THE TRIBUNAL RESUMED ON THE 5TH OF NOVEMBER, 2010,
AS FOLLOWS:
CONTINUATION OF EXAMINATION OF PROFESSOR MICHAEL ANDERSEN
BY MR. LOWRY AS FOLLOWS:
CHAIRMAN: Mr. Lowry.
MR. LOWRY: Thank you, Chairman.
Yesterday, Mr. Andersen, yesterday evening, I read into the record paragraphs 7, 8 and 9 of your sworn statement, and I assume that you now stand over the contents of what you said in each paragraph of your statement without reservation?
A. Sorry, I just need to have -- to which document are you referring?
Q. I am referring to your sworn statement, paragraphs 7, 8 and 9 and which I read into the record at the close yesterday evening, and I just want to understand from you, do you stand over what is in that statement?
A. Sorry, I am a bit unclear. Are you making reference to the transcripts or are you making reference to the statement I have made?
Q. Your statement, the statement that you made to the Tribunal yesterday, I put on the record.
A. Yes.
CHAIRMAN: Sorry, Mr. Lowry, I think the stenographer is just having a little difficulty hearing you. Possibly, if you just went into the microphone a little bit more.
Q. MR. LOWRY: What I am saying is that, yesterday, in the course of the examination of you, I put on the record paragraphs 7, 8 and 9 of your sworn statement --
A. Oh, yes.
Q. -- and I am asking you, this morning, if it is true to say the contents of what you had in those paragraphs of your statement is accurate and that you made that statement in paragraphs 7 and 8 and 9 without reservation?
A. I stand over that, yes.
Q. Professor Andersen, you have given extensive evidence before the Tribunal about your dealings with various civil servants in the Department of Transport, Energy and Communications and the Department of Finance in relation to the second mobile licence process. When the blame-game started in relation to this, the Department of Finance seems to have been forgotten, and I would think probably conveniently, and --
MR. O'DONNELL: Chairman, I think the stenographer is having major difficulties...
CHAIRMAN: Yes. Well, I think all that we have done so far, Mr. Lowry, in case there is any doubt, is that

Professor Andersen has confirmed the paragraphs of his statement that you explored yesterday, and you were moving on to something slightly different now.
MR. LOWRY: Can you hear me?
A. Yes, although it's not as clear speech as politicians normally do.
Q. Okay, Professor Andersen, I was saying to you that you have given extensive evidence before the Tribunal in relation to your contacts with various civil servants in the Department of Transport, Energy and Communications and from the Department of Finance, in relation to the second mobile phone licence, is that correct?
A. That's correct.
Q. When it is my -- and I am putting this to you as my view, that when the blame-game started, this examination of witnesses started, it appeared to me the Department of Finance seemed to have been forgotten, and I would think, perhaps, conveniently. Now, this always struck me as curious, and it is my view that the Department has always been -- the Department of Finance has always been kept under the radar at this Tribunal. Could I ask you, Mr. Andersen, in that context, and in the context of the involvement in the second phone licence process of both Departments, is it fair to say that it was a joint effort between the Department of Finance and the Department of Transport, Energy and Communications?
A. It was a joint effort, yes.
Q. I just want to confirm a few points about the very many civil servants involved in the second mobile phone process. Did any of the civil servants involved in the second mobile phone licence process ever make any suggestion to you that I, as Minister, had any desire that there may be any particular outcome or result in the phone process?
A. No.
Q. Did any civil servant involved in the second phone licence process even imply that I, as Minister, had any desire that there be any particular outcome or result in the licence process?
A. No.
Q. Mr. Andersen, you have given sworn evidence to the Tribunal that you are absolutely satisfied with the integrity and honesty of all those civil servants involved in the second mobile phone process, is that correct?
A. That's correct.
Q. So, Professor Andersen, is it correct to say that you have no evidence to give to this Tribunal of any impropriety or wrongdoing on the part of any civil servant, either individually or collectively, in relation to this licence

process?
A. That's correct.
Q. Mr. Andersen, I just want to --
CHAIRMAN: I think the press box are now having a little difficulty, Mr. Lowry. I don't want to interrupt you, but we'd better make sure that things are coming through loud and clear to all interested persons.
MR. LOWRY: I am surprised, Mr. Chairman, that they'd want to hear anything that I have to say, but I'll definitely oblige them.
CHAIRMAN: Yes.
Q. MR. LOWRY: Sorry, Mr. Andersen, I just want to briefly refer you again to the statement of sworn evidence that you provided to this Tribunal. In that statement, you expressly referred to the involvement of the civil servants in the second mobile phone process. I would just like to put on the record what you said in this regard, so that everyone is absolutely clear, and I wish now to read your statement, paragraphs 10, 11, 12 and 13 in your statement regarding the involvement of civil servants in the GSM2 process. You stated at paragraph 10 --
MS. O'BRIEN: Just, sir, to intervene briefly here, I am not certain if Mr. Lowry is reading from Mr. Andersen's statement of April of this year or his statement of October of this year. It's just that in relation to his April statement, sir, when you circulated that, you did so with a deletion of paragraph 10, and that deletion is for good reason, sir, because there is a reference in it to your provisional findings which, as you know, sir, are strictly confidential, so for Mr. Lowry to read that statement out now, paragraph 10 of that statement out now, would undermine the confidentiality and the integrity of that procedure. So it was on that basis that the statement was circulated. But it's, perhaps, the October statement he is intending to read from, rather than the April statement, but I think it's just important that that matter be clarified, sir.
CHAIRMAN: Well, I have ruled, Mr. Lowry, that provisional findings should not be opened in the course of public sittings, but I think there appear to be ample portions in both the Professor's evidence and in the statements that were opened, that he had full confidence in the civil servants with whom he worked from both your former Department and from the Department of Finance.
MR. LOWRY: Mr. Chairman, could I understand this? What you are saying -- I haven't had the time to catch up with this process in relation to the statements, but effectively what you are telling me, what you are repeating to me

today, is that Mr. Andersen made an original statement to the Tribunal, and that because Mr. Andersen, in parts of that statement, criticised the conduct and the approach of Mr. Healy in that statement -- that he, Mr. Andersen, made criticisms of the Tribunal and, in particular, of senior counsel, that these aspects of his statement, I am being told that those aspects cannot be put before the Tribunal?
CHAIRMAN: No, Mr. Lowry. It's a different matter. It's the portions of statements that referred to provisional findings of the Tribunal that I have ruled may not be put in the public sittings.
MR. LOWRY: Well, I am not putting -- I have no intention, Mr. Chairman, of putting the provisional findings to Mr. Andersen, and I am not, myself, going to refer to provisional findings that have been issued in advance. I have no intention of reading from provisional findings.
MS. O'BRIEN: The position, sir, is that paragraph 10 has been deleted for good reason. It is not a deletion that relates to any of Mr. Andersen's criticisms of his dealings with your Tribunal legal team; it relates solely to a matter of provisional findings. But there is no difficulty at all in Mr. Lowry proceeding from paragraph 11 of that statement. It's just paragraph 10, sir, which relates to provisional findings.
MR. LOWRY: Could I say then, in passing, Mr. Chairman, that, you know, I find this to be, quite frankly, ridiculous, because the provisional findings of this Tribunal have been well-signposted. I haven't issued any reaction to the provisional findings, but certainly others have, and not alone is everybody in this room aware of the provisional findings, but the general public, through the media, are aware of what the provisional findings are, and I find it absolutely extraordinary that I am now not afforded the opportunity even to refer to these findings with a witness who was in a position to completely counter the allegations that have been placed against officials in the Department. But I'll proceed and I'll read number 11 and 12 into the record.
Now, paragraph 11, Mr. Andersen:
"I am certain that at no point during the GSM process was I informed of any preference for the Esat Digifone application express or implied on the part of any civil servant involved in that process. No such preference was ever expressed to AMI. I am certain that if any such preference existed on the part of any individual civil servant, then I would have become aware of it, given my central role in the process and my close contact with the individual civil servants involved over a period of a

number of months of intense activity. I can categorically say that I do not believe that any such preference existed on the part of those involved in the GSM2 process."
Mr. Andersen, is that statement factual, correct, and do you stand over it?
A. It's correct and I stand over it, yes.
Q. In paragraph 12, you say: "I should mention that the only time that relative preference or apparent relative preference for any particular application came to AMI's attention was when Mr. Sean McMahon of the Department's Regulatory Division expressed a concern that Esat Digifone would be particularly difficult to deal with from a regulatory perspective and that Persona would not present such challenges."
You understand what -- that comment was made to you; do you understand that to be correct?
A. That is correct.
Q. Could I ask you, you also -- have you read Mr. Sean McMahon's subsequent evidence to this Tribunal, or previous to you making your statement, where Mr. McMahon stated, quite clearly, that he agreed with the result and didn't in any way demur from the work of the Steering Group?
A. Yes, I have read his evidence, or the transcript of it, that he fully backs up the result. So, the concern he raised was, I believe, a fair concern on his part if you look at what his job was. His job was to take care of the regulatory things and he brought up this question that Esat Digifone would be more difficult to deal with regulatorily, and when we told him, during the Steering Group meeting, when he raised it, that that was not a concern that we could take into consideration, then he fully accepted that. And let me just say it, quite clearly, concerning Sean McMahon: What I have been saying about the integrity of the Irish civil servant does also include Sean McMahon.
Q. Yes, and I put it to you, Professor Andersen, that I can vouch for that because I was the Minister at the time. Mr. McMahon and Ed O'Callaghan were in the Regulatory Division and I was anxious to open up land lines and all sorts of access for competition into the sector, as Minister, and there was a conflict at times between what I required to do and what the status quo was, and the status quo was, at that time, to preserve the monopoly of Telecom Eireann in all areas, and the job of Mr. McMahon and Mr. O'Callaghan was to preserve that monopoly until such time as we got legislation through. So can you understand that?
A. I fully understand that you were, in actual fact, Minister, Mr. Lowry, in one of the most difficult periods a minister

could ever be in office in these years, because you were Minister in the period when the liberalisation began to take place, and I know from other countries, also, that that was a hugely complex process, a process which also involved conflicts from time to time, natural conflicts, because, in your case, because at that time you had not instituted an independent regulator. So you had, as a Minister, to deal both with the State's ownership interest in Eircell and Eircom, on the one hand, and also, on the other hand, to take care of the liberalisation process, which was not something you could decide alone in the Irish Government, but which you were, to some considerable extent, forced to do by EU regulation.

Q. Yes, I'd agree with that summary. And I'd like, Mr. Andersen, for you to understand that, at that particular time, again, we had a Coalition Government. I was anxious, as Minister, for liberalisation. There was elements within that particular Government who were anxious to protect the status of the existing monopoly. Now, can you understand that?

A. I fully understand it, because the cross-pressure that you were having is the same cross-pressure that every European EU Member telecom minister would have during these years.

Q. An important element, I put to you, Mr. Andersen, of this, and it puts in context Mr. McMahon's reservations about regulating Esat, was that, at that particular time, Esat was the predominant influence and force in bringing change through competition, and, on a regular basis, they were in contact with the officials of my Department, including Mr. O'Callaghan and Mr. McMahon. The officials were in conflict with the Esat movement at that particular time because the officials were holding what was still the official Government line, policy line, and, for that reason, there was a lot of tension between Esat and Mr. O'Callaghan and Mr. McMahon. And in fairness to Mr. McMahon, I can understand why he made the statement he made about Esat being difficult to control, because they were giving him an extremely hard time in the Department, asking him why wouldn't he open up the land lines to competition.

A. That is also why I retain my comment that the fact that he did raise this regulatory concern does not impact on my view of the fact that he has high personal integrity.

Q. And I repeat, again, that Mr. McMahon has given evidence of the fact that he was quite happy with the way the competition was ran, that he signed up to the decision that was made to award the second mobile phone licence to Esat Digifone, isn't that correct?

A. Yes, that's what his evidence and that is also consistent with what I -- what I recollect was his approach during the Steering Group meeting.
Q. Paragraph 13, you say, "That I am entirely satisfied, from my perspective, that all of the civil servants involved in the GSM process carried out their work with the utmost integrity and without any element of favouritism for any applicant being brought to bear."
Do you stand over that statement?
A. Yes.
Q. You state, "I am also satisfied if any such desire or preference to assist any particular applicant ever existed, then I would have quickly become aware of such a preference, given my close involvement."
Do you stand over that statement?
A. Yes.
Q. "By the time AMI became involved in the GSM process, we had been involved in a great many similar -- a great number of similar mobile tender processes around the world. It is not feasible to suggest that such preferences or interference could be brought to bear without the consultants conducting the process becoming aware or even suspicious of such motivation."
Do you agree with that?
A. Yes.
Q. "However, there was no such awareness or suspicion on the part of AMI in the GSM process in Ireland. As far as AMI was concerned, the licence competition process was conducted fairly and without any untoward interference or influence being brought to bear on it."
A. Yes.
Q. "The winning applicant was simply the best applicant measured against the applicable evaluation criteria which were laid down prior to the reception of the applications. As far as AMI is concerned, there is no more to it than that."
A. Yes.
Q. In other words, the winner was conclusive and it won, as we say in Ireland, fair and square?
A. Fair and square, yeah.
Q. Now, could I just briefly turn to -- we have touched on it already so I am not going to delay you on this, but in relation to the competition, the competition, just to put it in perspective, Mr. Andersen; when I came into that Department as Minister, work had been previously conducted by my predecessor Brian Cowen, as Minister, and by the officials in the Department, and when I became Minister, a number of priority policy initiatives were put to me by the

Secretary General and the Secretariat of the Department, and because of the lack of competition in this sector, we decided, and because of the pressure that was on us from the European Union Commission, we decided to move ahead with the competition. Now, I have been accused, in the past, of actually creating a competition to do somebody a favour. The reality is that the work was underway. Would you agree with that, Mr. Andersen?
A. Well, that's a bit difficult for me because I don't know the entire pre-history. So --
Q. Let me assure you that the work was underway within the Department and the evidence available to the Tribunal will clearly show that. Secondly --
A. Okay, let me just try to explain the real starting line for me was in and around April of 1995. Of course, we did the tender before that, so there is a pre-history also there in, I believe, sometime in 1994, but the documents I now see for the Tribunal, dating back to, let's say, 1993, and stuff like that, I would not be familiar with that pre-history.
Q. Okay. But you will accept, Mr. Andersen, that the Irish Government was under pressure from the European Commission to bring liberalisation to the market?
A. I would even put it stronger than that. You had, point one, an obligation to introduce competition within the field of GSM, and point number two was that you were beginning to be characterised in the EU circles as a laggard because you were one of the last, if not the last, to introduce competition within this field.
Q. And you would agree, I presume, Mr. Andersen, that consumer welfare competition is good for the citizens of the State?
A. Definitely. That was also part of the background for EU to put pressure on this because it's good for the consumers in the country, but it is also, and that is inherent in the GSM system, it was also good for the economic and welfare development in the entire EU.
Q. So, therefore, Mr. Andersen, you would agree that the second mobile phone licence process was urgently needed in Ireland and was dual-held and carried out in the national interest?
A. Yes. Let me put it in that way. At the time we are talking about now, you had the paging system, Eirpage, which was not a telephony system, and then you had a TACS 900 system, which was an analogue mobile telephony system, a not very advanced one, to say the least, and therefore, there was, I would say, a need to introduce GSM as quickly as possible in order, also, to gain the macro-economic benefits you could gain from that.

Q. And it's fair to say, Mr. Andersen, that Esat Digifone, the successful candidate, did succeed in bringing competition to the market, and that was the objective of the Government of the day, to bring competition. And could I put that in context for you: Would you agree that this licence process did bring competition to the market?
A. Sorry, I didn't get the question.
Q. Do you agree that this competition process did bring exceptional competition to the market?
A. Now we are talking about something which is post the GSM evaluation and post the finalisation of my work, and I have come here to give evidence specifically on the GSM evaluation and the tender process. So I will just, you know, I will not --
Q. Let me put it for you this way, Mr. Andersen; because of your wide experience, you should be able to give me a view when I put it to you this way: That when the competition process was initiated in 1995, in Ireland we had a population, at that time, of three-and-a-half million citizens?
A. Yes.
Q. We had a monopoly of Telecom Eireann, and due to the -- a flawed business plan, they actually had only 50,000 GSM customers. At that time, in 1995, we had 2.3 percent penetration of the marketplace per capita. Now, we proceeded, we held the competition, and Esat Digifone was declared the winner, and, in anybody's language, Mr. Andersen, and I don't think you need to be living in Ireland to know this, that the Esat Digifone story was a spectacular success in shaking up the Irish telecoms market because we now have a penetration level per capita in the mobile telephony area which is the second highest in Europe and one of the highest in the world. So therefore, the objectives that were set down by that Government have worked, and furthermore, the decision to grant the licence to Esat Digifone has been a spectacular success in that it achieved all the objectives that was set for it in that competition, is that correct?
A. Yes, it's correct that you have achieved a lot and it's not incorrect what you are stating, but what I am trying to say here is that I would like to confine my evidence here for this Tribunal on matters which is focused on the GSM evaluation and the GSM tender process.
Q. I appreciate that, Mr. Andersen, but the facts are there and they speak for themselves.
Professor Andersen, do you consider it one of the great ironies of this Tribunal, an irony, in that this Tribunal, which has spent so much time, spent so much money and such

an effort has been expended in what was actually, in objective terms, one of the most successful policy issues implemented by an Irish Government. In other words, this was a very successful competition, it achieved its objective. And here, we have a situation, and the reason I am here today and you are here today and that we are all here today, is that this spectacular success that we have, we have given ten years trying to unwind it and undo it; do you find that strange?
A. I don't think it's my role to comment on that. I think I am here to give evidence, as I said before, on the GSM tender process and specifically about the evaluation that took place. Now, if you want to comment on something in more general terms, it's just a reflection, you were talking about how things were, how things went along post the GSM2 tender process, but you could -- my reflection is just that --
Q. I understand what you are saying.
A. The macro-economic benefits you are addressing, you could also have the reflection that you could have achieved much, much more in the Irish society if you had introduced GSM more quickly than you actually decided to do. So, in my view, you see, the licence process in Denmark was over in 1991, the same was the case in Germany, and so forth. So coming in as one of the latest, if not the latest, among the European member countries, you actually had a huge macro-economic loss.
Q. Thank you, Mr. Andersen. Could I just put to you finally, in relation to this, the result of this competition, could I put it to you, for the avoidance of doubt; I know you have said it previously, but it's important that we put it on the record again: Can I ask you, are you absolutely satisfied as to the integrity of the second mobile phone licence process?
A. Yes, I am.
Q. Are you absolutely satisfied that the correct result was achieved in accordance with the terms and conditions of which you based the competition on?
A. Yes.
Q. Are you absolutely satisfied with the validity of the result?
A. Yes.
Q. Are you -- you are, therefore, saying that Esat Digifone won the second mobile phone licence process because it was the best application relative to the five other applicants?
A. No, that's not what I have stated here. I have been very meticulous in my statement to say that A5, or Esat Digifone, was best, the best application according to the

evaluation criteria. So you are stating something where you do not take --
Q. I understand the difference --
A. It's very important for me to state, where you do not take paragraph 19 into account. So my statement is A5 was the best application according to the evaluation criteria laid down in paragraph 19.
Q. Thank you.
Mr. Andersen, have you any evidence whatsoever that you can give to this Tribunal that would suggest that Esat Digifone's success in the second mobile phone licence process was due to factors other than the fact that it submitted the best application?
A. No, I am not aware of any such a thing.
Q. So therefore, Mr. Andersen, I am putting it to you that improper influence or interference on my part, or on the part of anyone else, was not a factor at all in achieving that result?
A. No.
Q. So the reality, then, is that Esat Digifone won because it deserved to win; it's really as simple as that, isn't it, Mr. Andersen?
A. You used the word "deserved to win". I would then -- if I should be fully clear on this, deserved to win according to paragraph 19, that's according to the evaluation criteria laid down.
Q. Now, for the record, Mr. Andersen, I would like to read paragraphs 15, 16, 17 and 18 of your statement, which refer to the validity of the process.
Paragraph 15 of your statement, you say:
"Esat Digifone, applicant A5, won the second mobile phone licence competition for the plain and simple reason that it submitted the best application in accordance with the criteria set down by the Irish Government in requests for proposals published on the 2nd of March, 1995. These criteria were set down in descending order of priority at paragraph 19 of the RFP."
After all the evidence you have heard, Mr. Andersen, do you stand over that statement?
A. Yes, I do, and you see here I also refer to paragraph 19. I hope you appreciate that.
Q. Yes, I understand the point you made.
Paragraph 16: "Esat Digifone was a clear winner of the GSM licence competition process. By 'clear', I mean there was certainly an appreciable difference between Esat's application and the application of the second-placed applicant, Persona. It is important to note that by 'clear winner', I mean that no amount of further supplementary

analysis or scrutiny of the applications would have changed the result. Esat's margin was not narrow. Esat clearly won the competition as the so-called A5 application was the highest ranked according to the evaluation criteria with an appreciable margin to the second applicant, a margin well outside what would be regarded as close, enough to prompt the requirement for further supplementary analysis or a review of the scoring process."
Is that correct, Mr. Andersen?
A. Yes, it is.
Q. "It is fair to say that Esat's highest ranking in the second mobile phone licence process was clearer or more emphatic in terms of what AMI would regard as typical in such mobile competition processes."
In other words, you had conducted in the region of 200 licence processes and, in this instance, the margin of win, we'll call it, was higher than what you typically receive in the international marketplace?
A. Yes.
Q. It was certainly clearer than the results that had been arrived at many similar mobile phone competition processes that you had been involved in?
A. Exactly.
Q. Paragraph 17: "I was, and remain, absolutely convinced that Esat Digifone, by any objective standards, submitted the best application in accordance with the criteria set down by the Irish Government. There was simply no question about it. In simple terms, Esat Digifone's application was comparably better, in some cases very considerably better, than the next ranked application, when viewed in the context of the relative importance of the individual paragraph 19. Had AMI been of the view that there was not such an appreciable difference between Esat Digifone's application and that of the next placed applicant, then AMI would certainly have demanded that such further analysis be carried out as may have been required. However, the result was perfectly clear and no amount of such further analysis would have changed that. Esat's application was very clearly the best, according to the applicable evaluation criteria, and arrived at in a unanimous fashion among the PG GSM group."
I think it's important to reemphasise here, Mr. Andersen, that you are saying in the statement that you arrived at a unanimous decision among the PG and GSM group, isn't that correct?
A. That's correct.
Q. And I'll conclude with paragraph 18:
"I should also point out that, in AMI's view, the

application submitted by Esat Digifone was one of the most impressive applications that the AMI team had ever considered in any such tender process worldwide, either at that time or indeed since."
Now, Mr. Andersen, that's a very big statement to make. You conducted in the region of 200 applications worldwide. Do you stand over what you have said in that statement, that effectively what you are saying, that this was the best tender that you had ever adjudicated on, or one of them?
A. It was one of the best applications I have ever seen, if not the best application. When I am making a reservation about not saying the best application, it is to do with how I perceive the way you measure this, because whenever you are going to say that something or somebody is the best, you have to measure it against criteria.
Q. Okay. And then you say "The level of detail and the substantive content as provided by Esat Digifone in their application was hugely impressive. As an example, this was so in the sections of Esat's application dealing with ability to roll out their network. I recall, in particular, the Evaluation Team being astounded by the level of preparation done by Esat Digifone in terms of signing up site options, applying for site planning permissions. No other application came close to Esat Digifone in this regard."
Do you stand over that comment?
A. Yes, I do.
Q. Could I ask you there, in respect of the statement that you have made here, "In particular, we were astounded by the level of preparation done by Esat Digifone in terms of signing up site options and applying for planning permissions." Do you recall -- I noticed in a note of a meeting that you had with Mr. Healy at one stage where he said that that was fictitious and false, that statement that you had made; do you recall that meeting in private session?
MR. McDOWELL: Chairman, I think you have ruled on these matters. I think Mr. Lowry, although --
CHAIRMAN: I made a ruling, Mr. Lowry, that these meetings with Tribunal counsel are not admissible in evidence for the reasons that I have given, and I think you are aware of the force of that ruling. I cannot call the barristers. Perhaps I am being indiscreet in saying that the individual barristers have indicated to me they would have welcomed an opportunity to testify in these matters, but I have ruled it is not appropriate here. If it comes up in a subsequent forum, there will the opportunity for everybody to hear all

sides of those matters, but not today.
Q. MR. LOWRY: Well, could I ask you, Mr. Andersen, was that contention -- was that statement that you have made, did that become, without going into, we'll say, the detail of it, did that become a bone of contention in your private sessions with senior counsel?
MR. McDOWELL: This question is a deliberate attempt to evade a ruling that Mr. Lowry, although a layman, clearly understands and is trying to evade.
CHAIRMAN: Move on, if you please, Mr. Lowry.
A. Can I say something which does not relate to the private meetings? You were reading aloud paragraph 18. What I think I have stated -- you may not have been here, but what I think I have stated is that the way we saw the A5, or Esat Digifone, application, was that it had reached a stage which we labelled pre-implementation. And by that I mean you can have -- you can classify applications in different categories, and the A5 application was very, very much at the advanced level of what we termed pre-implementation; that is to say, that a lot of the network roll-out and cell planning had been provided in the application. Local market analysis was there. There was a branding process which had been finalised. There were even advertisements and maybe, also, presentation films and videos present, and whatever, all of which we could see in the A5 application but which was also tested during the so-called oral presentations.
Q. MR. LOWRY: Thank you, Mr. Andersen. I just want to put on the record that I do not agree that I, as somebody -- as an affected party, have put a question to you which is very relevant to the outcome of this Tribunal, because it gets to the core of the issue about you being led and others being led in relation to a theory. So I'll drop it, but I want to place on record my dissatisfaction with that approach.
CHAIRMAN: Noted.
Q. MR. LOWRY: Now, Mr. Andersen, we have already said, you have conducted, simply, roughly 200 applications. It's acknowledged that you are a man of huge experience, vast experience, and your expertise has not been challenged, nor could it seriously be challenged. In that context, could I ask you, Mr. Andersen, have you ever been subjected to -- after you ran a competition, have you ever been subjected to a process like this Tribunal before?
A. No, not like -- not in a tribunal fashion like this, but it is a matter of fact that there have been court cases and Judicial Review of some of the subsequent tenders that took place in Ireland.

