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IN THE COMPETITION
APPEAL TRIBUNAL

Case No. 1160-65/1/1/10

Victoria House,
Bloomsbury Place,
London WC1A 2EB

21 October 2011

Before:

VIVIEN ROSE
(Chairman)
DR ADAM SCOTT OBE TD
DAVID SUMMERS OBE

Sitting as a Tribunal in England and Wales

BETWEEN:

(1) IMPERIAL TOBACCO GROUP PLC
(2) IMPERIAL TOBACCO LIMITED

Appellants

– v –

OFFICE OF FAIR TRADING

Respondent

CO-OPERATIVE GROUP LIMITED

Appellant

– v –

OFFICE OF FAIR TRADING

Respondent

WM MORRISON SUPERMARKET PLC

Appellant

– v –

OFFICE OF FAIR TRADING

Respondent

**(1) SAFEWAY STORES LIMITED
(2) SAFEWAY LIMITED**

Appellants

– v –

OFFICE OF FAIR TRADING

Respondent

**(1) ASDA STORES LIMITED
(2) ASDA GROUP LIMITED
(3) WAL-MART STORES (UK) LIMITED
(4) BROADSTREET GREAT WILSON EUROPE LIMITED**

Appellants

– v –

OFFICE OF FAIR TRADING

Respondent

**(1) SHELL UK LIMITED
(2) SHELL UK OIL PRODUCTS LIMITED
(3) SHELL HOLDINGS (UK) LIMITED**

Appellants

– v –

OFFICE OF FAIR TRADING

Respondent

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HEARING (DAY 18)

Note: Excisions in this transcript marked “[...][C]” relate to passages excluded.

APPEARANCES

Mr Mark Howard QC, Mr Mark Brealey QC and Mr Tony Singla (instructed by Ashurst LLP) appeared on behalf of the Appellants Imperial Tobacco Group Plc and Imperial Tobacco Ltd.

Mr Rhodri Thompson QC and Mr Christopher Brown (instructed by Burges Salmon LLP) appeared on behalf of the Appellant Co-operative Group Ltd.

Mr Pushpinder Saini QC and Mr Tristan Jones (instructed by Hogan Lovells International LLP) appeared on behalf of the Appellants WM Morrison Supermarkets Plc and Safeway Stores Ltd and Safeway Ltd.

Mr James Flynn QC and Mr Robert O'Donoghue (instructed by Norton Rose LLP) appeared on behalf of the Appellants Asda Stores Ltd, Asda Group Ltd, Wal-Mart Stores (UK) Ltd and Broadstreet Great Wilson Europe Ltd.

Ms Dinah Rose QC and Mr Brian Kennelly (instructed by Baker & McKenzie LLP) appeared on behalf of the Appellants Shell U.K. Ltd, Shell U.K. Oil Products Ltd and Shell Holdings (U.K.) Ltd.

Mr Paul Lasok QC, Ms Elisa Holmes, Mr Rob Williams, Ms Anneliese Blackwood and Ms Ligia Osepciu (instructed by the General Counsel, Office of Fair Trading) appeared on behalf of the Respondent.

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1 Friday, 21 October 2011
 2 (10.30 am)
 3 (Proceedings delayed)
 4 (10.35 am)
 5 Discussion re timetable
 6 **THE CHAIRMAN:** Good morning. Mr Howard.
 7 **MR HOWARD:** Sorry, I thought you were going to ask me
 8 a question.
 9 **THE CHAIRMAN:** I can ask you a question, and that would be:
 10 how are we getting on with the timetable production?
 11 **MR HOWARD:** We are getting on with it.
 12 **THE CHAIRMAN:** Do I need to set a timetable for the
 13 production of the timetable?
 14 **MR HOWARD:** It is in production. I'm not trying to be
 15 evasive. I have seen it, I believe it's been
 16 circulated. (Pause).
 17 We have a timetable which is intended to fit into
 18 the remaining two weeks that were set aside for oral
 19 evidence, or factual evidence, the factual evidence. We
 20 have had some discussion about the position of
 21 Fiona Bayley. She is currently scheduled to come on
 22 Thursday. The position is, I recognise that, although
 23 the OFT are calling her, she is not -- as with lots of
 24 the witnesses here, they are not in the control, as it
 25 were, of the person calling them in the sense that they

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1 are not an employee or anything of that sort.
 2 She, I think, says she is only available on
 3 Thursday. By that I understand she means she only wants
 4 to be engaged for one day. But to cut a long story
 5 short, I am obviously taking the lead, I can't speak for
 6 how much cross-examination there will be from the other
 7 appellants, but we will certainly for our part endeavour
 8 to try and fit her in on Thursday. That may mean
 9 starting at, say, 10 o'clock and possibly, if
 10 the Tribunal were prepared, sitting slightly later. But
 11 obviously she is the only witness, she is an important
 12 witness, and because of that, she is the only witness
 13 the OFT are calling, and as with any witness, there is
 14 a risk that she'll have to come back the next day, or at
 15 some other juncture if for some reason she can't come
 16 back the next day. In other words, we cannot -- I will
 17 certainly do my best and I am sure my fellow counsel
 18 will do their best, but we can't undertake that we will
 19 be guillotined in respect of the one witness that the
 20 OFT are calling that it will all be done in one day.

21 **THE CHAIRMAN:** Is there some particular difficulty with her
 22 coming on the Friday morning, if she can't be finished
 23 on the Thursday?

24 **MR LASOK:** The difficulty, as I understand it, is largely
 25 personal in the sense that Ms Bayley has a job, she

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1 lives in Devon, she has children to look after, she has
 2 indicated to us in rather strong terms that she has made
 3 a day available, and we have indicated to her that this
 4 is a court proceeding, but she has expressed to us
 5 fairly strong views. We all know what the score is.
 6 **THE CHAIRMAN:** Does she know what the score is?
 7 **MR LASOK:** She has been told what the score is.
 8 **THE CHAIRMAN:** Well, if there is anything the Tribunal needs
 9 to do to assist matters, no doubt you will let us know.
 10 **MR LASOK:** Hopefully that won't arise, because if she is
 11 dealt with in the one day that she set aside, then
 12 that's fine. So we may have to cross the bridge when we
 13 come to it, if we come to it.
 14 **THE CHAIRMAN:** As long as it's not that we come to it at
 15 4.30 on Thursday.
 16 **MR FLYNN:** Perhaps she can be shown that bit of the
 17 transcript.
 18 **MR HOWARD:** I think ultimately she just needs to be told
 19 that we are going to endeavour to deal with you on
 20 Thursday but it's public duty to come along and give
 21 evidence and if necessary, you will have to come on
 22 Friday and it will be unfortunate if the Tribunal have
 23 to order you to. And that's really the position, isn't
 24 it?
 25 **THE CHAIRMAN:** That is precisely the position, Mr Howard.

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1 **MR HOWARD:** So that is how, you know, what we hope is that
 2 on Thursday we get through Fiona Bayley -- her married
 3 name I am afraid escapes me for the moment -- and that
 4 may dribble into Friday, and then we deal with
 5 Mr Matthews and dispose of him by the end of Friday. We
 6 will then have left over Somerfield, First Quench, TM
 7 and T&S, or whatever their precise name is.

8 **THE CHAIRMAN:** TM Retail and T&S.

9 **MR HOWARD:** Yes. We are proposing, as I think I mentioned
 10 to you, to have a mini opening which will encompass all
 11 of them. Somerfield is obviously a remaining
 12 supermarket, and the others are more the convenience
 13 retailers, so there is a distinction between them, but
 14 there are some common themes which we will want to
 15 address. There may be some other more general points
 16 that we will want to draw attention to. I suspect in
 17 relation to Sainsbury, whether we make a mini opening in
 18 respect of Sainsbury is going to depend upon time, as to
 19 whether there is any time. We certainly won't want to
 20 lose witness time. I suspect that we will not say
 21 anything very much, if at all, in respect of Sainsbury,
 22 simply because again (a) it's another supermarket but
 23 (b) we are actually there going to have the OFT
 24 presenting a witness so we can explore matters with the
 25 witness.

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1 **THE CHAIRMAN:** So that means that next Tuesday and Wednesday
 2 are the days in which the Asda witnesses have to be
 3 completed.
 4 **MR HOWARD:** Yes, absolutely.
 5 **THE CHAIRMAN:** So we would want to see some quite careful
 6 timings on the timetable which people must stick to in
 7 relation to each of those witnesses.
 8 **MR HOWARD:** Mr Hall is coming today and has to be completed
 9 today.
 10 **THE CHAIRMAN:** Yes.
 11 **MR HOWARD:** Before he comes in, I don't necessarily want to
 12 embarrass him, but (a) as you have seen he has been
 13 retired for some time; (b) the reason he has to be
 14 completed today, I told you he has to go into hospital
 15 on Tuesday, and I've told Mr Lasok that. I am not
 16 asking for any special allowances but one just has to
 17 recognise that is the fact. So if, for instance, he
 18 appears to be flagging or anything of that sort, I would
 19 ask for indulgence, just recognising that's the
 20 position.
 21 **THE CHAIRMAN:** Yes.
 22 **DR SCOTT:** Mr Howard, one question in relation to that: he
 23 deals with Somerfield as well --
 24 **MR HOWARD:** He is coming back for Somerfield.
 25 **DR SCOTT:** He will be able to?

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1 **MR HOWARD:** As far as I understand.
 2 **DR SCOTT:** You can understand our concern.
 3 (Pause)
 4 **MR HOWARD:** To respond to that question, he is going into
 5 hospital next week, then he is coming out again, he will
 6 be available for the day he is scheduled on Somerfield,
 7 but the next day he is going back into hospital, so I am
 8 afraid that's the position, there are very specific
 9 constraints in respect of Mr Hall.
 10 **THE CHAIRMAN:** Yes.
 11 **MR LASOK:** Madam, you will have observed from what Mr Howard
 12 has said that next week on Thursday and Friday we have
 13 two witnesses, each of whom says that they are available
 14 only for one day. Ms Bayley on the Thursday, and
 15 Mr Matthews on the Friday. I think that all parties are
 16 going to use their best endeavours to dispose of each of
 17 them within the confines of the specified day.
 18 There is obviously, however, a problem, if there is
 19 an overrun with Ms Bayley because that may affect
 20 Mr Matthews. So it may well be that if we can't finish
 21 Ms Bayley on the Thursday, like some of the other
 22 witnesses, she might have to come back on another day
 23 but not the Friday. Because the difficulty with
 24 bringing her back on the Friday, quite apart from the
 25 fact that apparently she has a reluctance to come back

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1 on the Friday, is that then that has a knock-on effect
 2 on Mr Matthews.
 3 **THE CHAIRMAN:** Well, we may have to simply say their
 4 evidence will be completed on those days and wherever we
 5 get to on those days is what their evidence is, and
 6 people will need to prioritise the questions they want
 7 to ask them.
 8 **MR HOWARD:** I think that would be an unfair thing to do in
 9 respect of Ms Bayley. You have to remember this whole
 10 procedure, we will have had six weeks or something of
 11 the OFT --
 12 **THE CHAIRMAN:** She is a witness from one of the retailers,
 13 and although I've seen that the other retailers wish to
 14 ask her questions, everyone has stressed to the Tribunal
 15 that each of these bilateral relationships has to be
 16 examined on its own terms.
 17 **MR HOWARD:** I am not interested in the other retailers and
 18 what they want to ask; they can fight their own corner,
 19 they are perfectly able. But in respect of my position
 20 on behalf of Imperial, I am anticipating that I will be
 21 able to deal with her in a day. But if that doesn't
 22 turn out to be the case, it would be incredibly
 23 unfortunate at this stage of the proceedings that
 24 Imperial was subject to a guillotine when the OFT has
 25 not been subject to such a guillotine in respect of any

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1 of the Imperial witnesses.
 2 **THE CHAIRMAN:** What I would say, then, is certainly ITL has
 3 the priority of the time of Ms Bayley. If Ms Bayley is
 4 not completed by the end of Thursday, and there are some
 5 retailers who wish to ask her questions who have not
 6 been able to ask her questions, the Tribunal may need
 7 some convincing that their questions are going to add
 8 further to her answers to ITL's questions before
 9 deciding that she has to come back on some subsequent
 10 day.
 11 **MR HOWARD:** Can I make one other point and then obviously we
 12 want to get on, which is a point I have made to
 13 Mr Lasok, and I suspect the Tribunal would endorse this:
 14 insofar as cross-examination of witnesses is repeating
 15 the same points that we have gone over time and time
 16 again, for instance where one sees a tactical bonus,
 17 say, being offered and says therefore the price is 3.29
 18 and then being withdrawn and said therefore the price is
 19 3.34, we know the OFT wants to say that shows it's
 20 a fixed differential. We know that invariably the
 21 witnesses say that isn't the case. I am not saying you
 22 don't say -- put the point to the witnesses, but whether
 23 it's necessary to go to every single piece of
 24 correspondence, particularly say with Mr Matthews, where
 25 they have already been round the houses on Morrisons, in

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1 Sainsbury -- I can't remember whether there is exactly
 2 the same sort of correspondence, but I suspect there
 3 is -- just to, it doesn't seem to me to elicit exactly
 4 the same evidence, it's inevitable he is going to say
 5 the same thing and Mr Lasok is going to say the same
 6 point that has already been put, and I can't imagine
 7 that your evaluation of the evidence is going to
 8 particularly be assisted by repeating the point over and
 9 over.

10 **THE CHAIRMAN:** Well, people have a limited time now in which
 11 to ask their questions, and I could well understand if
 12 they prioritise the questions by not asking those sorts
 13 of questions or not further pressing a witness once they
 14 have got the initial answer.

15 **MR HOWARD:** That actually just raises a further point, but
 16 again I am just going to put down a marker: in my
 17 submission it is in fact inappropriate to repeat the
 18 same question to a witness three or four times because
 19 you haven't got the answer you want, in an attempt to
 20 get -- so if he says no, to say the same thing three or
 21 four times to hope he will say yes. In my submission
 22 that is not an appropriate or fair thing to do. But
 23 that's perhaps for submission in due course, insofar as
 24 reliance is placed upon that sort of badgering of the
 25 witness to achieve an answer.

1 **THE CHAIRMAN:** Mr Hall.

2 **MR HOWARD:** Mr Hall. We will obviously furnish you with the
 3 revised timetable this afternoon before we rise.

4 MR GRAHAM CHARLES HALL (affirmed)
 5 Examination-in-chief by MR HOWARD

6 **MR HOWARD:** Mr Hall, could you just for the record please
 7 tell us your name and address?

8 **A.** Graham Charles Hall of [redacted].

9 **Q.** Thank you. Mr Hall, I understand that you are currently
 10 on some form of medication and due to go into hospital
 11 next week. If at no time any point during the course of
 12 today you don't feel well or you feel you need a break,
 13 you should say so, it's not an endurance exercise and
 14 everybody will understand.

15 Could you please be given core bundle 3 in order to
 16 identify your witness statement. Could you turn to
 17 tab 41. {C3/41/513}. Could you identify that is your
 18 witness statement and that it's true?

19 **A.** Yes, and it is true.

20 **MR HOWARD:** Thank you very much, Mr Lasok will ask you some
 21 questions.

22 **THE CHAIRMAN:** Before Mr Lasok asks you some questions, let
 23 me say that we are very grateful for you coming to
 24 the Tribunal, Mr Hall, we understand that it's probably
 25 the last thing you need at the moment, so we do

1 appreciate it, and as Mr Howard said, if at any time you
 2 want to have a break, please do say.

3 Also, we have been sitting in the case now for
 4 a month and we are quite familiar with certain aspects
 5 of the industry and how the market works. So please
 6 just listen to the questions carefully and keep your
 7 answers as short as you can do, given of course that you
 8 want to give full answers to the questions that you are
 9 asked.

Cross-examination by MR LASOK

10 **MR LASOK:** Mr Hall, if you have your witness statement in
 11 front of you, in paragraph 2 you say that you were the
 12 national account manager from 2000 until your
 13 retirement, and you were the manager responsible for
 14 Somerfield and Asda.

15 I am only going to ask you about Asda, but in some
 16 of the documents that we have, a Mr Martin Downham's
 17 name appears, and I think that the first document that
 18 we have that mentions your name dates to about
 19 October 2000. Can you remember when it was that you
 20 started dealing with the Asda account?

21 **A.** From my memory, a guy called Terry Thomas(sic) was
 22 handling Asda until 1989 and I took the account over
 23 from him in 1989, I can't tell you the month
 24 unfortunately.

1 **Q.** Are we talking about Asda?

2 **A.** Yes, we are.

3 **Q.** Could you get annex 14, please. It will be handed to
 4 you. If you look at tab 9 you should have a letter
 5 dated 5 October 2000. Do you have that? {D14/9/27}.

6 **A.** Yes.

7 **Q.** On the second page we have your name at the bottom as
 8 the national account manager?

9 **A.** Yes.

10 **Q.** If you go to, let's take for example tab 2, that's
 11 a letter dated 9 May 2000, and at the bottom it's signed
 12 by Martin Downham, who is described as the national
 13 account manager. Would it have been the case that you
 14 must have become the national account manager for Asda
 15 sometime between May and October 2000?

16 **A.** No, that's not correct. I took the account over, as
 17 I said, from Terry Thomas(sic) in 1989. Martin Downham
 18 joined the department as a national account manager, and
 19 he and I were handling the Asda account jointly, because
 20 he had only recently come into the department.

21 I would sometimes join him for meetings, but at the
 22 end of the day, I had got total responsibility, he was
 23 working with my guidance, hence you have two signatures.

24 **Q.** Okay, fine, thank you very much. Now could you turn to
 25 tab 43, please. It's not in your witness statement, but

1 it's in this annex 14. {D14/43/99}.

2 You should have here a couple of emails, the top one

3 is from Nick Law on 2 November 2001. Are we looking at

4 the same thing?

5 **A.** Yes, we are.

6 **Q.** What I was interested in was a bit in the first email

7 just by the second holepunch, and this is a message from

8 Nick Law to John Jolliff, and Mr Law says:

9 "I have just viewed the Asda price tracker report."

10 Am I right in thinking that the Asda price tracker

11 report was an internal ITL document that tracked Asda

12 prices?

13 **A.** It was a summary of our merchandising representatives'

14 visits for the previous week, that summarised the prices

15 we had found on the shelf in Asda.

16 **Q.** If you go to the next tab, 44, {D14/44/100}, this is

17 a memorandum from you to Graham Plummer and

18 Philip Zentner, and the subject is "Price Tracker

19 Report, Somerfield and Asda", and you say in the first

20 sentence:

21 "Following the autumn MPI, the strategy pricing

22 requirements on the price tracker reports need updating

23 for JPS and L&B brands as per the attached."

24 If you look at the attachment, we have a document

25 headed "ITL's Strategy Pricing Requirements".

