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IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1178/5/7/11

Victoria House,
Bloomsbury Place,
London WC1A 2EB

23 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 9)

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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Friday, 23 March 2012

(9.30 am)

HOUSEKEEPING

MR FLYNN: With Mr Bowsher's permission, sir, can I point out to the tribunal that you have just had inserted into your E19-file, which I think is the supplementary documents file --

THE CHAIRMAN: Bear with me for a moment, please.

MR FLYNN: At the very end of that, I think you'll find a document that just has a coloured divider in it. That is a letter which my instructing solicitors, Burges Salmon, sent to Mr Bowsher's instructing solicitors, Addleshaw Goddard, last night.

THE CHAIRMAN: Yes, I saw it last night. I didn't read it in any detail.

MR FLYNN: Then you're ahead of the game, sir. I don't suggest that we read it in any detail now, but basically that explains how the additional Bond Pearce time logs that we produced the other day came to be found and what further enquiries have been made. So that's set out in some detail there.

THE CHAIRMAN: That can be the subject of comment, if appropriate, in closing submissions. I was going to make it clear at the end of the day, but perhaps I should make it clear at the beginning, it's stating

1 the obvious, I hope, but we are expecting that, after
2 today, there will be no attempt to introduce any more
3 evidence into this case. I hope that's reasonably well
4 understood.

5 MR FLYNN: I hear that, sir.

6 MR BOWSHER: Sir, that letter I received -- I think it came
7 after my bedtime. I've only skimmed it. At the very
8 least, it raises questions as to who in Cardiff Bus knew
9 what at the time of the various witness statements and
10 the disclosure statement. I have simply not got on top
11 of -- I need to go back and analyse some of the
12 underlying material. You very helpfully put me to, not
13 exactly my election, but you asked me to commit myself
14 as to what my case was and invited me to put that to
15 Mr Brown, and at the time, I reserved my position. This
16 is not in any way suggesting we would be putting in
17 fresh evidence. What I would say is I need to take care
18 as to what, if any, proposition flows from the assembled
19 material that I now have on this. We need to go away
20 and think about that.

21 If there is a proposition that needs to be put, it
22 may be that we have to invite the tribunal to timetable
23 15 minutes at the beginning of our hearing so that I can
24 put that proposition, or it may be a proposition that
25 can simply be put in writing. But I need to work out

1 what that proposition is.

2 THE CHAIRMAN: That's why I deliberately made the
3 distinction between evidence and submissions. I have
4 a strong feeling, having only glanced at that material
5 and late last night, probably when you were tucked up
6 listening to a Book at Bedtime, that probably this
7 material, if at all, could be dealt with in submissions
8 rather than by adducing further evidence. If anyone
9 wants to apply to adduce further evidence after today,
10 of course we can't stop them, but I can tell you that it
11 won't be welcome.

12 MR BOWSHER: It certainly won't be our intention to adduce
13 further evidence. It's simply that if there is
14 a proposition that ought fairly to be put to someone,
15 we will flag up --

16 THE CHAIRMAN: We even have breakfast together sometimes and
17 we were reflecting over breakfast that there has been
18 a reasonable amount of time and it's been fairly
19 leisurely as well, in the preparation of this case. It
20 may not have seemed leisurely to you at times, but by
21 CAT standards, it has been fairly leisurely. You don't
22 have to answer that, Mr Bowsher.

23 MR BOWSHER: This last issue is a late breaking point, which
24 I need to go back and look at the material we do have
25 in the light of what we're now being told.

1 MR FREEMAN: It may not be material, but I don't think the
2 letter has found its way into my supplemental bundle.

3 MR FLYNN: That's an error which will be remedied, sir.

4 THE CHAIRMAN: Right at the back of E19.

5 MR FREEMAN: Point withdrawn.

6 MR FLYNN: I shan't say any more about it, sir, except that
7 I hope, on study, it will answer some of the questions
8 that Mr Bowsher has posed. And it may be that there
9 will be, depending on how we get on with Mr Haberman,
10 time today for reflection and instructions to be taken,
11 but I shouldn't say any more than that.

MR PHILIP HABERMAN (continued)

Cross-examination by MR BOWSHER (continued)

12 THE CHAIRMAN: Good morning. Please ignore everything
13 that's been said in the last six and a half minutes.
14 We will now resume from where we were yesterday. I hope
15 you had a good night and enjoyed a Book at Bedtime.

16 A. I did indeed, thank you. I wonder if I might take the
17 opportunity to expand on an answer which I gave
18 yesterday afternoon?

19 THE CHAIRMAN: Mr Bowsher?

20 MR BOWSHER: Very well.

21 THE CHAIRMAN: Which answer?

22 A. Mr Bowsher was asking me a question about the fact that
23 the auditors had signed off the financial statements
24 in February 2004. At that time, they hadn't raised any
25 concerns about a going concern. And I was thinking

1 about the dates. It struck me that a public company
2 that's listed has to have presented its results to its
3 shareholders within six months of the end of the period.
4 So the financial statements were signed off very late
5 in that period because they were signed off on
6 25 February, I think the date was.

7 I also notice that the PwC report was signed off on
8 18 February. It is a possibility -- I can't be
9 certain -- that the reason why the financial statements
10 took so long to finalise was because the auditors did
11 raise issues about going concern. Those issues were
12 resolved in the way they are usually resolved, which is
13 by asking management to put together projections of the
14 financial position of the company over the next year to
15 18 months.

16 THE CHAIRMAN: Just on that, Mr Haberman, is it the normal
17 practice for the auditors to attend a board meeting
18 before the accounts are finally signed off in a listed
19 company?

20 A. Usually, yes.

21 THE CHAIRMAN: So one would expect there to be minutes at
22 a board meeting of a discussion between the board and
23 the senior representative of the auditors?

24 A. Yes. But that may just be the formality at the very
25 end, in that earlier discussions may have taken place

1 separately.

2 THE CHAIRMAN: Okay, thank you.

3 A. The sort of thing I'm thinking of is that it may well be
4 that the auditors raised this issue, it was resolved by
5 management preparing projections, which were reported on
6 by PwC. The auditors then reviewed those projections
7 in the light of the directors agreeing to guarantee
8 borrowings to the extent suggested by the PwC report,
9 and that then gave them the comfort that the business
10 was in fact a going concern at that date. And that's
11 how they reached their view.

12 Putting all the dates together, that seems to me to
13 be a logical explanation because there is nothing in the
14 financial statements that involves very much judgment
15 and no reason why they should have taken so long to put
16 together after August 2003.

17 MR SMITH: Of course, Mr Haberman, you may not have seen it,
18 but we have. There was a letter dated 10 December 2003
19 regarding these accounts, which was written by Bevan and
20 Buckland to the company, which did raise a number of
21 questions, to put it no more than that.

22 A. You're quite right, sir, I didn't see that.

23

24

25

1 MR BOWSHER: You'll have gathered from the interventions,
2 Mr Haberman, this has been a hearing at which there's
3 been an opportunity to go over a number of the facts.
4 I don't think we need to speculate because the tribunal
5 has the evidence and can decide for itself what did or
6 didn't happen between August and February.

7 A. Yes, of course.

8 Q. And I'd suggest that the tribunal can decide for itself
9 what Bevan and Buckland did or didn't do and what they
10 should or shouldn't have done at the end of 2004. That
11 would be fair, wouldn't it?

12 A. Yes, it would.

13 Q. They've also heard evidence from Mr Harrison about the
14 process and the intensity of the process conducted by
15 PwC, so again, they can judge for themselves the
16 fairness and rigour of the investigations carried out by
17 Price Waterhouse, can't they?

18 A. Yes. My comments have nothing to do with the work that
19 Price Waterhouse did. It's purely the timing.

20 THE CHAIRMAN: Thank you.

21 MR BOWSHER: Have you looked at the evidence as to what
22 Price Waterhouse did in terms of the rigour of their
23 investigation and the amount of work they put in?

24 A. Yes, I've read the transcript.

25 Q. So you'll have seen this involved actually sending

1 someone in to actually investigate and review the
2 ongoing business of the company?

3 A. Yes. It's always difficult to get a picture of exactly
4 how much work is being done in situations like this.

5 Q. And whatever the shortcomings of the material today, we
6 know that if there was evidence available then, Bevan
7 and Buckland and Price Waterhouse were in a position to
8 call for that evidence, were they not?

9 A. Yes, they certainly were.

10 Q. And we know also from the written evidence that
11 management accounts were being prepared up to July, at
12 least until July 2004, and we see that from Mr Fowles'
13 second statement, paragraph 69?

14 A. Certainly from the documentary evidence, I don't think
15 we found management accounts for every month up to that
16 point. There were some gaps and some missing months.

17 Q. The missing document -- there's a saga in this case,
18 I don't know if you're aware, about what may have
19 happened to some documents from 2 Travel over the years.
20 But at that point, up to the middle of 2004, at the very
21 least, documents -- the evidence is that the documents
22 did exist. What may have happened to them is a matter,
23 I think, at the moment, of speculation; is that fair?

24 THE CHAIRMAN: I raised this question earlier and I've had
25 no answer to it as yet. If there were no management

1 accounts after July 2004, does that have any
2 consequences as to the conduct of the company or the
3 viability of the company? I was thinking of the
4 provisions in the Companies Act that penalise companies
5 and directors for not keeping proper books of accounts.

6 MR BOWSHER: Sir, can I intervene on that question? Because
7 on the section that you've referred to, which we're
8 going to come on to in submissions, the penalty is only
9 on the directors, not the company.

10 A. The requirement of the Companies Act is to keep proper
11 accounting records. It isn't necessary to keep
12 management accounts in order to keep proper accounting
13 records.

14 THE CHAIRMAN: As long as there are other accounting
15 records?

16 A. Yes, the core accounting records can still be there.
17 The purpose of the management accounts is, as the name
18 implies, to help management to decide what is happening
19 in the business and what to do with the business going
20 forwards. It's a convenient -- simply a convenient
21 summary of what's happened.

22 THE CHAIRMAN: Thank you.

23 MR BOWSHER: And we know also from the evidence, don't we,
24 that what's sometimes been referred to as the second PwC
25 report, is in fact, as we know from the evidence of

1 Mr Harrison, a management tool being prepared by PwC for
2 the management to help them manage the business, is it
3 not?

4 A. Yes, I understood from Mr Harrison's evidence that it
5 was reflecting the fact that 2 Travel at that time,
6 I believe, either didn't have or was in between finance
7 directors and needed some help themselves in pulling
8 together projections as to what may happen in the
9 business. That was the purpose of that second report.

10 Q. Could you turn on in your report to paragraph 3.15. I'm
11 using internal page numbers. Perhaps page 12 in the
12 report. My understanding of what you're saying here is
13 that prior to the AIM flotation, 2 Travel had to rely on
14 its bank overdraft to help finance its working capital.
15 That seems to be what the words mean; is that right?

16 A. That's right, yes.

17 Q. Could you take E3, page 12. This is part of the
18 Solomon Hare report being prepared for the purpose of
19 the AIM flotation.

20 A. Yes.

21 Q. If you go to page 14, paragraph 1.22, at that point
22 we can see the company currently has no overdraft
23 facility. So what you say in your report must just be
24 wrong, mustn't it? It can't be depending on an
25 overdraft facility that doesn't exist?

1 A. In which case the figures which are shown in the
2 management accounts, which show negative cash at bank,
3 must refer to unpresented cheques, which means that the
4 company is running very much on the brink, in that from
5 its accounting records, it's showing its bank as being
6 in overdraft, although in fact, the bank isn't in
7 overdraft. So cash is having to be fed into the bank
8 account in order to meet the unpresented cheques as they
9 come along.

