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IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1178/5/7/11

Victoria House,
Bloomsbury Place,
London WC1A 2EB

21 March 2012

Before:

LORD CARLILIE OF BERRIEW QC
(Chairman)
PETER FREEMAN CBE QC
MARCUS SMITH QC

Sitting as a Tribunal in England and Wales

BETWEEN:

2 TRAVEL GROUP PLC (IN LIQUIDATION)

Appellants

– v –

CARDIFF CITY TRANSPORT SERVICES LIMITED

Respondent

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HEARING (DAY 7)

APPEARANCES

MR. M BOWSHER QC and MS A BLACKWOOD (instructed by Addleshaw Goddard) appeared on behalf of the claimant.

MR. J FLYNN QC and MR C WEST (instructed by Burges Salmon) appeared on behalf of the respondent.

1 Wednesday, 21 March 2012

2 (9.45 am)

3 MR DAVID BROWN (continued)

4 Cross-examination by MR BOWSHER (continued)

5 THE CHAIRMAN: Good morning. We've just been handed
6 a document.

7 MR BOWSHER: I will explain what it is. It's part of the CC
8 report, which ... It is the appendix to the CC report,
9 entitled "Cardiff case study", which I have to say
10 I thought was in F2, but it isn't. The main body of the
11 report is, but the case study isn't.

12 Mr Brown, good morning. Just to make sure I've
13 covered the points. Firstly, you understood, didn't
14 you, that the five routes which 2 Travel were targeting
15 were the key, most significantly profitable corridors in
16 Cardiff for you; isn't that right?

17 A. Yes.

18 Q. That's what you told, I think, both the OFT and the
19 Traffic Commissioner at various points. Would that be
20 right?

21 A. I think so. I can't remember specifically.

22 Q. We can dig the references out. I don't know if you've
23 been provided with a copy of this case study. This is
24 actually -- I don't know if you've seen this document.
25 You may well have done. This is the appendix to the

1 recent Competition Commission report into local buses,
2 and it's the appendix dealing with Cardiff. Have you
3 seen this before?

4 A. Some time ago, I think.

5 Q. I think it was published in December so I'm supposing
6 you may have seen it, being in charge of Cardiff Bus.

7 A. In terms of its preparation, yes, certainly.

8 Q. And I don't want to take very long on it, but we can
9 see -- you would agree, would you, that in terms of
10 developing a bus company in Wales, would you agree with
11 the observation in paragraph 3, the last sentence, which
12 comes from Stagecoach, that Cardiff in particular, but
13 also the coastal cities, are the most likely prospects
14 for growth of a bus company in Wales. Would that be
15 fair?

16 A. I think in the sense that south-east Wales and Cardiff
17 at the centre of it, is the engine of growth in Wales,
18 then, yes, that seems a reasonable assumption. It
19 wasn't my comment.

20 Q. Certainly if you were going to build a bus company in
21 Wales, you'd want to get in and try and grow that in the
22 Cardiff area. Would that be fair?

23 A. If you're looking for growth, that is the area that is
24 most likely to grow. I don't think that necessarily
25 means that that's the most profitable area to operate.

1 There are other profitable bus companies in Wales.

2 Q. And we can see, if you turn to paragraph 12, that --

3 this is, of course, not in the -- this is the

4 Cynon Valley. We can see that at least one other entity

5 has adopted a fairly similar strategy to that of

6 2 Travel, in that it has looked for local services,

7 tendered contracts, and then expanded to commercial

8 services. That's in the Aberdare area. That's in

9 paragraph 12. Is that right? (Pause).

10 A. There's no doubt that Edwards Coaches expanded to

11 operate commercial services. I don't believe those

12 commercial services are in-fill services, I think

13 they're stand alone commercial services.

14 Q. Right. And I think some, at least, Stagecoach -- if you

15 turn on to paragraph 27 -- have used price

16 differentiation as a means of trying to compete with

17 yourselves in trying to gain entry in the Cardiff

18 market. Is that correct? That's summarised in

19 paragraph 27. (Pause).

20 A. I note their comments. These are inter-urban services,

21 very limited services.

22 THE CHAIRMAN: They're what services?

23 A. Inter-urban, on very limited corridors, and they have

24 sought price differentiation to try and win some of that

25 market, as they come in on those corridors.

1 MR BOWSHER: Thank you. We can put that away. If you could
2 take file F2, I want to go to the body of the report.
3 The report starts in F2, page 336. Just while we have
4 that, for the tribunal's note, we can see on page 339
5 a list of appendices, and you will see the reference to
6 the Cardiff case study, which is what I've just handed
7 up, so you see where it fits in with the ... The
8 section I wanted to go to was page 532, "Conclusions on
9 head to head competition."

10 Paragraph 8.93, where they set out conclusions about
11 the nature of head to head competition. I'm not going
12 to ask you to agree with some of the policy propositions
13 of the CC. I wanted to look at 8.97. You would agree
14 that when bus operators compete head to head, they do
15 so, at least in part, on the basis of service frequency.
16 Would that be fair?

17 A. I'm trying to understand the context. It seems to be
18 stating the obvious, so ...

19 Q. Well, sorry, maybe I'm going too quickly and that's
20 fair. Let's back up. What they say at 8.94:

21 "For the reasons set out in the body of the report,
22 we find head to head competition delivers significant
23 benefits to customers.

24 "However, as set out further in another appendix, we
25 find that head to head competition is uncommon. We

1 examined the reasons for the lack of that competition
2 across the reference area. We found that lack of demand
3 did not explain it."

4 And they then go on to consider how the head to head
5 competition works. That's the context of 8.97:

6 "We found that in general, subject to some
7 exceptions, when bus operators compete head to head,
8 they do so, at least in part, on the basis of service
9 frequency."

10 Is that right?

11 A. Yes. I'm still struggling to understand the context of
12 what the Competition Commission are getting at.

13 THE CHAIRMAN: I've read 8.97 to 8.102. They seem to be a
14 blinding statement of the obvious, albeit it rather
15 verbosely.

16 MR BOWSHER: I wouldn't say such a thing about the
17 Competition Commission.

18 THE CHAIRMAN: If Mr Freeman will forgive me.

19 MR FREEMAN: It's since my time, don't worry.

20 MR BOWSHER: I will move on. It says what it says. All
21 I wanted to engage with was the simple proposition that
22 bus operators compete on the basis of service frequency.
23 Would we agree that that's a way in which they compete?

24 A. If there are two buses, which there would be a minimum
25 of, frequency has to be a factor. I haven't read

1 through, so I don't understand.

2 Q. We saw that it says "in general, subject to some
3 exceptions discussed in 8.86 to 8.92", and I wanted to
4 look at 8.86 to 8.92, which is "The other ways they
5 compete" -- so that's 8.86:

6 "Operators also compete on the basis of aspects of
7 service other than frequency. This is likely to be
8 because where customers face a choice, they may decide
9 which service to catch or which operator's network
10 ticket to buy before they get to the bus stop."

11 Would you agree that that's a way in which the bus
12 operators seek to compete, by trying to affect people's
13 travel plans before they get to the bus stop?

14 A. I think -- I note the Competition Commission's comments.
15 My own position, my own understanding from the bus
16 industry, is that most people catch the first bus that
17 comes along, but there are factors that might persuade
18 people at the margin to prefer one form of transport
19 rather than the other. Not just in terms of one
20 operator rather than the other, but also bus as opposed
21 to walking, cycling or car. And certainly in Cardiff,
22 we have made a great play of having high quality
23 vehicles, with things that we would expect to attract,
24 particularly perhaps, the low floors, which are
25 particularly attractive to parents with buggies and to

1 older people. So at the margin, yes, but the basic
2 principle for me would be first bus that comes along.

3 Q. But it may be that we do agree. Let's make sure we've
4 covered the points. 8.87, they suggest that reductions
5 in price are also a common response by operators to
6 entry.

7 A. Mm-hm.

8 Q. "The qualitative evidence shows that operators sometimes
9 respond to entry by reducing single fares on certain
10 routes. It also shows that sometimes there is price
11 competition over the price of an area and area ticket."

12 So you would agree that sometimes pricing is a means
13 of establishing a competitive advantage, would you?

14 A. At the margin, it would be one of the factors, yes.

15 Q. If we turn the page, there is also:

16 "We also found that operators responded to entry by
17 improving service quality and improving punctuality."

18 Those are also means of improving competitive
19 advantage. Would that be right?

20 A. Yes. Sorry, new vehicles as in brand new rather than
21 additional, I'm agreeing with you.

22 Q. I'm coming to that in a moment. 8.88, they talk about
23 price elasticity:

24 "The survey results [second sentence] indicated that
25 on urban competitive corridors, the cross price

1 elasticity between operators is 1.6, suggesting that
2 customers have a high propensity to switch between
3 operators in response to changes in operators' relative
4 prices ... Customers are more likely to respond to
5 relative price differences when planning a trip as
6 opposed to at the bus stop."

7 So they may plan to catch the bus of a lower priced
8 operator. So that would be fair, wouldn't it, that if
9 there is a price competition, they'll actually plan to
10 go out and meet that bus in accordance with the
11 timetable; would that be right?

12 A. At the margin, some may choose to do that. But on
13 a high frequency corridor, where you've got buses, in
14 some cases, going past every two or three minutes, the
15 idea of trying to get to a bus stop for a specific time,
16 not knowing whether that bus may or may not be on time
17 itself, and if you miss it, it's half an hour until the
18 next one, if price is a major, major issue for you, then
19 at the margins, some people might choose to do that. In
20 general, people will not do that.

21 Q. We can accept, agree, can't we, that price competition
22 will cause at least some people to switch their travel
23 preference; isn't that right?

24 A. At the margin, yes.

25 Q. We can see that there's reference to some other parts of

1 the UK. 8.90, and this is again picking up a point you
2 and I probably agree on:

3 "Passenger willingness to switch in response to the
4 relative cleanliness, reliability and seat availability
5 of rival operators at the planning stage was also
6 analysed. The survey results show that at the planning
7 stage, these factors are also important, although this
8 is difficult to quantify."

9 It's not just marginal, it is important in
10 customers' decision-making as to whether or not the
11 buses are more or less clean, reliable or whether seats
12 are available?

13 A. Yes, all the surveys that I've ever seen done into the
14 bus industry say that reliability is the significant --
15 it's the most significant factor in terms of how people
16 choose to use public transport, followed closely by
17 frequency. Journey time is another factor, and fourth
18 or fifth is price.

19 Q. And in fact there is a strong incentive, it is not just
20 a marginal difference, to compete on non-price factors
21 because concessionary fares, passengers will look to
22 those non-price factors more than price, for obvious
23 reasons?

24 A. I think if there was a single factor that prompts
25 concessionary fares, it's low floor buses. It's the

1 ability to get on the level, particularly if you're less
2 able, but also if you have shopping trolleys and so on.
3 That is a major factor and it's been one of the drivers
4 of the market.

5 Q. And it would make sense, wouldn't it, Mr Brown, that one
6 of the ways in which you try and win over concessionary
7 fare passengers is, actually, simply just to be friendly
8 and provide the service that passengers actually look
9 forward to taking. Wouldn't that be right?

10 A. Well, friendly drivers isn't the exclusive province of
11 any one bus company and we strive to have friendly
12 drivers. I wouldn't think that whether the drivers are
13 friendly or not is a major factor. It's certainly
14 in the list that I talked about, after reliability and
15 frequency. It's a nice to have rather than a major
16 driver of demand.

17 Q. I think you're agreeing with me that, actually, you
18 would want to make sure that your drivers are friendly
19 to induce passengers to come with you. That's what you
20 would look for, isn't it?

21 A. It is indeed. We run our own customer service
22 programmes to try and engender exactly that. Anyone in
23 customer service would want to have its forward facing
24 staff friendly and affable in nature.

25 Q. And you would accept that a number of passengers are

1 susceptible to making their travel choices on the basis
2 of some of these non-price factors, including, for
3 example, friendliness of the drivers?

4 A. I think the idea that that would influence a travel
5 choice -- I think people would want to have friendly
6 drivers as a matter of course if they're travelling
7 on public transport. The idea that that would
8 differentiate in terms of choice, I think that is very
9 remote.

10 Q. So you would not agree, would you, with those at
11 2 Travel who thought that one sensible way of growing
12 their market share was to make sure that, actually,
13 their buses were buses that people wanted to travel on
14 because people wanted to travel with the 2 Travel
15 drivers so they'd plan accordingly?

16 A. All bus companies want to have customer friendly staff.
17 That goes without saying. So the idea that they would
18 have done anything other than to have friendly drivers
19 would be extraordinary in itself. Certainly we strive
20 to have friendly drivers.

21 Q. But overall, you then accept the conclusion in 8.92 that
22 a proportion of customers plan their trip in advance and
23 do so by reference to relative differences between the
24 operator's prices and service quality?

25 A. One needs to see the overall report, which is a long

1 report, which examines these things in very much more
2 detail. And we're just quoting a particular paragraph
3 here. If you had a bus service that operated, say,
4 every 15 minutes and one operator had two buses an hour
5 and the other had two buses an hour and one was £1, the
6 other was £2, yes, you might see people trying to make
7 that choice. Where you have a high frequency corridor
8 with buses on the main corridors running every two or
9 three minutes, then it is far less likely. So I think
10 one would need to see the context of the particular bus
11 company, the particular price, corridor, location and so
12 on.

13 Q. I accept it's a long report, but it's not difficult, is
14 it? This is a conclusion. This is: overall, we find.
15 This is their summing-up and I'm asking you, do you
16 agree with the summary finding that they make here, that
17 a proportion of customers plan their trip in advance and
18 in doing so, are more likely to respond to relative
19 differences between operators' prices and service
20 quality; do you agree with that or not?

21 A. They're saying a proportion, they're not saying what
22 proportion, and I've talked about at the margin, there
23 will be some customers who prefer these factors and
24 there are factors that will favour one operator and
25 factors that will favour another operator. So there is

1 no doubt that these factors have an effect. It's
2 a proportion and what I'm saying is, personally, I don't
3 believe it is a substantial proportion, but
4 a proportion, yes, I would accept.

5 Q. Overall, if you're trying to grow a bus business in
6 South Wales -- let's take it a step at a time. The
7 largest market for growth is going to be Cardiff. We've
8 agreed that. We've seen that the most profitable
9 corridors in Cardiff are the five which 2 Travel
10 selected and that you would want, if you were trying to
11 make an entry into Cardiff, to influence passengers to
12 come with you by a number of means, including price and
13 other factors. All of those propositions are true,
14 aren't they?

15 A. You have made a number of propositions and the first,
16 I think, was growth would be one of the key factors.
17 You've got growth in the economy and certainly from that
18 perspective, Cardiff would be a target market. But
19 you've also got demographics, in that public transport,
20 traditionally, has been something that's been favoured
21 by those who are less able to afford alternative forms
22 of travel such as the car. And therefore there is
23 strong evidence that, particularly in the current
24 economic times, the areas of growth are those in those
25 areas where poverty is greatest, which wouldn't be in

1 Cardiff. So I think if one was to look at growth in the
2 market over the last few years, you would see not just
3 the economic growth of Cardiff, but many other factors
4 having an effect as well.

5 Q. But that, of course, is exactly why the five routes that
6 are selected are the routes which are the routes for
7 growth. Isn't that right? I didn't take you to that
8 part, but if you had that Cardiff survey, it's
9 paragraph 5 of the Cardiff study:

10 "Cardiff Council said that Cardiff is a dense urban
11 settlement ...(reading to the words)... Local Authority
12 housing. These areas were not served by local rail
13 services to the same extent as the north of the city,
14 which was traditionally wealthier and had higher car
15 ownership."

16 So that's exactly why those are the routes you would
17 go for in south Wales.

18 A. The corridors that we're talking about, there's no doubt
19 that at the outskirts, they were serving traditional
20 housing estates which, in terms of the demographics we
21 were talking about, would be the case. I think just
22 going back, as you quoted the Stagecoach comment, one of
23 the factors that I think Stagecoach may have been
24 talking about is that Cardiff is a magnet for employment
25 from outside. Stagecoach offer inter-urban services and

1 so a lot of the Stagecoach services have grown because
2 they are bringing people into the employment centre of
3 the region. So as I say, there are many factors
4 involved when one's looking to try and understand the
5 market, the market growth and so on.

6 THE CHAIRMAN: Could you just look at page 721, please.
7 You've been asked a number of entirely appropriate
8 questions by Mr Bowsher about conduct of customers who
9 wish to catch buses. It just occurred to me that the
10 Competition Commission had wrapped up all these issues,
11 on this occasion, not verbosely, rather concisely and
12 neatly, in paragraph 14.8. Is there anything in
13 paragraph 14.8 that you don't agree with? (Pause).

14 A. Sorry, is that a question for Mr Bowsher?

15 THE CHAIRMAN: No, for you. Is there anything in that
16 paragraph that you do not agree with? (Pause).

17 A. No, that seems to make sense to me.

18 MR SMITH: Mr Brown, following on from that, clearly
19 frequency of service must affect the extent to which
20 a passenger pre-plans his journey.

21 A. Yes.

22 MR SMITH: In the sense that if your bus stop is served by
23 buses coming along every couple of minutes, you don't
24 have to pre-plan.

25 A. Yes.

1 MR SMITH: Whereas if you have a bus stop which perhaps has
2 two buses stopping an hour, you will plan ahead.

3 A. Yes.

4 MR SMITH: I get the sense from your answers that the
5 factors that will determine choice of carrier are
6 different, according to whether you are looking at
7 a very frequently stopped bus stop or infrequently
8 stopped bus stop?

9 A. Yes. I think that's basically right. We talk about
10 frequent services at every 15 minutes and every 10
11 minutes. At 15 minutes they are on the cusp of becoming
12 a frequent service. At 10 minutes, we describe it as
13 a turn up and go service, and the reason for that is 10
14 minutes is believed to be an acceptable waiting time.
15 If you miss your bus, it's somewhere between 0 and 10
16 minutes to go. If it's less frequent than that, then
17 you do tend to plan your journey. There are many
18 factors in how you might plan your journey and the
19 most -- the one I'm on, at best, an infrequent service,
20 it's every half an hour, and I tend to look at when I'm
21 trying to get to work and then you work back from that
22 to find out the time of the bus that will get me to work
23 for that time. That's probably the main -- it's
24 different for me, of course, but in general, people will
25 look at the bus that will get them to where they want to

1 go at the time.

2 THE CHAIRMAN: So you do go to work by bus, do you?

3 A. I do both, but I frequently do, yes, and I did indeed
4 come here this morning by bus. So yes, I think
5 generally it's about finding the convenience of the bus
6 that will get you where you want to be on time. Outside of
7 that, if you're totally indifferent as to when you
8 travel, then there may be other factors that come into
9 it.

10 MR SMITH: And those other factors will be things like
11 reliability and quality of service. You put reliability
12 as the first key factor?

13 A. Yes. Reliability, followed by frequency.

14 MR SMITH: It just struck me, if you've got a frequently
15 served bus stop, just how important is reliability?
16 Will you surely not just get on to the next bus? Or
17 will you say: I'm not going to get on this bus because
18 I'm worried about reliability?

19 A. In those situations, I think the frequency trumps
20 reliability because, effectively, it's overcome that
21 problem, because even if the bus service is a little bit
22 unreliable, you've still got a bus every 2 or 3 minutes
23 on a frequent corridor.

24 MR SMITH: So if we were to list out the factors that are
25 relevant to a passenger getting on to a particular bus,

1 really the starting point for our analysis would be to
2 determine whether the service in question is frequent or
3 not frequent?

4 A. Yes. Frequent services have very different
5 characteristics from infrequent services.

6 MR SMITH: Thank you very much, Mr Brown.

7 MR BOWSHER: I was going to move on from bus passenger
8 preferences to another topic now. We can put F2 away.
9 I wanted to look at various documents, some of which
10 we've looked at before but not for these purposes. Can
11 we go to E5, page 60. It's the board minutes on
12 11 November.

13 A. Yes.

14 Q. We can see that there's quite a lot of detail about
15 a number of aspects of the operation of the company.
16 But when we come to competition on page 63, item 4,
17 there was no change in the current competitive position:
18 "... but the meeting was advised of actions taken in
19 anticipation of potential competition from
20 2 Travel Group."

21 Was there any written narrative provided to the
22 board of the actions being taken?

23 A. If there was, the board practice is in advance of
24 a board meeting, about a week before a board meeting,
25 a pack is put together and there would have been

1 a managing director's report underpinning. These are
2 the minutes, but there would have been a pack underlying
3 this. Those packs, I know, have been made available and
4 I can't recollect whether there was anything in there or
5 not, I'm afraid.

6 Q. Well, we do have a number of these packs, and it seems
7 to us, looking at them, that there's a consistent theme,
8 and we'll look at a few more. There's a narrative here
9 about the discussion. Quite a bit of narrative about
10 what happens in the board meeting. If you go to the
11 previous page, you'll see that under "Financial", the
12 observations and enquiries of Councillor Shepherd at the
13 meeting, are gone into in some detail. But there's no
14 record of what's said at the meeting about competition,
15 nor can we find any note before the meeting as to what
16 actions were going to be discussed at the meeting.

17 Is that your recollection?

18 A. As I say, I haven't seen the pack or certainly not
19 recently, so I cannot recall, I'm afraid, whether there
20 was anything in writing about competition or not. For
21 most items there would be some comment in the board
22 pack. So without seeing that, I'm sorry, I don't know.

23 Q. Okay. Well, if you look back at page 96, that's the
24 managing director's report?

25 A. Yes.

1 Q. The only note there is that:

2 "The company has registered key corridor routes,
3 [under 4] as frequent routes with the Traffic
4 Commissioner. This enables extra services to be run on
5 main corridors without further registration."

6 That's all that's noted there.

7 A. Yes.

8 Q. You're saying that is the only actions being taken.

9 Is that what you're saying?

10 A. At this stage. It's a very long time ago and I can't
11 remember, but certainly the frequent registrations was
12 an issue that was raised, and the other thing, I think,
13 was the retention of vehicles.

14 Q. And is there any note anywhere else as to what other
15 steps were being taken at this time to prepare for the
16 2 Travel entry?

17 A. I think that's ... At this stage, in November 2003,
18 that's, I think, all that was being done.

19 Q. Okay. If you put that away, E6/80. We'll look at a few
20 of these as we go along.

21 THE CHAIRMAN: Is this an article?

22 MR BOWSHER: Yes. Sorry, E6/80 is an article of ... And
23 it's this, E6/79, I wanted to look through and go
24 through a number of points about how the company was
25 dealing with the entry. 79 is a letter from

1 Alan Kreppel, your predecessor, to Bond Pearce:

2 "We are about to encounter a dose of heavy
3 competition ...(reading to the words)... used by the
4 incoming competitor for any legal action against us."

5 Were you aware that that letter had been sent to
6 Bond Pearce, seeking advice?

7 A. No, we discussed this on Monday. This forms part of my
8 third witness statement. I haven't seen that letter,
9 I wasn't aware of it.

10 Q. That's what then leads to the correspondence. It's at
11 that time, is it not, that of course, the E6/81 -- that
12 the staff notice goes out to recruit people for the
13 buses. That's right, isn't it?

14 A. It's dated 4 March, yes.

15 Q. And that's described, it appears to be described at this
16 stage, as the "Battle bus notice." If you look at
17 page 83. Do you see that? It's the only text there is
18 in that e-mail on 83.

19 A. Yes.

20 Q. If we then go on 9 March to the board meeting and
21 perhaps we'll do it the other way round this time.
22 E6/118 is the managing director's report for that
23 meeting.

24 THE CHAIRMAN: Sorry, can I have that page again?

25 MR BOWSHER: E6/118. This is about the time when we start

1 doing plus or minus two.

