dealing with, the weakness of Esat. In other words, it was a way to fudge, to get over the perceived problem with Esat; that the Department and, it is suggested, that Mr. Towey and Mr. Brennan at the, if not express behest of the Minister, but under his influence, so on, put this in so that any weakness in respect of Esat could be camouflaged, that this came from them, in other words, and you went along with it?

A. Okay, I see the context now, but that is most certainly not the case, because we would have equal concern with A3, for instance.

Q. And we will look at A3. I know you have been anxious that we don't ignore A3, and we will look at A3 in the context of the final report in a moment, but this certainly isn't something that was dreamt up to try to protect the choice of Esat as being the number one ranking applicant?

A. Definitely not.

Q. And is it a view that you had in conducting other mobile phone licence competitions, that provided one consortium member had sufficient financial strength, that the weakness of another would not have a negative impact on the ranking of applications in those competitions?

A. That's correct.

Q. I see. So this was not something that was simply designed

for this competition, but it's a view you have had and applied in other competitions that you had conducted?

A. Yes.

Q. And then I suppose the final issue on this page, and the final issue in the context of these suggested textual amendments, at page 44, is the bullet-point, paragraph 3, "Delete paragraph as the point is covered both in the material above and in the final recommendation." And your note says: "No, not re A5," your handwritten note?

A. Yes.

Q. And as we know, the paragraph that it had been suggested be deleted, was, in fact, included?

A. Yes.

Q. And, again, can I suggest this: If anybody was suggesting that the Department were trying to steamroll over AMI or Michael Andersen, and that Michael Andersen wasn't going to get his way on something, this gives the lie to that suggestion, the suggestion, for example, made yesterday that you were a rubber-stamping operation?

A. Yeah, this shows that the rubber-stamper might have been somewhat invalid here.

Q. And, Professor Andersen, again, just to avoid any confusion or misconception that may arise in the minds of others, did you see anything sinister or improper about Mr. Towey's suggestion that this paragraph be deleted? The thesis, again, I should warn you, or I should -- from the Tribunal, is that the suggestion by Mr. Towey that this paragraph be deleted, was so that the weaknesses of Esat would not be highlighted in the report and would effectively be concealed?

A. I don't read it in that way myself.

Q. Did you get any sense ever, from any member of the civil servants, that they were anxious to conceal weaknesses, actual or perceived, in the Esat application?

A. No, definitely not. And this is one example, but throughout the process there would be other examples.

Q. And we are going to look --

A. And let me just add to this, that it's clear from the written communication I have here with Fintan Towey, but also the same is the case with the telephone conversation I had with him, that he did not object to my proposal that this paragraph should not be deleted.

Q. Would you turn to Tab 30, which is the final report. Just one, if I could deal with one note about the final report, it may be an aside, but I think it's a matter that's of some, or appears to have been regarded as of some importance to the Tribunal.

As you know, there is some doubt in the Tribunal's mind as

to whether a copy of the final report was received by the close of -- by the end of the day on the 25th of October,

A. Yes.

Q. And we know that you certainly sent the copies with the overlaid names --

A. Shadow text.

Q. Shadow text, thank you. Excuse me. You certainly sent those shadow-text copies on the 26th?

A. Yes.

Q. But it -- certainly, Ms. Nic Lochlainn suggests that she believes that, in fact, 52 pages of the report, though not the appendices, were received late in the evening of the 25th of October, and, in fact, she recalls staying in to work. You can't exclude that as something that may have happened?

A. I can't exclude it, no.

Q. And she certainly points to the fact that she sent an acknowledgment -- she has an acknowledgment fax, acknowledging receipt of the documents on the 25th of October, and that you know Maev Nic Lochlainn from your dealings with her in the course of the Project Team?

A. Yeah.

Q. She is a responsible, careful civil servant?

A. Yes, I was -- I would fully accept that evidence. And I know I was -- when I was examined on this, it was not put to me that a faxed copy was sent on the 25th of October.

It was only put to me that there were hard copies sent on the 26th.

Q. And that it is true that hard copies were ultimately sent on the 26th, with shadow text.

A. Yes.

Q. But if Ms. Nic Lochlainn is of the view that it was sent -- that a non-shadow-texted copy of the report of some 52 pages, but perhaps not the indices or appendices, though we are not certain about that, if she says that that was received by her in the Department late in the evening of the 25th, you wouldn't gainsay that? You wouldn't argue with that?

A. No, not at all.

Q. And also, Professor Andersen, you had a deadline, which was to deliver the final report on the 25th of October?

A. That's correct.

Q. And it would be something for you to be able to say that you met that deadline, even if you delivered the report by fax late at night, you could stand up in any subsequent discussion with the Department, or with anybody else, you could say, "Well, I was set a deadline of the 25th of

October for delivery of the final report, and I made it"?

A. Yes, and maybe I could take this a step further; that, is there a time of the day when I sent this fax to Fintan Towey? I think we were over that earlier on. It is sent around 2 o'clock, or whatever, in the afternoon.

Q. I think that's right. I think there may have been a call in the morning with --

A. Something like that.

Q. I think the record shows that, on the 26th, you sent a final report with shadow text, but I think that the suggested textual amendments was sent sometime in the afternoon, early afternoon. I am not sure of the actual time, though I might be able to get back to you on that. o'clock, Ms. O'Brien helpfully points out, 1 o'clock in the afternoon.

A. Okay, that is helpful.

Q. Received in the Department, which is 2 o'clock in Copenhagen.

A. Okay. But then my point would still be that, given the fact that we agreed on the specific things to be inserted in the report and given that they were limited in nature and not having any impact on the tables and the graphics, so it was only textual amendments, that there would have been time for us, in AMI, to do these changes and fax a final report, or provide a faxed version of the final report to the Department.

Q. I think that's right. I think -- and, as I say, it would also be consistent with you finishing your report in time to meet the deadline of the 25th of October. Certainly, in the invoices that you sent, there appears to be conversations on the 25th of October, communication concerning logistics, and there seems to be a later adjustment by Mr. Feddersen of the Evaluation Report. But there is no reason to think that the final report wasn't delivered in its final format on the 25th of October, even if the appendices may not have come through? There is no reason to think that it wouldn't have been -- you had no reason to hold it back?

A. That's correct.

Q. The Department had no reason to request you to hold it back?

A. Yeah.

Q. And it was in keeping with their target and your contractual obligation that you would deliver it on time before midnight, if I can put it that way, on the 25th?

A. Yeah. That's the reconstruction that is possible, but you will appreciate it's 15 years ago and I have no -- it is not on the top of my mind today.

Q. I can understand that.

A. Okay, thank you.

Q. I can perfectly understand that and I am hoping the Tribunal will see it the same way.

Okay, can we turn to Tab 30, which is the final report.

And given that you are the author of this, perhaps if I might, with your help, just look at certain elements of it.

Firstly, the Executive Summary of the report.

A. Yes.

Q. There was a debate about whether to include an Executive Summary. It didn't initially have an Executive Summary when they were considering the drafts in October, on October the 9th, but a Draft Executive Summary was included, and have you any reason to distance yourself or to qualify anything that is contained in this Executive Summary, or do you stand over it?

A. I stand over it.

Q. And I think we have been through the tables on a number of occasions, and I think we have been through the moving from marks to -- from grades to marks. But if I could ask you to turn to page 44, and the heading "5," and it's "Sensitivities, Risks and Credibility Factors". Do you have that?

A. Yes, I have it.

Q. Now, this says: "Various analyses and investigations have been conducted in order to deal with the sensitivities, risks and credibility of the applications and the business cases behind the applications."

We then have the paragraph that we discussed earlier on, that has been inserted here into this report. And then it says: "The assessment of credibility and risks has also taken account of management proposals, preparations in relation to development of the distribution channel, preparations in relation to site acquisition, equipment procurement, consistency of penetration usage, etc., with financial figures. In general terms, this assessment has sought to identify factors which may have the effect of undermining the projected development of the business plans proposed by the applicants."

Now, there is -- in the course of the examination by the Tribunal of certain witnesses of the Departments, there has been, I suppose, an implicit criticism that these risks and sensitivities were not marked, were not scored. And perhaps you could explain to us, as the consultant, why these marks were not scored? There is the obvious, I suppose, answer, firstly, that they weren't part of the criteria, but maybe you could elaborate and explain to us what the position was.

A. Yeah, there are, maybe, a few number of important points here to state, Mr. O'Donnell, and that, maybe, can start with the fact that we had marked this under so-called "Other Aspects" initially. I don't know if you have that in mind.

