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IN THE COMPETITION

Case No.: 1380/1/12/21

APPEAL
TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP
(Remote Hearing)

Monday 1 November – Friday 19 November 2021

Before:

The Honourable Mr Justice Marcus Smith
Bridget Lucas QC
Professor David Ulph CBE

(Sitting as a Tribunal in England and Wales)

BETWEEN:

BGL (Holdings) Limited

Applicant

v

Competition & Markets Authority

Respondent

A P P E A R A N C E S

Daniel Beard QC and Alison Berridge (on behalf of BGL)
Marie Demetriou QC. Ben Lask and Michael Armitage (on behalf of the CMA)

Digital Transcription by Opus 2

Thursday, 4 November 2021

(10.30 am)

(Proceedings delayed)

(10.43 am)

THE CHAIRMAN: Mr Beard, good morning.

MR BEARD: Good morning, sir. We are obviously now going to move into the evidential phase.

THE CHAIRMAN: Yes, Mr Beard, let me just check that we are good to go on the streaming out. Yes, we are. Thank you, yes. Do continue. I am so sorry.

Application by MR BEARD

MR BEARD: Obviously, Ms Demetriou is going to call Ms Glasgow. I have had a word with Ms Demetriou, because there is a problem that arises with the cross-examination of Ms Glasgow given the nature of the confidentiality concerns that have been expressed.

Now, there are some documents that will be sensitive. There are other documents where I do not think there is any sensitive material, but because names of insurers are redacted, for example, it would inevitably be the case that I would have to ask questions in code, and then Ms Glasgow would be having to answer questions using codes, and I think that would be a particular cruelty that we cannot visit on a witness. In those circumstances, I think we are going

1 to have to deal with those questions in private so that
2 Ms Glasgow is not trying to read a key and make sure she
3 does not make a slip in relation to confidentiality
4 which is not her concern.

5 We have also realised that whilst a hard copy bundle
6 has been prepared for Ms Glasgow, unfortunately, it has
7 been prepared, save in relation to her witness
8 statement, with all the redactions in it. That, of
9 course, includes the redactions in relation to MSM
10 material, which may be material that I would want to
11 refer to. So the intention is --

12 THE CHAIRMAN: When you say "redactions" it is not just
13 highlighting; it is blacking out.

14 MR BEARD: Blacking out, because of course in relation to
15 other material, it is important she would not see it on
16 the basis of the confidentiality concerns. So in those
17 circumstances, we do not think we can use the hard copy
18 bundle. I think, in any event, that would have been
19 limited, because there are some other documents I want
20 to go to.

21 So what I am going to do is call up the EPE
22 reference numbers. I am hoping that I have them right
23 and they are MSM material that has been seen.
24 Obviously, if I make a mistake or there was an error in
25 what is pulled up, we will all shout and scream and have

1 it taken away again, but I think that is the only way in
2 which we can deal with this, this morning.

3 I will start a few questions without moving into
4 confidential, but it is not going to be many.

5 THE CHAIRMAN: Right. Well, thank you for raising that now.

6 Ms Demetriou, I am pretty reluctant to go into closed
7 session for the usual and obvious reasons, but I am
8 equally wanting to ensure that Ms Glasgow's ability to
9 give evidence -- this is a stressful enough time
10 anyway -- is as easy as possible, and I really do not
11 want to have hanging over her, the concern that she is
12 going to misspeak into the record something which is
13 confidential.

14 What I am going to do, I think -- and I will rule on
15 this, but I want to hear from you first -- is I am going
16 to consider permitting Mr Beard to remove the
17 confidentiality gloves himself, and Ms Glasgow likewise,
18 and for Mr Beard to exercise his judgment about matters
19 that are truly confidential, where I would like him to
20 tread a little bit more carefully, but when we are
21 talking about names and the usual stuff, it seems to me
22 that the gloves should come off and that material will
23 simply be referred to properly.

24 We have discussed this a couple of times already,
25 and I know the CMA's position is that they are, to

1 a large extent, the watchdogs of other persons'
2 confidentiality, and that is the position you have very
3 properly been articulating. So I am going to give you
4 the opportunity to speak both for the CMA, and if you
5 wish, to object for any third parties to this course.
6 I will then make a ruling either to go into private
7 session or to indicate that I am going to lift the
8 question of confidence. But obviously, I need to hear
9 from you first and then if Mr Beard is anything other
10 than neutral, I will hear from him.

11 MR BEARD: If I may, just before Ms Demetriou speaks --

12 THE CHAIRMAN: Yes, of course.

13 MR BEARD: Only because Ms Demetriou does not know which
14 documents I may be going to.

15 THE CHAIRMAN: I understand.

16 MR BEARD: So I think it is right to say there are one or
17 two documents that I think I am pretty sure are properly
18 confidential to MSM, so we would have to deal with those
19 in closed. They will come relatively early. Then there
20 are transcripts of interviews and so on, which we do not
21 think are confidential, because we think our clients
22 have seen these documents, but we are not absolutely
23 sure whether they have seen all of them. So we end up
24 with this difficulty that unless we do some kind of
25 audit, we cannot work out what is and is not genuinely

1 confidential.

2 Whilst I quite appreciate the Tribunal's indication,
3 I am not sure I am going to be able to sort of navigate
4 confidently round some of these documents, and so it may
5 be somewhat unavoidable. But, for instance, my clients
6 may have to leave the room, for example, and we will
7 have to stop the live stream for a period, because I am
8 just not sure where I am, frankly, with what is -- if we
9 could imagine two categories: seriously confidential,
10 ie would justify some kind of confidentiality
11 protection, and what is covered in yellow at the moment,
12 and I am not sure I can distinguish necessarily. I do
13 not think I have the sensitivity to do that at the
14 moment. I am really sorry.

15 THE CHAIRMAN: No, that is helpful. What you are saying
16 really is it would have been hindsight, spectacles
17 firmly on, a good idea to have two forms of highlighting
18 for confidentiality, the stuff that does not matter and
19 the stuff that does matter. That rather makes the point
20 about excessive use of yellow which we have discussed
21 already.

22 MR BEARD: I do not want to revisit that, because we are
23 where we are.

24 THE CHAIRMAN: We are where we are.

25 MR BEARD: I just want to try to make this morning workable,

1 but I wanted to indicate that because Ms Demetriou
2 obviously does not know these things and therefore I did
3 not want to put her in an awkward position.

4 THE CHAIRMAN: I understand. Ms Demetriou, I will hear you
5 and then I will consider what course we take.

6 Submissions by MS DEMETRIOU

7 MS DEMETRIOU: Sir, I think all I want to say is I think the
8 difficulty from the CMA's perspective is that it has
9 now, following the Tribunal's indication the other day,
10 written to the insurers and given them the chance to
11 object, and so that process is in train.

12 So my concern is that your provisional proposal
13 really means that they are not really being given the
14 chance properly to object, because the horsemen have
15 bolted. I think, on that basis, given that we have put
16 in train this procedure, and I do understand the
17 Tribunal's reservations about going into private, I do
18 think that would be the safest course.

19 I firmly agree with Mr Beard that we cannot ask this
20 witness to be speaking in the cipher code. It is just
21 not an acceptable way to proceed with the witness.

22 So I think that although I understand the Tribunal's
23 reservations, I think the safest course is to go into
24 private. Once these issues have been resolved, then
25 obviously to the extent that confidentiality redactions

1 The difficulty that has been articulated is this:
2 whilst in the course of opening submissions, counsel
3 have very skillfully and on the whole successfully
4 navigated the confidential material by using code
5 references or by directing the Tribunal to read to
6 itself confidential passages. It is entirely unfair to
7 expect a witness, who is seeking to give evidence in
8 what can only be described as a stressful environment,
9 to have in mind this confidentiality regime. It seems
10 to me that that point is absolutely correct.

11 Ms Glasgow needs to be in the best position possible
12 to give her evidence, and that includes removing from
13 her concern the worry that she might misspeak and
14 inadvertently refer to confidential material.

15 So the objective is clear: Ms Glasgow must be
16 unconstrained by worries of confidence. The resolution
17 of that objective is less clear. Either the
18 confidentiality regime needs to be removed or we need to
19 go into private session.

20 My strong preference would be to not go into private
21 session and to lift the confidentiality regime. The
22 reason for that has become very clear over the last few
23 days. What is clear is that the CMA entirely
24 understandably has sought, during the course of its
25 investigations, to assuage the concerns of the third

1 party that it has been interviewing and speaking to, to
2 assuage those concerns by indicating that significant
3 protection will be given to all kinds of material in the
4 documents, just to encourage persons to speak in an
5 uninhibited way with the CMA. One can understand
6 exactly why that course is taken.

7 The fact is that although the CMA has significant
8 enforcement and compulsion powers in regards to
9 evidence, entirely wisely, it prefers to rely upon the
10 voluntary good offices of those that it speaks to.

11 Speaking entirely for myself, I can quite understand
12 why, in the course of its investigation, the CMA would
13 say: do not worry, your names will not be used in
14 public, do not worry about information, we will ensure
15 that it is kept under wraps. So what one gets in the
16 course of the investigation is a confidentiality regime
17 that is exceedingly broadbrush, because it is human
18 nature, when a third party is offered a wide
19 confidentiality protection, they tend to take it.

20 The problem is that when one comes to trial, a wide
21 confidentiality regime is entirely at odds with the
22 principle of open justice. It seems to me that for the
23 future, a significant reassessment of the
24 confidentiality regime needs to be undertaken, really at
25 the moment that an appeal is launched. It seems to me,

1 at that point, the parties must calibrate themselves by
2 reference to what is going to take place, if the appeal
3 is heard in court, and it seems to me that the regime of
4 confidentiality must be dramatically curtailed to that
5 which is commercially damaging to third parties.

6 It seems to me that that is the starting point.
7 There must be not simply a subjective desire to keep
8 names and figures out of the public domain, but there
9 must be a clearly articulated reason why the release of
10 this material will cause harm, and unless that reason
11 can be articulated and the harm is a material one, this
12 material should not be continued to be confidential but
13 should be free for open reference.

14 That is for the future, and I say it really to
15 ensure that we do not get a situation like this again.

16 For today, it seems to me that we cannot, without
17 adjourning -- and we are not going to adjourn -- seek to
18 draw a difference between confidential material that is
19 not really confidential and confidential material that
20 is. It would be unfair to Mr Beard to require him on
21 the hoof to make that assessment.

22 So with considerable reluctance, when Mr Beard
23 indicates, we will go into private session and
24 Ms Glasgow will give her evidence in private.

25 We will then review the transcript of the evidence

1 and we will publish it on the website with appropriate
2 redactions, if appropriate, on the basis of the
3 confidentiality regime that I would like to have in
4 place, rather than the confidentiality regime that is in
5 place. But that is something which we can deal with
6 after the event, and I am sure that both legal teams
7 will assist in ensuring that the widest possible
8 dissemination of material and the evidence of Ms Glasgow
9 is given.

10 MR BEARD: I am most grateful. Sir, I am going to, if
11 I may, just put down one marker on behalf of those
12 behind me.

13 Sir, you emphasised that this was a matter for the
14 future. Those behind me have been protesting with the
15 CMA for some substantial period of time that precisely
16 that exercise should have been done.

17 Now, I understand that now there have been further
18 communications with insurers and so on. We have been
19 pressing for this for a long time. That is not a matter
20 to be discussed today. It may be a matter that in years
21 later down the line and results in issues to do with
22 costs and so on, but I think it is important to put down
23 that marker.

24 You rightly say, this may be a matter for the
25 future, but we have tried to make it a matter for now

1 and have not succeeded. But we leave that, I think.

2 THE CHAIRMAN: I am grateful. Ms Demetriou.

3 MS DEMETRIOU: Sir, thank you. In that case, the CMA calls
4 Ms Glasgow.

5 MS NATASHA GLASGOW (affirmed)

6 THE CHAIRMAN: Ms Glasgow, good morning. Would you please
7 sit down and make yourself comfortable. You have some
8 water there.

9 A. Thanks.

10 THE CHAIRMAN: Before Ms Demetriou takes you to your
11 evidence-in-chief, first of all, apologies about talking
12 about you when you were at the back of the courtroom.
13 Secondly, you will see rather more monitors and
14 electronic equipment than is usual in a courtroom. I do
15 not want you to be disturbed by that, but you should
16 I think be introduced to the third member of our
17 Tribunal, who is Professor David Ulph, the gentleman on
18 the bottom of the screen over there. He is attending
19 remotely from Scotland, perhaps unusual, but because of
20 the COVID crisis, that is why we are in part remote and
21 hybrid.

22 So please do bear in mind that your evidence is
23 being heard remotely in Scotland, and you will have been
24 told: address yourself to the Tribunal.

25 A. Yes.

1 THE CHAIRMAN: Well, that is a little bit harder today than
2 normal.

3 There is a camera which is following the speaking
4 parties. When one has submissions that is actually
5 quite straightforward. When one is talking as long as
6 I am, that is also quite straightforward. But when
7 questions are coming, the camera will be swivelling
8 between Ms Demetriou, yourself and me, if I intervene.

9 Could I ask everyone to take their time about
10 answering, so even if you have a super quick answer,
11 give it a second or so, just so that Professor Ulph can
12 see the speaker rather than, as happened when we tested
13 it yesterday, when one has too fast a tennis match
14 between one speaker and the other, the camera shoots
15 across and is always too late to catch the answer.

16 So take it slowly, and we will see how it goes. If
17 it does not work, we will make sure something else does.

18 The last thing is you will be seeing documents,
19 I think, a combination of paper and electronic versions.
20 To the extent that there are electronic versions, you
21 are not able to do what many witnesses want to do, which
22 is to feel the document page, look at the first page and
23 last page, and what you are presented with is just
24 a single page.

25 Now, most witnesses think it is terribly rude to

1 say, "Please can I see the first page and the second
2 page." It is not rude. If you want to place the
3 document in context, if you want to read it all, if you
4 want to see where it begins, where it ends, to refresh
5 your memory, just ask and Ms Demetriou will take you to
6 it. Do not worry about the time, it is very important
7 that you understand what it is you are being referred to
8 and, of course, the same with Mr Beard, who will be
9 asking most of the questions.

10 Ms Demetriou, over to you.

11 Examination-in-chief by MS DEMETRIOU

12 MS DEMETRIOU: Thank you, sir. Just on the topic of hard
13 copy bundles, can I just make sure, because I do not see
14 a bundle in front of Ms Glasgow, but there are two on
15 the shelf behind. Can I just make sure that one of
16 those -- can we just check, because we did want
17 Ms Glasgow to have a hard copy of her witness statement
18 in front of her.

19 As Mr Beard indicated, these bundles are fully
20 redacted, so they are not going to be terribly helpful,
21 but they are at least helpful in terms of containing
22 Ms Glasgow's witness statement.

23 THE CHAIRMAN: Very good, thank you.

24 MS DEMETRIOU: Ms Glasgow, have you now got your witness
25 statement in front of you?

1 A. I do, yes.

2 Q. That for everybody else's note is bundle A, tab 13 at
3 page 1 {A/13/1}. Can you confirm, looking at the bottom
4 of that page, that that is your signature?

5 A. I can, yes.

6 Q. Then if you turn on, please, to page 13 {A/13/13}, this
7 is the witness statement that you gave the CMA during
8 the investigation, is it not? Can you confirm that that
9 is your signature at the end?

10 A. At the end of the statement, yes, that is my signature.

11 Q. Thank you. Can you confirm that the contents of this
12 statement are true to the best of your knowledge and
13 belief?

14 A. They are, yes.

15 MS DEMETRIOU: Thank you very much. I do not have any
16 questions for you, but Mr Beard is going to ask you some
17 questions now.

18 A. Okay.

19 Cross-examination by MR BEARD

20 MR BEARD: Thank you. Good morning, Ms Glasgow.

21 A. Good morning.

22 Q. When I refer to the witness statement, I am going to be
23 referring to the one you gave during the investigation,
24 not the one with the first three paragraphs. So I am
25 just going to ask you some questions about that

1 statement, so it is helpful you have it in front of you.

2 In the beginning, you set out some of your
3 background and the fact that you have now moved on from
4 MoneySuperMarket. At paragraph 6, you start picking up
5 some of the substance of your evidence, and you talk
6 about how MoneySuperMarket, in paragraph 6, did not use
7 wide MFN clauses that are the subject of this appeal.
8 But I just wanted to pick up towards the end, you say:

9 "However [in the last sentence], MSM did support the
10 use of 'narrow' MFN clauses, ie clauses which restricted
11 an insurer from offering insurance more cheaply through
12 its own direct sales channel ..."

13 You say that is the case:

14 "... because we did not want to make substantial
15 investments with the risk that a customer could obtain
16 a cheaper price buying a product directly from the
17 insurer."

18 Just so I understand what you are saying, just in
19 that sentence, you had various, for example, marketing
20 campaigns like the sort of Epic So MoneySuperMarket
21 campaign and more recently the Money Calm Bull and
22 presumably you spent an awful lot of money on those
23 campaigns. That is right, is it not?

24 A. That is right.

25 Q. What you did not want was to spend lots of money on

1 those campaigns, have customers that could come to your
2 website, but then find that they could find the same
3 home insurance product cheaper on the insurer's own
4 website. That is right, is it not?

5 A. Yes, that is right.

6 Q. So what you did not want was investing all that money in
7 marketing and then having someone poaching your
8 customers effectively by drawing them across to their
9 own direct websites; yes?

10 A. Yes, that is right.

11 Q. So you are in a situation where the people, whose
12 products you run and present on the website, they are
13 also competing against you effectively in relation to
14 these issues. That is right, is it not?

15 A. Yes, not for all, but for some insurers, yes.

16 Q. But all the ones that are the key providers offering
17 major brands on your websites who have direct online?

18 A. Yes, that is right.

19 Q. Thank you. I am just going to stick with a little bit
20 on marketing and so on.

21 I actually just want to understand a little bit more
22 about how MoneySuperMarket use Google. It is a sort of
23 ubiquitous presence in the world of anything online, we
24 know.

25 Now, I think you were involved in preparing what are

1 referred to as the Section 26 responses to the CMA.
2 That is right, is it not? The list of questions that
3 came with a kind of formal cover sheet. Is that right?

4 A. Yes.

5 Q. In the first one of those, one of the things you raised
6 as a concern was how Google listed people, I think. We
7 can go to it, if you need to, but it was listed as
8 a concern.

9 I am not sure we need to deal with your specific
10 concern, but I just wanted to explore how
11 MoneySuperMarket uses Google.

12 As I understand it, you will probably know this
13 better than I do, Google, when you plug in a search
14 term, returns two sorts of results essentially. You
15 have the ones at the top of the page, which are the ad
16 funded results, and then you have organic results as
17 they are referred to. Is that broadly right?

18 A. Yes, that is right.

19 Q. Just when we think about -- let us take it in stages --
20 the ones at the top of the page, the ad funded ones, in
21 order to get a good ranking so that you appear in
22 those -- it is normally first four slots, I think, is it
23 not?

24 A. It is four now. It used to be three, yes.

25 Q. So in order to get into those three or four, you have to

- 1 bid into the ad words auction. Is that right?
- 2 A. Yes, there is an auction that goes on, you set your
3 parameters what you are prepared to pay for each term
4 and Google determines which one gets to the top.
- 5 Q. Yes, absolutely. It is obviously important to be in
6 those top three or later top four, because they are the
7 ones that appear first on the page when someone does
8 a search and we are all incredibly lazy and we never go
9 through to the second or third page. That is broadly
10 the issue, is it not?
- 11 A. Yes, that is particularly true on mobile devices, yes,
12 people do not want to scroll down.
- 13 Q. Those slots are important, so you, and many others,
14 spent an awful lot of money bidding into the ad words
15 auction in order to secure high level spots effectively
16 for key terms. That is correct, is it not?
- 17 A. That is right.
- 18 Q. When you are bidding into the auction, as I say, it was
19 not just you bidding in, there were a whole bunch of
20 other people. What we see when we do searches now or
21 when we look at searches in the past is the people that
22 were winning places in those top slots, they were not
23 just price comparison websites, for a term like cheaper
24 home insurance. They were people like Direct Line or
25 More Than or Admiral as well. That is right, is it not?

- 1 A. Yes.
- 2 Q. So effectively, in that auction, you are competing
3 against not only PCWs, but the direct provision insurers
4 in order to secure those slots. That is right, is it
5 not?
- 6 A. That is correct.
- 7 Q. So we can see an auction as being a sort of direct
8 competition or conflict between you, and you have PCW
9 rivals and the insurer rivals, who are essentially
10 trying to get eyeballs and clicks, I think is the way it
11 is put, is that fair?
- 12 A. That is correct, yes.
- 13 Q. What we have seen is that actually MoneySuperMarket, we
14 have seen some examples, and I am not going to take you
15 to them, but MoneySuperMarket was pretty successful in
16 actually getting into those top slots?
- 17 A. Yes.
- 18 Q. So you were bidding quite a lot of money?
- 19 A. Yes.
- 20 Q. That was probably your biggest marketing spend, was it,
21 pay per click? I am going to ask you questions focused
22 on sort of 2016/2017. Obviously, you have to cast your
23 mind back.
- 24 A. I do not know if it was larger than our TV advertising
25 spend or not, but it was certainly one of the top ones,

1 but I have not got the numbers to say.

2 Q. Sorry, there is a certain cruelty in asking for
3 precision, but it is a very large number?

4 A. It was, yes.

5 THE CHAIRMAN: Ms Glasgow, I do not want you to give any
6 confidential material, but can you sort of give us
7 a ballpark figure of what a large number is in this sort
8 of case?

9 A. £90 million a year.

10 THE CHAIRMAN: Right, thank you.

11 MR BEARD: So I was asking you just about the ad spots,
12 which, as you say, particularly important for mobile
13 devices because, as I understand it, that is because on
14 a mobile screen, it being smaller, you get fewer things
15 at the top of the screen?

16 A. That is right, yes. You generally do not get to see the
17 organic results.

18 Q. Yes, unless you can actually make the effort of using
19 your finger to scroll down.

20 A. Yes.

21 Q. So if we could make the sort of mental effort of just
22 scrolling down to the organic results, in relation to
23 the organic results, what you are doing is you are not
24 bidding in, but you are trying to make sure that if
25 a term like "home insurance" or "cheaper home insurance"

1 or "cheap home insurance" or something like that, that
2 you want to get hits on, that you come high up in the
3 organic results. You, along with many others, spend an
4 awful lot of time and money making sure that your
5 website reads to the Google algorithm as something
6 attractive in relation to those search terms. Is that
7 broadly right?

8 A. Yes, with Google, you do not know what is in the
9 algorithm, they update it frequently, but we had an SEO
10 team, an organic specific team within MoneySuperMarket
11 that invested their time ensuring we had good quality
12 content, because Google, part of the algorithm is they
13 would look at who clicks on to your website, whether
14 they stay on your website for very long and whether they
15 get to the information they were looking for.

16 So it is a combination of factors that drive that
17 SEO, the organic ranking. But, yes, we had a team of
18 people in our marketing department that specialised in
19 running campaigns or activity or making sure content was
20 up to date to ensure we were better placed in the
21 organic position.

22 Q. What Google is trying to do, in very loose terms, as
23 I think you are saying, is find the most relevant hits
24 for a person's search term and you are trying to make
25 yourself look as relevant as possible for those hits.

1 Is that broadly right?

2 A. Yes.

3 Q. As I say, it is not just you doing that. Other PCWs are
4 playing the same game, so there is a kind of arms race
5 going on there, but there is also an arms race going on
6 with the direct insurers as well, because they are
7 playing the same game, because they want to be ranked
8 high in the organic hits. That is right, is it not?

9 A. That is right.

10 Q. So again, you are competing directly against the direct
11 insurers in relation to all of that positioning?

12 A. Yes.

13 Q. Now, I am very sorry, I think in order to take things
14 broadly logically -- and I am sorry, Ms Glasgow, just to
15 pause here, you can probably anticipate what I am going
16 to say, given the debate earlier -- I think it might be
17 now is the moment where whatever plugs need to be pulled
18 or people asked to leave the room has to occur, because
19 otherwise, I have to take things hugely out of order and
20 I am not sure that is going to be helpful either for the
21 Tribunal or Ms Glasgow.

22 THE CHAIRMAN: No, having conceded the principle, I am going
23 to give the administration of it over to you and if you
24 want to go into private now?

25 MR BEARD: I think this is the moment, because I think the

1 next document I go to, this one is certainly
2 confidential, and, therefore, after that, it becomes
3 unclear as to when we can re-emerge.

4 THE CHAIRMAN: What we will do is we will rise for five
5 minutes to enable both the persons who need to leave to
6 leave, but also for the IT to ensure that the right bits
7 of these proceedings are being streamed to the right
8 way. Obviously, Professor Ulph needs to stay, but the
9 live stream needs to stop. But I think it is probably
10 best not to do that on the hoof, but to take five
11 minutes to do that.

12 MR BEARD: Obviously, entirely content. Without wishing to
13 be intrusive, might this be a moment to provide the
14 witness with the ordinary --

15 THE CHAIRMAN: I will do that, but if you need more than
16 five minutes, let us know.

17 Ms Glasgow, I say this usually before a slightly
18 more longer break, but please do not talk to anyone
19 about your evidence, you have probably been told that.
20 Well, I will not say any more, because you know. But
21 I will rise now and we will hopefully resume in five
22 minutes. Thank you very much.

