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1 Monday, 10th May 2004

2 (10.30 am)

3 MR DOCTOR: I know this is a very unusual request the moment
4 you walk in, but may I have about half a minute to
5 finish taking instructions on something which has arisen
6 very recently?

7 (Pause).

8 Opening submissions by MR DOCTOR

9 In accordance with the tribunal's directions, I am
10 going to begin with a short opening, drawing attention
11 to parts that we consider are important, and just
12 briefly say how we intend to proceed and what we say
13 took place.

14 There are certain items that we want to stress, and
15 which we would ask the tribunal to bear in mind. I am
16 going to list them out and perhaps take you to some of
17 the evidence.

18 What we are dealing with are products sold by
19 Hasbro, most of which, or many of which, are in
20 a category which are described by the witnesses as
21 either must-have or must-stock. One can see this, for
22 example, in the witness statement of Mr Riley.

23 THE CHAIRMAN: I think we can accept they are must have or
24 must stock products.

25 MR DOCTOR: I can give you the reference to that, for

1 convenience in the future. Mr Riley, in tab 55 of the
2 witness bundle, paragraph 4, and Mr McMahon, for
3 example, at tab 31, paragraph 3.

4 There has traditionally, we are saying, up to the
5 time of these events, been very fierce price competition
6 over these particular items and historically low
7 margins.

8 Argos is, of course, the number one toy retailer in
9 the UK and has obviously traditionally carried these
10 sort of goods. Index or Littlewoods is another
11 important competitor for Argos in relation to these
12 goods.

13 I want to give you some references which make that
14 good, without necessarily going to them at the moment.
15 It is Paisley, tab 46, paragraph 3; Burgess, tab 5,
16 paragraph 6; Ms Clarkson, tab 4, paragraph 12;
17 Mr McMahon, tab 31, paragraph 2; Mr Cowley, tab 10,
18 paragraph 3; and Mr Duddy second statement, tab 22,
19 paragraph 9.

20 That Index is recognised by Argos as being an
21 important competitor appears also from certain documents
22 in the core documents bundle. I would be grateful if
23 I could show you these documents. The references I have
24 are attached to the witness statements. If you go to
25 tab 17 in volume 1 of the witness statements, at

1 page 112, going by the central number --

2 THE CHAIRMAN: 112 is in tab 16.

3 MR DOCTOR: It is the central number. The numbers on the
4 right are from a previous bundle. Whenever we refer to
5 a number, it is at the bottom. The reference at the
6 bottom, this is a memorandum from Maria Thomson to
7 Mr Duddy within Littlewoods, dealing with her
8 presentation and her field of toys. She specifically
9 refers, at the bottom of that page, under the heading
10 "Terms: Price Promise Pricing":

11 "Process to measure effect of revised pricing policy
12 on sales and competitiveness to be determined. Decision
13 re price promise, whether matching Index and/or key
14 competitors."

15 So it is featured in this, there is a specific
16 reference to Index, and the point I am making is that
17 there is a perception within Argos that Index is
18 a particular important competitor.

19 That was 1998. At tab 41 you see another document
20 from Thomson to her buying managers, with a copy to
21 Ms Porrit, 20th April 1999. There is a reference in the
22 middle of that page, 330, to:

23 "Continue with our pricing policy of not pre-empting
24 Index but ensuring we have hero prices, entry prices
25 across all groups."

1 If you go to the next document, this is a document
2 which was published in the following year. It is
3 tab 42, it is exhibited by Ms Paisley to her witness
4 statement, and it is an internal memorandum to which is
5 attached a discussion paper by Tony and Diane Ashworth,
6 and this is a paper which I shall come back to in due
7 course. But for the present purposes, if you go to
8 page 334, in the middle of the page, there is
9 a reference to:

10 "Our current policy is to be on the market."

11 Then a short way down the third paragraph:

12 "To operate a proactive price checking policy across
13 the market is probably impractical for a retailer like
14 Argos with such a huge number of competitors. It is
15 practical to price check the Index, but to take it
16 beyond this gets increasingly burdensome."

17 We say there is a particular focus on Index.

18 The important thing to bear in mind is that Index is
19 also a discounter. It is not simply a price follower,
20 it is a price cutter and a discounter. It wants to be
21 the lowest in the past, or it wanted to be the lowest
22 even if it did not always achieve that. The references
23 I want to give you for that are Mr Burgess, tab 5,
24 paragraph 4; McMahon, tab 31, paragraph 2; Ms Paisley,
25 tab 46, paragraph 16; Mr Edmonds, tab 23, paragraph 5;

1 Darling, tab 12, paragraphs 2 and 5; Mr Martin, tab 28,
2 paragraphs 4 and 5; and I will quote that particular one
3 as of some interest:

4 "Obviously over a period of time when you have been
5 pricing for Index you come to realise that by beating
6 Argos price on a high profile branded line by as little
7 as 50p, you could really have quite an effect on our
8 sales in that season. The converse is also true, of
9 course, so you tend to pay a lot of attention to the
10 retail position Argos takes with key lines."

11 THE CHAIRMAN: What is the date of that document?

12 MR DOCTOR: That is Mr Martin's witness statement in 2003.

13 That was one of the more recent ones.

14 Then Mr Overill, tab 43, paragraph 2; and the
15 e-mails which he exhibits at tab 44; and Gunn, tab 27,
16 paragraph 4.

17 There have been in the past lots of complaints to
18 Hasbro about the fact that there are low margins in this
19 area of these high-profile toys. Evidence of that is
20 contained in Mr Burgess, tab 5, paragraph 12; McMahon,
21 tab 31, paragraph 3; Needham, tab 33, paragraph 23.

22 But what they say is that whatever the position and
23 the complaints no-one can afford to drop them because
24 they are must-have. They bring the customers into the
25 store, they are advertised widely on TV. They give

1 excitement, they are up to date, and they have knock-on
2 benefits.

3 So although you might not make the world's greatest
4 profit on these items, by selling these items and being
5 the lowest you create an impression in the public's mind
6 on these high-profile goods that your store is the
7 lowest, and that has knock-on effects for the other
8 goods where you have higher margins, such as non-branded
9 items.

10 The other thing to bear in mind is this: that
11 catalogue retailing is about price and price only.
12 There is no customer loyalty. The perception, moreover,
13 is in the catalogue which is all important, because the
14 customers have them at home. A large number, we are
15 told, have both Index and Argos catalogues at home and
16 therefore when setting out to buy something would be
17 able to compare from the comfort of their homes what is
18 cheaper and would set out for the store accordingly.

19 So even if you issue fliers later in the season,
20 they are not as important or as effective as the
21 catalogue. You have to get it right in the catalogue.
22 The evidence in support of that is Mr Burgess, tab 5,
23 paragraph 11; Mr Cowley, tab 9, paragraph 6; and
24 Ms Paisley, tab 46, paragraph 16.

25 Of course, the fact that you have to get your

1 catalogue right, the fact that there is no customer
2 loyalty, means that this is a particular problem for
3 Argos and Index, whose businesses are catalogue
4 businesses. They are both price cutters.

5 Until 1999 Argos was usually, but not always, but
6 usually the winner on the lowest prices. I would like
7 to show you that in a document which is attached to
8 Mr Brealey's skeleton. He has done a pricing analysis.

9 This is an analysis which we were given last week,
10 in which Argos has put together a comparison of prices
11 over the period. If one goes to page 1, it starts with
12 core games. It is tab A in the bundle.

13 THE CHAIRMAN: Yes, "Pricing Analysis, Core Games".

14 MR DOCTOR: Yes. The pattern which you see, just on these
15 items, is as follows: at the bottom of the page you see
16 spring/summer 1998, so that would be a catalogue that
17 came out at the beginning of 1998, so it is long before
18 these events. You see that there were nine common
19 products, none were at the same price, but Argos was
20 cheaper on all nine, which is consistent with what the
21 witnesses are saying -- that on the whole Argos was
22 cheaper.

23 If you go to the next catalogue, autumn/winter 1998,
24 this is after the Argos takeover. The takeover was in
25 April, and the catalogues are done by then, just about.

1 You will see in paragraph 8 there are 13 common items,
2 four are at the same price. Argos is cheaper on eight
3 and Littlewoods is cheaper on one.

4 If you jump from there to page 7, that is core
5 games. If you look at Action Man, spring/summer 1998,
6 there are 18 common products. One is at the same price.
7 Argos is cheaper on 11 and Littlewoods on six.

8 Autumn/winter 1998, 17 common products, three are at
9 the same price, Argos cheaper on 10, Littlewoods cheaper
10 on 4. So that is entirely consistent with the pattern
11 we have been told about; Argos usually, but not always,
12 wins.

13 If one looks at the other toys, it is not a category
14 as such, but just for the sake of completeness if you go
15 to that at page 13 you will see spring/summer, there is
16 only one common product so it is very difficult to make
17 anything of it, although as it happens Argos was cheaper
18 on that one product. Then autumn/winter, there are six
19 common products, none are at the same price, Argos is
20 cheaper on four and Littlewoods cheaper on two. So
21 a pattern certainly supports the witness evidence.

22 I shall come back to that very shortly.

23 Argos' policy, therefore, of trying always and
24 succeeding in being the lowest built it up a great
25 reputation amongst its customers. But there was a price

1 to pay, obviously, in that the business was apparently
2 generally coming to the conclusion that margins had to
3 be improved.

4 It was taken over by Great Universal Stores in April
5 1998. Of course, the autumn/winter catalogue comes out
6 in July, but it is printed in about the beginning of
7 May, so they do not suggest there is any effect on that.
8 One sees the previous policy.

9 What we are told is that on the takeover there was
10 the start of a new policy. The important thing which we
11 say the tribunal ought to bear in mind is to listen
12 carefully and to try to find out what was the policy.
13 We say that in the first set of witness statements which
14 were provided in response to the original Rule 14
15 notice, the clear thrust of these witness statements was
16 that the policy was a policy of moving towards RRP, or
17 recommended retail price. If they do not actually say
18 that it was a policy to adopt RRP, it is a policy in
19 which it is clear that, whatever the wording is, it was
20 a policy of moving towards RRP in the field of these
21 goods.

22 I give you the references: Maria Thomson, tab 62,
23 paragraph 9; Mr Needham, tab 33, paragraphs 16, 17, 18,
24 34 and 39.

25 You will recall that the first statement of Mr Duddy

1 was served at a later stage, together with the notices
2 of appeal. Once the decision had come out and been
3 based on the original, what we say the original
4 allegations regarding the policy were, there was then
5 another statement served with the notice of appeal to
6 this tribunal.

7 We say that there has been a slight change in the
8 emphasis in this policy, where the policy was described
9 as more of a change to market pricing -- the previous
10 witness statements had referred to market pricing, but
11 made it clear this meant RRP. In Mr Duddy's statement
12 there was a reference to market price, but he did not
13 refer to RRP at all. But he does convey in that
14 statement that the policy was that the prices should go
15 up -- up rather than down, but not necessarily to RRP,
16 but what he calls market pricing.

17 In the second set of statements which were served
18 for this hearing we say that there has been a further
19 change in which it is accepted that the policy was one
20 of moving to market pricing, or Mr Duddy calls it
21 pricing on the market. He describes it:

22 "It means that Argos would look to price
23 competitively, bearing in mind the prices charged by its
24 major competitors, such as Woolworths, Toys R Us and
25 Index."

1 That is tab 22, paragraph 9.

2 Essentially the thrust as it developed, the way the
3 policy was portrayed, was a policy originally to move to
4 RRP, then to move up, and now to remain competitive.

5 When it comes to Littlewoods, Littlewoods'
6 statements are -- in other words, what they perceive the
7 policy to be, they make it clear that the policy was
8 one, as they understood it, of a policy to move to RRP.

9 THE CHAIRMAN: Their policy, you mean?

10 MR DOCTOR: They understood that the Argos policy, which
11 they say everybody knew about, and we will come to that
12 in more detail, but generally they convey that what
13 everyone knew about -- although apparently at different
14 times -- was that Argos had changed their policy as
15 a result of the GUS takeover, to change its policy in
16 this field. Mr Cowley, tab 9, paragraph 5; Mr Burgess,
17 tab 5, paragraph 5 and Ms Paisley, tab 46, paragraph 5.

18 We say that the reason why there has been this
19 reference, this emphasis originally by Argos and
20 continuing by Littlewoods, on RRP, was to explain what
21 you see in the 1999 autumn/winter catalogues, which was
22 this complete parity of prices between the two at, in
23 most cases, RRP.

24 We say if the policy, however, was not to move to
25 RRP, which we say it is now not presented as that, but

1 to remain competitive, which is the way Mr Duddy puts
2 it, "remain competitive on our market with our major
3 competitors", that coincidence of prices at RRP in
4 autumn/winter 1999 cannot be explained by this policy.

5 We say it can only be explained by something else if
6 it is not coincidence. That is what this case is about.

7 We are told that the policy was actually implemented
8 before 1999 and can already be seen taking effect in the
9 spring/summer 1999 catalogue. You will recall that that
10 is published if not in the first week then in the second
11 week of January 1999.

12 One way of rebutting the OFT's case is that the
13 policy is implemented already for the 1999 catalogue,
14 which seems to be before the evidence would indicate
15 that there was this kind of what we say is collusion.

16 If you go back to the pricing analysis that has been
17 prepared, page 2, which is core games --

18 THE CHAIRMAN: Tab A.

19 MR DOCTOR: Tab A of the Argos skeleton, page 2, under the
20 heading "core games" -- you will recall we have looked
21 at 1998, spring/summer and autumn/winter, there are
22 quite a few common products but not many at the same
23 price, but Argos has always achieved this.

24 We are told now that the policy of moving up or
25 moving with the change had come about and that it

1 influenced the first catalogue, spring/summer 1999. We
2 see in paragraph 12 there were nine common products;
3 Argos and Littlewoods had five of these at the same
4 price but Littlewoods were cheaper on the four other
5 products which is a noticeable change in the pattern.
6 Argos has suddenly -- if there were any cheaper,
7 Littlewoods has become cheaper.

8 If you go to paragraph 17, we see that for
9 spring/summer 1999 of the nine common products Argos
10 priced six at RRP, and of the total 12 games that they
11 stocked Argos priced at equal to or greater than RRP --
12 so they did appear to have chosen RRP -- and they say in
13 fact maybe all of them were at RRP, it is just difficult
14 to say in retrospect. So Argos goes to RRP and it finds
15 itself beaten in at least four of the items by
16 Littlewoods.

17 If we then go to Action Man, here we again have seen
18 Argos is almost always cheaper -- almost always but not
19 always. That is page 7 of spring/summer, Argos cheaper
20 on 11, Littlewoods on 6. In autumn 1998, Argos cheaper
21 on 7, Littlewoods on four.

22 If we get to spring/summer 1999 there are 12 common
23 products, Argos are cheaper on three and Littlewoods on
24 nine. So there seems to have been a reversal as
25 a result of something happening in the spring/summer

1 1999. They say this is because they decided to put up
2 their prices; whether it was to RRP, whether it was just
3 up, or whatever it was, there has been a change.

4 Spring/summer other toys, from what one can make
5 out, on page 13, there are two common products and
6 Littlewoods are cheaper on both of them.

7 We are told that immediately after catalogues come
8 out everybody in the business -- in this case, Argos and
9 Index -- do an immediate comparison of all their prices.
10 What Argos must have seen at this point is that,
11 whatever its policy was of increasing it, it had ended
12 up in a situation where on these key items, far from
13 them always being or predominantly being the cheapest,
14 the situation seems to have reversed itself. So they
15 were cheaper on none, and indeed Littlewoods was cheaper
16 on the balance of the items.

17 If you then continue on with the pricing analysis,
18 autumn/winter, this is when we say the agreement,
19 collusion has kicked in.

20 THE CHAIRMAN: We are on page 4?

21 MR DOCTOR: Page 4, paragraph 19. There are 14 common
22 products, they are all at the same price. That is core
23 games. If you go to Action Man, page 8, there are 18
24 common products, they are all, except Walkie Talkie, at
25 the same price. That is for the moment what we say the

1 agreement consists of.

2 If one goes to page 14, we say the other toys were
3 not yet in the agreement. If you go to page 14 there
4 are seven common products, none of them at the same
5 prices. Argos priced one at RRP, and so on.

6 What we say -- I will not go into the evidence in
7 any great detail -- is that towards the end of
8 1998/beginning of 1999, in that period, the parties
9 began to meet. It is certainly uncontroversial that
10 there were certain meetings. We want to say this at the
11 moment: that there was a meeting with Littlewoods, which
12 we will come back to in a moment, but dealing first with
13 Argos, there was a meeting with Argos in February 1999
14 at which one of the Hasbro -- you will recall, there is
15 a Hasbro document, it may be an agenda or something,
16 which says the purpose of the meeting is to stabilise
17 RRP's, but I am trying at the moment to keep away from
18 evidence which might be controversial, by referring to
19 our evidence. I am basically looking at their evidence.

20 Perhaps I should begin with, because it is
21 important, Mr Thomson. I will give you the reference
22 and read it to you. It is tab 64, paragraph 12.

23 THE CHAIRMAN: In the witness statements?

24 MR DOCTOR: In the witness statements. This is the meeting
25 on about 17th February. She says -- and this is a word

1 which is picked up, and we will obviously explore. She
2 says:

3 "We did discuss the GUS policy, in the sense that we
4 were very clear that we were not going to pre-empt the
5 market. We told Hasbro that we were not going to
6 tolerate low margins on toys."

7 I think we will go into that, what Argos is or is
8 not going to tolerate:

9 "We indicated that Argos intended to price more at
10 a market price but would not compromise its competitive
11 position, ie it would react if it was under-cut by its
12 key competitors."

13 So what Argos is telling Hasbro is that they are
14 talking about their pricing, their retail pricing, but
15 they are saying, "We will react if we are undercut by
16 our key competitors."

17 If you look at Mr Duddy's statement at tab 22,
18 paragraph 11, also referring to this meeting, he says:

19 "At this meeting I may have indicated to
20 Alistair Richards and Simon Martin that should market
21 prices drop during the life of an Argos catalogue [he
22 means by that, should our competitors charge less] Argos
23 would react and would look to Hasbro for support in
24 order to maintain its profit margin. Revised prices
25 would be communicated to customers through the use of

1 promotional fliers issued through the life of the
2 catalogue. My intention was to undertake considerably
3 more promotional activity than had gone on in the past."

4 So Argos was saying "If we find that the prices have
5 dropped then we will react."

6 Then if you look in the core bundle at page 38, that
7 is an e-mail from Sue Porrit of Argos. It seems to be
8 referring to the same meeting, confirming that, in about
9 the middle of the page, underneath "Pricing Strategy v
10 Rebate Pricing":

11 "MT [that is Maria Thomson] indicated that we will
12 react heavily to being undercut, should it happen.
13 Hasbro will not put money on the table to support this
14 but will look for other methods of support. I will
15 follow this up with Mike Brighty."

16 They indicate, "should it happen", "it" being if the
17 competitors prices are lower.

18 Then on page 42, this is Mr Wilson, who is the
19 Hasbro contact with Argos, about a month and a half
20 later, on 29th March, the second page under number 2,
21 the third bullet point:

22 "Hasbro's retail pricing strategy to increase trade
23 brought in margin was discussed. Sue understands our
24 strategy ["Sue" is Sue Porrit) but categorically stated
25 that Argos will react to competitor pricing and 'may be

1 forced to react on price if sales are sluggish later in
2 the year.' She implied that this would be out of her
3 control."

4 We say this: firstly, it is somewhat strange that
5 Argos are discussing its intentions as to its retail
6 prices with Hasbro at all. We will see some of the
7 witnesses say, "We never discussed our prices, our
8 retail prices, with our suppliers." But they are
9 apparently discussing retail prices.

10 What makes it odd is this: this is a company which
11 is apparently trying to get lower cost prices in order
12 to improve margins. What it is saying to its supplier
13 is that it is planning to go out at higher prices, to
14 put it neutrally for the moment. We say it is saying
15 that it is going to go out at RRP, but it is going to go
16 out at higher prices, which would seem to, as it were,
17 lessen the pressure on Hasbro to reduce the wholesale
18 price at all. After all, there is only so much pressure
19 you can bring to bear if you announce beforehand that
20 you are planning to up your prices anyway.

21 We say it is reasonable to infer that Argos is
22 telling Hasbro its intentions as to its retail prices
23 for a purpose. The question is: why is it telling
24 Hasbro that it will be going out at higher prices,
25 market prices, RRPs, whatever it is saying, and that it

1 will react if it is undercut?

2 The question is: Argos may say, "Well, we were
3 saying that because if we were undercut we would want
4 support, we would want a reduction in the cost price or
5 a payment for the fliers." But if even that is what
6 they want, why are they telling this to Hasbro at this
7 stage, before any undercutting has occurred? It could
8 have charged its retail prices in its catalogue, found
9 that it was undercut, and then gone to Hasbro and made
10 the same demands.

11 We say that it was telling this to Hasbro because it
12 had an expectation that Hasbro could prevent the "it",
13 the undercutting, should it happen. It, undercutting,
14 should not happen, but if it does, the various
15 consequences is they will react. They are telling
16 Hasbro this in order to remind them, induce them, ensure
17 that Hasbro will see to it that it, undercutting, does
18 not happen.

19 THE CHAIRMAN: Mr Doctor, if I can just take you out of your
20 stride for a moment. We had envisaged a half-hour
21 opening. I do not know how you are getting on. I do
22 not want to cramp your style, but we do need to plan
23 this hearing quite tightly and I do not want to slip on
24 time unduly. How much longer do you think you will be?

25 MR DOCTOR: I will be another 15 minutes.

1 THE CHAIRMAN: I think it would have been helpful if that
2 had been signalled to us before we started. Let us go
3 on for the moment; if you can take it fairly shortly at
4 this stage.

5 MR DOCTOR: Going back to this point at the end of
6 1998/beginning of 1999, and if one turns to the
7 Littlewoods situation, the appearance of the 1999
8 spring/summer catalogue ought to have come to
9 Littlewoods, but after years of not winning suddenly it
10 turns out that Argos has no lower prices on these key
11 items and that it is the winner of the price war on many
12 of these essential items. This, we say, should have
13 appeared to Littlewoods as a fairytale come true.

14 As you will see, Littlewoods' evidence is that they
15 believed, they say they believed, that Argos had
16 a policy of charging RRP.

17 What one would expect to have found, given that
18 apparent belief and those results in the spring/summer
19 catalogue, was that Littlewoods, now confident that
20 Argos have changed its policy to charge RRP, would have
21 come in at just below RRP on its items in the very next
22 catalogue, the autumn/winter catalogue. At very little
23 cost to itself, and with a certain amount of certainty,
24 given what it says are its beliefs, it could have
25 ensured that it became for autumn/winter 1999 the lowest

1 in the market. As we know, the autumn/winter catalogue
2 is much more important than any of the other earlier
3 spring/summer catalogues. But they did not.

4 What we have seen is what I showed you a while ago:
5 that instead of, as one might have expected, the
6 exploitation of this apparent change in Argos policy,
7 which they think is going to stick to RRP, we see
8 instead in the autumn/winter 1999 catalogue an absolute
9 parity of prices at RRP, in all but one or two cases.

10 We say that speaks volumes, and is the issue in this
11 case. We say that Littlewoods entered into an agreement
12 with Hasbro, as did Argos, at about that time, in which
13 each of them understood that Hasbro would get the other,
14 and other players in the market of less importance, to
15 go out at RRP and that in that way nobody of course
16 would be cheaper, nobody would gain an advantage of
17 being cheaper, but at the same time, nobody would be
18 more expensive. This, we say, in the case of
19 Littlewoods is confirmed by the e-mails which passed
20 a year later in May 2000 which explicitly refer to this.
21 One of them is sent to Littlewoods, to about four or
22 five people at Littlewoods, none of whom respond in any
23 way inconsistent with knowledge of what these e-mails
24 contained.

25 We say, our client, that that evidence and that

1 pattern of events, these facts fulfil the tests which
2 are set out in the authorities for an agreement or
3 concerted practice. If we are to establish or if the
4 court is to find an agreement, it must of course find
5 a concurrence of wills. It must find that at the least.
6 But the form of the agreement is of course unimportant.

