

Case No: 1262/5/7/16 (T)  
IN THE COMPETITION APPEAL TRIBUNAL

Competition Appeal Tribunal  
Victoria House  
Bloomsbury Place  
London  
WC1A 2EB

Before:

MR JUSTICE MARCUS SMITH  
MR PETER FREEMAN CBE, QC (Hon) and MR BRIAN LANDERS

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Between:

AGENTS' MUTUAL LIMITED  
Claimant

and

GASCOIGNE HALMAN LIMITED (T/A GASCOIGNE HALMAN)  
Defendant

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MR ALAN MACLEAN QC and MR JOSH HOLMES appeared on behalf of  
the Claimant

MR PAUL HARRIS QC and MR PHILIP WOOLFE appeared on behalf of  
the Defendant

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1 Monday, 13 February 2017  
 2 (10.00 am)  
 3 Housekeeping  
 4 THE CHAIRMAN: Good morning, Mr Harris.  
 5 MR HARRIS: Good morning. One or two housekeeping matters  
 6 if I may. Thank you ever so much for the protocol.  
 7 I think that has been sent to the experts.  
 8 THE CHAIRMAN: Thank you. I am sorry it was so late.  
 9 MR HARRIS: Not at all, sir, and we will dutifully vacate  
 10 the front bench after lunch.  
 11 Just whilst on the subject of experts, you invited  
 12 me to take instructions over the weekend as regards  
 13 timing. We are content with that proposal that was put  
 14 forward by the Tribunal, namely that if it is Mr Parker  
 15 to go first -- though I know what is said about that in  
 16 the protocol -- after lunch tomorrow, then he will have  
 17 come out of purdah at some point in the morning, even if  
 18 only just before lunch, and I'll have an opportunity to  
 19 consult with him then with my team. If he is first up,  
 20 then that should suffice.  
 21 Can we play by ear whether there is a need for  
 22 another 15 or 20 minutes. It may not arise,  
 23 particularly if the hot tubbing is finished well before  
 24 lunch.  
 25 THE CHAIRMAN: Yes, the only thing we were conscious of was

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1 that it would be, just as Mr Maclean was identifying the  
 2 unfairness of an extensive purdah, so it seems to us  
 3 a little bit unfair if there was a non-extensive purdah  
 4 with one party's expert going in straight after the hot  
 5 tub.  
 6 MR HARRIS: Yes.  
 7 THE CHAIRMAN: And so you can take it from us that if it is  
 8 your expert going in after the hot tub, there will be  
 9 accommodation if you need it for however long you need  
 10 it within reason to take instructions.  
 11 MR HARRIS: I imagine that may not be problematic. I am  
 12 grateful.  
 13 THE CHAIRMAN: Who knows? But I think that would be the  
 14 fair indication to give.  
 15 MR HARRIS: Two other matters on housekeeping.  
 16 The first is of course the procedure is ultimately  
 17 entirely up to the Tribunal but you will recall, sir,  
 18 that we attempted to use that rather unhappy phrase that  
 19 counsel like to use to put a marker down at the PTR and  
 20 then again in our skeleton about the danger, we say  
 21 unfairness to us, should it be the case that at any  
 22 point during the oral evidence Mr Bishop is allowed to  
 23 seek to develop a case which he has deliberately not put  
 24 in either of his written reports, and the point that  
 25 I am referring to of course is necessity and

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1 dispensability.  
 2 So just to remind the Tribunal as briefly as I can,  
 3 at the costs management hearing I think before the  
 4 President in I think September, it was suggested that it  
 5 was anticipated that Mr Bishop would be addressing that  
 6 issue, and of course we anticipated that as part of my  
 7 learned friend's pleaded case that one would normally  
 8 expect an economist to address and they chose not to,  
 9 and having chosen not to at the PTR, we of course  
 10 identified that they had chosen not to and said it  
 11 wouldn't be fair if they did then do so in the reply  
 12 report and then they have chosen not to again.  
 13 So we say: fine, no problem. But our submission, if  
 14 you needed to pick this up, sir, you don't need to turn  
 15 it up but just so that you know we put it in writing as  
 16 well at paragraph 104.3 of our skeleton argument, our  
 17 submission is that in those circumstances it wouldn't be  
 18 fair or appropriate for Mr Bishop to be asked questions  
 19 about that and/or to seek develop a case that he has  
 20 deliberately chosen not to put forward in his written  
 21 report. But I can't take it any further than that  
 22 because of course ultimately it is a matter for the  
 23 Tribunal.  
 24 THE CHAIRMAN: No, and in a sense, there's a distinction to  
 25 be drawn between hot tubbing where the matter may arise

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1 and cross-examination where the matter won't arise,  
 2 because of course you will be in control of the  
 3 cross-examination of Mr Maclean's expert.  
 4 Just to give you an indication of how we are  
 5 thinking, we obviously have some idea of what we want to  
 6 ask the experts, and we have supplied them with an  
 7 indication, albeit very broad brush, in the protocol.  
 8 Our sense is that it would be not consistent with the  
 9 hot tubbing process to have a debate where only one  
 10 expert participated. We certainly don't want to  
 11 encourage the filling out for the sake of it of a gap,  
 12 if that's what you call it, in Mr Maclean's expert's  
 13 report, but equally, if we consider a question is worth  
 14 asking we will want to have a debate between the two  
 15 experts.  
 16 MR HARRIS: Yes, sir, may I make just one parting remark  
 17 then in response to that, which is of course that would  
 18 have been a case, had it been chosen to be addressed,  
 19 for my learned friend's side to advance. Because they  
 20 didn't, Mr Parker hasn't addressed that issue either.  
 21 So at the moment there is no expert evidence on the  
 22 topic, so it wouldn't be as though one would be asking  
 23 only one expert to opine upon that which he has  
 24 addressed, whereas the other hasn't, because neither has  
 25 addressed it, because it would have had to come from

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<p>1 them for us to respond.</p> <p>2 So we say, and as we put it in the skeleton that is</p> <p>3 somewhere where the claimant has deliberately chosen to</p> <p>4 be silent on an issue where they have the burden. As</p> <p>5 regards expert evidence, of course I accept that</p> <p>6 Mr Springett seeks to address that as a matter of fact</p> <p>7 and you have seen what we have to say about that in the</p> <p>8 skeleton.</p> <p>9 THE CHAIRMAN: Yes, indeed. I suspect it may not arise but</p> <p>10 thank you for the marker.</p> <p>11 MR HARRIS: Then the final housekeeping point, whilst I at</p> <p>12 least am on my feet, is if I can ask with great respect,</p> <p>13 are we still on track to finish next Monday for certain?</p> <p>14 The reason I ask is I have been asked to take on two</p> <p>15 commitments next Tuesday and I said: "I would rather</p> <p>16 just check first if you don't mind".</p> <p>17 THE CHAIRMAN: I hope so. Because what I think we are</p> <p>18 envisaging is that to the extent that we are overrunning</p> <p>19 within the trial it is an intra-trial overrun and it</p> <p>20 cuts into your time for the preparation of submissions,</p> <p>21 rather than -- or possibly the Tribunal's time for</p> <p>22 reading, we'll see, but with an end date as planned.</p> <p>23 MR HARRIS: Yes, sir.</p> <p>24 THE CHAIRMAN: Close of play Monday. Mr Maclean?</p> <p>25 MR MACLEAN: Perhaps I am more reckless than my learned</p> <p style="text-align: center;">Page 6</p>	<p>1 evening to do a better job I hope for the Tribunal.</p> <p>2 It is obviously a matter for the Tribunal but what</p> <p>3 we had in mind was if the Tribunal was willing to accept</p> <p>4 something from us by, say, 12 o'clock on Friday, whether</p> <p>5 that would be convenient. It is obviously a matter for</p> <p>6 the Tribunal.</p> <p>7 THE CHAIRMAN: Thank you. We'll think about that. But</p> <p>8 Mr Harris, I take it you have nothing to add to that?</p> <p>9 MR HARRIS: No. For our part, we see the great benefit of</p> <p>10 the Tribunal having -- I hate to say this because I can</p> <p>11 just imagine what it is going to do to my Thursday</p> <p>12 night, but the benefit of a full day of reading on the</p> <p>13 Friday, so we venture to suggest something like</p> <p>14 8 o'clock or 9 o'clock in the morning on Friday so the</p> <p>15 Tribunal has the full day. I hesitate to say that but</p> <p>16 there we go.</p> <p>17 MR FREEMAN: Mr Harris and Mr Maclean, closings are meant to</p> <p>18 be short, pithy summaries of your case, not another</p> <p>19 bible, please. I am thinking of my weekend.</p> <p>20 MR HARRIS: Yes, sir.</p> <p>21 THE CHAIRMAN: It takes time to do things in short, though,</p> <p>22 that is the trouble.</p> <p>23 MR HARRIS: That may be the answer to the question. The</p> <p>24 less time, the shorter they will be.</p> <p>25 MR FREEMAN: That is your challenge.</p> <p style="text-align: center;">Page 8</p>
<p>1 friend. I already have a commitment for next Tuesday</p> <p>2 afternoon and I was proceeding upon the basis that we</p> <p>3 were going to finish next Monday.</p> <p>4 My point is this: first of all, so far as Mr Harris'</p> <p>5 point on Mr Bishop's concern, I hear what he says and</p> <p>6 I suspect he is tilting at windmills but we will see</p> <p>7 what happens.</p> <p>8 So far as my point of housekeeping, it is this: I</p> <p>9 assume the Tribunal is content with the suggestion</p> <p>10 I made the other day that, given Mr Bishop's</p> <p>11 difficulties on Wednesday morning, we won't sit on</p> <p>12 Wednesday morning but we will sit on Wednesday</p> <p>13 afternoon. That is the first thing.</p> <p>14 THE CHAIRMAN: Yes, I think that is the basis upon which we</p> <p>15 have been proceeding.</p> <p>16 MR MACLEAN: Then following on from that, I think in the</p> <p>17 original plan when we didn't sit at all on Wednesday and</p> <p>18 Thursday for the preparation of written closings,</p> <p>19 I suspect they are due at some time on Thursday</p> <p>20 afternoon and what I was going to raise with the</p> <p>21 Tribunal, for the Tribunal to hopefully think about, was</p> <p>22 whether, given that we are losing half a day, the</p> <p>23 Tribunal would be prepared to accept the written</p> <p>24 closings at some stage on Friday rather than close of</p> <p>25 play on Thursday, which obviously gives us an extra</p> <p style="text-align: center;">Page 7</p>	<p>1 THE CHAIRMAN: We will think about it and get back to you.</p> <p>2 MR HARRIS: So if there aren't any more preliminaries then</p> <p>3 I would like to resume with Mr Springett if he's able to</p> <p>4 do so.</p> <p>5 MR IAN SPRINGETT (continued)</p> <p>6 Cross-examination by MR HARRIS (continued)</p> <p>7 MR HARRIS: Mr Springett, you will recall we were talking</p> <p>8 about matters connected with the group procurement law</p> <p>9 when we finished on Friday afternoon. Do you remember</p> <p>10 that?</p> <p>11 <b>A. We were, yes.</b></p> <p>12 Q. And I am right in saying to you, am I not, that the</p> <p>13 other sister and/or parent companies of a member of AM</p> <p>14 who are supposedly bound by the group procurement law,</p> <p>15 those other sister or parent companies they are not</p> <p>16 actually members of the company, are they?</p> <p>17 <b>A. Bound by the group -- as I understand it, no, they're</b></p> <p>18 <b>not members.</b></p> <p>19 Q. So that means they don't have any listing rights of</p> <p>20 their own as members, do they, these sister or parent</p> <p>21 companies?</p> <p>22 <b>A. That's my understanding.</b></p> <p>23 Q. They don't have a vote, do they, as members of the</p> <p>24 company?</p> <p>25 <b>A. Only members.</b></p> <p style="text-align: center;">Page 9</p>

<p>1 Q. That is right. And what share do they get on the 2 winding up of the company, the sister and parent 3 companies? 4 <b>A. Only the members get that.</b> 5 Q. That is right. My suggestion to you, Mr Springett, is 6 that you have no reason or justification for this group 7 procurement rule, do you? 8 <b>A. Yes, we do.</b> 9 Q. Perhaps you could explain what you say that reason or 10 justification is. 11 <b>A. Well, it avoids the situation where the rules and the</b> 12 <b>contracts can be gamed --</b> 13 THE CHAIRMAN: "Gamed", you said? 14 <b>A. Gamed, yes, sir. What I mean by that is that clearly</b> 15 <b>there would be ways, for example, for a member entity,</b> 16 <b>particularly if it was part of a group of companies, to</b> 17 <b>evade the One Other Portal rule obligation by simply</b> 18 <b>channelling business via a sister company or another</b> 19 <b>element of the group. So that's one of the purposes of</b> 20 <b>that group rule and the procure obligation in</b> 21 <b>particular.</b> 22 MR HARRIS: Now, you say, Mr Springett, in your fifth 23 witness statement at paragraph 21 -- you don't need to 24 turn it up, I am going to quote it to you -- you say, 25 and I quote:</p> <p style="text-align: center;">Page 10</p>	<p>1 <b>A. Again, you're putting forward a legal term to me which</b> 2 <b>I wouldn't venture to make an opinion on.</b> 3 Q. Thank you. I am going to now ask you some questions 4 about a different part of the contract, what has been 5 called in the legal pleadings the "no other promotions 6 rule". You know what I mean? 7 <b>A. I do.</b> 8 Q. You are restricted from promoting any other portal bar 9 OTM, correct, as a member? 10 <b>A. Correct.</b> 11 Q. Though, to be fair to you, you are allowed to mention 12 that you are on the one other portal, correct? 13 <b>A. Yes, that's right.</b> 14 Q. I suggest to you, Mr Springett, that what you were 15 really aiming for in relation to this obligation in the 16 contract was to ensure that the members engaged in 17 supplementary marketing for the benefit of OTM; is that 18 right? 19 <b>A. There are two parts to it. I don't remember the clause</b> 20 <b>numbers in the contracts and they vary from contract to</b> 21 <b>contract, but one of the obligations, one of the</b> 22 <b>positive obligations that members enter into is to</b> 23 <b>actively promote their own portal, so including our logo</b> 24 <b>in window displays, on marketing literature -- you know,</b> 25 <b>doing anything they can do to grow the brand</b></p> <p style="text-align: center;">Page 12</p>
<p>1 "There is nothing preventing it [by which you mean 2 GHJ] from complying." 3 But that is not right, is it? Can you explain to me 4 how GHJ is supposed to procure its parent to do 5 something that the parent doesn't wish to do? 6 <b>A. I think you are taking me into matters of contract.</b> 7 <b>I say that under advice from my legal team.</b> 8 Q. So you can't yourself -- and that is fair enough, 9 I don't need you to tell me anything about your legal 10 advice -- put forward a method by which a subsidiary 11 company can procure a parent company to do something 12 that the parent doesn't wish to do; is that right? 13 <b>A. Well, again, I have had the procure obligation explained</b> 14 <b>to me right back at the beginning when the contract was</b> 15 <b>first drafted, but the -- I have given you a practical</b> 16 <b>example of how we see it operating. It is there to</b> 17 <b>ensure that participants behave properly in relation to</b> 18 <b>their obligations. That's all I can tell you.</b> 19 Q. Right. So is the answer to my question either no you 20 can't, or you don't know whether a parent -- 21 <b>A. I think it is a matter of contract primarily.</b> 22 Q. I see. And am I right in saying, therefore, that you 23 also can't put forward a method by which a sister 24 company can procure a sister company to do something 25 which the sister company doesn't want to do?</p> <p style="text-align: center;">Page 11</p>	<p>1 <b>particularly in their local market, and by the same</b> 2 <b>token, it doesn't make any sense to us, if they're</b> 3 <b>owning a portal business, to then go around promoting</b> 4 <b>somebody else's portal business.</b> 5 Q. Right. Mr Springett, I am pleased to hear you say that 6 because you have anticipated my next question. You just 7 said there are two parts. Now, as I understand them, 8 the two parts are a positive obligation on the part of 9 the members to engage in marketing for OTM, and the 10 second part is a negative obligation on the part of 11 members not to promote somebody else; correct? 12 <b>A. I think that's a reasonable summary, yes.</b> 13 Q. And that I suggest to you, that negative obligation is 14 what is pernicious; it is intended to hurt the other 15 portals, isn't it? 16 <b>A. It just seems to us to be common sense that if you</b> 17 <b>create your own portal and enter it into the market, you</b> 18 <b>would not necessarily then seek to promote the brand of</b> 19 <b>a portal you don't own.</b> 20 Q. But you accept, I think, don't you, perhaps following on 21 from that answer, that the other portals will therefore 22 obviously lose some of the benefit of the free 23 competition that they would otherwise get from having 24 agents on that other portal, correct? 25 <b>A. I'm not aware that agents are under any obligation to</b></p> <p style="text-align: center;">Page 13</p>

<p>1 <b>promote other portals.</b></p> <p>2 Q. Well, Mr Springett, can I just turn your attention,</p> <p>3 please, draw your attention to bundle 1/544. The</p> <p>4 document itself starts on 542.</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. In your solicitor's index this is described as</p> <p>7 a questions and answers document from 4 March 2013.</p> <p>8 <b>A. Okay.</b></p> <p>9 Q. Am I right in saying that you are responsible, or</p> <p>10 largely responsible, for putting together this document?</p> <p>11 <b>A. Yes.</b></p> <p>12 Q. The bit I would like to draw your attention to, please,</p> <p>13 is the top paragraph of page 544 and do you see the</p> <p>14 final two sentences of that top paragraph, the one</p> <p>15 beginning "We are asking our members"?</p> <p>16 <b>A. "From the experience of Primelocation ..."?</b></p> <p>17 Q. I beg your pardon. Three sentences:</p> <p>18 "We are asking our members to promote ..."</p> <p>19 <b>A. I see, yes. "... the new portal," yes.</b></p> <p>20 Q. Yes, and then you say in the final sentence:</p> <p>21 "They will obviously lose some of the benefit of</p> <p>22 this free promotion from agents joining us."</p> <p>23 The "they" in that sentence is the other portals,</p> <p>24 isn't it?</p> <p>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 14</p>	<p>1 <b>the initial five-year contractual period.</b></p> <p>2 Q. That is right. So I think the answer to the question</p> <p>3 then is "yes", Mr Springett. You think it only applies</p> <p>4 for the start-up period of five years, this restriction,</p> <p>5 correct?</p> <p>6 <b>A. I don't have a strong view either way. It could</b></p> <p>7 <b>continue and it would make sense to continue, as far as</b></p> <p>8 <b>I'm concerned, as long as members own their own</b></p> <p>9 <b>business.</b></p> <p>10 Q. Well, let me just take you then to a passage in your</p> <p>11 fifth witness statement. You can put away whatever</p> <p>12 other bundle you had open a minute ago, and if you are</p> <p>13 handed bundle C, please, claimant's witness statements,</p> <p>14 and if you turn to tab 4, to your fifth witness</p> <p>15 statement, and if you turn within that, please, to</p> <p>16 paragraph 13.1. This is under the heading about the</p> <p>17 rule we are talking about.</p> <p>18 <b>A. Mmm.</b></p> <p>19 Q. And in 13.3 do you see that you say in the second</p> <p>20 sentence, talking about this "no other promotions" rule:</p> <p>21 "This is not least because it applies only for the</p> <p>22 start-up period of five years in order to facilitate</p> <p>23 OTM's attempt to break into a market which is dominated</p> <p>24 by two incumbents ... "</p> <p>25 Do you see that?</p> <p style="text-align: center;">Page 16</p>
<p>1 Q. So I suggest to you that it is right that one of</p> <p>2 the aims of the rule was to take away the benefit of</p> <p>3 free promotion from other portals, wasn't it?</p> <p>4 <b>A. Well, it is a by-product of the rule really, isn't it?</b></p> <p>5 Q. A moment ago, Mr Springett, you said there were two</p> <p>6 sides to it. One of them was positive to help your</p> <p>7 portal, the other one was negative, and I suggest to you</p> <p>8 the negative one is: cause other agents to cease</p> <p>9 supporting their competitor sites; that is right, isn't</p> <p>10 it?</p> <p>11 <b>A. Well, I can only repeat, it would seem common sense to</b></p> <p>12 <b>me that if you create a new business and you own it, you</b></p> <p>13 <b>would choose to promote your own business and if you</b></p> <p>14 <b>were doing so previously you would cease promoting other</b></p> <p>15 <b>brands in the same marketplace.</b></p> <p>16 Q. Other brands who are competitors, correct?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. Thank you. And I suggest to you -- sorry, I am moving</p> <p>19 on now. And your view is that this obligation not to</p> <p>20 promote other competing -- other sites, even the other</p> <p>21 one that they choose, your view is that that applies</p> <p>22 only for the start-up period of five years, right?</p> <p>23 <b>A. Well, again, it comes back to something I said to you</b></p> <p>24 <b>yesterday, that as far as Agents' Mutual and members are</b></p> <p>25 <b>concerned, everyone's focus when we started this was on</b></p> <p style="text-align: center;">Page 15</p>	<p>1 <b>A. I do.</b></p> <p>2 Q. So your written evidence to the Tribunal is that you</p> <p>3 thought it would only apply to the start-up period of</p> <p>4 five years because that was the break-in period, right?</p> <p>5 <b>A. Well, I think that's because the contracts only extend</b></p> <p>6 <b>for that time.</b></p> <p>7 Q. And the reason that you -- am I right in thinking that</p> <p>8 since you thought it only was in place or since your</p> <p>9 view is that it is only in place for five years you</p> <p>10 thought it was only needed for five years, correct?</p> <p>11 <b>A. Well, there's -- I think my view would be that even</b></p> <p>12 <b>beyond five years it would be a logical step for members</b></p> <p>13 <b>to take, to promote the portal they owned and not</b></p> <p>14 <b>promote ones they didn't own, and that would apply at</b></p> <p>15 <b>any time, but I think what's in my witness statement is</b></p> <p>16 <b>more to do with what agents have entered into contracts</b></p> <p>17 <b>actually to do.</b></p> <p>18 Q. Perhaps I could show you a copy of a contract in</p> <p>19 bundle 4 where this rule arises. The Gascoigne Halman</p> <p>20 copy of the contract begins on page 2208 in bundle 4.</p> <p>21 Just so you can orientate yourself, I know you are very</p> <p>22 familiar with these documents, Mr Springett, but the OOP</p> <p>23 rule is in clause 6, isn't it? That is on 2209.</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And what we are referring to as the restriction on</p> <p style="text-align: center;">Page 17</p>

<p>1 promoting other portals, that is clause 7, isn't it?</p> <p>2 "We will promote the portal to our registered</p> <p>3 applicants ... and agree not to promote any other</p> <p>4 portal."</p> <p>5 <b>A. Correct, yes.</b></p> <p>6 Q. Can you just show me where in that clause 7 it says it</p> <p>7 is limited to five years?</p> <p>8 <b>A. Well, it doesn't say that but the contract is only for</b></p> <p>9 <b>five years.</b></p> <p>10 Q. Right, so if you are wrong on that and the contract</p> <p>11 isn't limited for five years then you have gone further</p> <p>12 than you needed to, correct, with this restriction?</p> <p>13 <b>A. Again, I think as I described on Friday, this would be</b></p> <p>14 <b>a matter for us as a board and with our legal advisers</b></p> <p>15 <b>to assess whether we were going to at some stage butt up</b></p> <p>16 <b>against legal considerations in retaining these things,</b></p> <p>17 <b>so if it turned out that it looked like we were, then we</b></p> <p>18 <b>would release it and there would be a way to do that.</b></p> <p>19 Q. I see. So perhaps in either clause 6 or 7 now can you</p> <p>20 show me where it says that the restriction, either the</p> <p>21 OOP restriction or the not promoting other portals</p> <p>22 restriction, will remain in place until such time as</p> <p>23 Agents' Mutual's board decides otherwise?</p> <p>24 <b>A. It doesn't say that.</b></p> <p>25 Q. No. Can you show me where in either provision it says</p> <p style="text-align: center;">Page 18</p>	<p>1 Q. And that's a particular scheme, G5, and do you see the</p> <p>2 opening date?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Five years from that would take you beyond</p> <p>5 26 January 2020, wouldn't it?</p> <p>6 <b>A. Yes.</b></p> <p>7 Q. Can you see that the same point applies to items 8, 10,</p> <p>8 15 and 17?</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. So those are the categories, aren't they, of additional</p> <p>11 membership contracts that would take a five-year</p> <p>12 membership beyond 26 January 2020, aren't they?</p> <p>13 <b>A. Yes, they are.</b></p> <p>14 Q. And you can see that at various times, I don't need to</p> <p>15 read them out, there have been various branches</p> <p>16 contracted as at the scheme close date and various that</p> <p>17 are still contracted?</p> <p>18 <b>A. Yes.</b></p> <p>19 Q. Refer both items, 5, 8, 10, 15 and 17?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. And indeed, one can see the figures for oneself.</p> <p>22 Then can I leave that tab now and move on in the</p> <p>23 bundle to tab 28 and this time draw your attention to</p> <p>24 the bottom of the first page of tab 28. Mine doesn't</p> <p>25 have a page number on it. Is yours the first page of</p> <p style="text-align: center;">Page 20</p>
<p>1 that it will remain in force until Agents' Mutual</p> <p>2 achieves market power under the CMA's definition?</p> <p>3 <b>A. It doesn't say that either. That is really a matter for</b></p> <p>4 <b>our board.</b></p> <p>5 Q. I am right in saying that the duration of the OOP rule</p> <p>6 extends in some cases even beyond five years from the</p> <p>7 date of launch, doesn't it?</p> <p>8 <b>A. Well, to the extent I suppose that we've entered into</b></p> <p>9 <b>contracts for five years since the launch date.</b></p> <p>10 Q. Yes. Perhaps I can just take you to one or two of those</p> <p>11 details.</p> <p>12 Now we are in bundle X and I am turning at first</p> <p>13 into tab 25, please. When we looked at this table on</p> <p>14 Friday, Mr Springett, you identified that the total</p> <p>15 numbers, the figures, certainly the bottom right-hand</p> <p>16 one, 6307, that wasn't confidential.</p> <p>17 <b>A. That's correct.</b></p> <p>18 Q. I can't remember now. Did you say that the other one is</p> <p>19 confidential?</p> <p>20 <b>A. Yes, please.</b></p> <p>21 Q. Okay, so I won't read that one out. But now I am</p> <p>22 looking at a different column. Do you see on the first</p> <p>23 page of the table, reference number 5, using the</p> <p>24 left-hand column?</p> <p>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 19</p>	<p>1 a letter dated 26 January 2017?</p> <p>2 <b>A. Yes, it is, yes.</b></p> <p>3 Q. And you explain via your solicitors, or more accurately</p> <p>4 your solicitors explain on behalf of the company, don't</p> <p>5 they, at the bottom in (i) that some of those types of</p> <p>6 contract remain available even today to new members; is</p> <p>7 that right?</p> <p>8 <b>A. That's correct.</b></p> <p>9 Q. And that over the page, there was a mistake in the</p> <p>10 information memorandum which said that the five-year</p> <p>11 period from listing finished for membership schemes on</p> <p>12 26 January 2020, yes?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. And in fact, then in (iv), and I won't read this out</p> <p>15 because I think the particular figures might be</p> <p>16 sensitive, but your solicitors are accepting that there</p> <p>17 are in fact -- and then you can see the numbers of</p> <p>18 arrangements that expire after 26 January 2020, yes?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Including some in -- well, one can see the rest -- some</p> <p>21 in 2021 and some later on in 2021, right?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. Now, when you first put your mind to it -- I am finished</p> <p>24 with bundle X, thank you. When you first turned your</p> <p>25 mind to the duration of the OOP rule -- well, let me</p> <p style="text-align: center;">Page 21</p>

6 (Pages 18 to 21)

<p>1 start again.</p> <p>2 When you first turned your mind to putting together</p> <p>3 Project Z, am I right that you didn't hire any</p> <p>4 consultants to assist you, correct?</p> <p>5 <b>A. I think I was the consultant.</b></p> <p>6 Q. Yes, good answer, Mr Springett, yes. I will show you in</p> <p>7 a minute what it was you were asked to do. But you</p> <p>8 didn't -- in addition to you, there were no other</p> <p>9 consultants, right?</p> <p>10 <b>A. We -- I think we had some legal advice at a pretty early</b></p> <p>11 <b>stage.</b></p> <p>12 Q. I am talking right at the -- let me help you.</p> <p>13 <b>A. We are in 2011, I think.</b></p> <p>14 Q. Yes. Let me just show you. My suggestion to you is it</p> <p>15 was just you with a very limited budget to undertake</p> <p>16 some desk research. Does that ring a bell?</p> <p>17 <b>A. Yes, absolutely.</b></p> <p>18 Q. So I can show you that document if I may. It is at</p> <p>19 bundle 1/89. This was an email that was sent to you and</p> <p>20 some of the other founding steering committee members</p> <p>21 headed "Project Z". And do you see at the top of</p> <p>22 page 89 under the heading "Resources for preliminary</p> <p>23 investigation" --</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. -- what you were asked to do?</p> <p style="text-align: center;">Page 22</p>	<p>1 did you come up with the duration figure?</p> <p>2 <b>A. Well, which duration figure are we talking about?</b></p> <p>3 <b>Because at this point we're well pre-merger here. So</b></p> <p>4 <b>there are basically four significant players in the</b></p> <p>5 <b>market: Rightmove, the DPG brands, Primelocation and</b></p> <p>6 <b>FindaProperty, and Zoopla as the fourth player and</b></p> <p>7 <b>I think we looked on Friday at a document which showed</b></p> <p>8 <b>I think at November 2011 that the discussion was still</b></p> <p>9 <b>around full exclusivity for three years. So I think the</b></p> <p>10 <b>five-year discussion came later, once the merger had</b></p> <p>11 <b>taken place and we had reviewed the whole situation and</b></p> <p>12 <b>determined that full exclusivity wasn't viable. So it</b></p> <p>13 <b>certainly isn't around this time that that consideration</b></p> <p>14 <b>was looked at.</b></p> <p>15 Q. Thank you. Let me take you then to the document in this</p> <p>16 bundle at page 181 which you have looked at before.</p> <p>17 This is the Project Z draft of 9 November 2011.</p> <p>18 <b>A. That is the one I was referring to, yes.</b></p> <p>19 Q. Yes, thank you. If you turn it up to 181, and this is</p> <p>20 a document that you have said that you were responsible</p> <p>21 for authoring, do you see in the paragraph just above</p> <p>22 the second hole punch, the one beginning "To allow it</p> <p>23 ..."?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. "To allow it to achieve sustainable entry ..."</p> <p style="text-align: center;">Page 24</p>
<p>1 <b>A. The only thing I would observe from what you just said</b></p> <p>2 <b>is that I don't think the steering committee formed</b></p> <p>3 <b>itself until later.</b></p> <p>4 Q. A fair point, but Mr Abrahamsohn and Mr Hodgson at least</p> <p>5 in the cc list --</p> <p>6 <b>A. Became so, yes.</b></p> <p>7 Q. -- and Mr Flint, who sent you the email, they are all</p> <p>8 founding members of the steering committee, aren't they?</p> <p>9 <b>A. Which was formed later was my point.</b></p> <p>10 Q. I suggested to you that it was just yourself by way of</p> <p>11 desk research at this early stage because that is what</p> <p>12 it says at the top of 89, doesn't it?</p> <p>13 <b>A. That's correct.</b></p> <p>14 Q. And indeed you had a pretty limited budget. Is that</p> <p>15 figure that is in yellow below, is that now</p> <p>16 confidential?</p> <p>17 <b>A. No, I'm happy for it to be --</b></p> <p>18 Q. Because this was many, many years ago. So it was you,</p> <p>19 by yourself at a desk using £5,000 plus some travel</p> <p>20 money, correct?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. And we can see what that generated in terms of duration.</p> <p>23 No, sorry, let me do that in a slightly different</p> <p>24 way. When you generated your duration figure using this</p> <p>25 limited budget and the desk research by yourself, how</p> <p style="text-align: center;">Page 23</p>	<p>1 And it goes on, and then at this stage, this early</p> <p>2 version of the OOP rule, you say:</p> <p>3 "Their listings will be committed to the preferred</p> <p>4 portal on an exclusive basis for at least three years."</p> <p>5 Do you see that?</p> <p>6 <b>A. Yes, but we ought to make clear that "OOP" means "One</b></p> <p>7 <b>Other Portal", whereas what's referred to in this</b></p> <p>8 <b>paragraph is full exclusivity.</b></p> <p>9 Q. No, no, with respect, Mr Springett, that is not right,</p> <p>10 is it? Because look, it goes on to say:</p> <p>11 "However, given the importance to agents of listing</p> <p>12 with at least one other market leading portal an</p> <p>13 exemption is being made such that agents could list</p> <p>14 their properties priced at less than 1 million or</p> <p>15 renting for less than £500 per week also on Rightmove</p> <p>16 over this period."</p> <p>17 So it is a one other portal, isn't it?</p> <p>18 <b>A. Okay, for that segment, but I guess what I'm pointing</b></p> <p>19 <b>out is it isn't the version of the rule that was</b></p> <p>20 <b>eventually determined.</b></p> <p>21 Q. That is right. It is a large segment, isn't it:</p> <p>22 properties priced at less than £1 million or renting for</p> <p>23 less than £500 a week? That is a very large segment,</p> <p>24 isn't it?</p> <p>25 <b>A. It is a big segment.</b></p> <p style="text-align: center;">Page 25</p>