23 (11.17 am)

24 (A short break)

25 (11.23 am)

1 In private

2 THE CHAIRMAN: Mr Beard.

3 MR BEARD: I am grateful. I am going to come on to what you
4 say about your pricing strategy in a moment, but just
5 picking up your statement at paragraph 7, you say in
6 paragraph 7 {A/13/3}:

7 "To ensure that MSM was pricing competitively ... we
8 monitored our prices on a monthly basis against the
9 prices offered by our competitors in relation to
10 equivalent risks and insurers."

11 So you are here saying that you engaged in a price
12 monitoring process, and just to understand, you used the
13 consumer intelligence data set to carry out that price
14 monitoring, was that the key resource?

15 A. Yes, we did not do anything internally, it was always
16 externally with consumer intelligence.

17 Q. Just so I can understand, consumer intelligence, it
18 provides weekly data, obviously we are focusing on
19 homes, I know it does other things, but it provides
20 weekly data on home insurance pricing and it does that
21 primarily by scraping effectively prices off insurer and
22 PCW websites; is that right?

23 A. That is right, yes. It does a certain -- I cannot
24 remember the number of risks, but it puts a certain
25 number of profiles each month, through various weeks in

1 the months and then provides a report to show where your
2 prices are versus others.

3 Q. So essentially, it may be bots that are doing it, but it
4 is essentially pretending to be a series of customers
5 that have particular risk profiles, and then entering
6 those into the various online channels, whether PCW or
7 direct channels?

8 A. That is correct, yes.

9 Q. That means you can compare your prices for all of those
10 risks both against PCWs and against the direct channels,
11 that is correct?

12 A. That is right, yes.

13 Q. So your monitoring is of all of those providers?

14 A. Yes.

15 Q. You use other things, you use brand tracking metrics and
16 all sorts of other things to assess whether or not your
17 marketing is working. That is true, is it not?

18 A. Yes, that is eBenchmarkers for market share. So the
19 three areas, consumer intelligence, eBenchmarkers and
20 our own brand tracking surveys.

21 Q. Thank you. As far as you know, this consumer
22 intelligence data set for the price monitoring, that was
23 used by most other PCWs and insurers for similar
24 purposes?

25 A. Yes, an identical set of risks that were profiled.

1 Q. So effectively, that is quite a rich deep data resource
2 that enabled you in quite some detail, I was going to
3 say forensic detail, but that is obviously not
4 a compliment, that it enabled you in some detail to
5 analyse your business, other people's competing business
6 and so on and position yourself?

7 A. Yes, that is right. So you could see if there was
8 a price differential for the same risk and if it showed
9 that a particular brand was £10 cheaper on another price
10 comparison site, you could tell that difference. You
11 could then go and work with the insurer to say: we have
12 seen a discrepancy, can we investigate? We would do
13 that, and I think I talk to it in my statement, around
14 sometimes we would ask insurers to go and understand why
15 there was a price difference. Sometimes, and more often
16 than not, it was because something was different in
17 terms of how a question response was mapped, because it
18 all depends how you map the client's responses to your
19 risk profile.

20 Sometimes there would be errors in terms of
21 something that had gone wrong in between. So either us
22 or the insurer would have to fix that, but other times
23 it would be because then we could see, if we went on to
24 their site ourselves, they might have had a promotional
25 deal on, and you could see that was happening.

1 So it identified not just promotional deals, but
2 where things were wrong. So it was valuable to us in
3 terms of if something was wrong with our mappings or
4 a question response was not working as well as it
5 should, then we could go and look at that.

6 Q. So this was a very important robust data set that you
7 used for all of that process and those interactions.
8 That is right?

9 A. That is right, yes.

10 Q. So it was vital to your business and indeed the business
11 of all your rivals?

12 A. That is right.

13 Q. It was used practically all the time, it sounds like,
14 effectively?

15 A. Yes.

16 Q. Obviously, this is a fairly data rich industry, online
17 insurance, so presumably, you have lots of clever people
18 sitting there, analysing this data, and making those
19 sorts of business decisions about how you position
20 prices and whether you can change question sets and so
21 on in order to change your positioning and change your
22 pricing and so on?

23 A. Yes, so, you know, it is data rich, insurers are always
24 after more data. The more data you can provide to them,
25 the better it helps them assess the risks. So over the

1 period of time, not only would we use that data to
2 understand if there were changes we could make, we might
3 have introduced extra questions into the question set to
4 help the insurers risk price appropriately. So it was
5 definitely used in that way, but we had a pricing data
6 science team within MoneySuperMarket that used to
7 analyse this data and help us unpick what we might need
8 to do. I think it is referred to in here, in 2015, we
9 then enlisted the help of Oliver Wyman, a specialist
10 consultancy to help us understand our pricing position
11 further and understand the correlation between price and
12 conversion to sale and whether that was a big factor in
13 terms of determining how many sales we could make.

14 Q. You are ahead of me, Ms Glasgow.

15 A. Sorry.

16 Q. No, that is fine. I am coming to Oliver Wyman now,
17 because you refer to that in paragraph 8 {A/13/4}.

18 A. Yes.

19 Q. You say, as you have already indicated, that, in 2015,
20 there became an awareness that essentially in pricing
21 terms you were systematically behind your rivals. That
22 is right, is it not?

23 A. That is right.

24 Q. You were finding that companies like ComparetheMarket
25 were offering much cheaper prices than you were able to

1 offer?

2 A. Cheaper prices and our market share was going down, so
3 it was a combination of both. So one was a pricing
4 angle, the other was we were losing market share, not
5 necessarily just to ComparetheMarket but to the other
6 top two as well.

7 Q. No, sorry, I was not --

8 A. No, no.

9 Q. I, of course, perhaps am a little bit ComparetheMarket
10 focused, but I completely understand your concerns were
11 about others. ComparetheMarket was, in many
12 circumstances, offering the cheapest prices in relation
13 to the risk where you were getting that information
14 back?

15 A. That is correct.

16 Q. Yes. In fact, it was cheaper than all of the PCWs in
17 relation to lots of risks, and therefore, they were
18 potentially a target for you to look at; yes?

19 A. Yes.

20 Q. So you refer to the Oliver Wymam report. I want to
21 check I am looking at the right thing. I am going to
22 call it up. If it looks wrong, in case there is any
23 problem, then we will remove the document. But let us
24 just look at the first page: {F/398/1}. If we could
25 have that on the EPE, that would be great, thank you.

1 Now, I am pretty confident that is the front page of
2 the report you are referring to.

3 A. Yes.

4 Q. Good, thank you. So could we go to page 13 {F/398/13}.
5 This is all confidential material, but I just want to
6 make sure I understand what this is showing.

7 I think this is showing what you have already just
8 said. So this is to do with home. I know Oliver Wyman
9 looked at both motor and home, but I am just focusing on
10 home for these purposes. I am going to look at the
11 right-hand graph. I find that one slightly easier to
12 read than the left-hand one, but I think they are saying
13 broadly similar things.

14 What the dark blue plot is showing, as I understand
15 it, is across a period of time, from the beginning of
16 2015 through to middle of 2016, when an MSM quote for
17 a risk was the best across competitors, how much of the
18 time that was the case, is that broadly what that is
19 indicating?

20 A. Yes, it is looking at MoneySuperMarket's best, cheapest
21 price. Line one is the best quote from the competitor,
22 the cheapest price from the competitors. The other line
23 is the average of the competitor's best prices.

24 Q. Sorry, you spoke very quickly, then, let me just check
25 that I understood that.

1 So the dark blue line is MoneySuperMarket's best or
2 cheapest price for the risk. That is correct, yes?

3 A. The top line is the best quote versus the best quote
4 from the competitors.

5 Q. Right, thank you.

6 A. The bottom line is MoneySuperMarket's best quote versus
7 the average of the competitor's best quote.

8 Q. Right. So what that --

9 THE CHAIRMAN: Just so that I understand, if you had a flat
10 line along the 100% line, there would be absolute parity
11 between what MoneySuperMarket was offering and what its
12 rival was offering?

13 A. I think that is right. I cannot remember, it was not my
14 research, it was Oliver Wyman's. But yes, I think that
15 is right from the index. If it is at 1, you are at
16 parity. When you are over, you are more expensive.

17 THE CHAIRMAN: You are charging basically 101% of what is
18 the 100% of the rival metric, and if you are below the
19 line, then you are cheaper?

20 A. Yes. You want that to be at least 1.

21 THE CHAIRMAN: I understand.

22 MR BEARD: This is effectively just a graphical indication
23 of just how far you were away?

24 A. Yes.

25 Q. So, as you said, during 2015, it was apparent you were

1 a long way away from people who were offering cheaper
2 insurance, whether direct providers or CTM or others,
3 and this was the graphical indication of it. I am not
4 going to deal with the plot on the left.

5 Let me then go to page {F/398/16}. The right-hand
6 side, leave the left, because that is motor insurance,
7 but the right-hand side, we have the same plot that we
8 had before. You have essentially got the strategy
9 target in relation to price competitiveness described
10 here at the top:

11 "... (index 1.00 or below) to build our value
12 credentials, deliver more buyers & win market share."

13 So essentially, what it is saying is you wanted to
14 have a strategy where you drive your prices back down,
15 because they departed from the competitive pricing or
16 the most competitive pricing of the likes of
17 ComparetheMarket and you wanted to adopt a strategy to
18 bring those prices back down, and that is what your
19 aspiration is, to reach parity if you could. Is that
20 right?

21 A. That is right, yes.

22 Q. If we then go to page {F/398/21}, this is the "Next
23 Steps" at the end of the document, and it says -- I will
24 leave the light grey. That is to do with, I think,
25 non-quotes, but:

1 "Q4 Focus for execution in 2017 ...?"

2 So this is what you aspired to do during 2017 is:

3 "Continue with a portfolio of price investments ...
4 to achieve an overall price index reduction of 0.012."

5 That was the target. That was what you were setting
6 as your strategy.

7 A. Yes.

8 Q. So actually what you were doing here was saying: look,
9 we have got to do this gradually. We are so far away
10 from competitive pricing, we are going to have to have
11 a gradual process. In 2017, we will start moving in the
12 right direction, and we will have a target of moving
13 0.012 towards the line, the one line that we saw. Is
14 that right?

15 A. That is right, yes.

16 Q. But that 0.012 was not going to get you to the one line,
17 it was just part of a process. That is right, is it
18 not?

19 A. That is correct.

20 Q. So you were not going to reach price parity in 2017.
21 That is not the target here. But you wanted to go in
22 that direction. That is right?

23 A. That is correct.

24 Q. Let us just turn to the strands of your strategy,
25 because I think you have already touched on one of them.

1 Obviously, part of it is moving the prices. The
2 other is what you refer to as quotability, I think,
3 internally. Is that right?

4 A. That is correct.

5 Q. So what you needed to do was engage with insurers to
6 increase quotability, and that is the number of times
7 that an insurer returns a quote on your site for
8 particular queries. Is that right?

9 A. That is right. We spot through our data sometimes, some
10 insurers would not return a price for us, but they would
11 for another price comparison site, so something was
12 broken potentially in our journey or we would work with
13 insurers to expand their footprint to allow them to
14 quote on our site.

15 Q. So let us just -- there were various interviews
16 conducted, including one with you, but there was an
17 interview or two interviews with a colleague of yours
18 called Deepa Patel, who was your head of partnerships
19 during the relevant period. That is right, is it not?

20 A. That is right, yes.

21 Q. I think in paragraph 14 of your statement {A/13/5}, you
22 refer to the partnerships team, and that is what she was
23 head of. That is right, is it not?

24 A. That is right, yes.

25 Q. If we could go to {F/544/17}. Sorry, that front page

1 that came up helpfully is just the indication of the
2 interview. So it was not just Deepa Patel there.
3 Matthew White?

4 A. Matthew Whittle.

5 Q. I am sorry, I cannot actually read. Yes, Matthew
6 Whittle, I am so sorry, he was the Chief Risk Officer,
7 yes?

8 A. Yes.

9 Q. Deepa Patel, Head of Partnerships. Helen Chambers, Head
10 of Home and Motor and your Deputy General Counsel?

11 A. Yes.

12 Q. If we just go to page {F/544/17}, in that, she
13 essentially describes the situation, and I think this is
14 what you were just saying. So Ms Patel says:

15 "Yeah, so from a provider perspective as Helen
16 mentioned earlier, we had this strategy in place, which
17 was, from my perspective, my team would be going out to
18 partners to understand their quotability ..."

19 I think you have said that:

20 "... understand how we can increase their
21 quotability, right through to having discussions around
22 conversion, making sure that if a customer does select
23 a provider on our site then they've got the highest
24 possible chance of selling to that customer or the
25 customer buying from them."

1 So that is the correct summary, effectively, of what
2 you were doing in relation to the quotability part of
3 the strategy, yes?

4 A. Yes.

5 Q. She then goes on and says:

6 "That would involve a lot of discussions around
7 their site and the questions that they're asking and the
8 question set, right through to us, making sure that we
9 had the right questions on our question set, because all
10 those answers that a customer gives in our journey is
11 what the insurer uses to decide their price, based on
12 the risk that they can determine from the information
13 the customers given."

14 There she is, I think, highlighting the same point
15 that you have already picked up, that you could modify
16 your own question set or that the insurer can modify
17 their question set, so that you can effectively get
18 better prices appearing for that insurer in relation to
19 particular types of risk. That is right, is it not?

20 A. Yes, that is correct. Or it might be that you expand
21 the number of answers available. So, for example, the
22 number of years no claims discount, I think an example
23 is given, you could say one year, two years, five years
24 plus, but some people might go down to the nth year of
25 saying -- they will quote for nine years and if we were

1 only asking for five plus, we would not have got the
2 same rate as somebody with nine years. So sometimes it
3 was questions or it was the number of answers we allowed
4 within the question set.

5 Q. Perfectly fair, quite understood. So it is the
6 questions and the way in which you could take into
7 account responses, the subtleties with which you do it?

8 A. The depth of the data that you share, yes.

9 Q. Understood. If we could then go to {F/584/9}, this is
10 a further interview with Ms Patel, page 9. Again, she
11 was being asked similar questions. These are all the
12 interviews with the CMA. So she is asking how the
13 strategy works and she said:

14 "Yeah, so we would take ... car and home ... we
15 would look at car and home in our weekly meetings, and
16 we had a measure. So, the strategy was twofold. The
17 first part was to look at insurers' quotability,
18 mappings, filters [and so on, which is what we have just
19 been discussing] I guess, the basics of an insurance
20 quote, to see if they were working effectively. And
21 then we were looking to put in any fixes that were
22 necessary. And the second part was pricing
23 investments."

24 So she is moving on to the second part of your
25 strategy here, I think, is that correct?

1 A. That is right, yes.

2 Q. "So, where we saw there was quite a significant gap in
3 between us and other PCWs [and we have discussed
4 that] -- and I have to stress that we used ... an
5 external company ... to give us that [data] -- to help
6 us understand the data between our pricing and our PCWs,
7 we would pick the top insurers that came out in that mix
8 to say, 'Well, actually, there is a pricing discrepancy.
9 We can't find it between quotability or mappings or
10 anything like that'. And, then we would reach out to --
11 then I would take this list of partners to my team to
12 say, 'Right, they are your [partners]. Can you see if
13 we can go and strike a deal?' where we would part-invest
14 in that deal."

15 So the way it was working was you did the
16 quotability analysis and the interaction to see whether
17 you could solve problems, get the better prices by
18 changing question set subtlety of responses that you
19 have --

20 A. Yes.

21 Q. If that was not enough for you, then you would say to
22 the partnerships team or Deepa Patel would say to her
23 team, "Look, go out and see if you can get a deal, so we
24 can improve our pricing"?

25 A. Yes, and that happened in two ways, pre the Oliver Wyman

1 strategic approach of pricing, it was done on an ad hoc
2 kind of basis, just talking about how to get the better
3 deals. Once we had put it into a more formal strategy,
4 we had help and support from our data science and
5 pricing team and they would work with us, not just to
6 look at all insurers, but which ones would be best and
7 how we could better influence the top of the screen,
8 because we know that 70% of consumers buy from the top
9 three results.

10 So ultimately, the list there for the list of 100
11 results, but the bulk of consumers buy from the cheapest
12 top three, so our pricing strategy changed to try and
13 influence that top three rather than just in general
14 across the board.

15 Q. So what we see there is that it was Deepa Patel and her
16 team would go off and engage with the insurers in order
17 to try and carry out this strategy, but supported with
18 input from the data team and in fact brand using the
19 consumer data set?

20 A. Yes.

21 Q. You were not actually involved in any of those
22 discussions, were you?

23 A. No, sometimes, but not very often. Sometimes these
24 would come up as part of quarterly meetings and some of
25 the larger providers, notably, you know, I would be

1 involved in seeing them on a quarterly basis, because we
2 had a broader relationship with their senior management
3 team, but I was not involved on a day-to-day basis.

4 I was in the pricing committee to make decisions on who
5 to go to, but I did not have the discussions with the
6 account managers.

7 Q. No, and if we go over to page {F/584/11}, that is
8 essentially what Ms Patel says. She was asked about the
9 extent to which you were involved in any of these
10 partnership discussions and she says:

11 "To be honest with you, not really", which I think
12 you are saying is a fair statement?

13 A. Yes.

14 Q. What you have already explained and said in your witness
15 statement is because you were behind on price and
16 because you wanted people to go away, do the quotability
17 exercise, do the pricing exercise, if the quotability
18 exercise did not get you the benefits, then you thought
19 about striking deals in order to head towards price
20 parity. That is right?

21 A. Yes.

22 Q. Then you indicate that in going towards that goal of
23 price parity, there were various sorts of promotions
24 that could be done. You refer to them in paragraph 18
25 of your statement {A/13/6}.

1 So when you were talking about these deals, you were
2 interested in how much the insurer would co-invest in
3 relation to a deal, but also the nature of what they
4 were willing to agree to, whether it was a discount in
5 the headline price or some kind of cashback, so that the
6 price would stay, but you would get money back as
7 a customer or a voucher or presumably other sorts of
8 gifts and so on. Is that correct?

9 A. That is correct.

10 Q. Do you ever remember Deepa raising with you the
11 existence or an impact of the ComparetheMarket wide
12 most-favoured-nation status clause?

13 A. I cannot give you a specific example, but I remember
14 a conversation, whether it was just with Deepa or not,
15 I do not know, but when we had feedback from some
16 insurers saying they did not want to participate in the
17 price informations, one of the reasons given to us at
18 one of the points was certainly that because of
19 restrictions in contracts, I do not think the wide MFN
20 clause was named, but because of restrictions in other's
21 contracts, that formed part of the decision as to why
22 they would not do the pricing activity with us.

23 We had one example, I am not sure which it was,
24 where they would do a deal with us, but only if we did
25 not promote it on the site, so there was no badging of

1 it, so it was not obviously displayed, because they did
2 not want to alert others to it. So those types of
3 conversations were had.

4 Q. We will come back to that in a little bit more detail.
5 I just want to test this. If we could go to F/398/18.
6 Sorry, that is the wrong reference. It is F/584/18,
7 I think. Sorry, that is also not the correct reference.
8 Forgive me. One moment, let me just check my notes.

9 (Pause)

10 {F/544/18}. Thank you very much. I am grateful to
11 Ms Berridge.

12 So Ms Patel, who was involved in running the team
13 that was involved in the direct discussions with the
14 insurers, was asked by the CMA:

15 "... are you aware of examples of any home insurers
16 refusing to discuss a promotional deal because of
17 a contractual restriction in the agreement with
18 ComparetheMarket?"

19 She then says:

20 "No."

21 She then says:

22 "So if I'm being honest, it was hard to determine,
23 because the responses we would get were quite blunt, in
24 terms of, 'No. We can't work with you on that
25 initiative.' Yeah, there was never a time where I could

1 honestly say that somebody had mentioned, anything about
2 CompareTheMarket, specifically. It was more to do with
3 what I was offering on the table as an initiative."

4 So I just want to be clear, Ms Glasgow, the person
5 that was involved in the negotiations and running the
6 negotiations with the insurers did not remember any
7 instances of it being referred to, but you are saying
8 you do?

9 A. I remember a conversation with somebody in Deepa's team
10 certainly and Deepa was not involved in all the
11 conversations, I remember distinctly a conversation with
12 somebody in the London office, whereas Deepa was based
13 up in Chester most of the time, where they record in
14 a telephone call and said the insurer was not prepared
15 to put it in writing, that that was one of the reasons
16 why they could not entertain a deal with us, because of
17 restrictions. They did not name ComparetheMarket, so
18 they did not name them as the person.

19 The inference was because of the size of the amount
20 of business we do with that particular provider, we
21 cannot risk it. The size is inferred because
22 ComparetheMarket had 40% market share, everyone else was
23 battling around for 15, 18% shares. So that was the
24 inference. Nobody, at any point, named
25 ComparetheMarket, so she would be right in what she said

1 there in terms of that.

2 Q. Just to be clear, you said in this conversation that you
3 are reporting. You have not referred to it in the
4 witness statement, but you say that was one of the
5 reasons that was given.

6 A. Yes.

7 Q. Ms Patel is saying, "Actually, what I was being told was
8 it was always more to do with what I was putting on the
9 table."

10 A. Yes, and the insurers' reasons that they may not want to
11 do it. Not necessarily the deal. I think, as we see
12 from other insurers, that it is not just -- it might not
13 be the right time, it might not be the right approach
14 for them at that particular point, they might have
15 a price promotion somewhere else, so it is not
16 necessarily just the deal.

17 Q. If we just clarify one thing. In the Section 26, the
18 first one you gave in 2017, you included three emails
19 which MoneySuperMarket said were examples of deals being
20 refused, because of the wide most-favoured-nation
21 status.

22 You are not referring to them now, but if we could
23 go to {F/584/14}, I am just going to read out what the
24 CMA was asking. It was clearly fishing for what it
25 would consider a helpful response. It put these three

1 emails forward that you provided:

2 "... on the face of these emails, those insurers do
3 seem to be referring to wide MFNs or contractual hurdles
4 as preventing them from going further in discussions
5 with MoneySuperMarket; and that is what MoneySuperMarket
6 confirmed in its response."

7 That is the reference to the Section 26 response:

8 "Looking at those email exchanges, would you agree
9 with our interpretation of them on their face, that the
10 arrangements with CTM appear to have been a reason for
11 them not being able to enter into deals with
12 MoneySuperMarket?"

13 Ms Patel says:

14 "Yes. If you are taking those three emails, then,
15 yes, especially because a couple specifically mention
16 those clauses."

17 But then she says -- so Adams says:

18 "Right."

19 Then Ms Patel says:

20 "I do have to stress that they are probably the
21 exception because they were few and far between in terms
22 of conversations, which is why I could not recall them
23 last year."

24 I think being fair to you, Ms Glasgow, I think you
25 are saying the same thing, that those incidents really

1 were the exception, you did not even refer to those
2 three emails when I asked you about them. They were
3 very much the exception, were they not?

4 A. Yes, we did not go to all insurers, either. You have to
5 appreciate we only went to a handful of insurers each
6 time we went out to look at price information, because
7 we wanted to have the biggest impact on the results. So
8 there is no point in -- I think I referred to in my
9 witness statement, there is no point in investing with
10 somebody who is in position 30 all the time, because
11 a consumer is not going to scroll down that far.

12 So our approach was to a small number of insurers in
13 terms of trying to get them to take part in those deals,
14 because that was how we were going to impact the
15 consumer prices that were seen at the top of the page.
16 I think we have said across all the evidence, it is
17 a factor along with a number of other factors. It is
18 not the only factor why the insurer is or is not going
19 to have a pricing conversation with you.

20 Q. I am going to come on to that, but you --

21 THE CHAIRMAN: Sorry to interrupt, but just before I do not
22 forget, it is not for the witness, it is for the
23 parties. Can we identify those emails that were put in
24 the course of this conversation?

25 MR BEARD: Sir, you need not worry. I am going to go to

1 them.

2 THE CHAIRMAN: I apologise for interrupting.

3 MR BEARD: I will not only identify them, but I will show
4 you them.

5 THE CHAIRMAN: Thank you very much.

6 MR BEARD: I thought it would be too tantalising otherwise.

7 So these were distinctly the exceptions. That is fair,
8 I think, is it not, Ms Glasgow?

9 A. Yes.

10 Q. So let us go to the Section 26 notice you actually
11 submitted in 2017, which included the reference to these
12 emails. That is at {F/282/7} and I am living in hope
13 I have actually put the right number down in my notes
14 this time. I have.

15 Sorry, could we just go back to page {F/282/1}, so
16 Ms Glasgow can see that she is happy that this is the
17 right document.

18 So this is your information submission under Section
19 26, November 2017. Can you see you were involved in the
20 preparation of it?

21 A. Yes.

22 Q. Right. If we could then go to page {F/282/7}, you say
23 at paragraph 21:

24 "In 2017 ..."

25 So you were only looking at 2017, in this response,

1 I think. That is right, is it not?

2 A. Yes.

3 Q. "... we have proposed Exclusive Deals to a range of Home
4 Insurance Providers and Brokers. We successfully
5 managed to arrange pricing investments with both ... and
6 ... Having made enquiries of our commercial team, our
7 understanding of why other parties were not willing to
8 progress discussions were as follows ..."

9 I think this reflects what you have already said to
10 some extent:

11 "AA Insurance: insufficient budget ...