1 Am I right in thinking that these strategy pricing

2 requirements were given to the merchandisers when they

3 carried out or compiled their price tracker reports?

4 **A.** They were shown what we believed the prices were for

5 Asda from Asda's notifications to us, but they didn't

6 actually state on the bulletins to the merchandisers

7 what the strategy was, in terms of more than -- not more

8 than 10p expensive. We would simply show the price that

9 we believed Asda were, from the intelligence they had

10 given us and the communications from them.

11 **Q.** Can I put it another way: as I understand it, the

12 merchandisers are checking the Asda shelf prices; is

13 that correct?

14 **A.** They are checking the prices that they can see displayed

15 on the kiosk and reporting them back to us.

16 **Q.** They are checking them against the strategic pricing

17 requirements?

18 **A.** No, that's not correct. They are merely shown the price

19 that we believe Asda are at, based on what Asda have

20 told us. They are only shown one price on the

21 merchandising brief.

22 **Q.** What, therefore, do you mean in this memorandum where

23 you say that the strategy pricing requirements on the

24 price tracker reports need updating?

25 **A.** That's on the summary report, which we compiled from the

1 merchandisers' reports to us.

2 **Q.** So, do I have it right, then, that the merchandisers go

3 out, they look for the prices displayed at the kiosk in

4 the Asda stores, they come back with that information,

5 and within ITL you run through that information and

6 compare it with the strategic pricing requirements?

7 **A.** Internally we would compare it. Their data is punched

8 into a handheld terminal which is downloaded to the

9 centre, and then Philip Zentner and/or Graham Plummer

10 summarise that and give me a report back on the price

11 tracker.

12 **Q.** How often would the strategy pricing requirements be

13 updated?

14 **A.** Only really when there was a manufacturers' price

15 increase or a Budget increase, and when the company

16 might reduce the recommended retail price which was

17 required of us to produce for HMRC, or increase a price

18 for whatever reason in that way.

19 **Q.** If we go back to tab 22, {D14/22/49}, this is

20 an internal ITL national accounts business development

21 plan for the Asda account. Am I right in thinking that

22 it's been signed by you?

23 **A.** That's correct.

24 **Q.** So you would have compiled this report?

25 **A.** This was a summary, not a report, it was a summary of

1 what we wanted to spend and how we intended spending it

2 in the financial year to come.

3 **Q.** Now, there are page numbers stamped on the bottom

4 right-hand corner. Could you go to page 173, please.

5 If you go to the bottom of 173, you have the last three

6 lines on that page where you say:

7 "Almost all stores continue to achieve strategy

8 pricing on all of our brands."

9 Then you refer to exceptions. Would you have

10 derived that conclusion from the price tracker reports?

11 **A.** In part, yes, but in part also from my own visits to

12 stores, and from what Asda were telling us as well.

13 **Q.** Thank you. If you go, in this document, back to

14 page 169, it will be the fourth paragraph beginning "In

15 brief ..." Do you have that?

16 **A.** Yes.

17 **Q.** That refers to adherence measures, and there is

18 a reference to pricing 95 per cent. Does that indicate

19 that ITL had criteria for determining the level of

20 Asda's adherence to ITL's pricing strategy?

21 **A.** It means that they would be achieving that price level

22 or better, because they were free and could always do

23 so, go lower in price. That would not count against

24 them. So if they were lower in price, then they would

25 be seen to be adhering to our required strategy. The

1 reason that it is set at 95 per cent is because we did
 2 know, and were very much aware, that there were some
 3 exceptions. Those exceptions being, for example, in
 4 London and the southeast where Benson & Hedges might be
 5 reduced, because it was the biggest selling brand, as
 6 would Embassy No 1, but Regal Kingsize would not be.
 7 Conversely, in a store in Glasgow and in Newcastle,
 8 those stores may elect to reduce the price of
 9 Regal Kingsize but not Embassy No 1, and therefore there
 10 would be differentials.
 11 **Q.** I am right in thinking, am I not, that at this stage --
 12 because your report is dated 25 January 2001 -- the
 13 trading agreement between ITL and Asda didn't refer to
 14 ITL paying Asda for pricing in accordance with ITL's
 15 strategic pricing requirements? The trading agreement
 16 is in tab 14(a). Do you happen to remember that?
 17 **A.** I don't seem to have 14(a).
 18 **Q.** It's funny, actually, because I don't seem to have 14(a)
 19 either.
 20 **DR SCOTT:** Nor do I.
 21 **THE CHAIRMAN:** It is (a) right at the very beginning.
 22 **MR LASOK:** I am sorry, I meant annex 14, tab (a).
 23 **THE CHAIRMAN:** The very first document in the file.
 24 **A.** Page 43 at the bottom right?
 25 **THE CHAIRMAN:** The very first document in the file, Mr Hall.

1 **A.** Right, I am on (a). {D14/(a)/1}
 2 **MR LASOK:** It's the ITL trading agreement 2000/2001 for the
 3 period 1 January 2000 to 31 December 2001, and we have
 4 a bit about advertising, a bit about availability, a bit
 5 about merchandising, and the promotional programme. On
 6 the next page we have a range requirement, then we have
 7 the trading agreement package, a bit of promotional
 8 activity, trade marketing, and then lastly development
 9 opportunities, we have a bit about filling stations and
 10 other trading fascias.
 11 **A.** Yes, that's correct.
 12 **Q.** Is the explanation for that that Asda --
 13 **THE CHAIRMAN:** The explanation for what?
 14 **MR LASOK:** For the absence of -- I am terribly sorry.
 15 Is the explanation for the absence of a payment for
 16 Asda complying with the strategic pricing requirements
 17 that Asda had previously decided to forego payment for
 18 pricing, distribution, availability, merchandising and
 19 advertising in return for additional promotional
 20 activity?
 21 **A.** Yes, they did forego any payment and took the money and
 22 gave it to consumers, by way of consumer promotions.
 23 **Q.** It's not a sort of trick question, but that's what the
 24 report at tab 22 says at the bottom of the first page.
 25 **A.** Correct.

1 **Q.** Yes. But nonetheless at this stage it is the case that
 2 your price tracking reports are tracking Asda prices,
 3 you are checking the information against ITL's strategic
 4 pricing requirements, and you are observing on the
 5 information that you have that Asda is, by and large, in
 6 line with strategic pricing requirements, because that's
 7 what you say in this document?
 8 **A.** They were achieving or bettering our price requirements,
 9 in some cases at times they did have prices which were
 10 below that that we were seeking.
 11 **Q.** Now, I would like to move on back to your witness
 12 statement, to paragraph 12. Could you read paragraph 12
 13 to yourself, please.
 14 (Pause)
 15 Right. Now, the example of an Asda price file that
 16 you refer to is the one at tab 81(b). Could we just
 17 have a look at that? {D14/81(b)/297}.
 18 As I understand it, what we have here is, on the
 19 first column on the left, we have the Wal-Mart codes for
 20 the brand or product in question?
 21 **A.** That's correct.
 22 **Q.** Then we have --
 23 **A.** They were supplied by Wal-Mart to us.
 24 **Q.** Then we have the brand name?
 25 **A.** Yes.

1 **Q.** Then we have things like pack size, the ITL code, the
 2 outer size, retail packs, outers per case, the Q6 price
 3 per outer, Q6 price per case, we have the total
 4 off-invoice bonus per outer, off-invoice bonus per case,
 5 net invoice cost per outer, net invoice cost per case,
 6 the next one looks like HQ bonus per outer. It's HO,
 7 I think. What's HO?
 8 **A.** HO, head office.
 9 **Q.** Yes. Then we have retro bonus per outer, net cost per
 10 outer, unit retail pack, and you have percentage POR.
 11 What's POR?
 12 **A.** Profit on return.
 13 **Q.** Then you have a start and a finish, and what do the
 14 start and finish refer to?
 15 **A.** I'll give two examples of that. If there was a Budget
 16 increase, then the start date would be with effect from
 17 invoicing at post Budget price. And there would be no
 18 finish date, because we would not know when that was
 19 going to change, it would only change if there was
 20 a promotion and bonus changed, we increased the bonus,
 21 or if there was a manufacturers' price increase, or if
 22 there was another Budget.
 23 If we were introducing a consumer promotion where we
 24 wanted to reduce the price, let's say, by 10p to the
 25 consumer, we would show very clearly on there a start

1 date, and when we planned, if we knew, when to end it.
 2 So that Asda knew exactly when they were going to
 3 receive money for doing that, and when they got to
 4 finish the promotion.
 5 **Q.** Would there be anything on these pages, any information
 6 that was supplied by Asda?
 7 **A.** Yes, there would, there would be the Asda codes, because
 8 we had to add them to it, as I've said previously. The
 9 rest of it was geared towards the way Asda worked. Our
 10 published price list only quoted a price per outer,
 11 because their system worked on case prices we had to
 12 multiply that up, hence the reason you have on there
 13 "case price" and then "cost per case", specifically
 14 geared to Asda's requirements. This was a document they
 15 required us to fill in for them, so that they had got
 16 all the information relative to each product line.
 17 **Q.** Thank you very much. Now could you turn in your witness
 18 statement to paragraphs 57 to 60 and read those to
 19 yourself, please. {C3/41}.
 20 (Pause)
 21 Have you read it all, 57 to 60?
 22 **A.** Ah, sorry.
 23 (Pause)
 24 **Q.** Now, Mr Jolliff, you encountered him in your dealings
 25 with Asda, didn't you?

21

1 **A.** Met him several times.
 2 **Q.** Yes. Now, he stated in a witness statement that he has
 3 provided in these proceedings that he received the price
 4 files from the manufacturer, and here we are talking
 5 about the ITL price files, and that the price file
 6 contained a recommended selling price or shelf price
 7 which was specifically provided to Asda by the
 8 manufacturer, here ITL, and he says that the basic cost
 9 price was set at a level that allowed Asda to make
 10 a specified margin if Asda sold at the recommended
 11 selling price provided by here Asda.
 12 Is that your recollection?
 13 **A.** At no time ever did I quote a price as a recommended
 14 selling price. Never.
 15 **Q.** Well, how did the recommended selling price appear in
 16 these price files which were drawn up by ITL?
 17 **A.** I am sorry, there is no recommended selling price shown
 18 on this document. It is unit retail per pack. It is
 19 a proposed price. If Asda wished to change the price,
 20 they were free to do so. I never ever used the words
 21 "recommended selling price" in any document to any
 22 retailer.
 23 **Q.** Well, therefore I think what we are talking about is
 24 terminology, because Mr Jolliff describes them as
 25 recommended selling prices or shelf prices, and you

22

1 describe them as a unit price. But are we agreed that
 2 the unit price that appears in the price files was
 3 a price that was inserted in the price files by ITL?
 4 **A.** Not necessarily. It was the price that was put in place
 5 based on what their previous price was, in other words
 6 we would check their price pre Budget. If there was
 7 a price increase of the Budget of 7p which the company
 8 was passing on to the consumer, then we would apply that
 9 7p increase, and show them what the effect of that
 10 increase was. Whether or not they wished to adopt it
 11 was their choice, and I can clearly recollect on at
 12 least one occasion when I published a price in their
 13 price file of £4.10 for Embassy No 1 and they elected to
 14 sell it at £4.09. Their choice, not mine. They changed
 15 the issue. These were merely proposed prices to show
 16 them and demonstrate what margin they would be getting.
 17 They were at liberty to change that at any time.
 18 **Q.** Forgive me, Mr Hall, you don't have to be defensive
 19 about this. I am asking you specific questions, and you
 20 have been answering points that I haven't yet put to
 21 you. The point that I was putting to you was that what
 22 we see in the column -- I can't remember what it's
 23 called --
 24 **A.** Unit retail per pack.
 25 **Q.** Yes, that was a figure that was inserted in the price

23

1 file by ITL, that's the only point that I am asking you
 2 about at the moment.
 3 **A.** Yes, but it does need the clarification that --
 4 **THE CHAIRMAN:** Well, he will probably come on to that, but
 5 you are rather anticipating his questions. Just let him
 6 ask the questions and answer as we go along.
 7 **A.** We have done the maths for Asda, yes.
 8 **MR LASOK:** Right, okay. So in paragraph 57 of your witness
 9 statement, when you say at the very beginning "ITL
 10 assisted Asda with the preparation of a price file for
 11 the Asda account", it wasn't just assisting them to do
 12 it, because it was ITL that completed all the relevant
 13 parts of the price file; the only information you got
 14 from Asda was such things as the Asda or Wal-Mart code
 15 for the brand and the list of the brands?
 16 **A.** That is correct, but Asda required a document of that
 17 type, whether we were selling cigarettes or dog food.
 18 Every supplier had to supply such a document.
 19 **Q.** If you go to paragraph 58, you have:
 20 "ITL would update the price file to reflect changes
 21 in the cost prices of products sold to the retailer
 22 and/or changes in the level of promotional discount ITL
 23 was offering the retailer."
 24 The changes that you have incorporated in the price
 25 file related not only to any change in cost price or any

24

1 change in level of promotional discount, but you put in
 2 to the price file the consequential effect on the Asda
 3 prices, and I am going to be precise about this, because
 4 I think your evidence is that you took the then existing
 5 Asda shelf prices as you knew them and, when there was
 6 a change in the cost price or a change in promotions,
 7 you altered the unit price figure correspondingly?
 8 **A.** In so much as we were offering a promotional discount in
 9 addition to the standard rates, to give the consumer
 10 a price cut, yes, we would show the retailer what price
 11 we were looking for them to go down. If we were funding
 12 a 10p reduction, we were looking to see that 10p
 13 reduction.
 14 **THE CHAIRMAN:** All we are talking about at the moment is
 15 this point that when you altered the unit price to
 16 reflect changes in the wholesale price to indicate to
 17 them what the retail price would be, other things being
 18 equal, once there had been that change in the wholesale
 19 price.
 20 **A.** We would only be offering that promotional discount --
 21 **THE CHAIRMAN:** It doesn't matter what kind of discount it
 22 was, just looking at the wholesale price, if that
 23 changed you would do the calculation for them as to,
 24 other things being equal, how that would affect the unit
 25 retail price in this column; is that right?

25

1 **A.** Yes, because we weren't looking to increase their
 2 margin.
 3 **DR SCOTT:** So it's about the margin, so that when there is
 4 a change, up or down, you adjust the table so that they
 5 can see what they need to do if they want to keep their
 6 margin. Is that a good summary?
 7 **A.** The real summary is that if we were increasing the
 8 promotional discount, we were trying to feed that money
 9 into the consumers' hands, not Asda's.
 10 **DR SCOTT:** So they didn't want the margin to fall and you
 11 didn't want the margin to rise?
 12 **A.** Their percentage return would actually slightly
 13 increase.
 14 **DR SCOTT:** Yes.
 15 **MR LASOK:** If we go to paragraph 59, you say:
 16 "The unit retail per pack prices set out in the
 17 price file recorded the retailer's pricing strategy as
 18 implemented in its shelf prices."
 19 I put it to you quite bluntly that the unit retail
 20 per pack price included or took into account ITL's
 21 strategic pricing requirements; is that so?
 22 **A.** As a maximum price, yes.
 23 **Q.** Let's now look at a document. Could you turn to tab 2,
 24 please.
 25 This is a letter dated 9 May 2000 from Mr Downham.

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1 Can you just read that to yourself.
 2 (Pause)
 3 So this is an indication of the incorporation of
 4 ITL's strategic pricing requirements into the Asda price
 5 file, isn't it?
 6 **A.** It was an offer to John Jolliff to take on board a price
 7 reduction for the consumer, yes.
 8 **Q.** I want to be absolutely clear about this. The point
 9 I am putting to you is that this is an instance of ITL
 10 incorporating in the price file ITL's strategic pricing
 11 requirements. That's so, isn't it?
 12 **A.** It was merely an offer to Asda to promote --
 13 **THE CHAIRMAN:** Just listen to the question. You are trying
 14 to make points, and that's not your task at the moment.
 15 Just listen to the question and answer the question,
 16 please.
 17 **A.** Can you repeat the question?
 18 **MR LASOK:** Yes. The question simply is that this is
 19 an instance of ITL incorporating in the price file ITL's
 20 strategic pricing requirements. I'll just explain why
 21 I am putting this to you. It's because the letter says
 22 that ITL would like to reduce certain prices, but it
 23 explains in relation to Richmond, L&B and JPS, that
 24 these reductions are in order to achieve parity with
 25 Mayfair 20s, or in the case of L&B and JPS, Mayfair 20s

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1 plus 20p, and the letter says in the penultimate
 2 sentence that an updated price file would follow. So
 3 that's why I am putting to you that this is
 4 an indication of ITL including in the price file prices
 5 that reflect ITL's strategic pricing requirements.
 6 **A.** Yes, you could say that.
 7 **Q.** Well, I have said it; do you say it?
 8 **A.** I stick by my word, it's an offer, I can't say at that
 9 stage whether they took it up, if they did then we would
 10 incorporate that price.
 11 **Q.** Well, I am not asking you whether it was an offer, I am
 12 simply asking you whether you accept that this is
 13 an example of ITL including in the price file a price or
 14 here three prices that reflect --
 15 **MR HOWARD:** Surely the witness has answered what has been
 16 asked. This is another instance of a question being
 17 asked a number of times. He has given his answer. If
 18 what Mr Lasok is trying to ask him is: would you have
 19 put this in the price file if Mr Jolliff didn't take up
 20 the offer?, he can ask that. But he has explained he
 21 regarded this as an offer open to be accepted one way or
 22 the other.
 23 **THE CHAIRMAN:** That's not really the point. It's a simpler
 24 point that's being put to him, which is that the prices
 25 that were included in the price file sometimes reflected

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1 ITL's strategic pricing differentials, and this is
 2 an instance of that.
 3 **A.** Yes, as a maximum.
 4 **MR LASOK:** Why do you say it was a maximum?
 5 **A.** Because Asda were free to set their own prices.
 6 **Q.** Well, I want to draw you back to what this letter
 7 actually says. Can you point out where it says that the
 8 price positions are maxima?
 9 **A.** It doesn't specifically state that in the letter. The
 10 letter was a shorthand letter to the customer, the
 11 customer was well aware of our strategic pricing
 12 requirement which showed that a price should be no more
 13 than or at least as, et cetera.
 14 **Q.** Let's move on to tab 10(a). {D14/10(a)/30}. This is
 15 a letter from you dated 5 October 2000. On the second
 16 page, at the top, you have a heading "Pricing". You say
 17 there:
 18 "The Richmond Superkings range carries the same
 19 recommended retail price as Dorchester" --
 20 **A.** 10 or 10(a)?
 21 **Q.** I'm sorry, it's 10(a).
 22 **A.** My letter doesn't start "Pricing".
 23 **Q.** It's 5 October 2000.
 24 **A.** Yes, Richmond Superkings. "Further to our
 25 discussion~..."