7 For a concerted practice, we say that the test is
8 that the parties substituted knowingly practical
9 co-operation between themselves, instead of or in place
10 of the ordinary risks of competition.

11 THE CHAIRMAN: I think we have your outline legal
12 submissions.

13 MR DOCTOR: Yes. We say those facts and the outline I have
14 given to you show that either there was, we say,
15 a common will of these parties, or at the very least
16 arrangements which substituted practical co-operation
17 for competition. Obviously we say these arrangements
18 had the effect of restricting competition. Fixed prices
19 do that.

20 I think I will bring it to a close there, in view of
21 the time constraint.

22 THE CHAIRMAN: Thank you very much. That is very helpful.

23 MR DOCTOR: We can get on with calling the witnesses.

24 THE CHAIRMAN: Administratively speaking, when we have the
25 LiveNote, we generally need to take a break for the

1 shorthand writers which I generally take after about an
2 hour and ten minutes, so that would normally be about
3 11.40, but it might be convenient to take that break now
4 so that we do not interrupt the witness evidence.
5 Subject to something Mr Brealey was about to say.

6 MR BREALEY: I appreciate I have no right of a short
7 opening, but the purpose of Mr Doctor's opening is to
8 clarify the issues and emphasise important issues. As
9 the tribunal know from our skeleton, we rely quite
10 heavily on the GUS takeover and the Argos change of
11 policy. As the tribunal will know from the decision,
12 the OFT have rejected our case on the unilateral change
13 of policy and that we moved towards market pricing.

14 THE CHAIRMAN: Are you making a submission at this stage or
15 what are you doing exactly?

16 MR BREALEY: I am going to ask the tribunal to ask Mr Doctor
17 whether he now accepts that Argos had a unilateral
18 change of policy and whether he accepts --

19 THE CHAIRMAN: I think that comes a bit later in the
20 proceedings. He has made his opening, as we are
21 entitled to do. We are going to get on with the
22 evidence and you will have every opportunity to press
23 him on what his position is at a later stage.

24 MR BREALEY: Very well.

25 THE CHAIRMAN: Thank you. Mr Doctor, rather than interrupt

1 the evidence, I am inclined to rise now until, say,
2 11.30 and start evidence at 11.30.

3 (11.25 am)

4 (A short break)

5 (11.30 am)

6 MR DOCTOR: I am going to call my first witness, who is
7 Mr Thomson. Before I do that, I notice that we are
8 privileged to have a large number of people present
9 here, and there are two issues which arise as a result
10 of that. One is, I understand that some of these people
11 who are in court are in fact witnesses in this case and
12 I want to inquire about any rules as to whether
13 witnesses who have not yet given evidence should be in
14 court, and if it is the practice that they should be or
15 they may be in court, I would certainly like it recorded
16 as to which of them are in court, so that we would know
17 that they have listened to the arguments and the case as
18 it has developed.

19 The second point is a question of confidentiality,
20 which is a separate matter altogether.

21 THE CHAIRMAN: On the first point, Mr Doctor, our developing
22 practice so far is that the other witnesses are in court
23 or can be in court if they so wish, unless a reasoned
24 objection is taken, and if a reasoned objection is
25 taken, we will of course listen to the objection. As to

1 actually identifying who is present, I think the best we
2 can do is to ask the appellants to identify as far as
3 they can who is present. I do not know whether that
4 needs to be done now?

5 MR DOCTOR: I would prefer it to be done now, so that we
6 have it on record, otherwise I do not know who is here
7 and who is not.

8 THE CHAIRMAN: Can somebody do that for us, Mr Green?

9 MR GREEN: At the moment, Mr McMahon, Mr Burgess, Ms Paisley
10 and Ms Gornall are in court.

11 MR BREALEY: None of ours are in court at the moment,
12 although they are going to pop in as and when they can.

13 THE CHAIRMAN: If you would tell Mr Doctor when that
14 happens.

15 MR BREALEY: Yes.

16 MR DOCTOR: The other issue is the question of
17 confidentiality. Until I received a list this morning,
18 which is very much reduced, there are vast areas of the
19 witness statements said to be confidential, and I would
20 have been in some difficulty in conducting the trial
21 under those conditions, unless everybody was excluded
22 permanently.

23 We have been given a much shorter list, and I am
24 told there is also a list from Littlewoods which is also
25 very short -- I do not have that one yet. I have not

1 looked at it, therefore I have not had a chance to find
2 out which parts are being objected to. Therefore,
3 I would ask if there could be some indication given by
4 counsel for Littlewoods and Argos, if they feel we are
5 getting near or straying near an area where there is
6 some objection to them as to the confidentiality, so
7 that we can decide what to do about it at that moment.
8 I would not have thought it will be a great problem, but
9 it is just too difficult at the moment for me to find
10 out what is still in issue.

11 MR GREEN: I am relying on Ms Demitriou to kick me in the
12 shins if there is something confidential.

13 THE CHAIRMAN: So long as there is some signal so we can
14 decide what to do.

15 IAN SHOTBOLT THOMSON (sworn)

16 Examination-in-chief by MR DOCTOR

17 MR DOCTOR: Mr Thomson, if you would go to tab 61 of the
18 bundle which is being put in front of you, do you have
19 the witness statement of you, Ian Shotbolt Thomson?

20 A. I do.

21 Q. Which runs to 25 pages?

22 A. Yes.

23 Q. Is that your signature at the end of it?

24 A. It is.

25 Q. Dated 12th June 2003?

1 A. Yes.

2 Q. I understand you want to correct something in
3 paragraph 144?

4 A. Yes.

5 Q. Could you tell the tribunal how you want to correct
6 that?

7 A. This was to do with the response that I gave to
8 Gary Smith at Index with regard to the Ferris Wheel
9 being in Argos or not being in Argos. I actually got
10 that wrong. I managed to refer to a diary that I have,
11 where the response from Charles Cooper was that it was
12 in Argos. So I made a mistake in the statement.

13 THE CHAIRMAN: Thank you.

14 MR DOCTOR: It says:

15 "I did get a response from Charles but he told me
16 that they were not listing it for autumn/winter 2001."
17 What did he tell you?

18 A. Sorry?

19 Q. It says:

20 "He told me that they were not listing it for
21 autumn/winter 2001."
22 A. He told me that they were listing it, and I --

23 Q. Did he give you the price at which they were listing it?

24 A. Yes.

25 Q. What was that?

1 A. £49.99.

2 Q. It then says:

3 "I went back to Index and told Gary Smith that it

4 would be safe to go out at £49.99 because Argos were not

5 running the item?

6 A. Yes.

7 Q. What do you have to say about that?

8 A. That should have been that Argos were running the item

9 but it was safe to go out at £49.99.

10 Q. Subject to that change, do you confirm the contents of

11 this statement?

12 A. Yes, I do.

13 Q. Thank you. I have no further questions.

14 Cross-examination by MR GREEN

15 MR GREEN: : Mr Thomson, I am counsel in this case for

16 Littlewoods and Index. I am going to ask you some

17 questions about Littlewoods and Index, but not in any

18 detail about Argos. Do you understand that?

19 A. Yes, I do.

20 Q. Mr Brealey, who is here, will ask you questions about

21 Argos if he feels the need to.

22 A. Okay.

23 Q. You say in your witness statement that you prepared it

24 without the assistance of the OFT; is that correct?

25 A. That is correct.

1 Q. When did you come to London to prepare for this hearing?
2 A. I have not been to London with the OFT. I came to
3 London to prepare for this hearing with Denton Wilde
4 Sapte, about the middle of last year, I think.
5 Q. Specifically in relation to today, when did you come up
6 to London?
7 A. Today I came up this morning.
8 Q. Have you read the other witness statements in this case?
9 A. Partly.
10 Q. Do you know which ones you have read?
11 A. I have read some of the statements from Lesley Paisley,
12 Alan Burgess, Alan Cowley.
13 Q. Are they the only ones you have read?
14 A. I probably may have glanced over some of the others.
15 Q. I presume you have not had a chance to look at all the
16 other myriad documents in this case?
17 A. Not all.
18 Q. In relation to the correction you have just made to your
19 statement, can I just ask you about this?
20 A. Yes.
21 Q. Can you turn to paragraph 144. You now say that Argos
22 did in fact list this product; is that correct?
23 A. That is correct.
24 Q. Therefore paragraph 144 is incorrect?
25 A. That is right.

1 Q. Your recollection, at least your recollection when you
2 prepared this statement, was therefore faulty?

3 A. At that time, my recollection was faulty.

4 Q. When you prepared this statement, you obviously thought
5 that you had it right?

6 A. I did.

7 Q. The statement that you therefore make at the end of
8 paragraph 144, if you look at the bottom of page 672 of
9 the bundle, there is a sentence starting "I went", right
10 at the very end of the page.

11 A. Yes.

12 Q. You see it says:

13 "I went back to Index and told Gary Smith that it
14 would be safe to go out at £49.99 because Argos were not
15 running the item."

16 That also must be false, must it not?

17 A. That is false. But that was my recollection at that
18 time. It was not until I later looked at the diary and
19 realised the entry I had made said that I had gone back
20 to say that it was listed.

21 THE CHAIRMAN: Can I just be clear, Mr Thomson, looking at
22 that sentence:

23 "I went back to Index and told Gary Smith that it
24 would be safe to go out at £49.99."

25 That is the first part of the sentence. The next

1 part of the sentence is:
2 "... because Argos were not running the item."
3 A. Yes.
4 THE CHAIRMAN: So which part of the sentence is correct, if
5 any of it?
6 A. It should be that it could go out at £49.99, but Argos
7 were running the item as well.
8 MR GREEN: You would not say to them that it would be safe
9 to go out at £49.99, that plainly is incorrect?
10 A. I would have said it probably was safe to go out at
11 £49.99, even though Argos were running the item, because
12 Charles Cooper told me it was okay.
13 Q. What you just said is it would have been said, you do
14 not actually recollect what you actually said?
15 A. Not specifically.
16 Q. And that is important. I will come back to that later.
17 The events that you refer to in your statement relate to
18 a series of discussions and meetings and the like
19 occurring up to five years ago, do they not?
20 A. Yes.
21 Q. I think you would accept that it is always very
22 difficult to piece together precise events many years
23 after the event?
24 A. There are some things that are particularly clear and
25 there are others that I am not so clear on.

1 Q. You have set out quite fairly and candidly in your
2 statement quite a large number of areas where you say
3 your memory is unclear, either in whole or in part?
4 A. Yes.
5 Q. Just to give you an illustration, you say that you
6 cannot remember when certain meetings took place?
7 A. That is correct.
8 Q. An example you give us is the first meeting with Index
9 in 1998 or the beginning of 1999.
10 A. Yes.
11 Q. You say elsewhere, for example, that you cannot remember
12 who you took through the 1999 business plan, you do not
13 know whether you took Mike Brighty through it, for
14 example?
15 A. I did say that. But there were a number of people
16 involved at that time with the plan. So because there
17 were so many people there, it was difficult to remember
18 who specifically was there, but potentially Mike Brighty
19 could have been there because he was the sales director
20 responsible for Argos.
21 Q. When you say potentially he could have been there, what
22 you mean is that, looking backwards now, you think it is
23 possible but you cannot remember actually whether he was
24 or he was not?
25 A. Not specifically.

1 Q. In preparing for this hearing, did anyone explain to you
2 that there is no presumption that Hasbro, your employer,
3 or Argos, or Littlewoods, have done anything wrong at
4 all? Are you aware of that?

5 THE CHAIRMAN: I think that is a little difficult question
6 for the witness to answer, Mr Green.

7 MR GREEN: I want to find out what assumption the witness
8 has about the legal proceedings, and I want to know
9 whether or not he has been informed of certain matters
10 by the OFT. I have a couple of questions only on this.

11 A. Sorry, could you repeat that please, what the question
12 is?

13 THE CHAIRMAN: I think what we want to know from the witness
14 is his view of the fact, rather than the background
15 understanding of a layman, as to where the burden of
16 proof lies.

17 MR GREEN: I want to ask him whether he is aware of certain
18 positions that the OFT has taken, not the legal
19 inferences to be drawn from them. I just have two
20 questions.

21 THE CHAIRMAN: All right, put the questions.

22 MR GREEN: Are you aware the OFT does not say that the
23 initial price initiative was unlawful?

24 A. No.

25 Q. You are not aware?

1 A. I am not aware.

2 Q. Are you aware the OFT says the initiative only became
3 unlawful in autumn/winter 1999?

4 A. I am not aware.

5 MR DOCTOR: With respect, I am not sure that is an entirely
6 accurate way of putting our case and I am not sure it
7 will be very helpful.

8 THE CHAIRMAN: I do not think these are profitable questions
9 at the moment, Mr Green.

10 MR GREEN: Those are the only two questions I want to ask.
11 I want to ask you about the toy market in general
12 terms. I would welcome your help in understanding how
13 the market worked in 1998 and onwards. We know that the
14 GUS takeover occurred in April 1998, I think the date
15 was 24th April 1998. Do you recollect that?

16 A. Yes, I do. But as I was not involved directly with that
17 business, it was not something I paid particularly great
18 attention to.

19 Q. GUS generally is known as a company which is keen on
20 seeking margins. Are you aware of that?

21 A. The home shopping side of the business, mail order
22 catalogue, then that is correct.

23 Q. Have you had a chance to look at the statement of
24 Mr John McMahon?

25 A. No, I have not.

1 Q. I would like to show you a paragraph in that statement
2 to see if you agree. This is witness statement
3 volume 1, tab 31. Let me read to you what he says:
4 "I did go out on occasions with the recommended
5 prices from Hasbro [paragraph 8, page 237, middle of the
6 page]. This was a calculated risk to attempt to improve
7 Littlewoods' margin but not get beaten on price by
8 Argos. Sometimes it worked, sometimes it did not.
9 I was well aware of Argos attempting to improve margins.
10 This was well documented when Stuart Rose was chief
11 executive for a short while. I was also aware that GUS,
12 when they acquired Argos, wanted improved margins.
13 I worked for GUS for ten years and they were very much
14 a margin-driven company."
15 Did you know that Mr McMahon had worked for GUS for
16 ten years?
17 A. He may have mentioned it in the odd meeting I had, but
18 I cannot remember that being said.
19 Q. Again, is that your view now, can you remember whether
20 you knew at the time, let us put it in late 1998?
21 A. No, I cannot remember that.
22 Q. When GUS took over Argos, it would have been widely
23 assumed that GUS would therefore change the direction of
24 Argos from volume to margin; would that have been your
25 perception, or at least that of Hasbro at the time?

1 A. It was something that was talked about at the time, but
2 I think we also thought that, although that would apply
3 to the home shopping side of the business, the mail
4 order side of the business, it would not particularly
5 happen within the Index and Argos sector because they
6 were highly competitive.

7 Q. I would like to show you another statement, to see
8 whether or not your recollection is the same as that of
9 one of the Index buyers. It is paragraph 5 of the
10 witness statement of Lesley Paisley, which is volume 2
11 of the witness statements, page 346, tab 46, the middle
12 paragraph under the heading, "The Takeover of Argos by
13 GUS". She says:

14 "Argos was acquired by GUS following a hostile
15 takeover on 24th April 1998. I was aware of a change of
16 policy on the part of Argos following the GUS takeover.
17 I have, in order to put my evidence in context,
18 undertaken some brief research in order to substantiate
19 the points I make. During the takeover battle, Stuart
20 Rose, the acting chief executive of Argos, publicly
21 announced that Argos intended to take measures to
22 improve both service in the stores and profit margins
23 (see the article in the Guardian)."

24 Then she refers to an article in the Financial
25 Times:

1 "Following the takeover it was very soon clear to
2 the whole retailing industry that the policy of Argos
3 under GUS was to seek more margin. Part of this could
4 be achieved through a better product mix with more
5 non-branded goods and different products such as soft
6 furnishings where margins tended to be higher."

7 My version says "Confidential". I do not know if it
8 is confidential? It is not.

9 THE CHAIRMAN: I cannot believe there is any remaining
10 confidentiality.

11 MR GREEN: I think that must be right:

12 "It also became known that the search for margin
13 would include being less inclined to undercut other
14 retailers in the field of toys, a search for more margin
15 in a supplier's branded segment where typically products
16 are heavily promoted and retail margins are low would
17 inevitably imply moving to recommended retail prices.
18 During the 1990s suppliers' recommended retail prices
19 were often not followed by Argos who were presumably not
20 making a profit on these goods. Following the change of
21 policy everybody in Littlewoods' buying team expected
22 Argos to be very much more inclined to adopt recommended
23 retail prices."

24 I am interested in your previous answer in relation
25 to what Ms Paisley says. She says, as you see, that

1 Index and Littlewoods believed that Argos would change
2 its policy. What is your perception of that? Can you
3 clarify the previous answer? You said that was not the
4 same as your perception or it was broadly the same.

5 A. There was no evidence to us to suggest that Argos would
6 change the prices. Nothing had happened, I think, after
7 the GUS takeover, and in actual fact when the catalogues
8 came out in 1998 autumn/winter, the profit margins, if
9 anything, went back, because part of my business plan
10 strategy going forward into 1999 was to try and improve
11 the profit margins at Index, and they had actually gone
12 back year on year. That followed launches of the
13 autumn/winter catalogue in late July 1998, where the
14 analysis was taken from the autumn/winter catalogue.

15 Q. Could you turn over to page 358, this is the second
16 page of the text of an article from the Guardian, dated
17 25th April 1998. If you turn back a page you will see
18 that is so. At the top of the page it says "Guardian,
19 April 25th", the day after the takeover. There is
20 a quote from Stuart Rose on page 358 in the sentence
21 starting:

22 "During the three-month campaign Mr Rose admitted
23 that Argos had been bad at basic retailing skills but
24 outlined measures to improve service in the stores and
25 raise profit margins."

1 This was a day after takeover. Would Hasbro have
2 monitored the press closely and would they have picked
3 up something like this?

4 A. I am sure that somebody probably would have monitored
5 the press. I know that we used to get all the
6 newspapers delivered to our PR division in the company,
7 so they used to read it. So if the information was
8 taken on, it would have been passed on to someone.

9 Q. Mr Bottomley seems to have picked it up. If I ask you
10 to look at Mr David Bottomley's statement, which is
11 tab 3 of witness statement volume 1, paragraph 7,
12 page 7, he says:

13 "In April 1998, however, Argos was taken over by
14 GUS. GUS wanted to increase Argos's profitability and
15 to that end wanted to drive margins back into the
16 industry."

17 So Mr Bottomley appears to have been aware of the
18 takeover and its implications?

19 A. Yes.

20 Q. Would he have got that through being advised by Hasbro's
21 press monitoring unit or would he just have picked that
22 up?

23 A. He may have read it himself or he may have picked it up
24 from somebody internally. I do not know.

25 Q. There are a significant number of other comments from

1 both Littlewoods employees, Argos employees and Hasbro
2 employees, who are all aware of the GUS takeover and its
3 implications. Who is Charles Cooper?

4 A. Charles Cooper was the Argos account handler for
5 a while; initially when we worked on the account
6 Neil Wilson was the account handler.

7 Q. He took over from Neil Wilson?

8 A. He took over from Neil Wilson.

9 Q. In about summer/autumn 2000?

10 A. I am not sure. I think it could have been around about
11 that time.

12 MR DOCTOR: October 2000.

13 MR GREEN: I can take you to the document, but let me put
14 the proposition. He said when he was interviewed by the
15 OFT back in 2001, in October 2001:

16 "After the GUS takeover Argos was not as aggressive,
17 was focused on profit and margin rather than volume."

18 Would that be correct? That was his view?

19 A. There was an indication, as I said earlier on, that we
20 thought that pricing might go up, but we were not sure
21 what was going to happen in that sector, because it was
22 very competitive by its nature. I am not sure whether
23 there was any sort of moving in pricing, I do not have
24 any analysis to back that up.

25 Q. Argos, of course, sell a vast array of goods, not just

1 toys?

2 A. Yes, Argos sell a huge range.

3 Q. If -- and this is a hypothetical proposition -- Argos
4 were known in the market to be shifting policy towards
5 margin and profit, then this would have been picked up
6 by suppliers across a range of products over and above
7 toys, would it not?

8 A. I think it would have been picked up when the catalogues
9 came out, when the analysis was done. Most companies do
10 analysis. We certainly did analysis of the catalogues.
11 My specific analysis was based on Index analysis.

12 Q. The catalogues would have been one indicator certainly
13 of a change in policy by Argos. But once the press
14 began to comment, that would have been something which
15 at least would have crossed the radars of other
16 retailers across a range of products. Do you agree?

17 A. Yes, it would have been picked up, but it was not
18 something that was specifically mentioned at that time.

19 Q. Do you know who Management Horizons (Europe) are? Have
20 you ever heard that name before?

21 A. No, never.

22 Q. They are management consultants, and in September 1998
23 they prepared some consultancy advice for Index and
24 Littlewoods. I would like to show you this report,
25 because what I would like to do is to ask you about your

1 perception of their advice from both your perspective
2 and Hasbro's perspective. Did you know that Index had
3 commissioned a strategic review in 1998?

4 A. No.

5 Q. If you go to witness statements volume 2, tab 51,
6 page 479, it says "Index Strategic Review, September
7 1998".

8 A. Yes.

9 Q. It follows from your previous answer that you have never
10 seen this report?

11 A. Correct.

12 Q. You will see that Index received this report in
13 September and it says on the top right-hand corner,
14 "Received: 17th September 1998".

15 Can you confirm that this was just a few weeks
16 before the Hasbro price initiative was unveiled, which
17 as I recollect was in October?

18 A. It was late October when we talked about -- when it was
19 presented to us, our new terms package was presented to
20 us by the sales directors.

21 Q. So this preceded, it is coincidental, that price
22 initiative by approximately a month?

23 A. Yes.

24 Q. If you turn over to page 480, you will see that the
25 report was conducted by a team of five consultants --

1 Mr George Wallace, Mr Gavin George, Ms Jacqui Scull,
2 Ms Theresa Walsh, Ms Alison Garbutt. I presume you do
3 not know any of those?

4 A. No.

5 Q. The report addresses the performance of Index and it
6 suggests ways of improving that performance. If you
7 turn to page 507, you will see there is a heading,
8 "Competitor Analysis".

9 A. Yes.

10 Q. In this section, if you turn to page 512, you will see
11 there is a section concerning Argos, and it effectively
12 concerns the period 1990-1998?

13 A. Yes.

14 Q. You will see that under the heading, "Background":

15 "Between its float in 1990 and the GUS acquisition
16 in 1998, Argos had established a solid trading track
17 record."

18 If you look down below that, there are a number of
19 indents. The second indent is a comment by the external
20 consultants:

21 "Argos has become the dominant player in a number of
22 core market sectors, for example jewellery, with
23 a market share of 10 per cent; small electricals, market
24 share of 30 per cent; and toys, with a market share of
25 17 per cent."

1 A. Yes.

2 Q. Would that more or less reflect your view of Argos at
3 the time, those market shares? Approximately of course,
4 I am not asking for exact figures.

5 A. I cannot remember in terms of detail of the market
6 shares, but certainly at that time Argos were considered
7 to be our number one customer.

8 Q. If you go down a few lines:
9 "But this track record appears to mask a number of
10 trading issues."
11 One of the "issues" is the second indent:
12 "The drive for competitive pricing has reduced gross
13 margins to less than 31 per cent."
14 So the consultants are advising Index that Argos had
15 as an issue the driving of competitive pricing downwards
16 in reduction of margins. Again, from my reading of the
17 documents, that was something which was fairly well
18 understood in the industry as a whole, that that was
19 a problem or an issue for Argos?

20 A. It was a huge problem, and an even bigger problem for us
21 in Hasbro, because we had been under intense pressure
22 for some time to improve our margins on our product.

23 Q. Could you turn to page 517, under the heading "Likely
24 Future Strategy". Just so you can see the context, just
25 read that page to yourself.