10 Q. Paragraph 3.15 though, is not accurate because it's not
11 relying on a bank overdraft, is it, it doesn't exist?

12 A. That's correct. That's why I said it seems to have had
13 to, but if it's relying on having a negative balance for
14 accounting purposes, it had a positive balance at the
15 bank. It's, actually, even worse.

16 Q. I understand that. But in terms of a careful statement
17 of what the position is, that's not accurate, is it?

18 A. That's correct, that's being rather more favourable to
19 the company than it was.

20 Q. Then paragraph 3.17. Again, you say it didn't have
21 sufficient cash to pay its debts, but the reality was it
22 was continuing to pay its debts over the following
23 period?

24 A. Well, I don't think it was. Its overdue creditors were
25 expanding. It had a very large deficit on its PAYE,

1 which it had not been able to recover. That seemed to
2 be growing rather than shrinking. So I'm not sure it
3 was able to pay its debts.

4 Q. At this stage, whatever the overall position, the
5 reality is that investors did invest into the company?

6 A. Yes, that's correct.

7 Q. So on the basis of the Solomon Hare analysis and the
8 long form report, investors such as Chrysalis and so
9 forth did invest and did take up the issued shares?

10 A. That wouldn't have been on the basis of the long form
11 report and the working capital report. I'm not sure if
12 they would have seen that. It would have been on the
13 basis of the prospectus.

14 Q. In 3.20, it says:

15 "2 Travel has not raised any new long-term capital."

16 Do you mean by that it hasn't raised any equity
17 capital? But it raised loans and other capital from
18 elsewhere after that.

19 A. What I'm referring to there is there was no equity,
20 there was no equivalent of loan stock, as was raised
21 shortly after the flotation. At that point there was
22 nothing which was clearly long-term, in that it did not
23 have a short-term payment date.

24 Q. But these loans were not expressed to have a short-term
25 payment date, were they?

1 A. Well, they were -- as far as I can see, they were
2 callable at any time because if there was no date,
3 they're the equivalent to bank lending, which could be
4 called at any moment.

5 Q. Given that they were coming, though, those loans -- the
6 source from which they were coming, there's no basis for
7 suggesting they were going to be called in earlier?

8 A. No, not at all. Just they're not specifically shown as
9 long-term.

10 Q. Paragraph 4.1 of your report, I would suggest,
11 exaggerates the costs of flotation by 10 per cent. If
12 you look at the last sentence of 4.1.

13 A. Yes.

14 Q. That seems to be an addition failure if you look at the
15 component figures in footnote 35.

16 A. I think you're quite right. I don't recall -- I've gone
17 back to check, but I cannot recall where the 474 comes
18 from, so you're quite right, it should be 424.

19 Q. Is that a part of the report you prepared or someone
20 else prepared?

21 A. No, this is part that I did. I went through the
22 calculations myself.

23 Q. 4.9 to 4.11 looks at the funds from flotation. Again,
24 is this a part that you prepared?

25 A. Yes.

1 Q. If we compare that -- and you're using the PwC report as
2 a comparator in order to come on to make certain
3 observations at 4.11, and you're making various comments
4 and criticisms of the professionalism of PwC in 4.11.

5 A. I would dispute that. I'm not commenting on their
6 professionalism. It's just the report includes what
7 seemed to me to be an incorrect analysis. That just
8 seems that they may have been given some different
9 numbers, it doesn't comment on their professionalism.

10 Q. Whatever the comment is, it's based on errors made by
11 yourself, is it not, because if we go to the report to
12 which it relates -- and people may be using different
13 versions. I've been using C1, the version attached to
14 Mr Harrison's report, page 32, but we probably all have
15 our own pet copies.

16 The figure for -- sorry, page 32.

17 A. I happen to be using the one in bundle D5. Is that
18 internal page 9?

19 Q. Yes, it is. What you have identified as "Purchase of
20 commercial vehicles", is in fact not identified as that,
21 it's identified as "Buses and other fixed assets
22 acquired"?

23 A. Yes.

24 Q. So the label you're using is not, in fact, the label
25 that PwC are using themselves?

1 A. That's correct, yes.

2 Q. Similarly, you make a criticism of the figures and
3 a comment on what they mean, by noting that there's an
4 item for payment of PAYE NI arrears?

5 A. Yes.

6 Q. But that's not actually what the item refers to, it's
7 PAYE and creditor arrears, so it may be other creditors,
8 we don't know?

9 A. That's correct.

10 Q. So again, the criticisms you've made in 4.11 would seem
11 to be based on a misstatement as to what the PwC report
12 is saying?

13 A. It's possible that it may be referring to other things,
14 but I note that the reference to PAYE comes before
15 "Other creditors"; buses comes before "Other fixed
16 assets acquired." In both cases, I think as an outside
17 reasonable interpretation, this is what it's trying to
18 deal with because it's talking about how the funds were
19 intended to be used and that's very much how they were
20 intended to be used beforehand.

21 Q. In my suggestion you have glossed the description in the
22 report in order to improve the criticisms that you want
23 to make?

24 A. No. Actually, what I've done is I've tried to work with
25 the headings which I've found in the financial

1 statements and in the original intended use and then
2 tried to see how everything else fitted into those.

3 Q. If we then go on to 4.18, just so that I'm clear about
4 this, there may be a number of issues as to what is or
5 is not recurring. But certainly the 249 flotation cost
6 is not recurring, is it?

7 A. That's correct, yes.

8 Q. And in those accounts to which you are referring, there
9 is £200,000 or so of 2002 costs, which again, obviously,
10 don't recur?

11 A. Yes, so I understand.

12 Q. So out of the 600 that you refer to, it is absolutely
13 plain that 449, a total of 200 and 249 is a non-recurring
14 item. Is that not right?

15 A. The 249 certainly is non-recurring. The question of
16 whether a bad debt would be recurring or not would
17 depend on how debts were handled in the future. So
18 whilst that particular item wouldn't recur, there may
19 also be an expense in the future. It may not be of that
20 size, but there may be some expense.

21 Q. It may be another expense, but that 200 is not going to
22 recur, it's happened and it's now in the past, is it
23 not?

24 A. You could take that approach to any item that once it
25 has happened once, it cannot happen again, but items of

1 the same category could recur. They may not recur at
2 the same level. So yes, at least 249 and possibly as
3 much as 449 would be non-recurring and it may be
4 somewhere in the middle.

5 Q. There is a further debate between you. We would say, in
6 fact, more than 449 is non-recurring. But the short
7 point is at the very least, we say 449 is non-recurring?

8 A. I understand.

9 Q. If we go to 4.26, again you note discrepancies in the
10 information. If we go to C1, page 40, that's internal
11 page 17 of the PwC first report.

12 A. That's the page headed "P&L projections for August 05"?

13 Q. Correct. I'm a bit confused here, but in the statutory
14 accounts we can see -- we perhaps need to compare that
15 with the statutory accounts in E5/453. Apologies.

16 Do you have that?

17 A. Yes, I do.

18 Q. The comparison you've made there, if you have the
19 statutory accounts at page 453, is between the 950,
20 which is the loss after taxation -- we can pick it up
21 just above "Retained profit".

22 A. Yes.

23 Q. And you've compared that with a pre-tax figure, which is
24 three figures further above.

25 A. You're quite right. That was an error of mine, I should

1 have compared it with the 996 which is the same figure.

2 Q. So if we have the right figures, they in fact do
3 cross-refer across and we can see that the 996 we're
4 comparing it with in the PwC report is the bottom left
5 number in those three columns in the PwC -- the page of
6 the PwC report?

7 A. Yes, that's correct.

8 Q. Which is a correct transcription. Then if we could turn
9 to paragraph 4.30. You make certain general conclusory
10 criticisms in paragraph 4.30 about the management
11 forecasts.

12 A. Yes.

13 Q. But we can see, if you take the transcript from Day 4 --
14 this is when Mr Harrison was being asked about that.
15 It's page 79. Maybe you just want to read page --
16 rather than read it out, Mr Harrison is being asked
17 about this very passage in your report. If you go from
18 line 13 on page 79, down to line 19 on page 80.

19 (Pause).

20 A. Yes.

21 Q. Your conclusion in 4.30 is entirely looking backwards,
22 is it not? There's no reference in your criticism to
23 the expectations of management for the future, is there?

24 A. No. What I'm saying here is that the -- at the time of
25 the flotation, so these were looking at the figures for

1 the year to August 2003, management had forecast
2 turnover that was far above what was actually achieved.
3 The same thing for CTC. And then just dealing with the
4 six months. It was less than half of the turnover that
5 had been expected in the previous year. Those are the
6 only comments that I'm making.

7 Q. But you can't say on the basis of that, whether or not
8 what they were planning was over-optimistic or not
9 because that involves an assessment as to the immediate
10 future project, the move into Cardiff, doesn't it?

11 A. Yes.

12 Q. And the in-fill routes?

13 A. Yes. What I'm saying here is that management's
14 expectations at the time of the flotation had proved to
15 be way over-optimistic. Now they had further
16 expectations and the further expectations were beyond
17 what had previously been expected for that next year.
18 So we have the forecast for year 1 was not achieved.
19 The forecast at point zero for year 2, you would
20 therefore think may not be achieved because we're behind
21 on year 1. It turns out that year 1 is far behind.
22 Then the forecast for year 2 is even better than the
23 original forecast for year 2. That's what seems to me
24 to be surprising.

25 So we have a curve that instead of going like that

1 (indicating), goes along the bottom and then goes like
2 that (indicating).

3 Q. Well, whether or not those plans were over-optimistic
4 must be judged, must it not, by whether or not -- by
5 their assessment as to the likely benefits of the new
6 Cardiff business and the Cardiff in-fill routes for
7 their profitability?

8 A. Yes. That would be one aspect and that's something I'm
9 very happy to go into if you would like to.

10 Q. And one of the factors which PwC identified, did it not,
11 as being an assumption, as it were, on which their
12 success was based, was competition law compliance?

13 A. That was one assumption, yes.

14 Q. And of course, that assumption was undermined by
15 Cardiff Bus's activity; is that not right?

16 A. Yes, that particular assumption was.

17 Q. If you then move on to 4.38 of your report. You've
18 asserted there that the contracts, the existing school
19 contracts, were loss making.

20 A. Yes. As I said, as the finance director had pointed
21 out, the contracts were loss making.

22 Q. I think what he actually said was they were underpriced.
23 Let's look at the actual evidence we've seen on that.
24 Have you looked at the transcript of Mr Fowles on this
25 topic?

1 A. No.

2 Q. Day 2, page 10, line 22. We can see this is a question
3 from Mr Flynn to Mr Bev Fowles at line 17. Sorry,
4 Mr West. You will see that he's actually putting the
5 question on the basis of the document from the financial
6 director. He then says:

7 "The contract base is totally underpriced. The
8 commitment is killing any chance of improvement. Is it
9 right that the contract base [that's the school bus
10 contracts and so on] were not generating sufficient
11 revenues to meet the company's running costs?"

12 And the answer from Mr Fowles is:

13 "Some of the schools contracts weren't covering all
14 the costs. The majority of the Cardiff contracts were
15 much higher priced than those in Swansea and Llanelli
16 which is why they were targeted."

17 So what the evidence is, is in fact the Cardiff
18 school contracts are, if anything, a net contributor,
19 not a problem. They're not loss making on the basis of
20 that evidence, are they?

21 A. That evidence doesn't tell us whether or not they're
22 loss making. It says that some of the other contracts
23 weren't covering their costs. It says the majority, not
24 all, of the Cardiff contracts, were higher priced than
25 those in Swansea and Llanelli. But it doesn't actually

1 say whether or not that was sufficient to ensure that
2 they were covering costs with a margin or not. It just
3 doesn't tell us.