Q. And --
A. But not in the fashion of a tribunal, no.
Q. Are you aware, Mr. Andersen, that when this competition result was completed, that I, as the then-Minister, invited the losing Persona, invited them to conduct a Judicial Review of your decisions and the decision of the Project Team, are you aware of that?
A. Vaguely, yes.
Q. Well, just for the record, I did invite them to do that, as Minister of the day, and my officials invited them to do that, and as you previously have stated there, that would have been the normal thing to do; if you had a problem or a difficulty, you would go to the courts and you would seek a Judicial Review. They were given that offer, encouraged to take that path, and they refused to do so.
A. Okay.
Q. Professor Andersen, I want to put it to you here about a typed note taken at a meeting with the Tribunal with Tony Boyle of Persona. This is the meeting that took place in private on the 1st of May, 2001. Now, it might not surprise you to learn that one of the first parties that the Moriarty Tribunal engaged with when it was starting to conduct its inquiries into the second mobile phone licence, was Persona, and this meeting that I am referring to, I believe that Mr. Healy attended at this meeting with Mr. Boyle?
A. With whom?
Q. Mr. Healy and Mr. Boyle. Mr. Boyle attended a private session of the Tribunal with Mr. Healy?
MS. O'BRIEN: Sir, I just -- as I said, I hesitate to interrupt and I am sure you have no difficulty at all in Mr. Lowry referring to these notes, because they actually have already been adduced in evidence, they have been explored with Mr. Boyle in the course of his examination, but I think it is very, very important that the record be correct. The first person -- the first party that the Tribunal engaged with in relation to its private investigations into this process, was with both Departments, the Department of Transport, Energy and Communications, as it then was, and the Department of Finance, and that was in the early months of 2001, sir.
CHAIRMAN: That's my own recall.
Q. MR. LOWRY: Mr. Andersen, in this meeting with Mr. Healy and Mr. Boyle, the comment was made that Andersens were a small operation in Denmark and that their biggest client was the Irish Government. This comment was made by Mr. Boyle to Mr. Healy. Does that comment reflect accurately the size and substance of your organisation and

the worldwide reach that you had in your capacity as lead consultant with AMI?
A. That's strange, I have never heard that, but that is most certainly not correct. Our Irish clients -- client here, the Department, was most certainly not our biggest client, and the turnover, just to put it into perspective here, was many, many, many times annually over the fee for this assignment.
Q. Well, Mr. Andersen, I would ask you, would you see a remark like that at an early stage of the Tribunal, would you see that as a leading remark to try and discredit the credibility of your operation?
A. That's my interpretation of it. But I don't know whether I can see the letter? Is it possible to see the --
Q. I have seen it, but I am not allowed to put it to you, but it's very much in that way.
A. Okay. But could -- just to reflect a little bit. Could you read aloud the quotation again, please, about the turnover and something that it was marginal?
Q. "Andersens were a small operation in Denmark. Their biggest client was the Irish Government." In other words, the Irish Government were very foolish to bring you on board because you didn't have the capability or credibility to do this process. That was the inference at an early stage when the Tribunal was formulating their line of investigation into this process.
MS. O'BRIEN: Again, sir, I think it has to be, in fairness to the record, it has to be made clear. Mr. Lowry has read from a note of a meeting. He hadn't identified the date of the meeting, where the meeting was. I think there is no difficulty in him putting these meeting notes to the witness, but I think he has already quoted the fact that the material to which he was referring was attributed to Mr. Tony Boyle, not to the Tribunal, sir.
CHAIRMAN: Yes.
MR. LOWRY: In private session with Mr. Healy.
Yes, Mr. Andersen?
A. I would just say -- I mean, we were, most certainly, not what you would consider as a small company. We were working in 48 countries. And it would be my estimate that the turnover from the Irish assignment here would be around 5% of the annual turnover of the company at the time. So, it is most -- certainly, so that it is not correct to state that this was our biggest client, the Department was the -- your Department was our biggest client. That's not correct.
Q. I fully accept that. And I just, you know, I am glad that you have had the opportunity to correct what I would

consider to be a smear on your professional reputation.
Now, could I ask you, Mr. Andersen --
MR. McDOWELL: Chairman, just arising out of that, I think it's important that the record show that this was a charge made by a rival to the Tribunal's counsel and not a charge made by the Tribunal's counsel in relation to Mr. Andersen's company.
CHAIRMAN: Well, I think that actually did emerge on Mr. Lowry's opening of the matter, that it was a comment attributed to Mr. Tony Boyle.
MR. LOWRY: It's difficult, Mr. Chairman, to put it accurately when you are refused the opportunity to put the detail on the screen and put it --
CHAIRMAN: Let's proceed, Mr. Lowry.
MR. LOWRY: However, we'll carry on, Mr. Chairman.
Could I ask you, Mr. Andersen, how many individual expert external consultants were actually involved in conducting the second mobile phone licence? How many? Just, I don't need you to go into this in detail. How many had you involved with you, roughly?
A. Well, in this competition, we had seven nominated consultants involved, and let me just be as concise as I can: Six were on a permanent contract and were also -- had also dealt with previous competitions, and one was a seconded vice-director-general from the Danish National Telecom Agency. Now, in addition to these pre-identified consultants, who were already mentioned in our tender and who actually executed the job, a few additional consultants were also used, consultants that were on full-time contract in my company.
Q. So it's fair to say that all of these people were professional, experienced and competent at their job?
A. Very much so, yes. And they would have been -- all of them would have been through similar tenders or other GSM2 tenders, also the seconded vice-director-general from the Danish National Telecom Agency.
Q. So, in other words, it was quite a collection of experience in the field of telecommunications with specific expertise in conducting these competitions, is that correct?
A. Yes. I don't think you, at the time, could have found any other consulting firm delivering this level of expertise.
Q. Now, could I ask you, Mr. Andersen, the validity of the Esat Digifone result in this process, was it accepted and endorsed by each of the consultants involved, of the AMI team?
A. Yes.
Q. So you are after telling me that there were seven external consultants involved. Out of the seven, did each of the

seven accept and endorse -- was there any demur of the seven? Was it unanimous that the seven agreed with the result?
A. That was unanimous.
Q. What would you say, Mr. Andersen, to anybody who would question or challenge your professional competence and the professional competence of your AMI team of consultants?
A. It would depend on how such statements were made and where they were made, etc. So it's difficult for me to give a general answer to your question.
Q. Could I ask you --
A. I need to see it in some context.
Q. Could I put it in the context, would you think that Mr. Peter Bacon was in any way qualified to assess or criticise your competence as an expert?
A. No.
Q. Would you consider that Mr. Bacon was a strange choice by this Tribunal?
A. Yes, I actually would, in a sense that having looked into it, I can see nowhere that he has expertise within this field.
Q. So you never came across him in the field of telecommunications?
A. No.
Q. And as far as you are concerned, he has no reputation in terms of -- in the area of telecommunications?
A. No, not that I know of.
Q. Could I go further, Mr. Andersen, and ask you, do you believe that there is anyone associated with this Tribunal have the qualifications to assess your competence or to criticise your stewardship of the mobile phone licence? I am talking about in a technical sense.
A. Well, in my dealings with the Tribunal, I have not seen any experts there.
Q. Were you surprised with the lack of understanding and grasp of those people acting on behalf of the Tribunal, of the process?
A. That's a difficult question to answer, actually, because, in the beginning, when I was asked to meet with the Tribunal, the Tribunal wanted to sign some kind of consultancy agreement with me, and with AMI, and therefore, the surprise that you are addressing did not pop up in my mind initially. I don't know if you -- you look like you don't understand what I am saying, so I am trying to explain it a little bit.
Q. Yes, could you explain? When you say that the Tribunal offered you a consultancy, what do you mean?
A. What I mean is -- you are asking me whether I was

surprised?
Q. Yes.
A. That's what I would like to be meticulous on answering. The surprise was not -- is not a correct term for me to characterise my reaction, because when I met with the Tribunal legal team, they approached this in a manner initially, you know, very, very early stage --
Q. This is in 2001?
A. Yeah, very early stage, as if they needed to be a kind of educated or a kind of -- what shall I say? -- there was a discussion on a consulting contract between the Tribunal and AMI. So when you are questioning me whether I was surprised, I hope you will understand, Mr. Lowry, that I was not, as such, surprised, because when people want to retain consultants, they want to retain assistance. That's what they are expressing. So I don't see how I could answer 'yes' to your question that I was surprised that they didn't have expertise, because they were demanding expertise. That was why AMI was there initially.
Q. Okay.
A. Do you understand what I mean?
Q. I do, I do. And could I ask you, Mr. Andersen, how did those discussions that you initiated in 2001, could you tell me how those evolved and how your interaction with the Tribunal evolved and how -- just tell me a little bit about that.
A. How things evolved?
Q. Pardon?
A. How things evolved?
Q. Yes.
A. Well --
MR. McDOWELL: Chairman, again, the Tribunal has made a ruling and Mr. Lowry clearly understands that ruling. He has protested against it, but, not content with protesting against it, he is now trying to circumvent it, quite clearly.
CHAIRMAN: It is the ruling I have made, Mr. Lowry. I am trying to give you some latitude because your only professional advisors present are from disciplines other than legal ones, but I have made a ruling that these meetings and interactions are not to be canvassed in evidence, and I have given my reasons for it.
MR. LOWRY: Well, Mr. Chairman, I have to say that that, again, is totally unacceptable. I am asking the witness, and he is a key witness to this Tribunal. I am the one, like others in this room, officials, and what have you, that have -- allegations have been made against constantly. I am trying to ascertain where these theories started. And

from my perspective, just to explain to you, Mr. Chairman, where I am coming from, as far as I am concerned, the theories in relation to wrongdoing with the licence process levelled against officials and against me, as then Minister, emanated from these early meetings that were held in private between Mr. Healy, in particular, and Mr. Andersen, Mr. Boyle and others. And I would like to ask Mr. Andersen, and I think it's a perfectly legitimate request, to ask Mr. Andersen to put in context the discussions and the meetings that he had and then to follow the progress of the line of inquiry that the Tribunal adopted from there on. I think that's a perfectly reasonable and legitimate point of view to put forward.

CHAIRMAN: No, Mr. Lowry. I have made a ruling on that. I have heard certain evidence from Mr. Andersen's initial statement that has given me -- that has made me aware of certain matters in this regard, and I will assess those, together with the other evidence, and I am aware of your view on it and I'll take that into consideration, but I am not going to reverse my own ruling in relation to the content of these meetings. So please proceed.

Q. MR. LOWRY: Mr. Andersen, I am sorry that you and I are muzzled in this regard. I'd like if I was able to ask -- question you at length in relation to it, but I have to accept the Chairman's ruling, under protest.

Could I ask you, Mr. Andersen, when did you become personally aware of the Tribunal's interaction with Peter Bacon?

A. Well, I believe it was when the Tribunal sent his reports to me. I would have to look through the files, but it was -- I know, for instance --

Q. Whatever about the precise time, Mr. Andersen -- I'll use that word again -- when you heard that Mr. Peter Bacon was brought in to examine your work, were you surprised?

A. Yes, definitely. I recall that a report was sent by the Tribunal, I believe it was in 2006.

Q. Okay. Have you, Mr. Andersen, had access to the notes and documents that were exchanged and the conversations that took place between the Tribunal counsel and Mr. Peter Bacon?

CHAIRMAN: Again --

MR. McDOWELL: How many times must I make this application?

CHAIRMAN: Mr. Lowry, can I remind you of the situation? I ruled that Dr. Bacon's reports could not be made admissible. I specifically ruled those out of evidence. Because of a remark made in the High Court in the course of Mr. Justice Quirke's decision dismissing the challenge made by Mr. O'Brien in relation to certain allegations, it was

stated by the High Court Judge that Mr. O'Brien, and, as it transpired, certain other interested persons, would be entitled to cross-examine Dr. Bacon on dealings had between the Tribunal and Dr. Bacon, but that was as far as it went. His reports have not gone into evidence, they have not been read or considered by me.
MR. LOWRY: But at the same time, Mr. Chairman, you allowed a situation where Mr. Bacon came in here, gave evidence on behalf of the Tribunal --
CHAIRMAN: Not so, Mr. Lowry.
MR. LOWRY: Yes, he came in as a consultant to the Tribunal.
CHAIRMAN: Please, let's get things right. I disallowed Dr. Bacon's evidence. The High Court said that whether or not he was called, that he would have to be made available if Mr. O'Brien wished to cross-examine him. That was the sole basis upon which he became involved.
MR. LOWRY: Sorry, just to clarify this, Mr. Chairman. I don't have anybody to legally advise me on it, but what you are saying is that the three or four or how many days I saw -- I was here when Mr. Bacon gave his evidence. You are saying --
CHAIRMAN: Two.
MR. LOWRY: Two days. So you are saying that all of the preliminary meetings that Mr. Bacon had with the Tribunal, that the cost that was involved, I think it was 100,000, and then Mr. Bacon comes in and he gives his evidence, you are telling me that all of that evidence and that particular exercise is gone for nought?
CHAIRMAN: The evidence that was heard over those two days are matters that I will take into consideration. Even though it was not evidence that was sought or directed by me, other matters that took place are not part of the evidential body that I must consider and I am not going to have them inquired into now.
MR. LOWRY: I find it --
MR. O'DONNELL: My understanding, sorry, sir -- I am sorry to interrupt Mr. Lowry -- my understanding, from what you said yesterday, was that Mr. Bacon's testimony had not been read or considered by you and wasn't going to be.
CHAIRMAN: Of course I have read -- it was Dr. Bacon's reports, Mr. O'Donnell, lest there be any doubt in the matter, that I disallowed.
MR. O'DONNELL: I am aware of that.
CHAIRMAN: Of course I had to read his two days' evidence and I was present at it.
MR. O'DONNELL: And so, just for absolute clarity, you are now taking into account, in the report which you will be

filing, the testimony of Mr. Bacon?
CHAIRMAN: Not -- Mr. O'Donnell --
MR. O'DONNELL: I am not trying to make trouble, sir. I just want -- I appreciate your ruling, I am not trying to go behind the ruling at all. But I just want, for absolute clarity, that the Tribunal will be reporting, will, in its report, be dealing with the evidence or will be taking into account the evidence given by Mr. Bacon, albeit it will not be taking into account the reports furnished by Mr. Bacon, is that a correct summary of your position?
CHAIRMAN: I will not be considering any expert evidence that may have been purportedly given by Dr. Bacon. I obviously had regard to certain of the matters, such as Dr. Bacon's response to Mr. McGonigal's suggestions in his cross-examination that Dr. Bacon was led by the nose, and similar matters. But as regards positively adopting any professional observations made by Dr. Bacon that might in any way be deemed to give rise to possible adverse inferences as against your clients, I am certainly not acting on that basis.
MR. O'DONNELL: All right. Thank you, sir.
MR. LOWRY: Well, Chairman, just for the record, I have -- I just want to state this and I'll leave this area then, but I want to say that I have read all of the notes, I am not going to put them on the record here, but I have read all the notes that transpired from meetings with Mr. Healy, and what have you, and I would have to say I agree with Mr. McGonigal, he was led by the nose and the hand --
MR. McDOWELL: This is deliberate and contrived effort to circumvent the ruling of this Tribunal, and it's not being done by somebody who doesn't -- is unaware of what he is doing.
CHAIRMAN: Mr. Lowry, you have two professional advisors present. They may not be lawyers, but you are well aware of the situation. You are a very experienced and able politician and businessman. And I would ask you to please proceed on the basis of those points that I can legitimately take notice of insofar as they may influence me in your favour.
Q. MR. LOWRY: Okay. Mr. Bacon -- or, Mr. Andersen, just one question. If it were suggested to you by anybody that you were manipulated in any way by the Steering Group or by anybody involved in the process, were you open to manipulation? Were you that kind of a person? Were you unprofessional? Were you weak in any regard that would allow you to be manipulated?
A. No, I don't think that any of this would carry any truth with it, given my experience in not only other GSM tender

processes, but also the involvement and conduct of the GSM2 tender in Ireland.
Q. That brings me on to -- and I want to be fair, Mr. Chairman, to Mr. Bacon as well. We have established that his evidence is not going to be allowed and that he is not the expert that we initially thought he was. But Mr. Bacon, in his evidence, and I am sure I am allowed to ask this because he said it in the witness-box himself during the course of evidence, Mr. Bacon refused to accept that he made certain comments that were applied to him in the notes taken of meetings.
CHAIRMAN: Well, no, sorry, you cannot --
MR. McDOWELL: This is deliberate contempt of the Tribunal.
CHAIRMAN: -- keep continuing. We are not having the notes.
MR. LOWRY: Okay, Mr. Chairman, what I am going to -- Mr. Andersen, could I ask you, Mr. Bacon said that he was incorrectly interpreted and the notes weren't accurate or factual. Has that ever happened to you?
CHAIRMAN: You needn't answer that, Professor Andersen. Proceed, Mr. Lowry, if you have matters that you think I should attach importance to in your own interest.
MR. LOWRY: As far as I am concerned, these questions are very relevant and I think their relevance is very obvious from how touchy the Tribunal is whenever I actually even go near the subject. I am talking about private meetings, private notes, that are not available to me that I can't use to defend myself.
MS. O'BRIEN: Sir, I think it's very important that the position in relation to the records of the meetings that the Tribunal had with Dr. Bacon is cleared up.
The meetings that the Tribunal had with Dr. Bacon and the attendances of those were all circulated on foot of the O'Callaghan decision in advance of Dr. Bacon's attendance. Dr. Bacon was called by you, sir, not as a witness to the Tribunal, not to provide the Tribunal with any substantive evidence in relation to the process, but on foot of the ruling of Mr. Justice Quirke in his decision in the High Court where the Tribunal's engagement of Dr. Bacon had been challenged. Dr. Bacon was made available. He was cross-examined by all affected persons, including -- and I am subject to correction here, but my recollection is he was also cross-examined on behalf of Mr. Lowry --
CHAIRMAN: Yes, he was, by Mr. Fanning.
MS. O'BRIEN: -- in relation to his dealings with the Tribunal. And that matter has been dealt with. I would submit -- or suggest to you, sir, it is entirely inappropriate for Mr. Lowry to now be asking Mr. Andersen

to comment on exchanges between Dr. Bacon and the Tribunal in the course of private meetings where Dr. Bacon himself confirmed in evidence that what was recorded in those meetings were related to matters and observations made by him and not observations made by any Tribunal counsel, and to ask this witness to confirm that he agrees with Mr. Lowry that those observations were made by Tribunal counsel, and that is most inappropriate, sir.

CHAIRMAN: In any event, we are moving on, Mr. Lowry. I have made a ruling on this.

MR. LOWRY: Yes, Mr. Chairman, I have made my point. I think it is unfair, unjust to me, not to be able to examine, because what I was establishing, Mr. Chairman, was a trend, a trend that these private sessions and how it led into your theory --

CHAIRMAN: Next point, Mr. Lowry. I have heard all of that.

MR. LOWRY: Could I ask you, Mr. Chairman, where is Mr. Healy today?

CHAIRMAN: I don't keep him under lock and key, Mr. Lowry. It's a matter for the barristers --

MR. LOWRY: I think you should find him from the basement and bring him up here.

CHAIRMAN: Come on, Mr. Lowry. Let you show your real talent.

Q. MR. LOWRY: Mr. Andersen, during your evidence you'll have heard senior counsel to the Department of Communications, and indeed other counsel, refer, time and again, to the Tribunal's working hypothesis and the Tribunal's theory in relation to events of the second mobile phone licence. There are many references to this thought process of the Tribunal in your sworn statement, and in that sworn statement, which you gave to the Tribunal, you have given evidence on it over the past two weeks. I, personally, and those associated with me, have long been of the view that the Tribunal has very much worked on the basis of a predefined theory. You, yourself, have described it as "working backwards," and I think that that is an excellent description. Effectively what you are saying is that the Tribunal decided the result that it wanted and then started working back from there. Could you explain to me, could you elaborate in relation to your phrase "working backwards"?

MR. McDOWELL: Chairman, again I object to this. This is clearly --

CHAIRMAN: I think I will allow Mr. Lowry a certain amount of latitude in this regard.