<p>1 Q. Yes, that's right. I am going to come back later on, 2 Mr Springett, to the fact that you identify Rightmove 3 here as being the one other portal on this early version 4 of the rule, but right now I am still focused on the 5 fact that in this early version of the rule you identify 6 an exclusivity period, subject to that carve-out, for 7 three years and not for five years. That is right, 8 isn't it?</p> <p>9 <b>A. Clearly at this point we were looking at three years, 10 yes.</b></p> <p>11 Q. Can you show me the documents in which you set out your 12 analysis of why at that stage you were thinking that 13 only three years was required?</p> <p>14 <b>A. Well, I think at that stage I was considering history 15 really, and what we'd achieved with Primelocation which 16 also had a three-year initial period written into it.</b></p> <p>17 Q. That is right. So it was your past experience based on 18 Primelocation that was principally driving it, wasn't 19 it?</p> <p>20 <b>A. Together with some early legal advice that we had taken 21 I think as long ago as certainly the first half of 2011.</b></p> <p>22 Q. Please, Mr Springett, don't feel obliged to tell me 23 anything about your legal advice unless you want to.</p> <p>24 <b>A. I'm just saying we had some.</b></p> <p>25 Q. But can you show me the spreadsheet or the data analysis</p> <p style="text-align: center;">Page 26</p>	<p>1 the launch of Agents' Mutual are totally different from 2 those that were extant when Primelocation launched, 3 don't you?</p> <p>4 <b>A. Well, that's a third point in time, isn't it? So 5 Primelocation was launched in 2001. We are here talking 6 in 2011, pre the merger, at a point where Zoopla was 7 really not on anyone's radar, and then a post-merger 8 situation where a reassessment was done of what was 9 needed and still later a detailed financial model was 10 put together.</b></p> <p>11 Q. That is right, but I think you do accept, don't you, 12 that the portals market at the time of launch of 13 Agents' Mutual is totally different from the portals 14 market when Primelocation launched?</p> <p>15 <b>A. It's considerably more difficult, yes.</b></p> <p>16 Q. You say that, Mr Springett, but actually it is much more 17 of a mixed picture, isn't it, as regards difficulty?</p> <p>18 <b>A. I don't remotely agree with that.</b></p> <p>19 Q. Really?</p> <p>20 <b>A. It was a market completely dominated by two large media 21 groups.</b></p> <p>22 Q. You say that now, Mr Springett, but my understanding is 23 that you were regarding it as a market that had moved to 24 some extent in favour of portals compared to when 25 Primelocation launched. Do you accept that?</p> <p style="text-align: center;">Page 28</p>
<p>1 that led you at that time to think that you needed, in 2 order to "allow it to achieve a sustainable entry" -- 3 and here I am quoting from your top line --</p> <p>4 <b>A. Yes --</b></p> <p>5 Q. -- to need only three years? What's the data or 6 spreadsheet or analysis that you conducted in order to 7 come up with three years at this stage?</p> <p>8 <b>A. I think as I have just said, the origin of that was 9 referring back to previous experience and it's relevant 10 to say at this point that this was more an issue of what 11 would work commercially from my perspective as somebody 12 advising the company, or the putative company, at this 13 stage of what might work, and also a question of what 14 the agents felt would be viable for them as businesses. 15 So I don't think really at this stage we were into 16 detailed analysis. There was no business plan. There 17 were no financials drawn up at this early stage.</b></p> <p>18 Q. No, exactly, Mr Springett. There is no underlying data 19 or financial analysis at this stage to come up with the 20 three years, is there? That is right, isn't it?</p> <p>21 <b>A. That's right.</b></p> <p>22 Q. So it is effectively based upon your view, including 23 your past experience with Primelocation, correct?</p> <p>24 <b>A. That's right.</b></p> <p>25 Q. But you accept that the market circumstances relating to</p> <p style="text-align: center;">Page 27</p>	<p>1 <b>A. In favour of portals? That is a different matter. That 2 is a different question altogether.</b></p> <p>3 Q. Mr Springett, can I draw your attention to, still in 4 bundle 1, we are back in a document, a Q and A that you 5 looked at before but this time on page 542. I said to 6 you a moment ago that it was a more mixed picture and 7 you didn't accept that. But I am just looking at your 8 item 3 now on page 542.</p> <p>9 <b>A. Mm.</b></p> <p>10 Q. And you say in the fourth line down -- do you have the 11 sentence beginning "Although"?</p> <p>12 "Although the competitor environment is now tougher, 13 the situation is also eased by the fact that paying 14 listing fees is now an established concept and agents 15 recognise fully the value the portals provide."</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. That is right, is it not? So it is not unequivocally 18 harder to launch when Agents' Mutual launched, compared 19 to when Primelocation launched, is it, even in your own 20 words?</p> <p>21 <b>A. Well, that's certainly a saving grace, but I can tell 22 you that the market environment when I launched 23 Primelocation, or when we launched Primelocation, was 24 rather easier than the one that we entered into at the 25 beginning of 2015.</b></p> <p style="text-align: center;">Page 29</p>

8 (Pages 26 to 29)

<p>1 Q. But not unequivocally in one direction, as you would 2 have had us accept just a moment ago, now that you have 3 seen this document. That is right, isn't it?</p> <p>4 <b>A. Well, to the extent that it's established that people 5 had to pay for the two largest portals, that's true.</b></p> <p>6 Q. Well, it is not just that, is it? Because it is also 7 because "agents recognise fully the value the portals 8 provide"? So that had been a development in favour of 9 portal launching, hadn't it, compared to Primelocation?</p> <p>10 <b>A. That's true.</b></p> <p>11 Q. That is right.</p> <p>12 MR FREEMAN: Mr Harris, could I just ask -- you can hear me, 13 can you?</p> <p>14 MR HARRIS: Yes, thank you.</p> <p>15 MR FREEMAN: Mr Springett, when you say "more difficult", 16 your answer is all about agents but what about 17 persuading viewers to look at portals because that's the 18 key to the other side of the market?</p> <p>19 <b>A. Well, yes, and I think our challenge was that we were 20 entering at a time where there were two entrenched 21 portals. Consumer behaviour had been as it was in terms 22 of the portal -- of portal usage for a number of years, 23 particularly in relation to Rightmove.</b></p> <p>24 <b>I'd also say, and it is a personal view, that Zoopla 25 is primarily an amalgam of a number of relatively</b></p> <p style="text-align: center;">Page 30</p>	<p>1 <b>and it has undoubtedly grown -- I have seen statistics, 2 and I can believe them, that most searches for property 3 now initiate online at the rate of about 90 per cent of 4 people, so that inevitably makes it easier in the sense 5 that usage, in the generality, of the internet has 6 increased amongst property sellers.</b></p> <p>7 <b>The thing that is more difficult now is that there 8 has been for a number of years established usage of 9 a relatively small number of brands which had also 10 recently become even more concentrated and so our entry 11 to the market, one of the challenges for that was to 12 say: well, how would it be possible to encourage -- 13 I got into trouble on Friday with "consumers", but 14 property seekers to change their behaviour and begin to 15 consider a new entrant to the market?</b></p> <p>16 MR FREEMAN: Thank you.</p> <p>17 MR HARRIS: Thank you, Mr Springett.</p> <p>18 I am going to move on a little bit now. It is 19 right, isn't it, that when you were putting together in 20 these early days Project Z and the formulations of the 21 OOP rule and the other restrictions, that you started 22 from a presumption that you wanted to obtain the 23 maximum degree of exclusivity protection, didn't you?</p> <p>24 <b>A. Yes.</b></p> <p>25 Q. And indeed, in your business plan you say -- and</p> <p style="text-align: center;">Page 32</p>
<p>1 <b>long-established portals where again consumer usage of 2 those was pretty well established.</b></p> <p>3 <b>So by the end of 2012 you had a situation where 4 there were two portals, strong brands, big marketing 5 budgets, with already entrenched consumer usage of those 6 portals, and one of the challenges for us would be how 7 to come into the market and move those eyeballs, if you 8 like, and part of the logic, one of the primary parts of 9 the logic of the One Other Portal rule was to say: we're 10 not going to be able to afford the kind of marketing 11 budgets which would achieve that, and I'm not even sure 12 however much you spend you would necessarily be 13 effective in achieving that.</b></p> <p>14 <b>But I've always believed that the properties, the 15 listings themselves, are the thing that draws the 16 consumer and therefore the strategy has been to, if you 17 like, have some movement, some switching of the agents 18 and the property listings between the three portals as 19 now list in the market.</b></p> <p>20 MR FREEMAN: From your point of view as a new start-up 21 portal, does the increased willingness and preference of 22 house-hunters, lease-hunters, to use online portals as 23 a means of finding listed properties, does that make 24 your task of entry easier or more difficult?</p> <p>25 <b>A. I think the fact that there is strong usage of portals,</b></p> <p style="text-align: center;">Page 31</p>	<p>1 I quote -- you "ideally would require its members to 2 list their properties exclusively". Do you remember 3 that?</p> <p>4 <b>A. I do.</b></p> <p>5 Q. In the event, though, you went for just one degree less 6 exclusivity, didn't you? You carved out from the 7 exclusivity an exemption in favour of one other portal, 8 right?</p> <p>9 <b>A. Well, that was really one of the main, I suppose 10 negotiating points between me and the steering committee 11 because I came from the point of view that I didn't 12 think it would work at all without the agents being 13 prepared to provide their listings and revenue on 14 a fully exclusive basis.</b></p> <p>15 <b>There was an extended standoff period actually 16 during 2011 running into 2012 where I was saying: "We 17 cannot move forwards or certainly you won't be moving 18 forward with me involved unless we can get to a sensible 19 outcome around that question." And in the end the 20 compromise position was one other portal.</b></p> <p>21 <b>But all the time during that period, bear in mind, 22 I think round about late 2011 the intention to merge 23 between DPG and Zoopla had been announced, and then 24 around April 2012 I think it was given the go ahead and 25 that I think led to a bit of a meeting of minds where</b></p> <p style="text-align: center;">Page 33</p>

<p>1 <b>the agents felt: well, we've got to do something and</b></p> <p>2 <b>don't believe it is feasible to do full exclusivity but</b></p> <p>3 <b>we would enter into a one other portal rule arrangement.</b></p> <p>4 Q. I suggest to you, Mr Springett, that in your own mind</p> <p>5 the thinking about what that one other portal would be</p> <p>6 was always clear; you always thought the one other</p> <p>7 portal would be Rightmove, didn't you?</p> <p>8 <b>A. Well, this is -- in fact, I should have raised this on</b></p> <p>9 <b>Friday afternoon when we were looking at</b></p> <p>10 <b>the November 2011 document.</b></p> <p>11 Q. Do you want the page, Mr Springett? It is page 181 of</p> <p>12 bundle 1.</p> <p>13 <b>A. It is not particularly necessary. It is just really --</b></p> <p>14 <b>I wanted to give just a flavour for what my personal</b></p> <p>15 <b>position was at that time and also how the agents were</b></p> <p>16 <b>feeling about this because if what you are suggesting,</b></p> <p>17 <b>if your case is that a plot to defeat and do down Zoopla</b></p> <p>18 <b>emerged in the course of 2011, I was semi-retired at</b></p> <p>19 <b>that point. I had been asked to help with this project</b></p> <p>20 <b>and I was helping on a consultancy basis, albeit</b></p> <p>21 <b>by November I wasn't being paid anything for the</b></p> <p>22 <b>privilege. I was simply giving my view as to what the</b></p> <p>23 <b>group would need to do and it was certainly not agreed</b></p> <p>24 <b>at that stage that I would even write a business plan,</b></p> <p>25 <b>let alone become CEO.</b></p> <p style="text-align: center;">Page 34</p>	<p>1 Rightmove?</p> <p>2 <b>A. Yes, I wouldn't dispute that at that time Rightmove was</b></p> <p>3 <b>the gorilla in the room. There was really no</b></p> <p>4 <b>possibility that people would choose to leave Rightmove,</b></p> <p>5 <b>and particularly for property valued below the</b></p> <p>6 <b>£1 million threshold, because Rightmove is the</b></p> <p>7 <b>mainstream brand.</b></p> <p>8 Q. In fact at this stage I am right in saying, aren't I,</p> <p>9 that you took the view that it was inconceivable that</p> <p>10 the majority of agents would come off Rightmove, didn't</p> <p>11 you?</p> <p>12 <b>A. Well, certainly in the circumstances that pertained at</b></p> <p>13 <b>that time, that's right, but what I'd also say about</b></p> <p>14 <b>this is that the primary problem was then and remains</b></p> <p>15 <b>Rightmove and it's just turned out that Zoopla is not</b></p> <p>16 <b>the solution.</b></p> <p>17 Q. In fact, my suggestion to you is that this idea</p> <p>18 persisted well into the following year. If you turn in</p> <p>19 the same bundle to a document that begins on 369, this</p> <p>20 is dated 23 September 2012. So we are just under a year</p> <p>21 later now compared to that Project Z letter. We looked</p> <p>22 at this before because it was the one I took you to</p> <p>23 right at the outset about the management deal and your</p> <p>24 cut of the management pot.</p> <p>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 36</p>
<p>1 <b>As far as the agents were concerned, this was</b></p> <p>2 <b>a four-brand market. The gorilla in the room by some</b></p> <p>3 <b>margin at that point was Rightmove and the agents were</b></p> <p>4 <b>also concerned at the behaviour of DPG having determined</b></p> <p>5 <b>to manage FindaProperty and Primelocation together. And</b></p> <p>6 <b>so actually the problem has always been Rightmove, and</b></p> <p>7 <b>the secondary problem was the emergence of DPG as a kind</b></p> <p>8 <b>of package of brands that they had to use. And Zoopla</b></p> <p>9 <b>was not really on their radar. I don't think even that</b></p> <p>10 <b>all of the steering group member firms were using Zoopla</b></p> <p>11 <b>at that point. So the idea that we cooked up a plot to</b></p> <p>12 <b>do it down is fanciful.</b></p> <p>13 Q. I suggest to you, Mr Springett, that it was always in</p> <p>14 your mind right from the very beginning, precisely</p> <p>15 because it was the gorilla in the room, that all the</p> <p>16 agents when they had to choose a one other portal would</p> <p>17 choose Rightmove and that's why you identified it by</p> <p>18 name on page 181. That is right, isn't it?</p> <p>19 <b>A. Let me go to 181. Would you kindly point me at where it</b></p> <p>20 <b>says "Rightmove"? I'm sorry.</b></p> <p>21 Q. Yes, it is the paragraph we were looking at with the</p> <p>22 three years, just above the second hole punch. In the</p> <p>23 final line you actually identify what the other portal</p> <p>24 would be, albeit on this earlier version of the One</p> <p>25 Other Portal rule, don't you, you identify it as</p> <p style="text-align: center;">Page 35</p>	<p>1 Q. But if you turn over the page to 371 under item 5,</p> <p>2 "Control on capital payments" I suggest to you at this</p> <p>3 stage you were making various scenarios about growth</p> <p>4 rates but that you can see scenario B on the previous</p> <p>5 page, it is an increase of the annual growth rate to</p> <p>6 a thousand offices a year rather than 500 a year. But</p> <p>7 what is telling in my suggestion to you is the next</p> <p>8 bullet point. What you were aiming for at that stage</p> <p>9 was ownership of the number 2 portal in a market with</p> <p>10 only two credible participants, and the only two</p> <p>11 credible participants simply must have been OTM and</p> <p>12 Rightmove, mustn't they?</p> <p>13 <b>A. Well, we are now looking at September 2012, so the</b></p> <p>14 <b>merger has taken place and I don't think we were clear</b></p> <p>15 <b>by then, but it didn't matter because I think our mantra</b></p> <p>16 <b>has been really that it's a market where there might end</b></p> <p>17 <b>up only being one participant or there might end up</b></p> <p>18 <b>being two participants. In either case, the agents had</b></p> <p>19 <b>better end up owning one of them because otherwise the</b></p> <p>20 <b>consequences for them and their industry are very</b></p> <p>21 <b>severe.</b></p> <p>22 Q. Jumping a little bit in time, so please bear with me,</p> <p>23 Mr Springett, but if we go in the same bundle, earlier</p> <p>24 to page 207 we see the next iteration of the Project Z</p> <p>25 document. The one we looked at a moment ago was</p> <p style="text-align: center;">Page 37</p>

<p>1 early November and this one beginning on page 207 is 2 late November.</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Do you see that in fact the formulation of the draft OOP 5 rule has changed in the course of November? If you turn 6 now to page 215 you can see that in the same paragraph, 7 the one beginning "To allow it", you can see that the 8 listing period is still three years, that is four lines 9 down, but the final sentence that we were just 10 concentrating on, that has now been changed: 11 "However ..." 12 You can see for itself.</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. It goes on, and then instead of saying one other portal 15 for certain properties and naming Rightmove, it's 16 changed to "one other portal of their choosing" and then 17 you introduce the phrase: "the choice of portal must 18 apply across all offices of that firm"?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. And then you say what the effects will be. 21 I suggest to you, Mr Springett, that what you and 22 your at this stage steering committee members wanted to 23 do was take out the word, the identified other portal, 24 Rightmove, because you were worried that would give rise 25 to an obvious charge of a collective boycott of Zoopla,</p> <p style="text-align: center;">Page 38</p>	<p>1 <b>A. Yes, they are.</b></p> <p>2 Q. And I think I am right in saying that your comments are 3 in the boxes on the right-hand side?</p> <p>4 <b>A. That's right.</b></p> <p>5 Q. So if we turn over the page then to 192, the column for 6 Mr Abrahmsohn, he comments for some reason in capital 7 letters in the left-hand column and picking it up in the 8 second sentence he says: 9 "We understandably don't want to get it wrong and 10 can't change strategy midway, i.e. for the exclusivity 11 to be limited to Rightmove." 12 Do you see that?</p> <p>13 <b>A. Yes, I do.</b></p> <p>14 Q. Then in fact your comment on this point is: 15 "For discussion at the next meeting. I suspect we 16 might run into collective boycott territory if we were 17 more specific." 18 So you did have that expressly in mind, didn't you, 19 that naming Rightmove might lead directly to a charge of 20 collective boycott?</p> <p>21 <b>A. I didn't have a concern about it. I mean, clearly the 22 steering committee, quite rightly, is raising lots of 23 questions and I'm answering them at the time. But we 24 didn't crystallise what we were going to do until much, 25 much later in the process and, as I say, at this stage</b></p> <p style="text-align: center;">Page 40</p>
<p>1 weren't you?</p> <p>2 <b>A. I don't think any of that was in our mind at the time.</b></p> <p>3 <b>The focus at this stage was what was going to work 4 commercially, and it was a matter that came up much 5 later when we took formal legal advice that we needed to 6 then cut our cloth accordingly.</b></p> <p>7 <b>Again, I remind you that at this stage no financial 8 modelling had been done at all. So this was really 9 still part of working out between us what would work, 10 and me saying: "To enter this market you're going to 11 need the maximum exclusivity and unique content that can 12 be delivered," and agents saying, "We can't live with 13 that".</b></p> <p>14 Q. Mr Springett, I suggest to you that answer is just flat 15 wrong when you say you didn't have the worry about 16 a collective boycott in mind at that time. Would you 17 like to change that answer?</p> <p>18 <b>A. Well, I can -- I didn't have the worry about it.</b></p> <p>19 Q. I see. Can we turn in bundle 1 then to page 191. You 20 see this is comments following the 23 November meeting 21 on the latest draft paper and financial projections?</p> <p>22 <b>A. Yes.</b></p> <p>23 Q. On the left-hand side are entries recording statements 24 from some of the founder committee steering members, 25 aren't there?</p> <p style="text-align: center;">Page 39</p>	<p>1 <b>I don't think I'd agreed to be part of the management of 2 this. I think I was still advising on what one would do 3 in order to make an entry to the market.</b></p> <p>4 Q. Just reading from the transcript, Mr Springett, you said 5 a moment ago when I put to you this passage about your 6 words "collective boycott", you said: 7 "I didn't have a concern about it." 8 Is that because you are not concerned about 9 collective boycott territory?</p> <p>10 <b>A. Of course not. At the point that we took formal legal 11 advice we were clearly alerted to the issues around 12 that.</b></p> <p>13 Q. You go on to say: 14 "If, as seems likely, the larger firms will choose 15 Rightmove and many think it performs better ..." 16 That is a bad understatement, isn't it, 17 Mr Springett? It is not just that it seemed likely at 18 that stage. It was, to use your words from the 19 Project Z draft, "inconceivable" that the majority of 20 firms would choose to drop Rightmove, wasn't it?</p> <p>21 <b>A. Again, we are still in pre-merger time here, so the 22 market -- if I go back to 2011, the market was 23 Rightmove, the gorilla, and then three smaller brands, 24 Primelocation, FindaProperty and Zoopla, and if 25 I remember rightly, the OFT made that very plain, the</b></p> <p style="text-align: center;">Page 41</p>

<p>1 <b>OFT report.</b></p> <p>2 Q. So I think the answer is yes, then, it was inconceivable</p> <p>3 in your view at the time that the majority of firms</p> <p>4 would not drop Rightmove, yes?</p> <p>5 <b>A. Inconceivable -- I think it was inconceivable that they</b></p> <p>6 <b>would drop Rightmove.</b></p> <p>7 Q. Yes, inconceivable that they would drop Rightmove, which</p> <p>8 is what you say in the Project Z draft that I just</p> <p>9 showed you?</p> <p>10 <b>A. And that was my judgment in 2011.</b></p> <p>11 Q. In fact, you have never been surprised that over</p> <p>12 90 per cent of estate agents in the market chose the</p> <p>13 dominant market leader, have you?</p> <p>14 <b>A. I was surprised. I think I have told you that our view</b></p> <p>15 <b>of this moved considerably during the course of 2013</b></p> <p>16 <b>when I went beyond London and the Southeast because up</b></p> <p>17 <b>until that point the experience of particularly the</b></p> <p>18 <b>steering group members was that for them Primelocation</b></p> <p>19 <b>in particular was a very important brand. I think,</b></p> <p>20 <b>again I refer to the OFT report, that makes clear that</b></p> <p>21 <b>actually in London at the time Primelocation and</b></p> <p>22 <b>FindaProperty was stronger in combination than Rightmove</b></p> <p>23 <b>was in that part of the world. The merger changed</b></p> <p>24 <b>everything and if you look at the things that were being</b></p> <p>25 <b>said and the statistics being quoted at the time, early</b></p> <p style="text-align: center;">Page 42</p>	<p>1 <b>if I delivered it to Savills on 7 February 2012.</b></p> <p>2 <b>I think the origin of the slides pre-dates that, but</b></p> <p>3 <b>7 February.</b></p> <p>4 Q. Thank you, yes. You can see, can't you, that the</p> <p>5 company, or the would-be company's strategy as described</p> <p>6 by you at that time is set out on the slide on page 288,</p> <p>7 isn't it?</p> <p>8 "Strategy: a direct replacement Primelocation TDPG."</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. So it is specifically targeting a named other portal</p> <p>11 competitor in the market, isn't it?</p> <p>12 <b>A. I mean, I guess at that point in the proceedings we</b></p> <p>13 <b>thought that would be the outcome.</b></p> <p>14 Q. No, Mr Springett, with respect, it says that is the</p> <p>15 would-be company's strategy, doesn't it?</p> <p>16 <b>A. Okay, but if you take the view that it is unlikely that</b></p> <p>17 <b>people will leave the market leader at that point, then</b></p> <p>18 <b>if you are going to have one other portal the corollary</b></p> <p>19 <b>of that in those circumstances would be that TDPG would</b></p> <p>20 <b>be the loser.</b></p> <p>21 Q. Exactly, Mr Springett. I couldn't have put it better</p> <p>22 myself. Thank you.</p> <p>23 Then I am now looking at -- I am going to take this</p> <p>24 quickly, Mr Springett, but do you see over the page, so</p> <p>25 the second page of the Savills' slide so we are now</p> <p style="text-align: center;">Page 44</p>
<p>1 <b>2013, and beyond that into 2014, the impression</b></p> <p>2 <b>absolutely was that Zoopla by virtue of the merger had</b></p> <p>3 <b>caught up with Rightmove.</b></p> <p>4 Q. I suggest to you, Mr Springett, that your express</p> <p>5 strategy on the part of the would-be company at that</p> <p>6 time was directly to replace what was still then</p> <p>7 Primelocation and TDPG, wasn't it?</p> <p>8 <b>A. Well, I mean, it is a moving feast with respect. You</b></p> <p>9 <b>need to direct me to a point in time and I'll tell you</b></p> <p>10 <b>what I think I felt at the time.</b></p> <p>11 Q. These are, as I understand it, they are your words. We</p> <p>12 are back in tab 1 --</p> <p>13 <b>A. You need to be clear at what time I am speaking.</b></p> <p>14 Q. Yes, let's go to a particular document and ascertain the</p> <p>15 date. So I am in bundle 1 at page 288, which</p> <p>16 I understand to be a document of 7 February 2012, so</p> <p>17 just a couple of months after the Project Z documents,</p> <p>18 still whilst Primelocation and TDPG are separate, yes?</p> <p>19 <b>A. This is like a presentation document?</b></p> <p>20 Q. This is how I understand it to be.</p> <p>21 <b>A. I am just making sure I have got the right document.</b></p> <p>22 <b>Page 270?</b></p> <p>23 Q. 288 is the one I want to look at but I think the</p> <p>24 document begins on 271.</p> <p>25 <b>A. Yes, so this is a presentation that was -- it looks as</b></p> <p style="text-align: center;">Page 43</p>	<p>1 earlier in that document at 296.</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Can you see this was the income and cost projection for</p> <p>4 the proposed company at that stage, yes?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. And at the top line it was intended to be an incremental</p> <p>7 growth of 500 offices a year?</p> <p>8 THE CHAIRMAN: I think we need to be careful here because it</p> <p>9 is not yellow but it says "Entire spreadsheet</p> <p>10 confidential", Mr Harris.</p> <p>11 MR HARRIS: Are these historic figures still confidential,</p> <p>12 Mr Springett?</p> <p>13 <b>A. I'm happy for them to be discussed.</b></p> <p>14 THE CHAIRMAN: Thank you.</p> <p>15 MR HARRIS: Thank you. Thank you, sir, because mine isn't</p> <p>16 yellow either so I had overlooked that so I am grateful</p> <p>17 to you.</p> <p>18 So you were going to have 500 offices sign up in the</p> <p>19 pre-launch year, yes, and then 500 a year going forward</p> <p>20 each year?</p> <p>21 <b>A. That's right, yes.</b></p> <p>22 Q. And then can you see if you go down the page below the</p> <p>23 box the surplus deficits before tax and depreciation and</p> <p>24 then the cumulative, on this plan with 500 offices a</p> <p>25 year, including only 500 at the date of launch, you were</p> <p style="text-align: center;">Page 45</p>

<p>1 going to break even, weren't you, after just one and 2 a bit years of trading, because you're negative in year 3 2 on surplus deficit but in year 3 you have become quite 4 significantly positive, so somewhere between year 2 and 5 year 3 you have broken even, correct, on this plan? 6 <b>A. On this plan, yes.</b> 7 Q. And then it goes into significant further surpluses 8 every year after a little over a year's worth of 9 trading, yes? 10 <b>A. Yes, but it --</b> 11 THE CHAIRMAN: So cumulatively you break even in the course 12 of year 6? 13 MR HARRIS: I think, Mr Springett, what the Chairman is 14 saying is if you look at the cumulative figure it will 15 have broken even between some time after four years of 16 trading and into the fifth year of trading, yes? 17 <b>A. I see that. This is by no means the plan we</b> 18 <b>implemented, however, because this would have been</b> 19 <b>targeted at a much more limited market, so we would have</b> 20 <b>been going -- under this plan we would have been</b> 21 <b>charging, as it says on 293, an average listing fee of</b> 22 <b>£400 per month. What we actually have with the model</b> 23 <b>that we have adopted is 244, and the funding model was</b> 24 <b>different and so really this would have been much more</b> 25 <b>of a niche, upmarket sort of website, which is something</b></p> <p style="text-align: center;">Page 46</p>	<p>1 Q. I don't need to read out the figures but if you turn to 2 page 657, I am right in saying, aren't I, that the 3 original plan was to raise a certain amount of 4 pre-launch finance? The two bullet points. Do you see 5 that? There was one that was loan capital with a figure 6 next to it and the next figure was some monthly 7 subscriptions per office and it comes to a total? 8 <b>A. Yes.</b> 9 Q. So the pre-launch finance on this plan was the first 10 figure identified plus the second figure? 11 <b>A. Yes.</b> 12 Q. Members of the Tribunal, you may recall some similarity 13 with the figures which I asked you to identify in the 14 previous document I think on Friday. 15 I am right in saying, aren't I, that the plan at 16 this stage was for the business to generate monthly 17 surpluses as soon as it goes live? You can see that 18 beneath the second bullet point, the third line down. 19 <b>A. Mmm. (The witness nodded).</b> 20 Q. Do you see that, the third line down: 21 "This is to ensure there is a solid core franchise 22 ..." 23 <b>A. Sorry, you have lost me slightly here.</b> 24 Q. The second bullet point. 25 <b>A. Yes, pre-launch monthly subscriptions?</b></p> <p style="text-align: center;">Page 48</p>
<p>1 <b>that we moved away from, particularly post the approval</b> 2 <b>of the merger which came I think later.</b> 3 Q. I see. So you considered another alternative entry, did 4 you, of a niche and upmarket website that only required 5 500 per launch and would start to break even after 6 a year and a bit of trading; is that right? 7 <b>A. Well, that was what was under consideration at this</b> 8 <b>point. A lot of things were moving at this stage. The</b> 9 <b>market had consolidated pretty rapidly and so we were</b> 10 <b>kind of changing to keep up in a way.</b> 11 Q. Mr Springett, I suggest to you that the -- if we now 12 look at the business plan which is to be found in 13 bundle 2/657. If you want to see the first page it is 14 at 644. 15 <b>A. Okay.</b> 16 Q. I am turning now into some of the annexes at the back of 17 the business plan, so if you keep going until you get to 18 page 657. 19 <b>A. "Market entry strategy"?</b> 20 Q. Yes, that's right. It is possible that this is 21 a separate document but it comes at the same time as the 22 business plan. If you want to see the front page it is 23 645. It is entitled "Executive summary". 24 <b>A. Yes, this looks like the business plan that was approved</b> 25 <b>and from which all of the other documents now flow.</b></p> <p style="text-align: center;">Page 47</p>	<p>1 Q. Yes, beneath that there is a paragraph beginning: 2 "The firms comprising ..." 3 So the points, Mr Springett, are these. This was 4 a plan based upon generating a certain amount of 5 pre-launch finance in the amounts that I have shown you? 6 <b>A. Yes.</b> 7 Q. And with 1,000 offices at launch date, right? 8 <b>A. That's right.</b> 9 Q. And the idea was that, generating that amount from those 10 thousand offices, the business would generate monthly 11 surpluses as soon as it goes live, correct? 12 <b>A. Yes, that's right.</b> 13 Q. And indeed that it would build up healthy cash balances 14 on that plan, correct? 15 <b>A. Yes.</b> 16 Q. And if you want to see those they are over two more 17 pages at 661. So you can see in the table, again 18 I don't need to particularly read out any figures, but 19 again you can see that the plan has evolved by this 20 stage, hasn't it? So this is 1,000 offices on entry, 21 500 per annum, yes -- 22 <b>A. Mmm.</b> 23 Q. -- additional branches and you can see that there is 24 a minor loss, a relatively small loss after just the 25 first year of trading, so that's year 2, isn't it?</p> <p style="text-align: center;">Page 49</p>