2 THE CHAIRMAN: I'm using the pages on the bottom.

3 MR BOWSER: Okay. The first two paragraphs describe
4 2 Travel, so we can move beyond that. The last sentence
5 of the second paragraph:

6 "Cardiff Bus will need to make an immediate and
7 positive commercial response, details of which will be
8 diarised at the meeting."

9 And there is then reference:

10 "With this competition, our financial position will
11 have an effect on the company's finances and may affect
12 our ability to make a substantial contribution to
13 socially necessary services."

14 And then it goes over the page.

15 So the MD's report makes a point of saying the
16 details of the commercial response will be disclosed
17 at the meeting. If we go to the meeting itself and the
18 minute of that, it's at page 98. Again, there are lots
19 of discussions about other topics minuted, but if you
20 look at page 98, that's where "Competition" starts. The
21 narrative, if we're trying to find out what the
22 discussion was as to what was going to happen, the top
23 of page 99:

24 "The company was preparing to make a commercial
25 response, details of which were given to board members.

1 The chairman led a wide-ranging debate on the potential
2 impact of these competitive registrations and the
3 company's commercial response."

4 Do you see that?

5 A. Yes.

6 Q. By contrast with almost every other topic discussed, it
7 seems strange to us that there's no discussion in either
8 the report or the meeting, as to what actually the
9 commercial response is.

10 A. Well, there are numerous items in the board. There are
11 some which, on the finance side particularly, go into
12 a little bit more detail. From looking, just going
13 through the pages, most items are short and to the
14 point.

15 Q. Well, I would suggest to you that at this stage there's
16 a positive reason why you weren't recording the details,
17 it's that you did not want them recorded?

18 A. I have no recollection of that. As I said, I'm
19 struggling to recollect what was actually discussed
20 at the meeting.

21 Q. I see.

22 A. In outline, clearly I recall the general thrust of what
23 was being discussed by the competitive response. It
24 seems to me that it's recorded the outcome of those
25 discussions. They're not minutes of narration right the

1 way through.

2 Q. But they are, are they not -- for example, the financial
3 material provides a narrative of what happened at the
4 meeting, does it not?

5 A. The financial notes are fuller. Perhaps that's -- I was
6 responsible for that at the time. I don't know.

7 Q. So are you suggesting that when we look at subject
8 matters that you're responsible for, the notes will be
9 fuller?

10 A. I think the finances are right at the heart of the
11 company, so the finances are traditionally gone through
12 in some detail and recorded in some detail.

13 Q. I see. If you could then go to E6/208. That is the
14 competition policy document, which, I know it's your
15 evidence, that you weren't even aware of; is that right?

16 A. I think the evidence I gave to the OFT is that I may
17 have been aware of it briefly, but it hadn't featured.
18 I could not recollect it. It came as a surprise to me
19 when I saw it in the disclosure under section 26 at that
20 time. I may have seen it at the time.

21 Q. We'll come on to its detail in a moment. But this would
22 seem to be the summary of what one might call the
23 commercial response, and I would suggest -- I accept
24 that this is a couple of weeks later, but it's
25 a document like this which would have comprised the

1 detail of the commercial response you were discussing on
2 9 March --

3 A. Well, this is quite different to what my understanding
4 of the commercial response was, and I believe the
5 board's response was, but nevertheless we have to accept
6 that this is the document that was produced by the
7 managing director at that time and it was his project,
8 and this was his document.

9 Q. You were involved in the initiation of this commercial
10 response, were you not?

11 A. No, I took over when I took over as managing director
12 designate at the beginning of April. So this planning,
13 I wasn't aware of this planning in March, when it was
14 going on, other than in terms of what I knew as a board
15 member. It was the previous managing director's
16 project.

17 Q. You were signing off, were you not, the moment you took
18 over as managing director at the beginning of April?
19 G1/514. I apologise, it's the only place I can find it.
20 Do you see that that's an e-mail, 2 April, you are
21 signing off almost immediately on taking over as
22 managing director, on the format of the ticket to be
23 issued by the white services. Do you see that?

24 A. Yes, I do.

25 Q. That's a format, is it not, that is intended to make it

1 unclear as to what -- or at least confusing as to what
2 the white services are. Are they a Cardiff Bus service,
3 are they part of a 2 Travel service? Because there's no
4 reference on the ticket itself as to what in fact is the
5 company providing those tickets.

6 A. Yes, the ticket was -- we were differentiating between
7 our main services and the no frills white services and
8 we wanted something that was neutral. I can't remember
9 that e-mail specifically. I acknowledge that someone
10 asked me the question and I said: fine by me.

11 Q. So you were immediately involved in implementing the
12 commercial response from 1 April; is that right?

13 A. I started taking over from 1 April, yes, and that was
14 when my involvement started.

15 Q. We can put G1 away. Sorry, before you do, G1/533. No,
16 I've taken you to 533 already. 535, as we have it
17 there, is then the notice, the press notice attributable
18 to you on 13 April, is it not?

19 A. Yes, it is.

20 Q. We'll see that immediately, on the second page, you
21 start to disparage 2 Travel at the top of that page and
22 disparage their service and note in the penultimate
23 paragraph:

24 "Cardiff residents will no doubt be saddened by this
25 attempt of an external stock market listed Plc to cream

1 off the easiest routes at the easiest times, with school
2 bus standards leaving Cardiff's own bus company to cover
3 the socially necessary but less profitable routes and
4 operating times. At the end of the day, this
5 competition will detract from the quality of public
6 transport provision in Cardiff, merely causing confusion
7 and traffic congestion as bus stop usage becomes
8 unplanned and uncoordinated."

9 And that was the text you signed off on, is it?

10 A. Sorry, can you just show me which paragraph that was?

11 Q. The second page, penultimate paragraph. You signed off
12 and agreed on that text, did you?

13 A. Yes indeed.

14 Q. You, I presume, from an early stage then, have
15 established -- put G1 away -- a competition sub-group;
16 is that right?

17 A. Yes. We met, I think, early in April, early on in my
18 taking over the role.

19 Q. Yes, we can see that from E6/311. Then those
20 competition sub-group meetings appear to recur. And
21 we can see that if you take your diary in file E12.
22 Keep E6 open, but take E12. Do you have that?

23 A. Yes, I don't have the page.

24 Q. Page 656. Do you see that?

25 A. Yes.

1 Q. There is a reference there -- is that "Competition
2 group" in your handwriting?

3 A. It is, yes.

4 Q. There's then some other different handwriting in your
5 diary. I'm not sure whose writing that is.

6 A. That would be the director's PA, Toni Kemp.

7 Q. Let me try and make sure we don't get too bogged down in
8 the diary. We've prepared a note of the key bits of the
9 diary. Perhaps we could hand a number up. (Handed).
10 And I wonder whether this witness could be provided with
11 the original of his diary, if possible. (Handed).

12 You should have the original of your diary so you
13 can check it. It may be easier for you to read, and
14 then this note, which we've tried to prepare on the
15 basis of that original. Is it right that your
16 competition group meets on 8 April and then again on
17 16 April? I think it's just after the Easter Holidays.
18 So once just before Easter and once just after Easter?

19 A. 8 April, yes.

20 Q. And then 16 April?

21 A. Yes.

22 Q. Then there's rather a lot of Tippex on the dates 20th,
23 21st, 22nd, 5th, 6th. Are you able to read what the
24 entries are underneath the Tippex?

25 A. No.

1 Q. One of the things you'll see from your note, which is
2 rather strange, is there is a great deal of Tippex in
3 your diary. Do you know why that would be?

4 THE CHAIRMAN: Can I just see the original for a moment,
5 please? The whole diary, so we know the kind of diary
6 we're looking at. (Handed).

7 A. Yes. Just to explain --

8 THE CHAIRMAN: Wait a moment, please. (Pause).
9 Thank you.

10 Presumably, if any propositions are going to be made
11 about the use of Tippex, they'll be made directly?

12 MR BOWSHER: Yes. I'm not proposing to go to each and every
13 Tippexed entry. I was going to make a general
14 proposition.

15 THE CHAIRMAN: The existence of Tippex itself, are you going
16 to make a proposition that that shows that competition
17 groups have been covered up ex post facto?

18 MR BOWSHER: I'll come on to where this will go in due
19 course, if I may.

20 THE CHAIRMAN: There is no document examiner's evidence that
21 I can recall.

22 MR BOWSHER: No, there is not.

23 A. Do you wish me to answer the question that I think you
24 asked?

25 THE CHAIRMAN: Let him ask it again.

1 MR BOWSHER: Firstly, you had competition group meetings on
2 8 and 16 April; is that right?

3 A. Yes.

4 Q. Is there a particular reason why so much of this diary
5 appears to be amended by Tippex?

6 A. Yes, indeed. I've worked with a paper diary, much to
7 the frustration of my PA, for as long as I can remember,
8 and it's both personal and a work diary. I typically
9 write in pen or biro and if a meeting's cancelled or
10 moved or if I put in something tentative, then I will
11 either cross it out or, more typically, Tippex it out,
12 to indicate that that time is then clear. I've been
13 doing that throughout, and I think in any diary you can
14 see before or after this, up to the present day, Tippex
15 has been a consistent thing that I work with and still
16 do.

17 MR FREEMAN: So it's your Tippex, not your PA's?

18 A. No, typically, it would be my Tippex. My PA tended to
19 work in pencil and I note that there's talking about
20 indications of pencil being rubbed out. That would
21 typically be her or her entries. I might also, if
22 I came across a pencil entry that I wanted to cancel, to
23 rub it out rather than Tippex it out.

24 MR BOWSHER: Just sticking with those competition group
25 meetings, were there any minutes made of those

1 competition group meetings?

2 A. No.

3 Q. There are a number of other references to them, and
4 they're set out in the note. Were minutes taken of any
5 competition group meetings?

6 A. Not that I recall.

7 Q. On 7 May, there appears to be a reference to a meeting
8 you were having with Eversheds at their offices,
9 presumably here in Cardiff. Would that be right?

10 A. Yes.

11 Q. And then there are a number of other references to
12 meetings with solicitors on 2 August, which appears to
13 be your birthday as well?

14 A. Indeed.

15 Q. You were going to Bristol to see solicitors?

16 A. Yes.

17 Q. Was that Bond Pearce?

18 A. No, it wasn't. And if I could just, please, clarify.
19 That was a personal appointment about a personal family
20 matter, totally unconnected with the company or this
21 case.

22 Q. On 6 September, you did go and see Bond Pearce,
23 presumably in Bristol. Maybe Mr Woodhouse came to you.
24 Do you see that?

25 A. Yes.

1 Q. Were you seeing either Eversheds or Bond Pearce at that
2 stage, for advice about the operation of your white
3 services?

4 A. No. As I said, I didn't take any advice on the
5 operation of the white services, other than that
6 I referred to with Darwin Gray. The Eversheds meeting
7 that you talked about was -- I think "DW" would have
8 been David Worsell, our engineering director. I can't
9 remember what that meeting was about but given that it
10 was with David Worsell, it might have been a contractual
11 issue relating to our buses. I simply don't know. The
12 meeting on 6 September with Peter Woodhouse is shown as
13 being with "AC" and "CO". "AC" is Amanda Canterbury,
14 who is our HR manager, and "CO" is Cynthia Ogbonna, our
15 finance and administration director. Peter Woodhouse
16 was fundamentally our employment adviser and the fact
17 that HR were present would indicate to me that this was
18 an HR related issue. It may have been a dismissal or
19 whatever that we needed to discuss or employment
20 policies, I simply don't know.

21 I could go through my diary and try and get some
22 context of it, but essentially, Peter Woodhouse was our
23 employment solicitor.

24 MR FREEMAN: It's probably not at all relevant, but I did
25 notice that the request for advice from Mr Kreppel back

1 in March was to Mr Woodhouse.

2 A. Yes, he was our main contact and --

3 MR FREEMAN: Does that strike you as odd or --

4 A. Bond Pearce had advised us on our overall policies. We

5 had at some point in the past, previous to that,

6 completely re-written our policy handbook on all sorts

7 of employment policies, and he guided us through that

8 process. So he was our sort of contact at Bond Pearce.

9 What I now know, of course, is that he was then referred

10 on because he was an employment solicitor and I've seen

11 that he was referred to a David Harrison.

12 MR BOWSHER: Certainly it is right, isn't it, that still

13 in November 2004, you were using Peter Woodhouse of

14 Bond Pearce as your source of competition law advice and

15 competition related advice. Isn't that right?

16 A. Sorry, November the?

17 Q. 2004.

18 A. Can you point me to somewhere ...

19 Q. Were you still, in 2004, using him as a source of

20 competition advice?

21 A. I said I didn't take any competition advice, so clearly

22 not.

23 Q. What about advice --

24 A. He advised us on employment issues and it's a long time

25 ago, but certainly he was advising us on employment

1 matters at that time.

2 Q. So if you look at E9/59, on 12 November 2004 you're
3 sending a memo to Councillor Pantac.

4 A. Mm-hm.

5 Q. And you're referring to a meeting which you're going to
6 have with the Traffic Commissioner --

7 A. Yes.

8 Q. -- between 2 Travel and yourself, to explore the
9 allegations made by both companies in respect of each
10 other's operational activities.

11 A. Mm-hm.

12 Q. Perhaps we can jump a few lines. It is plain from that,
13 isn't it, that this is going to be a meeting about the
14 operational and competition issues between the two of
15 you? That's what this meeting was about?

16 A. Yes.

17 Q. And if you look at the third paragraph:

18 "It is not my intention to bring legal
19 representation, although I will be asking
20 Peter Woodhouse of Bond Pearce for his advice on this
21 document and the approach we are adopting."

22 It is plain, is it not, that you were using
23 Peter Woodhouse as a sounding board, at the very least,
24 probably a source of advice, on competition and
25 operational matters?

1 A. Well, at this stage I also made a reference to talking
2 to Peter Woodhouse in relation to the Darwin Gray
3 letter, the one in May that we responded to. My belief
4 at that time was that our response was legal, that it
5 wasn't anti-competitive and that was my position right
6 the way through. The issues that were being raised were
7 predominantly traffic related, and it seemed sensible as
8 we were going into an inquiry, to ask a solicitor -- and
9 I chose him because he was the person we normally have
10 dealings with on employment matters -- to just cast his
11 eye over it and let me know whether it was appropriate
12 or not.

13 Q. So you're saying you asked an employment solicitor to
14 look over the document you were preparing for this
15 meeting?

16 A. I didn't see it as being a competition issue per se,
17 I saw it being about operational issues regarding
18 registrations and other things and just a solicitor as
19 to whether it was reasonable or not -- it did not ...
20 I can't remember the advice, but competition didn't
21 really come up. It was about the registrations and it
22 was about the allegations being made and our response to
23 those. It was generic advice, I suppose. He didn't
24 point me in any other direction. And presumably --
25 I can't remember specifically. I know with the Darwin

1 Gray letter he said "Yes, that's fine." He might have
2 made some amendments. I can't remember whether he made
3 any comment on this or not.

4 Q. Let's look at the document, E9, page 3. This presumably
5 is the document that was being given to Peter Woodhouse
6 to sign off on, because it is the document for that
7 meeting?

8 A. Um ... It's possible. It's a long document and one of
9 the difficulties we had, trying to piece together -- I'm
10 not entirely clear that there were two series of
11 correspondence with the Traffic Commissioner, the one
12 initially and then the second one. But yes, I think
13 it is probably the document I referred to, but I can't
14 be absolute because I simply don't know.

15 Q. There is no other reference in your diary, I don't
16 think, to a joint meeting around this time, and on the
17 front it refers to a meeting on 22 November.

18 A. Can you just take me back, please, to the letter to --
19 no, the note we were at with Peter Woodhouse, my note?

20 Q. The note regarding Councillor Pantac?

21 A. Yes.

22 Q. 59.

23 A. So yes, this relates to the main Furzeland inquiry, yes.

24 Q. Which you can see is noted on 22 November in your diary.
25 So it does all tie in?

1 A. Yes.

2 Q. And I can't see any other reference at that time to
3 a three way meeting.

4 A. No, this does relate to it, yes.

5 Q. The note itself, the text, addresses three complaints.
6 On page 4 there's the summary of the complaints, the
7 first is:

8 "Nature of complaints from 2 Travel regarding the
9 legality of our no frill bus registrations and
10 the suggestion that they breach competition law."

11 So right at the beginning, it's a suggestion, this
12 is a document which you're asking Mr Woodhouse to
13 presumably comment on, and its first paragraph concerns
14 compliance of your operations with competition law.
15 Isn't that right?

16 A. Yes.

17 Q. And that is followed up in more detail, if you look at
18 page 5, where you summarise the first complaint. The
19 last bullet again is a discussion or a note as to what
20 you want to say to the Traffic Commissioner as to why
21 you think you are in compliance with competition law.
22 Do you see that?

23 A. Yes.

24 Q. If you look at the third complaint and turn over the
25 page, page 8, if you could read bullets 3 and 4, the

1 third and fourth bullet. Is that material you drafted
2 or is that something you got from a lawyer?

3 A. It's stuff I drafted.

4 Q. And you asked Mr Woodhouse to sign off on it?

5 A. I think "sign off" is too strong a word. I asked him
6 whether he had any views on what we were doing. It
7 would have been a telephone call, I would have sent it
8 over to him, and had a telephone call with him.

9 Q. That's not what you've said. You're giving assurances
10 to Councillor Pantac, are you not, that you are asking
11 for advice on this document and "the approach we are
12 adopting"? You're telling Councillor Pantac that you're
13 asking for advice on this subject matter. Is that not
14 right?

15 A. It's on the document, including subject matter, yes.

16 Q. So you're asking for advice from Mr Woodhouse, who you
17 now tell us is your employment solicitor --

18 A. Well, employment and general advice. Certainly not an
19 specialist in competition.

20 Q. The reality is, isn't it, that at this date
21 of November 2004, you are asking Mr Woodhouse from
22 Bond Pearce, you certainly, for advice on competition
23 law? Because you are submitting a document asking for
24 his comments on observations about competition law?

25 A. I'm asking him to comment on all aspects of it and that

1 includes, obviously, the references I've made to
2 competition law.

3 Q. And you have told Councillor Pantac that you're going to
4 seek his advice on those matters; is that not right?

5 A. Yes.

6 Q. And I'm suggesting to you, just as it was true
7 in November 2004 that you were asking Peter Woodhouse
8 for advice on competition law, it was true back in the
9 earlier meetings, when we saw that you were meeting
10 Peter Woodhouse back in the summer, that you again, even
11 back then, just on the same basis, were getting
12 competition law advice from Peter Woodhouse?

13 A. No, in November 2004, Alan Kreppel asked
14 Peter Woodhouse. What I now know and I didn't know at
15 the time --

16 Q. Sorry, Alan Kreppel in November 2004?

17 A. I'm misunderstanding your question there, I think, then.

18 Q. Well, in November 2004, you're managing director. Why is
19 Alan Kreppel asking you to do this?

20 A. I thought you were talking about the original
21 correspondence. If you'd like to ask the question
22 again.

23 Q. You go off and meet Peter Woodhouse, and we had the
24 reference. I'll give it to you again. It's
25 6 September.

1 A. Yes. That's before we knew all about this.

2 Q. You were then, I'm suggesting to you, just as you were
3 asking Peter Woodhouse for competition law advice
4 in November, you've always been asking him for
5 competition law advice in 2004 and you were certainly
6 asking for it on 6 September?

7 A. No, I asked in relation to the Darwin Gray letter, which
8 contained some very serious allegations about safety and
9 so on. I asked him to look at the letter and look at my
10 response and see whether he was happy with it. I seem
11 to recollect that he suggested some minor changes and
12 the letter was sent. The meeting in September, I don't
13 recall what that meeting was. There was no reason for
14 me to be talking about competition issues. The fact
15 that it was attended by Amanda Canterbury indicates it
16 was an HR related issue and nothing to do with
17 competition. The next reference is indeed on
18 12 November, which is really following up on the
19 sequence of events that started with the Darwin Gray
20 letter, and we've received further correspondence.
21 I think that my -- I can't specifically recall, but
22 I think I would have put together this document and it's
23 likely that I asked him: look, are you okay with that,
24 does this make sense?

25 Certainly there was nothing in writing. His

1 indication to me, I recollect, was "Fine, go ahead",
2 that "That's fine". There was no discussion of
3 competition law or the details of it, it was just, that
4 was fine.

5 Q. Even though the Darwin Gray letter specifically refers
6 to the OFT?

7 A. Yes, and I wish he had, to be honest.

8 Q. And just going back, still on that topic, on 7 May,
9 which happens to be the day that you received
10 Darwin Gray's letter by fax, that very day in the late
11 afternoon, you're at Eversheds with DW. Are you saying
12 you didn't ask Eversheds for any off-the-cuff advice on
13 that letter?

14 A. Yes. No recollection at all of Eversheds being involved
15 in the competition situation at all.

16 Q. I see.

17 A. No.

18 MR BOWSHER: Sir, that may be a convenient point. I can go
19 a bit further.

20 MR SMITH: I had a couple of questions if you were moving
21 on, Mr Bowsher.

22 MR BOWSHER: Please.

23 MR SMITH: First of all, Mr Brown, I wonder if you could
24 open E6 at page 79. This is Mr Kreppel's letter, as you
25 can see, to Mr Peter Woodhouse.

1 A. Yes.

2 MR SMITH: But if you then move on to page 84, you can see
3 the response from Bond Pearce isn't from Mr Woodhouse,
4 but from a Mr Harrison. Do you know who Mr Harrison is?

5 A. What I understand now, from what's been disclosed to me,
6 is that Alan Kreppel wrote to Peter Woodhouse.
7 Peter Woodhouse said "This is essentially a competition
8 issue, it's not my area of law", and referred it to
9 David Harrison, who I understand was, and I have now
10 seen that exchange of correspondence. And it refers to
11 a telephone call that Alan Kreppel had with
12 David Harrison about these issues. I don't have any
13 recollection of that at the time, and I still don't now.
14 But as a result of that early correspondence and
15 telephone conversation, this letter was sent, attaching
16 this listing from mid-and west -- the decision on
17 mid-and west Kent. And what I've said is that the
18 writing at the top indicates that it was circulated to
19 me because "DB" definitely refers to me, so it's likely
20 that I saw it.

21 As I said, subsequently, try as I may, I can't
22 remember the document even now, with all the other
23 things that have been prompted. I just don't remember
24 the document.

25 MR SMITH: Did you have any recollection of any meetings

1 that you might have had with Mr Harrison?

2 A. No, definitely not.

3 MR SMITH: Thank you. Then if you could take up the helpful

4 analysis of your diary, Mr Brown. It's page 1. Look

5 at the entry of 14 May.

6 A. Yes.

7 MR SMITH: Reference there: "Interview Carl Waters".

8 A. Indeed.

9 MR SMITH: That is the Mr Waters of 2 Travel, is it?

10 A. Yes.

11 MR SMITH: Can you enlighten us as to what the subject of

12 this interview was?

13 A. Certainly. I was finance and administration director

14 before I took over as managing director and one of the

15 first jobs I had to do was to advertise for and recruit

16 a replacement finance director. Carl Waters applied for

17 that position and was interviewed for that position.

18 MR FREEMAN: But he didn't get it?

19 A. He didn't. My -- a person was judged to be more capable

20 and better.

21 MR BOWSER: We can carry on.

22 THE CHAIRMAN: We should carry on. It's a little early.

23 MR BOWSER: Just so that I've understood documents

24 correctly, I think we can go back to E6. So I think for

25 the moment we can put E12 and E9 to one side. If you go

1 to page 385, this is a document I think, if I've
2 understood your answers correctly on Monday, that you
3 were aware of, because this is the instructions on
4 operation of the white services, which were being given
5 to drivers. Is that right?