Q. MR. LOWRY: Mr. Andersen, as an expert witness and somebody

who was involved in this process, you said, in evidence here, and I want to question you on this evidence that you have already given to this Tribunal, you said that "The Tribunal had started and were working backwards. They came to a conclusion and they were working backwards to try and make that fit the theory that they had." What did you mean when you said they were "working backwards"?
A. Let me try to be as concise as I possibly can. "Working backwards" is a term mentioned in my statement to the Tribunal with regard to meetings -- to a whole-day meeting which took place on the 29th of October, 2003. And the one person during this meeting who used the term "thinking backwards," that's, in actual fact, not me. I take it on board as something I agree with, but it was my Danish solicitor. He discovered, during the meeting on the 29th of October, 2003 --
Q. Sorry, for clarification, who was that meeting with?
A. It was a meeting with two representatives from the Tribunal legal team and my Danish solicitor and myself, a whole-day meeting in Copenhagen.
Q. Who represented the Tribunal at that meeting?
A. That was --
CHAIRMAN: This meeting has been held by --
MR. LOWRY: Okay, the meeting happened, meeting happened.
A. Meeting happened, yes.
MR. McDOWELL: Chairman, again I have to object to this.
CHAIRMAN: Mr. Lowry, if this goes on, I am just going to have to adjourn matters. I have made a ruling on it. I accept that you are displeased by it, but I am going to stick to that ruling. I am not reversing it. Now if you have further matters to put --
MR. LOWRY: But, Mr. Chairman, this is a total nonsense. Here, we have an expert witness who has given evidence, and you are telling me that I cannot question him on a full day's meeting with the Tribunal counsel. You are telling me that that's completely off the agenda. It's off the agenda because it causes embarrassment to somebody, is that why I am not allowed to ask him?
CHAIRMAN: You are aware of my ruling and the reasons that I have given for it. Now, if you have other matters to raise, please proceed.
MR. LOWRY: Mr. Chairman, with your permission, I'll take a break for ten minutes, please -- five minutes.
CHAIRMAN: How long more do you propose to be after that, Mr. Lowry?
MR. LOWRY: I'd say I could be six hours yet. I'll do my best, Mr. Chairman.
MR. McDOWELL: I just want to indicate that the Tribunal

made a ruling in relation to time. The Tribunal indicated that the parties were free to share time. Mr. Lowry, for other reasons, which are perfectly understandable, wasn't available during some of the time allocated to him by the Tribunal. This witness has said that he will not be available after today for most of another year, and the Tribunal -- I would ask the Tribunal to remind Mr. Lowry that it has made a clear ruling, that it intends to abide by, that he was given a maximum amount of time to examine this witness and that he will be -- that he will be held to that ruling.

CHAIRMAN: That is the case, Mr. Lowry. I was aware that Mr. Gleeson told me he had certain dealings with you, I observed Mr. Bradley, Mr. O'Donnell's colleague, for the State, having some communications with you yesterday, so I intend to take the ten-minute break now and thereafter --

MR. LOWRY: Mr. Chairman, just before you do that, I will assist the Tribunal in relation to my contribution. I disagree entirely with Senior Counsel McDowell. First of all, I was given an allocation, when you sent around your sheet, your spreadsheet, I was given an allocation of nine hours. I have literally -- at the moment, I have two hours of examination. Now, I do not intend to take, in view of the request you have made of me, I will condense my questioning and I will be as quick as I possibly can, but I think it's a bit rich, coming from Mr. McDowell, who was on his feet for a week, and such repetition, particularly he gave two days on one aspect of it. I am now told that, as the chief accused here, that my time is limited and that I am restricted to an enormous degree as to what I can put to Mr. Andersen. But I hear what you are saying and I'll take a break.

CHAIRMAN: Ten minutes and we will thereupon --

MR. McDOWELL: Chairman, just before you rise, just for the record, he was given six hours, and it was due to commence after 1 p.m. yesterday -- 12 o'clock yesterday, and he wasn't, for his own very good reasons, and I don't criticise him at all, available at that time, but --

MR. LOWRY: Mr. Chairman --

CHAIRMAN: Ten minutes.

MR. LOWRY: Mr. McDowell is totally wrong in that. Number one, if he counts --

CHAIRMAN: Mr. Lowry, you have requested a ten-minute break.

MR. LOWRY: On a point of order, Mr. McDowell is wrong in his assertions. I had nine hours. If he checks his figures, he will see that I had nine hours. And the reason I was not here yesterday, I was here and available, but

Mr. O'Donnell wasn't finished.
CHAIRMAN: Ten minutes, Professor. Thank you very much.
THE TRIBUNAL ADJOURNED AND RESUMED AS FOLLOWS:
MR. LOWRY: I will proceed, Mr. Chairman. I understand that you have a time pressure, and all I am looking for is an adequate opportunity to make the points that I make. I'll be as expeditious as I possibly can, and I do wish to say it, though, that whatever way you look at the sheet, I looked at it -- the way I read it, I thought I was allocated nine hours, but it looks like I was allocated six, but, whatever way it goes, I am still two hours or three hours, or whatever, so I have a bit to go. I am not going to take --
CHAIRMAN: Well, Mr. Lowry, you know about time-sharing a great deal better than any of the rest of us here, except perhaps Mr. McDowell, and I certainly have been led to believe that both Mr. Gleeson and Mr. O'Donnell have availed of that facility, and my intention is that, whatever happens, Mr. McDowell must start his re-examination at 3 o'clock, and I understand that Mr. Gleeson is anxious to be starting his examination of his own client at or very close to 12 o'clock.
MR. LOWRY: Okay, Mr. Chairman, I am going to accept your ruling, but I want, again, to say to you I think it's unfair. Mr. McDowell already had a week of this witness's time and he is now looking for another hour when we finish. So I will move on.
Mr. Andersen, could I ask you, you have already given evidence to this Tribunal that the Tribunal, from your perspective, had worked from a predefined theory. Could I ask you, do you believe that the Tribunal got its assumptions, its calculation and its methodology wrong in how they came to the conclusions that they came to?
A. You are combining a set of factors in what you are stating.
Q. First of all, could I ask you, do you believe that the Tribunal had a predefined theory in your discussions with them?
A. Yes.
Q. Do you believe that that theory was based on assumptions that were incorrect?
A. Yes.
Q. Do you believe that the methodology used and the manner in which they calculated their theory, do you believe that that was accurate?
A. Well, that's -- I cannot give you a fully-fledged 'yes' to that because I have seen no calculations, as such, in writing from the Tribunal. What I have seen is a number of verbal statements; I have seen reports from Dr. Bacon, as

he addressed earlier; I have seen inter partes correspondence; and I have also seen documents on the Tribunal website, for instance the ruling from 2007; and I have also, then, received a document in November of 2008. But if I look through this, I have seen no calculation, as you ask me about.
Q. And --
A. I just want to be meticulous with my answer.
Q. Having seen all that documentation and correspondence, and what have you, did you come to the conclusion that the Tribunal was acting on the wrong assumption and that its methodology, in coming to that conclusion, was wrong?
A. You see, in answering, and in my head, I approach this in a different manner. I approach it in a manner like the following: One, is the fact base you are operating on. I mean, how are the facts with regard to the evaluation, the processes, the scoring of the applicants, etc.? And a different thing is the attitudes to things. And what I have seen is that, that the facts, it has been very difficult to establish a -- what shall I say? -- a concise fact base, so obviously the Tribunal legal team has not accepted facts, as I believe were facts. And when that is the case, you look into why can that be and then you look into the attitude part of this equation. That's just how, you know, it works in my mind.
Q. So what you are saying to me is that the Tribunal, in your opinion, have ignored the facts, have stuck to the theory, is that correct?
A. Something like that, yes, in a sense that if you go through all the processes I mentioned before and you even go to the opening remarks on Tuesday of last week, still some of the same errors or still some of what I believe is a wrong description, occurs.
Q. Even in the Opening Statement of last Tuesday?
A. Yeah. So there is some kind of consistent, consistency here.
Q. A consistency of errors?
A. Yes.
Q. In your judgement?
A. Yes.
Q. Okay. And why do you think that consistency of error is there? You mentioned the word "attitude"; do you think the attitude is reflected in these comments and in this Opening Statement?
A. Well, let me put it in another way. I think that the Irish GSM2 tender was conducted in a fair and square manner and with the arrival at a result which was relatively clear and through processes which, in my view, are fully normal and

defendable. And I have even given evidence that if you look at the core evaluation, that core evaluation stands up to what I call international best practice. So maybe I do not understand your question correctly, but I put it back to you: How can you investigate things during nine years when the procedures and the result are as they are? It must be because you are operating on the basis of some wrongdoing.

Q. Yes. And that's what we call the predefined theory and the working hypothesis there has to be something wrong here. But the reality is, Mr. Andersen, that you, from what you have -- the evidence you have given and from the statement that you have made to this Tribunal, you, as far as you are concerned, would say that there is absolutely no factual evidence to support that theory?

A. That's correct.

Q. Now, unfortunately, Mr. Andersen, I would like to get the nub of the issue, but I am not allowed to because of the Chairman's ruling, and the nub of the issue is the word that you used yourself, the "attitude," a-t-t-i-t-u-d-e, the attitude of the Tribunal, and their preconceived idea. So I have to leave that aspect of it, but I am not happy doing so.

Now, I want to ask you, Mr. Andersen -- I want you to listen to me carefully, Mr. Andersen, because I have a couple of questions to put to you here. Our legal friends here, and other people, have gone through this process in a very technical way, and the legals have tossed it around here now for nine or ten years and they have had a mighty time agreeing and disagreeing over a little emphasis there or a change there, to the extent that it has been repetitive, boring, and, you know, people have lost interest in it. But I want to get us back to a few basics by asking you the following question:

I want to ask you, the theory or the hypothesis that's being pursued by this Tribunal in relation to wrongdoing in the process, let's take that at its face value. But isn't it correct that such a theory or working hypothesis could only be true, it could only be true, if there was a vast conspiracy involving myself, a whole host of senior and respected civil servants and, indeed, yourself?

A. Yes, that's probably correct.

Q. Well, then, isn't it, following from that, isn't it the logical conclusion of the Tribunal's hypothesis that the theory could only be true if there was a huge and overwhelming conspiracy of truly epic proportions?

A. Of truly what?

Q. Epic, epic proportions?

A. Epic. Yeah, poetry? Spin, spin. Yes.
Q. Spin?
A. Spin.
Q. So you would agree with me that the theory could only be true if there was this massive collusion and conspiracy between everybody involved in the process, the civil servants, myself as Minister, you, your entire Project Team, we'd all have to be involved in this massive conspiracy and collusion for that hypothesis to be true, is that correct?
A. I think that is broadly correct, but you could also see other scenarios of wrongdoing; for instance, if there were, let's say, serious calculation errors in reports, whatever. But throughout all of this, I think it's very well-documented that there is no such thing as calculation errors, or whatever. So there is nothing happened fortuitously which could support a theory that A3 should have been the winner or that there was some conspiracy, whatever.
Q. Okay, so you are saying, you have consistently stated, Mr. Andersen, from the first time that you gave a statement to this Tribunal, you have consistently stood over the integrity of your work?
A. Yes.
Q. And honesty of the officials and the Project Team that worked with you?
A. Correct.
Q. Now -- so, technically, technically, you can certainly stand over it. You are the expert, you are the one who has most knowledge of what happened and you have relayed it here to us in a very careful way, in a very precise way. Now, so, rule that out, you then had to have the conspiracy theory. So the conspiracy theory is, do you feel that there was any evidence there, whatever, to support a conspiracy between the rest of us?
A. No, I have not seen any evidence.
Q. And just to get this clear and put it on the record, did anyone ever attempt to implement or formulate such a complicated conspiracy with you?
A. What do you mean by "conspiracy" here?
Q. Did anybody approach you and say, "Look, we want a result here, but to enable the result that we are looking for, you and others, you'll have to talk to your friends, you'll have to talk to the people who are doing the work for you; in other words, we'll all have to agree that we are doing the same thing"; did that ever happen?
A. It never happened. I mean, my evidence is very much to the contrary, that a lean process was carried out and it was

carried out as intended and as agreed and the scorings were on a unanimous basis and we also had reports drafted, etc. It dates agreed -- pre-agreed. So seen, you know, from the helicopter perspective, when you look across all of this the Tribunal has looked into, I see no justification -- there is no justification in what I see as an expert, to look into these matters. You had a very detailed and costed proposal from the consultants. You had the Evaluation Model which we have been through over some days here in the Tribunal. We have been through the scoring and the meticulous work done by the ten evaluation sub-groups. We have seen that three reports were submitted, etc. So when I look across this, all the work that went into it and the way the work was executed, I think that I was actually rather proud of what we achieved, measured against the challenges that we have. You see, there was the Orange claim, there was the EU intervention, there was the whole discussion with Telecom Eireann about the access conditions, etc., where you are to break up a monopoly, and stuff like that, a number of challenges were there underway. But I had the feeling both at the time but also now, when I have had the opportunity to look through it in hindsight and from the helicopter perspective, that I was proud of what we achieved. I think it was, you know, very good work.

Q. Just in relation to that, Mr. Andersen, you are an acknowledged international expert, you have a very fine reputation in relation to your technical and professional work. This just comes to my head. Could I ask you this question, Mr. Andersen: In that context, and in the way that your work has been questioned, do you consider yourself a credible and trustworthy witness?

A. Yes.

Q. Could I get back, Mr. Andersen, to the conspiracy and take it a step further, because, you know, this -- you have to understand, Mr. Andersen, the reason I am asking you these questions is, this is the way this is conveyed to the public in Ireland for the last ten years, that there was some form of conspiracy, and, as you say, there was no basis for it because there was no factual background to it, but it still went on and went on and that's why we are here for ten years, because there is this idea that something happened, we don't know what it is, but it happened. So let's find out what could it possibly be. We are given ten years of that and there is no information to show that there was any conspiracy.

Now, Mr. Andersen, could I put it to you that for such a conspiracy to have existed, then all of those people who

were involved in the conspiracy, and again it's you, me, every official in the Department, all the senior civil servants, approximately 17 of them gave evidence, and we had a host of other evidence, and everybody who has come before this Tribunal has said that they have absolutely no knowledge of any wrongdoing or impropriety in relation to the licence process. So, in effect, if there was a conspiracy, what would have had to happen is that all of those people involved in a conspiracy would have also conspired to give false testimony to this Tribunal over an eight-year period. Doesn't it follow that if there is a conspiracy and people come in and they tell the truth, as they see it, under oath, they'd have to be misleading the Tribunal?
A. Probably, but, you know, it's very theoretical.
Q. And I would have to say to you, Mr. Andersen, I have lived with this conspiracy theory, and I am very happy that the Tribunal is coming towards a close and that the conspiracy has never been backed up. There has been suggestions, allegations, innuendo, but as conspiracy theories go -- I think, Mr. Andersen, you are a man who is well-travelled -- as far as conspiracy theories go, I think it's right up there with the faked moon landings; would you agree with that?
A. Sorry, I didn't --
Q. Do you ever hear of the faked moon landing? It's a conspiracy theory?
A. Oh, yes, yes.
Q. Would you put this right up there with it?
A. Sorry, the question is that what happens with the Tribunal is something like the fake moon landing?
Q. The theory in relation to it, the conspiracy?
A. I haven't thought of it in that way, but, you know, it's inevitably so, seen from my perspective, that if a conspiracy theory could be proved to operate or if you would like to test a conspiracy theory, I can only confine my evidence to my own work, to my co-work with my colleagues in AMI and to the excellent team work I had with these Irish civil servants, so you will appreciate that there may be knowledge out there that -- or there may be documents, there may be something out there in the universe that I am not familiar with, so I can only confine myself to what I have been dealing with, and speaking about that, there is no justification for a conspiracy theory.
Q. Thank you, Mr. Andersen. Now, Mr. Andersen, could I ask you a number of questions about the civil servants that you dealt with. First of all, could I say to you, there is a word in the media here in Ireland for a considerable period

of time now, and the word is "enthralled," and I want to give you a description of what "enthralled" is. In the case as a Minister, I was a minister in the Department, and I worked with senior civil servants, experienced people; do you understand that?
A. Yes.
Q. Now, in that context, I want also to put my time as Minister in perspective. I was a first-time Minister in that Department. It was my first time being a Minister, so I didn't go into the Department with a lot of experience, and, in that context, I will say to you that the suggestion has been put to me that officials in that Department were in awe of me?
A. They were?
Q. In awe; in other words, they were afraid of me, they would do anything I'd ask them to do. Now, you have been a civil servant, you have also had loads of contacts with politicians in different jurisdictions. Has it ever appeared to you that, you know, that officials under a minister are unduly influenced and that they be blinded by them or that they be controlled by the Minister? That's the kind of suggestion that has been made; that, in other words, when I was Minister, the officials in my Department, some way or another, were in awe of me, that they were under my influence unduly, that they were blinded or controlled by me. In effect, Mr. Andersen, what -- I need you to understand this, that, in effect, what's being said is that these officials would do anything that the Minister asked of them, effectively, whether it was right or wrong. So I am asking you to put on your cap as a former civil servant and just imagine, and ask me is this -- does this happen in the public service? You know, could you imagine senior civil servants so petrified of me, as Minister, that they themselves wouldn't have had the moral courage or that they would crumble under a request from me to do something improper? In other words, that, as civil servants, they would act against their principles, that they would act against their training, that they would deviate from their high standards, and effectively, that they would act against their free will? From your experience of the civil service, do you think that's a realistic supposition to put to me? In other words, do you think that that would happen in the civil service in Denmark, in Ireland, or anywhere else?
A. Well, there are different layers in this. One --
Q. I am talking about the highest level?
A. But I am using the term "layer" in a slightly different way. Let me try to explain. One thing is the work, the

daily work of civil servants now. A minister can exert influence in at least three ways: One can be a direct order, a second can be an indirect order, and thirdly, inference can be exerted by the Minister just being there in a 'Yes, Minister' universe in a sense that civil servants can have what I called earlier during this hearing, an anticipated reaction, just trying to pre-empt what the Minister would like people to do. But I have seen none of this in this tender.
Q. Can I stop you there, Mr. Andersen, please. In terms of this licence process, did you see, to use your three examples, did you see any symbol whatsoever, or sign, of a direct order from me to interfere with the licence process?
A. No, I didn't.
Q. Did you see any indirect order from me in relation to the process?
A. No, I didn't see that, either.
Q. Did anybody in the civil service at any stage anticipate, as you use the word, or convey to you that the Minister would like this, that or the other? Did you ever get a message such as that?
A. Well, that is what I am stating, I didn't see that operate, either, and I would be rather experienced with a Ph.D. degree in political science, which, in my education, was almost exclusively on public civil servants and the public sector, and also being a public civil servant myself, and also, lastly, having worked so much as a consultant with the public sector in other countries, if such a kind of anticipated reaction would even have been there. And that having been said, I think it's -- you know, seen from where I am giving evidence, it's a bit surprising that we are going to expend so much time on this, because what I think is very relevant is also the fact to look at whether the civil servants and the consultants, they actually worked within the remit they were given.
Q. Okay --
A. And that is also important to state, that, as the work went along, there was no such a thing as the Steering Group or the consultants, as I see it, working with -- outside the remit that was given.
Q. So, it is fair to say, Mr. Andersen, from your contact with the Irish civil servants, that you would say that they were driven by a sense of public duty and that they wanted to do the right thing by the Irish State, would that be correct?
A. Yes. Hard-working and with high personal integrity.
Q. So, Mr. Andersen, just to finish on this point, you mentioned you have a Ph.D. in political studies, so, from your experience and your insight into the mentality of a

civil servant, would you reject the suggestion that senior civil servants with that training, with that background, with that experience, would you accept that they would not, at the request of a minister, do something improper or against their professional standards?
A. They would not do such a thing. They were -- and particularly speaking about, of course, the civil servants I had most contact with, they were of a very high calibre. This meant that they were civil servants who would know, Mr. Lowry, that you might even not be in office the next day. I mean, it is a standard thing that civil servants, they have to work under different ministers, and they have to retain their personal integrity all the time through, otherwise they will not be able to work, as they are supposed to work, as civil servants.
Q. So, the final question on this, Mr. Andersen: Would it be your view that the senior civil servants that you dealt with in the licence process, what I am asking you is, isn't it highly unlikely that they would be enthralled to me to such an extent that they would put their personal and professional integrity, built up over a lifetime, isn't it highly unlikely that they would put that professional integrity on the line for any minister?
A. Yeah, that's highly unlikely, and I also stated that I didn't see anything like that actually take place.
Q. In fact, Mr. Andersen, just the closing remark on this is that one of our witnesses to the Tribunal earlier said in his evidence that "Ministers come and go, but civil servants are there for life." That was his comment to the Tribunal.
A. Okay, I am saying pretty much the same thing.
Q. The point that he was making, which is the same that you are making, is that the civil servants do not take risks or will not go out on a limb or endanger their careers for a minister.
A. That's correct.
Q. So, Mr. Andersen, the suggestion that all these civil servants involved in this process from all of the Departments, the suggestion that they were up to no good and involved in some sort of ugly wrongdoing, is just not really realistic, is it?
A. Yeah. Basically, my answer is yes.
Q. Okay, Mr. Andersen, could I put this question to you: That from everything you have said to me, can I take it, therefore, Mr. Andersen, that you are absolutely satisfied to say, under oath, to this Tribunal here today, that you have no concerns whatsoever about the integrity and honesty of all the civil servants who were involved in the licence

process?
A. Yes, no reservations.
Q. And do you believe that the suggestions that have been carried in the media in respect of wrongdoing by civil servants, is completely unjustified, unreasonable and without basis or foundation?
A. Well, I am not following the media, but if you say that the media says this, then it is not something I can recognise from what actually took place.
Q. Okay. Mr. Andersen, could I -- the Chairman here -- and I am coming -- I am conscious of the time and others have to examine you, but could I ask you, Professor Andersen, this question: The Chairman of this Tribunal said many years ago that he wasn't interested in carrying out an audit of the second mobile phone licence?
A. Sorry, an?
Q. An audit.
A. An audit, yes.
Q. Now, I -- an audit, you know what an audit is, and, to my mind, what has happened in this process over the last ten years and at this Tribunal, if it's not an audit, it certainly has striking similarities to an audit. The kind of detailed assessment that has been conducted of this -- at this Tribunal, would you consider it to be close to an audit, or an audit?
A. Here, we are talking about terminology. It would be wrong of me to say that the Tribunal has not looked into the GSM2 tender process, wouldn't it?
Q. Into every aspect of it, including all of the technical and evaluation processes that have concluded, isn't it true that the Tribunal have examined them in detail?
A. Pardon?
Q. Isn't it true that the Tribunal has examined all of the evaluation and technical process involved in this licence?
A. Yes, they have looked into quite a bit, yes.
Q. Do you think, Mr. Andersen, considering your own experience and your technical capability, and nobody, as I said, has questioned your professional competence in this area, do you think it is appropriate -- and this is no criticism of the Tribunal; it's a criticism effectively of the Oireachtas -- do you think that it's appropriate that a Tribunal of Inquiry run by the legal profession should seek to attack and undermine a complicated process relating to the awarding of the second mobile licence?
A. Well, I am fully prepared to answer your question. I would like to reiterate that my role here for this Tribunal during two weeks has been confined to comment on the evaluation process and the GSM2 tender, as such. I am not