<p>1 <b>A. Yes. You are asking me, yes.</b>                  2 Q. Because year 1 is pre-launch, isn't it, so there is no                  3 trading?                  4 <b>A. Correct.</b>                  5 Q. Year 2 is the first year of trading?                  6 <b>A. Yes.</b>                  7 Q. And that generates only a small loss?                  8 <b>A. Yes.</b>                  9 Q. And then fairly swiftly after one year of trading,                  10 therefore into what is called "year 3", you have well                  11 over broken even and started to make a profit and then                  12 they rise to what you call in this document "healthy                  13 cash balances" over the next few years of trading,                  14 correct?                  15 <b>A. Yes.</b>                  16 Q. Indeed, even the cumulative losses have been wiped out                  17 after only a little over two years of trading, haven't                  18 they?                  19 <b>A. That's right.</b>                  20 Q. And your phrase "healthy cash balances", if you want to                  21 see it, is above the table into the paragraph above it,                  22 three lines from the bottom.                  23 <b>A. Mmm.</b>                  24 Q. "Following the repayment of the debt, healthy cash                  25 balances."</p> <p style="text-align: center;">Page 50</p>	<p>1 <b>sought to respond to where we got to, which is a much</b>                  2 <b>stronger appetite than was originally anticipated, and</b>                  3 <b>we've spent any extra income generated to build the</b>                  4 <b>business faster and grow the footprint and market share.</b>                  5 Q. Very much so, Mr Springett. I am going to come back to                  6 that last point in just a minute. But what I am                  7 suggesting to you -- you need two documents open now.                  8 Keep open, please, the table with the figures in and if                  9 you could be handed bundle 10, please, and turn to                  10 page 5640, this is a document we have seen more than                  11 once now. Do you see that on the second page of the                  12 email, 5640, the penultimate paragraph, the larger                  13 paragraph --                  14 <b>A. Mmm.</b>                  15 Q. -- that you have said that:                  16 "Under one other portal the idea is that members                  17 retain the stronger of the duopoly portals to cover                  18 themselves while OTM builds up into the true alternative                  19 they need."                  20 <b>A. Yes.</b>                  21 Q. So what I suggested to you is that this is if you like                  22 the figurative, by which I mean using figures,                  23 manifestation of what you are saying in that email,                  24 isn't it? You can see that the healthy cash balances                  25 are being built up after a little over only one year of</p> <p style="text-align: center;">Page 52</p>
<p>1 <b>A. Yes.</b>                  2 Q. And the idea was for members to retain the stronger of                  3 the two established portals to cover themselves while                  4 OTM built up into the true alternative they needed by                  5 generating these healthy cash balances, wasn't it?                  6 <b>A. Where does it say that?</b>                  7 Q. No, I am just putting that to you. The idea was for                  8 members to retain the stronger of the two established                  9 portals to cover themselves whilst OTM built up into the                  10 true alternative they needed by generating these healthy                  11 cash balances?                  12 <b>A. I'm not sure -- I wouldn't say that the healthy cash</b>                  13 <b>balances were an essential part of it. In practice, the</b>                  14 <b>objective has been to further the long-term interests of</b>                  15 <b>the business, and our management agreement has precisely</b>                  16 <b>those words in it, and so within certainly my</b>                  17 <b>arrangements with the company, there is a commitment on</b>                  18 <b>the part of the board that we would pursue maximum</b>                  19 <b>cumulative profit and there's a commitment on both</b>                  20 <b>parties to act in the long-term interests of the company</b>                  21 <b>and specifically, if those two things ever come into</b>                  22 <b>conflict, then it is the long-term interests that will</b>                  23 <b>prevail.</b>                  24 <b>One of the practical outcomes of that is that we</b>                  25 <b>haven't sought to generate those surpluses. We have</b></p> <p style="text-align: center;">Page 51</p>	<p>1 trading and what you say in this email is that that's                  2 intended to cover themselves while OTM builds up into                  3 the true alternative they need. That is right, isn't                  4 it?                  5 <b>A. No, that's -- that's not what this says. What this says</b>                  6 <b>is that we have -- first of all, I am reminding people</b>                  7 <b>that this is a medium-term enterprise and not to expect</b>                  8 <b>instant results, certainly not to expect a pop-up portal</b>                  9 <b>which can match the performance of the other two. So</b>                  10 <b>hence the air cover from whichever is their strongest</b>                  11 <b>portal.</b>                  12 <b>But actually what this does demonstrate is precisely</b>                  13 <b>what I was trying to say earlier, which is that because</b>                  14 <b>we had more support we needed to spend more marketing</b>                  15 <b>and there was an opportunity to drive the business to</b>                  16 <b>a much greater level than we had originally thought was</b>                  17 <b>possible and in order to do that we have spent every</b>                  18 <b>spare penny generated by income over and above our</b>                  19 <b>overhead base on marketing and sales activity to do</b>                  20 <b>that. So in practice our trading history over three</b>                  21 <b>years is losses in each year, small losses most recently</b>                  22 <b>as a result of doing that. We are effectively operating</b>                  23 <b>at break even and spending everything we can to grow the</b>                  24 <b>business.</b>                  25 Q. What I suggest to you though, Mr Springett, is that your</p> <p style="text-align: center;">Page 53</p>

<p>1 plan as identified in these documents was to build up 2 these healthy cash balances whilst OTM builds up into 3 the true alternative they need, and indeed to put 4 together a substantial war chest that you could use to 5 take on Rightmove; that is right, is it not, within the 6 five years? 7 <b>A. What would you be describing as a substantial war chest?</b> 8 Q. These are your words, Mr Springett. If we turn in 9 bundle 3 to 1429, this is an email that you wrote 10 in August 2013 to somebody enquiring about the would-be 11 business? 12 <b>A. Yes.</b> 13 Q. A Mr Henderson at Acorn Properties. In the second 14 paragraph down, second substantive paragraph down, you 15 say: 16 "The one thousand office figure is a threshold 17 rather than a target. We are hoping that more agents 18 will sign up. At that level we would represent 19 a formidable portal force preparing to enter the market 20 as we would have a very substantial war chest and an 21 extremely strong committed income from the outset." 22 So that is what you were hoping to achieve, wasn't 23 it: healthy cash balances which gave rise to a very 24 substantial war chest well within the five-year trading 25 period? That's right, isn't it?</p> <p style="text-align: center;">Page 54</p>	<p>1 <b>But the thrust of that was altogether about being in</b> 2 <b>a position to spend more on marketing and that's pretty</b> 3 <b>much what we've done.</b> 4 <b>So this hasn't been driven to generate cash</b> 5 <b>surpluses. What it -- when I have referred to "war</b> 6 <b>chest", I don't remember this email particularly, but</b> 7 <b>I would have been thinking about the amount we would</b> 8 <b>have available to run the business in a way that would</b> 9 <b>challenge the incumbents.</b> 10 Q. Thank you, but the fact is, Mr Springett, isn't it, that 11 your restrictions, including the OOP, remain in place 12 for the whole of the five-year trading period but you 13 were expressly aiming to be the number 2 player as 14 quickly as possible and preferably within the first two 15 to three years of trading, weren't you? 16 <b>A. And I think I took some time on Friday to explain our</b> 17 <b>view and that of our advisers and our board around that,</b> 18 <b>which is that that's something that we -- in relation to</b> 19 <b>the commercial and the legal imperatives we keep under</b> 20 <b>review, so, you know, I --</b> 21 Q. So I think the answer is "yes" then? 22 <b>A. Well, we kicked off with a five-year view if that's what</b> 23 <b>you want to --</b> 24 Q. But my point, Mr Springett, is it was expressly the view 25 of you and the board that notwithstanding that your</p> <p style="text-align: center;">Page 56</p>
<p>1 <b>A. Where is the "well within the five-year trading period"?</b> 2 Q. You can see that from your table, Mr Springett, on 3 document 2 at page 661. 4 <b>A. Again it might help the Tribunal if I explain the</b> 5 <b>principle on which this was put together. What I was</b> 6 <b>asked to do by the steering committee was create</b> 7 <b>a portal platform at the minimum cost really. They</b> 8 <b>asked me to put something together which would allow an</b> 9 <b>entry to the market to be made, a credible entry for the</b> 10 <b>lowest possible cost, consistent with it being scalable,</b> 11 <b>and what we were trying to do was have a business plan</b> 12 <b>which said: if this number of people buy into it then we</b> 13 <b>can get it there and have it available. And having got</b> 14 <b>it there and having the scope then to present the</b> 15 <b>proposition, we hoped that others would come on board;</b> 16 <b>there would be a snowball effect, other agents would see</b> 17 <b>it was a good idea and support it and it would continue</b> 18 <b>to grow.</b> 19 <b>So the business plan that was structured and</b> 20 <b>crystallised in March 2013 was a base plan to allow that</b> 21 <b>to happen and even within the information memorandum at</b> 22 <b>the time I built in scenarios which said: if actually we</b> 23 <b>recruit more people by the time of launch and if our</b> 24 <b>recruitment thereafter is at I think a thousand offices</b> 25 <b>per month, then that would change how the thing looked.</b></p> <p style="text-align: center;">Page 55</p>	<p>1 restrictions are in place for five years you wanted to 2 be the number 2 player as quickly as possible and within 3 two to three years, correct? 4 <b>A. Well, I don't think at the point we set out we remotely</b> 5 <b>had that ambition. I think our view changed at the end</b> 6 <b>of 2013 when we realised that instead of getting to the</b> 7 <b>threshold of 1,000 branches, we'd got to 1,800 and so we</b> 8 <b>recalibrated the plan early 2014 to a much more</b> 9 <b>ambitious scale.</b> 10 Q. Absolutely, Mr Springett, and that is when you 11 presumably reduced the duration of the OOP rule; is that 12 right? 13 <b>A. No.</b> 14 Q. No, you didn't, did you? 15 <b>A. Because a plan is just a plan, isn't it? We need to</b> 16 <b>respond to actual circumstances.</b> 17 Q. Thank you. 18 <b>A. We see what happens and we determine whether we have</b> 19 <b>a commercial reason to change or a legal imperative to</b> 20 <b>change.</b> 21 Q. If anyone wants it, the reference to where you say that 22 "The company strategy is to get Agents' Mutual to be the 23 number 2 player as quickly as possible within the first 24 two to three years and then we will work to become equal 25 to Rightmove" is bundle 9/5035 in the board meeting</p> <p style="text-align: center;">Page 57</p>

15 (Pages 54 to 57)

<p>1 notes of 10 February 2014.</p> <p>2 <b>A. That's consistent entirely with what I've just said.</b></p> <p>3 Q. Yes, it is, thank you, Mr Springett.</p> <p>4 I think I am right in saying that your own case was</p> <p>5 that your venture really became completely unstoppable</p> <p>6 when you had signed up only 4,000 agent branches, right?</p> <p>7 <b>A. Again, I suspect you're paraphrasing, aren't you?</b></p> <p>8 Q. Well, I mean, is that your view or not?</p> <p>9 <b>A. No, it isn't.</b></p> <p>10 Q. It isn't your view.</p> <p>11 <b>A. The 4,000 level, if it is the 4,000 you are referring</b></p> <p>12 <b>to, was the point at which we felt we -- it was almost</b></p> <p>13 <b>like a point of no return for us, that if we could get</b></p> <p>14 <b>to that level of support, and bear in mind 4,000 offices</b></p> <p>15 <b>was a combination of those contracted and those offices</b></p> <p>16 <b>which were covered by a letter of intent to contract, we</b></p> <p>17 <b>felt once we'd reached that level then we could confirm</b></p> <p>18 <b>that the project actually was going to launch, which we</b></p> <p>19 <b>hadn't done until that point in time. I mean, we didn't</b></p> <p>20 <b>have a brand name even until July 2014. I don't think</b></p> <p>21 <b>we told anybody about it until August. We reached the</b></p> <p>22 <b>4,000 level of total support in, I believe it</b></p> <p>23 <b>was October and announced it, and some time after that</b></p> <p>24 <b>we began approaching agents who had given letters of</b></p> <p>25 <b>intent to say: will you now sign a contract?</b></p> <p style="text-align: center;">Page 58</p>	<p>1 subheading "Member recruitment", as I understood it you</p> <p>2 say:</p> <p>3 "This means we are over 60 per cent of our way to</p> <p>4 our next major milestone with the achievement of 4,000</p> <p>5 supporting agent offices, a point at which the venture</p> <p>6 really does become unstoppable."</p> <p>7 Correct?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. But in fact you had 4,600 agent branches on launch date,</p> <p>10 didn't you, a little over that?</p> <p>11 <b>A. Well, I think you are interpreting "unstoppable" in one</b></p> <p>12 <b>way and the way I interpret it is in the way I described</b></p> <p>13 <b>earlier, that it becomes -- we are past the point of no</b></p> <p>14 <b>return, we commit to the launch. I think up until the</b></p> <p>15 <b>point where we had reached 4,000 supporting agents as</b></p> <p>16 <b>a total we weren't completely sure that we would</b></p> <p>17 <b>necessarily launch.</b></p> <p>18 Q. In fact, having got far, far more agent branches than</p> <p>19 you had anticipated and far more than the thousand that</p> <p>20 in your original base case plan you said would allow you</p> <p>21 to achieve sustainable entry, what you do with the extra</p> <p>22 money that's generated is devote it almost entirely to</p> <p>23 marketing, don't you?</p> <p>24 <b>A. Not -- some of it went into staffing large organisation</b></p> <p>25 <b>but I agree that we wanted to have the maximum impact</b></p> <p style="text-align: center;">Page 60</p>
<p>1 <b>Now, all of that in parallel with developing the</b></p> <p>2 <b>portal, planning for the launch marketing which had to</b></p> <p>3 <b>be paid for a couple of months in advance, so there was</b></p> <p>4 <b>a sort of a point in time where we had to say: yes, this</b></p> <p>5 <b>is a definite go and we are going to implement it and</b></p> <p>6 <b>implement it in the timetable that we committed to,</b></p> <p>7 <b>which was January 2015.</b></p> <p>8 Q. Thank you. And I think you said that I was paraphrasing</p> <p>9 and you didn't agree with me but as I understand it,</p> <p>10 those were your words if you turn to bundle 5 at 2897 --</p> <p>11 <b>A. I'm not sure I said I didn't agree with you, did I?</b></p> <p>12 <b>I said I thought you were paraphrasing.</b></p> <p>13 Q. Bundle 5/2897, please, a document we haven't been to</p> <p>14 before.</p> <p>15 <b>A. May I get rid of some of these bundles?</b></p> <p>16 Q. Yes, if you could perhaps just keep number 10 around.</p> <p>17 <b>A. I will.</b></p> <p>18 Q. But by all means discard some of the others, thank you.</p> <p>19 This is an email that I understand you to have</p> <p>20 written to either people who had signed contracts or</p> <p>21 perhaps LOIs. So it is written to you from you, and was</p> <p>22 it sent out to --</p> <p>23 <b>A. I am just trying to work out who this would have gone</b></p> <p>24 <b>to. It certainly would have gone to members, I think.</b></p> <p>25 Q. What you said under the second hole punch under the</p> <p style="text-align: center;">Page 59</p>	<p>1 <b>with marketing.</b></p> <p>2 Q. That is right, because to use your words from a moment</p> <p>3 ago, and here I do paraphrase but they are on the</p> <p>4 transcript, you wanted to grow more swiftly. That is</p> <p>5 right, isn't it?</p> <p>6 <b>A. I think there was -- we saw an opportunity to grow more</b></p> <p>7 <b>rapidly, certainly.</b></p> <p>8 Q. Yes, thank you. Members of the Tribunal and</p> <p>9 Mr Springett, again I won't read them out but I think</p> <p>10 you still have bundle 10/5639 and 5640 open and we can</p> <p>11 see what that progression in marketing spend in fact was</p> <p>12 when you got far more offices than you had originally</p> <p>13 planned for, correct?</p> <p>14 <b>A. Sorry, do you have the page number? H1?</b></p> <p>15 Q. No, H10.</p> <p>16 <b>A. Sorry, what was the page number, please?</b></p> <p>17 Q. It was 5639.</p> <p>18 <b>A. Thank you. Yes, we did spend just about 12 million in</b></p> <p>19 <b>the first years.</b></p> <p>20 Q. I don't know, is that not confidential?</p> <p>21 <b>A. I'm happy for it to be ...</b></p> <p>22 Q. Thank you. So instead of the original plan, which would</p> <p>23 have planned to use sustainable entry, and I am quoting</p> <p>24 from your Project Z document, which was 1,000 offices</p> <p>25 allowing you to spend -- are none of those figures</p> <p style="text-align: center;">Page 61</p>

<p>1 confidential?</p> <p>2 <b>A. I think it's fine.</b></p> <p>3 Q. So it was 3.27 but in fact you launched with 4,600 and</p> <p>4 you spent 12 million?</p> <p>5 <b>A. Yes.</b></p> <p>6 Q. That's right, isn't it? And on my suggestion to you</p> <p>7 that's meant that you have already become unstoppable,</p> <p>8 but instead of dialling back on any of the restrictions</p> <p>9 in your contract, for example reducing the duration of</p> <p>10 the OOP rule, you just spend all of the money you</p> <p>11 generate, or nearly all of it, on marketing, don't you?</p> <p>12 <b>A. Completely, absolutely, and where we've ended up</b></p> <p>13 <b>relative to the other two portals indicates that we are</b></p> <p>14 <b>going to have to keep doing that.</b></p> <p>15 MR HARRIS: Thank you.</p> <p>16 Sir, that may be a convenient moment. I am on track</p> <p>17 to finish as mandated at 12.30 and it may be</p> <p>18 a convenient moment to have five minutes.</p> <p>19 THE CHAIRMAN: Thank you, Mr Harris. Just to let those</p> <p>20 behind you know, I hope we have emailed out for the</p> <p>21 experts, Mr Parker and Mr Bishop, to look at</p> <p>22 a spreadsheet which draws together the materials very</p> <p>23 helpfully provided by them to us in a single place. So</p> <p>24 I hope they have that. We probably won't come to that</p> <p>25 today but we may come to it tomorrow morning in the hot</p> <p style="text-align: center;">Page 62</p>	<p>1 Q. So am I right in saying then that just like when you</p> <p>2 originally thought it might be three years you didn't</p> <p>3 employ external analysts or consultants or economists,</p> <p>4 you didn't do that when it moved from three years to</p> <p>5 five years, did you?</p> <p>6 <b>A. That was my assessment. I had been engaged as</b></p> <p>7 <b>a consultant in the first place having had something to</b></p> <p>8 <b>do with the industry over the years.</b></p> <p>9 Q. So there is no document, is there, that says, for</p> <p>10 instance, "Well, if we sign up 1,000 agents at launch we</p> <p>11 will need five years but if we sign up 2,000 agents at</p> <p>12 launch we will only need four years but if we sign up</p> <p>13 3,000 agents at launch we will only need three years"</p> <p>14 and setting out the financials and the economics for any</p> <p>15 of those? There is no such document, is there?</p> <p>16 <b>A. No, there is no such document but equally that would be</b></p> <p>17 <b>a very simplistic way of going about it because</b></p> <p>18 <b>competitor response would form part of the assessment,</b></p> <p>19 <b>for example, and –</b></p> <p>20 Q. You say that, Mr Springett, but in your original</p> <p>21 business plan based upon the 1,000 offices plus 500 per</p> <p>22 year my understanding is that your plan was that that</p> <p>23 would be successful irrespective of competitor action;</p> <p>24 isn't that right?</p> <p>25 <b>A. Well, that's relative to – am I right in thinking that</b></p> <p style="text-align: center;">Page 64</p>
<p>1 tubbing. Five minutes.</p> <p>2 MR HARRIS: Thank you.</p> <p>3 THE CHAIRMAN: Thank you.</p> <p>4 (11.30 AM)</p> <p>5 (A short break)</p> <p>6 (11.35 AM)</p> <p>7 MR HARRIS: Mr Springett, we are nearing the end of this</p> <p>8 journey you will be very pleased to hear. So we looked</p> <p>9 earlier, didn't we, about how in an earlier iteration of</p> <p>10 the OOP rule the duration was limited to three years,</p> <p>11 and we know of course that in its final form it had</p> <p>12 increased in duration to five years, yes?</p> <p>13 <b>A. That's right.</b></p> <p>14 Q. Can you show me the data or analysis that led you to</p> <p>15 form the view with the board members that in fact five</p> <p>16 years was necessary, not three years?</p> <p>17 <b>A. That was really our view based on the business plan and</b></p> <p>18 <b>the fact that it would take us that length of time to</b></p> <p>19 <b>develop into a situation where we were sufficiently</b></p> <p>20 <b>strong to stand on our own two feet. We also formed</b></p> <p>21 <b>that view under legal advice as to what would be</b></p> <p>22 <b>appropriate, our legal team reviewed the business plan</b></p> <p>23 <b>and that was the conclusion that was reached.</b></p> <p>24 <b>I won't pretend that I wasn't keen to have it for as</b></p> <p>25 <b>long as I could have it.</b></p> <p style="text-align: center;">Page 63</p>	<p>1 <b>is a fully exclusive situation?</b></p> <p>2 Q. No, by this stage you had moved the OOP rule into its</p> <p>3 current guise. Would you like to see where you did say</p> <p>4 that?</p> <p>5 <b>A. Yes, please.</b></p> <p>6 Q. It is in bundle 2/664. We looked at part of this. This</p> <p>7 is part of the 2013 business plan that was signed off by</p> <p>8 the board. If you see in the top left-hand box at page</p> <p>9 664 we are in the 1,000 office scenario?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. And then you see five entries down there is risk</p> <p>12 mitigation. The risk is said to be:</p> <p>13 "The company's market entry may be disrupted or its</p> <p>14 impact reduced by competitor action."</p> <p>15 You said that you wrote this and in the "Mitigation"</p> <p>16 column it says:</p> <p>17 "The directors believe that the market entry</p> <p>18 strategy set out in the plan will be effective</p> <p>19 irrespective of competitor action."</p> <p>20 <b>A. Yes, I think -- what's the date of this document?</b></p> <p>21 Q. I think this is the business plan March 2013, the one</p> <p>22 you said got signed off by the board. The front page is</p> <p>23 on 664.</p> <p>24 <b>A. Well, I suppose to the extent that if we get the first</b></p> <p>25 <b>1,000 offices then we would be able to make the portal</b></p> <p style="text-align: center;">Page 65</p>

<p>1 <b>live in the market, I guess is what I'm saying.</b></p> <p>2 Q. Mr Springett, I suggest to you that you could have</p> <p>3 launched Agents' Mutual on to the market by signing up</p> <p>4 a core group of agents who supported Agents' Mutual,</p> <p>5 perhaps because it was a mutual and/or because it was</p> <p>6 paying healthy interest payments but who did not want to</p> <p>7 be bound by the OOP rule. That is right, isn't it? You</p> <p>8 could have launched by signing up those people?</p> <p>9 <b>A. Sorry, those people who didn't want to be bound by the</b></p> <p>10 <b>OOP rule?</b></p> <p>11 Q. That's right, but nevertheless were attracted to</p> <p>12 Agents' Mutual.</p> <p>13 <b>A. Well, we didn't think that that would get any traction</b></p> <p>14 <b>with audiences.</b></p> <p>15 Q. That is because you didn't investigate it with the big</p> <p>16 three, Countrywide, Connells or LSL, did you?</p> <p>17 <b>A. Well, our view at the time that we came into the market,</b></p> <p>18 <b>which is now April/May 2013, at least in terms of</b></p> <p>19 <b>exposing the proposition, was that their interests were</b></p> <p>20 <b>not aligned with what we were trying to do. In fact,</b></p> <p>21 <b>they were the opposite. They had every reason to want</b></p> <p>22 <b>the status quo to continue.</b></p> <p>23 Q. But you didn't investigate it with them at the time, did</p> <p>24 you?</p> <p>25 <b>A. We didn't discuss it with them at the time and had they</b></p> <p style="text-align: center;">Page 66</p>	<p>1 analysis or frankly even your list of all the offices</p> <p>2 that would have signed up to Agents' Mutual without the</p> <p>3 OOP rule in place?</p> <p>4 <b>A. That's a judgment we made and even if they had, even if</b></p> <p>5 <b>we had had thousands and thousands of offices, if we'd</b></p> <p>6 <b>just had a subset of the same stock that was on Zoopla</b></p> <p>7 <b>and Rightmove we would not have got traction with the</b></p> <p>8 <b>public.</b></p> <p>9 Q. So it is a judgment you made but you don't crunch the</p> <p>10 numbers or analyse them or set them out in any form at</p> <p>11 this time, do you?</p> <p>12 <b>A. Well, because our view, our consideration, was as</b></p> <p>13 <b>I referred earlier this morning: could we attract</b></p> <p>14 <b>property seekers to the portal if all we had was</b></p> <p>15 <b>a subset of what both of the existing portals had? And</b></p> <p>16 <b>we didn't think we could.</b></p> <p>17 <b>So to some degree, you know, having Countrywide and</b></p> <p>18 <b>LSL and Connells on board in those circumstances we</b></p> <p>19 <b>still didn't believe would do the job, and that's clear</b></p> <p>20 <b>actually from my notes of the four-way meeting</b></p> <p>21 <b>in January 16.</b></p> <p>22 Q. So the answer to the question is: "No, we didn't set out</p> <p>23 in spreadsheets or a list of numbers of all of the other</p> <p>24 offices that would have been prepared to sign without</p> <p>25 the OOP rule," but then you go on to give a reason why.</p> <p style="text-align: center;">Page 68</p>
<p>1 <b>shown any interest they could have contacted us, of</b></p> <p>2 <b>course.</b></p> <p>3 Q. Right.</p> <p>4 <b>A. They were aware of it.</b></p> <p>5 Q. And you didn't investigate it with Hunters, Miss Frew's</p> <p>6 organisation, did you?</p> <p>7 <b>A. Yes, we did. We talked to -- I had a meeting with the</b></p> <p>8 <b>then managing director of Hunters in May 2013 I believe.</b></p> <p>9 Q. It is right, is it not, that the big three estate agents</p> <p>10 would have given you over 2,200 agent branches, wouldn't</p> <p>11 they, if they had signed up?</p> <p>12 <b>A. I think at that time.</b></p> <p>13 Q. And that was well over your base case plan for launching</p> <p>14 with 1,000 offices, wasn't it?</p> <p>15 <b>A. That is true but I had not the slightest hope that they</b></p> <p>16 <b>would do that and sign up for one other portal.</b></p> <p>17 Q. And you didn't investigate with my own client, Gascoigne</p> <p>18 Halman, did you, whether they would have signed up even</p> <p>19 without the OOP rule?</p> <p>20 <b>A. That's true.</b></p> <p>21 Q. And it wasn't challenged that Mr Forrest says in his</p> <p>22 paragraph 48 that Gascoigne Halman would have become</p> <p>23 a member of AM even without the OOP rule in place?</p> <p>24 <b>A. Well, that's his view.</b></p> <p>25 Q. Can you show me the document, your spreadsheet or your</p> <p style="text-align: center;">Page 67</p>	<p>1 That is right, isn't it?</p> <p>2 <b>A. That's what I just said.</b></p> <p>3 Q. Yes, thank you. In fact, I suggest to you that you</p> <p>4 performed simply no analysis of how many agent branches</p> <p>5 there would have been out there who would have been</p> <p>6 prepared to sign up without the OOP rule, did you?</p> <p>7 <b>A. No.</b></p> <p>8 Q. I suggest to you in addition that it's not necessary to</p> <p>9 restrict agents to list with only two portals. There</p> <p>10 are lots of examples, aren't there, of multi-listing on</p> <p>11 more than two portals, correct?</p> <p>12 <b>A. I'm not aware of many, certainly not since the merger.</b></p> <p>13 Q. Well, Mr Symons, even he said, he's one of your</p> <p>14 witnesses, he said that at times his organisation signed</p> <p>15 up for listing on more than two portals, didn't he?</p> <p>16 <b>A. He did say that.</b></p> <p>17 Q. And another one of your witnesses, Mr Wyatt, he also</p> <p>18 said the same, didn't he?</p> <p>19 <b>A. He did.</b></p> <p>20 Q. All of the big three said that, didn't they, in the</p> <p>21 meeting, they would be prepared to sign up with you</p> <p>22 without the OOP rule even though they wanted to retain</p> <p>23 Rightmove and Zoopla, yes?</p> <p>24 <b>A. They said that.</b></p> <p>25 Q. Hunters, Miss Frew, said the same thing, didn't she?</p> <p style="text-align: center;">Page 69</p>

<p>1 <b>A. She did.</b></p> <p>2 Q. Mr James in his witness statement, he wasn't challenged</p> <p>3 when he said he would have been prepared to sign up with</p> <p>4 more than two? That's right, isn't it?</p> <p>5 <b>A. One of the things that Mr Symons said, though, I think</b></p> <p>6 <b>it's fair to bring in, and Mr Wyatt indeed as well, is</b></p> <p>7 <b>that they didn't focus on those portals and many of them</b></p> <p>8 <b>disappeared. They didn't have to leave them. They were</b></p> <p>9 <b>just no longer there.</b></p> <p>10 Q. That is right, but he said he would be prepared to sign</p> <p>11 up to more than two, didn't he, Mr James, in the right</p> <p>12 circumstances?</p> <p>13 <b>A. I don't remember what Mr James said.</b></p> <p>14 Q. Well, gentlemen, members of the Tribunal, it is the</p> <p>15 final paragraph of Mr James' statement and it wasn't</p> <p>16 challenged.</p> <p>17 Even some of your own founder members are</p> <p>18 historically big multi-listers, aren't they?</p> <p>19 <b>A. Circumstances change over time but I think I've made</b></p> <p>20 <b>very clear that my view is that the only two post-merger</b></p> <p>21 <b>that have mattered to anyone and made any material</b></p> <p>22 <b>difference to competition are Rightmove and Zoopla.</b></p> <p>23 Q. The fact is, Mr Springett, that even your own founder</p> <p>24 members, some of the important ones, historically have</p> <p>25 been big multi-listers, haven't they?</p> <p style="text-align: center;">Page 70</p>	<p>1 <b>there. I travelled far and wide, as you noted, round</b></p> <p>2 <b>the country, exposing the proposition and that was to</b></p> <p>3 <b>some extent our market research phase.</b></p> <p>4 Q. Exactly. And that is as far as it went. Can you show</p> <p>5 me the list of agents who said to you during any one of</p> <p>6 these presentations or what you distilled at the end of</p> <p>7 them, who said "I can afford, I'm prepared to pay;</p> <p>8 I can't afford, I'm not prepared to pay"? Where is that</p> <p>9 list?</p> <p>10 <b>A. That discussion took place earlier in 2011 when</b></p> <p>11 <b>I actually was paid to do some work, which was meetings</b></p> <p>12 <b>with I think 15 to 20 agents to gauge their view on what</b></p> <p>13 <b>was going on in the market.</b></p> <p>14 Q. I see. So your view on who could afford to pay on more</p> <p>15 than two was based on taking soundings from 15 or 20</p> <p>16 agents, was it?</p> <p>17 <b>A. That was the initial grouping, yes.</b></p> <p>18 Q. That was what it was based on? I just want to be</p> <p>19 completely clear about this.</p> <p>20 <b>A. What's "this"?</b></p> <p>21 Q. When you say that agents couldn't afford to pay --</p> <p>22 <b>A. Yes, my initial view was based on those and then as we</b></p> <p>23 <b>expanded and presented the proposition I gathered more</b></p> <p>24 <b>input on that.</b></p> <p>25 Q. That is right, and you never created a list, did you,</p> <p style="text-align: center;">Page 72</p>
<p>1 <b>A. I think historically is right.</b></p> <p>2 Q. Let me show you a document to make that point good. It</p> <p>3 is bundle 1/105. I appreciate this is not your document</p> <p>4 and I also appreciate it is 2011 but it seems to be,</p> <p>5 doesn't it, internal communications within Savills about</p> <p>6 the number of different portals that they are on at that</p> <p>7 date in time?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. By my reckoning, even if you count all of the DPG ones</p> <p>10 as one, that's five different portals that they are on</p> <p>11 at this time?</p> <p>12 <b>A. That's true, but obviously since that time there has</b></p> <p>13 <b>been further consolidation so that Zoopla and DPG have</b></p> <p>14 <b>subsequently merged which reduces it again by one.</b></p> <p>15 Q. In your witness statement, Mr Springett, you say that</p> <p>16 another reason for the OOP rule is that you had been</p> <p>17 informed by agents that some couldn't afford to pay for</p> <p>18 more than two portals, yes?</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. That is right, but you didn't perform any analysis</p> <p>21 whatsoever, did you, about how many agents there are out</p> <p>22 there who could afford and who could not afford to pay</p> <p>23 for more than two, right?</p> <p>24 <b>A. What we -- effectively what we took during 2013 was</b></p> <p>25 <b>a survey, if you like. We put the proposition out</b></p> <p style="text-align: center;">Page 71</p>	<p>1 of: this agent, this agent, this agent and this agent,</p> <p>2 they say they can't afford; this agent, this agent and</p> <p>3 this agent they say they can afford? You didn't do that</p> <p>4 ever?</p> <p>5 <b>A. I didn't remotely think it was a practical thing to do.</b></p> <p>6 Q. And in fact you still have absolutely no data that you</p> <p>7 are able to present to this Tribunal, have you, as to</p> <p>8 how many agents can afford to pay on more than two</p> <p>9 portals and who can't afford to pay on more than two</p> <p>10 portals, have you?</p> <p>11 <b>A. No.</b></p> <p>12 Q. It is right, isn't it, that Zoopla launched without any</p> <p>13 form of exclusivity rule? That is right?</p> <p>14 <b>A. I believe so.</b></p> <p>15 Q. And they did so in the face of a dominant Rightmove,</p> <p>16 yes?</p> <p>17 <b>A. Yes.</b></p> <p>18 Q. So why don't you mention that in your witness statement</p> <p>19 when you are going through the other people who have</p> <p>20 entered and how they've entered?</p> <p>21 <b>A. I don't know. I didn't include it. I'm not sure it was</b></p> <p>22 <b>relevant.</b></p> <p>23 Q. I suggest to you another less restrictive way of</p> <p>24 entering the market would have been to sign up some core</p> <p>25 anchor tenants.</p> <p style="text-align: center;">Page 73</p>