4 Q. And there's no actual statement from the finance
5 director saying that they were loss making, just that
6 they were underpriced?

7 A. That's correct, yes.

8 Q. So again, your assertion in 38 that they were loss
9 making, is not based on any actual evidence?

10 A. I would have to go back to all of his comments to
11 double-check because there are so many comments and
12 memos from Mr Waters, making comments about the fact
13 that the company's not covering its costs.

14 Q. Do you recall any evidence that supports the proposition
15 you made there that the contracts were loss making?

16 A. I don't think they had the detail to be able to know for
17 certain. I was taking that from his comments.

18 Q. I would suggest that you've actually taken a comment and
19 stretched it beyond what it actually says and made an
20 assumption which the evidence doesn't actually bear?

21 A. That's your suggestion.

22 Q. In 5.26 of your report, you refer to an e-mail, which
23 we've looked at before, concerning 300K of facility from
24 the bank and you draw a conclusion from that, 5.27, that
25 you suggest there were issues with the analysis that had

1 not been noticed earlier. Have you actually followed up
2 what the true situation ended up being regarding that
3 facility?

4 A. No.

5 Q. Maybe we can look at that. Look at E9/240. If you have
6 that there, you can see at the bottom, that's the e-mail
7 that you quote?

8 A. Yes.

9 Q. If you then run two messages further up, Evaline Sarbout,
10 who -- actually, it's Graham Spooner who's writing,
11 we can deduce --

12 A. Yes.

13 Q. -- using Evaline Sarbout's e-mail address. We can see
14 that in fact, the bank was prepared to continue with its
15 facilities.

16 A. Yes.

17 Q. And that "Huw Francis, with others, may be prepared to
18 underwrite a deep discounted rights issue." So that
19 whatever problem that you're identifying there, in fact
20 has a solution as regards the bank, it's not a problem?

21 A. Yes. The point I was just making was simply the fact
22 that it hadn't been identified earlier, whereas one
23 would have expected it to have been picked up when
24 looking at the facilities that the company had available
25 to it. To have identified that there was a facility

1 that was expiring, so that it could be dealt with as
2 part of the thinking about what needed to happen on
3 working capital.

4 Q. Okay. We can put that away then. You have the August
5 PwC report. I'm using that at C1, page 90.

6 Unfortunately, my copy doesn't have internal page
7 numbers.

8 A. No, but I think these pages have a heading.

9 Q. The one I'm looking at is "Projected balance sheets",
10 which is after the title page, "Projected trading
11 results"; it's the third page of text. C1/90.

12 A. Yes.

13 Q. If I've followed this through correctly, once one -- and
14 in fact, Mr Harrison gave some evidence about this,
15 which we maybe need to come to. If you look on C1/90,
16 you can see that there's net assets of 1128.

17 THE CHAIRMAN: That's net assets for May 2004?

18 MR BOWSHER: Yes. Sorry, August. I'm in the wrong month.

19 THE CHAIRMAN: 825.

20 MR BOWSHER: Exactly right. That's why I'm confusing
21 myself. Thank you.

22 If you've got 825 for August, which of course is
23 where we actually are at this time --

24 A. Yes.

25 Q. -- and you take the unsecured loan of 583 -- this isn't

1 for accounting purposes, this is just a reporting
2 position -- the overall position, taking those two into
3 account, is that you reduce down to 240,000 of
4 borrowing?

5 A. No. 240,000 of shareholders' funds.

6 Q. Net assets, yes.

7 A. Shareholders' funds.

8 Q. So that we're there comparing your 183 by the end
9 of October, a couple of months later, with 240
10 in August.

11 A. Yes.

12 Q. So the comparison is nothing like as stark as you seek
13 to portray it. It's not 825 down to 183. It's 240 to
14 183?

15 A. That's correct, yes.

16 Q. Again, it's an exaggerated depiction of the change in
17 the state of the company, isn't it, what you put in your
18 report?

19 A. That's correct. I think the problem that we have here
20 is we have numbers put in so many different formats and
21 these numbers that are presented are relying on the
22 management accounts at May and then extrapolating
23 forward to August. So there is doubt upon all the
24 numbers, but you are quite right, I have picked the
25 wrong figure of 825 to compare with the figures of 183.

1 Q. Again, is that part of the report you wrote?

2 A. Yes.

3 THE CHAIRMAN: Sorry, can you just bear with me for
4 a moment? I just want to be sure I understand the
5 point. All right, thank you.

6 MR BOWSHER: What our concern is on this side is that, yes,
7 some of these figures are presented in different ways,
8 but they're presented for different purposes and in fact
9 you've made certain comments and criticisms on the basis
10 of errors and exaggerations. Is that not right?

11 A. No, I don't agree.

12 Q. We've identified some of these errors and exaggerations
13 which you use for the purpose of your conclusion?

14 A. Yes, you've identified two or three points, but there
15 are an awful lot of other points which you haven't
16 commented on.

17 Q. If we look at 5.38, this is the conclusion of section 5,
18 so it's after entry into Cardiff. If you look at 5.39,
19 you seek to use, as it were, as corroboration for your
20 position, the position of the Traffic Commissioner;
21 is that right?

22 A. Yes.

23 Q. Have you followed through what happened to that Traffic
24 Commissioner decision?

25 A. I have seen that the decision was postponed, there were

1 further things that happened later on.

2 Q. Have you seen that it was overturned?

3 A. Yes, but at that time the Traffic Commissioner was

4 not -- did not have evidence in front of him that

5 2 Travel was able to produce the required funds.

6 Q. Did you follow why it was overturned?

7 A. I do remember reading it, but I don't recall the reason

8 now.

9 Q. Let's have a look at that. E10, page 14. The point is

10 in paragraph 15 of the decision on page 21, that the

11 tribunal took the view that the commissioner had given

12 the impression that there would be a further hearing or

13 at least a further opportunity to make representations

14 about making funds available.

15 A. Yes.

16 Q. And it ought not to have, as he uses the phrase, brought

17 down the axe with serious consequences, without giving

18 2 Travel the opportunity to address those funding

19 issues.

20 A. Yes, I see that. There's no dispute, though, that the

21 Traffic Commissioner was not shown evidence that

22 2 Travel could produce the funds, which is the comment

23 that I'm making.

24 Q. Well, there is a dispute because if you look at the

25 transcript at that very hearing, Mr Francis, who was

1 there, at the Traffic Commissioner hearing, was indeed
2 indicating that funds would be made available. Is that
3 something you've looked at?

4 A. No.

5 Q. Okay. Well, the tribunal has seen the evidence and has
6 got the documents on that. In fact, of course, bringing
7 down the axe in the way the Traffic Commissioner did,
8 was a pretty decisive moment. There may have been
9 a tipping point in the weeks before then, but once that
10 axe came down and the services stopped, probably
11 2 Travel was then in an irrecoverable position --

12 A. Yes.

13 Q. -- once it had stopped those services?

14 A. Yes, clearly, as a bus company, it could not operate
15 without the licences.

16 Q. And it might have been able to recover out of that, but
17 it was certainly in a very difficult position from then
18 on?

19 A. Yes.

20 Q. If we look on in your report at 6.13 -- again, I just
21 want to understand the way these figures are presented.
22 There's a table here, where you seek to present the
23 position at the end of August. But all that is, is it
24 not, as it were, your analysis of a cash position at
25 that point?

1 A. It's just trying to get some feel for what the results
2 to the year to August 2004 would have looked like, had
3 the matters complained of not taken place.

4 Q. But what you are comparing here is a year's loss
5 against, effectively, four and a half months of profit?

6 A. Yes. So what I'm saying is by August 2004, I'm trying
7 to get an estimate of what the profit position might
8 have been of the company in that year.

9 Q. Given that I think we agreed that a company like this
10 might expect to make losses at the outset for some
11 period, even the most pessimistic analyst might expect
12 that if you were only taking four and a half months'
13 profit and comparing that against a year's loss before
14 then, you weren't going to get a figure that looked
15 particularly attractive?

16 A. Yes. What we're trying to do here is see -- this is how
17 the company is progressing at this time, and in the year
18 to August 2004, it would only have been operating the
19 in-fill services for a limited period. So I'm trying to
20 estimate what the results of the company would have been
21 for that year. And as far as I can see, there would
22 have been a continuing loss, a reasonably substantial
23 loss.

24 Q. You've taken different profit figures, which are just
25 four and a half months of profit figures from Mr Good's

1 low case and Mr Good's high case?

2 A. Yes.

3 Q. But on any view, it's right, isn't it, that if 2 Travel
4 had been able to continue to trade and to trade without
5 predation, that figure in the calculation, in the
6 following year, would have, even in the most general
7 terms, involved a six figure sum?

8 A. I totally disagree.

9 Q. That would have been the incremental profit -- even on
10 Dr Niels' figure, that's what that figure would have
11 been?

12 A. No. If one looks at what the likely extra income would
13 have been for running the Cardiff services for a year,
14 on the basis of the various calculations that have been
15 done, I don't think -- well, my view is it wouldn't have
16 been enough to turn the company into a profit at all, it
17 would have still been loss making. I can take you
18 through a calculation if you like, but it would still be
19 loss making.

20 Q. The revenue, though, over that period, would be
21 a significant sum, hundreds of thousands of pounds, and
22 that calculation, therefore, would look significantly
23 different, would it not?

24 A. Not many hundreds of thousands. That's the problem. It
25 was nowhere near as large as management expected it to

1 be. It was never going to be as large, unfortunately.

2 Q. Have you looked at the evidence given over the last few

3 days about the impact of the predation upon 2 Travel?

4 A. The evidence here at the hearing?

5 Q. Yes?

6 A. No.

7 Q. There's quite a lot of it, and I don't necessarily want

8 to take you to all of it. Let me take you to two

9 references. Transcript, Day 3, 14 March, page 39. We

10 need to back up. This is questions from the chairman,

11 as you can see, to Mr Francis. If you start at page 38,

12 line 12, you can see there is the evidence of Mr Francis

13 as to what the impact of this predation was, actually,

14 on the operation of the company. You might want to read

15 that. Line 12 on page 38, down to line 15 on page 39.

16 (Pause).

17 A. Yes, I see what's written.

18 Q. There are a number of other references. For example,

19 you have reached a difficult situation if the predation

20 is reaching the point where you actually have to have

21 the finance director driving the buses around, as we see

22 referred to there?

23 A. Yes.

24 Q. We can see that Cardiff Bus, or Mr Brown of

25 Cardiff Bus -- if we go to Day 7 --

1 A. Actually, out of that quotation that you showed me,
2 towards the bottom of page 38, from about line 18 --
3 sorry, it was Mr Fowles, wasn't it?

4 THE CHAIRMAN: Mr Francis.

5 A. Apologies. Mr Francis says the company was running out
6 of cash. That had been happening for some months
7 beforehand and some months before the entry into
8 Cardiff. When one looks at the reports that Mr Waters
9 is making to the board, he's commenting all along that
10 the company doesn't have enough cash to maintain its
11 business, it's continuing to lose cash at all times. So
12 it's not something that starts after going into Cardiff.

13 MR BOWSHER: The problem here though, is that it's certainly
14 not in a position to carry on doing business effectively
15 as a bus company because of the matters -- and that's
16 a summary, we have heard a lot of evidence about it, but
17 of those factors affecting its business?

18 A. Yes, clearly there are a lot of operational difficulties
19 arising out of what happened in Cardiff.

20 Q. Which is going to make it well nigh impossible, is it
21 not, to actually be an effective functioning bus company
22 if you look at the effect of that predation?