in the position to give comments on what the Oireachtas or the Dail should do, and I don't want, either, to comment on, you -- you know, it has not been my intention, as such, to comment on --
Q. I can understand --
A. -- let me just finish -- the approach of the Tribunal? So, what transpired during Mr. McDowell's examination of me with regard to issues like attitude, and stuff like that, that came across only, only because the Tribunal, through Mr. McDowell, made a point which I believe was wrong, that I was unwilling to give evidence to this Tribunal, and secondly, also specifically elected to go into considerable detail concerning the indemnity issue, why I had an indemnity. You see, I had a need to explain to the Tribunal why I was willing to give evidence all the time to the Tribunal, and, also, why I needed an indemnity. So my starting point coming here to this Tribunal has not been to come with any comment whatsoever during my evidence these two weeks on the matters which you are now asking me about.
Q. Okay. I fully appreciate that and I can understand why you, like I, would be frustrated at the idea that many of the things that you wish to say about the Tribunal's attitude, that you have been -- you have had to withdraw your -- those comments remain on the record. I presume you still stand over those comments?
A. I stand fully over these comments and I am fully prepared, also, to explain them further and give additional comments. That's not the point, but my starting point --
Q. Mr. Andersen, I am sorry, you are not allowed to do that. The Chairman has said you are not allowed to do that. Mr. McDowell gets very uncomfortable when you attempt to do that. The Tribunal has made a decision in relation to that matter. They don't want to hear about it. I am not going to delay. I have a few other questions to ask you.
CHAIRMAN: Please proceed, Mr. Lowry. I am very anxious that Mr. Gleeson be allowed to examine his client, which will include the matters you have just referred to by Professor Andersen within the next few minutes.
MR. LOWRY: I need more than a few minutes, Mr. Chairman. If you could give me -- effectively, I needed to get up to 1 o'clock, but I'll conclude at a quarter to one, and maybe sooner. I see Ms. Jacqueline O'Brien shaking her head. It's a matter for you, not Ms. Jacqueline O'Brien, to decide that matter.
CHAIRMAN: You have until half twelve and we will take a foreshortened lunch. I have to have regard to the witness.
Q. MR. LOWRY: Could I ask you, the reason why I mentioned the Tribunal process is, you referred earlier on to the

judicial process in terms of being the normal course that somebody would take if they have a grievance.
A. Yeah.
Q. Now, we had another experience in Ireland. As you said, you did 200 licences, there was only two of them were the subject of, we'll call it, litigation or aggravation. And the other one was the Orange versus Meteor, and you were the person, it was your company that provided the technical assistance on that licence, as well. Now, your position was vindicated by the justices of the Supreme Court here in Ireland. Could you just briefly tell me on what basis did the Supreme Court rule in favour of Meteor and your involvement?
A. Well, they ruled on the basis of having looked into the Evaluation Model, the evaluation process, and taking a number of very specific issues into account, they ruled that there was no basis for any wrongdoing, and they also ruled that it was a correct thing of the Office of the Director of Telecommunications Regulation to retain expertise and, as I understand that ruling, the ruling was also that they would not question that expertise, because they, as Supreme Court -- the five Supreme Court judges, would not substitute the expertise that AMI had, with their own second-guessing, so to speak.
Q. Mr. Andersen, that's exactly the point. The Supreme Court ruled, in that instance, that they were not in a position to second-guess. Now, I just -- unfortunately, I would have needed, Mr. Andersen, with you, at least another three to four hours. I have to abide by the ruling of the Chairman. But I want to move on to explain to you that you talk about attitude of the Tribunal earlier on. I also want to say to you that a central element for the reason why we are here, after 10 years, examining this process, and 15 years after the licence was granted, was because of a huge basket of sour grapes that was carried about by Persona when they lost the competition. Now, it's a very central element to the deliberations of this Tribunal, and I was interested, Mr. Andersen, to hear you refer to the scope of the Tribunal's inquiry and as to how limited it was in terms of, it was effectively looking at why there was a winner, rather than the actions of the other participants. And I just want, Mr. Chairman, and you, Mr. Andersen, to understand that no sooner was the ink dry on the decision that had been taken to announce the winner, when I, in that Department at the time, and you were still there, Mr. Andersen, because I know my officials took advice from you, but you will recall that, at that particular time, there was an immediate outcry from

Persona. Now, when you are a minister in a department, there is a convention that you can take with you documents and files and papers that are directly involved with yourself at the time as Minister. I never took any files or letters from the Department, but I did recently request to have a review of the correspondence that I had in this regard. And I just want to put it to you, Mr. Andersen, were you aware of the huge level of agitation on behalf of Persona immediately after the announcement?
A. To some limited extent. However, in your rather long question, you refer to Persona. And as I have said one of the other days, my perception is that that is wrong, in a sense; that if you use the term "Persona" as a synonym for the applicant, that appeared not to be true as the Persona consortium was not retained, as such. It might be that the entity, the judicial entity, whatever, might have been the same, but I met with the lead operator of that consortium, coincidentally, in Schiphol airport on my way back from a meeting with the Persona consortium, and they said to me, both people from KPN, the big Dutch operator, and Telia, one of the big mobile operators also, both of them said to me that they would withdraw from the Persona consortium, from the Persona entity, and that they would not back up any claim as they thought that the process had been fair and square and as they fully accepted the result and the outcome. So when you say "Persona," it is only a very limited part of the applicant that was left in that consortium and, notably, a single person.
Q. Yes, you are quite correct, Mr. Andersen. Because what you are telling me now is consistent with the position, because the Irish State is being sued at the moment, but it's not being sued by the full consortia. The companies that you mentioned withdrew from any challenge and accepted the result. But an element of it, two individuals of that consortia, have persisted in taking a challenge against the decision. So you are correct in what you are telling me. But I just want to let you know, Mr. Andersen, that from the moment the announcement was made, elements of that consortia launched a vicious attack on me personally and on the Department officials. And that vendetta at the time, it raged through the Dail chamber and was sustained to this day through a relentless media campaign orchestrated by themselves. And I want to put on the record, Mr. Chairman, that that campaign was vindictive and, at times, absolutely scurrilous. And over the years, I and many others, Mr. Andersen, involved in the licence process, we have been vilified and we have been defamed on numerous occasions. And I am sorry, Mr. Andersen, that you, unfortunately, got

caught up in part of that campaign.
Chairman, if you give me a moment, I have too many questions left unanswered, but I want to select one or two that I'll finish with to come within your time-frame. Could you give me -- if I could just sit and look at my papers for a minute, please?
CHAIRMAN: Do that.
Q. MR. LOWRY: Mr. Andersen, you mentioned that Persona consortium. That was made up of Motorola and Unisource?
A. Yeah, and ESB and Sigma, as far as I recall.
Q. Yes. I think -- I just want to confirm that from the information that I have researched, and obviously I am a party to this, but the action that was taken against the State in relation to this, Motorola walked away from that claim, Unisource walked away from that claim, the ESB obviously didn't pursue it, so that the only ones actually suing the State at the moment, it's by Mr. Tony Boyle and Mr. Michael McGinley. I just think you should know that. Could I ask you, Mr. Andersen, can you recall when the oral hearings were heard, all of the applicants, as I understand it, got some time with you. I don't know what the formula was, but an issue has arisen for me in the course of this Tribunal process where you remember, you recall Irish Cellular Telephones, they were one of the applicants?
A. Yes.
Q. Now, that applicant -- that particular application was headed up by Mr. Tony O'Reilly?
A. Yes.
Q. And Mr. O'Reilly gave evidence at this Tribunal here to the effect that, somehow or other, I must have known what was happening at those oral hearings because he claims I passed a remark to him about his group having done badly at the oral hearings. Now, apart from the fact that there was many aspects of his statement incorrect, I felt that he had misinterpreted that. Could I ask you, first of all, Irish Cellular Telephones, where did they finish up with the competition?
A. They didn't finish off among the three highest-ranked applicants.
Q. My understanding is that they were second-last?
A. Second-last, yes.
Q. Now, so, isn't it quite likely that Sir Anthony O'Reilly, as Chairman of that Irish telephone group, would be well aware of his own consortium's performance at the oral presentation? You probably don't, maybe you do, know Mr. O'Reilly, but Sir Anthony wouldn't be -- let's put it this way, he was very much interested in this competition, and conveyed his interest directly to me and to other

members of the Government at that time; in actual fact, he had an expectation that he could possibly win it. So, isn't it likely, or is it possible, Mr. Andersen, that a group who comes in to make a presentation, it's like sitting an exam; if I sat an exam, I would know, leaving the hall, how I actually got on, I'd have some indication whether I did well or whether I did badly or what way I performed. And in that context, the people who were representing Mr. O'Reilly's consortium, they would all be professional, they'd be all clued in, they would be aware of, you know, where they needed to perform well and they would have a full understanding, in my view, how well they did do after they have left it. Would I be right, Mr. Andersen, or do you think would they know how -- would the consortia, the five people that went in and made an application to you in oral session, would they have an understanding, leaving that room, as to how well they fared?

A. Generally speaking, I think so, because it was a full three-hour session with each of the applicants, and they were tested, if I may use that expression, quite thoroughly. That was the purpose of the presentation meetings. One hour was allocated for their own presentation, which they could deal with in the way they wanted to present how they pitched. One hour was --

Q. The only thing I need to know, Mr. Andersen, is, there is every possibility that the people involved on the Irish Cellular consortium would have told Mr. O'Reilly that he had fared badly, that they hadn't done as well as they had anticipated during the oral hearing, is that a possibility?

A. That is definitely a possibility, yes.

CHAIRMAN: Well, we are right on half past, Mr. Lowry, now. And I did notice, in any event, of the matters that I have heard in evidence, that Persona were very disgruntled losers and that they had a very acrimonious meeting with the Department. So I am not unaware of the points that you make in that regard and I will have regard to them. But, now, I have done my best to be fair, Mr. Lowry. I know you are not pleased with the ruling I have made, but I have to let Mr. Gleeson examine his client if we are going to permit of getting through the schedule that's been fixed.

MR. LOWRY: Thank you, Mr. Chairman.

CHAIRMAN: Thank you very much.

MR. GLEESON: Thank you, Mr. Chairman. I am going to just hand out a Book of Documents that I intend to rely on. They have all been referred to before.

CHAIRMAN: Not one needing a weight-lifter, I hope, Mr. Gleeson?

MR. GLEESON: No, Chairman. They look more daunting than, in fact, they are.
THE WITNESS WAS EXAMINED BY MR. GLEESON AS FOLLOWS:
Q. And, Professor Andersen, just before we look at the documents in this book, I just want to ask you a couple of questions briefly about the indemnity, if I may.
A. Yes.
Q. And we have been through the indemnity that Mr. Denis O'Brien has furnished to you, and I think you'll agree with me that that indemnity, in summary, provides you with an indemnity in relation to any third-party claims and it also provides you with an indemnity in relation to legal costs and expenses, isn't that right?
A. That's correct.
Q. And nowhere in the indemnity is there any provision for the payment by Mr. O'Brien to you of a fee for attending the Tribunal?
A. No, definitely not.
Q. And you don't expect to receive a fee from Mr. O'Brien for having attended here for the last two weeks?
A. No, I will not even take a fee if it was offered.
Q. And I think that you are currently, through your solicitors, in negotiation with the Tribunal in relation to an hourly rate for your attendance here in Dublin Castle, isn't that right?
A. Yes, that's right.
Q. And could you just open, then, Tab 5 of the book that I have handed to you, and this is the statement that you furnished to the Tribunal in relation to the indemnity. And if you could turn to paragraph 11 of that, Professor Andersen, firstly, and that states "The Tribunal sought to persuade the Government to provide me with such an indemnity," and you refer to Tribunal correspondence. It goes on: "In particular, in the letter of the 23rd of June, 2004" -- are you with me, Professor Andersen?
A. Yes, I am.
Q. -- "the Tribunal said that 'To date, the Tribunal has been unsuccessful in persuading the State to provide an indemnity'." And you go on to comment: "It cannot now be suggested that this request was unreasonable or unjustified given that the Tribunal asked, albeit unsuccessfully, the Government to provide one."
So you would happily have taken an indemnity from the Government back in 2004, had it been provided?
A. Very much so, yes.
Q. And that would have enabled you to come to give evidence at a much earlier date, isn't that right?
A. Definitely.

Q. And the fact that you have obtained an indemnity from Mr. O'Brien in 2010, doesn't alter or influence the professional view you have on the evaluation process or the outcome of the evaluation process, do you agree with that?
A. My professional view will be exactly the same whether an indemnity would be provided by the State, by the Tribunal, by O'Brien, by Telenor or by anybody else. I just needed to have an indemnity in place before I could give evidence.
Q. I'll be coming back to that statement in some more detail litter on.
Can you then turn to Tab 1 of this book, which is the first day of transcript of these hearings, and, in particular, I want to refer to portions of the Opening Statement. If you would go, first of all, to page 76. Do you have that in front of you?
A. Yes.
Q. Now, at the bottom of page 76, counsel for the Tribunal states: "There are a number of other important technical matters bearing on the evaluation process and potentially affecting its outcome in respect of which Mr. Andersen's evidence may be important. These are in some cases interrelated and many cases require detailed knowledge of the evaluation process that cannot be readily summarised in the time available to me this morning."
And, Chairman, what I am going to do with the witness is go through each of these nine points. I think, Professor Andersen --
A. Sorry, which page are we at?
Q. We are on page 76, now on page 77, of Tab 1.
A. Yes.
Q. Do you have page 77 open, Professor Andersen?
A. Yes, I have.
Q. Now, paragraph 1 on page 77: "The decision taken in mid-September 1995 to concentrate on the three top-ranked applications as they were then emerging, leaving the three other applications out of the further evaluation, in particular in circumstances where there appears to have been no pre-qualifying test; that is, no basis upon which any applicant could have been excluded from evaluation once it had been admitted to the competition."
Now, do you agree with that paragraph and the way it is formulated?
A. Well, I disagree with most of it, I must say. Most of it is factually incorrect.
Q. Can you explain why you say that?
A. Well, let's walk through it point by point so that we can identify things. It says "The decision taken in mid-September to concentrate..." and then "... leaving the

three other applications out of the further evaluation..."
now, that's the first point I would like to make, that the
three other applications, that is A2, A4 and A6, they were
not left out of the further evaluation; they were still
evaluated. So this is clearly a mistake, and I don't
understand how such a mistake can operate, because I have
told the Tribunal, in private meetings, how this went
along, etc. I have also given a response to the document,
the so-called working hypothesis, or what we call PF, or I
call PF, because I am not allowed to use such -- what is
behind that acronym, but I received those in November 2008,
and, there, you have exactly some same kind of factual
misunderstanding operating, and I have made this Tribunal
aware that this is not true, several times. So therefore,
I am struggling to see how such a misunderstanding can
still operate when this two-week session was opened on
Tuesday of last week.
Now, then it goes on. It says: "No basis upon which any
applicant could have been excluded from evaluation once it
had been admitted to the competition."
I find that awkward wording. Let me just stop there
Q. Can we then move on to Point Number 2:
"The circumstances and reasons for the relevant sub-group
not proceeding in the manner envisaged with a qualitative
analysis of the financial key figures dimension."
Now, I want to ask you, first of all, was that paragraph,
or the content of that paragraph, put to you during the
course of your examination by the Tribunal?
A. No, it wasn't.
Q. And do you wish to comment upon the statement that is made
there at paragraph 2?
A. I think it's factually wrong, also. It states "Not
proceeding in the manner envisaged with a qualitative
analysis of the financial key figures dimension."
Now, I think what is abundantly clear to me, after these
two weeks, is that the Tribunal has not focused very much
on how the evaluation actually went along, and therefore,
it was interesting to be examined by both Shipsey but also
O'Donnell, because they asked me questions for the first
time on how the work actually went along. And I think it
is very clear that both the financial sub-group, but also
the other sub-groups, they carried out their work as
envisaged, and this was also the case with the financial
key figures, and I remarked that at least one of the
participants in that group has given evidence that he also
fully stands over the result of the work, the scoring of
the work, etc.
Q. Very good. Now, Number 3, Professor: "The circumstances

and reasons for not proceeding to evaluate the so-called 'other aspects' being the risks and sensitivity elements. It appears that this was identified at a late stage in the competition as a way of proceeding otherwise than is provided for in the Evaluation Model in the event that agreement on ranking could be reached on the basis of the four aspects scored."

Now, can we just take the first sentence, firstly:

"The circumstances and reasons for not proceeding to evaluate the so-called 'other aspects' being the risks and sensitivity elements." Do you agree with that?

A. That is, yet again, a wrong statement, it's factually wrong, because evaluation did take place. What should have been stated here, if the Tribunal is to go into a factually correct way of recording this, is that other aspects were not scored, but that is not the same as stating that "risks and sensitivities were not evaluated". They were certainly evaluated.

Q. And I think you explained in evidence, in answer to Mr. O'Donnell, that one of the reasons they weren't scored was because these other aspects were not in the RFP criteria?

A. Yeah, I have given four reasons, really, for why we proceeded as we proceeded, and I think that it's, you know, in my view, perfectly reasonable that we proceeded as we did proceed.

Q. Now, in the second sentence, "It appears that this was identified at a late stage in the competition as a way of proceeding otherwise than is provided for in the Evaluation Model in the event that agreement on ranking could be reached on the basis of the four aspects scored."

Is that a correct statement, in your opinion?

A. No, it isn't. It shows, yet again, that what I have told the Tribunal legal team on previous occasions, doesn't have any effect. Because already, in 2001 and 2002, we went through this quite meticulously, and in the -- in the model itself, we had two things recorded under "Other Aspects". One was "risk and sensitivities," and we have just been over, Mr. Gleeson, that that was evaluated. Now, secondly, I admit that the subcriteria we had on the effect on the Irish economy, we didn't proceed with that one, but we didn't proceed with that one for very good reasons, for legal reasons, for the reason that it was not part of the evaluation criteria in paragraph 19, but even if it had been a criteria in paragraph 19, then it would not have been a legitimate thing to evaluate on that basis. That is to say, for instance, that if we had taken into account that Irish -- applicants in this Irish GSM2 tender should

be scored positively because they promised factories in the west of Ireland, X number of jobs, certain donations, or whatever, to the Government, or any other sort of thing, that was -- that would not have been legitimate things to take into consideration in an evaluation. That would contravene EU rules, to take national, such national criteria into account.
Q. Now, I just wanted to refer, at this point, to Book 91, which I think you may have, but if you don't, we can provide you with a copy. And would you open, please, Tab 24, which is the Draft Evaluation Model.
A. Yes.
Q. And would you go to page 18 internally of that document.
A. Yes.
Q. Now, that's headed "Procedure for the Qualitative Evaluation Process," isn't that right?
A. That's correct.
Q. And the first paragraph reads: "Despite the hard data of the quantitative evaluation, it is necessary to include the broader holistic view of a qualitative analysis." Then it goes on to say "Other aspects such as risk and the effect on the Irish economy may also be included in the qualitative analysis which allow for a critical discussion of the realism behind the figures from the quantitative analysis."
So what that sentence appears to state, Professor Andersen, is that risks -- the aspects such as risk and the effect on the Irish economy which may be matters that may be included, isn't that right?
A. Yeah, but it was not something which was mandatory for us to do.
Q. Exactly. So the Evaluation Model, which was in second draft form on that date, didn't bind you to evaluate aspects such as risk and the effect on the Irish economy, let alone score them?
A. Exactly. So there is no contrast in between what we actually did and what was envisaged.
Q. Now, can we go on to paragraph 4, then, page 77, back to the Opening Statement.
"The decision to arrive at a provisional ranking by reference to a grand total of marks, and, further, how that grand total was arrived at."
Now, that is a topic which may have been referred to under references made to weightings and to scoring. But I am not absolutely correct -- I may not be absolutely correct in my recollection, but I don't recall this particular point being put to you in that way. Now, I am open to correction about that.

A. No, I don't think it was put in that way. I am struggling to find out, actually, what the Tribunal means here.
Q. Now, can we move over the page to paragraph 5 --
A. Maybe, if you just look at the wording of it: "The decision to arrive at a provisional ranking by reference to a grand total of marks, and, further, how that grand total was arrived at."
Let me just take the first part of that sentence. "The decision to arrive at a provisional ranking by reference to a grand total of marks..." I don't think we had anything such as a provisional ranking.
Q. Well, not much may turn on this point number four.
A. Then it says "reference to a grand total of marks". I fail to understand the exact meaning of these words.
Q. Now, on page 78, we have paragraph 5, which is a long paragraph, and I am going to read it in full.
"The decision to carry out what appears, from the evidence heard, to have been an ad hoc exercise whereby the performance of the two top-ranked applicants were compared, the methodology applied in that exercise, and the manner in which that exercise came to influence the analysis and tables contained in the final report and in appendices and to influence the eventual outcome.
"As part of this last-mentioned inquiry, an extremely important set of particular questions arises as to whether a meeting took place as between Departmental Officials and Mr. Andersen in Copenhagen on the 28 September, 1995. Mr. Andersen has asserted that no such meeting took place, despite the evidence of officials in relation to that meeting.
"It was the evidence that the Tribunal has heard in that regard that Mr. Andersen, Mr. Martin Brennan and Mr. Fintan Towey concluded the evaluation and determined a ranking in the overall process at that meeting of 28 September, 1995, by an ad hoc comparison of the performance of the two top-ranked applicants based on the qualitative assessment. If such an analysis took place, the Tribunal wish to inquire as to who advocated this approach and was such analysis appropriate, and, if appropriate, was it reliable?"
Now, just going back to the first paragraph, the word "ad hoc," Professor Andersen, in English, means unplanned or improvised.
A. Yeah.
Q. Now, the exercise -- "the ad hoc exercise whereby the performance of the two top-ranked applicants were compared." Can you identify, in the evaluation process, where there was an unplanned or improvised exercise whereby

the performance of the two top-ranked applicants were compared?
A. No, I cannot. And maybe I should just be helped a little bit along here if there is any sinister in the wording "Ad hoc exercise"? Because I have, quite clearly, explained that we had an ongoing work in process throughout the evaluation. And after the core evaluation had taken place in the ten supplementary groups, ten sub-groups, all the work was to be collected and recorded in a report, which was to be adopted by the Steering Group on the 9th of October. I am now making reference to the report on the 3rd of October. And then I am struggling to understand how this ad hoc exercise should have being taken place, because nothing is recorded in the Evaluation Report on the 3rd of October relating to this ad hoc exercise. And moreover, I think that what we actually did already recorded in one of the Steering Group minutes from the 14th of December, was to look at the three highest-ranked applicants and to focus more on them than the three remaining applicants. So I do not fully understand where the "two" comes from.
Q. Perhaps we could just refer to the -- sorry, the first Evaluation Report, that is the draft of the 3rd of October. I am working off Book 47, Mr. Chairman, because that was the book I originally had. I think this may be in Book 93, but I am not certain. It's the first Evaluation Report.
CHAIRMAN: What page, Mr. Gleeson?
MR. GLEESON: It's page 47.
A. It's tab?
Q. It's Tab 34. It's the first tab in Book 47 --
A. Yes.
Q. -- and it's page 47 of that draft. And that's paragraph 5.5, Professor Andersen, entitled "A last comparison of the best applications." Do you see that?
A. Yes.
Q. I think that, in the first two paragraphs you, are comparing A3, A5 and A1, isn't that so?
A. Exactly.
Q. And then you go on to compare A5 and A3 in the balance of that section?
A. Yes.
Q. And is that section of the Draft Evaluation Report a culmination of the work that had been done in September in the sub-groups?
A. That's correct.
Q. And is it, therefore, in your view, at all correct to describe this comparison of the applicants as an ad hoc exercise?
A. That's incorrect, yes.