Q. It's on page 45. It's on -- sorry 46, I beg your pardon, it is dealt with, yeah.

A. But -- yeah -- but under "Other Aspects" in the Evaluation Model, we had actually identified two issues prior to the submission deadline; one was risk and sensitivities, whatever, terms like that, and the other was the effect on the Irish economy, and there was nothing else mentioned in our Evaluation Model. Now, if you look at the effect on the Irish economy, we found out, during the process, that that was not a legitimate thing to take into consideration during an evaluation.

Q. I think Martin Brennan was very keen that that couldn't be taken into account?

A. Couldn't be taken into account. Now, then, we were still left with a header called "Other Aspects," which you rightly said was not mentioned in the paragraph 19. So that's the second point I would like to make you aware of. And then, thirdly, if you look through the minutes from the ten sub-groups and you also compare with the reader's guide which was handed out meticulously to each evaluator, risks were addressed already in what we call the core evaluation. So that was point number three. Are you familiar with that, because it's important? Because it would be utterly wrong if you score the same thing two times.

Q. Exactly, yes.

A. So, each evaluator would, through the reader's guide, have identified risks to be addressed in the each of the ten sub-groups.

Q. Yes.

A. And this was also factored in when scoring, so if you were to score once more, so to speak, you would be double-scoring, so that would be wrong. And then point number four, of which you should be aware, is what actually flows through this section 5: that even if we had elected to score, it would not have made any difference.

Q. And why do you say that?

A. That is how it is stated in the text here.

Q. All right. Well, maybe we just -- because there's some importance has been placed on this by the Tribunal, maybe we should just look at it. If I can go back to page 44, it says:

"In general, the credibility of A5 has been assessed as extremely high as A5 is the applicant with the highest

degree of documentation behind the business case and with much information evidenced. In addition, it can be stated that A5 does not have abnormal sensitivities in its business case. Taking all the sensitivities defined in the tender specifications into account, A5 still earns a positive IRR. A5's maybe weakest point is not related to the application, as such, but to the -- behind the application and, more specifically, to one of the consortia members, namely Communicorp, which has a negative equity."

Can I just stop you there, Professor Andersen. The Tribunal highlighted the word "maybe" in the past. And again, the implicit, if not explicit, suggestion, is that the insertion of this word "maybe" is inserted to try to dilute the appearance of weakness on the part of the Esat consortium; in other words, that this "maybe" is put in to try and say well, it's a weakness, but, well, maybe it's a weakness, to cast some doubt as to whether it's really a weakness at all, and, in other words, to try to procure or attempt to provide some sort of advantage for Esat, which is a serious charge against the drafts-people of the report, of which you are, of course, the driver.

A. Let me answer by a couple of things here. It reads: "A5's, maybe, weakest point is not related" etc. Here, my first comment would be that what we do is that we distinguish between the application and then the applicant.

Q. And do you regard that as a significant distinction?

A. That's the first comment I would like to make, that A5 constitute my understanding of the application, so to speak. So there is a difference between the application and the applicant.

Q. All right.

A. And that's one kind of explaining why "maybe" may be justified.

Q. All right.

A. And that was relevant to at least my approach at the moment. Secondly, I think it is such that whenever you make changes to a report, people can always say, "why are you making these changes?" And I see here that it's very, very few changes that are actually made. So I think that if you are down to that kind of linguistic torture, if I may reuse that expression, then you can continue forever with all kinds of reports in this world.

Q. It certainly doesn't appear as a word that is suggested for insertion in the suggested textual amendments put forward by Mr. Towey earlier on; it's not his idea, in other words, that the word "maybe" goes in?

A. No.

Q. So it's, perhaps, even where it's inserted in the sentence,

may indicate that it comes from someone in Denmark who speaks very good English rather than someone in Ireland?

A. Yeah, that could very well also be the case.

Q. All right. Let's just continue to look at this because I think you go on to deal with A5. You say, "Should the consortium meet with temporary or permanent opposition, this could, in a worst-case situation, turn out to be critical, in particular concerning matters relating to solvency.

"Although being assessed as the most credible application, it is suggested you demand an increased degree of liability and self-financing from the backers if the Minister intends to enter licence negotiations with A5."

Just stop you there. Were you aware, Professor Andersen, that Mr. Donal Buggy, who you knew from the PTGSM, had been asked to conduct an investigation and an evaluation and did conduct an investigation and evaluation of the IIU component of the consortium prior to the award of the licence in May of 1995?

A. No, I was not aware of that.

Q. But you, presumably, having known Mr. Buggy, you trusted him and had respect for his ability and his integrity?

A. Yes, he had also, in addition to what you say, financial and accounting expertise.

Q. And, so, you would expect a job done by him to be a job that would be well done and professional and in keeping with the high standards of the civil service?

A. Yes.

Q. The A3 application has also been found highly credible as well, although not reaching the same degree of documentation and evidencing as A5. In the case of A3, the supplementary investigations concerning tariffs indicated that there might be a lack of consistency between the marketing and the financial plans, as the projected usage revenue per call minute exceeds the normal call tariffs by far and not substantiated solely by the non time-true meetings principles. For this reason, the difference in the level of tariff between A3 and A5 is not substantiated by the projected revenue streams, where A5 projects a lower revenue per call minute than A3."

And can you explain that to us in perhaps slightly simpler terms?

A. In very simple terms: A3 was scored a C on the tariff dimension and A5 was scored a C in the tariff dimension.

Q. Sorry, A5 was scored a C?

A. And A3 was scored a B.

Q. Correct.

A. And what is stated here is that if you look at a sanity

check, if you understand that expression, or if you calculate the -- make a consistency -- a calculation on consistency in the applications, then you would arrive at the conclusion that the actual tariffs projected in the business, in the financial part of the business plans, would make A5 better than scored and A3 less good as scored.

Q. All right. So --

A. But what we elected to do was not -- you know, part of this analysis came in rather late, so we did not revert and go into a rescoring.

Q. Okay.

A. I think that was also a little bit tabled in the minutes to the 9th of October meeting, which we went over this morning.

Q. There is a reference --

A. Do you want to go back to these minutes?

Q. If you bear with me for a minute. Yes, I think there is a reference at Tab 26: "AMI also indicated that the supplementary analysis in relation to interconnection and tariffs which had yet to be provided did not suggest that it would be necessary to revise the award of the marks."

A. Yeah.

Q. Okay. Now, the next paragraph, I think, is important, because it's not one that has been focused on by the Tribunal.

"In addition, A3 has a similar type of problem as A5; namely, the extremely small equity of Sigma Wireless. It is questionable whether Sigma Wireless can bridge the gap between the weak degree of solvency and the general liability as a comparatively big shareholder in a business that requires 'patient money' and a high exposure."

Now, perhaps you can amplify that statement. This is indicating a significant reservation about A3, isn't it?

A. Yes.

Q. And would you explain this reservation, which seems to be a serious one? You say that it's, firstly, a similar type of problem to A5?

A. Yes, similar in the sense that, here, you also have one of the companies in this consortium, consortium members, having a weak balance sheet, essentially, and that has also to be compared with the exposure of the project to be implemented.

Q. And you say that "It is questionable whether" they "can bridge the gap between the weak degree of solvency" which Sigma Wireless has "and the general liability as a comparatively big shareholder in a business that requires 'patient money' and a high exposure."

Can you just explain those phrases; the phrase "patient money", how is that relevant? I assume that it's money that you have to wait for its investment to give a return, is it?

A. That's correct. Because, basically, what you see with these GSM2 operations throughout Europe in and around this time, was that, normally, six to seven years would expire before these companies reached cash flow break-even. So what is demanding for a company with a small -- with a weak balance sheet, is to keep inserting money in this operation or even just covering its equity -- it's proportionate equity part, and then wait for, let's say, six to seven years, or whatever the time-frame might be, before one would reach break-even. And let's -- I think we did analyse the exposure, the exposure -- by exposure, we refer to the maximum negative cash flow that an operation reaches during its lifetime.

Q. I think Mr. O'Callaghan was through this with you yesterday?

A. That's right. And when assessing this with -- it is stated that it's "similar type of problems as A5." Now, let me just try to be as precise as I can, because we are trying, as much as we can, to compare on a like-for-like basis, but there may be differences. Communicorp did have a negative equity, so that was worse, if I may use that expression, than Sigma Wireless. Now, Sigma Wireless, in turn, had two things which were more negative than Communicorp: One was that the exposure was higher in the A3 business plan; and secondly, despite the fact that they didn't have negative equity at the time, searches made by the accountants showed that Sigma Wireless owed money to the Irish State?

Q. And is this significant?

A. Well, what it says is, we say, "similar type of problems".

Q. Do I take it, therefore, that because it had similar type of problems, you felt it was appropriate to draw the attention of the Government, and whoever else was ever going to read this report, because in the event of them not concluding negotiations with A5, you were saying, look, A3 has got problems as well, and this is the first problem that you identify, which is its small equity and its high exposure. So you are putting down a marker, I suppose, for the Government, that if you negotiate with A3, this is something you are going to have to overcome as well?

