

Redacted Statement of Mr. Michael Andersen

Introduction / Background

1. My name is Michael Andersen. I am 51 years of age and am a Danish National. I am presently the Chief Executive Officer of Andersen Advisory Group A/S and am actively involved in a number of business ventures in the field of telecommunications. I currently hold the position of Adjunct Professor at the Copenhagen Business School within the field of business strategy.
2. I studied Political Science at the University of Aarhus and graduated at a level between MA and PhD in 1983, specializing in telecommunications policy. I graduated as a Fellow to the Salzburg Seminar in August 1985. I also graduated with a Bachelor of Commerce from the Copenhagen Business School in 1987. I am a Certified Management Consultant and hold Professional memberships of the Strategic Management Society and the Academy of Management.
3. Between 1983 and 1987, I worked as a Head of Section at the Danish Ministry of Finance and Ministry of Public Works, dealing with telecommunications. From 1987 -1991, I worked as Deputy Managing Director of AIM Management A/S. AIM Management A/S was acquired by Deloitte in 1990, at which point I became a Partner at Deloitte Denmark. In 1991, I left Deloitte and established Andersen Management International A/S and became Managing Director and Co-owner of that telecommunications consultancy business. That business was sold in 2000. In 2002, I continued my present business through Andersen Advisory Group A/S, which is based in Copenhagen, Denmark.
4. Throughout my professional career, my primary focus has been in the field of telecommunications; primarily in the field of mobile telecommunications. To

date, I have dealt with the awarding of in excess of 200 mobile communications licences in jurisdictions all over the world (and in very many of them as the lead consultant). They include (by way of example) countries like the United States, Sweden, Iceland, Norway, the Netherlands, Hong Kong, various Baltic States, Denmark, the CIS-countries, a number of African countries, Austria, and, not to forget, Ireland. I have worked as a consultant to the World Bank on numerous occasions. I have carried out work in mobile tender processes for a great many National Regulatory Bodies, State Agencies and Ministries all over the world. Andersen Management International ("AMI") had already worked in at least 48 countries in and around the time of the Irish tenders.

5. I have lectured at Copenhagen University and at the Copenhagen Business School. I have also taught business strategy and innovation as part of the MBA programme run by the Danish Technical University. I have been the author of a very many publications in the field of telecommunications and am co-author (along with Professor Flemming Poulfelt) of the book *"Discount Business Strategy - How the new market leaders are re-defining business"*. This successful title has been translated into a number of languages; including Russian and Korean. In 2010, I co-authored another book - *"Return on Strategy - How to achieve it!"* This book is currently being translated into Chinese and Danish.

6. During 1995 / 1996, I was the principal of Andersen Management International. During this period AMI acted as lead consultant to the Irish Government in the process leading to the awarding of the second mobile phone licence ("GSM 2"). This licence was awarded to Esat Digifone Limited on 16 May 1996 following a competitive tender process involving 6 applicants. AMI was very heavily involved in this competitive tender process. AMI was also involved, although to a significantly lesser degree, in the period between the announcement of the competition result on 25 October 1995 and the actual awarding of the second mobile phone licence to Esat Digifone Limited on 16 May 1995. Details of AMI's introduction to, and

involvement in, *the* GSM 2 tender process in Ireland are set out at the relevant section of this statement.

Involvement of Mr. Michael Lowry in the GSM 2 Tender

7. I understand that the Moriarty Tribunal of Inquiry ("the Tribunal") is inquiring into the awarding of the second mobile phone licence as part of its inquiries into acts and decisions of Mr. Michael Lowry during the period when he was Minister for Transport, Energy and Communications. Michael Lowry was Minister for Transport, Energy and Communications during the period whilst AMI were engaged in the GSM 2 process in Ireland.
8. I did not meet Michael Lowry either *before*, during or after *the* GSM 2 process. Neither I, nor any of my colleagues in AMI, had any contact whatsoever with Michael Lowry as part of the GSM 2 process or indeed otherwise. Other than very general public policy statements made by him as Minister, I was not aware of any directions, instructions, preferences or even opinions in relation to the GSM 2 process coming from Michael Lowry. I certainly was never aware of any preference or apparent preference on the part of Michael Lowry for any particular applicant in the GSM 2 process. No such preferences were ever relayed or even intimated to me by any of the civil servants involved or indeed otherwise. As far as AMI was concerned, Michael Lowry was not part of the GSM 2 decision making process.
9. I should state that, based on my extensive experience worldwide, I would not regard direct involvement by a Government Minister in such bid processes as being highly unusual. However, I am certainly not aware of any such involvement and/or interference in the GSM 2 process on the part of the then Minister, Michael Lowry. Michael Lowry simply did not feature as part of the competition process. I am confident that if any such interference on his part existed, then I would have become aware of it as part of my central and critical involvement in the GSM 2 process.