Q. Now, insofar as the second paragraph of paragraph 5 is concerned, going back to the Opening Statement, I think you have given evidence extensively about the meeting on the 28th of September, 1995, and I am not going to ask you to repeat what you have said, but if we go back then to the last paragraph, it appears to be suggested, Professor Andersen, that the ad hoc comparison is something which may have taken place at that meeting in Copenhagen on the 28th of September, 1995?
A. Yes.
Q. Do you wish to make any comment about that suggestion?
A. Well, as I have stated to the Tribunal, I have no recollection of a specific meeting taking place in Copenhagen at that date. I acknowledge that there has been a meeting, in accordance with the examination, but I fail to see how such an ad hoc exercise could take place without being recorded in the subsequent documents.
Q. Yes. And I think that you accepted in evidence later in the Tribunal that there may well have been a meeting on that date?
A. Yes.
Q. Even though you don't recollect it. And you have also indicated that whatever discussion took place in Copenhagen, was always going to have to be reported back to or subject to the views of the Project Group itself?
A. Yes.
Q. And that was the meeting which took place on the 9th of October, 1995, isn't that right?
A. Exactly. I think, in all fairness to the Tribunal, it should also be stated that in the last three lines of this paragraph, it reads "If such an analysis took place," so it's a bit hypothetical here -- "The Tribunal wish..." etc.
Q. And whatever analysis did take place at that meeting in September, was going to be subject not just to review by one meeting of the Steering Group, but by two meetings of the Steering Group in October?
A. Yes.
Q. And two different -- at two different stages, there were Draft Evaluation Reports produced by AMI and furnished to those two Steering Group meetings in October?
A. That's correct.
Q. Isn't that right?
A. That is correct.
Q. So what emerges from those two Steering Group meetings is that there was a text produced upon which people can either agree or disagree at those meetings?
A. Yes.
Q. So could we just then finally reflect on the wording "ad

hoc exercise," because, as I read it, it may relate to what I was made aware of today, this conspiracy theory. So it's just something which I cannot recognise at all, that something wrong should have been taking place or some conspiracy, or whatever, should have been taking place. And I am just posing the question whether "ad hoc exercise" is a fair way to describe the way in which civil servants and consultants in a hard-working and meticulous way proceed in order to arrive at a first Draft Evaluation Report. And I think you have, in your evidence, meticulously documented the various stages of the work of this entire process, isn't that so?
A. Yes.
Q. And you have had -- you have described how you had intensive contact with the civil servants, both at the Project Group meetings and in between meetings, isn't that right?
A. Yes, that's right. So what I am trying to say here, finally, is, also, if there is a conspiracy theory behind the awkward wording here "ad hoc exercise," why does the Tribunal then not pose it to me?
Q. And just in --
MR. McDOWELL: Just, I have to interrupt. There is no conspiracy theory, and it has never been suggested there was a conspiracy. Mr. Lowry suggested that.
A. Okay, thank you.
CHAIRMAN: Yes, I was loath to interrupt Mr. Lowry further. I think we can go on.
Q. MR. GLEESON: Professor Andersen, I want you to -- I just want to refer you to three further tabs in this book relating to -- I am sorry, I beg your pardon, it's in Book 91, I am going back to Book 91, because there have been questions put to you about reservations expressed by two members of the Steering Group, Mr. Buggy and Mr. Riordan.
A. Yes.
Q. And that before the meeting of the 9th of October, they documented their reservations about the scoring of the financial aspect, and I am going to refer you to those two documents. They are at Tabs 57 and 58 of this book, that is of Book 91. Do you have that open, Professor?
A. Yes, I have.
Q. I think -- I am not going to read through these because they have been opened extensively. Tab 57 is a note by Mr. Donal Buggy?
A. Yes.
Q. And he produces a total of the financial aspect for A5 as C moved from a B, and for A3 as B, isn't that right?
A. Yes, that's how it reads.

Q. That's how it reads. And the next document is Mr. Riordan's note, which is a note clearly preparatory to the meeting on the 9th of October. That's at Tab 58. Do you see that?
A. Yes.
Q. And he has, for the result, for A3 a B, and for A5 he has a C, but he has a B in brackets above the C.
A. That's correct, yes.
Q. And Tab 59, then, is a note sent by the two of them, a joint note sent to you, and if we just look at that for a moment, it's a Memorandum to Michael Andersen and Jon Bruel from Donal Buggy and Billy Riordan re the first draft of the Evaluation Report dated the 9th of October:
"Further to our discussions this afternoon, as promised, we set out below our particular queries on the financial section of the report." Isn't that right?
A. That's correct, yes.
Q. Now, the queries that they had raised and the different markings that they had produced in Tabs 57 and 58, are they referred to in this Memorandum?
A. No, there is no reference.
Q. And could that be because whatever reservations or queries they had, were addressed and resolved at the meeting of the 9th of October?
A. That is how I read it, because they state "Further to our discussions this afternoon... "
Q. Now --
A. Sorry, I am just anxious about the lunch break in the process here.
CHAIRMAN: Well, I was going to make inquiry. I mean, we do have to perhaps revert to a somewhat traditional Irish Friday. I think we are going to have to have somewhat Spartan rations, and I can't obviously make the lunch break meaningless, but I think I'll have to abridge it to 50 minutes, and I was going to check with both you and with the Professor as to flight plans. I think you had indicated last week that 4.15 appeared to be --
A. 4.00.
MR. GLEESON: The Professor has indicated he has to leave at 4.00. If he can stay 'til 4.15, he can clarify that over lunch. Are you saying 50 minutes, sir, for lunch?
CHAIRMAN: I think 50 minutes, 50 for lunch...
MR. GLEESON: Very well. I mean, the difficulty is that there are no lunch facilities in this building and it's -- Professor Andersen has the habit of going back to his hotel at lunchtime, which is a ten-minute walk away. So...
CHAIRMAN: Yes. I do think we are faced with a somewhat urgent situation, and there is no reality in Professor

Andersen returning sometime next year, and you, obviously, have to adequately explore the matters that you are setting about, and Mr. McDowell has to, because there are matters that, as part of the Tribunal's discharge of fair procedures, will have to be put in conclusion. So I think I'd better abridge it to -- I think that clock is a little fast. We are just about three minutes to one now. So --
MR. GLEESON: I should say, Mr. Chairman, I understand Mr. McDowell is going to take an hour. If that is so, then I am going to be truncated in my two-hour slot, and surely, if there is to be a truncation, it should be pro rata, because this is my witness, Mr. McDowell had five days with this witness. I have had --
CHAIRMAN: Well, there was plenty of legal argument and there was plenty of statements to be put in, but we have been through that before, Mr. Gleeson, and, I mean, I think debating it now is only reducing an already rationed package, but if we were to resume then, let's say, at five to two. That's putting it as close to an hour --
MR. GLEESON: I will endeavour to finish by 3.00, but I may go a few minutes beyond 3.00.
MR. McDOWELL: We will try and see if the Professor can extend his availability until 4.15. I am not trying to short-circuit anybody, but, I mean, I was led to believe that both in your own informal discussions with Mr. Lowry and those had by Mr. Bradley, that some accommodation had been reached. Very well. Five to two.
THE TRIBUNAL ADJOURNED FOR LUNCH.
THE TRIBUNAL CONTINUED AFTER LUNCH AS FOLLOWS:
CONTINUATION OF EXAMINATION OF PROFESSOR MICHAEL ANDERSEN BY MR. GLEESON AS FOLLOWS:
Q. MR. GLEESON: Now, Professor Andersen, I think we had stopped at page 78 of the transcript, that's the Opening Statement. Can you look at paragraph 6, please, at the bottom of page 78. Do you have that in front of you?
A. Yes, just a second. Page 78?
Q. Page 78. Paragraph 6.
A. Yes.
Q. "The Tribunal will wish to inquire into the methodology applied to the analysis of the financial key figures dimension, whether Andersens were responsible for it and degree of knowledge and input of the seconded accountants to this element of the evaluation, if any."
Again, I think that this issue may have overlapped with a number of other issues, although I don't recall it being put to you precisely in this way, but I am not making any point about that. But do you wish to comment about paragraph 6?

A. It wasn't put to me in this way at least, and I think that what did transpire during the evidence was that the seconded accountants, they did come with input. So when it reads "if any," I think it is clear now to the Tribunal that there was substantial input from the seconded accountants.
Q. So that insofar as there was any concern on the part of the Tribunal in relation to issue 6, is it your evidence that that concern should now be --
A. Taken away.
Q. -- resolved or assuaged as a result of the evidence?
A. Yes.
Q. Now, paragraph 7 on page 79:
"The switches of the qualitative side of the scoring system from a wide grading based on marks of A, B, C, D and E, to a more narrow and inflexible numerical scoring system based on scores of 1, 2, 3, 4 and 5."
Now, there has been considerable discussion of the conversion of marks to numbers, Professor Andersen, isn't that so?
A. That's correct. But I think the way that it is worded here, in point 7, is not a correct reflection of what actually took place.
Q. And in what way is it not a correct reflection?
A. Because it says -- it reads here, if we take the words "the switching," there was no such kind as a switching from letters to scores, or to numbers. What did take place at some stage, at some late stage, was that, having finalised the core evaluation in the ten sub-groups and having compiled these scorings in Table 15 and 16 respectively, the scores of Table 16 were subsequently converted into a point-based system.
Q. So it was an additional way of presenting the scores that were already in the original table?
A. It was an additional approach. It was a check, you could say.
Q. Yes.
A. Or an extra testing, I think that was the word used.
Q. And is there anything else you wish to say about paragraph 7 before we move on to the next paragraph?
A. Well, I think if you read the words here, I don't think they are neutral, because one thing is that the word "switching" is used, and we have now stated that switching did not take place. But then there are some words attached to letters and numbers respectively which does carry some kind of implicit value or maybe an attitude behind it when it says "wide grading" and it says "narrow and inflexible." I have no more comments.

Q. And when it says wide grading and narrow and inflexible, is that a correct description of those items; namely, grading based on marks and scores based on numbers?
A. No, I am making this because I don't think it is a correct description and what is stated here in paragraph -- the words used here in entire point 7 makes it sound as if there was something wrong about it, and that was most certainly not the case.
Q. Okay. Now, paragraph 8: "The application of weighting matrix to the resulting numerical scores."
Firstly, do you understand what that means?
A. No.
Q. And I am not sure that a question in that form was ever put to you in the course of your examination here?
A. No, I don't think so, either.
Q. Well, we'll move on to paragraph 9, where the question of weighting is dealt with in some detail, and it reads:
"The application of a weighting matrix in respect of the 'credibility of business plan' criterion of equality weightings of 10,10,10 rather than weightings of 15, 10 and 7.5 and the reasons for this. In this regard, if the original weighting had been applied or even the relative importance of the dimensions respected within a revised cumulative weighting for this qualitative criterion, a question arises as to the consequences for the overall ranking.
"Finally, the circumstances in which these revised weightings came to be identified in the final report as the pre-closing date agreed weightings for quantitative purposes."
Now, I think if we go back, first of all, to the first paragraph, Professor Andersen, there is a reference to "original weightings" and in the second paragraph there is a reference to "revised weightings". Now, it's not clear from this paragraph which is meant to be referring to the original or the revised, but I think one can assume, from the questioning that has been put to you, that the "original weighting" is referable to 15, 10 and 7.5, and the words "revised weightings "then refer to 10, 10, 10.
A. That's how I read it, also.
Q. And --
A. And I think, in all fairness, I did ask Mr. McDowell, in his examination, whether he had an instruction from the Tribunal legal team that 7.5, 15 and 10 were the so-called correct weightings, and he confirmed that that was his instructions, but I also think that it transpires, during the examination, that that is not a correct way of seeing things, it's a mistaken way to see things, because, for the

simple reason, 7.5, 10 and 15 adds up to 13.2[sic], and that is not in accordance with the agreed weightings.
Q. I think it's 32.5 --
A. 32.5, sorry, yeah. And that does not accord with 13 weighting based points as agreed.
Q. And I think, in fact, in the first draft of the Evaluation Model, the weightings were not 15, 10 and 7.5, isn't that right?
A. They were 10, 10, 10.
Q. So to describe 15, 10 and 7.5 as the original weighting, is that something that you would agree with?
A. Sorry?
Q. Would you agree with the description of 15, 10 and 7.5 as the original weightings?
A. No. They were not the original weightings.
Q. And insofar as -- there has been a lot of discussion about weightings, and when we come to the month of October, Professor Andersen, and there are three versions of the Evaluation Report: the first draft, the second draft and the final version, isn't that right?
A. That's correct.
Q. And is it correct to say that the 10, 10, 10 weightings appear in the Evaluation Report of each -- in the weightings table of each of those Evaluation Reports?
A. Yes, the 10, 10, 10 appears in all three Evaluation Reports; that is to say, the draft of the 3rd of October, the draft dated the 18th of October and also the final report dated the 25th of October.
Q. And you have already, this morning, given evidence that at the two Project Group meetings in October when these draft reports were being considered, there was a discussion about the contents of these draft reports at those meetings, isn't that right?
A. That's correct.
Q. And if anyone had had a particular problem or reservation about the weightings being adopted in that report, in the first draft or the second draft report, they had an opportunity to say to you, or to the group, when it met, "These are not the weightings that should be here. They should 7.5, 15 and 10." Isn't that right?
A. That's correct.
Q. And yet, the group agreed with the weightings as they appear in these draft reports and as they appear in the final report?
A. Exactly.
Q. Now, if you go to the bottom of page 10 -- sorry, the bottom of page 79, the Opening Statement then moves on to a different issue, although it's not a numbered issue, but it

is a separate topic, and it reads:
"A particular question is what consideration, if any, was given to requesting further information from applicants in order" --
A. Sorry, just before we leave the weighting issue which you are now -- I just want to make the point very clear here; that even if the Tribunal had been right concerning 7.5, 10 and 15, then it would have made no change in the scoring.
Q. Now, if we then look at the last paragraph on page 79 where there is a different subject being addressed, and it reads:
"A particular question is what consideration, if any, was given to requesting further information from applicants in order to resolve any difficulties encountered or with a view to letting participants know of changes in the evaluation process."
Now, that appears to be a suggestion that once you had encountered difficulties on the quantitative evaluation, that those difficulties could, in some way, or to some extent, have been addressed by going back to the applicants and seeking further information from them?
A. Yes.
Q. Is that a correct way to approach a difficulty of that kind, in your view?
A. To some limited extent, it would be, yes. But what I'm struggling with here is the Tribunal view that we should have requested further information than the information we actually did request. Now, let me try to fully explicate this. We did pose each applicant some applicant-specific written questions during the process. We did receive answers and we did take these answers into account, which is also documented in the Evaluation Report. Now, the suggestion, or the critique against the work of the people here, that I read into this, is that the Tribunal now make the point that we should have requested further information than the information that we actually did request. Now, I recognise that very clearly as being precisely what this so-called non-expert, Mr. Bacon, also suggested in his report. So the Tribunal is here on equal footing, like in some other places, with Mr. Bacon. But I have the clear view that this is an utterly wrong way to take, for the following reason: When you have the opportunity to pose questions, you only have that to some limited extent, because the more questions you pose in written rounds to the applicants, the more you put the applicants on alert that there is some kind of scoring behind -- going to be behind the questions, and the clarification that the evaluators would then like to have will not transpire to the extent you wish, for the simple reason that if you, for

instance, pose a question about coverage degree, for instance, let me just take that as an example, an applicant will inevitably ask himself or herself "why are they now again posing this question or why are they posing this specific question?" And the answer you will get from the applicants might be a tactical, rather than a substantial, answer. And therefore, what you actually get, if you keep posing questions to applicants, that is a flawed process. So what I think here, is that the Tribunal is actually entertaining a road which leads to flaws rather than to clarification.

Q. Okay. Now, Mr. Chairman, I was going to ask Professor Andersen some questions about the Bacon reports which were furnished to him in 2006, and indeed furnished to us in September of this year, on the basis that this was material that may be relevant to his evidence. And it seems to me that he is preeminently the witness who can deal with the propositions contained --

CHAIRMAN: Well, aren't we contemplating a moot, Mr. Gleeson? As it happens, I haven't read Professor Bacon's reports because I did rule that they were not to become part of the Tribunal body of evidence.

MR. GLEESON: Very well.

CHAIRMAN: And it seems to me somewhat academic. I have noted one remark already from the Professor, but it does seem to me that going into the Bacon reports is something that should not concern me.

MR. GLEESON: Well, I would be delighted if the Tribunal indicated that it's not A) going to rely on the Bacon reports, or B) any of the propositions contained in the Bacon reports, because what Professor Andersen can address are some of the propositions contained in the Bacon report, whether they are going to be relied on with or without the imprimatur of Mr. Bacon. That is the question.

CHAIRMAN: Mr. Gleeson, my ruling was that after hearing all the affected persons at the time, obviously not then, and including your client, was that although this was a subject of some detail, it did not require expert evidence, and, therefore, I ruled out Professor Bacon's testimony, and what emerged, as we discussed this morning, was solely on foot of the High Court Judge's addendum to his judgement that, whether or not Dr. Bacon was called, Mr. O'Brien would be entitled to cross-examine him. So I see nothing to be gained in embarking upon consideration of any of Dr. Bacon's reports. I haven't considered them and I am precluded from any reliance on them in anything I write in the report.

MR. GLEESON: Very well. But I take it then, just for

clarification, that that would include any reliance on the propositions contained in those reports?
CHAIRMAN: It would have to --
MR. GLEESON: Oh, yes. Very well.
CHAIRMAN: -- otherwise I would be letting them in the back door.
MR. GLEESON: Thank you very much.
A. Sorry, could I just ask, because I read the Chairman's ruling from 2007, and there, I think, there was some wording around the IRR which Mr. Bacon has got wrong, but there is some of your ruling in which you state, in 2007, that you will attach value to this IRR calculation, whatever, from --
MR. GLEESON: Well, I think that's been clarified.
CHAIRMAN: I think that's been ruled out.
MR. GLEESON: That ruling, as I understand it, Chairman, in answer to Professor Andersen's concern, has been overtaken by your current ruling.
CHAIRMAN: It was one of the four matters that Dr. Bacon was initially consulted about, but, as events moved on, it was ruled out.
MR. GLEESON: Very well. Okay.
Professor Andersen, the bottom of page 79, please. The last line of page 79, it reads:
"Alternatively, to what extent could it be said that the original Evaluation Model remained valid; was there a need, in the circumstances, to reconstitute the competition?"
Now, first of all, can we deal with the first part of those two propositions: "To what extent" can it be said -- or "could it be said that the original Evaluation Model remained valid?" Do you understand that -- it's posed as a question, effectively?
A. I think that I fully understand the words, and I am in disagreement with the attitude and the approach behind this wording, because I think that it has been abundantly clear, after two weeks of examination here, that the original Evaluation Model was valid, was used, was valid and was executed in a way that no contrasts appear whatever. So I don't accept that -- the opposite of it, that it was invalid, what is implicitly suggested here.
Q. Could you open Tab 25 of Book 91, please, which is the contract you signed with the Department on the 9th of June.
A. Sorry, tab?
Q. Tab 25.
A. Yes.
Q. Now, if you go to page 2 of that contract, Professor Andersen, paragraph 1A.
A. Yes.

Q. This is one of the tasks that you have contracted to provide for the Department, and it reads:
"The development of an Evaluation Model for applications for the GSM licence based on the selection criteria at paragraph 19 of the GSM tender document in accordance with the principles outlined in paragraphs 3.2.1 and 4.2.1 and section 5 of the consultancy tender. This advice shall be provided before the 23rd of June, 1995, by a document providing an outline Evaluation Model which might be further developed during the evaluation."
Now, just looking at the last two lines of that paragraph, "... an outline Evaluation Model which might be further developed during the evaluation."
What did you understand by that?
A. Well, I understood that the Evaluation Model was not set in stone but could be further developed throughout the process.
Q. And if you go over the page to paragraph 1(d) of the contract, you will see that it provides for "A detailed evaluation of the applications for the GSM licence in accordance with the Evaluation Models" -- and I stress "models," in the plural -- "developed in pursuance to (a) above and in accordance with the process outlined in paragraphs 3.3.1 and 4.3.1 of the consultancy tender."
So that paragraph of the contract appears to envisage that not just one model but a number of models could be developed pursuant to paragraph (a) of the contract, is that right?
A. Correct.
Q. Now, I want you then to look at Tab 18 of this book, please, because this is the first draft of the Evaluation Model that you presented to the Project Steering Group, isn't that right?
A. Yes.
Q. And could you look at internal page -- if you look at page 2 of 19, first of all.
A. Yes.
Q. That's the procedure which you set out for the quantitative evaluation process in the draft. And at paragraph 4, on page 2 internally, it reads:
"Uncertainties regarding the scoring of points may be dealt with in the qualitative evaluation."
A. Exactly.
Q. And what is the significance of that paragraph in the draft model at this stage?
A. Well, the significance is that once we encountered the challenges that we have been over in a statistical sense with the quantifications, we then, later on, went back to

this document and assured ourselves that the way in which we proceeded to include the quantifications and the qualitative assessments under a holistic approach in the final evaluation draft, was in accordance with the provisions here.
Q. And if you turn, then, to page 18 of this document, which deals with the qualitative procedure that was proposed, and paragraph 7, on page 18, do you see that, Professor Andersen?
A. Yes.
Q. And it reads: "If major uncertainties arise (e.g. in accordance with step 4 of the quantitative evaluation or due to incomparable information) supplementary analyses might be carried out by Andersen Management International in order to solve the matter."
So that appears to have -- envisage already, before there has been any evaluation or any applications received, that there might be uncertainties, that there might be difficulties with the quantitative evaluation and that this could be dealt with in the qualitative stage of the process?
A. Correct. And therefore, if we go back to the opening remarks by the Tribunal, the original Evaluation Model certainly remained valid.
Q. Okay. Now, as we are on the Evaluation Model, I just want to refer you briefly to Appendix 2 of the final report. Now, I am working off Book 46, and it's the very last tab in Book 46. I think it's Tab 51. And if you go to page 5 of that Appendix 2.
A. Yes.
Q. Now, before we look at the detail of this, am I right in thinking that Appendix 2 is, in effect, an account of the methodology that was actually applied during the evaluation process?
A. Yes, that's correct.
Q. Now, in the second paragraph, you say: "Essentially, the evaluators decided that all of the results of the evaluation should be presented in one comprehensive report, as is the case with the main report, such that the results of the evaluation (both quantitative and qualitative techniques) should be presented in an integrated fashion. No changes were made in the memorandum, but it was decided that the qualitative evaluation should be the decisive and prioritised part of the evaluation."
And then I think you go on to indicate, Professor Andersen, a number of indicators which either could not be scored or were difficult to score in the quantitative process, isn't that right?

