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IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1178/5/7/11

Victoria House,
Bloomsbury Place,
London WC1A 2EB

22 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 8)

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.

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Thursday, 22 March 2012

(9.30 am)

MR NICHOLAS LUKE GOOD (continued)

Cross-examination by MR FLYNN (continued)

THE CHAIRMAN: Good morning.

MR FLYNN: Good morning, Mr Good. Last night we broke off -- we were just about to deal with evidence in relation to the contention or the aspiration of 2 Travel that it wanted to pick up most of its passengers in the outskirts of Cardiff. I was going to take you to tables in Dr Niels' report. That's where we broke off, and I think now everyone has a tab 9 in the D range files. If you have Dr Niels' report in tab 8, there will now, if there wasn't before, be a tab 9.

For those who haven't been lucky enough to be given a tab 9, it's the last eight pages.

You have a tab 9, Mr Good?

A. Yes.

Q. If you can find within that -- I don't know if your copy is paginated -- table A3.3 and A3.4. Do you see those?

A. I do.

Q. And you're familiar with those, I imagine?

A. Yes.

Q. They show Dr Niels' calculation of, route by route, the section within the route on which passengers of various

1 types boarded it. Do you see that?

2 A. That's right, yes.

3 Q. Section 1 is effectively the outskirts, isn't it?

4 Section 1 of each route is the outskirts, the outlying

5 estates?

6 A. Yes, you need the map to see that, but that's right.

7 Q. We'll go to the map if we need to, but that's the point.

8 So if one looks across each route, one sees the various

9 percentages of people who boarded in that sector. And

10 it's right, isn't it, that that does not show that most

11 of the passengers would have got on at that point?

12 A. Well, this analysis is based on a slightly strange

13 period because it's based on the first ten weeks of

14 2007, and I know that, for example, when Mr Fowles was

15 contemplating starting the service, he reckoned that was

16 not a good time to be running buses and for his service,

17 it was better to start in April. It's 2007, not 2004.

18 It's a relatively short period and, of course, these are

19 liveried services, so with those caveats, I appreciate

20 this is the data we have, we have to work with the data

21 we have, and that shows a varying percentage between --

22 I think it's 69 on 144, down to, looking at "Adult",

23 down to 40 per cent on the 117.

24 Q. Yes.

25 A. Of course, they can't be the 117 and the 144 because

1 they weren't in operation in 2007, but I understand what
2 Dr Niels is doing.

3 Q. You understand what's being done. There is, as you say,
4 some limitation on the data. But have you any reason to
5 suppose that if this had been taken in an April rather
6 than a January, if that's what you're saying, if this
7 had been done in April, it would be significantly
8 different?

9 A. No. I just -- I have no reason to know either way.
10 I am just commenting that it's slightly strange just to
11 take the first ten weeks of 2007, I don't know why that
12 was done, and also to observe that these are
13 liveried services and 2 Travel was aiming for a segment
14 of the liveried service passengers rather than
15 necessarily all of them. Although I appreciate efforts
16 have been made to correct for that because it's only
17 based on the periods of operation that 2 Travel was
18 aiming to operate, broadly.

19 Q. And these splits, which do show the proportions that
20 they show of people getting on in section 1 and in other
21 sections, these are already factored into Dr Niels'
22 18 per cent figure, aren't they?

23 A. That's right, yes.

24 Q. Now, you contend otherwise for a higher share, as
25 I understand it, of the market, on the basis of various

1 factors, starting with Mr Fowles' evidence. That's
2 right, isn't it?

3 A. Again, we're into a question of market share and what
4 market share is used for. As explained, I think
5 yesterday, market share is used to calculate the pick-up
6 of white bus passengers by 2 Travel. So the question
7 I'm seeking to answer is how many of the white bus
8 passengers would have been picked up by 2 Travel.

9 Q. But the assumptions that you use don't suggest, do they,
10 that you are looking at people who get on at section 1
11 and carry on into the city centre? I'm thinking of the
12 average fare that you take for the passengers that
13 you're considering.

14 A. The average fare I take is based on the average as
15 experienced by 2 Travel during its period of operation.

16 Q. And that's in your table 1, is that right,
17 paragraph 5.2.3 of your report?

18 A. Yes.

19 Q. So the average fare that you're using is in the 80p sort
20 of range, isn't it?

21 A. Yes.

22 Q. If one looks down that. But if you got on the bus
23 in the section 1 and carried on all the way into the
24 city centre, the fare would be much higher than that,
25 wouldn't it?

1 A. I think it would have been a pound.

2 Q. I think if we look at 5.4.35 of your report, it will go
3 up to £1.20.

4 A. Sorry, yes, £1.20.

5 Q. So if the average is 80, that suggests that many people
6 are paying the full, all four zones fare, does it?

7 A. No, to pay £1.20, as I understand it, you'd have to
8 start in the estate and go all the way into town.
9 Doesn't mean you didn't start in the estate and go
10 part-way into town, which means you'd still be being
11 picked up in the estate.

12 Q. Indeed, that's right. I think what is being said by
13 2 Travel is: we weren't really expecting to pick up many
14 people on the arterial -- on the corridors as they kind
15 of thicken and more buses are coming in, we would have
16 expected to pick up the passengers we were carrying on
17 the outskirts and if the average is 80p, it doesn't
18 suggest they were actually taking many people all the
19 way, does it?

20 A. Well, the 80p average also includes children, so I'm not
21 sure it's quite right to do an exact comparison between
22 that and the full £1.20, in order to derive that
23 conclusion.

24 Q. The average would be higher than 80 if, in fact, a large
25 proportion of the passengers were travelling all the

1 way, whether they were adults or children, wouldn't it?

2 A. I would have to look at the children's fare. If you
3 want to turn to that -- I think it's in the OFT
4 decision, table 5. You could get to an average of 80
5 with an adult at £1.20, a child at a lot less, yes.
6 There are any number of ways that you could get to 80.

7 Q. And in any event, 2 Travel buses were not going to be at
8 the estates, starting a journey in section 1 at the
9 highest peak time for going in, were they, because they
10 were being used for the school runs?

11 A. I'm not sure I've seen data on the pick-ups by hourly
12 segments, so I'm not sure that -- I just can't say what
13 the peak for an in-fill service like this or the white
14 bus would be.

15 Q. But in any event, I think it's agreed the 2 Travel buses
16 wouldn't have been available before 8.45 or 9 o'clock
17 in the morning because they were being used for school
18 runs?

19 A. I agree.

20 Q. So any intense traffic for people trying to get into
21 work or anything before that, they simply weren't
22 available?

23 A. Absolutely.

24 Q. Can we move to the topic of what in your report you call
25 "Growth". I think terminologically, as I understand it,

1 you and Dr Niels are actually agreed that what you mean
2 by growth in this report is to get from wherever you
3 start to the six months sort of top passenger numbers,
4 and then it sort of plateaus from there; is that right?
5 I haven't put that very well, but over a period of six
6 months, you achieve what you need to --

7 A. Certainly in the way I've calculated the numbers, yes,
8 there is a ramp up period for the first six months,
9 after which that is assumed to be steady state.

10 Q. I just wanted to pick that up in the joint report.

11 THE CHAIRMAN: Why as long as six months?

12 A. I'm sure I'll be taken to this, but there's evidence
13 both from Neath and Swansea that that's how long it
14 took, and also that was Mr Fowles' opinion as well.

15 MR FLYNN: If we can just look -- this is in tab 22 of the C
16 files, the joint experts' reports. Tab 22 is the note
17 of the meeting between you, Mr Good, and Dr Niels, isn't
18 it? At page 334 in the --

19 THE CHAIRMAN: We don't have the page numbers. Internal
20 page?

21 MR FLYNN: Internal 6, bottom right.

22 You'll see on that page the first two elements of
23 the experts agree:

24 "The experts agree that any potential growth would
25 come from 2 Travel taking market share from Cardiff Bus

1 rather than growth in the size of the Cardiff Bus
2 market."

3 A. Yes, that's right, although I did hear Mr Brown
4 yesterday, I think, or possibly Monday, when discussing
5 the key assumptions behind the business plan and whether
6 competition, no competition, et cetera, was an element,
7 that actually, he said that the key assumption in his
8 business plan was passenger number growth. So clearly
9 it's not entirely static, but yes, for the purposes of
10 these calculations, I've assumed that it's static.

11 Q. And that's the subject of the second point of agreement
12 on this page:

13 "After the initial first six months of 2 Travel's
14 operations, it can be assumed there is a constant state
15 in which no further growth is achieved."

16 A. In terms of passenger numbers, yes.

17 THE CHAIRMAN: I can understand that perfectly, but I wonder
18 why we have to have six months? Is the six months based
19 on any analysis or is it just educated guesswork based
20 on what Mr Fowles said? Because it's talking about
21 people standing at bus stops on their way to work or
22 shopping.

23 A. Yes, sir. It'd be helpful to turn to the Swansea/Neath
24 experience, if you wish to now. Mr Flynn will take me
25 to that later.

1 THE CHAIRMAN: We'll come back to that later, I'm sure.
2 I don't want to distract him unnecessarily.

3 MR FLYNN: We will come to that. So at 5.4.8 of your
4 report, that's what you mean when you talk about "the
5 immediate short-term growth of the in-fill services that
6 could have been expected"?

7 A. Yes.

8 Q. And the longer term growth, as I understand it, is
9 revenue growth?

10 A. Yes, following the analysis in here. That's where --
11 the final point that's taken in calculating the numbers,
12 yes.

13 Q. To which, basically, you apply an RPI factor to the
14 current fares. That's how you deal with revenue growth
15 in your --

16 A. To the 2004 fares, yes. So that would have led, if
17 2 Travel had continued to do an average fare of about £1
18 by now ...

19 Q. And is your contention then, is it still your
20 contention, as I understand it, that over that six month
21 period, 2 Travel would have reached a 30 per cent market
22 share by the six months, but for the operation of the
23 white services?

24 A. No. I don't make any assumption about the market share
25 that would have been achieved by the end of the growth

1 period. We heard some numbers discussed with
2 Stephen Harrison, for example, about the number of
3 passengers on the bus, and I think it was put to him
4 that it would be about 60 to 70 passengers on the bus.
5 Just to put it in context, even after all the growth,
6 I'm suggesting that on the low side, there will be about
7 15 passengers on the bus and on the high side, there
8 would be about 22 passengers on the bus.

9 Now, as I've said, we don't have the relevant or
10 I have not seen the relevant market size data to enable
11 me to understand what that means in terms of overall
12 market share at the end of the growth period. But
13 clearly, if PwC were looking at 30 per cent, were basing
14 their calculations on a 30 per cent growth and they get
15 to that number of passengers per bus and I have a much
16 lower number of passengers on the bus, then it follows
17 that the market share would be much less as well.

18 MR FREEMAN: This is the bus in the counterfactual?

19 A. Yes.

20 MR FREEMAN: Which assumes no white bus service, just
21 a 2 Travel service?

22 A. Correct, sir, yes.

23 MR FLYNN: So are you accepting the point that I put to
24 Mr Harrison about the calculation of the £1,920 per week
25 forecast revenue in the PwC report?

1 A. I don't disagree with the maths there, no.

2 Q. So that's one leg of your growth assumption, 5.4.10, and
3 so forth. It is, in fact, the PwC report, isn't it?
4 And you haven't --

5 A. I haven't -- I've been more conservative than PwC in
6 assuming growth. Because we don't know the market size,
7 I can't say exactly what market share I get to, but it
8 must be less than PwC's assumption of 30 per cent.

9 Q. Because in your revised report at 5.4.43, you have
10 simply struck out --

11 A. Yes.

12 Q. -- the comparison between your revenue figures and those
13 reached in PwC?

14 A. Yes. I realise that one was on a per bus basis and one
15 was on a per route basis.

16 Q. But you haven't made any corresponding revision to
17 5.4.10 and 11, where you appear to be relying on PwC as
18 the heading says, for sources of evidence for the growth
19 assumption?

20 A. Well, in that my assumptions are more conservative than
21 PwC, I'm not sure that that would then lead me to strike
22 out 5.4.10 or 5.4.11.

23 Q. I see. But you say there:
24 "Revenue was forecast to reach £1,920 per week per
25 route in the sixth month."

1 A. In paragraph?

2 Q. In paragraph 5.4.10.

3 A. This is where the confusion is. I should have corrected
4 this as well. You're right. That is per bus per week.

5 Q. So in effect, PwC doesn't really help you here on the
6 growth assumptions; is that right?

7 A. Well, PwC forecast in total revenue figures in a steady
8 state, of 1.6 million a year. Between my low and high
9 case -- and this is important, so I will just turn to it
10 in my appendices -- in the low case, I forecast a steady
11 state lost revenue of just under 400,000.

12 Q. Sorry, you're pointing to?

13 A. Appendix 2.1. Then it's about two-thirds of the way
14 down. There's a total line, lost revenue, and then
15 ignoring --

16 THE CHAIRMAN: Appendix 2.1?

17 A. Sorry, there are two appendix 2.1s. There's a summary,
18 a very short summary page, but the main page --

19 THE CHAIRMAN: Where do we find the 400,000?

20 A. About two-thirds of the way down on the left is a line
21 "Lost revenue", which is a total line. And then if you
22 ignore the first set of figures, which is a monthly
23 during the period of the actual operations of 2 Travel,
24 and go to the first column in the next set, which are
25 the annuals, you can see it starts at 390667.8 and then

1 with the RPI, it ends up at 465,000. And that's low
2 case. And then the equivalent in appendix 3.1 is
3 £617,000 per year. To be precise, to help you locate
4 it, it's --

5 THE CHAIRMAN: I've got it.

6 A. So I think where we came in on that was looking at
7 comparing my figures to PwC's figures and concluding
8 that I'd been significantly more conservative in the
9 growth assumption.

10 MR FLYNN: And effectively, PwC just doesn't help you there;
11 is that right?

12 A. Well, if PwC have assumed something that's higher and
13 I'm being more conservative and my numbers are lower,
14 then I don't think one throws away entirely, PwC. One
15 simply says: I've been more conservative than PwC.

16 Q. PwC's figures would require you to have 70 passengers
17 per journey for each bus, wouldn't they? That's not
18 just a different version of being conservative, that's
19 just a completely unrealistic projection, isn't it?

20 A. Well, you put that to Mr Harrison, yes.

21 Q. I'm putting it to you.

22 A. I can't say for sure. It does sound like a high number.
23 Whether they operated double deckers or if the
24 passengers' growth had been as strong as they'd hoped,
25 they would have ended up with either bigger buses or

1 more buses but it's hard to tell from the PwC model
2 whether that's built in. I don't think that's built
3 into the model, so I think something would have had to
4 have changed to allow, probably, to allow 2 Travel to
5 have carried that many passengers, yes.

6 Q. You were here for Mr Cartwright's evidence, who told us
7 that most of the fleet were 35 seaters?

8 A. Yes, exactly, so they would have had to have changed
9 something.

10 MR SMITH: Mr Good, as I understand it, though, your
11 calculations don't depend on the PwC conclusions?

12 A. That's correct, sir.

13 MR SMITH: You might use them as a cross check.

14 A. Exactly, thank you.

15 MR SMITH: But you could take out the PwC report altogether
16 and nothing in these spreadsheets would change at all?

17 A. That's correct.

18 MR FLYNN: So if we leave aside PwC, you then also rely on
19 Mr Fowles. This is another source of your evidence of
20 your growth assumption. At 5.4.12 and 5.4.13. There,
21 you point to Neath, Llanelli and Swansea, which we are
22 coming on to. But you note that Mr Fowles said that the
23 in-fill services in Neath were profitable. Did you
24 verify that at all?

25 A. No, I didn't. As I think it's all agreed, the 2 Travel

1 documentation is not very complete that's available to
2 us now.

3 Q. So if we have a look at Swansea and Neath, or Neath and
4 Swansea, I think is the order you take it in. You say
5 one of the sources is actual evidence of growth by
6 2 Travel in Neath and Swansea, where 2 Travel operated
7 in-fill services that commenced operations significantly
8 earlier and hence were more mature than in Cardiff. So
9 that's what you were looking at?

10 A. Yes.

11 Q. Is there any reason why you didn't look at Llanelli?

12 A. We did have some data for Llanelli. I seem to remember
13 it was so patchy, it was impossible to draw any
14 conclusions from.

15 Q. Right. In the context of this case, that's quite
16 a statement, probably. That's a comment, not
17 a question, I'm sorry.

18 Now, if you're going to make these comparisons,
19 you'd have to accept that there's a basis for making the
20 comparison, wouldn't you, that there's a degree of
21 comparability between Neath and Swansea? But certainly
22 no suggestion in your report that you investigated, for
23 example, how many other operators there were on the
24 routes in Neath and Swansea?

25 A. That's correct.

1 Q. Or relative frequency of services on those routes?

2 A. Well, I know the frequency of the 2 Travel services, but

3 I agree, not the relative frequency of the --

4 Q. Not the relative frequency --

5 A. Yes. Again, though, I'm not looking at market share

6 here, I'm looking at growth.

7 Q. You are looking at how they perform?

8 A. Yes.

9 Q. Yes. But you haven't really seen what they were

10 performing against. For example, how many buses per

11 hour on any relevant segment of a Neath or Swansea route

12 there were or anything like that?

13 A. Well, the only -- the factors I draw out of the Neath

14 and Swansea analysis being a length of time to reach

15 more of a steady state and the way in which passenger

16 levels move from initially through to that steady state

17 in terms of the overall growth, I'm not sure the extent

18 to which the relative frequency of the other services

19 would be factors that would influence those

20 significantly.

21 Q. Don't you really need to know what they're achieving

22 those growth rates against? Don't you need to know what

23 the incumbent is doing, what the incumbent's response is

24 to their entry on those routes?

25 A. That would be ideal, yes.

1 Q. But that hasn't been done?

2 A. No. I have only to look at the facts that Mr Fowles set
3 out in his second statement.

4 Q. And you haven't performed any analysis of actually what
5 service was offered by 2 Travel in Neath or Swansea,
6 have you?

7 A. Well, save for making enquiries of Mr Fowles, no.

8 Q. So you don't know, for example, whether they were
9 operating according to their timetable?

10 A. No.

11 Q. What percentage of their services actually ran in those
12 places?

13 A. No.

14 Q. You do say -- and you say this based on, it would
15 appear, a conversation with Mr Fowles that you exhibit
16 at appendix 7 to your report -- you do say that 2 Travel
17 were operating four journeys per hour, two in each
18 direction, on in-fill routes in Neath. Do you see that?
19 It's (b) in your appendix 7, which I have at 95, marked
20 on the bottom right-hand corner.

21 A. Mm. Yes.

22 Q. Eight journeys per hour, four in each direction in
23 Swansea.

24 A. Yes.

25 Q. That's a lot more than Cardiff, isn't it?

1 A. Well, Cardiff were operating two per hour.

2 Q. So this is double or more?

3 A. In Swansea, yes.

4 Q. And in Neath.

5 THE CHAIRMAN: In Swansea that's quadruple and in Neath it's
6 double.

7 MR FLYNN: That's what I thought.

8 A. Sorry, sir, in Swansea it's four? In Cardiff it was two
9 an hour in each direction.

10 THE CHAIRMAN: And in Swansea it's eight. Four per hour in
11 each direction, okay.

12 MR FLYNN: In table 8 in your report, which is about
13 Swansea, paragraph 5.4.23, you show average revenue per
14 passenger in Swansea.

15 THE CHAIRMAN: Table 8?

16 MR FLYNN: It's table 8, Swansea in-fill service growth.
17 Paragraph 5.4.23. You show average revenue, which is
18 in the sort of 30 to 40p range.

19 A. Yes.

20 Q. Does that suggest a different sort of operation from
21 Cardiff, where you give an 80p range, as we've already
22 seen?

23 A. I'm aware Swansea is a smaller place, yes. It does
24 suggest that.

25 Q. So overall, Mr Good, I suggest you haven't really

1 demonstrated that there is a sound basis for comparing
2 Neath and Swansea with Cardiff?

3 A. Well, they are nearby Welsh towns and cities operating
4 in-fill services at similar times, going up against
5 incumbents on those routes, that 2 Travel had commenced,
6 in this case, a bit earlier. On the other hand, as you
7 say, I've not done an in-depth study about the
8 incumbents or the response of those incumbents, I agree.

9 Q. And you say in your conclusion in this section of your
10 report, looking at 5.4.40:

11 "It appears that Cardiff may have had the potential
12 to outperform both Neath and Swansea."

13 And there, you rely again on Mr Fowles and on
14 Mr Harrison. When you say "it also appears", that's
15 something you have yourself investigated or satisfied
16 yourself of, is it?

17 A. Well, in that Cardiff is clearly a larger market, and
18 I think Mr Brown and others have all agreed that there
19 is significant potential in Cardiff, then I think
20 that is agreed. But in terms of an in-depth bus study
21 of the bus market in 2004 and the relative potentials,
22 then no, there is not a study of that kind.

23 Q. The PwC report, which you don't cite in this particular
24 paragraph, but Cardiff was simply expected to be half
25 the growth, wasn't it? It wasn't going to be --

1 A. Half the growth of what, sorry?

2 Q. Half the growth over the period that the PwC report
3 covered?

4 A. Of the 2 Travel business?

5 Q. Yes.

6 A. I haven't got the figures in front of me but I do know,
7 that yes, 2 Travel was not only looking to expand in
8 Cardiff and make money in Cardiff, but was also looking
9 to expand its operations elsewhere, yes.

10 THE CHAIRMAN: I'm just wondering -- the reason I looked as
11 though I wanted to ask a question, Mr Flynn, is I'm
12 struggling with how scientific this all is. There are
13 a lot of imponderables, aren't there?

14 A. Absolutely.

15 THE CHAIRMAN: If, for example, you have a liveried service
16 in Cardiff that, for the sake of argument, is very
17 efficient and attractive to passengers, then the amount
18 of growth that's available may be different from, say,
19 Swansea -- and I'm not saying this is the case -- where
20 there may be a liveried service that's much less
21 efficient?

22 A. That would be true, sir, but because this is growth
23 based on what was actually achieved, all I'm trying to
24 account for or look at here is, okay, so we have some
25 hard data about what was actually achieved in Cardiff by

1 2 Travel and then one has to make an assumption what
2 that would have looked like, absent white bus. And then
3 based on these other examples, are you flat from the
4 beginning? Is where you get to from the beginning,
5 that's all you're ever going to get? And all this is
6 saying -- and I agree, it's not substantially
7 scientific -- is saying, actually, in Swansea and Neath,
8 no, what they got at the beginning was just a starting
9 point, and they did grow for a few months after that.
10 And I don't want to put it any higher than that.

11 THE CHAIRMAN: Thank you.

12 MR FLYNN: Isn't the evidence in this case, which you have
13 heard, that actually, in Cardiff, 2 Travel hit the
14 targets pretty well straightaway? Isn't that
15 effectively what happened? "It all happened much faster
16 than we expected", is what we have heard.

17 A. Yes. And Mr Fowles puts that, I think, as his "week one
18 was as good as he would have hoped for a week 8", but
19 that's not saying he would reach full potential at the
20 beginning, merely that it was perhaps slightly further
21 up the growth curve that was hoped for, from the off.

22 Q. But ultimately, is there any -- to pick up the
23 chairman's phrase -- scientific basis for a suggestion
24 that what you might have got in the counterfactual world
25 would have been any different from what actually was

1 secured through the operation of both 2 Travel and the
2 white bus no frills service? Can we actually really do
3 better than that?

4 A. I think there are two factors there. There's
5 Swansea/Neath, which we've already talked about, and
6 there's also the fact that 2 Travel wasn't running
7 a full service. And we saw -- I think it was the very
8 first thing we turned to -- the numbers which showed
9 about 84 per cent in April and then going down towards
10 50 per cent by September. Now, I haven't, in my
11 numbers, made a separate correction for that. I haven't
12 grossed up the actual numbers for the missing services
13 to say: actually, we would have carried more passengers.