A. Yes. Let me just return to the distinction I made earlier between the application and the business case in the application and then the applicant, because the reason why I would like to mention these things in this report goes back to the way paragraph 19 is formulated. And maybe if

we can go back to page 1, for instance, of the same document here --

Q. Yeah.

A. -- it says: "The Minister intends to compare the applications on an equitable basis, subject to being satisfied as to the financial and technical capability of the applicant in accordance with information required herein and specifically with regard to the list of evaluation criteria set out below in descending order of priority."

Now, the evaluation criteria you have in descending order of priority already mentions, in the first indent, the word "business plan". So when you mention the word "business plan" here, or when the word "business plan" is used, then you are talking about the application. Do you see the distinction we are working with?

Q. Yes.

A. And the entrants to these criteria, the Government had elected to use the word "the applicant".

Q. Yes, so you felt it appropriate to draw the Government's attention to the position of the applicant and the financial and technical capability of the applicant?

A. Exactly.

Q. Here you were saying, "Look, the financial capability of A3 is something that I'd better warn you about, that there's a potential problem here"?

A. If we take the case of A3, I am not in a position to specifically know the legal implications of this, but if one of the consortium members owes money to the State, that would be a problem in some kind of tenders you are running, because some governments, they have institutionalised rules that says that you cannot give favourable decisions to a consortium or to anybody who owes money to the State.

Q. Obviously, that didn't arise here, it wasn't an issue.

A. And let me just tell you my own experience.

Q. Sure.

A. My own experience, as the co-owner of a consulting company, was that when I pitched for the consultancy work here, our invoices were not settled in full all the time because you have a system with withholding tax.

Q. Yes.

A. And that is, if you owe money to the Irish State, which we obviously didn't do, but that would then be subtracted.

And it would also be normal, but I don't know whether this applied in this tender, but I know that that applied in the Dutch tender we participated in, and other tenders, that you were not able even to tender if you owed money to the State.

Q. Well, I suppose from the point of view of the evaluation process that you were undergoing, you weren't using, as part of the assessment criteria, whether or not A3 or, for that matter, A5 owed money to the State, it wasn't something that you were using as an assessment?

A. No, no, not at all. I am telling this in the context of having finalised the scoring and presented a draft report on the 3rd of October, and then we agreed, earlier on this morning, during your examination of me, that some track recording was going on, some additional work was going on. And we have been reading from the invoices that the word "track recording" appears. Now, that was an exercise which was only partially done by AMI consultants but primarily done by Department of Finance, because Department of Finance would have access to files showing where the companies owed money to the Irish State, and obviously consultants working in Denmark would not have access to the same kind of information.

Q. Of course. And therefore, this wasn't something that was reflected in whether or not Sigma did or didn't owe money to the State, it wasn't something that was reflected in the report, either way. But what is expressed in the report --

A. Well, it is reflected in the report. It's not reflected here, but you will appreciate that we had supplementary analysis. So I think it is in the supplementary analysis.

Q. We may come to that. But could I just ask you about this paragraph? Would it be reasonable to describe this paragraph about A3 having a similar problem to A5, as a marker to anybody who was thinking of negotiating with A3?

A. Yes.

Q. And so, therefore, any suggestion that the only consortia that had a marker, a financial marker, put down beside it as a result of the evaluation process, was A5, that would be an inaccurate and incomplete account of this report, because this Evaluation Report also puts down a marker in respect of A3?

A. That's correct.

Q. Now, in the next two paragraphs, you say:

"Furthermore, A3 has expressed such strong reservations concerning the draft licence, which was circulated as part of the tender documents, that the Minister will formally have an unfavourable starting point. However, should the Minister wish to enter into licence negotiations with A3, these reservations should be solved satisfactorily."

So that's, I suppose, a less emphatic marker, but it is, I suppose, a little warning to the Government that, "Look, if you are negotiating with A3, be aware that they have made very strong representations about what should and shouldn't

be in the licence. They have a very fixed and strong view about that and that's something you have to look out for"?

A. I don't agree. You said it is a "less emphatic"; how do you read that?

Q. Maybe I shouldn't be saying that. You tell me.

A. Well, it isn't stated in the text.

Q. No, I agree. Well, would you regard it as something that was -- I suppose it was sufficiently significant to be put into the report, is -- was it a matter of significance that you would expect the Government to bear it in mind?

A. Well, otherwise we wouldn't have inserted this paragraph, and it reads "Furthermore"; it doesn't say "Here you have something less emphatic."

Q. I take your point. And then the next paragraph says:

"Finally, it has not been taken into consideration at all during the award of marks in the evaluation that Motorola and Sigma have interests with and links to the incumbent operator whereby it could, in theory, be questioned whether some of the consortium members of A3 could be exposed to conflicts of interests, thereby weakening the competitive edge of the GSM2 operator or the incumbent. Andersen Management International clearly views this as a risk."

Well, you are very upfront there.

"This risk should be dealt with at the political level, as has been the case in other European mobile tenders, most recently during the DCS 1800 tender in France, where the French Government abstained from the nomination of the consortium with conflicts of interest between the incumbent and the political status as a second mobile licensee."

That's what it says -- sorry, I beg your pardon, "... the potential status as a second mobile licensee." I beg your pardon. And again, this is a warning?

A. Yes, that's how it reads, yes. There were also some additional considerations which didn't go into this paragraph, but which was discussed between AMI and the Department and which is also in the documentation earlier or previous to this report. And that relates to the fact that, in the A3 consortium, you have ESB as a member. ESB is a -- or was, I don't know how it is today, but ESB was a publicly-owned enterprise and the reference to France is actually relevant here also with regard to the ESB, because you could question, like the case with Motorola and Sigma's commercial interest with Eircell, whether handing out a licence to A3 would ensure a sufficiently strong competition. So that was discussed between AMI and also the Department in the context, not only of A3, but also in the context of two other applicants having State-owned enterprises on board. One was, as far as I recall, RTE,

who participated in one consortium, and Bord na Mona, who was, I don't know if that's pronounced correctly --

Q. Absolutely right --

A. -- who was a member of one of the other consortium. And then, thirdly, you had ESB. Now, the difference -- there was a difference between the three, though, and that was that, in the documentation, you have that RTE and Bord na Mona, they should not -- they were not bound to provide additional equity, as I recall, to the consortium. But ESB, in the A3 consortium, they had a wider commitment, if you understand.

Q. I do. Okay. Can we look, then, at the -- I mean, you look at the other consortia and you look at the sensitivities and risks and credibility factors so far as A1, 2 and 6 are concerned, and I am going to pass from them, if I may. But we may turn over the page --

A. Yes, would you allow one comment from me on this?

Q. Certainly.

A. One additional comment, and that is that it has been said sometime that we only compare two applicants, but, as you see here, it is A5, A3 and also A1. I know you are skipping quickly over A1 --

Q. I am against the clock here.

A. But we also did an analysis on A1.

Q. And you put down a risk factor in respect of A1?

A. Exactly.

Q. And that may -- I think you -- for the completeness, maybe we should identify it. You say, "A risk factor may be found in the commitment from one of the backers and in the composition of the consortium as a whole.

Having outlined what it is, even pointing to the strength of Deutsche Telekom."

You say, the next paragraph: "If the Minister intends to enter licence negotiations with A1, these risk factors should be taken into consideration."

A. Yes.

Q. So that's a marker, a financial marker, about A1, as well?

A. That's correct.

Q. So none of the three, the top three applicants, escaped scot-free. Every one of the top three applicants had a financial marker of some sort put beside it so that the Government were made aware that, if you are negotiating with these, with any one of these three, there are certainly financial risks that you are going to have to be satisfied about before you commit to giving them the licence?

A. Yes, let me answer that, financial and other risks, yeah.

Q. All right. Can we just turn to page 46, and it's the bottom half of page 46, beginning with the words "In total..." and I'll read it out:

"In total, the evaluators have arrived at the conclusion that the other aspects investigated under the dimensions, credibilities, sensitivities and risks, widen the gaps between the applicants and, thus, confirm the results of the award of marks presented in chapter A4, in particular concerning the difference between, on the one hand, A1, A3 and A5, and, on the other hand, A2, A4, and A6. The evaluators have also concluded that it has not been necessary to score the so-called other aspect contained as an option in the agreed evaluation model since the mandatory part of the evaluation generates results that discriminate among the applications and since it has been concluded that the general credibility of the applications is equal to the ranking of the applications. As such, it has been assumed that the risks identified can be handled satisfactorily during the licence negotiations.