A. That's correct.
Q. And I think we have been through this already, but here, you are making clear, you are setting out the detail of the difficulties that you encountered as the lead consultant here?
A. Yes.
Q. And after the four bullet-points, you say:
"Having realised this, the evaluator decided that the foundation for a separate quantitative evaluation had withered away. As the memorandum on the evaluation had not been changed, it was checked (page 1, indents 4 and 5, and pages 10-11, indents 5, 6, 7 and 8) that this was also consistent with the memorandum."
I think the word "memorandum" was used by you to refer to Appendix 3, is that correct?
A. That's correct.
Q. And here, you are saying that there was a check done to see whether the methodology that was, in fact, applied, was consistent with the Evaluation Model that had been adopted?
A. Exactly.
Q. And your judgement was, and you have identified the paragraphs, and I have just read them out, was that it did, in fact, comply?
A. That was most certainly the case. We went through it and checked that what was actually processed in the evaluation was in accordance with the Evaluation Model as originally adopted.
Q. And I think that that is, in part, due to the fact that there was a degree of discretion or flexibility in the model itself and in the contract which you signed on the same day that the second draft of the model was presented?
A. That's a correct statement, yes.
Q. Now, you go on to say: "Consequently, the evaluators have used the information generated by the number-crunching of the mandatory tables and other quantifications as valuable input into the integrated holistic evaluation."
So just pausing there. It's not as though the fact that there was a separate -- that no separate quantitative report could be compiled, that didn't mean that the work that had been done during the quantitative phase was work that was not going to be used and was going to be thrown out.
A. Exactly. There was no such a thing as abandonment or something being jettisoned, to make reference to a term we have heard earlier.
Q. And you go on to --
A. On the contrary. The valuable work developed with the quantifications was actually used to a considerable extent

in the holistic evaluation.
Q. And I think you go on to say just that. You say, "In the main report, this is reflected in particular in Chapter 4 in several ways. One is that quantification appears as tables, graphics, figures etc. Another is that all the clearly quantifiable indicators have been taken into consideration and have been scored."
Then you say "clearly quantifiable indicators". What do you mean by that?
A. I would say the usable indicators. For instance, if you take international roaming plans could not be scored in the way that was described originally, and then there was the procedure which we have just been over, that if there were such uncertainties or lack of comparable data, that will be dealt with in a qualitative way, and that was certainly the case with international roaming plans. Another example was, for instance, blocking and drop-out, where it transpired that they could neither be scored nor assessed. So they are indicators that were not usable.
Q. And I think, I am not going to read through this list, we have been through it before, but it sets out a list of I think some 12 or maybe 14 indicators which, although they couldn't be scored --
A. Sorry, some of them could be scored.
Q. Sorry, I beg your pardon, these were the ones which were taken into consideration and I think some of them were scored but perhaps not all of them?
A. Correct.
Q. How many of those 14 indicators were both taken into account and scored?
A. Well, it is stated here, we can go through them one by one, but I think most of them was scored. As I recall it, only blocking and drop-out was, in actual fact, not scored as indicators. However, if you want a further decomposition of this, some of them was scored exactly as envisaged in the different scoring models and others were identified for scoring but was scored with the data readily available.
Q. And I think, if you go to page 6, then, after the bullet-points where you have listed these indicators, it states: "As illuminated above, all the indicators defined for quantification have been taken into consideration, and, in compliance with the evaluation memorandum, all the eligible indicators have been taken into consideration in the holistic evaluation."
Now, can I ask you, when you say "eligible indicators" does that mean what you have just referred to as usable indicators?
A. Yeah, usable indicators, yes.

Q. And I think just to correct, there appears to be what may be a typographical error in the next paragraph. The last line of the next paragraph reads "qualitative model".
A. It should have read "quantitative".
Q. That should read "the quantitative model"?
A. Yeah.
Q. Because you are referring there to indicators which -- you say, "A number of 14 indicators in the quantitative model were either impossible or difficult to score."
So the difficulties in scoring became apparent not during the qualitative phase but during the quantitative phase, isn't that correct?
A. Yeah, early on in the evaluation process, yes.
Q. Now, can we go back to the Opening Statement then. At page 80 --
A. Yeah, there were two issues: One was that the Tribunal questioned the validity, we have been over that, but then there is the reconstitution.
Q. Yes. What do you understand by the phrase "to reconstitute" the competition? What does that mean to you, as an expert in this field?
A. Well, as I read the wording here, to reconstitute the competition would be to cancel the existing competition and then call for a new competition.
Q. And is that something that could happen, in practice?
A. That's far from real life or far from commercial reality. I mean, that would have been very, very difficult to do. And what I can say is that I have not seen that in any of, let's say, the EU member countries. If we take the Norwegian case, which we discussed, and Mr. Chairman posed me a question about, that was not reconstituted, either. It was not seen in EU member countries that competitions were cancelled and then run from scratch again.
Q. And just to clarify this: Was there any basis, having regard to what happened in this competition, for it to be reconstituted?
A. No, I don't think so, no.
Q. Now, the next paragraph then, at page 80, reads -- that's the second paragraph on page 80 -- "Cutting across most, if not all, of these technical questions, is the question of the relative roles of the Project Group, of particular elements within the Project Group and within the Department, and of Andersens. How did information pass and what matters and developments were reported between the persons responsible for the evaluation as the process evolved? Having adopted and agreed on a particular methodology, why was this abandoned in favour of a different methodology, adopted only after applications had

been considered and evaluated?"
Now, just take the last question there. I think you have answered this to some extent already, but that question appears to assume, or assert, as a fact, that the original methodology was abandoned in favour of a different methodology. Is that your understanding of what happened in this case?
A. No, that was certainly not the case. There was no abandonment and there was nothing done in favour of a different methodology. And "adopted only after applications had been considered" is also wrong, and it's also wrong that that was "adopted only after applications had been evaluated," that's equally wrong. So there are at least four mistakes here. But let me add a little bit to this, because what concerns me about this part of the Opening Statement is that it is exactly the same that is contained in Mr. Bacon's reports. That's of a real concern to me.
Q. Well, I think that concern may now have evaporated in the light of what the Chairman has just directed --
CHAIRMAN: Well, my concern is with your evidence, Professor, and --
MR. GLEESON: I understand what you are referring --
CHAIRMAN: So I don't think we need to delve --
A. Okay, that's fine, but then I'll move on then to say that it is also the same philosophy underlying what I call the PF or the working hypothesis. So it seems -- this seems to be something that the Tribunal has consistently pursued. And just the read words: "Having adopted and agreed on a particular methodology, why was this abandoned in favour of a different methodology, adopted only after the applications had been considered and evaluated?"
I think it's very, very important words we have here in the opening remarks from --
CHAIRMAN: Well, I have listened carefully to your evidence on that, and that is what I will have regard to, Professor. Now, I think we must move on from these Bacon comparatives or working-hypothesis scenario.
Q. MR. GLEESON: Could you turn to page 59 of the Opening Statement, that's page 59 of the transcript, which is the beginning of the Opening Statement.
A. Yes.
Q. Now, what this states is: "While for many years Mr. Andersen declined to come to Ireland to give his evidence, his appearance here today is welcome and his evidence is awaited with some measure of expectation as being of potential significance to a number of important matters canvassed before this Tribunal."

Then just turn over the page, there is a similar reference on page 60, if you go to line 24: "Although Mr. Andersen provided assistance to the Tribunal prior to and following that date" -- that is December 2002 -- "he declined, despite the Tribunal's repeated requests, to provide evidence to the Tribunal."
Now, you have, before we go into the detail of this, furnished to the Tribunal a statement in which you explain why you had sought an indemnity, the history of your seeking an indemnity, the fact that the Tribunal agreed to try to persuade the Government to give you an indemnity, and why you have ultimately come, because you, in fact, obtained an indemnity from somebody else. And what I am asking you is, this statement which says that you declined, despite repeated requests, to provide evidence to the Tribunal, doesn't refer to any of that, Professor Andersen, it doesn't refer to the fact that the Tribunal was at one point engaged collaboratively with you in seeking an indemnity on your behalf, isn't that right?
A. That's correct.
Q. And were you surprised when you saw this statement?
A. Yes, I was, because I don't think it's a fair description.
Q. And can I just ask you, you did have a number of meetings with the Tribunal in 2001 and 2002, and you have referred to some of these in your statement. Could I ask you to turn to your redacted statement of the 22nd of October. Paragraph 19. That's at Tab 4 of this book.
A. Yes.
Q. Do you have that?
A. Yes.
Q. And it reads: "During my numerous private meetings with the various members of the Tribunal's legal team between 2001 and 2003, it was suggested to me that Persona's application and credentials were superior to those of Esat Digifone. During these private meetings, certain Tribunal legal team members clearly sought to undermine Esat's credentials and stressed the relative merits of Persona. I recall in particular a remark made to me personally by senior counsel to the Tribunal, Mr. Healy, during one of these private meetings, that Esat Digifone's site options, agreements/planning permission documentation as submitted in their application were not genuine. Indeed, he used one of the most defamatory words you could use to describe that documentation. I found Tribunal counsel's approach to this matter and indeed to their advocating of Persona's position generally to be troubling. It seemed quite clear to me that at least part of the Tribunal was operating under a pro-Persona and anti-Esat-Digifone agenda."

Now, just going back to the start of that paragraph. You refer to meetings between 2001 and 2003. Now, can you elaborate upon what you state in that statement, that you perceived that A3 was being promoted by the Tribunal and A5 was being demoted by the Tribunal, is that correct?
A. Yes. It was such that the Tribunal, at this stage, would engage also in very specific kind of second-guessing, or entertaining discussions on how things should be scored or was scored and what was good and what was bad. And whenever it came to these discussions in some of these meetings, what was apparent was that focus was always on weak points regarding A5 or Esat Digifone and strong points regarding A3, namely Persona.
Q. And --
A. So it was not a balanced or a like-for-like or, what should I say, neutral discussion.
Q. Can you then turn to page 54 of your statement, which has been read into the record already, but I just want to look at it again. Do you see that, Professor Andersen?
A. Yes.
Q. "I specifically recall that meeting of the 30th of October, 2002, as Tribunal counsel were clearly rather excited and satisfied by what they regarded as 'the results of the quantitative evaluation' which they erroneously felt established A3 as the 'winner'. I recall that AMI informed them that they were using the wrong version of the quantitative scoring chart. In fact, the correct version does not have Persona as the applicant with the highest chart. Although I have brought this to the Tribunal's attention time and time again, they continue to rely on this inaccurate version and claim that Persona won the quantitative evaluation. This is simply incorrect. I cannot understand why the Tribunal has proceeded to consistently misrepresent this matter when this has been corrected time and time again, including having been corrected in a lengthy and detailed memorandum as provided to the Tribunal on the 20th of June, 2002."
So that appears to describe your recollection, not just of a particular meeting, but of a discussion along these lines which took place at more than one meeting; would that be fair, Professor Andersen?
A. That's fair to state, yes.
Q. And do you recall, I think there was a meeting in June of 2002 between the then-solicitor to AMI, Lisbeth Bork, and Carol Plunkett, who was then the AMI solicitor, do you recall --
MR. McDOWELL: Sorry, was the witness present at this meeting?

Q. MR. GLEESON: Were you present at this meeting?
A. No.
Q. Well, do you know anything about this meeting?
A. What I can say from the records is that I have seen, in the inter partes correspondence, that the Tribunal has some handwritten notes from this particular meeting, but I can also tell the Tribunal that the solicitor acting for AMI in this meeting has recorded a total of 12 pages minutes, written minutes, from this meeting, and a further one-page additional recommendation to AMI.
Q. I think, Professor Andersen, My Friends are saying that they haven't seen this document, so --
MR. McDOWELL: I should say, Chairman, I don't want to interrupt or make a circus of this, but we asked, formally, Mrs. Preston to give us all documents relative to these proceedings in the possession of the Professor. We haven't received anything from him on foot of those requests, not one paper.
CHAIRMAN: Well, I think we can move on from this.
MR. GLEESON: Yes, I'll just say two things in response. I appreciate we will move on from this. Firstly, as I understand it, this is a document which is in AMI's files and it's not Professor Andersen's document. He was a consultant at that stage. This was a document produced by AMI.
But secondly, it's clear from what he has said that he has seen this document. Now, I am asking you to permit him to give evidence, de bene esse, of what he recalls --
CHAIRMAN: No, Mr. Gleeson, I think I have heard the Professor indicate his view that orientations towards Persona, according to him, were shown in meetings. It's a matter for me how I respond to that, and I'd like you to concentrate on the balance of your examination.
MR. GLEESON: Very well.
Well, then, can we go to Tab 7 of this book, Professor Andersen? This is a document which -- this is a letter from the Tribunal to Carol Plunkett dated the 26th of March, 2003, and you have already quoted from this letter in your statement dealing with the indemnity, isn't that right?
A. Yes, that's correct.
Q. And the letter reads:
"Dear Mrs. Plunkett,
"I refer to recent correspondence. I am writing once again to seek your client's assistance in this matter. The Tribunal has had an opportunity of further examining the AMI report relied on in the course of the GSM2 licensing process in Ireland. From the Tribunal's current reading of

the report, it would appear that much of the analysis is unsatisfactory. Moreover, the Tribunal has obtained some expert assistance for the purpose of scrutinising the report and this has confirmed the Tribunal's tentative view that the report appears to be flawed in a number of ways and indeed may contain a number of seriously fundamental flaws."
Now --
MR. McDOWELL: Sorry, can you finish it?
MR. GLEESON: Sorry, I will finish it. Of course.
"The Tribunal is anxious that your client, AMI/Merkantil Data, should be afforded a full opportunity of responding to any queries concerning the report and, in particular, in circumstances in which conclusions may be reached which may reflect poorly on the authors of this report.
"I'd be obliged, therefore, if you could ascertain whether your clients are prepared to reconsider their decision not to assist the Tribunal."
Now, just firstly, when you received that letter, did you know what kind of expert assistance the Tribunal had obtained?
A. No, I didn't know.
Q. And when did you -- did you ever find out what kind of expert assistance this was?
A. Well, that subsequently transpired, a lot of time after that, that it was Peter Bacon.
Q. I think you told the Tribunal this morning that it wasn't until 2006 that you were furnished with those reports?
A. Yeah.
Q. And I think that is --
A. I recall that that was when I was furnished with the 2005 report from Bacon. The 2003 report, I don't recall when that came to me, but that was certainly not at this time.
Q. And when you received this document, Professor Andersen, you are an international expert in your field, you are a distinguished academic, here you are receiving a letter from the Tribunal of Inquiry saying that expert assistance has been obtained; in other words, somebody reading this might think that an expert at your level of expertise has been recruited by the Tribunal to provide them with assistance, and, as a consequence of that, the Tribunal has reached a tentative view that the report, your report, appears to be flawed in a number ways, and indeed may contain a number of seriously fundamental flaws. How did you react when you received this document?
A. I was shocked when I saw it, because it expressed to me something which would be very difficult for me to deal with, because it said nothing about who the expert was and

it said nothing, either, with regard to where the fundamental flaws were, and it didn't spell out, either, why the Tribunal thought that the analysis -- much of the analysis was unsatisfactory. So it concerned me. I was worried.
Q. Now, can I then ask you to go back to Tab 5, which is the statement you furnished in relation to the indemnity?
A. Yes.
Q. And I am not going to read out these paragraphs because they have already been read out, and I am conscious of the time, but paragraphs 9, 10 and 11 indicate why, or in what circumstances you communicated to the Tribunal your requirement for an indemnity, isn't that right?
A. That's correct, yes.
Q. And I think that was -- that communication took place, inter alia, at a meeting in October 2003 between yourself and the Tribunal representatives, isn't that right?
A. That's correct. That was on the 29th of October. So what I did, as a consequence of this letter, this threatening letter from the Tribunal from 26th of March, 2003, was to volunteer to have a meeting, a whole-day meeting with the Tribunal legal team.
Q. And without getting into too much detail, can you describe the gist of that discussion on the 29th of October, 2003?
A. Well, the gist of it was -- could easily be recapitulated to some extent at least by my Danish solicitor, because he said that "Michael, this is a tribunal thinking backwards". So what he meant by that was that a hidden agenda was there and an agenda which was not spelt out in any way. And moreover, I can say that it was the same thing again, that A5's credentials were miscredited and A3 was credited. Another thing I recall, and which is stated in the minutes, is they try to make, what I call, a 'murder' on Martin Brennan, because they tried to make minutes -- try to make me agree to minutes with very disqualifying remarks on Martin Brennan. Then, I will also say, as a last thing here, that during my examination by McDowell, I was presented with a fax showing that, around 11 o'clock, the third version of the draft quantifications were faxed to the participants of this meeting, but you will see nowhere, neither in the -- you will see nowhere in the minutes from the Tribunal that this has been taken on board by the Tribunal. So what concerns me here is, also, that when you look into Peter Bacon's reports, or at least the first report from Mr. Bacon, which was already produced, according to the date on that particular report, sometime in March 2003, it is very clear to me that the backward thinking, spotted also by my Danish solicitor, comes from

the fact that the Tribunal legal team had already a report from this so-called expert, Mr. Bacon, and they were trying, somehow, to get me to back up his report, not knowing to me, of course -- which was not known to me.
Q. Now, I think you were sent the minutes of this meeting prepared by the Tribunal?
A. Yes.
Q. This is the October 2003 meeting.
A. Yes.
Q. And --
A. Maybe I should just make you aware of the fact that the minutes from the Tribunal legal team, they only came approximately two years after the meeting had taken place.
Q. Yeah, I think if you look at Tab 8 of this book, there is -- that is the letter which sends you the minutes, if I am not mistaken. That's the letter of the 31st of August, 2005. Do you have that, Professor Andersen?
A. Yes.
Q. "Dear Mr. Andersen,
"I refer to recent correspondence, in particular to my letters of the 13th of May and 27th of May last to which I have, as yet, received no response.
"While it appears to the Tribunal that you are not agreeable to attending to give evidence at public sittings of the Tribunal, it has been the Tribunal's understanding that you are otherwise disposed to assisting the Tribunal in its work. I refer to the private meeting which you kindly attended with members of the Tribunal legal team at your lawyer's office in Copenhagen on the 29th of October, 2003. You will recall that before the commencement of the meeting, it was agreed and recorded in your solicitor's letter of the 28th of October, 2003 (which was countersigned by myself on behalf of the Tribunal) that:
'Any discussion or information exchanged or discussed during the meeting will remain on a confidential basis with the Tribunal, unless both parties jointly agree otherwise in writing.'
"Following that meeting, the Tribunal produced two documents, entitled as follows:
"1. Note of meeting with Michael Andersen in the offices of Bech-Bruun in Copenhagen on the 29th of October, 2003;
2. Additional material from memo of attendance on visit to Michael Andersen in Copenhagen.
"I enclose herewith copies of each of the above documents for your assistance. The Tribunal has been requested by a person directly affected by the Tribunal's inquiries into the second GSM licence for access to documentation, including documents generated by the Tribunal in respect of

the interaction between the Tribunal and your good self and/or your legal advisors. The Tribunal is of the view that the enclosed documents fall within that category of documents, but it is also of the view that, in the absence of your written agreement, those documents cannot be disclosed to persons affected by the Tribunal's work. The Tribunal is anxious to make the documents available to such persons and, accordingly, I am instructed to request your formal written agreement to the Tribunal circulating copies of the enclosed documents to persons directly affected by its inquiries.

"I should add that in furnishing such documents to persons affected by its work, the Tribunal would notify such persons that the documents are confidential, and direct that such documents should not be disclosed to any person save for the purposes of the provision of assistance to the Tribunal or the making of submissions to the Tribunal regarding the consequences of your nonavailability as a witness to the Tribunal.

"The Tribunal is due to hear submissions at public sittings in relation to the consequences of your nonavailability as a witness to the Tribunal, on the 13th of September next. Accordingly, if it is your intention to assist the Tribunal by agreeing to the provision of the enclosed documents on the terms set out above, I would be very much obliged if you could furnish your written consent within the next seven days."

And that was the first time that you saw those minutes?

A. Yes.

Q. Now, the response, I think, is on the next tab, from Mr. Carsten Pals, who was your Danish lawyer, dated the 7th of September, 2005. And the response states:

"I refer to your letter of the 31st of August, 2005, to my client.

"It has come as a surprise to us that the Tribunal's legal team has drafted what appears to be detailed minutes from the meeting in my office back in 2003 as we initially had an exchange of view on this particular matter and seemed, at the meeting, to agree that formal minutes, etc., from the meeting should not be drafted. The reasons for this was that the primary purpose of the meeting was to have informal discussions regarding a number of technical issues in order for the Tribunal to get a better understanding of these issues or to find out my client's view on certain of the technical issues. Furthermore, it is surprising that it has taken almost two years after the said meeting to produce and send the said documents for us for our review.

"For a number of reasons, we are unable to approve any

circulation and use of all of the said and similar documents and material received together with your recent letter.
" -- my client has pointed out to me that major factual mistakes and misunderstandings occur not only in the minutes but also in the conclusions drawn from the minutes.
-- the discussions reflected in the minutes regarding some of the issues do not correspond to our recollection of the discussions that took place at the meeting.
-- contravention with my client's contractual relations with AMI and the present owners of AMI.
"As I have stated earlier, my client has not received any cost coverage so far, neither for his previous assistance nor for the legal costs incurred by the Tribunal. Consequently, he has instructed me to close down the entire case in order not to incur more legal costs until the contract envisaged during the meeting in 2003 has been agreed to, or is in substantial preparation, as outlined by the legal team of the Tribunal and agreed to by my client and myself. Any future correspondence from the Tribunal office -- including but not limited to e.g. your recent e-mail to me -- should, therefore, be directed by e-mail to the following addressee," and it gives your address. And that is your solicitor's response to those minutes, isn't that so?
A. Correct.
Q. And I think that there is then a further letter, although I don't have the intervening fax, but there is a letter dated October 2005, and if there is anything in the fax that My Friends wish to refer to, then I don't have a problem with that being read out. But it's dated the 27th of October, 2005, and it again refers to the need for an indemnity, isn't that right, Professor Andersen?
A. That's correct.
Q. And this is a letter which you wrote -- now, it's not from your Danish solicitor, Mr. Carsten Pals; this is your own letter to --
A. Yeah, I couldn't afford or defend incurring legal costs to my solicitor.
Q. And it goes on to say: "Firstly, I trust that you are aware of the fact that the indemnity issue was already tabled when AMI commenced its assistance to the Tribunal in 2001. However, at that stage the Tribunal only asked for a consulting-like assistance."
That's, I think, what you explained this morning, that the Tribunal initially sought to recruit you as an expert to assist them?
A. Yeah, on a consultancy-like basis.