1 What I want to ask you about, so you have it in
2 mind, is the section in the middle saying, "Price":
3 "Unlikely to initiate price war but will not allow
4 Index to seriously undercut."
5 A. Yes.
6 Q. If you look at that sentence, "Price":
7 "Unlikely Tony initiate price war but will not allow
8 Index to seriously undercut."
9 What Index and Littlewoods is being advised is that
10 Argos is unlikely to initiate a price war. Was that
11 your understanding at the time or did you have
12 a different view?
13 A. There was -- we had hoped that we would see improvements
14 in margins, but this proved not to be the case. As
15 I said, when the catalogues came out again in that
16 autumn/winter, the effect of that from my analysis
17 certainly within Index was to show that the
18 profitability that Hasbro produced for Index had gone
19 backwards yet again on the previous year. I, from that
20 conclusion, thought that we were seeing more competitive
21 pricing.
22 Q. This is saying effectively, or suggesting the opposite,
23 is it not?
24 A. It is.
25 Q. If you look down, it says:

1 "Argos is well placed to match/counter the current
2 initiatives at Index."

3 What they are being advised is that Argos will not
4 initiate a price war but they will not allow Index to
5 undercut them?

6 A. In our opinion there was a lot to lose from both
7 parties, because to be undercut in price meant that you
8 would lose footfall, therefore you would lose market
9 share. Specifically with Hasbro toy merchandise, which
10 was producing very low margins, and a lot of the
11 products we were selling were in actual fact key drivers
12 within the toy industry for bringing people into stores.

13 Q. If we look down to the sentence starting
14 "Operationally", the consultants say:

15 "Operationally the focus is likely to be on
16 improving speed of service and leveraging its vast
17 buying power."

18 Again, what Index is being advised is the way that
19 Argos is going to increase profitability is by squeezing
20 its suppliers. Again, was that something which you
21 would have perceived at the time?

22 A. No.

23 Q. This sort of advice, which is from external consultants,
24 would in all likelihood reflect the sort of advice that
25 retailers generally would be given by other consultants.

1 It is interesting, is it not, that there is a mismatch
2 between your perception and these external consultants?

3 A. Well, we were not aware of this analysis. As I said
4 earlier, our perception was that we hoped that the
5 pricing would go up but we were not sure that it would
6 happen within Argos and Index because they had such
7 a lot to lose, they were direct competitors.

8 Q. Mr Thomson, can I ask you this: in preparing your
9 statement, did you go back and check all of the prices
10 which were in the catalogues in 1999 and whether Index
11 or Argos went out at RRP?

12 A. No, I did not.

13 Q. Do you know whether Hasbro sought this sort of advice
14 from consultants at the time?

15 A. I have no idea.

16 Q. Can you turn to page 519. Do you see the heading
17 "Recommended Index Future Strategy"?

18 A. Yes.

19 Q. That is the context of this section. If you turn over,
20 you will see effectively an index of the sort of matters
21 which were being considered. Just skim down that. I do
22 not want to ask you any questions about it, but I just
23 want you to see the context.

24 A. Yes.

25 Q. Then if you turn over to 521, under the heading,

1 "Alternatives":

2 "Alternative strategic directions have been
3 considered but are not thought to offer a sustainable
4 competitive advantage to Index."

5 Then there is a heading, "Limited Assorted Deep
6 Discounting":

7 "Price is an important customer driver in catalogue
8 showroom shopping, however Index does not begin from
9 a position of market share leadership which could be
10 used to squeeze out smaller operators. The reverse is
11 true. If Index pursued a deep discount strategy on
12 limited assortment it is likely that direct competitors
13 would respond aggressively to diminish the sales impact
14 while inflicting losses on Index."

15 That is the advice that Index was being given: do
16 not adopt a policy of limited assortment deep
17 discounting because your direct competitors would
18 respond aggressively, in other words it would backfire
19 on you. That would apply to Argos, would it not?

20 A. I would have thought so.

21 Q. Then below that, it says:

22 "Just as Tesco has introduced Tesco value --"

23 THE CHAIRMAN: I did not quite follow that last question.

24 That is what would happen if Index --

25 MR GREEN: That is right.

1 I will make sure we understand each other,
2 Mr Thomson. If Index adopted a policy of deep
3 discounting, it is likely that direct competitors, one
4 of whom we agree would be Argos, would respond
5 aggressively to diminish the sales impact while
6 inflicting losses on Argos.

7 A. Yes.

8 Q. The consultants are saying to Index: do not engage in
9 a price war in a policy of limited assortment deep
10 discounting, do not do that because that will stimulate
11 the price war in which you may become the losers. Is
12 that how you understand it?

13 A. As I understand it, by reading it here, I would also say
14 that does not tell you what kind of ranges or areas they
15 were looking at.

16 Q. No, that is a fair comment.

17 A. Toys specifically were always a range that were subject
18 to deep discounting.

19 Q. You are right, it does not identify products and it is
20 talking about the general market position. But this is
21 headed:

22 "Alternative strategic direction which is being
23 considered but not thought to offer sustainable
24 competitive advantage to Index."

25 So it is a general piece of advice about a range of

1 products. That is the point you are making?

2 A. Yes.

3 Q. The next bullet point:

4 "Just as Tesco has introduced Tesco Value to
5 frustrate Aldi and Netto, GUS would not allow Argos to
6 be undersold. In addition, depths of assortment is
7 a strong customer driver and a severely edited index
8 assortment would be seen by some customers as a further
9 relative weakening of Index relative to Argos, but
10 further the fixed cost structure of Index for at least
11 the medium-term future is too high to be consistent with
12 a deep discounting strategy."

13 As a general proposition, the consultants were
14 saying a price war with GUS, Argos or any of your major
15 competitors is likely to be unprofitable?

16 A. Yes, I would agree with that. However, what I would say
17 was that in our area of toys there were very, very few
18 replica products, an awful lot of our products we sold
19 were brand leaders and brand names. Therefore, there
20 was no sort of copies or anything else where anyone else
21 could make big profit margins. Ours were always very
22 low price and cost cut, whereas in other ranges I am
23 quite sure there were many other product ranges, like
24 furniture, where a sofa made by one manufacturer but not
25 made by another could attract higher profit margins, and

1 that would be areas that would be concentrated on.
2 Toys, to me, did not appear to attract that. Toys were
3 always low margin and we were always being undercut and
4 the pressure was on us constantly to improve these
5 margins.

6 Q. It is a point I will come to later with you, which is
7 that toys, particularly must-have toys, generated low
8 margins and gave the retailers little room for
9 manoeuvre?

10 A. Yes.

11 Q. I will come back to that issue later because I want to
12 discuss it with you. If you go back to page 483 of this
13 report, this is in the executive summary. You will see
14 at the top of the page there is a basic point which the
15 consultants wished to convey. It is as follows:

16 "Index has a long history of unsatisfactory
17 financial performance. Recent sales growth is good but
18 it comes from a low base and has not been effectively
19 converted to profit. Performance remains well below
20 acceptable levels. Structural changes in retailing will
21 put further pressure on Index."

22 So the general pressure being conveyed was that
23 Index was under-performing. Can I ask you from your
24 perspective, was that a view that Hasbro held of Index
25 at the time?

1 A. There was a time when Index was growing with us,
2 I cannot remember specifically if it was around that
3 time, but I think from -- it grew to a certain point and
4 then went into a major decline and continued to do that
5 over the years. One of the big issues as far as we were
6 concerned was, again, profitability.

7 Q. So generally you would agree with, from Hasbro's
8 perspective, the proposition the consultants were
9 advancing?

10 A. Yes, I think from the perspective of Hasbro we would
11 like very much to have seen a growth in profit margins,
12 because that would have taken the pressure from us, but
13 that did not seem to materialise when I was looking
14 after Index.

15 Q. If you turn over to page 484, in the middle, you will
16 see there is a heading:

17 "Direct competition for Index will intensify."

18 The next bullet point down is:

19 "A rejuvenated Argos under GUS control is likely to
20 exploit the Argos brand strength more effectively."

21 That is the consultants' advice to Index, that Argos
22 will be rejuvenated under GUS control. Did Hasbro
23 perceive that Argos would be rejuvenated under GUS?

24 A. We certainly thought there would be a strength behind
25 the business, because at the time we were talking about

1 the amount of money available, and if anything this was
2 a benefit to us in terms of putting more business our
3 way.

4 Q. At the bottom of page 484, you see a sentence:

5 "The combination of Index's current poor performance
6 and the likely increased pressures means that a steady
7 evolution of business as usual will not be adequate to
8 deliver the necessary uplift in performance."

9 Again, the message being conveyed is that you cannot
10 just continue as you are, you have to do something.

11 I think, from the answer you have given to my previous
12 question, Hasbro would have agreed that Index must do
13 something to improve its performance?

14 A. We looked upon we had to improve our performance within
15 Index because of the pressure we were getting to improve
16 our profitability within the business, and that was
17 something that was constant.

18 Q. The recommended way forward is a section which starts on
19 the next page, 485. They go back to the point we have
20 just looked at, halfway down, "Alternative Strategies",
21 and one of the strategies which is, according to these
22 consultants, not to be continued with is limited
23 assortment deep discounting. One of the points that
24 interests me is two pages on, page 487, at the bottom of
25 the page:

1 "Development proposals, product and service range",
2 you will see that the consultants say:

3 "The price architecture should be altered to include
4 fewer and higher price points."

5 I think what that means is that Index should
6 concentrate its focus on perhaps better product
7 selection, but fewer and higher price points. This is
8 the advice that they are being given which, as you say,
9 you were not aware of at the time?

10 A. No.

11 Q. Does it surprise you that they were being given this
12 advice?

13 A. It is difficult to make a comment, having not seen this.
14 The pressure that I was under within Index was not on
15 higher price points. The pressure came from the
16 Littlewoods home shopping side of the business, where
17 they were moving to higher price points as a natural
18 evolution of their business. There was a move in terms
19 of selling product that might be below £4.99, and that
20 was difficult and costly to distribute.

21 Q. If you turn over to page 492, there is a heading,
22 "Structural factors in retailing and overseas case
23 studies".

24 I am showing you this page so you can see the
25 context of the comment on the next page, page 493:

1 "Scope exists for a shift to higher price points."

2 Again, you are not aware of this, but one of the
3 important matters in this case is each party's
4 perception of what was happening. That may be a legal
5 point, but each party's perception of what was happening
6 and how they responded is an issue in this case. What
7 you see here is Index being advised that Argos is less
8 likely to initiate a price war and that there exists
9 scope for a shift in prices, and that you must not adopt
10 the same on policy of strategic limited assortment deep
11 discounting. As you say, you were not aware of that at
12 the time?

13 A. No.

14 Q. Index plainly did not share with you their internal
15 policy decisions, did they?

16 A. No.

17 Q. If they had a strategy document that was for their
18 internal use, was it not?

19 A. Yes.

20 Q. I want to pick up a stray comment, which I hope you can
21 help me with, on page 511. It is in a different
22 context. It is under the heading, "Competitor Analysis,
23 Impact of Category Killers."

24 I was intrigued by the second bullet point down,
25 next to the box on the left:

1 "Weakness in the toy market has hit Toys R Us, which
2 is therefore not well placed to put pressure on toy
3 prices."

4 Can you elaborate on what that might have meant?
5 This is September 1998, "Toys R Us not well placed to
6 put pressure on toy prices"?

7 A. From my perspective here, Toys R Us would very much
8 follow what was happening within the marketplace. So
9 therefore if Argos or Index had come out with toys and
10 cut prices, they would follow suit and go lower. But
11 the perception of the consumer was that Toys R Us were
12 always much lower than anybody else. This was not the
13 case. From our analysis, we knew that they would go
14 deep cut in pricing on maybe 100 or 200 toys, not as
15 much as everybody else. But I do not understand when it
16 says they were not well placed to put pressure on toy
17 prices. They could at a moment's notice put pressure on
18 toy prices by dropping prices on the shelf.

19 Q. Do you understand what is meant by weakness in the toy
20 market?

21 A. The weakness in the toy market I can only assume was
22 that at that time the toy market was suffering from
23 extreme margin pressures. This was something that was
24 getting steadily worse within our Hasbro business, and
25 had been leading up until 1998. We were coming under

1 increasing pressure to improve margins to our retailers.

2 Q. One of the things I will discuss with you later is the
3 way in which various market pressures coalesced around
4 this time. We see a number of the retailers, perhaps
5 for different reasons, having a desire to push prices up
6 to get more margin, and there are many different ways in
7 which that can be achieved.

8 But this report goes on in a number of places to
9 make similar points. I will not ask you any more
10 questions about it, but perhaps you will look at
11 page 531, which is the heading to another section, two
12 pages on, which is repeated on a number of occasions:

13 "Change in price architecture, higher price points
14 and fewer price points."

15 That point is made on a number of occasions. If you
16 turn to page 589, right at the very end, the very last
17 page of this tab, you will see that the external
18 consultants, under the heading "Next Steps" have
19 suggested as one of the team leaders for implementing
20 any new strategy which flows from this, Mr John McMahon.
21 Do you see that?

22 A. Yes.

23 Q. I think it flows from your previous answers that
24 Mr McMahon did not discuss this report with you at all?

25 A. No, I cannot recollect him discussing it.

1 Q. I want to consider with you one or two of the
2 implications of this. Could you go to Mr Bottomley's
3 statement at paragraph 10, volume 1, tab 3, page 8,
4 where he says:

5 "The development of the pricing initiative came at
6 the right time insofar as Argos' business strategy was
7 concerned. At that time Argos wanted margin injected
8 into the sector."

9 What Mr Bottomley is saying is that the Hasbro price
10 initiative came at the right time because, in effect of
11 the GUS takeover, Argos were trying to inject more
12 margin into their business. If they were doing that,
13 they would be trying to find ways of moving price up,
14 naturally?

15 A. I am not aware of this meeting between Alistair Richards
16 of Hasbro and (inaudible) of Argos. That is not
17 something I can remember at all.

18 Q. Paragraph 10, if you read that to yourself.

19 What I want to discuss with you is how the market,
20 in various different ways, came together in late 1998;
21 retailers were looking to push their prices up, and you
22 were seeking to inject more margin into retailers. What
23 this means is that if the Hasbro price initiative -- and
24 I will ask you about that later -- was formulated in
25 a way which, as you put in your witness statement, made

1 it unavoidable that retailers would go about actual
2 RRPs, then most retailers, given these sorts of changes
3 in the marketplace, would have been happy to follow
4 suit. As you say in your statement, it was more or less
5 unavoidable?

6 A. That is correct, but there was no guarantee that anyone
7 was going to follow suit in the strategy that we laid
8 out. That was one of the issues that we had all along,
9 that no-one would agree to stick to any prices because
10 both were afraid that either would undercut each other
11 in order to gain market share.

12 Q. I will come to that in a while. What I want to do at
13 the moment is concentrate on how the market operated, so
14 we understand the context in which the various companies
15 operated.

16 A. I can understand what they were trying to do, but at the
17 time the pressure was still on us to improve the
18 margins. At the same time, there was still consistent
19 price cutting taking place.

20 Q. Let me ask you about price points and low margins. You
21 touched on this already. One way to do that is just to
22 ask you about Ms Paisley's statement, which is volume 2,
23 tab 46, paragraphs 10 and 11, which is page 347 of the
24 bundle. Is this a statement you had a chance to read?
25 Do you recollect the paragraph? Let me read it to you,

1 so you have it in mind:

2 "The toy sector is characterised by strong price
3 points. The strongest price points are £9.99, £19.99,
4 £29.99 et cetera. The products priced at £4.99 and
5 £14.99 are almost as strong. The price points are
6 related to the perception of the consumer, who will
7 recognise that £9.99 is less than £10, even though it is
8 only one penny less. To move to a price of £10.25
9 produces a very different reaction and a lot more
10 consumer resistance. Going through a strong price point
11 is known as breaking the price point and is always
12 a very risky thing to do. Hasbro, like most suppliers,
13 will recommend prices at the strongest price point that
14 they could find, but they are constrained to a degree by
15 the cost price and the need for a certain minimum retail
16 margin. Hasbro will choose price --"

17 THE CHAIRMAN: Do you need to read the whole thing, Mr
18 Green? I do not know what you are going to ask.

19 MR GREEN: I am going to read it to him so he understands.
20 Is that what you want me to do?

21 THE CHAIRMAN: Only if it is really necessary.

22 MR GREEN: I want to ask him a number of questions about
23 different sentences, so I would like to read it so he
24 understands it.

25 THE CHAIRMAN: Carry on.

1 MR GREEN: I know it is a bit tedious.

2 "Hasbro will choose price points such as £9.99 or
3 £19.99 as often as they possibly can, the consequence is
4 that retailers dare not break the price point and these
5 are likely to become an effective maximum. They are
6 also very close to a minimum in that the retail margin
7 allowed may be as low as 6 or 7 per cent, which is often
8 inadequate in any event to cover the retailer's
9 distribution costs. Going below the recommended retail
10 price would almost certainly mean a significant loss for
11 the company. This may even represent an overall loss on
12 each item sold, so that the greater the volume sold, the
13 greater the loss. This is a very dangerous situation
14 for a retailer to find itself in. The profit on return
15 bearing in mind that the cost of sales would at best be
16 small and certainly decisions to undercut the
17 recommended retail price would mean a negative financial
18 contribution to the business. Undercutting decisions
19 are accordingly strategic, ie designed to persuade
20 consumers of Index's price-cutting credentials."

21 Do you have any dispute with any of that?

22 MR DOCTOR: With great respect, he simply cannot ask the
23 witness that question.

24 THE CHAIRMAN: You will have to take him through it.

25 MR GREEN: I am happy to. We will start in paragraph 10.

1 Do you agree that the strongest price points are £9.99,
2 £19.99 and £29.99?

3 A. Yes.

4 Q. Do you also agree that the products at £4.99 and £14.99
5 are almost as strong?

6 A. Yes, I do.

7 Q. Do you agree with the next sentence about the perception
8 of consumers?

9 A. I would agree with that as being less than £10.
10 However, up until this point this did not happen because
11 the pricing points in Index certainly were not around
12 the price points as far as our product was concerned.
13 Some of them were, some of them were not, but there were
14 varying price points across our whole range. It was the
15 same within Argos as well.

16 Q. When you say up to this point, what point in time? Are
17 you talking about up until 1997?

18 A. I am talking about up until 1998 a lot of our analysis
19 is that round price points were often not adhered to.
20 While we would recommend a retail price point, that was
21 a recommendation. More often than not, when the
22 catalogues came out in July/August we found that had not
23 been the case.

24 Q. Are you referring to spring/summer 1998, until that
25 point in time?

1 A. Yes.

2 Q. Have you been back to check whether the spring/summer
3 catalogues for 1998 did or did not go out at your price
4 points?

5 A. I know for a fact that this initiative took place in
6 autumn/winter 1999, so the price points were all over
7 the place.

8 Q. Do you agree with the sentence which says:
9 "To move to a price of 10.25 produces a very
10 different reaction and a lot more consumer resistance."

11 A. Yes, I do, but it also depends what you are trying to
12 achieve from a different product. It may have been that
13 any one of our retailers decided to go at a specific
14 price point in order to make a statement.

15 Q. I do not suppose there is much disagreement about that.
16 Ms Paisley then says:
17 "Going through a strong price point is known as
18 breaking the price point. It is a risky thing to do."

19 A. That is risky if the perceived value of the product is
20 £19.99 or £20 and everyone else in the high street is
21 selling it at that price. Occasionally one of our
22 retailers would go out higher than that, then we would
23 view it that they would not sell the same sort of volume
24 going out at that price, but a lot of people did go out
25 on price points.

1 Q. I assume you agree with the first part of paragraph 11,
2 that it was your policy to recommend prices at the
3 strongest price point, and you were not going to choose
4 a weak one, were you?

5 A. Most of our prices were £4.99, £7.99, £9.99 or higher
6 depending on the product we were selling. We had
7 a whole range of products in our portfolio.

8 Q. Ms Paisley says in the next two sentences:

9 "Hasbro will choose price points as often as they
10 possibly can."

11 So you agree with her on that?

12 A. Yes.

13 Q. She says in the next few sentences that:

14 "The consequence is that retailers dare not break
15 the price point, these are likely to become an effective
16 maximum. They are also close to a minimum in that the
17 retail margin allowed may be as low as 6 or 7 per cent
18 which is often inadequate in any event to cover the
19 retailer's distribution costs."

20 She is referring here to the low margin goods, not
21 the much higher margin goods. As a proposition, her
22 perception -- we are only looking at her evidence at
23 this stage -- is correct. What she is really saying is
24 that there is little room for manoeuvre. Do you agree?

25 A. There was not very much room for manoeuvre, but it was

1 still manoeuvre. Despite the fact there were low
2 margins, there were products we were selling at that
3 time which were only earning margins of 1 per cent.

4 Q. In the last sentence she says very much the same thing:

5 "Undercutting decisions are accordingly strategic,
6 ie designed to persuade customers of Index's price
7 cutting credentials."

8 So retailers would undermine or go below an RRP for
9 strategic reasons?

10 A. If some products we were selling were particularly high
11 volume products that were driven by huge amounts of TV
12 advertising spend, then these were the ones that were
13 usually undercut the most.

14 Q. In terms of the way you formulated your price point,
15 there is a variety of bits of evidence -- I will not
16 take you to them -- which suggests Hasbro did a certain
17 amount of research each year to try to find the
18 strongest price points. For example, you discussed
19 generally in the industry price points at the toy fairs
20 at the beginning of year. Would that be correct?

21 A. No. We certainly would not discuss with our competitors
22 about price points. We had a policy, I think, at that
23 time where we used to put our recommended retail price
24 points on our price tickets when our customers went
25 around the toy fair. You would occasionally go on to

1 other people's stands to see what they were doing and
2 some companies would show price tickets, some would not,
3 but our pricing had been very much firmed up by the time
4 we got to these toy fairs, it probably would have been
5 firmed up as late as October or November the previous
6 year. There was very little change between then and the
7 toy fairs.

8 Q. Your experience is that you had sufficient experience
9 and skill to know instinctively what the correct price
10 point was?

11 A. My company would have. I did not. I went with what my
12 company had as the list price and the recommended retail
13 price. It was the company and the marketing part of the
14 company that decided that strategy. I would also assume
15 that was to do with whatever our list pricing strategy
16 was in order to make our company profitable.

17 Q. Can you help the tribunal with the process of setting
18 the price point for the RRP internally? You said
19 a moment ago you thought it was the marketing people who
20 did that. How would it arise?

21 A. Basically our pricing is based upon from point of
22 manufacture all the way to the point of retailing, which
23 covers anything like our overhead costs, our advertising
24 strategies, the kind of volume we are doing. If it is
25 a new product, it could be to do with the tooling used

1 to make the product. It is a whole beginnings of
2 process.

3 We use a document called a TLP, which is a toy line
4 plan, which basically takes the product from point of
5 manufacture to include licensing costs, royalty costs,
6 advertising costs, all the factors that are made up to
7 bring a product to market. That tends to dictate the
8 list price, which would then dictate a retail price
9 point.

10 Q. You mentioned a moment ago the question of advertising.
11 Hasbro advertised a number of its key brands on
12 television, did it not?

13 A. Yes.

14 Q. I think any parent with small children will know that
15 popular toys are advertised with their RRP's generally at
16 6.00 in the morning, as I recollect?

17 A. Yes, there is a fair amount of advertising that goes on,
18 yes.

19 Q. The advertising includes what is in effect the RRP,
20 a price is put out on the television?

21 A. Some do, some do not.

22 Q. Are you aware that there are codes of practice governing
23 advertising of price on television, is that something
24 you were aware of?

25 A. Not totally familiar, because again that is not an area

1 that is my expertise.

2 Q. It has been suggested to me by one of my clients that
3 the cost of advertising on television is really quite
4 substantial, so if you are building in the cost of
5 advertising on television, it will affect the way in
6 which you set the list price of a product and ultimately
7 your recommended retail price, is that fair?

8 A. It certainly affects the overall cost of the product,
9 yes, because it is a huge cost to the company to
10 advertise. And that has to be reflected in the list
11 price of the product.

12 Q. I am going to ask you about the spreadsheets that you
13 sent to buyers later, but now I just want to ask you
14 about the fact that when you sent out the spreadsheets,
15 you would often identify whether the product was to be
16 advertised on television or not?

17 A. That is correct.

18 Q. The purpose behind your including the fact that the
19 product was to be advertised was to say to the buyer:
20 well, you really ought to be going out at this RRP
21 because that is the price it is going to be on
22 television?