"It should be remarked that the effect on the Irish economy, to which some attention has been made in some of the applications, has not been taken into consideration in the evaluation process as it is not included in the selection criteria at paragraph 19 of the RFP. In any event, a short supplementary analysis of this aspect reveals that the differences between the applications are not significant. Direct effects on national economy are difficult to measure, and even if a measuring was to be carried through, the resulting effect of such an analysis might never materialise in the projected manner."

I think, to that, it's also clear you couldn't -- it wasn't a legitimate thing for you to consider.

A. That's correct.

Q. And there is nothing else that I want to deal with in this report, but I do want to ask you about the timing of the announcement of the result.

A. Okay.

Q. As you are aware, Mr. Brennan had initially thought, I think back in May, though I may be wrong on the date, certainly in April/May, that there would be a four-week period between the conclusion of the evaluation process and the announcement of a result, and certainly a time of that sort had been provided for by him initially, isn't that right?

A. Yes.

Q. And I think the position is that, in such a situation where time of that sort was provided, the reason why time would be provided would be that the relevant Government -- the

relevant Government department would prepare a draft memorandum of the proposed decision. It would circulate that to other departments. It would get input from other departments as to that decision. It would take into account that input. It would then, having collated and taken into account, it would then prepare an actual memorandum for Government and it would present it to the Government. And that was a process that, even moving reasonably swiftly, could take three to four weeks, and that's the initial time that he felt would be appropriate to provide for such a procedure. You, I think, advised that this was not the way to deal with the announcement of this result?

A. Yes.

Q. And could you explain your reasons why you felt that it was appropriate that, as soon as the result had been arrived at, that it should be announced?

A. Well, if -- let me put it in the following way: The longer time that elapses between a final report has been submitted and then the announcement -- the winner of the competition was announced, the bigger would be the probability, the higher would be the probability that rumours and such kind of things went into this universe. So it would be my clear advice that if such unwanted communication should be avoided, then it would be the best thing to announce sooner rather than later. And let me just put it quite clearly: This advice would be the same for me also in other countries.

Q. Well, that's what I was coming to. There was an inference that, because, in Ireland, a secret is something that everybody knows, there is a suggestion behind some of the questions put by the Tribunal that this was only done in Ireland to suit this particular application, this particular evaluation process in the context of an Irish Government where rumours get out, and the inference being that you can't keep anything quiet or confidential in Ireland. Your advice -- your evidence is that this advice was advice that you had given in the past to other countries?

A. Yes.

Q. And that you have continued to give, since then, to other countries?

A. Yes.

Q. Irrespective of how gossipy or how talkative people in a country are?

A. Let me put it in the following way: In numerous other jurisdictions, we actually manage to have a hassle-free end of these processes, and that was partly due to the fact

also that we managed, together with our clients, to finish the work a little bit ahead of schedule and a little bit ahead of the time announced by a specific minister in a specific country as to when it would be announced. And by hassle free, I mean not only rumours, as I addressed before, but also all kinds of lobbyists and stuff like that would -- normally in lobbying processes, lobbiesmen would be highest towards the end of an evaluation process. So if you could cut off some of that time, you could catch the applicants or the lobbyists by surprise, so to speak.

Q. So, if everybody knows that the date of the, proposed date of the production of the final report is the 25th October, it's in your interest if you can get it out, get it finished earlier so that people don't build-up ahead of steam, as it were, to try to start lobbying for their own position?

A. Exactly.

Q. I see. The last, you'll be glad to hear, Professor Andersen, the last thing I want to deal with is your Memorandum, which is at Tab 31, which is the Memorandum of the evaluation -- the Memorandum on the evaluation of the evaluation. And I think if we just, I just want to look at a couple of things. I think you -- paragraph 3, at page 2, "A general outline of the conduct of the competition process. The evaluation process outlined below covers the period from May '95 to November '95. The organisation is then: The Department of Transport, Energy and Communications has had the overall responsibility for the conduct of the competition. The drafting of this evaluation's Evaluation Report has been the responsibility of Andersen Management International.

"The Project Team on GSM (PTGSM) conducted the competition process. The PTGSM comprised members from the three telecom divisions of the Department of Transport, Energy and Communications, Department of Finance and affiliated consultants from Andersen Management International."

I am just pausing there. You indicated that the Department of Finance are there. That's an important -- it seems to sometimes get left out of the analysis by the Tribunal, because the Tribunal referred to affiliated personnel who weren't civil servants at all, and that, in some way, there is an attempt to minimise the role and the responsibilities of the Department of Finance. But you are saying in this -- in your evaluation here, they were very much part of the team, part of the decision-making process?

A. Yeah, I think that's important, too, yes. And they had, as I saw, two members, namely Jimmy McMeel and Billy Riordan.

Q. Yes. And the last bit I wanted to take you to was page 8

of your report. You say, under the heading "Procedural Effectiveness:

"The Department in general, the PTGSM in particular, have taken a number of steps in order to structure the process and also a considerable number of specific procedures have been pre-adopted. Prime examples are the formation of the PTGSM, and the appointment of the Chairman, the involvement of the Andersen team, the Attorney General, the early adoption of the Evaluation Model, procedures concerning security, the work planning. These action-points all support the target of obtaining objectivity, transparency and non-discrimination.

"This has been further 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 PTGSM. This has also been supported by the fact that no political or arbitrary matters have been mixed up with the evaluation."

Professor Andersen, having heard the evidence throughout the Tribunal, and I know you weren't watching it, necessarily, carefully since it began, but have you any reason, having heard what evidence you have heard and being aware and having read such documents as you have, have you any reason to change the view expressed by you there, that there was no actual or attempt by the Minister to exert influence on the outcome of the evaluation?

A. No, there is nothing that would lead me to change the wording today.

Q. And if I just look at the summarising at the bottom of the page: "Summarising the performance on the procedural side, considerable importance has been attached to the following three areas:

" -- the transparency which is substantiated by the fact that all the Evaluation Models and techniques were adopted even before the applications were received, and that the adopted procedures, not limited to the work plan but also including iterative step-by-step approach to the conduct of the evaluation, were subsequently followed. One of the ways by which outside parties will be able to check transparency is to follow the consistency between paragraph of the RFP document, the pre-adopted Evaluation Model, the final documentation of the results of the evaluation and the draft rejection letters."

Have you any reason now to change anything that you have stated there in February of 1996, right before all this began?

A. No, I haven't.

Q. You then say, "The non-discrimination is another area which

is substantiated by the fact that all applicants have received the same treatment on an equal footing. This was e.g. reflected during the questioning/answering period where all the questions and answers were anonymised and circulated to all that have brought the tender material by means of information memoranda. This was reflected in all communications with the applicants during the evaluation. As an example, all admitted applicants were asked the same questions and received the same agenda before their presentation, and the presentations were managed by the Department in such a way that all applicants had the same time-frame to work with."

Professor Andersen, not to put too fine a point on it, do you reject the contention that, in some way, this evaluation process was skewed or altered or remodified so as to allow Esat to win?

A. No, definitely not.

Q. And finally: "The objectivity, which is substantiated by a number of facts: One is that a considerable amount of PTGSM members and consultants from the Andersen team participated in the evaluation and that no disagreements occurred during the voting, award of marks and the final result of the evaluation. Another fact is that outside interests, political aspects or hidden links to outside parties, never occurred.

"Taken all together, it can be concluded that a high degree of objectivity, transparency and non-discrimination has been obtained and a high degree of procedural effectiveness has thus been reached."

And do you stand over that, Professor Andersen?

A. Yes, definitely.

Q. Professor Andersen, do you stand over your part in the evaluation process that you participated in through AMI?

A. Yes.

Q. And do you stand over the result that that evaluation process produced?

A. Yes.

MR. O'DONNELL: Thank you very much, Professor Andersen.

CHAIRMAN: I think the last part of today, Professor Andersen, is Mr. Lowry, who has attended to ask you some questions. I'd normally be saying that we might take ten minutes now, but would you still prefer to take the ten-minute break?

A. Yes, definitely.

CHAIRMAN: That doesn't inconvenience you, Mr. Lowry? We'll start --

MR. O'DONNELL: Sir, just before you rise, sir, there is a point that I am instructed to make and it's -- I just want

to bring it to the attention of the Tribunal. It doesn't concern Professor Andersen. But I have instructions to make it, so maybe we could do that and then rise. I'll be very brief.

There are two issues, sir -- because I won't, hopefully, be on my feet again, unless I am provoked, but not by you, sir, I hope.