6 A. I don't know. It may have been raised, brought to my
7 attention at one of the competition meetings in April
8 and May. I don't know.

9 Q. This does appear to be the document, does it not, which
10 at least was going to managers on the ground and
11 probably to drivers, as to how they were in fact to
12 operate the services?

13 A. Yes.

14 Q. It would be surprising if the competition group of which
15 you were part, did not see that key document. Isn't
16 that right?

17 A. No. As I said, the arrangements had been set up by my
18 predecessor and I was picking up on it after it had
19 already been established and set up. I can't recall
20 whether this document was shown to me or not.

21 Q. There are a number of meetings of this competition group
22 referred to in your diary. Are you suggesting that
23 those meetings did not involve a review of this sort of
24 detail as to how the services were to operate?

25 A. Well, it would have started off -- the first meeting

1 would have been me asking: what's all this about, can
2 you explain to me what we're doing? And it may have
3 been in this context that it was shown to me. As I say,
4 I can't remember.

5 Q. We'll come back to some of the detail perhaps, when
6 we ... But you were writing up, weren't you, the team
7 briefs, say for example, page 570?

8 A. Yes.

9 Q. You were writing up this document?

10 A. Yes.

11 Q. So presumably you were getting a fair bit of information
12 from people on the ground as to what was happening,
13 because we can see in (iii), a short narrative where you
14 comment on what is happening. Do you see that?

15 A. Yes. That was one of the reasons we had the competition
16 meeting. So yes, this is the sort of thing I would have
17 been briefed on.

18 Q. And presumably the evidence to date will have included
19 written reports and notes as to what in fact was
20 intended to be achieved?

21 A. No. I would have been given a verbal briefing.
22 I didn't go through documentation. Certainly I have no
23 recollection of going through documentation. It was
24 more by way of a general update as to performance.

25 Q. So who would have given you all the details that would

1 enable you to write up that little item (iii),
2 "Competition"?

3 A. That would have probably been Peter Heath and
4 Chris Dexter, between the two of them.

5 Q. So if we wanted to know the detail as to what was going
6 on on the ground, we'd have to speak to one or other of
7 them; is that right?

8 A. Yes.

9 Q. Are either of them available to give evidence today?

10 A. I have no idea.

11 Q. Where are they now?

12 A. Chris Dexter left the company some time ago. I haven't
13 had any contact with him for a number of years.
14 Peter Heath is still working for the company.

15 Q. Page 574. This is part of the same team brief, I think.
16 It's the last entry, I think, in that document. Is that
17 a reference there to -- the "13 white tornadoes" is
18 presumably the buses. Is that right?

19 A. Yes.

20 Q. That was the phrase being used within Cardiff Bus to
21 describe those buses, is it?

22 MR FREEMAN: Could I ask you, Mr Brown, where did the idea
23 of competition being legitimate if it's on a level
24 playing field basis come from?

25 A. The competitive response came from Alan Kreppel.

1 MR FREEMAN: So the idea that competition, as a response,
2 was permissible if the competitor was not competing on
3 a level playing field, that came from Mr Kreppel, did
4 it, that idea? Because it's a definite theme of a lot
5 of these annotations.

6 A. I think there are two things. There's the concept of
7 predation in terms of operating services below avoidable
8 cost, which we now know was the foundation of the OFT's
9 finding against us. The issues I was dealing with
10 at the time were predominantly to do with these
11 questions about the legality or otherwise of the
12 registrations and the suggestion that we were blocking
13 bus stops and driving dangerously and adopting
14 aggressive tactics and so on.

15 The other thing, I think, is that whilst we fully
16 understand now -- and we've apologised for our
17 misunderstanding of the law -- our understanding is that
18 if, for example, you win a contract from the Local
19 Authority, you then have to operate that contract in
20 accordance with the contractual conditions. And if you
21 underprice a contract and deliberately win it by going
22 in at a lower price, with no intention of operating the
23 contract according to its provisions, then that in
24 itself is unfair and anti-competitive. And I think
25 a lot of the comments that I've made throughout about

1 misunderstandings, really -- and the level playing field
2 particularly, is that every bus operator has to have
3 licensed vehicles, they have to maintain them safely,
4 they have to display operator's licences discs, they
5 have to be insured. There are a number of things that
6 are a basic minimum that every operator has to comply
7 with. And if you have an operator that just takes
8 a line through that and thinks "These rules don't apply
9 to us", that was in many cases what I was meaning about
10 there being an unlevel playing field between the two
11 companies.

12 We were expected to operate to 95 per cent of all
13 our services within the timeframe. That didn't seem to
14 be applying to 2 Travel, and I think a lot of my
15 comments related to that.

16 MR FREEMAN: I understand that because you have told me that
17 earlier on, but forgive me if this is impertinent, but
18 was that idea all your own work or did you get it from
19 someone else, the idea that competition had to be on
20 a level playing field? Did that come from advice you
21 received or was that your own view, formed by yourself?

22 A. It was my understanding at the time, yes, that it needed
23 to be on a level playing field basis, that it was
24 competing like-for-like. It certainly didn't come from
25 advice because, as I said, I didn't take advice other

1 than what we were informed at board, and I can't
2 remember what that advice was. And there may have been
3 some reference, I don't know, by Mr Kreppel to it.
4 I certainly didn't take advice beyond that, so it was my
5 understanding from my knowledge of the legal situation,
6 limited as it might be.

7 MR BOWSHER: Mr Brown, you say you haven't taken advice but
8 you're quite happy to advise the Traffic Commissioner
9 in November as to what competition law requires. Isn't
10 that right? We've seen that in the document we were
11 looking, under the third complaint. You were telling
12 him in those bullets what you thought competition law
13 required?

14 A. Well, it was my understanding, based on the little
15 I knew.

16 Q. And you were certainly concerned with competition
17 issues. It's not true to say you were just concerned
18 with safety, because if you look at page 410 in E6, this
19 is your e-mail signing off on a press release to go to
20 the South Wales Echo. We can see that is all
21 conditioned around the idea of competition rather than
22 safety, is it not?

23 A. Sorry, I don't understand the question in relation to
24 this.

25 Q. You are noting, are you not, in the highlighted text

1 in the middle, that the concern is competition and those
2 are the concerns that you're concerned with, not safety?

3 A. The issue here and the reason for writing the memo
4 is that we were aware that the very fact that there was
5 competition coming into Cardiff would feature in the
6 local paper. And what I'm differentiating here is
7 typically, if we're releasing a story that we want to be
8 widely seen, a positive public PR story, we would also
9 possibly circulate it widely, particularly to the trade
10 press. Here, we were saying: let's not make a big deal
11 of this, this is a Cardiff issue, keep it to the Echo.

12 Q. But we can see then, from page 411, that the story you
13 want put out there is the story we saw before at the
14 time of Alisters, that this is an experimental market
15 test. It's the second paragraph. So you're using the
16 same excuse again. Isn't that right?

17 A. That's correct.

18 Q. Had you been told that that was a good explanation to
19 give as to why you were doing it?

20 A. I can't recall exactly where this came from. My guess
21 is that this is perhaps what was discussed at board.

22 Q. Because it isn't true, is it? This was not an
23 experiment, this was a programme to ensure that 2 Travel
24 did not secure a foothold?

25 A. It was my understanding at the time. We have accepted

1 now the --

2 Q. Where is there any indication in the documents, other
3 than in this press release, that you were actually
4 running an experiment? The truth is that it was very
5 clear that the intention of the board was to keep
6 2 Travel out of Cardiff, not to run an experiment to
7 test the market; isn't that right?

8 A. These matters were considered by the OFT and we've
9 accepted the OFT's findings.

10 Q. But at the time, is there any indication, other than
11 that press release, that you were testing the market?

12 A. It was my understanding of what we were doing.
13 I subsequently now understand, being able to see the
14 full picture, that the OFT took a different view and why
15 they took that different view.

16 Q. If we look again at E6, the 9 March 2004-minute we've
17 seen before, E6/592. That, of course, we were
18 discussing, and that is before you became
19 managing director.

20 A. Yes.

21 Q. The commentary there is on 594. It's very clear there.
22 There is no suggestion that you are testing the market,
23 is there? You are responding to 2 Travel in order to
24 keep them out of the market. That's what that reference
25 in "Competition" refers to, isn't it?

1 A. Sorry, can you repeat the question, please?

2 Q. That note under "Competition", there is no suggestion in
3 this board meeting that you thought: that's a good idea,
4 let's test the market again. Insofar as it says
5 anything, it tells us that what the white buses were
6 about was about keeping 2 Travel out of the market?

7 A. Well, at the bottom of page 594, details of which were
8 given to board members, as I said, I can't recollect the
9 details of that, it could well have been that it was
10 related to the subsequent document that we've just been
11 looking at. I can't remember, I'm afraid.

12 Q. There is no other document that shows that you were
13 doing any market testing other than that press release,
14 is there?

15 A. I can't recall.

16 THE CHAIRMAN: What were you trying to achieve at this time
17 in relation to 2 Travel?

18 A. Well, my understanding -- and I appreciate the OFT
19 finding is different from this -- was based around the
20 principle of differentiated competition, and I think in
21 my original press release, I set out that as being what
22 we were doing. Effectively, I think we talked about if
23 Cardiff Bus were Sainsburys or Marks & Spencers and they
24 had set up a Lidl, this was an Aldi. We talked about
25 British Airways, who set up a low cost subsidiary, GO,

1 and Stagecoach in Manchester, with Magic Bus. So that
2 the idea of a differentiated market, I think I said
3 that -- I may have even have said that we'd experimented
4 with it in the past --

5 THE CHAIRMAN: If you look at the very negative press
6 release about 2 Travel, you were not saying in that
7 press release: this is a legitimate differentiated
8 market in which we believe our product is better. You
9 were saying: this is a rubbish company which runs awful
10 buses and is going to the wall.

11 A. Certainly we said that. I thought in that press
12 release, I thought we'd said the other part as well.
13 Certainly in one of the press releases it does talk
14 about the concept of Sainsburys, Aldi and Lidl.

15 THE CHAIRMAN: But what did your board want to happen to
16 2 Travel?

17 A. We were clearly trying to protect our market.

18 THE CHAIRMAN: What did your board want to happen to
19 2 Travel, or had that not been a question that was asked
20 at board?

21 A. As I said, I don't recollect the full discussion, but
22 I think it's clear that certainly we were looking to
23 protect the market in terms of them getting a foothold,
24 and I think it is reasonable to say that we would not
25 have been upset if they had left Cardiff.

1 THE CHAIRMAN: So you wanted to put them out of business?
2 Is that too direct a way of putting it?
3 A. No. Well, we're talking about Cardiff?
4 THE CHAIRMAN: Yes, of course we're talking about Cardiff.
5 A. It was a competitive situation. We were seeking to stop
6 them getting a foothold in Cardiff.
7 THE CHAIRMAN: You're being asked a lot of very legitimate
8 questions by Mr Bowsher, but if the answer is "Yes,
9 we were trying to get them out of business in Cardiff",
10 it might be as well to get over that hurdle, perhaps
11 slightly more quickly than we are.
12 A. I'm not used to this sort of format. I think I prefaced
13 all my comments by saying that we have accepted the
14 finding of exclusionary intent and I think if one finds
15 the -- accepts that statement, then clearly, underlying
16 things is the presumption that we would have been quite
17 happy for 2 Travel --
18 THE CHAIRMAN: I'm feeling a "Yes" coming on.
19 A. Yes.
20 MR BOWSHER: Thank you, sir. We've just looked at March.
21 If you then go back in the pack to 586, this is the
22 board meeting minutes of May. The reason why I'm taking
23 you to these is of course, by this point, you are now
24 managing director designate, so I imagine at this
25 meeting you were at least trying to shadow everything

1 the managing director does and display an interest in
2 all parts of the company. Would that be fair?

3 A. Yes.

4 Q. We see that on 586. And of course, the minutes of the
5 last meeting, which we've just seen, were agreed as
6 a true record, including of course, the reference to
7 competition legislation. You see that just under 796,
8 "Minutes". Do you see that?

9 A. Yes.

10 Q. So presumably you were there signing off on those
11 minutes as being true?

12 A. Well, the minutes would have been signed off by the
13 chairman and the board.

14 Q. If there'd been any question about it, you would no
15 doubt have raised the question as a member of the board,
16 saying, "That isn't right, there should be more
17 discussion about what we were actually planning to do"?

18 A. The board, including myself, were happy that the minutes
19 were a true record.

20 THE CHAIRMAN: Presumably you decide whether the minutes are
21 a true record and then you deal with matters arising, if
22 any, in the normal way?

23 A. Yes.

24 MR BOWSHER: And as managing director designate, you went on
25 to consider -- that meeting went on to consider

1 competition at 588. (v). And there is simply
2 a discussion. But as far as I am aware, again, there's
3 no discussion of what that note is, either here or
4 anywhere else. Are you aware of any such discussion?
5 Sorry, note of the discussion?

6 A. No. That would be the only note.

7 Q. Presumably, again, if there had been a discussion which
8 said, "We're going to make sure we comply with
9 competition law. All we are doing is a market testing,
10 competition compliant programme."

11 That would have been a document that you would have
12 wanted to show the OFT in the OFT investigation?

13 A. Well, I'm not aware of any document related to this.

14 Q. Okay.

15 A. Again, I would just preface it by saying that there
16 would have been a board pack associated with this and
17 not having it in front of me, I don't know whether there
18 was any further comment from --

19 Q. We do have most of the documents that went, I think, to
20 the board. At least we do have a finance director's
21 report and a managing director's report, which don't
22 seem to say much more. But if you go to page 607 --

23 THE CHAIRMAN: Choose your moment, Mr Bowsher.

24 MR BOWSHER: I will deal with this as it's part of this
25 meeting. Heading 5 at 608 is the "Managing director's

1 narrative of competition." So you're now
2 managing director designate, presumably straining at the
3 leash to take over this company and get to grips with
4 all of these matters. And perhaps you'd just read the
5 section headed "Competition", on page 608.

6 A. Yes. (Pause).

7 When you asked your question previously, "Had there
8 been any other documents?" then that's where I was
9 trying to say that this is what the board would have
10 seen. There wouldn't have been any other documents. If
11 there had been, they would have been shown as
12 appendices, as indeed the press articles and press
13 releases were shown at appendix G. So if there had been
14 a further document, it would have been annotated as an
15 appendix.

16 Q. So if there'd been any analysis of the market testing
17 programme or how you're going to comply with competition
18 law, it never made it into writing?

19 A. That's correct.

20 Q. I'd suggest because it never did happen, because all you
21 were trying to do was adopt a programme that put
22 2 Travel out of business?

23 A. We've been there. There was no analysis.

24 Q. Okay. After the break, we'll come back to what happened
25 on the streets of Cardiff. I've got a couple more

1 documents, then we'll get on to E14, the competitive
2 logs. We only need to spend a moment or two looking at
3 them.

4 THE CHAIRMAN: We'll take until 25 to 12.

5 (11.23 am)

6 (A short break)

7 (11.35 am)

8 MR BOWSHER: Mr Brown, could you take E6 and E11. Just
9 start at E11, page 591. It is a passage I've already
10 taken you to when we started, concerning the competition
11 policy document, and we've already covered the whole
12 question as to whether you had seen it before or not.

13 A. Just a moment.

14 Q. 590. We've talked about the narrative passages about
15 whether you had implemented it or not. Do you recall?
16 E11/590.

17 A. "Office of Fair Trading summary", 7.93?

18 Q. Yes. When we started, we were talking about your
19 position as to whether or not you were aware of the
20 document and whether or not you had implemented it. Do
21 you recall?

22 A. Yes.

23 Q. I wanted to look at the detail of the document now and
24 the table on page 592, which summarises the OFT's
25 conclusions on that document.

1 A. Yes.

2 Q. And if you want to just confirm what that document is,
3 it's in E6, page 208. We skated past it earlier this
4 morning.

5 A. Yes.

6 Q. I don't think we need to keep it open because the OFT --
7 I have not actually checked word for word, but they
8 appear, broadly speaking -- they have summarised certain
9 key points that they draw from that document in that
10 table. Do you see?

11 A. Yes.

12 Q. If we just run down the table --

13 THE CHAIRMAN: Sorry, where are we now?

14 MR BOWSHER: E11/592. I just wanted E6 for identification
15 so Mr Brown can see it comes from that document.
16 E11/592. You can see on the left-hand column there's
17 the proposed action from the competition policy
18 document.

19 A. Yes.

20 Q. On the right-hand column, the OFT saying what you
21 actually did?

22 A. Yes.

23 Q. The first item, you would agree, would you not, that you
24 introduced a low grade service on the same routes where
25 2 Travel introduced its new commercial services, with

1 the same frequency as 2 Travel?

2 A. Yes.

3 Q. You agree, second item, the white services had a white
4 livery?

5 A. Yes.

6 Q. On the third and the fourth items, which comes from the
7 policy document:

8 "Buses will be timed to operate just in front of the
9 competitor's vehicles. Where the competitor departs
10 from the scheduled time, our times will vary to remain
11 in front of the competitor's vehicles."

12 Item 4:

13 "Where the competitor fails to appear or disappears
14 for a meal break, we will run the mileage until the two
15 vehicles can be reengaged."

16 On both those items, the OFT said it had
17 insufficient evidence of this?

18 A. Yes.

19 THE CHAIRMAN: What does "run the mileage" mean? I've seen
20 this phrase elsewhere.

21 A. It means that if the competitor wasn't operating, we
22 would still continue to operate as planned.

23 MR BOWSHER: And then each of those -- 5, you would agree,
24 wouldn't you, there's a point about your uniforms and
25 the tickets were white. You'd agree with that, wouldn't

1 you?

2 A. Yes.

3 Q. And 6; I think you would agree with what it says about

4 the fares?

5 A. Yes.

6 Q. Again, you'd agree with what it says about 7, the

7 multi-rides and so forth?

8 A. Yes.

9 Q. 8; you would agree with that, would you not?

10 A. Yes. It's a factual statement, I think.

11 Q. Yes. 9; again, you would agree that the evidence was

12 you kept publicity for the white services to a minimum?

13 A. Yes.

14 Q. You'd agree that your white service drivers had direct

15 radio contact with the competitive services supervisor?

16 A. Yes.

17 Q. You would agree with the 11th proposition that they were

18 monitored by a dedicated supervisor and so forth?

19 A. Yes.

20 Q. You'd agree with the 12th, that there was no sufficient

21 evidence, that was the point made there, and the 13th --

22 A. Yes, I do agree with 12, yes.

23 Q. And you agree, you maintained the frequency of its

24 normal services during the period it operated the white

25 services?

1 A. Yes.

2 Q. 14 deals with the registrations. You'd agree with that,
3 wouldn't you?

4 A. Yes.

5 Q. And 15, you'd agree with that, about gathering the data?

6 A. Yes.

7 Q. And then we'll come back to 16, but we've seen that you
8 did indeed have -- you did chair a competition meeting
9 on a very regular basis?

10 A. I think I chaired four meetings at the start of the
11 services in April and May. I don't believe I chaired
12 any meetings after that. If there were any meetings,
13 they were informal and I have no record of them.

14 Q. And the purpose of those meetings were, if we look
15 at the left-hand column -- they involve questions about
16 drivers, supervisory staff, marketing to review the
17 competitive position, making adjustments to the
18 operation and strategy as required, to minimise the
19 competitor's passenger carriers. That's what those
20 meetings were for, isn't it?

21 A. It's not the meetings that I had. The meetings I had
22 were very much about being updated on what was going on,
23 their performance and our performance.

24 Q. Was that what Mr Heath and Mr Dexter were doing?

25 A. In terms of competing as per my instructions, the

1 operational responsibilities did indeed fall to
2 Chris Dexter and his team.

3 Q. Okay. If we could look then -- turn to what was
4 happening. You can put E11 to one side and take out
5 E14. I think that's its first appearance. I think
6 these logs did go to the OFT, did they?

7 A. I don't know. I'm not sure.

8 Q. Did they or did they not?

9 A. I have no idea, sorry.

10 Q. They weren't management documents so they were not the
11 sort of documents that would appear to be specifically
12 identified in the section 26 notice.

13 A. I don't know, sorry.

14 Q. Our understanding is this is material that the OFT
15 didn't have to look at. If you look at page 124. I'm
16 certainly not going to go to all of the references that
17 my learned junior has dug out in this pile, you'll be
18 glad to know. You'll learn more about it than would be
19 good for us.

20 THE CHAIRMAN: I'm sure she enjoyed every minute of it!

21 MR BOWSHER: Page 124. This is a note by Mr Quarrington, so
22 presumably -- is he in the bus station or is he driving
23 around; do you know?

24 THE CHAIRMAN: Sorry, 124?

25 MR BOWSHER: 124 of E14.

1 THE CHAIRMAN: Yes.

2 A. This is a Mr Quarrington, who is one of our supervisors,
3 and he is at the Carpenters Arms, which is on the
4 eastern corridor --

5 MR BOWSHER: Sorry, you're quite right.

6 A. -- and observing their services and our services.

7 Q. Right. Quite right. That was
8 obvious. February 23, April 04, we know roughly where
9 that comes in the sequence. In the middle, what we can
10 see is that you're listing the numbers so we can quite
11 readily identify which is a white bus service and which
12 is a 2 Travel service. Is that not right?

13 A. Yes. The services starting with a 1 are ours and with
14 a 2, are theirs.

15 Q. And we can see the times as they go by. If you look
16 over at 11.29, the actual time. You see the scheduled
17 time and then the actual time and I'm looking at the
18 actual time.

19 A. Yes.

20 Q. 11.29. There are two of yours. One was five, six
21 minutes early and one is four minutes late. Do you see
22 that?

23 A. Yes.

24 Q. And the note is:
25 "Sandwiched a 2 Travel blue bus."

1 A. Yes.

2 Q. That presumably is what you at Cardiff Bus are trying to
3 achieve, to sandwich those buses?

4 A. It's certainly not what I was trying to achieve.
5 I accept that's what it says here.

6 Q. So if we then go to 282, on 11 May, this is now
7 Mr Walters at Clifton Street. If you look at the first
8 four items there, in each case there is a white service
9 and a 2 Travel bus arriving pretty much simultaneously.
10 Do you see that?

11 A. Yes.

12 Q. And then again at 12.11.

13 THE CHAIRMAN: Which is the 2 Travel bus?

14 MR BOWSHER: 245.

15 A. And ours is one minute after, yes.

16 Q. That theme recurs on a number of occasions. We'll see
17 the 2 Travel and the white service bus end up being
18 simultaneous. That comes again and again. If you look
19 on 21 May --

20 A. Do you have a page reference?

21 Q. 358. Mr Haynes at Victoria Park. The white service and
22 the 2 Travel from Pentrebanne both arrive at the same
23 time. A few minutes later, two of your buses from Ely
24 and a 2 Travel bus from Ely again all arrive at the same
25 time.

1 A. Sorry, if you can take me through that stage by stage.

2 Q. Page 358, the third line down. At 10.39, there's

3 a 2 Travel bus from Pentrebane?

4 A. Yes.

5 Q. There's one of your buses from Pentrebane. Both arrive

6 at 10.39.

7 A. Yes.

8 Q. And then the next three items, there's one 2 Travel bus

9 and two of your buses all arriving at the same time.

10 A. Yes. And another 2 Travel bus a few minutes after.

11 Q. Another 2 Travel bus six or seven minutes later.

12 THE CHAIRMAN: It doesn't look as though anyone is getting

13 on or off any of these buses at all on this occasion?

14 MR BOWSHER: What you'll see is there's a -- well, I'll come

15 back to that. We don't need to talk about numbers now

16 perhaps.

17 MR FREEMAN: But if nobody gets on either bus, that suggests

18 there's nobody there?