12 Direct Line Group: proposed offer ... was not strong
13 enough and covered all brands when [you] wanted to
14 focus ..."

15 So essentially, there is a commercial difference
16 there:

17 "Hastings: did not want to progress due to internal
18 [matters]."

19 Now:

20 "[Legal & General]: could not support due to MFNs
21 with another PCW."

22 I am going to come back to that one.

23 A. Okay.

24 Q. "Admiral: already had an ATL campaign ..."

25 That is an above the line campaign, so that is using

- 1 television advertising normally, to support?
- 2 A. That is right.
- 3 Q. Yes. So timing was not right:
- 4 "Esure: did not believe that the proposals would
5 provide sufficient returns."
- 6 So that is the quality of the deal you are offering.
- 7 A. Yes.
- 8 Q. Sorry, I pause, only because if you nod, it does not
9 come up on the transcript.
- 10 A. Sorry, yes.
- 11 Q. "Barclays: did not believe current insurance performance
12 was appropriate for [an above the line] campaign.
13 "Aviva: could not support due to MFNS with another
14 PCW."
15 We are going to come back to that one:
16 "Policy Expert: could not support due to MFNs with
17 another PCW."
18 So there are three so far where you have put in this
19 Section 26. There were issues in 2017 with those people
20 doing deals due to wide MFNs, and:
21 "Ageas: wanted to complete a project to review
22 PCW ..."
23 Is that lifetime?
24 A. Lifetime value.
25 Q. So this is what insurers do, they do not just look at

- 1 the first purchase; they look at the value of someone
2 sticking with them over a longer period. Is that
3 correct?
- 4 A. That is right, yes.
- 5 Q. Part of the reason they do that is because they are
6 making assumptions that consumers are a bit sticky?
- 7 A. Yes, that they will renew.
- 8 Q. Sorry, that they will renew. Indeed, they put in place
9 non-resolicitation clauses that are 13-months long
10 normally, do they not?
- 11 A. Yes.
- 12 Q. So they are stopping you competing against them for the
13 renewal by actually sending something active out?
- 14 A. At the first renewal, yes.
- 15 Q. Sorry, at the first renewal. Sorry, yes, absolutely.
16 As I say, 13-months long and that is because insurance
17 contracts are generally a year long?
- 18 A. Yes.
- 19 Q. So they are trying to protect their position vis-à-vis
20 you?
- 21 A. Yes, so they monitor lifetime value of a price
22 comparison shopper versus a direct shopper in a lot of
23 cases. If you have come to a price comparison site, you
24 are probably more likely to be looking for a better
25 deal, or you are more likely to go back the next year to

1 a price comparison site. So they would not want us
2 actively promoting that reshopping around again 12
3 months' later, because they have got to try to make the
4 return in a shorter window of time.

5 Q. Sure, and so the effect of that means that otherwise you
6 would send stuff out to people just before the year?

7 A. Yes.

8 Q. You would try to get the renewal business?

9 A. Yes.

10 Q. So effectively, what they are doing is stopping you
11 competing with them for renewal business?

12 A. For that first year, yes, for the first renewal.

13 Q. Yes. So effectively, your competitors put in place
14 a protection for themselves to insulate themselves in
15 relation to that competitive dynamic?

16 A. Yes, in their mind, it would affect pricing.

17 Q. Sorry?

18 A. Their ability to price at that time is based on the
19 assumption, as you said, with a lifetime value of how
20 long a client is likely to stay with them. So
21 obviously, if we wanted cheaper prices, you have got to
22 make sure you are not going to go and take them away
23 again the next year. So it is a pricing protection on
24 their part to enable them to give us better prices.

25 Q. Also to walk customers up through higher prices?

- 1 A. I am not party to their strategies.
- 2 Q. Well, you are not party to their strategy, but you are
3 well aware of the idea of a loyalty penalty, are you
4 not?
- 5 A. Yes.
- 6 Q. That is essentially the price walking that the insurers
7 engage in, is it not?
- 8 A. Yes, we also know from a home insurance perspective
9 consumers generally do not shop every year, it is less
10 volatile than the motor insurance market where you tend
11 to find more people will come back year after year for
12 a price. Home insurance, possibly their possessions are
13 worth more, they do not tend to conduct that exercise
14 every year. The home insurance market is not the same,
15 does not have the same levels of switching each year as
16 the motor insurance market does.
- 17 THE CHAIRMAN: But it is fair to say that these non-approach
18 clauses prevent entities like yours from, as it were,
19 encouraging going back to the market?
- 20 A. Proactively marketing.
- 21 THE CHAIRMAN: Because you cannot email them after
22 (inaudible) time at eleven and a half months saying --
- 23 A. Come back.
- 24 THE CHAIRMAN: -- come back and look at the market.
- 25 A. Yes, so we have to rely then on our broadbrush marketing

1 campaigns to encourage people to come back.

2 MR BEARD: Yes, so all of the marketing that you do, so
3 obviously the Epic So MoneySuperMarket was all about
4 your brand, but then it is out there essentially to try
5 and counteract the effect of non-resolicitation clauses,
6 because as long as you are in people's minds, they might
7 actively come to you; is that right?

8 A. That is correct, yes.

9 Q. We have already talked about how much money you spend on
10 these things. You said, well, TV advertising is another
11 big -- it is online marketing and TV marketing are your
12 big expenditures and the TV marketing is helping you
13 effectively overcome that restriction on competition
14 that the insurers have put in place?

15 A. That is right, to keep you front of mind, yes.

16 Q. Sorry, that all came out of an acronym of LTV.

17 The next acronym is LV, but that is actually London
18 Victoria, and that is the Moreland brand, is it not?

19 A. Not Moreland, sorry.

20 Q. Sorry, that is RSA, I apologise, but:

21 "LV [that is London Victoria]: wanted to keep parity
22 across all PCWs.

23 "Tesco: insufficient budget to support.

24 "Sainsbury's: insufficient budget to support.

25 "Swinton: did not respond to proposals."

1 Now, what is interesting about this is that the
2 three, where you mention that they could not support the
3 campaign due to the MFNs, they are the three where there
4 are emails that you have submitted?

5 A. I have shown them, but, yes, I do not recall the emails.

6 Q. But you did not actually remember any of those emails,
7 did you?

8 A. No, and they were not emails from me, as in they were
9 not emails that I engaged with.

10 Q. No. So just to be clear, even if those emails were
11 sent, you had never seen them before the Section 26
12 compilation, as it were. This is not an implicit
13 criticism. I am just saying, presumably, when you did
14 the Section 26, you said to people, "Have you got any
15 emails that refer to any of this stuff?"

16 A. That is correct.

17 Q. But none of those emails had come up to you and none of
18 them had been raised with you previously?

19 A. Not the emails specifically. Conversations may have
20 happened around the time, in terms of can we find out
21 why they will not do a deal with us? So that kind of
22 conversation definitely would have happened in our
23 pricing committees, in terms of, okay, we have
24 approached these number of insurers, these ones have
25 come back and said, "No", can we find out why they have

1 said, "No"?

2 So I would have been engaged in asking the team to
3 try and find out the reasons for, so that we can either
4 review the offer, change what we want to do, depending
5 on the outcome, as you see here. Sometimes it is
6 budgetary constraints, did we want to spend more, was it
7 worthwhile investing in it and not asking for
8 investments? So those conversations around trying to
9 understand would definitely have happened and that would
10 have then spurred the partnerships team into then trying
11 to find out.

12 Q. Sure, and in that process with the pricing committee,
13 people would have sent emails to one another and there
14 would be a briefing document for the pricing committee?

15 A. Not necessarily send the emails to each other, there
16 might well have been a briefing document or some notes
17 or actions to come out the back of it.

18 Q. Okay, and when you compiled the Section 26 notice,
19 I think Matthew Whittle fairly said that he thought that
20 the CMA had been pretty sure that they had been given
21 all that you could find in terms of relevant written
22 material. Is that right?

23 A. Yes. A lot of the time our discussions were telephone
24 based, in terms of you would ring them up, have
25 a conversation, come back and you might follow up in an

1 email. Email was not our only form of communication.

2 Q. Yes, but as I understand it, you just said that there
3 would be notes for the pricing committee meeting and
4 notes of steps to take that would have come out. We
5 have nothing on that.

6 So let us look at some emails. This is not an email
7 I am going to take you to, it is not an email that was
8 one of the three.

9 A. Okay.

10 Q. But it does concern MSM and therefore I cannot remotely
11 see how there is any confidence in relation to MSM in
12 relation to it. So I am going to call up {F/319}. Can
13 we have page 2 {F/319/2}, please.

14 Presumably, you know who Dominic Cuffaro is?

15 A. Yes, he was the Partnerships Manager in the team at the
16 time.

17 Q. So he was sort of the tier below Deepa Patel, is that --

18 A. Yes.

19 Q. Thank you. So he is one of the people that when Deepa
20 was talking about sending people out to talk to people,
21 he is one of the actual individuals who would have done
22 it at the time?

23 A. Yes.

24 Q. Okay. He says -- this is an email from Vicky Wintrip.
25 She is at L&G.

1 A. Yes.

2 Q. It is July 2015. So it is before what we have been
3 referring to in this litigation as the relevant period,
4 but it is 2015.

5 It says:

6 "Hi Dominic,

7 "Before Adam left ..."

8 Was Adam a previous partnership?

9 A. Adam was Deepa's predecessor.

10 Q. Right, great, I assumed so. That makes sense:

11 "Before Adam left I was in discussions with him
12 about running a co-funded pricing offer on home."

13 So this is someone from Legal & General saying,
14 "I was talking to your partnership guys about running
15 a co-funded offer":

16 "Please can you review the details below and let me
17 know if this is something that MSM would like to proceed
18 with?"

19 There are details below, but that does not matter.

20 So middle of 2015, Legal & General are actually
21 approaching you, but you do not remember anything to do
22 with this?

23 A. Not that specific example, no.

24 Q. Right, let us scroll up, please, and then this is
25 Dominic Cuffaro's reply, and this is also,

1 I think, July 2015:

2 "Hi Vicky,

3 "Sorry for the delay on this.

4 "I've caught up with Natasha and Rose ..."

5 Could that Natasha be you?

6 A. Yes.

7 Q. " ... MSM are not entering into any Home pricing
8 campaigns for the foreseeable future so unfortunately we
9 cannot commit to this. Natasha also mentioned that we
10 would not be able to do the segmented approach if we
11 were to revisit this in the future.

12 "Let me know if you have any questions."

13 So back in 2015, you were telling your partnerships
14 team -- I think this is the only time your name appears
15 on anything, you are safe now, that the time when your
16 name appears, you were saying, "No, we are not
17 interested in doing deals with Legal & General, not for
18 the foreseeable future", that was the position?

19 A. We were not doing home campaigns prior to the pricing
20 strategic change, yes.

21 Q. We will come back to that in a moment. You said "not
22 for the foreseeable future", so this would be running
23 into 2016?

24 A. Yes.

25 Q. So it was effectively this was the position until you

1 changed your strategy beginning of 2017 in relation to
2 home?

3 A. That is correct, yes.

4 Q. So you were saying, "I am not doing these sorts of
5 deals", but Legal & General were coming to you saying,
6 "We are interested in doing one"?

7 A. Yes.

8 Q. But you just did not remember anything about this?

9 A. Not that particular one, no.

10 Q. Let us go to {F/284}, if we could. I think you can
11 ignore the headline date at the top, which talks about
12 16 November 2017, because I think this was part of the
13 gathering exercise. So it was an email being forwarded
14 to Deepa Patel, so you can ignore that.

15 As I understand this document, I think that is what
16 that date is. So the relevant date is the next one
17 down, and you will see -- we should actually go down to
18 the bottom of this, from Sarah Caines, so this is
19 someone within the partnerships group of MSM. That is
20 right?

21 A. Sarah was, yes.

22 Q. She is again writing to Vicky Wintrip, so it is the same
23 person that Legal & General were saying, in 2015: look,
24 can we do deals?

25 A. Yes.

1 Q. Sarah is saying to Vicky:

2 "Hello! Hope you're feeling better. One of the
3 things we were going to catch up about was the ATL
4 conversations and my suggestion of the mid May-mid June
5 slot. Did you find out whether you'll be able to work
6 to that timeline?

7 Give me a shout if you'd like to catch up - I'm
8 around most of today."

9 You have perfectly fairly said you do not remember
10 this email, it was gathered, so I am not going to ask
11 you about context, that would be a particular cruelty.

12 But if we just go up, it says:

13 "Hi Sarah,

14 "Apologies I was back to back until 5 in the end
15 yesterday and just trying to catch up now while Bea is
16 eating breakfast!"

17 Now, I am assuming Bea is going to be a child
18 presumably.

19 "At the moment I'm am still working on whether we
20 could do this contractually which is the major hurdle
21 I need to overcome, and would be the showstopper for us
22 if we can't."

23 Now, I assume that the reason you included this
24 email is because when it was swept up, you thought
25 contractually that must mean the CTM wide MFN. Is that

- 1 right?
- 2 A. I assume so, yes.
- 3 Q. You assume so, but you are not actually sure about that?
- 4 A. No.
- 5 Q. As you say, Matthew Whittle said, "Pretty sure we have
6 given you what we can find", so we do not have any
7 follow-ups in relation to this. If this was something
8 you were really concerned about, presumably this is the
9 sort of thing where Sarah would have gone back to Vicky
10 and said, "Where have you got to? What is going on?
11 Have you sorted it out?" You would expect that, would
12 you not, from your team?
- 13 A. Yes, pick up the telephone and have a conversation with
14 them, yes.
- 15 Q. But if the conversation on the telephone had been, "No,
16 we are not doing this contractually", you would have
17 expected that to come up to you as a concern, would you
18 not?
- 19 A. Yes, or to Deepa. Sarah is working for Deepa, so I
20 would expect it to go through that chain of command.
- 21 Q. Fair enough.
- 22 A. But also if somebody says they cannot do something
23 contractually, we are not going to continue to fight
24 against them if that is a show-stopper and an answer.
- 25 Q. But that is not what this email says, is it?

1 A. No, no, but I am saying, I do not know what the
2 follow-on was, but that is why it would not necessarily
3 get to me, is what I am saying.

4 Q. No, but if somebody had said, contractually, it was
5 a show-stopper, it would have gone to Deepa presumably?

6 A. Yes, I would assume Sarah would have had a conversation
7 with Deepa.

8 Q. As we have already seen, Deepa did not remember any of
9 this. So it is fair to assume that there was not
10 a follow-up, and it was not highlighted to Deepa in
11 those circumstances, because we know Deepa did not
12 highlight it to you, and we have seen that Deepa did not
13 remember it. That is fair, is it not?

14 A. It is fair, yes.

15 Q. Thank you. I am going to skip forward a bit now to
16 another email. This one actually is not in the bundles
17 or it may be now, because it was being uploaded. If we
18 try {F/713} and see if the magic works. It does. Thank
19 you very much, Opus, for uploading that. That is great.

20 So if we could go to the second page, please
21 {F/713/2}. So we are getting slightly familiar with our
22 cast now. At the top of the page, Sarah Caines,
23 MoneySuperMarket, writing to Vicky Wintrip and someone
24 else, I am assuming Sarah Lloyd is at --

25 A. Sarah Lloyd is a senior person at Legal & General, yes.

1 Q. Thanks, copying in someone called Alisha Olsen:

2 "Hi both,

3 "Good to speak to you both earlier. If you're
4 interested in submitting a home offer, the September
5 campaign would run 17 Sept-16 Oct. I've emailed my
6 colleague about the call centre uplift Vicky and if we
7 can share anything on the broad impact that other
8 partners have seen there I'll be in touch. As
9 discussed, the timing is tight: we need a definite
10 proposal in by the end of the week from you. I wanted
11 to flag this opportunity to you both as I think a strong
12 L&G home offer stands a good chance for this September
13 slot.

14 I'm not in the office tomorrow ..."

15 Now, I assume you do not remember this?

16 A. No, but the process we went through, at that time, when
17 trying to secure deals, is: we would approach, as
18 I said, two or three or a selected number of insurers,
19 based on our pricing team's approach and we would ask
20 them to put forward their offers and we would choose the
21 best one. So it was obviously during that process of,
22 if you want to put forward an offer, then what would
23 work for you, then we would look at it against our
24 modeling.

25 Q. Let us look at that a little bit more. Clearly, there

1 has been a meeting between Sarah Caines and Vicky
2 Wintrip, and presumably Sarah Lloyd, and Sarah Caines
3 has come away presumably having discussed this home
4 offer, because otherwise it would be rather out of the
5 blue, talking about a particular slot and not having any
6 sense that Legal & General are saying, "We do not want
7 to do this", because otherwise this email would be
8 totally pointless, would it not?

9 A. So I am assuming the conversation has happened
10 between March and July, that has either resolved the
11 contractual issue or Legal & General have said they are
12 open to them at that point.

13 Q. Right.

14 A. But they were not earlier in that year.

15 Q. So they were not earlier in the year. We saw they were
16 open to them 2015, 2016, and we have one where they
17 appear not to be open, and now they are open again to
18 them, right.

19 Let us go back up to page {F/713/1} to see the
20 conclusion of this. That is all we have.

21 Then Vicky responds:

22 "Hi Sarah.

23 "Just another thought ..."

24 So this is not "get lost", as you rightly
25 anticipate; it is, "We are thinking about this".

1 "... are you able to get any detail about the
2 cannibalisation from the other three aggs that the other
3 brands have seen? This will enable me to review our
4 call centre capacity requirements."

5 Let me see if I understand what is being said here.

6 I accept that you have not seen the email, and you
7 are seeing it now for the first time, so I recognise
8 that this is only tangentially relevant, but as
9 I understand it, what is being asked here is: if we are
10 Legal & General and we sell these products directly, how
11 does a promotion cannibalise our direct sales? Is that
12 fair?

13 A. No, I think it is asking what it cannibalises against
14 the sales they would ordinarily get from the other
15 aggregators. It is not talking about direct.

16 Q. Right, I see. But how can you tell it is not talking
17 about direct? Because it just refers to three
18 aggregators?

19 A. Yes.

20 Q. But what that is doing is also recognising that
21 cannibalisation more generally is a problem, is it not?

22 A. It is a risk that if they are going to write their
23 business anyway.

24 Q. What they are also asking about is call centre capacity.
25 So if you do a deal, you might have more calls on the

1 deal. Is that the issue might be ...

2 A. I am assuming that in home insurance what you tend to
3 find is in motor insurance, people are more confident to
4 stay online throughout the journey and will continue on
5 to the provider's side to complete their purchase. In
6 home insurance, there is a higher number of people that
7 actually pick up the phone, at that point, because they
8 want to ask questions about specific items in their home
9 or to double-check things are covered.

10 So there is a higher proportion with home insurance
11 where consumers come to, say, a price comparison site,
12 they see the price, they click through to the insurer's
13 website, but then they make a telephone call before they
14 commit to buying.

15 That is probably why she is looking at call centre
16 capacity, because if they have a greater number of deals
17 coming through to them, as a result of the price
18 investment, they have got to be able to manage that
19 telephone call capacity at the same time.

20 THE CHAIRMAN: There is in this email at least a nexus
21 between cannibalisation and call centre capacity?

22 A. If it is -- there is high level cannibalisation,
23 obviously the call centre volume will not have gone up
24 that much, because they would have had a lead from
25 another aggregator or a price comparison site anyway.

1 If it is incremental, they have got to plan for
2 capacity, because it is going to be more --

3 THE CHAIRMAN: So high cannibalisation, low need for further
4 capacity?

5 A. Yes.

6 THE CHAIRMAN: If it is no cannibalisation or little, then
7 you need to have the infrastructure to deal with it?

8 A. The capacity. Yes.

9 THE CHAIRMAN: Thank you. Mr Beard, I notice the time.
10 I do not want to interrupt you.

11 MR BEARD: I was going to finish with this one and then
12 I have exactly done that, but I thought we should get
13 through this HIP, and then I would pause if that is
14 acceptable.

15 THE CHAIRMAN: That is very helpful, thank you.

16 MR BEARD: So, in fact, precisely, as you say, there is
17 a description, an assertion from Alisha at MSM that
18 actually offers have driven incremental sales, so you
19 might need some more capacity:

20 "Thanks for coming back so quickly."

21 So, as you rightly said, in relation to the period
22 in July 2017, you have got Legal & General quite closely
23 engaging with the metrics of how a promotional deal
24 would work. We do not have anything else in relation to
25 this, but clearly, they were open to the idea, as you

1 can see. That is correct, is it not?

2 A. Yes.

3 Q. Sorry, you nodded.

4 A. I know you want an answer.

5 Q. I am just going to note for the court, this is not
6 a question for Ms Glasgow. But, of course, Ms Demetriou
7 laboured yesterday some material from Legal & General
8 in June. I just give you the reference of, it is
9 {F/324/3} that she laboured very heavily. So that
10 is June 2017, she laboured the material. July 2017,
11 Legal & General clearly open to promotional deals.

12 Were you aware from your price monitoring that
13 Legal & General had done a promotional deal during the
14 period 2016/2017?

15 A. Not off the top of my head without looking back through
16 data.

17 Q. Do you recall that they did one subsequently in the
18 period 2017 to 2019?

19 A. Not from my own recollection. Again, I would have to
20 look back through -- we would have logged it at the
21 time.

22 Q. You would have logged it?

23 A. Yes.

24 Q. It was actually one of yours?

25 A. Yes, internally.

1 Q. We will draw our own conclusions as to the significance
2 of the wide MFN for Legal & General in the light of
3 that. Now, I think, is perhaps a convenient moment, if
4 that assists the Tribunal.

5 THE CHAIRMAN: Mr Beard, thank you very much.

6 MS LUCAS: Can I just ask one question arising out of what
7 you have just said? It is just to clarify my
8 understanding of how it works. When a customer is going
9 through the process and then you say picks up the phone
10 to clarify, that is with the insurer?

11 A. Yes.

12 MS LUCAS: Do the insurers then take that contact up and
13 complete it as their own sale?

14 A. They can complete the sale over the phone, but the
15 reference given to it would be that it has come from the
16 price comparison site, so the price comparison site
17 still gets the credit for the sale in terms of the cost
18 per acquisition. So we would monitor that, because the
19 quote reference will be the quote reference that we have
20 given when we have returned the price.

21 So it does not matter to MoneySuperMarket or
22 ComparetheMarket whether it completes online or offline.
23 It obviously has to factor in the costs, it costs the
24 insurer to deal with the price comparison, if they have
25 a high number of people that complete offline.

1 MS LUCAS: Okay, thank you.

2 A. If they get stuck in the question set before they have
3 got a quote, then they may ring MoneySuperMarket or
4 ComparetheMarket and they do have call centre operatives
5 who can help them through at that stage.

6 MS LUCAS: Thank you very much, Mr Beard.

7 MR BEARD: I am sorry, I did not mean to stop you.

8 THE CHAIRMAN: Not at all. We will rise for 10 minutes, so
9 that brings us to 12.35. Mr Beard, I think you can go
10 to say 1.10 given that we are having the break a little
11 later than usual.

12 MR BEARD: Yes, I am hoping to get done this morning.
13 I obviously do not want to detain Ms Glasgow over
14 lunchtime if it can be avoided.

15 THE CHAIRMAN: If it can be avoided, but equally, you should
16 not feel under any time pressure.

17 MR BEARD: That is very kind of you, sir, thank you.

18 THE CHAIRMAN: Thank you.

19 (12.23 pm)

20 (A short break)

21 (12.39 pm)

22 THE CHAIRMAN: Mr Beard.

23 MR BEARD: Sir, thank you. Can we go to document {F/285} in
24 the EPE, please. Could we go now to the second page
25 {F/285/2}. No, let us go back to the first page

1 {F/285}, thank you.

2 So Rob Kirkpatrick, another member of Deepa's team?

3 A. That is right, yes.

4 Q. Thanks. Email to Daniel Bunyan, and he is at -- well,
5 there are two names, Qmetric or Policy Expert?

6 A. Same organisation.

7 MR BEARD: I think, sir, there was a communication. You
8 posed a question on Day 1 about why they were described
9 as Policy Expert.

10 THE CHAIRMAN: Yes.

11 MR BEARD: I hope you got the explanation and why it was
12 I did not want to say anything, because answering it
13 would have totally given away the situation.

14 THE CHAIRMAN: Yes. It was an unfortunate misunderstanding
15 on my part, but the email clarified it and I entirely
16 understood why you could not explain it in open court.

17 MR BEARD: I was trying to indicate on the transcript.
18 Thank you very much. Well, Ms Glasgow has confirmed it
19 too.

20 So Policy Expert. Presumably, from your price
21 monitoring, you knew that they had done a couple of
22 promotional deals with people in 2016 and 2017?

23 A. Yes, so they were flagged as one of the ones where we
24 had more expensive prices than our competitors.

25 Q. Yes. So they were people you thought: they have done it

1 before, we can go and talk to them about it. Then you
2 get a response, 14 November 2017, and you say, this is
3 one of the ones where:

4 "... unfortunately, the CTM pricing parity clause is
5 going to prevent us from taking part this year. Please
6 keep us in mind next year though, I am sure the clause
7 will have gone by then."

8 So this is one where they are really specifically
9 referring to ComparetheMarket. Now, I completely accept
10 you did not remember this, this is added to your 2016.
11 Do you think they might just have been giving you the
12 brush-off, because they did not want to do a deal with
13 you?