29

1 **Q.** Yes. Could you go to the second page, please. Under
 2 the heading "Pricing"?
 3 **A.** Yes.
 4 **Q.** In the second line you say:
 5 "Our policy will be to match the Dorchester
 6 Superkings selling price in all outlets."
 7 Now, you comment on this letter in paragraph 21 of
 8 your witness statement. So could you look at
 9 paragraph 21, please.
 10 **A.** (Pause). I seem to have lost my page.
 11 **Q.** It should be page 503, if you are looking at the
 12 pagination at the bottom right or left-hand corner.
 13 **A.** Thank you.
 14 (Pause)
 15 **Q.** Do you have paragraph 21?
 16 **A.** Yes.
 17 **Q.** I am just asking you about the first three lines, where
 18 you refer to this passage that I've just read out that
 19 the policy would be to match Dorchester, and you say
 20 that:
 21 "It refers to the fact that ITL was informing the
 22 retailer that ITL's strategy would be that its brand
 23 should be no more expensive than the Dorchester
 24 Superkings product."
 25 If we go back to this letter, can you explain to me

30

1 where you inform Asda that the policy was that the brand
 2 should be no more expensive than Dorchester? (Pause).
 3 **A.** In my letter, I am referring to the same recommended
 4 retail price as published by ITL versus the Gallaher
 5 published price list.
 6 In my witness statement, I am referring to the fact
 7 that ITL's policy was that we were introducing a new
 8 brand called Richmond and we did not want to sell it in
 9 store at a price higher than Dorchester.
 10 **Q.** My question to you was where in this letter you tell
 11 Asda that your policy is that Richmond should be no more
 12 expensive than Dorchester? Which words?
 13 **A.** Which paragraph in the letter are you referring to,
 14 please?
 15 **Q.** Well, I don't know, because I am asking you: where in
 16 the letter do you inform Asda that ITL's policy was that
 17 Richmond should be no more expensive than Dorchester?
 18 **A.** At that stage we had not got to the point of pricing,
 19 because it was a notification to Asda on 5 October that
 20 we were launching these brands.
 21 **THE CHAIRMAN:** Yes, but you did discuss pricing at the top
 22 of the second page of the letter. What Mr Lasok is
 23 asking you is: why, given what's said in the letter, do
 24 you say in paragraph 21 of your witness statement that
 25 you informed Asda that the strategy would be that

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1 Richmond should be no more expensive than Dorchester?
 2 **A.** Because we would have been very happy if it was selling
 3 cheaper than Dorchester.
 4 **DR SCOTT:** But, Mr Hall, if, as I understand it from your
 5 evidence, your many years of experience of retailers is
 6 that retailers don't like funding reduced margins out of
 7 their own margin, they reduce prices out of their own
 8 margin, they look to suppliers to fund reduced margins.
 9 So the expectation from your many years of
 10 experience is that if you write to a retailer saying you
 11 are going to introduce a product for which you want the
 12 price to match that of an existing product of a rival
 13 retailer, then your expectation from those many years is
 14 that the retailer will be looking for a margin that
 15 enables them to price at the same price as Dorchester,
 16 and make their margin.
 17 If you are suggesting that it would be nice to go
 18 below that, then they are going to come back to you and
 19 say "Yes, but it will cost you", not simply "yes". So
 20 that if you say "match", they will expect "match and
 21 retain margin". Is that right?
 22 **A.** In summary, yes, but in our strategic pricing document,
 23 it would be worded as "no more expensive than".
 24 **DR SCOTT:** Oh, that may be true behind the scenes, but
 25 Mr Lasok is pointing at this letter, and this letter

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1 uses the word "match", it doesn't use the words from the
 2 strategic pricing policy; it says "match"?
 3 **A.** In that instance, yes, it does.
 4 **DR SCOTT:** Thank you.
 5 **MR LASOK:** If we look at another example of this, we could
 6 go to --
 7 **THE CHAIRMAN:** Well, is it going to be helpful to look at
 8 another example, Mr Lasok?
 9 **MR LASOK:** I'll simply put a more general question, and that
 10 is that when we see the word "match" in the documents,
 11 emanating from you or Mr Downham when he was acting
 12 under your authority and control, "match" means match;
 13 that's all, isn't it?
 14 **A.** No, that's not exactly it, because it may be stated as
 15 "match", but if a retailer chose, and Asda chose, to go
 16 at a lower price, we would be happy with that.
 17 **Q.** What about an internal ITL communication? If one arm of
 18 ITL sends to the other arm a message saying that prices
 19 of two brands, ITL and Gallaher brands, are to match,
 20 what does that mean?
 21 **A.** Without seeing the document that you are referring to,
 22 I wouldn't like to comment. I can only really comment
 23 on what I have written and said.
 24 **Q.** Let's have a look at tab 20. Now, tab 20 is an email
 25 from Terry Rogers, and it's to the UK NAMs, isn't it?

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1 **A.** It is.
 2 **Q.** What is RSDM?
 3 **A.** Regional sales development manager, of which there were
 4 four in the country.
 5 **Q.** Right. Could you read the email to yourself, please.
 6 (Pause)
 7 So the word "match" in relation to, for example,
 8 point 1 "Classic to match Hamlet", what does that mean?
 9 **A.** It was his terminology not to exceed those prices for
 10 Hamlet. If the price was lower, then he would be
 11 delighted.
 12 **Q.** How would you know that?
 13 **A.** Because I had a personal relationship over the years
 14 with Terry Rogers as cigar marketing manager.
 15 **Q.** So Mr Rogers, as I understand it, sends an email round
 16 to everybody telling them that the strategy is that
 17 certain brands, ITL brands, are to match the price of
 18 other brands, and what does he do? He then rings up
 19 everybody and says, "Look, when I said 'match' I didn't
 20 actually mean it, I meant something else"?
 21 **A.** He doesn't ring around at all, he came to national
 22 account managers' meetings, and we knew from those
 23 discussions that his word "match" meant he did not want
 24 to see Classic more expensive than Hamlet. If Classic
 25 was cheaper than Hamlet, he would be absolutely

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1 delighted.
 2 **DR SCOTT:** And would he be delighted if you paid
 3 an additional bonus to achieve that reduction?
 4 **A.** No, that would be if the retailer chose to go below that
 5 price.
 6 **DR SCOTT:** So he is not expecting you to fund an additional
 7 price reduction?
 8 **A.** Correct.
 9 **DR SCOTT:** Thank you.
 10 **MR LASOK:** If you look at point 2 in this email, we have:
 11 "Panama to be minus 3p against Hamlet, except where
 12 King Six is stocked, in which case Panama to be plus cf
 13 King Six to a basement price for Panama of £2.59."
 14 Doesn't that mean what it says?
 15 **A.** It means that we should fund down to a price of 2.59 but
 16 not to throw more money at it, because it would be
 17 uneconomic. If a retailer chose to go to 2.57 or 2.55,
 18 that would be his choice. But we didn't want to damage
 19 the brand by going any lower in price.
 20 **Q.** But you were content that the retailer would damage the
 21 brand?
 22 **A.** We did not want to be seen to be pushing the price down
 23 5.29 ourselves. If the retailer chose, that was his
 24 right to do so.
 25 **THE CHAIRMAN:** Didn't want to be seen by whom to be pushing

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1 the price?
 2 **A.** The whole of the trade. King Six was a very small brand
 3 at the time, and they were going to very low prices to
 4 try and capture trade from Panama, which was similarly
 5 packed as six cigars in a pack.
 6 **THE CHAIRMAN:** So King Six is a Gallaher brand?
 7 **A.** Correct.
 8 **MR LASOK:** Could we go back to tab 13, please. This should
 9 be an email from Martin Downham sent on 15 November 2000
 10 to Mr Jolliff. If that's what you have, we are on the
 11 same page. {D14/13/36}.
 12 **A.** Document 42?
 13 **Q.** It has a stamped page number in the bottom right-hand
 14 corner of 42. Could you read that to yourself, please.
 15 (Pause)
 16 Now, this I take it was an email that Mr Downham
 17 sent to Mr Jolliff, for which you take responsibility
 18 because you were running the show?
 19 **A.** Except for one minor point, I would have been in the
 20 Caribbean at that time. It was my birthday at that
 21 time.
 22 **Q.** No doubt your influence was such that it spread from the
 23 Caribbean?
 24 **A.** Yes.
 25 **Q.** We see here that he starts off by saying that ITL would

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1 like to match the prices of Drum to the current
 2 Amber Leaf promotional prices, and maintain the current
 3 differentials with Golden Virginia. Then towards the
 4 middle of the page, after dealing with the various
 5 figures, he says:
 6 "A price file will follow. I would, however, be
 7 grateful if you could implement the above, ensuring that
 8 the prices shown above are correct."
 9 So this is an instance where we have, I would
 10 suggest to you, the use of the word "match" in its
 11 ordinary connotation, and it's being made quite clear to
 12 Mr Jolliff that even before the price file follows with
 13 the prices incorporated in it reflecting these
 14 requirements, ITL wishes Asda to implement, but
 15 following the prices shown above. That's what he says,
 16 and that's what was going on, wasn't it?
 17 A. I believe that means in the context of: please tell us
 18 before we publish the price file if those aren't the
 19 prices you are going to, because if they weren't,
 20 then it would be pointless producing the price file.
 21 Q. Why does he say:
 22 "I would, however, be grateful if you could
 23 implement the above, ensuring that the prices shown
 24 above are correct"?
 25 A. I come back to, I think his question or his statement

1 about ensuring the prices are correct is asking the
 2 retailer, without posing it as a question, "tell us if
 3 they aren't correct before we publish the price file".
 4 THE CHAIRMAN: I think it's the reference to "implementing
 5 the above" that Mr Lasok is asking you about.
 6 A. Say again?
 7 THE CHAIRMAN: It says "grateful if you could implement the
 8 above" which seems to suggest that you are expecting or
 9 asking them to adopt these prices and getting them to
 10 confirm that that's what they are going to do before you
 11 change the price file.
 12 A. Yes.
 13 MR LASOK: It may be appropriate now to have the usual
 14 mid-morning break.
 15 THE CHAIRMAN: Yes, after which I hope we are going to move
 16 to a different point.
 17 MR LASOK: We will move to a different topic.
 18 THE CHAIRMAN: We are going to have a short break now,
 19 Mr Hall, for ten minutes for everyone to have a stretch.
 20 You are in the middle of your evidence and that means
 21 you mustn't speak to your legal team or anybody else
 22 about the evidence that you are giving before we get
 23 back. Thank you.
 24 (11.45 am)
 25 (A short break)

1 (12 noon)
 2 MR LASOK: Now, Mr Hall, I wonder whether you could possibly
 3 turn to tab 53 in the file that you have on the right,
 4 that's annex 14. {D14/53/148}. This should be the ITL
 5 trading agreement for 2002, covering the calendar year
 6 2002, and on the third page you have, under the heading
 7 "Trading Agreement Package", ITL promising to make
 8 a quarterly payment to Asda on condition that ITL's
 9 requirements on [redacted]
 10 [redacted] strategic pricing being met; that's
 11 correct, isn't it?
 12 A. Yes.
 13 Q. You have signed this agreement?
 14 A. Yes.
 15 Q. So essentially what we are here looking at is the
 16 promise of a payment on condition that, among other
 17 things, Asda meets the strategic pricing requirements;
 18 isn't that so?
 19 A. Yes.
 20 Q. We have in the March 2003 ITL report on Asda, which is
 21 at tab 70, which is signed by you, do you have tab 70?
 22 {D14/70/188}.
 23 A. Yes.
 24 Q. So you can see it's signed by you. If we run very, very
 25 briefly through it, the penultimate paragraph on that

1 first page refers to the adherence measures, pricing
 2 95 per cent; correct?
 3 A. Yes.
 4 Q. That's the same as before. Then if we go to the one
 5 stamped 230 in the bottom right-hand corner, and here
 6 you have the investment summary. As I take it -- and
 7 you will tell me if I am wrong -- on the right-hand side
 8 we have amounts of money in thousands of pounds?
 9 A. Correct.
 10 Q. On the left-hand side we have what the payments were
 11 for. If we go to just below the first holepunch we have
 12 "PRP", and then it says "[redacted]"
 13 strategy pricing", and the amount alongside that is
 14 [redacted]?
 15 A. Correct.
 16 Q. I am sorry, I think that the figure is confidential.
 17 So is this an entry for the payment for strategy
 18 pricing?
 19 A. This is an internal document submitted to Roger Batty by
 20 me, showing a projected volume of cigarettes for the
 21 year that we hope Asda will sell, and showing what the
 22 effect of the [redacted] payment would be in respect of
 23 those three items, which would come to [redacted].
 24 Q. If you move on to page 235, again following the
 25 pagination stamped in the bottom right, you have

Confidential:
Asda

Confidential:
Asda

1 a heading "Pricing", and then you have a second
 2 paragraph, which says:
 3 "Almost all stores continue to achieve strategy
 4 pricing on all of our brands."
 5 Now, was that view formed on the basis of the Asda
 6 price tracker reports?
 7 **A.** On the reports from our merchandisers that were
 8 summarised on the price tracker, yes, and by adherence
 9 I mean at or better.
 10 **THE CHAIRMAN:** At or better than --
 11 **A.** The expected price under the strategy requirement, in
 12 other words if --
 13 **THE CHAIRMAN:** Remind me what the strategy requirement is?
 14 **A.** If a brand should be not more than 3p more expensive
 15 than, if it was at a lower price than that it would
 16 still count as adherence, it wouldn't be counted as
 17 non-adherence.
 18 **THE CHAIRMAN:** But adherence as regards a relativity between
 19 an ITL brand and a Gallaher brand?
 20 **A.** Correct.
 21 **MR LASOK:** Now, we have an example of one of the strategic
 22 pricing requirements that was in existence after the
 23 signature of the trading agreement that we have at
 24 tab 53, because that trading agreement at tab 53 is
 25 dated 5 June, and if you go to tab 54, we have a letter

1 from you to Mr Jolliff dated 11 June 2002, and on the
 2 second page of that, we have a page of strategy pricing
 3 requirements, and we can see that they are expressed as
 4 "no more expensive than" and so forth. Do you have
 5 that?
 6 **A.** Yes.
 7 **Q.** I put it to you that the understanding was that these
 8 parities and differentials were fixed, and that was how
 9 they were incorporated in the Asda price files?
 10 **A.** They were not fixed. The purpose of this letter was to
 11 express a change because Gallaher had increased their
 12 prices prior to us, and therefore the differentials had
 13 changed from what they were previously. We were not
 14 fixing the price; we were merely stating a maximum for
 15 each brand.
 16 **Q.** Could you go to tab 56, please. {D14/56/156}. Now,
 17 this is a letter dated 13 August 2002. It's a letter
 18 that you sent to Mr Lang. I draw your attention to the
 19 second paragraph of the letter under the heading "Trade
 20 Development Programme Investment". Just for the sake of
 21 clarity, am I right in thinking that you are here
 22 referring to the payments under the trading agreement
 23 that we have just looked at?
 24 **A.** Yes, I am.
 25 **Q.** Could you read the paragraph that begins "The purpose of

1 our trade development programme", please.
 2 (Pause)
 3 The way I read the language that you are using is
 4 that you are communicating to Asda the purpose of the
 5 trade development programme and you have expressed it as
 6 being "to ensure that we have the range of products
 7 available in all stores to meet consumer demand and on
 8 sale at prices which reflect the standard price list
 9 differentials against competing lines".
 10 I'll put it to you that that language looks as
 11 though you are telling Asda, and Asda would read it as
 12 you telling them, that the shelf prices should reflect
 13 the standard price list differentials, that's to say
 14 they should be the same as the standard price list
 15 differentials against competing lines. Is that what you
 16 meant?
 17 **A.** That is not exactly what I meant. I was clarifying the
 18 trade development programme for a very specific purpose.
 19 Kevin Lang had just taken over from John Jolliff.
 20 John Jolliff had a very vast knowledge over the years
 21 from 1989. By 2002 he left this side of the business.
 22 Mr Lang had come along and asked me to try and explain
 23 in detail the trade development programme. But the
 24 trade development programme itself, if you read the
 25 detail, does say "no more expensive than" or "at least

1 as", et cetera. So that's the fundamental document that
 2 was agreed and signed by Asda. This was merely me
 3 trying to explain to him the purpose of it. I may have
 4 used poor language in expressing that.
 5 **Q.** As I understand it, you are saying that you are, as it
 6 were, instructing or informing a newcomer to the
 7 arrangement as to how it works, and you decide that the
 8 best way of informing him exactly how it works is to
 9 tell him that the purpose is that the brands should be
 10 on sale at prices which reflect the standard price list
 11 differentials against competing lines. You have decided
 12 to express yourself in that way?
 13 **A.** As I said previously, I may have used poor language,
 14 I should probably have said the price list differentials
 15 as per strategy pricing requirement. I think I did use
 16 poor language in expressing that. However, the document
 17 that was signed and agreed was the trading agreement.
 18 **Q.** If you go to page 2 of this letter, just below the first
 19 holepunch, you say this:
 20 "I also left with you full details of our strategic
 21 pricing requirements effective from 2 September.
 22 Philip Zentner will forward you an updated price file on
 23 27 August incorporating the changes effective from
 24 2 September."
 25 Isn't that an indication that would reinforce the

1 impression given to Asda by the use of the word
 2 "reflect", because what you are saying is that you have
 3 given Asda the latest strategic pricing requirements,
 4 and then you are going to incorporate them in the price
 5 file, but the price file, as we have seen, will have
 6 specific prices in it?
 7 **A.** The changes referred to effective from 2 September were
 8 the increases in the manufacturers' price increase on
 9 the prices that had applied in Asda previously, not
 10 necessarily the preceding paragraph.
 11 **Q.** Right. But the problem is this, Mr Hall: we don't seem
 12 to have any document either before the date of the
 13 June 2002 trading agreement or afterwards in which you
 14 actually tell Asda that the pricing is to be at
 15 a certain point or lower; you always use language
 16 indicative of a specific price point, a word like
 17 "parity" or a verb like "match", or in this letter
 18 "reflect", and you relate this all to the price files
 19 where there are specific prices.
 20 So how could Asda have known --
 21 **MR HOWARD:** Sorry, the factual premise of that question is
 22 wrong from the documents Mr Lasok has taken the witness
 23 to.
 24 **THE CHAIRMAN:** Yes, because here he does refer to the
 25 strategic pricing requirements, and as I understand it,