19 MR BOWSHER: Of the 10.47 arrival, there are three buses and

20 six people are being carried by the three buses.

21 A. Yes.

22 Q. So to be very simplistic about it, if there had been

23 a single bus there, it would have carried roughly --

24 MR FREEMAN: Nobody would have got on or got off. Well,

25 they might have got off, I suppose.

1 MR BOWSHER: There would have been six people on that bus.

2 Again, there's a simultaneous arrival at 11.09,
3 yourself and the 2 Travel. A simultaneous arrival from
4 Pentrebane at 11.23?

5 A. Yes.

6 Q. And then on the same day -- I think probably at the same
7 place, yes -- again you had achieved the triple arrival,
8 effectively. At 12.52 and 12.53, you managed to get two
9 of your buses surrounding a 2 Travel bus at 12.53.

10 Do you see that?

11 A. Yes.

12 Q. And frequent references here to running together. I'd
13 suggest again that's a reference, is it not, to your
14 buses running together with the 2 Travel buses because
15 that's what you were trying to achieve?

16 A. I don't know. Looking at it, there's a 2 Travel bus at
17 12.25 and another one at 12.27. So it could be
18 referring to the 2 Travel buses, I don't know.

19 Q. Again --

20 A. If we then look at the next one further down, still
21 running together, and you've got 12.54 and 12.53, so it
22 looks as though it's commenting on the 2 Travel buses
23 running together.

24 THE CHAIRMAN: I take it that it is to indicate a general
25 proposition, this line of cross-examination. You will

1 recall on the first day -- and if you need reminding,
2 it's page 30, lines 18 to 20 of Mr Seddon's excellent
3 transcript -- I expressed the view that we don't expect
4 it would be appropriate for the tribunal to make
5 detailed incident based findings.

6 MR BOWSHER: Indeed, which is why I'm not going to take you
7 to each and every tag.

8 THE CHAIRMAN: I'm relieved to hear it. I don't want, in
9 any way, to undermine Ms Blackwood's hard work.

10 MR BOWSHER: Can I just take you to one more. One could
11 spend a great deal of time looking at this. Look at
12 4 June. This is pages 438 and 439. Again, Mr Haynes is
13 in action, he's at Victoria Park, and we can see, can we
14 not, that you've managed to get at 9.39, two of yours
15 simultaneously with a 2 Travel bus?

16 A. Yes.

17 Q. At 9.46 you manage to get one of yours with a 2 Travel
18 bus from -- again, one from -- presumably this is going
19 the other way. At 10.07, you manage to get two. At
20 10.46, this is the orgy of buses. There are now two
21 2 Travel buses and two white services buses, all at the
22 same time, on the same route, at 10.46. Do you see
23 that?

24 A. I do.

25 Q. And that carries on, on to the following page. The

1 pattern, I would suggest to you, is that it wasn't an
2 exception. If anything, it would appear to be from
3 those logs, the intention to ensure that, wherever
4 possible, a Cardiff Bus white service bus gets in front
5 of a 2 Travel bus, to make sure that it can take the
6 passengers available at that time?

7 A. I think they were timetabled to run ahead of the
8 2 Travel services.

9 Q. Right in front of, as in physically?

10 A. I don't know, because I don't recall the timetable and
11 I don't think I've seen the timetable. But they were
12 timetabled to run ahead of the 2 Travel services, yes.

13 Q. My understanding was the white services were being run
14 as a frequent service so that you could get those
15 services in front of the 2 Travel bus whenever?

16 A. They were scheduled to operate every half an hour on the
17 corridor.

18 Q. What is clear, looking at that, is if they were being
19 scheduled, they were being scheduled to operate
20 simultaneously and, it would seem, just in front of the
21 2 Travel bus; isn't that right?

22 A. I don't know the schedule, but yes, they would have been
23 running in front of the 2 Travel buses.

24 Q. And the intention of that scheduling seems to be to take
25 the 2 Travel custom?

1 A. We were competing for market.

2 Q. Yes. And that was a plan that you were fully engaged
3 in, is it not?

4 A. Running half an hour frequencies and running ahead of
5 2 Travel, I was aware that that was the strategy, yes.

6 Q. You were fully engaged in a plan which involved doing
7 whatever was necessary to get the white bus services
8 just in front of the 2 Travel buses, to take their
9 custom; isn't that right? You personally?

10 A. Certainly that was my understanding. I'm trying to
11 understand the point the question. I think I've just
12 answered that yes, the buses were timetabled to operate
13 at half hour frequencies and ahead of the 2 Travel
14 buses, yes.

15 Q. More than that, you were using those buses regardless of
16 timetable, using the white service buses to run just in
17 front of the 2 Travel buses, whenever they ran?

18 A. We were -- when they were running, to run ahead of them.
19 If they were running to timetable, of course, and to run
20 in any event, if they weren't running.

21 Q. To run, in any event, just in front of the 2 Travel bus,
22 whenever a 2 Travel bus was running?

23 A. Remember, we know that perhaps only half of the
24 services, the 2 Travel services, ever operated. At
25 those times we continued to run every half hour.

1 Q. Well, let's look at a document. Put E14 away. E6,
2 page 726. Do you have that?

3 A. Yes, I do.

4 Q. I want to look at two e-mails. I want to look at the
5 first e-mail first, so we're a few lines up from the
6 bottom on 726.

7 A. Yes.

8 Q. It's said to be from union office to Chris Dexter,
9 copied to yourself and Alan Kreppel, on May 25. I think
10 by this point you were managing director or at least you
11 were managing director designate?

12 A. Yes. I recognise the document. I was in charge by
13 then, yes.

14 Q. And the union office is presumably the TGWU?

15 A. Yes.

16 Q. "The TGWU is becoming increasingly concerned with the
17 operation of the CVR."
18 What was that, CVR?

19 A. I think it must have been "Competition vehicle roster",
20 something of that sort.

21 Q. "We are concerned that the drivers on this roster are
22 being used as nothing more than scapegoats for the
23 inability of the company to operate in competition with
24 2 Travel. The supervisor for this roster and the
25 manager who is in charge of this roster are continually

1 altering the rules so much that the drivers are no
2 longer sure of where they are and which rules they are
3 under. One minute they are working the pad -- "

4 That's the timetable presumably?

5 A. Yes.

6 Q. "... and the next minute they are being told to fight
7 the competition. Yesterday, Alan Kreppel told me that
8 he had instructed the supervisor to tell the drivers not
9 to run to pad and to start competing against 2 Travel.
10 We really need to let the drivers either compete against
11 them or, if we are not going to do this, I suggest we
12 remove our buses and save ourselves the revenue we are
13 wasting. Also, we are concerned that we are telling our
14 drivers that they must run the route and not delete
15 mileage because the Traffic Commissioner is watching us.
16 Then when it suits the manager and the supervisor or
17 allocations, we take them off the CVR [presumably] and
18 use them where and when we feel like. As I have said,
19 either we compete or we should remove the buses because
20 we are totally confusing not only the drivers on the
21 roster but the drivers on the normal services as well.
22 Let's do one or the other."

23 That's an e-mail you must have got, presumably?

24 A. Yes. And I responded to.

25 THE CHAIRMAN: Can you just remind us what Alan Kreppel was

1 doing at this time, May 2004?

2 A. He had been on holiday and I think he had just come back
3 from holiday at this point. This is a week before he's
4 due to depart.

5 THE CHAIRMAN: So this is during the handover period?

6 A. Yes.

7 MR BOWSHER: So just before you become managing director,
8 you are aware that the instruction being given to your
9 white service drivers is to compete, regardless of the
10 timetable; isn't that right?

11 A. No. If I can explain here. My instructions were to act
12 legally, professionally and safely at all times, and
13 that means in accordance with the pad, the timetable,
14 the half hourly interval that I talked about. That was
15 my position right from the start, when I reviewed the
16 situation. We do this legally, professionally, safely.
17 I made that clear right at the outset with the team.
18 What we've got here is Alan Kreppel interfering, if
19 I can use that word, suggesting that he wants a more
20 aggressive response and not to run to pad. And that's
21 what they're saying here, "We're getting confused.
22 We've got Alan Kreppel saying one thing and you,
23 David Brown, saying another, and our drivers are caught
24 up in between it. What is the situation?"

25 I respond to that with the e-mail you see above,

1 reiterating that we're doing it exactly as I said, and
2 to ignore what Alan Kreppel was saying, and that it was
3 legal, professional and safe, and that means to the pad.
4 That was my instructions when I first took over and I'm
5 reiterating my instructions.

6 Q. So let's look at your response then:

7 "Thanks for your note."

8 So you have taken over the response:

9 "I fully understand your frustrations but feel that
10 perhaps you are not seeing the full picture. The
11 competition battle is being fought on many fronts and
12 not just the white bus competitive response."

13 What do you mean by that; what are the other fronts?

14 A. I meant that the term that's been used, architects of
15 their own misfortunes, they were making so many mistakes
16 that it was a relatively easy job to point out to others
17 the wholesale abuse of traffic regulations and traffic
18 law. For example, I think we've seen a letter to
19 Chris Pike at Cardiff Council around this time, pointing
20 out the fact that they just aren't operating the
21 contracts as they should be and asking them to look at
22 it and pay attention to that.

23 So in many ways, we don't need to do any more than
24 we said -- than just operate this service half hourly
25 because they're just making so many mistakes. That's

1 what I meant here.

2 Q. You are doing more, aren't you? If you look at the end
3 of the second paragraph:

4 "Part of our behind the scenes work is to ensure
5 that the relevant authorities become aware of 2 Travel
6 activities."

7 So you're making it your business to go and report
8 anything that happens to all the relevant authorities,
9 aren't you?

10 A. Well, where they were in breach of their legal
11 obligations, then yes, we were pointing it out to other
12 authorities.

13 Q. And we can see from the next paragraph that you were
14 making a point of reporting a 2 Travel incident in the
15 next paragraph?

16 A. Yes. The point that was being made here, this is a park
17 and ride contract, where both Cardiff Bus and 2 Travel
18 were operating vehicles. Given the concerns that we
19 had, we did indeed have someone there observing. We saw
20 a bus arriving without an O licence, which means that
21 bus is operating illegally, and we drew it to the
22 attention of the Council official who was there, because
23 it's illegal. That may have implications for insurance
24 as well and this was a Cardiff Council contract.

25 Q. The next paragraph:

1 "However, for our campaign to be successful, we have
2 to be 110 per cent safe and legal and we do not wish to
3 get involved in any activities that would compromise
4 that position. Having said that, there is perhaps scope
5 to alter timings on some routes and we will explore that
6 option further."

7 You're saying that's telling drivers to operate to
8 timetable?

9 A. I don't know what happened subsequent to that. My
10 position throughout has been it's a half hourly service
11 and yes, I appreciate, running in front of the
12 competitors. The 110 per cent safe and legal means that
13 we are doing everything by the book, including operating
14 to pad.

15 Q. Because you were telling us that Alan Kreppel was
16 meddling and you wanted to contradict the instruction,
17 but I don't see any contradiction here, any statement in
18 this e-mail saying: no, Alan Kreppel's wrong, we must
19 run to timetable?

20 A. 110 per cent safe and legal means we operate to
21 timetable. We said we would look at the timetable,
22 that's what it's saying. The time --

23 Q. That isn't what you're saying in the paragraph. You're
24 saying there's scope to alter timings. I would suggest
25 to you, this is giving your people permission to do

1 exactly what was happening on the ground, which is alter
2 the timings to make sure that white services were taking
3 2 Travel custom?

4 A. I said here that there is perhaps scope, and we will
5 explore that option further. I can't remember whether
6 we did or not, but throughout, it was a half hourly
7 frequency and yes, we were running ahead of the 2 Travel
8 buses.

9 Q. In fact it's exactly what you were doing because the
10 next paragraph is:

11 "For the sake of clarification ..."

12 Presumably you're clarifying this possibility of
13 altering timings:

14 "... Peter Heath is coordinating our competitive
15 strategy and chairs a group comprising myself
16 ...(reading to the words)... strategic changes. I have
17 asked Peter to meet with you to explain things in
18 a little more detail and to discuss if there is any
19 scope for fine tuning. Together with CD, they can also
20 discuss the issues of inconsistency, to which you
21 refer."

22 I suggest to you when you read that, Mr Brown, that
23 it is nonsense to suggest that you were telling the
24 drivers to run to timetable. On the contrary, what
25 you are telling the union and through them, the drivers,

1 is that you are tolerating and encouraging departure
2 from timetable and that you have a management group
3 that is going to fine-tune the programme of sandwiching
4 and mistimetabling?

5 A. No. There are two points I'm making here. One is
6 in relation to the fine tuning, whether the timetable
7 itself needs changing. We were running in front, and
8 of course, 2 Travel services themselves were not
9 operating as we'd understood them. So there was some
10 potential for us to operate our services still at a half
11 hourly frequency, but to effectively compete more
12 directly with them.

13 THE CHAIRMAN: But if they were not operating to timetable,
14 what was the point of altering your timetable? If they
15 were operating to a different timetable, I can
16 understand that you might want to alter your timetable
17 to be closer to their different timetable. But if
18 they're operating, as it were, randomly, what on earth
19 is the point of altering your timetable?

20 A. I think that's why I'm asking Peter Heath to look into
21 it in more detail and see what might or might not be
22 possible. I'm not aware that we did change our
23 timetable, I have to say, and I can't recall what the
24 outcome of this -- what I can say is that the last
25 sentence there, "together with CD", that's Chris Dexter,

1 "they can also discuss the issues of inconsistency to
2 which you refer", I was not happy at all about the
3 suggestion that there should be this direct engagement
4 that Alan Kreppel was talking about and I made it clear
5 to the team that I wanted it to be done exactly as we
6 had said it would be done. And I am making the point
7 there, albeit in slightly softer language perhaps, that
8 I want the message to go through very quickly. The
9 instructions from me are legal, professional and safe at
10 all times. And that's what I'm referring to there.

11 MR BOWSHER: There is no suggestion here you're going to
12 give any written direction or explanation to the
13 drivers, is there?

14 A. No.

15 Q. And it's not the case that Peter Heath is going to look
16 into it, is it? What you're saying is that you are
17 going to be discussing this and agreeing your strategic
18 changes at a meeting, at this competition group meeting;
19 isn't that right?

20 A. Sorry, can you ask your question again?

21 Q. You, personally, are going to be at the meetings where
22 the strategic changes and developments are going to be
23 discussed and agreed. That's the first sentence of --

24 A. Yes. I accept that, yes.

25 Q. And your evidence is that's not going to be transmitted

1 in writing. On the contrary, Peter Heath is going to
2 explain things orally to the drivers; is that right?

3 A. No, I've asked Peter to meet with the trade union to
4 explain what we're doing in a little more detail and to
5 discuss whether there is any scope for fine tuning.
6 Clearly, we have a very frustrated trade union here and
7 what we're saying is we will listen and see whether
8 there's anything that we need to feed back into the
9 group as to whether any changes need to be made.

10 I can't remember any changes being made, to be honest,
11 but that was certainly the statements being made.

12 Q. And the last sentence of that paragraph:

13 "Together with CD, they can discuss the issues of
14 inconsistency."

15 Well, the issues of inconsistency must be,
16 presumably: sometimes we're operating to timetable and
17 sometimes we're not? That must be the inconsistency?

18 A. Yes, the inconsistencies is that Alan Kreppel had told
19 me that he'd instructed the supervisor to instruct the
20 drivers not to run to the pad. I was not happy about
21 that and that's understating it. I think the reason
22 that last sentence is phrased as it is is I didn't
23 particularly want to mention my predecessor directly in
24 it. But effectively what I was saying is: look, I set
25 the rules here, not Alan Kreppel.

1 Q. I suggest to you the reason why you didn't want to spell
2 out more clearly what you actually intended is there's
3 nothing in here which says, "Please operate to
4 timetable". On the contrary, the plan was to continue
5 what you were doing and operate the buses off timetable
6 to take 2 Travel custom?

7 A. My instruction was to operate every half hour and, as
8 I've said, I understood the timetable to be just in
9 front of those.

10 Q. And we saw earlier on, an earlier white bus document
11 about how they were to operate. Was that ever followed
12 up with another document reiterating the need to run to
13 timetable?

14 A. Sorry, say that again?

15 Q. Did you ever follow up this email with an instruction to
16 drivers to run to timetable?

17 A. In terms of a general instruction following the Darwin
18 Gray letter -- in fact, I think at this time -- I'm just
19 trying to look at the dates. I'd written to all
20 drivers, telling them to operate professionally, safely
21 and legally at all times. And legally means to pad.

22 Q. Did you ever tell people they had to work to the
23 timetable and to ignore any instruction to --

24 A. I said legally, it is a requirement. Every driver has
25 a pad. It's an inherited term in the bus industry, but

1 effectively it's a clipboard, which sets out their
2 duties for that day, and that has the timetable and
3 frequencies and it tells them what they're supposed to
4 do. That is what you have to run to, that's the legal
5 requirement. An officer from the Traffic Commissioner's
6 office or VOSA can stop any bus at any time and say: can
7 I please see your pad? And then compare what they are
8 doing against that pad. So that's what I meant by legal.

9 MR SMITH: So, Mr Brown, even if one has a service that is
10 registered as frequent, and so there isn't
11 a registration which indicates what time the bus should
12 run to, there nevertheless is, internally speaking,
13 a requirement that the timings of the bus be fixed?
14 Is that what you're saying?

15 A. Yes, it is. I appreciate the point you're making.
16 It is an internal document and even if they weren't
17 operating to timetable, then from a frequent
18 registration point of view, that itself wouldn't be
19 illegal. But you have to have a pad, giving you your
20 instructions as to the route. And for me, that was
21 operating every half hour.

22 MR BOWSHER: So do you have a copy of any document that
23 demonstrates that instruction being given after that
24 e-mail?

25 A. I referred you to the letter that I'd sent to every

1 driver just a couple of weeks previously. I think this
2 cropped up, as I said, because -- my recollection
3 is that Alan Kreppel had been on holiday, had come back,
4 had noted what I had said, which was the letter
5 following the Darwin Gray letter, making it very
6 clear -- and the union had clearly understood the
7 message that I was sending at that time, and then you've
8 got Alan Kreppel saying: hold on a second, don't do
9 that, I want you to do this instead. And I say: no, we
10 do what I said.

11 Q. If we look at the competitive logs, which run through
12 into August, there certainly seems to be no change in
13 the pattern of white service buses getting just in front
14 of 2 Travel buses; is that your recollection?

15 A. I don't recall seeing the detailed monitoring logs.
16 It's not something I would have seen.

17 Q. Did no one want to tell you at the competitive groups or
18 any other management groups what in fact was happening
19 on the streets?

20 A. In terms of -- I've already said that our buses were
21 running ahead of 2 Travel buses. And I've said that.
22 I'm not quite sure what point you are making beyond
23 that.

24 Q. Did you get no written record or description summarising
25 what was actually going on?

1 A. No, I knew that our buses were running at a half hourly
2 interval ahead of theirs. That's what I had instructed,
3 that's what I understood. I didn't see the daily
4 monitoring reports. As I explained elsewhere, I was
5 a recently appointed managing director, I was trying to
6 get to grips with everything across the company. This
7 was just one part of what I was dealing with at that
8 time.

9 Q. I suggest to you that by putting your bus just in front
10 of a 2 Travel bus as a rule, that has a number of
11 effects. Firstly, obviously, it means that your bus
12 will take the passengers who might have got on,
13 otherwise, the 2 Travel bus just behind. That would be
14 right, wouldn't it?

15 A. Yes, if one works on the basis they catch the first bus
16 that comes along, if our bus is ahead of theirs, then
17 yes, they would get on our bus and then the 2 Travel bus
18 would have whatever window there is for them to pick up
19 any other passengers that have arrived in the
20 intervening period.

21 Q. And that was your intention, to get your bus so that you
22 would take those passengers; isn't that right?

23 A. Yes.

24 Q. And of course, if people ever had the opportunity of
25 travelling on a 2 Travel bus, if there are reasons to

1 travel with 2 Travel, some of these softer features,
2 they're never going to have the opportunity of testing
3 the 2 Travel offering, are they?

4 A. You've taken me to some examples of where they are
5 running just ahead, numerous pages. I don't know
6 because I haven't studied the documents, as to which
7 occasions we were running one minute, five minutes, ten
8 minutes or whatever ahead of it. I don't have that
9 information.

10 Q. I don't want to take time going through each and every
11 page. Take it from me at the moment as an assumption,
12 that if you go through that document you'll see page
13 after page where the white bus and the 2 Travel bus are
14 simultaneous or within a minute?

15 A. Yes, there are some occasions, yes, you pointed it out,
16 where it's the case. I can't say that it's every
17 occasion or I can't say what percentage of occasions it
18 was because I haven't made that study.

19 MR SMITH: Mr Brown, what was the intended gap between the
20 white bus and the 2 Travel bus? You said that the plan
21 was to operate to timetable but ahead of the 2 Travel
22 buses. What gap did you envisage between the two
23 services?

24 A. I have to confess, I really don't know. It was a point
25 that came up at the OFT inquiry and one that I never

1 satisfactorily resolved as to what was actually -- what
2 the timetable actually was as against that service. At
3 a guess, I would say five minutes, but I really don't
4 know, I am afraid.

5 THE CHAIRMAN: Sorry, I'm trying to keep an air of reality
6 about this, Mr Brown. Are we being asked to accept
7 evidence which suggests that when a white bus turned up
8 at the same time as a 2 Travel bus, that was merely
9 a coincidence and a failure of normal timetabling, or is
10 the reality that the policy was, whether you approved it
11 or not originally, for the buses to turn up at about the
12 same time, wherever possible?

13 A. Our policy was for the buses to run just ahead of their
14 buses.

15 THE CHAIRMAN: At about the same time, wherever possible?

16 A. Yes.

17 THE CHAIRMAN: Okay.

18 MR SMITH: Following on from that, it sounds very easy to
19 have one service running just in front of another with,
20 let us say, a small time gap like five minutes. But
21 isn't it, in practice, actually rather difficult to
22 achieve that because of the bunching, as it's called, of
23 buses, where you have one bus that's ahead, picking up
24 passengers and therefore being slowed down and another
25 bus overtaking?

1 A. Yes. That's what I was saying about the five minutes.
2 It's the speed with which a bus travels through the
3 corridor, depends on loadings. So if you're picking up
4 passengers, it will slow you down, and it can close
5 a gap or open a gap. So your timetable against expected
6 loadings and expected traffic conditions, and then
7 depending on the actual traffic conditions and loadings,
8 the bus may speed up or slow down. And in many
9 circumstances, as we well know, because of the "why do
10 buses come in threes" arguments, buses can start off the
11 route a few minutes apart, but by the time they reach
12 the end of the route, they actually bunch together. So
13 that is quite normal.

14 MR FREEMAN: I think one of your points is that 2 Travel's
15 operations didn't keep to their timetable?

16 A. Yes.

17 MR FREEMAN: So how did you predict their unpredictability?

18 A. I don't know, and I don't know to what extent we were --
19 because I haven't seen the documents -- to what extent
20 we were just carrying on as we were. That was what
21 I understood to be happening with it. One of the
22 problems was that 2 Travel were in disarray. Half their
23 buses and sometimes more than that, just weren't there
24 anyway, so we were continuing our normal operations
25 according to the pad, according to the timetable, even

1 when they weren't there. In terms of when they were
2 there, my understanding was that our buses would start
3 off ahead of theirs and I appreciate now, looking back,
4 we've got documents here that show what actually
5 happened. But I haven't studied those documents and
6 I don't know what the actual pattern was, I'm afraid.

7 THE CHAIRMAN: If it's accepted that the contemporaneity of
8 the buses was no coincidence, can we move on to the next
9 point?