14 A. No, we were quite engaged with Policy Expert at that
15 time in terms of footprint expansion, work that they
16 were looking at to put devices in homes, to detect water
17 leaks, so we had quite a good open relationship with
18 them about the strategy, about investment. So I would
19 not have said it was a reason not to want to sort of do
20 a deal with us at the time.

21 Q. Is this the LeakBot?

22 A. Pardon?

23 Q. Is this the LeakBot?

24 A. If that is what they call it, yes.

25 Q. I wondered what that was.

1 A. I would have said we had a good strategic relationship
2 with them, but I would not expect that to cause
3 a problem.

4 Q. Did you think they had any appetite for promotional
5 deals?

6 A. At the time, they were looking to grow, so they were
7 looking to find ways -- they are not a big direct
8 player, so they have got a direct offering, but they
9 know they are going to have to spend a lot. So they
10 were, what I would call, non -- not your typical large
11 insurer, not a Legal & General or somebody that has huge
12 funds to be advertising themselves. So their main
13 distribution was via price comparison sites.

14 Q. But they were not actually interested in promotional
15 deals?

16 A. That is not what that is telling you there, is it? They
17 are saying they cannot do it.

18 Q. No, I am asking you, sorry.

19 A. No, they were, they did talk to us a lot about pricing
20 and what they needed to do to be competitive.

21 Q. I think that may be only so far I can take this line of
22 questioning now. The court will -- it will be subject
23 to submissions in due course. But you think this was
24 a real reason, not just a brush off?

25 A. On the face of it, yes. I would not like to think they

1 were brushing us off, at that point in time, because we
2 had a good relationship with them.

3 Q. Can we go to the final part of the email. This is from
4 Rob Kirkpatrick to his boss, Deepa:

5 "Hi Deepa,

6 "Response from PE in relation to a Black Friday
7 deal. All the investment return conversation were by
8 phone so no record I'm afraid."

9 So I am reading that as meaning that there had been
10 a discussion about what the real value of this sort of
11 promotional deal would have been and it just had not
12 been written down.

13 A. Yes, that could be read into that.

14 Q. Yes. So, in those circumstances, it might have been
15 that investment return conversation that was critical?

16 A. I cannot say.

17 Q. Understood.

18 A. You know, there was never a practice of writing notes
19 from every conversation you had, and that is why some of
20 this -- the guys were saying -- it is telephone calls
21 happen and they will not have a record of them.

22 Q. Just so I understand the process, Rob Kirkpatrick
23 works -- I do not want to sound too hierarchical, but
24 works for Deepa.

25 A. Yes.

1 Q. So what this looks like is in a culture where you do not
2 write lots of things down, he has said to her, "Well,
3 this is the email, but actually we had a conversation
4 about investment return contribution, but I did not
5 write anything down about it", and that would imply, the
6 very fact that he is saying that to her, would imply
7 that it is significant in your way of working within the
8 partnership team. Is that fair?

9 A. Yes.

10 Q. Thank you. Let us go to F/268. Oh, let us not go to
11 F/268, let us take that away.

12 I am sorry, Ms Glasgow, this is entirely my fault.
13 Ms Berridge has properly given me all the correct
14 references and I had managed to transpose them
15 incorrectly. So I apologise for that. {F/286}. There
16 we go, I did it again.

17 Can we go down the page, over to the next page,
18 please {F/286/2}. No, I am sorry, we will have to go
19 back, apologies to the EPE operator {F/286/1}.

20 So bottom of the page, Rob Cornish at Aviva to Rob
21 Kirkpatrick, so it is the same person. This is 4
22 September 2017:

23 "Hi Rob,

24 "Could you indicate the amounts you had in mind?

25 We've double checked and wide MFNs still exist in

1 another agreement. This means we won't be able to enter
2 into a cash/price discount.

3 If it is possible with you, there might be potential
4 to do an ancillary offer which has worked well
5 elsewhere?

6 What are your thoughts on that?

7 "Thanks,
8 Rob."

9 So this is the third of the emails you submitted
10 with that 2016, and it is the only justification that we
11 have found in any of your material for your account in
12 question 21 about those three insurers.

13 A. Yes.

14 Q. So it looks like what you did in relation to your 2017
15 Section 26 response was looked at those emails and
16 slotted in those responses?

17 A. Yes, and we asked the team at the time: can you find any
18 emails where we are asking to invest in pricing or do
19 the line promotions? They give you reasons why they are
20 not able to participate and they had to search through
21 manually in terms of looking through where they were
22 talking about pricing or responses and gather that from
23 the team and then put that into the response.

24 Q. Obviously, that search missed all sorts of emails where
25 actually people were coming back with promotional deal

1 offers and so on, as we saw with --

2 A. Yes, it is a manual -- I mean, it would have been
3 a manual exercise, asking people to recall if they had
4 had that engagement and try and find those emails.
5 There was not a systematic way of finding or checking
6 those.

7 Q. So we might have missed quite a lot of ones like the
8 Legal & General ones that I was showing you?

9 A. Yes, and telephone conversations that are not there. So
10 there are a number of things that, it is a small amount.

11 Q. Obviously, we have the material from Deepa saying that
12 those were three exceptions. Anyway, let us just look
13 at this email.

14 So here, as I understand it, what you said in your
15 Section 26 notice was that this was an example of wide
16 MFN meaning you could not do any deal. Can we go back
17 to the first page {F/286/1}, thank you.

18 But actually, what Aviva says is: can you indicate
19 the amounts you had in mind? So presumably, if the
20 amounts you had in mind on this particular one would
21 take you down to, say, price parity with the cheapest in
22 the market, that would not be a problem, because a wide
23 MFN does not stop you coming to price parity, does it?

24 A. No.

25 Q. But you did not go back with any detail, as far as we

1 can see, because the only response we have is the one
2 above:

3 "Hi Deepa,

4 "Response ... from Aviva in relation to a joint
5 investment."

6 Now, if it was really significant, would you not
7 have been expected to explore what amounts were
8 feasible?

9 A. Yes, but as I said, that probably would have happened
10 over a conversation. I do not believe that would have
11 been the end of the email trail, because we would have
12 responded about the ancillary product. So their
13 proposal was: can we give something away for free? An
14 ancillary product perhaps will include home emergency
15 cover or something of an equivalent value is what they
16 are referring to in terms of that offer, so we wouldn't
17 have just left it and not responded at all.

18 Q. No, you would not have left it and not responded at all,
19 but given they had raised amounts, you would have
20 thought you would ask about what level they could go to?

21 A. Either what level they could go to or what they wanted
22 to know that for. It might have been to understand the
23 value versus what they need to offer an ancillary
24 product to make it meaningfully the same to the
25 consumer.

1 Q. Just in relation to this, they talk about they cannot
2 enter into a cash or price discount, but you could do
3 cashbacks under wide MFNs, could you not?

4 MS DEMETRIOU: Sorry, that is a legal point that is being
5 put to the witness. I do not think that is a fair
6 question. It is also contested.

7 MR BEARD: I do not think it is contested, is it? Not in
8 your decision, it is not.

9 THE CHAIRMAN: Mr Beard, I will let you ask the question,
10 but I will obviously take into account anything that
11 Ms Demetriou says about the weight of the response.
12 Ms Glasgow, do feel free to answer if you feel able.

13 A. Can you repeat your question?

14 MR BEARD: Yes, so you could do cashbacks that we were
15 exploring at the start of the ...

16 A. I do not know whether you could have done. I would have
17 assumed they were in the wide MFNs, so I would not have
18 -- and I do not think we took a stance that
19 MoneySuperMarket, that a cash-back is treated
20 differently.

21 Q. Let us just go to {F/392}.

22 THE CHAIRMAN: Sorry, just to have clear what that answer
23 was. You, at MoneySuperMarket, did not treat cash-back
24 differently, would that be?

25 A. No, because if somebody applied a cash-back, we would

1 have put them higher up in the results table, because
2 that is how we would have displayed it. We have done
3 cash-back deals with insurers, but have not specifically
4 done them to try and get round an MFN clause. We have
5 not treated them differently in that way.

6 THE CHAIRMAN: I am not asking that, just to understand how
7 it works, but at least for your rating purposes, you
8 would deduct the cash-back from the headline price of
9 the premium and adjust the rating or ranking
10 accordingly?

11 A. Yes.

12 THE CHAIRMAN: Thank you.

13 MR BEARD: That would affect the ranking as well?

14 A. Yes.

15 Q. If we go to page {F/392/2} of this document, please, you
16 will see at the top of the page, the response from Rob
17 Kirkpatrick:

18 "Unfortunately I am not getting any traction on an
19 ancillary investment."

20 So this goes back to what you were saying about the
21 ancillary issue:

22 "They want to use funds to invest in price in line
23 with the company strategy."

24 So that is the response. It focuses only on the
25 ancillary investment point, but he does not ever ask

1 about the amounts in question.

2 Then if we go back to the first page {F/392/1},
3 there is nothing else there other than Rob Kirkpatrick
4 saying, "You should get out of the contract."

5 But there are two things that I just want to be
6 clear about.

7 This was not something that Deepa remembered, and it
8 was not ever raised with you, because you did not know
9 about this?

10 A. No.

11 Q. Thank you. So --

12 A. We would have been asked about the ancillary products.

13 Q. Sorry?

14 A. We would have been asked about the ancillary products
15 that he refers to --

16 Q. Understood.

17 A. (overspeaking) back in --

18 Q. But nothing to do with the amount?

19 A. Yes.

20 Q. Thank you. So let us just go back to your witness
21 statement, if I may. Do you still have it in front of
22 you?

23 A. Yes.

24 Q. Great.

25 MS LUCAS: Do you have the reference to that, Mr Beard, so

1 that it can come on the EPE?

2 MR BEARD: The witness statement is {A/13} and I will be
3 going to page {A/13/7} in it, I think, or it may be page
4 {A/13/8}.

5 Now, here you say:

6 "Among the insurers who declined to negotiate
7 promotional deals with MSM due to wide MFNs, there were
8 some big insurance providers, which, together, accounted
9 for a large proportion of MSM's home insurance ... These
10 included Legal & General, AXA, Policy Expert and Aviva."

11 Now, we have dealt with Legal & General, Policy
12 Expert and Aviva, where in your Section 26 notice, you
13 said that those three were people that had rejected
14 promotional deals. We have looked at the three emails
15 you relied upon in relation to those, have we not?

16 A. Yes.

17 Q. In relation to AXA, you did actually do a promotional
18 deal, did you not?

19 A. We did, yes.

20 Q. In fact, I am not going to take you to it, because I am
21 sure you would concur, you said when you were
22 interviewed by the CMA that AXA had been sort of softer
23 in relation to promotional deals, is that right?

24 A. They had, yes.

25 Q. I suggest that actually it is very limited, the extent

1 to which there is any basis for an assertion that large
2 insurers were rejecting promotional deals, but what
3 I actually want to do is go to look at the scale of your
4 promotional deals before and after the withdrawal of the
5 wide MFN clause by ComparetheMarket.

6 If we could, could we go to document {F/714}. This
7 is a document that actually the Tribunal has not seen
8 before. I will just explain what it is. It is an
9 extract from CMA's own database of promotional deals
10 that were entered into before and after the wide MFN,
11 only looking at the period that they focused on, 19
12 months before/19 months after.

13 What we have done is we have just selected out only
14 those that concerned MSM. Across that period of 38
15 months -- so over three years -- we have a total of 39.

16 Just to explain the table to Ms Glasgow and to the
17 Tribunal, what you see is obviously numbers down the
18 left-hand side. Then you have the PCW, which is you.
19 That is because it has drawn out an Excel spreadsheet
20 that has the others in. Then you have 1 and 0 for
21 before and after.

22 So these are deals starting before the relevant
23 cut-off period, in other words, when the wide MFN was
24 withdrawn, and those starting afterwards, and it is just
25 a binary marker effectively. So the first 18 are before

1 and then the remainder are after.

2 THE CHAIRMAN: So before is really during the period of
3 concern?

4 MR BEARD: Yes, I am sorry.

5 THE CHAIRMAN: No, I quite understand why you use the label.

6 MR BEARD: It is before and after that threshold.

7 THE CHAIRMAN: That threshold, yes.

8 MR BEARD: The threshold that the CMA is using. That is the
9 only reason the language is used. There is no other
10 significance to it. I am just explaining, so both the
11 Tribunal and Ms Glasgow can see what we are dealing with
12 here.

13 I just want to test this. In relation to the deals
14 you did before the removal of the wide MFN, you will see
15 that a number of them at the start were with Direct
16 Line. Is Direct Line within the sort of top five or top
17 ten of insurers selling through PCWs -- selling home
18 insurance through PCWs during 2016 and 2017?

19 A. Through the Churchill brand, yes.

20 Q. And Admiral?

21 A. It would have been higher than home. I do not know
22 where --

23 Q. Sorry, this is not going to be a full test. I am just
24 giving a broad sense.

25 A. Yes.

1 Q. The reason is there are tables in the decision, but they
2 are actually redacted, so I cannot take you to them.

3 A. That is fine.

4 Q. I am not trying to play a game of try and name the top
5 ten insurers.

6 A. That is fine. They would be in the top ten, definitely,
7 just not in --

8 Q. Thank you.

9 THE CHAIRMAN: To be clear, you are using the Direct Line
10 label as a reference to those entities within the Direct
11 Line group that accessed price comparison websites?

12 A. Yes.

13 THE CHAIRMAN: Just for my understanding.

14 A. Yes.

15 MR BEARD: You can actually see that in the next --

16 A. Churchill or (overspeaking) --

17 MR BEARD: I am so sorry, I spoke across you.

18 THE CHAIRMAN: But you are confirming my understanding that
19 Direct Line, as a brand, did not go through --

20 A. Appear on the price comparison sites, no, but then
21 certain brands do.

22 THE CHAIRMAN: I am grateful.

23 MR BEARD: If you think of small red telephones or Harvey
24 Keitel, those are not on PCWs. If you think of a dog
25 with a wobbly head, that is on PCWs. Is that broadly

1 right?

2 A. That is right.

3 Q. You can actually see that in rather neater and more
4 succinct terms, if you look at the "HIP & Brand" column
5 that is next over.

6 A. Yes, column F.

7 THE CHAIRMAN: Yes.

8 MR BEARD: Ms Glasgow quite properly qualified her answer in
9 relation to Direct Line and said, yes, in relation to
10 Churchill.

11 THE CHAIRMAN: No, I wanted to ensure that I had the
12 understanding absolutely on the record.

13 MR BEARD: Admiral, we have dealt with. BGL, this is
14 actually their direct insurance product, even though
15 they own ComparetheMarket.

16 A. Yes, yes.

17 Q. Then we have more Admiral, more DLG. Then RSA, this is
18 where I made my faux pas earlier, I mixed up my London
19 Victoria with my RSAs. But again, they are a top ten?

20 A. Yes, they might have been skirting round the outside of
21 it, but, yes.

22 Q. One Call, smaller perhaps?

23 A. Yes.

24 Q. But Tesco Bank large in home insurance at the time?

25 A. Yes, they were.

- 1 Q. AXA large?
- 2 A. Yes.
- 3 Q. Direct Line Group, we have dealt with. Stride, they are
4 a slightly different entity, they do computer quotes, so
5 they are potentially a rather smaller entity; yes?
- 6 A. Yes.
- 7 Q. Admiral, large. Co-op, more in the top 20s than in the
8 top 10s, yes?
- 9 A. Yes.
- 10 Q. Tesco Bank again.
- 11 So during the period up until the withdrawal of the
12 wide MFN, you are actually doing promotional deals with
13 some of the biggest insurers out in the market who had
14 competitive products in home insurance. That is right,
15 is it not?
- 16 A. Yes.
- 17 Q. You did 18 before, and of course you have already given
18 evidence that your strategy for pursuing promotional
19 deals only really kicked off in earnest, in 2017, in
20 home insurance?
- 21 A. Yes.
- 22 Q. So if we had been looking back across the whole of 2016
23 and you had had a different strategy, you might have
24 done more then as well?
- 25 A. Yes.

1 Q. Then I am going to just make the arithmetical point that
2 actually after the withdrawal, you do a total of 20,
3 some of which are with precisely the same insurers you
4 were dealing with before, like Admiral, AXA, Tesco Bank
5 and so on, but you do add one or two others that you are
6 dealing with, like AA Group and Saga, is that right?

7 A. Yes, and Legal & General.

8 Q. Yes, Legal & General. But the ones you were doing the
9 deals with beforehand, particularly those in the top
10 ten, those were highly competitive insurers, were they
11 not?

12 A. Yes, they are, yes.

13 Q. So when in paragraph 28 of your statement -- sorry,
14 probably start at 27 {A/13/8}:

15 "To sum up, based on what MSM was told at the time
16 by insurance providers ..."

17 We have got very limited reference to that that we
18 have gone through.

19 "... my understanding is that, because of CTM's wide
20 MFN clauses, we could not get some of the more
21 competitive insurers to engage with us."

22 But actually what you are referring to there are the
23 four above, are you not?

24 A. Yes.

25 Q. In fact, you were able to get many of the largest

1 insurers, so when we get to paragraph 28 {A/13/9}:

2 "The fact that MSM was not able to engage in
3 negotiations with those insurers meant that our pricing
4 strategy was more costly, as engaging with less
5 competitive insurers required bigger investments on our
6 part in order to conclude promotional deals with a truly
7 competitive retail price."

8 Now, we have just run through the 18 that you had
9 done deals with before. Barring two of them -- sorry,
10 barring three, One Call, Stride and Co-op, they are all
11 top ten. So this is slightly overstating it, is it not?

12 A. At the time -- well, Legal & General are our biggest
13 player, so they were the number one, alongside -- and
14 then Churchill, they switched around, the two. So they
15 were the two bigger ones, slightly different footprints,
16 so you could attract a different audience slightly for
17 who Legal & General were looking for.

18 So I think it is a fair statement, and it is not
19 saying we did not do deals with some of them, but some
20 of those bigger ones, Policy Expert were particularly
21 good in certain footprints, certain areas, so actually
22 to get them cheaper would have been -- helped us to win
23 that space. Legal & General, in particular, were one we
24 particularly wanted to do deals with at various times,
25 because their footprint changed and in the contract, we

1 would have got a better price.

2 We did do deals with the other insurers, but at
3 times, in our model, it might have cost us a little bit
4 more to get them to position one or two or three.

5 So that is my reference to it, it cost us more in
6 terms of the ideal candidate might not necessarily have
7 been the one that we necessarily went with, because it
8 might have cost us more to get the same outcome. So it
9 would have cost MoneySuperMarket more.

10 Q. Let us just look at your witness statement:

11 "... engaging with less competitive insurers
12 required bigger investments on our part in order to
13 conclude promotional deals ..."

14 Now, that might as a general proposition be true,
15 but in practice what you had were highly competitive
16 insurers that you were doing deals with here?

17 A. Admiral and Churchill, yes.

18 Q. Not just Admiral and Churchill. RSA, Tesco Bank, AXA.

19 Even Co-op in these circumstances. So we are looking at
20 a couple.

21 A. Co-op would have required a bigger investment. They
22 were not in the top three. Some of those examples are
23 where it would have cost us more to get to the same end
24 position.

25 Q. I see. Again, I have not seen anything about that

1 written down, so I am assuming it was not that
2 significant that it needed to be noted to the pricing
3 committee.

4 A. We went with the deals which -- back to the pricing
5 committee, were the deals that were available rather
6 than focusing on the ones that were not available.

7 Q. But we have no record of any concern being expressed
8 about the cost of any of these deals, have we?

9 A. If it was within our tolerance, then, no. We obviously
10 worked the models to our own return investment, so where
11 we have a model that says we can work within these
12 parameters, and if the deal that came back to the table
13 worked within the parameters, we would run with it.

14 Q. So the reality is, really, you were able to do extensive
15 promotional deals during the period 2016/2017, and the
16 CTM wide MFN did not really actually have any material
17 impact on your strategy, did it?

18 A. The impact of who we worked with, but not in our end
19 strategy of getting cheaper prices out to consumers.

20 Q. Who you worked with you have identified Legal & General,
21 AXA, Policy Expert and Aviva, those are the four; yes?

22 A. Named in there.

23 Q. But that is your evidence, is it not, Ms Glasgow?

24 A. Yes.

25 Q. Obviously, we have been focusing on the insurers with

1 wide MFNs in their contracts, but you are always able to
2 do promotional deals with those that only had narrow
3 MFNs in their contract?

4 A. Yes.

5 Q. That was the same before and after the November 2017?

6 A. Yes.

7 Q. So I am going to just ask you a couple of questions, if
8 I may, about the end of the pricing strategy.

9 You left in January 2019, but were you aware by then
10 that your pricing strategy was considered unsustainable
11 in the longer term within MoneySuperMarket?

12 A. Not the unsustainability. We had moved it into what
13 I would class as business as usual in terms of that was
14 a way of doing business, so it was not a strategic focus
15 of MoneySuperMarket, at that time, to be outwardly
16 pushing and looking at above the line campaigns in that
17 way for products.

18 Q. So you are saying you thought it was long-term
19 sustainable in those circumstances?

20 A. For targeted investments.

21 Q. Could we go to {F/398/27}. Actually, we should check.
22 Let us go to document {F/480/2} to start with.

23 I am slightly conscious of the time. I wonder if we
24 should -- could we go back a page, please {F/480/1}.

25 This was a Section 26 response provided

1 in June 2019, so this was after you left.

2 A. Yes.

3 Q. If we can then just go over the page {F/480/2}, do you
4 remember this diagram being developed in 2018 or early
5 2019 about the "Key challenges we face" and "Overcoming
6 our challenges"?

7 A. No, I had stepped away from that (inaudible) leaving.

8 Q. Because in there it talks about the whole strategy being
9 unsustainable and it is something Ms Patel dealt with,
10 but I think since you are not in a position to comment,
11 I am not going to ask you further questions about it.

12 In terms of the business as usual, that focused also
13 on quotability, presumably?

14 A. Yes.

15 Q. One last document, {F/715}.

16 Now, this is the MoneySuperMarket Group report and
17 accounts for 2020. Have you ever seen these? Have you
18 looked at these at all?

19 A. No.

20 Q. Because what I just wanted to ask you about was you are
21 aware that the FCA carried out an investigation into
22 general insurance matters, because I think it started
23 whilst you were at MoneySupermarket. That is right?

24 A. Yes, digital market tools.

25 Q. Well, there was digital market tools, that was the CMA,

1 but there was also the FCA looking at general insurance
2 and the concerns about price war. Are you familiar with
3 that?

4 A. Yes.

5 Q. Have you kept up with the developments in relation to
6 that at all?

7 A. Not explicitly, because it is not relevant to my job.

8 Q. Because it is not relevant to your job. So you do not
9 have any view about the impact of that on promotional
10 deals, and so on, and the strategy?

11 A. No.

12 Q. Because it is commented on here, but given you cannot
13 comment on those matters, it would not be a fair
14 question to ask.

15 A. No.

16 MR BEARD: I am most grateful. I do not have any further
17 questions. We say, Ms Glasgow, thank you for providing
18 your evidence. We do say that you have overstated in
19 relation to MSM, the extent to which these wide MFNs
20 were significant, but we have been through the various
21 matters, and I have no further questions for you. Thank
22 you very much.

23 A. Thank you.

24 THE CHAIRMAN: Professor, do you have any questions for the
25 witness?

1 PROF ULPH: Yes, I have one question of clarification.

2 Questions by THE TRIBUNAL

3 PROF ULPH: At what point, Ms Glasgow, you said that
4 cash-back was included when you were doing the ranking
5 of HIPs that would appear on your website, have
6 I understood that correctly?

7 A. Sorry, I did not hear that very well. Are you asking
8 about the use of cashbacks?

9 PROF ULPH: Yes, I was asking about how you do the ranking,
10 during which different offers will appear on the
11 website, and --

12 A. If a partner did a deal that involved a cash-back, let
13 us say, they offered the consumer £50 back, instead of
14 the price being £200, we would have put it at 150 and
15 said this price includes the £50 cash-back. So it would
16 have moved them higher up the rank.

17 I think we changed that probably at some point in
18 the cycle to not do that and just leave the prices as it
19 was and just have the promotion, but I cannot remember
20 the dates when we changed that kind of thing, but it is
21 certainly in the early days of the promotions, we would
22 use it to reduce the price on screen.

23 PROF ULPH: So just to be clear, there were some occasions
24 when the ranking was done purely on the price, and there
25 are other occasions when it was done on the price minus

1 any value of any other offers or cash-back?

2 A. Yes, at some point, that did change, but it did at one
3 point, certainly.

4 PROF ULPH: Thank you for clarifying.

5 THE CHAIRMAN: Ms Glasgow, I have one question. You have
6 very helpfully been giving us evidence going beyond your
7 personal direct experience.

8 A. Yes.

9 THE CHAIRMAN: I am very grateful, but obviously, it is
10 a limiter that we have to bear in mind. Looking at the
11 statement you provided in the course of the CMA's
12 investigation, ie the substantive statement, not the one
13 you confirmed for these proceedings, I notice that at
14 the time you gave the statement, you were no longer
15 employed by -- well, you had become employed by
16 Broadstone Group.