There are two points, sir. The first is, sir, that, as the Tribunal is aware, in the past, when witnesses have -- additional witnesses have given evidence, the Tribunal has made, and indicated that it is making, additional provisional findings, and that it indicated to the parties that it was going to do so, in advance of so doing, to allow the parties to make some submissions in relation to those additional findings before those provisional findings would be made. It seems, in my respectful submission, to be inevitable that the Tribunal, having had regard to the evidence of Professor Andersen, has to contemplate and put that into effect, and I am asking the Tribunal to rule publicly, I am not asking you to do it right now, but I am asking the Tribunal to give me a ruling, publicly, that new provisional findings will be made as a result of Professor Andersen's evidence and that the parties will be given an adequate opportunity to make submissions in advance of the making of such new provisional findings.

I should say, sir, that my clients, in common with everybody else here, are not anxious in any way to delay the ongoing procedures of the Tribunal, and certainly aren't anxious to delay the issuing of a report, but having said that, sir, if the Tribunal is going to be consistent in the way it has dealt, in the past, with the evidence of new witnesses, as it did with Mr. Nesbitt and Mr. McFadden and Mr. Gormley, it does seem appropriate that -- and it seems to me to be compelling that the Tribunal would make new provisional findings. But I am asking the Tribunal to make a ruling in respect of that issue and to indicate that it will do that and give us time.

The second issue is a separate issue, and perhaps a slightly more delicate one, sir, and it is not meant in any personal way to any of the personnel involved, but in the course of your ruling in respect of the involvement of Mr. McDowell, you indicated that one of the reasons why you had no difficulty in retaining the services of Mr. McDowell is that he was not part of what you described as the deliberative process, and bearing in mind that comment and bearing in mind, also, your comments made here, sir, the day before yesterday and also in March, as to the difficulties that you would have in hearing evidence from

counsel for the Tribunal because of their involvement with you, I am asking you, sir, to make a ruling, and I am not asking you to do it now this instance, but I am asking you to make a ruling, in public, before the conclusion of this sitting, that the counsel for the Tribunal have not, do not and will not form part of the deliberative process. I say that, sir, it's a matter of concern because of the way in which, I suppose statements have been made, and your ruling, sir, while it's clear on the position of Mr. McDowell, does leave an ambiguity, which I am obviously keen to rule out.

And, sir, given that the resolution at the Houses of the Oireachtas appointed you as the Sole Member but did not appoint the legal representatives as having any function in the role of deliberation, one might think it's a question that doesn't need to be asked, but I am asking it so that there can be no ambiguity and so that the Tribunal can give a clear, open answer, and that's -- as I say, sir, I am not asking you to rule on either of those submissions now, but I am asking you, before close of business tomorrow, that you rule, in public, on those matters so that my clients can address the position then. Thank you, sir.

CHAIRMAN: On the latter, there is no problem. I stated, I think on one of the very first days of the Tribunal, rather echoing remarks that were made, I think, in the Red Line Square English Tribunal, if I recall correctly: It is my Tribunal, I will make the decisions, and I see no particular need to advance upon that proposition which I have unequivocally stated.

As regards the other matter, I am going to be faced, at the end of today and tomorrow, with approximately somewhere between 40 and 50 hours of continuous evidence. It may have been strenuous-enough for all persons concerned. In regard to that former matter mentioned, whether I do so in the course of tomorrow's sitting or very promptly afterwards, I will address that issue in the context of fulfilling the requirements of natural justice and fairness. Ten minutes.

THE TRIBUNAL ADJOURNED AND RESUMED AS FOLLOWS:

MR. GLEESON: Mr. Chairman, before Mr. Lowry begins his cross-examination, I have spoken to Professor Andersen and he is beginning to feel the strain of the number of hours that he has been in the witness-box, and he has now done 22 hours of evidence this week, and I am asking that we would rise in about half an hour today, because I have just noticed that he is becoming tired and I would be concerned about him going on beyond 4 o'clock today. I appreciate that we have time difficulties, but I have also spoken to

Mr. Lowry about me taking some of his time, and we are still on course to finish tomorrow at 4 o'clock.

Mr. McDowell will have his allocated time, and the Tribunal can be assured that, between Mr. Lowry and I, we will endeavour to stick to that time deadline.

CHAIRMAN: Well, Mr. Gleeson, I have to have regard to the fairness to the witness. I appreciate it's been a long haul for him and -- well, perhaps we might proceed as far as 4.15 - I mean, we are at a little after half three now - and see what progress has been made then. But it has been made clear, the very considerable difficulties that your client has expressed about anything like a prompt return, and I think you'll readily accept a scenario of his returning in the middle of next year is an unthinkable scenario from anybody's vantage point, and I am not faulting him in that regard, so, I mean, I think we do have to maximise today and tomorrow.

MR. GLEESON: Yes, but, I mean, I think that within the constraints that you have identified, I do believe that it will still be possible to finish by 4 o'clock tomorrow.

CHAIRMAN: All right. Well, then, the sooner we embark -- not beyond 4.15.

MR. O'CALLAGHAN: Chairman, just before Mr. Lowry commences, I want to endorse the first part of Mr. O'Donnell's application where he has sought additional or fresh additional findings from you, sir. I am conscious that you will have to read all the evidence given by Professor Andersen again. After you have done that, sir, what I'd ask you to do is to consider that a similar situation arose in respect of Mr. Christopher Vaughan, and, on day 355, your counsel indicated that the findings, if there were any, against Mr. Vaughan, would be put at nought. That was subsequently confirmed in correspondence to my solicitor dated the 25th of May, 2009.

So, my expectation, as well, Chairman, is that any of your findings would be served upon us.

CHAIRMAN: Well, there has been no absolutism in procedures adopted with a number of different of witnesses to date, but at this stage, Mr. O'Callaghan, I think you'll appreciate I'd prefer that we proceed and give Mr. Lowry his opportunity to question the Professor. I have indicated that I will advert to the matter as realistically speedily as I can. Mr. Lowry?

MR. LOWRY: Thank you, Chairman.

MR. LOWRY: Chairman, before I commence, as you know I don't have legal representation, and I will do the best I can to defend myself in relation to this, sir, to put the questions to Mr. Andersen as I wish to do so. And I want,

from the outset, to put on the record to you, again, that I am not happy to be corralled by the Tribunal in terms of the amount of time that I have. I'll accede to your request and I will do the best I can to be as expeditious as I can, but I want to place on the record of the Tribunal every question that I feel should be put on it from my perspective. It may be repetitious in places, but I think, in years to come, I would like to feel that, when I read the content of the Tribunal here, when I read my own submission, that I did myself justice and my family justice and that I put myself -- made myself quite clear. So before I do so, though, Mr. Chairman, I don't have a legal team to communicate with you, so I am going to do it directly with you yourself, with your permission.

I want to -- and this will take me one minute, and you can dock it off the time that's available to me, but I wish to place on the record here, with your Tribunal today, that your ruling yesterday, I wish to object to that ruling. That ruling prohibits the questioning of Mr. Andersen, who is now in the witness-box, with regard to his meetings and discussions in private session with your senior counsel, Mr. Jerry Healy. Now, as far as I am concerned, Mr. Chairman, your ruling has put an amazing cloak of protection around your senior counsel, and I believe that this Tribunal is going to extraordinary lengths to shield Mr. Healy from questioning by me and other affected parties. And I believe, Chairman -- and I am a member of the Oireachtas, and the Oireachtas established this inquiry -- I believe that this is a public inquiry, and, effectively, what's happening here is we are trying to hide from the public the full detail of the unacceptable attitude, approach and conduct of one of your senior counsel, Mr. Healy, in his private sessions with Mr. Andersen.

And as an affected party, and a seriously-affected party, because I am the one that's being inquired into, I believe that your ruling in this regard is undemocratic, and, in my eyes, it makes a mockery of Tribunal law.

And the final point I make, Mr. Chairman, is that effectively what your ruling is doing, is, you are obstructing my entitlement to expose what I consider to be the appalling behaviour of Mr. Healy, because in those private sessions with the witness in the box, Mr. Andersen, Mr. Healy, and I have read the notes, and I do note there is no record of some of the other meetings that took place, but in the ones that are recorded, the meetings that are recorded with Mr. Andersen, there is an absolutely total bias and a totally inappropriate level of insinuation, in

the private sessions, from Mr. Healy to Mr. Andersen, about the licensing process.

So, in this ruling, effectively what you have asked me to do, and I'll abide by it but I feel it's wrong, what you are asking me to do is to ignore what I consider to be a hugely significant aspect of the Tribunal's inquiry, and you are doing it, Mr. Chairman, on your own words yesterday, you are doing it to avoid the embarrassment of having to adjudicate on the actions of one of your own senior counsel. Now, that's fine, that's a legal nicety, and the legals understand that between themselves. But from my point of view, as somebody who is standing effectively accused of wrongdoing by the Tribunal, I think it's unfair to me. And I just want to make that point before I start.