14 So in a sense, part of the growth assumption could,
15 equally, easily otherwise have been dealt with by that
16 sort of grossing up exercise. So what I've done is take
17 the April numbers and grow those. If, instead, I'd
18 taken the actual numbers
19 through May, June, July, August, and then grossed them
20 up for the missing journeys, the fact that 2 Travel
21 wasn't running 100 per cent of its services, then at
22 least for those months, the numbers -- and I'm afraid
23 they're not presented in my report as any analysis I've
24 done subsequently, but that would show numbers very
25 similar to the April, plus growth. That's a little bit

1 complex. I hope I've explained that clearly.

2 MR SMITH: Mr Good, have you, in your figures, taken into
3 account seasonal variations? The reason I ask this, and
4 you probably heard it when you were in court --
5 Mr Bev Fowles suggested that there were good times and
6 bad times in which to start a bus service.

7 A. Yes.

8 MR SMITH: His evidence was that April was a good time to
9 start, whereas in the immediately post-Christmas period,
10 passenger numbers fell and that would be a bad time to
11 start a new service. So the growth figures that
12 you have projected for Swansea and Neath, is that
13 a factor that you have considered or did you leave that
14 to one side?

15 A. No, that's true, that's not something I considered.

16 MR FLYNN: Just looking, comparing table 8 and table 7, it
17 looks as though Neath started in May and Swansea started
18 in October. Is that right?

19 A. Yes.

20 Q. And it's Swansea that shows the much higher growth on
21 your table. So perhaps Mr Fowles is right about that?

22 A. Yes.

23 Q. Perhaps that explains --

24 A. That may be a factor that explains the growth in Swansea
25 as being so much higher, yes.

1 MR FREEMAN: In the Swansea table, there seems a very large
2 jump between February 2004 and March 2004. Did you ask
3 what the explanation for that was?

4 A. Yes, and we noticed it at the time and asked -- we went
5 back and checked that the data was right and there
6 hadn't been an increase in services. Mr Fowles was
7 absolutely adamant there hadn't been an increase in
8 services. Dr Niels asked the same question. We went
9 back and double-checked with him and he said: no, we
10 continued to operate the same number of services.

11 MR FREEMAN: That means you have no explanation?

12 A. That means I have no explanation. Well, I know that it
13 wasn't an increase in the service number. It may be the
14 spring effect that we've been talking about here.
15 I have no other explanation.

16 MR FREEMAN: Early spring, I think.

17 A. Yes.

18 MR FLYNN: Just a moment ago, Mr Good, you said you'd done
19 some calculations separately, which are not shown in
20 your report.

21 A. Mm.

22 Q. It's a bit hard for the tribunal to rely on those, isn't
23 it, when you've had the opportunity and taken the
24 opportunity to revise your report and put in yesterday,
25 what was said to be a complete statement of your expert

1 opinion. It's a bit hard to be coming up with new stuff
2 now, isn't it?

3 A. Well, that analysis can be derived from the numbers in
4 here. We can do it with a calculator now, if you wish.
5 I didn't want to put in new evidence at a late stage,
6 merely -- yesterday or the day before, I merely wanted
7 to pick up things. I felt it wouldn't be fair to put in
8 new stuff at that stage.

9 Q. Mr Good, I suggest that when it comes down to it, your
10 principal reason for disagreeing with Dr Niels on his
11 approach of distributing passengers equally across
12 services according to actual frequency, is your
13 suggestion that there would have been 100 per cent
14 diversion of the white bus fare paying passengers to
15 2 Travel. That's the main reason you have for saying
16 that Dr Niels isn't right to spread things equally
17 across the services?

18 A. Sorry, we are leaving growth aside for the moment and
19 going back to the subject of allocating white bus
20 passengers to 2 Travel?

21 Q. Yes.

22 A. Well, I think we talked yesterday and earlier this
23 morning about the factors there, involving the white
24 buses running ahead of the 2 Travel, whether the white
25 bus was seeking to run a commercial service at all,

1 price sensitivity or not, the quality of service or not
2 and the other factors that we discussed yesterday.

3 Q. Yes. I wanted to take it more on a factual basis now,
4 not so much to do with passenger choice, but just to go
5 over some of the things that were dealt with in evidence
6 with Mr Brown. It's accepted, isn't it, by us, that the
7 white bus services were scheduled to run just ahead of
8 the 2 Travel buses?

9 A. Mm.

10 Q. But that couldn't have happened 100 per cent of the
11 time, could it? Many of the 2 Travel services didn't
12 run at all. Correct?

13 A. Which would suggest that there would be more white buses
14 available to run in front of the ones that did, but yes.

15 Q. Many didn't run to timetable?

16 A. Where's that -- well, is that based on the VOSA
17 analysis?

18 Q. That's based on a number of things, including the
19 logs -- I think they were called the competitive logs
20 that we looked at in E14 yesterday. Were you following
21 that discussion?

22 A. I think that Mr Brown was taken to certain of the white
23 bus logs. I'm not sure whether the purpose of that
24 analysis was to demonstrate whether 2 Travel was running
25 to time or not.

1 Q. I'm not sure that it was, but I think it did demonstrate
2 that, didn't it? Even the pages we looked at showed
3 that the 2 Travel services were not running at all to
4 timetable.

5 A. I couldn't say whether that was a scientific analysis
6 or ...

7 THE CHAIRMAN: I don't think it's scientific, but would it
8 be right that each page gave a snapshot of the
9 juxtaposition or otherwise of 2 Travel and white buses?

10 A. I wish I could be more help. I simply am not close
11 enough to that evidence to be able to give an opinion on
12 that.

13 MR FLYNN: You haven't analysed that?

14 A. No.

15 Q. We saw yesterday that it had been supplied to the OFT
16 and we saw the OFT's conclusion, which perhaps I'll just
17 remind you of. That's E11 at 592, which is the OFT's
18 table comparing a Cardiff Bus document called
19 "Competition policy document", and what actually
20 happened.

21 A. Yes.

22 Q. Items 3 and 4 are the relevant ones here:

23 "According to the competition policy document, buses
24 will be timed to operate just in front of competitors'
25 vehicles ...(reading to the words)... the OFT has

1 insufficient evidence of this. This was a matter for
2 the Traffic Commissioner."

3 And there's a quotation from what the Traffic
4 Commissioner found. The OFT had those logs. And then,
5 4:

6 "Where the competitor ...(reading to the words)...
7 until the two vehicles can be reengaged."?

8 A. Yes.

9 Q. And you heard Mr Brown saying: that means we carry on
10 operating. And again, the OFT draws no conclusions on
11 that. It was put to Mr Brown yesterday, an e-mail was
12 put to Mr Brown, which represented Cardiff Bus's own
13 investigation of the only two incidents of what you
14 might call "lurking", hanging around, waiting for
15 a 2 Travel bus to turn up. There were only two
16 incidents that Mr Furzeland, the Traffic Commissioner's
17 clerk, had asked about. Do you recall that?

18 A. In broad terms, yes.

19 Q. I can show you the document if necessary, but since --

20 THE CHAIRMAN: We saw it yesterday.

21 MR FLYNN: It's all fresh in people's minds. So the fact of
22 the matter is, isn't it, Mr Good, that even if people
23 had timed their appearance at the bus stop according to
24 a 2 Travel timetable, hoped to get a 2 Travel bus and be
25 diverted because it didn't turn up, they'd have been as

1 likely to be diverted to a Cardiff Bus liveried bus than
2 a -- well, in the counterfactual that's what would have
3 turned up if there hadn't been a 2 Travel bus, wouldn't
4 it? If people turned up at the stop, hoping to catch
5 a 2 Travel bus, get on the white bus instead, in the
6 factual, what you're saying is those people would,
7 in the counterfactual, all get on a 2 Travel bus,
8 whereas, actually, it's just as likely, isn't it, that
9 they'd get on the first bus that came along, which would
10 be a Cardiff Bus liveried bus?

11 A. In the counterfactual, I don't assume they'll all get on
12 a 2 Travel bus, no. The fare paying passengers, yes,
13 I do. For the concession passengers, it's a range of
14 between 30 and 50.

15 Q. I'm sorry, I've only been talking about fare paying
16 passengers here because that's your 100 per cent
17 reallocation, isn't it?

18 A. Yes. So in terms of ... Sorry, I'm struggling to
19 understand the question fully. I think there's a lot
20 of -- there has been a fair bit of evidence over the
21 last two weeks and also in the documents around this.
22 I'm not sure it's for me to say the evidence says there
23 was or was not running ahead. Clearly, from an
24 accountancy and economic perspective, if there was
25 running ahead or if there was sandwiching, then that

1 would tend to suggest the passengers who were on the
2 white bus would go on the 2 Travel bus. If it's found
3 that there wasn't, then you would make an allocation
4 more along the lines of the market share, taking into
5 account any of the -- sorry, the relative frequency,
6 taking into account any of the softer factors that are
7 found to be relevant, such as lower pricing and the
8 other things we've discussed.

9 MR FREEMAN: I'm having a bit of difficulty in following
10 this. Counterfactuals are always difficult. In the
11 counterfactual, there's no white bus?

12 A. Yes.

13 MR FREEMAN: It is just 2 Travel and the liveried service,
14 and you're trying to work out what would happen to fare
15 paying passengers if the 2 Travel bus doesn't come
16 along?

17 A. If the white bus isn't there, I think is what --

18 MR FREEMAN: If the notional passenger is standing at the
19 stop and a bus comes, and you're saying if it's
20 a liveried bus, they would wait for the 2 Travel bus;
21 is that what you're saying? They will not get on it,
22 they would wait for the 2 Travel bus?

23 A. I'm saying the passengers who had travelled on the white
24 bus --

25 MR FREEMAN: The fare paying passengers, to whom the

1 difference in price is notable, they will step back from
2 the bus stop and not get on the liveried bus. That's
3 the proposition?

4 A. Who may have the 2 Travel bus there instead because --

5 MR FREEMAN: That's the first bus, so they get on it?

6 A. I think the CC says that once you're at the bus stop,
7 pretty much everything is overridden by which bus comes
8 along, yes. Then there's a question: do they come out
9 for the 2 Travel bus because they know it's coming at
10 a particular time and it's cheaper? And then there's
11 a question of: on these high frequency routes, is the
12 attraction of waiting for the lower priced 2 Travel bus
13 and coming out for that bus because you know the cheaper
14 bus is coming on the hour and on the half past, whenever
15 it's timetabled; is that sufficient to make you wait and
16 come out for that bus or do you just turn up at the bus
17 stop? And especially as Lord Carlile said yesterday, in
18 the rain; are you prepared to spend a bit more because
19 your liveried bus has arrived? I think that's what
20 we're discussing.

21 MR FREEMAN: So your 100 per cent proposition for fare
22 paying passengers means they either don't come out
23 because they planned for the timetable --

24 A. Yes.

25 MR FREEMAN: -- or if they are there, they do not board the

1 higher priced liveried bus, assuming that comes first?

2 A. These are not just -- this is not across the whole
3 spectrum of passengers at the stop. We're talking about
4 the fare paying passengers who ended up travelling on
5 the white bus. So there's going to be a large swathe of
6 these potential market for 2 Travel, who, if they're at
7 the bus stop and they're indifferent to price, will have
8 got the liveried anyway, but could, in the next time
9 they randomly turn up, get the 2 Travel. So all we're
10 looking at is allocating the white bus passengers, so
11 this is why, whether they were running together or not
12 is so important, I think, for this part of the analysis.

13 MR FREEMAN: And presumably at some stage we're going to
14 consider how this works in the counterfactual future as
15 described by Mr Harrison, where the 2 Travel prices have
16 been raised?

17 A. If they would have been raised. The counterfactual
18 future then gets even more complicated.

19 MR SMITH: Just to be clear about your 100 per cent
20 allocation of fare paying passengers, Mr Good. As you
21 say, you are focusing only on those passengers who, in
22 fact, decided to get on to a Cardiff white bus service?

23 A. Yes.

24 MR SMITH: So you eliminate, in our counterfactual, the
25 Cardiff Bus white bus service, pretend it never took

1 place?

2 A. Mm.

3 MR SMITH: Your 100 per cent figure is based upon the fact
4 that that white bus service would have been running very
5 shortly ahead of the 2 Travel bus?

6 A. In part, yes. That's a large part of the basket of
7 factors.

8 MR SMITH: With no intervening liveried bus between the two
9 low fare operations?

10 A. Yes.

11 MR SMITH: And you very fairly accept that that's a question
12 of fact, not a question for you. But that's what drives
13 your 100 per cent; is that right?

14 A. That and price, price elasticity, yes.

15 MR SMITH: Right. So the other factor that you take into
16 account is the fact that the liveried service is
17 significantly more expensive than the 2 Travel
18 operation?

19 A. Yes.

20 MR SMITH: Are those the only two factors that drive your
21 100 per cent reallocation of the Cardiff Bus white bus
22 passengers?

23 A. I think in reality, yes. Given that, as was discussed
24 yesterday, there seems to be little evidence on quality
25 of service.

1 MR FLYNN: Mr Good, I'm going to move on now to costs, which
2 is the other side of the equation. So far, we've been
3 talking about the basis on which you project the lost
4 revenue. Section 6 of your report is the one dealing
5 with costs. I think it's right to say, isn't it, that
6 when you first wrote your report and when you met
7 Dr Niels, your position was that the only relevant costs
8 that had to be taken into account were fuel, maintenance
9 and engine replacement, marginal costs of those, on the
10 basis that the costs to the drivers were covered by the
11 schools contracts. Is that right? Is that your
12 position at the time?

13 A. Yes. And then Dr Niels rightly pointed out that there
14 was, potentially, the need for additional drivers to
15 operate the fifth service and Mr Fowles agreed with that
16 and quantified it as an extra 2 to 3. Therefore,
17 I amended my numbers to include three drivers.

18 Q. So you've added in three drivers for the additional
19 service. Is that right?

20 A. Yes.

21 Q. So you remain in disagreement, do you, that a proportion
22 of the costs of all the drivers should be allocated to
23 the running of the in-fill service?

24 A. What I think was one of your very early questions, what
25 we're trying to do here is calculate the marginal effect

1 of running and not running the in-fill services. If
2 that's what we're trying to do, then the drivers who had
3 already been contracted prior to the start of the
4 in-fill services, who were there on their 45-hour a week
5 contracts -- I think one of Mr Waters' memos describes
6 the burden of the 45-hour contract drivers -- this was
7 prior to the start of the in-fill and it was dragging
8 down 2 Travel. We have these drivers already contracted
9 and in place. And in a situation where we are looking
10 at the marginal profits that will be made from the
11 in-fill services, then any allocation of cost that's
12 already being incurred from the schools contracts across
13 to the in-fill, simply leads to an increase if the
14 schools contracts were profitable -- and it's hard to
15 say because we don't have the data, but on the basis
16 that Mr Fowles says they were breaking even, an
17 allocation of the costs from the schools contracts, the
18 in-fill contracts, would make the in-fill contracts less
19 profitable but the schools contracts more profitable.
20 So on a marginal basis, I don't take into account the
21 costs of the existing drivers, no.

22 Q. You were here for Mr David Fowles' evidence?

23 A. Yes.

24 Q. Let's just have a quick look at that. Day 5, page 89,
25 line, say, 21. This is Mr Bowsher, I think, in

1 examination-in-chief of Mr David Fowles. He points to
2 paragraph 15 of Mr Fowles' witness statement:

3 "The majority of our drivers are employed on
4 a full-time basis. A couple of part timers before the
5 in-fill started but the vast majority were full-time."

6 And Mr Bowsher says:

7 "Why was that, why did you mostly have full-time
8 drivers before the in-fill?"

9 And Mr Fowles responds:

10 "On the basis that we believed that, obviously, the
11 in-fill work was going to come on board as quickly as we
12 could, it seemed sensible at the time to take on
13 full-time staff, to give them some sort of incentive in
14 terms of job security, to roll out the in-fill
15 services."

16 So from Mr David Fowles' perspective, it's right,
17 isn't it, that the drivers were taken on, in part, to
18 deal with the in-fill services?

19 A. Yes. I don't think you would employ drivers on
20 a 45-hour contract unless you had this in-fill plan in
21 mind, which was both Mr Fowleses' strategy from the off.

22 Q. So if you're trying to assess the profitability of the
23 in-fill services, it's appropriate, isn't it, to
24 allocate a portion of their employment costs to the
25 driver?

1 A. But if you're looking at the marginal -- yes, but if
2 you're looking at the marginal profitability that's lost
3 by not being able to run the in-fill services, then you
4 wouldn't take it into account. And the other way to
5 look at this is that -- and I appreciate this may be
6 a matter of law. Because of the actions of Cardiff Bus,
7 2 Travel were not able to operate in Cardiff as a whole.
8 And if you take it on a global basis, then again, it's
9 only the marginal costs of the in-fill services that you
10 need to take into account in relation to the in-fill
11 services.

12 Q. When you say "weren't able to operate in Cardiff as
13 a whole", do you mean on the planned routes they weren't
14 able to offer the full service or do you mean some
15 wider counterfactual issue?

16 A. This is not the way that I or Dr Niels have chosen to do
17 it, partly through lack of data, but a version of
18 calculating the loss caused by the actions of
19 Cardiff Bus would be to look at the overall
20 profitability in Cardiff, including schools and tendered
21 services, and in-fill, in the actual versus the
22 counterfactual.

23 Q. We haven't got the data for that, have we?

24 A. We haven't got the data for that, no, but again, if you
25 did that, you would be saying you have the costs and the

1 revenues of the schools, which are broadly as they were
2 in the actual, and then the in-fill -- and would
3 continue, forwarding the counterfactual that they would
4 continue, the costs and the revenues of the schools.
5 And the in-fill in the actual, you had the small bit
6 that did operate for the short time and then the
7 counterfactual is what we've been spending time
8 discussing. And in that actual and counterfactual, you
9 wouldn't take into account -- well, you would take it
10 into account, but it wouldn't reduce the numbers, the
11 costs of the drivers.

12 Q. 2 Travel didn't run a full service in Cardiff, did they?

13 A. No.

14 Q. And it's right, isn't it, that one of the reasons given
15 for that is shortages of drivers?

16 A. Yes.

17 Q. So if one's projecting a vision in which the full
18 service is offered, additional drivers would have had to
19 have been taken on, wouldn't they?

20 A. I think there may be a short-term issue over the summer
21 of 2004 and possibly, although I think Mr Fowles says
22 this wasn't the case, the costs that were actually
23 incurred by 2 Travel might have been lower, if they
24 weren't employing the drivers. But then he points to
25 the cost of getting new drivers and all the others,

1 which means that in the round, it comes out the same.
2 So that's one point, the point over the summer period:
3 were the costs as high as they would have been if
4 operations had all been smooth? The other point is the
5 more longer point going forward: in the counterfactual,
6 would you have had to employ more drivers to service the
7 counterfactual than you were having to employ for the
8 schools? And with the schools service running smoothly,
9 I think based on the number of buses that were used on
10 the schools and the number of buses that would be used
11 in the in-fill, the answer is, you didn't have to employ
12 more drivers except for the fifth service. If you've
13 got a smooth running schools service, you have the
14 drivers to fulfil the in-fill, which is the more longer
15 term calculation of the loss in the counterfactual.

16 Q. Well, it may be a matter for the evidence, but the
17 constant complaint from 2 Travel has been that they were
18 very short of drivers. Presumably they are going to
19 have to take on more drivers to run 100 per cent. It
20 just follows from the case they're putting forward,
21 doesn't it? And yet your position is those costs don't
22 have to be taken into account.

23 A. Well, the costs of running the schools -- the costs of
24 all the drivers you need for the schools service don't
25 have to be taken into account because they're being

1 incurred anyway for the schools service.

2 Q. That's your position. So Mr Bev Fowles made it clear in
3 evidence that the two to three drivers that he talked
4 about was solely in relation to the 258, didn't he?

5 A. He said elsewhere that he would have had enough drivers
6 for the other four services on the in-fill with the
7 schools contracts drivers.

8 Q. You've modelled three drivers?

9 A. Yes.

10 Q. Three additional drivers for the 258.

11 A. Yes.

12 Q. On what you say is a cautious basis. Could we look at
13 the transcript for Day 2, page 137. This is at the end
14 of Mr Fowles' cross-examination by Mr West, so if one
15 looks from line 12 on 137, down, really, to the end of
16 the cross-examination, which stops at line 11 on
17 page 139, what's being put to Mr Fowles there is our
18 case that even three isn't enough for the 258.
19 Do you see that?

20 A. I see that.

21 Q. And Mr Fowles talks of flexibility in the roster, but
22 the fact of the matter is there have to be three buses
23 on the route at any one time and we say three drivers is
24 not enough. So even modelling three for the 258 isn't
25 a conservative approach, I put to you?

1 A. Well, it depends on the view you take of what Mr Fowles
2 has said.

3 Q. So you would say that's a factual matter as well. As
4 far as the schools contracts are concerned, you haven't
5 been able to check whether, in fact, the driver costs
6 were covered by the schools contracts, have you?

7 A. That's correct, I haven't. But in a sense, from
8 a marginal perspective as to what profits would have
9 been earned from the in-fill services, that's less
10 relevant or not relevant.

11 Q. You've already referred to the memos from Mr Waters --

12 A. Yes.

13 Q. -- saying not only that the 45 hours is an albatross, as
14 it were, but saying that schools contracts were
15 underpriced. It came in the same sentence from the one
16 you were quoting; yes? We don't need to give --

17 A. Yes. What that is measured against, whether he's
18 measuring that against the cost of the 45-hour drivers,
19 I can imagine that it's possible that without the
20 in-fill services, he would look at that cost base and
21 think that it was too high compared to the pricing.
22 I think it just emphasises the strategy that 2 Travel
23 was putting forward.

24 Q. Was that a strategy of loss making on tenders?

25 A. I haven't seen the data to say that.

1 Q. Because it was put to one or other of the witnesses,
2 perhaps I put it to Mr Harrison, that Cardiff Bus, when
3 pitching for these contracts, would work out the costs
4 of employing the drivers for the time that the school
5 contracts take, which is about 10 hours a week, and they
6 wouldn't have priced the school contracts on the basis
7 of full employment for the drivers. You wouldn't expect
8 that, would you?

9 A. I have no idea what the cost base of Cardiff Bus is and
10 how that would compare and how they would cost a project
11 and a tender.

12 Q. You recall Mr Harrison's evidence? He said that he
13 hadn't checked at the time whether the school contracts
14 were covering their costs. We can --

15 A. I'm sure -- I believe that's right, yes.

16 Q. It's page 114 of the transcript for Day 4. And he also
17 thought it was quite possible that some of the school
18 contracts were loss making?

19 A. I'd have to see that in the transcript to see what he
20 said.

21 Q. Day 4, page 119. It starts on the bottom of page 118:
22 "Mr Harrison: the point I was trying to make to him
23 is the fact that if those costs -- if it was a loss
24 making business and they bid on the school contract to
25 make a loss on the school contract, in the belief that

1 they were getting in-fill income, then of course those
2 costs would already be built into the system. This
3 would be incremental profit."

4 So he's recognising the possibility that they bid --

5 A. It's certainly acknowledging it as a possibility, yes.

6 Q. And Mr Bev Fowles acknowledged that some of the school
7 contracts were not covering their costs?

8 A. Yes.

9 Q. That's Day 2, page 10. One of Mr Waters' memos was put
10 to him, that's the one we were talking about, so you see
11 the question at 17 from Mr West:

12 "He then [that's Mr Waters] says the contract base
13 is totally underpriced and commitment guaranteeing
14 45 hours is killing any chance of improvement. Is it
15 right that the contract base [that's the school bus
16 contracts and so on] were not generating sufficient
17 revenues to meet the company's running costs?"

18 And the answer is:

19 "Some of the school contracts weren't covering all
20 the costs. The majority of the Cardiff contracts were
21 much higher priced than those in Swansea and Llanelli,
22 which is why they were targeted."

23 On any basis, Mr Good, don't you have to consider
24 whether what's happening is that the in-fill services
25 are making a contribution to the losses on the schools

1 contract rather than just put all that to one side?

2 A. But we're comparing here what happened with and without
3 the in-fill services. Now, the losses on the schools,
4 if they were losses, were there with or without the
5 in-fill. So in calculating the losses attributable to
6 the in-fill, it's the same on both sides in the actual
7 and the counterfactual.

8 Q. Well, you understand our position on that. In relation
9 to other costs other than drivers, you've only looked at
10 replacement of engines, I think.