17 A. Yes.

18 THE CHAIRMAN: What I am interested in is, because I think
19 it affects the extent to which you had access to data
20 that you might have wanted to see, was how far you had
21 the assistance of MoneySuperMarket in obtaining access
22 to emails that you might have wanted to look at in order
23 to make your statement more granular or were you
24 confined to the material that had been provided to the
25 CMA by MoneySuperMarket through you via your Section 26

1 notices and other information?

2 A. I did not get any direct information from

3 MoneySuperMarket, only what was being shared with the

4 CMA or from my own recollection. There was no other

5 dialogue separately with MoneySuperMarket to get access

6 to information or data.

7 THE CHAIRMAN: I am grateful. Ms Glasgow, thank you very

8 much. We will see if there is any re-examination.

9 Probably, I think, Ms Demetriou, shall we start at 2.00?

10 MS DEMETRIOU: That is okay. I am going to be very short in

11 re-examination, if that makes a difference?

12 THE CHAIRMAN: Well, yes. Ms Glasgow, are you happy to

13 have -- are we talking five minutes?

14 MS DEMETRIOU: Five minutes.

15 THE CHAIRMAN: Ms Glasgow, are you happy to get it over

16 with?

17 A. Yes.

18 MS DEMETRIOU: I think if the transcribers do not mind, it

19 just would be helpful, because then Ms Glasgow can be

20 released.

21 THE CHAIRMAN: I, of course, understand, thank you.

22 Re-examination by MS DEMETRIOU

23 MS DEMETRIOU: So, Ms Glasgow, I am going to be very quick,

24 as I have said. I just want to turn up, please, could

25 we have document {F/713/2} and this is a document that

1 Mr Beard took you to. It relates to Legal & General.

2 Do you remember he showed you this?

3 A. Yes.

4 Q. You did not receive this email, at the time, but he
5 said -- what was put to you, he said that this says:

6 "Good to speak to you both earlier."

7 Essentially, what was being put to you was that
8 Legal & General must have been interested in doing
9 a promotional deal. Do you remember that question?

10 A. Yes.

11 Q. Can I just ask you to look at this document, please:
12 {F/324}. First of all, let us go to page {F/324/1}.
13 This is a Legal & General document. Do you see at the
14 bottom?

15 A. Yes.

16 Q. The date is June 2017. The reason it says "MSM" is
17 because it is in advance of a meeting with MSM. If we
18 could go to page {F/324/5}, please --

19 MR BEARD: I am sorry, I did not understand that. I put
20 these documents to the witness. I thought these were
21 confidential. It does not matter for these purposes,
22 but this is a Legal & General document that has not been
23 seen by MSM as far as I am aware.

24 THE CHAIRMAN: I was going to ask, but this just goes to
25 show no question is too stupid, I was going to ask

1 whether you were feeling in any way that your
2 cross-examination was inhibited by confidentiality,
3 because had your answer, as I now infer it will be
4 "yes", I would have made clear that I would not have
5 accepted that sort of limit on your cross-examination.

6 MR BEARD: I think, as I indicated at the outset, we
7 considered that anything that was before MSM, and so the
8 email chains that went to and from MSM, we assumed there
9 was no confidentiality restriction. We had, in
10 preparing our cross-examination, assumed there would be
11 no confidentiality in relation to any other matters.

12 It may be it does not make a difference, and I am
13 certainly not going to stop Ms Demetriou, but I have to
14 say that was our working assumption that we could not
15 put to an MSM witness, material that had not been seen
16 in relation to MSM.

17 For instance, I paused, for example, in relation to
18 Qmetric, and I did not put any of that material, quite
19 understandably, because I thought it was not
20 appropriate, even though I referred to it in opening.

21 Now, I am not sure this is going to make a massive
22 amount of difference. It may well be something that we
23 can deal with, but if the question, sir, you are asking
24 is: did we apply some kind of constraint? Yes, we did,
25 because we did not think we were entitled to breach

1 confidentiality in putting material to Ms Glasgow, and
2 we sought to avoid that.

3 Now, I should emphasise that the vast majority of
4 what is going to be relevant is stuff that MSM will have
5 seen. So I am particularly concerned about the idea
6 that in re-examination, new documents are being put that
7 have never been seen by MSM, that are produced by other
8 people in circumstances where they thought they were
9 confidential.

10 MS DEMETRIOU: Sir, I can short-circuit this. I will not
11 put the question. I can make the point by way of
12 submission. I do not need to put it to this witness.

13 I have two more questions I want to ask which do not
14 involve going to any documents. The first is a question
15 of clarification, and it arises from Professor Ulph's
16 question to you, Ms Glasgow, about the rankings and
17 cash-back offers.

18 A. Yes.

19 Q. Can I just clarify the position in relation to
20 non-cash-back offers, so, for example, free gifts, did
21 they have any impact on the rankings or not?

22 A. No.

23 Q. Then one last question: would it generally have been
24 a desirable thing for MoneySuperMarket to price lower
25 than its competitor price comparison websites?

1 A. Yes, because we know on average that a consumer goes to
2 1.8, 1.9 price comparison sites, so despite all the
3 investment, I do not think any price comparison site has
4 secured that loyalty where they only ever go to that
5 price comparison site, so for us to be cheaper would be
6 advantageous rather than at parity, absolutely. As
7 I say, I think the stats at the time are an average of
8 1.8 price comparison sites and at least one other direct
9 insurer, that was consumer behaviour at the time. So we
10 took that that they would go to two price comparison
11 sites, so it would have been important.

12 MS DEMETRIOU: Thank you very much, Ms Glasgow. I do not
13 have any further questions by way of re-examination so
14 the witness can be released.

15 THE CHAIRMAN: Ms Glasgow, thank you very much for your time
16 today. You are released and you can go or stay if you
17 wish to. Thank you very much.

18 A. Thank you.

19 THE CHAIRMAN: We will rise in a moment.

20 It may not matter in this case because clearly
21 Ms Glasgow can really only speak with authority in
22 relation to MoneySuperMarket documents, but I have to
23 say I am quite troubled to have the confidentiality
24 regime trumping the asking relevant questions regime,
25 and I have to say it was not my understanding until

1 Mr Beard you made your comment this morning, and I was
2 about to say you are surely not restrained in asking
3 your questions, and I thought that was a question too
4 stupid to ask, and it obviously was not.

5 MR BEARD: The stupidity may be on our side in that regard
6 because I think we undoubtedly focused on and I think --
7 and I do not want to overplay the issue -- we would
8 undoubtedly have focused on the evidence that she is
9 able to comment on which is going to be limited, and
10 I can make submissions -- I think there is no one in the
11 room, so for example if we take the QMetric example,
12 Ms Glasgow gave evidence about what she knew about in
13 relation to QMetric. Plainly we have evidence from
14 QMetric in relation to statements saying we are not
15 interested in promotional deals.

16 Now, there is an extent to which it could be said,
17 well, that is just grandstand cross-examination if you
18 put that to a witness and you are just opening it up,
19 but I am just straight off the top of my head thinking
20 about things like that that I specifically avoided so
21 that we did not risk traversing into stuff that I have
22 no idea whether it might be confidential.

23 I have profound doubts that there could be any issue
24 with Ms Glasgow now, because she works for someone else,
25 but because it would potentially be more widely

1 available I applied a self-denying ordinance in relation
2 to it.

3 THE CHAIRMAN: That is helpful to know, and as you have
4 said, it may not matter in this case, and I again have
5 my eye rather more on the future, and I am sure if it
6 was absolutely clearly relevant material that you had to
7 put, the dispute would have emerged earlier.

8 MR BEARD: I think that is entirely fair, sir. If there was
9 some document that we immediately identified and said,
10 "This is confidential", we would have raised it, but
11 I think the difference is how you approach the analysis
12 of the documentary record for putting it to someone is
13 different. So I am not here saying there is some sort
14 of smoking gun document that I specifically did not put
15 because it was confidential. I do not want to give that
16 impression. That would not be fair, and that is the
17 reason I place the caveat, but you asked the question as
18 to how we prepared, and it only came up when
19 Ms Demetriou raised a document that was not theirs.

20 THE CHAIRMAN: I understand. I know that when there is
21 confidential material in disclosure hearings, for
22 instance, one at some point weighs the value of
23 disclosing the document against its confidential
24 significance.

25 MR BEARD: Yes.

1 THE CHAIRMAN: We may be in a similar territory when one
2 shapes cross-examination, but what I would not want
3 anyone before this Tribunal to think is that we regard
4 the confidentiality regime as more important than the
5 asking of material questions. Indeed, if anything, it
6 goes the other way round.

7 I am quite sure that skilled counsel such as we have
8 here can find ways of minimising the confidential
9 damage. As I say, it is probably not a problem here,
10 but what you have said about navigating the confidential
11 regime just seems to me to send the wrong vibe for the
12 future, and it is probably another aspect that we might
13 want to take on board in terms of handling confidential
14 material in this sort of case going forward.

15 I do not think I need to say anything more, but it
16 is a little troubling.

17 MR BEARD: Yes. I think for the moment I have given the
18 position. We did look at the idea of putting other
19 material, and we thought there were ways round it and
20 given the questioning we have followed we have avoided
21 it.

22 So we will review it, but I am not sure we are in
23 the territory of wanting to recall the witness in order
24 to deal with anything which would be the natural course
25 here, so to that extent I think the hypothetical issue

1 is potentially significant; the practical application of
2 it here may be less so.

3 THE CHAIRMAN: Thank you, Mr Beard.

4 Ms Demetriou, if you have anything to say, I will
5 hear you, but you do not.

6 Well, thank you very much. I see the time. We will
7 not start at 2.00 but we will shave a little bit off the
8 break and start at 2.10.

9 MR BEARD: Most grateful.

10 THE CHAIRMAN: Thank you very much.

11 (1.25 pm)

12 (The luncheon adjournment)

13 (2.12 pm)

14 Open session

15 MR BEARD: Sir, we now call Dr Niels to give evidence. So

16 I was just going to have him sworn in as normal.

17 THE CHAIRMAN: Yes. I think, Dr Niels, do sit down for
18 a moment. I think we have just two things that I want
19 to be clear. First of all, we are back in open session.

20 MR BEARD: Yes, we are.

21 THE CHAIRMAN: I know everyone assumed that, but it ought to
22 be made clear that we are.

23 MR BEARD: I am grateful.

24 THE CHAIRMAN: Secondly, because I am likely to forget if
25 I do not say now, I hope the parties had an email about

1 the inability of the Tribunal to go beyond 2.30
2 tomorrow.

3 So what we have suggested is an earlier start of
4 either 9.00 or 9.30.

5 I do not think we have had a response in terms of
6 objection. I think we asked for objections. But we
7 probably ought to sort that out now before we all
8 forget.

9 MR BEARD: I imagine that actually starting at 9.30 is
10 probably going to be perfectly acceptable to all, but
11 actually starting earlier might tend to create
12 disruptions for people who have school runs and all
13 that.

14 THE CHAIRMAN: I can quite see that. I think 9.30 and we
15 can always catch up at other points in the process.

16 MR BEARD: Yes. I think that is fine. I will check behind
17 me. I am grateful.

18 THE CHAIRMAN: Ms Demetriou, is that all right?

19 MS DEMETRIOU: Yes.

20 THE CHAIRMAN: Very good. Well, I am most grateful to
21 everyone, and I know it is inconvenient to move away
22 from normal hours, but what we will do is we will run
23 from 9.30 and we will shorten the lunch break by an
24 amount, just so that we can squeeze the most out of the
25 day, but we will end at 2.30 and that will be the day.

1 MR BEARD: It might be sensible -- we will discuss it
2 tomorrow -- to build in two breaks during the morning
3 session just both for shorthand writers and for
4 witnesses, I think.

5 THE CHAIRMAN: Yes.

6 MR BEARD: Perhaps for all concerned.

7 THE CHAIRMAN: I agree. We will give that some thought
8 overnight, but we at least have a start point. So thank
9 you, and apologies, Dr Niels. We will now proceed to
10 swear you.

11 DR GUNNAR NIELS (affirmed)

12 THE CHAIRMAN: Good afternoon, Dr Niels, do sit down and
13 make yourself comfortable. There is water there if you
14 need it. I think you were in court this morning, so you
15 heard my explanation of the way we are sitting in hybrid
16 form. It will make your job a little bit more difficult
17 ensuring that Professor Ulph is fully involved, but
18 I think all I would suggest is speak a little bit more
19 slowly, just to enable the camera to follow your
20 answers, so that the Professor can see what is going on.

21 A. Thank you.

22 THE CHAIRMAN: With that introduction, I will hand over to
23 Mr Beard.

24 Examination-in-chief by MR BEARD

25 MR BEARD: I am grateful. On the EPE, could we have

1 bundle A, tab 6, please {A/6}. Thank you.

2 This is the front page of your first report; is that
3 correct?

4 A. Yes.

5 Q. Thank you. Could we go to page 35 {A/6/35}. Is that
6 your signature at the bottom?

7 A. Yes.

8 Q. Is this report true to the best of your knowledge and
9 belief?

10 A. Yes.

11 Q. I should say that I am not sure that Dr Niels has a hard
12 copy of the report in front of him, nor indeed the
13 second one. I do not know if the CMA bundles contain
14 those.

15 MS DEMETRIOU: I think they do, but perhaps somebody could
16 check for Dr Niels.

17 MR BEARD: Could we have a quick look? I just think, for
18 reference, in case the Tribunal or indeed Ms Demetriou
19 is going to go to --

20 THE CHAIRMAN: That would be helpful.

21 MR BEARD: There was an expert set, thank you so much. I am
22 sorry, someone somewhere is owed a debt of gratitude
23 because there is another set.

24 Before I move to the second report, can I just track
25 down in there where the first report is, just so that

1 Dr Niels can have it in front of him. I think it is
2 just useful, if you are flipping backwards and forwards,
3 because he, of course, has no control over the EPE.

4 THE CHAIRMAN: I entirely agree.

5 MR BEARD: You now do have two hard copy versions, but I am
6 going to take you to, as a matter of formality, to take
7 you to {A/10}, please.

8 A. Yes.

9 Q. Is that the front cover of your second report?

10 A. Yes.

11 Q. Could we go to page {A/10/25}. Is that your signature?

12 A. Yes, it is.

13 Q. Is that report true to the best of your knowledge and
14 belief?

15 A. Yes.

16 MR BEARD: Thank you. Now, Dr Niels, I do not have any
17 questions for you, at this stage, certainly, but you
18 will have seen and received questions from the Tribunal
19 or questions that were being posed by the Tribunal to
20 the experts in relation to matters of market definition.

21 I do not know if you have a copy of those in front
22 of you, because you may have printed one off, but it
23 would not be appropriate for you to bring them into the
24 witness box.

25 THE CHAIRMAN: Do we have a hard copy for Dr Niels?

1 MR BEARD: Would you mind very much sacrificing one? I did
2 not think about this beforehand and that was very --

3 THE CHAIRMAN: No, of course, not. We did not either. Yes,
4 thank you.

5 MR BEARD: Thank you, I am most grateful. Just for point of
6 reference.

7 Obviously, in relation to the expert evidence
8 presented by ComparetheMarket, Dr Niels has taken the
9 lead in relation to conceptual matters. Obviously,
10 Ms Ralston has provided evidence in relation to certain
11 matters, both matters of application and some specific
12 issues to do with how one deals with engineering of
13 market definition analysis and what is relevant to it.

14 So whilst, obviously, for today's purposes, we have
15 suggested, in line with the Tribunal's indication in
16 relation to questions, that Dr Niels should start
17 dealing with questions that the Tribunal has.

18 We have also indicated to him that if there are
19 matters that fall less within his report, but more
20 within the scope of what Ms Ralston has dealt with, then
21 those are matters that would perhaps properly be picked
22 up tomorrow.

23 So we hope that that indication is not problematic
24 and I do not anticipate that that is necessarily going
25 to be a significant issue in relation to the questions

1 we have seen from the Tribunal today.

2 THE CHAIRMAN: No, that is a very helpful indication,
3 Mr Beard, and it does seem to me that the converse also
4 applies. We had not planned to put the whole raft of
5 questions to Ms Ralston, but if she has particular views
6 about anything in this document or indeed anything that
7 Dr Niels says, then we would obviously want to hear from
8 her. But I will rely on counsel to extract those views
9 from her rather than -- because time is not a limitless
10 quantity. This is going to take, I think, some time to
11 go through anyway.

12 MR BEARD: Yes, absolutely.

13 THE CHAIRMAN: We want to keep it to the reasonable minimum.

14 MR BEARD: No, no, we completely understand that. We
15 anticipate that, as I say, more than the lion's share of
16 these fall to Dr Niels, but I just thought it was
17 sensible to raise that, at the outset, given that we do
18 have two experts dealing with different aspects of
19 market definition.

20 THE CHAIRMAN: I quite understand. Thank you very much.

21 MR BEARD: Unless I can deal with any other matters, I will
22 leave Dr Niels in the tender care of the Tribunal for
23 these questions.

24 THE CHAIRMAN: Thank you very much. The Tribunal will take
25 care of Dr Niels or it may be the other way around.

1 Questions by THE TRIBUNAL

2 THE CHAIRMAN: Good afternoon, Dr Niels.

3 A. Good afternoon.

4 THE CHAIRMAN: This is a slightly unusual approach.

5 Normally, the Tribunal would ask its questions either in
6 the course of the giving of evidence or at the end of
7 the cross-examination.

8 However, both Professor Ulph, Ms Lucas and myself
9 have, I think, a sufficient number of quite fundamental
10 questions that it seemed to us after careful thought
11 that we would get them out of the way early on, so that
12 we have the building blocks clear in our own minds, so
13 that we can actually assess with at least a common
14 language, the points that all of the experts are
15 addressing.

16 So it is very much a question of market definition
17 that we are talking about. But I think it is the
18 application of the common economic test that we have to
19 two-sided markets and what exactly a two-sided market is
20 that is driving these concerns.

21 My own experience is that in past decisions where
22 this has cropped up, the parties have accepted that
23 there is a two-sided market in play, but have agreed the
24 market definition without any form of dispute. So it
25 has not been particularly necessary to get into it,

1 whereas here, of course, it is quite fundamental.

2 So you have seen the questions. What I am going to
3 do is I am going to just go through them and read them
4 out and get your answers.

5 The reason I am going to do that is because I am
6 quite keen to encourage a dialogue rather than a sort of
7 extraction of information. I am really doing this
8 because I am genuinely troubled by my lack of
9 understanding of these important points.

10 Professor Ulph obviously does not share my economic
11 illiteracy, but he too has issues which interrelate to
12 the questions I have. So what he is going to do, and
13 I hope he will shout loudly when he has a point, he is
14 going to intervene in the course of our discussion, if
15 he has points to raise. He may have points at the end
16 to run past you to the extent they are not covered by
17 our discussion.

18 We move, and could we bring up on to the screen the
19 Decision of the CMA, unless you have that in hard copy
20 yourself. I do not think you do.

21 A. No, sorry.

22 THE CHAIRMAN: Bring it up on to the screen, so the
23 Decision, which is {A/1}, I believe. If we could move
24 within the Decision to page {A/1/75}, paragraph 5.2.

25 What we see there is the definition of the market in

1 this case, and in my question 3, I have articulated what
2 we see there stated as the market. It said that the
3 relevant market is the provision of price comparison
4 website services, the market is a two-sided one. On one
5 side, there is a supply by PCWs of customer introduction
6 services to home insurance providers and then on the
7 other side, there is the supply of price comparison
8 services to consumers.

9 Now, we see the use of the term "two-sided market",
10 and I wonder if you could start by giving us your
11 definition of what is a two-sided market.

12 A. Sure, and sir, I am grateful to engage with you through
13 dialogue, with the panel in a dialogue on this.

14 As you rightly have said, "two-sided market" is
15 a bit of a buzz word, lots of people use it all the
16 time, but rarely do people actually think through in
17 more depth what are the underlying economic mechanisms
18 here at play, and what are the implications.

19 Your questions very much go to the heart of that and
20 I think they are important for this case.

21 So two-sided markets, two-sidedness, two-sidedness,
22 two-sided network externalities is the proper term, is
23 an economic characteristic that you can have in
24 a market. It is an economic characteristic on the
25 demand side in a market.

1 It is not a -- so many markets can have this -- can
2 have features of a two-sided -- of this two-sidedness,
3 so the world cannot be divided between two-sided markets
4 and all other markets. It is more a matter of degree
5 and practice.

6 Now, what is that underlying economic mechanism that
7 defines a two-sided platform? Again, I should say
8 "two-sided platform" is more an accurate term than
9 "two-sided market". The word "market" causes some
10 confusion here.

11 So the essence of a two-sided platform is that you
12 have a platform that has two -- that brings together two
13 types of users. It can be more than two types. You can
14 have multisided platforms, but let us talk here about
15 two-sided platforms.

16 They bring the two users together, and the crucial
17 feature of this two-sidedness is that the demand for the
18 services of the platform by each of the sides is
19 a function not just of the price that that side pays,
20 which is what you get in normal markets, but also
21 a function of the demand on the other side by the other
22 type. That is the unusual bit about two-sided markets.

23 That is what in economic terms is called a
24 "positive demand side externality", so the demand on one
25 side depends on, in this case, positively on the demand

1 on the other side. So the more you have users on one
2 side, the more attractive it is to the users on the
3 other side, and vice versa.

4 So that is the positive network externality, and
5 that is what we called "two-sided network effect". So
6 network, positive network effects, between the two
7 sides.

8 It is also sometimes called indirect network
9 effects, where "indirect" is a reference to the fact
10 that it is an externality between the types, between the
11 two types, rather than directly between users of the
12 same type.

13 So there are also platforms and networks with
14 one-sided externalities, one-sided network
15 externalities. So, for example, say WhatsApp or
16 Facebook, if you are on Facebook and all your friends
17 are, then the more of your friends are on Facebook, the
18 more attractive the platform is, but you are all kind of
19 the same type of users.

20 Here this is between the two types. What does that
21 then mean for the platform itself? It means that the
22 platform has to get both types of users on board. It
23 competes on both sides simultaneously, and it sets its
24 prices on both sides simultaneously in order to attract
25 the two sides. That is why you get in two-sided

1 platforms, you often get the skewed pricing structure.
2 It has been referred to as "subsidy", one side paying
3 a lot more than the other or even one side not paying
4 anything at all. The skewed pricing structure is what
5 you typically get in these two-sided platforms.

6 My last point I wanted to make, this is slightly
7 jumping ahead to what it means for market definition,
8 but this is also crucial for the hypothetical monopolist
9 test, because the hypothetical monopoly platform also
10 competes on both sides simultaneously and sets prices on
11 both sides simultaneously.

12 So that means that if the market, as part of this
13 exercise, is hypothetically monopolised, so there is no
14 more competition between PCWs here, but rather there is
15 only one PCW, that means the monopolist will
16 recalibrate, will reoptimise its prices simultaneously
17 on both sides. Therefore, as part of the SSNIP test,
18 you have to look what happens on both those sides.

19 That is, in the essence, my answer to the question
20 what do I mean by -- or how would I define two-sided
21 markets.

22 Apologies, I am also trying to look at
23 Professor Ulph, but I do not know where the camera -- I
24 am seeing him there --

25 THE CHAIRMAN: Quite understood. No, he is there. I think

1 that is the nearest screen that you have, and he can see
2 you, because the camera, you can see you are above him
3 on the screen over there, so it is not perfect, but it
4 is pretty good.

5 So just to nail this question of terminology. Like
6 you, I do not think I like the phrase "two-sided
7 market", because it implies a single market, whereas as
8 you will have seen from my questions, the way I see
9 it -- and I just want to check whether we are going to
10 agree or disagree about this -- I see it as two markets,
11 but with the platform intermediating between the two of
12 them. Is that something that you would accept as
13 a reasonable description of what is going on or do you
14 think that is importing its own inaccuracies?

15 A. So I think I would say this exercise -- in the market
16 definition exercise, you have to look at both sides
17 anyway, whether you say it is two markets or it is one
18 market. Actually, I would say it is one market, but we
19 can come to the reasons for that, and also the CMA has
20 treated it as one market. We will come to the reasons
21 for that, but --

22 THE CHAIRMAN: Well, yes.

23 A. I think regardless of whether you do it as two markets
24 or as one, even if you take your approach of saying: no,
25 it is two markets, but you have the platform in the

1 middle, you cannot get away from the complexities, from
2 the interlinkages, the interaction on the demand side
3 between the two sides.

4 So the fact that the platform always takes into
5 account both sides when setting prices, that you have to
6 take into account whether you define it as two separate
7 markets or as one market.

8 THE CHAIRMAN: We will surely be coming to that. I suppose
9 what I am saying is that what I see -- and we will
10 perhaps come to the free newspapers, the sort of
11 paradigm example, what I see is two markets, and what is
12 peculiar about the two-sidedness, is because of course
13 there are markets all over the place, is that they are
14 connected.

15 In other words, one can obviously list markets left,
16 right and centre, but what makes these special is that
17 they are in some way linked, and it may be of course
18 that you have more than two markets linked by
19 a platform. This is just a particularly simple example
20 of the phenomenon, but I am certainly not gainsaying
21 your connection, we will come to the nature of the
22 connection.

23 What I am trying to work out is whether if I, in my
24 mind, am picturing two markets with buyers and sellers
25 that are different in each, is that something which is

1 going to lead me down a route that is going to result in
2 inaccuracy or is it a reasonable way of speaking that is
3 going to -- well, simply a terminological point rather
4 than something more fundamental?