CHAIRMAN: Well, I am not going to debate it with you now, Mr. Lowry, beyond referring to the words of my ruling and the earlier ruling I made on the occasion it was raised directly. So perhaps you'd like to take up what questions you see fit to put to Professor Andersen.

THE WITNESS WAS EXAMINED BY MR. LOWRY AS FOLLOWS:

Q. MR. LOWRY: Professor Andersen, my name is Michael Lowry.

As you know, I don't have any legal qualifications. I am representing myself before this Tribunal of Inquiry. You were here, Mr. Andersen, last week, when I raised with the Chairman certain issues in relation to the costs of my representation before the Tribunal. You heard that discussion. So I presume, Mr. Andersen, you understand why I am representing myself?

A. Yes, I do.

Q. I think you understand, in general terms, why I am required to personally mount my own defence in relation to allegations being made by this Tribunal considering my involvement in the second mobile phone licence. It is for those reasons, Mr. Andersen, and I hope you will understand that I am asking the questions myself. I am not a professional. I may be technically incorrect at times. I would ask you to have patience with me, and where you feel I am wrong or if you feel you would like to develop or expand a point that I am putting to you, please feel free to do so?

A. That's fine.

Q. Now, speaking of legal representation, Mr. Andersen, as a politician, we tend to get around, we mix in different circles; like, you know, when you go to the Law Library, you hear the gossip, when you go to the Dail bar you hear the political gossip, and, in the course of a conversation that I had with a number of people recently, it came to my

attention, in a completely innocuous way, that when you came here in 2001, you went -- you came to the Tribunal, and I have seen reference to your visits to the Tribunal in your own statement. Could I ask you, first of all, did you have any or do you have any expectation of having your legal costs covered by this Tribunal?

A. I have always sought to get my costs covered, but, so far, I have got no cost coverage.

Q. In relation to your legal team for the Tribunal, did you get assistance from the Tribunal -- it was in the context of a recent appointment in a cross-discussion that I had -- sorry, I am speaking too fast for you. It was in the context of a discussion that I had with others that it was suggested to me that when you came here in 2001, that you had selected a senior counsel, for instance, to represent you, and that, for some reason, that senior counsel is not with you at the moment. I know you have an excellent, an outstanding senior counsel, but is that a rumour that was passed to me or is it factual?

A. That is factually correct. Maybe I could expand a little bit on my answer?

Q. Please do.

A. Because when we are talking about 2001, as you are addressing, at that stage I was still with AMI, the consulting company, and the consulting company had retained Carol Plunkett from, I believe it was, Landwell Solicitors, and also Gerard Hogan as the senior counsel.

Q. And did you -- what was the problem with Gerard Hogan at that particular time?

A. Well, Gerard Hogan participated in either the first, or both the first and the second meeting we had in 2001, and then it was flagged to him by one of the Tribunal counsel that he should not continue to represent myself.

Q. Which senior counsel?

A. That was Jerry Healy.

Q. And what reason did he give that Mr. Hogan was conflicted?

A. Jerry Healy made it quite clear that he could -- that Gerard Hogan could not represent because he was also representing Dermot Desmond and, therefore, there was a conflict of interest.

Q. Would it be, from my perspective looking at this, I am not a legal eagle, but it would appear to me that Mr. Hogan didn't have any conflict of interest because Mr. Desmond wasn't involved in any way in the competition process, but whatever, I am -- in relation to that, all I can say is -- sorry, could I ask you a further question. At that meeting when Mr. Healy was outlining the conflict of interest and effectively telling Mr. Hogan that he was conflicted and

that he shouldn't continue, you are saying he had two meetings that Mr. Hogan attended with you?

A. Yeah, I am not aware -- there was a meeting in July 2001 and there was also a meeting in December 2001, and I was not -- I need to go back to my papers if you want me to see if Gerard Hogan participated in both meetings, but he, at least, participated in one of these meetings, probably the first meeting, and what was stated by Gerard Hogan to me, and also during communication I have had with him subsequently, is that Gerard Hogan did not agree, as such, with Jerry Healy, but I must say here that Gerard Hogan is a very honourable man with an extreme degree of personal integrity. So he informed me, in writing, that he could not represent me because he had a perceived -- there was a perceived conflict of interest. And when I then discussed that with Gerard Hogan, he said to me that there are some rules of the Bar and there are different kinds of regulations that senior counsels are subjected to, and his point of view was that he could not represent me or AMI if there were a perceived conflict of interest.

Q. And this --

A. And by "perceived," he meant that Jerry Healy thought that there was a conflict of interest. So despite the fact that Gerard Hogan did not, as such, agree, he made the inference, or the implication of that, that somebody else said that there was a conflict of interest, there was a perceived conflict of interest.

Q. Effectively, the honourable man that he is, and he is now, and it was in that context that his name came up in the discussion and the discussion came up in my company. He is now a High Court judge, and deservedly so. So effectively what you are saying is that Mr. Hogan withdrew as your senior counsel on the basis of advice being given to him by Mr. Healy on behalf of the Tribunal?

A. Yes.

Q. Okay. Do you not -- would you not think it's a bit rich -- sorry, could I take a question further. Did Mr. Healy, at any stage, in your company, with anybody else or personally to you, did he advise you that he had a similar problem earlier with this Tribunal, that there could be a perception that he himself, the man who was giving the advice, had a conflict of interest?

A. No, he didn't say that to me, but Gerard Hogan said to me that he was actually surprised that he was attacked by Jerry Healy on this conflict-of-interest issue as Gerard Hogan was fully aware that he had participated, together with Jerry Healy, in advising A3 or Persona, if I may use that expression.

Q. Okay. Thank you, Mr. Andersen. Could I say that, personally, I believe that your evidence is of key significance to this Tribunal. And I get the feeling, maybe I am wrong, that the sworn evidence that you have given isn't that well-received by our Tribunal team because, Mr. Andersen, I just want to put it to you, and ask you, are you aware that, for the past eight years, nine years, going on ten years, Tribunal counsel, the Tribunal counsel here have sought to impugn and relentlessly attack the integrity of the second mobile phone process and also to attack the reputations of those that have been associated with that licence process? This has been happening for part of a decade; have you followed all of that?

A. I wouldn't say I have followed all of it, but I am aware of elements of it; in particular, elements where either AMI or myself has been contacted by the Tribunal or had dialogue with the Tribunal or seen reports from time to time, yes.

Q. Well, Mr. Andersen, I will say, personally, again, that I am glad to see you here and I am glad that you made the decision to come and to give evidence to this Tribunal, because, until your arrival at this Tribunal, we were being stuffed with innuendos, accusations and blatant inaccuracies, and I want to thank you publicly for the careful and considerate -- considered evidence that you have given to this Tribunal. And from my perspective, reading the transcripts as best I could over the last number of days - because of time pressure, I haven't been able to follow everything that has happened here - but I want to say that I now see that the tide has turned. I didn't think it could happen, but it has turned, and the reason it has turned is because you have brought out the truth of the process, and I want to thank you for that. The other point I'd like to make to you is there is -- here, is that I have been following the Tribunal, needless to say, and I think that you know this idea of curtailing what we can ask you, curtailing what I could ask you because of the time constraint that we have, and I can understand why the Chairman wants to finish it and I can understand why, for some people, Mr. Andersen, your evidence is uncomfortable, and the sooner we get you out of the box, maybe the better. But from my perspective, I am quite happy to have you here for as long as you are available, to shed light on the factual situation in relation to the licence.

And could I ask you, is this time pressure, is it from you or the Tribunal asking you to get out? Are you available to come back here at any stage in the near future or do you

have this limit? Is it this deadline for Friday, has that been put by you or by the Tribunal?

A. That is something put solely by me. So I have indicated to the Tribunal that I had allocated two full weeks, and that was, in actual -- in accordance with the first request from the Tribunal, that two full weeks should be allocated, and therefore, I have allocated last week and also this week to give evidence. Then, I have subsequently been asked whether I was willing to extend into what I think is a third week, or whatever, but the answer given to that by my solicitors is that that's not possible in the near term.