10 MR BOWSHER: That was indeed my intention. We don't need to
11 get into how it was controlled. We can see that from
12 the OFT evidence, how it was effected.

13 The intention was, was it not, as your competition
14 policy document says, although you said you didn't know
15 it, that you were intending to reduce the opposition's,
16 2 Travel's carryings, to the absolute minimum. That's
17 right, isn't it?

18 A. Yes.

19 Q. And every time you prevent a passenger getting on --
20 every time you take a passenger that would otherwise
21 have got on to the 2 Travel bus, you deny 2 Travel the
22 opportunity of demonstrating its relative merit in
23 whatever way? Whether it's the quality of the bus, the
24 quality of the driver or whatever. Is that right?

25 A. If our bus is running directly in front of a 2 Travel

1 bus, then on the basis that customers catch the first
2 bus that comes along, then yes, it is depriving 2 Travel
3 of that passenger.

4 Q. So it deprives 2 Travel of the opportunity to use those
5 non-price factors, which we saw the CC talk about in its
6 report?

7 A. Well, they could wait. They have a range of factors,
8 but generally speaking, the buses were competing on
9 a similar sort of bus to 2 Travel. So if a white bus
10 was just before a 2 Travel bus, then one might
11 reasonably expect they'd get on the white bus and
12 vice versa, unless of course, they were waiting for
13 a low floor bus or one of the liveried services.

14 Q. And, of course, if 2 Travel were to wait, you would be
15 right on them, making sure that someone knew they'd
16 missed their own timetable and that they were in default
17 of their regular [inaudible word] requirement under the
18 timetable, wouldn't you?

19 A. Part of the job of spotters was to look out for their
20 breaches of traffic law and we were getting those
21 reports, yes.

22 Q. So 2 Travel hanging back is not an option for them. It
23 may be an option for you because you are a frequent
24 service but it's not an option for 2 Travel to hang
25 back, is it?

1 A. They have to operate to timetable.

2 Q. So do you agree with me, it's not an option for 2 Travel
3 to hang back?

4 A. Yes.

5 Q. The effect of that is likely, is it not -- you have seen
6 drivers. That's going to lead to a certain amount of
7 driver frustration, isn't it?

8 A. In terms of?

9 Q. They're constantly having to drive just behind
10 a competing bus. That's likely to lead to a certain
11 amount of frustration with drivers?

12 A. I can imagine that would be frustrating, yes.

13 Q. And that means the management will have to deal with
14 a more frustrated workforce; is that not right?

15 A. Yes.

16 Q. That in itself is likely to lead to a less effective
17 management, a less effective service. Would that not be
18 right?

19 A. Well, probably the biggest frustration of the lot that
20 we experience, and just about every bus company
21 experiences, is traffic congestion, getting stuck in
22 traffic. So every bus driver -- it comes with the
23 territory -- has an awful lot of things that makes them
24 frustrated. I appreciate this is an issue that would
25 have caused some frustration. I've accepted that.

1 Q. Congestion problems are likely to be exacerbated, are
2 they not, if you're driving at a congested time and
3 you have a bus just in front of you? So what would
4 already be a frustrating event is going to be made that
5 much more frustrating because you are intentionally
6 increasing the traffic around that bus?

7 A. Well, as I've said, I can understand that it would have
8 caused some frustration.

9 Q. And indeed, the creation of more congestion in this way
10 is likely to make it even more challenging for 2 Travel
11 to keep to timetable; isn't that right? It creates more
12 congestion, it's going to be harder to keep to the
13 timetable, isn't it?

14 A. I suppose that is a possibility. I don't ... The buses
15 are going with the flow of the traffic. As long as the
16 traffic is flowing, I don't see why it should
17 necessarily slow things down.

18 Q. We can take E9 and we can probably close everything else
19 that isn't E9 for the moment. If you go to page 335,
20 this is the point at about the time 2 Travel's shares
21 are suspended and you are preparing for the meeting with
22 the Traffic Commissioner.

23 A. Yes.

24 Q. So 335 is part of the minutes for the meeting on
25 30 November. That refers itself to your report, which

1 is at page 339. Do you see that? Sorry, 333 is the
2 board minute. 339 is your report for that board minute.

3 A. Yes. 333 is the meeting of 14 October, not 30 November.

4 Q. You're absolutely right, sorry.

5 A. The report you refer to is 30 November, so it doesn't
6 tie up.

7 Q. Thank you, you're quite right. In October, this is the
8 minute just before that meeting, and you confirm on
9 page 335 to the board, that you are continuing to
10 conduct business in a professional and
11 a non-anti-competitive manner. Do you see that?

12 A. Yes.

13 Q. Again, your position is that again is based on no legal
14 advice?

15 A. That's correct. Professional, legal and safe is what
16 I was referring to here. Exactly the instructions I'd
17 given right the way through.

18 Q. And that advice is covering your advice as to
19 non-anti-competitive?

20 A. Yes, in accordance with my understanding at the time.
21 The services in themselves, I believe were legal, and as
22 we talked about on Monday, based on the reassurance that
23 I'd been given from the original board meeting when they
24 were set up. This was specifically talking about the
25 operation of the services, which was the legal, safe and

1 operating to pad and so on.

2 MR FREEMAN: I don't think non-anti-competitive is a happy
3 addition to the English language, is it?

4 A. Well, at the time, I wasn't thinking I'd be here in
5 eight years time, looking at the meaning of words like
6 that. I think I was talking about the allegations of
7 illegal registrations and the other allegations that
8 were being made by 2 Travel.

9 MR BOWSHER: At this stage, though, you were well aware that
10 competition law was an issue, were you not, that was
11 going to be raised?

12 A. I was aware in general terms about competition law, as
13 I've said, and I've been reassured, and the board had
14 been reassured, that the service in itself was in
15 compliance with competition law.

16 Q. That's the reassurance that goes back from the beginning
17 from Alan Kreppel?

18 A. I never sought to question that subsequently. I wish
19 I had now, but clearly at the time, I didn't.

20 Q. At 283, just to be clear -- this is the note in
21 preparation for the tripartite meeting on 22 November?

22 A. Yes.

23 Q. And you knew, if you look at that third bullet -- you
24 had it very much in mind that it was not permitted by
25 competition legislation to run services at a loss to win

1 market share?

2 A. Yes, that's right.

3 Q. So how does that marry up? Because by this point you
4 knew that running these white services had involved
5 substantial cost?

6 A. Substantial cost, not necessarily loss. We accepted as
7 part of the finding, the services were operated at
8 a loss. It had not been on my radar at that time.
9 I was looking at passenger numbers, I wasn't computing
10 the profits and losses on that service.

11 Q. So you were happy to tell the Traffic Commissioner what
12 you thought the law was, but you'd carried out no
13 analysis for yourself as to whether, in fact, your own
14 services were running at a loss or not?

15 A. Yes.

16 Q. And you were happy to tell the board that it was
17 non-anti-competitive, your service, even though, again,
18 you hadn't actually done the analysis, the financial
19 analysis, to see whether, by your own calculation, it
20 was lawful or not?

21 A. Yes. As I said, the general comment in the third
22 complaint about "presumption of making a profit", that
23 was my understanding, not based on any advice I'd
24 received, just that was my understanding at the time and
25 that's what I said. And it's correct that, no, I hadn't

1 done the analysis to check at that service level, the
2 individual service level, whether they were covering
3 their avoidable costs, and ultimately that was the core
4 finding of the OFT, that we were operating services at
5 a loss.

6 MR FREEMAN: This reference to running at a loss is about
7 2 Travel running at a loss, not Cardiff Bus running at
8 a loss, to be fair, Mr Bowsheer.

9 MR BOWSHER: I presume that you must have thought the same
10 competition law applied to you and to 2 Travel?

11 A. Yes.

12 Q. And if you were running a service at a loss, you must
13 have thought you were acting in breach of competition
14 law?

15 A. Potentially, yes. It depends on the circumstances.
16 There are circumstances where it is quite okay to
17 operate services at a loss, and we've done it,
18 particularly introducing a new service, where it takes
19 a little while for -- where a service hasn't operated
20 before, I should add, and it takes a little while for
21 people to get used to it. So you make a loss in the
22 early stages but cover forward -- moving forward. You
23 also have a situation when you're talking about losses,
24 the issue of avoidable costs --

25 Q. Did you have legal advice about all of this in 2004?

1 A. No. I have a detailed understanding of it now. In
2 those terms it was a very general understanding, and
3 that's all I'm talking about. And certainly, as I've
4 said, it isn't something that I've taken advice on.
5 It's just my understanding at the time.

6 Q. At the point that you were writing this material in the
7 last quarter of 2004, you had some months earlier told
8 Amicus that this whole process was going to cost
9 hundreds of thousands of pounds, hadn't you?

10 A. Yes. The question was asked and I wasn't entirely happy
11 that there hadn't been a clear answer to that question
12 and I wish I had. I think there were two parts. One
13 was the 40 per cent market share I referred to. I've
14 absolutely no idea or no recollection where that
15 40 per cent figure came from and I was reluctant to put
16 my name to something which I didn't understand. In
17 terms of the 500,000, it was a figure that had been
18 bounced around. I mean, I know that that figure had
19 been mentioned. I can't remember where it had come from
20 or the basis of it. But I do appreciate that that
21 figure, at least, was a figure that had been mentioned
22 previously. It may have been mentioned by my
23 predecessor, I just simply can't remember, and I was
24 reluctant to put my name to something that -- I was just
25 picking up a figure that I'd heard somewhere and

1 referring to it.

2 Q. That is the letter at G1/533, that we looked at on
3 Monday. It's the letter to Amicus, dated 13 April 2004.

4 A. Yes. But you talked about cost and I did make the
5 point, there are the two elements. There's the cost of
6 running the service and there's the loss of patronage,
7 and it's the two together.

8 Q. Given what you thought at the time you wrote this note
9 for the 22 November meeting, I suggest to you that you
10 must have known that your white services had been
11 unlawful at that time because you knew that they were
12 running at a loss?

13 A. No, I didn't. As I said, the individual service level,
14 I just didn't have my eye on that ball.

15 Q. We can see that you had given some considered thought to
16 this. E12, page 585. It's an undated document, but
17 we can get a fair idea of when it was because it was
18 a written commentary by you to the OFT.

19 A. Yes.

20 Q. So that must be well into the OFT proceedings.
21 Page 588. There are some numbered paragraphs at the
22 bottom.

23 A. Yes.

24 Q. It starts:
25 "Turning to the commercial aspects of this activity,

1 we were aware of the following key factors and financial
2 information."

3 Number 2:

4 "We knew the requirements of our additional services
5 and the costs. The most significant element ..."

6 And it sets all this out. The last three lines:

7 "Our back of an envelope calculation indicated an
8 additional cost of around £400,000?? Per annum. Not
9 scientific, but entirely adequate in the circumstances."

10 And someone's put £300,000 next to it. Did you see
11 you were going to get £300,000 or £400,000 revenue for
12 these white services?

13 A. Yes, I think we did, and this document, incidentally,
14 I think is -- it's a draft document. I think it was
15 preparation for the oral representations given to the
16 OFT. I can't be certain of that, but that's certainly
17 what it looks like. As I said, first of all, I didn't
18 really compute the numbers, but on the basis that people
19 catch the first bus that comes along, I had no reason to
20 believe that we wouldn't cover our avoidable costs. But
21 I didn't really do the calculation. It wasn't something
22 that was in my head. I appreciate that we're saying
23 that an understanding of the costs -- that's the easy
24 bit. What you need to then understand is what the
25 revenues are associated with those services. That's the

1 difficult bit. And as I said, I didn't have my eye on
2 that ball as things progressed.

3 Q. So you knew throughout that you weren't supposed to be
4 running routes at a loss?

5 A. Yes.

6 Q. You had a back of an envelope idea that the costs
7 associated with these routes might be £300,000,
8 £400,000?

9 A. Yes.

10 Q. And you quote £500,000 to Amicus --

11 A. No, I didn't. I talked about £500,000 as being the
12 combination of the costs and the loss of patronage.

13 Q. If you wanted to check whether or not your new service
14 was going to be loss making or not, did you ever
15 actually do that analysis and say, "This is what we
16 expect to get so we're happy that this is not a loss
17 making service"?

18 A. As I said, I didn't have my eye on that ball, I was not
19 computing the numbers. I knew approximately the costs
20 from the outset and one can look at it from different
21 perspectives, but £300,000, you know, it's in that sort
22 of ballpark, running the services for a full year.
23 I just didn't do the revenue calculations to look at
24 that. And I appreciate now, looking back, based on the
25 OFT's findings, I should have been focused on that

1 aspect because that was the bit that we were found
2 guilty of predation over, was operating services at
3 a loss.

4 Q. But you already knew that you weren't to be running
5 services at a loss. On your own understanding of the
6 law at that time, you were simply reckless, weren't you,
7 as to whether or not you were complying with the law,
8 because you simply didn't do the work to see whether or
9 not the routes were run at a loss or not?

10 A. Well, I didn't do the work. As I said, I was an
11 extremely busy person at that time. I'd taken over
12 a large organisation, trying to get to grips with all
13 aspects of the company, of which this was only one part.
14 For a large chunk of the time, I was without a finance
15 director until a new finance director had been
16 appointed. What I'm saying is that I didn't run the
17 numbers, if you like, to do these calculations. I just
18 didn't do it.

19 Q. Even though you were talking to two or three different
20 firms of solicitors at the time, who could have looked
21 at it for you? You didn't ask any of them to look at
22 it?

23 A. I wasn't talking to two or three firms of solicitors.
24 You mentioned three. Eversheds, I don't know what it
25 was about, but it was certainly nothing to do with this.

1 One was a personal family matter and Bond Pearce
2 I consulted on two occasions, and I wish Bond Pearce had
3 said something to me, "You need to do this" or "You need
4 to do that", but they didn't.

5 Q. If you go on to E9/445 -- sorry, I'm taking these
6 things out of order. Stick with E9/445. Sorry,
7 Mr Brown. This is coming up to the dying days.
8 I suggest that this, again, is a useful confirmation of
9 what you knew all along. Page 445, on 13 December, an
10 e-mail sent to you by Peter Heath. On 29 November:

11 "Vehicle 103 was scheduled to be the 12.01 and the
12 13.31. In fact, from Prodata it seems to have arrived
13 at St Mellons about 12.15 and waited to try and find
14 a 2 Travel journey."

15 Even now, even now that 2 Travel are, frankly, past
16 it, probably, you still know and tolerate buses waiting
17 for 2 Travel; isn't that right?

18 A. Can I first preface my answer by saying that this e-mail
19 follows Mr Furzeland's letter, I believe. At the
20 Furzeland inquiry, a suggestion was made that we were
21 deliberately parking up at non-terminal points, just
22 literally waiting for a 2 Travel bus to come along.
23 That accusation was one that Mr Furzeland specifically
24 asked to be checked by the VOSA officers, and the VOSA
25 officers went out and conducted a number of checks over

1 a number of days to see whether that allegation was
2 correct. They found -- despite extensive monitoring,
3 they only found two instances where they felt this might
4 have been the case and I agreed to investigate these and
5 these were the response. No, I'm not happy about the
6 idea of waiting to try and find a 2 Travel journey.
7 That's not as per my instructions. But you need to see
8 this as these two services are the only two services
9 that were found that could possibly be that way, despite
10 extensive monitoring over a number of days and routes by
11 VOSA officers, specifically on that allegation.

12 Q. I would suggest to you that there's no possible reason
13 why a driver was waiting to try and find a 2 Travel
14 journey, other than because he had been told in the past
15 or she had been told in the past, that that was what he
16 or she was supposed to be doing?

17 A. Well, it isn't what they were supposed to be doing. If
18 that's the case, it's heavily -- there's question marks
19 about what was going on here, but no, that's not what
20 should have been happening.

21 Q. Was that driver ever reprimanded?

22 A. I have no idea. There were allegations made on previous
23 occasions and any allegations that were found to be
24 correct, the driver was indeed seen. And I think in the
25 evidence we gave, the original -- the original letter

1 from the traffic office, we responded to each of the
2 complaints line by line and where there was found to be
3 something incorrect, we did indeed take action.
4 I assume that to be the case because that's the kind of
5 company we are, but I have no knowledge of these
6 particular situations.

7 Q. Just to confirm -- and sorry to take this out of
8 order -- the £400,000, or was it £300,000, additional
9 cost figure that we saw in that note to the OFT is in
10 fact confirmed, isn't it? If anything, it's an
11 underestimate because on 14 October 2004, E8/169 -- it's
12 your report on page 169 on 14 October.

13 A. Yes.

14 Q. We see, do we not:

15 "The financial figures for year to
16 date September 2004 were reviewed. It was noted that we
17 might struggle ...(reading to the words)... of
18 competition ..."

19 Presumably that's 2 Travel; is that right?

20 A. Yes.

21 Q. "... which is estimated to cost the company up to
22 **£500,000** PA in additional costs. The management team
23 was confident that cost control measures put in place
24 would help achieve budgeted operating results."

25 So the number that you gave to the OFT is, in fact,

1 if anything, an underestimate by reference to what you
2 told the board?

3 A. I think that's loose wording. As I've explained, the
4 cost to the company is made up of two parts: one is the
5 cost of running the white services, the other is the
6 loss of revenues. And I believe I was referring here to
7 the combination of the two, but I appreciate that the
8 wording does just say "additional costs", but in context
9 for me it was the combination of the two.

10 Q. E10, page 495. Do you see that?

11 A. Bear with me for a moment. Yes.

12 Q. That's a note of a union strategy meeting, which I think
13 you must have attended.

14 A. Yes. These are working notes, I think, taken probably
15 by Toni Kemp out of the meeting. So it isn't the
16 minutes as such, I think it's just her taking notes out
17 of the meeting, from which she would have subsequently
18 done the minutes.

19 Q. Although you're not there, at the top it seems to be --

20 A. I am there, yes, and others from the company.

21 Q. Exactly.

22 A. It's just making a note of the union members that are
23 there.

24 Q. Were there other meetings like this?

25 A. These meetings took place twice a year. It is part

1 of -- for two reasons. One is as part of our
2 investments, Investors in People commitment, we meet with
3 our trade unions formally twice a year to talk about
4 what's going on in the company, what our plans are, and
5 to discuss our overall strategy and direction and to
6 deal with any questions they might have. It also
7 fulfils the requirements of a European Works Council
8 because not all our employees are members of a trade
9 union. This would typically -- I don't know whether it
10 was here -- be engendered by the employee director and
11 it's supposed to fulfil that obligation as well. So
12 twice a year, yes, a formal meeting to discuss issues.

13 Q. Presumably there was a meeting then a year earlier than
14 this; would that be fair?

15 A. I think there may very well -- yes, there should have
16 been.

17 Q. Were there minutes for that meeting?

18 A. I would imagine so. I don't know. Yes.

19 Q. That would be useful, wouldn't it, to understand what
20 you were saying to the relevant unions, because we've
21 seen that you were engaging with them, about the
22 2 Travel competition? Presumably that's what you would
23 have been discussing at that meeting?

24 A. I don't know what was discussed at a meeting in 2004.
25 It is possible, I don't know.

1 Q. Do we know if there are any other minutes of meetings in
2 2004, meetings of this type?

3 A. There may well. I'm sorry, I don't know.

4 Q. We haven't seen them, I don't know.

5 A. I don't know.

6 Q. Is there any explanation for why they're not there?

7 A. You're making the supposition that competition was
8 discussed and I don't know.

9 Q. I'm making a supposition because we've seen that at that
10 time there was -- you were making contacts with both
11 Amicus and TGWU, who were expressing concerns about
12 these topics. Both of those unions are represented
13 there. I'm making a supposition that at a union
14 strategy meeting, topics such as this, which were
15 clearly of concern to both you and the unions, would
16 have discussed these very topics. Is that not a fair
17 supposition?

18 A. I haven't looked to see what was discussed here, to be
19 honest. Perhaps you could take me to what the reference
20 is.

21 Q. Well, if you look, for example, at page 497, this
22 is May 2005. Six lines up from the bottom:
23 "Commercial."
24 There's quite a lot of detail about a lot of this.
25 But then suddenly:

1 "Competition. PH gave brief overview of 2 Travel."
2 That's all it says, so clearly the 2 Travel
3 competition situation was discussed?
4 A. Yes.
5 Q. Was there any other written record of what Peter Heath
6 was saying?
7 A. A lot of it is an information thing:
8 "Peter Heath gave a brief overview on 2 Travel."
9 That's all it says and that's all he would have
10 done.
11 Q. If you look at the rest of this minute, parts of this
12 are almost a -- maybe not quite verbatim, but it's quite
13 a detailed record of exchanges at this meeting about
14 what's going on. If you go on to look at schools,
15 there's a note of exchanges with different people making
16 different points. Nothing is said about competition
17 here.
18 A. There's one reference to competition. I think one needs
19 to understand the context, that the unions and our
20 managers work very closely together, and much of the
21 stuff here would be about things where the company is
22 seeking to inform them about things they don't know
23 about. All I can see is that Peter Heath gave a brief
24 overview regarding 2 Travel to the meeting.
25 Q. It's not minuted at all, is it, there?

1 A. Sorry, the details?

2 Q. The details are not minuted anywhere?

3 A. No.

4 Q. And similarly, I think this is the minutes of the same
5 meeting, the more formal minutes of the same meeting at
6 502?

7 A. Yes.

8 Q. Again, we can see there's lots of detail about all sorts
9 of topics, but when it comes to commercial:

10 "PH gave a brief overview of competition and the
11 situation relating to 2 Travel."

12 I would suggest to you the only reason I can imagine
13 why in neither of these documents is there any record as
14 to what was being said is because you were consciously
15 ensuring that no written record was kept of your
16 position at the time.

17 A. I simply don't know.

18 Q. You talked earlier about your diary and how things got
19 changed. Just so I understand, your PA is making
20 changes to your diary, telling you about changes, and
21 we've seen that she writes things in. Does she have
22 another parallel diary which she keeps of your
23 engagements, on Outlook or something like that?

24 A. No, not at that time, I don't think. I do now run in
25 parallel with an electronic diary. I can say with

1 confidence we didn't have an electronic version at that
2 time. It was just my diary.

3 Q. And we've never seen, I don't think, any diaries
4 for April 2003 to March 2004; that's right, isn't it?

5 A. I don't know. I made all my diaries available to
6 solicitors.

7 Q. Your solicitors wrote to the OFT, telling them -- and
8 the reference is E17, page 117, but I don't think we
9 need to get it out:

10 "You will note that the response does not contain
11 copies of David Brown's diary for the dates April 2003
12 to March 2004 and April 2005. This was the result of an
13 oversight and we will pass these on to you as soon as
14 we have them."

15 Did you go and look for those missing diaries?

16 A. No, I gave -- all my diaries were bundled up and I just
17 handed them over. I have no idea why that happened or
18 indeed what was in that. I just literally took them
19 from where ... I kept them for various reasons in the
20 office, particularly in case I needed to refer back
21 because you only have so much in the thing and I just
22 let them build up and build up. They were in separate
23 envelopes. Each time I took some out, I put it in an
24 envelope, so there's a series of envelopes, and I just
25 handed them over.

1 Q. Did Burges Salmon ever ask you why --

2 MR FLYNN: They're in court, sir.

3 THE CHAIRMAN: The diaries?

4 MR FLYNN: Yes. They have not been asked for, but they are

5 in court.

6 THE CHAIRMAN: Well, it's 12.55, Mr Bowsher. Do you want to

7 adjourn now so you can look at the diaries between now

8 and 1.45? Is that all right?

9 MR FLYNN: On the same basis that we made the one that was

10 requested available yesterday or the day before.