1 that is the "not more than" --
 2 **MR HOWARD:** That's 11 June, the agreement is 5 June, so to
 3 say there is no document subsequent.
 4 **MR LASOK:** I fully accept that we have the strategic pricing
 5 requirements documents that are communicated, but apart
 6 from that, every other communication.
 7 **THE CHAIRMAN:** Let's hear Mr Hall's answer to that question
 8 and then move on to a different topic.
 9 **A.** Can you give me the question so I understand it
 10 completely?
 11 **MR LASOK:** The question is this: although a document
 12 entitled "Strategic Pricing Requirement" has been given
 13 to Asda from time to time, which has "no more than",
 14 every other communication that takes place, including
 15 this letter in which you explain the purpose of the
 16 trading agreement, uses language, ordinary language,
 17 that indicates to Asda that they are to price at
 18 a particular point?
 19 **A.** The price file that was supplied under that paragraph
 20 "Philip Zentner will forward you an updated price file"
 21 incorporated the price changes in the manufacturers'
 22 price increase. So if a brand went up by 3p, we applied
 23 3p to the existing price that Asda were selling at,
 24 whether it was above or below the strategic pricing
 25 requirement. We took the price that was on sale the

1 week before, and we added whatever the price increase
 2 was. That was only then a unit retail price being put
 3 forward to Asda, it was up to Asda then to decide
 4 whether or not they applied that increase or a lesser
 5 one.
 6 **DR SCOTT:** Mr Hall, I think you explain this in the latter
 7 part of paragraph 98. Just turn to paragraph 98 in your
 8 witness statement for a moment. You are talking about
 9 actually a buyer such as Mr Jolliff, and in the second
 10 part, you say:
 11 "This was done on the assumption that the retailer
 12 would simply pass on to the customer any increase in its
 13 net cost price by increasing the shelf price for
 14 a relevant product by an equivalent amount. In my
 15 experience, this assumed that the retailer would not
 16 wish to fund a promotional shelf price for ITL's product
 17 by reducing its own margin as it was free to do."
 18 I think we understand that it was free to do so, but
 19 in your experience it would simply add on the additional
 20 money; is that right?
 21 **A.** In the majority of cases, although there is at least one
 22 instance that I recall where Asda didn't.
 23 **DR SCOTT:** Yes. Thank you.
 24 **MR LASOK:** I would like to move on to a different topic now.
 25 Could you go to tab 9 in annex 14. {D14/9/27}. This is

1 a letter dated 5 October 2000 from you to Mr Jolliff.
 2 **A.** Yes.
 3 **Q.** It may be that the better thing is for you to read the
 4 whole of that letter. I am only interested in three
 5 points in it, but you might want to read the whole of it
 6 to refresh your memory.
 7 (Pause)
 8 Now, the first line of that letter refers to
 9 a meeting on 3 October 2000, which of course is a long
 10 time ago, but you appear here to be writing this letter
 11 to confirm what was discussed at that meeting. Now, to
 12 the best of your recollection, is this letter accurate?
 13 **A.** Yes, but it was merely a confirmation of the discussion,
 14 it wasn't an agreement as I read it.
 15 **Q.** It's a confirmation of a discussion, that's what you say
 16 in the first sentence. Under the heading "Concept
 17 Tobacco Tubes and Machines" you refer to an agreement.
 18 Would you have written that if you hadn't reached
 19 an agreement with Mr Jolliff?
 20 **A.** All I am saying in that paragraph, yes, we have agreed
 21 something.
 22 **Q.** When you get to the heading "Embassy No 1 Kingsize", you
 23 refer to an agreement?
 24 **A.** Yes, because we wanted to reduce the price.
 25 **Q.** But you are reflecting something that was agreed?

1 A. Yes.
 2 Q. If we turn to the next page, under the heading "Lambert
 3 & Butler and JPS", you indicate ITL's intention to move
 4 Lambert & Butler and JPS brands up when Mayfair moves
 5 up, and that's a fair reflection of what you wanted to
 6 do?
 7 A. Yes, the company was looking to increase the price.
 8 Q. The interval in the prices between Mayfair and Lambert &
 9 Butler and JPS, would that reflect what ITL's preferred
 10 differential was between those brands at that time?
 11 A. It's not giving a date.
 12 Q. No, but to the best of your recollection, if you wrote
 13 this kind of thing, would you be writing by reference to
 14 ITL's preferred differential as it existed at the time
 15 of the date of the letter?
 16 A. If and when Gallaher moved the brand Mayfair, we would
 17 be looking to move our brands. Whether that be a week
 18 later or a month later, we weren't saying at that stage.
 19 Q. I think the question I am trying to put to you is
 20 whether the price position that you have hit upon for
 21 Lambert & Butler and JPS was something that you just
 22 plucked out of the air on a whim, or whether it
 23 reflected strategic placing of Lambert & Butler and JPS
 24 by reference to Mayfair, that ITL had at this time?
 25 A. Yes, it would.

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1 Q. Then under the heading "Richmond Pricing", you refer to
 2 something that took place after the meeting where you
 3 say that Mr Jolliff had advised you that Dorchester was
 4 going to move in price on 29 October. So far as you can
 5 recall, is that accurate?
 6 A. So far as I can recall, yes.
 7 Q. Then you refer to an agreement on a move in the price of
 8 Richmond. Would you have written that if you hadn't
 9 reached agreement with him?
 10 A. I believe we agreed that on the telephone after the
 11 meeting and before I wrote the letter.
 12 Q. Yes. Again, the price point here, that reflected ITL's
 13 pricing strategy as between Richmond and Dorchester at
 14 that time?
 15 A. Yes, it did.
 16 Q. I think that we can now move to tab 40. Can I move
 17 instead to 32, because it may be better to take this
 18 chronologically. {D14/32/79}. This appears to be
 19 an email from Mr James Ryan sent on 29 March 2001 to
 20 Mr Jolliff, copied in to you, but he appears to be
 21 sending on a message to Mr Jolliff from Martin Downham.
 22 You will see that the email from Downham to Jolliff
 23 confirms a recent conversation, and says:
 24 "On the basis that both Sterling and Dorchester will
 25 increase by 5p per 20s on 1 April 2001, I can confirm

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1 that Richmond prices will increase by the same amount on
 2 this date."
 3 Then there is a reference to a price file following
 4 in due course. Do you remember anything about this?
 5 You were merely copied in to this, but did Mr Downham
 6 speak to you about this?
 7 A. Forgive me, but I was once again in the Caribbean,
 8 because that's was my wife's birthday so he didn't
 9 phone --
 10 THE CHAIRMAN: You are making us all very jealous!
 11 MR LASOK: I think I am in the wrong business.
 12 A. To clarify, what Mr Downham is saying there to John is
 13 that if you go ahead with the price increase on
 14 Dorchester and Sterling, then the price will change, but
 15 he does then say "Please call if anything is likely to
 16 change", it's only an intimation at that stage of what
 17 we would like to do.
 18 Q. Because there had been an earlier communication
 19 involving you, which is at 14/28, if you go to 14/28.
 20 {D14/28/74}.
 21 THE CHAIRMAN: Tab 28 in that bundle.
 22 MR LASOK: I am sorry.
 23 A. Yes.
 24 Q. This is an email from you, sent on 13 March 2001 to
 25 Martin Downham, and you tell Mr Downham that you

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1 believed from a discrete source, not Asda, that certain
 2 changes including changes to the price of Sterling and
 3 Dorchester would take place, and the dates that you give
 4 for the Sterling and Dorchester changes are 26 March and
 5 19 March. You didn't know by how much, but you assumed
 6 it would be 5p. So it looks as though somebody other
 7 than Asda had spilt those particular beans, doesn't it?
 8 A. Yes.
 9 Q. Then when you get back to tab 32, it looks as though by
 10 the time of that email more certain information had been
 11 obtained by ITL, because we have got a firmer idea about
 12 the increase, but we also have a different date, which
 13 is 1 April 2001. Would you know where ITL had obtained
 14 that additional information from?
 15 A. No, I wouldn't, because from the document on tab 28, as
 16 I say, "good luck" at the bottom is because I was
 17 jetting off to the Caribbean, so I was away.
 18 Q. Could you turn to tab 40, please. {D14/40/93}. We have
 19 two emails here, the first or earliest one is the one
 20 that starts in the middle of the page. It's from you,
 21 it's sent on 1 October to Mr Jolliff about Richmond
 22 pricing. You start off by thanking him for a phone call
 23 that he had made to you on the Friday, confirming that
 24 Sterling was going to move on 29 October. Would you
 25 have written that if it wasn't correct?

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1 A. No, I wouldn't have written it if it wasn't correct.
 2 Q. We see that the response is, on your part in the email
 3 to Mr Jolliff, is to confirm a Richmond move on the same
 4 date and that would be followed up by the relevant price
 5 file. That move, was that also part of the ITL policy,
 6 so far as the differential between Sterling and Richmond
 7 is concerned?
 8 A. We would have been holding the price down following
 9 a price increase in order to compete against Sterling,
 10 and at the same time we had got price marked packs on
 11 the two multipacks, which were bigger sellers than 20s,
 12 so we were only moving the price of the 20s, we were
 13 actually holding the price even longer on the price
 14 marked packs, and I was giving notice also of the fact
 15 that there would be another price marked pack to follow
 16 it.
 17 Q. But the short answer is that you were moving the price
 18 of Richmond in order to maintain the Richmond 20s --
 19 A. Only on the 20s packs, not the 100s multipacks, which
 20 were bigger sellers.
 21 Q. Yes, but you were moving the price of the Richmond 20s
 22 so as to maintain ITL's differential between Richmond
 23 and Sterling?
 24 A. Yes.
 25 Q. I take it that the email at the top of the page

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1 reflected common practice that when these things
 2 happened, you would instruct the person within ITL who
 3 was responsible for preparing the Asda price file to
 4 amend the price file to incorporate the changes?
 5 A. That is correct.
 6 Q. That's correct. Let's go to tab 49. {D14/49/136}. You
 7 have here an email string with the earlier email at the
 8 bottom of the page. Could you just read that, please.
 9 The first email in time is from you, sent on
 10 28 February 2002 to Mr Batty.
 11 (Pause)
 12 Now, you also sent that email, I think, to all the
 13 NAMs?
 14 A. Ultimately on Roger Batty's instruction, yes.
 15 Q. Do you say that, "ultimately on his instructions",
 16 because in the first email, the recipients are said to
 17 be "Roger Batty: UK division NAMs"?
 18 A. I was only telling them what I had picked up as market
 19 intelligence, nothing more than that at that stage. And
 20 the second email was communicating what Roger had asked
 21 me to tell them.
 22 Q. Can I ask you about this source of the market
 23 intelligence? That was Mr Jolliff, who had called you
 24 that morning?
 25 A. Yes.

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1 Q. In your witness statement at paragraph 105, if you have
 2 that, you refer to this document. Do you have
 3 paragraph 105?
 4 A. Yes.
 5 Q. Could you just read the paragraph to yourself, please.
 6 (Pause)
 7 Q. I think that we now agree that 105 is a bit inaccurate,
 8 because it wasn't a case of you noticing an increase in
 9 price of the Gallaher brands in Asda stores, it's as you
 10 said in the email, that the source of this information
 11 was Mr Jolliff?
 12 A. You are correct, yes.
 13 Q. And furthermore, it wasn't that Gallaher had ended
 14 a promotion they were running, because the information
 15 that Mr Jolliff had given you was that the moves were
 16 going to take place from 3 March for Sterling and
 17 10 March for Dorchester; that's so, isn't it?
 18 A. Yes.
 19 Q. Then what happens is that you then speak to Mr Batty, it
 20 looks as though you spoke to him on the same day,
 21 because the second email is one that you send off on
 22 28 February 2002, and it's timed at 2.28 pm, your
 23 earlier email being timed at 12.23. This email goes
 24 around to all the NAMs, and it confirms the decision
 25 made by ITL to follow Gallaher's lead and to pursue the

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1 strategy that Richmond should be 5p above Sterling and
 2 at parity with Dorchester, and that's what happened,
 3 wasn't it?
 4 A. In that context, yes.
 5 Q. We were at paragraph 105 of your witness statement, and
 6 I just wonder whether we could look above that to
 7 paragraph 103, because there was something that I didn't
 8 understand, and I wondered whether you could help me
 9 with. Could you read 103 to yourself, please. It
 10 refers to a document in annex 14 at tab 30. So you
 11 might wish to refer back to that document to refresh
 12 your memory.
 13 (Pause)
 14 The query I have concerns what you say in
 15 paragraph 103. It's your explanation of what was going
 16 on in the document we have at tab 30. Because you say
 17 in the second sentence of paragraph 103 of your witness
 18 statement:
 19 "It was necessary for Mr Downham to seek the
 20 retailers' information in this regard so that both
 21 parties knew when the promotion would end and when net
 22 cost prices would increase to avoid the risk of
 23 confusion."
 24 There is then a passage that, in my copy, is square
 25 bracketed and marked "confidential". I don't know why

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1 it's confidential, but before I proceed further, could
 2 I just ask whether there is a claim that it should be
 3 retained as confidential?
 4 **MR HOWARD:** It's fine.
 5 **MR LASOK:** Thank you.
 6 Do you have this bit in square brackets?
 7 **A.** Yes.
 8 **Q.** I don't quite understand this. You say:
 9 "If Asda lost revenues from failing to increase
 10 shelf prices when cost prices increased, a multiple
 11 retailer as powerful as Asda would invariably seek
 12 compensation from ITL to reflect the lost margin."
 13 This is what I don't understand: on what basis would
 14 they do that?
 15 **A.** They would submit a claim for us to pay them a sum of
 16 money, which they did on occasions, when they got
 17 confused. If -- and we had one particular example where
 18 they put a complete claim in for a year of bonus on
 19 a product that we had already paid them by another
 20 means, so we had to be absolutely explicit on, if we are
 21 ending a promotion, that is the date that we stop paying
 22 the bonus. If you decide to carry it on, it is your
 23 choice, at that lower price, if you make a mistake, then
 24 it's cost you money. And we needed to be very clear.
 25 Now, they, in this instance, had increased

1 Amber Leaf -- I believe from the document I have -- on
 2 19 March, because this fax seems to have been dated
 3 20 March. And we were looking to then say "Right, we
 4 now have a situation where we are prepared to withdraw
 5 our bonus support, can we agree a date on which you are
 6 going to put the price of our brands up to these
 7 suggested prices", and we asked the question "Monday
 8 26 March?"
 9 **Q.** If you had actually said that in this document, I would
 10 have understood the explanation that you give in
 11 paragraph 103. But in fact what you say in this email
 12 is completely different, because you say:
 13 "Following yesterday's increase in the retail prices
 14 of Amber Leaf, I would like to increase the retail
 15 prices of ITL's roll-your-own range as follows ..."
 16 Then you say:
 17 "These prices will be achieved by withdrawing the
 18 bonus support."
 19 And you indicate that a price file will follow. So
 20 I would suggest to you that a person reading this would
 21 say "Ah, ITL wants to increase the retail price of its
 22 roll-your-own range, they are telling me, Asda, to carry
 23 out that increase. They are also telling me that they
 24 are going to achieve that increase in my retail prices
 25 by simply withdrawing a bonus. What I have got is

1 an indication from ITL that if I move to these prices,
 2 I won't be penalised by reference to the cost price,
 3 because I can go back to ITL and say 'well, I have moved
 4 my prices and therefore you must keep my margin'"?
 5 **A.** They would keep their margin anyway by moving their
 6 price up, and if I may, I did not write this document.
 7 **Q.** Right. But you are giving an explanation for it, and
 8 you have previously told us that Mr Downham was acting
 9 under your instructions and under your control?
 10 **A.** I agree with that, but you did say "I wrote". I did not
 11 write. I'm --
 12 **Q.** I apologise for that. I should have said "ITL says".
 13 **A.** We were looking to withdraw the bonus. We were looking
 14 to say after we had seen the Gallaher price move up that
 15 we were going to end a promotion where we had been
 16 funding a lower price, and we were looking to agree
 17 a date on which that could happen.
 18 **Q.** Perhaps I ought to revert to this again. Surely when
 19 you send a communication like this, Asda, the reader,
 20 the ordinary commonsense reader reading it would
 21 understand that if they didn't move the price upwards,
 22 then they would have to take a cut in their margins.
 23 They would just understand; it follows naturally from
 24 the communication you are making.
 25 So why would it be the case that if they made the

1 decision not to move the prices upwards, they would make
 2 a claim on you for money? "You" being ITL not you
 3 personally.
 4 **A.** Because they did not update their system accordingly,
 5 and bear in mind that when we sent them a price file,
 6 somebody at Asda head office in Leeds had to punch that
 7 into their system. If they failed to update that point,
 8 then they would submit a claim ongoing. We had a claim
 9 for a complete year's bonus on one product.
 10 **DR SCOTT:** So although they were free to do this, they
 11 expected you to finance it; yes?
 12 **A.** If they made a mistake like that, yes. They would try
 13 to come back to us.
 14 **THE CHAIRMAN:** But if it was their deliberate policy --
 15 **A.** Different matter.
 16 **THE CHAIRMAN:** -- then it would be a different matter.
 17 **MR LASOK:** Could you go back to your paragraph 103 and look
 18 at the sentence after the one I read, because you then
 19 say:
 20 "If ITL declined to pay such compensation, the
 21 retailer might well refuse to participate in future
 22 manufacturer led low price promotions."
 23 I don't understand that either. Maybe you can help
 24 me here. Why wouldn't the retailer participate in
 25 a manufacturer led low price promotion? Because if it

1 didn't participate, it risked being priced higher than
 2 its competitors in relation to the promoted brand, or,
 3 if it sought to reduce its prices, it would have to fund
 4 the promotion itself. So why would the retailer, if it
 5 didn't get compensation, refuse to participate in future
 6 manufacturer led low price promotions?
 7 **A.** If the promotion in question was on a much lower volume
 8 brand such as perhaps a new launch where the brand
 9 hasn't sold, then they would use their bargaining power
 10 against me from the outstanding, as they saw it, bill
 11 for the promotion that we hadn't paid for that they had
 12 undertaken of their own volition or mistake.
 13 **Q.** I am afraid I don't follow that.
 14 **A.** If we are launching a new brand and we want to instigate
 15 a very low price on that, the amount of money that they
 16 would lose or be likely to lose in sales would be
 17 minimal, whereas if they had made a mistake with
 18 a promotional bonus on a bigger brand, they have in
 19 their mind an outstanding debt that we have declined to
 20 pay because it was their mistake.
 21 **Q.** But I don't follow why, if they had made a mistake and
 22 suffered a loss as a result of their own fault, and ITL
 23 hadn't compensated them, the retailer would then go on
 24 and cut its nose off effectively to spite its face by
 25 either rendering itself uncompetitive because it's not