Q. Okay. Now, I am going to start with a question where you finished off with Mr. O'Donnell --

A. Yes.

Q. -- because he got to the heart of the matter in relation to one of the accusations that have been put to me over the years through this Tribunal and relentlessly through the media, and that is, that for some reason, I expedited the process. Now, I am going to deal with that in more detail tomorrow, but just, in summary, could I say to you that, as I understand it, the Department established, on the advice of the Government and a Government decision, we established a Project Team to run this competition, which was comprised of the Department Officials in my Department at the time, Transport, Energy and Communications, and then we had the Department of Finance. And I agree with a question that was put to you earlier; there seems to be, conveniently here, the Department of Finance had never entered the equation. So I was the lead Minister in my Department, and, at the time, Ruairi Quinn was the lead Minister for his officials in the Department of Finance, and this was a combined, a combination of Finance and my Department. But I notice in commentaries and correspondence that I have received from the Tribunal, that there seems to be a fixation with the officials in my Department, and people forget that the Department of Finance was very strongly represented on the Project Team. Would you agree that the Department of Finance and its officials had a strong input into the process?

A. They were actually part of the process, yes, and with two members of the Steering Group.

Q. Okay. Then the Project Team, as it was established, we could call you the captain of the team, you were there to give guidance, is that correct? Were you there to give guidance?

A. You can put all colloquial terms on it you like, but my own perception of my role was that I was the project leader of the consulting team, delivering assistance to both your

civil servants and the civil servants of the Department of Finance, but with reference to your civil servants in your Department, and that when it came to what I call the core evaluation, in particular the description we have had over the last two or three days with the work that took place in the evaluation sub-groups, at that stage I was, what I would call, in the driver's seat. I think that that was the expression I used.

Q. Okay. So you were the leader from your Project Team from the outside, expert consultants. And it would be fair to say that each member of the Project Team, they would, within that team, would have played to their own individual strengths and would have brought their expertise to bear on different decisions?

A. That's correct. I appreciate that you might not have been here when I explained how we actually tried to put together the expertise to the highest obtainable level, but it was a very experienced team with differentiated types of expertise in each of the relevant sub-groups.

Q. Okay. I am conscious that I am up to 4.15 this evening, so I'll come back to that later. But could I just say to you that the next stage of that is, you were the lead consultant. You had your team under you. They all made their various contributions according to their skills and expertise, and then it was a combination of that expertise and the skills of the team under you, or with you, that came, and this is the important thing, you came to a collective decision ultimately, you came to a collective conclusion that Esat Digifone were the worthy and deserving winners, is that correct?

A. That's correct, or A5 as we normally -- you know, we abbreviated all the -- or synonymised all the applicants. That's correct, A5.

Q. So the important message here is that it was the combined efforts and the collective conclusion of the entire Project Team that arrived at that decision?

A. Yes.

Q. Now, in racing parlance, in racing -- you understand horse-racing?

A. Yes, a little bit, yeah.

Q. I heard you here, at an earlier stage, saying that the result of this competition was not a neck-and-neck finish, and if I recall you correctly, you stated that the winner won by the length of a horse?

A. Yes.

Q. Okay. Well, in Ireland, I can tell you that if you had a bet on and you were beaten by the length of a horse, you wouldn't back him again.

A. Okay.

Q. And the other thing I will say in relation to your confirmation of that kind of a win in any situation, and in this case it was in the event of the winner of the licence process, it was a decisive win. There was no hard-luck story, was there?

A. There was no what?

Q. Hard-luck story. It was a clear-cut winner?

A. It was a clear winner, yes.

Q. Thank you. Now, so the Project Team came to complete its -- I am not into the detail of -- the officials or the representatives of the Department have gone through it, and I am not going to go through the detail of it because I am not familiar with it, never was, and I am still not familiar with it. As I understand it, then, after you had reached a decision, a conclusive decision that you had a clear-cut winner, which was, as I refer to them, Esat Digifone, you completed the final report, and from where I was, as Minister, I am going to take you through how that message was transferred to me as the then-Minister.

A. Fine.

Q. So, from my perspective, the result was communicated to me by the Secretary General of the Department of Communications. He told me, on the day that he arrived at my office unexpectedly, I might add, he told me that the Project Team had concluded its work, that it had reached a final conclusion, and that they had made a recommendation to him, and he was bringing that recommendation to me. And shortly afterwards, I think, he -- we had a discussion on it, and the Secretary General of the Department, a very experienced senior civil servant, he advised me, as Minister, that it was important to make a quick decision. And I understand from your evidence there in the last 15 minutes why he gave me that advice, because obviously you had advised him and the Project Team that it would be in the best interests of the competition if the result was announced quickly?

A. That is correct. However, I just want to be as precise as possible. I did not give that advice to your Secretary; I gave that advice to the Chairman of the Steering Group.

Q. Mr. Brennan?

A. Correct.

Q. Mr. Brennan, as you know, is an Assistant Secretary in the Department, and the next line of communication from Mr. Brennan would have been to Mr. Loughrey and the next line of communication from Mr. Loughrey would be to the Minister of the day, which happened to be myself. That would be the chain of command.

A. Fine. Yes.

Q. So John Loughrey had come to me and he had said that the process had concluded and that Esat Digifone was the winner, and he then proceeded to advise me that there was no way, because of the level of interest -- and people need to understand, Mr. Andersen, I think you understand, that there was a huge level of interest in this competition and every other day there was inquiries from the various consortia, representatives from them, there was inquiries from the media, there was inquiries from the political establishment, everybody wanted to know when was this result going to be announced. So, there was, from our perspective in the Department at the time, and I am asking you do you consider this understandable, there was -- how will I put it to you? -- a sense that this was a big decision and it needed to be managed properly, whenever the decision was made, it needed to be managed properly in terms of it being sold to -- I am a politician, and, after making big decisions, politicians like to sell their decision as being a positive one, to the public?

A. Yes.

Q. And it was in that context that I listened to Mr. Loughrey, and Mr. Loughrey advised me that this decision would leak, and if it leaked, it would destroy the political impact of what was a very good and sound Government decision. Can you understand that?

A. Yes, because that was in accordance with my own advice to Martin Brennan.

Q. I discussed it with the then-Secretary, John Loughrey, and he asked me -- he advised me and suggested to me that I should make an immediate announcement. Now, the next step, Mr. Andersen, just so that you fully understand it, was that I was not prepared to make the announcement without having political approval for it. Can you understand that?

A. Yes.

Q. Now, and the reason, because I was in a, first of all, a situation where -- I was in a Coalition Government with three Party leaders.

A. Yeah, the Rainbow Coalition.

Q. The Rainbow Coalition at the time. And I had to be politically careful that any decisions that were made in my department had the approval and imprimatur of my colleagues in Government. Can you understand that?

A. Definitely.

Q. Okay. So I suggested to the Secretary General of the Department that I get prior political approval before any announcement was made, and the Secretary General made his various contacts. The Secretary General came back to me

and said to me that, on that particular day, there happened to be, and it was purely by coincidence, a meeting of the Party leaders about a situation that had developed in Aer Lingus, or -- our national airline.

A. Okay, yeah.

Q. And I went, as Minister. I asked the Secretary General to contact the Minister for Finance, because his lead team -- he had a leadership role in the sense that his team was involved in the project. My recollection was that when I actually contacted the Minister for Finance, he was already aware of the decision, as I understand it, and if I recall it correctly, was already aware of the decision --

A. Okay.

Q. -- through his officials?

A. Through Jimmy McMeel, probably.

Q. Yes, yes. Now, so I went and I met with Taoiseach, John Bruton, I went -- we had a meeting with Taoiseach, John Bruton; with the Tanaiste, Dick Spring; and with the Minister for Social Welfare, Proinsias De Rossa. Do you think it was reasonable of me to tell them, at that stage, that the Project Team had made a decision, that they had made a recommendation to me, as then-Minister? Do you think it was reasonable of me at that stage to communicate that recommendation to my colleagues in Government?

A. It sounds very reasonable indeed, Mr. Lowry.

Q. Okay. Now, the reaction at that meeting was very simple. I was given, as the Minister for Transport, Energy and Communications, the full authority to make the announcement. Secondly, the arrangements were then made for the follow-up procedures within Government.

Now, Mr. Andersen, you were in the public service, you were a civil servant in Denmark, I see from your CV?

A. Correct.

Q. And you understand the way the civil service works?

A. Pardon?

Q. You understand the way the civil service works, from your time in the civil service?

A. Very much so, yes.

Q. And --

A. Hard work and low payment.

Q. Well, yes. It's a problem here, too, I can tell you. So, from that point of view, you can understand the civil servants' point of view. Then, you also -- you have worked on 200 licensing processes around the world, so, in that process, I am sure you have come in contact with a lot of political institutions and political establishments and political individuals?

A. Very much so. Similar situations to the situation you were

in at the time here in Ireland.