11 A. Yes.

12 Q. There are plenty of other parts of a bus that can go
13 wrong, require replacement and significant expenditure.
14 That's right, isn't it?

15 A. There may be. I'm not sure how significant expenditure
16 when he's talking about an engine rebuild costing £2,500
17 to £4,000.

18 Q. Mr Fowles accepted that as a proposition.
19 Mr Bev Fowles.

20 A. Yes, I remember that. He didn't cost that out.

21 Q. He didn't cost it out, but he referred to gearbox,
22 suspension, and said it could be any part. These are
23 not trivial amounts of expenditure, are they, in this
24 sort of world?

25 A. I can't say how much more or less than a -- a gearbox is

1 than an engine rebuild.

2 MR FREEMAN: Do we have figures for the additional mileage

3 arising from the in-fill services?

4 A. I've estimated across a long period from -- this is at

5 6.2.2 of my report, an additional 1.6 million bus miles.

6 MR FREEMAN: And those are actual bus miles or are they

7 counterfactual bus miles?

8 A. Those are counterfactual bus miles across December 04 to

9 September 2011, so really a considerable period.

10 THE CHAIRMAN: It's about 200,000 additional bus miles

11 a year.

12 A. Um ...

13 THE CHAIRMAN: Bit more.

14 A. Yes.

15 MR FLYNN: I'm struggling to remember whether Dr Niels has

16 done the same. I'm sure that'll be brought to your

17 attention at a later stage.

18 MR FREEMAN: In terms of cost, you'd need to break it down

19 per notional bus and try and see what difference it made

20 to the life and the maintenance costs?

21 A. Yes, and that's why I have made an allowance for the

22 engine rebuild, following discussions with Mr Fowles,

23 that that was the cost element that needed to be

24 included. It's been put to Mr Fowles there were perhaps

25 some other cost elements and he's agreed that there may

1 be other cost elements to include as well.

2 MR FLYNN: Sir, I was going to move from costs to section 8

3 of Mr Good's report. Section 7 is really the conclusion

4 that you draw from all the factors you have applied?

5 A. Yes.

6 Q. So we've been discussing the elements that go into that,

7 but we don't need to go over the calculation itself.

8 Section 8 of your report is the section dealing with the

9 loss of capital asset. Whether that is a relevant issue

10 in these proceedings depends in the first place on

11 whether Mr Haberman is right that 2 Travel would have

12 gone bust when it did in any event, isn't it? That's

13 right conceptually, isn't it?

14 A. Clearly, if a business will have gone bust in any event,

15 then its value is limited to its breakup value, which in

16 this case, I imagine would be fairly small, apart from

17 the Swansea depot. But that's not part of these

18 calculations, which specifically exclude the Swansea

19 depot.

20 Q. Yes. And the analysis that Mr Haberman has carried out

21 is something with which you don't essentially engage.

22 That's right, isn't it?

23 A. Well, firstly, his analysis was done after I did my

24 report and secondly, it's not the principal subject in

25 my report, no.

1 Q. So just looking at the way you've approached this, the
2 first step in your assessment is to reach a figure for
3 maintainable earnings, isn't it?

4 A. Yes.

5 Q. And that is effectively taken from the PwC report?

6 A. Yes.

7 Q. And you were here when Mr Harrison made it very clear
8 that everything in the PwC report was management
9 projections?

10 A. Well, they were based on management projections, yes.
11 That's not saying that he and his team did no work, but
12 yes, they were based on management projections.

13 Q. I didn't say they did no work, but the result of the
14 work was that they, effectively, put forward the
15 management projections with a degree of commentary on
16 them?

17 A. Yes. I'm trying to remember the exact wording in
18 Mr Harrison's statement, but I broadly agree with what
19 you're saying, although he says he felt they were
20 realistic and there was a number of -- discussion about
21 that over the last few days.

22 Q. And we've talked about some of those, including, for
23 example, the 30 per cent share.

24 A. Yes.

25 Q. Which I think now you've accepted you wouldn't support,

1 on the basis of the PwC calculations?

2 A. I've accepted that a figure of 70 passengers per bus
3 would need some further support, which Mr Harrison was
4 unable to give, in order to justify, yes. That doesn't
5 render null and void, I think, the whole of PwC.

6 Q. There has been plenty of evidence in this case to show
7 that targets and projections of 2 Travel were unreliable
8 and routinely missed, I would suggest to you?

9 A. I think it's clear that the projections that they put
10 forward for the AIM listing were not met. There were
11 various things that didn't happen, such as the Hawkes
12 purchase, and obviously, that anticipated going into
13 Cardiff as well. Whether the projections would have
14 been met in the fullness of time but not in the
15 timescale set out in those projections, is a different
16 matter.

17 Q. I'm not sure we need to go through all this, Mr Good,
18 I just asked simply whether you maintain that the PwC
19 report is a good basis for projecting maintainable
20 earnings in this calculation?

21 A. I think the whole of this claim is premised on the
22 question, to put it slightly colloquially: would
23 2 Travel have come good? So yes, in order for there to
24 be value in this part of the claim, you have
25 fundamentally to believe that the business would have

1 continued; that the management had a sound plan; PwC had
2 put forward that plan; whether there are elements of it
3 that would, in the fullness of time, have needed
4 changing; whether they would have made it immediately.
5 You know, these are difficult questions. But if you
6 believe that 2 Travel as a business had a future, then
7 you look at the sort of future that PwC think the
8 business could have become and use that as your way of
9 calculating -- putting a value on that future.

10 Q. But you think it's all right just to lift the figure out
11 of that report and simply adjust it for corporation tax,
12 do you?

13 A. There are ... With this distance of time, there is
14 nothing else, really, to base it on. You could look at
15 what had happened in the past. Obviously, the business
16 had been loss making in the past, which is why I say
17 this claim is predicated on a view that the business
18 would have turned round. I think we've heard quite
19 a lot of evidence that businesses in the start-up phase
20 make losses. I think Mr Short said that. I think
21 Mr Clayton Jones said that. I refer here to another bus
22 company in 2005, Rotala, which had three years' worth of
23 losses before becoming a successful and listed company
24 that's now worth about £15 million. So yes, the whole
25 thing is predicated on 2 Travel turning around. What

1 that future would then have looked like, I think PwC is
2 the best -- the only basis to look at.

3 Q. It's the only show in town?

4 A. It may not be a perfect show.

5 Q. You've just mentioned Rotala because what you then do is
6 take the maintainable earnings and what you then seek to
7 do is apply a price earnings multiple. That's right,
8 isn't it?

9 A. That's right.

10 Q. And it's Rotala that you have identified as the right
11 comparison?

12 A. Well, I've set forward some other comparators there, but
13 clearly they are much, much larger companies and while
14 one could have taken an average across the sector, which
15 was one way of doing it, I didn't feel that was
16 appropriate, given that the other comparators were
17 significantly different and that's why I focused on
18 Rotala, yes.

19 Q. Yet, you decided that of that list of, as it were, bus
20 operators, the only one that was properly comparable in
21 your view was Rotala and so --

22 A. You never have a perfect comparable, but was the most
23 comparable, yes.

24 Q. Mr Haberman has given some views on that comparison in
25 his report, which is in the D files, tab 5,

1 paragraph 7.6 of Mr Haberman's report. In the bundle
2 numbering, it's page 39. Do you have that, Mr Good?

3 A. Yes.

4 Q. In 7.7, Mr Haberman explains why he takes the view that
5 there are significant differences between Rotala and
6 2 Travel that would make them unsuitable for comparison.

7 A. I see that.

8 Q. He says that it's a consolidator, not an organic grower,
9 if I can put it that way.

10 A. Yes, which was indeed the strategy I think PwC were
11 urging on 2 Travel.

12 Q. I think it was actually the other way round. I think
13 2 Travel began by suggesting to Mr Harrison that they'd
14 got some wonderful ideas for acquisitions and he
15 effectively said -- if I'm not unfairly summarising his
16 evidence -- that he hosed them down and asked them to
17 concentrate on the knitting, which was a phrase he used,
18 which I think is the other way round?

19 A. Certainly he wanted them to get their own house in order
20 but I think the thrust for the November 03 letter
21 was: once you have done that, this is the way to grow
22 your businesses, by buying other businesses.

23 Q. That's at least a medium-term, if not a longer term
24 approach. Isn't that right?

25 A. Sure.

1 Q. He says in the second bullet:
2 "Rotala began from a stronger position than
3 2 Travel."
4 And he quotes some figures.
5 A. Yes.
6 Q. Do you think that's an inappropriate point for him to
7 take?
8 A. Well, neither of these businesses are, even at that
9 stage or even now, First Group or Stagecoach -- yes,
10 there is a difference in size, but we're not talking,
11 you know, apples and pears here. They're similar size,
12 smallish businesses.
13 THE CHAIRMAN: One of the issues that determines whether
14 a company can grow is the level of its gearing.
15 A. Of course.
16 THE CHAIRMAN: What is the comparison between gearing of
17 2 Travel and the gearing of Rotala?
18 A. I don't know the answer off the top of my head.
19 Mr Haberman's exhibit 44 sets out some financial data on
20 Rotala. So we'd have to turn that up to have a look at
21 that.
22 THE CHAIRMAN: But wouldn't one need to know that to make
23 a fair comparison between the two companies?
24 A. I think one's more looking at the business sectors
25 they're operating in and the business models, and both

1 Rotala and 2 Travel are bus companies, they both have
2 a strategy of getting a base of contract work. So in
3 Rotala's case, that's corporate contracts with BA, as
4 well as contracted Local Authority services. 2 Travel,
5 of course, has the schools and the tendered routes.
6 They're both sort of local bus companies, albeit that,
7 as Mr Haberman points out, Rotala's core market isn't
8 Wales, it's elsewhere in the UK.

9 THE CHAIRMAN: My point is that it may well be that 2 Travel
10 was much more solidly based to make acquisitions than
11 Rotala. Mr Harrison was assuming it could make
12 acquisitions up to a cost of £25 million. But in order
13 to make the comparison, don't you need to know what the
14 strength of Rotala's base was, in order to ascertain
15 whether it or 2 Travel was in an equivalent position to
16 make acquisitions or not?

17 A. It depends on which way round you look at it. I think
18 the funding flows from the business model. If you have
19 a successful business model and you're making profits,
20 then the funding will flow. If you don't have
21 a successful business model, then clearly it won't. So
22 I think I'd look at it the other way round.

23 THE CHAIRMAN: Okay, thank you.

24 MR FLYNN: Probably Rotala's strong corporate customer base
25 means that its contracts were profitable with those

1 companies, doesn't it?

2 A. I'm not sure that necessarily follows. I know from my
3 own experience that contracting with big companies,
4 sometimes they're the ones that screw you the hardest on
5 price. But I'm not sure it necessarily follows that
6 just because the quality of the customers themselves is
7 good, it means the prices they were getting were good.

8 Q. And Mr Haberman also says that Rotala began operations
9 when 2 Travel was going into liquidation, so it's
10 different trading conditions, which also makes it hard
11 to draw the comparison.

12 A. Well, it is a slightly different time period, yes.
13 They're starting in 2005, just as 2 Travel is finishing.

14 Q. And have you given any consideration to whether they're
15 different periods; different conditions such as to make
16 comparison better or worse, more appropriate or less
17 appropriate?

18 A. Well, this is a broad-brush exercise we're doing here,
19 to try and get to our hypothetical value of a company.
20 The important thing is to identify a business that's
21 similarly sized, in a similar sort of business and
22 ideally, in a similar geographical market, which it is
23 in the sense of being in the UK but isn't in the sense
24 that it's Wales. Yes, there are points of detail around
25 that, but if one ... One can't adjust for every single

1 factor. Having identified a reasonably close looking
2 comparator, you can then make some broad-brush
3 calculations based on that. I don't think it's
4 suggesting otherwise.

5 MR FLYNN: Would that be a convenient moment, sir?

6 THE CHAIRMAN: Yes.

7 (11.00 am)

8 (A short break)

9 (11.15 am)

10 MR FLYNN: Mr Good, did you consider Veolia as a possible
11 comparator?

12 A. I don't think I did, no.

13 Q. I just wonder, we might have a quick look at Mr Brown's
14 witness statement, paragraph 121. Maybe I can just read
15 it to you. Perhaps you should see it. Paragraph 121 on
16 page 24 in D1.

17 THE CHAIRMAN: I'm not sure what Shamrock Travel were doing
18 in the Welsh valleys, but there we are.

19 MR FLYNN: You have the paragraph there?

20 A. Yes.

21 Q. Shamrock Travel, that's Mr Clayton Jones' business, was
22 sold to Veolia. Veolia's not dissimilar -- Veolia
23 Transport anyway, is not entirely dissimilar from
24 Rotala, is it?

25 A. My recollection is that I did think about Veolia, but

1 that it's a large, predominantly French company, and
2 therefore for these purposes, looking at trading
3 multiples, it wasn't going to give me the right sort of
4 geographical or size data to make a decent comparison.

5 Q. Yet it was a group that at least was operating in Wales,
6 which might have given you --

7 A. It couldn't have given me a trading multiple for
8 a valuation, because the trading multiple would be based
9 on the whole group, which was predominantly a French
10 business.

11 Q. Anyway, having found your comparator using Rotala, what
12 you then do is apply the PE multiple to the PwC
13 maintainable earnings. That's what you do, isn't it?

14 A. As adjusted for tax, yes.

15 Q. Indeed. Thank you. I don't know if you still have
16 Mr Haberman's report in front of you?

17 A. I do.

18 Q. I just wanted to bring paragraph 7.8 of that to your
19 attention. Mr Haberman's view is that that approach
20 is -- he says that's a nonsensical calculation because
21 the price earnings ratio is based on actual historical
22 profit and you can't apply the PE to maintainable
23 earnings for the year in question. That's his view.

24 A. Well, I think the wording is a bit strong there,
25 a "nonsensical calculation". One can refine the

1 calculation to use the forward price earnings and the
2 current forward price earnings of Rotala are 6.2, which
3 is within the range and has been, historically, up as
4 high as 9. So while I accept that for perfection, one
5 might wish -- one ought, indeed, to apply a future
6 looking multiple to future looking profits, in this
7 situation, for a rough and ready valuation, it doesn't
8 really lead to a particularly different result.
9 Slightly lower, perhaps, but not significantly, and
10 there are other factors that could increase the
11 valuation because a price earnings is typically based on
12 valuing a small tranche of shares and therefore you
13 might apply a control premium. So you would add
14 a premium on to the calculation you've done on a price
15 earnings basis because you're valuing 100 per cent of
16 a business rather than just a small chunk of it. And
17 I haven't added in any premium, so while I accept that,
18 for perfection, one should do it the way Mr Haberman has
19 done, I don't see a reason, particularly, to alter my
20 calculations.

21 Q. But if you had done it the way Mr Haberman suggests,
22 you'd have got quite a different outcome, wouldn't you,
23 because 2 Travel's actual historical position was that
24 it was in loss?

25 A. Well, yes, on the profit side. As I said at the

1 beginning, this whole aspect of the claim is predicated
2 on 2 Travel, as I say, coming good and becoming the
3 business that, clearly, its financial backers and PwC
4 and Mr Fowles thought it could become. But yes, it has
5 to be predicated on that and if you try and do
6 a valuation on the loss making earlier years, typical of
7 a start-up business, then yes, you wouldn't get
8 a valuation on a price earnings basis.

9 Q. Then I wanted to come to section 12 of your report,
10 where you make some observations on 2 Travel's financial
11 performance prior to the predatory conduct, as you've
12 put it. You start by quoting things from the defence,
13 and I think this is really your response to some points
14 made in the defence.

15 A. That's correct, yes.

16 Q. Your points, as it were, start from 12.2.

17 A. Mm.

18 Q. And you say there that the operating loss that 2 Travel
19 made in the year to 31 August is largely due to
20 exceptional and non-recurring items. Is that right?

21 A. I don't think largely. I think to give a full picture,
22 we've got 687, which is the loss before interest.
23 I think it comes down to a total loss after interest,
24 pre-tax, of 996. So nearly 1 million. And then there's
25 a tax credit to take it back to a retained loss for the

1 year, of 950. And then identify, based on the
2 chairman's statement and also the PwC report and indeed
3 the presentation in the accounts for some of it, some
4 items which are non-recurring in nature.

5 Q. So the PwC report said that around 600,000 of the costs
6 were considered to be non-recurring. That's right,
7 isn't it?

8 A. Of which 250 was classed as an exceptional item in the
9 financial statements, being the float costs charged
10 against profit and loss, and then there was 200,000 that
11 related in fact to 2002, but only got booked in 2003.

12 Q. I think you've just said, correct me if I'm wrong, that
13 the audited accounts identify only 249,000, I think
14 it is, as exceptional items; is that right?

15 A. Yes. There's a distinction here, of course, between
16 exceptional and one off. You can have a one-off cost
17 that's not, under accounting standards, classified as
18 exceptional. The chairman's statement pointed to some
19 other costs and the chairman's statement, of course not
20 subject fully to audit, but nevertheless, has to be
21 considered by the auditors to be consistent with the
22 accounts.

23 Q. Yes. But insofar as we are looking at the PwC report,
24 again that was just simply based on management's view as
25 to what was exceptional or one off, wasn't it?

1 A. Well, the 250 we've talked about is exceptional, and the
2 bad debt relating to 2002 of 200, there's correspondence
3 with the auditors around that, which I think you took
4 someone -- I can't remember who -- to earlier last week.
5 So I don't think that's a PwC opinion at all, and that's
6 450 of the 600,000.

7 Q. And then you refer to the operating loss in the six
8 months ending 29 February 2004.

9 A. Mm. Yes.

10 Q. 41,000. But there you don't take account, do you, of an
11 exceptional income amount? So in the first comparison
12 you say: well, discard exceptional costs, and in the
13 second one, you leave out account and exceptional income
14 items?

15 A. It's fair to point that out, those figures are improved
16 by an exceptional credit of 95,000.

17 Q. And if you do take that into account, you actually get
18 to an operating loss of 135,000, I think.

19 A. Well, I think operating loss here is before interest.

20 Q. Yes.

21 A. So I think it's break even. Sorry, it's not break even
22 before interest, there's a loss of 50,000 before
23 interest, yes.

24 Q. So on that basis, it isn't right to say that it was
25 a significant improvement, is it?

1 A. Well, to have a loss for a half year on that basis of --
2 you're right -- 135,000 pre-interest ... Now, the
3 accounts figures, if you don't look at exceptionals,
4 were 687 for the full year. Of course, if you -- you
5 either add or you don't add back the exceptionals. If
6 you don't add back the exceptionals, then clearly 2
7 Travel is doing better. But of course, if one does then
8 look at the exceptionals, then the loss for the year
9 was -- well, pre-interest, about 100,000, so yes,
10 they're not doing as well in 2004.

11 Q. Then you spend a little time -- and this is probably
12 getting into the detail -- looking at earnings or
13 you are assessing 2 Travel's performance on a, I think
14 one says, EBITDA basis; is that right?

15 A. Mm.

16 Q. And Mr Haberman's comment on that at paragraph 4.20 of
17 his report is that it's not really appropriate to do
18 that when the company's vehicles were all basically on
19 HP.

20 A. I did the analysis on an EBITDA basis because it was
21 responding to a point in the defence which was framed in
22 terms of EBITDA. And as we discussed a few moments ago,
23 the main purpose of this chapter was to pick up some
24 points that were in the defence on EBITDA -- sorry, more
25 generally, but including on EBITDA. I understand what

1 he's saying, and yes, EBITDA, while it is a common
2 measure, it wouldn't include the financing costs
3 associated with HP. So it is important also to look at
4 those as well, yes.

5 THE CHAIRMAN: What he's really saying is you should go for
6 the EBIT but not the DA? The depreciation and
7 amortisation. Because the vehicles are on HP. Isn't
8 that what the difference amounts to?

9 A. The difference in this case, yes, is because the
10 vehicles purchased on HP will have been capitalised
11 in the balance sheet and therefore the depreciation will
12 be going through. And therefore, yes, you do need to
13 look at the depreciation as well. Although that's still
14 a non-cash charge, the depreciation, and that's why
15 EBITDA is commonly used, because it is a better measure
16 of what's happening to your cash pre-financing.

17 MR FLYNN: The tribunal has Mr Haberman's point at 4.20 and
18 the footnote there, so I think the respective positions
19 are staked out.

20 Then I think you deal with current ratios and
21 security. That's right, isn't it, in 12.3?

22 A. Yes.

23 Q. You say there are plenty of bus companies that have
24 a current ratio below 1. That's not abnormal.

25 Mr Haberman's response to that at 2.13 of his report is

1 to say: well, yes, that's fine, so long as you are
2 actually generating revenues and profits and cash so
3 that you can pay off your creditors. And that, history
4 tells us, 2 Travel was just never able to do. That's
5 Mr Haberman's comment. [inaudible] your view of this
6 matter and I thought I should put it to you.

7 A. Yes. I mean, clearly, that's a large subject of whether
8 2 Travel either was able to meet its bills as they fell
9 due or would have been, in the counterfactual, absent
10 the predation for the period up till the final
11 liquidation in May 2005. I'm not sure it's capable of
12 an easy one word answer.

13 Q. Yes. Well, I think at least in the factual we have the
14 position that, as I've stated, one can assess the
15 performance on the basis of the figures that we do have.

16 A. Right. Well -- and we know that money was found across
17 the period to the end of 2004 and into 2005. Now, how
18 it was found and the attitude of the backers, Mr Short
19 and Mr Francis and others, you know, these are more
20 complicated matters that you have heard a lot of
21 evidence on already. The fact is they did continue to
22 find the money to pay off their creditors as they could.

23 Q. Yes. As you say, that is a matter on which there has
24 been a lot of evidence. Mr Haberman also points out in
25 respect of current ratios -- and I'm looking at 2.15 and

1 2.16 of his report -- that the issue is actually
2 complicated by the fact that 2 Travel extensively
3 factored its debts and that a current ratio assumes that
4 debts can be collected, but obviously, if you factor
5 them, then you can't. Mr Haberman sets out a table at
6 16, showing how the current ratio would have to be
7 justified, if you take full account of that.

8 A. Yes. I suppose for the year ending August 2003, we can
9 see the comparison is between 0.43 for the accounts or
10 adjusted for factoring, 0.37. So yes, there is a factor
11 there, but it makes a 10 per cent difference.

12 Q. This may be a case where every 10 per cent counts,
13 Mr Good. Do you also accept Mr Haberman's point -- you,
14 as it were, make a virtue of the fact that security had
15 been provided in respect of 2 Travel's principal assets.
16 Mr Haberman suggested that that's actually a
17 disadvantage, not an advantage, at least for the
18 unsecured creditors, because if any of those are called
19 in, the company is unable to carry on generating income.
20 Its revenue producing assets are vulnerable, as it were.

21 A. Yes. I think what I'm saying here is that you have
22 a large number of creditors and some of them are
23 secured. So in terms of managing your creditors, those
24 creditors, at least, are going to have some comfort that
25 they have some assets against which the obligations are

1 secured. I agree for the unsecured creditors, that's no
2 comfort at all.

3 Q. Particularly when the assets that are secured are really
4 everything the company needs to operate. So calling
5 those in is a disaster scenario?

6 A. Sorry, the question is?

7 Q. Would you agree with that?

8 A. Creditors have to be paid eventually or else they
9 threaten to wind up, as we saw with the Inland Revenue
10 eventually. Although then again, it shows the company
11 was able to find the money in order to pay that off. So
12 yes, for an unsecured creditor, he has to be paid in the
13 end.

14 Q. But it's right, Mr Good, isn't it, none of these points,
15 some of which are perhaps rather technical -- none of
16 them do you pursue to a conclusion that absent the
17 infringement, 2 Travel would have stayed afloat?

18 A. My analysis doesn't go into that level of detail. I'm
19 sure that will be discussed with Mr Haberman tomorrow.
20 Clearly, there are a number of factors: the loss that
21 2 Travel was sustaining, how loss making it was. We've
22 looked at the 2003 numbers already. Mr Haberman's done
23 a projection of the 2004 numbers. There's the attitude
24 of the financiers: whether the financiers believe in the
25 business plan, whether there is a realistic business

1 plan. All these factors that, you're right, I don't
2 attempt, as an accountant, to tie that all together and
3 come to a conclusion about whether this company was or
4 wasn't irredeemably broke.