23 A. Well, my view is that the company was in such
24 a financial state already, that its financial position
25 was such that it would not be an effective bus company

1 irrespective of the operational issues.

2 Q. If you go to Day 7, page 89, this is questions to
3 Mr Brown. It's part of a long sequence. Maybe start at
4 the top of page 90. The premise that is being put to
5 him is on 89:

6 "So if a white bus was just before a 2 Travel bus,
7 then one might reasonably expect that they'd get on the
8 white bus, unless of course, they were waiting for a low
9 floor bus or one of the liveried services."

10 Do you see that?

11 A. Yes, I saw that.

12 Q. And then:

13 "Question: Of course, if 2 Travel were to wait,
14 you'd be right on them, making sure that someone knew
15 they'd missed their own timetable and they were in
16 default of their regular requirement under the
17 timetable, wouldn't you?

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

21 So 2 Travel were put in a position where their
22 ability to meet the timetable was imperilled and
23 Cardiff Bus was making sure that any consequences that
24 flowed from that were in fact implemented; isn't that
25 right?

1 A. Yes, that's what I'm seeing there, yes.

2 Q. So:

3 "Question: 2 Travel hanging back is not an option
4 for them. It may be an option for you because you're
5 a frequent service ...(reading to the words)...

6 "Answer: They have to operate to timetable.

7 "Question: So you do agree with me it's not an
8 option ...(reading to the words)... likely to lead to
9 less effective management, less effective service.
10 Would that not be right?

11 "Answer: Well, probably the biggest frustration of
12 the lot that we experience and just about every bus
13 company experiences is traffic congestion. Getting
14 stuck in traffic ...(reading to the words)... I have
15 accepted that."

16 And it goes on in a similar vein. In short, the
17 consequences of all this conduct by Cardiff Bus will
18 have been to bleed dry the morale of the drivers and the
19 ability of management to do its job; isn't that right?

20 A. Certainly it would have had an impact on the drivers.
21 I can see it having a big impact on the operations of
22 the company. Just keeping things going from the
23 management point of view would be difficult.

24 Q. Have you ever worked in a company which is sort of
25 spiraling downwards because of these sorts of

1 disruptions from outside?

2 A. I have not worked in one, but I've seen some of the
3 consequences before.

4 Q. If, as owners and directors of a company like that, you
5 have gone into a business expecting losses in the early
6 years on the basis of fair competition and you see that
7 expectation being disappointed, and your ability to
8 carry on just the operations -- leaving aside the
9 financial position, you see the operations just being
10 devastated in this way, a consequence of that may very
11 well be, is it not, that you will simply decide that
12 it is not worth continuing with that business?

13 A. I think if I were in the situation where one part of my
14 business was affected by something like this, I would
15 stop quickly and think: what do I do? Do I give up on
16 this part of the business and focus on other parts of
17 the business, which are being more successful? Do I try
18 and find some other route to have something done about
19 it by means -- a situation like this, of a formal
20 complaint? Or do I have to find some other way of
21 dealing with it? Just continuing, probably would not be
22 a sensible thing to do.

23 Q. You look for alternatives?

24 A. Yes.

25 Q. You were commenting yesterday on Mr Short and

1 Mr Francis' interest in the Swansea depot.

2 A. Yes.

3 Q. What is your evidential basis for supposing that their
4 only interest in this company was the Swansea land?

5 A. That's me drawing conclusions from the evidence that
6 I've seen. That's not me saying that I have any
7 specific evidence for it.

8 Q. The tribunal's seen both Mr Short and Mr Francis and
9 heard what they've had to say about that, about their
10 interest and why they were interested in the business.

11 A. Absolutely.

12 Q. Have you been through those transcripts?

13 A. No, it's clearly a conclusion for the tribunal to reach
14 rather than for me to reach. I'm just giving my
15 perception of what I saw in the business.

16 Q. So that's not on the basis of the evidence in the last
17 10 days or so, it's your supposition as to what you have
18 seen?

19 A. Of course. As I said, it's on the basis of -- sorry,
20 because it was said here in the tribunal, it wasn't on
21 the basis of having read all the transcripts and seen
22 that, it was on the basis of the documentary evidence
23 that I'd looked at beforehand.

24 THE CHAIRMAN: I didn't quite understand the evidence
25 in that way, but maybe others did. I understood that

1 the sense of what Mr Haberman was saying was that if
2 they had not had the interest they had in the Swansea
3 land, then they might have had or would have had no
4 interest in 2 Travel. Is that --

5 A. That would certainly be my view, yes.

6 MR BOWSHER: We may have to --

7 THE CHAIRMAN: That, I understood it, was the way that
8 Mr Flynn and Mr West were putting it.

9 MR BOWSHER: If the only interest had been in the Swansea
10 land, at the very least that was land which they could
11 have secured before the company was floated?

12 A. Yes. I would agree. But it's not for me to know how
13 that decision was taken.

14 Q. I don't know if you've had a chance to look through all
15 the transcripts on this -- and I'm not proposing to take
16 you to a wodge of references, as it were. You have
17 seen, have you, that both Mr Short and Mr Francis held
18 Mr Bev Fowles in high regard as a busman?

19 A. Yes, I understand that.

20 Q. And he has a track record for that, working for one of
21 First Group's significant companies in England. Have
22 you seen that?

23 A. Yes, I did. I think it may be that this is a situation,
24 and it does often arise, where someone can be extremely
25 successful running a division of a larger company, but

1 not able to be similarly successful as the
2 chief executive of a smaller company, having to take all
3 the strategic decisions themselves. I've seen that
4 happen in many other situations as well.

5 Q. That may be a comment on Bev Fowles but I'm not focusing
6 on him at the moment. But they had a well grounded
7 reason to think that supporting Bev Fowles was at least
8 a credible plan, did they not?

9 A. Yes.

10 Q. Indeed, there was a further issue, a further reason for
11 them to remain interested in 2 Travel as a bus company,
12 because Mr Francis is in fact related to Mr Bev Fowles
13 and wanted to support him. We have seen that in the
14 evidence, haven't we?

15 A. Yes, I understand that.

16 Q. So there was both a commercial and a family reason to
17 support this business as a bus company and, as it were,
18 2 Travel as a property company doesn't make much sense
19 with Mr Bev Fowles in it, if I can put it that loosely?

20 A. No, I completely understand that Mr Fowles was there to
21 run a bus company. The property was incidental to
22 running the bus company. My point was that it seemed to
23 me that the interest of Mr Francis and Mr Short, from
24 a commercial point of view, was more likely to be in the
25 property than in the bus company.

1 Q. Well, if it was the property they wanted, we've seen
2 they could have dealt with that at another time. If we
3 could then turn to Day 4 of the transcript. If we start
4 at page 16, where Mr Short's evidence starts. Sorry,
5 15. Have you had a chance to look at Mr Short's
6 evidence?

7 A. I think I've been through it very briefly, but not in
8 detail.

9 Q. Maybe we should just look at it. The bottom of page 16,
10 in answer to a question from me, he describes his past
11 business experience. That goes on for a little while
12 and tells you about what he's currently doing. He
13 describes at the top of page 21, the effect of the
14 predation upon his -- if you want to just look at that.
15 It starts on page 20. At the top of page 21 he
16 describes how the predation and the realisation that the
17 predation was not going to stop, affected his thinking
18 about this business.

19 A. Yes.

20 Q. You've seen here -- page 22 -- his expectations of the
21 business. **Let's** look at that. The last line of page 21:
22 "In your assessment of 2 Travel, were you looking
23 for a particular level of profitability ...(reading to
24 the words)... Did you have a particular view as to how
25 you expected the business to go, to be prepared to stick

1 with it?

2 "Answer: Yes, we wanted the business to expand
3 fairly rapidly. There were plenty of examples and
4 benchmarks we could see from other companies in
5 a similar sector, who had managed to expand and
6 certainly the expectation was that we would be able to
7 do that with 2 Travel ...(reading to the words)...
8 modest loss?

9 "Answer: Yes."

10 Then on to page 30. At this point he's being
11 cross-examined. He's being cross-examined about a lot
12 of questions about guarantees and land and security
13 here.

14 A. Yes.

15 Q. Do you see at the bottom of page 30, line 19:

16 "It would be wrong to characterise this as some sort
17 of property investment because that was not the concern
18 at the time."

19 A. Yes.

20 Q. And he repeats that at the top of page 31. Again, we
21 don't need to read it all out, but the tenor, I would
22 suggest to you, of what he is saying is: well, you know,
23 I'm a rational person, if there's security to be had, my
24 lawyers will advise me to take such securities as are
25 available. But that doesn't mean that my interest in

1 this is as a property company, it is that I'm prepared
2 to support the company and my decision is reinforced if
3 there is appropriate security to support that. That's
4 a fair approach, isn't it?

5 A. Yes.

6 Q. And it's a fair approach for someone to take who's
7 wanting to support a bus company through a difficult
8 period of trading?

9 A. Yes.

10 Q. And then at page 43, it was put to him by Mr Flynn:

11 "I don't know if it's controversial, I'm just trying
12 to, as it were, keep it moving. So we've looked through
13 from the flotation to the end of 2004, and at all points
14 it's right to say, isn't it, that the company was in
15 fact extremely short of working capital?

16 "Answer: The company was at times short of working
17 capital ...(reading to the words)... a lot of businesses
18 suffer from over-optimistic projections, especially
19 young businesses.

20 "Question: So really, in fact, it is not right to
21 say that it is a non-starter to say 2 Travel was short
22 of working capital, is it?

23 "Answer: It's absolutely correct. I would have
24 made the capital available to the business if I'd been
25 satisfied that we could have succeeded in our strategy

1 and my track record backs that up considerably."

2 And then he makes a similar point, and if you then
3 go to page 60. Line 9:

4 "The issue is the availability of capital to the
5 business. The fact that there was security available.
6 Obviously, it would have been prudent to rely on that
7 security. It was not the intention at the time to take
8 the property out or to get involved ...(reading to the
9 words)... supported this business regardless of that."

10 THE CHAIRMAN: I feel a question coming on, Mr Bowsher.

11 MR BOWSHER: Yes.

12 It is right, looking at the evidence, is it not,
13 Mr Haberman, that it is unsustainable to say that
14 Mr Short's only interest in this business was as
15 a property business?

16 A. I see exactly what is being said. I think there are
17 a number of points here, which -- there are provisos
18 tucked in. So Mr Short says: the company was at times
19 short of working capital, but working capital was made
20 available when it needed it. In other words, yes, the
21 company really was always short of working capital.
22 "Made available" means "I was prepared to lend it."
23 That doesn't say that the company is actually
24 sustainable.

25 THE CHAIRMAN: Pause a moment, Mr Bowsher. To adopt

1 a phrase from my colleague, Mr Freeman, I'm not sure
2 that asking an accountant to indulge in behavioural
3 psychology is really very productive. We've seen the
4 evidence, we've heard it. It's certainly right to draw
5 our attention to it, but whether this witness can really
6 deal with that is questionable.

7 MR BOWSHER: He made certain observations yesterday, which
8 I thought it right that he should be invited to look at
9 what the evidence actually was in --

10 THE CHAIRMAN: We've got the point.

11 MR BOWSHER: I'm absolutely going to move on.

12 MR FREEMAN: In his report at 6.20, the witness says that:
13 "2 Travel's shareholders had been told it had no
14 alternative sources of funding apart from Huw Francis
15 and Nigel Short."
16 So it seemed to me that he accepts that that is
17 a source of funding.

18 MR BOWSHER: Mr Haberman's observations yesterday went
19 rather further than that and suggested their only
20 interest was in property, not in buses. I thought it
21 was right to put the evidence on that to Mr Haberman.