<p>1 <b>A. But before we leave Zoopla, actually, let's be realistic</b>  2 <b>about this. They entered the market, they ran for</b>  3 <b>a year, they got almost nowhere in terms of traffic and</b>  4 <b>then they embarked on a private equity backed</b>  5 <b>consolidation of the market through acquisition.</b>  6 Q. When did they introduce their exclusivity requirement?  7 <b>A. They didn't do that.</b>  8 Q. No, they didn't, did they?  9 <b>A. But by the time they had completed that, and let's take</b>  10 <b>2011 as an example, they had round about 10,000 paying</b>  11 <b>customers of which around 8,000 were estate agent</b>  12 <b>branches and it was at that point that they were saying</b>  13 <b>that there was a risk that they might have to exit the</b>  14 <b>market unless the merger was allowed.</b>  15 Q. I suggest to you, Mr Springett, that another less  16 restrictive alternative would have been for you to enter  17 the market by signing up a group of anchor tenants; that  18 is right, isn't it?  19 <b>A. All our members are anchor tenants.</b>  20 Q. You could have signed up a group of anchor tenants to  21 get you over the 1,000 agent branches model that you in  22 your business plan describe as allowing you to achieve  23 sustainable entry, couldn't you?  24 <b>A. I don't know what you mean by that because that's what</b>  25 <b>we did to get the venture off the ground.</b></p> <p style="text-align: center;">Page 74</p>	<p>1 Q. That is right, but they would have been -- they were in  2 favour of three strong portals competing and they could  3 have provided you with easily enough anchor tenants to  4 get the venture up and off the ground, couldn't they?  5 <b>A. I don't accept that. In fact, I say in my note of the</b>  6 <b>meeting that even with them on board, without the One</b>  7 <b>Other Portal rule we would remain a distant third in the</b>  8 <b>market.</b>  9 Q. But the truth is, Mr Springett, you personally had set  10 ideas, didn't you, about what the big three would and  11 wouldn't do right from the beginning?  12 <b>A. We discussed it. We made an assessment. I think what's</b>  13 <b>happened subsequently is an illustration that we were</b>  14 <b>right.</b>  15 Q. You made an assessment based upon your preconceptions  16 and without investigating it, didn't you?  17 <b>A. No.</b>  18 Q. Perhaps I could just draw your attention then to  19 bundle 1/191. We looked at this before.  20 <b>A. This is 2011 now.</b>  21 Q. That's right, 2011. We have seen this before but now  22 I am on the first page of the document, so  23 Mr Michael Hodgson's comments. Do you see there is  24 a square icon, the first square icon on the page:  25 "Are we sure that all three main groups, LSL,</p> <p style="text-align: center;">Page 76</p>
<p>1 Q. You could have signed up a group of 1,000 people who  2 would have been prepared to sign but without the OOP  3 rule and make them your anchor tenants?  4 <b>A. No, actually I don't think that's true. You heard</b>  5 <b>Mr Symons say that they had seen lots of these purported</b>  6 <b>market entrants come and go and what attracted him to</b>  7 <b>this proposition was precisely the One Other Portal rule</b>  8 <b>because he felt it gave the proposition a chance.</b>  9 Q. We saw in the note of the four-party meeting, didn't we,  10 Mr Springett, that both Miss Platt on behalf of  11 Countrywide and Mr Livesey on behalf of Connells, were  12 actively in favour of a market in which there would be  13 three strong portals competing; that is right, isn't it?  14 <b>A. I think they were in favour of us dropping our One Other</b>  15 <b>Portal rule.</b>  16 Q. Well, Mr Livesey -- they are your notes of the meeting,  17 aren't they?  18 <b>A. Yes.</b>  19 Q. And they do say, and I quote, as regards Mr Livesey, his  20 favoured position "would be three strong portals  21 competing". So that is what he said, isn't it?  22 <b>A. That is what they both said.</b>  23 Q. That's right.  24 <b>A. But I think their motive was to draw us towards</b>  25 <b>releasing our One Other Portal rule.</b></p> <p style="text-align: center;">Page 75</p>	<p>1 Connells and Countrywide, are all committed in some way  2 to Rightmove or DPG/Zoopla?"  3 That is his question, and your response is:  4 "I have no reliable information on this, either in  5 relation to Zoopla now or post-merger. We should  6 discuss whether to ask and who should ask".  7 But you didn't, did you?  8 <b>A. Well, because events were -- our information base</b>  9 <b>improved, shall we say, because we became aware that</b>  10 <b>a strategic partnership had been formed between those</b>  11 <b>three corporates and Zoopla and we were also aware that</b>  12 <b>they had long-term contracts with Rightmove in place.</b>  13 Q. You never approached a single one of these people --  14 <b>A. It was published information.</b>  15 Q. Mr Springett, you never approached a single one of those  16 big three which Mr Hodgson is suggesting, "Are we sure  17 they're committed?" You never approached a single one  18 of them prior to September 2015, eight months after  19 launch, did you?  20 <b>A. Because there was published information as early as 2011</b>  21 <b>to say where they were committed.</b>  22 Q. So the answer is: "Yes, we didn't approach them"?  23 <b>A. Yes, we didn't approach them directly, no.</b>  24 Q. Another less restrictive alternative that could have got  25 you into the market is you could have had just some</p> <p style="text-align: center;">Page 77</p>

<p>1 founder members giving you exclusivity, couldn't you, 2 rather than every member giving you a form of 3 exclusivity, yes? 4 <b>A. I saw that in Mr Livesey's witness statement. So what 5 he's suggesting there is that our 240 branches of our 6 six founder members should commit themselves to use only 7 one other portal and everybody else be allowed not to do 8 that.</b> 9 Q. You -- 10 <b>A. That is the suggestion, right?</b> 11 Q. You have some major listed companies, haven't you, as 12 founder members? 13 <b>A. We have one listed company I think.</b> 14 Q. Some of them have got tens of millions of turnover, yes? 15 <b>A. Globally, not necessarily in their residential UK 16 business.</b> 17 Q. So yes is the answer; is that right? 18 <b>A. Well, the question was: have we got public limited 19 companies, and we have one.</b> 20 Q. You have founder members who have, some of them have 21 tens of millions of pounds of turnover, don't they? 22 <b>A. Savills is a big company, Knight Frank is a global 23 enterprise, yes.</b> 24 Q. That is right. Sorry, may I just check something, 25 Mr Springett. (Pause)</p> <p style="text-align: center;">Page 78</p>	<p>1 a preferred status? 2 <b>A. Yes, in return for the large chunk of money that the 3 selling shareholders received.</b> 4 Q. I suggest to you you could have signed up all the agents 5 in areas where Zoopla was already weak or of little 6 presence and then you wouldn't have needed the OOP rule 7 at all, would you? 8 <b>A. I'm not sure that would again address the requirement to 9 attract property seekers.</b> 10 Q. Mr Forrest explains, doesn't he, very clearly, and none 11 of this was challenged, that in his area it was frankly 12 no big deal to drop Zoopla because he didn't think it 13 was very good and therefore his organisation would have 14 signed up completely irrespective of the OOP rule. That 15 is right, isn't it? 16 <b>A. That is why the local market --.</b> 17 Q. So you could have gone round by way of entry to find all 18 those other local markets where Zoopla was weak or of 19 little presence and you wouldn't have needed the OOP 20 rule at all would you? 21 <b>A. No, because it still doesn't address how to attract the 22 consumer audience with a differentiated property stock.</b> 23 Q. I will come on to the uniqueness in a moment. That's 24 what you are talking about? 25 <b>A. Yes, it is.</b></p> <p style="text-align: center;">Page 80</p>
<p>1 But it is right, isn't it, that Rightmove entered 2 the market, didn't it, by just obtaining a degree of 3 exclusivity from its founder members and not from its 4 other members, yes? 5 <b>A. Well, let's remember that they entered in 2,000 and 6 let's remember also that their founder members had 2,000 7 branches between them.</b> 8 Q. So the answer is again yes, isn't it? 9 <b>A. Yes.</b> 10 Q. Thank you. I suggest to you you also could have entered 11 in a less restrictive manner by having an obligation to 12 prefer the OTM portal, such that, for instance, they 13 spend -- the members spend as much on OTM as they spend 14 with other portals, yes? 15 <b>A. That wouldn't have addressed the point about the 16 requirement to attract the consumer, or let's get away 17 from that, property seeker side of the network.</b> 18 Q. Primelocation had such a preferred status for its 19 members, didn't it, at a later stage in its existence? 20 <b>A. That was one of the terms of the sale and purchase 21 agreement.</b> 22 Q. I suggest to you -- 23 <b>A. It was in the context of the sale to The Daily Mail 24 Group.</b> 25 Q. But factually it is right, isn't it, they had</p> <p style="text-align: center;">Page 79</p>	<p>1 Q. I will come on to that in a minute. Where did you 2 analyse these other options that I have been putting to 3 you about preferred spending or signing up in areas 4 where Zoopla was weaker or of little presence or founder 5 member exclusivity? Where are the documents that 6 analyse those at the time you are putting together these 7 business plans? 8 <b>A. There don't need to be documents for those things. 9 A lot of this was discussed within the steering 10 committee and then with the benefit of the various 11 inputs that we had from the work I had done, our 12 knowledge of the market, our observation of what was 13 going on, published reports, OFT being an example of one 14 of those, and so there were lots of inputs to that idea.</b> 15 Q. I suggest to you there is another one, Mr Springett, 16 there is a long list of these that I have already been 17 through, but another one is that you could have entered 18 the market by what Mr Livesey referred to as 19 "penetration pricing", yes? 20 <b>A. Well, I understand what he means by that. I don't see 21 how that -- where the money would have come from to 22 allow us to run the business and market it by entering 23 with penetration pricing.</b> 24 Q. Primelocation entered with penetration pricing, didn't 25 it?</p> <p style="text-align: center;">Page 81</p>

1 **A. By accident, yes.**  
 2 Q. And indeed the penetration pricing was just for a matter  
 3 of months, wasn't it? It is almost the definition of  
 4 penetration pricing, correct?  
 5 **A. I think there has been some rewriting of history gone**  
 6 **on, not just for Primelocation but particularly for**  
 7 **Rightmove because I think both of those portals entered**  
 8 **the market with a business model that turned out not to**  
 9 **be a business model that would work and, therefore, at**  
 10 **the appropriate time had to go to their shareholders and**  
 11 **say, "Would you be prepared to pay-to-list?" So the**  
 12 **idea that that was a carefully crafted strategy from the**  
 13 **outset is not true.**  
 14 Q. But the effect, whether deliberate or otherwise, was  
 15 that Primelocation entered with penetration pricing by  
 16 which I mean low or zero rates for the initial months.  
 17 That is right, isn't it?  
 18 **A. Okay, if that's how you want to characterise it but**  
 19 **again that was the year 2001.**  
 20 Q. So the answer is yes, but that was in 2001; is that  
 21 correct?  
 22 **A. I am saying it wouldn't have been a viable strategy now.**  
 23 Q. Yes, but Mr Springett, I am just anxious -- so that we  
 24 are on the facts.  
 25 **A. Yes.**

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1 Q. The answer is yes, isn't it?  
 2 **A. What's the question again?**  
 3 Q. The question is Primelocation did enter with what is  
 4 effectively penetration pricing when it entered the  
 5 market, didn't it?  
 6 **A. To the extent that it wasn't charging agents, yes.**  
 7 Q. Thank you. And that only lasted for a period of a few  
 8 months, didn't it?  
 9 **A. That's right.**  
 10 Q. And in fact, you have --  
 11 **A. Until we ran out of money.**  
 12 Q. No, because the whole point of penetration pricing,  
 13 Mr Springett, is it doesn't last very long and then you  
 14 start to charge so you don't run out of money. That is  
 15 right, is it not?  
 16 **A. That is true but in entering this market you would have**  
 17 **needed a very, very substantial amount of funding in**  
 18 **order to deploy that strategy and it might still not**  
 19 **have worked because of the reasons I was just describing**  
 20 **about the need to attract property seekers.**  
 21 Q. You are welcome to point me anywhere in this  
 22 10,000 pages, Mr Springett, to where you approached the  
 23 seed corn funders or the investment capitalists or the  
 24 venture capitalists for this other source of income in  
 25 launching AM. Can you point me to me paragraph that

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1 shows any of those things?  
 2 **A. It really wouldn't have done the job because our**  
 3 **perspective was, and it was borne out in practice when**  
 4 **we came to talk to a wide range of agents, is what they**  
 5 **did not want was to replicate eventually what was**  
 6 **already in the market whereby the profit motive of**  
 7 **shareholders was the thing that drove these businesses,**  
 8 **and the results are there for everybody to see. They**  
 9 **wanted a portal which was capable of becoming a market**  
 10 **leader but did so at a price to them which bore some**  
 11 **relationship to the costs of running these things.**  
 12 Q. But I am right in saying, aren't I, Mr Springett, that  
 13 you have now, much much later than launch started to  
 14 offer to would be new members or indeed non-members very  
 15 low rates and short term deals, haven't you?  
 16 **A. We absolutely have done that, yes. We have had to do**  
 17 **that because of the kind of pricing approach that Zoopla**  
 18 **has adopted.**  
 19 Q. Mr Springett, just on this particular topic, can I draw  
 20 your attention to a document in bundle 13. It is to be  
 21 found in some board minutes, the first page of which is  
 22 at 7437. If you want to see the first page it is 7437.  
 23 Board minutes, 9 November 2015. My copy is in yellow.  
 24 The paragraph to which I would like to draw your  
 25 attention is on 7439 under the heading "Business

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1 update".  
 2 **A. Yes.**  
 3 Q. Do you see the one beginning "Trials of discounted fee  
 4 offers"?  
 5 **A. Yes.**  
 6 Q. That is not confidential, is it? These are out there in  
 7 the market, right?  
 8 **A. Yes, that's okay.**  
 9 Q. Then can you just read the paragraph at the top of the  
 10 next page to yourself in the first instance. "There was  
 11 general approval", that one. (Pause)  
 12 **A. Yes.**  
 13 Q. Is any of that confidential?  
 14 **A. I think I'm happy for it to be covered.**  
 15 Q. I am just interested in that one because we agreed on  
 16 the facts that you have engaged in these discounted fee  
 17 offers much more recently, but even in those cases it  
 18 seems from these minutes that the strategy was to lock  
 19 out competitors, wasn't it?  
 20 **A. Well, to the extent that we were approaching people who**  
 21 **were only on one portal and the reason we found that**  
 22 **they were only on one portal is that they couldn't**  
 23 **afford to be on two portals, certainly not at full**  
 24 **rates, we saw that as a way of increasing listings by**  
 25 **offering those people a low incremental price and**

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<p>1 clearly with the <b>One Other Portal rule in place as long</b>                  2 <b>as they were in contract with both those portals that</b>                  3 <b>would have that effect.</b>                  4 Q. That is right. Indeed, that effect, which I suggest to                  5 you is clearly anti-competitive is the company strategy,                  6 isn't it?                  7 <b>A. No, it's not the company strategy.</b>                  8 Q. It says here there was general approval for the strategy                  9 and then it goes on to say lock out competitors?                  10 <b>A. Yes, but you are saying that is the objective and the</b>                  11 <b>objective of this is simply to build our membership.</b>                  12 Q. What does strategy mean if it doesn't mean objective?                  13 <b>A. It means how you go about achieving your objective.</b>                  14 Q. Exactly, thank you. I suggest to you that you wouldn't                  15 have needed your restrictions in place or you wouldn't                  16 have needed them for as long if you had obtained                  17 additional revenue from what you called additional                  18 products being sold to OTM members. That is right,                  19 isn't it?                  20 <b>A. That would be true of any sorts of revenue. If we had</b>                  21 <b>more revenue we would grow faster -- if we grew the</b>                  22 <b>business quicker we would grow faster et cetera.</b>                  23 Q. So it is true then. So your point being, and I think we                  24 are agreed on this, that if you had grown faster you                  25 wouldn't have needed the restriction in place for so</p> <p style="text-align: center;">Page 86</p>	<p>1 Yes? But I would like to show you another document.                  2 You know you are on very vulnerable territory here,                  3 don't you, Mr Springett, if you look at bundle 15/8274.                  4 Picking up the chain, as one does later in the bundle,                  5 it is the next page, 8275. You see there is a "Hi Ian"                  6 from Vicky. "Please see below a press release about                  7 Northern Ireland." That is on 11 March 2016.                  8 <b>A. Yes.</b>                  9 Q. Then going earlier in the bundle, so the previous page,                  10 you write back at the bottom of the page:                  11 "Hi Vicky, what do you mean by the difference in the                  12 rule?"                  13 <b>A. Yes, I see that.</b>                  14 Q. So she in the draft press release had talked about                  15 a different rule in Northern Ireland?                  16 <b>A. Yes.</b>                  17 Q. She sends you the draft press release, correct?                  18 <b>A. Yes.</b>                  19 Q. And you write back saying:                  20 "What do you mean by the difference in the rule?"                  21 And she writes back to you saying:                  22 "Where Northern Ireland agents don't select to                  23 choose Property Pal as their one other portal ..."                  24 Helen writes to you, I beg your pardon:                  25 "... don't select to choose Property Pal as their</p> <p style="text-align: center;">Page 88</p>
<p>1 long, right?                  2 <b>A. Yes, that's self-evident.</b>                  3 Q. Thank you. So it follows as well then that if you had                  4 grown faster by getting in listing fees from online                  5 agents and from new home developers, again, you wouldn't                  6 have needed your restrictions in place for so long,                  7 would you?                  8 <b>A. I made the point to you yesterday that our proposition</b>                  9 <b>is geared to full service agents so it would not have</b>                  10 <b>been as attractive in the market to those sorts of</b>                  11 <b>customers if we had, for example, taken new homes</b>                  12 <b>developers as a customer who are in the end vendors</b>                  13 <b>directly listing on some portals. So it doesn't follow</b>                  14 <b>just by admitting those categories would necessarily</b>                  15 <b>have helped us build the business. In fact, we believed</b>                  16 <b>that our approach has been very appealing to that</b>                  17 <b>category of potential customer.</b>                  18 Q. I suggest to you that yet another less restrictive                  19 alternative for entering the market is that which you                  20 use in Northern Ireland. That is right, isn't it?                  21 <b>A. And I've agreed with you about that previously I think.</b>                  22 Q. That is right. In fact, we looked at the documents                  23 where you agreed with me in which you had written that:                  24 "The operation of the OOP rule in Northern Ireland                  25 makes us slightly out on a limb."</p> <p style="text-align: center;">Page 87</p>	<p>1 one other portal for all their properties but instead                  2 choose one other portal for each individual property."                  3 Just bear with me, Mr Springett. That is one of the                  4 differences in Northern Ireland, isn't it, you can                  5 choose by property as opposed to --                  6 <b>A. I think we did go over that.</b>                  7 Q. Can I just ask you a question first. Yes?                  8 <b>A. Yes.</b>                  9 Q. So that is one of the differences?                  10 <b>A. Yes.</b>                  11 Q. And the other difference is that this less restrictive                  12 rule applies for the first 12 months, doesn't it?                  13 <b>A. That's right.</b>                  14 Q. And I think at the top of the page, recognising that                  15 this causes you a considerable difficulty you say:                  16 "Ah yes, that will be handy in court! Ha ha."                  17 That is because, Mr Springett, you know perfectly                  18 well that that shows a less restrictive entry method for                  19 one part of this relevant market, doesn't it?                  20 <b>A. Let's go through this in series. So I get an email from</b>                  21 <b>our PR manager that says "Here's the proposed release,"</b>                  22 <b>and she says something about the difference in the rule.</b>                  23 <b>My purpose, I remember this, in writing back with the</b>                  24 <b>question was not that I didn't know the answer, but to</b>                  25 <b>make sure she did. Mrs Whiteley was quicker to the</b></p> <p style="text-align: center;">Page 89</p>

<p>1 <b>punch and gave me the answer that we both already knew</b>  2 <b>and obviously I made a flippant remark in response.</b>  3 Q. It is much more telling than that, isn't it,  4 Mr Springett, your remark at the top of the page?  5 <b>A. Well, it remains to be seen.</b>  6 Q. Yes. You have claimed as part of your case, you and the  7 company, that there wasn't a competitive market at the  8 time that OTM entered, right?  9 <b>A. I think that competition was extremely limited. There</b>  10 <b>was no switching. In their published documents both of</b>  11 <b>the major portals say that they suffer very little</b>  12 <b>attrition and that they both have a very high proportion</b>  13 <b>of the market listing with them. So that says to me</b>  14 <b>there is very little competition in that market and</b>  15 <b>I observe what's going on at grass roots level when</b>  16 <b>talking with agents, so you can connect the market</b>  17 <b>structure with what the customers are feeling as well.</b>  18 Q. But you recognise, don't you, Mr Springett, that there  19 are plenty of competing portals out there in the market  20 including at the time that you launched, don't you?  21 <b>A. There are a variety of competing portals but none that</b>  22 <b>bear on the serious competitive dynamics and it is quite</b>  23 <b>a fluid market so things can change. There has been,</b>  24 <b>particularly in the case of Zoopla, a build of their</b>  25 <b>business via acquisition. There are lots of links</b></p> <p style="text-align: center;">Page 90</p>	<p>1 it?  2 <b>A. And I think our view has been we assess each one we are</b>  3 <b>asked to assess by our members on a case-by-case basis</b>  4 <b>and we determine accordingly at that point. So what we</b>  5 <b>are looking for, for example, is the market coverage,</b>  6 <b>ownership is a big factor, whether they have links, as</b>  7 <b>very many of them do, to one or other of the duopoly</b>  8 <b>portals, in other words, content is shared or fed. So</b>  9 <b>it is things like that.</b>  10 Q. Thank you, I have made my suggestion to you and you have  11 given your answer.  12 I am going to move on to a point I said I would come  13 back to a few moments ago, the unique contents point,  14 Mr Springett.  15 <b>A. Yes.</b>  16 Q. My suggestion to you is that under the OOP rule in fact  17 you don't have any unique content on your website, do  18 you?  19 <b>A. Well, I don't think we claim to have any unique content.</b>  20 <b>The objective here was to reach a position where no one</b>  21 <b>portal has complete coverage, so you can now find the</b>  22 <b>entire market on either Rightmove and Zoopla, Rightmove</b>  23 <b>and OnTheMarket, Zoopla and OnTheMarket. And therefore</b>  24 <b>that changes the situation from what it was before our</b>  25 <b>entry and it disrupts the position where otherwise the</b></p> <p style="text-align: center;">Page 92</p>
<p>1 <b>between portals as well which sometimes aren't</b>  2 <b>immediately obvious that you have to look for.</b>  3 Q. But one reason -- sorry.  4 <b>A. I'm just describing a little bit about the network of</b>  5 <b>other smaller portals.</b>  6 Q. But one reason that we know that there are these other  7 competing portals out there is because you have a long  8 list, haven't you, as a company of what you call "other  9 competing portals", right?  10 <b>A. Well, it has accumulated over time. That's certainly</b>  11 <b>true.</b>  12 Q. That is right. Members of the Tribunal, you don't need  13 to turn it up but we handed in a list and it is right,  14 isn't it, that there is a long list of other competing  15 portals from time to time and they are other portals  16 competing with your portal, aren't they?  17 <b>A. They are.</b>  18 Q. I suggest to you that you've distorted that competition,  19 haven't you, because only one of those other ones can  20 ever be chosen by a member of OTM? That is right, isn't  21 it?  22 <b>A. Yes, if it's deemed to be a competing portal only one of</b>  23 <b>them can be included.</b>  24 Q. And therefore that disables the other ones from being  25 chosen and therefore from competing with you, doesn't</p> <p style="text-align: center;">Page 91</p>	<p>1 <b>consumers had got used to simply finding all the stock</b>  2 <b>on either Rightmove or Zoopla.</b>  3 Q. In fact, even your own steering committee founder  4 members take the view that under the One Other Portal  5 rule there will be no unique content on OTM, don't they?  6 <b>A. Well, and I take that view because we've never said</b>  7 <b>unique content. What we've said is, I think it is</b>  8 <b>referred to here and there, is a unique collection of</b>  9 <b>properties. Although I should make clear that's not</b>  10 <b>what we say in our marketing material, that is</b>  11 <b>effectively an internal term for discussion, but what it</b>  12 <b>means is a differentiated property stock. And I've</b>  13 <b>explained to you what the objective was: to move the</b>  14 <b>market away from the situation where any new entrant</b>  15 <b>would only ever have a subset of what one or other of</b>  16 <b>the big portals had.</b>  17 Q. Thank you. I will just show you -- actually, I will  18 just move on to the next document.  19 As you know, I put this to you many times and you  20 defended yourself as you do, but my suggestion to you  21 all along has been that the strategy was to get rid of  22 Zoopla altogether but in those circumstances there would  23 be absolutely no unique collection on OTM, would there,  24 if Zoopla is knocked out of the market?  25 <b>A. Well, it wasn't our objective.</b></p> <p style="text-align: center;">Page 93</p>

<p>1 Q. But it is right, isn't it, that if I am right and that 2 was your objective and/or that's what you effectively 3 achieved, then you won't even have a unique collection 4 because all the properties on your side, they'll all be 5 on Rightmove, won't they?</p> <p>6 <b>A. Well, until such time as there was some genuine 7 switching and rivalry in which case not all agents would 8 be on Rightmove and not all agents would be on 9 OnTheMarket and therefore there would be a difference 10 and there should be if the market was functionable.</b></p> <p>11 Q. I have suggested to you in the past that various groups 12 of agents, not just Mr Livesey but the group in west 13 Wales and others, thought that your strategy was to 14 knock out Zoopla. On this specific issue about if you 15 knock out Zoopla does it destroy the supposed uniqueness 16 of the collection can I take you to a document you have 17 not seen in bundle 2/1034. This is an email to you from 18 Mr Cornish, again, the Acorn Limited gentleman, 19 14 June 2013, yes? Do you see that he has had a meeting 20 with you yesterday?</p> <p>21 <b>A. Yes.</b></p> <p>22 Q. Various things have come up. Look at the final 23 paragraph please: 24 "We would also welcome the chance to discuss with 25 the steering group how they see the scenario play out</p> <p style="text-align: center;">Page 94</p>	<p>1 <b>just as well in a way that they absolutely can't do at 2 the moment.</b></p> <p>3 Q. Thank you. Nearly there, Mr Springett. I am just going 4 to put forward to you a series of fairly short points 5 and then we will be done.</p> <p>6 The example of supposed entry into the property 7 market of Tescos, that is not a portal trying to enter 8 at all, was it, that was an estate agent?</p> <p>9 <b>A. I can tell you a bit about that because I was managing 10 director -- sorry, chief executive of Primelocation at 11 the time that that happened and at that point we were 12 managed independently from FindaProperty but Tesco 13 approached The Daily Mail Group because they were 14 considering setting up a portal and what they wanted was 15 for us to provide the initial content for that portal 16 and normally that was the kind of thing that I would 17 have kicked into touch in seconds but because I was then 18 part of the group and the group had broader advertising 19 relationships with Tesco we put some thought and effort 20 into it. I can remember that we were talking about 21 branding Primelocation content as Tesco Finest and 22 FindaProperty's content as the mainstream brand. 23 Luckily, from a commercial point of view, that 24 didn't go anywhere but there is no doubt in my mind that 25 it was a portal that was being developed.</b></p> <p style="text-align: center;">Page 96</p>
<p>1 where everybody jumps ship from Zoopla but stays on 2 Rightmove."</p> <p>3 He seems to have formed the impression as well as 4 Mr Livesey and the group of west Wales that the view of 5 the steering committee is to have everybody jump ship 6 from Zoopla, doesn't he?</p> <p>7 <b>A. That is exactly what it doesn't say, isn't it? He 8 wouldn't be saying it in that way if that's what I'd 9 proposed.</b></p> <p>10 Q. But it is interesting that what he points out, the 11 proposition I was just putting to you, wasn't it, that 12 if this was to be the case then the edge of the new site 13 being the only place to view all available property will 14 be lost. That is because all of it will be on 15 Rightmove, won't it?</p> <p>16 <b>A. But that's not our strategy. We are talking here about 17 a market entry strategy. We started with seed corn 18 funding and one person in 2013 with a view to trying to 19 build something that would add some competition to the 20 market and ultimately challenge the dominant market 21 leader which turns over 200 million a year, so there's 22 a bit of a way to go before we can provide what we are 23 setting out to, but if we do provide that, the whole 24 basis of it is that people then have a choice and they 25 can migrate from Rightmove and have something that works</b></p> <p style="text-align: center;">Page 95</p>	<p>1 Q. Thank you. The suggestion in your witness statement 2 about Google being another example, that was a very 3 half-hearted effort on their part to try to enter the 4 market, wasn't it?</p> <p>5 <b>A. Well, it wasn't felt at the time that they were to be 6 messed with. That's for sure.</b></p> <p>7 Q. Mr Springett these are your words again.</p> <p>8 <b>A. They are also, with respect, Mr Chesterman's words in 9 his 2014 report to analysts which was put to Mr Nofley 10 the other day.</b></p> <p>11 Q. Do you accept from me, Mr Springett, that you wrote on 12 21 January 2013: 13 "Google tried to enter the market but it seemed 14 a half-hearted effort and they withdrew soon 15 afterwards"?</p> <p>16 <b>A. I agree they could have given it a lot more force than 17 they did but that doesn't mean it wasn't credible, shall 18 I say.</b></p> <p>19 Q. Another example you put forward in your witness 20 statement is Property Live but actually that shut down 21 in collaboration and by agreement with Agents' Mutual, 22 didn't it?</p> <p>23 <b>A. No, it didn't.</b></p> <p>24 Q. Perhaps we can therefore look as probably the final 25 document, bundle 4/1816. Do you see this is an email</p> <p style="text-align: center;">Page 97</p>