5 MR FLYNN: Thank you very much, Mr Good. No further
6 questions.

7 MR SMITH: Before Mr Bowsher rises, I had a couple of points
8 for you, Mr Good, if you don't mind. Do you have your
9 report in front of you?

10 A. I do, sir.

11 MR SMITH: If you could go to paragraph 5.3.6. You see
12 there that you refer to monthly passenger numbers and
13 revenue supplied to you by Cardiff Bus for the relevant
14 period. You've got there the total number of passengers
15 carried and a total amount of revenue. When I was
16 looking at this last night, I couldn't see those figures
17 appended to your report. They're not appended to your
18 report, are they?

19 A. No, they are not.

20 MR SMITH: Are they the same as the figures we have in
21 bundle 11?

22 A. Not quite, I think is the answer, but let's have a look
23 at that in more detail. I do remember we had some
24 material on disclosure before I did my report, and then
25 we had some subsequent material, which I think is what

1 these are based on, which came in after my report.

2 MR SMITH: I think you'll find them at I1, tab 4, sub-tab B.

3 I think if you turn -- it's not numbered, I'm afraid,

4 but you'll find somewhere through the bundle there's an

5 e-mail from the box of Ella Curnow and after that, there

6 are some figures.

7 A. Okay, yes.

8 MR SMITH: There you'll see, I think, two columns, one

9 giving total monthly passenger numbers, excluding

10 service 158, and one including service 158. Taking the

11 first, the one excluding service 158, we can see a grand

12 total -- this is in monthly passenger numbers -- of

13 159,790, which is a little higher than the figure

14 you have in 5.3.6.

15 A. Yes.

16 MR SMITH: What was the reason for that discrepancy?

17 A. A different set of data that was provided to me back

18 in October, as opposed to this paper.

19 MR SMITH: These are better figures though.

20 A. Yes, I think the data that was provided to me in October

21 was just revenue only. So I had to work back and infer

22 the passenger numbers from that. That's the figure

23 I got to. Sorry, I did have total passenger numbers.

24 I had to use that to infer the different types of

25 passengers, but anyway, yes, there were different data

1 sets in October and November but as you see, they are
2 not so different to cause me concern.

3 MR SMITH: I understand. No doubt I'll be corrected if the
4 presumption that these figures are the ones we should
5 use is wrong. That's clearly not a matter for you.

6 Can I then ask you in the same tab to move forward
7 to the second page, which is where one has, first of
8 all, summary of the white bus passengers by route. And
9 then there's a more detailed table, which breaks down
10 total number of passengers, not only by route and by
11 month, but also by class of passenger.

12 A. Yes.

13 MR SMITH: Again, looking at this, I had some difficulty in
14 tying in the descriptions in the top column with the
15 figures below. One has "Adult", "All", "Child", "Swift
16 use" and "Welsh concessionary". I wonder if you could
17 assist us in what these mean? "Adult" obviously means
18 adult passengers and must relate to the figure of 930.
19 Is that right?

20 A. I believe those would be the fare paying passengers, so
21 not all the adults because the concessionaries will be
22 adults as well.

23 MR SMITH: So it will be full fare paying passengers?

24 A. What the "All" are, I'm not sure. As I said, this
25 wasn't the data I used --

1 MR SMITH: I see.

2 A. -- for my report.

3 MR SMITH: Well, it may be that the parties can assist in
4 providing a clearer description, both of which figures
5 related to which labels and what the labels mean.

6 MR FLYNN: Sir, yes.

7 MR SMITH: I won't press you any further on figures that,
8 after all, aren't yours. Just taking these figures,
9 it would appear that one can split passenger numbers
10 quite precisely for the Cardiff Bus white bus
11 services --

12 A. Yes.

13 MR SMITH: -- both as to route, as to period and as to
14 passenger type?

15 A. Yes.

16 MR SMITH: Now, can I ask you to look at the OFT report,
17 which is E11, page 424. This is a table you mentioned
18 in your cross-examination with Mr Flynn. It's table 5,
19 which shows the various fares charged by 2 Travel and
20 Cardiff Bus, both for Cardiff Bus on its liveried and on
21 its white bus services. As you pointed out, you can see
22 that the fare varies, both according as to whether
23 you're buying a ticket for zone 1 or zone 2, or zone 3
24 or zone 4; it also varies according as to whether you're
25 buying a single or return and it also varies as to

1 whether you're an adult or a child.

2 A. Yes.

3 MR SMITH: Clearly, all those factors have a bearing on the

4 revenue that is earned by the bus company in question.

5 Of course, we don't have revenue figures broken down

6 in that way.

7 A. That's right.

8 MR SMITH: Because even on the Cardiff Bus figures, all

9 we have are total number of passengers travelling on any

10 one route. It doesn't say when a passenger got on or

11 when it got off?

12 A. Which zone they paid for.

13 MR SMITH: Exactly. It doesn't say, indeed, whether they

14 were buying a single or a return. What you have done in

15 terms of trying to deal with that problem, if you put

16 E11 away now and go back to your report, is in

17 paragraph 5.2.3. You've calculated a 2 Travel average

18 revenue per passenger?

19 A. Yes.

20 MR SMITH: But you haven't sought to calculate an equivalent

21 average for Cardiff Bus?

22 A. For the white bus?

23 MR SMITH: For the white bus service?

24 A. No, I haven't, because for the calculation I take the

25 passenger numbers from the white bus -- and we've talked

1 at great length of how many of those might have
2 travelled with 2 Travel -- but then applied the 2 Travel
3 fare to those, rather than the white bus fare to those.

4 MR SMITH: I see. Is that what we see in table 5 of your
5 report, internal number 15, where you've got the column
6 which is labelled "Portion of revenue per passenger",
7 and there is a 1 there?

8 A. Yes, this is to do with the problem I alluded to
9 earlier, which is that I didn't even have data of that
10 quality when I did my report. All I had for white bus
11 was the total number of passengers per month and the
12 revenue for each of the five different types, whether
13 it's full fare, concession, et cetera. And so in order
14 to work out the passenger numbers, I had to work back
15 from the revenue to passenger numbers by type of
16 passenger.

17 MR SMITH: I see. So just to go through your various
18 revenue heads. "Fares". That is full adult fares, is
19 it?

20 A. That's on-bus cash, so that would include children.

21 MR SMITH: Right. And "Other on bus"; what is that?

22 A. I'm not sure. It was so small that I wasn't too
23 concerned that I didn't know.

24 MR SMITH: "Multi-ride" we understand. "Concessions" we
25 understand. "Advertising"?

1 A. Yes. That's advertising, as I understand it,
2 advertising on the buses. I think we've seen -- I know
3 there were pictures of the 2 Travel buses that we saw
4 with advertising on. As I understand it, that would be
5 advertising in or outside the bus. But I haven't
6 included any revenue from that in my numbers at all.

7 MR SMITH: Yes, indeed, because in our counterfactual,
8 whilst the passengers may well transfer onto a 2 Travel
9 bus, the advertising wouldn't?

10 A. Quite.

11 MR SMITH: So that was not included in your calculation?

12 A. Yes.

13 MR SMITH: Thank you. Given that we've got revenue figures,
14 albeit perhaps, not quite as broken down as they might
15 be, in your table 5, but also number of passengers in
16 those classes, and the figures that we've just seen --

17 A. That we now have that I didn't have then.

18 MR SMITH: Indeed, and no criticism is intended, Mr Good,
19 I'm trying to get a grip of where we are now. We can,
20 for each of the revenue streams in your table 5,
21 excluding the advertising and the "Other on bus", we can
22 find out the corresponding number of passengers?

23 A. We have the data with the corresponding number of
24 passengers, yes.

25 MR SMITH: Exactly so. So we can actually identify for each

1 of those classes, an average ticket price?

2 A. Yes.

3 MR SMITH: We could also then identify as a percentage the
4 extent to which that average ticket price is below the
5 maximum price that a passenger might pay?

6 A. You'd still have the adult to child problem, I think.

7 MR SMITH: Well, yes, but if you looked at your fares at the
8 first figure, £43,000, that includes adults and
9 children.

10 A. Yes.

11 MR SMITH: If you took your passenger figures as including
12 also adults and children, you would then get an average
13 price, wouldn't you, which would factor in the children?

14 A. Yes, you would. Unless there were some strange effect
15 whereby children only rode within the estates, whereas
16 the adults rode into town. It wouldn't necessarily deal
17 with that, but that's probably a second order of fact.

18 MR SMITH: Well, it would deal with the zonal discount,
19 those passengers who are travelling for only part of the
20 way in, because again, less would be paid?

21 A. You could get to an average discount, yes.

22 MR SMITH: It would be a very broad average but you'd get to
23 an average. Now, that would be factoring in not only
24 the adult to child question and the return and single
25 question and the zonal question, you'd factor all those

1 in. Now, if you then worked out the theoretical maximum
2 price that could have been earned, given the number of
3 passengers -- let's suppose that the maximum price you
4 could pay is an adult travelling the whole way on
5 a return.

6 A. Mm.

7 MR SMITH: Let's suppose that the price for that is £2. I'm
8 picking a figure from the air.

9 A. I think it's 1, but yes.

10 MR SMITH: I'm going to say £2 because I've done my example
11 on that basis. Let's suppose there are 100 full fare
12 passengers in question. I'm hypothesising. You'd be
13 able to achieve a calculation of the maximum revenue
14 that could be achieved, assuming all of the people
15 travelling were adults. They travelled return and they
16 travelled the full distance.

17 A. Yes.

18 MR SMITH: And you could compare that to the average price
19 that we actually have.

20 A. For 2 Travel or white bus?

21 MR SMITH: I'm still talking about Cardiff Bus at the
22 moment. In other words, what you'd have if, say, the
23 average price was £1, as calculated on the Cardiff Bus
24 figures, but the theoretical maximum was 2, you'd say
25 that the difference is 50 per cent, and you could

1 attribute 50 per cent to the fact that there are single
2 passengers and children and passengers not travelling
3 the whole way?

4 A. Yes.

5 MR SMITH: Now, what occurred to me was that that loading,
6 that discount, could then be applied to the 2 Travel
7 fares. In other words, if you make an assumption as to
8 how many passengers transfer from the Cardiff white bus
9 to the 2 Travel bus -- and I don't want to ask you
10 anything about that, we have heard plenty on that. But
11 let's take your 100 per cent assumption. You can then
12 work out what fare 2 Travel charged as a theoretical
13 maximum and apply that discount that one derives from
14 the Cardiff Bus figures to that revenue stream to get
15 a sense of how much, in the counterfactual scenario,
16 2 Travel would have received, had all the passengers
17 shifted over?

18 A. Yes. I'm trying to work through ... That sounds
19 likely. I'm sorry, I don't want to be difficult.
20 I haven't given it that much thought. I'm wondering
21 what the benefits of that are, as compared to
22 identifying each -- knowing how many passengers there
23 are that the white bus carried in each category, which
24 we now have, and then one just makes an assumption about
25 how many of those transfer. You still have to make an

1 assumption, don't you, about how many transfer? Is that
2 not the key issue rather than the mechanics of ... I'm
3 struggling to see the benefits, sir, of your proposal.

4 MR SMITH: Certainly you need to make an assumption as to
5 how many transfer. Whether it's 100 per cent or less or
6 more, you'd have to do that. But you also, once you've
7 decided how many transfer, have to make assumptions as
8 to whether they would have been full fare paying or not.

9 A. Yes.

10 MR SMITH: So that then, is a consequence in the analysis?

11 A. Right. But I have, in my analysis, made different
12 assumptions about how many transfer, depending whether
13 they're concessions or full fare already. So although
14 I say 100 per cent of the full fare, it's between 30 and
15 50 of the concessions. So I think your method, sir,
16 might help then, adjust for whether the white bus
17 passengers had a different profile in terms of the zones
18 compared to the 2 Travel passengers. I think that might
19 be the additional benefit of that analysis.

20 MR SMITH: Yes, because we are talking about the white bus
21 passengers who are transferring, in your hypothesis, to
22 2 Travel, rather than 2 Travel passengers. So it seemed
23 to me, looking at this yesterday, that the starting
24 point ought to be the profile of the passengers who, in
25 fact, travelled with Cardiff Bus?

1 A. And that's what I've done in all regards except for this
2 additional point about the assumption I make was that
3 they had the same profile in terms of sections carried
4 that the 2 Travel passengers had.

5 MR SMITH: So you're saying that one can short cut all this
6 and simply rely upon the average prices used in 5.2.3 of
7 your report?

8 A. Those are ... It's only a short cut in terms of that
9 point about the zones. In the other regards, in terms
10 of the number of passengers carried and whether they
11 were full fare or concession, you know, that is based on
12 the white bus data. But yes, that would give some extra
13 precision in that regard.

14 MR SMITH: Thank you, Mr Good. Sorry to have taken so much
15 of your time.

16 THE CHAIRMAN: Mr Flynn, do you want to ask any questions
17 arising from Mr Smith's questions?

18 MR FLYNN: No, sir.

19 MR SMITH: Mr Flynn, It would be helpful, I think, to have
20 the revenue figures that Mr Good had in his report which
21 I assume derive from Cardiff Bus. I don't think they --

22 MR FLYNN: I think that's right, sir. I can't now remember
23 if they were attached to the defence. We will look them
24 out, but I think that's what Mr Good would have been
25 commenting on at that time.

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Re-examination by MR BOWSHER

MR BOWSHER: Just before I start, on Mr Smith's last calculation or hypothesis, if I put it that way, I'm wondering whether the most effective way would be to try and work that up in a worked example and see --

THE CHAIRMAN: You'll have it on the transcript.

MR BOWSHER: And we can then make any comment in writing on the basis of that.

THE CHAIRMAN: Mr Smith's done work on this overnight, as is obvious. It may well be worth --and I was aware he was going to raise these issues.

MR BOWSHER: I thought it was ex tempore. I'm disappointed.

THE CHAIRMAN: No, several pages of neat notes. So if the parties would like to work anything up on the basis of the questions put by Mr Smith for the whole tribunal, that may be helpful.

MR SMITH: That would be very helpful.

MR BOWSHER: Mr Good, a couple of questions for you. Can we go back to a couple of earlier points. You were being asked about your growth assumptions and the way in which you used other Welsh towns as a comparator for that. I don't know if you want to pull that out? I think it's in 5.4.8 and following of your statement, where you start to deal with that topic.

If I can lead to this extent. Those growth

1 assumptions, did they lead to your high case and low
2 case scenarios?

3 A. Yes, the high case and low case are composite scenarios,
4 so there are other factors around this issue of pick-up
5 of white bus passengers. But yes, there is a high
6 growth assumption and a low growth assumption.

7 Q. Could you explain firstly, what is the material from
8 which you derive the high growth and low growth
9 assumptions, the underlying material?

10 A. Right. Well, we've talked about Swansea and Neath, so
11 Neath has a growth from start-up of about 65 per cent.
12 Swansea has 260 per cent. I think Mr Smith very
13 helpfully pointed to the fact that starting in the
14 autumn, maybe in that is confused some seasonality as
15 well as growth. But Neath certainly, starting in May,
16 shows 67 per cent growth. So I've taken those as
17 a point to start from. Also taken what we know about
18 what actually happened in Cardiff, so I apply this
19 growth as a perhaps -- as I slightly convolutedly tried
20 to explain -- to the April 2004 numbers and explained
21 that that leads to a certain pattern of passenger
22 numbers growing over time. But also, if one compared
23 that to the passenger numbers that one would get if one
24 had run 100 per cent of the services instead of the
25 proportion that was actually run and grossed it up, then

1 we'll get a similar pattern, at least for the first few
2 months of growth.

3 And then I've obviously taken into account the
4 knowledge that Mr Fowles and, as discussed, Mr Harrison
5 considered there was significant growth potential in
6 Cardiff. I appreciate Mr Harrison, in part, was basing
7 that on what Mr Fowles, in his discussion with
8 management said. And then one really has to make an
9 assumption because there is no hard science available
10 for this counterfactual, I'm afraid, and I've assumed in
11 a low case, 40 per cent growth. So the very first
12 month, April, up to the plateau of 40 per cent, and in
13 a high case, 100 per cent. So I've not gone anywhere
14 near the Swansea growth of 260 per cent. In the low
15 case, it's below the Neath growth of 65 per cent.

16 Q. Can you just show us on your annexes, appendices? It's
17 in appendix 2.7, isn't it? Show us how those feed
18 arithmetically into the calculation.

19 A. Right. This is further complicated, I'm afraid, by
20 where I assume the growth comes. For the low case, I've
21 assumed that all the growth comes in the concession
22 passengers because they're the lower -- you get less
23 revenue from them. And so I thought, given this was the
24 low case, I should assume all the growth in passenger
25 numbers comes in concession passengers. It's probably

1 easier then, to see it flow through on 2.1, which I'm
2 afraid is the one with the very small type. What I'm
3 taking there is the -- in the first column of numbers,
4 the April 2004 actual passengers. I add to that the
5 proportion that is assumed were on white bus and are
6 assumed to travel on 2 Travel. Then I take that April
7 number and then I grow it steadily. Sorry, the 40 or
8 100 per cent is the total growth, it's not the month on
9 month growth. So I apply a proportion of that to give
10 me the 40 per cent growth over a six-month period. And
11 in order to calculate the loss in the period to
12 liquidation, obviously deduct the actual number of
13 passengers that were carried.

14 Q. Then how does that work on the high case?

15 A. Exactly the same way but with different numbers,
16 different growth assumption.

17 Q. You were asked some questions about the PwC passenger
18 assessment, the number of passengers, the 71.2
19 passengers, I think.

20 A. Yes.

21 Q. And you ventured that you come up with some different
22 results. Could you explain what results you come up
23 with on the basis of that analysis? And I wonder if
24 it's helpful that you have a copy of the exhibit --

25 A. I don't really address Mr Harrison's number.

1 Q. Not in your report?

2 A. No.

3 Q. What is your sort of parallel --

4 A. I don't think I need that to do a parallel assessment.

5 I'm afraid I will get my calculator out here, apologies.

6 If we stay in 2.1, we can see in the right-hand section,

7 the post liquidation loss of profits, which is

8 effectively the steady state annual profits. So

9 if we look at the May 2005 to May 2006 column ... And

10 then there are two sets of lost passengers: one, 559.2.

11 Sorry, it's very, very small writing. Which are the

12 full fare lost passengers per working day that we say

13 would have been carried on by 2 Travel. So that's 559

14 on the four services that did run. And a further 139.8

15 full fare paying passengers on the fifth service. And

16 then if we continue down that column, we have 1,252

17 concession passengers per day and 313 on the fifth

18 service. So if one adds all those up and divides it by

19 the number of journeys, which is the 157, which is

20 nearer the top of the column, you get to about 15 on the

21 low case and about 22 on the high case.

22 Q. In looking at the comparability of the Neath and Swansea

23 analysis, do you take any account of the nature of the

24 competition in Neath and Swansea?

25 A. I know there was competition. I know that they were

1 starting in-fill services against an incumbent, but
2 other than that, no.

3 Q. You were then asked some questions about Rotala and its
4 applicability as a comparator.

5 A. Yes.

6 Q. Particularly, you were asked about how, if at all, one
7 should take into account gearing and so forth in looking
8 at that. I wonder whether it would be helpful just to
9 look at the exhibit to Mr Haberman's report, which
10 actually deals with this. It's in D4, which,
11 interestingly, is tab 6. I don't think it's paginated.
12 I think you just have to thumb through until you find
13 exhibit PH1.44. (Pause).

14 THE CHAIRMAN: This is the BlueOar report?

15 MR BOWSHER: Exactly so. You were asked questions about the
16 applicability or otherwise of Rotala as a comparator
17 when looking at the value of the 2 Travel business.
18 This document here, is that a document which you've
19 looked at before?

20 A. I've seen it, yes, it was attached to Mr Haberman's
21 report. I looked at a similar -- not a BlueOar report
22 but a similar report when I was preparing my report.

23 Q. Do you get any material from this report, either
24 positive or negative, to reinforce or undermine the
25 comparability of Rotala as a useful comparator for the

1 analysis that you go on to make?

2 A. I think internal page number of 12 is quite helpful.

3 Q. Could you explain your thinking there?

4 A. It shows a pattern of losses for the first three years.

5 Reported profit before tax, a loss of 1.1 million in

6 year one, a loss of 2.7 in year two, a loss of 1 in year

7 three and an estimated loss of 0.1 in year four. That's

8 estimated, I believe, as was 2007. I believe in

9 reality, as it turned out, they did make a profit.

10 Q. Have you looked at the 2009 accounts, which I think are

11 in the bundle, for Rotala, to see if there's any further

12 material which assists on that?

13 A. I think I looked at the 2010, but anyway, we can look at

14 2009.

15 Q. They are in ...

16 THE CHAIRMAN: Is there any significance in the comparison

17 between these two companies? I'm looking at page five

18 of the BlueOar report. Is there any significance in

19 their having raised 8 million of equity before expenses

20 in their first two years? It looks as though their AIM

21 flotation raised 4.7 million of equity which for a small

22 company, is pretty successful, isn't it?

23 A. That does look successful and considerably bigger than

24 2 Travel. Clearly, 2 Travel was relying in part on

25 investor loans, whether they're the 8 per cent

1 convertibles or the loans provided by Messrs Short and
2 Francis, yes.

3 THE CHAIRMAN: Does that difference affect comparability of
4 the two companies or not?

5 A. In terms of overall valuation to be placed on a bus
6 business, you would there be looking at profitability of
7 the business and the view of the market segment rather
8 than the way in which that was financed. On the other
9 hand, a successful placing like this suggests a lot of
10 confidence in the management, I think.

11 MR BOWSHER: I was going to ask you to look, Mr Good, at
12 E11, page 758. Again, I just wanted to ask an open
13 question as to whether there's any material -- it's
14 obviously now, some way into the future -- from the 2009
15 report, which provides guidance as to the applicability
16 of the comparison you have made?

17 A. The company has moved -- it's considerably bigger by
18 this stage. The revenues are 40 million. So you know,
19 one has to take this as -- sorry, I'm on internal
20 page 23, 782 of the bundle. By this stage, the company
21 has succeeded and is making profits. This is four, five
22 years after flotation. So they've done well. The other
23 thing which isn't in this 2009 accounts, in terms of the
24 revenue, it talks about it all coming from one activity.
25 If you look at 2010, it's probably clearer that that

1 activity is a mixture of -- I think it's below
2 10 per cent charter and then the rest of it is between,
3 if you like, commercial contracts. About half of the
4 rest is commercial contracts and about half of it is
5 Local Authority type work and on-bus revenue. So it's
6 got that same feel of a business model in terms of
7 having some longer term contracts and some on-bus
8 revenue buses.

9 THE CHAIRMAN: And of course, by then, they had
10 institutional investors in the company?

11 A. Oh yes, they've done well by this point.

12 MR BOWSHER: I think it was being suggested to you that
13 there's a chronological issue between making the Rotala
14 2005 comparison with 2 Travel a little bit earlier. Is
15 there any significant moment where you think the market
16 has changed or which would affect your comparisons?

17 A. No, I had a quick look at that in my report as to
18 whether the structure of the bus market had changed
19 radically over the period 2004 to date. There were
20 no -- based on the market research which I quote very
21 briefly in my report, there were no massive structural
22 changes. I know there were some events, which are
23 discussed in relation to coaches, but not in relation to
24 buses.

25 Q. You were being asked about the section in your report,

1 which is at -- you can put E11 to one side. In your
2 report, internal 47.

3 A. Yes.

4 Q. You were being asked various questions about the
5 applicability or otherwise of certain exceptional
6 losses. Can you just explain how, as it were, the
7 variables in this analysis and how that plays into your
8 assessment of the value of the company? Of course,
9 we were talking about a loss. There's a £50,000 loss in
10 these exceptionals. How does that play into this?

11 A. For the company to have value, it has either to be
12 profit making or perceived that it will be profit making
13 in the future or else have valuable assets. Setting
14 aside the Swansea depot, the basis of valuation in
15 section 8 is around the business being profitable in the
16 future. There is a question, of course, you have to
17 look at the past, what's happened in the past, and the
18 company was loss making in the past. Does that mean
19 it'll be loss making in the future? Obviously you have
20 to bear it in mind, but you also have to bear in mind
21 their plans, quality of management, financing, all the
22 rest of it. So to that extent, no. What happened in
23 2003 in terms of the loss, while informative, isn't
24 a fundamental input into the valuation, assuming the
25 business had survived.