22 MR SMITH: It's very helpful to have the references,
23 speaking for myself, Mr Bowsher, but at the end of the
24 day, it's a question of fact rather than --

25 MR BOWSHER: Yes.

1 THE CHAIRMAN: We're vigorously agreed. We're the tribunal.
2 We have absolutely got the point. Mr Short said in his
3 evidence that he had the motive of keeping the bus
4 company going, that he had an interest in 2 Travel and
5 there was security which plainly influenced the
6 situation.

7 MR BOWSHER: We'll develop that in closing. We are
8 vigorously agreeing. Indeed, as you'll recall from the
9 parties' openings, the defendant says that there is some
10 flaw in what we have to say because this question,
11 somehow, we have not addressed this by means of expert
12 evidence. Our position is this is a question of fact
13 for you, not for expert evidence. But factual evidence
14 having been given and Mr Haberman having sought to make
15 certain observations about people's motives, I thought
16 it right that we present that material to him. Our case
17 is it's for you, not for Mr Haberman.

18 THE CHAIRMAN: Okay. We're all agreed.

19 MR BOWSHER: Mr Haberman, we then move into the topic which
20 was raised by the chairman yesterday of AIM rules and
21 compatibility with that. I think you're not, as it
22 were, an expert on AIM rules yourself, are you?

23 A. No.

24 Q. And again, this is a matter largely for submission,
25 which we come back to. But my understanding when we

1 look at it, is that there is a notification requirement
2 under the AIM rules when one deals with a related party
3 transaction. Would that be your understanding?

4 A. There would certainly be a notification requirement, but
5 I believe there is also an approval requirement for all
6 public companies.

7 Q. Well, I'm not sure that's in the AIM rules, we think
8 that's come back into --

9 A. I believe that's a Companies Act requirement rather than
10 an AIM requirement.

11 Q. We can look and see. Again, that'll be a matter for
12 submission. But we can see, can we not, that as
13 a matter of fact, if you take E8 -- have you studied at
14 E8/89, the trading statement which was published, which
15 includes notification to the market regarding the
16 related party transaction on 8 October?

17 A. Yes.

18 Q. And we can see on page 91 that part of the company's
19 notification is an explanation that the directors are,
20 as it were, in considering the position regarding this
21 related party transaction, they're taking account of the
22 difficult situation which the company finds itself in;
23 isn't that right?

24 A. Yes.

25 Q. That's perfectly proper, isn't it?

1 A. Absolutely. It's what was required. The point I was
2 making was simply that a lot was going on, of the
3 directors happily lending money to the company without
4 having put this in place already, because it should have
5 been done right at the beginning, when money first
6 started to be lent, rather than after the event.

7 Q. That may depend, may it not, whether or not it's secured
8 or unsecured? If it's an unsecured loan, and there is
9 no priority rules, that may be a different situation,
10 may it not?

11 A. No, it's the fact that the directors are lending money
12 to the company. I think it's something which ought to
13 have been -- certainly ought to be raised and ought to
14 have been notified to shareholders.

15 Q. I don't think we want to spend time now going through
16 all the history as to what was or was not publicised
17 about the directors' position. There was, of course, an
18 EGM dealing with this very transaction, wasn't there?

19 A. Yes.

20 Q. And there are chairman's notes which set out the gory
21 detail about what had to be done. I don't know if
22 you have looked at those?

23 A. I haven't, but it's something that has to be approved in
24 general meetings rather than --

25 Q. And Grant Thornton in their report -- well, you've

1 looked at the Grant Thornton report. You'll have seen
2 that they note all of this and they don't make any
3 criticism of the way in which this related party
4 transaction was dealt with, do they?

5 A. No.

6 Q. It might be useful to take whatever your pet copy of the
7 PwC reports is. We may not need to look at them, but
8 I've got a couple of questions about them, so if you
9 want to refer to them as we go, it may be useful to have
10 them to hand.

11 A. Is it the first or the second?

12 Q. The first. We've already looked at the correct figure
13 for the 2003 losses. We have from paragraph 6.13 of
14 your report, a figure for the assumed loss to
15 31 August 2004.

16 A. Yes, that's my calculation.

17 Q. Yes. 4.11?

18 A. Yes.

19 Q. We know that the loss post-tax was about 950 because we
20 looked at that a moment ago?

21 A. Yes. That was 2003.

22 Q. Yes. We know that there were about £450,000 at least,
23 because we looked at this, of non-recurring cost because
24 we've got the flotation costs and the 2002 costs?

25 A. Yes.

1 Q. So we can see that at worst, we've got a position of 411
2 assumed loss and a previous position of, as it were, 400
3 for the previous year?

4 A. Yes. It depends on what the non-recurring costs in 2003
5 would have been. On the basis of the figure which
6 you're suggesting of £600,000, then there would have been
7 a loss in 2003 of about £400,000.

8 Q. What I'm suggesting is these two figures suggest to us
9 that there may be a recurring loss over this 2003/2004
10 period of about £400,000 or £500,000?

11 A. Okay.

12 Q. It's rough and ready, but it's consistent with the
13 figures that we've got here?

14 A. Yes.

15 Q. PwC were projecting £1 million profit?

16 A. Yes.

17 Q. Even allowing for optimism, there is considerable
18 flexibility in that for one to achieve a break even in
19 2004/2005, absent predation, is there not? You have
20 £1 million profit against, let's say, a recurring loss
21 of half a million?

22 A. The problem is that you start from the recurring loss of
23 £400,000 to £500,000. That, for August 2004, is based on
24 the Cardiff school contracts, which you are putting to
25 me were profitable of themselves. I'm saying it would

1 appear that they were loss making but I don't know for
2 certain. Some Cardiff in-fill income, which ought to
3 have been adding, then, to profit -- this is obviously
4 ignoring the additional Cardiff income. That's still
5 showing a loss of about £400,000. If we then add the
6 Cardiff in-fill income for a full year, which is, after
7 all, the only extra thing that really makes
8 a difference, because everything else seemed to have
9 been happening -- the only thing that didn't happen
10 compared to what PwC had expected was the Cardiff
11 in-fill services being successful.

12 A full year of income on Cardiff in-fill services
13 would not have been enough to turn £400,000 to £500,000
14 loss into a profit. PwC's projection of £1 million
15 profit in August 2005 is just pie in the sky.

16 Q. If I may suggest two things. Firstly, it's not right
17 that the projections were based entirely on the Cardiff
18 contribution. Indeed, that was about half the
19 contribution they were looking for. They were looking
20 for growth elsewhere?

21 A. Yes, I understand that.

22 Q. I think the figure is about 50 per cent. 50 per cent
23 from Cardiff, 50 per cent elsewhere. So it is not true
24 to say that the only source of improvement is from
25 Cardiff in-fill; the source of improvement comes from

1 the business in South Wales generally?

2 A. But what I'm saying is the difference between the
3 performance of the business in the year to August 2004
4 and what it had been expected to be, the only thing
5 that's been identified that didn't happen that should
6 have happened was greater success in Cardiff. There's
7 nothing to suggest that what was planned in other places
8 wasn't working.

9 Q. But we are agreed that what they were planning was to
10 increase their revenue from other operations. That's
11 the first part of the equation. The second part is what
12 we see from the factual evidence is that it wasn't just
13 the Cardiff operations that were being affected, it was
14 all their operations that were being affected. People
15 were having to drive drivers across from Swansea and
16 Neath and the whole bus operation in South Wales was
17 being dragged down by the impact of Cardiff?

18 A. I understand that operationally. There's nothing that
19 explains what effect that would have on the figures.
20 When I look at the projections that are in the PwC
21 report for the year to August 2005, the level of
22 turnover that they included for Cardiff is a very big
23 number. The amount of turnover that was actually likely
24 to be generated from in-fill services is far, far
25 smaller. It seems to me that the -- when I look at the

1 calculations that PwC do and the sort of figures that
2 they have for revenues from Cardiff in-fill services,
3 the level of revenues that they've got is probably more
4 than £1 million more than would ever be generated by
5 those services. So purely wiping that out from the
6 projections turns August 2005 into a loss.

7 Q. So we can see that even if there is between half
8 a million a year and the million and plus PwC position,
9 there is substantial room, as it were, in the PwC
10 estimate, to allow for the business to break even?

11 A. As I say, I don't think there was. If we look at the
12 sorts of numbers that PwC -- or the projections here --
13 we keep referring to them as the PwC projections,
14 they're management projections shown by PwC. For August
15 and September 2004, this is on the sheet called "Cash
16 requirements of new route". For Cardiff they calculate
17 cash income in August and September 2004, which are
18 months when the services are running fully, projected to
19 be running fully on five routes, of £150,000 in August,
20 £125,000 in September.

21 Annualised, that comes to a figure of something of
22 the order of perhaps 1.7, 1.8 million of turnover.

23 Q. That's only half the projected growth.

24 A. Please, let me finish. There's a bit more to this
25 calculation. That's about 1.7 million of turnover.

1 Realistically, the turnover that was likely to be
2 generated from in-fill services is probably no more than
3 about 300 to £350,000 at best. So that figure for
4 turnover is itself overstated by about 1.3 to
5 1.4 million. So all I have to do in the PwC projections
6 is to recognise that and suddenly the projected profit
7 for 2005-year of 1.1 million becomes a projected loss of
8 about 0.3 million. That's why I say these are just pie
9 in the sky figures.

10 Q. But that fails to take account of a number of factors,
11 does it not? Firstly, PwC's projections are only
12 allowing for 50 per cent of the contribution in growth
13 to come from Cardiff, and you get that from page 41,
14 second bullet.

15 A. Sorry, you're talking about --

16 Q. Page 18.

17 A. That's 2004. 2005 is a full year.

18 Q. And what we also know from this analysis, page 18 of the
19 PwC report, second bullet, we can see they're talking
20 there about moving up to 20 in-fill buses, and in fact,
21 they never achieved those 20 buses, did they?

22 A. This is exactly what I'm saying. These projections say
23 in 2005, this is a full year of Cardiff in-fill
24 services. The full year of Cardiff in-fill services.
25 Their calculations are showing that that is going to

1 generate something of the order of £1.7 million to
2 £1.8 million of turnover. Forget costs, forget
3 everything else in the projections. That single number
4 is itself overstated by about 1.3 to 1.4 million. It's
5 so far adrift from reality, it was never, ever going to
6 be achieved. You just have to make that one adjustment,
7 assume everything else in the year to 2005 happens
8 exactly as PwC projected it was going to happen. All of
9 the other things worked perfectly. The growth in
10 what was called phase 1 in Llanelli, everything else
11 works perfectly. Just adjusting for that single figure
12 turns the company, the 1 million projection, into a loss
13 of about the same level as was actually experienced in
14 the year to August 2004.

15 THE CHAIRMAN: What is the true figure about CTC? I notice
16 on page 41, CTC is projected to rise from 03 to 04, from
17 roughly half a million to just over 1.1 million. And
18 then in 2005, to 1.315 million. What actually happened
19 to CTC?

20 MR BOWSHER: I'm not sure what actually happened to CTC.

21 THE CHAIRMAN: My recollection is that there is evidence
22 that CTC did not grow.

23 MR BOWSHER: We're talking about its classification.

24 I don't remember what the evidence is as to what it
25 actually did.

1 MR FREEMAN: Coach brokering, I thought.

2 THE CHAIRMAN: Yes.

3 MR BOWSHER: Sorry, I know what it did. I mean how it
4 performed.

5 THE CHAIRMAN: We've seen some e-mails referring to poor
6 performance by CTC and a lot of complaints, if you
7 recall. We had a lot of those documents last week.

8 MR BOWSHER: Indeed we did. I can't recall, immediately,
9 the numbers. There's an issue about how it's classified
10 and what sort of business it is in the accounts. We'd
11 have to dig out the references.