Involvement of Civil Servants in the GSM 2 Process

10. **DELETED**

11. I am certain that at no point during the GSM 2 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 such individual civil servant(s), then I would have become aware of it given my central role in the GSM 2 process and my close contact with the individual civil servants involved from the Department of Transport, Energy and Communications and the Department of Finance over a period of a number of months of intense activity. I can say categorically that I do not believe that any such preference existed on the part of those involved in the GSM 2 process.

12. I should mention that the only time a 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.

13. I am entirely satisfied, from my perspective, that all of the civil servants involved in the GSM 2 process carried out their work with the utmost integrity and without any element of favouritism for any applicant being brought to bear. I am also satisfied that 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 in the GSM 2 process and my experience gained from involvement in such competition the world over. By the time AMI became involved in the GSM 2 process, we had been involved in a great many 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 of, or even suspicious of, such motivations. However, there was no such awareness or suspicion on the part of AMI in the GSM 2 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. 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.

The validity of the A5 application in the GSM 2 Licence Competition Process

14. **DELETED**
15. Esat Digifone Limited (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 the Request for Proposals ("RFP") published on 2 March 1995. These criteria were set down in descending order of priority at paragraph 19 of the RFP.
16. Esat Digifone was a clear winner of the GSM licence competition process. By clear, I mean that 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 based on AMI's experience. Esat clearly won the competition as the so-called AS 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. 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. It was certainly clearer than the results that have been arrived at in many similar mobile phone competition processes that I have been involved in.

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 in the RFP. 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 criteria. 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 application, 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.

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 processes worldwide; either at that time or indeed since. 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 etc. No other application came close to Esat Digifone in this regard.

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AMI's Introduction to the GSM 2 Tender Process

23. AMI first became involved in the GSM 2 process by responding to an invitation to tender as published in the Official Journal of the European Communities in late 1994. AMI submitted an initial pre-qualification document and subsequently a final tender to the Department of Transport, Energy and Communications on 16 March 1995. AMI's tender was accepted in late March 1995 and AMI began their work on the GSM 2 process in April 1995.

24. The first formal contract between the Department and AMI was signed on 9 June 1995. It is very important to note that the nature and scope of AMI's work changed very considerably as the process developed from what had been initially agreed and recorded in this document of 9 June. In particular, AMI was required to undertake work which was well outside of the scope of the tender submitted on 16 March 1995. An initial amendment was agreed on 14 June which related primarily to developments involving the European Commission and their apparent disapproval of the "auction" concept of the GSM 2 process. The involvement of the European Commission and the assimilation of their views into the GSM 2 process created a very significant level of additional and unforeseen work for AMI and the PG GSM.

25. Further amendments were required due to certain other unforeseen circumstances which arose during the course of the GSM 2 process. AMI was required to engage in further detailed discussions with the Department in order to adapt AMI's role and level of involvement (which naturally impacted on the level of fees involved). These issues did lead to certain contractual difficulties as between AMI and the Department in the context of the GSM 2 process. In the end, AMI's work was very considerably wider than had been anticipated in the tender provided by AMI and accepted by the Department.

26. These contractual discussions culminated in a further agreement being reached on 14 September 1995; which agreement was recorded in a letter to AMI written by Martin Brennan of the Department dated 14 September 1995. This letter incorporated a fixed fee element; which was contrary to the original quotation and tender as submitted by AMI on 16 March 1995. AMI was also retained at this time by the Department to prepare a separate report on the regulatory regime applicable in Ireland. This work was wholly separate from the GSM 2 process.

27. It should be noted that AMI was engaged as consultants in the GSM 2 process after the Government had published the RFP document on 2 March 1995. As such, AMI had absolutely no role in determining the actual criteria upon which the GSM 2 competition would be decided; nor was AMI involved in designing the rules of the competition. This was somewhat unusual. As such, AMI had to design an evaluation methodology and process that would "fit around" such pre existing paragraph 19 criteria and respect the descending order of priority applicable to those criteria as set out in the RFP. Typically, AMI would have been involved in defining the criteria to apply in such competitive processes. This was not the case in Ireland. The view of AMI was that the design of the criteria did not meet international best practice at that time (or certainly not European best practice). However, AMI was bound to respect the criteria as published prior to its engagement by the

Government. This did however cause some problems as the evaluation process developed.