<p>1 from you to Mr Hayward of the NAEA in October 2013?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. And towards the bottom he says:</p> <p>4 "I am happy with the memorandum of understanding.</p> <p>5 We can confirm that we will exclusively support AM."</p> <p>6 Then in summary:</p> <p>7 "If your board are happy with our release we can</p> <p>8 move immediately. Property Live will be shut down."</p> <p>9 On the previous two pages there is a written</p> <p>10 memorandum of understanding between the group that ran</p> <p>11 Property Live and Agents' Mutual Limited setting out an</p> <p>12 agreed strategy for the withdrawal of Property Live from</p> <p>13 the market, isn't there?</p> <p>14 <b>A. No, the decision to shut Property Live had been taken by</b></p> <p>15 <b>the National Association in January and you will have</b></p> <p>16 <b>heard Mr Wyatt saying he was disappointed about that and</b></p> <p>17 <b>there was a rear guard action from the members of the</b></p> <p>18 <b>NAEA to consider whether there was some other commercial</b></p> <p>19 <b>basis on which it could be continued and I believe there</b></p> <p>20 <b>was some research work done around that.</b></p> <p>21 <b>They had come to the conclusion that they were going</b></p> <p>22 <b>to shut it anyway and it was wholly their decision but</b></p> <p>23 <b>we took the opportunity to say to them, "We would very</b></p> <p>24 <b>much like to work with you and have your endorsement"</b></p> <p>25 <b>bearing in mind our constitution and our objectives and</b></p> <p style="text-align: center;">Page 98</p>	<p>1 Q. That's the point I'll end on there because that is to be</p> <p>2 found in Miss Farrell's first witness statement, your</p> <p>3 instructing solicitor, in bundle X, tab 39, please, and</p> <p>4 internal page 341. Do you have paragraph 8.5,</p> <p>5 Mr Springett?</p> <p>6 <b>A. Mmm.</b></p> <p>7 Q. This was a witness statement put in by your instructing</p> <p>8 solicitor on instructions from you. You can see there</p> <p>9 it says in the top line:</p> <p>10 "...been informed by Mr Springett that ..."</p> <p>11 <b>A. Okay.</b></p> <p>12 Q. And then at 8.5 do you see it talks about deferment of</p> <p>13 loans --</p> <p>14 <b>A. Yes.</b></p> <p>15 Q. -- from your members.</p> <p>16 <b>A. And I think because we had to put that sum of money into</b></p> <p>17 <b>deposit it has left us short of cash. The board members</b></p> <p>18 <b>have done what is described there but it has still</b></p> <p>19 <b>caused us to adjust downwards our marketing budget</b></p> <p>20 <b>because clearly we can't spend money we don't have.</b></p> <p>21 Q. But you could and you have deferred loans in the past</p> <p>22 when cash has been short, haven't you?</p> <p>23 <b>A. Yes.</b></p> <p>24 MR HARRIS: Thank you, I have no further questions.</p> <p>25 Thank you for bearing with me, Mr Springett.</p> <p style="text-align: center;">Page 100</p>
<p>1 <b>that's the basis on which we reached an agreement, but</b></p> <p>2 <b>it was wholly their decision to close it down.</b></p> <p>3 Q. Then the last point, Mr Springett, is you suggested in</p> <p>4 your evidence that there had been a diversion of funds</p> <p>5 away from the marketing in order to pay for this</p> <p>6 litigation?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Can you show me a single document, anywhere in all of</p> <p>9 these documents that bears out that suggestion?</p> <p>10 <b>A. Well, I suppose we could go through the management</b></p> <p>11 <b>accounts and I could highlight indications that it's</b></p> <p>12 <b>happened but what I can tell you, and I refer back to</b></p> <p>13 <b>what I said earlier this morning, that we're a business</b></p> <p>14 <b>that is spending every single spare penny on marketing</b></p> <p>15 <b>and so any reduction in our available funds means</b></p> <p>16 <b>a reduction in the marketing budget.</b></p> <p>17 Q. I suggest to you there is not a single document anywhere</p> <p>18 including in the management accounts that bears it out.</p> <p>19 We have hunted high and low.</p> <p>20 <b>A. I'm happy to agree with you.</b></p> <p>21 Q. In fact, at an earlier stage of the litigation when we</p> <p>22 were pressing for security for costs the generation of</p> <p>23 funds for that was by deferment by the company of</p> <p>24 repayment of loans, wasn't it?</p> <p>25 <b>A. No, it wasn't.</b></p> <p style="text-align: center;">Page 99</p>	<p>1 THE CHAIRMAN: Thank you, Mr Harris. Mr Maclean.</p> <p>2 Re-examination by MR MACLEAN</p> <p>3 MR MACLEAN: Mr Springett, I have three topics I want to</p> <p>4 discuss with you. Can you be handed, please, the</p> <p>5 transcripts bundle which is called daily transcripts on</p> <p>6 the spine. However, it doesn't have a letter. Would</p> <p>7 you turn to Day 5, please, Mr Springett. It should be</p> <p>8 at tab 5, Day 5, 9 February. You see there are four</p> <p>9 pages to each page. Do you see that, Mr Springett?</p> <p>10 <b>A. Yes.</b></p> <p>11 Q. If you turn, please, to the page which includes pages</p> <p>12 121 to 124 of the transcript. That is what I want to</p> <p>13 get to. It is internal page 31 if you use the numbers</p> <p>14 at the bottom right-hand corner. Just cast your eye</p> <p>15 over page 123 of the transcript. Do you see Mr Harris</p> <p>16 said to you: "Keep number 3 to hand." Do you see that?</p> <p>17 <b>A. Yes, I do.</b></p> <p>18 Q. "Now we're going to look at H16. Please open that to</p> <p>19 the email you wrote on 2 May 2016 which begins at 8719."</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. So let's just take that for a moment. H16/6719. Keep</p> <p>22 the transcript open, Mr Springett. Right at the</p> <p>23 beginning of the bundle, the second page there is an</p> <p>24 email from Mr Milsom to you. Do you see that? "Thanks,</p> <p>25 I am yes -- sorry."</p> <p style="text-align: center;">Page 101</p>

<p>1 <b>A. Yes.</b>  2 Q. That is what Mr Harris was showing you, okay. Let's go  3 back to the transcript. Do you see at line 14,  4 page 1223:  5 "Does that put that into context for you that's what  6 was going on?  7 "Answer: I agree, but having some more demonstrable  8 compliances.  9 Then Mr Harris suggested that the point in relation  10 to his last question is over the page at 8721. So just  11 go there with me, please. Do you see decision 2?  12 Mr Harris read that out, and then he says:  13 "In your words you say here, you say in 2016, so  14 some two years later..."  15 And then he quotes another chunk. Then the  16 suggestion to you was:  17 "That's completely inconsistent with the evidence  18 that you have just given, that you already knew about it  19 and you had already had advice to say that wasn't  20 proper, isn't it?"  21 Just read your answer, Mr Springett.  22 "To answer this question I would like to refer to  23 some documents, firstly being a letter we received from  24 the CMA on 27 March 2015."  25 Could you take bundle H10, please, and turn to 5393.</p> <p style="text-align: center;">Page 102</p>	<p>1 to be at 136. Just look at page 136 through to 143. We  2 have those here but we haven't got those in H10, do you  3 follow?  4 <b>A. I'm with you, yes, so the attachments that went with the</b>  5 <b>letter.</b>  6 Q. But the letter itself -- there is only one letter?  7 <b>A. Is the same letter.</b>  8 Q. So we can see -- let us put X5 away again.  9 <b>A. Right.</b>  10 Q. The third document you referred to in your answer to  11 Mr Harris is something you say, "I believe  12 is April 2016". So would you then take bundle H15 and  13 turn to page 8525. Would you tell me first of all, do  14 you recognise this letter and secondly, if you do, what  15 is it?  16 <b>A. This is -- I think this was not a letter directed</b>  17 <b>specifically to Agents' Mutual or OnTheMarket. This is</b>  18 <b>an open letter which was transmitted in a variety of</b>  19 <b>ways, aimed at estate agents and we are mentioned at the</b>  20 <b>bottom of the first page.</b>  21 Q. Let me just take it in stages. Would you then go over  22 the page. We see that this letter is dated 21 April.  23 <b>A. Yes.</b>  24 Q. Would you then go to page 8528 in that same bundle.  25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 104</p>
<p>1 We did in the end, through Mr Harris's gritted teeth  2 I think, later in your cross-examination look at this  3 document. H10/5393. That is the CMA letter  4 of March 2015, isn't it?  5 <b>A. Yes, it is.</b>  6 Q. We are going to come back to that in a minute. Then you  7 say:  8 "Second, my response to the CMA to that letter."  9 <b>A. Yes.</b>  10 Q. And then the letter that's referred to in these emails  11 April 2016.  12 Taking it in stages we have the CMA's letter at  13 5393, yes?  14 <b>A. Yes.</b>  15 Q. If you then turn to 5507 in that same bundle H10, tell  16 me what that is, please, Mr Springett?  17 <b>A. That's my letter which was prepared under advice from</b>  18 <b>our legal team replying to Mr Kirk Patrick of the CMA.</b>  19 Q. So that's the letter you refer to as "my response",  20 right?  21 <b>A. Yes.</b>  22 Q. If you take bundle X and keep that all open I am afraid,  23 bundle X, tab 5 this appears to be the same letter as  24 the one we have just looked at in H10 you see beginning  25 at page 130 and the difference between the two appears</p> <p style="text-align: center;">Page 103</p>	<p>1 Q. Here is one of these emails from Agents' Mutual to Ian.  2 Do you see Mr Harris gave you an example of this this  3 morning?  4 <b>A. Yes, and that is --</b>  5 Q. What's that?  6 <b>A. I am copied on any email that goes to our membership, so</b>  7 <b>this is just my version of what all members would have</b>  8 <b>received.</b>  9 Q. What is it?  10 <b>A. I'm sorry. It is a response by us to the open letter</b>  11 <b>from the CMA which, as with the first one, generated an</b>  12 <b>enormous amount of negative propoganda from our</b>  13 <b>opponents and it is there to clarify our position.</b>  14 Q. If you go back then to the transcript where we started  15 if you still have that at page 124 you said:  16 "To answer this question you would like to refer to  17 three documents."  18 That is the first CMA letter?  19 <b>A. Yes.</b>  20 Q. Your response to the CMA letter and then the April 2016  21 communication which, as you say, is not to you at all  22 but is an open letter from the CMA?  23 <b>A. Yes.</b>  24 Q. You said you didn't have those and Mr Harris said, well,  25 essentially that was too bad, and you said:</p> <p style="text-align: center;">Page 105</p>

<p>1 "It would assist me to answer if I could refer to 2 the documents." 3 And then over the page you said: 4 "I won't be able to give you the whole truth in that 5 case" and Mr Harris had to move on? 6 <b>A. Yes.</b> 7 Q. So Mr Springett, you now have those documents. You have 8 the CMA one from 2015, you have your response and you 9 have the later CMA communication. So what is the whole 10 truth then, Mr Springett? 11 <b>A. All right, so let me tell you what my recollection of 12 the whole truth is and then I can spend more time 13 looking for the precise elements, but if I go to the -- 14 could you remind me where the first letter is in the 15 bundle?</b> 16 Q. The first one is in bundle H10/5393. 17 <b>A. Yes, and bearing in mind that what we are contemplating 18 here is our communication with member agents and 19 prospective member agents. If I look at the first 20 letter and internal page 3, 5395 in the bundle, that 21 page starts with a paragraph entitled "The suspected 22 agreements or concerted practices. An estate agent 23 should act independently ..."</b> 24 <b>The CMA understands that one of the requirements of 25 membership is that in order to list properties on its</b></p> <p style="text-align: center;">Page 106</p>	<p>1 <b>taken by the incumbent portals to try to, in my words, 2 derail our entry into the market.</b> 3 Q. Just pausing there, Mr Springett, if you turn on in the 4 bundle then to the -- I think we established that your 5 letter back to the CMA starts at 5507? 6 <b>A. Yes.</b> 7 Q. And you just used the expression "derailed". Go to 8 5511, do you see halfway down that page? 9 <b>A. That is the list I was talking about. Yes, that's it.</b> 10 Q. Was there any response from the CMA to this letter? 11 <b>A. I don't believe we got a response to this letter. 12 I think we offered at any point to go and see them but 13 they didn't respond, no.</b> 14 Q. Right. I am sorry, I took you out of your course 15 I think. 16 <b>A. No, and I don't know whether this is the version 17 actually that we are looking at at 5512 that has the 18 relevant attachments, I don't think it is actually.</b> 19 Q. No, it is in bundle X. 20 <b>A. I think that is not the point that I am primarily 21 addressing though.</b> 22 <b>If we go now to H15/8525 which is the April 2016 23 letter, my recollection is that the CMA in this letter 24 expanded the concern it had beyond the choice of which 25 other portal to the joining of Agents' Mutual in some</b></p> <p style="text-align: center;">Page 108</p>
<p>1 portal agents may list on a maximum of one other portal 2 and if Agents' Mutual's members, or I guess prospective 3 members, were to meet and agree collectively either (a) 4 to list only OnTheMarket or (b) to list on the same 5 portal in addition to OnTheMarket, the CMA would regard 6 this probably or possibly as constituting a breach of 7 the law. 8 <b>And they also refer to other concerns, and as we are 9 on the subject of the plus one rule we visited this 10 paragraph the other day. Their view on all of this 11 might change if we established a position of market 12 power.</b> 13 <b>So immediately we received this letter and apart 14 from taking legal advice we made some additions to our 15 information memorandum at the appropriate place where we 16 talk about strategy to reflect precisely the second 17 paragraph under the heading "The suspected agreements or 18 concerted practices" to warn agents that they should not 19 agree amongst each other in the manner that is pointed 20 out there. We took the opportunity to then confirm our 21 understanding and we wrote to the CMA on 9 April and we 22 took the opportunity to try and say a bit more about 23 what our intentions were.</b> 24 <b>I notice toward the end of that letter we also put 25 down a little list of all the actions that were being</b></p> <p style="text-align: center;">Page 107</p>	<p>1 <b>form of collective manner.</b> 2 <b>And so as I have said numerous times, our legal 3 advice from the outset has been that agents have to take 4 their own individual decision but this was an occasion 5 where what the CMA were saying publicly expanded on its 6 letter of March 2015 by including in its potential 7 concerns some kind of collective decision to join the 8 OnTheMarket portal. I think that's laid out in the 9 second paragraph.</b> 10 <b>So what I was saying is that when we were 11 considering how to respond to that I wanted to review 12 that, as I did in fact with our legal advisers, before 13 we rushed to put out any immediate changes to our 14 material and in particular, one of my concerns was that 15 there is a significant difference between having 16 a meeting of estate agents at which we make our 17 proposals and invite them to join us and a meeting at 18 which they collectively decide to join. And what 19 I didn't want was to put out a form of words which could 20 be used to put people off doing the first of those two 21 things in the spirit of putting them off doing the 22 second of those things.</b> 23 <b>So we paused for thought. We took legal advice and 24 that's the context for the email.</b> 25 Q. Thank you. The second point I want to address is in the</p> <p style="text-align: center;">Page 109</p>

<p>1 same transcript.                  2 MR FREEMAN: Just before you do, Mr Maclean, the open letter                  3 is an open letter to estate agents.                  4 <b>A. Yes.</b>                  5 MR FREEMAN: It was not addressed to you.                  6 <b>A. No, it wasn't.</b>                  7 MR FREEMAN: It was copied to you.                  8 <b>A. That's correct. In fact, I don't recall whether it was</b>                  9 <b>even copied to us but we certainly received a copy of it</b>                  10 <b>and there was, as there had been the first time round,</b>                  11 <b>a significant propaganda effort against us as a result</b>                  12 <b>of that. But we have always wanted to make sure that we</b>                  13 <b>didn't step out of line with anything that the CMA was</b>                  14 <b>saying and therefore it was our intention to update if</b>                  15 <b>we needed to our sales and marketing material.</b>                  16 MR FREEMAN: Whereas the 2015 letter to you included the                  17 CMA's concern that Agents' Mutual might be encouraging                  18 agents to do this or that.                  19 <b>A. Yes.</b>                  20 MR FREEMAN: The 2016 letter is sent openly to estate agents                  21 and doesn't appear to include the concern about                  22 Agents' Mutual encouraging; am I right?                  23 <b>A. No, that is right. But I should explain that the</b>                  24 <b>27 March 2015 letter was sent as an advisory letter to</b>                  25 <b>us but my recollection is that the National Association</b></p> <p style="text-align: center;">Page 110</p>	<p>1 <b>A. I beg your pardon, it was absolutely 2016 because it</b>                  2 <b>followed the April 16 letter, so that is an error in the</b>                  3 <b>...</b>                  4 Q. You told me earlier when I asked you was there                  5 a response to the 2015 letter, your answer was no?                  6 <b>A. Yes, that's correct.</b>                  7 Q. So this appears to be referring -- assuming the date is                  8 wrong as you have just suggested -- to a meeting that                  9 took place in the wake of the April 2016 letter that we                  10 just looked at?                  11 <b>A. Yes, in the course of obtaining legal advice following</b>                  12 <b>not receipt as an addressee but certainly a receipt of</b>                  13 <b>a copy of the letter. As I say, we met with our</b>                  14 <b>advisers and we determined that we should once again</b>                  15 <b>seek a meeting with the CMA to try and clarify our</b>                  16 <b>strategy and objectives and to hear what they had to say</b>                  17 <b>about it.</b>                  18 Q. We can see from that email what they say. Is that where                  19 matters rest or is there some further follow up that you                  20 are aware of?                  21 <b>A. I'm not aware of any further communication, no.</b>                  22 Q. Right. Let me then turn to something else. In the same                  23 transcript as we started on, Day 5, would you turn to                  24 the page which gives you pages 173 to 176 of the                  25 transcript.</p> <p style="text-align: center;">Page 112</p>
<p>1 <b>of Estate Agents and the Association of Residential</b>                  2 <b>Letting Agents were asked to promulgate a version of</b>                  3 <b>that letter, it wasn't the precise letter but certainly</b>                  4 <b>a version of the message to all of its members. So that</b>                  5 <b>27 March letter in its advisory form was private to us</b>                  6 <b>but there was another version of it which was sent far</b>                  7 <b>and wide.</b>                  8 MR FREEMAN: Thank you.                  9 MR MACLEAN: I am very grateful to Mr Freeman.                  10 Can I just ask you, Mr Springett, to turn in bundle                  11 16 if you still have that, one of the ones we looked at.                  12 <b>A. Do I need to keep the other ones?</b>                  13 Q. You are going to need H5 in a minute.                  14 <b>A. Right.</b>                  15 Q. But you can put everything else away I think. Would you                  16 turn to page 9141, please, in H16. Do you recognise                  17 this email, Mr Springett?                  18 <b>A. Yes, I do.</b>                  19 Q. It refers to a meeting between your client,                  20 ie Agents' Mutual and the CMA on 11 May 2015. Do you                  21 see that?                  22 <b>A. Yes.</b>                  23 Q. Do you recall there being a meeting on 11 May 2015?                  24 <b>A. Yes, I attended it.</b>                  25 Q. Was it on 11 May 2015?</p> <p style="text-align: center;">Page 111</p>	<p>1 <b>A. I have that.</b>                  2 Q. Look at the bottom of 174, Mr Springett, please.                  3 Mr Harris is asking you about the west Wales group. Do                  4 you see that at line 5?                  5 <b>A. Yes.</b>                  6 Q. And he reads out a Dear Nigel email. Then look at your                  7 answer:                  8 "Well the particular context ..."                  9 Just read that to yourself, would you. Just read                  10 that to "It says exactly that" at the top of the next                  11 column. (Pause)                  12 <b>A. Thank you, yes.</b>                  13 Q. In the middle of that answer you refer to:                  14 "We were keen and we did actually at some point in                  15 2014 and it's in the bundle somewhere get their                  16 permission to issue a statement."                  17 Do you see that?                  18 <b>A. Yes.</b>                  19 Q. Would you take bundle H5 and would you turn first of all                  20 to page 2541. Would you look at the top of the page                  21 first of all. There is an email 27 March 2014, "Dear                  22 all" from you. Do you see that?                  23 <b>A. Yes. I am just trying to see who that's to.</b>                  24 Q. It is to all the people at the bottom of 2540.                  25 <b>A. Our board members.</b></p> <p style="text-align: center;">Page 113</p>

<p>1 Q. Is it? It's to --</p> <p>2 <b>A. Oh, I'm sorry, to --</b></p> <p>3 Q. I am not sure. I think you are replying to all the</p> <p>4 people that Mr Jones's email was sent?</p> <p>5 <b>A. No, I don't think that's right. I think what I've done</b></p> <p>6 <b>is forwarded that email from Mr Jones to my board</b></p> <p>7 <b>members.</b></p> <p>8 Q. I see.</p> <p>9 <b>A. And with the suggestion that they might give me consent</b></p> <p>10 <b>to issue a communication effectively to say that they</b></p> <p>11 <b>are all in a position to meet their obligations under</b></p> <p>12 <b>the contracts that they by then had signed.</b></p> <p>13 Q. We can all read page 2540 but there are emails</p> <p>14 successively from Mr Abrahmsohn from Mr Flint and from</p> <p>15 Mr Jarman. We see that, right?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. Then if you turn on in the same bundle to 2549, the same</p> <p>18 day, that was all very early in the morning, Mr Jarman,</p> <p>19 Mr Bartlett gets out of bed a bit later. Mr Bartlett,</p> <p>20 he's another board member?</p> <p>21 <b>A. He is, yes.</b></p> <p>22 Q. And then at 2550 there is an email from you:</p> <p>23 "Please find below a draft text".</p> <p>24 And then there is a draft text at 2551?</p> <p>25 <b>A. Yes.</b></p> <p style="text-align: center;">Page 114</p>	<p>1 Q. What is it?</p> <p>2 <b>A. It is the prospectus, I think the date of it is</b></p> <p>3 <b>4 June 2014, of Zoopla Property Group ahead of its IPO</b></p> <p>4 <b>which took place at that time.</b></p> <p>5 Q. Yes, it is actually dated 5 June on page 122, do you</p> <p>6 see, the bottom of page 122?</p> <p>7 <b>A. Right.</b></p> <p>8 Q. Would you turn, please, in this document to page 175</p> <p>9 using the bundle numbers. Do you see:</p> <p>10 "High growth high margin ... prescription based</p> <p>11 model"?</p> <p>12 <b>A. Yes.</b></p> <p>13 Q. Do you see in the middle of the next paragraph do you</p> <p>14 see the sentence "The vast majority" and then the</p> <p>15 following sentence "The group"?</p> <p>16 <b>A. Yes.</b></p> <p>17 <b>"The group has historically experienced a low churn</b></p> <p>18 <b>rate. The number of members who discontinue their</b></p> <p>19 <b>membership indefinitely as was ... total members."</b></p> <p>20 <b>So that is one of two pieces of information I was</b></p> <p>21 <b>referring to. This one from Zoopla and I suspect there</b></p> <p>22 <b>is another one that you might be taking me to for</b></p> <p>23 <b>Rightmove.</b></p> <p>24 Q. Not quite. If you turn to page 195 in the same</p> <p>25 document, "Party operating in financial review". Do you</p> <p style="text-align: center;">Page 116</p>
<p>1 Q. And if we go to 2562. When you referred in your answer</p> <p>2 to there being in the bundle somewhere getting</p> <p>3 permission to issue a statement. Would you look at 2562</p> <p>4 and tell me if at all that relates to the answer you</p> <p>5 gave Mr Harris?</p> <p>6 <b>A. Yes, that is the email that we were given consent by our</b></p> <p>7 <b>board member firms to issue and it was -- well, as you</b></p> <p>8 <b>can see, it was in response to activity in the market by</b></p> <p>9 <b>our competitors to try to I think unsettle other members</b></p> <p>10 <b>and prospective members and to try to tell them that it</b></p> <p>11 <b>would be impossible for our board firms on launch date</b></p> <p>12 <b>to list with OnTheMarket on a one other portal basis</b></p> <p>13 <b>because they had signed intra contracts which would</b></p> <p>14 <b>contradict --</b></p> <p>15 Q. Thank you. The final point, Mr Springett, which I hope</p> <p>16 I can do in the four minutes I have left. At page 86 of</p> <p>17 today's transcript in answer to a question from</p> <p>18 Mr Harris you referred to the published documents from</p> <p>19 Rightmove and Zoopla in the context of switching. Do</p> <p>20 you remember?</p> <p>21 <b>A. Yes, I do, yes.</b></p> <p>22 Q. Would you take, please, bundle E1 and would you turn in</p> <p>23 it to page 123. Just help me, Mr Springett, what is</p> <p>24 this? Do you recognise this document?</p> <p>25 <b>A. I do.</b></p> <p style="text-align: center;">Page 115</p>	<p>1 see that?</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. At the bottom of the page:</p> <p>4 "In the six months ended 31 March 2014 the group</p> <p>5 [that is the Zoopla Group] generated revenues of</p> <p>6 38.3 million, an increase of 26.5 per cent as compared</p> <p>7 to 30.3 million in the six months ended 31 March 2013</p> <p>8 ..."</p> <p>9 <b>A. Yes.</b></p> <p>10 Q. And then there are some key performance indicators</p> <p>11 including number of visits, number of leads and ARPA.</p> <p>12 Do you see that?</p> <p>13 <b>A. Yes.</b></p> <p>14 Q. Then there is a reference to number of visits at 197:</p> <p>15 "The group measures the number of visits [the top of</p> <p>16 the page] to the group's websites and mobile application</p> <p>17 via Google analytics."</p> <p>18 Do you recognise what Google analytics is?</p> <p>19 <b>A. Yes, I do. It is a measurement of web activity. We use</b></p> <p>20 <b>it, Zoopla uses it and I believe Rightmove also uses it.</b></p> <p>21 Q. Would you look at "number of members" on that same page</p> <p>22 at the bottom. Do you see that heading?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. And in the paragraph beginning "The number of members".</p> <p>25 Do you see?</p> <p style="text-align: center;">Page 117</p>

<p>1 <b>A. Yes.</b></p> <p>2 Q. Have a look at the last sentence beginning "The group's</p> <p>3 agent churn..."</p> <p>4 <b>A. "The group's agent churn. The number of estate agents</b></p> <p>5 <b>and letting agents who do not renew their membership as</b></p> <p>6 <b>a percentage of total agents who are members has</b></p> <p>7 <b>historically been low and usually linked to the natural</b></p> <p>8 <b>churn in the estate agency market of branch openings and</b></p> <p>9 <b>closings".</b></p> <p>10 Q. Is that something you had in mind in answer to</p> <p>11 Mr Harris?</p> <p>12 <b>A. Yes, it is.</b></p> <p>13 Q. Then finally, page 201 do you see "Current trading and</p> <p>14 future prospects"?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. Do you see the sentence:</p> <p>17 "The group's strong operating momentum has</p> <p>18 continued."</p> <p>19 <b>A. Yes.</b></p> <p>20 Q. Is that a phenomenon you would recognise or not?</p> <p>21 <b>A. In relation to Zoopla?</b></p> <p>22 Q. Yes.</p> <p>23 <b>A. Absolutely I would. Since this time their claims of</b></p> <p>24 <b>their brand awareness have become more bullish. They</b></p> <p>25 <b>now say they have greater brand awareness than Rightmove</b></p> <p style="text-align: center;">Page 118</p>	<p>1 <b>A. Yes.</b></p> <p>2 Q. We see the revenue and the audience and value which is</p> <p>3 percentage of leads?</p> <p>4 <b>A. Yes.</b></p> <p>5 Q. You may have heard me put this document to some of the</p> <p>6 witnesses but in very broad terms the first two pie</p> <p>7 charts are roughly 2 to 1 in terms of ratios and the</p> <p>8 third one is 1 to 1.</p> <p>9 My question is, to what would you attribute the</p> <p>10 difference in the ratios in the third pie chart, namely</p> <p>11 1 to 1 compared to the ratio in the first two pie charts</p> <p>12 which is in broad terms 2 to 1?</p> <p>13 <b>A. It is a wholly different methodology for generating</b></p> <p>14 <b>leads within a rather different definition between the</b></p> <p>15 <b>two portals and so I think Zoopla during this period was</b></p> <p>16 <b>set up to generate more measurable activity and I am</b></p> <p>17 <b>thinking emails and measurable phone calls than</b></p> <p>18 <b>Rightmove would have been.</b></p> <p>19 MR MACLEAN: Thank you very much, Mr Springett. Those are</p> <p>20 all my questions in re-examination. Does the Tribunal</p> <p>21 have any questions?</p> <p>22 THE CHAIRMAN: No, we have no questions. Thank you very</p> <p>23 much, Mr Springett. You are released.</p> <p>24 <b>A. Thank you.</b></p> <p>25 <b>(The witness withdrew)</b></p> <p style="text-align: center;">Page 120</p>
<p>1 <b>does. I think their visit numbers have increased.</b></p> <p>2 <b>I think their ARPA has increased, and I am going from</b></p> <p>3 <b>memory, relating to their 2016 full year performance but</b></p> <p>4 <b>I think on all of those metrics that has increased.</b></p> <p>5 Q. Finally, Mr Springett, in an earlier answer on Day 6 you</p> <p>6 referred at page 35 to the Zoopla IPO prospectus but you</p> <p>7 went on to say you were referring to Zoopla being "neck</p> <p>8 and neck in terms of coverage by agents, very close on</p> <p>9 brand awareness and I think ahead on lead generation."</p> <p>10 The final document I want to show you is back in</p> <p>11 bundle H2, if the Tribunal will just bear with me.</p> <p>12 Would you turn to page 688. It is not your document,</p> <p>13 Mr Springett, it is Zoopla's document but are you</p> <p>14 familiar with this document from Mr Chesterman</p> <p>15 in March 2013?</p> <p>16 <b>A. I am, yes.</b></p> <p>17 Q. In the context of your reference in your answer to</p> <p>18 Mr Harris about lead generation, would you turn to</p> <p>19 page 685. You should be looking at three pie charts?</p> <p>20 <b>A. Yes.</b></p> <p>21 Q. If I have understood this, which I almost certainly have</p> <p>22 not, the first one deals with revenue. Do you see that?</p> <p>23 <b>A. Yes.</b></p> <p>24 Q. Split between Rightmove and ZPG. So this is</p> <p>25 post-merger, right?</p> <p style="text-align: center;">Page 119</p>	<p>1 MR MACLEAN: I am sorry, I trespassed for four minutes. We</p> <p>2 have to do a little reorganisation. Where would you</p> <p>3 like Mr Harris and I to be this afternoon? I ask this</p> <p>4 with a little trepidation.</p> <p>5 THE CHAIRMAN: Can I answer in the negative. Not in that</p> <p>6 row. We don't envisage that you will play a role in the</p> <p>7 hot tubbing. The reason for that is should you wish to</p> <p>8 retrace any matter that we traverse with the experts</p> <p>9 you will be entirely free to do so in cross-examination</p> <p>10 and that is a gloss I think on the normal rules of hot</p> <p>11 tubbing. But I don't know if there is room in the row</p> <p>12 immediately behind.</p> <p>13 MR MACLEAN: If they squeeze up.</p> <p>14 THE CHAIRMAN: That would probably be satisfactory. But if</p> <p>15 you could make efforts to move your materials to one</p> <p>16 side that would be very helpful.</p> <p>17 MR MACLEAN: Very good.</p> <p>18 THE CHAIRMAN: As I think we said in the protocol the</p> <p>19 experts really only need their reports and the annexures</p> <p>20 to those reports to hand plus the data they circulated</p> <p>21 in the joint statements to us. We will start at</p> <p>22 2 o'clock with the hot tubs, so the taps can start</p> <p>23 running now. We will end not later than 4.20 today and</p> <p>24 that's because we have another event, nothing to do with</p> <p>25 this case but we will be having others, perhaps not in</p> <p style="text-align: center;">Page 121</p>

<p>1 this court but in court 1, I am not sure about the 2 logistics, but Mr Holmes will be making an appearance 3 there. 4 MR MACLEAN: He may or may not have changed by that time. I 5 hope not. 6 THE CHAIRMAN: Tradition is not. 7 MR MACLEAN: I know, I told him that. 8 THE CHAIRMAN: As you or so Mr Harris knows it is the 9 tradition to have a cup of tea after this matter. I am 10 quite sure Mr Holmes will have other matters to talk 11 about beyond this case, but if any other of either 12 counsel team wish to attend then you will be more than 13 welcome. 14 MR HARRIS: That is very kind, sir. 15 MR MACLEAN: Very good. 16 MR HARRIS: Is the intention that prior to the hot tubbing 17 we introduce the witnesses and take them to their report 18 and verify their signatures? 19 THE CHAIRMAN: I don't think that will be necessary. 20 I anticipate that you will do that when they each give 21 evidence-in-chief and we will simply take their reports 22 de bene esse pending that moment in time. 23 MR HARRIS: The only reason I raise it is Mr Parker has some 24 minor typo type clarifications in his report. I had 25 said, oh well we might get them out at the beginning.</p> <p style="text-align: center;">Page 122</p>	<p>1 I am quite sure, for my part at least, the more that 2 will be appreciated. It may be that you have to descend 3 into jargon but the chances are, if you do, we will have 4 to ask for elucidation. 5 The second point is that you are obviously giving 6 opinion evidence as expert economists. To a greater or 7 lesser extent you may have familiarity with the factual 8 situation. You may have heard the facts which have been 9 given by the various witnesses. It would be extremely 10 helpful in your answers if you could make clear when you 11 are relying upon particular facts to support the opinion 12 that you are giving. 13 I don't anticipate that we will require you, because 14 it will take too long, to track down specific factual 15 points in the materials we have had. To the extent that 16 a point becomes contentious or difficult or unclear, we 17 may need to request the assistance of your legal teams 18 to track down whether a particular fact does or does not 19 pertain. But for the present I am really just 20 interested in ensuring that where your opinion depends 21 on a particular fact we identify what that fact is. You 22 will both appreciate obviously that neither of you are 23 giving evidence of facts and all you can do is indicate 24 the facts that matter to your opinions. 25 The final point: although ordinarily the claimant's</p> <p style="text-align: center;">Page 124</p>
<p>1 I am in your hands as to quite how -- none of them 2 are -- 3 THE CHAIRMAN: I understand. No, we'll deal with those 4 matters when each expert is giving his evidence-in-chief 5 and obviously we won't be reading anything into the fact 6 that they haven't been corrected earlier than that. 7 That is one of those things. 8 In that case we'll rise until 2 o'clock. 9 (1.07 pm) 10 (Luncheon Adjournment) 11 (2.00 pm) 12 THE CHAIRMAN: Good afternoon, gentlemen. You have no doubt 13 been apprised of the process that we are going to go 14 through this afternoon and tomorrow morning. 15 Essentially it is a collaborative process where we, the 16 Tribunal, engage in a form of conversation with you and 17 between yourselves with a view to educating the Tribunal 18 as to the issues in play. So what will happen is that 19 I, in conjunction with my colleagues, will lead the 20 discussion. We'll try and get you to talk both to us 21 and amongst yourselves. 22 In short order, you will be sworn in but before you 23 are I just want to make clear a couple of points. 24 First of all, the more straightforward and 25 layman-like you can make your answers to our questions,</p> <p style="text-align: center;">Page 123</p>	<p>1 expert, Mr Bishop, would go first, we will reverse the 2 order, at least for swearing and for the initial 3 questions, simply because the burden, as has been 4 demonstrated by the fact that openings were in this 5 order, it will be Mr Parker to go first followed by 6 Mr Bishop. 7 Do you two gentlemen have any questions of me before 8 we swear you in? 9 MR PARKER: No, sir. 10 MR BISHOP: No. 11 THE CHAIRMAN: Then perhaps we will proceed to swear you in. 12 MR SIMON BISHOP (sworn) 13 MR DAVID PARKER (affirmed) 14 Questions by the Tribunal 15 THE CHAIRMAN: Perhaps we could begin with the nature of the 16 market in which portals operate. It is common ground 17 that it is a two-sided market but I wonder, Mr Parker, 18 if you could start by defining what you see as the two 19 sides in that market. 20 MR PARKER: Sir, I think within the portals market the two 21 sides are estate agents on the one hand and the 22 house-hunters/vendors on the other. So the job of the 23 portal is to put estate agents and the property that 24 they are seeking to sell in line with the buyers, and 25 particularly vendors of those properties, which is what</p> <p style="text-align: center;">Page 125</p>