12 THE CHAIRMAN: I raised the question because -- and
13 Ms Blackwood's given you an answer, I see, or not, as
14 the case may be -- we're looking at the whole of the
15 business when we're discussing viability, aren't we?

16 MR BOWSHER: Yes. We've been going for an hour and a half.

17 THE CHAIRMAN: We'll have a break until 11.15.

18 (11.00 am)

19 (A short break)

20 (11.15 am)

21 THE CHAIRMAN: Something has been left open meaningfully in
22 front of me, I think.

23 MR FLYNN: Sir, it was pointed out that one of the letters
24 in the bundle had not come out very well in photocopy,
25 so you now have the highlighted version.

1 THE CHAIRMAN: So it's not redacted. It was just bad
2 copying?

3 MR FLYNN: The letter with the purple blots, those were
4 search terms. That's why they're highlighted.

5 MR BOWSHER: Sir, you asked a question about CTC before the
6 break. I have a recollection of having seen an as
7 performed number for CTC, but I think I must be dreaming
8 it or I can't find it. There's evidence about CTC but
9 not a number for what it actually did in the period
10 we're talking about. If I find it, no doubt we'll put
11 it in submissions.

12 A. Might I just point out that the CTC turnover really
13 isn't an important figure? Because CTC is just
14 a broker, it's the difference between its turnover and
15 its cost.

16 THE CHAIRMAN: Yes.

17 A. Most of the turnover disappears anyway, so that's not
18 a critical number.

19 THE CHAIRMAN: Whatever the percentage is that you get on
20 each --

21 A. That's right. It's just the difference between the two
22 which is the figure that matters.

23 MR BOWSHER: That's a topic which I think we've already
24 ventilated sufficiently.

25 Picking up a couple of points from before the break.

1 If we have the PwC report, just so we're clear. You
2 were using a number of 1.7 million -- I'm not quite
3 sure. The figure we're looking for though for turnover,
4 simply in terms of revenue, is 1.58 million for Cardiff
5 overall. That's at page 18 of the PwC first report.

6 A. I see that number, yes.

7 Q. So let's get this right. 1.58. And the projected
8 forecast profit we can actually deduce, although you
9 need to do a sum to do it. If you go back to page 14,
10 we can see a gross margin, and this is under the heading
11 "Dynamics of new routes", so this is the depiction of
12 the contributions from all the different new routes but
13 the gross margin on the Cardiff is down as 46 per cent,
14 so I think that means we're actually talking in terms of
15 contribution of 730,000 in the forecast.

16 A. Yes. There's a bit of a difficulty here because, on the
17 one hand, we're told that the school contracts cover all
18 the costs. On the other hand, there's quite a -- that
19 table "Dynamics of the new routes" shows weekly profile
20 Cardiff for a single bus, revenue reaching a peak of
21 £1,920 a week. With costs of £1,035. The sort of
22 levels that we've been discussing, the levels that
23 Mr Good has been looking at and that Dr Niels has been
24 looking at, the weekly turnover for a single bus would
25 have been -- I believe it comes out to something around

1 £300, which means that the Cardiff in-fill services, on
2 the basis of these calculations, might well be
3 substantially loss making.

4 Q. But I think we've heard evidence about this. Those
5 figures go up as the number of buses go up over the
6 period. So 1920 is the target with 20 buses.

7 A. Yes. I'm working on the assumption of all the buses
8 being in place. I'm working on 20 buses.

9 Q. But just looking at your analysis then. Again, in terms
10 of your assessment, what we're losing here is not
11 1 million, it's 720,000, from the in-fill, and that is,
12 on that basis, even if one took out the in-fill on the
13 PwC report, there is still profit?

14 A. I'm afraid I still don't see that the numbers work,
15 because £1,920 per bus per week, multiplied up, would
16 give, I think you'll find, a rather higher number than
17 1.5 million for an annual turnover.

18 Q. And your analysis to get there involves you making your
19 own choices from the analysis done by Dr Niels and
20 Dr Good as to what the revenue actually would be, does
21 it not?

22 A. Yes, I'm trying to get to an approximation.

23 Q. A decision that the tribunal has to take as to what that
24 number is --

25 A. I'm therefore trying to work it on the basis of the

1 sorts of numbers that they're talking about rather than
2 trying to pick on a single number.

3 Q. We were talking about what happens as the crisis comes
4 to a head towards the back-end of 2004, and I think we
5 agreed that there comes a point when 2 Travel has to
6 think about what its plans are. Whatever the position,
7 even if things were as you suggest, we've seen, have we
8 not, that Mr Short and Mr Francis were prepared to
9 continue to fund a bus business through a loss making
10 period?

11 A. Yes. Through a loss making period if they were
12 satisfied that it was going to, in due course, generate
13 profits. And that's the problem. I think it's that
14 "if" that is unlikely to be achieved because it would
15 continue making losses.

16 Q. I think we're straying into an area that the tribunal's
17 already told us is for them.

18 A. I understand. But at some point, if the business is
19 continuing to make losses and is not showing signs of
20 turning around, even Mr Francis and Mr Short would have
21 said, "Enough is enough".

22 Q. I'd suggest -- well, I don't want to stray back into the
23 area.

24 A. And I might say that even if they hadn't, the
25 shareholders certainly would have.

1 Q. Well, the majority of the shareholders -- of course,
2 Mr Francis and Mr Fowles are 51 point something per cent
3 of the shareholders.

4 A. Yes, but to maintain the company, the other shareholders
5 have to be satisfied it can continue as well. Everybody
6 else has to be satisfied that the company is a going
7 concern.

8 Q. If it were not for the predation, at the very least,
9 it is right, isn't it, that the perception of Mr Short,
10 of any investor, would have been that this is a company
11 in better shape, able to carry on trading and conduct
12 its operations?

13 A. It would appear from what we can tell. But as I say,
14 because we don't have the sort of management information
15 we would ideally want, none of us have, it would
16 certainly be in a better position. But whether that
17 would have been materially better and sufficiently
18 better to have given confidence to outsiders that it's
19 a business worth maintaining, is a completely different
20 question.

21 Q. And we know that one possible route is to accept the
22 losses and treat this as a company that is going to
23 suffer losses for a period while it, as it were, works
24 its way into profit and improves its own operations and
25 so on?

1 A. Provided one has the confidence that it can do that.
2 That's what I think is missing.

3 THE CHAIRMAN: So that's the Rotala analogy.

4 MR BOWSHER: It's the confidence in the company position,
5 absent predation.

6 THE CHAIRMAN: Yes.

7 MR BOWSHER: It can be done, we've seen companies like
8 Rotala doing that, haven't we?

9 A. Yes.

10 Q. And a sub-optimal option, to keep the company going,
11 would be to keep the company ticking over, as it were,
12 to support the company and to carry on working, with
13 a view to using its assets to clear up its financial
14 position. That's right, isn't it?

15 A. Yes, it would be. There are lots of alternatives.

16 Q. What I've called in my notes: survive and sell. And
17 that could mean one of two things. It could either mean
18 survive sufficiently, with a view to selling off part of
19 the Swansea depot to clear the underlying financial
20 difficulties of the company. That's one possibility,
21 isn't it?

22 A. Yes. Another possibility, quite a rational possibility,
23 would have been that if the Cardiff school contracts
24 were covering their costs and at least breaking even, to
25 say: okay, let's stop, we'll think again about Cardiff.

1 Stop the in-fill services. Don't try and do that.

2 Let's go back and make sure we are making money on the

3 rest and then re-think how we go into Cardiff. And

4 perhaps come back again, a year later, on a different

5 basis. That might have been a reasonable thing to do,

6 if the company was confident it was making profits

7 elsewhere. But that's what appears to me on the

8 analysis of the 2003 information, to be not the case.

9 Q. The tribunal has to look at what the actual people

10 involved did and thought, not what you retrospectively

11 think you might have done.

12 A. Yes.

13 Q. And one possibility is -- there are a number of

14 possibilities. They could keep the company going and

15 try and sort out the financial situation, and we know

16 from the evidence that there was a very substantial

17 offer for about a third of the Swansea site, some time

18 in mid-2005. I think it's 2.2 million was the evidence,

19 for an offer for about 1.5 acres. Have you seen that?

20 A. No, I don't recall that.

21 Q. That 2.2 million would have gone a long way to putting

22 the financial position of the company in a better place,

23 wouldn't it?

24 A. Yes, it would have improved it by that amount.

25 Q. And it would have enabled it to deal, for example, with

1 the HP, the factoring, and all those other problems
2 which were certainly additional difficulties for the
3 company, were they not?

4 A. I couldn't tell you whether it would be enough to deal
5 with all of those. I don't have the figures available.

6 Q. But as a rational way forward, you might keep the bus
7 business going, with a view to selling off an existing
8 asset so as to improve the business going forward?

9 A. You might, yes.

10 Q. Of course, you might keep the business going if it was
11 operating without predation, as an attractive business
12 that someone else might be able to take over and buy out
13 the business altogether?

14 A. Attractive only if it was making money. I don't think
15 a business making losses would be attractive.

16 Q. If the business itself, though, if the in-fill business
17 and the Cardiff business is making money, that in itself
18 may make 2 Travel, as a business, attractive?

19 A. Yes, but we've got quite a lot of "ifs". So if it was
20 making money. Unfortunately, the way 2 Travel was run,
21 it did not know whether any of its services were making
22 money.

23 Q. The problem is we will never be able to know whether
24 Cardiff Bus would have made money -- 2 Travel would have
25 made money in Cardiff on the in-fill and overall,

1 because it was never put in a position whereby it could
2 do that without predation?

3 A. That's right, but what it appears to me is, from the
4 basis of the figures I've seen, even if I allow for the
5 additional turnover that would have been generated from
6 in-fill services in Cardiff, that still isn't enough to
7 turn 2 Travel into a profitable company.

8 Q. You say in your report at 6.23, even if cash had been
9 forthcoming, there is no guarantee -- sorry, this cash
10 is the £300,000 referred to by Grant Thornton.

11 A. Yes.

12 Q. Even if this cash had been forthcoming, there was no
13 guarantee that it would have achieved its intended
14 purpose, as it was likely to be used to pay off key
15 creditors as soon as it was available. So you're saying
16 you don't know, in effect -- there's no guarantee what
17 would have happened, you don't know what would have
18 happened to it. And you say there were other sources of
19 funding. But again, that's straying, is it not, into
20 the question of fact about what the funders would or
21 wouldn't have done, isn't it?

22 A. Yes. The first part is just talking about the fact that
23 if more cash had been available at that time, there were
24 so many other calls on it from overdue creditors, HMRC,
25 for example, that the cash -- just thinking of it as

1 cash to keep the business going, isn't necessarily going
2 to get there.

3 Q. We've been through some of the alternative strategies
4 which Mr -- and I'm sure there are many others. I'm not
5 a management consultant and I don't know about the bus
6 industry. I'm sure there are many other strategies that
7 might have applied. But given that those options
8 existed, it's simply not tenable to take the position in
9 6.24, where you actually state that come what may,
10 2 Travel would have ceased to trade when it did. In
11 other words, it ceased to trade at the end of 2005?

12 A. I'm saying on a rational basis, looking at the losses it
13 had been making beforehand, the fact that -- even if the
14 Cardiff in-fill services had been functioning, its
15 prospect of making profits was just not apparent.