11 THE CHAIRMAN: Okay. We'll adjourn now until 1.45. Before

12 we do, I'm bound to say, Mr Bowsher, that I think we're

13 taking quite a long time over some of this.

14 MR BOWSHER: We're on the home stretch.

15 THE CHAIRMAN: Good. I'll say no more.

16 (12.55 pm)

17 (The Short Adjournment)

18 (1.45 pm)

19 (Delay in proceedings)

20 (1.55 pm)

21 MR BOWSHER: Sir, thank you for giving us a moment or two.

22 My learned friend Mr Flynn was good enough to provide us

23 with a couple of documents at the end of the

24 adjournment, and thank you very much indeed, the

25 tribunal, for giving us a moment to look at them.

1 I don't know if those have been made available. Does it
2 make sense to hand them up now?

3 MR FLYNN: I'm happy to do that.

4 MR BOWSHER: It probably makes sense to put them in the
5 bundle. Shall I carry on? I'll come back to the
6 document before we finish with Mr Brown.

7 Mr Brown, could we go back to file E5. I just
8 wanted to ask you this. E5/59. 7 November 2003. This
9 is an e-mail from you to Alan Kreppel, but also copied
10 in is Amelia Price of First Group. I just wondered, why
11 were you e-mailing First Group about 2 Travel's
12 operations?

13 A. I really can't recollect. Amelia Price was finance
14 director at First Group. I may have bumped into her
15 and, you know, we discussed it and she asked: if you get
16 any information, let me know. It could have been
17 Alan Kreppel asked me to do it. I really can't
18 recollect why that was.

19 Q. I may be being unfair, but it seems a funny thing to do,
20 to talk to another bus company about the economic
21 activities of a new competitor. Doesn't that seem
22 rather strange?

23 A. At the time, not. Clearly, we've received training now
24 and I know that any meeting I have with any bus company,
25 I've got to be extremely careful and record exactly

1 what --

2 THE CHAIRMAN: So the results of an AIM listed company would

3 go straight on the Stock Exchange website anyway,

4 wouldn't they?

5 A. All this is doing is pointing to a link for --

6 effectively, to a Stock Exchange announcement.

7 MR BOWSHER: Oh, absolutely. If you put E5 away, and then

8 we can go back to our old friend, E6, page 511.

9 Do you see that?

10 A. Yes.

11 Q. You have to turn it on its side, in my version anyway.

12 And it seems to be -- first, it's an e-mail from

13 Peter Heath to Aman Singh. Do you know that he was

14 exchanging messages with Aman Singh on 22 April?

15 A. Peter Heath would speak to Aman Singh on a regular

16 basis. Aman Singh is the transport coordinator for all

17 the schools contracts and so on in Cardiff, so we are in

18 regular contact with their office.

19 Q. It certainly looks as if you, Cardiff Bus, are sharing

20 with Aman Singh, information about a competitor; is that

21 right?

22 A. It's talking ... It's not my e-mail, so I'm trying to,

23 as you are, understand what it's saying. It's passing

24 information about the ticket machines they use to

25 Aman Singh.

1 Q. Why would he want to know that?

2 A. At the time, we would have perhaps had some concern over
3 their ability to record concessionary passenger data.
4 I think that's a concern we would have with -- I talked
5 about the level playing field, making sure that all
6 returns made are done properly and for that, you have to
7 have the correct ticket machine. If you don't have the
8 correct ticket machines, it's very easy to misrepresent
9 data. So ticket machines are at the heart of it.

10 Q. We've seen there are a number of letters from Aman Singh
11 to 2 Travel. If you go on to E6/736, 27 May.
12 Aman Singh to Peter Heath. I don't think we have any
13 context to this message. It's just what it is. But --

14 A. No, I do have the context to this. The subject is
15 2 Travel park and ride. I can't be certain, but I think
16 if we were to check back, we would find that -- if you
17 remember, we were talking about someone at the park and
18 ride pointing out that there was a failure to display an
19 O disc and that has all sorts of wider implications. It
20 was pointed out to them that that bus was operating
21 illegally. In fact it couldn't carry passengers as
22 a result of that, and it looks like this is just
23 a response: just to let you know that we've written to
24 2 Travel about it and checked that their bus has been
25 MOT'd. That's all it's saying. So I think it's almost

1 certainly in relation to the earlier incident you
2 mentioned.

3 Q. It reads rather as if he's reassuring Cardiff Bus that
4 he's, as it were, keeping up the pressure on 2 Travel;
5 would that be fair?

6 A. No, I just read it, a complaint's been made by
7 Cardiff Bus about illegal operations and he's just
8 saying: we've followed up on that complaint. I don't
9 see any more in it than that.

10 Q. And taking those two emails together, I'd suggest that
11 what we get a glimpse of is that, in fact, Peter Heath
12 was making sure that Aman Singh was on top of 2 Travel
13 and doing whatever he could to make life difficult for
14 2 Travel?

15 A. It wasn't about making life difficult, it talks about
16 the level playing field. We pointed out to the Local
17 Authority, breaches of their contract and service. This
18 was a competitive tender for park and ride services.
19 They had won some of those services and were operating
20 them illegally and we were pointing out to them and on
21 other occasions as well, pointing out failures in their
22 services.

23 Q. We saw an e-mail this morning where you were noting you
24 were going to make sure that authorities and so forth
25 kept on top of 2 Travel and followed up on any

1 regulatory infractions, didn't you?

2 A. Yes, we made it clear that if we found they were
3 operating illegally, we would point it out to the
4 relevant authorities, that fact, and I think we did.

5 Q. Could you go to E6/509. Paragraph 2. We've looked at
6 this before, but to remind us in the context:

7 "CD also outlined ...(reading to the words)...
8 a business decision had been taken to deprive 2T of any
9 staff we could and leave our internal mechanisms to deal
10 with poor performance."

11 We've looked at that before, but in the context,
12 doesn't that now make sense? This is part of a general
13 campaign by Cardiff Bus to make life difficult for
14 2 Travel to carry on its bus business?

15 A. Well, as I said before, this wasn't my meeting, and I
16 wasn't -- didn't attend it and I don't recollect having
17 seen the minutes of the meeting. What we have said,
18 certainly, is that we were in a competitive situation
19 for drivers, drivers were short and we were looking to
20 make sure that, as far as possible, we had a full
21 complement. And inevitably, by connection, that means
22 we're competing for the same drivers that 2 Travel are
23 competing for.

24 Q. If you look to page 673; do you see that?

25 A. Yes.

1 Q. This is Mr Cole. I'm not sure who Mr Donovan was, but
2 we've heard from Mr Cole. That memo shows, does it not,
3 that again, Cardiff Bus is going out of its way to make
4 sure that 2 Travel is denied drivers it might otherwise
5 recruit?

6 A. I think going back to the connection -- the previous
7 note that you showed me, which I think preceded this,
8 we have been recruiting drivers. We've recruited five
9 bus drivers who might otherwise have gone to 2 Travel.
10 We didn't, normally, as a matter of policy, employ
11 previous employees and that had been relaxed here. What
12 this is saying is that he's been involved from the start
13 in the retraining and so on and they're doing fine and
14 there have been no issues.

15 Q. Can we put E6 to one side and take E7. Page 367 seems
16 to be a chain which shows that you're making sure
17 that -- if you look at the second e-mail, the one in the
18 middle that starts halfway through the first column,
19 from Huw Morgan and so forth. That would suggest, would
20 it not, that between you, Caerphilly, Stagecoach, First
21 Group, Blaenau Gwent -- I may have missed someone
22 else -- are all coordinating to make sure that the news
23 about 2 Travel's problems is fully propagated; is that
24 right?

25 A. The context of this is 2 Travel's reliability and the

1 quality of the services, which was a matter of concern
2 to the bus industry across the whole of South Wales and
3 the areas in which they were operating. And a number of
4 people were concerned about the damage that it was doing
5 to the reputation of the bus industry more generally.
6 I don't know why Huw Morgan became involved. But
7 of course, this isn't just about the area in which
8 we are operating, but they were also operating from the
9 Cwmbran depot, which I think was the Stagecoach area.
10 So he's copied me in with a number of other people,
11 including Leo Markham as the representative of the bus
12 users' consumer body, other Local Authorities. This is
13 a series of people who are concerned at the activities
14 and he's just copied me on some actions he's taken,
15 I think to draw the attention of the Traffic
16 Commissioner to irregularities.

17 Q. You're not just doing this out of the goodness of your
18 heart though, to make sure the bus industry works well.
19 If you look at your response to Huw:

20 "At last some good news."

21 The context of this, isn't it, is that this is
22 congratulating Huw on making sure that the Traffic
23 Commissioner has the material to try and pursue
24 2 Travel; isn't that right?

25 A. I've been absolutely clear from the outset that we were

1 seeking to draw the regulatory authorities' attention to
2 what we considered to be the illegal -- or otherwise
3 illegal and failure to operate to contract, of
4 2 Travel's services. I don't think it's congratulatory,
5 it's just saying that -- you know, it's making sure that
6 the Traffic Commissioner is aware of the situation.

7 Q. Again, if you go on to G1, page 624, this seems to be
8 you following up 2 Travel's insurance position. Was
9 2 Travel's insurance position any business of yours?

10 A. Well, it certainly was if they were obtaining contracts
11 and operating in a competitive environment, and
12 operating those contracts without insurance, yes.

13 Q. So that was why you were making sure their insurers
14 followed up anything that you thought might need
15 investigating; is that right?

16 A. Well, I can't remember. There was certainly
17 a suggestion that there was an insurance issue and all
18 I was doing was pointing out to the insurers -- this is
19 someone I knew, just saying: look, we have some concerns
20 over their insurance position. This is something you
21 may wish to look into. It's a matter for you.

22 Q. I suggest this is a pattern of your following up with
23 anyone you could, other competitors, insurers,
24 regulators, regardless of whether it was your business
25 or not, to try and impede 2 Travel in its business?

1 A. I've made it clear from the outset that we were looking
2 to identify the many illegal activities that we observed
3 taking place and draw them to the attention of the
4 regulatory authorities and that's exactly what we're
5 doing here.

6 Q. Before I go on to the last topic, I think, sir, you now
7 have the documents that Mr Flynn supplied.

8 THE CHAIRMAN: We do. Bond Pearce time ledgers.

9 MR BOWSHER: Bond Pearce time ledgers which Mr Flynn has
10 made available, and it's appreciated. These were
11 documents I think we asked for a couple of weeks ago.
12 It's much appreciated that we've got them now. I
13 propose just to ask a couple of questions about them and
14 it may be that I need to go away and analyse them
15 further. In order to try and not hold things up, if
16 I can deal with them with Mr Brown now, but I may have
17 to come back.

18 Do you have those documents in front of you,
19 Mr Brown?

20 A. I do just now.

21 Q. These appear to be internal Bond Pearce time records.
22 There are four sheets of them. There's two documents.
23 One runs from 19 April to 9 June and the other, 23 June
24 to 4 October 2004. Do you have those?

25 A. Sorry, 19 April?

1 Q. 19 April through to 9 June. Then 23 June through to
2 4 October.

3 A. Yes.

4 Q. I've probably said something wrong. I just want to be
5 clear, we've seen the reference there -- this obviously
6 isn't your document so you and I may have to guess
7 a bit, but I'm guessing that "DMH 1" is a fee earner, so
8 that's probably David Harrison.

9 A. Sorry, I'm struggling to follow you.

10 Q. Five down, if you look at the left-hand column.

11 A. Yes.

12 Q. That would seem to be David Harrison considering some
13 competition law issues and advising Alan Kreppel. And
14 there's at least three successive issues there.
15 Do you see that?

16 A. Yes.

17 Q. Then there's two involving you. If we then look further
18 down:
19 "DMH1, 30 April 2004. Obtaining latest info on
20 Cardiff Bus wars and public statements and considering
21 advice pending publication of OFT case."
22 So this is 30 April, the day before you became
23 managing director designate. Do you see that?

24 A. Yes. I see it. I'm struggling to keep up.

25 Q. Sorry, I'll slow down. On 30 April, it looks as if

1 David Harrison is considering and preparing some advice.
2 On 30 April, he e-mails you with interim advice. I'm
3 suggesting to you that that is the competition law
4 advice which you have not been able to remember
5 hitherto?

6 A. As I said, I can't remember any contact over this.

7 Q. And then in May, David Harrison is obtaining, 4 May,
8 more background on the bus wars. If you turn the page,
9 he's checking the OFT website to see what's happened to
10 the Edinburgh decision. He e-mails you on 12 May,
11 updating you on the OFT bus decision. Do you recall
12 that?

13 A. That presumably is the Edinburgh decision. As I've
14 said, I have no recollection of discussions and advice
15 from that time.

16 Q. That leads to 9 June, an e-mail to you and Peter Heath,
17 with an analysis of the Edinburgh bus decision. I would
18 suggest that that shows pretty clearly that you are
19 getting some competition law advice in June 2004.

20 A. From the basis of this, I -- as I say, I cannot remember
21 it at all. The Edinburgh bus decision, I remember
22 something in my mind about Edinburgh bus. I can't ...
23 I'm certainly not pinning it back to this or anything.
24 I just cannot remember, I'm sorry.

25 Q. This is pretty unambiguous, isn't it? This suggests,

1 certainly, that Bond Pearce think they gave you some
2 advice on 9 June, which seems to have a time value of
3 £225?

4 A. That appears to be the case, but as I've said, I have no
5 recollection of this at all.

6 Q. If you move on to 30 July, there's David Harrison again.
7 Do you see 30 July, third line:
8 "E-mails in update, 2 Travel issues."
9 That rather suggests, doesn't it, that Mr Harrison
10 has been involved in the 2 Travel saga before 30 July,
11 doesn't it?

12 A. Update 2 Travel issues ... Yes, it possibly does. As
13 I said, I can't remember.

14 Q. 23 August, he's doing some research for you on the
15 direct consequence for directors for breaches of
16 Competition Law. I didn't take you to the document.
17 Do you recall this was a topic being raised at board by
18 directors as to what the consequences would be for
19 directors of a breach of competition law?

20 A. No, I don't recollect it.

21 Q. I'm not quite sure who "SML" is, and I'm a little bit
22 surprised because SML is having a conversation with
23 Toni Kemp, who we've seen keeping the minutes of the
24 union meeting.

25 A. She's the PA to the directors.

1 Q. So I'm not quite sure what that is about. Maybe that's
2 just organising something. But it seems also, doesn't
3 it, that there is a discussion about competition issues
4 going on with David Harrison, which must be again for
5 your benefit; isn't that right?

6 A. As I said, I can't recollect this. I'm seeing this now
7 and trying to cast my mind back. I think that the dates
8 in August 2004 -- as I recollect, this coincides that
9 we were threatened with High Court writs by Huw Francis
10 and it may have been in relation to that, that we took
11 advice. I can't remember taking advice, but that does
12 seem to be what it is about. I think I was actually on
13 holiday at that time, so ...

14 Q. Well, that may explain a day or two there, but what we
15 see from this record is from the moment you became
16 managing director designate, you seemed to be involved
17 in a process of obtaining or receiving competition law
18 advice from Bond Pearce; isn't that right?

19 A. Based on this, it does seem to show that, but as I said,
20 I have absolutely no recollection of that.

21 Q. Did you ever go back and check, when all the various
22 proceedings took place, what legal advice you had?

23 A. It would have been done as part of the search, the
24 e-mails and so on. As far as they were there, they
25 would have been searched, so I'm at a loss to

1 understand.

2 Q. If you put that to one side and take E11. Go to
3 page 734. Do you have that? That's a memorandum you
4 prepared --

5 A. Yes.

6 Q. -- or Cardiff Bus prepared, for the hearing at which it
7 was being considered whether or not Cardiff Bus had lost
8 its repute as a result of the findings against it by the
9 OFT.

10 A. Yes.

11 Q. Do you recall that?

12 A. Yes.

13 Q. There are a number of explanations given. Go to
14 page 735. It says:

15 "Cardiff Bus is embarrassed by this decision and
16 takes this opportunity to apologise."

17 At F:

18 "Cardiff Bus believed the no frills service would be
19 profitable."

20 On what basis did you feel it was appropriate to say
21 that you believed it would be profitable? We've seen
22 there was no analysis done as to whether it would be
23 profitable or not. That's just made up for the purpose,
24 isn't it?

25 A. It was the assumption at the time that the passenger

1 revenue would cover the costs. As I said, we didn't
2 follow through and check that, but that was the
3 assumption at the time.

4 Q. You said this to the Traffic Commissioner because you
5 thought it would help your case to tell him that you
6 thought it would be profitable?

7 A. Well, that's what we believed at the time. I mean,
8 I'm ...

9 Q. Even though we've seen you knew at the time it was going
10 to cost you hundreds of thousands of pounds?

11 A. We knew it would cost, we knew roughly what the cost
12 was, but we didn't know the passenger revenue that would
13 be taken on it.

14 Q. We have seen you never actually made any consideration
15 as to whether it would be profitable or not?

16 A. No, after the event, we didn't do any checks as to the
17 profitability.

18 Q. And you didn't do any checks in early 2004 as to whether
19 it would be profitable or not, did you?

20 A. No, because we couldn't forecast the passengers at that
21 time.

22 MR SMITH: Mr Brown, I wonder if I could ask you about that.
23 Could you be handed bundle I1? Perhaps you could open
24 that at tab 4 and then sub-tab B. These are figures for
25 passengers travelling on the buses, that have been

1 helpfully provided by Cardiff Bus's solicitors. You can
2 see that what one has is a fairly detailed breakdown of
3 the passengers travelling on the various routes. The
4 table right at the top is a global set of figures and
5 then one has below that, individuated figures for
6 adults, children, concessionary use, I believe.

7 A. Yes.

8 MR SMITH: Would this data have been kept at the time,
9 contemporaneously by Cardiff Bus?

10 A. Yes. I think this report was provided to the OFT.
11 I think it was at their request that we ran the data,
12 because this is exactly what they were looking at, the
13 revenues versus the costs of the service. So I can't be
14 absolutely certain, but I'm pretty sure that the
15 document that we're looking at was prepared specifically
16 for the OFT for their inquiry. So the data would have
17 been held in ticket machine format in the database. We
18 then ran the figures for the OFT.

19 MR SMITH: As we can see, these figures are provided on
20 a monthly basis --

21 A. Yes.

22 MR SMITH: -- here. So it would have been -- well, you tell
23 us. Would it have been straightforward to extract these
24 figures from the ticket machines in order to assess
25 after the first month's operation, the white bus

1 services, what revenue had been brought in?

2 A. No, this was an extraordinarily difficult exercise. Not
3 because we didn't have the data, but effectively, if
4 I can explain, the data's kept in segregated format.
5 It's millions of pieces of data and you have to run
6 reports specifically to get what you want. In order to
7 do that, you have to understand exactly what it is
8 you are looking for, so you have to identify the
9 specific services, the times of day. You can't just run
10 a report and say that "I want all the data for that
11 day". You then have to look at the time the bus
12 started, the time it went for its break, the time it
13 started again. So there are a number of parameters that
14 you have to run forward. I'm not saying it's
15 a difficult exercise in terms of the specifics, if you
16 know what you're looking for. It is a question of
17 running the numbers, but in terms of running the
18 numbers, there are a lot of different steps, all of
19 which are extremely time consuming, to run the different
20 data sets to get the data and compile them in this
21 format.

22 When we did the exercise for the OFT, it took weeks
23 to run this data in this format.

24 MR SMITH: Thank you very much.

25 MR BOWSHER: The truth is that you didn't think it was worth

1 doing that exercise. If I can hand up a document which
2 those instructing me have dug out over the adjournment.
3 (Handed). I suggest we just put them in as supplemental
4 documents.

5 On 7 May 2004, the message you were giving to your
6 finance department and Chris Dexter, we can see here,
7 was not that it was too difficult, but just not to spend
8 too much time on it because there will be no definitive
9 answer? (Pause).

10 A. Yes, it's relating to pay and how the pay records are
11 kept. The pay records will be attached to duties and so
12 on, and there's a query from finance as to how it's
13 being -- how it should be recorded. I think what I'm
14 saying is it's a ballpark estimate of our additional
15 costs that we're looking at.

16 Q. I see.

17 A. Just trying to identify in general terms, not in detail,
18 the costs of the service.

19 Q. Okay. E11/741. This is this document you provided to
20 the Traffic Commissioner.

21 A. Yes.

22 Q. 6C on page 742, you say you did not knowingly commit
23 these breaches of law:

24 "In fact, had it known that it was at risk of such
25 criticism, it would have taken a different approach.

1 Breaches were inconsistent with the company mission
2 statement of operating services that demonstrate public
3 transport best practice. There was no intent to act
4 unlawfully. Cardiff Bus is happy to offer assurances as
5 to its future behaviour in respect of competition and
6 will seek legal advice when appropriate, to ensure it
7 operates lawfully."

8 Now that we've seen the records from Bond Pearce,
9 the reality is that you were getting legal advice; isn't
10 that right? And you must have thought that you were at
11 risk of some -- at least there was an issue to consider,
12 otherwise you wouldn't have sought the advice?

13 A. I don't recollect that legal advice. I'm not denying
14 that we may have had it, I don't recollect it, but the
15 fact that we continued in the way we did, I can only
16 assume that the advice that there was, was that things
17 were fine, because I believed that what we were doing
18 was legal and correct. But as I don't know what that
19 legal advice was, I can't recollect it, I can't say any
20 more than that.

21 Q. The impression you gave to the Traffic Commissioner --
22 and we can see it in the detail of this document -- was
23 that you didn't realise you were dominant, you didn't
24 know there was a legal issue to concern yourself with,
25 you didn't know there was anything going wrong, and as

1 a result, you shouldn't lose your repute. Isn't that
2 right?

3 THE CHAIRMAN: That was four questions. You can answer all
4 or any of them.

5 A. As I said all through, I believed we were acting legally
6 and I now know that we weren't acting legally.

7 THE CHAIRMAN: Mr Bowsher, I know you are approaching the
8 end of your cross-examination. I wanted to raise with
9 you two issues, please, which have been of concern to
10 the tribunal.

11 If you are alleging that there was a deliberate
12 concealment of diary entries by the use of Tippex and
13 erasure, then you should put that directly, and also, if
14 you are asserting that there was a deliberate
15 concealment of the obtaining of legal advice, you should
16 put that directly.

17 MR BOWSHER: As to the first, taken on board and noted. As
18 to the second, my position obviously is affected by the
19 documents I've received over lunch and I may have to
20 consider my position in light of those documents. As to
21 the second point, I didn't have the basis for any such
22 a case.

23 THE CHAIRMAN: And as to the first?

24 MR BOWSHER: As to the first, I'm not putting a case --

25 THE CHAIRMAN: On the basis of fraud, as it were?

1 MR BOWSHER: On the basis of fraud at the moment. As to the
2 second, I think I do have to reserve my position.

3 THE CHAIRMAN: I can understand why.

4 MR BOWSHER: But I don't want to go away and just -- I would
5 hope I can deal with all the matters now, but if I have
6 to come back, I will.

7 In fact, Mr Brown, you told the OFT, did you not,
8 that you had not received legal advice? We get that at
9 E11, page 312, I think. Maybe I should, in fairness,
10 show you what document we're looking at. E11, page 306,
11 which is the transcript of the oral hearing that you
12 were invited to with the OFT.

13 A. Yes. And the page reference?

14 Q. 312 -- maybe we should back up a bit. Start at 311,
15 line 18:

16 "We were aware -- I was aware, perhaps, of similar
17 successful, no frills models that had worked elsewhere,
18 both inside and outside of the industry. We were aware, for example,
19 of the Stagecoach operation ..."