<p>1 Mr Bishop calls "the property seeker" and what I call                  2 the "house-hunter/vendor". So I think for me those are                  3 the two sides. There are essentially estate agents and                  4 then there are house-hunter/vendors.                  5 THE CHAIRMAN: Mr Bishop?                  6 MR BISHOP: I would agree with Mr Parker.                  7 MR FREEMAN: Which side of the market have you got vendors                  8 in?                  9 MR BISHOP: I have estate agents on one side and vendors are                  10 consumers of the estate agent services, so it is                  11 property seekers on one side and I have vendors as                  12 a consumer of the estate agent.                  13 MR FREEMAN: Vendors provide the properties which give rise                  14 to the listings which fulfil that side of the market,                  15 don't they?                  16 MR BISHOP: They do, but it is also true that vendors can                  17 also be on the side that Mr Parker suggested, because                  18 they are also searching on the website, so they're kind                  19 of, if you like, on both sides.                  20 MR FREEMAN: Okay, not with a view to a purchase though?                  21 MR BISHOP: No.                  22 THE CHAIRMAN: So what we have, if I can paraphrase, is                  23 a slightly longer chain in terms of the parties on the                  24 estate agent side and the estate agent is directly                  25 involved with the portal but acting for and on behalf of</p> <p style="text-align: center;">Page 126</p>	<p>1 Mr Bishop do shout if my summary doesn't accord with                  2 your view, is that in the ordinary course the ultimate                  3 consumer will be both a vendor and a purchaser, the most                  4 transactions involve my selling a property and also then                  5 buying, whether it's an upsize, a downsize or simply a                  6 move, and the exception is perhaps the case where I am                  7 only selling or only buying, if such cases exist, but                  8 I think what you are saying, Mr Parker, is that in                  9 general a property vendor is also a property purchaser.                  10 MR PARKER: Yes, that is right.                  11 MR BISHOP: I agree.                  12 THE CHAIRMAN: Nothing to add?                  13 MR BISHOP: No.                  14 THE CHAIRMAN: Now, we have heard a little bit about the                  15 geographic limits of markets and I think it was common                  16 ground before the factual evidence was given that so far                  17 as the first side of the market was concerned, the                  18 market was the UK-wide market and I am just wondering if                  19 we think specifically about the evidence we heard                  20 regarding Northern Ireland, whether you, gentlemen,                  21 would want to change your views about that.                  22 Let's again start with Mr Parker.                  23 MR PARKER: Sir, from a property portal perspective, I think                  24 for the purposes of carrying out the analysis it was                  25 a good starting point to look at the UK as a whole</p> <p style="text-align: center;">Page 128</p>
<p>1 the vendors who instruct the estate agent and you loop                  2 that as one side, and then on the other side you have                  3 the house purchasers who are directly using the portal                  4 to obtain information about properties they are                  5 interested in?                  6 MR PARKER: Yes, and perhaps to expand slightly, I think an                  7 individual estate agent you could think of a bit like                  8 a portal, they are trying to put house vendors and house                  9 purchasers together.                  10 MR FREEMAN: They are a bricks and mortar portal.                  11 MR PARKER: They are a bricks and mortar portal in                  12 a specific geographic area. So I think I am entirely in                  13 agreement with Mr Bishop that vendors come up a couple                  14 of times here. They come up as customers of the estate                  15 agent and that side of the little mini portal that is                  16 the estate agent, but they also come up when looking for                  17 property because in many cases house-hunters who are                  18 searching on the property portal will themselves at some                  19 point need to become vendors in order to become a house                  20 purchaser and so they may be looking at property portals                  21 on a regular basis as a house-hunter or property seeker                  22 and it is only maybe a bit later in their journey, if                  23 you like, that they then become a vendor from the kind                  24 of perspective of the property portal.                  25 THE CHAIRMAN: I see. I think what you are saying, and</p> <p style="text-align: center;">Page 127</p>	<p>1 because a lot of the data, the relevant portals operate                  2 across the UK as a whole or at least across GB as                  3 a whole and the data that you have available relates to                  4 GB or the UK as a whole as it may be.                  5 I can see that from the very recent discussions                  6 around Northern Ireland that the conditions of                  7 competition do look somewhat different there. There                  8 seem to be some different players, some local players                  9 there. I think for the purposes of analysis it is not                  10 clear to me that it would make a big difference between                  11 saying there is a market in GB and a market in Northern                  12 Ireland if you look at those separately, or there's a UK                  13 market but there are some differences in the competitive                  14 conditions in different regions and we have picked those                  15 up in the competitive effects stage, if you like.                  16 So from an economist's perspective, this may not be                  17 quite what you are looking for, but from an economist's                  18 perspective the marketing side I think doesn't really                  19 add a huge amount to the debate but I can see that from                  20 the conditions of competition it does seem to be                  21 somewhat different in Northern Ireland. So one could                  22 potentially split that off.                  23 THE CHAIRMAN: Before you go on to the other side,                  24 Mr Bishop, do you want to comment on that?                  25 MR BISHOP: I agree with Mr Parker.</p> <p style="text-align: center;">Page 129</p>

<p>1 THE CHAIRMAN: So far as estate agents are concerned, and 2 I appreciate that is in terms of our enquiry a slightly 3 less important area but just to get your evidence on 4 this, I think you are agreed that their markets are much 5 more geographically constrained; the bricks and mortar 6 stage at least is looking to a particular locality. 7 MR PARKER: Yes, I think that's right. For a bricks and 8 mortar estate agent I think we haven't come to a view as 9 to exactly the ambit of those local markets and how they 10 are defined everywhere, but I think it seems 11 a reasonable assumption that given the nature of an 12 estate agency business, and my personal experience that 13 they tend to focus on a specific area and focus on 14 properties in that area, that it would make sense to 15 think of local estate agency markets and there being 16 a whole number of local estate agency markets across the 17 UK although I am not sure what the number is. 18 THE CHAIRMAN: Again, Mr Bishop, before I follow with 19 a supplemental, you have nothing to add? 20 MR BISHOP: No, I agree. 21 MR LANDERS: Could I just ask, we heard about the emergence 22 of the corporate estate agents, the three big ones. 23 Does that in your opinion change what you have just said 24 in any way? 25 MR PARKER: Not from my perspective. I think it is -- as</p> <p style="text-align: center;">Page 130</p>	<p>1 not tied so much to a specific geographic location and 2 they can do more kind of national-type advertising and 3 they can advertise on property portals, amongst other 4 places, and potentially they could have on-the-ground 5 people who are doing valuations and so on, they could 6 sign up a network of people, maybe in the future that 7 might change the relevant definition of the local estate 8 agency market from a geographical perspective, but we 9 would still have the -- at least for now, house-hunters 10 probably are still looking in specific local areas. The 11 full service of the bricks and mortar estate agents are 12 still present in different local areas. 13 Since, if you wanted to go into more of the sort of 14 competition economics jargon of this, a hypothetical 15 monopolist of all of the full service estate agents in 16 a local area I think would still have enough of the 17 presence of the potential offerings at the moment so as 18 to mean I wouldn't seek to depart from a local set of 19 local markets -- even though online estate agents are 20 now coming in, I don't think they're important enough at 21 this stage to change if you like from a local geographic 22 market definition but that could come in the future. 23 THE CHAIRMAN: Mr Bishop? 24 MR BISHOP: I think if you want to move to Cornwall you need 25 to buy a property located in Cornwall, and I think the</p> <p style="text-align: center;">Page 132</p>
<p>1 I understand it, the corporates have a set of different 2 chains of local estate agents across the country but 3 I wouldn't say that that widens the definition of the 4 relevant market. It is that there are some estate 5 agency businesses that have chosen to locate in many 6 different parts of the country, sometimes with different 7 branding, different franchise names, and so on. I don't 8 think that makes a difference for market definition. It 9 is a business strategy. That's all. 10 MR BISHOP: Again, I agree. 11 THE CHAIRMAN: Following up on that, we have heard about 12 corporates but we have also heard about, and I think it 13 is an inaccurate label I'm using, but online estate 14 agents, but let's treat that as a business model that is 15 less focused on local branches, much more based on an 16 internet or online offering but I am not excluding from 17 my definition feet on the ground, simply in a more 18 dynamic way. 19 As regards that sort of estate agent -- I'll use 20 a shorthand, "online estate agent" -- can I ask the same 21 question as Mr Landers asked about corporates? 22 MR PARKER: So I think my view, and I haven't particularly 23 explored this in my report, I think my view would be at 24 the moment online estate agents are a small but growing 25 part of the market. They tend to have, because they are</p> <p style="text-align: center;">Page 131</p>	<p>1 fact that an online estate agent is offering properties 2 for sale in Cornwall and in Hampshire or Sunderland, 3 that just says it is active in three separate markets in 4 the same way that a corporate might be active in more 5 than one local market. 6 MR FREEMAN: So it doesn't change the geographic market 7 location but it is another source of competition? 8 MR BISHOP: It is another source of competition but I would 9 still consider the competition in the estate agent 10 market still to be local. 11 THE CHAIRMAN: I think I am detecting a difference. I am 12 not sure it matters but I would quite like to nail it if 13 there is. You are suggesting, Mr Bishop, that even if 14 there was a dramatic change in the market split away 15 from bricks and mortar towards what I am terming 16 "online", let us suppose, plucking these figures from 17 the air, at the moment it is 90 per cent bricks and 18 mortar and 10 per cent online, let us suppose one 19 inverted those percentages and it was 90 per cent online 20 and 10 per cent bricks and mortar, I think your answer 21 would still be that the geographic market was a local 22 one. Whereas I think, but Mr Parker do come back on 23 this, you might suggest that the market was perhaps less 24 geographic or a bigger geographic market. 25 MR PARKER: I think that could be the case, particularly if</p> <p style="text-align: center;">Page 133</p>

<p>1 a very large proportion of transactions moved to online                  2 estate agents, online estate agents I think would find                  3 it fairly straightforward to move into different parts                  4 of the country because they're not tied to having a                  5 physical presence in lots of different places. So                  6 I think on the supply side that could widen the scope of                  7 the market.                  8 On the demand side I'm very much with Mr Bishop that                  9 if you want to buy a house in Cornwall you need to have                  10 people selling houses in Cornwall.                  11 MR FREEMAN: If I could interrupt you, that is the                  12 difference, say, from supermarkets where you have local                  13 markets and also you have a national market affected by                  14 I think chains of substitution as I recall from an old                  15 case. But the fact is a house in Cornwall is a house in                  16 Cornwall. Whereas a supermarket in Cornwall sells goods                  17 which could be the same in Aberdeen or Sunderland. You                  18 are not buying any old house; you are buying that house.                  19 Does that make a difference?                  20 MR PARKER: Sir, a house is clearly a --                  21 MR FREEMAN: You are buying a specific house.                  22 MR PARKER: A specific house.                  23 MR FREEMAN: Not a tin of baked beans.                  24 MR PARKER: But you are buying a tin of baked beans in                  25 a particular location, assuming you are not doing it in</p> <p style="text-align: center;">Page 134</p>	<p>1 course of his cross-examination, that estate agents, to                  2 simply look at that side of the market, regard portals                  3 as substitute for other forms of advertising, for                  4 example, print media advertisements, their own websites,                  5 shared property newspapers or magazines. And I wonder,                  6 before we proceed to other participants in the market,                  7 as regards estate agents how far you consider that to be                  8 a material factor when considering the market position                  9 of the portals.                  10 MR PARKER: So perhaps we might distinguish between the                  11 market position and the relevant market, so for me                  12 I don't think -- I think estate agents will look at                  13 a variety of routes to advertising their property, of                  14 which property portals would be one, of which local                  15 newspapers, magazines, local radio stations and so on --                  16 there may be a range of other alternatives -- posters in                  17 the local area, a range of routes to get to your                  18 customer.                  19 I think it is the case that estate agents will look                  20 to, if you like, optimise their marketing budget across                  21 all of these different routes and they'll put their                  22 money where they think they're going to get the biggest                  23 return for their marketing buck, and one way you can see                  24 that is if you look in my first report at I think it                  25 will be in section 4, figure 4 on page 32 of my first</p> <p style="text-align: center;">Page 136</p>
<p>1 an online shop, you are doing it in a local shop. So                  2 a tin of beans from my perspective in north London in my                  3 local supermarket is not a substitute for a tin of beans                  4 in Aberdeen even though it is the same tin of beans.                  5 So I think it would still be the case that the local                  6 nature of this on the demand side is common across both                  7 supermarkets and the estate agency markets.                  8 MR FREEMAN: I think as the Chairman said we are going to                  9 have to talk about competition in estate agent markets                  10 even though the effects of this particular dispute in                  11 the market for estate agents seem less in dispute we                  12 understand. We'll have to sort of navigate our way                  13 through that, I think. We can't just not talk about it.                  14 MR PARKER: Yes.                  15 THE CHAIRMAN: Before we move on to a slightly different                  16 topic, Mr Bishop, if you have any comments to make or                  17 indeed questions to ask of Mr Parker do fire away.                  18 MR BISHOP: Not at this stage.                  19 THE CHAIRMAN: I see you shaking your head.                  20 I want to ask now about whether we are being                  21 a little bit narrow in viewing portals in isolation, and                  22 let me unpack that a little bit before I ask you to                  23 comment.                  24 There is some evidence, and I am thinking in                  25 particular of answers that Mr Springett gave in the</p> <p style="text-align: center;">Page 135</p>	<p>1 report --                  2 THE CHAIRMAN: Yes.                  3 MR PARKER: And so this is a chart taken from                  4 the December 15 outlook of Enders' analysis who look at                  5 property markets on an annual basis.                  6 What this shows, and apologies if it is relatively                  7 small type, but the chart shows the total advertising                  8 expenditure that Enders has estimated across the                  9 different channels and then they have split that up by                  10 channel over time and what you can see, and this starts                  11 in 2002, the expenditure on online channels has                  12 gradually grown over time. It is barely there in 2002                  13 and it gradually starts developing and increasing until                  14 from around about 2013 I think it is the case that more                  15 is being spent on property portals than it is on                  16 regional newspapers.                  17 So regional newspapers, consistent with the idea                  18 that this is a local market, have been a very important                  19 route to market for advertisers, for obvious reasons.                  20 I think what you see from this is that as different                  21 types of marketing outlets become more or less                  22 attractive, estate agents are shifting the balance of                  23 their spend. And if you look at figure 2 in my report,                  24 or maybe you are jumping slightly, that is a few pages                  25 earlier on page 25, you will see at least part of this</p> <p style="text-align: center;">Page 137</p>

<p>1 series from 2011 onwards. But that is showing you that 2 there has been a considerable increase in the proportion 3 or the number of visitors to online property portals, at 4 least over the last five years, and if you look at the 5 OFT decision and so on that has been going on for more 6 years back in the past. We don't have the data here, 7 but I think that's correct.</p> <p>8 And I think it explains, if you like, what we see in 9 figure 4, that over time people have been shifting the 10 balance of the spend more towards property portals and 11 away from other types of advertising.</p> <p>12 THE CHAIRMAN: If I may, can I just follow up on that. 13 I was careful to use the words "market position" and you 14 were very careful, Mr Parker, to differentiate between 15 relevant market and market position.</p> <p>16 It does appear that there is a degree of 17 substitutability between the portals and the other forms 18 of advertising that we've discussed, and it may well be 19 the case that you are right, that the online form of 20 advertising is becoming more prevalent as the internet 21 grows and as its powers become apparent as demonstrated 22 by your figure 4. So given that estate agents only have 23 a limited amount of budget for advertising, they 24 obviously have to consider where they allocate their 25 spend as you very fairly suggested.</p> <p style="text-align: center;">Page 138</p>	<p>1 change the fact that there is a market definition for 2 property portals alone and that's essentially the view 3 that the OFT came to as well.</p> <p>4 THE CHAIRMAN: It may be that Mr Freeman wants to come back 5 on that but before he does, if he does, Mr Bishop, do 6 you have any comments or indeed any questions that you 7 would like to ask Mr Parker about that?</p> <p>8 MR BISHOP: I think -- no, no questions for Mr Parker but 9 I think just that these issues of whether these 10 alternative forms of advertising are complements or 11 substitutes comes up in most sort of media markets. To 12 be honest, I think if there is a budget constraint there 13 will be a degree of substitutability. I think it is 14 kind of difficult to actually identify what we mean by 15 the competitive price in these markets, given that this 16 is the return that an advertiser gets for a given amount 17 of spend and as the price goes up the expected return 18 may change.</p> <p>19 But overall in the analysis I think we can stick, as 20 Mr Parker has suggested, with a sort of narrow portal 21 market. I don't think it really makes too much 22 difference.</p> <p>23 MR FREEMAN: I suppose the only other question is whether we 24 are observing a trend and whether in the figure 4 charts 25 the red will be everything in ten years' time, whether</p> <p style="text-align: center;">Page 140</p>
<p>1 But doesn't that suggest that at least as far as 2 estate agents are concerned, in terms of what they are 3 buying, one needs to look less at the precise 4 advertising provided by a portal and more at the 5 substitutes as well in terms of defining the relevant 6 market?</p> <p>7 MR PARKER: I think the discussion about relevant market in 8 this case was slightly kiboshed by the sort of early 9 decisions of the Tribunal to try to get to a position 10 where we didn't have to debate what the relevant market 11 was. So I haven't done a big market definition 12 exercise. I think what I would say is, since it is 13 common ground that, if you like, we have a dominant firm 14 Rightmove in the property portals market when it faces 15 some substitutes --</p> <p>16 MR FREEMAN: We want to come back to that.</p> <p>17 MR PARKER: I understand but I am trying to --</p> <p>18 THE CHAIRMAN: Do carry on.</p> <p>19 MR PARKER: Putting it in context, if there was only one 20 property portal in the country, do I think it is highly 21 likely that it could raise prices above the competitive 22 level? Yes, I do, given the share of total spend that 23 it has. So I don't think regional newspapers or even 24 collectively all these other forms of advertising are 25 a sufficient substitute for property portals so as to</p> <p style="text-align: center;">Page 139</p>	<p>1 that makes any difference to your analysis, or is there 2 a new equilibrium coming where there is still 3 (inaudible)?</p> <p>4 MR PARKER: You will have to forgive me because I am not 5 looking at a colour copy so if you mean will the wider 6 --</p> <p>7 MR FREEMAN: The red is the portal share of advertising 8 expenditure. I thought you only ever dealt in colours. 9 I don't see how you would be able to follow your graphs 10 otherwise.</p> <p>11 MR PARKER: I think it is quite possible that, if you like, 12 the trend in figure 2 towards people looking more and 13 more online, if that continues then I think we'll 14 probably see a continuation in the increased share of 15 the red portal share in terms of overall advertising 16 expenditure. I am not sure that that observation 17 particularly makes any difference to the issues in this 18 case.</p> <p>19 THE CHAIRMAN: No. In other words, looking as we are as the 20 market stands at the moment, your view is that if one 21 postulates in the portal market a single entity there 22 isn't a degree of substitutability to prevent the price 23 rise and all you would be saying is that if the purple 24 expands evermore the answer remains the same; it is 25 simply a fortiori?</p> <p style="text-align: center;">Page 141</p>

<p>1 MR PARKER: Absolutely.</p> <p>2 THE CHAIRMAN: So presumably, again this may not matter but</p> <p>3 just to get our bearings in this area, if one backtracks</p> <p>4 to the early 2000s when portals were nascent, your</p> <p>5 answer would then have been rather different in terms of</p> <p>6 the substitutability question because portals were</p> <p>7 really emerging as a new thing and had to establish the</p> <p>8 results?</p> <p>9 MR PARKER: Yes, I think that is probably right. We have</p> <p>10 seen a lot of new -- a lot of markets which have online</p> <p>11 channels now and there is a question when it comes to</p> <p>12 competition analysis of at what stage firstly do you</p> <p>13 take the online channel as being a thing of constraint</p> <p>14 on the bricks and mortar channels, and then possibly at</p> <p>15 some point does that process reverse and you find that</p> <p>16 really the primary ambit of this is really the online</p> <p>17 channel and then it might be the bricks and mortar side</p> <p>18 of that that is a constraint?</p> <p>19 I think there would have been a flip probably</p> <p>20 somewhere in history, but I think we are now at the</p> <p>21 stage, and I am in agreement with Mr Bishop, that one</p> <p>22 can look at a portals market in a sensible way but we</p> <p>23 may -- I am sure, from these data, since online portals</p> <p>24 barely existed in 2000, that there would not have been</p> <p>25 a market for online property portals but as they got</p> <p style="text-align: center;">Page 142</p>	<p>1 MR BISHOP: Yes.</p> <p>2 THE CHAIRMAN: We will be coming to that later but it might</p> <p>3 be worth disentangling the strands there and asking</p> <p>4 Mr Parker to comment, but I think what you are saying is</p> <p>5 that when one is looking at the revenue figures, which</p> <p>6 you gentlemen have very helpfully provided to us and we</p> <p>7 have looked at, there are multiple different reasons why</p> <p>8 those prices may, as they appear to have done, rise over</p> <p>9 time.</p> <p>10 The first is, as Mr Freeman mentioned, add-ons, and</p> <p>11 am I correct in understanding that the revenue figures</p> <p>12 that you have provided to us include, as it were, add-on</p> <p>13 services in addition to the basic listing fee?</p> <p>14 MR BISHOP: Yes.</p> <p>15 THE CHAIRMAN: Yes. That is right, is it? So that is one</p> <p>16 explanation of an increase: added value by way of</p> <p>17 additional service beyond simply the appearance of the</p> <p>18 property on the portal.</p> <p>19 The second strand which might inform price increases</p> <p>20 or, if it goes wrong, price decreases is the perceived</p> <p>21 usefulness of the listing to estate agents. So when you</p> <p>22 start off, if we could dial back again to the early</p> <p>23 noughties as Mr Maclean would say, one isn't seeing</p> <p>24 a particular valuable service but 16 years on everyone</p> <p>25 realises that this is a really important way to market</p> <p style="text-align: center;">Page 144</p>
<p>1 more popular at some point there would have been</p> <p>2 something there worth monopolising, which is the</p> <p>3 definition of the market.</p> <p>4 THE CHAIRMAN: We reach, to coin a phrase, a tipping point</p> <p>5 and we are well past it what I think you are both</p> <p>6 saying.</p> <p>7 MR BISHOP: May I make one observation?</p> <p>8 THE CHAIRMAN: Please do.</p> <p>9 MR BISHOP: Which is obviously as the property portals</p> <p>10 become more important then over time that is relevant</p> <p>11 for how we interpret changes in listing fees. Because</p> <p>12 an increase in listing fees can reflect just simply that</p> <p>13 estate agents have a higher willingness to pay because</p> <p>14 they're getting more bang for their buck by actually</p> <p>15 listing. So when we are looking at changes in listing</p> <p>16 fees over time it is not just saying: that's just market</p> <p>17 power. That's also that the service being offered is</p> <p>18 improving and trying to distinguish between those two</p> <p>19 effects is quite difficult.</p> <p>20 MR FREEMAN: When you say "the service being offered" you</p> <p>21 don't just mean extra services, you mean the quality of</p> <p>22 the actual core --</p> <p>23 MR BISHOP: And the quantity of number of visits so in</p> <p>24 Mr Parker's report you can see the large number of --</p> <p>25 MR FREEMAN: Mainstream services?</p> <p style="text-align: center;">Page 143</p>	<p>1 properties and so they are prepared to pay for the value</p> <p>2 of what is being offered. And that I think is the</p> <p>3 second strand that might inform prices.</p> <p>4 And is the third strand, or are there more, the</p> <p>5 potential for market dominance where one has one player</p> <p>6 in the market or possibly a duopoly, we'll come on to</p> <p>7 that as well, where they can raise prices which are</p> <p>8 raised in a manner that is independent of either of the</p> <p>9 first two strands? Would that be a fair analysis?</p> <p>10 First of all, have I got those inputs right and</p> <p>11 secondly, have I left any out? And if we start I think</p> <p>12 on this occasion with Mr Bishop because you set this</p> <p>13 hare running and then we can move to Mr Parker.</p> <p>14 MR BISHOP: Apologies. No, I think that is a fair summary.</p> <p>15 THE CHAIRMAN: Mr Parker?</p> <p>16 MR PARKER: I think those are the relevant issues. I think</p> <p>17 in respect of add-ons, my perspective would be that</p> <p>18 those are all part of the advertising service that is</p> <p>19 being sold by the portal, so the add-ons -- so the</p> <p>20 listing fee is the basic listing fee and the add-ons are</p> <p>21 ways in which you can get your listings higher up, more</p> <p>22 prominent, more flashy and so on to try and attract</p> <p>23 people's eye. I would say that's all part of the kind</p> <p>24 of the same service essentially that's being operated by</p> <p>25 the property portal.</p> <p style="text-align: center;">Page 145</p>

<p>1 I would say there's sort of qualitative difference                  2 between that type of add-on and potentially other                  3 add-ons, such as back office software that is useful for                  4 estate agents to manage their businesses. That I think                  5 would be somewhat -- I would treat that somewhat                  6 differently. But I think add-ons are part of the                  7 overall advertising and I think one should sensibly                  8 include those in the analysis. That's my first thing.                  9 In terms of perceived usefulness, I completely agree                  10 with that. I think what you get for your money is                  11 a very important aspect and then potentially there is                  12 a market power aspect as well.                  13 THE CHAIRMAN: Thank you. Sorry, Mr Landers has a point but                  14 if I could just take up your time a little more.                  15 I entirely, if I may say so, understand the                  16 distinction you are drawing between add-ons that are                  17 effectively related to the selling of the property, so                  18 they are joined at the hip to the listing itself,                  19 whether that be a star listing or a listing that comes                  20 at the top of a longer list. I understand that. On the                  21 other side one has, as you say, the back office things,                  22 all the arrangement of mortgage services, things that                  23 are much more related to sale, perhaps, than                  24 promulgating a given property. One might have                  25 a difficult line to draw between these different</p> <p style="text-align: center;">Page 146</p>	<p>1 Group, I think it's called, and the revenues for that                  2 are quite substantial and they were included in the                  3 H2/2016 figures, five months' worth of revenue there and                  4 that was several millions. So you will see that we                  5 highlighted that in particular and that could be                  6 stripped out because that's much more material than we                  7 are talking about here.                  8 THE CHAIRMAN: Thank you. That is very helpful in terms of                  9 understanding the revenue figures.                  10 MR LANDERS: I had a question that sort of flowed from that                  11 in terms of the revenue. When we were talking earlier                  12 about the comparison with other sorts of advertising,                  13 the characteristic of those forms, the media forms and                  14 so on, is that your purchasing decision can be terribly                  15 elastic. You can have more adverts, bigger adverts, you                  16 can do all that sort of stuff, whereas with a portal am                  17 I right in thinking that the decision is essentially                  18 binary? You are either with Zoopla or you are not with                  19 Zoopla with the exception of these add-ons, so that once                  20 you have made that decision the amount you are going to                  21 spend in a year is pretty well fixed? Does that change                  22 the economics? Does that change your analysis of the                  23 fact that portal purchases are pretty lumpy compared                  24 with other forms of advertising spend? Or am I wrong?                  25 MR PARKER: I haven't particularly addressed myself to that</p> <p style="text-align: center;">Page 148</p>
<p>1 add-ons.                  2 My basic question was, in terms of the revenue                  3 figures we have it is all in and we are not able to                  4 differentiate, between the different revenue inputs,                  5 what's generating the revenue. We just have the single                  6 figure.                  7 MR PARKER: So that's largely true. I am just trying to                  8 find footnote 146, one of my favourites, which I believe                  9 is on page -- no, 147, page 77. So in the revenue                  10 figures that we have, we have listing fees, we have                  11 premium listing fees as that type of add-on, and then we                  12 have some other software or back office services that                  13 the portals provide to the estate agents to allow the                  14 estate agents to do their job a bit better. This                  15 footnote suggests that that category is a very small                  16 proportion of the whole for Zoopla and Rightmove.                  17 So you can see, I won't read it out, the                  18 confidential to Zoopla figure on page 78, and similarly                  19 for Rightmove Mr Notley's view is no higher and may well                  20 be smaller, and then for OnTheMarket I don't think they                  21 do any of those. So to the extent that that is                  22 something that one should strip out it is very small and                  23 so perhaps not too much of a problem that it's in.                  24 The exception to that is Zoopla in the last                  25 financial year bought a company called Property Software</p> <p style="text-align: center;">Page 147</p>	<p>1 question. I don't think you are wrong. The nature of                  2 the portals and their business model is that you tend to                  3 have a contract that is on a per office per month basis                  4 for a certain period of time and once you've signed up                  5 to a contract like that you have an incentive to put all                  6 your properties on the property portal for as long as                  7 the contract lasts because essentially you have paid for                  8 it.                  9 I am not sure other than you don't -- I am not sure                  10 it particularly changes the analysis from my                  11 perspective.                  12 MR BISHOP: I think that's an extremely relevant point                  13 because the decision to list on a portal is a binary                  14 one. Whereas with print advertising I could list five                  15 of my properties in one paper and ten in a different                  16 magazine so I can tailor if you like my quantity.                  17 Whereas here it is all or nothing and I think this is                  18 extremely relevant to when we come to considering the                  19 analysis of the alleged price cost per lead and what we                  20 can take from that. And I'm sure we'll come back to                  21 that issue.                  22 THE CHAIRMAN: So I know we really don't want to spend too                  23 much time on Northern Ireland, but in a sense the                  24 Northern Ireland market is much more similar to your                  25 print market in that you can, or indeed you do, list</p> <p style="text-align: center;">Page 149</p>

1 properties individually rather than en masse and that is  
 2 rather like choosing to list certain properties in print  
 3 media.  
 4 MR BISHOP: Agreed.  
 5 THE CHAIRMAN: Mr Parker, do you want to come back on that?  
 6 MR PARKER: No, we will come to variance of these issues  
 7 later on.  
 8 THE CHAIRMAN: Now, we have looked a little bit backwards.  
 9 I wonder if we could look forwards a little bit to the  
 10 extent to which there could be elision between portals  
 11 and online estate agents. We have heard evidence about  
 12 the possibility of this and I don't want you to comment  
 13 on the probability or otherwise of this happening. You  
 14 will have heard, like us, the evidence of different  
 15 people and it is fair to say that that evidence went in  
 16 slightly different directions.  
 17 But my question to you is the extent to which it is  
 18 relevant for us to have regard to potential horizontal  
 19 competition between portals and estate agents, in other  
 20 words, that the portals essentially move down as online  
 21 estate agents to compete with what we are calling bricks  
 22 and mortar estate agents, and were that to happen in the  
 23 sort of reasonably medium or short-term future, whether  
 24 that is a factor that we ought to be bearing in mind in  
 25 terms of the markets that we are examining.