16 Q. That's a different point, Mr Haberman.

17 A. As a rational outsider, I look at that business, and as
18 a rational outsider, I say it would have ceased to trade
19 because at some point, the directors themselves have to
20 be very concerned about whether they are trading whilst
21 insolvent. So it's not a case of saying: we can just
22 keep going because somebody will keep providing us with
23 money. At some stage, the directors and the
24 non-executives especially, would look at this very, very
25 carefully and say: am I prepared to remain, to stay as

1 a director of a company, which is continuing to lose
2 money, which has no prospect of turning itself around?
3 And the answer, in my view, would have been from the
4 non-executive directors: this company has no prospect of
5 turning around. We're not prepared to let it continue.

6 Q. But you cannot say that's the decision they would have
7 taken in 2004, can you? If there had been no predation
8 and this was ongoing as an effective bus company
9 actually running the routes?

10 A. Yes, but you're back to your "if". [OVERSPEAKING]

11 THE CHAIRMAN: Can we have one at a time? Answer the
12 question.

13 A. You're back to your "if" it was a viable business. I'm
14 saying it was not a viable business. Your premise is
15 wrong.

16 MR BOWSHER: You do not know, absent the predation, whether
17 or not it would have been actually able to run the
18 routes as effective day-to-day routes and actually earn
19 turnover from those routes. You can't tell, can you?

20 A. No, because had it been able to run those routes, yes,
21 it would have generated turnover from them. What I'm
22 saying is that additional turnover would not have been
23 sufficient to turn 2 Travel into a viable business.

24 Q. You cannot tell what the board at the end of 2004, with
25 the funding support that was available to it, what

1 decision it would have taken at that point, can you?

2 A. None of us can tell you precisely what somebody would
3 have done. I'm giving you a view as an outsider looking
4 at this company, looking at a company that isn't viable,
5 that is AIM listed, that has directors who have
6 a responsibility, therefore, to outsiders, and the
7 prospect of them saying: yes, we'll continue to let this
8 company run making losses, I think is not going to
9 happen.

10 Q. You can say what, with retrospect, you might have wanted
11 to do but you can't say what Mr Short, Mr Francis and
12 the board would have done?

13 A. I'm saying this is what I think the other members of the
14 board would have done. Not Mr Short and Mr Francis, the
15 other members of the board, the non-executives.

16 Q. If you look at what the other members of the board were
17 actually concerned with, you will see -- again, I don't
18 know; have you looked at the board minutes to see
19 concerns that they had that were expressed in board
20 minutes regarding the ongoing predation?

21 A. I have looked at the board minutes. You'll have to take
22 me to something in particular.

23 Q. File E21. I hope you have tabs. Tab 4 is the board
24 minute of May 21st.

25 A. Yes.

1 Q. You can see there that at that point the board is
2 considering -- paragraph 4.1.2. Already at that stage,
3 the board is considering the practices of the Council
4 owned Cardiff Bus company and its effect on trading.

5 A. Yes.

6 Q. Again, I'm not going to take you to each and every one
7 of these. You can see that in the second August 2004
8 announcement, that's tab 9 --

9 THE CHAIRMAN: Sorry, can you just pause for a minute?

10 MR BOWSHER: Tab 9 is a draft announcement from City
11 Financial Associates. The cross-references in the other
12 bundles are on the contents page. And then the
13 penultimate paragraph:

14 "The board takes issue with comments made by
15 David Brown."

16 We can see the public announcement being made to the
17 market was that there were concerns about the impact of
18 Cardiff Bus's activities on 2 Travel. We can see that,
19 can't we?

20 A. Yes.

21 Q. We see that again the board on 2 August, tab 10 -- the
22 chairman, Sir Richard Needham. If you go to the second
23 page, 448 at (iv) is noting that the operational issues
24 in Cardiff are affecting the whole business. Do you see
25 that?

1 A. Yes.

2 Q. That clearly was seen by Grant Thornton as being
3 relevant because, if you go on near the end, there
4 should be a tab 18.

5 THE CHAIRMAN: Just pause again.

6 MR BOWSHER: Tab 18. I'm hoping that that is a copy of the
7 Grant Thornton report.

8 A. No, it's not.

9 Q. The second tab 18. I have two tab 18s. Right at the
10 back. If we look at your exhibit PH1.108.

11 A. I think it's tab 68 in this one.

12 Q. If you still have E21, it's tab 68. My apologies. If
13 you go on in the Grant Thornton report, it's internal
14 page 5, stamped page 294, paragraph 2.12:

15 "What effect the eventual resolution of the ongoing
16 Cardiff bus war will have on income is not known.
17 Similarly, it is not known ..."

18 And then there is an issue about the Quadrant bus
19 depot in Swansea.

20 The reality is, isn't it, that at the highest level
21 in the company, the impact of the Cardiff Bus predation
22 was seen as having a very substantial effect on the
23 operation and success of the company. That seems to be
24 clear, doesn't it?

25 A. It's one of the points that's being referred to because

1 you're taking me selectively to individual points out of
2 documents. There are other points being referred to.
3 I can't say it's the major one.

4 Q. And what I'm suggesting to you is whatever your ex
5 post-rationalisation is of the figures, I would suggest
6 that you're not able to identify anything that tells us
7 what the board would have done at the end of 2004, if it
8 hadn't been for that ongoing concern, which it's had for
9 months?

10 A. Yes, but the very existence of the Grant Thornton report
11 itself is a sign that the company is in serious
12 difficulties. So therefore, when it gets to a situation
13 like that, it cannot just carry on obliviously. One of
14 the minutes you took me to of Monday 2 August, the
15 chairman commented that the performance was
16 disappointing and the cash position a concern.

17 So these things were a matter of -- it's how you
18 read them. My reading is that the non-executive
19 directors would have been extremely concerned at being
20 associated with a company which had no prospect of
21 turning around and making profits. On the basis of the
22 figures we've looked at, by the time it got
23 to August 2004, it would have had shareholders' funds,
24 which were very small. If it continues to make losses
25 at that rate, it would be balance sheet insolvent by the

1 following year.

2 THE CHAIRMAN: I notice that the Grant Thornton report,
3 page 306 in tab 68, looks as though it was -- you keep
4 using the word "would" for non-executives. I suspect
5 that you mean "should"?

6 A. I mean that they should do and therefore they would do,
7 yes.

8 THE CHAIRMAN: It looks to me as though section 5 on
9 page 306 is particularly directed at the non-executive
10 directors and their responsibilities?

11 A. That's right.

12 MR FREEMAN: At what point did the non-executive directors
13 resign?

14 MR BOWSHER: I'll have to check the date, I apologise.

15 MR FREEMAN: It was well before May 2005, wasn't it?

16 MR BOWSHER: Yes. It's easy enough to find, except when
17 you're looking for it. (Pause).

18 E9/320, I'm being told. I will just check. Yes,
19 29 November.

20 THE CHAIRMAN: Let's just postulate this situation. Forgive
21 me, Mr Bowsher. The company's short of cash, so
22 directors who are in private funds themselves support
23 the company by saying that they will provide secured or
24 unsecured -- it doesn't matter -- funding that will, in
25 effect, be working capital to keep the company going.

1 What is the effect that flows from that, if any, on
2 other creditors? For example, the Inland Revenue, who
3 are owed PAYE, or any other major creditor?

4 A. Sir, it's not a matter of just providing day-to-day cash
5 to keep the business going because if the business isn't
6 able to pay its existing creditors, then it's not
7 a viable business. That's why the PwC projections are
8 always looking at: we have to take account of paying off
9 all the existing creditors and making sure there is
10 enough cash to keep the business going.

11 THE CHAIRMAN: Sorry, I didn't express myself very well. If
12 working capital is put into a company by benevolent
13 directors, isn't one of the consequences of that likely
14 to be that other creditors will say to themselves: this
15 company can now pay its way, we want our money too?

16 A. I suspect that any supplier who hasn't been paid would
17 not supply, would not be willing to trade on -- you just
18 continue to pay current bills but don't clear any of the
19 history. HMRC -- it would be a matter of ... I believe
20 what we saw was the original agreement with HMRC: pay
21 off £25,000 a month, but if anybody put in any additional
22 funding, we want a share of that.

23 THE CHAIRMAN: Yes.

24 A. So HMRC would have expected, if money had been put into
25 the company -- would have immediately said: some of that

1 needs to go off to pay our arrears.

2 THE CHAIRMAN: I'm just trying to get a picture of what
3 happens in this general situation.

4 A. It's the sort of situation where, if an administrator is
5 appointed, you can get to the position of freezing the
6 history and allowing the company temporarily to continue
7 trading, as long as things don't get any worse on
8 providing continuing lending. But that's a slightly
9 different sort of process.

10 THE CHAIRMAN: Yes. Thank you, Mr Bowsher.

11 MR BOWSHER: Not at all.

12 I don't want to go back over a valuation of what the
13 facts are. As we've discussed, though, at the end of
14 2004 there were options open to 2 Travel, or there would
15 have been, if it hadn't been for the predation, and some
16 of those might have involved the various survive and
17 sell options. Would that be fair?

18 A. Yes, there might have been those options. My personal
19 view is those options themselves wouldn't have achieved
20 anything and in due course, the company would have been
21 insolvent anyway.

22 Q. Maybe I should just rise to the bait of one of those
23 propositions. Certainly, survive and sell of the
24 Swansea site, enabling the company to be put on a more
25 stable financial footing and to enable the company then

1 to be -- operations to be improved, might have been
2 a very sensible approach?

3 A. It might, yes.

4 Q. It's an approach which is not without precedent. Rotala
5 is a UK, small to mid-sized bus company, is it not?

6 A. Yes.

7 Q. I'm not sure there's any better comparator in the bus
8 industry than Rotala, is there?

9 A. I'm not aware of a stand-alone company that would be
10 a better comparator.

11 Q. And it certainly traded through losses for a number of
12 years, I think three or four years, before becoming
13 a reasonably successful company today?

14 A. Yes.

15 MR BOWSHER: Thank you very much, Mr Haberman.

16 MR SMITH: Mr Haberman, I wonder if you could just help me
17 on some of the thinking in the PwC report. Do you have
18 it in front of you?

19 A. Yes.

20 MR SMITH: I'll give you the internal page references.
21 Could you first open it at page 14. We were looking at
22 this earlier. This is the projections of revenue for
23 a single bus over a six-month period and for month 6,
24 the revenue for that bus is £1,920.

25 A. Yes.

1 MR SMITH: We can also see that 20 buses were being
2 envisaged being run in Cardiff. That we can see on the
3 preceding page, page 13.

4 A. Yes.

5 MR SMITH: If you move on to page 18, we get there the
6 turnover figures, which Mr Bowsher was exploring with
7 you. We see again reference to 20 in-fill buses in
8 Cardiff, at the second bullet.

9 A. Yes.

10 MR SMITH: I was just doing a back of an envelope
11 calculation for the Cardiff turnover for, first of
12 all, August 2004, which is £473,000.

13 A. Yes.

14 MR SMITH: If you take the projected revenue of a single bus
15 per month of £1,920, multiply that up by 12, you get
16 a figure of £23,040.

17 THE CHAIRMAN: It's per week.

18 MR SMITH: Is it a weekly figure?

19 THE CHAIRMAN: It's definitely a week. We have had evidence
20 of that. I noted it at the time. £1,920 per week
21 in August.

22 MR SMITH: Right. I may be making a false point. I'm very
23 glad it's been picked up because I was dividing as
24 a monthly figure -- and when you divided 473,000 by the
25 monthly figure, you got 20 buses. Maybe I'm barking up

1 completely the wrong tree.

2 MR FLYNN: We did hand up a spreadsheet at an earlier stage
3 that went through that calculation.

4 MR SMITH: For the 1,920, yes, I remember that.

5 MR FLYNN: Yes. That multiplied by weeks, by buses, got you
6 to other figures in the --

7 MR SMITH: I see. Thank you.

8 MR FREEMAN: I know this is going back a few years, and
9 you're trying to give an opinion on what might have
10 happened in certain circumstances, but at the end of
11 Mr Bowsher's cross-examination, he was talking about the
12 survive and sell option, which can mean what it means,
13 but I think we understand what you're suggesting.