Conduct of the Licence Competition Process

28. A dedicated Project Group ("PG GSM") was established to carry out the GSM 2 competition process. This PG GSM consisted of civil servants from the three Telecoms Divisions of the Department of Transport, Energy and Communications, civil servants from the Department of Finance and later on AMI consultant on a kind of ad hoc basis. The Chairman of the PG GSM was Martin Brennan from the Department of Transport, Energy and Communications. Mr. Brennan made it clear to AMI that civil servants from his Department did not have expertise in financial matters and would be reliant on officials from the Department of Finance and consultants from AMI.
29. I, as principal of AMI, acted as the lead consultant to the GSM 2 process. The other consultants from AMI who worked on the GSM 2 process were Mr. Jon Bruel (co-team leader), Mr. Marius Jacobsen (deceased), Mr. Ole Feddersen, Mr. Michael Thrane and Mr. Mikkel Vinter. Moreover Mr. Tage Iversen, a Director of the National Danish Telecom Regulator, was part of the AMI team and performed a reviewing and auditing function in the GSM 2 licence competition process. His involvement, as a very senior official from a national regulatory authority, was a significant addition and ensured a consistent quality of AMI's final deliveries. Although we were part of the PG GSM, AMI did not participate in all of the PG GSM's meetings. On other occasions, AMI consultants were only present for certain parts of PG GSM meetings. AMI regarded some of these meetings as being internal civil service meetings. AMI only occasionally received minutes or notes of those meetings.
30. By agreement with the civil servants, the evaluation process was performed

as a joint exercise between the AMI consultants and the civil servants from both Departments. The PG GSM was a kind of "sub-divided" into 10 evaluation subgroups which evaluated the 10 distinct elements of the various bids as identified in the RFP. AMI consultants were involved in everyone of the 10 evaluation sub-groups. It is fair to say, given AMI's expertise, that AMI played a central role in conducting the second mobile phone licence evaluation process. Once AMI were on board, no other external mobile telecommunications experts were retained by the Irish Government. The civil servants involved were very clearly (as one would expect) heavily reliant on the input of AMI throughout the evaluation process.

31. The closing date for receipt of applications set out in the RFP issued on 2 March 1995 was 23 June 1995. 12 parties purchased the initial tender documents. A facility was provided to interested parties to allow written questions about the process to be posed. 230 sets of questions (many of them detailed with sub-questions) were received. This gave rise to the publication of two detailed memoranda to interested parties. Further significant amendments to the RFP were published on 12 May 1995. AMI advised that such additions / enhancements to the original RFP needed to be made to increase the likelihood that comparative evaluations could be made on a like for like basis. Despite these additions, it was not possible to fully restore the actual design of the competition and tender documentation to comply with standard European Practice. These shortcomings in the RFP did have an impact on the evaluation process, particularly in relation to the ability to properly complete the quantitative evaluation.
32. Prior to the original deadline for receipt of applications, the PG GSM completed a number of activities including:
 - (a) Agreement of a division of responsibilities (which confirmed AMI's significant role in all aspects of the evaluation process);

- (b) Adoption of an evaluation model which set out how a quantitative and qualitative evaluation model would be combined; and
- (c) Adoption of detailed work programmes to ensure timely delivery.

33. Shortly before the original closing date on 23 June 1995, the European Commission expressed serious reservations concerning the inclusion of an auction element in relation to the licence fee to be paid by the winning applicant. As a result of detailed and intense consultations, the closing date for receipt of applications was extended to 4 August 1995. I understand that the Tribunal is not pursuing any allegations in relation to the involvement of the European Commission and the deferral of the closing date. However, it is important to note that the changes introduced following interaction with the European Commission altered, to a considerable degree, the design and nature of the evaluation process. These changes, coming at the stage which they did, put quite significant pressure on AMI and resulted in considerable additional work (work which had not been anticipated at the outset) being taken on by AMI. This was reflected in the amendments to the contract between AMI and the Department.
34. Six applications were received on 4 August 1995 as well as a preliminary business case from Eircell which was required for comparative purposes. A more detailed business case was submitted by Eircell (following a request) on 11 August 1995 and this proved to be a very valuable reference point and was used, where relevant, for comparative purposes. None of the six applications were deemed to have substantial deviations from the minimum requirements of the RFP and, as such, all six applications were admitted to the evaluation process. The applicants were identified A1 to A6. A5 was Esat Digifone; A3 was Persona.