1 Q. If I can just go back to a question about the way in
2 which passengers transfer in the counterfactual, and it
3 may be that you've already covered this in the context
4 of some quite detailed questioning from the Tribunal.
5 Perhaps we'll just touch on it. In the analysis, if it
6 were to be found that, by and large, buses were running
7 immediately in front of 2 Travel buses in the real
8 world, and then you were seeking to value from the real
9 world into the counterfactual world, where the white bus
10 just disappears, can you talk us through how you see the
11 passengers who are sitting on that white bus being
12 transferred to other services? What's the analysis as
13 to how you decide how they get allocated?

14 A. Well, I suppose summarising some quite detailed
15 discussions already, we're looking at a position where
16 we have around the clock, in any one hour, a number of
17 liveried services. If we have a white bus on the clock,
18 as it were, just before the 2 Travel bus, and we have
19 that on a regular and consistent basis, then we have
20 those passengers not getting on the white bus but
21 getting on the 2 Travel bus. Then you have 100 per cent
22 pick-up. Now, I've not assumed 100 per cent pick-up in
23 either high or low case. I've assumed 100 per cent
24 pick-up of the concession passengers -- sorry, of the
25 fare paying passengers, which is more, as we discussed

1 earlier, around also, price sensitivity. But I've
2 assumed for the concession passengers, even in the high
3 case, that only half of them would transfer. Of course,
4 if it was found they were that close and that was
5 regular and it was appropriate to assume they all
6 transfer, my numbers to that extent would go up beyond
7 the high case.

8 MR BOWSHER: Can I just take instructions on one point?

9 THE CHAIRMAN: Of course. (Pause).

10 MR BOWSHER: Thank you very much, Mr Good. Does the
11 tribunal have any further questions?

12 THE CHAIRMAN: No. Thank you very much. We're very
13 grateful to you, Mr Good.

14 (The witness withdrew)

15 MR BOWSHER: That is our expert evidence.

16 THE CHAIRMAN: Right. What next? Mr Flynn?

17 MR FLYNN: We would then call Dr Gunnar Niels, sir.

18 DR GUNNAR THORVALD NIELS (affirmed)

19 Examination-in-chief by MR FLYNN

20 MR FLYNN: Could Dr Niels be given D, tab 8, please.

21 Dr Niels, is that your report you see before you?

22 A. Yes.

23 Q. If you turn to page 29, internal 27, bundle page 29,
24 is that your signature?

25 A. Yes.

1 Q. If you would just give your full name to the tribunal.

2 A. I have a middle name. Gunnar Thorvald Niels is my full
3 name.

4 THE CHAIRMAN: We're very accustomed to Scandinavian drama
5 now!

6 MR FLYNN: Attached to that report -- well, let's do it this
7 way. Do you have a tab 9?

8 A. Yes.

9 Q. Is that something headed "A3 data used in the
10 counterfactual analysis"?

11 A. Yes.

12 Q. Are those pages to be regarded as substituting for the
13 equivalent pages that were attached to your original
14 report?

15 A. Yes, correct.

16 Q. Perhaps you can just say what do we see there in tab 9.
17 I don't ask you to explain it.

18 A. These are basically the appendices to my original
19 report. There have been some changes. There have
20 basically been two adjustments made in these. One
21 relates to the additional profit that might have been
22 made on route 258 after December 2004, so that was
23 a calculation adjustment that is reflected in tables 4.2
24 and 4.3, right at the end of tab 9. And the other
25 adjustment relates to changes in -- small changes in

1 this jurisdiction; is that fair?

2 A. Yes.

3 Q. Do I gather, though, from what we see from your

4 bibliography and so forth, that your work in those

5 investigations is not in terms of conducting empirical

6 evidence as to how passengers do or do not behave?

7 A. Well, I would say in some of those cases, more than in

8 others, but I think in general, what the economists do

9 in competition cases involving the bus industry can

10 involve analysing passenger behaviour. And indeed it

11 can involve measuring passenger behaviour in terms of,

12 let's say, elasticity. So sensitivity to price. In

13 some of the other cases, I have done that more than in

14 this case.

15 Q. And the data that you have been using, is that data that

16 you have gathered for yourself and gained expertise

17 from, or is that data that's drawn from some other

18 source?

19 A. You mean the data in this particular case?

20 Q. From those other investigations, preferences and so

21 forth?

22 A. That varies. Sometimes in these cases you get primary

23 data. For example, you commission a survey and analyse

24 the survey results yourself. In this particular case,

25 I have used the data that has been made available,

1 I think, to everyone by the parties.

2 Q. In terms of the preferences of passengers and their
3 behaviours that may or may not affect some of the
4 matters in this case, you'll have seen that there's been
5 quite a bit of evidence, both written and oral, about
6 how passengers may or may not behave. You've not
7 conducted any analysis yourself as to how the passengers
8 in this market might or might not have behaved; is that
9 right?

10 A. You mean on Cardiff on the five specific routes, and
11 more specifically, the white service passengers? No,
12 I haven't conducted any additional analysis on how they
13 behaved.

14 Q. So in terms of those preferences, the tribunal may take
15 account of, for example, what the Competition Commission
16 has taken, about certain generalisations about how
17 passengers may or may not behave; is that fair?

18 A. Yes, indeed.

19 Q. But in a sense, the tribunal having heard that evidence,
20 I'm not certain that your expertise is anything
21 additional to add to how these particular passengers in
22 these particular parts of Cardiff would have operated;
23 is that right?

24 A. So if you refer to the specific question of whether the
25 assumption holds that they generally get on the first

1 bus to arrive at a bus stop, then yes, that is the
2 general assumption I have made in my analysis. Like
3 Mr Good, I have tried to analyse where the white service
4 passengers would have gone in the counterfactual. That
5 approach is very similar between Mr Good and myself.
6 Where we then differ is in relation to a number of
7 assumptions, three main assumptions, one of them being
8 indeed, where do the fare paying passengers go? Do they
9 get on the first bus to arrive at a bus stop or do they
10 all go to 2 Travel?

11 I have made that assumption. Actually, I should say
12 I have presented both scenarios in the concluding table,
13 so table 4.3 and 4.2. I have presented both scenarios.
14 So where the fare paying passengers all get on board
15 2 Travel in the counterfactual and the scenario where
16 they are divided by frequency and so the tribunal can
17 see in my tables, the differences. And I have explained
18 why I would prefer the assumption in the scenario where
19 they are divided by relative frequencies.

20 Q. In the counterfactual that we are working with, it's
21 right, isn't it, that we would have to assume that this
22 is a world in which 2 Travel were able to launch their
23 services, competing against a lawful, liveried service?

24 A. That is the counterfactual that I have analysed, indeed.
25 I have flagged up in the report that, of course, there

1 is always a theoretical possibility that there would
2 have been some other form of response by the liveried
3 services, a legitimate or legal response by the liveried
4 services, which could have led to a different
5 counterfactual. But that I haven't modelled, so I have
6 discarded that possibility. So yes, the counterfactual
7 modelling is purely the liveried services and the
8 2 Travel services, running on these routes.

9 Q. Yes.

10 MR FREEMAN: Can I ask, does "lawful" mean no change to the
11 status quo?

12 MR BOWSHER: Let me put it this way -- can I take that in
13 two steps?

14 MR FREEMAN: Please, answer it as you go along if you like
15 but if you could bear it in mind.

16 MR BOWSHER: Absolutely. Certainly you would agree that the
17 liveried services, therefore, are not going to indulge
18 in any conduct which has clearly been the subject of
19 adverse findings in other cases, the no flooding of the
20 routes, selective predation and so on and so forth. You
21 would agree with that, wouldn't you?

22 A. In my analysis, the liveried services run as normal and
23 don't make any changes to fares, et cetera. I mean,
24 there is of course, a grey area and boundary between
25 what is legitimate and what isn't, but for the purpose

1 of the analysis, I have abstracted from that.

2 Q. I think I can then deal with the tribunal's question.

3 At that point I think we are both agreed that for the
4 purposes of the counterfactual, we simply assume that
5 the liveried service carries on in business as it did
6 because anything else raises questions as to what would
7 or would not be permissible?

8 THE CHAIRMAN: So same price, same frequency, same types of
9 buses?

10 A. Yes, in the model.

11 THE CHAIRMAN: In the counterfactual.

12 A. The second part of the question, the "because", I have
13 no opinion on.

14 THE CHAIRMAN: But all kinds of things could have. They
15 might have changed the types of the buses, might have
16 cut the fares lawfully, but we're not really concerned
17 with that, are we?

18 MR BOWSER: I don't think so.

19 The 2 Travel competitive entry would then have had
20 the opportunity of trying to improve its pick-up of
21 custom against that liveried service, would it not?

22 A. It would have likely to have picked up more passengers,
23 yes. Just by running the bus. I'm not commenting here
24 on improving of the service or frequencies or extending
25 the services, but yes, it is, I agree -- my analysis is

1 based on the fact that they would have picked up
2 passengers that now or in the factual, went with the
3 white services, yes.

4 Q. Did you look at all at the experience of 2 Travel when
5 it went into other South Wales bus markets and met
6 a lawful competitive response, for example in Neath and
7 Swansea?

8 A. I did not. When I did the analysis to start with, I did
9 see what Mr Good did in relation to Neath and Swansea,
10 and I've commented on that. But that's not part of my
11 analysis.

12 Q. When you say comment, you mean in the joint statement
13 you commented?

14 A. Yes, and I have explained why, to me, Neath and Swansea,
15 the comparison is not a good basis for assuming an
16 additional growth rate in Cardiff.

17 Q. The 2 Travel service might have taken quite simple steps
18 to adjust its share because it's not -- in terms of
19 getting an increased share of passengers, it might just
20 alter its timetable so that it's a little bit closer to
21 the liveried timetable and increases its overall
22 proportion of the pie that way?

23 A. That's difficult for me to comment on. I think they
24 already tried that, to do that. They timetabled their
25 two services an hour in a certain way, presumably to

1 maximise flows on their buses. But clearly, the
2 liveried services that were there already on those four
3 or five services were frequent services, as we have
4 seen. There were six or eight buses already. I don't
5 know what an optimal timetabling would be for an entrant
6 with two buses on that route.

7 Q. Just visualise it for the moment with four buses because
8 in my own head, it's easier that way. If you have four
9 liveried and two 2 Travel buses, if the two 2 Travel
10 buses run at a given point, equally between two liveried
11 services, and your theory is right that everyone just
12 gets on the first bus that comes along, if you divide
13 the world up into little slices, the people who are
14 indifferent as to which bus comes along will -- of that
15 slice of the market, you will only get -- I think it's
16 two eighths, because if you just cut the pie up, there
17 will be two little eighths of the hour available to that
18 2 Travel entrant?

19 A. I'm not sure I follow your simplified example.
20 Apologies. So you have four buses on the route?

21 Q. Yes.

22 A. Presumably they go on the hour, the quarter, the
23 half ...

24 Q. Yes. If the 2 Travel entry comes in at 7.5 minutes and
25 37.5 minutes, and assuming passengers turn up to the bus

1 stop in equal distribution around the hour and they
2 simply get on the first bus that comes along, all
3 indifferent. This is the classic all things being equal
4 question.

5 THE CHAIRMAN: This is the theoretical bus queue analysis,
6 isn't it?

7 MR BOWSHER: Indeed, just a steady queue of people coming up
8 at whatever rate they arrive --

9 A. Yes.

10 Q. -- let's assume it's one person a minute that arrives,
11 just to make it simple. The 2 Travel bus will get 7.5
12 passengers and each of those buses will get 7.5
13 passengers because it's 7.5 minutes since the last one
14 arrived.

15 A. Yes.

16 Q. 2 Travel can adjust that by adjusting its timetable, can
17 it not?

18 A. Presumably it can, yes.

19 Q. So by running a little bit later in this hypothetical
20 all things being equal world --

21 A. It could get 14 passengers, 28 passengers in total, yes.

22 Q. And Cardiff Bus may be constrained in the way in which
23 it responds to that, simply by competition law, given
24 the fact that it is dominant in this market?

25 A. Possibly, yes.

1 Q. That's one simple way in which 2 Travel might respond.
2 It might respond in a number of other ways. I think we
3 should, in fairness, explore those. Could we go to F2.
4 THE CHAIRMAN: Is this the Competition Commission?
5 MR BOWSHER: Indeed. F2. The final Competition Commission
6 report is on page 336. This, of course, came out a few
7 weeks after all the reports in this case were prepared.
8 None of you actually had the benefit of this final
9 report when you prepared your evidence.
10 A. That's correct. I think the final report is not that
11 much different from the provisional findings report,
12 which I referred to, which had come out in the summer.
13 Q. Absolutely. We see that there is quite a detailed
14 analysis on customer switching between bus operators
15 that starts on page 430 and runs through to page 434.
16 A. Yes.
17 Q. But I think just to take things quickly, we can probably
18 pick up the summary of all of that by going on to the
19 area where they deal with head to head competition,
20 which is at page 527.
21 A. Yes.
22 Q. That's where they start to deal with the virtues of head
23 to head competition. The particular matters, page 531,
24 it's where they deal with competition on price and other
25 aspects of the offer. Firstly, we can see frequencies

1 are an issue. That's perhaps obvious. You would
2 accept, would you, that at 8.87:

3 "Ongoing head to head competition can have an impact
4 on operators' pricing. Operators monitor each other's
5 prices and evidence shows that operators sometimes
6 respond to entry by reducing fares, where they face
7 a significant degree of head to head competition and
8 that there's sometimes price competition over the
9 pricing of an area and period tickets."

10 Just taking that somewhat as a composite
11 proposition, would you agree with the proposition that
12 those are price effects you would expect to see in head
13 to head bus competition?

14 A. They are effects that can happen. They don't always
15 happen when a new entrant comes in. Prices do not
16 always change, but sometimes they do and indeed they're
17 not always illegal, I would have thought.

18 Q. But there are other constraints, aren't there? If you
19 look at E7/365. (Pause).

20 THE CHAIRMAN: Whilst you are organising yourself,
21 Mr Bowsher, Dr Niels, my reading of part of this
22 Competition Commission report includes that price
23 competition may be effective, dependent upon the type of
24 bus route you're talking about. So that, for example,
25 in an urban competitive corridor, where the bus is

1 travelling, say, from Merthyr Tydfil to Cardiff, which
2 is quite a difference, price may affect the customer
3 rather a lot, whereas if it's a short, urban journey
4 within the chimney stacks, it may affect it less;
5 is that a fair comment?

6 A. I can't recall whether the CC actually also found an
7 influence of that factor on pricing and on the degree of
8 price competition. But it sounds -- it is a plausible
9 proposition that on urban routes where there is high
10 frequency, high density, there the more general finding,
11 I would say, that passengers tend to be -- more time
12 sensitive than price sensitive generally prevails.

13 MR BOWSHER: E7/365, I wanted to look at, on price changes,
14 just to illustrate one point. This was a notice -- this
15 is an internal discussion within Cardiff Bus on 20 July,
16 about raising fares. Do you want to just read it rather
17 than reading it out? It's probably fairer if you read
18 the e-mail through. You've probably seen it before.
19 (Pause).

20 A. Yes, I've quickly read it.

21 Q. Just picking up a few points there. That is an
22 illustration, isn't it, of where the ability to raise
23 prices on, say, the no frills route is affected by, as
24 it were, the overall zonal system? As I understand it,
25 what's happening here is that Cardiff is raising its

1 zonal fares but not raising its no frills fares. That
2 seems to be the suggestion here; would that be right?
3 If you see, "Additionally, if competition ..." I infer
4 that because there's no suggestion they're changing the
5 white bus so I presume that the "Additionally, if
6 competition with 2 Travel were to cease, there would be
7 an additional 0.231 per cent" -- I presume that means if
8 we weren't responding to 2 Travel, that will come out of
9 the calculation?

10 A. That's hard for me to judge. I can see the first bit,
11 that, yes, there's a discussion of: let's increase
12 prices.

13 Q. Yes.

14 A. So I can also see the sentence:
15 "Additionally, if competition with 2 Travel were to
16 cease, there would be an increase of an additional
17 0.231."

18 I can't see where that increase would come from.

19 Q. Okay.

20 A. But I can see as a general proposition that having
21 a competitor on the route can make it difficult for you
22 to impose a price increase, yes.

23 Q. And also, particularly if you are dominant in the
24 market, you have an existing zonal structure, there may
25 be legality issues, compatibility with competition law

1 issues, if you were to alter the zonal structure simply
2 to address one particular competitive entry; would that
3 be fair?

4 A. That's hard to comment on, I think.

5 Q. Okay.

6 A. Because you are partly putting that from a commercial
7 perspective, partly from a legal competition law
8 perspective. It's hard to comment on.

9 Q. Putting it from a commercial perspective, you perhaps
10 wouldn't expect a large existing dominant bus provider
11 to, as it were, make special exceptions to its zonal
12 fare if it's going to increase the zonal fares
13 generally? It's not going to have funny little
14 exceptions because there's one competitor on one route?

15 A. That's probably correct to say. Not all bus operators
16 have a zonal structure for the whole network, but in
17 this case Cardiff had, and I think that's a fair
18 proposition, yes.

19 Q. The very fact that Cardiff Bus put in place the white
20 bus services as a lower cost no frills service suggests,
21 doesn't it, at the very least, they thought that there
22 was some possibility that 2 Travel would pick up custom
23 by virtue of its low cost, no frills model?

24 A. It's hard for me to judge what Cardiff Bus were
25 thinking, but I think that is a plausible idea, that if

1 a no frills entrant like 2 Travel comes in, that they
2 are able to get passengers, yes.

3 Q. If they thought that the customers in the estates that
4 these routes start in were completely price indifferent
5 or price indifferent between 2 Travel and the liveried
6 service, the white bus service would have been somewhat
7 pointless, wouldn't it? Because you could simply just
8 increase the number of liveried services and make sure
9 that everyone just travelled on liveried buses, there
10 would be no point in responding by putting in a separate
11 no frills, low cost entry?

12 A. I can see that launching the white services gave more
13 flexibility to leave the liveried services unchanged.
14 But I'm trying to think about whether you related that
15 to price sensitivity. I'm not sure that follows
16 entirely. That may be one factor, but there may be
17 other factors why you want to keep your existing
18 liveried services unchanged and offer a competing no
19 frills service.

20 Q. Picking up the point that the chairman has raised -- did
21 you get a chance to look at the evidence from
22 Clayton Jones?

23 A. I think I've read part of the transcript.

24 Q. Do you have the transcript file to hand? This is Day 1,
25 page 97. This is Clayton Jones' experience. He's

1 answering some questions from Mr West at this point. If
2 you pick up page -- the narrative starts from 97, line
3 19, to make sure one gets the context. If you then go
4 to line 4 on page 98, he says:

5 "They were using their economies of scale to the
6 full, yes. [That's 2 Travel] But whether that's a good
7 strategy or not depends on a number of factors which
8 I am going to suggest to you. For example, you need to
9 make sure that the school bus contracts actually do
10 cover your fixed costs?

11 "Answer: Yes, I would agree there.

12 "Question: And the proportion of passengers that
13 you're going to obtain by this strategy, doesn't only
14 depend, does it, on the fare which you're charging?"

15 Answer from Mr Jones:

16 "In the market they were in, it was a very key
17 factor."

18 "Question: In fact, it's well known in this
19 industry, Mr Jones, that passengers tend to get on the
20 first bus that arrives?

21 "Answer: If you live in Ely and you're on a limited
22 income, take it from me, it's your pocket that you look
23 at first, not which bus comes first."

24 And then Mr West moves on. He says he's going to
25 have to look at that again later.

1 Then if you go on to 99, the answer:

2 "Yes, but let me repeat, you know, with the greatest
3 respect, if you're on a limited income, in the areas
4 we're talking about, then saving 30p each time you
5 travel is a lot of money to people like that and there
6 are a lot of people out there who unfortunately, unlike
7 ourselves, can't afford public transport."

8 So in the estates we're talking about, would you
9 accept that there's therefore evidence from Mr Jones
10 that there is significant price sensitivity here?

11 I don't know what the quantitative price elasticity is,
12 but there's significant price sensitivity there?

13 A. Yes, that's what Mr Jones is saying.

14 Q. And I don't think you have gone out and, as it were,
15 done your own analysis as to what the price sensitivity
16 in those areas of Cardiff actually is?

17 A. No.

18 Q. If we carry on. We can put that to one side and we can
19 put E7 to one side.

20 THE CHAIRMAN: Do we still need the Competition Commission?

21 MR BOWSHER: Yes. That's my recurring theme at the moment.

22 You would accept, would you, that, from what we've
23 just said, if you look at 8.88 on 817, the way in which
24 a propensity to switch from one provider to another is
25 more often than not evidenced in the way people plan for

1 a journey? So if they're price sensitive, they perhaps
2 don't go and stand at the bus stop and think about
3 things, they actually plan to go out for the cheap
4 service; would that be fair?

5 A. Yes, I think that can describe the behaviour of certain
6 passengers. Again, it depends on whether we're talking
7 about corridors that have frequent services, where just
8 the general incidence of people looking at timetable
9 will be less, or we're looking at infrequently served
10 routes, where I think probably most people will look at
11 timetable.

12 THE CHAIRMAN: Can you look at page 721, paragraph 14.8.
13 Last time we had this discussion, it occurred to me that
14 paragraph 14.8 was a summary by the Competition
15 Commission on this point.

16 A. Yes.

17 THE CHAIRMAN: Have you read that?

18 A. Yes. It's the same as paragraph 49 in the main summary
19 of the CC report, yes.

20 THE CHAIRMAN: Does that represent a fair summary of their
21 conclusions?

22 A. I think it does, yes.

23 THE CHAIRMAN: Thank you.

24 MR BOWSER: And you would accept, going on, would you, the
25 CC's proposition that those who are sensitive to who

1 they travel with -- and how many there are may be
2 a matter for debate -- but those who are sensitive may
3 be sensitive to a number of matters? We see that in
4 8.90. Relative cleanliness, reliability, seat
5 availability, what I might call soft factors are
6 described. Do you agree that there are soft factors
7 which, to use the CC's words, are also important but
8 difficult to quantify?

9 A. Yes, correct. The CC is here describing the results of
10 its survey, which was quite an extensive survey,
11 identifying all these factors. Then the paragraph that
12 we just looked at, which is also paragraph 49 in the
13 overall summary, that is where the commission then puts
14 this particular finding of sensitivity into the overall
15 context between time sensitivity and price sensitivity.

16 Q. For perhaps obvious reasons which we don't need to spell
17 out, the soft factors are the factors that are
18 particularly important if you're competing for
19 concessionary fare passengers?

20 A. These factors can be important. From my experience in
21 other cases, in terms of having seen consumer evidence
22 like this one, the number one is always punctuality and
23 frequency. And then clearly these other factors do
24 matter: cleanliness, reliability, seat availability,
25 yes, they all matter. Whether they matter more for

1 concessionary passengers or fare paying passengers,
2 I don't know.

3 Q. I didn't put it quite fairly. Price is not going to be
4 such a significant factor for a concessionary passenger,
5 but other factors, non-price factors, will be?

6 A. Correct.

7 Q. We can put F2 to one side. Can I then go back to the
8 analysis of routes and your actual analysis as to how
9 many routes there were and, as it were, the rival
10 counterfactual analysis. Just so that I've got this
11 right, there is an issue that I think on one of the
12 routes there are buses going in both directions round
13 the estate. I think that's for 2 Travel the 217.

14 A. Yes. In that case you have the liveried services, 17
15 and 18, on exactly the same route but going the other
16 direction, that's correct, in section 1.

17 Q. It gets a bit complicated when you start to work out how
18 they're going to intersect and who's going to be where
19 at any given time. But as I understand it, what both
20 you and Mr Good have done when allocating passengers on
21 that route -- you are allocating the passengers in an
22 anti-clockwise direction, so you've taken the 17 and the
23 117 and compared it with the 217?

24 A. Yes, correct.

25 Q. If you have I1, that's the result. In I1 -- I'm not

1 sure whether it has a tab 5 in your file. I've got
2 a home-made tab 5.