23 A. No, not necessarily. At that time we were sending
24 out -- when I sent out spreadsheets, it was to
25 highlight, the TV highlight was also to show how

1 volume-related the product would be. In some cases in
2 some of my spreadsheets to Index, I indicated what
3 volume we would be looking at in the UK for that
4 product. One of the reasons behind that is that if
5 Index were to look at their market share in relation to
6 the volume we would be doing, they would be able to see
7 the volume they could expect for that product. The RRP
8 was something we put on our spreadsheets to show that
9 was the indicated price at that time. More often than
10 not with TV driven products, the RRPs did not come out
11 at that, they would be less than that, considerably less
12 than that in many cases, which resulted in lower
13 profitability, which again put the pressure back on us.

14 Q. Say, for example, you advertise a doll at £9.99 on
15 television, then the poor benighted parent sitting in
16 the armchair at 6.00 in the morning will expect to buy
17 it at a maximum of £9.99, it would be difficult to
18 advertise it at a higher price if it has been advertised
19 on television?

20 A. That is right, but again there were some accounts within
21 our portfolio who would decide not to do that, who would
22 go above the perceived retail price point.

23 Q. The fact it was advertised on television would make it
24 easier for a retailer to go with that price because
25 there would have been an expectation built up, to

1 a degree?

2 A. Not necessarily. The expectation would be to go out at
3 that point, because that was the retail price point we
4 would have published or printed in our spreadsheets.
5 More often than not, that was not the case. These
6 advertised products tended to be much lower than £9.99.

7 Q. What period are you talking about, are you talking about
8 1997, when you say we did this?

9 A. I am talking about prior to 1998 when we brought out
10 a new business plan, a new strategy revolving around our
11 core games and Action Man products.

12 Q. At a later period, once one sees that there is a degree
13 of adherence to RRP's, if you advertised then, jumping
14 forward, taking a hypothetical example in 1999 or 2000,
15 if you then advertise, then that expectation in the mind
16 of the parent will be created and will perhaps be
17 stronger?

18 A. It is very difficult to know what the consumer's
19 perception would be. The consumer is always looking for
20 the best possible price, and these price points were
21 a guideline only.

22 Q. Can I ask you about another general matter. In general
23 terms a high street retailer, let us say Woolworths, can
24 change its price for a particular toy much more easily
25 than can a catalogue retailer?

1 A. That is correct.

2 Q. It can, in extremis, change a price overnight if it
3 wishes in order to respond to competitor pricing
4 elsewhere; is that correct?

5 A. Yes.

6 Q. The catalogue retailer prices are set, in effect, twice
7 a year, in the spring/summer and then in the
8 autumn/winter catalogue?

9 A. Yes.

10 Q. It would therefore follow that if a catalogue retailer
11 wishes to implement a new or a modified policy on
12 prices, it can only do this in real terms once or twice
13 a year?

14 A. Not if a catalogue has a price promise printed in the
15 catalogue, which says that they will match any other
16 prices in the high street.

17 Q. I see that. But generally, in general terms, I am not
18 talking about in the individual cases but in general
19 terms the focus for any catalogue retailer is to respond
20 to the pressures which have arisen over the previous few
21 months and reflect that in the catalogue?

22 A. Hence it was still critical for the catalogues to get
23 their pricing policies right and try to be more
24 competitive.

25 Q. I think there is no dispute that both of the catalogue

1 retailers obviously examined the prices in the previous
2 catalogue of their rival, to see if they could determine
3 trends in the marketplace?

4 A. Yes.

5 Q. They were monitoring, for example, the spring/summer
6 catalogue when they came to set prices for
7 autumn/winter?

8 A. Yes.

9 Q. I would like you to look at a document you produced,
10 which is in witness statement bundle 2, tab 49,
11 page 456.

12 THE CHAIRMAN: It is Index 1999.

13 A. Yes.

14 MR GREEN: Do you recognise this document?

15 A. I do.

16 Q. This was part of the documents prepared for
17 a presentation to Littlewoods?

18 A. This was not. This actual template was not produced by
19 me, it was produced by the company, and I inserted it
20 into the presentation.

21 Q. You will see that it is entitled "Index 1999 Price
22 Analysis, Autumn/Winter 1998"?

23 A. Yes.

24 Q. Can you just explain to the tribunal how this data would
25 have been collected, because you have just given

1 evidence that it was not you, it was somebody else in
2 the company?

3 A. Analysis was collated by our business planning
4 department at that time, who would go through and look
5 at all the catalogues and would then go out and do
6 visits into the retail trade, to take all the relevant
7 price points, whether they be in print or on the shelf,
8 and then come back and do an analysis of the
9 spreadsheet.

10 Q. This therefore concerned the prices effectively set in
11 May/June 1998 for the autumn/winter 1998 catalogue?

12 A. That is correct.

13 Q. You will see that, if you go to the bottom half of this,
14 there are a series of core games from Connect 4 down to
15 Cluedo. Do you see that?

16 A. Yes.

17 Q. There are 13 games which both Index and Argos sold in
18 their catalogues?

19 A. Yes.

20 Q. If you compare the price under Argos retail with Index
21 retail, you will see that the prices are identical, save
22 for Operation, where there is a difference of apparently
23 5p?

24 A. Yes.

25 Q. You will see that also Woolworths are more or less at

1 the same price for these core games?

2 A. Yes.

3 Q. Would it be fair to say that in autumn/winter 1998, for
4 whatever reasons, Argos and Index were largely matching
5 prices at your RRPs for core games?

6 A. No, these were not our recommended retail prices. Our
7 recommended retail prices on many of these games was
8 higher. They were Buckaroo, Operation, they were
9 £11.99. On products like Connect 4 they would have been
10 £9.99. These were the actual retail operations that
11 these accounts were actually going out at at that
12 particular time.

13 Q. Have you checked the RRPs for these products?

14 A. I know for a fact that Buckaroo and some of these key
15 products were going out at £11.99 at that time.

16 Q. Have you checked these products against the RRPs at the
17 time?

18 A. I would not have done that, but this analysis was based
19 on what the catalogues and what the retail trade were
20 selling these products for at that particular time.
21 I know for a fact that Buckaroo and some of our core
22 games, our recommended retails were around about £11.99
23 at that time and we later as a company got all these
24 prices down to £9.99, about two years after.

25 Q. It is said by the OFT these were prices which would have

1 been set in May/June 1998, which is the best part of 18
2 months before it is suggested that there was any
3 commonality in pricing. The point I am putting to you
4 is that, for reasons which are not suggested in any way
5 to be unlawful, there was a high degree of commonality
6 a long time before autumn/winter 1999?

7 A. For years these products, many of the products in this
8 spreadsheet here, especially the games like Buckaroo,
9 Operation, Twister, these games, and like Mouse Trap,
10 have been sold by us in the UK or by other companies in
11 the UK for a period of anywhere up to 35 or 40 years.
12 These products had also been sold within Argos and Index
13 for some considerable time and had probably established
14 themselves at these price points anyway because of
15 natural evolution. There was nothing we did at that
16 time, other than take the hit, because of the margins
17 that we made by selling products at that price, the
18 grief that we got was that there were not margins in
19 these products, but they were significant volume drivers
20 in the business.

21 Q. We noticed one thing, when we have done our own
22 correlations of the RRP's, that the RRP's you sent for
23 autumn/winter 1999 largely followed the price set out in
24 the Argos spring/summer catalogue for the previous
25 period. For example -- I am not asking you to look at

1 any statistics, but for Action Man, eight of the nine of
2 your RRPs followed the Argos spring/summer catalogue
3 price.

4 My question is this: presumably when you set your
5 RRPs, or at least your company set the RRPs, account
6 would have been taken of the price which the product
7 went out at in the previous Argos catalogue? That would
8 have been a factor which would have influenced the
9 setting of the RRP?

10 A. We would look at that, but mainly, I think, at that time
11 we would look at what was happening in the marketplace
12 and see what kind of price points were going out in
13 order to see the margin implementation. So it may have
14 been that at that time we would see that the market
15 price had already been set at that retail price point
16 and the chances of anyone putting that up, especially in
17 catalogues, would be remote, so it may be that I put in
18 my price list at the time that that was the
19 spring/summer retail price that we had seen and that the
20 likelihood was that there would be no reason to see it
21 going any higher, therefore I put down what price point
22 we saw in the marketplace, or that I saw in the
23 marketplace. It may not necessarily be that the company
24 wanted to retail it at that, it may be what I saw in the
25 marketplace.

1 Q. If you cannot answer this feel free to say you cannot.
2 You have seen the consultants' advice to Index?

3 A. Yes.

4 Q. If Index believed that Argos was not going to initiate
5 a price war and was going to push pricing up, to chase
6 margin, then that would have given Index and presumably
7 other retailers confidence that the prices in the
8 earlier Argos catalogue would remain stable in the next
9 one?

10 A. Yes.

11 Q. We discussed the context of your price initiative.
12 I would like to ask you some questions about it now. In
13 paragraph 41 of your witness statement, tab 61 in this
14 bundle, you say under the heading "1999 Trading Terms":
15 "In order to make sure that the sale and bought-in
16 margins were achieved from the previous year, the list
17 prices were increased on our core brands which meant
18 that there was no alternative but to go out at a 1999
19 price point."

20 What interested me here was the fact that you
21 increased the list price. My understanding of the price
22 initiative was that you -- again, this is probably very
23 simplistic but see if you agree with it in general
24 terms -- that you kept the list price high, but you
25 would inject profitability into the product by a series

1 of rebates, I think they were described as core brand
2 rebates?

3 A. Core brand rebates.

4 Q. The listing, pagination and so on, and I will ask you
5 about those in a moment. But is that broadly correct?
6 You would increase the list price so that, in effect, as
7 you say here there was no alternative but to go out at
8 the price point and then profit would come later with
9 a respective discount?

10 A. The strategy was to move price point, so they would move
11 up to round price point, as we called them, but the
12 incentive to do that was that the core strategy was
13 followed.

14 Q. Because prices were going up, and the evidence is that
15 they were going up 5 or 6 per cent on the core games,
16 roughly. That would have the effect of increasing this
17 margin for manoeuvre that we discussed earlier. You
18 have a higher list price, less margin, greater pressure
19 to go out at your 1999 price point?

20 A. The pressure was there to go out at the 1999 price
21 point, and therefore not discount at a 1995 or even an
22 1989 or whatever the price point might have been. It
23 was lower than that. It was designed so that that price
24 point could only effectively be 1999 to make any profit
25 at all, or to make similar profit to the previous

1 catalogue or the previous year.

2 Q. You then say in paragraph 42:

3 "Because the core brand range of products attracted
4 such low margins and in order for the account to see an
5 overall improvement in profit, it was a rebate available
6 for support."

7 A. That is correct.

8 Q. That is the core rebate, it was a listing rebate and
9 a variety of --

10 A. There were a number of rebates. The core brand rebate
11 that involved our Action Man and games range involved
12 stocking the complete range of these products within the
13 core brands. There were other core brand rebates
14 available on some of our other product ranges as well,
15 but they had a minimum listing requirement.

16 Q. You say in paragraph 47:

17 "I would then construct the account business plan
18 for each of my accounts and present it to my sales
19 director for his approval. In constructing the 1999
20 business plan for Index the core brand rebating was
21 offered in return for joint page design and full listing
22 of the core range subject to availability. There was no
23 direct reference to maintaining retail prices to earn
24 the rebate in the plan."

25 A. Not in the actual plan, but the retail price points were

1 on the spreadsheets, the analytical spreadsheets, which
2 were used to prove the profitability.

3 Q. That is helpful. I will show you one of your
4 spreadsheets and ask you to explain how it works, to the
5 tribunal. At this point you are saying you were
6 granting the rebates for two things, joint page design
7 and listing. Can you confirm my understanding, which is
8 that from Hasbro's perspective, to be able to have its
9 product advertised in what may be seven million
10 catalogues is really quite a tremendous advertising
11 boom. It is a major promotional advantage for you to
12 have, let us say, two or three pages of Hasbro product
13 in the Index catalogue?

14 A. Yes, but for both parties. For us it was, the more
15 product we got into the catalogues obviously the more
16 turnover we achieved with that account. From the
17 account's perspective, in terms of having more of our
18 product, it was a draw for the consumer, because a lot
19 of our products were high profile driven merchandise.

20 Q. That is why a rebate would quite legitimately be given
21 for, I think you put it, joint page design and full
22 listing?

23 A. The joint page design was something that we felt very
24 strongly about because Hasbro at the end of the day
25 owned its brands and owned its merchandise and wanted to

1 make sure that the product looked the way we wanted to
2 see it on the page.

3 Q. Full listing means what?

4 A. Full listing would mean a full listing of these items
5 within the core ranges.

6 Q. You mentioned the Excel spreadsheet, because this is
7 a convenient moment to ask you to explain to the
8 tribunal how they operated, which we can probably do in
9 the six or seven minutes before lunch. They are
10 attached to Mr Riley's statement, tab 55, and a copy of
11 the spreadsheet in tab 56.

12 Mr Riley gives an explanation of how they work, but
13 since you are here and they are your spreadsheets,
14 perhaps you can explain to us precisely how they
15 operate. Let us take one as an example, which is the
16 first one on page 627. At the top you have a product,
17 Buckaroo, do you see that?

18 A. Yes.

19 Q. Then there is an item number, with a number, 14526. Can
20 you explain what that reference number is?

21 A. That is our Hasbro item number of that particular
22 product.

23 Q. That is your internal product number, not catalogue?

24 A. Not catalogue, our internal reference number.

25 Q. Then you have list price in the second column, then list

1 inclusive 7p label, then an empty column, pack costs,
2 then list price including label and packaging index.
3 Can you explain what those four columns are?

4 A. The list price is the list price that Hasbro published
5 at £7.65. Index required us to put a label with the
6 catalogue number or an item on the particular product,
7 which we charged 7p to do. Pack costs would have been
8 any additional packaging, for example in plush product
9 it might have been that Index required a polythene bag
10 to go on the product, which has incurred an additional
11 charge. Then the list price, including label on any
12 packaging, was reflected in that column.

13 Q. That is £7.72?

14 A. Yes.

15 Q. The next price, £9.99, it says High Street retail, but
16 that is in effect the RRP?

17 A. Yes, what we would anticipate it to retail at in the
18 High Street.

19 Q. Then the next heading is "Est Volume", estimated volume,
20 and it says 10?

21 A. That is the anticipated estimated volume that I would
22 expect Index to have sold in that particular year.

23 Q. It is clearly not 10 items?

24 A. 10,000.

25 Q. Then High Street list, thousand. So that is really

1 a multiplication of 10,000 times the RRP?

2 A. No, 10,000 times 7.72, which is 77,200.

3 Q. So that is your estimation of the revenue which the

4 retailer will make if they go out at your RRP?

5 A. Retailing at £9.99 would have generated just under

6 £100,000 worth of turnover, which would have made a cash

7 profit of £7,800, which would have been 7.8 per cent.

8 Q. Just explain to me a little bit more. You say you make

9 a cash profit of 77.2?

10 A. No, there is a list price, they would have generated at

11 list, 77,200. It would have retailed at just under

12 100,000 at 99.9, and that would have generated a cash

13 profit of £7,800, which would have given a profitability

14 of 7.8 per cent.

15 Q. So the revenue at the RRP is the 99.9 column?

16 A. That is the revenue taking cash through the till.

17 Q. Then you have 7.8 cash profit, and just explain so we

18 have it on the record how that is derived, the 7.8?

19 A. That cash profit is the difference between the list

20 price and the retail price. I am not sure whether this

21 excludes VAT or not.

22 THE CHAIRMAN: Can you just help me on that, Mr Thomson? If

23 I take 99.9 and I subtract 77.2, I get a larger sum than

24 7.8?

25 A. You have to take the VAT off at the retail price point,

1 because that includes VAT. There is a calculation that
2 we used within the spreadsheets which took out the VAT
3 content. Also, Index calculated their cash profit
4 slightly different to the way you would normally
5 calculate it. They used a different equation, which
6 I had to incorporate in the spreadsheets.

7 Q. There is a standard formula you used?

8 A. There is a standard formula in all of these.

9 MR GREEN: Then you have your percentage of 7.8. POR, what
10 does that stand for?

11 A. That stands for profit on return.

12 Q. The next column, avail, c/f?

13 A. That means carried forward.

14 Q. Which means what?

15 A. It is a product that continues in our range. A carry
16 forward product is something that may have been in our
17 range for year two or the second season or it could have
18 been in our range for, in the case of Buckaroo, I think
19 somewhere around 25 years.

20 Q. It is something you had in stock at the time?

21 A. Potentially, yes.

22 Q. Finally, under the heading TV, A/W, that is
23 autumn/winter?

24 A. Autumn/winter TV advertising.

25 Q. When would you start advertising the Buckaroo product on

1 television?

2 A. I cannot remember specifically. Buckaroo would probably
3 be a product that we would have started advertising
4 possibly around September time or at October half-term.
5 It was an ongoing product which meant that we would
6 advertise later, because people, the consumer, knew that
7 product. If it was a new product to us, we would tend
8 to advertise around about July and August when the
9 catalogues came out, to ensure visibility of the product
10 and also to let the consumer see who was stocking it at
11 that time.

12 MR GREEN: Is that an appropriate moment?

13 THE CHAIRMAN: Mr Green, I do not know how you are getting
14 on, but you have about another half an hour of your
15 indented time. I am very anxious to finish Mr Thomson
16 today.

17 MR GREEN: Certainly we will finish him today. I hope to be
18 much shorter with the other witnesses. Mr Brealey and
19 I hope that we will have finished all the OFT witnesses
20 by Wednesday morning between us. I will not be putting
21 my entire case to any of the other OFT witnesses. I may
22 have nothing to say to Mr Wilson; I will have a short
23 amount to say to Mr Bottomley.

24 THE CHAIRMAN: How much time do you need with Mr Thomson?

25 MR GREEN: I think, to do justice to Index's case, I need

1 another hour and a half minimum.

2 THE CHAIRMAN: Why did you indent for two hours, if you are
3 going to take 50 per cent longer than that? It means
4 the witness will have to stay over for another day.
5 I may not have the figure right, but that is what I am
6 working on.

7 MR GREEN: My understanding was we indicated we would be
8 through all the OFT witnesses, between us, in about
9 a couple of days. On that basis, I am putting my case
10 in its fullest form to one witness and I will be very
11 short with the others.

12 THE CHAIRMAN: How long are you likely to need with
13 Mr Thomson, Mr Brealey?

14 MR BREALEY: I do not know, but all I can say is that we are
15 very flexible and we promise that we will be finished on
16 time. I hope to be finished with Mr Thomson today.
17 I may need half an hour, 45 minutes. It depends to a
18 certain extent: if Mr Green has covered the questions,
19 then I can take them out of my cross-examination, so it
20 is difficult to say at the moment.

21 I have spoken to Mr Green, we are in no doubt that
22 we will finish the OFT witnesses on time.

23 THE CHAIRMAN: I do not want you to feel you have not had
24 the opportunity to ask the questions you need to ask.

25 MR GREEN: I have to put them to one witness.

1 THE CHAIRMAN: If we can finish this witness today, that is
2 a plus.

3 MR GREEN: That is very much my intention.

4 THE CHAIRMAN: Mr Thomson, would you be kind enough over the
5 lunch break not to discuss your evidence or any aspect
6 of the case with anybody else. We will see you back
7 here at 2.00.

8 (1.03 pm)

9 (The short adjournment)

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1 (2.00 pm)

2 MR BREALEY: I have Maria Thomson and Andrew Needham, our
3 two witnesses, in the room.

4 THE CHAIRMAN: Thank you very much.

5 MR GREEN: Mr Thomson, do you have your witness statement in
6 front of you?

7 A. Yes.

8 Q. If you turn to paragraph 45, in relation to the price
9 initiative, and also if you turn to tab 2 in the core
10 bundle --

11 THE CHAIRMAN: File 26 is the court's number for the core
12 document bundle.

13 MR GREEN: At tab 2, there should be a document --

14 THE CHAIRMAN: The core document bundle does not have any
15 tabs.

16 MR GREEN: Page 19, bottom right-hand corner, is that
17 a document which says "1999 Trading Terms"?

18 A. It does.

19 Q. This was the presentation by Mr Evans and Mr Brighty in
20 October 1998. Did you attend this presentation?

21 A. I did.

22 Q. Do you remember much about it?

23 A. Only that with any new set of trading terms, it was the
24 anticipation of what we are doing, and also it had been
25 indicated beforehand that we were looking to improve the

1 profitability of our accounts by way of setting up new
2 trading terms.

3 Q. In paragraph 45 of your statement, you say:

4 "I remember asking Mike Brighty if what we were
5 doing on the core rebate was legal, and was told that
6 Jonathan had spoken to Nigel Hutton in our legal
7 department and that it was okay."

8 Do you remember that?

9 A. Yes.

10 Q. Are you aware that Nigel Hutton had, in conjunction with
11 Emma Wilson, spent a good deal of time in 1997 with
12 Mike McCulloch, going through the dos and don'ts, to
13 ensure that these presentations were lawful?

14 A. No, not at all.

15 Q. Could you explain who Emma Wilson is?

16 A. I think Emma Wilson might have been one of Nigel's
17 assistants.

18 Q. And Nigel was?

19 A. Nigel Hutton was our local adviser. I am not sure of
20 his title, but he was a solicitor, a company solicitor
21 who works in-house.

22 Q. Would you look at page 28, you will see there is
23 a sentence:

24 "Paid in return for maintaining as a minimum the
25 1998 trade average brought in margin on games of

1 1.5 per cent and Action Man of 5.5 per cent."

2 Do you remember that?

3 A. Yes I do.

4 Q. If you could look at Maria Thomson's witness statement,
5 tab 64, paragraphs 7-9 at pages 692-693, this is her
6 evidence -- I am not asking you about her evidence, but
7 there is one incident in relation to this item that she
8 refers to and I want to see if you can add anything to
9 it. She says in paragraph 7:

10 "So far as I can give evidence of any meetings
11 relevant to this case, there are three meetings in 1998
12 and 1999 with Hasbro that are relevant. The first
13 meeting was probably in late 1998, possibly November,
14 although I am not sure. It was after the GUS takeover
15 in April 1998 and before the 17th February 1999 meeting
16 referred to in paragraph 51 of the decision. This
17 involved Hasbro stating to Argos that it would make
18 a grant of rebate conditional on Argos going out at
19 RRP's.

20 "In other words, the threat was that Hasbro would
21 withhold rebate unless Argos priced at RRP. It is,
22 I think, the proposal mentioned by Neil Wilson at
23 paragraph 9 of his statement. I was not actually at the
24 meeting. The meeting was with Sue Porrit and Mike
25 McCulloch at Argos' offices at Milton Keynes. Mike

1 McCulloch told Sue Porrit that Hasbro were proposing
2 that all retailers should sell at a given price. They
3 would only be paid rebates if they agreed to sell at the
4 relevant RRP. Sue came into my office and said
5 something like, 'You will never guess what Mike has just
6 said to me.' We both thought it was illegal. I also
7 thought that it was commercially unworkable. I think
8 that Sue telephoned Mike McCulloch and told him this.
9 From what Neil Simpson says at paragraph 9, this was
10 also the advice Hasbro got."

11 Just so you understand what Wilson said, at tab 68
12 in the same bundle, page 736, paragraph 9, about halfway
13 down, he says:

14 "I set out in more detail below how this worked in
15 practice. The second part of the strategy was a listing
16 initiative which ran concurrently with the pricing
17 initiative and which involved payment of a rebate to
18 retailers in return for listing certain products that
19 might otherwise have been delisted. It was considered
20 first by Hasbro's sales directors to make the granting
21 of a rebate also conditional on our adhering to RRPs,
22 but it was realised that this would be illegal after
23 consulting Hasbro's legal department."

24 Does that accord with your recollection as well?

25 A. No.

1 Q. You do not remember anything of that?

2 A. No. My recollection was, as I said in my statement, at
3 the meeting, the terms meeting, I had heard rumours that
4 someone had said that withholding rebates was illegal.
5 I asked the question at the meeting and I was told no,
6 it was not, and that Johnson had checked it through with
7 our legal department, and this could be used at as
8 a threat.