5 A. Yes, so I think you are absolutely right that the key --
6 and I understand, in your approach, you would not
7 overlook or negate that important interlinkage that
8 remains important. If you go down the route of seeing
9 it as two separate markets -- and we will come to later,
10 there are different types of two-sided platforms where,
11 in some types, you can see it actually does not make so
12 much sense. In other types, like free newspapers, you
13 can see that is also an approach.

14 At the end of the day, the actual way you do the
15 analysis, you test like, is it on this side, is it
16 profitable to impose a SSNIP on the other side, is not
17 so different from the way I propose one should do it, it
18 still being one test, but you also need to look at how
19 do users respond to price changes on both sides. At the
20 end of the day, it all comes down to the interpretation
21 of those results.

22 I set out three possible outcomes, right? If you
23 look at the two sides, you can conclude -- or the two
24 markets in the other approach, you can conclude that on
25 both sides, a SSNIP is profitable, in which case, the

1 answer is clear. The second scenario is, on both sides,
2 it is unprofitable, in which case, the answer is also
3 clear. On both sides, you need to look more widely.

4 The more complex situation is where, on one side,
5 you may find that a SSNIP is profitable and, on one
6 side, it is not. Then there is a question, again, how
7 do you interpret the results in the context of your
8 competition problem that you are assessing?

9 So that is the only bit I would say you need to be
10 careful further down the line, if you were to go down
11 that route. But at the core, the analysis one should do
12 is actually quite similar, the analytical exercise of
13 having to look at both sides, not overlooking the fact
14 that even if, on one side, there is competition, or
15 there is no competition, competitive pressure, that
16 platform may still have to compete very hard on the
17 other side.

18 THE CHAIRMAN: Well, let us move from the abstract to the
19 concrete, and we will be coming, I think, to the market
20 as defined by the CMA in a moment. But let us start
21 with something, which I hope is going to be
22 uncontroversial, which is my diagram 1, if you have the
23 sheet of papers, page 15.

24 A. Yes.

25 THE CHAIRMAN: I think it is commonly accepted that this is

1 quite a good example of what we still call a two-sided
2 market, the free newspaper or the newspaper.

3 A. I am afraid not necessarily. Yes, it is an example of
4 a two-sided platform, two-sided market -- well,
5 platform.

6 THE CHAIRMAN: Platform.

7 A. I am very happy to go along with this example and
8 explore the other properties of a two-sided platform,
9 but there are two significant caveats, I think I would
10 make, as to why this may not perhaps be the best example
11 to help us in this case.

12 So the first caveat is that there are different
13 types of two-sided platforms with different
14 characteristics. In the literature sometimes the
15 distinction is made between those platforms that have as
16 their core function bringing the two sides together, so
17 matching platforms, they are sometimes called
18 transaction platforms, and those two-sided platforms
19 that are more of the type of media advertising-based
20 platforms, like free newspapers.

21 Now, I have criticised those definitions as being
22 too binary. In reality, it is more of a spectrum,
23 because even some of those media platforms, especially
24 online, the difference with matching platforms is not so
25 big, because you also -- yes, it is advertising driven,

1 but it is ultimately about do consumers click on the ads
2 and then the platform gets paid, etc?

3 But it is useful to bear in mind, this is my first
4 caveat, that PCWs are more on the end of the spectrum
5 where it is about a matching platform. So PCWs, their
6 core business is to bring together HIPs and consumers
7 looking for home insurance, whereas free newspapers are
8 perhaps more on the other end of the spectrum. They do
9 other things, as you also rightly noted in your diagram.
10 They are also about what is the content of our
11 newspaper, etc, readership.

12 So that is the first caveat. So not everything on
13 free newspapers translates neatly to PCWs.

14 The second caveat is that the two-sided platform
15 theory is most interesting when the network effects are
16 two way, like in PCWs. So HIPs do value if there are
17 more consumers using a particular PCW, and the other way
18 round, consumers will value the more HIPs there are on
19 the PCW.

20 Now, with free newspapers, again that is more an
21 exception to that general principle, because advertisers
22 value that the newspaper gets a lot of readership, but
23 readers actually may not value having more advertising
24 in it, unless it is sort of a classified
25 advertising-type newspaper. So that is another slight

1 oddity of this particular example taking that as
2 a typical example for a two-sided market.

3 So those two caveats, I would make, but I am happy
4 to go through the example and explore the properties of
5 it.

6 THE CHAIRMAN: No, that is extremely helpful, and I am going
7 to come back to that, because what I am wondering is
8 whether what you have in your explanation is
9 a refinement of the fundamental concept of a two-sided
10 platform. What you are saying is that not all two-sided
11 platforms are the same. They obviously differ in,
12 amongst other things, the respects you have identified.

13 But I think my thesis, if I can call it that, is
14 that the hallmark of a two-sided market or two-sided
15 platform, however you want to call it, is that you have
16 the one or more products, which, through broadly
17 speaking the same product, are implicated in two
18 markets. It may be that the implication or the
19 connection in the two markets varies from case to case,
20 but fundamentally what you have is, looking at diagram
21 1, you have the two-sided platform sitting in play in
22 two markets.

23 So you have in my yellow and green colours, the two
24 markets that lie either side of a particular product
25 provider, which is to say a newspaper that is obviously

1 selling copy to readers but also selling advertising to
2 advertisers.

3 The reason I think this is an important starting
4 point is because you do not necessarily have to have in
5 one or other of the markets, two-sided platforms at all
6 stages. So if you look at my diagram, the free
7 newspaper obviously operates in both, but the suppliers
8 of reading content without advertisements only operate
9 in one side and not the other. Equally, rival
10 advertising sources, like hoardings or Google or
11 whatever, are not actually in the readership market;
12 they are operating only in the market for advertising
13 for drawing product to the attention of people who are
14 interested.

15 That, I think, is where I am coming from. If you
16 take that as a starting point, the notion that the
17 essence of a two-sided market is a product or platform
18 that is featuring in both, can we then move on to say:
19 well, yes, the platform is operating in different ways,
20 but treat that as the fundamental characteristic of
21 a two-sided market, to carry on using that irritating
22 term?

23 A. I see that example. Clearly, also this has been raised
24 in the discussions, in the literature, also about some
25 of these two-sided markets having different types of

1 competitors, as you rightly say here, for free
2 newspapers.

3 That is an important characteristic to consider, but
4 again, it does not necessarily translate so naturally to
5 all two-sided platforms, because for some two-sided
6 platforms, it is perhaps much more natural to think it
7 is one product, as you say, but actually also it
8 operates sort of simultaneously in the market.

9 I mean, let me give a completely different example,
10 which is in the older literature on two-sided markets.
11 Often nightclubs were used as an example. Nightclubs
12 that catered to men and women, a bit old-fashioned,
13 these days, to talk about it in those terms, but you
14 would not say -- and the natural effects apply, like it
15 needs to attract men and women to the nightclub, or
16 a dating club would be something similar.

17 There you would not necessarily so easily say, oh,
18 but there is a different market attracting men and
19 a different market attracting women. It is actually
20 just the product, and it is a two-sided product. So
21 again, I think it is a matter of degree again. Now, how
22 much do you have to see it as one product?

23 But again, I think, at the end of the day, as I said
24 earlier, the analysis that this leads you down to is
25 actually not dissimilar from looking at it in your way

1 to say: well, these are then two markets and I need to
2 test what substitutability in two markets.

3 The other point I wanted to make in this respect is
4 that this problem of the competitors being very
5 different in nature, you can see that for a free
6 newspaper. In this case, PCWs, that is actually not the
7 case. So the competitors that we are testing -- by
8 "we", I mean myself and the CMA -- that we are testing
9 in the SSNIP test are basically the direct channels, all
10 forms of direct channels, and they also try to connect
11 the HIPs with the consumers.

12 So, therefore, both sides, both for the HIPs and for
13 the consumers, you are looking at the same competitors
14 for the test.

15 So that example for free newspapers does not apply.
16 So that problem of how there are different competitors
17 on both sides does not apply.

18 I do not know if I have made myself clear. There is
19 also a figure in my report, figure 3.1, which is
20 actually very similar to your diagram 2. I do not know
21 if that is useful to look at.

22 THE CHAIRMAN: Let us bring it up. It is always helpful to
23 do that. Can we access Dr Niels' report?

24 A. It is figure 3.1 on page 9 of my report.

25 THE CHAIRMAN: Right. So, I am afraid, I am operating in

1 a paperless environment. {A/6/9}. Let us wait for the
2 EPE to come up.

3 Right, and the diagram must be on the next page.

4 A. I am sorry, it is in my second report.

5 THE CHAIRMAN: Right, Dr Niels' second report. {A/10/9}.

6 Right, we see it. I think we are probably coming back
7 to this, but just so that I am clear, when one is trying
8 to work out the channels, you are including both price
9 comparison website and direct channels in your
10 articulation of the two-sided market; is that a fair
11 statement?

12 A. I think what I -- both I and the CMA do is setting up
13 the test, the SSNIP test, in the way that you have the
14 PCWs there as the platform, as the focal product, as it
15 is called in the SSNIP test, the starting point, and
16 what both the CMA and I and Ms Ralston are testing is
17 are there other channels that are competitors, that
18 provide a competitive constraint on PCWs?

19 Now, Ms Ralston, in our case, is dealing with the
20 evidence. So I am actually not even judging on whether
21 they are competitors, but I am setting up the conceptual
22 test, the conceptual approach as to what you need to
23 test.

24 So those other channels, those are the ones that we
25 are testing for, are those competitive constraints, and

1 you need to test that at both the consumer side and the
2 HIP side.

3 THE CHAIRMAN: I think, then, let us stick for the moment
4 with the free newspaper and just work out how this works
5 in something which we all acknowledge is significantly
6 different to what we have here, but which -- because
7 I think it is one that has fewer moving parts than other
8 two-sided platforms -- might assist.

9 So going back to diagram 1, if one is trying to work
10 out what are the demand side substitutes, you get,
11 depending on which market you are looking at, different
12 answers.

13 A. Yes.

14 THE CHAIRMAN: Here, for example -- this is entirely
15 hypothetical, so I invented it -- what one asks, if one
16 is looking at the buyers of reading content, obviously
17 they are acquiring subsidised newspapers either sold at
18 below cost price or free, like your Evening Standard or
19 your Metro, whatever it is, so you pick it up at the
20 station, and because you are getting on the train and
21 you are bored and you do not have a book, you read that,
22 and one of the attractions is it is free and freely
23 available at the station as you dash in for the 6.45.

24 But you would ask yourself, if you were trying to
25 work out what other competitors there were to the buyers

1 of reading content, you would say, "Well, let us look at
2 books, let us look at periodicals, let us look at
3 newspapers", and then you would say, "Well, we have
4 a list of candidates that may or may not be substitutes.
5 Now, let us apply our SSNIP to see just how far this is
6 true. If we inflate the price of the subsidised
7 newspaper from nothing to, let us say, 50p, what
8 happens?"

9 Looking at just the buyers of reading content, my
10 yellow shaded stuff, that is how you do it, is it not?

11 A. Yes, that is how you can do it. Let us say, you do it
12 that way, what does this tell you then? How do you do
13 it and what does it tell you? I think that those are
14 exactly the right questions, you know, what are the
15 substitutes on the reader's side?

16 So this platform, the free newspaper, the
17 Evening Standard, let us say, how does it compete on the
18 reader's side? Who does it compete with? Indeed, maybe
19 the most direct competitor is, let us say, you know,
20 other newspapers that are paid for, that you actually
21 pay for.

22 So, yes, would you have to test, well, what if --
23 and on what dimension -- you also need to look at what
24 dimension on the reader's side, does the
25 Evening Standard compete on. Price is one, because it

1 is a zero price, but there may be others, like quality
2 of content or presentation. Just like in PCWs, we are
3 talking about on the consumer side, where there is no
4 price, as such you have these other dimensions of
5 competition. The Evening Standard will have the same.

6 So, yes, one can do a SSNIP or an equivalent,
7 a non-price equivalent of the SSNIP on the reader's side
8 to test with whom is the Evening Standard competing.
9 But, in doing so, though, let us say, if you
10 hypothetically monopolised all free London newspapers,
11 say, in the SSNIP test, you would also have to take into
12 account that the Evening Standard does not just look at
13 that side, even when it is a monopoly and even when it
14 sort of sets its prices, because it will look clearly
15 also on the other side. It needs to price in
16 a certain -- the reason why its business model is
17 pricing for free is that it clearly charges on the
18 advertising side.

19 So whatever it does on the reader's side, it needs
20 to consider the effects on the advertising side. So
21 even in that separate approach, it cannot ignore, as we
22 said before, those externalities with the other side.

23 THE CHAIRMAN: I absolutely do not have a problem with that.

24 I think, though, my approach -- and it may be that it is
25 just too linear -- is that I feel the need to understand

1 what the nature of the market is and what the
2 substitutes are, before I ask myself what is the
3 thinking of the platform that is, I accept, implicated
4 in both sides.

5 I am not saying I disagree with the relevance.
6 Clearly, that would be an error on my part. What I am
7 saying is that you need to have a pretty clear idea of
8 how it is that the yellow market in this case operates,
9 and we will come on to the green market, before you go
10 on to working out anything like what would happen in
11 order to ascertain, say, an infringement.

12 I am saying the building blocks have to be what
13 actually do we have in front of ourselves, how does it
14 work, what are the substitutes, on each side, and that
15 is sort of the preliminary working. I am sure you get
16 to other important questions, but I think the root of my
17 concern is that I feel that unless one has answered
18 these anterior questions clearly first, you are never
19 going to get the later questions right.

20 A. No, and I agree with that, absolutely, and it is good to
21 set out indeed these stages.

22 So, as you say, sir, you want to know what the
23 substitutes are on the -- well, on both sides, but
24 certainly, now we are talking here on the reader's side.
25 You want to get a sense for that. Now, of course, the

1 reason why the supplier comes in to the platform itself,
2 in its consideration, is because the SSNIP test is
3 ultimately the threshold it sets for -- all these
4 products are in principle substitutes, at an intuitive
5 level, you do not need to do any analysis of it. The
6 free newspapers, they do compete to some extent with
7 other newspapers, periodicals.

8 But for market definition, you somehow want to draw
9 the boundary, when are they close enough substitutes,
10 and for that competition law has come up with the
11 hypothetical monopolist test. That is about how does
12 a platform set its optimal prices? Then you do already
13 come into the -- well, it takes into account the other
14 side.

15 So unfortunately, you cannot fully abstract from it,
16 but I fully actually agree with the premise that even
17 without -- forget about the hypothetical monopolist for
18 the moment, which products are substitutes with each
19 other, that is good to really have a good overview of or
20 picture of.

21 THE CHAIRMAN: I think we may be getting to what is the nub
22 of what is troubling me, and this is extraordinarily
23 helpful. I think what you are saying is that when one
24 has a two-sided market -- and I will carry on using that
25 label -- when one has a two-sided market, one has to

1 apply the SSNIP test in order for it to be meaningful in
2 a different way to the way one would apply it in
3 a one-sided market. Would that be a fair articulation
4 of what may be the problem?

5 A. Yes, that is fair. One has to -- it is different, yes.

6 THE CHAIRMAN: Let us take the newspaper. So the reason the
7 newspaper is sold for nothing, is free to the readers,
8 the reason that is so, is not because of some altruistic
9 desire on the part of the newspaper proprietor. It is
10 because the free newspaper attracts more eyeballs to the
11 newspaper. Advertisers like eyeballs, they like readers
12 looking at the content of the paper, and they therefore
13 insert, and they no doubt try to make it as interesting
14 as possible, they insert into the newspaper advertising
15 or material that people will pay to insert.

16 So, as you say, there is a nexus between the
17 revenues you get from the advertiser market, to which we
18 will come, and the revenues you do not get from the
19 newspaper market. The reason you do not care about the
20 revenues is because the more readers you can attract,
21 the more you get from the other side.

22 So that is the link we are talking about in this
23 case.

24 A. Yes, correct.

25 THE CHAIRMAN: Right. So what you are saying, I think, is

1 that if you are trying to work out the nature of the
2 market viewed as a whole, you have to bear in mind the
3 sensitivity of the newspaper proprietor to price on the
4 reader market side. In other words, looking at this
5 diagram, let us just exclude the double-sided platform
6 altogether. Let us just take it out of our minds. So
7 let us just look at the other sources of reading content
8 that readers might have.

9 So you have paid for newspapers. You have books and
10 periodicals, and these are all things that you might
11 want to read, and you are trying to work out how far are
12 they a substitute for that broad class of people we call
13 "reader". So you say, okay, let us apply the
14 hypothetical monopolist SSNIP test, an appreciable
15 increase in price that is sustained over time, and let
16 us see what happens.

17 So we take our book and we say, well, your Penguin
18 book is going up from £7.50 to £8.50, and let us see
19 what that does to migration to hardback sales, or
20 whatever else, but you work out what is going out in the
21 market in that way.

22 A. Yes, a small correction.

23 THE CHAIRMAN: No, please correct me.

24 A. That is absolutely correct, but a small correction, the
25 focal product here is free newspaper, so not the Penguin

1 book. It is important to start with the product that
2 you are considering.

3 THE CHAIRMAN: No, I understand.

4 A. The logic is the same, that you would say, okay, well,
5 let us take price, free newspaper, now let us introduce
6 a 5p charge. You cannot take that as a percentage price
7 increase from zero, but it is a small price. Then, as
8 you say rightly, the logic is what if the
9 Evening Standard were suddenly to go up to 5p, what
10 readers switch to books, periodicals, etc?

11 THE CHAIRMAN: Forgive me, I was excluding free newspapers
12 as the focal product for a reason, because what I wanted
13 to do was I wanted to see if I could articulate why the
14 SSNIP test presents problems in two-sided markets,
15 whereas in a one-sided market or one-sided platform, it
16 is actually easier --

17 A. You are using Penguin books as an example of a one-sided
18 market.

19 THE CHAIRMAN: Looking at my diagram, let us just drop the
20 subsidised newspaper, the free newspaper altogether. So
21 let us postulate, no advertising at all in newspapers
22 and no advertising in books or anything. So we have
23 removed the green side of the market altogether. It is
24 just not there, and we are just asking what is the
25 substitute for a product that is not a free newspaper?

1 We can take *The Economist*, for example, so you have
2 a magazine, which interests people of a certain bent,
3 and we up the price from £5.25 to, what, £6 or something
4 like that.

5 A. Yes.

6 THE CHAIRMAN: You might want to include other things
7 equivalent to *The Economist* to make sure you have your
8 monopoly sorted out, and that would be a difficult
9 question to articulate, but what you would do is you
10 would define your product, you would work out what other
11 rival substitutes you need to think of, and you would
12 say, well, what is the effect of that increase in price
13 on the demand for other products?

14 A. Yes, correct.

15 THE CHAIRMAN: One hesitates to say it is a simple question,
16 it is not a simple question, the data is very hard to
17 acquire. That is why these questions are so difficult
18 to determine in practice, but the theory is actually
19 quite easy. If you find that a tiny increase in the
20 price of our *Economist* results in everyone buying
21 *Horse & Hound*, or something, then you have a demand that
22 is quite elastic and a situation where in fact the
23 product market is clearly wider than you initially
24 thought.

25 It would be a somewhat counterintuitive conclusion

1 to find all Economist readers jumping to Horse & Hound,
2 but anything is possible.

3 A. I would not, but ...

4 THE CHAIRMAN: I think Ms Lucas might. But that is the
5 nature of the question we are talking about. We do not
6 have to worry, though, about the increase in price,
7 because that is actually the driver of the test. That
8 is the point of it.

9 So let us now reinsert the subsidised newspaper and
10 ask ourselves, why is it the question is not as easy?
11 Because I might say, look, you can obviously not
12 increase the free newspaper by a percentage, but let us
13 say you are going to increase it to 50p or £1, what is
14 going to happen? The complexity, I think, is that you
15 will say, well, the hypothetical monopolist, in this
16 case, will say: you are not testing my presence in this
17 particular market. What you are doing is you are
18 actually destroying my entire business concept, because
19 the fact is the price in the reader's market is not
20 actually an economic price unless you factor in the
21 other market. Would that be fair?

22 A. It is a price that is driven by these network effects.
23 So, therefore, it is not an economic price, as in it is
24 not a stand-alone price that covers the costs, like for
25 The Economist, say, it has to cover the costs. Although

1 actually, of course, it also does advertising.

2 THE CHAIRMAN: I am hypothesising an Economist sans adverts.

3 A. Yes, and that is a really good way of putting the
4 question. But actually, therefore, it is not -- it is
5 actually not so problematic from the perspective of,
6 well, what do you do then for market definition?
7 Because while these two-sided network effects give rise
8 to these skewed pricing structures, all the way down to
9 zero, that does not mean you cannot do the SSNIP or the
10 equivalent on those pricing structures.

11 So this is also what the literature has shown, that
12 you can still, even a monopoly platform that has this
13 skewed pricing structure, now we monopolise the market,
14 so we combine all PCWs, say, or all free newspapers,
15 that monopolist will also then -- you can test in the
16 same way that you can do it for The Economist, you can
17 test how consumers or users on both sides respond to 5
18 to 10% changes in price or non-price equivalents.

19 So, in that sense, that is not the difficult part of
20 two-sided market definition. That is actually how
21 I would propose one does it, and also how you would do
22 it if you treated the two markets as separate.

23 So you do look, and actually how the CMA has done it
24 on the HIP side at least. Yes, it is a skewed pricing
25 structure, but the test is still, take commissions,

1 would commission 5 to 10% increase be profitable?

2 The same you can do on the consumer side. The CMA
3 has not done that. I say you have to do it, even if it
4 is not on price, it is on the other dimensions. But you
5 can just -- given the current level of competitive
6 outcome or parameter, you can test what happens if you
7 change those by 5 to 10%. So that in itself is not so
8 different from normal one-sided market. It does not --
9 you can still do that.

10 PROF ULPH: Dr Niels, that might be a good point at which
11 I could put some questions to you.

12 What I would like to do is I would like to put
13 a series of propositions to you. I think if we start
14 off in a fairly non-controversial way, I think they are
15 non-controversial most of the way through, but if you
16 want to disagree at any point, please do so, but what
17 I do want to ask you a question about at the end, about
18 how you do a SSNIP test and why you need to do it on
19 both sides of the market.

20 So there is this issue about doing a SSNIP test on
21 both sides that I want to try to get at here, and I want
22 to do this purely in the context of this particular
23 market. I am not trying to do it in the context of
24 a general two-sided platform.

25 So in this particular context, the only charge that

1 PCWs make for the use of their website is the commission
2 that they charge to HIPs on all the sales that are
3 concluded via their website.

4 A. Correct.

5 PROF ULPH: So, in some sense, the entire additional cost
6 a price comparison website incurs from offering home
7 insurance, in addition to all the other products it
8 sells through its platform, all those additional costs
9 are being recovered actually through the commission it
10 charges to HIPs. Would you agree with that?

11 A. Correct, yes.

12 PROF ULPH: So another way of putting this would be that the
13 benefits that both customers, as well as the HIPs
14 themselves, derive using these PCWs, are essentially
15 being charged to the HIPs in the form of this
16 commission?

17 A. Apologies, could you repeat the question?

18 PROF ULPH: Essentially, the benefits that both the
19 customers and the HIPs derive from using the PCW
20 websites are being paid for by the commissions being
21 charged to the HIPs. So the HIPs are paying essentially
22 for the benefits that both they and consumers derive
23 from the use of the website?

24 A. Yes --

25 PROF ULPH: Would you agree with that?

1 A. That is a way of describing that business model, yes.
2 PROF ULPH: These commissions are flat fees. It is a flat
3 fee charged on every sale that is made through the
4 website, the PCW website. Does that not mean that the
5 marginal cost to a HIP of selling an additional policy
6 through a PCW is higher than the marginal cost it would
7 incur from selling another insurance policy, say, on its
8 own website, because that commission is apt to use an
9 additional element of marginal cost to the HIP that it
10 is selling through the PCW?

11 A. In terms of what are the marginal costs to a HIP of
12 making an additional sale, which is what the question is
13 about, clearly, yes, when they use sales through the
14 PCWs, they pay that -- the commission. If it is through
15 their own channels or another channel, they would pay
16 either their own costs or some other commission to some
17 other channel.

18 But, if I may, in terms of how HIPs actually do it
19 or in terms of the actual costs, I would defer to
20 Ms Ralston, who has looked more closely into the actual
21 evidence on how HIPs and PCWs price and interact.

22 PROF ULPH: If we do accept that there is this additional
23 marginal cost of selling through a PCW, that additional
24 marginal cost coming through the commission, the flat
25 fee commission, would you accept that in economics,

1 marginal costs are the drivers of pricing behaviour,
2 both in perfect competition and in imperfect competition
3 and other types of market competition?

4 A. Yes, as a general proposition, yes. Companies, in many
5 types of markets, would set prices with reference to
6 marginal cost.

7 PROF ULPH: Typically, you would expect the prices would end
8 up above marginal costs, would that not be correct?

9 A. Apologies, can you repeat the question?

10 PROF ULPH: Typically, you would expect that prices would
11 end up at or above marginal cost in most contexts?

12 A. Yes, in the sense that firms need to have some margin
13 over marginal cost to recover their fixed cost, for
14 example, yes.