3 THE CHAIRMAN: We've got a custom-made one.

4 MR BOWSHER: As long as you have. I wasn't sure whether I'd
5 just made it up or whether it existed.

6 That's the 217 from Ely, which by chance is where
7 we were just talking about. That's your depiction of
8 the 17, the 117, which are those eight services, and the
9 217 beneath.

10 A. Yes.

11 Q. That's what you've taken forward to your analysis?

12 THE CHAIRMAN: So the 17 is at the top, the 117 is in the
13 middle and the 217 is the pale blue.

14 A. So the 17 had six buses, so the six refers to the 17.
15 This is all section 1. The white bus had two, so the
16 total there of eight is just a total of those two. And
17 2 Travel had two. For the counterfactual analysis, then
18 the relative frequencies are the -- the relevant
19 relative frequencies are six and two. Perhaps maybe
20 this is an opportunity to explain this also, if we go to
21 the next page, or tab 9 of my report, and have a look
22 at the map at the same time.

23 THE CHAIRMAN: I think it'll help my lunch if we hold that
24 in suspense, if you'll forgive me, Dr Niels. It's
25 something for us to look forward to.

1 (1.00 pm)

2 (The Short Adjournment)

3 (1.50 pm)

4 MR BOWSHER: Good afternoon again, Dr Niels. We had I1. If
5 you have your report, I wanted to look at D6, the data
6 attached to your report and I1, the little charts. It
7 may be that you and I agree on all of this, which would
8 make it easier. It's worth making sure what we do and
9 don't agree about.

10 Shall we just take 217 from Ely. There are some
11 wrinkles with some of the other routes. Let's take Ely
12 as our working model. If we have the Ely chart at I1
13 and then we take A3.1 --

14 A. Sorry, the Ely chart, where?

15 Q. In I1.

16 A. I moved to the map, the Ely map.

17 Q. The coloured chart. We can look at the map if we need
18 to, but I really hope we don't have to get down to which
19 street --

20 A. I personally think the map is a lot clearer than this
21 chart.

22 Q. Can we just stick with the chart?

23 A. Yes.

24 Q. We see a comparable depiction in A3.1?

25 A. Yes.

1 Q. So we see the route numbers playing against the chart,
2 between A3.1 and that chart; yes?

3 A. Yes.

4 Q. If we turn the page, the page in your report, we then
5 move to explanatory notes for A3.1. Then when we get to
6 A3.2, we see "Split of passenger types by section"?

7 A. Yes.

8 Q. There's "2 Travel's share of frequencies percentage",
9 and then "Split between passenger types by section."
10 It's the second one I wanted to look at. Stick with
11 117. I'm sure we agree on this. This is data taken
12 from ten weeks in 2007?

13 A. Yes, the percentage split in this table, the percentage
14 split across the sections, is from 2007. The totals
15 at the bottom in bold, those are the actual white
16 services. That also goes to Mr Smith's question
17 earlier.

18 Q. The route number is obviously a 2004 white bus number?

19 A. Yes.

20 Q. So we only have the 2007 data because, incidentally,
21 that data was being prepared for the purposes of the OFT
22 investigation, I think.

23 A. I don't remember. I know it's the only data available.
24 I could say that -- well, to put it the other way round,
25 I didn't see any reason why the make-up of the route,

1 where the passengers get on the route, why that would be
2 any different in this period compared with the period of
3 this case.

4 Q. So although this is done, I think, at a fairly early
5 point in the year, it assumes that the passenger make-up
6 is the same, whether you do it in January or June,
7 regardless of whether that's a good or a bad month for
8 buses?

9 A. Yes.

10 Q. And the percentages here must be people getting on the
11 bus in a particular section?

12 A. Yes, the percentages are based on the total people
13 getting on the bus from the 2007 data, off that
14 corresponding liveried service, then transformed into
15 percentages, and then these percentages are applied to
16 the total white service passengers on the 117.

17 Q. So in 2007, of all the adults who got on the comparable
18 service to the 117, 40 per cent got on in section 1,
19 23 per cent got on in section 2, 15 per cent got on in
20 section 4 and none in section 5; is that right?

21 A. Yes.

22 Q. Is the data done only on an inbound route?

23 A. Yes. This is -- let me just double-check. I believe
24 this is all inbound, inbound data. The section split is
25 based on inbound data, yes.

1 Q. And do you assume, therefore, that everybody is on
2 a round trip, so that if you take an inbound journey,
3 you take the equivalent outbound journey?

4 A. What I have effectively assumed in my analysis is that
5 all the passengers that get on in a certain section
6 travel all the way to the city centre and therefore
7 I have -- for example, the next step in the analysis is
8 to assume what fare they would have paid. I have
9 assumed that they have paid the full single fare all the
10 way to the city centre, to get the revenue figure. It
11 may, of course, well have been that some passengers
12 didn't travel all the way. To that extent I've
13 overestimated the revenue that would have accrued to
14 Travel.

15 Q. But you might have underestimated the split of
16 passengers, mightn't you, on the return at least? Let's
17 just take your assumption. 40 per cent getting on,
18 going all the way to the city -- of adults for the
19 moment.

20 A. Yes.

21 Q. That 40 per cent are in the city centre. They don't get
22 on the first available bus going outwards, do they?
23 They have to go on an Ely bus.

24 A. Yes, on the same bus back, yes.

25 Q. They don't just turn up at the city centre and take the

1 first bus leaving the city centre. The reason why
2 you've got 0 per cent in section 5 is because there are
3 so many buses -- 15 per cent. The reason why you have
4 15 per cent in section 4 is there are so many buses to
5 choose from, relatively few get on the 117?

6 A. Yes.

7 Q. By contrast, if you're going out, all those people who
8 started in section 1, if they've come all the way in,
9 will have to wait for buses going back to section 1,
10 won't they?

11 A. Yes.

12 Q. But what that fails to take account of, doesn't it, are
13 those who didn't, in fact, travel all the way to the
14 city centre, because there will be some of those
15 passengers, who in fact just went from section 1 to
16 section 2 and they will be wanting to go back to
17 section 1 and they need to be added to that, don't they?

18 A. Yes. As I said earlier, there could have been
19 passengers who went from section 1 to section 2.
20 Effectively, in my analysis -- and again, this is all
21 due to the relatively limited data -- in my analysis,
22 those passengers are assumed to actually have paid the
23 full fare to the city centre when they got on the white
24 bus. Sorry, in the counterfactual, when they got on the
25 2 Travel bus.

1 Q. It doesn't deal with, for example, the situation where
2 you are in the city centre and you want to go back to
3 Ely?

4 A. Correct, yes. There is an implicit assumption, I think
5 that what's you're trying to get at, that of course,
6 everyone who at some point travels from a section to the
7 city centre will travel back. So there is an assumption
8 in here of symmetry between inbound and outbound and
9 because of lack of data, one has to make that
10 assumption. That assumption would not change the choice
11 of passengers, assuming -- and that's another implicit
12 assumption -- that the origin, so let's say the first
13 leg of their journey on the day, is actually from
14 section 5 to the city centre and then in the evening,
15 they go back. If that's a fair assumption, then there
16 is no difference whether one would have looked at
17 inbound and outbound passengers.

18 THE CHAIRMAN: Have I got this right, if one were to assume
19 for the sake of argument that the bus, the 117, held 50
20 people, then 20 adults would take the bus into the city
21 centre and they would be 40 per cent of the passengers?

22 A. Correct. Yes.

23 THE CHAIRMAN: You're assuming that the same 20 people would
24 take the 117 back to Ely, to the starting point?

25 A. Yes.

1 THE CHAIRMAN: They might or might not be the same
2 percentage of the passengers, one just doesn't know?
3 A. I think, yes, that's correct.
4 THE CHAIRMAN: Because people wanting to get off at, say,
5 section 3, could take any number of buses?
6 A. Yes.
7 MR SMITH: But there's a further complication, isn't there,
8 Dr Niels, in that if you come in on a return ticket,
9 then you're going to be tied to the particular bus going
10 back, at least in terms of whether it's Cardiff Bus
11 versus 2 Travel. So there are complications?
12 A. That is indeed a further complication. For simplicity
13 I have assumed the single fare, so therefore they would
14 have, effectively, had to buy two single fares. For
15 2 Travel, probably the -- I haven't seen data on this,
16 but probably there would have been less passengers
17 anyway, who would have bought a return fare because
18 there was less choice of returns. And also -- well,
19 there were only in the in-fill times, returns available.
20 Whereas for the liveried services, one could assume that
21 there's more choice and therefore more people would have
22 bought a return fare.
23 MR SMITH: Thank you.
24 MR BOWSHER: This is helpful because I just want to
25 understand the strengths and limitations of the

1 assumptions we're making here and see where they take
2 us. What we can see, though, is for each of these
3 routes, the general assumption which was being made by
4 Mr Fowles in planning this business is good, isn't it,
5 because the general assumption is that the larger
6 proportion -- and in most cases, the majority of the
7 passengers -- get on in the outer section?

8 A. Yes, and I have taken that into account, indeed, by
9 acknowledging, based on this data, that, yes, in the
10 117s, actually it's the lowest, but 40 per cent got on
11 in the estates, clearly, yes. So 40 per cent and
12 23 per cent in section 2, which is also, perhaps, still
13 the estate in that sense, but not 100 per cent. Because
14 I think Mr Fowles' effective assumption is that
15 100 per cent of the white service passengers that we're
16 talking about redistributing did get on in section 1,
17 and I think, yes, the majority got on in section 1, but
18 there's no indication to suggest all of them. Indeed,
19 40 per cent, to me, is the best assumption.

20 Q. I'm talking here about the, as it were, basis of the
21 business judgment that was being made by 2 Travel when
22 it set up this business model. This empirical data
23 supports the general thrust of the business model,
24 doesn't it, that there was a business model that
25 sensibly involved targeting the passengers from the

1 outer estates?

2 A. The business model as such, yes, that's why you launch
3 the whole route. The assumption that you could get
4 30 per cent of that route, I think, no, these numbers or
5 my analysis shows that that's not a correct assumption.

6 Q. And as you say -- in fact, these figures show Ely is, if
7 anything, the worst for 2 Travel. The other ones --
8 there are many more passengers, relatively speaking, to
9 get from the other estates if you look at the other
10 routes?

11 A. Yes, you can see that in the table from between 69 for
12 the 144 and 67 for the 157. Those have the highest
13 proportion in section 1.

14 Q. And it's right to say, isn't it, that that seems to
15 apply the general proposition to all types of passenger?

16 A. Yes.

17 Q. There are one or two wrinkles, but as I understand it,
18 they're just quirks of the way the routes work. So for
19 example, there's an oddity about the 262, for example,
20 because of the way the routes work. You can see that if
21 you turn to your bar chart for the 262. There are very
22 few comparable routes on section 3 of the 262.

23 A. Yes. And can I now actually go to the map? Because
24 I can show it is an odd wrinkle, but it's just because
25 this is really a bit of the route of maybe 100 yards at

1 most. You can clearly see that on the maps or you take
2 my word for it. This is where the 61 and 62 diverge on
3 the map a little bit. So section 3 on the 262 is just
4 very insignificant.

5 Q. Okay. But again, it doesn't affect the general
6 proposition, which is in this case, the majority of
7 passengers are coming from Pentrebane estates?

8 A. Correct.

9 Q. We can put I1 to one side. Keep your report there for
10 the moment. In your experience as an economist looking
11 at these bus matters, have you had to consider what the
12 effects are of predatory conduct upon the victim of the
13 predation?

14 A. In the specific case -- well, I've worked on the
15 specific case, which was a predation case in the High
16 Court, the Arriva Chester case. I'm thinking aloud now.
17 There the issue was not so much on the **effect on the**
18 predated company. Indeed, actually my analysis was on
19 market definition and dominance in that case. So
20 specifically, my answer to the question would be no.

21 Q. It may be that we can't take this very far. I should
22 perhaps, in fairness, ask you a few questions and if you
23 feel it's not something you're capable of dealing with,
24 then just say. Take the OFT decision, E11, page 592.
25 Do you have that?

1 A. Yes.

2 Q. This is the table from the OFT decision, which refers to
3 this competition policy document. You have probably
4 seen the document itself in the files.

5 A. I remember seeing this, yes.

6 Q. Right. You may have been here yesterday and heard some
7 of the questions. You may be aware that there's plainly
8 an issue between the parties as to whether or not the
9 proposed action described in the left-hand column in
10 number 3 and number 4 was in fact implemented by
11 Cardiff Bus. Do you want to read 3 and 4?

12 A. Yes, I understand this to be an analysis by the OFT,
13 whether the actions in the left-hand column were
14 implemented, yes.

15 Q. And there's a dispute between the parties as to whether
16 or not, in fact, Cardiff Bus did do what the policy
17 document suggests they were intended to do?

18 A. Yes.

19 Q. If it were the case that a dominant bus company were in
20 fact predating upon -- taking part in exclusionary
21 conduct and not only price conduct but also operating
22 its buses, as it says here, timed to operate just in
23 front of the competitor's vehicles and to make sure that
24 they remain just in front of the vehicles and then
25 disappearing if the competitor fails to appear and then

1 coming back when they do appear. If you have that, what
2 we have called "sandwiching", the shadowing effect,
3 would you accept that that is likely to have
4 a disruptive effect on the ability of the predated
5 company to pick up passengers?

6 A. I think, yes. Yes.

7 Q. Would you accept that that is likely to have an effect
8 on the ability of the company to actually just do the
9 physical business of driving the bus, but making sure it
10 gets safely to the end of the route?

11 A. That I can't say. One can imagine this racing round the
12 clock, as it used to be called. You referred to it
13 earlier as well. You timetable your bus right in front
14 of the other, but usually what you get is the other
15 company then does the same and you get this racing round
16 the clock. Whether that then hinders someone to
17 actually drive the bus, I don't know, that depends then
18 on questions of how -- are they driving safely,
19 et cetera. I can't comment on that.

20 Q. In terms of achieving reliable timetabling, it's going
21 to have an effect on that, isn't it, because there are
22 going to be pressures on you to try and alter -- either
23 space the timetable or whatever, so that it's going to
24 put pressure on the ability to run a reliable timetable,
25 isn't it?

1 A. I can't comment on that.

2 Q. Would you accept that it's likely to have an effect on
3 the management as they try to manage the consequences of
4 that sort of conduct?

5 A. I think that would be too speculative for me to comment
6 on.

7 Q. Okay. Fair enough. I just want to be sure that you've
8 had an opportunity to look at that.

9 As I understand it, it is agreed between you and
10 Mr Good that neither of you are actually using market
11 share data as such as the means of calculating the
12 actual number of passengers that would, in the
13 counterfactual, have travelled on 2 Travel; is that
14 right?

15 A. Market share data, my analysis has been based on the
16 share of frequency. So in terms of whether you call
17 that -- that's a way of measuring market share, is by
18 the share of the number of buses that run in an hour.
19 From that perspective, that's the analysis I have done.

20 Q. Simply on a bus frequency basis then?

21 A. Yes. So that's how the concessionary passengers have
22 been distributed on the white service to 2 Travel and
23 the liveried. And I have presented both scenarios, as
24 I said earlier, where fare paying passengers are also
25 distributed in that way and then I've also presented the

1 scenario where all fare paying white service passengers
2 go to 2 Travel.

3 Q. You would accept that when you're distributing
4 passengers, you're looking not just on any given day,
5 you're looking over time, so that while you have not
6 distributed season ticket holders, there will come
7 a time when the season ticket expires and there's then
8 a possibility that that season ticket passenger becomes
9 available to competition, doesn't he?

10 A. Correct.

11 Q. Do you have the joint statement? C2, tab 22.

12 A. Yes.

13 Q. I'm working off the very faint page numbers in the
14 bottom right hand corner of the table, and I wanted to
15 look at 3. I have just taken something out of order.
16 Going back to the hypothesis that, again, white bus
17 services had been running immediately in front of the
18 2 Travel service, do you see that's under the column
19 "Point"? The left-hand column.

20 A. Yes, I see that.

21 Q. Just so that I've understood it, you have agreed with
22 Mr Good's point that if that were found as a fact to be
23 true, in carrying out the analysis, one would
24 effectively have to look at the white bus and 2 Travel
25 services as a single unit service, as it were, in trying

1 to look at the passenger figures?

2 A. Not sure about the terminology of "single unit", but
3 clearly, yes, my basic assumption is passengers get on
4 the first bus to arrive at the bus stop. So if it is
5 factually the case that every single one of those white
6 buses that these passengers got on had a 2 Travel bus
7 immediately behind it, I agree then, with the
8 proposition that then all those passengers would have
9 gone with 2 Travel.

10 Q. That's what's noted in -- the two positions in the joint
11 statement?

12 A. Yes.

13 Q. We can put that to one side, I think. When you were
14 looking, though, at market share and market share by
15 frequency, did you look at any other contemporaneous
16 statements by Cardiff Bus as to what might or might not
17 be achievable on these particular routes by a no frills
18 service?

19 A. Sorry, statements by Cardiff Bus?

20 Q. By Cardiff Bus.

21 A. No, I haven't mapped my analysis of the relative
22 frequencies on to factual statements by either 2 Travel
23 or Cardiff Bus in that regard. I have kept it simple.
24 I have allocated these passengers by relative
25 frequencies.

1 Q. What value would you place on observations,
2 contemporaneous observations, by either Cardiff Bus or
3 2 Travel, as to what they actually think they might
4 achieve on these particular markets?

5 A. It is not clear to me what is meant by what they "think
6 they might achieve." I have used actual frequencies
7 that were actually running in that relevant period.
8 I don't know if either side, either of these parties,
9 was thinking of changing that. I don't know if that's
10 what you refer to.

11 Q. In the OFT proceedings, Cardiff Bus put forward various
12 analyses, including, if you go to E19, page 110 ...
13 What this is, is part of the submission made to the OFT
14 by Cardiff Bus. It's in annex 4 to a rather long
15 submission. Do you see that?

16 A. Yes. I see that this is annex 4.

17 Q. Did you study this before?

18 A. No, I haven't.

19 Q. The data runs from page 112 to 128. Do you see that?
20 It's quite hard data to use, I've found, I have to say.

21 THE CHAIRMAN: Whose document is this?

22 MR BOWSHER: It's annex 4 to, I believe, the ...

23 THE CHAIRMAN: I'm puzzled by the first sentence. On the
24 face of it, it's part of Cardiff Bus's submissions to
25 the OFT.

1 MR BOWSHER: Yes.

2 THE CHAIRMAN: But it starts:

3 "The OFT and 2 Travel's position seems to be that
4 bus passengers should simply board the first bus."
5 Which suggests it has been written by somebody else.

6 MR BOWSHER: I think maybe written by Burges Salmon or ...

7 THE CHAIRMAN: I see. Right.

8 MR BOWSHER: I'm taking it from the page number. Sorry, as
9 you were talking, I was trying to find the relevant page
10 numbers. If you take it from the index, I think this is
11 within the -- there were two responses and it's part of
12 that response. It's Cardiff Bus writing to the OFT in
13 response to the initial statement of objections,
14 I believe.

15 THE CHAIRMAN: Yes. All right.

16 MR BOWSHER: It's Cardiff Bus's own figures. This appears
17 to be their attempt, at that point, to calculate the
18 revenues attributable to the various fares. Do you see
19 that from paragraph 1 and paragraph 2?

20 A. Yes.

21 Q. They explain at paragraph 6 what they have done, using
22 their own revenues, and we can see, if you look at the
23 last three lines, that what they are saying from their
24 own contemporaneous 2004 data is that the revenues from
25 the white buses clearly cover the costs of operating the

1 white bus services:

2 "This shows the reasonableness of introducing those
3 services."

4 A. Yes, I've read that.

5 Q. That suggests, does it not, at the very least, that the
6 buses were breaking even, by reference to their own cost
7 base at the time?

8 A. This seems to suggest that, yes.

9 Q. It's more than suggested, that was the case they were
10 putting forward.

11 A. Well, if I understand the context of this document
12 correctly, then yes, they are putting that case forward,
13 yes.

14 Q. And that paragraph is based on the supposition of
15 a first bus/first travelled assumption, I think?

16 A. I don't know. I can't deduct that so quickly.

17 Q. Sorry, I'm jumping ahead. Paragraph 1, first sentence,
18 sets out the first bus/first travelled assumption.

19 A. Yes.

20 Q. Please take your time. All from 1 to the end of
21 paragraph 6 is my understanding of what Cardiff Bus was
22 saying is the consequence of the first bus/first
23 travelled assumption on their actual figures. Yes?

24 A. Yes.

25 Q. Paragraph 7, what they say is:

1 "However, as we now know, the assumptions did not
2 hold."

3 And they then say that normal buses carried more
4 than their share. But we don't know. That's where your
5 figures then come in as to what did or didn't apply;
6 is that right?

7 A. I haven't seen any of this before, nor have I used it.
8 My assumption is clear, or at least in some of the
9 scenarios I have presented and prefer, that passengers
10 get on the first bus to arrive at the bus stop. I think
11 what it's saying here is assumptions did not hold and
12 that the liveried services actually carried more than
13 the no frills services, which may or may not have been
14 the case. But I haven't accounted for a factor like
15 that.

16 Q. That doesn't kick into your analysis because, as we've
17 seen, you don't use overall market share, you use
18 frequencies, as I understand it, and actual figures as
19 to how many actually did travel on the buses?

20 A. Yes, correct, but probably ... My limited understanding
21 of how this analysis is set out is to follow a very
22 similar approach to do that, and then say: but the
23 assumption doesn't hold.

24 Q. But your figures don't depend on how many the liveried
25 or the non-liveried actual work took, you work simply on

1 how many were on the white bus?

2 A. That's right. So the relative frequency analysis is
3 relevant for allocating the actual number of white
4 services that were on the white bus and then you
5 allocate them. That's where the relative frequencies
6 come in. I don't know how that compares to what has
7 been done here.

8 Q. Just so that I'm clear, you've never been asked to
9 consider or dismiss or evaluate Cardiff Bus's own
10 contemporary data on these white bus revenues?

11 A. I have not been asked to look at this analysis. I have
12 been asked to analyse the white service data that was
13 available, that was made available to me, which
14 I presume is contemporary.

15 Q. This is other data which appears, on its face, to be
16 contemporary, which has not been made available to you?

17 A. This hasn't, no.

18 Q. A couple of smaller points. Could you look at I1, while
19 we're still looking at numbers. Tab 4, the third page.
20 Lest this becomes significant later, if you've got --
21 it's I1, 4B, and then I think it's the fourth page of
22 that data. It's a table which has "Summary of passenger
23 data by route April to December", and then -- Mr Lusty
24 has a different looking table. Is it 3?

25 THE CHAIRMAN: Can you hold it up, then we can see?

1 (Pause).

2 MR SMITH: What's the title of the document, Mr Bowsher?

3 MR BOWSHER: "Summary of the white bus passenger numbers for
4 the period 1 April 2004 to 26 December 2004", and it's
5 the fourth page of that. (Pause).

6 THE CHAIRMAN: Beginning of tab C, I think.

7 MR BOWSHER: I will come back to it. Maybe if I come back
8 to it after the break. I'm sorry, I thought we could do
9 it quickly in passing, but we can't. I'll get it
10 unscrambled later, apologies. It's a fairly small
11 point, but I wanted to address it.

12 The actual frequency data that you have used, as
13 I understand it, is simply data from the timetable
14 itself; is that correct?

15 A. Yes, and verified and checked various times by
16 Cardiff Bus.

17 Q. And how verified?

18 A. Well, verified as in: is this your understanding that
19 it is correct? We had an initial allocation or
20 observations on frequencies. They were checked by
21 Cardiff Bus, the knowledge at the time, and there was no
22 reason to believe that it was different. A few weeks
23 ago, there was a final check and then there were some
24 adjustments made to some of these frequencies, in
25 particular some of the other liveried services, or not

1 just the frequencies but also the exact route and the
2 exact overlap of routes. So therefore some adjustments
3 were made.

4 Q. Okay.

5 A. But I have assumed now, these to be -- well, to
6 accurately reflect the actual frequencies at the time.

7 Q. Okay. That is then, therefore, the sole basis upon
8 which you then divide up the known passenger numbers for
9 white buses?