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1 MR PARKER: So I think at the moment the role of property  
 2 portals seems to be primarily as a route to market for  
 3 the online estate agents. That seems to be if you're  
 4 online only then it is clearly important to have online  
 5 channels in order to get to your customer base. That is  
 6 going to help things.  
 7 If it was the case that property portals would  
 8 themselves move into being estate agencies then that  
 9 seems to me a further set of horizontal overlaps that  
 10 you may wish to consider in your analysis because that  
 11 would be a further threat to estate agencies, a further  
 12 competitor set of substitutes for estate agents that  
 13 maybe one doesn't need to go to an estate agent; one can  
 14 just look on the property portal and the property portal  
 15 actually provides what I need. But it is a factual  
 16 question as to when, how quickly, how extensively that  
 17 is going to be taken up if at all.  
 18 THE CHAIRMAN: Yes, and if before Mr Bishop responds I could  
 19 give you something which struck me: I think it was  
 20 Mr Springett who suggested that there were what he  
 21 called "aggregators", people who accepted instructions  
 22 from individual vendors of properties, batched them up  
 23 and then as an aggregator put them on to one or more  
 24 portals. I think his suggestion was that if and when  
 25 the portals decided that that was a profitable route

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1 forward they would cut out the middleman and effectively  
 2 enter directly with the individuals.  
 3 Now, of course that was simply Mr Springett's view  
 4 and he was careful not to go further than identify this  
 5 particular phenomenon at the moment. But that seemed to  
 6 me to be an interesting indicator of what might happen  
 7 and I think, Mr Parker, what you are saying is: well,  
 8 it's a mixed question of facts and future prediction,  
 9 what will happen, but were that to happen that would be  
 10 a relevant factor in assessing the markets but you can't  
 11 go further than that.  
 12 MR PARKER: Yes, I mean in terms of looking at the markets  
 13 it could be that the portals -- there might then be  
 14 a portal market in which the portals are present and  
 15 then an estate agency market in which the estate agents  
 16 are present but also the portals are present and then it  
 17 would depend what competitive question you are asking as  
 18 to the relevance of that observation.  
 19 MR BISHOP: It is like Amazon going into publishing.  
 20 MR PARKER: For example, Amazon clearly is selling books  
 21 from publishers and it is also, if it is doing  
 22 self-publishing it is a competitor to the publishers and  
 23 it can operate at those multiple levels in the chain and  
 24 then the competitive issues that flow from that depend  
 25 on what type of behaviour you are looking at as to which

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1 of those is relevant.  
 2 MR BISHOP: It is not an issue I have given a huge amount of  
 3 thought to but I think the key issue here is that this  
 4 would be a portal entry into the estate agent market,  
 5 local markets, which I think is common ground are  
 6 considered to be highly competitive. So unless the  
 7 portal who was doing the entry was foreclosing bricks  
 8 and mortar estate agents from actually listing on that  
 9 portal I would hazard a guess that it would be a sort of  
 10 pro-competitive entry.  
 11 MR FREEMAN: They would have to buy an awful lot of estate  
 12 agents or do an awful lot of estate agency before it  
 13 became a risk to competition.  
 14 MR BISHOP: Yes, and it may well do at some point in the  
 15 future but in the kind of foreseeable you would see that  
 16 as a pro-competitive entry.  
 17 MR PARKER: Maybe just to pick up on the comment that estate  
 18 agency markets, if they are competitive today it doesn't  
 19 necessarily mean that you can't increase the level of  
 20 competition tomorrow because they may be competitive  
 21 today at the current prevailing cost conditions. If you  
 22 come in with a new business model which is much, much  
 23 cheaper then that could completely change the  
 24 competitive dynamics. So you may get -- as we have seen  
 25 in the movement of media channels you have the regional

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<p>1 newspaper market, regional newspapers which were                  2 attracting the vast majority of the spend. Essentially                  3 the move to online portals I suspect reflects there is a                  4 new and more efficient way of getting to your customer                  5 base and the online portals provide that relative to the                  6 regional newspapers and that's what's driving the kind                  7 of balance of spend.                  8 So even if regional newspaper markets were                  9 competitive there's still ways that you can make things                  10 more competitive by putting in a better mousetrap.                  11 THE CHAIRMAN: In a sense, just going back to Mr Bishop's                  12 point, we again heard quite divergent factual evidence                  13 on the level to which bricks and mortar estate agents                  14 ought to be concerned about online estate agents and                  15 obviously the fee structure is different and on the                  16 whole is lower with online estate agents, but for the                  17 most part the evidence was that bricks and mortar estate                  18 agents weren't concerned. We heard of divergent                  19 evidence there.                  20 But in terms of your answer, Mr Bishop, you in                  21 a sense, but correct me if I am mis-stating you, you                  22 don't really care. If it is the case that the online                  23 estate agents produce an offering that is cheaper and                  24 better such that vendors choose to instruct them and not                  25 bricks and mortar, that is a more competitive market and</p> <p style="text-align: center;">Page 154</p>	<p>1 material. I think before dismissing them entirely from                  2 consideration, an effect of the One Other Portal rule                  3 I think is that it reduces the addressable market for                  4 any competing portal that Mr Springett -- it is on the                  5 list, if you like, of other competing portals, which                  6 means if any of those did seek to grow and expand they                  7 would now potentially find it more difficult because the                  8 size of the market that they can realistically go for is                  9 reduced, because if your entry strategy is to attract                  10 new agents but for some of those agents you would have                  11 to say, "Well, I know you can't come off OnTheMarket                  12 because you have a five-year contract and you've also                  13 signed up with, say, Rightmove," then I would have to be                  14 saying, "Well, to get that agent I am going to have to                  15 encourage them to come off Rightmove". I think that's                  16 an obviously extremely difficult prospect for a small                  17 agent.                  18 So whilst I think the small property portals are not                  19 very large and therefore not very material, they still                  20 face higher barriers to entry as a result of the One                  21 Other Portal rule than they would otherwise do.                  22 THE CHAIRMAN: So perhaps before again we go to Mr Bishop                  23 what you are saying is that whilst in terms of the                  24 analysis of the market in a general way it is perhaps                  25 fair to call these other players insignificant, in terms</p> <p style="text-align: center;">Page 156</p>
<p>1 so be it. Would that be a slightly tendentious but fair                  2 way of summarising your position?                  3 MR FREEMAN: Slightly simplified.                  4 MR BISHOP: I think that is a very fair way of putting it.                  5 Ultimately if the market, ie consumers, want the online                  6 service rather than the bricks and mortar service then                  7 that would be the market telling people that they wanted                  8 this market development.                  9 THE CHAIRMAN: Whereas if they don't, they don't.                  10 MR BISHOP: They don't, yes.                  11 THE CHAIRMAN: Mr Parker, before we move on?                  12 MR PARKER: I agree with that.                  13 THE CHAIRMAN: If we can move then from the general                  14 parameters of the market to be a little bit more                  15 specific. Leaving on one side, we'll obviously spend                  16 some time discussing OnTheMarket, but leaving                  17 OnTheMarket on one side for the moment, and to use                  18 a neutral term, at the moment we have really two                  19 significant players only, that is Rightmove and Zoopla,                  20 and would it be fair to say that the other players,                  21 again leaving OnTheMarket on one side, we can                  22 acknowledge they exist and may be choices in certain                  23 cases, but they are for the purposes of our                  24 consideration not particularly material?                  25 MR PARKER: I think that they are generally not particularly</p> <p style="text-align: center;">Page 155</p>	<p>1 of the impact that you would say the One Other Portal                  2 rule has on them we need to have in mind that if                  3 a rational estate agent decides that it is going to sign                  4 up with Agents' Mutual, for reasons we have heard it's                  5 very likely that it will be either Rightmove or Zoopla                  6 and I think the emphasis was more likely Rightmove than                  7 Zoopla but we'll debate that in due course, one thing                  8 you can say is that what we are calling, rather rudely,                  9 the insignificant players in that scenario don't get                  10 a look in. I think that is what you are saying we need                  11 to have in mind.                  12 MR PARKER: I think that's right and they will find it as a                  13 result more difficult to have a look in in the future if                  14 they were seeking to try to enter the market.                  15 THE CHAIRMAN: Mr Bishop, do you want to come back on that?                  16 MR BISHOP: Yes, I think these smaller portals are already                  17 in the market so it is not a question of a barrier to                  18 entry and the question is: how successful were they in                  19 competing against Zoopla and Rightmove for estate agents                  20 prior to the entry of OTM? And it seems on the evidence                  21 not much, really. So their position may well have been                  22 made more difficult relative -- you know, once OTM has                  23 entered but has it gone from being impossible to                  24 impossible plus epsilon? It is how the entry of OTM has                  25 actually changed their ability to compete.</p> <p style="text-align: center;">Page 157</p>

<p>1 THE CHAIRMAN: Sorry, Mr Bishop, it came out on the [draft]                  2 transcript as it has "gone from being impossible to                  3 impossible plus excellence", which I don't think --                  4 MR BISHOP: Epsilon.                  5 THE CHAIRMAN: Thank you very much. We will crack on.                  6 Sorry, I interrupted you there.                  7 MR BISHOP: No, I had finished.                  8 MR FREEMAN: We don't do Greek I think on the ...                  9 MR BISHOP: I apologise.                  10 THE CHAIRMAN: We certainly do now.                  11 Mr Parker, had you anything to add or should we move                  12 on?                  13 MR PARKER: I don't think I have anything to add.                  14 MR FREEMAN: Before we move on, just to get one point out of                  15 the way: you have both talked about consumers and you                  16 have talked about it during the trial. Competition                  17 policy operates at the moment according to a consumer                  18 welfare standard. "Consumers" in this context primarily                  19 means house-hunters but also vendors presumably?                  20 MR BISHOP: Agreed.                  21 MR FREEMAN: Do you attach any significance to the                  22 relatively free way in which the word "consumer" has                  23 been used? Is it going to come back and bite us?                  24 Mr Parker?                  25 MR PARKER: I would highlight three groups, perhaps.</p> <p style="text-align: center;">Page 158</p>	<p>1 a nexus there, but you differentiate?                  2 MR PARKER: Yes, because I think the vendors if you like                  3 wear two hats here, which is obviously not helpful                  4 either. For analytical simplicity they wear one hat as                  5 also a house-hunter in many situations, and they are                  6 looking on property portals to find properties and they                  7 are consumers of the property portal service. But when                  8 they become a vendor they're also consumers of the                  9 estate agency service because they go to the estate                  10 agent and ask them to sell their house and so on.                  11 If it is helpful I set this out at 3.4.8 of my first                  12 report which is pages 27 and 28.                  13 MR BISHOP: I think the main issue here or the main area of                  14 dispute between myself and Mr Parker seems to be on the                  15 level of pricing of Rightmove following the entry of OTM                  16 and therefore for me it seems the most relevant issue                  17 is: to what extent are prices increased to estate agents                  18 and thereby passed on to their customers?                  19 So for me that is the prime element of consumer                  20 welfare that we should be considering. That is not to                  21 say that there aren't the other categories that                  22 Mr Parker has talked about but I think, given we want to                  23 get some clarity that's where the major area of dispute                  24 is and that's where we should be focusing our consumer                  25 welfare analysis.</p> <p style="text-align: center;">Page 160</p>
<p>1 I would look at estate agents as being customers of                  2 portals. I would look at vendors, who are in their role                  3 as customers of estate agents, so like an indirect                  4 customer of a portal, and then I would look at                  5 house-hunter/vendors, property seekers, who are the                  6 other side -- the consumers on the other side of the                  7 portals market.                  8 MR FREEMAN: It sounds a bit like hunter gatherers. You                  9 would put them all together into the consumer interest?                  10 MR PARKER: I think they are all separate groups of                  11 consumers and I think we should think about the effects                  12 on all of them, and that might explain some of the loose                  13 language because depending on the context -- and I am                  14 not saying unreasonably loose language but depending on                  15 the context you might talk about consumers vis à vis                  16 a certain context and they may be a different group                  17 because we have quite a number of groups here we need to                  18 keep in mind.                  19 THE CHAIRMAN: But essentially three groups you would say?                  20 MR PARKER: I would say.                  21 THE CHAIRMAN: Although I think you would accept they, at                  22 least as regards house purchasers and house sellers will                  23 overlap and I am not quite sure what you define as the                  24 relationship between estate agents and property vendors                  25 but you use the term "indirect" so there is obviously</p> <p style="text-align: center;">Page 159</p>	<p>1 THE CHAIRMAN: Yes, so you are saying that the other side,                  2 the house purchaser side in terms of being affected by                  3 increases in the costs of listing on portals, because of                  4 course they aren't paying anything anyway, are for the                  5 purposes of our present enquiry less relevant than the                  6 direct/indirect groups that Mr Parker identified of                  7 estate agents and the vendors. Is that a fair summary                  8 of what you're saying?                  9 MR BISHOP: It is, yes.                  10 THE CHAIRMAN: Again, Mr Parker, do you want to come back on                  11 that?                  12 MR PARKER: I don't think we should entirely rule out                  13 looking at house-hunter/vendors because what they                  14 benefit from on a particular portal is the aggregation                  15 of a lot of properties into a particular place. I think                  16 when we come to the look at the effects of the One Other                  17 Portal rule we will find that the quality of certain                  18 websites' propositions has been reduced because they no                  19 longer have like a full service picture of the market.                  20 So to that extent those house-hunters who were using                  21 that property portal now have -- and continue to do so                  22 they have a lower quality proposition that they get for                  23 their time. Like what they are giving up, they don't                  24 have a cash cost but they have a time cost of searching                  25 on property portals and people are busy and they don't</p> <p style="text-align: center;">Page 161</p>

<p>1 spend all of their time searching, so it is helpful to                  2 get a better product from the house-hunter side than                  3 a less good product.                  4 So I think we shouldn't rule that out entirely and                  5 particularly if we start looking at the future and we                  6 start thinking about scenarios in which potentially                  7 there is a tipping point and Zoopla disappears, Zoopla                  8 offers other services out there to house-hunters as it                  9 is part of its differentiation, its way of attracting                  10 people to the Zoopla website. If Zoopla did disappear                  11 those services would potentially disappear and they                  12 would be lost to the market and in particular they would                  13 be lost to the house-hunter/vendors, the property                  14 seekers.                  15 So I accept that the primary focus here is rightly                  16 on estate agents but I wouldn't completely rule out                  17 looking at house-hunter/vendors as well.                  18 THE CHAIRMAN: Before I invite Mr Bishop to come back on                  19 that, can I ask you one point, or possibly two. You are                  20 really identifying, leaving on one side the additional                  21 services that a portal offers to specifically the                  22 house-hunter, you are identifying the convenience of                  23 finding all the properties on a single portal so you                  24 don't have to switch between them and therefore save                  25 time. I think that was one of the advantages.</p> <p style="text-align: center;">Page 162</p>	<p>1 it is some way in the future. So I think one can                  2 probably proceed without having to worry about that.                  3 THE CHAIRMAN: Mr Bishop, do you want to come back?                  4 MR BISHOP: Just on that last point, I fully agree with                  5 Mr Parker. I think that's an interesting question but                  6 not one for this issue.                  7 I think what's relevant here when we talked about                  8 the house-hunters, of course there is a particular                  9 scenario in which you have got two portals both offering                  10 a comprehensive offering of all property listings, so                  11 two portals are basically offering all properties, but                  12 some visitors only go to portal A and other people only                  13 go to portal B and in that situation I don't really see                  14 that it is much different from the hypothesised single                  15 portal which you put forward, Mr Chairman, because                  16 estate agents would have to be on both portals.                  17 THE CHAIRMAN: It's a technical question but I think you are                  18 agreed that in the technical sense Rightmove is but                  19 Zoopla is not dominant. That is something which you've                  20 been asked I think to assume and have both in your                  21 reports assumed. Is that a fair summary?                  22 MR BISHOP: In my report I have actually taken no view on                  23 that. I have actually just taken the view that we need                  24 to assess the impact of OnTheMarket with the OOP rule on                  25 whether that has enhanced Rightmove's pricing power. So</p> <p style="text-align: center;">Page 164</p>
<p>1 MR PARKER: Yes, that's right.                  2 THE CHAIRMAN: That of course would rather indicate in                  3 favour of a single dominant provider in terms of                  4 portals.                  5 MR PARKER: From the house-hunter point of view.                  6 THE CHAIRMAN: From the house-hunter point of view.                  7 MR PARKER: I think agents may be a bit concerned if that                  8 eventuality transpired.                  9 THE CHAIRMAN: I am sure they would be, yes. So in a sense                  10 that's no more than a good illustration of what are                  11 perhaps countervailing interests amongst the three                  12 groups that you have identified.                  13 MR PARKER: Yes, and I think as we go more into this the                  14 linkages and interactions between these groups are                  15 really important when thinking how competition works and                  16 how the effects in this case of the One Other Portal                  17 rule play out in this type of market.                  18 THE CHAIRMAN: It may be more a question of law, and if so                  19 please excuse me, than economics but ought to have at                  20 the back of our minds the potential that a portal, if                  21 sufficiently strong in the market, might actually be                  22 able to charge not simply estate agents for listing but                  23 house-hunters for viewing?                  24 MR PARKER: I haven't considered that. As far as I know                  25 it's never happened, so if it does happen it feels to me</p> <p style="text-align: center;">Page 163</p>	<p>1 whether that is -- taking a view that Rightmove was                  2 dominant pre-entry or charging competitive levels                  3 pre-entry I think the analysis is the same.                  4 MR FREEMAN: If it is dominant now then it has the freedom                  5 already to raise its prices unconstrained by its                  6 competitors.                  7 MR BISHOP: It would suggest that Zoopla is not providing an                  8 effective competitive constraint, yes, if you assume                  9 that it's dominant.                  10 MR FREEMAN: It is a fairly fundamental point, we might                  11 think.                  12 THE CHAIRMAN: I would quite like to unpick these a little                  13 further but before we do let Mr Parker have his twopenny                  14 worth.                  15 MR PARKER: As you rightly say, we have been instructed to                  16 assume that Rightmove, it is common ground that                  17 Rightmove is dominant and that Zoopla is not dominant                  18 and we should perhaps discuss collective dominance as                  19 well subsequently because there has been I think some                  20 confusion in the language so far in earlier parts of                  21 this trial.                  22 Let's come back to single firm-type dominance. From                  23 an economic perspective there is no magic in getting                  24 over the threshold for dominance and suddenly                  25 everything, all competitive constraints, completely</p> <p style="text-align: center;">Page 165</p>

<p>1 disappear. There is a continuum of potential market                  2 power. At some point we define legally that we are in                  3 the world of dominance but one can certainly get more                  4 dominant, have more market power after we pass the                  5 threshold. That, if you like, is inherent in some of                  6 the legal concepts about, for example, super-dominance                  7 or about the idea that a merger in old money was                  8 a problem if it led to the creation or strengthening of                  9 the dominant position. It must be the case that if you                  10 can strengthen a dominant position that it is not just                  11 we have reached a level and that's it.                  12 So I think a dominant firm will often still be                  13 constrained by whatever competition there is in the                  14 market and if the remaining competition gets weaker that                  15 dominant position can be strengthened.                  16 MR FREEMAN: Lawyers get terribly excited about dominance                  17 because you can't abuse a non-dominant position, so I am                  18 told.                  19 MR PARKER: I think from an economic perspective that's                  20 not -- there isn't a kind of threshold above which                  21 suddenly we think all these problems could arise. There                  22 is a scale of materiality and legally from an abuse                  23 perspective to say we define something --                  24 MR FREEMAN: You are talking like somebody who has extensive                  25 experience of market investigations.</p> <p style="text-align: center;">Page 166</p>	<p>1 attach the label but in fact in advance the assumption                  2 of dominance adds nothing one way or the other. We need                  3 to look at what the prices are telling us.                  4 Do you want to go first, Mr Parker, and then                  5 Mr Bishop, you can come back?                  6 MR PARKER: It is a bit of a tricky one to answer given that                  7 earlier in this process we were essentially instructed                  8 to proceed on the basis -- and I think, as I understand                  9 the motivation for that was that if it is common ground                  10 between all the parties that a certain situation                  11 pertains then one, if you like, can save time and                  12 resource by assuming that that is the case and --                  13 MR FREEMAN: Also Rightmove is not here to defend itself                  14 so ... It may have a different view.                  15 MR PARKER: It may well do, but we're probably getting into                  16 legal territory that is well beyond my expertise.                  17 I mean, I have proceeded on the basis, as instructed,                  18 that Rightmove is dominant. It seems to me, whilst that                  19 is a question for abuse, it seems to me it does come up                  20 elsewhere. As I say, in the old money merger test it                  21 was all about the preventing, creating or strengthening                  22 of a dominant position. In the new money -- I am                  23 thinking EC here -- in the new money merger test it is                  24 whether it results in a significant impediment to                  25 effective competition, including by virtue of a creation</p> <p style="text-align: center;">Page 168</p>
<p>1 MR PARKER: Alas, this is the case, yes.                  2 MR FREEMAN: Where that is a very familiar combination.                  3 THE CHAIRMAN: We'll rise in a moment for the shorthand                  4 writers' break but I wonder if we can just spend                  5 a couple of minutes exploring this and just floating the                  6 duopoly point which, Mr Parker, you have touched on.                  7 Speaking simply as a lawyer, and this is in no way                  8 a criticism of the economists, I was a little                  9 uncomfortable at the notion of an assumption of                  10 dominance and I wonder if the fair way of putting it is                  11 this: that to the lawyer dominance really only matters                  12 in a context of abuse. Here we are much more interested                  13 in what is happening to the prices. We will obviously                  14 have to come on to how one defines prices and what data                  15 we have in relation to those, but what we are interested                  16 in is the effect as between Rightmove and Zoopla and                  17 then with the addition of OnTheMarket on the prices that                  18 have been charged to the market.                  19 Now, it may be that a notion of dominance could be                  20 used as an appropriate label after the event to define                  21 what's going on in the market once we have looked at the                  22 data, but would you agree with me, or if not tell me why                  23 you disagree, that the label of "dominance", to use it                  24 in advance, it is unhelpful? It may be that after the                  25 event, after the analysis has been done, one might</p> <p style="text-align: center;">Page 167</p>	<p>1 or strengthening of a dominant position.                  2 MR FREEMAN: That is merger control.                  3 MR PARKER: That is merger control, but we have -- there is                  4 an example in abuse. There is an example in merger                  5 control.                  6 MR FREEMAN: We are not assessing a merger here, are we?                  7 MR PARKER: No, that's correct.                  8 MR FREEMAN: We are assessing the effects with retrospect.                  9 MR PARKER: But one might think that if something leads to                  10 the strengthening of a dominant position by whatever                  11 means, competition policy generally seems to have                  12 frowned on that now, but we are probably getting beyond                  13 my expertise.                  14 MR FREEMAN: We are not trying to trick you into betraying                  15 your instructions or sort of giving up an assumption.                  16 We are just trying to get at the nature of the market                  17 power distribution in the portals markets, Rightmove,                  18 Zoopla, OnTheMarket, and we are trying to sort of get                  19 behind the labels I think.                  20 MR PARKER: So if the question is, "Do we think Rightmove                  21 has a very material market position?" it seems to me the                  22 answer to that is "yes". We see all over the disclosure                  23 we have references to Rightmove being the must-have,                  24 I think we had a similar discussion last week about                  25 Rightmove being the gorilla. We have the shares that</p> <p style="text-align: center;">Page 169</p>

<p>1 I report in section, I think it is 4, are on whatever                  2 basis you look they are above standard thresholds for                  3 dominant positions, so 50 per cent and above the                  4 presumption of dominance.                  5 We have I think common ground that there are                  6 barriers to entry and expansion in this market which                  7 would tend to support such a position. We have the                  8 observation that of the people that joined OTM, I think                  9 here it is also common ground that 90 per cent of them                  10 remained with Rightmove.                  11 It seems to me that that collection of facts would                  12 at least be consistent with the view that Rightmove had                  13 the dominant position, and has, and that is -- if you                  14 like, the instructions that I have are to assume that it                  15 does have a dominant position but to the extent that                  16 I have looked at the facts on this issue it does seem                  17 that there is some support for that, but I am not taking                  18 it any further than that.                  19 THE CHAIRMAN: Let me make perhaps three points clear and in                  20 a sense I am slightly signalling beyond you, gentlemen,                  21 in the front row to the assembled masses of lawyers                  22 behind you.                  23 There isn't the slightest suggestion of criticism                  24 that you have been asked to assume and have assumed                  25 dominance. I suppose where I am coming from is that</p> <p style="text-align: center;">Page 170</p>	<p>1 actually not a necessary part of your analysis at all.                  2 MR PARKER: I think that I look at a range of issues to                  3 determine whether I think it's a major theory and                  4 credible evidence to assess what I think the effects of                  5 the One Other Portal rule are on the market, and as part                  6 of that the background context of Rightmove having an                  7 existing and very strong position, so I am instructed to                  8 assume but as I say, the facts that I have seen are                  9 consistent with that, I think one can't get away from                  10 that market context, if you like. It is not an abstract                  11 thing. It is an existence of -- it describes the sort                  12 of level of where we start from. Does that help? Maybe                  13 not.                  14 THE CHAIRMAN: No, it does. I think we have been pressing                  15 on you, because it's the assumption you have been asked                  16 to make and, Mr Bishop, you quite rightly corrected me                  17 saying you don't make that assumption. I wonder though                  18 whether you would like to come back on the various                  19 points we have been discussing with Mr Parker.                  20 MR BISHOP: Yes, I think it's really important whether I am                  21 here as an economist or as a lawyer, and I am here                  22 obviously as an economist, having a dominant position in                  23 and of itself is not a problem and we are here to                  24 assess: what is the impact of the entry of OnTheMarket                  25 with the OOP rule? And according to Mr Parker's theory</p> <p style="text-align: center;">Page 172</p>
<p>1 either the issue of dominance matters, in which case                  2 I am slightly uncomfortable in following an assumption                  3 rather than making a finding of fact, or it doesn't                  4 matter because what we are looking at is not so much                  5 a question of Rightmove's subjective dominance, nor                  6 still less are we looking at any question of abuse.                  7 What we are asking ourselves is: what is the effect in                  8 this market where yes, Rightmove clearly is the biggest                  9 player? What is the effect of Agents' Mutual's entry in                  10 terms of the prices that Rightmove and to an extent                  11 Zoopla were able to charge to the market?                  12 Now, if that is the question, and the finding of                  13 dominance is something which we may or may not choose to                  14 make at the end of the day, then I am very happy. But                  15 if on the other hand the analysis starts by saying: yes,                  16 it is important to the analysis that Rightmove are                  17 dominant and you need to see the data in the light of                  18 that finding of fact, then speaking entirely for myself                  19 I am slightly uncomfortable about being asked to assume                  20 that fact.                  21 So I suppose what I am seeking is a sense of where                  22 dominance fits into the analysis and I appreciate we                  23 have not heard yet from Mr Bishop but I think,                  24 Mr Parker, you are agreeing, but tell me if I am wrong,                  25 that whilst "dominance" may be a convenient label it is</p> <p style="text-align: center;">Page 171</p>	<p>1 of harm that entry with the OOP rule is anti-competitive                  2 because it enhances Rightmove's pricing power.                  3 Now, I would say it's kind of -- I'm indifferent                  4 about whether that's enhancing Rightmove's pricing power                  5 relative to whether it is a competitive level or                  6 a dominant level. The real issue is about whether it is                  7 enhancing the pricing power relative to where Rightmove                  8 was prior to that entry.                  9 I think it would be remiss in the economic analysis                  10 if we just start using -- inserting a legal analysis                  11 which says: Rightmove is dominant, Zoopla is weakened,                  12 therefore we can jump immediately to a weakening of the                  13 number 2, it must inevitably lead to enhanced pricing                  14 power on the part of Rightmove. I think that that is                  15 the key area of disagreement between us and that is                  16 a legal analysis, not an economic analysis.                  17 MR FREEMAN: Can I just be clear: you are definitely here as                  18 an economist?                  19 THE CHAIRMAN: Yes, absolutely.                  20 MR FREEMAN: You should put the legal labels out of your                  21 mind really. I understand what you are saying about the                  22 disagreement between you being over the effect of                  23 OnTheMarket's entry with its OOP rule on the ability to                  24 raise prices. But the ability to raise prices is                  25 a function, it may be even sort of the visible sign of</p> <p style="text-align: center;">Page 173</p>

1 market power, and are you saying that the level of  
 2 Rightmove's market power at the time of entry is  
 3 irrelevant to your assessment of whether it is enhanced  
 4 by the entry or not? Does the starting point make  
 5 a difference?  
 6 MR BISHOP: Not in my view, no.  
 7 MR FREEMAN: So you are willing to take Rightmove as having  
 8 whatever market power it has and then you look at what  
 9 the change is?  
 10 MR BISHOP: Yes: has the new entry, together with the OOP  
 11 rule, enhanced Rightmove's pricing power?  
 12 MR FREEMAN: Can you do that without taking a view on what  
 13 its, then current level of market power was?  
 14 MR BISHOP: I believe you can, yes. Because then what it is  
 15 is the -- ultimately you have pre-merger, you have  
 16 Rightmove subject to a competitive constraint from  
 17 Zoopla, whatever that is. Then the question is: how  
 18 does the entry of OnTheMarket with the OOP rule alter,  
 19 change Zoopla's competitive constraint on Rightmove or  
 20 indeed, actually to be more precise, what are the  
 21 overall competitive constraints operating on Rightmove's  
 22 pricing, pre-entry and post-entry and how are those  
 23 changing?  
 24 MR FREEMAN: Okay.  
 25 THE CHAIRMAN: Mr Parker, do you want to have a final word

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1 on that?  
 2 MR PARKER: No.  
 3 THE CHAIRMAN: No. What we will do is we'll rise but as  
 4 a special treat give you a sneak preview of what we are  
 5 going into next so you can think about how to put your  
 6 answers more pithily. What we want to discuss at  
 7 a fairly high level of generality, because we will be  
 8 coming back to it, is the nature of the relationship  
 9 between Rightmove and Zoopla, again leaving OnTheMarket  
 10 out of account for the moment. Because, as Mr Parker  
 11 has certainly flagged, we have heard an awful lot of  
 12 mention of duopolies in the evidence and I for one am  
 13 not inclined to attach any particular meaning, or at  
 14 least no single meaning to the way in which the  
 15 witnesses used that phrase.  
 16 But I would be grateful if you could set out in  
 17 fairly short order what you consider the relationship  
 18 between Rightmove and Zoopla to be, what you understand  
 19 the duopoly relationship, if it is such a thing, to be  
 20 and whether in contrast you consider that Zoopla acts as  
 21 a constraint on Rightmove or not. That is a package of  
 22 questions. Obviously we will be coming back to that but  
 23 it will be very interesting to have a sense of where you  
 24 differ because this is I think one of the critical  
 25 points.