20 Then you see reference to Aldi and Lidl, we have
21 seen that again, and BA:

22 "It was something we were aware of, as was product
23 differentiation and market segregation. Those were
24 principles that we understood and discussed at the time
25 ...(reading to the words)... our own experiment and

1 indeed in launching our new service, I think we publicly
2 stated that if they had set up a Lidl, we're setting up
3 an Aldi. And that was the way we saw it in terms of
4 seeing things in our own minds. Surprising as it may
5 seem to those dealing with much larger companies, and
6 perhaps you are amongst those, our response was not
7 researched by marketing specialists. It wasn't costed
8 by corporate financiers and with all due respect to my
9 colleague Noel here, it wasn't reviewed by legal eagles.
10 That is basically just not the sort of company that
11 we are. It was a genuine reactive response, based on
12 the principle that if a stock market listed company has
13 done the research and believed the idea to be valid,
14 then we didn't want to risk being left behind and we
15 couldn't wait to see whether they were going to be
16 successful or not."

17 And then you note that they had raised money on the
18 back of their idea, so it would have been strange if you
19 also hadn't sought to experiment:

20 "We never expected to lose money on the no frills
21 services. Never. From the outset we believed they would
22 cover their costs, based on the well-known industry
23 principle."

24 And then you talk about the customer getting the
25 first bus?

1 A. Yes.

2 Q. The reality, if we break that down -- is it not the case
3 that you are yet again telling the OFT in part of an
4 investigation, that this was an experiment? That's what
5 you have told them; is that right?

6 A. Yes.

7 Q. That was exactly the same explanation that was given for
8 the competitive response to Alisters, that pushed them
9 out of the market?

10 A. Yes.

11 Q. It simply wasn't true that this was an experiment, was
12 it?

13 A. That's the conclusion the OFT reached and we've agreed
14 with that conclusion.

15 Q. And you say it wasn't reviewed by legal eagles. Well,
16 we've heard your evidence about your recollection. But
17 when we look at this document, it is plain that some
18 review by some legal eagles in Bristol did indeed go on
19 concerning the competition law consequences of
20 conducting your programme; that's right, isn't it?

21 A. It does indeed appear to be the case, and this statement
22 that I gave to the OFT, made three years later, was
23 under oath and I believe that that's the position. So
24 clearly at that time, I didn't recollect it either.

25 Q. You said at the outset that you would not want

1 Cardiff Bus to spend money on pointless exercises.
2 Presumably, you saw, therefore, the expenditure of money
3 on the white services as having some competitive
4 purpose; would that be fair?

5 A. Yes.

6 Q. And that competitive purpose was to see 2 Travel out of
7 the Cardiff market; is that not right?

8 A. As I said, protect our market, and I accepted that if
9 they left the Cardiff market, then, yes, that was in
10 a way, one of the things we might have been looking for.

11 Q. And what you thereafter sought to do was to cover your
12 tracks, both with the OFT and the Traffic Commissioner,
13 because you certainly told him that you did not know
14 what the legal position was and it would seem when we
15 look at the decision, that that must have been
16 a relevant factor in his deciding that Cardiff Bus had
17 not lost its repute?

18 A. At the time, I had no recollection of that legal advice.
19 The legal advice as given may well have been supportive
20 of the fact that what we were doing was legal. I simply
21 don't know because I can't remember.

22 Q. And you knew from your financial analysis of 2 Travel
23 that if you managed to push 2 Travel out of the Cardiff
24 market, it would be very likely that you would push
25 2 Travel out of business?

1 A. That wasn't why we started. I think clearly, at the
2 time, having seen their accounts, it was clearly
3 a company in trouble. But our sole concern, as I said
4 before, was our Cardiff market. We had no interest in
5 the wider --

6 Q. As you continued your programme throughout 2004, you
7 were seeking, as we saw in one of the e-mails, the
8 demise of 2 Travel. That's right, isn't it?

9 A. I accept that's what one of our junior managers said.

10 MR BOWSHER: Thank you, Mr Brown.

11 THE CHAIRMAN: Mr Flynn?

12 Re-examination by MR FLYNN

13 MR FLYNN: You were taxed by the tribunal for some loose
14 language in connection with the business plan. You may
15 remember this from early on in your cross-examination.

16 A. Yes.

17 Q. Did the business plan assume that there would be no
18 competition or make no assumption as to whether there
19 would be competition?

20 A. It was no -- it did not build in. Can you just repeat
21 that, please?

22 Q. I think what the questions were turning on is the issue
23 whether the business plan was prepared on the assumption
24 that there would be no competition over its life or
25 whether it's prepared on the basis that it's not making

1 any assumptions as to whether there would be any
2 competition?

3 A. Well, it wasn't making any assumptions. It wasn't
4 saying there wouldn't be competition. It was saying
5 that the plan had been prepared on the basis that there
6 was no competition, but if there was competition, then
7 the business plan would need to be changed to reflect
8 that, as with all the other variable factors that
9 we were talking about. So it wasn't saying whether
10 there would be competition or not. It didn't speculate
11 on whether there would or wouldn't be competition, it
12 was just saying at the outset that the figures had been
13 prepared on the basis that there is no competition. And
14 I'm not sure I'm any clearer on it today than I was the
15 other day, when the question was asked.

16 Q. I think that's our last shot on it. Could Mr Brown be
17 given file E9, at page 283. I think it was put to you
18 that the third and fourth bullet points on that page
19 represented your understanding of competition law at the
20 relevant time.

21 A. Yes.

22 Q. This document being the document that you provided to
23 Mr Furzeland --

24 A. Yes.

25 Q. -- in November 2004. Just looking at those two bullet

1 points, did your understanding of competition law
2 embrace concepts of predatory pricing or predatory
3 conduct?

4 A. No. That was something that came new to me. I wasn't
5 considering that at this point. This was about the
6 winning of deliberate underpricing of contracts to win
7 business.

8 Q. At one point you mentioned that you had written to all
9 drivers.

10 A. Yes.

11 Q. Could you look at E6, page 664. Is that the letter you
12 were referring to?

13 A. That's the first letter. I sent a subsequent letter
14 after the Furzeland inquiry in the November, I believe.

15 Q. So you were referring to this one and to another?

16 A. Yes. The subsequent letter was following Mr Furzeland,
17 following the -- the informal inquiry in November asked
18 both 2 Travel and Cardiff Bus to write to all drivers,
19 making it absolutely, explicitly clear, the standards of
20 behaviour that were required, and we did that. And
21 whilst this letter, the first letter, was to all our
22 drivers, and would have been distributed locally at work
23 to all our drivers, the second letter was sent by post
24 to all drivers at their home address, to make absolutely
25 clear and sure that they had received it.

1 Q. I don't know whether I'll be able to find it,
2 the suggestion for that, in this time. You were taken
3 to the file of competitive logs, I think they were
4 called, which was E14. Do you remember that file?

5 A. Yes, I remember the file, yes.

6 Q. And you said that you could not remember whether or not
7 it had been sent to the Office of Fair Trading.

8 A. Yes.

9 Q. Do you have E11 still with you? If not, perhaps it
10 could be given to you. Page 608. Probably 607. If you
11 read 7.134 to yourself. (Pause). Does that assist your
12 recollection?

13 A. Well, it refers to the observation programme, and
14 I assume that means the reports.

15 Q. Just read the whole of the paragraph to yourself.

16 A. 7.133?

17 Q. 7.134.

18 A. Sorry, I was on the wrong paragraph. (Pause). Sorry,
19 right, I'm with you now. Cardiff Bus supplied the OFT
20 with sheets it had used to gather observations on
21 passenger numbers. So yes, those documents would have
22 been provided.

23 Q. And I think you were taken to the OFT's conclusion on
24 that matter, so I don't need to go over that again.
25 I don't think we've been able to find a reference to the

1 second letter, but we will ...

2 THE CHAIRMAN: I think behind you there may be ...

3 MR FLYNN: I think it may be exhibited to the witness
4 statement. It's in E9/309. Is that the letter you were
5 referring to?

6 A. It is indeed, yes.

7 Q. What was the difference you were drawing between this
8 one and the first one we were looking at?

9 A. It was explaining the background to the Furzeland
10 inquiry, saying:

11 "Can I take this opportunity to remind all drivers
12 of the memo sent to you on 10th May [which was the
13 previous one that you referred to] and reiterate the
14 ...(reading to the words)... whatever the situation or
15 provocation received."

16 Then it goes on to say that:

17 "We're clarifying beyond any doubt those --"

18 THE CHAIRMAN: Yes, we can read it for ourselves.

19 MR FLYNN: I have no further questions for Mr Brown, sir.

20 I don't know if the tribunal does.

21 MR FREEMAN: This goes back to these Bond Pearce time
22 records, which we've only just seen. They've been
23 handed to us, we haven't studied them, we haven't
24 considered them. Can I be absolutely clear, you're
25 telling us that you cannot recollect asking for or

1 giving e-mails to Bond Pearce or receiving e-mails and
2 advice from Bond Pearce about competition law, the
3 Edinburgh bus decision of the OFT or whatever? Is that
4 what you're telling us?

5 A. I am also seeing these for the first time. The
6 Edinburgh bus decision is something at the back of my
7 mind because it was involving Lothian Transport, which
8 is another municipal bus company. So that's kind of
9 ringing some bells because of the Lothian Bus action.
10 I genuinely can't remember that advice being received.
11 I'm trying hard. And just to explain the context, when
12 we went through this with solicitors before, and I made
13 my witness statement, you know, I was really wracking my
14 brains. I wanted to be absolutely sure that I had said
15 everything that I knew. And in particular, in that
16 document, which clearly I had seen, or it's probable
17 that I saw, and I just could not remember the document.
18 I really tried hard to remember it and I couldn't
19 remember it. And I recognise now, from the information
20 here, that there must have been some advice taken.
21 I can't remember what that was or -- well, I can't
22 remember taking it, but I can't remember what it was
23 clearly either, so I just don't know.

24 MR FREEMAN: Thank you.

25 THE CHAIRMAN: Thank you very much, Mr Brown.

1 (The witness withdrew)

2 MR BOWSHER: I think the next order of business is probably

3 Mr Good giving expert evidence on behalf of the

4 claimant. I don't know whether that's a suitable time

5 to have a transcriber break? I'm in the tribunal's

6 hands. We can get started with Mr Good.

7 THE CHAIRMAN: Let's make a start and do a few minutes.

8 MR NICHOLAS LUKE GOOD (sworn)

9 Examination-in-chief by MR BOWSHER

10 THE CHAIRMAN: C2?

11 MR BOWSHER: Yes. Take C2, Mr Good. What are your full

12 names?

13 A. Nicholas Luke Good.

14 Q. If you go to tab 20 in C2, what is your address?

15 A. My current professional address is [address given].

16 Q. Those are the offices of KPMG, are they?

17 A. They are, yes.

18 Q. As it were, the body of the report which you've prepared

19 has internal pagination up to page 56. Is that your

20 signature there in C2?

21 A. It is.

22 Q. That's dated 14 October 2011.

23 A. It is.

24 Q. Did that represent your opinion regarding the matters

25 put before you at that point in the case?

1 A. It did, subject to some typographical corrections
2 I issued in November.

3 Q. Have you updated the narrative of your opinion since
4 then?

5 A. I have, sir. Following the meeting of experts with
6 Dr Niels and also the second witness statement of
7 Bev Fowles, I made an adjustment to my numbers in
8 respect of the number of drivers that would be needed to
9 operate the fifth service and issued revised numbers.

10 Q. And I think some of that is in the file at tab 19, one
11 part of that update anyway.

12 A. Yes.

13 Q. And then have you been in court for some of the hearing
14 for the last however many days we've been here?

15 A. I have, yes, except for Monday last week.

16 Q. Have you updated this week, the narrative of your
17 opinion?

18 A. Yes, in preparing to give evidence today and while
19 listening to the evidence of Stephen Harrison,
20 I realised that the comparison I made at 5.4.43 of my
21 report was not an apples for apples basis for
22 comparison, and therefore that should be struck out.

23 Q. Have you prepared, as it were, an up to date composite
24 narrative of your opinion?

25 A. Yes, I have. I believe it's in tab 23 and this takes on

1 board all the matters we've just discussed. That is
2 the November typographical errors, the change as
3 a result of Bev Fowles and Dr Niels and then striking
4 out of that paragraph.

5 Q. The tribunal, I believe, has a copy of that. It's
6 marked in red on the front page, "Amended
7 20 March 2012." If you go to stamped page 60, internal
8 page 56, is that then your signature on the document as
9 of today?

10 A. Yes.

11 Q. And therefore, taking into account all, as it were, that
12 you heard and read in the case up-to-date, does that
13 represent your opinion regarding the matters you've been
14 asked about in this case as of today?

15 A. It does.

16 MR BOWSHER: Thank you, Mr Good. If you wait there, there
17 may be some questions for you.

18 Cross-examination by MR FLYNN

19 MR FLYNN: Good afternoon, Mr Good.

20 A. Good afternoon.

21 Q. Some background points, first of all. Could you tell us
22 what is meant by an associate partner of KPMG?

23 A. That means I'm a salaried partner and not an equity
24 partner.

25 Q. At paragraph 123 of your report -- and I'm afraid any

1 page references I may have had have probably now been
2 falsified. We'll try and follow it in your composite
3 report. The paragraph numbers have not changed. So
4 1.2.3. You say that you're not an expert in bus
5 operations.

6 A. That's correct.

7 Q. So you haven't, for example, worked on competition
8 inquiries. The Competition Commission report that was
9 mentioned earlier, you haven't advised bus companies
10 in that sort of area --

11 A. No, I haven't.

12 Q. -- in the past? And you are a forensic accountant in
13 effect; I hope that's not a term that you deplore?

14 A. That is correct.

15 Q. So you're similar in background to Mr Haberman rather
16 than Dr Niels. Would that be a fair summary?

17 A. Yes, although the matters our reports cover are, in the
18 main, quite different.

19 Q. Indeed. You've been here for much of the evidence,
20 I think you just said?

21 A. Correct.

22 Q. Quite an investment of time in the case.

23 A. I've been here for many days, yes.

24 Q. And that may speed up some of the references. Can we
25 start by clearing out a few things that we don't need to

1 discuss. Section 9 of your report. I think it's
2 internal page 40. It's headed "Annex G". So this is
3 your commentary on annex G to the claim, the loss of
4 a commercial opportunity to grow 2 Travel as
5 a successful bus company. You consider that to be
6 double counting and effectively covered by the claim in
7 annex D, the going concern claim?

8 A. Yes. As I say in 9.13, except to the extent that it is
9 found to be considered that 2 Travel was a company with
10 exceptional prospects above that compared to, say, the
11 comparator company on which I based the valuation in
12 section 8. But yes, broadly, with that in mind,
13 I agree.

14 Q. That would come out through the comparison done in
15 section 8 rather than as a separate head under what you
16 deal with in section 9, wouldn't it?

17 A. If 2 Travel as a business was thought to have better
18 prospects than the comparator company in section 8, then
19 there would be an additional amount one might consider
20 would fall under the annex G loss, yes.

21 Q. You say yes, I'm saying no. I'm saying if the
22 comparison leads you to think that, actually, 2 Travel
23 were doing better than the comparator company, that's
24 something that would fall within the matters you discuss
25 under section 8 rather than operating as a separate head

1 of claim under annex G?

2 A. It may be a semantic question. I'm not sure that
3 logically follows. If you're basing your valuation on
4 a multiple that's derived from a particular company and
5 then do not adjust further, then to the extent there was
6 a further adjustment, that would be considered here.
7 But as I say, it's only a potential, and as you say, it
8 doesn't form part -- a main part of the loss of the
9 going concern claim, which is in section 8.

10 Q. And section 10 of your report, on the next page, you
11 refer to the claim in respect of the property, the
12 Swansea depot, set out in annex A to the claim, and
13 there you express no view?

14 A. Correct.

15 Q. Section 11 of your report, again over the page, this is
16 the wasted time claim. There, you say you have seen no
17 evidence that would demonstrate that there has been
18 wasted time. That's correct, isn't it? Nothing
19 you have seen has led you to believe that there had been
20 a diversion of activities?

21 A. Aside from the witness evidence of the witnesses of fact
22 from 2 Travel.

23 Q. So you say it becomes purely a factual matter on which
24 your expert opinion is not, as it were, needed?

25 A. And there would also be a question about whether

1 a wasted cost claim was also claimable alongside a loss
2 of profits or valuation claim as well or whether they
3 would be in the alternative.

4 Q. Subject to those qualifications, you quantify the claim
5 and set that out in your table 13, and you come to
6 a figure of 152,000-odd before interest.

7 A. Yes.

8 Q. I think it's right that Mr Haberman agrees with your
9 arithmetic?

10 A. That's what it says in the joint statement.

11 Q. And for the tribunal's note, that's at page 328 of --
12 tab 21 of the file that we were just in with your
13 statement, which is C. Anyway, it's at tab 21 of
14 file C, the joint report between Mr Haberman and
15 Mr Good. Just so we don't forget it, tab 22 is the
16 joint report between Dr Niels and Mr Good.

17 So those are matters we don't need to go back over,
18 Mr Good. In relation to those that we do, you start by
19 considering the loss of profit that, on your view,
20 2 Travel would have earned from the Cardiff routes but
21 for the infringing conduct.

22 THE CHAIRMAN: Mr Flynn, I think we should probably have
23 a break for the stenographer. Shall we do that now?

24 I was so engrossed in your questions.

25 (3.02 pm)

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(A short break)

(3.12 pm)

MR FLYNN: Mr Good, we were coming on to the loss of profit issue.

A. Yes.

Q. You were instructed to approach this on a but for basis, weren't you?

A. The profits that 2 Travel would have earned but for the infringement, yes.

Q. But for the -- yes, but for the running of the white services?

A. Yes.

Q. Our case, you'll have seen this set out in Dr Niels' report, is that in order to do that, ideally you first of all establish the factual position, what profit or loss did -- in this case, 2 Travel actually make on the Cardiff routes. Then you assess the counterfactual, what profit or loss would it have made but for the white services. And you compare the two.

A. Yes.

Q. In principle, do you agree with that as a framework?

A. Yes.

Q. Dr Niels goes on to explain that when you haven't got a lot of information about the costs of the company, you can obtain a similar result by identifying the

1 counterfactual revenue and subtracting from that the
2 actual revenue to get a figure you could call lost
3 revenue. Do you recall this in his -- we can go to his
4 table if we need to. And then from that lost revenue,
5 you deduct the costs that have been avoided by not
6 having to generate or incur the lost revenue?

7 A. Yes.

8 Q. And that gives you a net figure for lost profit or
9 incremental profit?

10 A. Margin or lost profit.

11 Q. You call it lost profit or the claimant does and
12 Dr Niels calls it incremental profit. Anyway, that's
13 what we're searching for?

14 A. Yes.

15 Q. And you're agreed, aren't you, with Dr Niels -- and it's
16 in the joint report -- that the cost information
17 available from 2 Travel is limited and not sufficiently
18 detailed to be fit for that purpose?

19 A. Yes, both the overall costs of the business, but also
20 the marginal costs of running extra services, yes, which
21 I think need to be considered separately.

22 Q. So in order to carry out this exercise, you've got to
23 make some assumptions about such things as number of
24 buses operated, numbers of passengers, fare levels and
25 costs?

1 A. Well, in the actual world we have some of that
2 information in terms of the number of duties operated
3 and therefore the number of journeys and buses operated.
4 Obviously, in the but for world, it is of course a but
5 for world, so one has to estimate that. So some of that
6 information is available.

7 Q. As to numbers of buses operated in the actual world, we
8 know that by no means all the 2 Travel buses that were
9 scheduled to run, actually ran in practice, don't we?

10 A. That's right, yes, and Clive Rix, on behalf of 2 Travel,
11 identified that, I think, at the time of the OFT
12 inquiry.

13 Q. And I think you took Mr Rix's figures and you arrived at
14 a 58 per cent service provision?

15 A. The figures are set out in appendix 2.4 of my report, so
16 I'll just turn to that, if I may. It's the only figure
17 that's expressed in percentage terms on that page, so
18 it's 84 per cent in April, going down in September to
19 52 per cent. And then Mr Rix's analysis stops at the
20 end of September and then I've made an assumption that
21 the number of duties operated continues to decrease over
22 the remaining three months. And the net is, yes, 57.

23 Q. 57. I'd noted 58.

24 THE CHAIRMAN: Where do we find that 57 on the table?

25 A. You can't, sir.

1 MR FLYNN: I believe that is Dr Niels' extrapolation from
2 these figures.

3 THE CHAIRMAN: Right. So it's line 3, is it?

4 A. It's the one with the note 3 against it, sir, yes. So
5 the fourth line of the table.

6 THE CHAIRMAN: Note 3, averaged.

7 A. Yes.

8 MR FLYNN: Exactly, sir. Percentage of duties operated,
9 that line averaged. And Dr Niels also shows scenarios
10 in which 80 per cent of the services ran and
11 a 30 per cent scenario, based on the VOSA monitoring
12 exercise?

13 A. Yes. I've seen those figures in Dr Niels' report.

14 Q. Even if you assumed in the counterfactual world that
15 2 Travel ran its full scheduled service, that would only
16 be two buses per hour within the hours in which they
17 were meant to run. Is that right?

18 A. Yes.

19 Q. Our case is that the numbers of passengers you pick up
20 are essentially a function of the relative frequency of
21 service, on the basis that, essentially -- and there are
22 some tweaks to that -- but essentially, passengers take
23 the first bus that comes to the stop?

24 A. Yes. I mean, that number is used in both mine and
25 I think Dr Niels' calculation, as a way of saying how

1 many of the white bus passengers would, instead, have
2 travelled with 2 Travel. So we start with an actual
3 2 Travel number and then add to that a number of
4 passengers that one assumes would have transferred from
5 the white buses, not necessarily all. And that differs
6 between the different categories of concessionary and
7 paid. Probably worth pointing out at this point that
8 the 30 per cent number that we heard discussed, I think
9 with Stephen Harrison, which is a market share figure,
10 neither of us have done a market size times market share
11 to give the number of passengers that 2 Travel would
12 have carried. That's not the way either of us have
13 approached the calculation.

14 Q. We'll come back to the 30 per cent point. Dr Niels
15 carries out an analysis of the frequencies on bases
16 which we can go into, but on the assumption that
17 passengers and services on the various sections in the
18 route are equally distributed, he comes to the view that
19 the maximum share that 2 Travel could have sought to
20 obtain was 18 per cent. That's right, isn't it?

21 A. Well, the 18 per cent, I think, is the relative
22 frequency of the 2 Travel buses compared to the liveried
23 services, taking account of the fact that in certain
24 sections of the route, there would be more liveried
25 services going up against the 2 Travel buses, but out

1 in the estates there would be fewer. And that's the
2 number you compute by comparing the relative frequency
3 and also based on a pick-up pattern to get you
4 a composite number across all the sections, yes.

5 Q. In the first place, do you agree fundamentally with the
6 proposition that passengers take the first bus that
7 turns up, by and large?

8 A. I don't think -- I'm not a bus expert. I don't think
9 Mr Fowles agrees with that proposition. I'm not sure
10 that the CC agreed with that proposition. But clearly,
11 there is -- there would be -- it would be a big factor,
12 yes.

13 Q. Well, we looked to some extent, earlier today with
14 Mr Brown, at the Competition Commission findings, didn't
15 we?

16 A. We did.

17 Q. And without going through all of that now, isn't it
18 right that they say, ultimately, various factors may
19 play a part, but for most people, when they turn up
20 at the bus stop, it's the first bus that comes along
21 that they take?

22 A. That's correct, but I think that's also in the context
23 of the CC discussing -- that's correct in terms of once
24 you get to the bus stop. I believe the CC also talks,
25 however, about planning to come out for a particular bus

1 and considered other factors in that context.