9 Q. It is quite clear, because we have seen the evidence of
10 Mike McCulloch taking legal advice, that he had taken
11 legal advice for the best part of a year and he had
12 a document called "Dos and don'ts". Did you have --

13 A. This was never ever imparted to us. In fact, the first
14 time that we ever knew anything about competition law
15 was when we had training, over a year and a half ago.
16 We had never been told how to conduct ourselves. We had
17 never been told what was legal or illegal.

18 Q. You had a sufficient antennae buzzing to wonder whether
19 it was illegal?

20 A. There were people who said that it was, there were
21 people who said that it was not. There was no guidance
22 from the company, from the sales directors at that
23 meeting or after that time to say that this was illegal.

24 Q. You and Mike McCulloch, and I think Mr Bottomley, went
25 to a meeting with Index after these presentations?

1 A. Yes.

2 Q. In relation to that meeting, you say in paragraph 54 of
3 your statement -- just remind yourself of what you say
4 in paragraph 54, page 657:

5 "Before the meeting I was told that Mike McCulloch
6 would be coming along and this was unusual as I would
7 normally only have a sales director present at
8 a business plan meeting."

9 Do you know why Mike McCulloch came with you to the
10 meeting?

11 A. At the time it came as a surprise because I said
12 normally we would not expect a sales director. But
13 because it was a change in our business strategy, it was
14 important that we got customers to buy into our new
15 terms. That was why I recognised that he was coming
16 along to that meeting.

17 Q. One of the reasons why he might have come along with you
18 was to ensure that what was said at the meeting was
19 consistent with his dos and don'ts. Was that
20 a possibility?

21 A. That was not the case.

22 Q. You just explained that you are not aware of his
23 conversation with the legal department.

24 A. He never said anything at the meeting that would have
25 led me to believe that what I was presenting was wrong.

1 Q. Am not suggesting that. I am just asking whether
2 Mike McCulloch came along with you because he, as
3 a senior employee within the company, was intent on
4 ensuring that nothing improper went on, so nothing
5 improper might have gone on, he came along with that
6 intent; is that a possibility, or do you not know?

7 A. I do not know.

8 Q. I am going to do this briefly, but I would like you to
9 look Emma Wilson's statement at tab 66. I am not going
10 to ask you to read a lot of it. I just want to see the
11 gist of what it says. At the same time, will you turn
12 to the last two pages in the same tab, 730 and 731,
13 which are the dos and don'ts. This is the advice that
14 Mike McCulloch was given, after having had a fairly
15 extensive briefing session with the lawyers throughout
16 1997.

17 A. 730 and 731?

18 Q. Yes, the last two pages. If you also go back to
19 page 700 at the beginning of that tab, this is
20 Emma Wilson's statement. In the next three pages she
21 describes her meetings with Mike McCulloch, because
22 Mike McCulloch wanted to inject more margin into
23 retailers but wanted to do so in a manner that was
24 lawful, so he sought legal advice. You say you were not
25 aware of this?

1 A. Correct.

2 Q. They also sought legal advice from a very well regarded
3 outside lawyer, David Aidman, then of Dentons, and that
4 is recorded. The dos and don'ts that are provided to
5 Mike McCulloch are at page 730. You see at the bottom
6 of that page:

7 "Parties to discussions: Hasbro. The individuals
8 from Hasbro who will be involved in the discussions
9 should be carefully briefed and should be at the sales
10 director level and above."

11 That would include Mike McCulloch?

12 A. That is correct.

13 Q. He was advised that he should attend meetings because he
14 was at sales director level and above. Then:

15 "Retailers: Contact with retailers should be at the
16 most senior levels possible, buying director level and
17 above. Discussions with retailers should always be on
18 an individual basis. Pricing issues should never be
19 raised in groups of retailers."

20 So far as you are concerned, you had an individual
21 discussion with Index, did you not?

22 A. I did.

23 Q. "Content of discussions. It is fundamental that the
24 message which we are conveying is a clear explanation of
25 our philosophy on pricing and not an attempt to impose

1 pricing directives."

2 So far as you are aware that is what happened: there
3 was a clear explanation of your philosophy on pricing
4 but you could not impose your price views upon your
5 customers?

6 A. That was not my understanding at the time because I was
7 not told that.

8 Q. But that is what Mike McCulloch was advised?

9 A. Mike McCulloch may have been told that, but this
10 information was not passed down to the sales force.

11 Q. I am not suggesting he informed you about it. Let me
12 make this clear: I am not suggesting you had legal
13 knowledge of the dos and don'ts at the time you had
14 meetings. What I am trying to get clear is what was in
15 Mike McCulloch's mind, because he was at the meeting
16 with you.

17 A. I cannot answer for Mike McCulloch because I have no
18 idea.

19 Q. Just one more thing, then I will leave this document.
20 At the bottom of page 730, above the heading "Management
21 of Discussions":

22 "Make clear throughout discussions that all margin
23 indications are in no way to be construed as a binding
24 commitment and that we can give no binding assurances as
25 to how the rest of the marketplace will react to our

1 discussion."

2 That was the advice Mike McCulloch had when he went
3 with you to the meeting, but your evidence is that you
4 were not aware of that?

5 A. Correct.

6 Q. Let us go back to the meeting in your witness statement.

7 You say in your witness statement that you drew up
8 different plans for each account; is that correct? Can
9 you remember how many different plans you drew up?

10 A. No, I cannot be specific, but we looked at plans per
11 account which looked at the profitability of the
12 accounts, what the impact of the terms would have on the
13 business in trying to move up profitability in
14 a positive manner.

15 Q. How many accounts were you responsible for?

16 A. At that time I was, I think, directly responsible for
17 three or four accounts and indirectly responsible for
18 another two, I think, another two or three.

19 Q. You cannot remember precisely how many?

20 A. I would think overall about six accounts.

21 Q. Can you name them for us?

22 A. I was directly responsible at that time for GUS,
23 Littlewoods Home Shopping, Index, and I think I was
24 indirectly responsible at that time for Grattans, Empire
25 and Freemans.

1 Q. I think you answered my question in relation to this at
2 the beginning of the cross-examination: you submitted
3 your business plans to a variety of people above you in
4 the Hasbro organisation for approval?

5 A. Sometimes yes, sometimes no. Generally it was with my
6 direct point of contact, which would be the sales
7 director at that time. It was not very often that we
8 would go and sit in front of Mike McCulloch personally.

9 The only other time that we did review our business
10 plans would be as a group of sales people, where we had
11 to present the plans to each other so that everyone knew
12 what we were doing, what we were trying to achieve.

13 Q. You say in paragraph 52 that you cannot remember whether
14 this plan was presented to Index in late 1998 or early
15 1999?

16 A. Yes.

17 Q. Do you have any further recollection of that?

18 A. The only indication that I now believe that it was in
19 the latter part of 1998 was that coming into January
20 would have been the time we were preparing for Toy Fair.
21 Usually that meant fairly intensive work before Toy
22 Fair, preparing to meet the accounts and present plans
23 or take them through some new initiatives. But I now
24 believe that it was at the tail end of last year, but
25 I cannot be specific as to what timing it was.

1 The only indication I do have is that when I looked
2 at the floppy disks -- I have copies of these business
3 plans -- so I looked to see when they were created and
4 when they were modified, and I created that business
5 plan, the 1999 business plan, one day before the new
6 terms proposition was presented to us at Hasbro, and it
7 was later modified on 13th November. I can only make an
8 assumption, but by modifying it on 13th November it was
9 probably prior to going and presenting the plan. Again
10 I am not clear, but I believe it was certainly around
11 that time or it could have been after 13th November.

12 Q. If would be helpful to see if we can clarify the date.
13 There may be some other hints, and I will come to those
14 in a moment, but it may not matter.

15 You say in paragraph 53 that you took
16 David Bottomley through the plan and possibly
17 Mike Brighty. Do you remember what David Bottomley said
18 to you about the plan?

19 A. Only that, I think, it was well put together, it was in
20 line with the company strategy, and he was looking
21 forward to a constructive meeting.

22 Q. And Mike Brighty, you do not remember what he said?

23 A. I cannot remember whether Mike was there. My only
24 recollection that Mike may have been there is because of
25 his involvement with Argos, and that both the plans were

1 having to run along pretty similar lines.

2 Q. Mr McMahon, when I asked him about this, said that when
3 he attended meetings that you were also present at, it
4 was generally Mike McCulloch who did the speaking?

5 A. Yes, generally. But if it was a presentation of
6 a business plan that I put together then I would
7 certainly present that plan, although any questions that
8 I could not answer would have been answered by
9 Mike McCulloch, or any minor issues that I had not set
10 up would have been covered by Mike McCulloch or
11 David Bottomley.

12 Q. If you can put yourself back in type, do you remember
13 expressly giving this presentation? The reason I ask
14 you is that John McMahon said that he was always
15 impatient at these sorts of presentations, and he,
16 because he was responsible for many different product
17 lines, was not really interested in the marketing blurb
18 for the nuts and bolts. He does not remember giving the
19 presentation. Do you remember whether you gave the
20 presentation or not?

21 A. I remember giving part of the presentation, if not all
22 of it, because I was the person who pulled all the
23 profitability analysis together. I had not pulled the
24 marketing slides together, but they had been prepared by
25 somebody else in the company and I had to take the

1 people through that part of the presentation.

2 Q. Was it slides put up on the screen or just slides on
3 a document?

4 A. I cannot remember at the time whether it was slides on
5 the screen or by document, because we were using
6 projectors off laptops. I cannot be specific at that
7 time.

8 Q. You say that the meeting lasted approximately two hours.
9 With respect -- and I am not being critical -- there is
10 very little detail about what may have been a lengthy
11 meeting of two hours in your statement; is that because
12 you do not remember the detail?

13 A. There was always detail at any of these meetings. With
14 any new business plan, there was always a change in the
15 way we present our business to an account. More often
16 it would be to do with new terms or new packages that
17 would have an influence on whatever discounts or rebates
18 we were giving, so there was always some debate at these
19 meetings as to whether this was the right strategy or
20 whether it would suit the accounts. Some discussions
21 over key points could take some time, going backwards
22 and forwards across the table.

23 Q. You are stating that now as a general proposition. Do
24 you actually recollect the detail of the conversation at
25 that time?

1 A. There are many parts of the conversation that I do not
2 recollect and there are some that remain quite clear.

3 Q. If you look at the document, this may help you with the
4 date. It is in bundle 2 of the witness statements,
5 tab 49, page 3. This is a document which says:
6 "Index 1999 business plan, presented by Ian S.
7 Thomson."
8 Then there is manuscript:
9 "Meeting in J Mc office, 5/11/98."
10 If that is correct I do not know who wrote those
11 words, but that would suggest it was 5th November?

12 A. That may be. I cannot remember what date that was.
13 I do not know -- looking at the way my business plan was
14 created, I would have thought that it would have been
15 after the middle of November.

16 THE CHAIRMAN: Is that your writing there?

17 A. No, it is not.

18 MR GREEN: We think it might be an Alan Burgess area which
19 is a possibility, but he can confirm that, if necessary.
20 We think it was probably that date.

21 A. It may or may not have been. Sometimes we had dates put
22 down for meetings that got cancelled. It could have
23 been an initial date, and then moved later on, I do not
24 know.

25 Q. If you skim through the document to see if you recognise

1 it.

2 A. Yes, I recognise it.

3 Q. That is the document which you say you presented at this
4 meeting?

5 A. I pulled this document together myself. I pulled the
6 whole of this document together, I created it.

7 Q. In terms of the date of this meeting, it may be
8 5th November. This is just a week or so after the
9 Brighty/Evans presentation of 23rd October, about two
10 weeks after that.

11 Again, maybe you cannot help me on this, but if you
12 can I would be grateful: in that presentation it is
13 stated that the plan would not be presented to sales,
14 trade and marketing colleagues until 12/13 November. In
15 other words, that would have been after the meeting with
16 Littlewoods.

17 Is it possible you could have had a meeting with
18 Littlewoods before the price initiative was presented
19 internally to the sales staff?

20 A. I doubt it very much. It could have happened. I do not
21 know, I cannot remember.

22 Q. I would like to ask you about the meeting itself. If
23 you look at your own statement.

24 THE CHAIRMAN: Mr Thomson, a minute or so ago you were
25 telling us that you checked the floppy disks that you

1 originally used. Can you remind me what you said? You
2 said you checked the disks that had created the business
3 plan, and then you saw it had been modified on 13th
4 November.

5 A. Yes. I created the disks on 22nd October, which was
6 when I would set up the template for the terms and try
7 to work in advance, because at that time we knew that we
8 would be presenting business plans to customers, so most
9 of the data we would be asked to pull together, and the
10 final part of the business plan would have been the
11 terms package to put into that business plan. I would
12 have started to work ahead of time, and then later put
13 in the presentation regarding the terms.

14 THE CHAIRMAN: When it was modified on 13th November --

15 A. That was possibly when I went back in again to change
16 the document and remodify or add the product terms.

17 THE CHAIRMAN: Very probably before you had actually met any
18 of the customers?

19 A. I would think so, yes, but I cannot be specific.

20 THE CHAIRMAN: You are not quite sure.

21 A. Not quite sure.

22 MR GREEN: Is it conceivable that, having had a meeting, you
23 clarified it in the light of discussions?

24 A. No, because this business plan here was the initial
25 discussion point for the terms. We would have gone back

1 and modified any of that at a later stage, and gone back
2 to re-present. But I do not think that was the case in
3 this instance.

4 Q. In paragraph 55 of your statement you say, page 658, at
5 the top of the page:

6 "We arranged to meet at a hotel in Liverpool
7 beforehand to go through the plan. I cannot recollect
8 whether Mike McCulloch mentioned that he had been to
9 anybody else beforehand with regard to presenting
10 similar plans. He did talk about the retail prices of
11 our core brands and how critical it was that Index would
12 have to stick to the price points in my plan in order
13 for Index to maintain the same profit levels as the
14 previous year."

15 You say you do not know whether Mike McCulloch had
16 spoken to anyone else prior to the meeting. Presumably
17 did you mean either at Littlewoods or with any other
18 retailer?

19 A. With anybody, any other retailer.

20 Q. Is that just that you do not remember or he just would
21 not have told you?

22 A. I do not remember.

23 Q. If he had, would he have told you or would he have kept
24 that information to himself?

25 A. He may not have told me that. That may have been

1 something he would have kept to himself.

2 Q. Is the word "critical" one that you actually used at the
3 time, or did you mean just important?

4 A. I am not sure if it was one that I would use. It was
5 certainly the talk about the business plan, the whole
6 key issue of the business plan was to get everyone to
7 move to round price points.

8 Q. You do not know whether that is the exact word you used?

9 A. No, but it was certainly -- we were given no
10 misunderstanding that this plan was not allowed to fail,
11 that we had to go out there and present this plan, and
12 that we had to try and get people to go to round
13 pricing.

14 Q. At the meeting you had, whenever it was, you record in
15 the next paragraphs that Mike McCulloch had various
16 conversations, particularly with John McMahon?

17 A. Sorry, where is that?

18 Q. You record various conversations in paragraphs 62-63.
19 I shall come back to those in a moment. Mike McCulloch
20 was having conversations at this meeting with
21 John McMahon?

22 A. At the meeting, yes, when we got to the issue about the
23 new terms and the price, that was when Mike McCulloch
24 said that he had been having conversations.

25 Q. Mike McCulloch was leading this conversation, was he?

1 A. I am not sure whether he led it. It probably ended up
2 with him leading it but I may have started it off and it
3 came out with a discussion about the new terms.

4 Q. Mike McCulloch never said to McMahon in mandatory terms,
5 "You must stick to our RRP's", did he? "You must do
6 that." Did he ever say that to him?

7 A. I am not sure, I do not know. I did not think he said
8 "You must do it".

9 Q. Did he say it would be advisable, I suggest to you that
10 you do so?

11 A. I think at that meeting, when we were going through the
12 spreadsheets with the pricing, it was then that the
13 price points had been spotted at £9.99 round price
14 points, and that is when the intimation came through
15 about sticking to the round price points in order to
16 maintain the same margins. It was along these lines.
17 That is when Mike -- it was then spotted that, how on
18 earth could we ensure that to maintain the same margin
19 at these price points that anyone else would follow
20 suit? That is when Mike said that he had been having
21 discussions with other parties, or another party.

22 Q. You used the word "intimation", which is a word you use
23 in your statement. In paragraph 62:
24 "It was at this point that Mike McCulloch intimated
25 to John McMahon."

1 Again, as you will appreciate, what was actually
2 said and the actual response of someone to that
3 statement is very important. The word you used is
4 "intimated". Is that your word now with the benefit of
5 hindsight? What does that mean, intimated?

6 A. At the time, I cannot remember the specific words, but
7 Mike McCulloch said that he had been talking to other
8 parties or another party, or the opposition -- I cannot
9 remember the exact wording -- about the same opinion.
10 So he had obviously been having discussions with, at
11 that time, I assumed, Argos. I cannot remember whether
12 Argos was actually mentioned specifically but it was
13 fairly clear as to the fact that it was.

14 THE CHAIRMAN: Why was it clear?

15 A. Because I think he used the words, "I have been talking
16 to the opposition" or "the major opposition", and the
17 major opposition at that time to Index was Argos in
18 terms of catalogue retail.

19 MR GREEN: You said in answer to the chairman's question
20 earlier, "I think", in response to an question earlier.
21 You said you could not remember precise words.

22 A. Not precise words. That is why I am still not clear to
23 this day. But the inference was, and I took out from
24 that meeting, that he had been talking to Argos
25 specifically. But I cannot remember whether Argos was

1 mentioned by name.

2 Q. You saw the statement from Maria Thomson earlier, where
3 she actually refers to a meeting with Mike McCulloch.
4 That is why I showed it to you, because that presumably
5 was a meeting that Mike McCulloch had attended with
6 Argos?

7 A. Which I was not aware of.

8 Q. Which you were not aware of at the time, yes. It seems
9 clear from your presentation, and again in the light of
10 Maria Thomson's statement and that paragraph in the
11 internal presentation about conditional rebate, you did
12 not or Mike McCulloch did not condition rebates on Index
13 complying with retail prices. I think you say that in
14 your statement as well. If you go back to paragraph 47:

15 "No direct reference to maintaining retail prices to
16 earn the rebate."

17 A. That is correct.

18 Q. Would it also be fair to say that you insisted, and
19 I use the word "insist" quite carefully, that
20 Littlewoods or Index go out at your RRP? You never
21 insisted to a particular buyer that they go out at your
22 RRPs?

23 A. The only time I remember doing that specifically was
24 with Alan Cowley in a later incident regarding Tweenies.

25 Q. And he bit your head off, did he not?

1 A. Correct.

2 Q. I will come back to that later. I have to put this to
3 you, because Mr McMahon will be giving evidence about it
4 later and you are the only person who can address it,
5 because Mr McCulloch is not here.

6 You say in relation to paragraph 63 that:

7 "John McMahon said he would play ball and go along
8 with the plan, but if they [Argos] renegotiated on the
9 deal and did not stick to the retail prices in their
10 1999 autumn/winter catalogue and he [Index] did he would
11 be seriously disadvantaged. If this happened as
12 a result, he would do some serious price cutting in the
13 next Index catalogue launch."

14 I have to put to you that Mr McMahon is absolutely
15 emphatic that in none of his discussions with
16 Mike McCulloch did ever say anything like "I will play
17 ball with you".

18 A. The words "play ball" may not have been used, but
19 I would go along with that there was a clear indication
20 that he was willing to participate, as long as he knew
21 that the opposition were going to do the same.

22 Q. Let us be absolutely crystal clear about this, because
23 this is an important issue, and Mr McMahon will want to
24 explain what his position is. What do you mean by clear
25 indication? What words did Mr McMahon use?

1 A. As I said, it was along the lines of, "I will go along
2 with your plan," but he was very nervous about it and
3 Mike McCulloch said at that time, "Well, you leave the
4 next part of the process up to me", and along the lines,
5 "I am going to go and have a discussion with somebody
6 else" or whatever, "and then I will come back to you
7 once we have had that discussion".

8 Q. You used the words "along the lines of". I am going to
9 press you further on this. What do you mean by "along
10 the lines of"? Can you remember the exact words you
11 used? Let us start with that.

12 A. No, I cannot remember the exact words used.

13 Q. Did Mike McCulloch ever get back to John McMahon?

14 A. I do not know whether Mike ever spoke to John directly
15 but I certainly got the word back from David Bottomley,
16 I think through Mike Brighty, that I had to go back to
17 Index and say that a deal had been struck.

18 Q. You got the word from David Bottomley, who got the word
19 from Mike Brighty?

20 A. Or Mike McCulloch, it would have been direct from
21 Mike McCulloch. Or from Mike Brighty. Mike McCulloch
22 might have told Mike Brighty, he may have told David
23 direct. All I know is that I got the word back from
24 David Bottomley at the time to go ahead and say that
25 a deal had been struck, and to go back to Index and say

1 that discussions had been favourable.

2 Q. We do not have Mr McCulloch to explain what he did or
3 did not do, but you do not know whether Mike McCulloch
4 went back to John McMahon?

5 A. No.

6 Q. You think that Mike McCulloch might have said something
7 to Mike Brighty, who might have said something to David
8 Bottomley, who said something to you.

9 A. One would have to draw a conclusion from that, because
10 I was given the information back through my sales
11 director at the time. And Mike McCulloch had said he
12 was going to have a conversation with somebody else
13 about it, who I took to be Argos, and then he would get
14 back to Index about that information.

15 Q. A conversation with somebody else -- Alan?

16 THE CHAIRMAN: He said, a conversation with somebody else
17 who he took to be Argos.

18 A. Yes.

19 MR GREEN: Mike McCulloch, if he had got some information,
20 would have got back to John McMahon?

21 A. I do not know. There were many things Mike McCulloch
22 did not pass down to us in the national accounts team
23 and they often came through thirdhand.

24 Q. I want to clarify one issue in relation to the meeting.
25 At paragraph 56 you say Lesley Paisley attended. She

1 has absolutely no recollection of this meeting. In her
2 witness statement, at volume 2, tab 48, she says in
3 paragraphs 4 and 5:

4 "Paragraphs 52-63 of Ian Thomson's witness statement
5 refer to a meeting at Littlewoods in late 1998 or early
6 1999 in which he presented the 1999 business plan. The
7 document at annex A appears to be the presentation made
8 by Ian Thomson to Littlewoods at that meeting.
9 Paragraph 56 of his witness statement, Ian Thomson says
10 that I was present at the meeting. I have no
11 recollection of attending, nor did reading through the
12 document at annex A trigger any recollection. If I had
13 been at that meeting, I am certain I would have kept
14 a copy of the presentation document. I have not seen
15 this document until recently."

16 Do you specifically remember Lesley Paisley being at
17 the meeting?

18 A. Yes.

19 Q. Why?

20 A. Because this meeting was one of the most critical
21 business plan meetings that we were having with Index
22 and also with our other accounts. At that time, for the
23 senior management to be present in the shape of
24 Mike McCulloch and David Bottomley, and I was going
25 along, then Mike McCulloch was on a similar level to

1 John McMahon, David Bottomley was on a similar level to
2 Lesley Paisley and I was on a similar level to
3 Alan Burgess and rest of the buyers. So the three of us
4 going up there, it was a critically important meeting
5 that we had the senior manager buying in attendance at
6 that particular meeting.

7 Q. To be fair, she does not say she did not attend, she
8 says she does not remember; she attends a large number
9 of meetings. But it is interesting that it did not
10 impact upon her; that she has no recollection of it.

11 A. I am sorry, I cannot speak for that comment.

12 Q. I would like to show you what Mike McCulloch thinks
13 about the general position. In volume 1 of the witness
14 statements at tab 29, this is the record of his
15 interview with the Office of Fair Trading on 10th
16 October 2001. I would like to take you through it. It
17 is perhaps easiest if you read the first page.

18 THE CHAIRMAN: It is not completely clear to me whether this
19 first page is talking about this particular meeting or
20 not. I am on page 230. Yes. Then there are various
21 matters he deals with on page 231.