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1 MR FREEMAN: Could you tell us what a duopoly is? A  
 2 two-person oligopoly or a two-person monopoly?  
 3 THE CHAIRMAN: We'll rise for five minutes for the shorthand  
 4 writers.  
 5 (3.30 pm)  
 6 (A short break)  
 7 (3.40 pm)  
 8 THE CHAIRMAN: Thank you, so I think beginning again with  
 9 Mr Parker, we'll have your two minutes' view on the  
 10 relationship between Rightmove and Zoopla.  
 11 MR PARKER: So I think the easiest way to maybe get into  
 12 this is to think about how competition takes place  
 13 between property portals, following on from something  
 14 that Mr Bishop said, and also perhaps if I can take you  
 15 to page 43 of my second report. So the agents in this  
 16 case are paying, the question is how much they are  
 17 paying for a property portal and what is the nature of  
 18 competition between property portals as experienced by  
 19 the agent?  
 20 What you have is the level of competition between  
 21 property portals is in my view determined by the overlap  
 22 between their house-hunter basis from the agents' side,  
 23 and actually when we come to look at it later between  
 24 the agent basis and the house-hunter side. So what I  
 25 care about as an agent is what house-hunters I can get

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1 from looking at a property portal and the listing fee or  
 2 the overall price I pay, and then what I care about as  
 3 a house-hunter is the agents on the property portal and  
 4 other value added services that that portal might  
 5 provide. Put the house-hunters to one side for now  
 6 because we are talking about from the agents'  
 7 perspective.  
 8 Mr Bishop rightly pointed out that if one portal has  
 9 access to a unique group of house-hunters, a totally  
 10 unique separate group of house-hunters and the other  
 11 property portal has another unique and different group  
 12 of house-hunters, then essentially these are two totally  
 13 separate routes to market. They are both, if you like,  
 14 monopolists over their customer bases. So in that world  
 15 each property portal can charge the sort of value that  
 16 it has inherent in its customer base and there isn't  
 17 really competition between them.  
 18 So now let's go to the other extreme. Now we have  
 19 exactly the same house-hunter base available on each  
 20 portal. In that world, competition between the portals  
 21 is extremely strong because if one portal tries to  
 22 charge me more than the other portal I will just list on  
 23 the second portal. I can get access to all of the  
 24 house-hunters, the agents can trade off those two  
 25 portals against each other. They are perfect

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<p>1 substitutes, the prices fall to marginal cost, which in                  2 this case is essentially zero because these are not                  3 really marginal cost businesses, they are fixed cost                  4 businesses, at least in respect of many individual                  5 agents. Marginal costs of dealing with an agent are                  6 very small compared to the costs of running the website,                  7 the costs of doing the marketing and so on.                  8 MR FREEMAN: So no agents' fees, no listing fees.                  9 MR PARKER: No listing fees in that world but that is not an                  10 equilibrium, unfortunately, because -- the ideal outcome                  11 for agents but the problem is no money, no marketing, no                  12 IT cost being covered, you can't have -- one of the                  13 portals will go out of business. It is probably                  14 a chicken game as to which of them goes out of business                  15 but one of them goes out of business and you are left                  16 with one portal.                  17 So these are the two extremes, two total                  18 monopolists, two identical portals, but we have seen                  19 that that is not an equilibrium. So instead we have                  20 a range of intermediate scenarios where there is one                  21 intermediate scenario you have a set of unique customers                  22 for this portal, let us call it Rightmove because it is                  23 on my right, so I am going to try and remember that, and                  24 a set of unique customers for Zoopla and then you have                  25 some substitute customers, and what you will see is the</p> <p style="text-align: center;">Page 178</p>	<p>1 this stuff in the middle where they are substitutes. So                  2 I think there has been quite a lot of discussion around                  3 whether the existence of multi-listing means that two                  4 firms in this type of market are not competing. I don't                  5 think that's the case at all. I think it's the level                  6 of -- the fact that people multi-list is merely, if you                  7 like, a corollary of the fact that they both have to                  8 some extent unique customer bases but they also are at                  9 least partial and maybe increasing substitutes as far as                  10 the overlapping customer base goes.                  11 THE CHAIRMAN: Thank you. Before we move over to Mr Bishop,                  12 can I ask you two factual questions relating to the data                  13 you have looked at.                  14 The first one is we obviously have a finite number                  15 of properties being listed in the United Kingdom, let us                  16 say for sake of argument. Excluding idiosyncrasies like                  17 Northern Ireland is it the case that if you take all of                  18 the properties listed on Rightmove and all of the                  19 properties listed on Zoopla you will have the totality                  20 of listings in our UK minus Northern Ireland market?                  21 MR PARKER: So putting Northern Ireland on one side, because                  22 I haven't looked at that, as far as I know the best                  23 evidence available on this is in figure 13 of my first                  24 report which is on page 65. So just to be clear how to                  25 interpret this figure, which is by the way also the data</p> <p style="text-align: center;">Page 180</p>
<p>1 unique customers for Rightmove are now a smaller set and                  2 the unique customers for Zoopla are a smaller set.                  3 Rightmove, its selling point to the agents is: these                  4 are people you can get on me that you can't get anywhere                  5 else. They provide additional value over what you can                  6 get on Zoopla so Rightmove will be able to say: "Well,                  7 here's what I can offer and let's do a deal that is                  8 worth you coming on the portal and accessing these                  9 customers so that you get some surplus but I also get                  10 some surplus because I'm providing you with some value                  11 and we share that". That's the sort of trade.                  12 Then the same thing happens for Zoopla. Zoopla has                  13 some unique customers as well and what you would expect                  14 to see is Zoopla would do a deal with an agent: "Come                  15 and list on my portal. I will charge you X amount.                  16 Because I have some unique customers, you can't get them                  17 elsewhere". But the competitiveness between them is                  18 driven by the overlap.                  19 Now, in that world what you are likely to get is                  20 a lot of multi-listing because these are part                  21 complement, part substitute. They are separate routes                  22 to market and provide you with to some extent a new and                  23 additional customer base. You would expect to find                  24 people listing on both but that doesn't mean that they                  25 are not competing. They are competing because of all</p> <p style="text-align: center;">Page 179</p>	<p>1 that was provided to you in response to a data request.                  2 The top big circle is Zoopla, the bottom big circle is                  3 Rightmove and the two little separate circles are OTM.                  4 So Zoopla has 2,307 agent branches that are only listing                  5 on Zoopla, 9,817 that are listing on Zoopla and                  6 Rightmove, and 578 that are listing on Zoopla and OTM.                  7 That's an estimated figure. We will come to that but                  8 these are all I think ballpark figures.                  9 Rightmove similarly, 9,817 listing on Zoopla, 3,020                  10 that are listing on Rightmove alone and then 5,201 that                  11 are listing on Rightmove and on OTM.                  12 To the best of my knowledge, I am not aware of any                  13 estate agents that are listing on OTM alone, so                  14 therefore there doesn't seem to be any property to my                  15 knowledge that is being listed just on OnTheMarket.                  16 I think Mr Springett said there may be isolated                  17 examples. I think there was one comment, a sort of                  18 testimonial from an estate agent in the disclosure that                  19 that estate agent in, I think it may have been Wootton                  20 had come off both. I don't know whether that still                  21 remains the case, but I think we are in the world of                  22 exceptions to rules here. I think the vast majority of                  23 properties are available, the overwhelming majority on                  24 Rightmove or Zoopla and it is not clear that there is --                  25 MR FREEMAN: So if an agent lists, it lists all its</p> <p style="text-align: center;">Page 181</p>

<p>1 properties?                  2 MR PARKER: In GB that is right because of the --                  3 MR FREEMAN: Leaving aside Northern Ireland.                  4 MR PARKER: -- nature of the branch-based fee.                  5 THE CHAIRMAN: And so if one were in this diagram to map in                  6 the various other portals that I have very rudely called                  7 insignificant or not material, they would appear within                  8 the two overlapping circles you have drawn and wouldn't                  9 to your knowledge appear in the yellow area outside the                  10 two circles?                  11 MR PARKER: To the best of my knowledge and to the extent                  12 that they are, if you like, standard residential type                  13 properties. I mean, there may be exceptions for farms                  14 and industrial and commercial property but those are                  15 very much separate to what we are talking about here.                  16 So yes, as far as I know the Rightmove and Zoopla                  17 portals cover the universe of properties to a very large                  18 extent.                  19 THE CHAIRMAN: The way you have analysed overlap, and of                  20 course I see why you are doing that, by reference to                  21 agents that are common or not common to the two                  22 providers, Zoopla and Rightmove, that's because they                  23 list all of their properties and so focusing on an                  24 agency head is, you would say, the best way of defining                  25 overlap because we don't I think have any data regarding</p> <p style="text-align: center;">Page 182</p>	<p>1 of around about October 2015 where they were starting to                  2 try and target agents on one other portal, who were only                  3 listing on one other portal, ie only Zoopla or only                  4 Rightmove, because they felt that the unattractive                  5 aspects of the One Other Portal rule in terms of forcing                  6 people to come off the portal might be mitigated                  7 somewhat if they focused on attracting people who were                  8 already only on one portal.                  9 So those data of October 2015, I have tried to match                  10 that with the OTM total number for around                  11 about October 15. I have applied a 90/10 split between                  12 those agencies that remain on Rightmove and those that                  13 remain on Zoopla within OTM and then I have tried to                  14 make these all add up to what Rightmove and Zoopla think                  15 are their total agent numbers at the relevant time                  16 periods.                  17 Now, that process doesn't come up with exact numbers                  18 that are precise, that precisely match up but I think as                  19 a general representation of the basic picture I think                  20 this is correct or reasonably correct.                  21 THE CHAIRMAN: Of the picture whilst OTM was on the market?                  22 MR PARKER: Yes.                  23 THE CHAIRMAN: Sorry, that was a joke I didn't intend. Of                  24 course, I think you would agree that it would be nice                  25 but I see from the data you have provided on our</p> <p style="text-align: center;">Page 184</p>
<p>1 analysis of individual properties that are listed on the                  2 various sites, not surprisingly.                  3 MR PARKER: Yes, that's right. I think agents are probably                  4 -- they are a good proxy for properties. Having looked                  5 at the data that we do have on properties, the decline                  6 in Zoopla's property base and the decline in its agent                  7 base following the entry of OTM were very similar in                  8 terms of proportions, so that gave me comfort that                  9 looking at agents was a good proxy for properties and                  10 then, as you say, sir, the fact that agents will be                  11 listing all their properties by virtue of the structure                  12 of the fee, looking at agencies is probably sensible and                  13 the data we have on agents is a bit better as well.                  14 THE CHAIRMAN: Yes, I recall you have provided us with more                  15 data because figure 13 is at a particular point in time.                  16 It is a snapshot, isn't it?                  17 MR PARKER: It is, but I don't think we have within this                  18 process better data and I wouldn't go so far as to say                  19 that it is a snapshot -- I wouldn't go as far as to say                  20 it is a snapshot at a particular point in time. I have                  21 had to pull together data from somewhat different                  22 sources because we don't have --                  23 MR FREEMAN: So it is a collage, is it, of snapshots?                  24 MR PARKER: It is a bit of a collage, exactly. Yes, so the                  25 data, the 2,307 figure is from an OnTheMarket document</p> <p style="text-align: center;">Page 183</p>	<p>1 spreadsheet, it is the category of "would be nice but we                  2 can't have" by annual figures showing how this overlap                  3 evolved. It would be very helpful if we had on                  4 a regular basis the agents, as it were, within each                  5 circle, Zoopla and Rightmove and the overlap because                  6 that might give us a further tool to analyse the data we                  7 do have in terms of prices. But all we can do, I think,                  8 is note what you very fairly said is a collocation of                  9 the information that is available to you and we will                  10 have to treat it for what it is worth.                  11 MR PARKER: I think this is the best that there is.                  12 THE CHAIRMAN: Yes. Thank you, Mr Parker, that was very                  13 helpful. Mr Bishop? If I can give particular                  14 congratulations for not mentioning "duopoly" once in the                  15 course of your explanation, thank you.                  16 MR FREEMAN: It will come.                  17 MR BISHOP: I think Mr Parker's description of the                  18 competition between the two portals was very clear but                  19 I think again here is the big point of disagreement                  20 between us because he talked about where the two portals                  21 have an overlap audience, but what he didn't then go on                  22 to talk about was: well, what does that mean for the                  23 extent of price competition between those two portals?                  24 And I think we can distinguish between two situations.                  25 The first one is where an estate agent is only going</p> <p style="text-align: center;">Page 185</p>

<p>1 to choose to list on one of those portals and then you 2 can see that there is likely to be direct price 3 competition between the two portals because one will 4 choose whichever value is the best. 5 But where an estate agent is choosing to list on 6 both portals, then even where there is an overlap in 7 a common audience there is also a situation where each 8 is providing access to a unique audience and as 9 Mr Parker put it, each portal will essentially have 10 a monopoly over access to that unique group. So to the 11 extent that estate agents think for whatever reason that 12 they need to list on both, then the competition between 13 Rightmove and Zoopla in terms of price competition prior 14 to the entry of OTM would have been limited. 15 MR FREEMAN: Do you mean by that a threat to switch from one 16 to the other wouldn't be credible because the portal 17 would know that it has a unique audience that that agent 18 needs? Is that what you are saying? 19 MR BISHOP: Exactly, and there's also no incentive for 20 Zoopla to cut its price in order to try and attract 21 customers away from Rightmove because what it is 22 offering is a value and obviously it makes a difference 23 on how big that unique audience is for both Rightmove 24 and for Zoopla. And in the figure 12A that Mr Parker 25 pointed to, if they can get to a situation where there</p> <p style="text-align: center;">Page 186</p>	<p>1 -- 2 MR FREEMAN: Can you say that again? You think it is not 3 about threats. 4 MR PARKER: I think it is about threats but it is not 5 really -- there is not that much actual switching. 6 MR FREEMAN: You had better get the transcript changed. 7 MR PARKER: It is about the threat. But I wouldn't expect 8 there to be much actual switching. 9 MR FREEMAN: Would you expect there to be evidence of 10 threats or is the threat a purely theoretical construct? 11 Does threat mean the possibility in the portal's mind 12 that the agent might switch? 13 MR PARKER: I think that's what restricts -- 14 MR FREEMAN: So far as a portal has a mind. 15 MR PARKER: Let's go back to this because I think this 16 potentially might help. What we are talking about is 17 here we have our two monopolists, totally separate 18 customer bases. Now we have a world where there is 19 a little bit of overlap but they still have an awful lot 20 of unique customers. So at that point Zoopla can charge 21 for a very large number of customers, that is very 22 attractive, Rightmove can charge for a very large number 23 of customers, it is very attractive. 24 As we gradually increase the level of overlap, here 25 we are still in a world where both have some unique</p> <p style="text-align: center;">Page 188</p>
<p>1 is no overlap then there are two firms with their 2 completely independent demands, then there is no price 3 competition between them at all on the assumption that 4 the estate agent needs to list on both. 5 I entirely accept that if estate agents are only 6 choosing one or the other, then there would be direct 7 price competition and that is what -- but the question 8 is: how important is that in the overall size of the 9 market? 10 MR FREEMAN: Do we have any information or data on switching 11 behaviour, including threats to switch other than 12 theoretical ideas about how this might occur? 13 MR BISHOP: I have no -- 14 MR FREEMAN: I am sticking with Mr Bishop to start with. 15 MR BISHOP: No, I have no data. 16 MR FREEMAN: Mr Parker, you are the data man. 17 MR PARKER: There isn't data but I would like to comment on 18 Mr Bishop's approach to thinking about competition. 19 I disagree with the way he presents it. So -- 20 MR FREEMAN: But we don't actually know how estate agents 21 switch or threaten to switch from one portal to the 22 other between these two portals? 23 MR PARKER: I think it is very clear. I think it is not 24 about threats to -- I think it is entirely about threats 25 to switch but very little is about actually switching so</p> <p style="text-align: center;">Page 187</p>	<p>1 customers but Rightmove only has control of a small 2 number of unique customers because all the other of its 3 customers can be got on Zoopla, and similarly Zoopla. 4 So here prices will be much cheaper because there is 5 much less unique -- there is much less differentiation 6 between the two. There is much more overlap. 7 So the level of competition is determined by the 8 level of overlap. Here I would still expect there to be 9 multi-listing in very large degrees because both of the 10 channels, they are a somewhat separate route to 11 marketing but because there is a lot of overlap between 12 them it is a lot more competitive, a lot more 13 competition. 14 Another way to think about this is portals are a bit 15 like supermarkets in this case. They are supermarkets 16 for estate agents. Let us imagine we had two 17 supermarkets. 18 MR FREEMAN: An industry you know a little bit about, 19 Mr Parker. 20 MR PARKER: An industry which I think both of us know 21 a little about. Many people in this room know something 22 about supermarkets. 23 What you have is you have Sainsbury, you have Asda, 24 and they have very much overlapping customer bases, but 25 they also have slightly unique customer bases and what</p> <p style="text-align: center;">Page 189</p>

<p>1 you find is that your suppliers want to list on all the                  2 different supermarkets. So Kellogg's, for example, will                  3 be wanting to list cornflakes in Sainsbury's and Asda                  4 and Tesco and Morrison's and corner shops and Budgens                  5 and a whole range of stores because it wants to get very                  6 wide access. But in a world where there was -- and you                  7 don't really see actual switching. So you don't see                  8 Kellogg's taking its products off the shelves very often                  9 to try and get a better deal out of a supplier.                  10 That all goes on within the negotiation. There is                  11 a threat there and you can imagine a world where if                  12 there was only one supermarket and there was no threat                  13 that supermarket would be able to get very advantageous                  14 prices out of its suppliers. If there was another                  15 supermarket out there who was providing an alternative                  16 route to market, largely overlapping but with some                  17 unique customers I would expect the suppliers to list on                  18 both and I wouldn't expect to see a lot of switching                  19 between them. And you do occasionally see these                  20 negotiations break down and there is a debate about the                  21 additional value that's being provided by a supermarket                  22 and the additional value, the price that the branded                  23 supplier is willing to accept. Occasionally you just do                  24 get this relationship break down but it is so rare as to                  25 be actually newsworthy and we saw that last year in the</p> <p style="text-align: center;">Page 190</p>	<p>1 because that's their business, high end properties, so                  2 they focus on the million-plus pound properties and                  3 portal B is lower priced properties, how its clientele                  4 has evolved, and it looks at up to a million in terms of                  5 value.                  6 Now, you might find that there were some agents who                  7 are in the overlap area -- you know, they are selling                  8 properties just above or just below a million and                  9 therefore they see an advantage in being in both, but it                  10 could be the case that one would have, because of the                  11 types of agent or types of property that those agents                  12 are putting into the two circles, an overlap that's                  13 almost defined by the nature of their business. You                  14 might do it on geography as well. You might find portal                  15 A is north of England and portal B is south of England                  16 and then you have an area where the agents in the middle                  17 are effectively obliged because of where they are                  18 geographically to deploy in both circles.                  19 It does seem to me that that makes something of                  20 a difference in terms of agent choice in that what it is                  21 doing is it is really saying that the overlap may be                  22 conditioned by agents whose business attracts them to                  23 both portals.                  24 I wonder whether that is something which -- I know                  25 we don't have the data, but whether that is a fact that</p> <p style="text-align: center;">Page 192</p>
<p>1 debate between Unilever and Tesco which made the news in                  2 around about September, I believe it was, and Marmite                  3 was one of the brands that was mentioned.                  4 But that's newsworthy precisely because it's so                  5 rare. You don't see that happening very often. But                  6 that doesn't mean that if Tesco is the only game in town                  7 that the suppliers wouldn't have a very different                  8 experience from negotiating with Tesco than they do                  9 given the existence of Asda, Sainsbury, Morrison and                  10 so on as alternative routes to market.                  11 So I think it's all about the threat and I wouldn't                  12 expect to see that much actual switching.                  13 THE CHAIRMAN: I think, Mr Bishop, before we let you come                  14 back on that can I throw another query into the mix                  15 which arose out of your answer. So far we have been                  16 looking at these overlapping circles without really                  17 making any form of hypothesis or assumption regarding                  18 the types of agent that are putting the properties in,                  19 or indeed the types of property that they are putting                  20 in. What I want to explore with you and then perhaps                  21 with Mr Parker is how far we ought to have this factor                  22 in mind.                  23 Let me explain why I am thinking this. Suppose one                  24 has two portals, A and B, and A specialises in or                  25 happens to have agents who only put into the portal,</p> <p style="text-align: center;">Page 191</p>	<p>1 we ought to be bearing in mind when considering these                  2 rather complicated overlaps. Let's start with                  3 Mr Bishop. Answer that and indeed come back to what                  4 Mr Parker was saying and then we'll let Mr Parker have                  5 the last word.                  6 MR BISHOP: To answer that question, it is not one that                  7 I have considered but I would think that that's where                  8 portals would probably compete in terms of what kind of                  9 estate agents to attract and also what kind of visits to                  10 that portal. And so it could be that it ends up with                  11 one portal that is only ever visited by people who want                  12 very expensive properties. I guess in that situation                  13 they might need to change their rules about which                  14 properties an estate agent wants to list because an                  15 estate agent may have over a million pound properties                  16 and also under. So I think that would be an issue for                  17 a portal but it all goes down to what kind of people                  18 they are attracting to that portal in the first place.                  19 Going back to Mr Parker's point his -- I forget, was                  20 it Tesco's and Marmite, that is a negotiation between                  21 Tesco's and Marmite over the value of listing, and                  22 I think the same applies here. If I am a monopoly and                  23 I have a unique group of customers and that's worth 10                  24 to an estate agent, I can charge that estate agent 10.                  25 If it folds in half and I only have a unique audience of</p> <p style="text-align: center;">Page 193</p>

<p>1 5 and that's only worth 5 to an estate agent I can 2 charge 5. 3 That is a situation where I'm a monopolist going 4 from offering a value of 10, I extract 10, to 5 a situation where I'm only offering a value of 5, I can 6 extract 5. But this distinction between offering 7 a unique audience of 10 going down to 5 is exactly the 8 same as if there is a portal offering common ownership 9 but the amount that I can extract for my unique audience 10 is the same and it is not a threat of switching to the 11 other portal which gets that, it is just the overall 12 value which I am offering has gone down. It is not 13 a threat of switching between portals which has given 14 rise to that, if you like, price decrease. It is the 15 reduction in the value that the portal is offering to 16 the estate agent, the incremental value. And this is 17 a really important point of distinction between us. 18 THE CHAIRMAN: I just want to summarise what Mr Bishop is 19 saying and then do come in, Mr Parker. So in terms of 20 the driver of value, the price that the portal owner can 21 charge you say that the determinant, and let's assume 22 that all other things are equal in terms of the quality 23 of access and the efficiency and things like that, just 24 looking at what properties one has on the portal, you 25 say that the key measure is the unique properties.</p> <p style="text-align: center;">Page 194</p>	<p>1 content of the properties in the portal but it might be 2 a range of other factors as well. It depends on 3 subjectively what that group of people is attracted to. 4 MR BISHOP: Correct. 5 THE CHAIRMAN: And so -- this is a slightly absurd 6 example -- if one had a situation where one portal was 7 so attractive in terms of dynamic and user 8 attractiveness but over time the content overlapped with 9 another, but the attractiveness was so great that the 10 audience continued coming to that portal, then on that 11 hypothesis the estate agent would be paying the same 12 even though there was 100 per cent overlap. I know that 13 is an extreme example, but it's a question of what is 14 driving the visitors, the house purchasers to the site. 15 MR BISHOP: What's driving that is what's available for them 16 to view on the website, the attractiveness, the 17 functionality of the website and the degree of marketing 18 which the portal was undertaking to get people to come 19 and visit. 20 Now, if I'm lucky enough to get lots of unique 21 visitors, I will have a more valuable service or 22 something additional to sell to estate agents relative 23 to if everyone I attract is also going to another 24 portal. 25 MR FREEMAN: Do we have any evidence for what makes a viewer</p> <p style="text-align: center;">Page 196</p>
<p>1 MR BISHOP: Sorry, the unique audience. 2 THE CHAIRMAN: I am so sorry. 3 MR BISHOP: It is the unique audience. And Mr Parker's 4 original situation where you have two portals and if you 5 assume that they are all offering all properties, so 6 they are both operating with the same properties but 7 portal A has 100 unique visitors and portal B has 100 8 unique visitors and assume that's the total market, 9 then, as Mr Parker said, and I agree with him, you have 10 essentially got two independent portals. There is no 11 price competition between them. 12 My view is what I'm arguing, and this is the point 13 of disagreement, where as that overlap comes up yes, the 14 overall value which the portals can extract will go down 15 but that's driven by the overlap in the audience, not 16 through direct price competition -- 17 MR FREEMAN: Overlap meaning smaller unique audience? 18 MR BISHOP: It is a smaller unique audience. So I am 19 delivering lower incremental value to the estate agent. 20 MR FREEMAN: Right. 21 MR BISHOP: And therefore I can extract less from it. 22 THE CHAIRMAN: This is very helpful because it is entirely 23 my fault, I hadn't quite grasped that aspect of what you 24 are saying. So what drives or causes an audience to 25 stick to one portal rather than another may be the</p> <p style="text-align: center;">Page 195</p>	<p>1 view a property portal? Is there any survey evidence? 2 Anything more than the theory? 3 MR PARKER: We may be jumping into issues you want to come 4 tomorrow but I think we have quite a lot of evidence 5 from the factual witnesses who run property portals that 6 its properties, its marketing, its valued added 7 features -- 8 MR FREEMAN: There is no survey of portal viewer attitudes 9 we can refer to? Property portal viewer attitudes? 10 MR PARKER: I don't think so. But there is very strong 11 evidence I think or strong views expressed by lots of 12 people that properties matter. So marketing matters and 13 value added features matter and the functionality of the 14 website matters too. 15 THE CHAIRMAN: But you have also been provided, the two of 16 you, with a certain amount of data on audience overlap 17 from, is it Nielsen Netview? 18 MR PARKER: Yes. 19 THE CHAIRMAN: Again, Mr Parker, we will be coming back to 20 you, but Mr Bishop you will be suggesting that that 21 overlap or lack of overlap is something that we ought to 22 be paying quite a lot of heed to. Would that be a fair 23 comment? 24 MR BISHOP: That is a fair comment and it is related to the 25 fact that many agents, estate agents are multi-listing.</p> <p style="text-align: center;">Page 197</p>

<p>1 If they weren't multi-listing, then you would expect to                  2 see direct price competition between the two portals on                  3 the assumption they were only going to list on one. But                  4 if they are going to list on both, then the price they                  5 end up paying on each portal will be driven by the                  6 incremental value of each portal which is determined by                  7 their unique audience.                  8 MR FREEMAN: What's your answer to Mr Parker's supermarket                  9 analogy that all the food companies are multi-listing?                  10 MR BISHOP: Well, fortunately I don't have that much                  11 experience of the supermarket industry. I mean,                  12 whether Marmite listed or not wasn't a threat of                  13 switching. It was just a negotiation with Tesco's over                  14 the terms of trade.                  15 MR FREEMAN: It was a threat of withdrawal.                  16 MR BISHOP: Yes, and it is the same here. I'm an estate                  17 agent, I want to list on your property portal. You are                  18 putting forward a price. It's kind of, do I think that                  19 that makes it worthwhile or not to pull off or accept                  20 it? It is not the threat I'm going to switch to another                  21 portal.                  22 THE CHAIRMAN: Mr Parker, do come back on that.                  23 MR PARKER: I do think that Mr Bishop's conclusion is                  24 entirely wrong. Your threat to withdraw from listing on                  25 a portal and the economics of negotiation is all about,</p> <p style="text-align: center;">Page 198</p>	<p>1 because you then get increased overlap and what                  2 Mr Bishop then says is quite right, if there is                  3 a reduction in the uniqueness of the house-hunter base,                  4 that is price competition. That's how price competition                  5 emerges, because of a threat of coming off Rightmove.                  6 Here the threat of coming off Rightmove is you lose                  7 everything. Here the threat of coming off Rightmove is,                  8 I keep these because I can get those on Zoopla. That's                  9 why Rightmove's price has gone down so it is all about                  10 the threat, the overlap.                  11 MR BISHOP: But it is not a threat in terms of Zoopla                  12 threatening to undercut Rightmove's prices. It is all                  13 driven by the extent of the overlap in the viewing                  14 audience. So I am agreeing, I think, Mr Parker's                  15 articulation apart from the last bit was spot on. There                  16 is competition between Zoopla and Rightmove to attract                  17 more and more unique viewers because that's what they                  18 can extract the value from, but there is not direct                  19 price competition in terms of saying: "Come to me, I'll                  20 undercut whatever Rightmove's offering," and vice versa                  21 where they are multi-listing. If they are not                  22 multi-listing then there will be direct price                  23 competition.                  24 MR PARKER: I think the whole multi-listing single issue                  25 thing is a red herring actually because you either</p> <p style="text-align: center;">Page 200</p>
<p>1 what's my next best alternative? So it is all about                  2 Zoopla, Rightmove, here we are, if I come off Rightmove,                  3 then what can I still get on Zoopla? And if I come off                  4 Zoopla, what do I still get on Rightmove? That's what                  5 determines the outcomes of the negotiations.                  6 So when Mr Bishop says, well, here I have got 10 and                  7 here I have got 10 and they can both charge 10. When we                  8 put them together and now this one's got 5, it can                  9 charge 5 and this one has got 5 and it can charge 5, you                  10 can list on both now for 10. Whereas here you can list                  11 on both here for 20.                  12 So, if you like, competition takes place for this                  13 person trying to expand their unique house-hunter base                  14 and get more value into their portal and this person is                  15 also trying to do the same and what happens is by trying                  16 to attract users they end up attracting them from each                  17 other.                  18 So that new users into the market or users who had                  19 previously used Rightmove and Zoopla will be trying to                  20 attract them to just use Zoopla and to try and get more                  21 unique users. So competition is driving them to try and                  22 attract house-hunters on to the portal because then they                  23 can charge more but that process of attracting                  24 house-hunters is going on in both directions and that                  25 potentially is what is driving increased competition</p> <p style="text-align: center;">Page 199</p>	<p>1 choose to multi-list and if you multi-list then you list                  2 on Rightmove and you pay up to 5 and you list on Zoopla                  3 and you pay up to 5 and your threat of coming off                  4 Rightmove is that you just stay on Zoopla. So now I am                  5 in a world where I am deciding: should I be on Rightmove                  6 or should I be on Zoopla? If I decide not to be on                  7 Rightmove, I choose to be on Zoopla, that is exactly the                  8 same threat. So whether you choose to multi-list or not                  9 is whether you decide that listing on a further route to                  10 market provides you with more surplus than not listing                  11 on that further route to market. But I think whether                  12 you single list or multi-list is actually totally                  13 irrelevant.                  14 I think it is looking at this through the wrong end                  15 of the telescope. What this says is: you will end up                  16 single listing where there is perfect overlap. Where                  17 you have perfect overlap single listing, where you have                  18 some level of uniqueness, you won't. But that's to                  19 mistake -- what's driving single listing is perfect                  20 overlap. If you get perfect overlap you get single                  21 listing but the competition and the threat is all about                  22 the overlap. It is not about the single listing. That                  23 is an outcome.                  24 THE CHAIRMAN: Can I try and unpick it here. I think, but                  25 perhaps both of you could correct me if I am wrong, that</p> <p style="text-align: center;">Page 201</p>

<p>1 you see that the driver of what the portal can charge to 2 the estate agent turns on the amount of audience that 3 they can attract that is in particular unique. Do you 4 both agree with that? 5 MR PARKER: Yes. 6 MR BISHOP: Yes. 7 THE CHAIRMAN: So what are we to make of this: if we have 8 a situation where the portals are both, let us assume, 9 listing exactly the same properties and yet the audience 10 is enjoying the experience of accessing both? In other 11 words, you have not merely a high overlap of properties 12 but a very high overlap of audience. You would expect 13 the price to fall but in a sense what the audience 14 overlap is telling you is that there is actually a value 15 being attributed to the same properties being listed in 16 two different places. Is that a factor that I really 17 ought to be dismissing from my mind as just slightly 18 strange or is there value in the fact that there are the 19 same properties listed in different ways to the same 20 people? 21 MR PARKER: Value for whom? Shall I start? I am not quite 22 sure who is -- 23 THE CHAIRMAN: It was directed to both of you but do start, 24 Mr Parker. I am talking I suppose in terms of value, 25 I think what we are -- we will proceed on the basis that</p> <p style="text-align: center;">Page 202</p>	<p>1 even better properties, more and better or different 2 properties, or you need some other differentiated 3 proposition that will attract house-hunters to you in 4 addition to them going to the existing property portal. 5 So the discussion around Zoopla's entry strategy was it 6 started by essentially being a provider of property 7 information, getting potentially house-hunters but 8 people to visit its website to get information about 9 property, not listings at that stage, information about 10 property, and then it started acquiring property 11 portals. Having already built up a customer base that 12 people were coming to, it was then attracting people to 13 the package of listings and some value added features. 14 It had this valuation tool which provided other 15 information about the local area and so on. 16 So the competition between the property portals, on 17 the house-hunter side you are trying to attract as many 18 house-hunters as possible. If you offer 19 a differentiated proposition from the other offers in 20 the market, whether that is by offering different 21 properties or other different features, then 22 house-hunters might look at your site as well as the 23 site of the other portal because they'll go to one 24 portal for lots of property and go to another portal for 25 something more specific.</p> <p style="text-align: center;">Page 204</p>
<p>1 if the audience, that is to say the property purchaser, 2 sees value in a listing then the portal will be able to 3 extract value from the estate agent. After all, we are 4 interested in really what drives the dynamic of the 5 estate agent's desire to pay, if that answers the 6 question. 7 MR PARKER: This is where we start getting properly into our 8 two-sided market. We have been talking very much about 9 one side of the market and why estate agents might pay 10 for house-hunters, access to house-hunters, but we also 11 need to look at house-hunters and why might they visit 12 portals to then start seeing how these dynamics play 13 through on both sides. 14 So as I think we have discussed, house-hunters 15 generally are going to want to see properties. That is 16 the main reason why they are going to a property portal. 17 More properties will be more attractive than fewer 18 properties. I think that has to be a common theme 19 throughout all of this. 20 Let's suppose there is a large portal there and they 21 have got all the properties and the house-hunters are 22 already used and habituated to going on that property 23 portal. Well, as a competing property portal how do you 24 try and compete in that market? How do you try and 25 attract a customer base? Well, you probably need either</p> <p style="text-align: center;">Page 203</p>	<p>1 So if you like, because the house-hunter doesn't pay 2 you have to offer them something different, which goes 3 back to Mr Freeman's comment about to have sellers you 4 need to have buyers. You need to get lots of buyers 5 there. That's what ultimately estate agents want so 6 that's what the portals try to give them. 7 THE CHAIRMAN: Thank you. I am afraid, Mr Bishop, you are 8 going to be resuming tomorrow. We have to rise now 9 because not least we have another venue to go to. 10 We'll resume at 10 o'clock tomorrow. I am quite 11 conscious that we are suffering from a problem that 12 Mr Harris had. The conversation is so interesting that 13 we are going longer than I think we thought but we will 14 finish at 1 o'clock tomorrow. So 10 o'clock tomorrow. 15 MR HARRIS: May I make an enquiry, sir. Do you have any 16 closer views yet as to who will be going first in terms 17 of cross-examination? 18 THE CHAIRMAN: Yes, I am sorry. That is a very fair point. 19 I think we will stick to the order as was originally 20 adumbrated. That is to say, with Mr Parker going first, 21 your expert, and Mr Bishop following, to follow the 22 opening submissions. 23 MR HARRIS: Thank you. 24 THE CHAIRMAN: Thank you for raising that. I don't need to 25 say it but I will anyway. Don't speak to anyone.</p> <p style="text-align: center;">Page 205</p>

1 I suppose you could speak to each other if you wanted to  
2 overnight but -- well, I will say feel free.  
3 MR MACLEAN: Sir, has the Tribunal given any thought to the  
4 point I raised this morning about the closing written  
5 submissions?  
6 THE CHAIRMAN: We have discussed it. We haven't reached  
7 a concluded view. We will give you one first thing  
8 tomorrow. Thank you all very much. 10 o'clock  
9 tomorrow.  
10 (4.30 pm)  
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