1 participating in an ITL financed promotion for
 2 a particular brand, or else seek to meet competition by
 3 funding the promotion itself when it could get the money
 4 from ITL; why would it do this?
 5 **A.** I have said previously they would do it at
 6 an opportunity when we were looking to launch a new
 7 brand of any sort, whether it be cigarettes, cigar,
 8 whatever, and look for their co-operation and they would
 9 remove that co-operation and not go with where we were
 10 wanting to go in a low price, because the amount they
 11 might lose would be minimal, because it's a product
 12 that's not yet gone on sale, or only just started.
 13 Whereas the amount of money they are trying to claim
 14 from us could be much larger.
 15 **Q.** I am going to move on now. Could you look at tab 58,
 16 please. {D14/58/160}. This is a sequence of emails
 17 dating to August 2002. The first one starts off below
 18 the second holepunch with a message from you, sent on
 19 29 August 2002, to Mr Lang of Asda. So what I would
 20 suggest is that you read that one first and then you
 21 read the subsequent emails. There are two subsequent
 22 emails. What you might want to do is to -- you comment
 23 on that email exchange at paragraphs 107 to 112 of your
 24 witness statement, and what you might want to do is,
 25 after reading the email exchange, read paragraphs 107 to

1 112 of your witness statement.
 2 (Pause)
 3 Have you read paragraphs 107 to 112?
 4 **A.** I have.
 5 **Q.** Right. If you look at paragraph 108 of your witness
 6 statement, you describe the position as follows: you say
 7 that in your first email that you have indicated what
 8 ITL's strategy is, and you describe it as a strategy
 9 that Drum would be no more expensive than Gallaher's
 10 competing brand, Amber Leaf. Then you say that:
 11 "Following Gallaher's initiative to reduce the RRP
 12 of the Amber Leaf brand some two months previously, ITL
 13 had also reduced the RRP for its Drum brand by 12p and
 14 23p."
 15 You talk about a reduction in cost prices, and in
 16 paragraph 109 you say that Mr Lang had indicated that he
 17 understood that both Gallaher and ITL had reduced their
 18 RRP's, and the problem arose over the low promotional
 19 shelf price.
 20 Can we just sort this out? You may not remember
 21 this, but so far as you recall, the Gallaher price move,
 22 was that the one in June 2002?
 23 **A.** Yes, it would have been, and that price move happened
 24 before Mr Lang took the chair. Mr Jolliff was in the
 25 chair then, and their prices were adjusted on the shelf

1 in line with the price changes instigated in the
 2 Gallaher price list, published price list that is.
 3 **Q.** If we go to tab 55, {D14/55/155}, we have an email from
 4 you, sent on 10 July 2002, to Mr Zentner. Just pausing
 5 there, Mr Zentner was I think one of the people involved
 6 in drawing up the Asda price file?
 7 **A.** That's correct, he was a trading assistant in the
 8 Bristol office.
 9 **Q.** The subject line says that this is Asda Drum pricing,
 10 and what you do is you ask Mr Zentner to prepare a new
 11 price file effective from 15 July so as to match the
 12 recent changes in Amber Leaf and Samson, and then there
 13 are various selling prices set out there, and the new
 14 bonus rate.
 15 So this was the ITL reaction to the Gallaher price
 16 change in June, wasn't it?
 17 **A.** I believe so, but there could have been a manufacturers'
 18 price increase which required those additional bonuses
 19 to be paid. I couldn't comment more than that at this
 20 stage.
 21 **Q.** I think it's common ground that there was a Gallaher MPI
 22 in June of 2002, but in that MPI there were various
 23 changes, one of which was a reduction in Drum and
 24 Samson, but there was no ITL MPI at that point in
 25 time -- I am sorry, I've confused everything.

1 Just to correct the position, the Gallaher MPI was
 2 in June 2002, there was no ITL MPI at that point in
 3 time; the Gallaher MPI in relation to Amber Leaf and
 4 Samson involved a reduction in Amber Leaf and Samson, it
 5 wasn't an increase, but the response that we see here in
 6 the email of 10 July 2002 is not in the context of
 7 an ITL MPI because no ITL MPI took place at that time?
 8 **A.** If that is the case, so be it. I can't remember exactly
 9 when the ITL price increase took place.
 10 **MR LASOK:** The Tribunal and the appellants will know this
 11 from the file that sets out the MPI list.
 12 **THE CHAIRMAN:** So is the effect of what you are saying that
 13 in fact, at tab 55, those were in effect reductions in
 14 the Drum price?
 15 **MR LASOK:** Yes.
 16 **THE CHAIRMAN:** Because the Gallaher MPI had in fact been
 17 an MPD as far as Amber Leaf and Samson were concerned?
 18 **MR LASOK:** Yes. So it was a move down to match.
 19 If we go back to --
 20 **DR SCOTT:** Well, it's just these figures don't match what's
 21 on the table here.
 22 **MR LASOK:** I think we may be coming to that.
 23 **DR SCOTT:** Right.
 24 **MR LASOK:** If you go back to tab 58, and we look at your
 25 first email, {D14/58/160}, it seems to have started off

1 with Mr Lang leaving you a message on your mobile.
 2 Presumably that would have been earlier on 29 August, or
 3 you wouldn't remember, I would suppose?
 4 **A.** Not exactly, no.
 5 **Q.** But it would have been about then?
 6 **A.** Yes.
 7 **Q.** So he leaves you a message on your mobile, and you now
 8 send him an email giving answers to his queries, and you
 9 start off, as you say in your witness statement, by
 10 pointing out that the strategic pricing requirement was
 11 unchanged and it was matching.
 12 Then you say, in the paragraph beginning "Secondly",
 13 you say:
 14 "Following Gallaher's initiative in reducing the
 15 recommended selling prices for Amber Leaf and Samson two
 16 months ago, we have reluctantly reduced the recommended
 17 selling prices for Drum."
 18 Now, you are not talking here about the recommended
 19 retail price, but the selling price?
 20 **A.** The reference there is to the recommended retail price
 21 in the published price list.
 22 **Q.** Well, are you sure about that? Because if you go back
 23 to Mr Lang's reply, which is in the middle of the
 24 previous page, and that's later in the day on 29 August,
 25 he says:

1 "That's fine, but if Imperial wish to compete with
 2 Gallaher's on the Asda pitch and set appropriate
 3 retails ..."
 4 Doesn't that indicate that he is talking about the
 5 retail prices, shelf prices?
 6 **A.** That is him attempting to get us to pay an enhanced
 7 bonus. Both Gallaher and ITL had reduced their
 8 recommended retail prices for these products by those
 9 amounts, two months apart, June and August. In doing
 10 so, both companies had reduced their percentage margins
 11 because their own margin had reduced as well. So there
 12 was less after tax to share between the manufacturer and
 13 the retailer and it became a lower margin brand to any
 14 retailer.
 15 Does that make sense so far?
 16 **THE CHAIRMAN:** Yes, but isn't what's happening here that you
 17 are trying to reduce the recommended selling price or
 18 retail price without you changing your net wholesale
 19 price? Mr Lang is saying "what's happening here?" And
 20 you are saying "Well" --
 21 **A.** We had reduced the percentage margin to any retailer, be
 22 it an independent or to the multiples, in order to
 23 achieve a lower priced product. It wasn't at the same
 24 price level, if you can follow me, in the marketplace,
 25 and as such became a lower margin brand overall, as had

1 previously Amber Leaf. But at that time Kevin Lang
 2 wasn't accepting anything because he wasn't in the
 3 chair. John Jolliff had accepted the Gallaher price
 4 reduction two months earlier. Kevin Lang came in later,
 5 and was then flexing his muscles, trying to achieve the
 6 same margin as he had been on a higher priced product
 7 that had become a lower priced product. And we were
 8 attempting -- I say "we", I was attempting to get that
 9 lower margin into place with Asda. And this was
 10 an instance of them flexing their muscles for more
 11 money.
 12 **MR LASOK:** My question was actually directed at something
 13 much simpler than that, and it's what Mr Lang was
 14 talking about. I put it to you that when he was using
 15 the word "retails", he is referring to shelf prices, he
 16 is not referring to the RRP's?
 17 **A.** He may have been, but in my reference there, "reduce the
 18 recommended selling prices", that was the reduction in
 19 the published price list that I was referring to.
 20 **Q.** But forgive me, there hadn't been a change, so far as we
 21 are aware, in the ITL RRP for these products at this
 22 stage?
 23 **A.** At 29 August there had been, that's why it had become
 24 a lower priced brand. Very definitely.
 25 **Q.** Well, it wasn't in effect at this point. What's more to

1 the point is that what we are talking about here is what
 2 had happened after the document at tab 55?
 3 **A.** Do we have anywhere in the room, please, a price list
 4 referring to August 2002? Because I am confident from
 5 the way I've written that, that the company had reduced
 6 the recommended selling price for Drum.
 7 **Q.** Well, we are talking about the period from the
 8 alteration as from 15 July, which is what Mr Lang is
 9 complaining about. What I would like to do is to,
 10 before we break for lunch, because over the lunch break
 11 maybe we could see if there is an answer to your
 12 question, but I am slightly puzzled about your email,
 13 sent again on 29 August 2002 at 4.26 pm to Mr Batty.
 14 Because --
 15 **MR HOWARD:** Can I just make it clear, because I am not quite
 16 sure why Mr Lasok is saying the witness is wrong. We
 17 have the document which has it in, and the increase of
 18 course is 2 September 2002, which actually I think
 19 precisely reflects what you see here. Sorry, the
 20 decrease, the reductions in the MPI. In other words,
 21 that was to come in effect on 2 September, but it would
 22 have been in the market of course about three weeks
 23 before. So the figures that are in the email reflect
 24 the figures that are in the document that we have, which
 25 tells you what was in the MPI. So --

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1 **THE CHAIRMAN:** Perhaps just make your point as to the email
 2 to Mr Hall, and then you can re-think this over lunch.
 3 **MR LASOK:** If you look at your email sent at 4.26 on
 4 29 August, you say that the new man at Asda is currently
 5 refusing to accept the margin reduction on Drum, and you
 6 say that it looks likely that you will have to put some
 7 bonuses back in place. But you see you say "to
 8 maintain" and then you give various prices "to match
 9 Amber Leaf prices." Then you go on to say "or move
 10 selling prices up slightly to restore the margin."
 11 These are selling prices, aren't they?
 12 **A.** They are the prices which Asda would be looking to sell
 13 at. If I had not thrown some more money at the price,
 14 then I would have had to suffer the consequences of Asda
 15 going up to maybe 2.04, 4.02 and disadvantaging my brand
 16 against them, and I was simply saying to my boss at that
 17 stage, "It looks as though there is a possibility that
 18 I may have to give them more money, or if I don't give
 19 them more money then we may be disadvantaged on my
 20 price". And I was really seeking at that stage
 21 an answer from Roger as to where to go.
 22 **Q.** But for the sake of clarity, the entire sequence is
 23 a discussion about selling prices, isn't it?
 24 **A.** The original statement was "we are going to reduce the
 25 recommended selling price", and that's the published

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1 price list, which we have already established does
 2 exist.
 3 **THE CHAIRMAN:** But the exchange seems to assume you are
 4 going to reduce the published price list, and by doing
 5 that, you are, before this exchange took place,
 6 expecting that Asda would then bring down their price,
 7 or you were hoping they would bring down their price.
 8 Mr Lang is then saying "Wait a minute, if we do that,
 9 then our margin gets squeezed"?
 10 **A.** Correct.
 11 **THE CHAIRMAN:** You are then saying "Well, you are trying to
 12 convince him, yes, your margin will be squeezed because
 13 now Drum is a cheaper product than it was previously",
 14 and on cheaper products you get slightly less margin, so
 15 that's just the way the market is moving, or it has
 16 moved.
 17 **A.** That's right.
 18 **THE CHAIRMAN:** And he is saying, "Well, that's fine", but
 19 actually if you want us to reduce the price to match
 20 Amber Leaf, then you are going to have to pay for it",
 21 and then you are asking Mr Batty, "Have you got
 22 authorisation to pay for it?"
 23 **A.** That's correct.
 24 **THE CHAIRMAN:** But I think the point is that although, in
 25 your email, you are talking about a reduction in the

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1 published price list, what you are actually trying to
 2 influence by bonusing or by your powers of persuasion is
 3 the price at which Asda sell Drum on their shelves?
 4 **A.** That's correct.
 5 **MR LASOK:** I think that's a convenient point at which to
 6 break for lunch.
 7 **THE CHAIRMAN:** Yes. We will come back at, let's say at ten
 8 past 2. There are some things I need to discuss with
 9 the barristers about how the afternoon is going to pan
 10 out, Mr Hall, so if you would like to go out, and again
 11 you mustn't speak to anyone about your evidence over the
 12 lunch break, and we will see you back here at
 13 ten past 2.
 14 **A.** Thank you very much.
 15 (In the absence of the witness)
 16 **THE CHAIRMAN:** I want to divide up the time that we have
 17 with Mr Hall this afternoon so that we know how long
 18 everybody has. So if we come back at ten past 2,
 19 assuming that we stop at 4.30, that gives us two hours
 20 and 20 minutes. How much longer are you going to be,
 21 Mr Lasok, do you think?
 22 **MR LASOK:** Probably 40 minutes.
 23 **THE CHAIRMAN:** So if we give you from 2.10 until 2.50;
 24 Mr Howard, how long?
 25 **MR HOWARD:** I think Mr Flynn comes next.

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1 **THE CHAIRMAN:** Yes, sorry. Mr Flynn, how long?
 2 **MR FLYNN:** Without co-ordinating with Mr Howard, I would
 3 have thought between 3 and 4.30 would give us all the
 4 time we would need. Maybe I should discuss that with
 5 him over lunch and give you a nod as to whether that
 6 would be problematic. I am not intending to be hugely
 7 long with the witness.
 8 **THE CHAIRMAN:** Yes. But I do not want to keep Mr Hall
 9 longer, because it's obviously tiring.
 10 **MR HOWARD:** At the moment I don't anticipate being very long
 11 at all in re-examination. So if Mr Lasok adheres to his
 12 estimate of ten to 3, and we have a ten minute break at
 13 some point, I would anticipate -- having just heard what
 14 Mr Flynn said -- that we would finish comfortably before
 15 4.30. Obviously there may be questions from
 16 the Tribunal. But I would be very surprised if we were
 17 not able to finish by 4 at the very outside.
 18 **THE CHAIRMAN:** Let's assume that you will stop or be
 19 stopped, Mr Lasok, at ten to 3, and we will have a short
 20 break then, and then you will be able to complete your
 21 questions.
 22 **MR HOWARD:** You never know, we may even get an early release
 23 on a Friday afternoon.
 24 **THE CHAIRMAN:** Oh, don't even say that, Mr Howard, you will
 25 bring down the evil eye on us all!

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1 **MR HOWARD:** It is an added incentive on all of us; a bonus,
 2 even!
 3 **THE CHAIRMAN:** We will come back at ten past 2. Thank you.
 4 (1.10 pm)
 5 (The short adjournment)
 6 (2.10 pm)
 7 **MR LASOK:** Mr Hall, we have seen documents in which Asda has
 8 assisted ITL by giving ITL advance notice of a Gallaher
 9 price change, and we saw those before lunch. Do you
 10 remember that?
 11 **A.** Yes.
 12 **Q.** When ITL heard of a Gallaher price, it would send the
 13 information internally to the person responsible within
 14 ITL for putting together the Asda price file, so as to
 15 amend the price file accordingly. Is that not so?
 16 **A.** If we were making an amendment at that time, yes.
 17 **Q.** For example, if you go to -- if you have annex 14 --
 18 tab 60, that's an example, isn't it, of you passing on
 19 information about Gallaher, this is a Gallaher price
 20 increase, to Mr Zentner, who did the Asda price files,
 21 for him to alter the pricing on the price files?
 22 **A.** No. That's a copy of an email from me to Roger Batty
 23 simply stating that those prices that were shown the day
 24 before I sent the email had changed. I hadn't given any
 25 instruction to anybody to do anything at that stage --

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1 **Q.** I probably ought to apologise, because you are right, it
 2 is sent to Roger Batty, copied to Eddie Oram, and the
 3 subject heading is "Asda Pricing" and it is actually
 4 Eddie Oram who forwards it to Mr Zentner, who was in
 5 charge of the price files?
 6 **A.** But Mr Zentner would not take any action based on that
 7 document.
 8 **Q.** Why not?
 9 **A.** Because there is no instruction to him to do so.
 10 **Q.** Well, why was he given that information?
 11 **A.** For his knowledge.
 12 **Q.** For his knowledge, he was just sort of generally
 13 interested?
 14 **A.** He was always interested in what was happening in our
 15 accounts. I've given no instruction to anybody, I've
 16 simply reported what I've seen in an Asda store the day
 17 before. There is no instruction in that at all.
 18 **Q.** Not in that document but I think you have accepted that
 19 when ITL did learn of Gallaher price increases, the
 20 information would be passed on so that the price file
 21 could be altered?
 22 **A.** No, because we would be not making any changes to our
 23 prices at that moment in time. He would need a date in
 24 which to make it become effective.
 25 **THE CHAIRMAN:** Could you just clarify what is the price

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1 alteration that you are saying would be made?
 2 **MR LASOK:** An example of it is in 14/2.
 3 **MR HOWARD:** Tab 2?
 4 **MR LASOK:** Sorry, yes, tab 2. {D14/2/6}.
 5 **THE CHAIRMAN:** I see.
 6 (Pause)
 7 **A.** Even at that point we don't have a date on which we are
 8 going to do anything. This is simply me saying to the
 9 John Jolliff, "We would like to reduce the following
 10 prices". He could not take any action until we had
 11 a date to put into the price files for it to become
 12 effective.
 13 **MR LASOK:** Yes, because what would happen is -- and we have
 14 seen a number of these documents already such as one in
 15 which you asked for implementation before the price file
 16 could be drawn up, you would send a letter to Mr Jolliff
 17 asking him to move the Asda price in accordance with the
 18 strategic pricing requirements and you would follow it
 19 up with an amended price file; isn't that what happened?
 20 **A.** Only when we knew a date on which he was going to do it.
 21 The document which you first referred to, tab 60, was me
 22 merely reporting what I had seen in the store. There
 23 would be no action taken on that until I gave
 24 an instruction to do so.
 25 **Q.** But you would give an instruction?

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1 A. Only when I knew when I was going to change the price.
 2 So we might have held the prices of our brands for five
 3 more weeks.
 4 Q. So the position was that when you knew the details of
 5 the Gallaher price move, you would have a corresponding
 6 change made to the Asda price file?
 7 A. Not necessarily. We may hold our price for another five
 8 weeks.
 9 Q. Right. So it would just depend on what your strategic
 10 planning was at that stage?
 11 A. Yes.
 12 Q. Right. When ITL increased its prices, ITL would amend
 13 the Asda price file in the expectation that Asda would
 14 carry out the price increase; isn't that so?
 15 A. We knew that they would have to change their prices
 16 because of the low margins they were on, we put forward
 17 the prices that we could see plus the price increase
 18 that we were making, and it was then up to Asda to say
 19 yes, they were doing it or they weren't.
 20 Q. The expectation that you had derived from Asda's
 21 reactions to the communications that you had with Asda
 22 because we have seen plenty of these communications in
 23 which you ask Asda to make a price movement, and Asda
 24 made those movements, didn't it?
 25 A. In the majority of cases, yes, but not all cases.