15 PROF ULPH: Yes. So what we could argue here is that the
16 component or the price or the insurance premium that
17 customers pay for home insurance, provided through PCWs,
18 reflects the commission that is charged to HIPs, so that
19 the commission charged to HIPs increases marginal cost,
20 and that means the prices would be above marginal costs,
21 the prices paid by consumers, the retail prices, of the
22 insurance premium being paid by consumers, some
23 component of that will be attributable to that
24 commission rate?

25 A. Yes, I think, as a general proposition, that is right,

1 and this relates to the concept of passing on. We are
2 talking here HIPs, to what extent do they pass on the
3 commission to what they then charge their own consumers.
4 I have to say, I have not analysed the evidence on how
5 HIPs actually set prices. In the way both the CMA and
6 we have done our market definition, there is an
7 assumption that if the commission increases by a certain
8 amount, that that gets passed on by the HIP, but to the
9 retail prices on that PCW. So it is a direct way of
10 passing on rather than in general prices. But that is
11 correct, that assumption of pass on is there, and there
12 is some economic rationale for it.

13 PROF ULPH: The way I was thinking about it was in
14 a slightly different way. I was thinking of this
15 analogy with all the taxation and how you think about
16 the incidence of taxes, where you differentiate between
17 the person who actually formally hands over the money to
18 the Treasury and pays the tax, and the final incidence
19 of the tax.

20 So, for example, the basic idea in multipublic
21 finance is that although lots of different people pay
22 taxes, all taxes ultimately end up borne by individuals
23 and households.

24 So if you take, for example, Boots, the chemist, the
25 chief financial officer will be the person who writes

1 the cheque to Rishi Sunak, or corporation tax, value
2 added tax, PAYE, and the employer NICs, but ultimately,
3 it is individuals would bear all those taxes through
4 either higher prices or lower wages or lower profits,
5 they ultimately fall on individuals.

6 So the point I am making here is that this analogy
7 here is that, ultimately, it is the customers of PCWs
8 who end up bearing all the cost and benefits of the PCW.
9 So although it looks as if it is the HIPs are paying the
10 money to the PCW, it is consumers who are, in some
11 sense, bearing the cost and ending up paying both the
12 benefits that they receive and for the benefits that the
13 HIPs receive.

14 Is that a step that you would accept?

15 A. I think that may well be possible. It all depends on,
16 indeed, how does the commission gets passed on by the
17 HIP.

18 PROF ULPH: Sure.

19 A. On the assumption that it gets passed on in full, then,
20 yes, it is ultimately a cost that ends up with the
21 consumers.

22 Just one slight side note. I do not know if this is
23 relevant to the consideration or was implicit in your
24 question, Professor, is the point about, yes, the
25 commission is a marginal cost to the HIP, because they

1 pay it when the sale is made, but there is also the
2 question of is it relative to what the marginal cost
3 would have been had they used another channel?

4 So there is always an element of it could be
5 a cost -- it may be much cheaper for them to use PCWs
6 than, say, another channel or direct channels. But I do
7 not know if that impinges on the question of it is
8 a marginal cost.

9 In monetary terms, it is a marginal cost, and it
10 could well be that it is passed on to consumers.

11 PROF ULPH: The point of my question is this: we are told
12 that it is quite hard to do SSNIP tests on the side of
13 consumers, because they are not charged for PCW services
14 in the normal way. So, as the CMA has done, you do the
15 SSNIP test on commissions. You work out the indirect
16 effect on the price that consumers pay, and you work out
17 the impact on demand.

18 Whereas the view that I was taking, if it actually
19 is customers, if it actually is consumers who are
20 bearing the cost, albeit it is not the entire price that
21 PCWs are paying for in the price they paid to the HIP,
22 it is just a component of the price they pay to the HIP,
23 is that not an exercise of you increase the commission
24 by 10%, that has a knock-on effect on the price the
25 consumers pay, and that will then increase their prices

1 for using PCWs? Is that not, in some sense, doing
2 a SSNIP test on the consumer side as well?

3 Is that SSNIP test not picking up both the consumer
4 side and the producer side? What is the additional
5 element?

6 A. No, I think it is good to have this clear and I think
7 there is clarity between the parties on this and where
8 the differences are. The way you describe it,
9 Professor, is, I think, also the way the CMA would
10 describe its test, which is it is only a SSNIP on the
11 commission side. But then through this pass-on
12 mechanism, which is -- so 5 to 10% increase in
13 commission, if it is passed on in full, it ends up being
14 1.8 to 3.6% increase in retail prices that consumers
15 see.

16 So, from that perspective, the SSNIP test, in the
17 way the CMA does it, does pick up to some extent an
18 effect on consumers through the pass-on, through that
19 pass-on and the effect on retail prices.

20 But my position is that that is not enough -- that
21 is not in itself a test of the SSNIP on the consumer
22 side, because a SSNIP is by definition 5 to 10%, so 1.8
23 to 3.6% does pick up some -- how the consumers respond
24 to that, but it is not the same as a 5 to 10% increase
25 in retail price for the sake of the SSNIP test, or

1 indeed does -- nor indeed does it test any of the other
2 dimensions, the non-price dimensions on the consumer
3 side.

4 PROF ULPH: Okay, but if you are doing a SSNIP test in just
5 a single market, go back to Marcus' example of books.
6 In most cases, you would just do the SSNIP test on
7 price. Would you necessarily control for all the other
8 dimensions of quality?

9 A. No, that is correct. In most cases, you can just do the
10 SSNIP test on price. There are markets, not just
11 two-sided markets, but certainly two-sided markets are
12 included, where the SSNIP test on price may not be the
13 most informative, because the price is zero, for
14 example, or for other reasons. In that case, you still
15 can do the SSNIP equivalent on non-price dimensions.
16 The main difference --

17 PROF ULPH: I understand that --

18 A. Sorry.

19 PROF ULPH: I understand that, but I thought we had
20 established, in some sense, we do not have a situation
21 with a zero price here. Consumers are actually paying
22 for the PCW services through the fact that marginal
23 costs are going up, and their price is higher as
24 a reflection of that marginal cost attributable to the
25 commission that has been paid by the HIPs.

1 So if you do the 5 to 10% increase in commissions,
2 I agree that does not translate into a 5 to 10% increase
3 in price.

4 So are you just arguing that what you want to do is
5 additionally increase the price to consumers by 5 to
6 10%, work out backwards what increase in commissions
7 would generate that and see whether that is profitable?

8 A. Yes, in essence, I am saying you also need to do the --
9 so I am saying doing it through -- doing the SSNIP on
10 the side of commissions and, yes, there is a feedback
11 loop passed on through the consumer side. So, yes, it
12 does pick up some substitutability questions on the
13 consumer side.

14 I am saying that is not enough. That is not testing
15 substitution properly on the consumer side.

16 Now, how do you do it on the consumer side? There
17 are three dimensions of competition on the consumer side
18 that have been identified by both the CMA and by me and
19 Ms Ralston. One of them is retail prices, one of them
20 is marketing, one of them is usefulness. I am agnostic
21 as to which you test the 5 to 10% on as long as you do
22 it on one of them. It has to be the most important one,
23 but it could be -- we know that marketing is an
24 important dimension, we know that retail prices are.

25 But then a secondary question, and that is to come

1 to your question, Professor Ulph, how do you then
2 actually do a 5 to 10% increase on retail prices?

3 I accept that that is not straightforward, because the
4 PCW does not set the retail price, but, as I have tried
5 to explain in my second report or the first one, I can
6 actually be a bit agnostic as to how exactly that 5 to
7 10% increase in retail prices comes about.

8 Because, ultimately, it is just about a thought
9 experiment, how do consumers respond to that. It could
10 come about through a combination of, indeed, increase in
11 commission, so the working backwards that you allude to,
12 Professor Ulph, but it could also be a combination of
13 that and other less effort in the negotiation or cost
14 savings that the PCW can employ to achieve lower retail
15 prices.

16 In this case, we know that PCWs can influence --
17 they have some degree of influence over retail prices,
18 and so, therefore, as the hypothetical monopolist could
19 also seek to exercise that influence to achieve that 5
20 to 10% price increase.

21 PROF ULPH: I think that has been very helpful, thank you.

22 THE CHAIRMAN: Thank you, Professor. I agree, I am afraid,

23 Dr Niels, you are the subject of a pincer attack.

24 Mr Beard, you are about to suggest a break.

25 MR BEARD: I was just going to ask about timing, actually,

1 since Professor Ulph had paused. I am obviously in your
2 hands, but I am conscious of the time.

3 THE CHAIRMAN: No, I am very grateful.

4 Dr Niels, I am going to just articulate where
5 I think Professor Ulph has helpfully left off, because
6 it feeds directly into my fundamental query as to the
7 basic usefulness of the SSNIP test in this sort of
8 context.

9 Now, I know that you are not speaking directly to
10 the operation of the market in this case, so what I am
11 hypothesising is simply a hypothesis. So whatever your
12 answers are, they are not going to be in any way cutting
13 across Ms Ralston when she gives evidence.

14 So what I am going to pick up on and ask you to just
15 think about as we rise for 10 minutes is this:
16 Professor Ulph was talking about the incidence of the
17 cost, and what we have is we have a service, a price
18 comparison service offered free to the persons who are
19 interested in purchasing home insurance products, so
20 they get their price comparison for nothing.

21 There is, of course, a cost in providing what is
22 after all a pretty sophisticated service, and that cost
23 is discharged and a profit made by the commissions that
24 are charged by price comparison websites and obtained
25 from the insurers, who sell their insurance after

1 a successful contract of insurance has been concluded.
2 That, as I think you have agreed with the Professor, is
3 a cost to the home insurance provider, which they are
4 going to have to recover.

5 Of course, they recover it from the people who are
6 paying the premiums, the persons who cease to become
7 proposed insureds, but become actual insureds by
8 entering into a contract. So it is they, at the end of
9 the day, who bear the cost of, amongst other things, the
10 commission.

11 So if one is hypothesising an increase in the price
12 to insurers, to HIPs, so the commission is, let us say,
13 in a particular policy case, 10%, and it rises to, let
14 us say, 15, which I think you would appreciate is a more
15 than significant increase over time, that cost is
16 obviously borne in the first instance by the insurers,
17 and you might be able to apply a SSNIP test to the
18 insurance market, the selling insurance market that we
19 will be coming to, but you are saying we need to look at
20 the other side of the market, the insurer market.

21 But the point I am making is: do you not need to
22 look at the people who are actually bearing the cost?
23 That is to say not the people who obtain quotations, but
24 the people who enter into policies, whether they obtain
25 a quotation through an ordinary broker, through a direct

1 channel or through a price comparison website, provided
2 they have entered into a contract of insurance, it is
3 they, that group, that is bearing the cost.

4 Therefore -- and I will leave you with this thought
5 and you can give me the answer after the break -- if you
6 are applying a SSNIP or something like it to the price
7 comparison service, you should not apply it to the
8 people who are looking at quotes, but you should in some
9 way -- and I do not know how you would articulate it --
10 you should, in some way, factor it into the people who
11 are actually paying for that cost, which is not the
12 people accessing the websites of the price comparators,
13 but the people who simply enter into a contract of
14 insurance.

15 That may be the reason why I am finding this all so
16 difficult, because you have the cost or the increase in
17 price that you are hypothesising taking a somewhat
18 unusual route through these two markets.

19 Do not feel obliged to answer now, unless you want
20 to.

21 A. No, thank you. I can respond after the break, but
22 apologies, I did want to clarify one point, because
23 I thought I was following you, but could you clarify
24 that last bit where you say there are two types of
25 people here, accepting the premise for this purpose --

1 THE CHAIRMAN: Yes, entirely hypothetical.

2 A. The consumers end up paying the cost, that is the
3 premise, so it is not actually the HIPs who ...

4 THE CHAIRMAN: The HIPs have to stay in business.

5 A. Yes.

6 THE CHAIRMAN: So they have to recover their costs.

7 A. Yes. So I thought I had understood, but then you said
8 therefore you have to do the SSNIP test on the side of
9 the consumers, because they are the ones bearing the
10 cost rather than on the side -- is that ...?

11 THE CHAIRMAN: This is, I think, the knot that is troubling
12 me, and it may be I should not reference a SSNIP test or
13 anything.

14 A. Okay.

15 THE CHAIRMAN: What I am saying is that you have a case
16 where the insurers have a cost. Now, of course, they
17 will try to keep those costs to a minimum, and if you
18 were to increase the price of commission, you might find
19 that they would go away. The problem is they do not,
20 because they are, like our advertisers, tied into the
21 fact that they are getting an awful lot of business,
22 which they do not want to lose, through the price
23 comparison websites.

24 So, in fact, there is a degree of reluctance to move
25 away from one price comparison website to another,

1 because you may be getting a unique set of interested
2 persons and insurers through not just one, but many
3 price comparators.

4 So the operation of a SSNIP test in the insurer
5 market is actually in itself a little bit tricky, but we
6 will come to that.

7 My point was, if you assume a stickiness on home
8 insurers in not being able to move away from price
9 comparison websites, because of the business that they
10 generate, they will continue paying that cost, but they
11 will be passing it on.

12 My question was, if you are factoring in the other
13 side of the market, which is what you say one needs to
14 do, and I can see why you are saying that, why are you
15 looking at the persons obtaining quotations from price
16 comparators? Because they are not paying anything. The
17 people who are doing the paying are the people who are
18 buying home insurance through whatever route.

19 A. I think I am following you, but just to clarify this
20 distinction between persons paying and the persons
21 bearing the cost.

22 If I understand you correctly, sir, then you are
23 saying the consumers, they are not paying, that is
24 right, because the price is zero, but they are bearing
25 the cost. But you are asking --

1 THE CHAIRMAN: But it is a different group of people.

2 I think that is my point.

3 So sorry, Mr Beard.

4 MR BEARD: I may be getting, sir, your question wrong, but

5 I think, Dr Niels, what the chairman is asking is, you

6 have people that go through to a website, click on, get

7 quotations, but do not actually close out a deal. He is

8 asking why it is that you would focus on the impact on

9 them rather than focusing on the impact upon people that

10 go through the website, click on, get a quotation and

11 then close it out, because they are the ones that are

12 actually paying the commission? Am I capturing the

13 question?

14 THE CHAIRMAN: That is exactly it.

15 MR BEARD: That, I think, is the homework you are being

16 given to think about just over this short period: why

17 would you focus on those only taking quotes rather than

18 those paying money on commission through the PCWs? Then

19 the chairman said that, in addition, there is a question

20 about how it is that those costs that are incurred are

21 actually borne by the insurers as well? Because you

22 referred to, sir, not just those people that took

23 insurance through the PCWs' website, but took it through

24 any route to that insurer.

25 THE CHAIRMAN: Well, precisely. So what I am saying is that

1 there is a certain -- I do not think you are saying
2 this, but if you were simply to say: let us apply
3 a material increase in price to the market of buyers of
4 price comparison services, you are actually looking at
5 the wrong people who are bearing the cost, because
6 whilst there will be an overlap between those who use
7 price comparison services and those who buy insurance,
8 it is only an overlap, it is not a same set of people.

9 So if you are saying the test needs to be: let us
10 turn this free service into one where you have to pay £5
11 a quote, that is disregarding the true set of people who
12 are bearing the cost of the commissions, that true set
13 being the people that buy the insurance products from
14 that particular HIP, whatever channel they use, whether
15 they use a broker, whether they use a price comparison
16 website or whether they go direct online. That is what
17 I am saying.

18 A. Thank you, I understand that distinction between the two
19 groups, so thank you for clarifying. I will give it
20 thought over the break.

21 THE CHAIRMAN: Mr Beard, I am very grateful. I am afraid we
22 are making quite slow progress. It is for me, and
23 I hope for everyone else, very helpful, but you had
24 better factor that into your timetable for tomorrow,
25 because I suspect we will only just finish Dr Niels

1 the end of the day, after all the passing on, as opposed
2 to the direct customers of a product.

3 Because there are all kinds of markets. Probably
4 most markets where, ultimately, we, the consumers, end
5 up paying all the costs everywhere higher up in the
6 chain. That does not mean that in a competition concern
7 higher up in the value chain or, let us say, in an
8 advertising market, we always have to trace it back all
9 the way to the end consumers who end up paying the bill.

10 I would struggle with that being a criterion for how
11 you do the SSNIP test. That is my first point.

12 My second point is, then, the question: well, what
13 do you do the SSNIP test on? What do you test for
14 market definition? I would say that is guided
15 ultimately by what the company in question actually
16 ultimately competes on. So the competitive parameters,
17 the competitive dimensions, and in PCWs, we have
18 identified that on the HIP side, they do compete to
19 attract the business of HIPs.

20 I think, as Mr Chairman, you were also alluding to,
21 there is a question of degree to what extent HIPs are of
22 course -- I forgot the term you used, but have to use a
23 PCW or are free to switch, that is a matter also for
24 Ms Ralston's evidence.

25 But the reality in this market is that HIPs do

1 negotiate with PCWs. There is a competitive process
2 going on there. So that is a very relevant part and
3 logical part of what you test for market definition.

4 Equally on, the consumer side, there are the three
5 competitive dimensions, and there is competition going
6 on for those -- the PCWs compete to attract those
7 consumers to their side. That brings me -- and that is
8 whether you do the market definition the way I would
9 favour it, which is one market definition, but you test
10 substitutability on both sides, or whether you do -- you
11 see there are two different markets. You also still
12 have to look at the consumer side.

13 So my third point is about this point of, are there
14 different groups of consumers? So the ones who actually
15 end up buying an insurance policy and the ones who are
16 just shopping around or clicking or viewing the site.

17 Again, I think again I would not draw that
18 distinction for market definition purposes between those
19 two groups of customers, because ultimately, from a PCW
20 perspective, they must compete to attract any consumers,
21 all kinds of consumers. They do not know beforehand
22 whether a consumer will actually buy the product or not.

23 So that is not the basis for making that
24 distinction, and you can see that in other markets as
25 well. Shopping malls, they want to attract custom to

1 their shopping mall, but they do not actually know who
2 is going to buy products. That is quite common in other
3 markets.

4 So I would not also be guided necessarily by that.
5 I would say, on the consumer side, you have these three
6 competitive dimensions, and it is worth testing whether
7 along those dimensions, PCWs face constraints from the
8 other channels.

9 THE CHAIRMAN: Well, thank you. That is very helpful.

10 Professor, do you have any questions arising out of
11 that answer or indeed what was said before we rose for
12 ten minutes?

13 PROF ULPH: No, I find that answer very helpful, and I think
14 it clarifies the point I was trying to raise, which was
15 that incidence point. Ultimately, it is consumers who
16 ultimately buy the product, who bear all the costs of it
17 being provided, and I thought your answer clarified my
18 thinking as to why it was necessary to additionally do
19 a test on the consumer side of the market. So it was
20 a very helpful answer.

21 THE CHAIRMAN: But no further question, just to be clear?

22 PROF ULPH: I have a further question, but not on this
23 particular train of thinking.

24 THE CHAIRMAN: Very good. Well, I will continue and do,
25 Professor, interrupt or interpose when you do.

1 I want to get back, then, to the purpose of the
2 SSNIP test and its application. You said earlier that
3 the point of it is to test substitutability, and you
4 said on both sides.

5 A. Yes.

6 THE CHAIRMAN: Let us get our diagram 1 back up and focus
7 only on the yellow side. We can do the same exercise on
8 the green side, but what I am suggesting is that
9 whichever side you go on, what you are doing is you are
10 focusing on the attitude of the buyers, when you are
11 talking about demand side substitutability, you are
12 talking about the attitude of the buyers to the increase
13 in price.

14 A. Yes.

15 THE CHAIRMAN: It does not matter why the prices are why
16 they are, when one is testing for demand side
17 substitutability.

18 A. Correct. Another way of saying that is you can take the
19 existing prices as the starting point for the SSNIP
20 test, and it all comes down, at the end of the day, to
21 interpretation of the results.

22 THE CHAIRMAN: Sure.

23 A. So there are lots of traps one can fall into when one
24 applies the SSNIP test blindly. One always needs to be
25 careful for what question am I actually answering, but

1 it is correct, that is what you look at.

2 THE CHAIRMAN: I quite accept that there is nuance. In
3 a sense, it is the nuance that is troubling me.
4 Therefore, looking at our yellow side and applying the
5 SSNIP test to our hypothetical monopolist, who is
6 selling a newspaper at zero price, and you say, right,
7 we are now going to charge or hypothesise a charge of
8 50p.

9 Do you consider that applying the SSNIP test in that
10 way is going to produce helpful results?

11 A. Yes, I do. Not maybe the full answer, but certainly
12 a helpful result. For example, if the result is that
13 after the 5p or 50p, after the price increase, if you
14 find that many, many fewer readers actually get the
15 newspaper, that is a significant loss. That is then
16 because those readers switch to other periodicals, say,
17 that gives you the helpful answer, that on that consumer
18 side, on the reader's side, this platform, this free
19 newspaper, faces significant competition with these
20 other channels, other platforms.

21 That is a very insightful and important bit of
22 information that one wants when analysing a competition
23 concern arising with this free newspaper.

24 It is not the full answer, because you also want to
25 see, well, okay, but on the advertising side, do they

1 maybe have some pricing power there or not? But I would
2 say it is a very helpful answer, and the SSNIP test is
3 a useful tool in that case.

4 THE CHAIRMAN: You consider that to be so, even though the
5 hypothetical monopolist would say that the increase in
6 the price from zero to 50p is overlooking the reason why
7 the price is zero. You still regard the data as useful?

8 A. Yes. One should then wonder why do readers switch away,
9 because they have better substitutes, and, therefore,
10 why would not the hypothetical monopolist do it? Well,
11 because fewer readers means fewer advertisers on the
12 other side and therefore fewer income. So that is where
13 the two sides come together again, but you can still do
14 the SSNIP -- the 5 to 10% price increase test on the
15 side and it gives you one helpful bit of information.

16 THE CHAIRMAN: If one is analysing the two markets that lie
17 either side of the given platform, why is not the
18 starting point -- maybe not the end point, but the
19 starting point -- to do entirely separate SSNIPs by
20 reference to each distinct set of purchases?

21 A. In essence, that is exactly also what I am saying how
22 one should do the critical loss SSNIP test in practice.
23 One has to look at the thought experiment on both sides,
24 entirely separately, in exactly the same way. The end
25 point is, I would not define it then as two separate

1 markets, but that is in essence exactly what one should
2 do. You have to consider, if you hypothetically
3 monopolise the newspaper market, what would happen after
4 5 to 10% price increase on the reader's side and let us
5 see what happens.

6 The reasons what may happen, that is separate from
7 the actual doing the test. So I agree that is actually
8 what one should do.

9 THE CHAIRMAN: If one is just trying -- and we are really
10 still at the stage of trying to work out what is going
11 on in any given set of linked markets, two-sided
12 markets, I really do not want to call them, but it is
13 unavoidable. What one ought to be doing is assessing at
14 least as a starting point, quite separately, the SSNIP
15 in one market and its effect, and the SSNIP in the other
16 market and its effect?

17 A. Yes --

18 THE CHAIRMAN: Sorry, I interrupted you.

19 A. Indeed, quite separately in the sense of you test it
20 separately, obviously what happens, the answer will
21 depend on those linkages inevitably, but --

22 THE CHAIRMAN: Absolutely right, yes.

23 A. You can do the test separately.

24 THE CHAIRMAN: I absolutely agree about the linkages. In
25 a sense, I think all of the questions that both

1 Professor Ulph and I are asking, start to get very
2 tricky when the linkages come in. That is why I am so
3 concerned to get the starting point right.

4 But to be clear, the SSNIP test, although its nature
5 is the same in each case, will be sticking to diagram 1,
6 essentially different, because they are different
7 markets.

8 So here, for instance -- and we are talking
9 hypothetically again -- you would want to measure the
10 effect of the increase in price of the subsidised or
11 free newspaper on the buyer's reading content as against
12 the alternatives, which here I have listed as books,
13 periodicals and newspapers without advertisements.

14 Now, we can cavil about what you would include in
15 the list, but that is what you would do.

16 A. Yes.

17 THE CHAIRMAN: The exercise on the other side, green side of
18 the market, would be the same question, but the
19 alternative products would be completely different or
20 potentially completely different.

21 A. Potentially, yes. Some of the other readerships may
22 also -- on the reader's side may also compete for the
23 same advertisers. But, no, I accept that in the case of
24 free newspapers, it could be completely different types
25 of substitutes. As I said earlier, in PCWs, that is

1 actually not a problem, because we are talking about the
2 same channels that also try to link.

3 THE CHAIRMAN: We will come to PCWs. Let us stick to
4 something completely different, because I am interested
5 in the process rather than the actual answer in this
6 case.

7 So we've got is two separate exercises, which you
8 say produce useful data, because what you see is how far
9 the demand on each side falls away for the product under
10 examination, when you increase the price. But where it
11 falls away to, if you like, will be different products
12 or may be different products depending on all the
13 circumstances.

14 A. Yes, in free newspapers, yes.

15 THE CHAIRMAN: In free newspapers, yes. All I am saying is
16 you may actually end up with a complete identity of
17 alternative or substituted products, but my point is you
18 have got to carry out the exercise separately on each
19 side in order to work out what the answer is.

20 A. Yes, correct.

21 THE CHAIRMAN: Thank you. This brings me -- and I wonder if
22 we could bring up {A/11}, which is your joint report and
23 move to page 4 within that document, so {A/11/4}. There
24 you see A.8, which is something that you, Ms Ralston and
25 Dr Walker all agree upon:

1 "The market definition exercise results in the
2 definition of a single relevant market that encapsulates
3 both sides, rather than separate markets on either
4 side."