10 A. In the scenario where they are divided up that way, so
11 in my terminology, passenger scenario 2, yes.

12 Q. Have you then looked to see how the business would
13 actually establish a foothold in the market over any
14 given time?

15 A. You mean the 2 Travel?

16 Q. The 2 Travel business.

17 A. Sorry, what do you mean by ...

18 Q. How long it would take to establish itself within the
19 market.

20 A. No, I haven't considered that, other than I've commented
21 on Mr Good's assumption about growth rate. I have
22 rejected that growth rate and have therefore simply
23 assumed that the frequencies that they did run and the
24 routes that they did run, that was the position in the
25 market they were seeking to achieve and that they --

1 those were the buses they ran.

2 Q. So your basis for assuming that 2 Travel wouldn't grow,
3 is on the basis that also you think the general bus
4 market in Cardiff doesn't grow?

5 A. That is the assumption. I mean, to be more precise,
6 yes, bus markets may -- demand may grow or decline with
7 switching to cars, et cetera. There may be other
8 factors. But specifically here, the question addressed
9 was the question of: would the market as a whole grow
10 because of the entry of a no frills operator? Also
11 Mr Good, but certainly my conclusion was that, no,
12 generally, markets don't grow just because you have
13 a new entrant. Overall demand doesn't grow. What may
14 vary is the market share within the existing demands.

15 Q. But if the market is growing, it may be that 2 Travel's
16 entry is part of that. If the market is growing,
17 2 Travel will be part of that growth?

18 A. Yes.

19 Q. If we see from the evidence that, in fact, the Cardiff
20 bus market has grown, we would expect to see that
21 2 Travel's business would grow commensurately as part of
22 that, wouldn't we?

23 A. Yes, if that was the proposition.

24 THE CHAIRMAN: Is the question founded on the proposition
25 that the whole of the Cardiff bus market grows?

1 MR BOWSHER: Yes, and that 2 Travel will be part of that
2 overall growth.

3 THE CHAIRMAN: I suppose there are all sorts of
4 imponderables in that, aren't there? Supposing an IKEA
5 opens in a particular point, the routes to IKEA may grow
6 but other routes may not grow. Some of us may go the
7 other way.

8 MR BOWSHER: Only people who are extraordinarily strong and
9 feel like bringing their goods back on the bus.

10 THE CHAIRMAN: You understand my point.

11 MR BOWSHER: Yes. It's a short point. I just want to take
12 Dr Niels back to one page, E11/734. It is a document
13 the tribunal has seen before. This is a submission made
14 by Cardiff Bus to the Traffic Commissioner on
15 30 March 2009. It's a written submission made for that.
16 It's the fourth paragraph. It is Cardiff Bus's
17 submission there to the Traffic Commissioner that it's
18 carrying 28 million passengers per year, which has
19 increased by 11 per cent over the last five years.

20 A. Yes.

21 Q. That would suggest, would it not, that there is general
22 growth of the market over that period?

23 A. Over this period, yes.

24 Q. In the same period, if you -- and we were talking about
25 season tickets. As you build up a competitive entry

1 into the market, it is possible, is it not, that -- and
2 season tickets expire -- that that will become an area
3 that you can grow your business into? In other words,
4 people who don't renew their season ticket with
5 Cardiff Bus, they can come to you as 2 Travel?

6 A. Potentially, if you start to offer season tickets and if
7 you are offering a frequency as attractive as the
8 offering that season ticket holders would look for, then
9 yes.

10 Q. We can see that from Cardiff Bus's evidence yesterday,
11 Mr Brown's evidence yesterday, that sometimes
12 Cardiff Bus will look to grow a route. If you have the
13 transcript for Day 7, page 95, line 15.

14 MR FREEMAN: Mr Bowsher, talking about growth in the market,
15 I picked up from Mr Good's evidence, paragraph 5.4.32,
16 that from April 2003 to December 2005, Cardiff Bus's
17 passenger numbers did not change very much. So this
18 11 per cent growth must be for a later period. Take
19 figure 1, 5.4.32:

20 "During the period it can be seen that there were
21 comparatively small fluctuations in passenger numbers."

22 MR BOWSHER: Our short point would be if 2 Travel were in
23 business and it happened, we may have been there to
24 benefit from it.

25 Sorry, do you have Day 7, page 95? I was asking --

1 actually, Mr Freeman was asking questions about running
2 routes at a loss. I was asking about running routes at
3 a loss and I asked him a question at 12:

4 "If you were running a service at a loss, you must
5 have thought you were acting in breach of competition
6 law?"

7 And Mr Brown says:

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

17 That is indicative, is it not, that certainly
18 Cardiff Bus understands that there will be circumstances
19 where they see an opportunity to grow the market by
20 growing a new route?

21 A. Yes. Well, taking at face value what is said here, if
22 you open a new route where there wasn't a route before,
23 then it may be a rationale to offer -- as an
24 introductory period, to offer the service at a cheaper
25 fare. I think when you're talking about mature routes

1 that already are served by frequent services, then maybe
2 this logic would not directly apply. But as such, this
3 logic, yes, I agree with it.

4 Q. In general terms, it is open to a company such as
5 Cardiff Bus and open to 2 Travel to grow the market by
6 finding a new route or a new opportunity, even within
7 a mature bus market; is that fair?

8 A. Well, there are mature bus markets and mature routes.
9 I think in mature routes, you can't really grow the
10 market. In mature bus markets, as in a city like
11 Cardiff, so very well served by buses, there may be
12 occasionally new opportunities, like if there's a new
13 housing development or an IKEA, indeed, then there are
14 opportunities. But by and large, my understanding of
15 the bus market is that those opportunities have been
16 taken before. They are not that frequent.

17 Q. Right.

18 A. But I can't rule out that in Cardiff there would have
19 been, over the years, opportunities to grow new routes.

20 Q. I don't know whether you've had a chance to look at the
21 PwC reports and correspondence about how 2 Travel was
22 originally planning to build its business?

23 A. Yes, I've looked at, in particular, the February 2004
24 report.

25 Q. And I think you will have seen from that, that at least

1 the long-term plan was to reach 20 buses for the
2 2 Travel business; is that your recollection? I can
3 take you to it.

4 A. No, I remember the reference to four plus four plus four
5 plus four plus four is 20 buses. I'm just thinking now,
6 whether that was really a forward looking plan -- that was
7 very unclear in that plan, but I remember there was
8 a statement about 20 buses in there.

9 Q. And so at the time when the predation, as it were --
10 when the 2 Travel services were suspended, they were
11 operating two an hour on the four routes and it was with
12 12 buses. If you get to 20 buses, they will be able to
13 grow their own business, either by increasing frequency
14 on those four routes or by looking at other growth
15 opportunities within the market; isn't that fair?

16 A. To me, it's always been very unclear how many buses and
17 how many drivers 2 Travel actually had and needed for
18 those services. I also recall that they had actually 22
19 vehicles to start with, but some of those were also
20 being used for the other -- the 89, 99, 88 and 98
21 services. So I don't know exactly what 20 buses could
22 have gotten them to.

23 Q. Let me put to you, just simply, the simple premise that
24 if they were running the four routes with 12 buses and
25 they were eventually able to get 20 buses available just

1 on those four routes, simply by increasing the
2 frequency, they'd grow their proportion of the passenger
3 share?

4 A. Yes. If they had introduced more frequencies on those
5 same routes, yes.

6 Q. And we can see that there were at least some growth
7 opportunities. Cardiff Bus plainly thought there were
8 some growth opportunities within Cardiff, and so in the
9 longer term, they could also use additional buses to
10 take advantage of such growth opportunities?

11 A. Of additional routes, yes. On the same route -- I don't
12 know if you were implying that also Cardiff Bus could
13 increase the frequency on the four routes that we're
14 talking about from, let's say, 6 or 8 to 10 or 12. That
15 I'm not sure about.

16 Q. Have you looked at all at the comparable growth achieved
17 by other companies and the comparison with Rotala, or
18 is that something Mr Haberman's looked at?

19 A. I have not looked at that.

20 Q. I'll come back and deal with that with him. Sir, I know
21 it's a bit early, but I wanted to get this document
22 sorted out. Would it be possible to have our break
23 a little bit earlier than usual today and we can get
24 this document sorted?

25 THE CHAIRMAN: Can I just have an estimate of timings?

1 MR BOWSHER: I will have finished Dr Niels, I would have
2 thought, some time this afternoon. So tomorrow is
3 tomorrow.

4 THE CHAIRMAN: And tomorrow we have?

5 MR BOWSHER: Mr Haberman. I don't believe there's any more
6 evidence then.

7 THE CHAIRMAN: Right. In that case, there's probably not
8 undue time pressure, is there?

9 MR FLYNN: I'm really in Mr Bowsher's hands. It'll be
10 finishing the cross-examination of Dr Niels and
11 cross-examining Mr Haberman, so we're comfortable,
12 I think, on that basis.

13 THE CHAIRMAN: We're comfortably going to get through the
14 evidence by early tomorrow afternoon?

15 MR BOWSHER: I'd have thought so.

16 THE CHAIRMAN: Okay. We'll break until 2.55.

17 (2.45 pm)

18 (A short break)

19 (2.55 pm)

20 MR BOWSHER: Sir, we've handed up a two-page document, which
21 I'm reasonably sure is somewhere in I1, but different
22 people have it in different places so it seemed easier
23 to hand it up.

24 THE CHAIRMAN: Yes.

25 MR BOWSHER: I just wanted to, before coming on to that

1 document, cover a couple of other things. Cost.
2 I don't know if you were in court this morning when
3 Mr Good was asked a number of questions about this, but
4 would you accept that if the evidence is that, in
5 fact -- and that what is found is that the costs of the
6 school contracts were being covered by the revenue --
7 the costs of the drivers and those other costs were
8 being covered by the revenue from the school contracts,
9 any incremental effects from the in-fill aren't affected
10 by the costs of the drivers?

11 A. Correct, yes, for the incremental cost analysis, I would
12 agree that it wouldn't be an incremental cost if the
13 drivers were already there and paid for by the school
14 contracts. I think it is probably worth clarifying that
15 the bus drivers that are -- the extra driver costs are
16 also relevant to the question of the fully allocated
17 costs for the absolute level of profitability rather
18 than the incremental profitability. And there I would
19 say that even if the school contracts did cover all
20 those costs, you would still have to allocate across
21 both school contracts and in-fill.

22 Q. I can see what you may be saying about looking at the
23 profitability of the overall business. If you are
24 looking at what was the effect of losing one or more
25 in-fill routes, if the costs are already covered

1 somewhere else, the driver costs don't affect that one
2 way or the other?

3 THE CHAIRMAN: I don't think that's what you're saying at
4 all, is it? Tell me if I've got this right. You say
5 that if they were being paid for a 45-hour week in
6 respect of a school contract and then the in-fill
7 service is introduced, you have to allocate some of the
8 cost of paying that driver to the in-fill service
9 because, in reality, it's a cost of the in-fill service
10 pro rata?

11 A. Yes, when it comes to analysing the absolute level of
12 profitability of the in-fill services, it is correct to
13 allocate costs. When it comes to purely incremental
14 analysis, like what would have happened --

15 THE CHAIRMAN: No extra cost.

16 A. Yes.

17 MR BOWSHER: So when you're looking at the incremental
18 effect in the counterfactual, if the cost is already
19 covered elsewhere, the driver cost doesn't affect that
20 incremental loss?

21 A. If that cost has already been covered, yes.

22 Q. And in fact, it makes -- as Mr Good was explaining, it
23 doesn't in fact matter whether the costs are entirely
24 covered or not because an increase or a reduction in
25 a loss is still a loss or gain and whatever the position

1 is on the school contracts, the incremental effect is
2 independent of what the driver costs are, which are
3 already attributed to the school contracts?

4 A. Yes, I'm not sure if I follow all the steps that you've
5 just outlined. But clearly, in the incremental
6 analysis, my premise has been that you have to run
7 extra -- so let's -- sorry, one step back. In the
8 scenario where it was just the services that were
9 actually run and in the counterfactual they also ran
10 those 58 per cent, say, of the registered services,
11 extra driver costs are not relevant. They come in
12 in the next step of the incremental analysis, where you
13 say: no, it's not the actual where they run 58 per cent,
14 but now let's assume a counterfactual where they run 100
15 per cent of services. Just by logic, I have inferred
16 from the position of 2 Travel that the reason they
17 offered 58 and not 100 was a lack of drivers. So you
18 didn't have those drivers. To get to 100, you needed
19 extra drivers, and then that cost does come in, into the
20 calculation.

21 MR FREEMAN: So this has nothing to do with the fifth route,
22 this is 100 per cent on the four routes?

23 A. This is just on the four, yes.

24 MR BOWSHER: You're saying if you needed more drivers to get
25 more services, then you need to take that into account

1 because that is then an incremental effect?

2 A. Yes.

3 MR SMITH: That's making an assumption as to why only 58
4 operated, isn't it?

5 A. Yes. Well, it is taking the assumption or the position
6 put forward by 2 Travel that the reason why it was 58
7 and not 100 was lack of drivers. So I've shown --
8 I have also shown a scenario where there is no extra
9 driver costs, so you can see the effects of both. But
10 I think, logically, it follows from 2 Travel's position
11 that to run those other 42 per cent, you would have
12 needed more drivers and would have therefore incurred
13 incremental cost.

14 MR BOWSHER: Let's just be clear about that, though. That
15 58 per cent is a figure that comes at the end of 2004.
16 The factual evidence from Mr Fowles is that he had
17 enough drivers to cover the services and he had enough
18 drivers at much higher rates of achievement earlier
19 in the year?

20 A. The 58 per cent is an average over the period. The
21 factual evidence from Mr Fowles, I think is very
22 unclear, both in terms of how many drivers they actually
23 had and also in terms of how many drivers they needed
24 for those services.

25 Q. By the end they were having difficulties, plainly,

1 shortly before the services came to an end. So the
2 58 per cent represents an average. Part of the average
3 is a significantly lower figure than 58 per cent; yes?
4 A. Yes, in the later months. In the earlier months it was
5 80, so even there it wasn't 100, and also Mr Fowles'
6 evidence in the first statement said that -- I believe
7 it said they lost two drivers at the start of the
8 services. So that may explain why it was 80 per cent at
9 the beginning and then it gradually decreased.

10 Q. There has been a lot of evidence in the last few days
11 about driver retention, but the short point is, when
12 they were achieving 80 per cent or so, the evidence must
13 be that they had drivers to produce to run those
14 80 per cent?

15 A. Yes.

16 Q. So the increment, if there is an incremental driver,
17 this hypothetical incremental driver you referred to,
18 it's for whatever the difference is between the maximum
19 performance and 100 per cent?

20 A. Yes, yes. I have taken the average of 58 per cent
21 across the period and therefore the extra drivers that
22 I have assumed are also on average across that period.
23 It may well be that in the early months it wasn't five
24 extra drivers that they needed but three or two. But
25 in the later months, they would have needed more. I've

1 taken the average.

2 Q. But just to be clear about this, if they had sufficient
3 driver establishment to run their maximum performance,
4 even assuming that those drivers were flat out, you only
5 need the incremental driver to fill the gap between the
6 maximum performance and 100 per cent?

7 A. Sorry, what do you mean by maximum performance?

8 Q. If you achieved 80 per cent or whatever they achieved,
9 in actual fact, when the service was at its early
10 stages.

11 A. Yes.

12 Q. Then as I understand it, just so that I'm clear about
13 this, one of the weaknesses in the data and one of the
14 reasons why you've had to approach these calculations
15 the way you have done is that no one actually knows how
16 many buses ran?

17 A. I think it is correct to say, yes, that nobody -- or
18 there is no data to know how many of them ran. That's
19 right.

20 Q. So by definition, therefore, no one knows the total
21 market, so market share figures as such, somewhat break
22 down?

23 A. Not for the purpose of this analysis because there
24 I look in the counterfactual, where there are no white
25 services, so it doesn't matter, actually, for the

1 analysis, how many white service buses ran. What
2 matters is the number of passengers and that we have
3 factually.

4 Q. But in the actual world we don't know the total size of
5 the market?

6 A. Well, in the actual ... Well, we know the total number
7 of passengers for each of the three types of services.
8 We also know how much they were all planning to run. So
9 we know the number of liveried services and we know both
10 2 Travel and white services were two an hour. How much
11 they actually ran, both of them, is unclear. It is my
12 general understanding that the white services ran more
13 frequently than 2 Travel in practice, which is why their
14 total number of passengers is also higher than that for
15 2 Travel. And of course, they ran the 158 at least for
16 a period, which 2 Travel didn't.

17 Q. I wanted to come to that. If you could take the
18 document which I gather is now in the file, the document
19 that I handed up. These are the actual white service
20 figures. We can see that even on these figures, there's
21 a significant number of passengers over the few months
22 that the white services were actually running, can't we?

23 A. Well, significant or not, this is the number of white
24 service passengers. These numbers are the same in my
25 table A3.2 that we looked at earlier. The number of

1 white service passengers by type for each of the five.

2 Q. We know that the five routes that were originally --

3 THE CHAIRMAN: Before you go on with that, Mr Bowsher, can

4 we just clarify what the headings in the box mean? This

5 is the headings that are out of sync with the numbers

6 beneath them, as it were. The first column is adult

7 fare paying passengers, is it?

8 MR BOWSHER: I presume so.

9 A. Yes, adult fare paying.

10 MR FLYNN: I apologise. This is a question that Mr Smith

11 asked earlier. I'm afraid I haven't got a complete

12 answer to that. I'll see if I can.

13 THE CHAIRMAN: Do you know?

14 A. I think if you compare -- I think all, basically, all

15 stand for the multi-journey passengers.

16 THE CHAIRMAN: Multi-journey.

17 A. Yes. But at least that's the basis I've worked on. You

18 can see that if you look at route 117 and my table A3.2.

19 The totals at the bottom. So the total for adults is

20 13667, and you can see that at the bottom of here as

21 well, under the column "Adult". Then under the column

22 "All", you have 6446, and I have that under

23 "Multi-journey passengers", so season ticket,

24 multi-journey ticket holders. That has been my

25 assumption. So my understanding, at least, of how --

1 that's how it ...

2 THE CHAIRMAN: So they're not included in the 13667?

3 A. Correct.

4 THE CHAIRMAN: The next column is "Child".

5 A. Yes.

6 THE CHAIRMAN: And then whatever "Swift" is, there's only

7 one passenger.

8 A. I don't know what that is.

9 THE CHAIRMAN: And "Use"?

10 A. I don't know what that is either, and those I have

11 ignored.

12 THE CHAIRMAN: "Welsh conc" is Welsh concession?

13 A. Yes.

14 THE CHAIRMAN: Sorry.

15 MR BOWSHER: Thank you, that's very helpful.

16 Those are the numbers. We know from the evidence

17 from a number of different places that these five

18 planned routes were regarded as the five most

19 advantageous corridors to go for, don't we?

20 A. Well, that's probably what 2 Travel had in mind.

21 Q. But it is also what Cardiff Bus had in mind. That's why

22 they were responding -- they made that point when they

23 were responding to the OFT, that: 2 Travel are directing

24 themselves at our five most profitable routes?

25 A. I agree with both of those positions. I don't know if

1 they're the same positions because, ultimately, a route
2 may do very well for an incumbent but if the route is
3 already very well served by that incumbent, then that
4 doesn't automatically imply that there is room for a new
5 entrant on the route. With that caveat, I would
6 otherwise agree with those positions.

7 Q. The reason I'm asking that is there is something rather
8 odd about these numbers because each of these routes has
9 tens of thousands of passengers over the months we're
10 talking about, except for the route that 2 Travel didn't
11 run.

12 A. The 258, correct.

13 Q. Is that a topic you've looked at?

14 A. Well, not in detail. I mean, it is clearly a topic
15 I have seen. The 258 was run less frequently than --
16 sorry, the white service, so the 158 was clearly run
17 less frequently and was terminated before, I think,
18 I seem to remember, before the other four, yes.

19 Q. It's hard to know, the comparison is so stark. Would it
20 seem fair to assume that it must have been run with
21 somewhat less vigour because, otherwise, they would have
22 surely got significantly more passengers than that for
23 the period?

24 A. I agree.

25 Q. We don't have the numbers to be able to know when they

1 were running or how many they were running. It's just
2 a guess.

3 A. I think we have the dates.

4 Q. Yes. If you were to take as a pure market share figure,
5 is it appropriate simply to add up all of these numbers
6 and then maybe allow for an oddity of the fifth route
7 and simply apply even the lowest 19 per cent market
8 share figure to try and get a number, as a minimum
9 number of passengers that 2 Travel would have got to?

10 A. Sorry, I don't know. I can't follow your question
11 exactly.

12 Q. In the counterfactual, if the white service doesn't run,
13 these passengers are now available to compete for.

14 A. Yes.

15 Q. As a minimum, is it appropriate simply to take the
16 2 Travel market share that you've calculated of around
17 19 per cent and simply say: well, as a minimum,
18 19 per cent of those must be travelling on 2 Travel in
19 the counterfactual?

20 A. Well, I've done that allocation by frequency, by route,
21 by section. So for each of the specific routes I've
22 taken -- I haven't taken the average 19 or 18 per cent
23 market share, I've done it exactly by route and by
24 section. If your question now refers to the 258 or the
25 158 passengers, then yes, I've followed the same

1 procedure. So allocating by relative frequency between
2 2 Travel and the liveried services. Of course, this is
3 only in the scenarios where they ran more services than
4 they actually did. So this is not the main scenarios
5 that I looked at, which referred to the actual services,
6 which I called services scenario 1, which were the
7 58 per cent on the four routes.

8 Q. Can we just turn to that then, at the end of your
9 report, because again I think we may be in vigorous
10 agreement on this. Page 25 of your report. What
11 you have --

12 A. This table has -- if you refer to the table, table 4,
13 the corrected version is in the next tab.

14 Q. You're quite right, thank you very much.

15 A. So I think it's the last page.

16 Q. Yes, the very last page.

17 A. No, sorry, the page before the last one.

18 Q. That's the figure from which you calculate what you call
19 scenario 1, in which, in the counterfactual, fare paying
20 passengers from the buses go to 2 Travel?

21 A. Yes. So I have two passenger scenarios. I've got three
22 services scenarios and then I also have these two
23 incremental cost scenarios. You are referring to
24 passenger scenario 1. That is where all the fare paying
25 passengers have been allocated to 2 Travel. So the left

1 two columns with numbers, if you like. Passengers
2 scenario 2 is the one that we've been talking about,
3 which is where passengers -- the fare paying passengers
4 are allocated according to frequency.

5 Q. Yes. In passenger scenario 1, it is only the fare
6 paying passengers that you have taken across totally to
7 2 Travel?

8 A. Yes.

9 Q. The others, the concessions, you have allocated using
10 the same proportions?

11 A. Yes.

12 Q. And then the multi-rides, if I use that as a general --
13 you have kept with whoever they have a multi-ride ticket
14 for; would that be fair?

15 A. With Cardiff Bus, yes.

16 Q. But you've assumed that if you had a multi-ride ticket
17 in April 2004 with Cardiff Bus, you keep the multi-ride
18 ticket for the entirety of the period up
19 until September 2011? But you never decide to give up
20 the Cardiff Bus and start travelling with 2 Travel?

21 A. We're looking at actual white service passenger, we're
22 looking at the actual months that they got on the bus
23 and had a multi-journey ticket. Whether that same
24 passenger -- what that same passenger did three months
25 later, that's not relevant, that doesn't come into this

1 analysis. It may well be that the numbers we look at
2 in April are exactly the same passengers as the numbers
3 in May and therefore they would have a season ticket in
4 both months, but that's irrelevant, I think, for this
5 analysis.

6 Q. Is it irrelevant, Dr Niels? Because over time, if
7 2 Travel establishes itself as a competing entity and
8 a desirable service to use, some people will say, "I'd
9 rather go on 2 Travel. I won't bother to renew my
10 Cardiff Bus multi-ride, I will start to travel with
11 2 Travel instead." So some of those multi-rides, over
12 time, become available to compete for?

13 A. Yes, I agree with that proposition, I think I agreed
14 with it before as well. But what I'm saying is for the
15 allocation exercise, it's not relevant because in that
16 particular month they were multi-journey pass holders,
17 so therefore the assumption is safe to say: well, they
18 would have travelled on the liveried service.