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1 Q. And you also had an expectation derived from the 2002
 2 trading agreement in which Asda had signed up to the --
 3 expressly signed up -- ITL's strategic pricing
 4 requirements?
 5 A. As maximum prices, yes.
 6 Q. I think we have already debated the question of maximum
 7 prices. You also had an expectation derived from the
 8 fact that your price tracker reports gave you
 9 information that Asda generally kept to ITL's strategic
 10 pricing requirements; isn't that so?
 11 A. Not in all cases. There was one case when we had
 12 a long-term battle over a cigar price where we had
 13 funded a price reduction for nearly seven months, and
 14 they hadn't implemented it.
 15 Q. Now, ITL would also ask Asda for confirmation that Asda
 16 would increase the price of Gallaher brands, wouldn't
 17 it?
 18 A. We didn't ask them to increase Gallaher brands, no.
 19 Q. Well, 14, tab 21, {D14/21/47}, this is a letter from you
 20 to Mr Jolliff on 15 January 2001. This is actually
 21 before the signing of the 2002 trading agreement. If
 22 you would go to the last paragraph, this is the one on
 23 the second page. (Pause).
 24 A. There was no expectation on me requesting them to
 25 increase Gallaher's price, I am simply trying to

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1 establish when they are going to increase Gallaher's and
 2 indeed Rothmans' prices.
 3 Q. Yes, and it's when, isn't it?
 4 A. If and when.
 5 Q. My question was actually that, for confirmation, ITL
 6 would ask Asda to confirm that it would increase the
 7 price of Gallaher brands, and this is in fact exactly
 8 what you are doing here, isn't it?
 9 A. I am sorry, I believe your first question was that
 10 I asked Gallaher -- sorry, Asda to increase Gallaher
 11 prices. I am simply asking here when they are going to
 12 increase Gallaher's prices.
 13 Q. Also there was an expectation that Gallaher would
 14 increase its prices?
 15 A. Because they had published a price list.
 16 Q. What about 14/62? {D14/62/167}. You say here, just
 17 below the middle part of the page:
 18 "We are anticipating that Gallaher will follow our
 19 lead by moving Dorchester Kingsize and Dorchester
 20 Superkings up in the not too distant future."
 21 A. That's exactly what we were expecting, but we didn't
 22 know when they would do it or if they would do it. We
 23 are simply stating "we are anticipating that they will
 24 be moving".
 25 Q. When Gallaher prices were going up, ITL would follow the

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1 rise in order to maintain the ITL strategic parities and
 2 differentials?
 3 A. Not necessarily. We may hold the price for two, three,
 4 four weeks.
 5 Q. So it's just a question of timing?
 6 A. Yes, but then anybody can change their prices whenever
 7 they want, and if Asda chose to carry on the price, they
 8 could do so.
 9 Q. I am actually focusing on ITL. ITL would seek to get
 10 Asda to increase the shelf prices in order to maintain
 11 the parities and differentials when there was a Gallaher
 12 rise?
 13 A. Not necessarily. We did not encourage them to change
 14 Gallaher prices in any way.
 15 Q. Well, could we look at tab 28, please. Tab 28 is
 16 an internal email from yourself to Martin Downham, and
 17 it deals with two things. {D14/28/74}. The first is
 18 headed "Amber Leaf" and the second is headed "Sterling
 19 and Dorchester". The Amber Leaf issue involved a move
 20 to Drum, and if we look at tab 30, {D14/30/76}, we see
 21 that the price of Amber Leaf does increase, and then you
 22 indicate to Mr Jolliff of Asda that you want to increase
 23 the price of Drum. There is also an increase to
 24 Golden Virginia, again to suit. We get, in tab 31,
 25 Mr Jolliff's response. {D14/31/77}. Because if you look

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1 at tab 31, the email at the bottom of the page is the
 2 one at tab 30. Mr Jolliff's response is actually to
 3 Mr Downham, it's that the change will be okay.
 4 **A.** On 26 March.
 5 **Q.** On 20 March, yes.
 6 **A.** On 26 March he is changing the system price.
 7 **Q.** Well, I am looking at -- we may be talking at
 8 cross-purposes. I see that Helen Wood sent an email on
 9 20 March to Mr Jolliff saying:
 10 "Retailers on system to change in store Monday
 11 26 March."
 12 **A.** That's correct, a week after the Gallaher prices had
 13 changed, and the reason we were changing was because we
 14 had been funding a consumer promotion. We had then
 15 decided that we no longer needed to do that to defend
 16 our position, and we were drawing our bonus, and we were
 17 agreeing a date in that first email with John Jolliff.
 18 **Q.** Yes, and you are shadowing the rise in order to maintain
 19 parities and differentials?
 20 **A.** Not necessarily, we had been defending our position in
 21 the marketplace.
 22 **Q.** Right. If you go back to tab 28 and look at the
 23 Sterling/Dorchester position, and if we follow that one,
 24 we move from tab 28 to tab 32, which we saw before
 25 lunch, tab 32 is where we get the firming up on the

1 amount by which Sterling and Dorchester were going to
 2 increase, and we also have the date. This is
 3 a communication to Asda confirming conversations with
 4 Asda about the price change. If we look at 14/33, the
 5 next tab, this is a continuation of the story, because
 6 here it's 2 April, {D14/33/80}, this is an email from
 7 you to Mr Carroll, and the change in pricing has taken
 8 place, and we actually see you saying to Mr Carroll:
 9 "Richmond KS and Lights have moved to 3.39 from
 10 1 April, along with Dorchester, and Sterling have moved
 11 to 3.34."
 12 You ask him to compile a new price file effective
 13 from 1 April confirming the new selling prices.
 14 The next stage is, if you go to tab 40, {D14/40/93},
 15 we had a look at the first email this morning, and this
 16 is the Sterling move in October, and you had
 17 a discussion with Mr Jolliff, and you record that you
 18 are confirming that Richmond will move to 3.44, that's
 19 Richmond Kingsize, and Richmond Superkings to 3.45 from
 20 the same date as the Sterling move, and you tell
 21 Mr Jolliff that Mr Carroll is going to forward to him
 22 the relevant price file shortly, and the email at the
 23 top of the page is the email that you send to Mr Carroll
 24 to prepare the price file accordingly.
 25 **A.** That is correct, but it is only the 20s packings of

1 those two brands that are changing, not the multipacks,
 2 which were much bigger sellers.
 3 **Q.** Then when you get to tab 49, {D14/49/136}, you have the
 4 next stage of the story. Again we have seen this email
 5 exchange this morning, but for a different purpose.
 6 Here we have ITL being advised of the new Sterling and
 7 Dorchester prices, and then there is an internal
 8 discussion within ITL, as a result of which the ITL
 9 policy regarding the shelf prices is confirmed.
 10 So, again, we have a situation, don't we, where if
 11 the Gallaher prices are going up, ITL moves in
 12 accordance to maintain the parities and differentials?
 13 **A.** We have merely moved our prices to compete with a brand
 14 that was a much bigger seller. We had recently
 15 introduced Richmond and we were trying to gain market
 16 share, by reducing the price to the consumer where
 17 necessary.
 18 **Q.** It's not a reduction, increases, and you are just
 19 following Gallaher at every step, and more to the point,
 20 you are getting Asda to change its shelf prices?
 21 **A.** We were only suggesting prices to Asda, we never set
 22 Asda's prices.
 23 **Q.** I think the Tribunal will have to read the documents for
 24 itself and come to a conclusion on that point.
 25 If ITL did not want to follow Gallaher up, ITL

1 considered that it had to change the strategic pricing
 2 requirements in order to prevent Asda from moving the
 3 price of the ITL brand in line with the Gallaher
 4 increase; is that not so? Did I rush that question?
 5 **A.** I think what you are saying, if I can paraphrase it,
 6 Gallaher went up on 1 October and we didn't go up until
 7 1 November. We didn't want to see our brand suddenly
 8 leaping up by the same amount as Gallaher.
 9 **Q.** So what you would do is you would countermand the price
 10 rise that would follow from the strategic pricing
 11 requirements by saying to Asda, "Here are some new
 12 pricing requirements, you don't make a change"?
 13 **MR HOWARD:** I think if Mr Lasok is going to put that, he
 14 needs to establish first and put as a question whether
 15 there was a requirement that where Gallaher's price had
 16 gone up that the retailer, here Asda, were to put up the
 17 price of Imperial's. This is a classic example of
 18 Mr Lasok not putting his case properly, trying to put
 19 questions -- now I am actually concerned that this -- we
 20 got a very incoherent explanation yesterday of what the
 21 case is --
 22 **THE CHAIRMAN:** I understand your point and I agree with it,
 23 Mr Howard. I think that as a preliminary to that
 24 question you do need to put to the witness the
 25 assumption that is underlying that question, to see what

1 he says about that.

2 **MR LASOK:** Well, Asda was conforming to ITL's strategic

3 pricing requirements, wasn't it?

4 **A.** As maximum prices, yes.

5 **Q.** And the object of those pricing requirements was to

6 ensure that the ITL brand was not disadvantaged by

7 comparison with the Gallaher brand?

8 **A.** It reflected the price list differentials in terms of

9 the published price lists effective at that point in

10 time. When a new price list was published by one of our

11 competitors, obviously the differential in prices

12 changed, and all we did was set out what those

13 differentials were and how they applied to the strategic

14 pricing.

15 **Q.** So if Gallaher put up the RRP's for, let's say,

16 Dorchester and the arrangement with Asda was that

17 Richmond was to be priced at parity with Dorchester,

18 then the consequence would be or the expectation would

19 be that Asda would put up the price of Richmond?

20 **A.** Not until such time as we had a price increase, which we

21 were actually trying to ensure that the consumer

22 benefitted from the fact that we had held our prices for

23 another month.

24 **Q.** Well, could you look at tab 54, please, and explain to

25 us why that letter was sent? {D14/54/152}.

1 (Pause)

2 **A.** I think effectively it's exactly what I said before,

3 that we were trying to ensure that the consumer

4 benefitted from the fact that we were holding our prices

5 until further notice at that point in time. We had not

6 announced a price increase, Gallaher had.

7 **Q.** You see, what I am putting to you is what I think you

8 have effectively said in your witness statement at

9 paragraph 45. Could you have a look at that, please.

10 It's tab 41 of the file that you are looking at. It

11 should be page 508, if you are looking at the pagination

12 in the bottom right and left-hand corner.

13 **A.** Got it. (Pause).

14 **Q.** You see, the point I am putting to you is this: in

15 paragraph 45 you say -- I should say that you suggest in

16 the first sentence that when a competing manufacturer

17 had a price increase, the retailer had a reason to

18 increase the price of the ITL product, and I am putting

19 to you that the reason arises under the strategic

20 pricing requirements that ITL had, and it's for that

21 reason that a letter such as the one we find here at

22 tab 54 would be written, because the way you cause the

23 retailer not to increase the price of the ITL brand is

24 by notifying to the retailer a countermanding

25 instruction which takes the form of an alteration of the

1 strategic pricing requirements?

2 **A.** The only reason the strategic pricing requirement

3 changed was because we were holding our price down.

4 There was no reason for the consumer to suffer a price

5 increase.

6 **THE CHAIRMAN:** Well, that's not quite an answer to

7 Mr Lasok's question. What he is saying is: because of

8 the strategic pricing differentials that Asda had signed

9 up to, he is asking if it's the case, as the OFT

10 maintain, that the effect of that is that if the

11 Gallaher prices increased then the ITL corresponding

12 price would also increase, but this letter was in order

13 to stop that from happening because in the absence of

14 this letter, the strategic pricing differentials would

15 have caused Asda to increase the ITL product once the

16 Gallaher product rose.

17 **DR SCOTT:** In other words, if they were to do so, if they

18 both went up, Asda would get an increased margin and

19 would not be penalised by losing any bonuses, because

20 they could refer to the agreement and say "All we have

21 done is follow the strategic pricing requirement that

22 you sent us".

23 **MR HOWARD:** With respect, the way Dr Scott has just

24 summarised it is not actually -- in fact, that's what

25 the witness is saying, that they might take

1 an opportunity and not be penalised, but the OFT's case

2 is not somebody could take an opportunity and not be

3 penalised, the OFT's case is that the strategic pricing

4 differentials gave rise to a requirement which Imperial

5 had that the retailer was required to observe, that

6 because Gallaher's price had gone up, the Imperial price

7 must be put up. I do respectfully suggest that if that

8 is Mr Lasok's case -- sometimes he says it is, sometimes

9 he says it isn't; he appears now to be saying it is --

10 he must put that in terms where the witness and

11 everybody can understand it. I think I have just

12 articulated clearly what he appears to be saying, and so

13 probably the witness can now say whether that is what he

14 understood was the requirement that ITL had of the

15 retailer.

16 **A.** Our strategic pricing requirement was clearly defined in

17 the very beginning as the differential between the price

18 list effective at that time. Because we had not

19 increased our published price list, the differentials

20 definitely changed. Therefore it was necessary to show

21 to the retailer that those differentials had changed as

22 a result of somebody else, Gallaher or Rothman, changing

23 their prices.

24 **MR LASOK:** Well, with respect, Mr Hall, the strategic

25 pricing requirements communicated to the retailer were

1 in the form either of a document like the one that you
 2 have on page 2 of tab 54; right? Tab 54, the one we
 3 were looking at.
 4 **A.** Yes.
 5 **Q.** Page 2.
 6 **A.** Yes.
 7 **Q.** So they were either in that form, or they took the form
 8 of a communication from ITL to Asda in which you said
 9 things such as "move the price to maintain parity" or
 10 whatever else.
 11 Now, because the pricing requirements were expressed
 12 in ways like that, it wasn't the case that when there
 13 was a change in the recommended retail price by, let's
 14 say, Gallaher, so as to cause their parity to change
 15 into a differential, that the retailer with whom you had
 16 the arrangement was required to follow the published
 17 RRP, because the arrangement was that the retailer would
 18 follow the strategic pricing requirements that it had
 19 been told by ITL.
 20 Do you follow me?
 21 **A.** First of all, we did not tell them to do that, we asked
 22 them to do that, and asked them in terms of a maximum
 23 price. In terms of when the differential changed, we
 24 always made it clear that the differentials had changed
 25 because the published price list differentials had

1 changed. And that was the basis of the strategic
 2 pricing at any point in time over the period. It was
 3 always the differentials in place in terms of the
 4 published price lists effective at that point in time.
 5 **Q.** I am sorry, if that's right, I simply don't understand
 6 why the letter at tab 54 was written?
 7 **A.** Because Gallaher had put their price up and we needed to
 8 show them exactly what the new differentials were during
 9 that period before we put our new price list out.
 10 **Q.** Quite so, you had to alter the differentials that you
 11 had agreed with the retailer in order to maintain the
 12 status quo, because otherwise the retailer would have
 13 gone along with the old strategic pricing requirements
 14 and, as a result of the increase in the RRP of
 15 Dorchester, the retailer would have increase the price
 16 of Richmond?
 17 **A.** Not so. The retailer was looking to get the lowest
 18 possible prices on his shelf, and therefore all we were
 19 doing was saying to the retailer "we, Imperial Tobacco,
 20 have not put up our prices. Please hold our prices
 21 until we do so", and we were defining that in language
 22 that the retailer understood.
 23 **Q.** But why, then, did you communicate to the retailer in
 24 the form that we have here? You could simply have said
 25 to the retailer "please don't increase the price of

1 Richmond". Why did you say to the retailer that -- and
 2 I am reading from your letter at tab 54, you say:
 3 "The forthcoming price increase on Gallaher products
 4 will change the relative price positions for our brands
 5 versus those of Gallaher. I am therefore taking the
 6 opportunity of enclosing a revised summary of our
 7 strategic pricing requirements from the date on which
 8 you implement the Gallaher increases."
 9 **A.** Quite correct. Nothing more than "hold our prices and
 10 here are the differentials".
 11 **Q.** I think the Tribunal will just have to take a view on
 12 that evidence.
 13 Finally, I think, it is the case, isn't it, that if
 14 Asda moved prices out of line with the strategic pricing
 15 requirements in order to respond to another retailer,
 16 ITL would take action to get prices back into line with
 17 its strategic pricing requirements; is that not so?
 18 **A.** I don't believe so, I can't recall an occasion.
 19 **Q.** Can we have a look at tab 52. This is an email from you
 20 to the UK division NAMs, sent on 23 May 2002. (Pause).
 21 Doesn't that email set out exactly what I have put to
 22 you?
 23 **A.** It indicates that Asda moved Raffles up from £4.10 to
 24 £4.11. I believe that was because two of their
 25 competitors had done so, and if they had applied the

1 price increase, the consumer would have benefitted at
 2 4.10, not 4.11, and we were drawing that to Asda's
 3 attention that they had moved up an extra penny, and
 4 there was a potential there for discussion about what
 5 bonuses should be paid because they had increased their
 6 margin. We were looking for the consumer to benefit of
 7 the lower price.
 8 **Q.** Is that what you say in the last paragraph of that
 9 email?
 10 **A.** I am endeavouring to persuade Asda to come back to
 11 £4.10.
 12 **Q.** Yes, and you say:
 13 "To meet our strategic pricing requirements."
 14 **A.** Yes, because the maximum price that we had been looking
 15 for was £4.10, and they had gone to £4.11. That must
 16 surely be to the benefit of the consumer.
 17 **THE CHAIRMAN:** But what was the preferred relationship
 18 between Raffles and Berkeley?
 19 **A.** To be the same price as Berkeley and Superkings.
 20 **MR LASOK:** Yes, that's correct. The Tribunal may get it
 21 from tab 44. Or at least that's the -- tab 44 is a bit
 22 earlier in time, because it's the strategy pricing
 23 requirements attached to the memorandum dated
 24 10 December 2001, and what we are looking at is dated
 25 24 May 2002. But certainly back in December 2001 the

1 position was that Raffles was at parity with Berkeley,
 2 which is the Gallaher brand.
 3 **A.** Raffles at that time was a brand which we were the
 4 agents for, for Philip Morris.
 5 **THE CHAIRMAN:** Yes.
 6 **MR LASOK:** The only other point to put to you is that, in
 7 the case of Asda, the co-operation that you got from
 8 Asda assisted you in getting the ITL price changes in
 9 line with the Gallaher price changes because you were
 10 getting fairly good information about the prices and the
 11 dates; is that not so?
 12 **A.** Not always, no. Sometimes they would move the price and
 13 we would only find it by going into the store.
 14 Sometimes we had put forward prices which, for several
 15 months, they failed to implement when we were offering
 16 them money.
 17 **MR LASOK:** No further questions.
 18 **THE CHAIRMAN:** Thank you. Mr Flynn?
 19 Cross-examination by MR FLYNN
 20 **MR FLYNN:** Mr Hall, I am going to ask you some questions.
 21 I am counsel for Asda, just so you understand the
 22 dynamics.
 23 In that last document we were on, the price of
 24 Raffles as against Berkeley and Superkings, just tell me
 25 this: if I understand this correctly, what you were

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1 saying to your colleagues, fellow national account
 2 managers, is that Asda's price is a penny higher than
 3 that that it's charging for Berkeley. Is that right?
 4 **A.** That's correct.
 5 **Q.** And that is happening in Tesco and Sainsbury, and
 6 I think you said that presumably Asda are doing that
 7 too, because they have seen it happening in Tesco and
 8 Sainsbury?
 9 **A.** That is correct.
 10 **Q.** If the price in Asda for Raffles had been £4.09 or
 11 £4.05, and Berkeley had been at £4.10, would you have
 12 minded?
 13 **A.** We would have been delighted to have a lower price, but
 14 part of the reason for flagging this to my colleagues
 15 was that they had a similar problem that there was
 16 an extra penny being put on a brand where there had been
 17 no real reason to do so.
 18 **Q.** Why is that a problem?
 19 **A.** In so much as our requirements to Philip Morris, who we
 20 were simply the agents for at that time, Philip Morris
 21 required us to have Raffles at the same price as
 22 Berkeley and Superkings.
 23 **Q.** When you say "the same price", given your answer to my
 24 previous question --
 25 **THE CHAIRMAN:** Well, ask him that in a more leading way.