22 MR DOCTOR: It cannot be a meeting at Littlewoods, it is
23 a meeting at Argos.

24 THE CHAIRMAN: It is not clear to me at the moment what
25 page 230 has to do with this.

1 MR GREEN: It is relevant to the understanding of what is on
2 the next page. I just want the witness to look at this
3 so he understands the context.

4 You have read that first page now?

5 A. Yes.

6 Q. This suggests that Mr McCulloch did have a meeting first
7 with Argos. I think that is what he is referring to on
8 page 230. When asked whether he agreed anything, he
9 said:

10 "No, not really. Two things came out of it. Tying
11 rebates to distribution and that Argos was critical to
12 initiative to giving more profits to retailers."

13 The "tying rebates to distribution" may be
14 a reference to the matter I showed you in the witness
15 statement of Maria Thomson. That is the Argos meeting.
16 He then refers to the next page; did you read the next
17 page?

18 A. Part of it.

19 Q. Do you want to finish it, so you have it in mind?

20 A. Yes. (Pause).

21 Q. You will see in the middle of the page there is
22 a question from Mr Lawrie:

23 "Docs suggest ongoing arrangement. Clearly there
24 were conversations between Hasbro, Argos and Index. Did
25 you have [any] discussions?"

1 "MM: No. Only the ones a year or so earlier. Way
2 pricing initiative was meant to work was suggesting RRP
3 in order to deliver a certain level of profit to
4 retailers. My discussions were with my sales directors
5 about how the overall plan was working. [I] did not see
6 the e-mails. [I] did not read them all."

7 His description of the pricing initiative and how it
8 was meant to work was that you were meant to suggest
9 RRP in order to deliver a certain level of profit to
10 retailers. Is that a fair comment?

11 A. The suggestion of RRP was driven by the business plans
12 that we pulled together and they were there on the
13 pricing spreadsheets, on the Excel spreadsheets.

14 Q. That is how the initiative was meant to work, that you
15 suggested RRP on the spreadsheets, which were
16 sophisticated --

17 A. The suggestions were on the spreadsheets which were
18 driven by the list price.

19 Q. I am going to ask you about the famous e-mail in
20 a little while. Just so we do not have to come back to
21 this document, if you look up a few lines, Mr Lawrie
22 says:

23 "The evidence suggests that sometime early in 2000
24 things went beyond that."

25 Perhaps I should read a few lines above that:

1 "Who in Hasbro spoke to who at Hasbro, Index and
2 other retailers?

3 "MM: Me. I spoke to Argos and Index in general
4 terms about the initiative, but no specific agreement
5 about retail pricing.

6 "BB: [The] evidence suggests that some time early
7 in 2000 things went beyond that.

8 "MM: [The] documents from Ian Thomson regarding
9 Argos and Index should never have been sent. They could
10 not have had an agreement with Argos. Argos price how
11 they want."

12 I am going to ask you about that when I show you the
13 e-mail, but it will save coming back to it. But that
14 was Mike McCulloch's view.

15 THE CHAIRMAN: Mr Lawrie suggests that some time early in
16 2000 things went beyond that. Then a few lines further
17 down there is another question:

18 "Docs suggest ongoing arrangement. Clearly there
19 was an ongoing conversation between Hasbro and Argos and
20 Index. Did you have [any] discussions?"

21 Mr McCulloch replies:

22 "No. Only the ones a year or so earlier."

23 When he says "the ones a year or so earlier", what
24 is he then referring to, in your submission?

25 MR GREEN: I think he is referring to the meeting I have

1 just been asking Mr Thomson about, which was either at
2 the end of 1998 or the beginning of 1999. I do not
3 think there were other specific formal meetings that
4 Mr McCulloch attended. I think he had some
5 conversations with Mr McMahon, which Mr McMahon covers.

6 THE CHAIRMAN: I see.

7 MR GREEN: Just so we have it in mind, Mr Thomson, if you
8 look down just below that, Mike McCulloch says:

9 "Thomson could not possibly guarantee to Index
10 Argos' prices. He must have taken a major risk."

11 Hold that in your mind and we will come back to it
12 shortly when we deal with the e-mail in its full glory.

13 One other point which comes out of that document,
14 which is a point both you and Mr Wilson made, is that in
15 the year 2000 everybody was basically following your
16 RRP's in the marketplace?

17 A. Yes.

18 Q. As a result, the amount of contact which Hasbro had with
19 the retailers generally was very much more limited; is
20 that correct? I think that is what is said in two or
21 three different statements, including yours?

22 A. As the plan had got bought into, yes, there was less
23 relevance to talk to our accounts on pricing.

24 Q. When you say the plan was bought into, you say the
25 evidence from the catalogues demonstrated that the

1 retailers were adhering to RRPs much more commonly?

2 A. They were adhering to the ones we had set out

3 originally.

4 Q. You will see right at the very end of that statement on

5 page 231, Mr Lewis says:

6 "So you never talked to Argos and Index about an

7 arrangement?

8 "MM: No. [I was] careful never to discuss retail

9 pricing with them on advice of [our] legal department."

10 Again, you have given evidence that you were not

11 aware of that?

12 A. That is correct.

13 Q. I think we have dealt with the position after the

14 meeting: you do not know whether Mike McCulloch went

15 back to John McMahon or not?

16 A. No.

17 Q. The final part of my questions is to ask you about your

18 relations with the various individuals at Index.

19 I would like to start with Alan Cowley. You are aware

20 that he recently retired from Index?

21 A. Yes.

22 Q. You are aware that Alan Cowley was a senior figure

23 amongst the Littlewoods' buying team?

24 A. Yes.

25 Q. A number of buyers -- and Katharine Runciman is one, in

1 her witness statement says that she would seek
2 Alan Cowley's advice. She gives a specific example.
3 She would seek advice on one of your quotations. Would
4 that surprise you?

5 A. Katharine Runciman came in I think to stand in for
6 Andrea Gornall when she went on maternity leave, and
7 I do not think Katharine had worked in the toy area
8 prior to that job. I was kind of known for my complex
9 spreadsheets, which we put everything into in terms of
10 the analysis of the business and it may have been that
11 she sought Alan's advice to understand what my
12 spreadsheets actually meant.

13 Q. I am sure Alan Cowley will forgive me if I say that he
14 is not someone who suffers fools gladly. Do you agree
15 with that description of him?

16 A. Correct.

17 Q. You are aware that all of the Littlewoods' buyers sit in
18 an open plan office with desks which are close to each
19 other?

20 A. I am.

21 Q. If you look at paragraph 111 of your witness statement,
22 page 666 of the bundle, this is what you are saying
23 about Alan Cowley:

24 "Alan Cowley looked after the preschool range for
25 Index, which included Hasbro's Tweenies and

1 Mr and Mrs Potatohead. My relationship with Alan Cowley
2 was not as personal as it was with the other buyers and
3 his dealings with me were extremely businesslike."

4 Businesslike is somewhat understating the position,
5 is it not?

6 A. No. He was very direct and to the point. There was
7 very little conversation other than business with
8 Alan Cowley, whereas with the other buyers we were able
9 to converse quite openly about our business and talk
10 about the general state of play, whereas Alan Cowley did
11 not have that conversation with me.

12 Q. I think that is borne out in your next statement:

13 "He was more aggressive than the other buyers were
14 when it came to talking about margin issues."

15 A. That is correct.

16 Q. "If there was a problem with a margin on his Hasbro
17 product range, he would tell me that he would have to
18 delist it unless there was something that I could do
19 about it. What he would be looking for was a better
20 list price, and this was something I could do very
21 little about. He would also complain if we put our list
22 prices up, which tended to happen on some products on a
23 yearly basis, and this in turn could move up the retail
24 price point to a level above what he thought the product
25 could sell at. I had lost two Potatohead products

1 because we had moved the list of retail price points up
2 from the previous year. When I talked about our
3 previous arrangements, Alan Cowley would not acknowledge
4 that he was aware of our agreement on core games and
5 Action Man and I had to explain it to him. He listened
6 to what I had to say, but would not give any commitments
7 to price the Tweenies range of products that I was
8 proposing. I was unsure that he would buy into the plan
9 but I was hoping that he would accept the strategy as it
10 would ultimately help to improve his margins with
11 Hasbro. I also hoped that he would talk to Alan Burgess
12 in order to get the evidence that our previous
13 initiatives had worked. The buyers all sat together in
14 an open plan office. I would have intimidated to him
15 that similar discussions were taking place with his main
16 competitor, Argos, by my opposite number, Neil Wilson,
17 in order to try to give him more confidence to ensure
18 the success of our plan."

19 What period of time are you talking about, mid to
20 late 1999 or 2000?

21 A. I think this was probably late 1999, although I cannot
22 remember specifically when it was. But the issue over
23 our pricing prior to this had always been an issue
24 where, when Hasbro moved up its list pricing, it may
25 have meant that the retail price point may have moved.

1 Earlier you talked about the perceived value of
2 product. In this instance, it was when we moved
3 Mr Potatohead from, I think, a £4.99 to a £5.99 price
4 point, and Alan did not like the fact that we moved it
5 to £5.99, he felt the product would not sell at £5.99
6 because it was above the perceived value, which I did
7 not disagree with at the time, but there was nothing
8 I could do about it because we could not move the list
9 prices.

10 Q. You had a fairly het-up series of arguments with
11 Alan Cowley, did you not?

12 A. They were mainly over Tweenies, which happened after
13 that.

14 Q. On a number of occasions he was pretty rude to you;
15 forthright?

16 A. Yes, very direct.

17 Q. He told you you were incompetent? In fact, he was
18 extremely rude and added the word f----- incompetent?

19 A. And other words, yes. He did not actually accuse -- he
20 accused Hasbro of being incompetent, which by way is me
21 because I was the representative of Hasbro dealing with
22 him.

23 Q. You were f----- incompetent?

24 A. Yes.

25 THE CHAIRMAN: Was that on this occasion or some later

1 occasion?

2 A. It was specifically -- that was probably the only
3 occasion that I ever got called that by Mr Cowley.

4 THE CHAIRMAN: That is in relation to these Potatohead
5 products, or later in relation to the Tweenies?

6 A. I think it was later. It was more to do with the
7 Tweenies pricing situation.

8 MR GREEN: You say in paragraph 112 that one of your
9 concerns was that the buyers all sat together in an open
10 plan office and that you if you had a row with
11 Alan Cowley, that would infect your relationship with
12 the other buyers?

13 A. No, because I had always had a distant relationship --
14 I had not had a good relationship with Alan Cowley,
15 never really had from taking on Index until the day he
16 left, whereas I had what was deemed to be an excellent
17 relationship with the other buyers. And this was
18 highlighted on more than one occasion at senior
19 management meetings, when Lesley would come to senior
20 management meetings with people like Alistair Richards
21 and Mike McCulloch, and say that the relationship that
22 we had between Hasbro and Index was second to none, and
23 that in fact I was one of the best account managers who
24 looked after them in the business. So the relationship
25 with other buyers was, I would say, excellent.

1 Q. We have seen some of your internal e-mails where you
2 were worried about the relationship with the other
3 buyers if you had a bad relationship with Alan Cowley?

4 A. That goes with the nature of the business, because you
5 do not want any bad relationship to spoil anything else
6 that you have been dealing with, which you have worked
7 hard to achieve.

8 Q. You have been to their offices in Liverpool many times
9 and you have seen that they all sit close to each other?

10 A. Yes.

11 Q. If Alan Cowley is having a raging row down the phone
12 with somebody, it is pretty much a racing certainty that
13 the other buyers would be interested and want to know
14 why?

15 A. I would guess so. But it was also acknowledged that
16 Alan Cowley was like that by the other buyers, and he
17 could be very difficult at times. And I think he had
18 a perverse sense of humour in doing that, to try to
19 upset people like us in sales, in order to try to get us
20 to do what he wanted.

21 Q. You say:

22 "When I talked about our previous arrangement with
23 Alan Cowley, he would not acknowledge that he was aware
24 of our agreement on core games."

25 When you refer to your agreement or arrangement, you

1 are referring to your suggestion that they should adhere
2 to your RRPs in order to drive margin; is that correct?

3 A. Yes, to back the plan that we presented in 1998, late
4 1998.

5 Q. Which was the combination of the --

6 A. Which was the core games and the Action Man lines.

7 Q. The combination of the high list price?

8 A. Plus the rebates.

9 Q. The rebates and the spreadsheets that set out the RRP?

10 A. And that it was critical that the retail price points
11 had to be maintained in order that all the other players
12 buying into the plan would buy into it.

13 Q. That is what you were suggesting and recommending that
14 they do?

15 A. Yes.

16 Q. He refused to acknowledge that he was aware of your
17 agreement on core games. Let me ask about that for
18 a moment. Lesley Paisley is senior to Alan Cowley, is
19 she not?

20 A. Yes.

21 Q. John McMahon is also senior to Lesley Paisley?

22 A. Yes.

23 Q. It follows, senior to Alan Cowley?

24 A. Yes.

25 Q. You are aware that Alan Cowley reported to

1 Lesley Paisley?

2 A. Yes.

3 Q. If Lesley Paisley had said to Alan Cowley, "Alan, we
4 have an agreement with Hasbro, with Ian Thomson, to
5 follow the RRP's, because Argos has already signed up to
6 them", Alan Cowley would have known this, would he not,
7 if Lesley Paisley had said that to him?

8 A. Not necessarily, because at that time Alan Cowley was
9 not responsible for the ranges that we were doing the
10 prices on. We started off on Action Man and core games,
11 which was not the responsibility of Alan Cowley.

12 Q. He was responsible for Tweenies and the preschool range?

13 A. Later on we talked about the initiative with Tweenies,
14 and that is when the conversations took place with Alan
15 regarding what we were trying to do with our retailers,
16 and as part of my conversation with Alan, when I was
17 trying to persuade him to stick on the prices,
18 I mentioned the initiative and what we had been doing
19 and how successful it had been over the last two
20 catalogues and that for further reference he could
21 possibly talk to John McMahon about it, which is
22 something I recollect he later did.

23 Q. He volunteered some evidence about that a long time ago.

24 A. Yes.

25 Q. Lesley Paisley or John McMahon had such an arrangement

1 with Mike McCulloch or David Bottomley. Is it not
2 possible that at some point they passed it to Alan
3 Cowley?

4 A. I do not know, but what I do know is that with Index,
5 once it was up and running, there were virtually no
6 conversations with myself or Lesley or John regarding
7 what we were doing. The conversations were with the
8 people responsible for buying the products, and that was
9 the products directly responsible for buying these
10 ranges.

11 Q. You say once it was up and running, can you give me
12 a date?

13 A. Certainly after two catalogues, the confidence in Hasbro
14 was that people were going along with the plan and would
15 stick with the plan we recommended.

16 Q. Two catalogues from when?

17 A. The autumn/winter 1999 to the spring/summer 2000
18 catalogue, and I think it was in 2000 that we started
19 talking about enhancing it.

20 Q. If you go to the core bundle, which is file 26, there
21 are a number of copies of what is effectively the same
22 document, but if we take it from page 96, at the bottom
23 you will see there is an e-mail at 10.19 am from you to
24 Henry Foulds; is that right?

25 A. Yes.

1 Q. Would this be 30th November?

2 A. Yes, it would be.

3 Q. Perhaps we ought to start with the one below, which is
4 at 4.57 pm the previous day:

5 "We are reducing our price for spring/summer on
6 Tweenies plush to enable retailers to make 25 per cent
7 POR at a target RSP of £12.99."

8 Then he gives the details. Just read that. Then
9 the e-mail at 10.19:

10 "We can't reduce the price to everyone else when
11 Argos and Index are in print at £14.99. They can't
12 change their prices, as already discussed, as this will
13 compromise their business. The whole point of making
14 Argos and Index toe the line on retails was to set
15 a precedent that the rest of the trade would follow. If
16 you need to discuss further then I suggest we arrange
17 a meeting to discuss. We will need to include Charles."

18 When you used the words "toe the line", you are
19 referring to the initiative that we have just discussed
20 a few moments ago, are you?

21 A. Yes, and the enhancement of it, because we increased the
22 size of that range and Tweenies was part of that range.

23 Q. "Toe the line" looks a bit pejorative. But in your mind
24 that is a description of the initiative we have just
25 discussed, which is the suggestion --

1 A. We had gone out to speak to Index, and I had spoken to
2 Alan Cowley about positioning Tweenies at a retail price
3 point of £14.99. Following on from that meeting, this
4 is when the prices started to change. I knew that going
5 back to Index to talk to Alan about this would not have
6 been a pleasant discussion and at the same time, because
7 we knew that the prices had been set, to go back again
8 and start to rearrange things, it was going to be very
9 difficult.

10 Q. The follow-up e-mail, half an hour later,

11 David Bottomley to you:

12 "Ian, please check urgently with Charles, as
13 I believe Argos have been able to re-price. The
14 deadline was yesterday. I would say in future to brand
15 that we require a great deal better communication of
16 price decreases as, given the huge amount of work we
17 have put into retail pricing in the last two years, the
18 last thing we need is for the two major customers to be
19 out of line."

20 Then there is the response from you to

21 David Bottomley at 12.10:

22 "David, I have asked Alan Cowley to change the
23 price. The reaction has been explosive, to say the
24 least, especially after my last telephone call two weeks
25 ago to make sure that he maintained £14.99, when he

1 threw the phone down on me in another fit of rage. I/we
2 have been accused of being nothing but a bunch of
3 f-----g incompetents and totally unprofessional. First
4 we set the price at £16.99, then we set the price at
5 £14.99, and now we are at £12.99. Hardly surprising
6 that he reacted badly and has said that he will not list
7 a single Tweenies or preschool product in autumn/winter
8 next year. In future, can we make sure that this does
9 not happen again. I have an excellent relationship with
10 the Index team except Alan Cowley and I have been trying
11 to build one with him and I don't need him to shout
12 about Hasbro's incompetence to the rest of his
13 colleagues."

14 A couple of points I want to ask you about. First,
15 in the third and fourth line you refer to the telephone
16 call a couple of weeks earlier, which would have been
17 mid-November, when you say that you were seeking to make
18 sure he maintained £14.99:

19 "... and he threw the phone down on me in another
20 fit of rage."

21 I think this confirms the point we had a minute ago
22 when you said you never insisted the prices to the
23 buyers. I think this is one instance when you insisted
24 to Alan Cowley or used some such words and he threw the
25 phone down on you?

1 A. There may have been one or two instances with Alan
2 regarding prices, but with Alan, because I was not sure
3 he would do it, I said, "This is the price we would like
4 to go out at, and as further proof of maintaining these
5 prices, talk to McMahon, and look at what we have been
6 doing with Action Man and core games, and it has
7 worked". At that time, Alan never liked to have any
8 changes at all to any of his plans, the list price would
9 be acceptable because that might help the margin, but
10 certainly anything to do with retail margins, he was
11 never happy when we had to make a change to any of the
12 plans we had pulled together earlier.

13 Q. You referred to another fit of rage, so this cannot have
14 been the first time you had a contretemps with Alan
15 Cowley?

16 A. I had many confrontations with Alan Cowley over the
17 years, not necessarily about pricing, it may have been
18 over the range or over other issues. Alan was a buyer
19 who one minute can be very calm, going through
20 a business plan, then next minute go into a complete
21 turnaround and you would wonder what you said to upset
22 the guy, so Alan, I was always very apprehensive when
23 I dealt with him.

24 Q. I can show you some documents, but the aftermath of this
25 was that Alan Cowley sent you a bill for £4,000.

1 A. He said at the time he could not change it but that he
2 would try. Eventually he did change it, but said it was
3 after the catalogue deadlines had been met or it was too
4 late to change it and to change it would cost £4,000,
5 which I think I seem to remember David Bottomley took it
6 on his behalf to try and get that fine waived, and
7 I think David spoke to Lesley, but then we were told it
8 was too late, we still had to pay it.

9 Q. Presumably you thought that the £4,000 was something of
10 an exaggeration?

11 A. It was just something we were not going to get away
12 with. He said, "You are not going to get away with it,
13 we thought we may be able to, but the relationship was
14 not one that allowed us to be flexible, or he did not
15 want to be flexible with us.

16 Q. If you go to Mr Cowley's witness statement in tab 10,
17 volume 1, paragraph 53 of the bundle, paragraphs 12 and
18 13 of Mr Cowley's statement:

19 "I do remember on one further occasion when
20 Ian Thomson claimed to know what the Argos selling price
21 would be, this was in December 2000, when Hasbro
22 suddenly and belatedly, as far as the production of the
23 catalogues was concerned, reduced their cost prices so
24 that the suggested selling price fell from £14.99 to
25 £12.99 on Tweenies. That in itself presented no problem

1 for retailers and was even a potential benefit.
2 However, I was extremely angry because I initially
3 thought that it was too late to change the prices in our
4 spring/summer 2001 catalogue. If Hasbro had quoted this
5 price to me earlier then I would have decided to follow
6 the RRP. However, I was now faced with a situation
7 whereby on a well-known branded product, because of what
8 I thought was poor management by Hasbro, Littlewoods
9 risked being £2 above the RRP. Ian Thomson told me that
10 Argos would have time to reduce their retail price, and
11 suggested that we did the same. Given the new cost
12 price, I would now be undercut by Argos and by other
13 high street retailers if I remained at £14.99.

14 "In the event, at the last moment I managed to
15 change the catalogue price to £12.99. I charged Hasbro
16 £4,000 for the trouble of making this very late change.
17 I attach as annex A a copy of the correspondence
18 relating to this isolated incident. I used the word
19 'insistent' in the e-mail of 28th December 2000 to
20 exaggerate the case and make the point that it was his
21 fault and Hasbro should pay for it. This tactic was
22 successful. Hasbro paid the £4,000 and they were
23 discouraged from making late changes in the future. We
24 would have wanted to price at the new RRP in any event,
25 but believed we might be prevented from so doing by the

1 extreme lateness of the price change."

2 The document and letter that he sent to you is
3 a couple of pages on at page 57, behind tab 11. I think
4 this is the incident that you were referring to a moment
5 ago, "28th December 2000 at 10.08," from Alan Cowley to
6 yourself:

7 "Ian, reference our conversation pre-Christmas
8 regarding Hasbro's late decision to reduce the price of
9 the Tweenies soft toys feature in the Index SS01
10 catalogue, fortunately for both of us we were in fact
11 able to amend the selling process at the last minute due
12 to an unexpected delay in catalogue production. This,
13 however, literally meant holding up the presses,
14 entailing an additional cost of £4,000 which will be
15 debited to your account shortly. I will not elaborate
16 on the consequences if we had been unable to do so,
17 resulting in our being undercut by Argos and other high
18 street outlets, especially when you had earlier been so
19 insistent that we all went out at the same price."

20 Those last words, "when you had earlier been so
21 insistent that we all went out at the same price"
22 I think is a reference to the matter we have discussed
23 on a couple of occasions in the last ten minutes?

24 A. Yes.

25 Q. When he threw the phone down on you?

1 A. Yes.

2 THE CHAIRMAN: Mr Green, we normally give the shorthand
3 writers a break about 3.10.

4 MR GREEN: That is perfect.

5 THE CHAIRMAN: You would like to take a break now?

6 MR GREEN: Yes.

7 THE CHAIRMAN: How much more do you have?

8 MR GREEN: I am doing reasonably well. I need to put to
9 Mr Thomson his relationship with the other buyers.
10 I will certainly finish by 4.00.

11 THE CHAIRMAN: If we come back at 3.15, what is your
12 estimate?

13 MR GREEN: I would hope 4.00. That means -- Mr Brealey and
14 I have discussed it -- we are both confident we will
15 finish the OFT witnesses by before midday Wednesday,
16 probably considerably before.

17 THE CHAIRMAN: Are we likely to finish with Mr Thomson
18 today, Mr Brealey?

19 MR BREALEY: I do not want to make any promises. If it goes
20 on tomorrow, there will be no longer than half an hour.

21 THE CHAIRMAN: We will come back at 3.15.
22 (3.10 pm)

23 (A short break)

24 (3.15 pm)

25 MR GREEN: I would like to ask you about your contacts with

1 Lesley Paisley, moving on from Alan Cowley. Your
2 contacts with primarily the Littlewoods and Index
3 buyers.

4 A. That is correct.

5 Q. So you did not deal on a regular basis with
6 Lesley Paisley?

7 A. Not on a regular basis, although from time to time
8 I would phone up Lesley to have a conversation about
9 business in general.