Q. On a consultancy basis?
A. Yeah.
Q. Can I just ask you, in that regard, can you give us a time during 2001 when that assistance was requested by the Tribunal, approximately when?
A. Well, it was definitely there in 2001, and then if you go through the minutes, you can see that there is still discussion about that throughout 2002, but with a sudden change in the view of the Tribunal, that it should, rather, be a witness-like kind of thing. And maybe that is most apparent in the meeting, I believe, in February, or whenever, I think there was a meeting in the end of February, where it was something like a change from me being a consultant to me being a kind of defendant.
Q. And the letter goes on to say:
"Firstly, I trust you are aware of the fact that the indemnity issue was already tabled when AMI commenced its assistance to the Tribunal in 2001. However, at that stage, the Tribunal only asked for a consulting-like assistance.
"Secondly, AMI and Merkantil Data/Ementor, terminated the assistance to the Tribunal in 2002 for the reason that the Tribunal would not reimburse AMI expenses and costs. As Carol Plunkett categorically stated, acting on behalf of AMI in a lengthy letter to the Tribunal, AMI would never have stopped the assistance to the Tribunal, had the Tribunal stood up to what AMI believed was a promise of reimbursement. Furthermore, AMI stated that if I undertook to give evidence, etc., to the Tribunal in my own capacity, I should bear the costs myself and be personally liable, despite the fact that I acted as an AMI representative during the entire GSM2 licensing process. Because of this lockup, a broad indemnity is needed.
"Thirdly, the Tribunal communicated several times with Carsten Pals of Bech-Bruun Dragsted law firm in the beginning of 2003 and conveyed the message that the licensing process and/or the Evaluation Report was 'fundamentally flawed'. We have, several times, asked the Tribunal to document this surprising statement, but we never received an answer. Considering this approach from the Tribunal, Carsten Pals and I decided that it was now indispensable to receive the full indemnity which had already been tabled for the Tribunal on several earlier occasions.
"With regard to the view of the Tribunal that something was 'fundamentally flawed', I do not recall that the regulator/governments, which AMI and I have previously worked for, received any claims or litigious approaches

during the processes of tendering in excess of 120 mobile licences, except for the case of Ireland. However, when exactly the same Evaluation Model and licensing process was used as in the case of GSM2, the Irish Regulator received complete vindication, c.f. e.g. the Orange case and the Broadcom case. Due to the proven record of the model, the model was also widely recommended by organisations working internationally in the field of mobile licensing, such as the OECD and the World Bank.
"Given these contingencies, I look forward to receiving the much discussed indemnity/insurance cover."
There is no doubt Professor Andersen, that, by that stage, the indemnity/insurance, certainly the indemnity issue was a much-discussed issue, isn't that correct?
A. It was --
Q. It was something that had -- there had been to-ing and fro-ing about this indemnity since, certainly, 2003 and into 2004 and 2005?
A. Very much so, yes.
Q. And therefore, to state -- for the Tribunal to state that you have refused to come here to give evidence, despite repeated requests by the Tribunal, without a reference to your understandable need for an indemnity, is not a fair representation of what, in fact, happened?
A. That was what I said before, that I don't believe the opening remarks was fair in that respect.
MR. GLEESON: Those are my questions, Mr. Chairman, and it's now just 3 o'clock. I do have -- I just want to make a short reference to something else, which is not in the form of a question, before I sit down, and that is to the provisional findings. And I understand --
MR. McDOWELL: Chairman, I object to any reference to the provisional findings.
MR. GLEESON: No, no --
CHAIRMAN: Well, if you're embarking on a --
MR. GLEESON: I am not going to refer to the provisional findings. I understand that there is a ruling that I cannot refer to them. I am not going to refer to the content of them, but I am going to refer to the fact of them, because what we were told -- there are two letters in this book I just want to refer to briefly. If you look at the letter at Tab 12 in this book, which is a letter from the Tribunal of the 7th of May, 2010, on the second page, and it reads:
"With regard to the provisional findings, they will not become the subject of your client's attendance as a witness. The provisional findings are confidential and those which impact directly on him will, arising from his

non-attendance, cease to have any effect once he makes himself available as a witness at the Tribunal's hearings. They do not consist of allegations and reference to them will not be permitted as they are confidential. Of course, your client's evidence may have an impact on provisional findings other than those which directly affect him, and this may, in due course, warrant the issue of further provisional findings, either related to those already issued, in substitution thereof or in addition thereto."

So there we have the Tribunal's position, is that the provisional findings are, in some sense, in a state of suspended animation. They may be added to, they may be replaced or they may reappear. And there is a further letter -- this is the last document I am going to refer to, the letter of the 5th of August, 2010, which is at the next tab.

In the second paragraph, on page 3 of that letter, the Tribunal states:

"The Tribunal does not regard your client as being disadvantaged by his attendance to give evidence after the implementation of the provisional findings procedure. On the contrary, his position is perhaps more advantageous than that of any other witness who has given evidence in relation to the GSM process, as he will give his evidence in the full knowledge of the Sole Member's provisional views of the evidence heard as of November 2002, and further, having furnished the Sole Member with submissions in response to those provisional views, which have and continue to be considered by the Sole Member."

Now, I may be reading that paragraph wrongly, but it seems to me to suggest that the provisional findings have not been set aside in respect of Professor Andersen, and, on the contrary, that both the provisional findings and his submissions in response to them, about which he has not been permitted to give full evidence, have and continue to be considered by you, sir, as the Sole Member.

Now, that, it seems to me, raises a particular difficulty, because if you are prohibiting discussion of the provisional findings and, by consequence, of Professor Andersen's submission to them in response and by further consequence of the evidence that he could give now in response to the provisional findings, it seems to me that, having heard his evidence, those provisional findings should now be set aside and deleted without a moment's delay.

Professor Andersen has the same constitutional rights to vindication of his good name as any Irish citizen. That is well-established. He is a Professor who goes around the

world with visiting professorships to other universities. These provisional findings are, therefore, still in some state of limbo. Is he to be sent back to Denmark in the shadow of these provisional findings, in the light of the evidence he has given and the assistance that he has given? In my respectful submission, that would be a wholly undesirable and unfair way to proceed, and I am requesting you, sir, as a senior member of the judiciary and as the Chairman of this Tribunal, to indicate, at the earlier possible opportunity, that the provisional findings in relation to Professor Andersen are now set at nought, and any other way of proceeding would, in my respectful submission, be totally unfair.

CHAIRMAN: Well, Mr. Gleeson, in the context of certain remarks made by your colleagues, Mr. O'Donnell and Mr. O'Callaghan, yesterday, I indicated that this is a matter in which I am going to have to reflect carefully and urgently and I am not going to charge into any extemporised and, perhaps, careless ruling upon it. And in the context of the approximately 50 hours of evidence that the Professor has given, of course I will have full regard to his constitutional rights that he enjoys as much as any Irish citizen, but I am not going to give a ruling. The Tribunal's procedures are not set in stone. I will give full consideration, along with consideration of all Professor Andersen's evidence and the degree to which it may ameliorate his position or that of other interested persons, but I am not prepared to give an extemporised ruling here and now on a matter that will require very careful reflection by me. But I fully take on board what you have urged, and will have regard to it.

Mr. McDowell? In the context of our time factors --

MR. McDOWELL: We have an hour and five minutes, as I see, but, I mean, I'll try and be quicker than that if I can --

A. I think we should also avoid having a pause, or whatever, so that's fine.

MR. McDOWELL: Sorry?

A. I don't think we need a pause this afternoon, do we?

CHAIRMAN: We don't need to take a break?

A. No break.

CHAIRMAN: Well, if you are happy --

A. No, I am fine to continue.

THE WITNESS WAS RE-EXAMINED BY MR. McDOWELL AS FOLLOWS:

Q. MR. McDOWELL: Professor Andersen, firstly, could I just ask you in relation to a general proposition, at first.

The Secretary General of the Department, Mr. Loughrey, told this Tribunal that he didn't see anything wrong with the people involved in the PTGSM process keeping the Minister

apprised with the progress that the competition was making.
A. Okay.
Q. And I take it that you would agree with him on that?
A. Yes, generally. But, you know, it doesn't go without saying what was the nature of the information, and so on.
Q. That's the second thing. That the second thing was, and this is the point that I do want to put to you, Mr. Loughrey was of the view that it would be wrong, having regard to the confidential nature of the competition and having regard to the fact that it had been emphasised to the participants in it that they were to keep the information secret to themselves, that it would be wrong to give, what I term, candidate-specific information to the Minister. That's what the Secretary General of the Department thought.
A. Okay.
Q. Would you agree with that proposition?
A. Not necessarily. It must depend on which rules and regulations and procedures were in place. So if it was the nature of their working style to inform very frequently, I wouldn't have a problem with that.
Q. I see.
A. But, on the other hand, if there was -- just to take the other point of this -- if there were a kind of written procedure stating that he should not, in any circumstances, be involved, then it would obviously be a breach of such a procedure.
Q. Well, I'll put it to you this way, Professor --
A. Yes.
Q. -- the Tribunal has received evidence, for instance, that Minister Lowry, as he then was, and Mr. Denis O'Brien, met in a public house in Dublin on the 17th of September, 1995.
A. Okay.
Q. And the Tribunal has received information that, subsequent to that, Mr. Lowry informed his Telenor partners, Mr. Simonsen, that the Minister -- Mr. O'Brien, sorry, Mr. O'Brien indicated to Mr. Simonsen that he had met the Minister in a pub and had been informed that he should bring in IIU, and this happened, this meeting, or this information was conveyed to the Telenor executive in the latter half of September 1995. Do you understand me?
MR. O'CALLAGHAN: The witness should be informed, Judge, that Mr. O'Brien denies this.
MR. McDOWELL: Yes, I will come to that, as well.
MR. O'CALLAGHAN: Mr. McDowell should have the transcripts of evidence that he is relying upon and put them to the witness, the same way as Mr. O'Donnell did and the same way as I did, rather than giving the witness's account of the

evidence.
MR. O'DONNELL: I don't wish to turn this into a chorus. If this is following the lines of re-examination, and I should say, sir, that, in normal course of events, re-examination -- it's hard to see how re-examination would be required arising out of a tribunal of inquiry where it is supposed to be a neutral inquiry, but if it is re-examination, it's usually matters that arose in the course of this witness's examination by persons other than Mr. McDowell, and how he is now, for the first time, at ten past three, being asked to comment on a matter that wasn't ever raised either in direct or in cross-examination by any other witness -- by any other party, does seem to me to be a little -- stretching -- going outside the boundaries of re-examination. And I am just asking the Tribunal to note my objection to this line of examination now being taken.
CHAIRMAN: The rules of evidence have always been a little strange in the context of tribunals. People can effectively cross-examine in the context of taking their own witness in what is, supposedly, cross-examination, and it is a hybrid format which certainly has its inherent difficulties, and, therefore, I have sought to afford latitude to counsel on all sides, as I now do to Mr. McDowell.
Q. MR. McDOWELL: I was just going to, before Mr. O'Callaghan so helpfully interrupted, I was going to actually say, whether or not the Tribunal accepts that evidence, if those things happened, would you regard that as acceptable?
A. I wouldn't accept it as usual, if I may use that expression.
Q. Would you accept it as acceptable in the context of this case, these -- what you know in this procedure?
A. You know, it's hugely difficult for me to comment on if it is an isolated question. In order to be able to give a proper answer, I think I would need to know did the Minister meet with other applicants and what was generally known, etc.
Q. I just want to stop you there.
A. So, you know, it's a matter of does he treat everybody on an equal footing.
Q. I see. But, I mean, I am asking you, as a general proposition, and in fairness to Mr. O'Donnell, this does arise out of your general statements that it was not, in your view, improper to convey information to the Minister, and I am just trying to work out what you do regard as proper and what you don't record as proper. Are you saying that, in principle, there wouldn't be any problem with the Minister conveying, if it did happen, to Mr. O'Brien, in a

pub in Dublin, that he should bring in IIU as a financier for his consortium's bid prior to the finalisation of the report? Are you saying, in principle, that that wouldn't be wrong if he was treating the other people -- if he was giving advice to the other people, as well, as to how they could improve their situation?
A. No, this is not what I am trying to say. No, it isn't.
Q. Well, maybe -- I am just asking you, what do you actually believe is right and is wrong and I am giving you a broad opportunity to explain to the Tribunal do you actually believe that it could, in any circumstance, be correct for a Minister, in September, on the 17th of September, this is before you wrote your letter of the 21st of September - I am putting you into the time-frame - to go to one of the parties and to indicate to them that they should bring in a new financier as part of their consortium? Do you think that that could ever be right, bearing in mind the nature of the process that has been described to this Tribunal?
A. I don't think it would generally be correct to do like this, but, you know, I don't have the full information. I am answering on bits and pieces of information, but generally, generally, if a minister says something which could -- which is a recommendation to an applicant, whatever, that is not generally a good way to proceed.
Q. And that's as far as -- that's as far as you want to put it, is it?
A. Yes.
Q. That, generally, that would not be a good way to proceed? And I take it that you aren't suggesting that it would be -- it could be excused if he treated all the applicants similarly and went around giving them all similar type of advice about how their progress in the competition could be assisted?
A. And what is the context? I mean, is it a formal meeting or is it an informal pub meeting or is it something in a third way? I don't know.
Q. What Mr. Loughrey said, so that My Friends or Mr. O'Callaghan should be particularly acquainted with this, is that he did not think it was correct to give candidate-specific information to anyone -- sorry, for the -- those in the competition to give candidate-specific information to the Minister having, regard to what he called, now this was his phrase, "the sealed nature" of the competition process.
MR. O'CALLAGHAN: Would Mr. McDowell give the Tribunal citation for that quotation from Mr. Loughrey, the day, the page, the line.
MR. McDOWELL: I have it here, in fact. We can produce it

for -- I don't want to delay the proceedings.
MR. O'CALLAGHAN: Then we shouldn't be asking questions about it if we're not going to --
CHAIRMAN: Well, we will revert to it, Mr. O'Callaghan, but let's proceed.
MR. McDOWELL: Chairman, I have to say that I don't agree with Mr. O'Callaghan's general mode of procedure, which is to produce selective quotes out of context, but I am putting to the witness that this --
CHAIRMAN: Well, I would have appreciated it if Mr. O'Callaghan had put the Tribunal on notice of the booklet at least the evening before you produced the extracts that you did, which appears to be your solicitor's regular practice, rather than at the moment you rose to invoke the documentation in that book. There is much talk of the procedures afforded to interested parties by the Tribunal, but, on occasions, the Tribunal is entitled to a little consideration as well.
MR. O'CALLAGHAN: I would have thought that the transcripts from previous witnesses would have been put to this witness in examination-in-chief --
MR. McDOWELL: Chairman, time is now limited and I am not --
MR. O'CALLAGHAN: -- there was no evidence to substantiate it, what Mr. McDowell wanted to do.
MR. McDOWELL: I am not going to be harried, I am not going to be harried, Chairman, by a constant chorus --
MR. O'CALLAGHAN: -- and I don't think I should be criticised, Chairman, for having been prepared, and Mr. McDowell should be prepared if he wants to put transcripts to this witness.
MR. McDOWELL: It's here. Let's get on with it. Could Ms. Moriarty go back to the previous page. The question was put to him --
A. Sorry, to whom?
Q. To Mr. Loughrey.
A. To Mr. Loughrey?
Q. Yes.
"Question: So apart from his right to know the critical path as the whole matter had been designed, what else do you think the Minister had a right to know?
Answer: Ultimately, as the process was designed, you are absolutely right, and you are also right in saying that, ultimately, it's the Minister who is responsible to the Oireachtas, to the Dail and, in particular, actually, and if he so insists, he could break that protocol if he so insists. Now, clearly, that would be a serious matter, as far as I was concerned as Secretary General, or any senior

civil servant, that is. But as to what the Minister was entitled to know, clearly he was entitled to know the progress that was being made, and, as a subset of that, he was equally entitled to say 'could you not get a move on?' Because that would be non-discriminatory as between any applicant.
Question: Correct, I understand, yes.
Answer: But he wouldn't, or shouldn't be, be entitled under protocol to have information that would be specific to an applicant in such a way that was effectively breaking the arm's length nature of the process.
Question: I understand. I think we both understand and are in agreement in relation to the process, the design of it and the function of the evaluators and the role of you and the Minister in the whole matter.
"And from what you have just said, I think you wouldn't disagree that if things were still under consideration from the Project Team, for example there were two or three strong teams emerging out of the process, and they were involved in discussing them or even discussing the report and how one might deal with risks or difficulties that might arise and what advice would be given, that it would not be appropriate for you or the Minister to say 'hurry on there lads' before you're finished your work.
Answer: Not if the pressure was such that it would compromise the process, the evaluation process. But asking civil servants to burn midnight oil or to work through a weekend, provided it was done on a non-discriminatory basis as between all the applicants, I wouldn't regard that as inappropriate pressure.
Question: There was no rush here, though, they were well within the critical path?
Answer: Yes and no, Mr. Coughlan. In one sense, ministers can decide to bring matters forward as well as defer them and they are within their entitlements to do so.
Question: I understand that, but in the normal course of design of this particular process and the critical path which had been set for it, there was no, no --
Answer: In those circumstances, they were actually right on the button, so to speak, in terms of the critical path.
Question: They were well ahead of it, weren't they?
Answer: Well, it depends, once again. If you take the Andersen statement of intent from August onwards, they were right on critical path. If you take the extra month that was given effectively and promulgated subsequently, then they were ahead of schedule.
Question: They were well ahead of schedule."
Now, if you just turn over the divider there, and I think

that's the portion that's there. Now, do you agree that candidate-specific information should not have been given out of the process to the Minister?
A. There are two different stages here. One is, what is it appropriate that civil servants inform the Minister about? And what is it appropriate that that a Minister informs the environment, including the applicants, about?
Q. Yes.
A. So I just want to be very certain here. Are you talking about the first or the second?
Q. Well, I am talking about the following, really: I suppose -- let's not have a false debate on this. Because if the Minister was a trappist monk and wasn't going to say anything to anybody, that's one thing, isn't it?
A. Yeah.
Q. If he was going to, as is alleged here, but the Tribunal has made no finding on it, meet somebody in a pub, and if Telenor were to be told that, as a result of a meeting in a pub, they were to bring in IIU, that wouldn't be the behaviour of a trappist monk in the matter, isn't that right?
A. That's correct.
Q. And I am suggesting to you -- I am just asking you to comment, because you have said to the Tribunal that keeping the Minister informed was not necessarily out of order, isn't that right?
A. That is my point of view, that as the Minister is the ultimate boss for this Department, then I can, in principle, see no problems in civil servants giving, practically speaking, any information to the Minister. The Minister is entitled to know what he wants to know.
Q. I think, in fact, it was the previous question, question 140, the question went: "I can understand that, but it was designed, insofar as was practicable, to be a sealed process, that's how it was designed."
And Mr. Loughrey said "yes," so that's where the word "sealed" came from.
A. "Sealed," yeah.
Q. But, in any event, are we agreed that --
A. Yes.
Q. -- whatever about whether the Minister should be confided in, it would have to be on the basis that he would keep any material he got confidential, is that right?
A. I believe so. But I do not recall precisely what was agreed about these things. I would be, you know -- the way I worded my answer, in the first place, to your question, I did put a little emphasis on the non-discriminatory issue, right as Mr. Loughrey did.

Q. I am not trying to catch you out at all. I am merely trying to work out what you meant when you said that it would be normal or reasonable to inform the Minister. And I am asking you, in these circumstances, would you agree with the view of Mr. Loughrey in this matter?
A. Yes, broadly speaking, yeah.
Q. Now, I think, just in relation to Messrs. O'Callaghan and McMahon, I just wanted to clear up one thing. You were being asked, I think by Mr. O'Donnell, as to whether everybody was -- Mr. Shipsey, I think it was, as to whether they were engaged in the process?
A. Yes.
Q. And I think your recollection at the time was that you couldn't remember whether or not they had been involved in the presentation process, the presentation meetings?
A. Well, what I think I told you was that I don't recall Sean McMahon being there, but I think that Ed Callaghan was there, so there was one from the Regulatory Division there.
Q. Well, I am just putting it to you, just as a matter of fact, that both of them have said that they were and that Mr. O'Callaghan --
A. Okay.
Q. -- Mr. O'Callaghan and Mr. McMahon, and, in fact, that Mr. McMahon actually asked questions of Esat about their funding.
A. Okay. I fully take that on board. Thank you.
Q. Now, could I ask you, Mr. O'Callaghan asked you, and he brought you through Appendix 10 in relation to the Evaluation Report, do you remember in relation to whether --
A. Yes, the two times and 1.5.
Q. Two times and 1.5. And I just want to, very briefly, bring you through a couple of things in relation to that, if you don't mind. And again, I am not trying to catch you out at all. So I just want to get through this very quickly, if I may. I am going to show you a number of tables here. Could you look at, just, Appendix 10 --
A. Yes.
Q. -- of the second draft report, please.
A. Sorry, Appendix 10?
Q. Appendix 10, yes. And could I just ask you quickly to turn to paragraph 10.3, which is "Assessment of A1," do you see that there?
A. Yes, I see it.
Q. And do you see the paragraph which reads: "In the financial plan, the base case equity contribution is stated to be 71 million with a debt financing of 32 million Irish pounds. The applications did not include a sensitivity

analysis regarding these figures, but the sensitivity analysis regarding the cash flow shows that the minimum accumulated cash flow increases (numerically) from minus 104 million to minus 136 million in the event of a two-year delay of subscriber uptake. Although this figure represents a possibly unrealistic event, a combined set of events influencing this particular case in a negative direction could lead to a situation where the need for finance is 40% higher than the base case."
Do you see that written there?
A. Yes.
Q. Could I just ask you to look at the pages that you have just been given?
A. Yes.
Q. And I think you'll see on the first page -- this is A1, do you see where "A1" is written between the two holes? Do you see at the top?
A. Yes, I see it, yes.
Q. And do you see "Year 3" appears to be the worst case there -- the best case there, Table 19, do you see that?
A. It seems to be --
Q. Year 3: 104,000 -- minus 104,000.
A. Yes, I see that figure.
Q. And do you see on the bottom -- the bottom of the next, at line 139, "Sub-forecast, two years delayed: 136.348 million," do you see that?
A. Yes.
Q. And that's where the figures, I suggest to you, that justify that, come from, isn't that right? 104 to 136 million?
A. Just a second. Just bear with me. In year number 5?
Q. Yes.
A. Year 5, yeah, and you are talking about line 139.
Q. Isn't that right?
A. That's correct, yes.
Q. So the worst-case scenario is 136, on that analysis, isn't that right?
A. Yes.
Q. Now, could I bring you -- and that's where the 40% comes from there, that 104 to 136 was a 40%, roughly speaking, difference, isn't that right?
A. That seems to be the case, yes, 40%.
Q. Could I bring you to the next page -- sorry, to A5, for a moment, which is --
A. In the tables or in Appendix 10?
Q. In Appendix 10 at paragraph 10.5.
A. That's page 6, isn't it?
Q. I think so, yes.

A. In the appendix.
Q. Yes. And a similar paragraph appears on page 7, I think, is it? Yes, it is. On page 6, a similar paragraph appears, do you see that?
A. In the handout?
Q. In Appendix 10.
A. Yes.
Q. And it talks about a difference from minus 108 million to minus 156 million in the event of a two-year delay, isn't that right?
A. That's correct.
Q. And again, if you look to the handout that you have there, that 2 is covered, is it not? Sorry, you may not have it there -- you do have it -- Divider 7. If you look at the second page of Divider 7, it's "105" at the top of the page.
A. Again, it's line number 139, isn't it?
Q. Yes, exactly. And that's where those two figures come from, isn't that right?
A. Yes.
Q. And could I just quickly bring -- could I quickly bring you, then, to A4 --
A. Yeah, that's the 50%, do we agree on that?
Q. Could I quickly bring you, then, to A3, the analysis in relation to A3?
A. Yes.
Q. And this is at paragraph 10.4. Do you see that, 10.4?
A. In Appendix 10, it's on page 3, isn't it?
Q. Yes, that's correct.
A. Where is it in the tables?
Q. Just halfway down the page. This is the matter that Mr. O'Callaghan asked you to look at. It says:
"The applications did not include a sensitivity analysis regarding these figures but the sensitivity analysis regarding the cash flow shows that the minimum accumulated cash flow increases (numerically) from minus 102 million to minus 255 million in the event of a two-year delay of subscriber uptake. Although this figure..." and that gives you, roughly, two or two-and-a-half multiple, isn't it, a multiple of two, isn't that right?
A. Actually, more than that.
Q. More than that, yes. Now, could I ask you just to take a look at the table for A3 and show me where you think those figures appear there. And, to shorten this, I don't want to trap you, but just to shorten this, they don't appear there at all, but, and this is the curious thing, would you look at A4?
A. Yes.