19 Q. What it means then is the figures you're giving for
20 allocation of passengers fails to take account of
21 passengers who may in fact end up travelling on
22 2 Travel? Because your scenarios go right up
23 to May 2005, September 2011. You assume those people
24 will never move across to 2 Travel, whereas in fact you
25 are agreeing with me that some of them will?

1 A. What I'm assuming, effectively, is that
2 after December 2004 when the actual services stopped,
3 yes, I'm effectively assuming that there is, after that,
4 a steady state in which everything stays the same. So
5 there is this same number of -- same proportion of
6 travellers are on multi-journey tickets. Whether
7 that is actually exactly the same passengers, that's
8 just unclear, but I've thought that was the simplest
9 assumption to make, that everything stays the same
10 after December 2004.

11 Q. And you also assume, if I'm right, that everything is
12 fixed, in the sense that as between liveried and
13 2 Travel and that there is no transfer between liveried
14 and 2 Travel?

15 A. Not beyond what has been modelled and happened up
16 to December 2004. The reason being, of course, that any
17 changes after 2004 are inherently speculative anyway
18 already, so the safest assumption I thought to make is
19 to assume there is a steady state in which not much
20 changes.

21 Q. But if it is right that 2 Travel are able to establish
22 themselves as a desirable alternative and that means
23 they're able to attract custom from the liveried
24 services, to that extent your figures underestimate
25 2 Travel's long-term achievement?

1 A. If your propositions are correct, then yes, there is
2 a possibility that 2 Travel would have grown, would have
3 become very successful, potentially.

4 Q. And growth is certainly a realistic proposition
5 because -- we've already looked at it in a couple of
6 places, but let's look at it in a simpler place. Take
7 E11 again. We were looking earlier in a rather
8 complicated annex 4 which was based on that data which
9 is why I wanted to look at it, because I wondered
10 whether you were able to help me with that data, which
11 I still don't understand. E11/138. The proposition is
12 put quite simply. This is the response by Burges Salmon
13 to the section 26 notice from the OFT. Have you seen
14 this document before?

15 A. No, I haven't.

16 Q. I think we can probably skip section 1, which tells you
17 all about Cardiff Bus. You might want to just have
18 a quick read of the section 2, no frills service.
19 Do you want to just read that to yourself so that I'm
20 not taking you by surprise? (Pause).

21 A. Yes, I think I have the gist of it.

22 Q. All I wanted to focus on is that my notion, my
23 hypothesis that I'm putting to you, that a no frills
24 service could actually grow over time, is not so
25 fantastic. It is exactly the notion that is being put

1 to the OFT by Cardiff Bus at the end of paragraph 2.1?

2 A. Yes.

3 Q. They assume the strategy would generate additional
4 revenues by encouraging more passengers to travel by
5 bus, by encouraging existing passengers to travel more
6 often, et cetera, et cetera.

7 A. Yes. I see that, yes. I think it is helpful to
8 distinguish between growth of the overall market and
9 growth of the entrants; growth of market share of the
10 entrant. I think we are veering a bit in between.
11 In the original claim form, 2 Travel didn't really make
12 that distinction. I made it more explicitly and
13 helpfully, I think Mr Good and I were clear about which
14 ones we're talking about. I think you are now back to
15 overall market growth. I have explained my assumptions
16 as to why I think that is generally not the case. I see
17 that here in this letter the opposite or something that
18 contradicts that is being said. I see that, yes.

19 MR BOWSHER: I have no further questions for Dr Niels.

20 MR SMITH: Dr Niels, two quick questions. First of all,
21 do you have a definition of what a multi-ride ticket or
22 multi-passenger ticket is?

23 A. No, I don't. I'm guided here by Cardiff Bus, who have
24 informed me. I think there is at least two. There is
25 the multi-journey ticket and then also the season

1 tickets. But beyond that, I haven't enquired about
2 definitions.

3 MR SMITH: Because in terms of passenger choice and being
4 able to move away from one provider to another, it
5 clearly makes a difference as to whether the passenger
6 has bought a season ticket for a year or whether it's,
7 say, a weekly ticket.

8 A. Yes. Correct.

9 MR SMITH: But simply the definition includes all of those
10 things as far as you're concerned?

11 A. Yes, it includes all of those things.

12 MR SMITH: Secondly, do you still have E11 in front of you?
13 If you could have a look at page 424, where I'm hoping
14 you should have table 5, the summary of the fares
15 charged by the two companies.

16 A. Yes.

17 MR SMITH: In answer to a question posed by the chairman
18 this morning, you said that passengers place more value
19 or are more sensitive to issues of time than price when
20 they're choosing their buses.

21 A. Yes.

22 MR SMITH: Looking at table 5, one sees that there's
23 a differential pricing between singles and returns and
24 that returns are, per journey, cheaper than singles.
25 Doesn't that suggest that bus companies, at least, think

1 that passengers or potential passengers do respond to
2 price and will be encouraged to buy a return ticket for
3 less than the single?

4 A. Yes, that may be an inference from that. They are
5 perhaps a bit like airlines, who sell single tickets
6 much more expensively than return tickets. I think
7 in the bus industry there's also the slight complication
8 of the concessionary fare reimbursement being linked to
9 the adult single ticket. That's why bus operators also
10 tend to play around with the single fare as such, with
11 an eye on the concessionary reimbursement. But other
12 than that, I think that could be an inference from this.

13 MR SMITH: So either the bus companies -- and we're talking
14 about all the bus companies here -- are slightly
15 irrational in their pricing or perhaps the market is
16 a little bit more sensitive to price than has been
17 suggested before us in the course of this week?

18 A. Yes, possibly. I think, yes, it could be. I think they
19 are trying to sell return tickets and therefore perhaps
20 make them a bit more cheaper than the single tickets.
21 I'm just thinking aloud. It may have to do with these
22 concessionary fares. So the causality may be the other
23 way round that actually, they know most people will buy
24 a return ticket, certainly on the liveried service,
25 so: let's make those -- price those optimally. But

1 then: let's play with the single ticket, which perhaps
2 fewer people buy, but then we get the concessionary
3 revenue. But I'm just speculating.

4 MR SMITH: Thank you very much.

5 THE CHAIRMAN: Thank you.

6 MR FREEMAN: I have a question. Paragraph 3.72 of your
7 statement. There you talk about future behaviour of
8 fares. I think both you and Mr Good have assumed that
9 it would be wise not to speculate too much about future
10 fare behaviour. I think he adds in an inflation
11 allowance and you just assume that fares would remain
12 the same. But in calculating in the counterfactual how
13 much money might have been made by 2 Travel, revenues
14 derived from fares are highly relevant. That's right,
15 isn't it?

16 A. Yes.

17 MR FREEMAN: And I'm just wondering, what sort of assumption
18 would it be reasonable to make? I'm sure it's safe to
19 make an assumption that there is no change. That's
20 obviously a very sensible, cautious approach, but this
21 is a purported entry by a new entrant, offering lower
22 fares than the incumbent. It seems very odd to me that
23 nobody's prepared to make any assumption about what
24 might happen to future prices because the purpose of the
25 entry, presumably, is to benefit customers, in the

1 competition analysis, which implies benefits which might
2 include downward pressure on prices or less upward
3 pressure; is that a fair response? Would it be
4 reasonable to assume that the incumbent's fares might be
5 affected by the new entrant's activities as well as the
6 new entrant's fares?

7 A. Yes. Over time, the incumbent's fares might perhaps go
8 up less than in the presence of competition. At the
9 same time, perhaps over time, the entrant's fare might
10 go up and go towards the incumbent's price.

11 MR FREEMAN: Which would be a pity from the passenger's
12 point of view.

13 A. It would be, yes. We have heard reference to it again,
14 with reference also to the concessionary fare revenue.
15 After all, that's a big chunk of passengers here. If
16 you price too low, then you lose that revenue across the
17 market as well. I think, yes, one could have made a lot
18 of assumptions. It would lead to greater speculation.

19 MR FREEMAN: Okay, which we deprecate. Thank you.

20 Re-examination by MR FLYNN

21 MR FLYNN: Dr Niels, I don't know if this is
22 a counterfactual, factual or something in between, but
23 if every 2 Travel bus were in fact running immediately
24 behind a white bus, which pulled into the bus stop
25 first, how many passengers would you expect to get on to

1 the 2 Travel bus?

2 A. If that were always the case, then those actual white
3 service passengers would have gone on to the next bus,
4 which would have been the 2 Travel bus.

5 Q. Sorry, I'm just asking, in a factual situation, if in
6 fact you had -- I think it was described as a single
7 unit. If you had a white bus first, immediately
8 followed by a 2 Travel bus, how many passengers would
9 get on the 2 Travel bus?

10 A. Yes, I see what you mean. Well, potentially zero, in
11 theory, if they all got ... Yes, zero could be
12 a theoretical answer to that.

13 Q. Possibly theoretical, possibly real proposition, but
14 there we are. The only other thing I was going to ask
15 was whether -- I know that you were keen to get out the
16 maps and I don't think this should be an opportunity for
17 a disposition on this, but was there any answer that you
18 felt was unsatisfactory or not full enough because
19 you weren't demonstrating it by use of a map?

20 A. Well ...

21 Q. As I say, this is not an opportunity to abuse.

22 A. I think it came up twice. Once in the 117, I wanted to
23 explain just the logic, but I think the logic is enough
24 understood. Actually, I think Mr Bowsher said
25 anti-clockwise, but the 17 ran clockwise, but there was

1 no double counting. For that section 1, I just took
2 into account the 17, which ran the same direction and
3 the 18 only came in in section 2, where the two did
4 coincide. Then the other oddity was the route 62. If
5 you feel like it, maybe you could look at the map, but
6 that's really --

7 THE CHAIRMAN: Would you like us to?

8 A. Yes.

9 THE CHAIRMAN: There we are. Which folder is it in?

10 MR FLYNN: I1.

11 THE CHAIRMAN: And it was route number?

12 A. It is in K. Route 162. So that's in K, the 162.

13 THE CHAIRMAN: Yes, we've got it.

14 A. I think these maps are actually quite helpful and clear.
15 Also just to illustrate this point of the oddity. This
16 is the 162. You can see section 1, it actually overlaps
17 with the ... Sorry, I just need to look at my
18 corresponding table. Yes, so perhaps if you can also,
19 while you have it, look at my figure A3.1. At the
20 bottom you can see the corridor for the 162. In
21 section 1, that is where you can see on the map, the
22 one, and then down to section 2. So where you can see
23 the white square with number 2. So that's section 1
24 from the 1 to the 2. There, actually, the corresponding
25 service is not the 62 but the 61. You can see the 62

1 has some overlap, but it goes in another direction. So
2 you can see that in my figure A3.5 for that section 1,
3 I've only counted the market share for bus 61.

4 Then section 2 -- actually, that's a short section,
5 section between 2 and 3, where both the 61 and 62
6 overlap. So I've counted both frequencies of both
7 buses. Then section 3 to 4 is actually just a small
8 bit, where the 162 went down and also the 62, they went
9 down towards the bridge. And the 61, actually, is then
10 not the overlapping one, but the 62 is the overlapping
11 one. And I think if I'm not mistaken, the 62 only had
12 two per hour. So that's why you suddenly get only two
13 liveried services in that section. And then from
14 section 4 onwards, you can see that that's the section
15 where quite a lot of other liveried services come in.

16 MR FLYNN: Okay. Unless the tribunal has any questions,
17 I have no further questions.

18 THE CHAIRMAN: Thank you very much indeed, Dr Niels.

19 (The witness withdrew)

20 MR FLYNN: Sir, the next witness is Mr Haberman.

21 MR PHILIP HABERMAN (sworn)

22 Examination-in-chief by MR FLYNN

23 MR FLYNN: Could Mr Haberman please be given file D, tab 5.

24 Could you give the tribunal your full name, please?

25 A. It's Philip Haberman.

1 Q. Do you recognise this as your report in these
2 proceedings?

3 A. Yes, I do.

4 Q. If you turn to bundle page 44, internal page 42.

5 A. Yes, I have that. That is my signature.

6 Q. Is this a complete and true account of your expert
7 position in the questions you have been asked to
8 consider?

9 A. Yes, it is.

10 Q. Is there anything you wish to add at this stage?

11 A. No, I have nothing to add apart from the contents of the
12 joint statement.

13 Q. I should possibly have pointed to that. That's tab 21
14 in the C range, I think it is.

15 A. Yes, that's correct.

16 Q. And that's your signature at the end of that document?

17 A. Yes.

18 MR FLYNN: Thank you, Mr Haberman. I think Mr Bowsher will
19 have some questions for you.

20 Cross-examination by MR BOWSHER

21 MR BOWSHER: Good afternoon, Mr Haberman.

22 A. Good afternoon, Mr Bowsher.

23 Q. If I could ask you to take your report and turn first --
24 what I thought I'd do in the time available is just pick
25 up a few high level points and we'll get stuck into the

1 detail tomorrow if that's all right.

2 You say at paragraph 4.45 as a conclusion -- you set
3 out your conclusion of a section which considers the
4 financial position of 2 Travel at the point that it
5 entered into Cardiff.

6 A. That's correct, yes.

7 Q. And that's what all of this narrative in section 4 is
8 all about, although to some extent it refers to the
9 previous parts of the history?

10 A. Yes, it uses some of the history, but it's looking
11 at the position leading up to the entry into Cardiff.

12 Q. So this is the position at, roughly speaking, the end
13 of February 2004?

14 A. The entry into Cardiff was April 2004, so it's
15 approximately around that time, February, March, April.

16 Q. Yes. Your assessment is that the position of
17 2 Travel -- this is paragraph 4.45 -- was so weak as to
18 be unsustainable?

19 A. That's correct, yes.

20 Q. If you could take, then, file E5 and go to page 439.
21 From 439 to 488 are the accounts, audited accounts, for
22 2 Travel, audited by Bevan and Buckland.

23 A. That's correct, yes.

24 Q. They're signed off. We see that they run up to -- for
25 the year end 31 August, but I think they were actually

1 prepared in February. We see that from page 452.
2 26 February 2004.

3 A. Yes. That's the date they were signed, so they would
4 almost certainly have been prepared some time before
5 that, and there will have been time for the audit to
6 have taken place, so they're signed and finalised on
7 that date.

8 Q. And as at that date, as signed off by Bevan and
9 Buckland, they are signing off, as I understand it, that
10 this company remains a going concern?

11 A. Yes, that's correct.

12 Q. And the conventional approach to that is that they are
13 therefore expecting that it is, as it were, sustainable
14 as a concern for a year hence?

15 A. Yes, that's what they believe.

16 Q. As I understand, Bevan and Buckland had not been
17 censured or criticised for these accounts in any way?

18 A. I'm not aware that they have been, no.

19 Q. They had the opportunity of investigating the state of
20 the business a couple of weeks here or there, around the
21 position that you're saying that 2 Travel was
22 unsustainable. Why should the tribunal prefer your view
23 to the auditors', who have actually undertaken the
24 contemporaneous analysis of the state of the company at
25 that stage?

1 A. Well, we don't have any evidence before us of the work
2 that the auditors did on the question of whether or not
3 the company could continue as a going concern. As it
4 happens, it did in fact continue as a going concern
5 beyond the date of 12 months from the auditor's report
6 being signed, which would have been to February 2005,
7 although it was barely a going concern at that date.
8 I suspect that's the reason why the auditors -- there
9 hasn't been any criticism, because it simply did not
10 arise. I'm looking at this from the outside, so rather
11 than having the opportunity to have discussions with
12 management and perhaps being influenced by management's
13 perceptions of what they hoped they were going to
14 achieve, I'm looking at it very much from the
15 perspective of what was actually achieved and what was
16 actually happening from what we've seen.

17 All of the evidence that I've seen is that the
18 company really was struggling at all times, it was never
19 covering its own costs. It was leaking cash
20 continuously. Any business like that is doomed to
21 failure.

22 Q. Isn't it right, Mr Haberman, that we may be being wise
23 after the event, but the reality is that at that stage,
24 it was not regarded by the directors or the auditors as
25 being an unsustainable commercial position?

1 A. That's correct, they didn't see it that way.

2 Q. And as that continued, even given the difficult
3 conditions which 2 Travel had to deal with in Cardiff
4 because of the infringement that has been found by the
5 OFT, the directors and backers continued to support
6 2 Travel for the rest of 2004, did they not?

7 A. Well, the directors continued to support it. I'm not
8 sure whether it's true to say the backers of it did,
9 because the shareholders weren't asked to contribute any
10 further money. There's nothing to suggest whether or
11 not they would have done. I know that two individuals
12 who were directors were willing to support it, but that
13 was on very specific conditions, and it appears to me
14 from the outside that that's the reason why they
15 supported the business, was because of those conditions.

16 Q. Well, the only relevant condition is that they were in
17 some respects looking for some security. That is not
18 a condition which affects whether or not they were going
19 to give the support or not, is it?

20 A. It's very difficult to try and interpret what's
21 happening from outside. The appearance, to me, is that
22 the valuable assets that this business had was the
23 property and the individual directors had identified
24 that and saw that that was the asset. They were willing
25 to lend against the asset and gradually, over time, the

1 arrangement changed so that the lending against a second
2 charge on the asset eventually became an option to buy
3 the asset, which eventually they did. It appears to me
4 that that was probably the real driving force behind
5 lending money to the company in the first place.

6 Q. Well, there's no evidence for that, though, is there?
7 If that had been the case, they might have secured the
8 assets separately themselves, quite separately from the
9 company?

10 A. It was the company that owned the asset in the first
11 place. I'm not quite sure how they could have done
12 that, particularly once the company had floated, because
13 then, as a public company, obviously any transaction
14 with individual directors would be a related party
15 transaction and would need to be done at market value
16 with the approval of the shareholders.

17 Q. We'll come back to that.

18 THE CHAIRMAN: Just on the question of a related party
19 transaction with a company like this, is there an
20 obligation to report a related party transaction to the
21 AIM market, to the LSE?

22 A. I think the obligation is for the transaction to be
23 approved in a general meeting.

24 THE CHAIRMAN: Yes.

25 A. Obviously, it would necessarily have to be reported in

1 order for there then to be a general meeting to take
2 place to decide whether or not to approve it.

3 THE CHAIRMAN: So the existence of that related party
4 transaction becomes the knowledge of the wider
5 shareholding community? For example, people who have
6 bought shares just on the market?

7 A. Yes. And it would have to be approved by a majority of
8 outside shareholders, of course, not those who are the
9 related parties.

10 MR BOWSHER: We'll come on, I suspect tomorrow now, to the
11 way in which comparable companies may or may not have
12 developed. But will you accept as a general proposition
13 that in an industry such as this, it's not surprising if
14 it may take a year to three years for the company to
15 grow out of a loss making position?

16 A. That may be the situation, yes.

17 Q. It would not therefore be surprising if, in a company
18 in the sort of public transport sector, its having to
19 expect early losses and therefore look for people to
20 support it during that early loss making period?

21 A. That would be quite common in lots of industries. There
22 would be a loss making period to begin with, while
23 a company gets established.

24 Q. And whatever the situation in which 2 Travel found
25 itself towards the end of 2004, if there were those who

1 were prepared to support the company through that
2 because they saw some reason to do so, then, by
3 definition, the company would have survived, would it
4 not?

5 A. No, not by definition. It may have been that money
6 would have continued to be pumped into the business and
7 lost and the company may still have disappeared because
8 the assumption that putting more money in was what it
9 needed to keep it going, assumes that the entire
10 business plan and entire approach of the company was
11 going to be effective and it was simply lack of cash
12 that was making life difficult. And I don't think
13 we can make that assumption.

14 Q. If they are, at the very least -- is it not correct that
15 if one can see various prospects on the horizon, in
16 particular, the possibility of the end of predation, at
17 least a possibility -- that's not what was being
18 foreseen here because the OFT hadn't yet acted. But if
19 one could see the end of predation and therefore an
20 improved trading environment, would it not be the case
21 that if supporters were prepared to support the company
22 during that difficult period and get to a more benign
23 trading period, that in itself would suggest that those
24 supporting the company would enable it to keep in
25 business?

1 A. Again, you're making the assumption that in a more
2 benign trading period this company would be successful,
3 and again I don't believe the evidence shows that. It
4 seems to me that the evidence shows that whether or not
5 there was a predation taking place by Cardiff Bus, the
6 company was not able to sustain itself, was not able to
7 trade at a profit and had little prospect of ever doing
8 so.

9 Q. We'll come back to some of the detailed figures probably
10 tomorrow. I'm not sure if you've been here in the last
11 few days to hear the individuals, particularly
12 Mr Francis and Mr Short, give evidence.

13 A. No, I haven't.

14 Q. Or the operational managers, both Mr Bev Fowles and
15 Mr David Fowles?

16 A. No, I wasn't here for their evidence.

17 Q. The evidence we've heard from them in short is that
18 Mr Francis and Mr Short were consistently willing to
19 support the company financially in the short-term by
20 meeting whatever was necessary to comply with the
21 Traffic Commissioner's requirements. Are you aware of
22 that?

23 A. Yes, I think I've seen comments being made about that.

24 Q. And it will be for the tribunal to decide, but if in
25 fact there are rational or understandable reasons why

1 they were doing that -- and there are at least two:
2 firstly, because they knew that there was a possibility
3 of obtaining some security by reason of the asset and,
4 secondly, because, as we've heard from Mr Francis, he
5 actually had a family reason for wanting to support the
6 business, because of his relationship to Mr Fowles.

7 In those circumstances, it's understandable, indeed
8 it's likely, is it not, that Mr Francis and Mr Short
9 would continue to support the business and would have
10 continued to have done so to a point at which the
11 difficult trading conditions in Cardiff could have been
12 rectified?

13 A. Again, you're making more than one assumption in doing
14 that. The first is that those conditions are capable of
15 being rectified in the sense that that is the thing
16 that's obstructing the company from being successful,
17 and you're always assuming that. That's not necessarily
18 the case and it doesn't appear to be the case.

19 The second thing is that you're talking about
20 a situation where two individual directors are looking
21 to support what is now a public company, and I'm not
22 sure that the individuals at the time really recognised
23 that, as a public company, it's a very different
24 situation from had this been a private company. Had it
25 still been a private company, they could have supported

1 it for as long as they wanted to and, to be honest, they
2 could have continued pouring money into it for as long
3 as they wanted to, whether it was going to make a profit
4 or not.

5 But as a public company, it's very different. As
6 a public company, it has its obligation to its external
7 shareholders as well as to the directors, so it's a very
8 different situation that it finds itself in. In some
9 senses, it's not their choice solely to decide: am
10 I willing to pump money into this business? It must
11 always be done with the approval of the outsiders.

12 MR BOWSHER: I was about to get stuck into quite a lot of
13 documents. I know it's a bit early, but I wonder if
14 that's a convenient point to stop?

15 THE CHAIRMAN: This presumably is, for example, why people
16 with, one might say, more money than sense pour part of
17 their fortune into running a football club as a private
18 company, whereas if it becomes a public company, like
19 some major football clubs, then they have an obligation
20 to a much wider world?

21 A. That's right. If you are Mr Abramovich, you can treat
22 Chelsea Football Club as a toy and pour in as many
23 millions as you wish, but it's an entirely different
24 situation if you are just one shareholder amongst many.

25 THE CHAIRMAN: So the London Stock Exchange rules, which

1 apply to the AIM as part of the LSE apply to all public
2 companies?

3 A. There are two separate things. One is the listing
4 rules, which apply to all public companies, but also
5 of course the Companies Act, and the requirements about
6 related parties are also contained in the Companies Act.

7 MR FREEMAN: Mr Abramovich is up against a slightly
8 different form of competition.

9 A. Yes.

10 THE CHAIRMAN: Yes. Though the only way to get there is by
11 bus. Shall we adjourn?

12 MR FLYNN: Until what time tomorrow, sir?

13 MR BOWSHER: 9.30?

14 THE CHAIRMAN: We're perfectly happy to start at 9.30.
15 Counsel always want to start early on Friday.
16 Are you all right with 9.30, Mr Haberman?

17 A. Absolutely.

18 THE CHAIRMAN: 9.30 tomorrow.

19 (3.56 pm)

20 (The hearing adjourned until 9.30 am the following day)

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