10 Q. Were you aware that the Littlewoods buyers did not have
11 authority to set prices themselves, they had to present
12 prices to Lesley Paisley at a meeting in order to
13 justify them?

14 A. Yes, I am vaguely aware of that.

15 Q. I want to ask you about the famous e-mail of 18th May.
16 It is in file 26, page 91, from you to Lesley Paisley,
17 Alan Burgess, Alan Cowley, Katharine Runciman and
18 Phil Riley, dated 18th May at 1.23 pm. It is plain,
19 John McMahon did not ask you to send this e-mail, did
20 he?

21 A. No.

22 Q. Lesley Paisley did not ask you to send it, did she?

23 A. No.

24 Q. Alan Cowley did not ask you to send this e-mail?

25 A. No.

1 Q. Alan Burgess did not ask you to send this e-mail?

2 A. No.

3 Q. None of the buyers did?

4 A. No.

5 Q. If you turn back to page 90, this is an internal e-mail
6 sent at 11.56 am, just an hour and a half or so before
7 the later e-mail?

8 A. Yes.

9 Q. This is sent to Hasbro employees. The language of this
10 e-mail is materially different from the language of the
11 e-mail sent to the Index buyers. You say:

12 "Neil and I have spoken to our respective contacts
13 at Argos and Index and put together a proposal regarding
14 the maintenance of certain retails within our portfolio.
15 This is a step in the right direction and it is fair to
16 say that both accounts are keen to improve margins but
17 at the same time are taking the cautious approach in
18 case either party reneges on a price agreement. Whilst
19 it is acknowledged that certain areas of the business
20 will be price conscious, we have attempted to increase
21 some of the spring/summer retails and get agreement on
22 other products to go out at our recommended prices. It
23 goes without saying that Action Man and games will be
24 maintained as per the earlier agreements."

25 Then you give a list of products and prices which

1 are detailed below. Then you say at the bottom:

2 "Both accounts have agreed to the above price points
3 to this information should be translated to other
4 accounts."

5 I just want to ask you, first of all: under
6 preschool, there is Mr Frosty, then Tweenies, Standard
7 Plush, Story Time, Cuddle and Squeeze Doodles?

8 A. Yes.

9 Q. Alan Cowley had never agreed these prices with you, had
10 he?

11 A. Alan had never agreed the pricing intrinsically because
12 he said he would never follow the line. What he
13 basically said was once I had talked to him about this I
14 was intimating that these are the prices that we wanted
15 to get some common ground on. That had followed months
16 of talks about how successful we had been in our prior
17 initiative in terms of maintaining the prices on core
18 games and Action Man, and while it would be inopportune
19 to do it with everything in our range, it might be worth
20 looking at key drivers within our range to maintain the
21 price points and to help move the overall profitability
22 within Index in a forward movement.

23 Q. You said there had been months of discussion about how
24 successful your initiative had been. Just so we are
25 clear, when you use the words "your initiative" --

1 A. We are talking about the cord brand pricing for
2 Action Man and games.

3 Q. It is a combination of the high list price, the core
4 rebates, the Excel spreadsheet?

5 A. And the improved profitability, because one of the
6 things that had happened from this initiative was that
7 we could see there had been a major move forward in
8 terms of profitability within the core brand ranges.

9 THE CHAIRMAN: When you said a moment ago "months of talks",
10 with whom?

11 A. With the buyers, and internally at Hasbro. It was
12 a kind of joint initiative, where we had seen how
13 successful it had been with the launch of the previous
14 catalogue, so internally at Hasbro we were very
15 optimistic about the way that everything had been going
16 and how successful it had been, which then translated to
17 us trying to go for a bigger range of product, to which
18 we could have narrowed it down in Hasbro, and then
19 I went out to talk to Index, and the buyers, and I know
20 that Neil Wilson went and talked about it to Argos.

21 MR GREEN: The discussions you had, to be clear, were on how
22 successful the price initiative had been?

23 A. Yes.

24 Q. Those are the matters we have already discussed.

25 A. We had seen from the catalogues following on from that

1 business plan presentation in late 1998 that the prices
2 and the structure had been adhered to, the evidence was
3 there, in every single catalogue launch after that.

4 Q. That is what you mean, as I understand it, in that
5 sentence that says:

6 "Whilst it is acknowledged that certain areas of the
7 business will be price conscious, we have attempted to
8 increase some of the spring/summer retails and get
9 agreement on other products to go out at our recommended
10 prices. It goes without saying that Action Man and
11 games price will be maintained as per our earlier
12 agreements."

13 A. Yes.

14 Q. The word "agreement" there is describing the initiative
15 and the matters we have just discussed?

16 A. The agreement was that the prices would be stuck to as
17 per our recommended retail prices, as per the
18 spreadsheets that I presented to the individual buyers.

19 Q. When you say the agreement was that they would be stuck
20 to, let me ask you about that. You have explained at
21 some length how there was an initiative to, as you put
22 it in paragraph 41 of your statement, increase list
23 prices and make it almost unavoidable that they would go
24 out at your price point. You then saw that that was
25 working, and you thought, right, the initiative is

1 working, we have got agreement as to the initiative?

2 A. The initiative was working, and the way we knew the
3 initiative was working was because these prices were
4 published in catalogues following on from that
5 presentation. We were never very sure that it would be
6 adhered to until the catalogues were published. While
7 there was verbal agreement to do this, there was never
8 any guarantee until we saw the date logs when they were
9 published after the events.

10 Q. When you say verbal agreements, again the terminology is
11 extremely important. You recommend to someone that they
12 follow your price and you say, "Bob, will you follow my
13 pricing? I am recommending that you follow the
14 pricing", and they say, "Yes, it looks like a reasonable
15 price, we are going to go out at it".

16 Is that the sort of conversation you are talking
17 about?

18 A. The conversations regarding this particular e-mail had
19 led me to talk to the buyers beforehand to initiate the
20 process whereby we were trying to expand the list of
21 products that would have a common price, and at that
22 time I would talk to the buyers about it and then go
23 back to find out what was happening between Neil Wilson
24 and Argos as to whether he was being successful.

25 THE CHAIRMAN: By "a common price", what did you mean by

1 a common price?

2 A. By going out at the same price. We wanted to establish
3 that this range of products here on this e-mail were
4 going to go out at these retail price points, so
5 therefore Argos would follow and go out at the same
6 price, and all we were trying to set was a common number
7 of products that we could go back to the respective
8 accounts.

9 Q. A common price as between the accounts?

10 A. Yes, as between the accounts and the buyers.

11 MR GREEN: We do know that the prices here were not in fact
12 adhered to by Argos. Did you know that, that a number
13 of the prices here were not followed by Argos?

14 A. Some of them may not have. As I said earlier, some of
15 these products, in principle I was told that we had an
16 agreement, which is why I went out with this e-mail. As
17 I said, there were never any guarantees that that would
18 be the case, until the catalogue was published.

19 Q. They never explicitly guaranteed to you that they would
20 go out at these prices?

21 A. You never got the guarantee. It was, yes, we will
22 agree, to go along with your prices, as long as we are
23 feeling comfortable that everyone else is. There was
24 obviously a great deal of nervousness about what we were
25 trying to do and also when we were setting this up as to

1 whether the prices would be followed through.

2 Q. The Index buyers who have given evidence in this case
3 and are going to give evidence are quite emphatic that
4 they never guaranteed to you that they would go out at
5 a particular price. That will be their evidence.

6 A. All I would say, the interpretation of that is that what
7 we went along to talk about, the range of products,
8 there was a buy-in from the buyers to say, "Yes, we will
9 go along with that, we are nervous about that, but as
10 long as you can assure us that the prices will be
11 adhered to then we will take the risk".

12 Q. Are you saying someone said to you, "So long as you can
13 assure us we will take the risk"?

14 MR DOCTOR: That price would be adhered to.

15 A. That prices would be adhered to. I would then say,
16 "Okay, I will then go back to Hasbro and talk to my
17 counterpart and I will then confirm it to you later as
18 to whether that is going ahead", which is the reason for
19 this e-mail, that I was actually confirming what had
20 happened and what had been discussed in previous
21 discussions.

22 MR GREEN: Index buyers will say that they certainly had
23 discussions with you where you might ask a candid
24 question, "What do you think of these prices?" and they
25 may say "Well, what do you think of these RRP's?" and

1 they would say, "Well, seem to us to be okay", and they
2 would effectively be saying to you, that is our policy,
3 we are going to follow the RRP's. That may be very
4 different this to them committing to you that they will
5 follow your RRP's.

6 A. No.

7 Q. Let me put it this way: an answer to a candid question
8 may be very different to someone committing to you that
9 they would adhere to RRP's or follow?

10 A. We already had a commitment, though, in the previous
11 catalogues on core games and Action Man and we had seen
12 the evidence over the previous two or three catalogues
13 that in actual fact our pricing policy had worked and
14 that these prices were adhered to.

15 Q. That is quite a different thing. Again, you say you had
16 had a commitment in your previous two or three
17 catalogues. Is what you mean by that the price
18 initiative we discussed earlier had worked?

19 A. Yes, it had worked, and it was agreed that it had worked
20 by both parties, which is the reason why we extended the
21 range of products.

22 Q. You said earlier, at no time did anyone guarantee that
23 they would go out on your prices because you never know
24 until the catalogue came out whether they would?

25 A. When somebody said they agreed to the price, I would

1 never in the back of my mind consider that a complete
2 agreement. We would never be confident that this would
3 be the case until the catalogue came out. When somebody
4 gave a verbal agreement to say, yes, we will go along
5 with you, we will go out at those prices, I would go
6 away thinking, that is fine, we have the agreement but
7 we will never be sure until the catalogue comes out.

8 Q. The Index buyers will say that there were discussions
9 you had with them about whether the RRP was a good one
10 or a bad one or whether they intended to go out with it,
11 and because it was their policy to go out with it, they
12 might very well say yes. Would you construe that as
13 an agreement to go out with your RRPs?

14 A. Specifically on this list, yes, there were many talks
15 and discussions about pricing and the rest of the range,
16 as to where we saw the right retail price point. But
17 specifically this range was pulled together with the
18 express knowledge that we had had the discussions and
19 this was a range we were going to go forward with,
20 because we were increasing the work we had done in the
21 past with our previous business plan for core games and
22 Action Man.

23 Q. But the discussions you had were of the type I have just
24 specifically asked you about?

25 A. They were discussed around these, and I talked to the

1 buyers about what we were going to do.

2 Q. I do not think you quite answered the question. If you
3 ask a candid question, "What do you think of my RRPs,
4 are you intending to go out with it?" A buyer might
5 say, "Yes, it is my policy to go out with the RRPs." Is
6 that the sort of conversation you had?

7 A. On these specific products, yes, there was agreement to
8 go out on these recommended retail price points.

9 Q. You understood that to be the agreement?

10 A. That is why I followed it up interminably back at
11 Hasbro. Once we got the agreement, I followed it up
12 with this e-mail and then confirmed it back to
13 Lesley Paisley and the other buyers.

14 Q. If Index were going out at the RRPs because it suited
15 them to do so, for all the reasons we discussed this
16 morning, that would not surprise you?

17 A. No, these prices here were all based on product that was
18 very high volume product, possibly with the exception of
19 some of our Get Set range. But certainly the rest of
20 the range was all fairly critical product, game plan at
21 that time. In fact Pokemon had just been launched that
22 year, and there were three items certainly that I think
23 the price was adhered to. The Interactive Pikachu was
24 another price which did fall by the wayside later on.

25 Q. At page 19, this is the e-mail you actually sent.

1 THE CHAIRMAN: Mr Thomson, when you say you talked to the
2 buyers at Index, who specifically are you referring to?

3 A. I talked to Alan Burgess, I think it was
4 Katharine Runciman at that time and certainly Phil
5 Riley, who was buyer or assistant buyer of games,
6 I cannot remember.

7 MR GREEN: Look at page 91, the e-mail you actually sent.
8 You use different language here, but the language you
9 use is as follows:

10 "Following on from various conversations regarding
11 price points and opportunities to make more margin, I am
12 able to confirm a list of products and prices that Argos
13 have committed to. Games and Action Man prices will
14 continue to be adhered to and the retails are on your
15 range sheets provided by me as part of the selection
16 proposal process."

17 Then you list the various prices?

18 A. Yes.

19 Q. You refer here to discussions about price points and
20 opportunities to make more margin. Is that the headline
21 that you used for the discussions you have been
22 referring to, price points being the suitability of an
23 RRP?

24 A. Yes, the price points were related to specific items,
25 which were listed in this e-mail, because the

1 opportunity was to make more margin. This e-mail
2 confirms these price points that we had previously
3 discussed.

4 Q. You do not refer here to any agreement that you have
5 with Littlewoods. What you are really saying is --

6 A. There may not be an agreement, but it does say that:

7 "Games and Action Man prices will continue to be
8 adhered to on the retails on your range sheets, provided
9 by me as part of the selection proposal process."

10 We are already getting that with our games and
11 Action Man products and this was just a continuation of
12 that agreement with these particular products.

13 Q. The reference to games and Action Man prices will
14 continue to be adhered to is a reference to the matter
15 we have already discussed, which is the price
16 initiative, the history of the prior catalogues, the way
17 the Excel spreadsheets advised to the buyer that they go
18 out at the RRP?

19 A. Yes.

20 Q. Argos did not stick to the price of Pokeball Blaster.
21 Are you aware of that?

22 A. No.

23 Q. Nor did they stick to the price on the Interactive
24 Pikachu?

25 A. I am aware of that, yes.

1 Q. Transforming Team, are you aware of that?

2 A. No, not specifically. I do not know which ones were or
3 were not, I cannot remember.

4 Q. They did not go out on Rally Race Track either. It is
5 not correct to say that Argos agreed to commit to these
6 prices because they did not.

7 A. I can only pass on the information I was given by my
8 colleagues at the time, Neil Wilson, that he had these
9 discussions and that as part of these discussions these
10 prices had been agreed.

11 Q. In fact the prices here are effectively the RRP's which
12 you notified to Index, these were the RRP's you were
13 hoping they would go out at?

14 A. They were part of my Excel spreadsheets, yes, and they
15 were the Hasbro RRP's.

16 Q. In relation to core games and Action Man, by this time,
17 May 2000, Index would have been able to see how Argos
18 were pricing in the previous four catalogues, from
19 autumn/winter 1998 through to spring/summer 2000?

20 A. Yes.

21 Q. I think, as you have explained, because you saw the fact
22 that there was this correlation of prices over different
23 catalogues, your assumption was that this would be
24 continued?

25 A. Yes.

1 Q. If Argos, or Index for that matter, simply looked back
2 and tried to say, can I get confidence from what has
3 gone on in the past, the answer was yes?

4 A. Yes, there was a general confidence.

5 Q. Do you know why these prices were inaccurate? Do you
6 think Argos was misleading Neil Wilson?

7 A. I do not know, I cannot speak for him, because I do not
8 think we had much of a discussion afterwards, other than
9 when we went back. If the prices had changed, the
10 explanation would be, we do not know why they have done
11 it, but having happened, we were given assurances prior
12 to that in that the prices would be adhered to.

13 Q. You said you were given assurances. Earlier you said
14 you would not know until the catalogues went out?

15 A. That is right, but in this case we had been given
16 assurances by the buyers that they were confident that
17 everyone would stick to the price and they would go
18 along with our suggestion and proposals.

19 Q. The fact that the full operations were not adhered to by
20 Argos suggest that you could not be confident --

21 A. We could not be confident, but that is only four
22 products that were not adhered to.

23 Q. These were four pretty key products where Argos did what
24 they wanted?

25 A. In comparison to the rest of the range; there were only

1 four of them there.

2 Q. The rest are RRPs. It is consistent with a policy
3 whereby the retailers largely follow RRPs, but do a bit
4 of strategic undercutting?

5 A. There had been prior to that time. This was the whole
6 reason for doing this initiative, to try to stop this
7 from happening, to improve profitability in the
8 business. One of the areas that we were finding it very
9 difficult, leading up to 1998, was trying to maintain
10 our presence within these accounts, because our
11 profitability was becoming worse every catalogue that we
12 went out with.

13 Q. The catalogue to which this related would have been
14 published a couple of months later, July?

15 A. This would have been 18th May, so the catalogue would
16 have come out in July, yes.

17 Q. When it came out, Index would have noted that a number
18 of these items were not at these prices, and if they had
19 looked, that is what they would have noted?

20 A. Yes.

21 Q. Did anybody from Index ever come back to you and give
22 you a rocket because they were not at the price that you
23 had committed?

24 A. I cannot remember.

25 Q. You can remember them doing it but you cannot remember

1 them now?

2 A. Occasionally, yes, but if I knew a price was wrong,
3 I would phone up and advise that I knew the price would
4 be different, if I knew that information.

5 Q. There are no documents that suggested that anybody ever
6 came back to you on this in relation to these prices.
7 You said at the bottom, "If you have any questions
8 regarding the above, please come back"?

9 A. Not from that e-mail, no. The only follow-up, as we
10 kept on going towards the launch of catalogues was the
11 continual reassurance that the prices were going to be
12 okay.

13 Q. There is one matter I want to ask you about in relation
14 to Lesley Paisley. If you look at her witness statement
15 in volume 2, paragraphs 26 and 27, tab 46,
16 Lesley Paisley here is referring to her telephone
17 conversation with you about this e-mail. When you were
18 asked about this e-mail by the OFT in your interview in
19 2001, you said that Lesley Paisley expressed surprise
20 when you phoned her. This is what she says:

21 "I do recall receiving the e-mail from Ian Thomson.
22 I remember being surprised to receive such an e-mail.
23 I was surprised that he even suggested that Argos was
24 committed to these prices. It was inconceivable to me
25 that Argos would have committed to Hasbro on retail

1 prices on any product, let alone all these products.
2 Moreover, I do not understand how he could suggest that
3 Argos would continue to observe RRP's on Action Man and
4 games. I do not recall being telephoned by Ian Thomson
5 and asked to delete it. I do not know why he would have
6 asked me to delete it but not the other recipients. It
7 is possible that this e-mail is related to the
8 intervention of Mike McCulloch in the meeting with
9 Hasbro on 2nd May but I certainly made no connection
10 between these two events at the time. I have conducted
11 a subsequent investigation of the prices actually used
12 by Index and Argos in the autumn/winter 2000 catalogue
13 and Hasbro's RRP's. The results of this investigation
14 demonstrate that I was right not to trust Ian Thomson's
15 claims that Argos had committed to retail prices. It
16 seems that Argos cannot apply these prices in the case
17 of Pokeball Blaster, Interactive Pikachu, Transforming
18 Team Truck or Rally Race Track.

19 "This is exactly what I would expect and it
20 demonstrates how unrealistic it was for Ian Thomson to
21 make claims of this kind. The prices listed by
22 Ian Thomson were lower than the RRP's in at least three
23 cases. (RRP's have not been found in all cases.) For
24 Interactive Pikachu, Gardens Galore and Super Sticker
25 Factory. I have no idea why Ian Thomson should have

1 done this. Gardens Galore was not listed by Argos and
2 the suggestion of a price £5 below the RRP is
3 inexplicable on any basis. Index actually went out at
4 the £24.99 RRP. My investigation also reveals that
5 Index went out at the RRP in the case of all products
6 mentioned in the e-mail in respect of which I have been
7 able to identify the RRP except Interactive Pikachu,
8 where we went out at £23.75 instead of the RRP of
9 £24.99, and Super Sticker Factory where the Index price
10 was £17.99 rather than the RRP of £19.99. My conclusion
11 about this e-mail is that it does not support the
12 Office of Fair Trading's allegation that Littlewoods
13 were involved in price fixing. I have no idea why
14 Ian Thomson sent this e-mail though presumably it was
15 related to his wish that we should observe RRP's."

16 Mr Thomson, you have explained why you sent it.
17 What I want to ask you is this: this is Lesley Paisley's
18 perception of the e-mail, and she explains why she was
19 surprised that you sent it. You said earlier that your
20 principal contacts were not with Lesley Paisley; you
21 would have periodic discussions with her. Is that
22 correct?

23 A. That is correct.

24 Q. Is there anything in here, particularly in paragraph 26
25 and the first part of 27, that would lead you to believe

1 that her perception is incorrect? That is her view.

2 Did you ever have a conversation with her which you
3 would suggest is inconsistent?

4 A. Yes, I do. I remember having a conversation at one
5 point during the proceedings to suggest how successful
6 we had been and that we were looking to increase the
7 size of the range, and Lesley's response at that time
8 was, okay, fine, I will leave you to discuss it in
9 detail with your other buyers, or words to that effect,
10 which is what I did. The reason for sending the e-mail
11 to Lesley and the buyers was to show that the
12 discussions had been successful and that we had come up
13 with a range.

14 Q. The only conversation you recall is one where you
15 suggested how successful, if I can change the wording
16 slightly, your price initiative had been, would that be
17 fair?

18 A. Yes.

19 Q. You then said, "We are going to establish our price
20 initiative", and she simply said, "Speak to the other
21 buyers"?

22 A. Yes.

23 Q. That is the only conversation you can remember?

24 A. It might have been one of many. But the conversations
25 were not long-winded, they were fairly perfunctory and

1 to the point.

2 Q. You remember her expressing surprise, you said that to
3 the OFT some three years ago.

4 A. The surprise was that I had sent the e-mail following on
5 from my meeting with Mike Brighty, and Mike Brighty
6 asked me to phone Lesley and ask her to delete the
7 e-mail, which is what I did.

8 Q. Let us just deal with the Mike Brighty point. I think
9 an illustration of the document is at page 94.

10 THE CHAIRMAN: In the core bundle?

11 MR GREEN: Yes, file 26. There are a number of versions of
12 it. The one I have marked up is page 93. Mike Brighty
13 said to you:

14 "This is a great initiative that you and Neil have
15 instigated."

16 Then there are a lot of exclamation marks.

17 "However, a word to the wise, never ever put
18 anything in writing, it is highly illegal and it could
19 bite you right in the arse. Suggest you phone Lesley
20 and tell her to trash? Talk to Dave."

21 Mike Brighty must have looked at it and said, "This
22 is a bit close to the line."

23 A. Yes.

24 Q. The legal line. He was telling you, you had better
25 trash it, speak to Lesley and tell her to trash it. Did

1 you ring her and say, "Lesley, trash this e-mail"?

2 A. I asked her to delete the e-mail.

3 Q. Did you give her a reason for why you asked her to

4 delete the e-mail?

5 A. I just said that what I sent was something along the

6 lines that I should not have sent it, it was not

7 something that we should have sent and would you please

8 make sure that you and the buyers delete the e-mail.

9 Q. You did not use the word "illegal" at that time?

10 A. I cannot remember the words I used at that time.

11 Q. You do not remember the words you used to Lesley at the

12 time?

13 A. No, just that I asked her to delete it.

14 Q. If Mike Brighty said those words to you, it might

15 suggest he had some form of legal advice?

16 A. Yes, I would agree with that, but this is an area where

17 we were told they had not had legal advice. In

18 a subsequent conversation with Mike Brighty, he told me

19 he had not had the training that we later got.

20 Q. I do not want to go over old ground, but you explained

21 to the tribunal this morning that you raised the

22 question of the legality of this in October 1998?

23 A. And he told us that it was not.

24 Q. He told you that it was not illegal?

25 A. Withholding rebates is what the discussion was about at

1 the time.

2 Q. We have been over that. Although it is fairly colourful
3 language, Mike Brighty is saying to you that you should
4 not have done this, because on his advice it is either
5 very close to the line or dangerous or maybe illegal?

6 A. He told me that I should not have put it in writing, and
7 that is why it was highly illegal.

8 Q. He says never put anything in writing, it is highly
9 illegal and it could bite you in the arse. He is
10 basically saying, not just trash the e-mail, there is
11 a bit of coverage up there, it is for the tribunal to
12 decide whether they overstepped the mark or not, but he
13 tells you to withdraw it?