5 That when I read it puzzled me, and it puzzles me
6 a little bit more, but it may be that we are simply
7 talking about different things.

8 If you are agreeing that in order to understand the
9 entity that one is talking about, before one gets on to
10 any of the other questions, surely you need to start by
11 saying: we are going to define each market, the
12 substitutes for each market using the SSNIP, because you
13 say that produces useful outcomes. That may be only the
14 starting point of the analysis, but surely the starting
15 point has to be: we have here two markets that are
16 linked but different.

17 A. Yes. No, and that is absolutely right, except I would
18 not personally use the term "market" here, because you
19 have the two sides. But other than that, I totally
20 agree that that is exactly the starting point. You have
21 the two sides. Well, let me then also call them two
22 markets, where you have to do the test, and let us see
23 what comes out of it.

24 Ultimately, it is then a matter of interpretation,
25 whether you do it on my approach, it is one market in

1 the end, or whether you call them two markets. If you
2 do the one market approach, and that is sort of what is
3 reflected here in this agreement between the CMA and
4 myself, is that you do the test -- or the way I would do
5 it, I think it is correct, you do the test on both sides
6 exactly without using the word "market", and then you
7 have the three possible outcomes.

8 The SSNIP test is profitable on both sides or not
9 profitable on both sides or profitable on one and not
10 profitable on the other. Then it is a matter of, okay,
11 let us say, in the scenario, if it is profitable on one
12 side, according to the CMA, it is profitable on the HIP
13 side, let us say, but not profitable on the other side,
14 because you have a lot of competition on the other side,
15 how do you, as the authority or the court, interpret the
16 results?

17 Do you say, "I take -- ah, there is market power on
18 one side, so I take that as the market?" Or I would
19 say, it depends on what competition concern you are
20 looking at. But if that competition concern, concerns
21 both sides, as it does here with wide MFNs, you need to
22 look at the consumer side as well, because even if there
23 were some pricing power on one side, over market, if you
24 call it two different markets, the other market, you
25 find that the platform has to compete very strongly,

1 fiercely, because there are all these alternatives.

2 That bit you cannot overlook, in my opinion, either
3 in my approach, where you just say, well, it is one or
4 the other is the market, or in your approach, if you
5 just say, well, these are two markets, but then I get
6 two different outcomes in terms of, is it a wider market
7 or not?

8 You still have to look at both markets, at the other
9 side.

10 THE CHAIRMAN: Is that not perhaps the nub of the point? If
11 you take the way I am somewhat extremely putting it,
12 that one is talking about two markets with separate
13 buyers and sellers in each, it is just that you have
14 a single common seller in both markets, and therefore,
15 a nexus of some sort between the two markets? If you
16 are conducting a separate evaluation of each market, as
17 we are discussing, at some point, you are going to get
18 different outcomes or you may get different outcomes in
19 each market.

20 So you may find that there is no substitutability in
21 the reader market and enormous substitutability in the
22 advertiser market, using my diagram 1, and that may have
23 very different implications for when one goes later down
24 the route, which I think is what you are saying.

25 A. Yes. This brings me back to what I mentioned at the

1 very beginning, this afternoon, this distinction that is
2 being made in the literature as well between that
3 spectrum of platforms, between platforms who have
4 matching platforms, who have much more at the core of
5 what they do, this matching of the two sides, versus
6 more the media-type platforms like free newspapers.

7 The problem, you describe it correctly as a problem,
8 occurs much more in the latter category of two-sided
9 platforms. In my opinion, it is actually not a problem
10 or not such a problem in platforms, where at the core of
11 their activity is this matching between the two sides.

12 That is why, both in the literature, but also
13 actually, for example, well, dare I bring in credit
14 cards in the US Amex Supreme Court ruling, where there
15 was also a debate, is it two sides or is it just one
16 payment system? Where the conclusion was drawn, it is,
17 at the end of the day, one market.

18 There is some consensus in the literature that what
19 people call transaction markets or transaction
20 platforms, for those platforms, it does make sense to
21 define -- to get one market -- to define one market at
22 the end of the process.

23 The process itself, you still need to look at both
24 sides as we have been through. That is also the reason
25 or the way the CMA describes it in the Decision, and

1 that is where I agree with the CMA, ultimately. This
2 agreement is reflected in this point A.8, that in this
3 market, PCWs, it makes sense to define at the end, one
4 market, also because the substitutes are not so
5 different.

6 So accepting the premise, as you rightly put it, in
7 some markets, that is a problem and does not actually
8 work.

9 THE CHAIRMAN: You referred to the decision of the US
10 Supreme Court and I do not want to go too far into the
11 law because either Mr Beard or Ms Demetriou or both are
12 going to stand up and tell me not to, but the problem
13 there is that the majority in that case took a view of
14 balancing benefits and disbenefits in what they saw as
15 a whole and concluding that at the end of the day the
16 benefits outweighed the disbenefits, which is very much
17 not the legal way in which we analyse things in this
18 jurisdiction.

19 A. No, apologies, I was purely referring to the market
20 definition bit in that ruling, not about the way --

21 THE CHAIRMAN: No.

22 A. And the market definition was purely about this is
23 a transaction platform, you need merchants and card
24 holders, you bring them together so it makes sense to
25 define the market as one market rather than separate

1 markets on the merchant side and on the -- but that is
2 just one example. Maybe we should not dwell on it too
3 much.

4 THE CHAIRMAN: No, but are you saying that there are
5 two-sided markets that are capable of being analysed by
6 way of a single SSNIP?

7 A. Yes. Well, to me, yes, by way of a single hypothetical
8 monopolist test that takes into account both sides.

9 THE CHAIRMAN: But how does it do that?

10 A. In the way that I have been describing and actually it
11 is not so different from seeing it as two markets. You
12 still need to test the SSNIP on both sides. I think it
13 fundamentally always brings me back to how does --
14 actually, again there is some confusion about this
15 generally, about the critical loss way of applying the
16 SSNIP versus the actual proper hypothetical monopolist
17 test where all you do is you monopolise a product and
18 you see what happens with prices, is the increase more
19 than 5 to 10%.

20 For two-sided platforms, as I said in the beginning,
21 if you hypothetically monopolise the platform, the
22 hypothetical monopoly platform will reoptimise its
23 prices on both sides simultaneously. So on both sides
24 you get either 5 to 10 or higher or lower price
25 increases. In essence that is where it all stays

1 together, but what you do in practice with critical
2 loss, where it is you as the analyst who imposes a 5 to
3 10% price increase and see if that is profitable or not,
4 that is the way it is done commonly in the market
5 definition thought experiment, that is why I am saying
6 you can do that, but you then need to take into account
7 what happens on both sides because the monopolist will
8 reoptimise prices on both sides.

9 So in that sense I don't call it two SSNIP tests; it
10 is still one SSNIP test, but it is the same mechanism as
11 you are proposing that you test it on both sides, and
12 I am calling it one test and I am saying the CMA has
13 done half the test, because they did it only on
14 commissions. If you say it is two tests, that is also
15 fine, and then I would say then the CMA has only done
16 one of them, but you should do it both, on both sides.

17 THE CHAIRMAN: Market definition I think we can all agree is
18 simply working out the environment in which one tests
19 what would have happened in the counterfactual scenario
20 where one removes the anti-competitive provision and
21 works out what in that hypothetical market would have
22 occurred?

23 A. I think market definition, it is certainly an
24 intermediate step in providing the competitive
25 landscape, getting a picture.

1 THE CHAIRMAN: Yes.

2 A. Now, of course, legally, but also economically, it is an
3 intermediate step also in the analysis of market power,
4 market shares, first of all, and then secondly also
5 on -- yes, indeed, it needs to inform you on the facts.
6 I would say counterfactual is of course one way of
7 looking at the facts, but it does not necessarily have
8 to be -- market definition is not just limited to
9 analysing the effects, what would happen in the
10 counterfactual, but it should be informative for it as
11 an intermediate step.

12 THE CHAIRMAN: Yes. Let me be clear. Market definition
13 obviously crops up in a variety of points in competition
14 law, but to be clear about why I am so obsessed with the
15 starting point, what one is trying to do is one is
16 trying to work out what would the effect be if one
17 removed the complained of provision, here wide
18 most-favoured-nation clauses, what would the effect be
19 on the hypothetical market if one removed that obnoxious
20 clause or practice.

21 A. Yes.

22 THE CHAIRMAN: That is where we are at the end trying to go
23 to. We are trying to work out whether the wide
24 most-favoured-nation clauses made a difference or not.

25 A. Yes, in this whole case, yes.

1 THE CHAIRMAN: In this whole case.

2 A. Absolutely.

3 THE CHAIRMAN: That is where, many steps away, we are trying
4 to head.

5 A. Yes, that is right. I would say that market definition,
6 the way I have probably looked at it also in this case
7 and in other cases, the first step what market
8 definition -- the first thing it is an intermediate step
9 for is to analyse the competitive landscape, so what are
10 the competitive pressures faced by, in this case,
11 ComparetheMarket. That is what market definition sheds
12 a lot of light on, and that is actually still
13 analytically a separable step from the end step is,
14 okay, what do we do about wide MFNs.

15 I think in my mind it is always an interesting
16 question in its own right, the platform here we are
17 looking at, does the platform have market power? Does
18 it face competitive constraints? That in itself --
19 I would not downplay too much the importance of that use
20 of "market definition" also in this case, but I fully
21 also see that ultimately we wanted to be informative for
22 that final bit of the analysis, what are its effects.

23 THE CHAIRMAN: Sure. The reason I am troubled by the fact
24 that one has -- I think we are nearly agreed, but not
25 quite -- the fact that there seem to be two markets here

1 albeit linked, is that if you say there are two markets
2 and you apply, as I think we have agreed, a separate
3 SSNIP to each to determine its ambit in terms of demand
4 side substitutability so you can work out what actually
5 is in and what actually is not so that you have the
6 battleground for working out what the effect of the
7 pernicious anti-competitive practice is, the problem you
8 have is you are doing that work twice over and somehow
9 you have to synthesise the outcomes because you are
10 doing the question twice over.

11 That is, I think, where I can see the SSNIP test
12 working independently, but I do not see how it is that
13 you can use it to in some way evaluate the two markets
14 together.

- 15 A. This doing it twice over, in the last step of analysing
16 the effects, you also have to analyse the effects in
17 both markets, I would say. I would say it is not
18 a twice over in vain or duplication. It is necessary to
19 look at both markets at the end of the day, whether you
20 call it two markets or whether it is one exercise, but
21 the market includes both sides.

22 THE CHAIRMAN: Right. So let us go completely
23 hypothetically here. We have our two markets and we
24 have our common platform in the two, and we have the
25 same conduct, because it is the same product, operating

1 in both markets, and let us say hypothetically
2 speaking -- and I really am speaking very hypothetically
3 here -- that this alleged anti-competitive practice has
4 unequivocally beneficial effects in market A and
5 unequivocally deleterious effects in market B. You
6 apply the SSNIP, that is what happens.

7 How do you resolve the issue of the different
8 effects in the different markets?

9 A. I would say my first point on this would be you have
10 done exactly the right analysis to get you to that
11 stage, to identify that there are actually these two
12 markets or at least two sides, and that the effects in
13 them are different. If you had overlooked it and you
14 had done analysis only on one side you could not even do
15 the analysis of the effects on the other side. That is
16 why it is so paramount that you look at the two sides.

17 THE CHAIRMAN: Right.

18 A. Looking at the two sides, yes, you can do the analysis
19 of effects, and in the hypothetical if those are
20 different ... I mean, as an economist, you would try to
21 put some measure or some quantification on it, and
22 perhaps you could say one is larger than the other. But
23 of course that is a legal question if we are talking
24 about 101(3), for example or the Competition Act. How
25 does one give weight to the negative effects on one side

1 and the positive. That is also a legal question.
2 Economists can provide some weight to it too. But the
3 positive in all of this -- and that is why I do not see
4 it actually as a problem, but as a crucial thing to have
5 arrived at that question is that you have done the right
6 analysis because you have been able to identify, yes,
7 there are actually two markets here, and I need to look
8 at the facts because the conduct in question has effects
9 on both of these.

10 THE CHAIRMAN: That if I may say so is very helpful and I am
11 going to stop that discussion here because I think it
12 gives rise to some interesting legal question which I am
13 not going to trouble you with. I will leave this part
14 of my questioning with this final question: sticking
15 with my assumption of two markets, same alleged
16 anti-competitive practice with radically different
17 outcomes in the two markets, one beneficial, one
18 prejudicial. That mismatch is not resolved by the SSNIP
19 test. We have to do something else. What that may be
20 who knows, but the SSNIP test does not help us.

21 A. No, but the SSNIP test has already helped us getting to
22 that stage.

23 THE CHAIRMAN: It has articulated the problem, but it has
24 not solved it.

25 A. Yes.

1 THE CHAIRMAN: So what competition law then would have to do
2 is to say, well, do we take the view that the mere fact
3 that there is a prejudicial effect in market B means
4 that it is game over as regards the anti-competitive
5 practice, or do we take into account market A, and my
6 simple question, and I think you have agreed, is, yes,
7 this is a very difficult and interesting question, but
8 it is not resolved by the SSNIP, it is articulated by
9 the SSNIP?

10 A. Yes.

11 THE CHAIRMAN: In part?

12 A. Yes.

13 THE CHAIRMAN: Thank you.

14 Professor, do you want to ask any questions arising
15 out of that?

16 PROF ULPH: Yes. Could I ask three further questions.

17 I think they are quite short questions.

18 The first question is this: if you are thinking
19 about doing a SSNIP test on the HIP side of the market,
20 should the question that you are looking at be if you
21 did a 5% or 10% increase in commissions, how many HIPs
22 would actually list on the PCW website? So you are
23 looking at the effect of commission rates on the
24 decision to list on the websites rather than working
25 through the implications of the consumer prices and

1 hence the implications for other demand on the products
2 produced by PCWs. Should you be looking at the question
3 of how many people actually choose to list?

4 A. Yes, you certainly have to -- or certainly the test is,
5 well, how do HIPs respond, and one of the responses is
6 delisting. Ms Ralston has also discussed the evidence
7 that one of the other responses is partial delisting.
8 There may be other types of responses as well. So
9 I would say it is not just the number who list or
10 delist, but that is clearly one part of the response.
11 There are more other responses at the margin of HIPs.
12 But all of those are relevant.

13 PROF ULPH: That is very helpful. The second question is
14 a slightly more conceptual question.

15 If you start off with a bunch of PCWs and then you
16 create a hypothetical monopolist that embraces all of
17 those PCWs, have you actually created a platform which
18 is intrinsically more attractive, because potentially
19 you have all the existing HIPs listed on that platform,
20 whereas in the initial situation you have, say, three or
21 four PCWs, each with a different number of HIPs listed
22 on them. So you are actually creating in some sense
23 a better product. Coming back to your initial point
24 about these externalities (inaudible) on the market, how
25 do you factor that into your thinking?

1 A. Yes, that is a really good question. Often in two-sided
2 market definition discussions or debates, people are
3 never really explicit, okay, what does it actually mean,
4 hypothetically monopolising the market? Do you just
5 bring them under common ownership but you keep four
6 different brands, or do you create one super-platform
7 under a new brand? I mean, those are all theoretical
8 possibilities. There is no one right answer, and they
9 could potentially result in different SSNIP tests. But
10 at its simplest you bring the platforms under common
11 ownership but you keep kind of the existing distinct
12 brands.

13 Sorry, let me rearticulate. I think at the end of
14 the day it does not really matter for this conceptual
15 discussion. Yes, if you combine it all into one
16 super-platform and that super-platform also has a great
17 brand and it is the only platform, then, yes, it is
18 attractive, but precisely the test is, is it so
19 attractive, or do HIPs still switch to the other
20 channels? If they do not, then the market is indeed
21 narrow and confined to PCWs only.

22 PROF ULPH: Thank you, that is very helpful.

23 My final question, could we go back to your diagram
24 3.1? Could that be brought up again on the screen?

25 MR BEARD: It is {A/10/9} for the EPE.

1 PROF ULPH: So you have these two different groups or two
2 different channels. You have PCWs and below that you
3 have direct channels. If I have understood you
4 correctly, would you say that direct channels are not an
5 example of a two-sided platform, because by definition
6 on the provider's side you only ever have one provider
7 so you cannot have these externalities where the more
8 customers you have the more providers you have on the
9 left-hand side?

10 A. Yes, agreed, correct. You would not call these direct
11 channels two-sided platforms, they are much more the
12 traditional distribution channels between insurers and
13 consumers, but a key point, this is also a point that
14 has actually been discussed in this literature, and this
15 is the one bit where the Supreme Court has been
16 criticised in Amex a lot, including by me, actually, for
17 putting out this statement that two-sided platforms can
18 only compete with other two-sided platforms. That is
19 not correct, because two-sided platforms can also
20 compete with direct channels that are much more
21 traditional distribution channels, in theory, and
22 I think there is agreement on that between the CMA and
23 myself. It is just then when it comes to analysing how
24 close of a constraint they are, we have reached
25 different conclusions.

1 PROF ULPH: Thank you. That is very helpful.

2 MS LUCAS: Dr Niels, I had a question, and it is moving on
3 to a slightly different area, actually. It is really
4 what I should make of narrow MFNs in the market
5 definition. I think the CMA's approach is to assume
6 that the narrow MFNs are prevalent in the market, and so
7 we assume that narrow MFNs apply to PCW HIPs, so HIPs
8 who are using PCWs, but narrow MFNs do not apply to HIPs
9 who do not use PCWs.

10 So as far as those non-MFN HIPs are concerned, they
11 are not constrained in the price that they can charge in
12 the same way as those subject to narrow MFNs?

13 A. Yes, that is correct.

14 MS LUCAS: So is the fact that those non-MFN HIPs can fix
15 lower prices relevant to the hypothetical monopolist?

16 A. I think in principle, yes, because ultimately for the
17 hypothetical monopolist test you want to test how HIPs
18 respond to a 5 to 10% price increase. To the extent
19 that they are certainly not bound by narrow MFNs, then
20 they do not change so you create this price differential
21 because of the SSNIP, and therefore you can just switch
22 it. To the extent that they do have a narrow MFN then
23 you are in this debate in this case between do you take
24 that into account or do you have to set that aside for
25 the purpose of the SSNIP test.

1 MS LUCAS: I just wonder if you could explain to me why you
2 have not taken into account the direct HIP providers who
3 are not subject to an MFN at all in the hypothetical
4 monopolist test?

5 A. It depends what is meant by "take into account".
6 I think it is relevant. When I say you have to do the
7 SSNIP test on both sides, and -- let me just think --
8 where does the narrow MFN -- that is also perhaps
9 important to bear in mind. Back to my picture, perhaps,
10 there are three dimensions on the consumer side, so the
11 retail prices, that is what PCWs compete on, the
12 marketing and usefulness. So this question of the
13 narrow MFNs, do you take them into account or not, comes
14 in only for that retail price dimension, because the
15 theory being or the logic being, ah, but you can impose
16 perhaps a SSNIP on those retail prices or induce a SSNIP
17 as a platform, but then the direct channels will also go
18 up by 5 to 10% if you assume that the hypothetical
19 monopolist also has narrow MFNs in place. I say you
20 have to assume that away for the SSNIP test.

21 So in that sense you do take into account the fact
22 that there can still be switching by the others,
23 certainly by the direct channels who are not bound by
24 a narrow MFN.

25 MS LUCAS: Did you factor that into your hypothetical

1 monopolist that some of the consumers may switch to
2 a direct online provider who is not subject to an MFN at
3 all?

4 A. In a sense, it is purely conceptual, so I have not done
5 any empirics, and I think Ms Ralston discusses the
6 actual evidence. Even that, of course, is in a sense
7 limited in terms of the precision one can get between
8 actually taking into account those direct providers.
9 But conceptually you would take into account if people
10 switch away to direct providers who do not have a narrow
11 MFN, absolutely that is an important factor that could
12 constrain the hypothetical monopolist.

13 MS LUCAS: Thank you.

14 THE CHAIRMAN: Professor, did you have any questions arising
15 out of that before I carry on?

16 PROF ULPH: No, I have finished.

17 THE CHAIRMAN: I see the time, Dr Niels, and I really do not
18 want to overburden you, but I have not finished. I am
19 going to suggest that I carry on for ten more minutes
20 just to broach a new subject so that we can each mull it
21 over overnight, if that is okay with you and indeed the
22 other teams.

23 MR BEARD: Yes, certainly. It is certainly fine with us.
24 Indeed, what we are slightly concerned to do is make
25 sure that market definition issues are finished by 2.30

1 tomorrow. We understand that that may not be possible.
2 If that were not to be possible I might need to discuss
3 with the Tribunal what rule applied to Ms Ralston's
4 purdah over the weekend, but that may be the only
5 practical consequence.

6 Sorry to spell out -- obviously she deals with
7 market definition and with other things. I would expect
8 she would be staying in purdah for market definition, we
9 were not allowed to talk to her on that, but I might ask
10 for leeway to be able to speak to her about other
11 matters, non-market definition. Of course you would
12 have to simply trust us that we would comply with that,
13 but obviously we would.

14 THE CHAIRMAN: I understand.

15 Ms Demetriou, I am inclined to take the view that,
16 since these are problems entirely of the Tribunal's
17 making, and since the integrity of both the expert and
18 the legal team really cannot be questioned, that we give
19 Mr Beard the assurance that he is asking for. It is
20 unusual, but it does happen more often than one thinks,
21 and I would not want ComparetheMarket to feel that they
22 quite understandably were unable to speak to their
23 expert on areas where they would ordinarily be able to
24 speak.

25 I do not know if you want to take instructions on

1 that.

2 MS DEMETRIOU: Sir, yes, I will take instructions.

3 I understand the point. Let me take instructions.

4 THE CHAIRMAN: I am grateful. (Pause)

5 MS DEMETRIOU: Sir, of course in principle we think that is
6 acceptable, and of course we trust that both the legal
7 teams and the expert teams will act with the utmost
8 integrity. We have absolutely no reason to doubt that
9 at all. There are some matters which cross over from
10 one part of the evidence to the other, so to take an
11 example there is a debate about the CI data that is
12 relevant to both parts of Ms Ralston's analysis. So we
13 would ask that extreme caution is taken not to trespass
14 into areas which relate to both parts so that the purdah
15 is observed very carefully in respect of the matters in
16 which evidence is going to be ongoing.

17 THE CHAIRMAN: I understand. I entirely understand your
18 concerns, but I think all I can do is say that I am
19 first of all sure that Mr Beard will ensure that
20 Ms Ralston understands the parameters within which he
21 and she and their respective teams must work, and if
22 this was a witness of fact I would be much more
23 troubled, but because it is an expert I think that given
24 the guidance that Mr Beard will give to his team and to
25 the witness, we can release Ms Ralston from purdah and

1 trust to the good judgment and good sense of Mr Beard
2 and his team. I do not think I need to say anything
3 more than that because clearly we cannot monitor what is
4 said.

5 MS DEMETRIOU: Yes, I understand. I just wanted to lay down
6 a marker in relation to that particular --

7 MR BEARD: It is perfectly proper. There is no objection to
8 the marker being put down. We completely understand.
9 The extent to which we may need to speak to Ms Ralston
10 might not transpire to be significant in any event. It
11 is just because we had this situation we discussed
12 previously of effectively dividing up for Ms Ralston in
13 relation to the evidence she is giving that we end up
14 with this situation, and it is only a product of that,
15 and I only say it now so that it does not arise at 2.30
16 tomorrow afternoon.

17 THE CHAIRMAN: I am very grateful for you to have done so,
18 and I think we have reached an accommodation. I am very
19 grateful to you both for that.

20 MR BEARD: I am very grateful.

21 THE CHAIRMAN: Dr Niels, we will have five more minutes and
22 then we will break because this is a tiring environment.

23 I think we both accept that the articulation of the
24 relevant market is not a subjective question; it is
25 evidentially rationally based. That is why you have

1 a SSNIP for example.

2 A. Yes.

3 THE CHAIRMAN: So let us look at diagram 2 --

4 MS DEMETRIOU: Sorry to interrupt but Professor Ulph is no

5 longer on the screen.

6 THE CLERK OF THE COURT: I understand he is still there, but

7 his camera is not on.

8 THE CHAIRMAN: Professor, can you say something, because you

9 have done a Daniel Beard and turned into a black hole.

10 PROF ULPH: Can you hear me?

11 THE CHAIRMAN: We can hear you.

12 PROF ULPH: I had to change headphones.

13 THE CHAIRMAN: Yes, I see. I think that Dr Niels is

14 entitled to the privilege of seeing his inquisitors.

15 What we are going to do is we are going to rise now and

16 we will start again at 9.30 tomorrow morning. I think

17 we want to overcome all technical questions.

18 Dr Niels, I will repeat my warning: do not talk

19 about your evidence to anyone. I am sure you know that.

20 I am hugely grateful for your time this afternoon, and

21 I am sorry that we are going to impose upon you further

22 tomorrow, but there we are. Thank you very much.

23 A. Thank you.

24 THE CHAIRMAN: 9.30 tomorrow, thank you.

25 (4.39 pm)

(The hearing adjourned until 9.30 am on
Friday, 5 November 2021)

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