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1 **MR FLYNN:** I am sorry. You have just said it would be at
 2 the same price?
 3 **A.** Not more than, I should say.
 4 **THE CHAIRMAN:** What was your agreement with Philip Morris as
 5 regards Raffles?
 6 **A.** Their requirement to us was that Raffles should not be
 7 more expensive than Berkeley and Superkings.
 8 **MR FLYNN:** Mr Hall, on a couple of occasions you talked
 9 about Asda's bargaining power, and you talked about it
 10 flexing its muscles. Could we have a look, I think you
 11 have the file that we call annex 14 in front of you --
 12 **A.** Yes.
 13 **Q.** -- if you would turn within that to document 22, that
 14 document is a document that you prepared, I think?
 15 {D14/22/49}.
 16 **A.** National Account Business Development Plan.
 17 **Q.** That's right, and for the record there is a similar one
 18 at tab 46. {D14/46/104} Could you have a look, you will
 19 see the page numbers at the bottom right-hand corner, at
 20 page 176. You see "Future Predictions". I see this is
 21 marked as confidential to ITL. I don't know if ...
 22 I think I am being told that we can look at the words
 23 there and speak them, Mr Hall.
 24 Under "Future Predictions" you see, second paragraph
 25 there, it says:

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1 "Asda has already determined ..."
 2 Then the second sentence, I just wanted to ask you
 3 about that. What's going on there? This is your report
 4 about future predictions for your account with Asda, as
 5 I understand it.
 6 **A.** This is an internal document obviously to my boss,
 7 saying that we are looking to continue to build our
 8 relationship with the account, nothing more, nothing
 9 less.
 10 **Q.** Well, if you just look at the whole sentence, you are
 11 trying to build a closer long-term relationship, then it
 12 says:
 13 "So far almost no signs of encouragement have been
 14 received."
 15 So a bit gloomy there?
 16 **A.** A little bit, yes, because we weren't getting active
 17 encouragement, we wanted to build a relationship, I have
 18 to say that Asda, for example, never participated in any
 19 corporate activity in terms of entertaining of any sort,
 20 therefore I am certainly expressing that the
 21 relationship is there in the office and that was it.
 22 **Q.** If you look on the previous page under the heading
 23 "Gallaher" --
 24 **A.** Yes.
 25 **Q.** -- you see the last sentence under that heading? What

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1 are you saying there?
 2 **THE CHAIRMAN:** Just remind me what POP is.
 3 **MR FLYNN:** I am sorry, Madam, am I misdirecting? On the
 4 previous page, 175, there is a heading "Gallaher".
 5 **THE CHAIRMAN:** Oh, I see.
 6 **A.** We had put forward proposals for planograms for Asda,
 7 however -- by planograms, the way the product is
 8 merchandised on the shelf, hoping to achieve a better
 9 position for our brand. However, despite having
 10 recruited people to do that professionally in-house,
 11 Gallaher was still providing all of the equipment and
 12 the furniture, and held the reins in terms of the
 13 merchandising layout.
 14 **MR FLYNN:** And you felt it would be difficult to displace
 15 them?
 16 **A.** Yes, because we didn't have the money to go and
 17 overthrow the opposition in terms of the amount of money
 18 required to replace all their units. It would have been
 19 an horrendous cost.
 20 **Q.** Could we have a look at document 77 in that file.
 21 {D14/77/226}. At the end of that document, page 85,
 22 again I think this is in a confidential box, but do you
 23 see at paragraph 10 "The Relationship?"
 24 **A.** What is your question, please?
 25 **Q.** I am just asking, if I get the nod that I can say this,

1 it says, this is Mr Batty writing to Asda, and he says:
 2 "You [that is Asda] stated you had a collaborative
 3 relationship with Gallaher and a combative relationship
 4 with ITL."
 5 Does that ring any bells, a combative relationship
 6 between Asda and ITL?
 7 **A.** Not exactly. It's my former boss's interpretation of
 8 a meeting, and I did not write that email.
 9 **Q.** It's not a criticism, Mr Hall, I am simply saying that
 10 this is Mr Batty writing to Asda saying that's what Asda
 11 have said, that you had a combative relationship?
 12 **A.** If they said that, then fine, but I can't recall their
 13 exact words at the time.
 14 **Q.** No, no, I am not asking you to go back to the meeting,
 15 it's just more generally the commercial relationship
 16 that you had with Asda.
 17 **A.** It was quite hard work all the time.
 18 **Q.** Would it be fair to say, would you think it was a fair
 19 description of that relationship to say that Asda was
 20 a compliant instrument in your hands?
 21 **A.** No, I would not say they were compliant, there were
 22 occasions when they chose to do their own thing, going
 23 below the prices, and on occasions not implementing some
 24 of the things that we had agreed, and on occasion, also
 25 refusing to go along with us for example on the launch

1 of Richmond when we launched it, they kept us waiting
 2 for something like seven months when other retailers
 3 were stocking it.
 4 **Q.** If you go on in that file, Mr Hall, to tab 80, you will
 5 see a trading agreement 2003. {D14/80/235}.
 6 **A.** Yes.
 7 **Q.** Signed by you on behalf of Imperial, and by Mr Mason on
 8 behalf of Asda. If you go on right to the end, page 22
 9 at the end, you see at the end there is a paragraph that
 10 says:
 11 "ITL Strategy Pricing Requirements.
 12 "The strategy pricing requirement is part of this
 13 trading agreement, but Asda stores is at all times free
 14 to set its own retails for products stocked in its
 15 stores."
 16 Do you see that wording?
 17 **A.** Yes.
 18 **Q.** Was that your understanding of the position?
 19 **A.** Yes, we only ever put forward prices as proposals, it
 20 was then up to Asda as to which price they chose to go
 21 at.
 22 **Q.** That wording, take it from me, doesn't appear in the
 23 previous agreement, 2002 agreement.
 24 **A.** Guy Mason had actually asked for that to be put in,
 25 I believe.

1 **Q.** The question about it is: did that wording make any
 2 difference, did that mark a change in the relationship?
 3 **A.** I don't believe so, no.
 4 **Q.** Had it been different in previous years?
 5 **A.** No, I think it was a case that he was dotting the Is and
 6 crossing the Ts.
 7 **Q.** The second complete paragraph on that page refers to
 8 a payment per thousand on all purchases.
 9 Such a payment under this agreement under the
 10 previous 2002 agreement, was that always paid in Asda's
 11 case?
 12 **A.** Where that payment related to that year's agreement it
 13 was paid to the best of my knowledge. In one instance
 14 or one year before the preceding year to the start of
 15 the [redacted] payment, Asda had specifically asked for all
 16 their money to go into consumer promotions, but then
 17 they stopped and said "We want some money in our till,
 18 please, instead".
 19 **Q.** Where that amount was in the agreement --
 20 **A.** It was paid.
 21 **Q.** -- it was paid without question?
 22 **A.** There was always a debate as to whether they had
 23 "earned" it in inverted commas, and in the majority of
 24 cases you could demonstrate that they had earned it and
 25 the money was paid.

Confidential:
ITL, Asda

1 Q. So under that agreement, and to an extent this will just
 2 be going over -- forgive me, Madam, just for clarity --
 3 one or two of the positions that have been put to you,
 4 but specifically in the context of your relationship
 5 with Asda, is it right -- because this is what the OFT
 6 is saying, as we understand it -- that under whatever
 7 arrangement you had with Asda if the shelf price at Asda
 8 of Gallaher's brands went up, you understood it to be
 9 a requirement of this agreement that the prices of the
 10 corresponding Imperial brands should also go up, even if
 11 you had not made a change in the wholesale price?
 12 A. Most definitely not.
 13 Q. Would such an arrangement have made commercial sense, to
 14 your mind?
 15 A. Definitely not, it would have meant that the consumer
 16 would have been paying more for our products when we had
 17 not implemented a price increase.
 18 Q. So we looked at that letter in tab 54, which you sent to
 19 Asda, and I think you have explained that in terms of
 20 making it clear in language even a simple retailer like
 21 Mr Jolliff could understand, that the differentials were
 22 widening, I think that's the way you put it?
 23 A. That is correct.
 24 Q. Why did you have to send that letter?
 25 A. To avoid any confusion and for somebody who may not be

1 normally responsible, for example Mr Jolliff could have
 2 been just going on holiday, somebody else came in, took
 3 the chair and made a price increase while he was away.
 4 We wanted to make it very clear, we were not the
 5 increasing our prices and we were holding them down to
 6 the consumer's benefit.
 7 Q. So if they had put up their prices, would you have been
 8 happy with that?
 9 A. Most definitely not.
 10 Q. Let's try something else. If, say, you had
 11 a manufacturers' price increase, your prices, your cost
 12 prices to Asda go up, Asda increases the shelf price of
 13 Imperial brands. Let's say at that point there is no
 14 Gallaher MPI and Asda don't put up the prices of
 15 Gallaher products on their shelves. In that scenario,
 16 could you get on the phone to Mr Jolliff or Mr Lang and
 17 say "You must put those prices up, you must put the
 18 Gallaher prices up"?
 19 A. I am sorry, you said Gallaher ...
 20 Q. You have had an MPI, you have gone up, Asda have --
 21 A. We would not have asked them to increase Gallaher
 22 prices. Never have done, never did.
 23 Q. If he didn't put -- just to button that one down -- his
 24 prices up, was that any breach of the arrangement that
 25 you had with them?

1 A. No, it wasn't, because the price list differentials in
 2 the published price list had changed at that point in
 3 time, therefore we could not be imposing any form of
 4 penalty whatsoever.
 5 Q. Say you put your prices down, your price to Asda goes
 6 down, they make a corresponding reduction on their
 7 shelves, your prices, Imperial brands, would you require
 8 at that point Asda to put down the prices of the
 9 corresponding Gallaher brands?
 10 A. No.
 11 Q. Was that part of the agreement?
 12 A. No, there was no requirement for them to reduce the
 13 price of the Gallaher brands just because we had reduced
 14 ours.
 15 Q. Would it have made commercial sense to have such
 16 an arrangement?
 17 A. Quite the opposite, in fact, it would have made
 18 commercial sense if they had actually kept the Gallaher
 19 brand up.
 20 Q. If Gallaher goes down, Gallaher put their prices down,
 21 Asda follows those down, could you require Asda at that
 22 point to bring down the prices of Imperial's brands?
 23 A. On some occasions we would offer additional money to
 24 bring our prices down on a specific product. On some
 25 occasions we chose to ride the storm out.

1 Q. If you didn't offer them money, did you check them to
 2 bring down the prices of your products?
 3 A. Normally not, no.
 4 Q. When you say normally?
 5 A. There was one occasion which we discussed earlier today
 6 when the margins on a handrolling tobacco had changed,
 7 both from Gallaher and from Imperial, and we were
 8 looking to re-establish the position of that brand from
 9 high priced handrolling tobacco to a low priced
 10 handrolling, and that's the exception I am talking
 11 about.
 12 Q. What happened in that case?
 13 A. Eventually, if I recall correctly, and I can't
 14 specifically say, but I believe they eventually brought
 15 the price into line, by that I mean they brought the
 16 price back down again without any additional money.
 17 I couldn't be specific on that without checking
 18 through handrolling.
 19 MR FLYNN: I have no further questions for Mr Hall. Thank
 20 you, Mr Hall.
 21 Questioned by THE TRIBUNAL
 22 THE CHAIRMAN: Just following on those questions that
 23 Mr Flynn has asked: if Asda had reduced the price, say,
 24 of Dorchester and you had established that that was just
 25 because they decided for their own reasons that they

1 wanted to cut the price of Dorchester, without having
 2 had a reduction in the wholesale price from Gallaher,
 3 would you have thought that if they are accepting
 4 a smaller margin on the Gallaher brand, that the
 5 agreement that they had with you meant that they also
 6 ought to accept a smaller margin on the equivalent ITL
 7 brand? I am not talking here about a decrease resulting
 8 from a Gallaher bonus, but just Asda deciding "we will
 9 accept a narrower margin on a Gallaher product", would
 10 you have then said if you saw that, "Well, you ought to
 11 accept a narrower margin on our product then"?
 12 **A.** It would have been nice to think that, but Asda didn't
 13 actually reveal to us any bonuses from any other
 14 manufacturers, even when we took the Philip Morris
 15 brands on board as agents, they wouldn't tell us the
 16 bonuses they had been getting from Philip Morris up to
 17 the day we took over the distribution.
 18 **THE CHAIRMAN:** So is your answer, then, that if my question
 19 assumes that you would know whether the reduction in the
 20 Gallaher brand was due to Asda's own initiative or
 21 a Gallaher offer, that you wouldn't know that?
 22 **A.** I had no way of being certain whether Gallaher had
 23 funded it or not.
 24 **THE CHAIRMAN:** Can you ask Asda, or would they ...
 25 **A.** They would not reveal. Even when we took the

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1 Philip Morris brands Marlboro and Raffles on as
 2 distributor, Philip Morris had been paying them a bonus
 3 up to the day we took over. We then had to put a cost
 4 price at Q6 into our price list, and set a bonus that
 5 suited Asda to carry on at that retail price, but Asda
 6 would not tell us the bonus that Philip Morris had been
 7 paying them. That may sound bizarre, but it's true.
 8 **THE CHAIRMAN:** So that might have resulted in them taking
 9 that opportunity to increase their margin, in fact?
 10 **A.** They could have actually tried to screw us by telling us
 11 they were getting a higher bonus but they didn't, they
 12 wouldn't tell us any bonus.
 13 **THE CHAIRMAN:** Just on a slightly different point, this is
 14 arising out of the questions you were asked about what
 15 makes commercial sense and what doesn't make commercial
 16 sense. There are a couple of points in these briefing
 17 notes, if you look at tab 46 for a moment, at page 196,
 18 if you go along until you get to 196 in tab 46.
 19 **A.** Yes.
 20 **THE CHAIRMAN:** At the bottom there under the heading
 21 "Wal-Mart", where it says that the public face of Asda
 22 Wal-Mart has shown some hostility to tobacco, and then
 23 it says:
 24 "Smaller units also suggest that space is ultimately
 25 being deployed to more profitable areas of the business,

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1 generally non-food."
 2 Do you remember whether, at your time in ITL, there
 3 was a concern that if prices got very low and margins
 4 were then very squeezed, the amount of space that stores
 5 like Asda were prepared to devote to cigarettes would be
 6 reduced?
 7 **A.** I don't think there was a concern within Imperial that
 8 that would happen. What I was noting here was that Asda
 9 were implementing big changes, Wal-Mart were
 10 implementing big changes in bringing more non-food items
 11 into the store, clothing in particular, and wherever
 12 they could, the actual tobacco kiosk could shrink from
 13 perhaps 5 metres to 4 metres, which then restricted the
 14 amount of display you could get and the number of lines
 15 stocked. Have I answered the question?
 16 **THE CHAIRMAN:** Yes, I think so. Well, just to ask it again
 17 in a slightly different way: you don't, or do you,
 18 recollect within ITL any concerns being expressed that
 19 if tobacco -- for example, when you were introducing the
 20 ultra low brands - that if prices were very low and
 21 margins were therefore very low, supermarkets would not
 22 devote the space to these products because they could
 23 fill that space with other more profitable products for
 24 them?
 25 **A.** No, I can't recall that at all.