Q. Now, Mr. Andersen, if I went back through my files, and if I -- and I have kept a lot of newspaper clippings and radio comments, and what have you, which may be useful to me at a later stage, but if I put those here for you, Mr. Andersen, you have no idea, Mr. Andersen, the exposure and the lengths that the media and this Tribunal went to plaster me and to destroy and attempt to destroy my political reputation, saying I tried to expedite this process. Can I ask you, Mr. Andersen, in your experience as a civil servant, and from your experience of having contact with politicians, do you think I took the proper procedures in the way that I brought that -- do you see anything unusual about it? Would you think it was correct? Or would you question it? Which is it?

A. Well, from what you are telling me, I think it makes perfect sense, and maybe if I were a minister, I would have been expediting in the same way, but I am not sitting with all the information that you have, so...

Q. I have conveyed the information that I have to you. Do you think my approach was reasonable?

A. Very much so. I take it for given that you had the approval from your colleagues in the Rainbow Coalition, and therefore, that you stood up to the formalities of that decision process.

Q. I'll go back to the start now, Mr. Andersen, because I was anxious to clear up that point. That's an accusation that has plagued me for years.

A. Okay.

Q. And I needed to put it to you today.

A. Yes.

Q. Now, could we get back to basics, Mr. Andersen, and you know the other swirling -- the other accusations that have been swirling around and the allegations that have been made, is that, you know, somehow or other, I got to you in this process, as Minister. Could I ask you, Mr. Andersen, is it correct that you and I actually never met?

A. We never met.

Q. Okay.

A. So it's correct that we never met, yes.

Q. Is it correct, Mr. Andersen, that in all of your life and all of your time involved in this process, that I actually never spoke to you? Did I ever speak to you?

A. No, you never spoke to me and I never spoke to you.

Q. Did I ever have any contact with you, in any shape or form?

A. No, not in any shape or form.

Q. During -- before, during or after this process?

A. Before, during and after this process, until this time when

we meet here in the Tribunal, I have not seen you. I have not been speaking with you, I have not text-messed with you, I have not sent letters, either by electronic mail or by snail mail, or whatever.

Q. The first time, actually, Mr. Andersen, that I met you, and, you know, normally this could involve an investigation by the Tribunal, but I met you in the loo when we were brushing up after the first --

A. Yeah, and I've looking forward to seeing how much influence you can exert on me, Mr. Lowry.

Q. Okay. So it is clear from your sworn statement, and I have read your sworn statement, it's clear from that statement to this Tribunal that you never had any interaction with me, either directly or indirectly, as part of the second mobile phone licence, isn't that correct?

A. That's correct.

Q. Okay. Now, Mr. Andersen, could you tell this Tribunal --

A. Sorry, we are approaching a quarter past.

CHAIRMAN: On my watch, we have eight minutes. I won't ask you to go over that.

A. Sorry, that's fine, sorry. I am just looking at the watch below. That's fine.

Q. MR. LOWRY: Mr. Andersen, you are putting pressure on me; it's bad enough to have the Chairman's watch ticking without having yours ticking as well. If you need a break, you take a break, because I gave days on end in that witness-box. I know how testing it is, I know how tiring it is, and I actually think, Mr. Andersen, the position you are in is unfair. It's hard to be sharp, it's hard to be crisp, it's hard to focus, it's hard to concentrate. You should not be put in this position, Mr. Andersen. If you need a break, you take it.

CHAIRMAN: What do you want to do yourself?

A. I think we'll continue these five, six, seven minutes, that's fine.

Q. MR. LOWRY: Mr. Andersen, have you any evidence whatsoever that you can give before this Tribunal that I, as Minister, interfered in any way, in any way, with the second mobile phone licence? Had you any evidence coming into this Tribunal? Have you any evidence since you came to the Tribunal? Have you any evidence since you started cooperating at the Tribunal? Have you heard anything in this chamber to say that I interfered in any way with the licence process?

A. No, I have not seen any evidence, no.

Q. Have you any evidence to give to this Tribunal that I took any act, that I "took any act" is the Terms of Reference of the Tribunal. Have you seen any evidence that I took any

act or made any decision to confer any benefit on any particular applicant for the second mobile licence?

A. No, I have not seen any of that.

Q. Have you seen any evidence before this Tribunal, or heard any evidence, that I took any act or made any decision that sought to confer or benefit on any particular applicant?

A. No, I haven't.

Q. Professor Andersen, I put it to you that, for ten years, you have been involved with this Tribunal now, almost ten years?

A. Yes.

Q. Now, after giving evidence to the Tribunal, tomorrow your two weeks will be up, and having considered the vast amount of material that the Tribunal have put to you, have you actually seen or heard anything that would even lead you to believe that I interfered in any way with the process?

A. No, I haven't.

Q. Professor Andersen, you provided a sworn Statement of Evidence to this Tribunal, and in that statement you expressly referred to my involvement in the second mobile phone licence process. And for the record, I would like to read the passages of that that are relevant, so if you could go to your statement at paragraph 7, 8 and 9.

A. Yes.

Q. It's page 3 of your statement and we will start with paragraph 7 and I am going to read this into the record. You say in your statement, under the heading "Involvement of Michael Lowry in the GSM Second Mobile Tender," paragraph 7, you state:

"I understand that the Moriarty Tribunal of Inquiry (the Tribunal) is inquiring into the awarding of the second mobile phone licence as part of its inquiries into acts and decisions of Mr. Michael Lowry during the period when he was Minister for Transport, Energy and Communications. Michael Lowry was Minister for Transport, Energy and Communications during the period while AMI were engaged in the GSM process."

That's factual and correct, Mr. Andersen, that paragraph?

A. Yes.

Q. Paragraph 8: "I did not meet Michael Lowry either before, during or after the GSM2 process. Neither I, nor any of my colleagues in AMI, had any contact whatsoever with Michael Lowry as part of the GSM2 process, or indeed otherwise."

So it's correct to state in this statement, and obviously it's a sworn statement, you are confirming that you have already confirmed to me about yourself, and you go further in this statement and you are saying that, not alone had I no contact with you, but I had absolutely no contact

whatsoever with any of your consultancy team or anybody involved with you in your consultancy capacity in your company, is that correct?

A. That's correct.

Q. You go on to say that "Other than very general public policy statements made by him as Minister, I was not aware of any directions, any instructions, preferences or even opinions in relation to the GSM process coming from Michael Lowry."

So what you are saying in this statement is that -- key lines: No directions, no instructions, no preferences, not even an opinion was conveyed to you by me, directly or indirectly, is that correct, Mr. Andersen?

A. That's correct.

Q. You go on in your statement: "I certainly was never aware of any preference, or apparent preference, on the part of Michael Lowry, for any particular applicant in the GSM2 process. No such preferences were ever relayed or even intimated to me by any of the civil servants involved, or indeed otherwise."

The key phrase here, Mr. Andersen, I'd ask you would you agree with me, is that you are saying in your sworn statement that it was never relayed to you or intimated to you by any civil servant involved in the process that I had conveyed any message through them for you, is that correct?

A. That's correct.

Q. So, as far as AMI was concerned, Michael Lowry was not part of the GSM decision-making process?

A. Correct.

Q. In paragraph 9, you go on in your statement to say that, "I should state that based on my extensive experience worldwide, I would not regard direct involvement by a government minister in such a bid process as being highly unusual. However, I am certainly not aware of any such involvement or interference in the GSM process on the part of the then-Minister, Michael Lowry."

You state that, "Michael Lowry simply did not feature as part of the competition process. I am confident..."

So just to recap on that, what you are saying here and what I'd ask you to agree or disagree, you are saying that, in other jurisdictions, you would have had more contact with government ministers in relation to the process, but, in this instance, you had -- I didn't become involved, I wasn't engaged; I had a bystander role?

A. Yes, you were simply not involved in anything I was involved in, yes.

Q. Thank you.

CHAIRMAN: I think we are just up to the 4.15 now,

Mr. Lowry.

MR. LOWRY: I have just one line of this, Mr. Chairman, and we are finished on this one.

So you go on to say then, "I am confident that if any such interference on his part" -- that's Michael Lowry --

"existed, then I would have become aware of it as part of my central and critical involvement in the GSM2 process."

So what you are saying here -- first of all, do you agree with that statement?

A. That's correct.

Q. So what you are saying there is that I wasn't involved, you knew I wasn't involved, you didn't see any interaction from me, either directly by me or through a third party, and you are effectively saying that -- well, you are saying that, as the lead consultant on this, it would be impossible for me to be involved or giving directions without you knowing it, is that correct?

A. That's correct.

Q. Thank you.

CHAIRMAN: Very good. Thank you very much, Professor. o'clock in the morning. Mr. Lowry, is 10 o'clock suitable to you in the circumstances?

MR. LOWRY: Yes.

THE TRIBUNAL ADJOURNED UNTIL THE FOLLOWING DAY, FRIDAY, 4TH OF NOVEMBER, 2010, AT 10 A.M.