14 Can I just ask you, Mr Haberman. Supposing the
15 Swansea depot asset had been "sold" in December 2004,
16 under the terms of the arrangements by which it was at
17 that point encumbered, what would have been the effect
18 on the cash position of 2 Travel? Are you able to
19 comment on that?

20 A. I'm not sure what the effect would have been. Obviously
21 it depends on what the value is at which it would have
22 been sold. Since it was tied up in quite complicated
23 security arrangements, I'm not sure how much cash that
24 would have released to the company.

25 MR FREEMAN: So it would have cleared indebtedness, but not

1 necessarily injected new cash; is that right?

2 A. If it had cleared indebtedness to the bank, the
3 combination of "to the bank" and "to Mr Francis and
4 Mr Short" so cleared up -- so any guarantees which they
5 had provided, assuming all of that had cleared, the
6 company still has a problem because it still has huge
7 arrears in creditors, particularly PAYE.

8 MR FREEMAN: But it'd be relieved of bank interest,
9 presumably?

10 A. Yes, but not of other interest.

11 MR FREEMAN: Thank you.

12 Re-examination by MR FLYNN

13 MR FLYNN: I think Mr Freeman's question may have addressed
14 one of the points I was going to make.

15 MR FREEMAN: Sorry, Mr Flynn.

16 MR FLYNN: Not at all.

17 THE CHAIRMAN: I think he's saying thank you!

18 MR FLYNN: I do mean thank you.

19 It was put to you that there was an offer in
20 mid-2005 of 2.2 million for part of the Swansea site
21 when by that time it was in the ownership of Mr Francis
22 and Mr Short, as you will recall. You said, well, yes,
23 if they'd taken that, they'd be better off by that
24 amount. It's right, isn't it, that if that had
25 happened, they'd have been worse off by the amount of

1 not having sold it previously?

2 A. Sorry, I'm not sure I follow what you mean.

3 THE CHAIRMAN: Despite it being a leading question. Try
4 again.

5 MR FLYNN: It was put to you on a hypothetical basis that if
6 the company had still owned it in mid-2005, they could
7 have taken that offer.

8 A. Yes, that's right.

9 Q. My question to you was: since actually it didn't own it
10 at the time, is it right or is it not right that they
11 would at the same time be worse off by not having
12 received the purchase price?

13 A. Well, obviously if the company didn't own the property
14 then it clearly makes no difference to it at all. If
15 the company had still owned the property, then it begs
16 the question of what would have happened. Would they
17 have been able to have been put in funds by the bank?
18 Because would Mr Francis and Mr Short have given the
19 guarantees to the bank and funded the company up to that
20 point without taking security? So in order to get cash
21 into the company itself, it needed to have still owned
22 the property.

23 Q. I think at that point we are getting into the questions
24 that the tribunal has said are really for them. More
25 generally, Mr Haberman, it was put to you basically on

1 several occasions there were operational difficulties
2 caused to 2 Travel by the conduct of Cardiff Bus and you
3 very properly accepted that, yes, that would have caused
4 them operational difficulties. Can you in a general way
5 say whether the existence of those operational
6 difficulties would cause you in any way to revise the
7 opinions that you have put forward in your report?

8 A. No, not at all. I'm reaching my view on the basis of
9 the financial position that the company is in, the
10 financial position it was in before it went into
11 Cardiff, which, as I've said in my report, seems to me
12 to have been at that stage already so weak that it was
13 unsustainable. And I'm basing that, in particular, on
14 the sorts of comments that the finance director was
15 writing, that the company is not able to cover its
16 costs. And that was all before it went into Cardiff and
17 before it suffered any of these operational
18 difficulties. There were other operational difficulties
19 already happening, so not everything was caused by the
20 entry into Cardiff.

21 MR FLYNN: Sir, I have no further questions for Mr Haberman.

22 I don't know if the tribunal has.

23 THE CHAIRMAN: Thank you very much. Thank you, Mr Haberman
24 very much.

25 (The witness withdrew)

1 MR FLYNN: That, so far as we are concerned, concludes the
2 evidence, sir.

3 THE CHAIRMAN: Right. Is there anything else we can do?

4 MR BOWSHER: I don't think so, but just as a matter of good
5 order, can I raise a couple of points? I'm conscious
6 that there are a couple of points which I think we do
7 have to follow up. One is that I think there are two
8 outstanding questions that Mr Smith asked of Mr Good,
9 and I was going to ask if that can appropriately be
10 dealt with with Mr Good by us writing to the tribunal.

11 THE CHAIRMAN: Certainly.

12 MR BOWSHER: One is the source of workings on white bus
13 actuals and the other is Mr Good's calculations on the
14 basis of the premise that was put to Mr Good -- and I'm
15 sorry, I don't have the transcript reference, but
16 I think we roughly know what we're talking about.
17 Subject to that, I think that's the only further
18 substantive material to follow up on.

19 In terms of the letter overnight, there are a number
20 of matters which we are still following up and
21 I indicated that we may have to come back in writing to
22 the tribunal. I hope if it's necessary to put
23 a proposition, we can either do it in writing or when
24 we have a short hearing, it could be done in 15 minutes
25 at the beginning of the day orally. It will be a short

1 point, but I think I can fairly outline the headline
2 without going into the gory detail. That is this, that
3 on day 1 my learned friend Mr Flynn said at page 46,
4 line 2, reflecting Mr Brown's witness statement:

5 "Mr Brown was not, as his witness statement made
6 clear, aware that Mr Kreppel had taken this advice."

7 And that's in the context of a discussion about
8 Bond Pearce. And page 18 of the letter of last night,
9 I think of the attachments to last night's letter, is
10 a letter from Mr Brown to Bond Pearce on 10 May 2004,
11 saying:

12 "As you may be aware, we have been dealing with
13 David Harrison in relation to competition advice."

14 Et cetera, et cetera.

15 Now, I'm not sure how far I can or need to take that
16 further. That's what we need to consider. One can
17 see -- I hope the tribunal can see we want to be
18 measured before we take that further.

19 THE CHAIRMAN: Right, okay. That's understood.

20 MR FLYNN: I understand the point on being measured, sir.

21 I don't think it's being suggested that I was
22 deliberately --

23 MR BOWSHER: No, no, sorry. I'm not in any way suggesting
24 that.

25 THE CHAIRMAN: Don't be sensitive!

1 MR FLYNN: We understand being measured. I think the
2 difficulty we will have, if indeed Mr Bowsher does wish
3 to put any propositions to Mr Brown, is doing it
4 immediately before closing. It's quite hard to see how
5 we could provide you with a --

6 THE CHAIRMAN: It occurs to me, Mr Flynn, Mr Bowsher, that
7 it's much more likely that these documents which have
8 been disclosed overnight or presented overnight may or
9 may not strengthen any argument that Mr Bowsher will
10 wish to make about Mr Brown's state of knowledge. But
11 the documents speak for themselves in some way or
12 another and I would hope that that can be done by way of
13 comment or submission, even if there's a separate page
14 or an extra 15 minutes, rather than by calling further
15 evidence and Mr Brown being cross-examined further.

16 MR BOWSHER: That's probably fine. I simply had in mind the
17 warning which you very properly put to me about making
18 clear what we're saying. I want to be clear what we are
19 saying before I put forward that proposition.

20 THE CHAIRMAN: Yes.

21 MR BOWSHER: I think that's probably right.

22 THE CHAIRMAN: I'm only looking worried because I observed
23 Ms Blackwood whispering something to you, which always
24 causes me fear and trepidation because it's obvious that
25 she knows the papers intimately.

1 MR BOWSHER: It gives me only comfort, as you know.

2 MR FLYNN: Sir, subject to that, are we going to now set
3 a timetable for delivery of written closings?

4 THE CHAIRMAN: Yes. I had understood that that had been set
5 provisionally; is that right?

6 MR FLYNN: We made a suggestion a while ago, which initially
7 wasn't agreed, I think because Mr Bowsher was hoping
8 we would get through the evidence and be able to deal
9 closings in the course of this week.

10 THE CHAIRMAN: We're going to hear you on 10 May.

11 MR FLYNN: I believe so.

12 THE CHAIRMAN: That's the date.

13 MR FLYNN: That date has been floated. I understand that at
14 the moment that may be difficult for Mr West. In your
15 words on day 1, that may be his availability problem,
16 not your availability problem.

17 THE CHAIRMAN: We always love to see Mr West, but counsel
18 who can recognise a Gurkha tie at a glance is to be
19 prized. Could you do that, Ms Blackwood?

20 MS BLACKWOOD: I'm not sure I could.

21 MR FLYNN: In that case, I think the timetable which I think
22 we proposed, if it's acceptable to the tribunal, is that
23 we would deliver our written closings on 20 April and
24 Mr Bowsher and team a week later on the 27th.
25 I understand that is acceptable.

1 THE CHAIRMAN: We are content with that and we'll give
2 directions accordingly. I should flag up that there is
3 a possibility, at least, that the tribunal may produce
4 a list of questions which we shall ask the parties to
5 attempt to answer if the parties think it appropriate.

6 MR FLYNN: Yes.

7 THE CHAIRMAN: And the questions, if any, will be produced
8 in good time so that it can be done within the
9 timetable.

10 MR FLYNN: That's very helpful, sir, because there was one
11 thing I was going to mention. It may overlap with
12 something Mr Bowsher was saying a moment ago. Mr Smith
13 set out some detailed analysis yesterday, on which
14 comments were invited. It may be that it's intended
15 that'll be picked up in some of your questions, but
16 clearly that is something to which our attention will
17 also be turning. I think that probably can be done in
18 closing submissions. I just thought I should mention it
19 now.

20 THE CHAIRMAN: Right. Can I raise another matter? The
21 length of closing written submissions. The implication
22 is that they should be kept to a manageable length,
23 given that we've agreed a timetable, which will give us
24 in our otherwise moderately busy lives only a few days
25 in which to read them. If they could be kept to about

1 75 pages in length each.

2 MR FLYNN: I think we had volunteered that, sir.

3 THE CHAIRMAN: Yes.

4 MR FLYNN: We will abide by that, subject to the tribunal's

5 exam questions.

6 THE CHAIRMAN: We don't mind if you miss out a few

7 conjunctions to keep the length down.

8 MR FLYNN: It's perhaps the adjectives we should keep down.

9 THE CHAIRMAN: Certainly the adjectives.

10 MR FLYNN: Mr West is also pointing out that I think each

11 side will have some suggestions for correcting the

12 transcript and we'll coordinate those.

13 THE CHAIRMAN: Please deal with that via the --

14 MR FLYNN: Yes, indeed.

15 MR SMITH: Sorry, Mr Flynn, just on figures, I think you are

16 going to come back on an explanation of the passenger

17 number figures, the headings, and also the revenue

18 figures.

19 MR FLYNN: Well, I was given an explanation of the

20 passengers, but maybe it's better done in writing. Then

21 you'll have it all together.

22 THE CHAIRMAN: Is that it?

23 MR FLYNN: Yes, sir.

24 THE CHAIRMAN: On behalf of the tribunal, can I thank all

25 counsel for taking such care over their submissions and

1 examinations and cross-examinations. A fortnight in
2 Cardiff could not have been more enjoyable for the
3 tribunal, given the circumstances.

4 MR FLYNN: And so say all of us.

5 MR BOWSHER: Thank you very much indeed.

6 (12.00 pm)

7 (The hearing adjourned)

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