35. It appeared at an early stage that some of the applications contained insufficient information. In accordance with the rules of the RFP, tailor made written questions were provided to the applicants on 24 August 1995. Answers were received on 4 September 1995 which resulted in valuable improvements in terms of the ability to comparatively assess applications. These answers also identified that the applicants had used widely differing assumptions in terms of key elements of their bid (such as metering principles; initial call charges etc). The use of differing assumptions was, in AMI's opinion, attributable to a significant degree to the somewhat ill-defined manner in which the evaluation criteria had been laid out in the RFP on 2 March 1995.
36. As noted above, the an important element of the evaluation process was conducted via the establishment of 10 sub-groups; each dealing with one of the ten dimensions identified in paragraph 19 of the RFP, namely
- Market development
 - Coverage
 - Tariffs
 - International roaming plans
 - Radio network architecture
 - Network capacity
 - Frequency efficiency
 - Performance guarantees
 - Financial key figures; and
 - Experience.

Each sub-group contained civil servants from the Department of Transport, Energy and Communications and consultants from AMI with the appropriate experience and expertise as required for that particular sub-group. The Department of Finance provided officials to participate in the sub-groups

dealing with financial issues and performance guarantees.

37. Invitations to attend oral presentations were issued to the 6 applicants on 5 September 1995. 3 hour oral presentations (following the same format for each applicant) were carried out as 6 separate meetings as between 11 and 14 September 1995. One hour was reserved for a presentation; one hour to answer questions (each posed and worded to all applicants in same way) and one hour was reserved by the PG GSM to pose questions.
38. Following the conclusion of the oral presentation on 14 September, the remaining part of the evaluation was concluded (credibility, risks and sensitivities of each application). This led to the overall evaluation and final marking being completed. This result provided that 3 candidates could be nominated for the right to negotiate for the licence with certain reservations being stated with regard to the applicants. The reservations with respect to the winning application (Esat Digifone) related to that entity's financials.

Competition Evaluation Report

39. The Evaluation Report containing the result of the GSM 2 competition process was drafted by AMI and forwarded to the Department on 25 October 1995. I strongly advised Mr. Brennan on a number of occasions that once the Department was in possession of the final result (via the final report) that it should announce that result as soon as was possible. This advice was based on AMI's extensive previous experience in such matters. It was my firm advice to Mr. Brennan that the result ought to be announced straight away. I understand that this advice was taken and that the result was announced by the Minister on the evening 25 October 1995. I wholly endorsed this approach; reflecting as it did my clear advice to the Department.

40. **DELETED**

41. In fact, the timing of the conclusion of the licence evaluation process and the production of the final report was agreed between AMI and the Department in the contractual amendment letter of 14 September 1995. This letter, as written by Martin Brennan, very clearly sets out the agreed contractual timeline for the provision of two drafts of the final report on 3 October and 17 October 1995 (respectively) with the provision of the final version on 25 October 1995. It was AMI who insisted on the inclusion of these dates in the amended contract. This contractually agreed timeline was followed exactly as set out in the letter of 14 September 1995. The question of "acceleration" simply did not arise. The evaluation process was conducted entirely in accordance with what had been agreed contractually between AMI and the Department on 14 September 1995 and the dates reflected what AMI had pushed for in those contractual negotiations.

42. The first version of the evaluation report was produced on 3 October 1995. This draft was discussed by the PG GSM on 9 October 1995. Comments by members of the PT GSM in relation to the presentation of the results of the evaluation process on this initial draft and a subsequent draft were incorporated into the final version of the report. The final version was produced, in accordance with the contractually agreed position, on 25 October 1995.

43. These contractual issues as between the Department and AMI did cause an element of friction, but they were resolved. AMI had run considerably over budget in terms of the time / cost dedicated to the GSM 2 project. In the end, a fixed fee arrangement was agreed between AMI and the Department (as set out in the letter of 14 September 1995) which was contrary to AMI's normal method of working and indeed with what had been set out in AMI's tender. As a result, AMI was not fully compensated in terms of the full cost of

the GSM 2 project but this was agreed between AMI and the Department as part of the contractual amendments. The work towards the end of the GSM 2 licence evaluation project was also limited somewhat by agreement with the Department. However, none of this had any impact whatsoever in terms of the final result of the GSM 2 competition. Esat Digifone was the clear winner in AMI's view and no amount of supplementary analysis or further work would have changed that position in any way.