2 Q. We'll go over some of those factors. The basic
3 proposition that people essentially take the first bus,
4 that was what Mr Harrison understood the position to be,
5 isn't it?

6 A. I think that's what he said, yes. I'm trying to
7 recollect his evidence, but yes.

8 Q. Well, we might just have a quick look. I don't know if
9 the transcript file is available to you, Mr Good.
10 Mr Harrison on Day 4 at page 103. It's the right-hand
11 two pages if you have the four page version there.
12 Pages 103 and 104.

13 A. I have it.

14 Q. I took him to part of the PwC report, which was quoted
15 from line 6. The simple example of the incumbent having
16 an hourly service and the new entrant coming in and also
17 running a service every hour. And the PwC report said,
18 essentially, the new entrant would expect to pick up
19 50 per cent of the passengers. Do you see that?

20 A. Sorry, can you point me to the line?

21 Q. The quotation from the PwC report is at lines 6 to 12.
22 It says:
23 "If the current operator has an hourly service with
24 an average of ten passengers per journey during the
25 in-fill period, a new service operated by ..."

1 And then I note there's something missing in the
2 report, but presumably "a new entrant":

3 "... every hour should average five passengers per
4 journey as the number of passengers using the route
5 will not vary significantly."

6 A. Yes, I see that.

7 Q. And I put to him:

8 "So that essentially depends on the frequency?"

9 He says "Yes". I put to him towards the bottom of
10 103 that you wouldn't expect to change the number of
11 passengers on the route, and then at the top of 104,
12 I put to him that he had been told by Mr Fowles that
13 a passenger waiting at the bus stop would be likely to
14 take the first bus that arrived, and he said "Yes" to
15 that. That's the basis on which the PwC report was
16 prepared.

17 The idea that in our case, the people who take the
18 first bus are concessions, which I think you agree with,
19 concessionary travellers?

20 A. I never actually have to consider that in my report.

21 It's only in the context of how many white bus
22 passengers would be picked up, which, as I say, is not
23 necessarily based on these strict market share by
24 frequency ...

25 Q. I think it's noted on page 331 in the joint report with

1 Dr Niels -- maybe this is a good enough place to pick it
2 up. You'll see in the bottom half of the page --

3 A. Sorry, where are we looking?

4 Q. Page 331 within tab 22. Internal page 3 of the joint
5 report:

6 "Passengers on multi-journey and season tickets.
7 The experts agree that 2 Travel would not have picked up
8 any of the multi-journey or season ticket white bus
9 passengers."

10 And then:

11 "Concessionary passengers."

12 Our case is that they board the first Bus to come
13 along. You have a view set out, summarised in the
14 left-hand column, which is that 2 Travel would have
15 picked up, up to 50 per cent of those white bus
16 concessionary passengers. That's on the basis of the
17 relative frequency of the Cardiff liveried buses along
18 the whole route; is that a fair summary of your position
19 as set out there?

20 A. Yes, but it is also in the context of the point above,
21 for example, the point we were hearing from Mr Brown
22 about earlier, as to whether the white bus was running
23 immediately in front of the 2 Travel service and whether
24 that would, therefore, mean that the number of
25 passengers 2 Travel would have picked up would not

1 follow the relative frequency directly. So yes is the
2 short answer. That's what I said here in relation to
3 concession passengers and pick-up, but that is also
4 in the context of the point above.

5 Q. The point above being that, as it were, Cardiff Bus
6 might have snaffled them all; is that what you're
7 saying?

8 A. If the white bus was running just ahead of the 2 Travel
9 service -- and I think Dr Niels agrees with this in part
10 at least -- then they could effectively be considered as
11 one service. And therefore, when you're considering the
12 number of the white bus passengers that would have moved
13 over to 2 Travel, then the one that comes one minute
14 behind would be considered the obvious destination for
15 those white bus passengers.

16 THE CHAIRMAN: Have I got this right: you add up the white
17 bus and the 2 Travel passengers and then you subtract
18 from that, the multi-journey and season ticket
19 passengers?

20 A. Broadly, sir. We segment both the 2 Travel and the
21 white bus between multi-ride, full fare and concession.
22 Then I take the 2 Travel actual passengers that
23 travelled and then to that I add a proportion of the
24 white bus passengers, and that proportion depends on the
25 type of ticket they held. So I'm saying here for the

1 multi-ride, none, because if they have a liveried season
2 ticket, I don't assume that they would therefore,
3 instead, travel with 2 Travel, absent the white bus.
4 For the full fare, I assume all of them would travel
5 with 2 Travel instead of on the white bus because these
6 are passengers who have chosen to travel on the white
7 bus. And then for the concession, there's clearly an
8 assumption that has to be made as to how many of those
9 concession passengers would choose to travel with
10 2 Travel; is it the relative frequency, the 18 per cent,
11 or is it something higher or much higher, if in fact the
12 white bus was just ahead of the 2 Travel bus and
13 therefore they only have to wait a minute longer and
14 they get the 2 Travel bus?

15 MR FLYNN: Did I hear you say just now that you would assume
16 that all white bus travellers would have taken the
17 2 Travel because they'd chosen to travel on the white
18 bus?

19 A. For the full fare, which was the assumption that was
20 derived from the LECG report that was prepared for
21 Cardiff Bus to the OFT, and it was also the initial
22 assumption in Cardiff Bus's defence.

23 Q. But not the case that Cardiff Bus is putting to this
24 tribunal?

25 A. No.

1 Q. Which is that people would essentially take the first
2 bus, so the white bus passengers need to be distributed,
3 not all allocated to 2 Travel, but because they took the
4 first bus that came along?

5 A. As a summary of Cardiff Bus's position, yes, I agree
6 that's the position, as I understand it.

7 Q. What basis do you put forward for suggesting that people
8 chose to go on the white bus and wouldn't have gone on
9 the liveried bus?

10 A. In terms of full fare paying passengers here? Because
11 I think -- is that what we're talking about?

12 Q. I think they're the ones you leave -- they're the ones
13 you distribute in that way, I think.

14 A. They distribute 100 per cent to 2 Travel, yes. That's
15 based on price sensitivity. I heard Mr Brown talk about
16 price sensitivity being more of a marginal issue, and
17 clearly that's a factor that the tribunal will have to
18 take into consideration. We've seen what the CC says
19 about price sensitivity. For whatever reason, these
20 were passengers who had chosen to pay the white bus
21 fare. Maybe they would have chosen to pay the liveried
22 fare, but they had chosen to pay the white bus fare, and
23 2 Travel is operating a similar kind of service.

24 Q. What the CC says is that sort of consideration might get
25 you out there, but it's largely overridden. When you

1 get to the bus stop and a bus comes along, you hop on
2 it?

3 A. Once you're out at the stop, yes.

4 THE CHAIRMAN: But equally, supposing I'm standing in the
5 rain which occasionally happens in this city, and the
6 next bus that comes along is the Cardiff Bus, I'm pretty
7 likely to get on that one.

8 A. Unless you're the person talked about by Clayton Jones,
9 for whom the fare difference is important, then I could
10 quite understand that.

11 THE CHAIRMAN: Or the friendly bus driver.

12 A. Yes, vulnerable to kindness. But I think that was in
13 terms of concession passengers rather than the full
14 paying.

15 MR FLYNN: You say that people came out to catch the white
16 bus. Does that assume there's some timetable operating
17 so they know to come out and get the white bus?

18 A. Yes, you'd have to have a timetable. Sorry, for the
19 white bus?

20 Q. Yes, the white bus.

21 A. Yes, although if they were coming out for the 2 Travel
22 bus and the white bus was just ahead of it, then they
23 could be coming out for the 2 Travel timetable.

24 Q. These were well served routes, weren't they, with
25 several buses in any one hour?

1 A. That depends on the section you look at. Certainly the
2 closer to the centre of town, there was a very high
3 frequency of buses. Out in the estates, there was a
4 lower frequency of buses and I know that Mr Bev Fowles,
5 his vision for these services was that it would pick up
6 the passengers out in the estates, where there is a
7 relatively lower frequency, albeit it's around sort of
8 20, 25 per cent. So it's still not as if it's 1 to 1.
9 I agree, liveried has more services by quite some way.

10 Q. If we look in the transcript bundle at Day 1, page 12.
11 Sorry, I've got a wrong reference here. I'm looking for
12 Mr Clayton Jones.

13 THE CHAIRMAN: There is a word index. (Pause).

14 MR FLYNN: 121. In re-examination, Mr Bowsher -- this was
15 probably the day you weren't here.

16 A. It was, correct.

17 Q. Mr Bowsher put to Mr Clayton Jones, who's an operator
18 from various other companies but not involved in
19 2 Travel:
20 "You were being asked some questions, Mr Jones,
21 about preferences for particular buses and it was being
22 suggested to you that people tend to prefer the first
23 bus that comes along. Would it be your experience that
24 if there is a timetable, people plan their journey
25 around timetables for those buses?"

1 And Mr Clayton Jones responds:

2 "It depends what routes. If it's a high frequency,
3 no. If it's a low frequency, yes."

4 And that's essentially what Mr Brown also said
5 earlier today, isn't it?

6 A. Yes.

7 Q. These were high frequency routes, weren't they?

8 A. In what definition of high frequency?

9 Q. They were registered as frequent services?

10 A. Okay. The analysis that Dr Niels has done shows that --
11 there's, I think, five an hour, for example, out in the
12 estates, of which -- sorry. 25 per cent would be
13 2 Travel. Two an hour, so yes, there would be, on that
14 basis, ten an hour.

15 Q. The tribunal may have seen the frequency charts.

16 I think the step charts are in I5 and those, you know,
17 the numbers there speak for themselves. But these are
18 frequently served routes, aren't they?

19 A. Yes.

20 Q. And Mr Bev Fowles' evidence on Day 2, if you look at
21 page 47 of Day 2. Look at line 8. Mr West is putting
22 to Mr Fowles:

23 "The first point [and he has just been through all
24 the services], these were clearly all frequently served
25 routes, were they not? Even without the white bus, you

1 have six Cardiff Bus liveried services and there's a
2 minimum on each of these routes, which means one service
3 every 10 minutes at a maximum and as Mr Jones told us
4 yesterday, that's a frequently served route, isn't it?"

5 Mr Fowles agrees and the question is put to him:

6 "On frequently served routes, as Mr Jones also told
7 us yesterday, passengers don't come out for a timetable,
8 do they?"

9 "Answer: No, they may not. They may not. It's
10 what's phrased a turn up and go service."

11 So that was Mr Fowles' evidence, Mr Bev Fowles,
12 in relation to timetable. You mentioned price
13 sensitivity.

14 A. Mm.

15 Q. And we've touched on what the Competition Commission has
16 to say about that, and I suppose we can all read the
17 report and make our own judgment from it, so I don't
18 have to put individual propositions to you. As I said,
19 their overall conclusion is when push comes to shove,
20 people are more time sensitive than price sensitive.
21 That's, I don't think, an unfair summary.

22 THE CHAIRMAN: I don't think that was a question.

23 A. I wasn't taking it as one, sir.

24 MR FLYNN: I'm saying to Mr Good, but also for the
25 tribunal's benefit, I don't think in this

1 cross-examination, I need to read out great reams --

2 THE CHAIRMAN: Absolutely not.

3 MR FLYNN: Well written though it all is, as was said
4 earlier.

5 So price sensitivity, I think we're agreed, aren't
6 we, that has no impact on concessionary passengers?

7 A. Yes, we're agreed on that.

8 Q. Mr Harrison, you heard his evidence?

9 A. Yes.

10 Q. He saw no point in having a low price at all. Do you
11 recall that?

12 A. I did. It sounded like he was in disagreement with
13 Mr Bev Fowles on that.

14 Q. So if we look at page 127 on Day 4. 126 might be right.
15 If you look at page 126, line 19, Mr Smith asks from the
16 bench:

17 "Did you ask or would anyone at PwC have asked, for
18 instance, whether there was a strategy with regard to
19 comparative pricing? In other words, whether the
20 2 Travel prices for a given fare would be lower than the
21 competition's pricing?"

22 Mr Harrison said:

23 "I think, from memory, it was lower to start with.
24 I couldn't understand that. I didn't understand why it
25 needed to be lower because, to me, it could have been

1 the same price. I think that was the view I had at the
2 time. I'm going back such a long time now that I might
3 be wrong but that's, I think, when we were discussing
4 this, they were talking about having lower prices at the
5 beginning. I couldn't understand the logic for that on
6 the principle if a bus turns up, why wouldn't you just
7 get on the bus? As long as the prices weren't higher,
8 why wouldn't you have equal pricing?"

9 So that was Mr Harrison's position. And indeed, his
10 view ultimately prevailed, didn't it? Do you remember
11 that?

12 A. I remember Mr Harrison being taken to the second PwC
13 report, where it discusses that matter, yes. But I also
14 note that the OFT at page 22 clearly says that in fact
15 the white bus didn't put up its prices -- sorry, the
16 2 Travel or white bus didn't put up their prices during
17 the duration that they were in operation. So it looks
18 as if, although there may have been a general
19 proposition in the PwC report around the whole of the
20 2 Travel operations, according to the OFT, that's not
21 what happened in Cardiff in-fill. And I have my own
22 data on the average price, white bus price, which is set
23 out in the appendices to my report, which you can't say
24 exactly whether there was or wasn't a price increase
25 because we don't have data that goes on for very much

1 longer, but it does look as if there wasn't a price
2 increase implemented.

3 Q. But we're really on the question of whether people
4 actually are price sensitive rather than what the actual
5 level of the prices was at any one time, aren't we?

6 A. Yes, and I notice that the white bus prices were even
7 lower than the 2 Travel prices, according to the OFT in
8 table 5. So clearly, there's a view somewhere that
9 prices matter.

10 Q. That was no doubt part of the infringement, part of the
11 reason why the Cardiff Buses didn't cover their cost.
12 The PwC report -- we don't need to go to that then, on
13 the basis of your answer, but the reference, if anyone
14 wants it, is E7/420. That was, I think, put to
15 Mr Bev Fowles. He recognised that the price increase
16 assumption had been put in the PwC second report and he
17 said -- if you'd like to look at that, it's page 137 of
18 Day 2. Line 5:

19 "Well, we were encouraged by the numbers of people
20 we were carrying. Clearly, once you've established
21 yourself in the market, then there's a tendency that you
22 don't have to be as cheap as you had been. You've made
23 your entry and then there's a time to start increasing
24 fares. If we found there was a potential to do that,
25 then quite clearly, that's what we would do."

1 A. Okay. So he's expressing the aspiration that they would
2 do that in the future, yes.

3 Q. So it's not just a disagreement between Mr Harrison and
4 Mr Bev Fowles on this issue, is it, Mr Good?

5 A. We'd have to go back to the precise wording of
6 Mr Harrison. I think Mr Harrison was saying at the
7 start-up, he couldn't see from the off why the prices
8 should be low, and I think Mr Fowles is saying you need
9 to start low to encourage traffic.

10 Q. I think he'd say once you are there at any rate, the price
11 sensitivity doesn't play in the same way, you can put
12 the fares up?

13 A. He's certainly suggesting there's scope for that, yes.

14 Q. Do you place any importance on friendly drivers,
15 Mr Good, as a differentiator?

16 A. If we just sort of step back to where this impacts the
17 numbers. As I say, this is all going to the question of
18 how many white bus passengers would 2 Travel have picked
19 up if the white buses hadn't travelled. Clearly, there is
20 a basket of factors there. The relative importance of
21 those factors -- maybe it's becoming clearer across the
22 course of the last two weeks. It's certainly a factor
23 to think about. Whether it's a key or major factor, I'm
24 not sure I'm in a position to say.

25 THE CHAIRMAN: Do we have any evidence at all, whose were

1 the friendlier drivers?

2 MR FLYNN: Other than Mr Fowles saying that his people
3 always had a hello and a bye bye, I'm not really sure we
4 do. There's Mr Brown's evidence earlier today that,
5 of course, if you have customer facing personnel, you
6 encourage them to be as friendly as possible. So
7 I don't think there's a table, sir, anywhere, that will
8 show you a comparison. It has been suggested on more
9 than one occasion, I think by my learned friend, that
10 friendly drivers might become an issue in this case.
11 I didn't see any reference in Mr Good's report, I just
12 wanted to be sure that that wasn't a factor that he was
13 laying any particular weight on for suggesting that the
14 numbers might follow anything other than relative
15 frequencies, which we say is the key.

16 THE CHAIRMAN: I only asked the question because if somebody
17 is asking this tribunal to make a finding as to which
18 company had friendly drivers, I think there's a bit of
19 a lack of evidence, isn't there, on that particular
20 point?

21 MR FLYNN: That would be our submission, sir.

22 MR FREEMAN: We're into behavioural economics, aren't we?

23 MR FLYNN: We are indeed. We are indeed, sir.

24 THE CHAIRMAN: It may depend on the number of the bus.
25 Drivers on a 13 may be less friendly than drivers on

1 another. I really think we're into that sort of arena
2 on this, unless somebody draws our attention to
3 something specific.

4 MR FLYNN: I shan't say more about it, sir. At this sort of
5 level of reasons that might influence passengers to take
6 one bus over another, you heard Mr Brown's evidence
7 earlier today in relation to buses that are a bit lower
8 so that you can get on if you're elderly or disabled or
9 have a buggy. You heard that sort of thing?

10 A. Yes, I did.

11 Q. And fundamentally, people did take the white service,
12 which in all relevant respects was comparable with the
13 2 Travel buses but had no timetable. So it's hard,
14 isn't it, to maintain that they came out and selected
15 the white service for some feature that's different from
16 2 Travel, or 2 Travel over the white service?

17 A. I don't think I can say why people eight years ago chose
18 to take a bus.

19 MR FLYNN: Sir, I'm conscious of the time and I'm coming on
20 to a passage in Mr Good's report that may take a little
21 longer than ten minutes or so.

22 THE CHAIRMAN: We'll make a start, Mr Flynn.

23 MR FLYNN: I'm absolutely in your hands, sir. What time are
24 we ...

25 THE CHAIRMAN: Ten past four? Let's go on until about 4.10

1 and then I think the stenographer will have had more
2 than enough.

3 MR FLYNN: He may not be the only one, sir.

4 Mr Good, you also refer in your report to market
5 share estimates that Mr Bev Fowles made in respect of
6 what 2 Travel would have expected, absent the white
7 services. That's correct, isn't it? I'm looking at
8 5.3.15 of your --

9 A. Yes.

10 Q. Just taking what's said at face value there, you're
11 accepting, I think, the principle of relative frequency
12 there, aren't you, implicitly? Those market shares are
13 based on ...

14 A. Well, as with the joint statement, what I say in 5.3.15
15 here is then modified by 5.3.17, in terms of how the
16 white bus was running as compared to 2 Travel bus. So
17 yes, clearly, relative frequency is an important factor,
18 as I think I said earlier.

19 Q. Those initial market shares are based on the principle
20 of relative frequency, aren't they?

21 A. Yes.

22 Q. Whether the numbers are actually right is another
23 question, but --

24 A. Certainly.

25 Q. But that's the principle?

1 A. Yes.

2 Q. And you're not, are you, casting any doubt on the
3 analysis of actual frequencies that Dr Niels has
4 performed?

5 A. No. No, I think the question is in the application of
6 that rather than the calculation of that.

7 Q. It's not right, is it, that 2 Travel was going to run
8 three buses an hour on certain of those services?

9 A. I'm not sure on that. Um ... I know they were planning
10 to run 20 buses in all. Whether that's three or two
11 departures per hour -- my understanding is it was two
12 departures per hour.

13 Q. And I think Mr Fowles accepted on Day 2 that some of
14 those figures were wrong, particularly what it says
15 about the 245. If one looks at page 133 of Day 2. I'm
16 not sure we shall ever find out exactly what was right
17 about that. But Mr West puts that to him at 133, line
18 23:

19 "Taking the 144 service, Cardiff have two buses, the
20 45 and the 44; 2 Travel have the 245, where we had two
21 buses."

22 Mr West says:

23 "That's just nonsense, isn't it? If you're talking
24 about the number of buses per hour, Cardiff Bus had
25 four buses per hour on each of the 44 and the 45, did it

1 not?"

2 He says:

3 "I thought it had three buses on 20-minute
4 intervals. They may well have altered that during the
5 period, I don't know."

6 Mr West says:

7 "Why have you said only one bus on each of the 45
8 and the 44?"

9 "Answer: We didn't, we used the 45. We put two
10 buses on the 45."

11 And then he says:

12 "It should say two routes, not two buses."

13 And he's asked:

14 "If it is four buses on the 45 and four on the 44,
15 that would undermine your figure of 30 per cent, would
16 it not?"

17 And he falls back on saying that the service is
18 different:

19 "Again, we would have to go back to the type of
20 service that we operated and possibly the unpopularity
21 of Cardiff Bus, in particular the fact that it didn't
22 give change and the crew attitudes. Drivers were meant
23 to be and were, in most cases, very friendly, tried to
24 talk to people to pass the time of day, provided that
25 different aspect to the service."

1 Then Mr West puts to him that there might be other
2 factors as well as friendliness. That we've been over.
3 A. I think Dr Niels has done, perhaps, a more scientific
4 analysis of frequencies.
5 Q. Well, that's a fair concession, Mr Good. Mr Fowles'
6 estimates, can I put it to you directly, are all over
7 the place and not reliable as a basis for preparing an
8 expert's opinion?
9 A. Is that a general proposition or in relation to -- if
10 that's a general proposition, I am not sure I can accept
11 that without some further discussion. In relation to
12 the frequency analysis, I think Dr Niels' analysis is
13 probably to be preferred, on the basis of the documented
14 facts.
15 Q. Thank you. We'll come back to frequencies. I think
16 another point that you have mentioned as a particular
17 aspect of the 2 Travel strategy was the idea that most
18 passengers would be picked up on the outskirts rather
19 than in the routes approaching the city centre. I don't
20 mean to put words in your mouth, but I think you said
21 something along those lines earlier.
22 A. That's how Mr Fowles had described his strategy in his
23 statement, yes.
24 Q. So your understanding is that their intention or hope
25 would have been to pick up the bulk of the passenger

1 load at the beginning of the route; is that right?

2 A. In the estates, I understand, yes.

3 Q. In the estates. And that would give a greater frequency
4 of service relative to Cardiff Bus than if you go closer
5 in?

6 A. Yes.

7 Q. That's the basis of that proposition. And I think
8 Mr Fowles again gave some evidence about that. I think
9 we've probably already looked at those passages. That
10 was Day 2, around about 45 and 46.

11 In the light of what you've just said about
12 Dr Niels' estimates, perhaps I don't need to put
13 a further question on that.

14 The results of your analysis of this issue are still
15 to be found, are they, in table -- I'm sorry, this is
16 Dr Niels' analysis, shown in table A3 and A4 in his
17 report. If I'm right about those, they will be found in
18 file D at tab 9.

19 THE CHAIRMAN: D2?

20 MR FLYNN: I don't think our numbers correspond, sir.

21 I believe there's a tab 9, which ...

22 THE CHAIRMAN: Bear with us for a moment, Mr Flynn.

23 (Pause).

24 MR FLYNN: Sir, you'll think I'm skiving, but I wonder if it
25 might be better if we do stop there because it will be

1 a little complicated and it'll be better if you actually
2 have the right ...

3 THE CHAIRMAN: I'm absolutely outraged by your skiving,
4 Mr Flynn, but we'll concede to stopping there.

5 MR FLYNN: Thank you, sir. I believe we're starting at
6 9.30; is that correct?

7 THE CHAIRMAN: If that's all right with counsel and with
8 you, sir.

9 MR FLYNN: Yes.

10 THE CHAIRMAN: Right. We'll start at 9.30 tomorrow.
11 (4.00 pm)

12 (The hearing adjourned until 9.30 am the following day)

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