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1 **THE CHAIRMAN:** Would that be because they had to sell
 2 cigarettes, effectively?
 3 **A.** Predominantly, yes. Some of the supermarkets did not
 4 sell tobacco product until Resale Price Maintenance was
 5 taken off which I think was around 1974, and it was only
 6 then that they said "Gosh, we want a share of this
 7 market, because consumers come in every day to buy
 8 a packet of cigarettes", and that's what they were
 9 after, the footfall.
 10 **THE CHAIRMAN:** Yes, thank you.
 11 **DR SCOTT:** Just a couple of areas. The first is, one can
 12 see from what's been said today and from your witness
 13 statement that there was this preoccupation with margins
 14 so that in, for example, paragraph 23 of your witness
 15 statement you talk about maintaining the margin -- stop
 16 me if you want to go and have a look at it, but I think
 17 this is uncontentious -- 33, watching the margin
 18 erosion; 57 they would retain their margins provided
 19 they adopted the prices in the price file; 69 mentions
 20 margin support. When you get to 73 you talk about it
 21 costing Asda nothing. It might be worth turning to for
 22 a moment, paragraph 73 in your witness statement.
 23 You might like just to read it through.
 24 (Pause)
 25 So we see it's not a foregone conclusion at the

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1 beginning, but by the time you get to the end, you are
 2 confirming that:
 3 "The increase in margin support was sufficient to
 4 ensure that the retailer's margin was left unaffected,
 5 if it chose to reduce the shelf price to the suggested
 6 level."
 7 **A.** Yes.
 8 **DR SCOTT:** You have explained that part of that has to do
 9 with not having misunderstandings so that you end up
 10 paying bonuses you are not expecting to pay.
 11 Now, if you go to tab 2, am I right in thinking that
 12 this is when Mr Downham has come to join you; yes?
 13 **A.** Yes, he was there then, yes.
 14 **DR SCOTT:** So you had been helping him to understand what's
 15 going on, and he ends his letter by saying:
 16 "As always, this activity will be fully funded."
 17 And that fits entirely with what you talked about in
 18 terms of maintaining margins?
 19 **A.** In fact, it increases their percentage margin, maintains
 20 their cash margin.
 21 **DR SCOTT:** Right. I suppose my question is about this "as
 22 always". How far do you believe that Asda had
 23 an expectation that, provided they went along with the
 24 suggestions you made about pricing, essentially the
 25 margins that they needed to retain the amount of profit

1 they were expecting from your products in the tobacco
 2 sector would be maintained?
 3 **A.** They expected us, whenever we had a need to reduce
 4 a price, for us to fully fund that price reduction.
 5 That became apparent, for example, when we had reduced
 6 the actual recommended retail price for the handrolling
 7 tobacco, it became an issue between us. There was
 8 an occasion that I can recall on Small Classic Cigars
 9 when we actually offered to fund a promotion and it went
 10 unheeded for some seven or eight months. They actually
 11 didn't participate and didn't get paid because they
 12 never implemented the proposal we had put forward, and
 13 they could have been selling at a lower price by about
 14 35p, I believe.
 15 **DR SCOTT:** As I understand it, from your many years of
 16 experience, you think that this is pretty routine
 17 behaviour from the point of view of a supermarket, in
 18 relation to its suppliers, whether they be tobacco
 19 manufacturers or anything else, really?
 20 **A.** I have to say I've never had any other experience with
 21 a supermarket other than tobacco, so I really can't
 22 answer your question.
 23 **DR SCOTT:** Right. I was getting that from later on in your
 24 witness statement, but don't worry.
 25 In paragraph 25 of your witness statement, you are

1 watching -- this is the monitoring of tobacco prices in
 2 store, and you will see that the paragraph concludes:
 3 "... and be able to spot a competitor's promotional
 4 change in strategy for their brands."
 5 If we give an example of that from Gallaher looking
 6 at ITL, they could probably see when you were
 7 repositioning Richmond. So as you looked at what you
 8 and your colleagues were learning about movements in the
 9 stores in relation to the RRP's that were published both
 10 for you and for Gallaher, and indeed for the others, and
 11 as you listened to the intelligence that you got, for
 12 example from Mr Jolliff, you were looking out for what
 13 Gallaher in particular, but others were doing in
 14 general?
 15 **A.** With the sole intention of increasing our market share
 16 wherever possible.
 17 **DR SCOTT:** Absolutely, but trying to understand what they
 18 were doing so you could react to it, or indeed be
 19 proactive?
 20 **A.** Or if necessary ride the storm out as well sometimes.
 21 **DR SCOTT:** What puzzled me slightly, then, is that -- and we
 22 will no doubt come back to this part of your witness
 23 statement on another occasion -- by the time you reach
 24 paragraph 171 in your witness statement, you are saying:
 25 "I worked without any knowledge of ITL's

1 competitors' strategies."
 2 Whereas the impression you have actually given me is
 3 that you were watching quite acutely and responding very
 4 sensitively to what was going on?
 5 **A.** By that I mean I had no knowledge in writing of what
 6 Gallaher were doing, because nobody put pen to paper and
 7 told --
 8 **DR SCOTT:** Right.
 9 **A.** -- the difference between knowledge in terms of the
 10 written word and where I am thinking.
 11 **DR SCOTT:** That's a great help. Thank you very much indeed.
 12 **MR SUMMERS:** We haven't specifically been taken to
 13 a document about this, but it's really by way of general
 14 information. You do refer, there is a reference,
 15 I think, in one of your reports, to the fact there was
 16 a request by Asda to be paid off-invoice.
 17 **A.** Yes.
 18 **MR SUMMERS:** A change of staff. What, from your point of
 19 view, were the implications of that request?
 20 **A.** Financial, because we were paying the money earlier. If
 21 we were paying a month of arrears we were getting
 22 30 days' credit on our money.
 23 **MR SUMMERS:** Did it make a difference to the way in which
 24 you calculate the base margin --
 25 **A.** None whatsoever.

1 **MR SUMMERS:** -- or the impact on the pricing or --
 2 **A.** None whatsoever.
 3 **MR SUMMERS:** Nothing, purely neutral: you can have it this
 4 way, you can have it that way.
 5 **A.** We preferred and had up until that time always paid
 6 retrospectively, and the purpose of that was that if we
 7 invoiced goods with a bonus and they then send some
 8 back, then you have to make sure that you are crediting
 9 them back at the right rate, whereas paying them
 10 retrospectively we worked out their net sales each
 11 month -- or their net purchases I should say -- and we
 12 paid them on their net purchases which took account of
 13 anything they had sent back.
 14 **MR SUMMERS:** Did the auditors take a view on which they
 15 preferred?
 16 **A.** I don't believe so, no.
 17 **MR SUMMERS:** Did you have any dealings with them about that?
 18 **A.** No.
 19 **MR SUMMERS:** Thank you.
 20 **THE CHAIRMAN:** Perhaps that's a good point at which to have
 21 a short break before you ask your questions, Mr Howard.
 22 **MR HOWARD:** Sure.
 23 **THE CHAIRMAN:** We will come back at 3.30 for the final
 24 stretch, Mr Hall. Thank you.
 25 (3.23 pm)

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1 (A short break)
 2 (3.35 pm)
 3 **MR HOWARD:** You will be very pleased to know that at 3.35 on
 4 Friday afternoon I have no further questions for this
 5 witness, and so we can, in football parlance, take
 6 an early bath.
 7 **THE CHAIRMAN:** Yes.
 8 Well, thank you very much, then, Mr Hall. That is
 9 all we need to ask you today about the Asda case.
 10 I gather that you are going to be coming back in due
 11 course to talk about Somerfield, but for the moment may
 12 I thank you again for your evidence, which has been very
 13 helpful, and you have our good wishes for tomorrow. So
 14 you can stand down from the witness box.
 15 **A.** Thank you very much.
 16 (The witness withdrew)
 17 Housekeeping
 18 **MR LASOK:** Madam, may I say that Mr Williams, who is dealing
 19 with Somerfield, would prefer not to go over with
 20 Mr Hall exactly the same type of documents in relation
 21 to Somerfield that we have already gone over in relation
 22 to Asda. There may be circumstances in which he can't
 23 do that for some reason, but that's his preference in
 24 terms of how he intends to conduct his
 25 cross-examination.

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1 If the Tribunal would prefer him not to do that,
 2 then I would be grateful for an indication so that I can
 3 pass that on to Mr Williams.
 4 **THE CHAIRMAN:** Well, that's a slightly vague request,
 5 Mr Lasok.
 6 **MR LASOK:** The point is this: his intention is that if you
 7 have a document in the Somerfield file which is the same
 8 as a document in the Asda file on which we have already
 9 heard evidence --
 10 **THE CHAIRMAN:** Oh, I see.
 11 **MR LASOK:** -- then he would prefer not to replicate that.
 12 That's what he would prefer to do. But if the Tribunal
 13 would like him to deal with documents of that nature,
 14 that's a completely different kettle of fish.
 15 **THE CHAIRMAN:** Well, the discussions that we have had on
 16 that so far, I understand there wouldn't be any problem
 17 with that at a subsequent time.
 18 **MR HOWARD:** I think Mr Williams must take a sensible course.
 19 I mean, I think the way it's being expressed is slightly
 20 enigmatic, so I am not going to say I necessarily agree.
 21 But I am not going to take points generally about
 22 whether documents have been put. If there is
 23 a particularly important document in Somerfield, even if
 24 it is similar to a document in this case, then that will
 25 need to be put. If it's simply more of the same, which

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1 is "you said move the price to 3.39 and that must mean
 2 it's a fixed price", that's a different matter.
 3 **THE CHAIRMAN:** What I understood was that, for example, in
 4 the letter that went to Asda saying "Don't raise our
 5 prices and here is a revised schedule of differentials",
 6 that is a letter that went to a number of different
 7 retailers, and one can assume that Mr Hall would say
 8 that that letter meant the same when he sent it to
 9 Somerfield as it meant when he sent it to Asda, and
 10 therefore it doesn't need to be put to him again.
 11 I understood that was the point you were making.
 12 **MR LASOK:** That's a good example of the point.
 13 **THE CHAIRMAN:** Yes. So if we limit it to those sorts of
 14 documents where the same document was sent by Mr Hall or
 15 by ITL more generally, to a number of retailers, we
 16 already have his evidence as to what he intended by that
 17 document, and we can assume that he intended the same to
 18 whoever he sent it to.
 19 **MR HOWARD:** Absolutely.
 20 **THE CHAIRMAN:** Yes.
 21 **MR HOWARD:** One point I think I would just like to make, and
 22 again it's just to put a matter on the record, because
 23 it is a point that arises generally: you already know
 24 that I have concerns about the way the OFT case has been
 25 put and concerns about what the true OFT case is. Now

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1 is not the moment to develop that further.
 2 There is a discrete point which has been raised both
 3 by Imperial and other witnesses, and it's this: at times
 4 it appears from the submissions that the OFT has been
 5 suggesting that documents in the trading agreements, and
 6 where one sees the differentials expressed as "not more
 7 than", at times it appears to have been their case or
 8 that they were suggesting that was all some sort of sham
 9 and that that wasn't the genuine agreement. That has
 10 not ever been suggested to any witness, that what is
 11 written in those documents is not what was genuinely
 12 intended.
 13 I just want to make that clear. If at any point the
 14 OFT had intended to argue that this was a sham document
 15 of some sort, being drawn up for some purpose, which so
 16 far I've no idea what it is, that would have had to have
 17 been put to witnesses.
 18 **THE CHAIRMAN:** My understanding as far as that's concerned,
 19 Mr Howard, is that generally that's not the OFT's case,
 20 their case is rather that the arrangements were operated
 21 or evolved into arrangements where there were fixed
 22 parities and differentials. The one instance where they
 23 came closer to something of the kind that you suggest --
 24 and I can't at the moment remember which retailer it
 25 was, it may have been -- I think it was either Safeway's

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1 or Morrisons where there were a number of drafts which
 2 it was expressed as fixed, then there was a suggestion
 3 it was sent to the lawyers and it came back with the
 4 "not more than" wording.
 5 There was some hint of that in the opening. I don't
 6 recall it being put very straightforwardly to the
 7 witnesses that that change had been made as a result of
 8 legal advice, and of course one can see that there would
 9 instantly be problems with making that kind of case.
 10 But that is my understanding of where we are on that.
 11 **MR HOWARD:** The point I am really making, it's a point that
 12 applies in relation to that, but it actually applies
 13 more generally, that certainly there may be a difference
 14 of view on this side of the court as to what one is
 15 required properly to put to witnesses, and I will be
 16 making a submission in due course in relation to a lot
 17 of material or a lot of arguments that the OFT appear to
 18 want to run that they have not put this properly to
 19 witnesses. That's a different matter. But I wanted to
 20 raise this particular point. I understand what the OFT
 21 may want to say is "Oh, well, in practice", but they
 22 have to run that case against the background of saying,
 23 insofar as these matters are set out in the agreements
 24 and where the agreement says "Not more than" and so on,
 25 that that was what was actually agreed, not that it's

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1 there for some different purpose, which one can't really
 2 work out what that would be in.
 3 **THE CHAIRMAN:** Yes.
 4 **DR SCOTT:** In the case where, as I understand it, the OFT
 5 are saying "We don't just look at the written
 6 agreements, we look at the generality of the evidence
 7 before us", would I be right in thinking that they are
 8 trying to put to witnesses questions which have regard
 9 to the expectations that existed between the parties,
 10 and that they are also in one alternative looking at the
 11 combined effect of there being arrangements with more
 12 than one manufacturer, and then asking the question:
 13 what is the effect of the way in which expectations
 14 evolved on the one hand, and the way in which
 15 expectations, when they have two manufacturers at
 16 a retailer, may combine?
 17 **MR HOWARD:** I think that's raising a number of different
 18 points. I simply want to make clear I don't accept any
 19 of that has been properly put.
 20 **DR SCOTT:** No, I think I understand.
 21 **THE CHAIRMAN:** The narrow point you make, which is if there
 22 is some suggestion that going beyond, "Well, the
 23 agreements actually were operating in a slightly
 24 different way", if there is a suggestion beyond that
 25 that actually these agreements were deliberately drafted

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1 in a way which was more benign, if I can put it that
 2 way, than the parties knew from the outset they were
 3 going to operate them and intended to operate them, then
 4 that is something that does need to be put directly.
 5 **MR HOWARD:** Also one would have needed to investigate, for
 6 instance, if it's said -- I am just taking this as
 7 a hypothetical, but an agreement is executed in 2000
 8 which says "not more than" and then we say "look, you
 9 wrote a couple of these letters in which you said move
 10 to this specific price point, that must mean it's
 11 fixed", then we see the agreement for the next year that
 12 still says "not more than", one would have thought the
 13 basic point in cross-examination would be to say: how do
 14 you marry the two together? We are not getting that.
 15 I did not want to get drawn into a general critique --
 16 **THE CHAIRMAN:** No, I understand.
 17 **MR HOWARD:** -- but I am concerned that, to be absolutely
 18 clear, one thing that one can say is there is not an
 19 attack, as it were, on the genuineness of the documents
 20 when executed, whenever it was in any of the cases.
 21 There may be a different point, which is: well, that's
 22 what you wrote in the agreement, but then in practice
 23 you slipped away from that and operated in a different
 24 way. That I recognise is a case that they can run, but
 25 what they can't run is a case that actually the

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1 agreements weren't genuine agreements or what's said
 2 there is not genuine.
 3 **THE CHAIRMAN:** What we don't know is who drafted the
 4 agreements and whether the agreements were drafted at
 5 a different level within ITL from the level at which we
 6 have seen people operating, and whether then within the
 7 single undertaking there were people --
 8 **MR HOWARD:** Actually, I don't think that's right. We do
 9 know who drafted them. Mr Matthews said he drafted the
 10 Morrisons one, I think Mr Hall says -- if he didn't
 11 draft it, nobody suggested that he is not, as it were,
 12 responsible for it. If it were to be suggested: well,
 13 this is all being drafted at some level distant from
 14 you, again that would need to be put. None of that's
 15 been put. What's more, the agreements we have just
 16 seen, they are agreements I think signed by Mr Hall, as
 17 I recall, and Mr Matthews. Anyway, Mr Matthews
 18 certainly said -- but the real point is, I did not want
 19 to get drawn too deeply in, but as I say it does relate
 20 to a more general point about the case properly being
 21 put, and you will have to consider that. As I say,
 22 I was considering, for instance, going back with Mr Hall
 23 to say: well, was this, does this actually represent
 24 what was agreed or was it drawn up for some other
 25 purpose? I came to the conclusion it was not necessary

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1 because I don't understand the OFT to be running a case
 2 that any document as executed is not a genuine document.
 3 **THE CHAIRMAN:** Yes. Not wishing to erode our early
 4 afternoon much further, can I nonetheless refer to the
 5 timetable, for which many thanks.
 6 What it doesn't include, though, is where we are
 7 going to fit your opening on the non-appellant
 8 retailers, unless I've missed it.
 9 **MR HOWARD:** The intention is that it would fit into, it
 10 should have been put on the timetable, the intention is
 11 the morning of 31 October. The intention -- and I am
 12 anticipating I might take, bearing in mind there are
 13 a number of the -- we have Somerfield plus First Quench,
 14 T&S and TM, so that may take the morning. So we are
 15 anticipating Mr Cheyne will come on in the afternoon.
 16 **THE CHAIRMAN:** We will have to plan that Mr Cheyne will
 17 start and finish, then, on the afternoon of the 31st.
 18 **MR HOWARD:** I think he is anticipated for a short period,
 19 I can't remember, Mr Lasok will be able to say, but
 20 I think he was only scheduled for two hours, I think.
 21 **THE CHAIRMAN:** Right. We will police this rather more
 22 strictly than we have policed things before, because we
 23 really must get through the factual witnesses by the end
 24 of the fortnight.
 25 **MR HOWARD:** The estimates that we have given, just so you

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1 know, Mr Cheyne was estimated for two hours, Mr Hall in
 2 respect of Somerfield, we have him down for two and
 3 a half hours, one might think that's slightly excessive,
 4 and Ms Williams two hours on ... the effect of what we
 5 are doing is they will all be giving, when we get to
 6 that week, their evidence in one go, as it were.
 7 **THE CHAIRMAN:** Yes.
 8 **MR HOWARD:** So it ought to go more quickly.
 9 **THE CHAIRMAN:** Yes. So we will take stock on Tuesday as to
 10 where we are with the remaining Asda witnesses, but in
 11 any event we won't be starting Ms Bayley until the
 12 Thursday.
 13 **MR HOWARD:** Yes.
 14 **THE CHAIRMAN:** Right.
 15 **MR HOWARD:** I would respectfully suggest that the only way
 16 we can ensure we do this is effectively as you did
 17 today, administering some sort of guillotine at some
 18 point.
 19 **THE CHAIRMAN:** Yes.
 20 **MR HOWARD:** If people don't have the self-discipline
 21 themselves.
 22 **THE CHAIRMAN:** Yes. Well, starting on Tuesday, then, can we
 23 sit at 10.30 or would it be better to sit early?
 24 Mr Lang is already coming back on the Wednesday. Are we
 25 likely to finish both Mr Jolliff and Mr Mason on the

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1 Tuesday?
 2 **MR LASOK:** From my perspective, I would have thought that we
 3 would have started Mr Lang on Tuesday.
 4 **THE CHAIRMAN:** Okay.
 5 **MR LASOK:** I don't know whether we will have finished him on
 6 Tuesday, that's a possibility, because the involvement
 7 of Mr Mason and Mr Lang was for a relatively short
 8 period of time. I wouldn't guarantee that we will have
 9 finished all three, but I would have thought we would
 10 have started Mr Lang.
 11 **THE CHAIRMAN:** We will meet again at 10.30 on Tuesday.
 12 **MR HOWARD:** Can I just say this: in the event that we did
 13 get through Jolliff, Mason and Lang on Tuesday or early
 14 Wednesday, it probably would be beneficial if we have
 15 that further, as it were, time on Wednesday for
 16 preparation.
 17 **THE CHAIRMAN:** Will you be saying anything by way of opening
 18 in relation to Sainsbury?
 19 **MR HOWARD:** If I do, it would be then.
 20 **THE CHAIRMAN:** It would be on Wednesday?
 21 **MR HOWARD:** But there's time on the Wednesday, then that's
 22 when it would be.
 23 **THE CHAIRMAN:** Yes, because I think on Thursday we must
 24 devote to Ms Bayley.
 25 **MR HOWARD:** The reason I may not is simply since we are

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1 going to have the opportunity to go through things with
 2 a witness, which we obviously haven't had in the other
 3 cases, it may be preferable to do it that way.
 4 **THE CHAIRMAN:** Yes. Thank you very much, everybody, and we
 5 will meet again then at 10.30 on Tuesday morning.
 6 (4.53 pm)
 7 (The court adjourned until 10.30 am on
 8 Tuesday, 25 October 2011)

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