44. AMI's involvement in the period between the announcement of the result of the competition on 25 October 1995 and the awarding of the licence on 16 May 1996 was very considerably less. AMI participated in the following activities during this period:

- Preparation of draft rejection letters to be issued to losing applicants and comments on draft letters prepared by the Department;
- Participation in the first licence negotiation with Esat Digifone;
- Advice to the Department in relation to issues being raised by losing applicants; including representations being made on behalf of certain losing Applicants by the US Embassy;
- Attendance at meetings in Dublin with disappointed applicants;

and

- Limited oral advice regarding a formal complaint made to the European Commission by Persona.

Miscellaneous issues re GSM 2 process

45. **DELETED**

46. The Tribunal has alleged that AMI acted against its own tender documentation and contrary to its obligations to the Department. These allegations are wholly without substance and are strongly denied. It is clear that the Department did not retain all of the services and models which had been proposed at the outset by AMI in its tender documentation. As set out above, the terms of the contractual arrangements between AMI and the Department were amended by consent on a number of occasions culminating with the letter of 14 September 1995. This allegation is completely undermined in any event by the contents of a letter received from the Department dated 16 July 1996. I attach a copy of this letter to this statement at **Appendix A** to this statement. It is clear from this letter that AMI fulfilled its contractual obligations to the Department. I do not believe that it is appropriate for the Tribunal to seek to second guess this confirmation and the clear understanding of the parties to that contract.

47. **DELETED**

48. I would point out AMI worked extensively for the Irish Government subsequent to the second GSM process. Indeed, AMI was retained by the Irish Government to act as the consultants in the third mobile phone licence process ("GSM 3"). The final decision in that matter was Judicially Reviewed in the High Court (Orange -v- ODTR) and the integrity of AMI's work was ultimately supported by the Irish Supreme Court. In its decision delivered on 18 May 2000, the Irish Supreme Court (Keane C.J, Barron, Murphy, Murray, Geoghegan J) unanimously found that AMI had acted properly at all times. Indeed, the Chief Justice referred to AMI as an entity:

" ... with a particular level of expertise and specialized

knowledge, or which, at the least, has the capacity, which the Court has not, to draw on such specialized knowledge, as the Director did in this case by retaining the services of AMI ... ".
(Page 128 of the Judgement)

In addressing allegations as made against AMI in the context of those proceedings, Mr. Justice Murphy remarked as follows:

*"Evidence of the existence of a malign influence bearing on the judgment of the evaluators, or some of them, so as to sway themselves (and their colleagues) consciously or unconsciously, in favour of the second defendant or against the plaintiff is slight indeed. The evidence to the contrary is, in my view, overwhelming. AMI were selected themselves by a competitive process. **They clearly have a very high reputation in the specialised field in which they practice ...**" (emphasis added)*

49. **DELETED**

50. I also reserve the right to refer to the numerous documents provided by myself I AMI to the Tribunal in the period 2001 to date. In particular, I reserve the right to refer to the Memorandum of AMI dated 20 June 2002 dealing with a number of issues raised by the Tribunal including:

- A. The audit trail of the quantitative evaluation
- B. The amendments of the draft evaluation reports
- C. Weighting Issues
- D. Provision of final version report to the Department.

51. DELETED

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57. DELETED

58. DELETED

Michael Andersen

Ann. 1



An Roinn Iompair,
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16 July, 1996.

Mr Michael Moesgaard Andersen,
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Strandgade 24, DK-1401,
Kobenhavn K,
Denmark.



Dear Mr Andersen,

I would like to confirm the completion of our contractual arrangements in relation to the selection of and award of a licence to a second operation of GSM mobile telephony in Ireland.

I also want to take this opportunity to convey my thanks to you and your firm for the assistance given to the Department during the process.

During the time that you worked with the Department, your work was considered to be of a consistently high professional standard and both the quality of the advice you gave and the experience that you brought to the process played valuable parts in ensuring the smooth progress of the work at hand. This applied to all stages of the process from the detailed preparatory work in relation to clarification of tender documents for interested parties; the design of the evaluation model; the execution of the evaluation itself; the documentation of the results; and finally to the information sessions for the unsuccessful applicants at the end.

I wish you and your company well in any similar projects that you might undertake in the future.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Martin Brennan', is written over a horizontal line.

Martin Brennan
Communications (Development and
Corporate Affairs) Division