Q. Have you got A4 in front of you?
A. Is A4 in Appendix 3?
Q. No, it's in the chart, it's in the material that Andersens produced. Do you see A4 there? Do you see it?
A. Yes.
Q. And the 102,969, and the 2 is in Year 3 at line 105.
A. Okay. I see what you mean. So what you suggest --
Q. Just let me finish for a second. And at 139, line 139, it's minus 255,682. And previously, what I am suggesting to you, and I am not trying to score points off you at all, Professor, I am saying that, in fact, what happened in this supplementary analysis is that after your evidence the other day, the Tribunal team went just to check through the figures, and they found that, curiously, the figures for A4 had been transposed to A3, and that, in fact, a much grimmer picture about the worst-case scenario for A3 had been painted by the application of the figures for A4, which were the worst figures for A4 to A3?
A. Yes.
Q. It seems to be so, doesn't it?
A. Maybe. I will have to check it, because it could also be that A -- I will have to check it. That's number one. But there is a little mystery here because A3 went considerably deeper with their network than A4 did, so I would assume that there could also be the possibility or the explanation that the A3 and the A4 were changed the other way around such that the figures you are showing me for A4, they should have been for A3, and vice versa. That would have been -- made more sense, because A3 went for an expensive network, they went for relatively low tariffs, and that would increase their exposure, so to speak, because what we are looking at is the exposure figure.
Q. But, one way or the other, either the tables that have been handed in to you are incorrect or, alternatively, there has been a transposition of A4's data into the A3 supplementary analysis, one of those two things has happened, isn't that right?
A. Yes. I am just suggesting that it could be that the figures inserted in Appendix 3, that they are correct.
Q. Well, again, I am not trying to trap you, but I am going to suggest to you that if the view is taken that it's A4's figures that have been used for A3's supplementary analysis, that this is, without becoming over-dramatic about it, but it's a serious mistake?
A. Then it would be a mistake, yes.
Q. And, I mean, to put it on the level of seriousness, would it rank with the -- if you discovered it yourself, would you use the word that you used about Mr. McMahon, would you

be shell-shocked by it if you thought that that supplementary analysis was wrong in that way?
A. Well, I wouldn't be shell-shocked, but I would be dissatisfied.
Q. Disappointed?
A. Disappointed, yeah, I would be, yeah.
MR. O'DONNELL: Could I just say, none of this was put to any of the departmental witnesses at any stage during the various years that he gave evidence, and, for it to be sprung in re-examination, and I use the word advisedly, on this witness, seems to me to be inappropriate in circumstances where, is the Tribunal now saying that because it wants to embark on a reinvestigation of this aspect of the matter, that it's going to do so? Because if it is, it's going to have to call back the Departmental witnesses and ask them for their comments on it because they're part of the team that put together this report. Professor Andersen is the author of it, but he was assisted in putting that together by the various other witnesses. And if it's being suggested that an error that is now being allegedly -- that an alleged error is now being discovered for the first time, the other departmental witnesses, as a matter of fair procedures, will have to be asked about it.
MR. GLEESON: Could I just say something, very briefly. I know that the time is very limited, and Professor Andersen is being asked to answer, on the hoof, a proposition about complex financial tables that have been put to him. And as he rightly said, he has to check this. We haven't had an opportunity to take instructions on any of this, and it's being put to him in re-examination. So --
CHAIRMAN: I have indicated in my Part 1 report that whilst I must base my report upon evidence that's been heard here in this chamber, if some matter, in ease of a particular affected person, arises, I am prepared to consider secondary evidence in that regard, and I did utilise that on occasions in Part 1. So, I mean, if Professor Andersen wants to, on his return, communicate and have regard to that --
MR. GLEESON: Certainly, if this is going to become a critical issue, it's not one that can be left in this way at the end of a two-week hearing.
CHAIRMAN: Well, let's not make it critical.
MR. McDOWELL: I was going to actually ask the witness. I am not suggesting to you that this is critical, because the Tribunal is not attempting, as has been suggested by various witnesses, but the Tribunal is not attempting to rerun the competition. But I do suggest to you that it does show that all of these tables -- you identified a

mistake that had been made against A5 the other day and was corrected on the supplementary analysis, and it does show that a bit of time has to be taken, one way or the other, with these tables, to ensure that they are correct, isn't that right?
A. I fully agree. It shows the complexity of it, it does.
Q. Exactly. And can you assist me on this. In that context, I just want to move on to another topic now and we may return to it slightly.
Can you -- you do recall that, on the 21st of September, you wrote a letter suggesting a meeting, either a conference call or a meeting in Copenhagen. You know that letter, we have gone over that many times.
A. That's correct. And, you know, I have written communication to support my memory, if I may use it in that -- because, of course, if you ask me do you recall what time of the day you wrote this letter or -- all kind of things like that, but there is written communication to the effect that I wrote a lengthy memo on the 21st of November -- of September, 1995.
Q. And we do know, now, that on the preponderance of the evidence, that there was a meeting in Copenhagen on Thursday the 28th of September, 1995, because we have the air tickets, the invoices, your own invoices, everything which suggests that such a meeting took place, isn't that right?
A. Yes. I fully accept that a meeting took place. But I would also like to say here that I have, in my calendar, 15 years ago, that I was to travel to Sweden in the afternoon of the 17th at 15.40, something, p.m., and I was not having the invoices in front of me, and it's 15 years ago. And, I mean, if you had had -- I don't know whether the Tribunal has had the invoices, but --
Q. I think it had, but it never saw -- it never --
A. That's fine.
Q. -- it never absorbed them.
A. But I am perfectly happy that a meeting can be documented to have taken place.
Q. So, just, on the basis that being common-sensical among us all, that the Tribunal is probably going to find that there was such a meeting in Copenhagen on that day?
A. Yeah, I think that's transpires.
Q. You do accept that it was an important meeting, don't you?
A. Yes, I think I have stated that, and I wouldn't, if you know my working style, I wouldn't have called for a meeting in that memo, and I would not have written that lengthy memo if I were -- if it wasn't needed to have feedback to the questions I raised in the memo.

Q. Yes. And you had set an agenda for the work that had to be carried out for that meeting in your letter of the previous week, isn't that right?
A. I think, with all respect, I am quite particular in that memo.
Q. Yes, I think you are, and there is no dispute, and I am not -- again, there is no point of controversy between us on this. But you did say that the scoring was to take place, the scoring of the various dimensions was to take place at this meeting?
A. No, no, that's not correct.
Q. Let's read precisely what you said.
MR. O'DONNELL: He has to be able to see it.
A. I would like to see it, yes.
MR. O'DONNELL: I am just anxious that -- it's not fair to simply read out something and to ask him --
MR. McDOWELL: The witness has Book 91, and he knows that it's Tab 47, so...
A. Yes, I have it.
Q. And at A, you say, you talk about the remaining award of marks to the ten dimensions, isn't that right?
A. Yeah.
Q. B, you talk about scoring of the marketing aspect, financial aspect and other aspects, and you say: "The award of marks to the remaining aspects is to be decided at a meeting on Thursday the 28th," isn't that right? Paragraph B there?
A. B. Yes.
Q. And you say, "The scoring of the financial aspect will be self-explanatory, whereas we need to consult each other concerning the scoring of the marketing aspect."
Then you deal with risk investigations, and you set out six of them which you propose to carry out, isn't that right?
A. That's correct.
Q. And then you say, "Other risks might be identified and dealt with later in the process." And you say, "If there is a clear understanding within the Department and AMI of the classification of the two best applications, it is suggested not to score 'other aspects'."
A. Yes.
Q. You were asked today about where this ad hoc competition between the two best applications came from. Here you are suggesting it, isn't that right?
A. Okay, that's here in the underlying -- but I would still retain my position, though, that, generally, we proceeded on the basis --
Q. I don't doubt you, Professor.
A. I see the point that it's "two" mentioned here. I take

that on board.
Q. I am suggesting to you that you came up with this proposal to look at the top two and to see if effort with the others was -- the same level of effort, rather, with the others, was really needed, isn't that right?
A. Sorry, the question?
Q. I am saying that you -- it was who you said that "If there is a clear understanding between the Department and AMI of the classification of the two best applications, it is suggested not to score 'other aspects', the risk dimensions and the other dimensions such as the effect on the Irish economy. In this case, the risk factor will be addressed verbally in the report."
So this notion of the emergence of the top two, contrary to what Mr. Gleeson put to you this morning, was not something that came from nowhere. You were canvassing it in your memo here?
A. I don't accept that, because if you look above, you will see that I take all six applicants into account, if we move a little bit upwards, you can see.
Q. I accept you cover all the applicants.
A. I just want to be meticulous here, Mr. McDowell. I accept that I have written "two best" here, but that might have been a leprechaun in my computer.
Q. A leprechaun in the computer. I see.
A. It should have read "three".
Q. Oh, I see. Fair enough. Well, I am not going to fence with you on this, but I am just suggesting to you that it isn't a conceit on the part of the Tribunal or the Opening Statement, that the concept of looking at the two best applications was to be looked at at that meeting.
A. Yes, but maybe you will also see that in the so-called PF or the working hypothesis, it's also mentioned a number of times, and I had a contractual obligation, Mr. McDowell, to rank three applicants. So therefore, I think that we mainly worked on the basis of identifying and ranking the three applicants. I take on board that "two" is mentioned here. My contractual position, and also my position here in evidence, is that I fulfilled my contractual obligations.
Q. All I am asking -- I am only re-examining you arising out of what Mr. Gleeson put to you today, which was effectively that there was little or no basis for the two best applicants idea, but I am suggesting to you it's to be found in your own letter and I am also suggesting to you that Mr. Towey's evidence, Ms. O'Brien tells me, was to the same effect.
A. I know I am not allowed to ask questions, but is this a

very, very big issue?
Q. No, it's not a very big issue, I mean, but your own counsel thought it was big enough to raise it with you in the very limited amount of time.
A. Okay, but that may be because it was raised in the opening remarks.
Q. Now, you were on time, were you not -- you were doing your work on time and you were, although under pressure, going to deliver your final report by the due date, isn't that right?
A. Yes.
Q. And can I just bring you to the next tab, which is Tab 50, and --
A. Sorry, before we leave this, you raised the question of what was -- before we leave this, I just want to go back to what needed to be scored, what was left for scoring.
Q. Yes.
A. And it was, if you leave out the "other aspects" which was not scored, then you are left with the marketing aspect and then the grand total.
Q. I understand that. It wasn't, by all means, everything open for scoring?
A. It's just so there should not be unnecessary disagreement among us.
Q. Okay. Could I just bring you to the final page of the memo of the 21st, and at that point, under paragraph F, you pose certain questions to the Department, and one of them was: "How do we integrate the quantitative evaluation in the report? We prefer to leave this question unanswered until we have the final results."
A. Yes.
Q. Now, I just -- we have talked about this on a number of occasions, but now, having heard four counsel cross-examine you or suggest things to you, and all the rest of it, can you now give the Tribunal your understanding of how it is that you could say that "The method of integrating the quantitative evaluation in the report should be left unanswered until you have the final results?" How is that consistent with the final results having been known at that time?
A. Well -- yeah -- that's -- as I read it, it has something to do that we had these two remaining things to score; namely, the marketing aspect and the grand total.
Q. But why would the question of how you integrated the quantitative analysis, await the finalisation of the score on those two outstanding matters? It doesn't seem to me to make very much sense.
A. Okay, that's fair enough, and I can also safely say that

when people look through documents that are 15 years old, and there is huge, huge documentation, you, with your skills, you will always be able to find something where you said "How can this happen?" and "Why do people write this?" I'll try to give you an explanation. You can assess for yourself why you find my explanation reasonable or unreasonable.
Q. It's not for me.
A. Okay. But, you know, I am approaching this matter from the angle of a consultant. I had a contract -- a consultancy contract with the Department. I wanted to progress the work, and I wanted to do it as speedily, as efficient and as effectively as possible. So, I think, you know, this is not an -- I am not trying to express a complacent consultant attitude here. I was hard-working at the time, Mr. McDowell, but this would be the easiest way for me to get to the -- to the fulfillment of my contractual obligation.
Q. Okay. Can I just ask you to look at Tab 50, and, in particular, this is a note made by Mr. Sean McMahon, on the second page of it -- this is an internal departmental meeting on the 3rd of October, and when he gets to item 4 in his note, he deals with GSM and he notes that he is being told, I think the evidence is that he was told by his colleagues, "Minister wants to accelerate process.
-- legalities more complicated.
-- draft report now imminent."
Now, this is on the 3rd of October, the day that you were coming to Dublin -- sorry, you came on the 9th -- the day that you finalised your report, sorry, isn't that right?
A. Yeah. I actually don't know because the front of it states that -- it looks like an internal meeting between the three divisions of the Department and a date on the first page is 3/10.
Q. So I am just saying to you that it does appear here that the Minister was saying internally in his Department "I want this process accelerated," or at least the civil servants were being told that that was his attitude?
A. Yes, that's how it reads.
Q. And we know that you arrive over on the 9th, isn't that right?
A. That's correct.
Q. And we know that there is a discussion on the 9th in relation to the draft report that you had sent over on, curiously, the same day, isn't that right?
A. Correct.
Q. And we also know, don't we, that the first -- and I just bring you to Tab 53, that on the 9th, this is a meeting at

which at least some of the Project Steering Group people were seeing your report for the first time. "The chairman opened the meeting by stressing the confidentiality of the Evaluation Report and discussions re same. He also informed the group that the Minister had been informed of the progress of the evaluation procedure and of the ranking of the top 2 applicants."
So this has happened on the day -- this is the first thing that happens at the meeting to discuss it: The chairman, who is Mr. Brennan, tells the people there that the Minister knows the ranking, isn't that right?
A. That's correct.
Q. And just to be clear about this, the discussion which took place afterwards, that you recall, on your report, took place in the shadow of the fact that the meeting knew who, in effect, had won the process?
A. Sorry?
Q. The discussion which took place subsequently --
A. On the 9th.
Q. -- on the 9th --
A. Yes.
Q. -- is preceded in time by the civil servants and the Andersen people there being told, the Minister knows the outcome of this, and also, he is disposed towards announcing the result as quickly as possible after the finalisation of the Evaluation Report?
A. Yes, that's how it reads, yes.
Q. Yes, it's "the finalisation of the Evaluation Report"; he is not saying "I am waiting for you all to agree with this." He is simply saying, "I know the result and I want to publish this as quickly as possible after the finalisation of the Evaluation Report is done," isn't that right? That's what the chairman says the Minister is doing?
A. As quickly as he can after the finalisation, yeah.
Q. Now, in fairness to everybody involved in this process, do you not think now, looking at that, that that tended to pre-empt the discussion; that it was a fait accompli at this point?
A. No, I don't think so, and I don't recall it being in that way.
Q. I see. Well, now, this morning, Mr. Gleeson asked you, in relation to the work of Mr. Riordan and Mr. Buggy, the Tables.
A. Okay. I think it was in the afternoon, but never mind.
Q. Sorry, this afternoon, I can't remember -- I think it was this morning because I prepared for it over lunch, so it must have been this morning, or after 12:00. You may be

technically right. Whatever...
As I understood it, he put it to you that their reservations, as set out in the tables, must have been discussed at that meeting, they must have put them on the table and been satisfied by the discussion that their problems were resolved?
A. Yes.
Q. But, you see, I am suggesting to you that when I asked you this -- about this on -- in the course of the transcript on Monday, the 1st of November, I asked you about them and I asked you in relation to these notes, whether -- I'll just put it to you now exactly what it is. It's on the screen -- it's page 155 -- sorry, page 36 of the transcript, and it's day 380. And I am asking -- I have gone through Mr. Buggy and Mr. Buggy's notes at this stage. And do you see at question 156:
"Question: But in any event, there are these two financial accountants assigned to the Department of Finance re working your matrix in private before they go to their meeting with you of the 9th October."
And you said to me "yes".
"Question: Do you remember them raising any of those points?
Answer: No, not at all. And I think I would have been remembering it if they had brought it up while I was present because I was, in the beginning, a member of the financial sub-group so it looked strange to me that there was this financial sub-group running, and I think the Irish participants were Billy Riordan and Fintan Towey."
A. Yes.
Q. Now, you see, Mr. Gleeson asks you, and I know it's the end of a long, long session, to say weren't these matters, in all probability, raised and dealt with to their satisfaction at that meeting, but I am suggesting to you that when I asked you about the same matter, you said no, you had no recollection of these matters being raised with you.
A. Let me say two things: First of all, I fully appreciate that you are looking for inconsistencies after so many days.
Q. I am not, I am not.
A. But --
Q. I am not looking for inconsistencies; I am simply suggesting to you -- I'll tell you what I am suggesting so that you can answer it fairly and squarely, to use Mr. Lowry's phrase. I am suggesting to you that it is unlikely that they were raised on that occasion, because you had no recollection of them being raised, and if that

amount of work had been done, and they put them in front of you and said "look, we have arrived at a different conclusion," you would have remembered it?
A. I fully take that on board and I don't think that that is in contradiction with what Mr. Gleeson examined me on because he took me to a note stating something like "Having discussed these matters on the Steering Group meeting today, we now want to clear the following..."
Q. Yes.
A. So this shows that despite my non-recollection of their personal notes being taken up or not being taken up, the work progressed and the input -- this is what is important with regard to the Opening Statement, also -- the input or an input from the two accountants were discussed and were a live part of the process, because, as I see it, Mr. McDowell, it has been -- or as I perceive it from the Tribunal, it is something like were work from these accountants taken into consideration at all? But I can see from several documents, of course the document that Mr. Gleeson opened on the 9th of October but also from other documents, that there is a lively exchange of views between the accountants and AMI consultants on this specific matter.
Q. Now, could I bring you to -- I don't want to cut you off, but I do want to just finish --
A. I know, time is running, but you should also go the full length --
Q. I know, yes. And just, in relation to -- could you go to Tab 52 and the Maev Nic Lochlainn fax to you?
A. Yes.
Q. Could I ask you, in particular, to look at the second paragraph.
"Please see attached list of criteria and weighting as agreed by the Project Group prior to the 4th of August, 1995.
"Could you please clarify how these relate to the weights as detailed on page 17/21 of the document of the 8th of June, 1995, which were to be the weights underlying the quantitative evaluation?"
She then explains: "Page 17 is also attached (at Annex C) and to page 7 of the Draft Quantitative Report (see section on weights at Annex D) e.g. OECD basket is weighted 15.96%. Does this correspond to 18% for competitive tariffing as agreed by the group?"
Now, that's what she puts to you, and if I could now just briefly ask you, while you are considering that paragraph, to go to Tab 24, which is your June 6 -- the 8th of June reworking of the Evaluation Model, and, in particular, page

17 of it. Internal page 17. Do you see that?
A. Yes, I see it.
Q. I mean, without getting stuck in the bog of weightings again, and all of us have gone through -- traversed this bog on a few occasions in the last fortnight, it does seem to suggest that she was specifically asking you to tell her how the weightings in the document you had furnished on the 3rd of October were to be reconciled with the weightings set out on page 17 of that Evaluation Model, which was agreed in June of 1995, doesn't it?
A. Well, I think the important point here is that Maev Nic Lochlainn, she has, in actual fact, expressed herself, how she would interpret this, on day 29 -- day 225, the 29th of May, 2003, to this Tribunal. And she says, "Because I think it has always been clear that the weightings which had 7.5 for marketing penetration scores 1 and 2 related, in fact, to a quantitative evaluation and that there was a clear decision by the Project Group documented by myself on the 21st of May which stated 30, 20, blah-blah-blah, and that there was no decision or no documented decision by the group how the 30 would be split in terms of qualitative evaluation. So I would disagree with the phrase "change" because I believe that, in fact, there was no change. It was a decision which was taken to split the 30 into 10, 10, 10. It was not a change since there had been no decision by the group except that the 30 was to relate to this top criteria."
MR. GLEESON: Just to clarify where that comes from. It's in the book that I furnished. It's a transcript from Maev Nic Lochlainn's transcript at Tab 3, day 225, at page 18.
Q. MR. McDOWELL: And can I ask you in relation to that --
A. Yes, but you asked me about her view. So I think it's fair -- it's --
Q. I wasn't asking about whether there was a change at this point; I was merely asking you wasn't she referring you to that table and asking you to reconcile the two?
A. Yes.
Q. Isn't that what she was doing?
A. Yes.
Q. And --
A. I think so.
Q. Now, I know that you have said that there isn't a paper audit trail and you aren't quite clear when, in your mind, the 10, 10, 10 came back on the table, so to speak?
A. Yeah.
Q. I know that, so --
A. In hindsight, I would have liked to have had a document stating this very precisely, but the document which I would

so much have liked to see, it isn't in the audit trail.
Q. But I am suggesting to you that one thing is pretty certain, and that is that the 10, 10, 10 was not the subject of a discussion -- or the difference between the two was not the subject of a discussion on the 9th of October?
A. What was on the table on the 9th of October must have been the fact that these figures here, which I think we have stated at least 20 times, summed up to 103, and that was discovered by Ed Callaghan.
Q. You are saying that was discussed on the 9th of October, the 103?
A. I say it must have been addressed somehow.
Q. But, you see, it could have been addressed, could it not, in Copenhagen, on the 28th of August -- sorry, September, rather.
A. Yes, it could or could not -- I have said before --
Q. You, at that point, produced a model based on 10, 10, 10?
A. Yes.
Q. But at any rate, what I do have to suggest to you is that insofar as the final report exhibits the Evaluation Model as a historical document, the fact is that, as a historical document, as approved by the Project Group, it didn't contain the 10, 10, 10 distribution of weightings at the time that the Evaluation Model was adopted in June of 1995?
A. That is correct, and that is also highlighted a little bit, I think, in Maev Nic Lochlainn's evidence, because she gives quite a thorough explanation about how documents were collected and how the logistic procedure was. So I would very much attach importance to her explanations on how it was arrived at the time, 10, 10, 10.
MR. McDOWELL: Professor Andersen, you'll be very glad to know I have nothing further.
A. Okay. Thank you so much.
CHAIRMAN: Thanks, Professor Andersen, for your attendance these two weeks.
MR. O'CALLAGHAN: There is one matter in respect of the indemnity that I have been asked to bring to the Tribunal's attention.
CHAIRMAN: I am not fielding any googlies at this stage.
MR. O'CALLAGHAN: It's not a googly. It's not even a bouncer. It refers to the fact, Chairman, that, on day 378, Mr. McDowell stated, at page 58, that my solicitor, Mr. Meagher, was unaware of the indemnity until the 20th of September of this year. That's not correct, sir. What actually happened was the Tribunal wrote to Mr. Meagher on the 21st of September, 2010, and asked him to confirm that he had no knowledge of the indemnity, when he wrote to the

Tribunal on the 14th of April, 2010. And Mr. Meagher wrote back to the Tribunal on the 28th of September, 2010, confirming that he didn't have any knowledge of it on the 14th of April, 2010.

Mr. Meagher has asked me to bring to the attention of the Tribunal that he was, however, aware of the indemnity in the first week of May 2010. So it is incorrect to state that he wasn't aware of it until September. It's just a matter I wish to bring to the attention of the Tribunal.

I know the Tribunal has spent a lot of time inquiring into the indemnity, but I think I should just make this point, that had it not been for my client providing the indemnity, Professor Andersen wouldn't have been here to give his invaluable evidence, evidence which I say has had the effect, or should have the effect, of preventing there being any injustice in respect of the licence.

MR. McDOWELL: I fully accept that. The only reason I said that he was unaware until that date was that it was stamped with a receipt stamp on the 20th and I assumed that that was intended to convey that that was the time it was received in Mr. Meagher's office, but he apparently was aware of it prior to the date of actual receipt.

CHAIRMAN: But the effect, Mr. O'Callaghan, is that it was approximately a month after the events of the meeting in April that Mr. Meagher became aware.

MR. O'CALLAGHAN: He became aware in the first week of May, sir.

CHAIRMAN: Thank you.

THE TRIBUNAL THEN ADJOURNED.