14 A. He is not telling me to withdraw it, but he is saying we
15 should go ahead with the initiative to put the prices in
16 place, but the fact was that we should not have put it
17 in writing and I should not have sent the e-mail out.
18 He was fully aware of the details and the circumstances.
19 And there was still pressure after this e-mail to
20 continue with our pricing initiatives, which we were
21 going to do for the forthcoming few months, up to 2001.

22 Q. The puzzle is why he thought it was illegal, and it may
23 have been coming close to a line which may have been
24 grey, but no-one is suggesting that the price initiative
25 of 1998, if properly applied, was illegal, so there is

1 no reason why he should have said it was illegal.

2 THE CHAIRMAN: I think that is a matter for argument and
3 debate later. It is difficult for the witness to
4 comment on, Mr Green.

5 MR GREEN: The long and short of it is that you have no idea
6 what legal advice Mike Brighty had to hand?

7 A. I have no idea what legal advice he had.

8 THE CHAIRMAN: When you said a moment ago, Mr Thomson, that
9 the pressure continued for some months after that, what
10 pressure are you referring to?

11 A. We as a sales department continued to meet all the way
12 through until late 2000/early 2001 to talk about prices
13 in the marketplace, and we were under continued pressure
14 to make sure that whatever pricing initiatives we had
15 put into place were looked upon and at these meetings we
16 would discuss where someone had dropped a price, we were
17 then asked, or the respective account manager was then
18 asked to go back to an account and get them to put the
19 price point up again or try to revisit the price point.
20 So it was very much part of the Hasbro initiative to
21 make sure that everyone was playing the same game.

22 MR GREEN: The meetings you just described to the president
23 are in fact the internal meetings which you refer to in
24 your statement, the internal Hasbro meetings?

25 A. Yes.

1 Q. I want to move on now from Lesley Paisley. I would like
2 to ask you about your relationship with
3 Katharine Runciman. If you go to tab 57, she deals with
4 her relationship with you in paragraphs 10-16. Have you
5 managed to read this statement before you came into the
6 witness box?

7 A. Yes.

8 Q. She says in paragraph 10 that you are very organised,
9 she says she would speak to you about once a month. Is
10 that about correct?

11 A. Yes, I would say that would vary depending on the time
12 of year.

13 Q. She says in paragraph 11 that she found your
14 spreadsheets a little confusing because you tried to
15 include so much information. Toys is quite
16 a complicated area because it spreads across so many
17 different categories, she would sometimes seek advice
18 from Alan Cowley. We discussed that earlier, that does
19 not surprise you, that she sought advice from
20 Alan Cowley.

21 A. We talked about that earlier, yes.

22 Q. "Amongst the matters I would discuss with Ian Thomson
23 would be discounts and contributions, often
24 a retrospective discount or a contribution to the
25 catalogue cost would be based upon the number of lines

1 selected and the quantity of pieces purchased. We would
2 be given a target such as 35 lines. If we met it we
3 might get an extra 1 per cent discount."

4 Is that an aspect of the listing rebate that we were
5 referring to earlier?

6 A. Without having had a look at the business plans, I think
7 the discounts were higher than that, depending on the
8 number of lines that would be listed.

9 Q. Could we agree this: she is talking about a discount
10 related to the number of lines?

11 A. There would have been a discount relating to the support
12 of the number of lines that were listed, yes.

13 Q. That is a matter you would have discussed with her?

14 A. Yes.

15 Q. She said:

16 "This might influence selection in that if you were
17 looking between a Mattel and Hasbro version of the doll,
18 you might go to Hasbro because it would get you a better
19 retrospective discount. Ian Thomson would ring me at
20 a reasonably early point in the process going through
21 our listing proposals. These listing discounts were
22 never conditional on our adherence to RRP's."

23 She is correct in that, is she not?

24 A. Yes.

25 Q. "Ian never applied any pressure to adhere to any

1 recommended retail prices. He might ask for my views
2 generally on a particular recommended retail price and
3 I might say something like this, 'I don't think much of
4 that price' or 'I don't know what anybody else has said
5 about it but I don't think you're going to sell it at
6 that' or 'You've got it at £24.99 but I think £19.99 is
7 going to be a much better selling price.' Ian never
8 changed any recommended retail prices as a consequence
9 of my having made a comment of that sort."

10 Do you remember those sorts of broad discussions?

11 She is talking in general terms, not specifically?

12 A. The ranges that Katharine Runciman ran with us were not
13 as high profile as our Action Man and core games
14 products. But they were critical in terms of some of
15 our Get Set price points, so price points were discussed
16 about retails. And also I am sure that I mentioned to
17 Katharine how successful we had been in your earlier
18 initiatives with our other products and this was a good
19 way forward for helping improve her profit margins.

20 THE CHAIRMAN: What do you mean by a Get Set price point?

21 A. The Get Set range was things like Chocolate Factory,
22 Gardens Galore or Mastering Mosaics, in that particular
23 range. At that time, they were doing quite well,
24 I think we had just taken it over from Waddingtons and
25 we were doing relatively well and introducing new

1 products in that range. It was not as high profile as
2 our Action Man and core games, but as they were doing
3 quite well and producing quite nice volumes we were keen
4 to do something on the pricing there as well.

5 Q. She then goes on to say, at the bottom of page 637:

6 "Ian never put me under any pressure to adhere to
7 the recommended retail prices."

8 She is quite explicit in using the word "pressure".
9 That would be correct, would it not?

10 A. I would say that I never put outright pressure and said
11 to any of the prior buyers, "You must adhere to it".
12 The pressure put was that it was in everyone's interests
13 to go out at these prices, because it was a move forward
14 in improving our overall profitability. But at the end
15 of the day, if they wanted to choose a different price,
16 that was down to them. Having said that, I did not feel
17 it was in anybody's interest to change from these retail
18 price points.

19 Q. She then said:

20 "At the end of the day, if he was recommending
21 £19.99 but I knew that Toys R Us were selling at £18.99,
22 I would price at £18.99 or, if I wanted to undercut,
23 lower."

24 A. If that were the case. But most of the price points we
25 were retailing out there were driven by what was

1 happening in Argos and Index. Occasionally there were
2 prices that would have been lower than our recommended
3 retail, but at that time it was pretty rare.

4 Q. I do not think she is denying that. She is saying:

5 "I think that I would have made it clear that retail
6 prices were for me to decide on or at least recommend to
7 the price setting mechanism. It is quite possible that
8 he might have inferred that I would probably go with the
9 recommended retail price simply from my enthusiasm to
10 take the product and the absence of any comment on the
11 RRP. We would talk about retail prices on the high
12 street and that would include Argos, but I do not
13 remember him trying to give me any comfort that
14 recommended retail prices were likely to be followed.
15 In the case of creative toys there would have been no
16 need to give comfort since it is not an especially
17 competitive area and prices are quite stable."

18 Does that accord with your recollection, she says
19 not any need to give comfort, prices were stable?

20 A. Yes, there would have been a need to give comfort
21 because at that time the range we had taken on, while
22 not as successful, as I mentioned previously, some of
23 the products mentioned in the range were big volume
24 items. Chocolate Factory is one of them. There was
25 almost like a comfort to say, "We are now trying to

1 improve your profitability. We have been successful in
2 doing it with other ranges. If we continue doing this
3 and look at maintaining your retails, then you will make
4 more profit, there is no need to undercut". As I said
5 earlier, there was no outright pressure that this is a
6 must do, you must do it I never said that.

7 Q. It would be a recommendation or suggestion?

8 A. Yes.

9 Q. Paragraph 14:

10 "I do not remember Ian Thomson pumping me for
11 information about Index's policy on pricing. It is
12 possible that from general discussions he thought that
13 he obtained enough information. After all, he would be
14 aware that in the main we would follow RRP's on my
15 product areas. But in any event if I did not pass any
16 adverse comment on a recommended retail price there was
17 certainly no guarantee that I would finally go out at
18 that price. With the benefit of hindsight, I think it
19 is possible that he might have passed on his impression
20 to other retailers, because that sort of thing goes on
21 with most suppliers. They often try to give the
22 impression that their recommended retail prices are
23 likely to be folded generally in the market. However
24 this was not something that I gave any real thought to
25 at the time."

1 Do you have any comment on that?

2 A. I think, as a general conversation, I am quite sure
3 other accounts that dealt with Index at that time may
4 not have done that. But as it had been part of Hasbro's
5 policy for some time, I find it difficult to read here
6 that we were not suggesting our recommended retail
7 prices, we were doing it because we were trying to
8 increase the range of product.

9 Q. I do not think she is saying you were not recommending
10 retail prices, I think what she is addressing here is
11 her perception whether or not you were passing on
12 information to other people?

13 A. I would have thought, with the trust that we had built
14 up with Index at that time and the fact that what we had
15 been doing was successful, it was a good indicator that
16 when I was talking about something about recommended
17 retail prices, that I was talking with the benefit of
18 knowledge and experience over a number of catalogues
19 that had been successful and we hoped it would continue
20 to be successful, but there were never any guarantees.

21 Q. I understand that. I do not think there is any dispute
22 between us on this. You would never say to Katharine,
23 "Katharine, give me a bit of information so that I can
24 pass it on to Neil Wilson and he can give it to Argos".
25 You never explicitly said, "Katharine, give me some

1 information on how you are going to price, so I can give
2 it to Neil Wilson and he can give it to Argos"?

3 A. I would never ask, "How are you going to price?"
4 I would not say I asked that of Katharine Runciman. But
5 certainly when we talked about our initiatives, we
6 talked about price points. And from that conversation
7 I indicated that I would go back to Neil Wilson -- not
8 Neil specifically, but the account handler of Argos --
9 to have the conversation and would then come back to
10 them and say, "These are products that we can now feel
11 comfortable about moving on and maintaining our
12 recommended retail price".

13 Q. There is a clash between you and Katharine Runciman.
14 She does not remember you saying you were going to pass
15 something on.

16 A. There were lots of conversations around this time with
17 the buyer. This was really the second part of the
18 initiative and there was a lot of talk, reassuring,
19 trying to make everyone feel confident that it was
20 actually going to happen. There were many conversations
21 like this. This took place over months, and it was
22 a long build-up and it was based on the trust that I had
23 with the buyers and with the account at that time.

24 Q. There are two different things. On the one hand you
25 were plainly saying, "Listen, this has worked, you can

1 see that from the catalogues", and there would have been
2 discussions about that and that would have been
3 self-evident to both Index and Argos, the evidence is
4 plain and transparent?

5 A. Yes.

6 Q. They can make their own minds up about that?

7 A. Of course they can, and we always said they could. But
8 at the end of the day the inference I got back was that
9 these prices were going to be adhered to.

10 Q. As Katharine Runciman said, it must have been blindingly
11 obvious to both you and her that that was the policy of
12 going out with the RRP's, that is what she says here?

13 A. Not necessarily, because yes, while there was an
14 indication that that was going to happen with any of the
15 buyers, there was never a guarantee until the
16 forthcoming catalogue was published.

17 Q. Paragraph 15:

18 "If I had thought about it at the time I would have
19 assumed that Ian Thomson would have protected our
20 position; ie he would not use confidential information
21 that he thought he was getting from us in discussions
22 with other retailers. He gave the impression that he
23 was very keen to do more business with Littlewoods and
24 that Hasbro valued its good relationship with us."

25 She is talking about confidential information. Did

1 you ever pass on confidential information with
2 Littlewoods?

3 A. If I was told not to pass on information, I would not
4 pass it on. But there was absolutely no doubt in my
5 mind that when we were talking about pricing with the
6 Index buyers that they knew I was going back to talk to
7 somebody in Hasbro about it, not directly to Argos, but
8 to somebody within Hasbro, to make sure that what we
9 were talking about was actually going on happen.

10 Q. Why did they need to do that? If they had been watching
11 the catalogues over the last year or year and a half,
12 they would have formed their own view as to whether or
13 not Argos was reliable?

14 A. Because there was a great degree of nervousness. You
15 have to remember at that time, the whole reason this had
16 led up to this was because of the competitive nature of
17 the business in terms of getting people through the
18 door, so there was always a worry on Hasbro's part that
19 this would go pear-shaped if prices started to tumble,
20 so one of the reasons why our business planning
21 department did the analysis on prices and presentations
22 and one of the reasons we had the meetings in Stockley
23 Park was to discuss the various pricing that was
24 happening out on the high street.

25 Q. That is your perception. She had a different

1 perception.

2 A. She is entitled to a different perception.

3 Q. It is possible she was looking at the catalogues, as
4 were her colleagues, for the previous seasons and they
5 had formed their own view about whether they could be
6 confident about Argos' intentions?

7 A. I am quite sure they did that. But, at the same time,
8 there was also a need to seek reassurance for myself
9 that this would continue to happen.

10 Q. She said in this statement, if she wanted to and she
11 thought Toys R Us would undercut, she would do so. As
12 you gave evidence earlier, on occasion that happened?

13 A. Yes.

14 Q. They made their own minds up about price?

15 A. Sometimes, yes.

16 Q. Sometimes? They made their own minds up about price?

17 A. Yes, they did. But more often with our prices, the ones
18 that we talked to, these prices were adhered to.

19 Q. They made their mind up more often to go out at your
20 RRP?

21 A. After I had conversations with them.

22 Q. Those conversations have to be seen in the context of
23 the fact that they could look at the previous period of
24 seasons and make up their own minds about their view of
25 Argos's intentions, given in particular the document

1 that we saw this morning from the external consultants
2 saying: "Move prices up. Argos are not going to
3 undercut." That was their own internal advice.

4 A. There was no guarantee that was ever going to happen.
5 And I could not give that guarantee either.

6 Q. That is why at the end of the day they had to make up
7 their own mind about prices. As we saw from the e-mail
8 of 18th May, even that was not accurate; that could not
9 have instilled a great deal of confidence?

10 A. Ultimately the price decision was theirs. But also,
11 there was a great deal of influence from ourselves.

12 Q. Briefly, just to finish, I want to deal with
13 Alan Burgess and Phil Riley. Alan Burgess' evidence,
14 bundle 1, tab 5, have you had a chance to read his
15 statement?

16 A. Some of it, yes. Not recently.

17 Q. Rather than read things to you, in order to save time,
18 let me put one or two of the propositions that he sets
19 out in his statements to you and see whether you
20 disagree. You know he will give evidence later on in
21 the hearing?

22 A. Yes.

23 Q. He says he has dealings with about six suppliers, in
24 paragraph 14. Did you know that?

25 A. Alan is one of the principal buyers with Index that

1 I knew had many responsibilities and would have been
2 dealing with a lot of accounts.

3 Q. He says in paragraph 13 of the statement, page 26:

4 "As the new Argos policy described above at
5 paragraph 5 took effect, however, all retailers gained
6 confidence that prices could be set at the supplier's
7 RRP. This confidence grew as we viewed the Argos
8 catalogues which evidenced the new policy of adhering to
9 RRP's. Suppliers and account managers would still
10 suggest to us that recommended retail prices would be
11 observed by Argos. However, we knew now that this was
12 more likely to turn out to be true, since 2000
13 discussions with suppliers on the likelihood of Argos
14 going to recommended prices on any type of goods have
15 reduced significantly. This is because the pattern of
16 Argos' prices on toys has become established. Retailers
17 now generally adhere to RRP's."

18 He is saying that you recommended retail prices, you
19 suggested that they would be observed, they simply
20 looked at the catalogues and they were able to see that
21 there was a general policy of adhering to your RRP's.
22 That is generally consistent with the evidence you have
23 given?

24 A. Following after 1998, I would say that was true. Prior
25 to that, the pricing was all over the place. I would

1 also say as well that once we put the initiative into
2 place in terms of core games and Action Man, that other
3 suppliers possibly saw what was going on or the
4 catalogues showed what was going on and took the same
5 sort of strategy, I do not know. But certainly as far
6 as we were concerned we knew it worked because it had
7 improved the profitability.

8 Q. He says in paragraph 15 -- I do not think there is any
9 disagreement between us on this:

10 "Ian Thomson never threatened me in any way. He
11 never said, 'Alan you must go out at these prices
12 because if you don't it's going to be a real problem for
13 you' or anything like that."

14 You never said anything like that to Alan Cowley?

15 A. There was never any threat. There was only the point
16 that we were trying to improve our profitability and it
17 would be in their interests to do that. But at the end
18 of the day it was the buyer's decision as to whether he
19 wanted to price at that point, knowing all the proper
20 facts.

21 Q. He says at paragraph 12 -- again, I doubt whether there
22 will be much disagreement between you:

23 "I have been asked to explain my dealings with
24 Ian Thomson, Littlewoods' account manager at Hasbro, who
25 has been my normal point of contact since the 1990s. As

1 with other suppliers of branded goods, I would have
2 numerous discussions with Ian Thomson about the low
3 retail margins available. Inevitably I would be trying
4 to obtain reduced cost prices, better retrospective
5 discounts or improved page contributions."

6 That would be the kind of conversation you would
7 have?

8 A. This was as I said earlier, prior to 1998 all of the
9 conversations we were having with all our customers were
10 to do with the poor profitability of Hasbro merchandise.

11 Q. Could you go back to his evidence, or his interview with
12 the OFT in the previous tab, tab 4. He says, halfway
13 down:

14 "At Toy Fair we will ask our suppliers to quote us.
15 This get us the cost price. In some cases suppliers
16 will also make recommendations about retail prices.

17 "Question: How much weight do you attribute to
18 these RRP's?

19 "Answer: Well, first of all, just something else
20 that goes into the mix.

21 "Question: So there is no question that RRP's are
22 imposed on you?

23 "Answer: Correct.

24 "Question: Are you made aware of what your
25 competitors' prices might be in the future before they

1 are published?

2 "Answer: The first indication I have of our
3 competitors' prices is when their catalogue comes out.

4 "Question: Do you assume the same applies in
5 respect of your prices?

6 "Answer: Yes.

7 "Question: Has Hasbro ever asked you for your
8 price?

9 "Answer: No, that is our business, not theirs."

10 Again, apart from the discussions that you have
11 already given evidence about to the tribunal, about the
12 general wisdom of going out at your RRP's, did you ever
13 say to Alan Burgess, "Alan, give me one of your prices
14 so I can pass it on?" Were you ever as explicit as
15 that? Did you say, "Give me one of your prices so I can
16 pass it on to Neil"?

17 A. I would not have asked for a price, but we were talking
18 about the range, particularly Action Man at that time,
19 we were talking about the deal after we had made the
20 presentation and we talked about going out at the RRP's.
21 There was an agreement to do it, when we were trying to
22 promote, and that was improved profitability. There was
23 never a guarantee that it would be adhered to and we
24 never knew effectively that it would be adhered to until
25 the catalogue came out later, after the selection

1 process had been gone through. But during that process
2 the agreement in principle to price at these prices was
3 given.

4 Q. These words are important, and we are arguing about the
5 meaning of words such as "agreement" or "agreement in
6 principle". By that, do you mean no more than that you
7 had set up the price initiative with high list prices,
8 core rebates, and so on, and you had learned that
9 Alan Burgess was happy to apply the RRP's?

10 MR DOCTOR: My Lord, this has been going on for a long time
11 now, and I have said nothing, but this is a good example
12 of where the summary of what the witness has said is
13 covered by the words "and so on". My learned friend
14 knows and everyone knows that there is something crucial
15 in "and so on". The witness has said it about six
16 times, but every time it has been put to him it has been
17 defined as the pricing initiative, even though we know
18 it is the original pricing initiative. He has put to
19 him a summary of the views which are not the views he
20 has stated and now it has been put to him again, the
21 pricing initiative and so on.

22 We must make clear what is being put to the witness.
23 If it is being put to the witness that it is simply the
24 original pricing initiative, that is what must be put.
25 If it is being put to the witness that what he says

1 happened falls within the words "pricing initiative",
2 then that should be made clear, so there is no
3 misunderstanding at a later stage as to what the witness
4 has been saying, and it is then argued that what the
5 witness was agreeing with each time was my learned
6 friend's summary of it, when he clearly has not agreed
7 with that.

8 THE CHAIRMAN: I think you should try to break it down,
9 Mr Green.

10 MR GREEN: Let us break it down.

11 THE CHAIRMAN: If it is of any help, the understanding that
12 I have at the moment -- and I may be completely under
13 a misapprehension, so I would be glad to be corrected --
14 is that when the witness says "We talked about the deal"
15 and that there was an agreement in principle to go along
16 with the prices, what he is intending to say is that in
17 this case Index had agreed in principle to go along with
18 the RRP's, and my understanding, which may be quite
19 imperfect, is that that agreement is on the implicit
20 assumption that there is to be some reassurance about
21 what the other major player will do.

22 A. That is correct.

23 THE CHAIRMAN: Is that what you are trying to tell us,
24 Mr Thomson?

25 A. Yes, there was reassurance that needed to be given

1 during most of the conversations, which we tried to do
2 by saying, "Yes, I have had talks with my opposite
3 number and this plan is going ahead, I am as confident
4 as I can be that this will take place". But there was
5 never any certainty really until the catalogues were
6 published that these prices did come out and were the
7 same.

8 MR GREEN: Let us take that stage by stage, because this is
9 important. You started with a price initiative, which
10 was that you increased the list price --

11 THE CHAIRMAN: When you use the phrase "price initiative",
12 it is being used by you in one sense and sometimes being
13 used by the witness in another sense. It is being used
14 by you in the sense that Hasbro wished at a certain
15 point, and perhaps the other retailers did too, to get
16 more margin into the business. I suspect it is being
17 used by the witness in a more general sense to cover the
18 whole arrangement, if I can put it like that.

19 A. Yes.

20 THE CHAIRMAN: Do you understand what I --

21 A. Yes. It was a continuation of our price initiative
22 which was driven by the presentation in autumn/winter
23 1998. As an initiative of the things I mentioned in one
24 of my earlier e-mails, Mike Brighty said it was
25 something to do with continuing the price initiative.

1 That is how we called it in Hasbro, a pricing initiative
2 in terms of what we were trying to do.

3 THE CHAIRMAN: Are you using the phrase "price initiative"
4 to cover --

5 A. To cover what we started doing and then extended later
6 on.

7 THE CHAIRMAN: That is only trying to clarify what people
8 are talking about, Mr Green.

9 MR GREEN: The problem is that there is an uncertainty
10 plainly in a number of witness' minds about what they
11 mean by agreement. That is one thing that has to be
12 explored with all the witnesses. As this witness has
13 emphasised, there was no guarantee by anybody that --

14 THE CHAIRMAN: Yes, he has said that on a number of
15 occasions.

16 MR GREEN: Rather than putting the points to the tribunal,
17 there was no guarantee that anyone would go out at your
18 RRP, you have said that on a number of occasions.

19 A. That is correct, but there was an indication and
20 a willingness to commit to the pricing.

21 Q. When you say an indication and a willingness to commit?

22 A. The words could have been, "Ian, I will go along with
23 you, but are you sure this is going to happen?" and
24 I would say, "Yes, trust me, I will go back and talk to
25 people to ensure this happens".

1 Q. Who specifically said those words, because it is very
2 vague.

3 A. They are in the court now in the back.

4 Q. Who particularly?

5 A. Alan Burgess.

6 Q. Can you remember an occasion when he specific used those
7 words?

8 A. Alan was very concerned about what we were doing,
9 because it could have a major impact on their business
10 if the prizing initiative did not follow through, did
11 not take place.

12 Q. He was constantly sceptical?

13 A. He was not constantly sceptical. There was more
14 confidence the longer we continued to do it. The more
15 they saw this was actually working, the decision to talk
16 about pricing started to evaporate. Going towards late
17 2000/early 2001, we did not need to talk a lot about
18 retail price points because most of the retail price
19 points that I presented on my spreadsheets were
20 generally adhered to; some were not, but most were.

21 Q. How soon after 18th May e-mail did that operate?
22 Because there, notwithstanding that you were suggesting
23 you had a commitment, four turned out to be incorrect.
24 You said earlier that that is a small number, but it is
25 not, four out of 14.

1 THE CHAIRMAN: They did not all turn out to be incorrect.
2 There were four prices that were different.

3 MR GREEN: Four prices that were different that Argos did
4 not commit to. Why would that instil confidence?

5 A. One of the prices that we got back from Argos was the
6 Interactive Pikachu, which is in one of the e-mails that
7 is included here, which is from an e-mail in which Mike
8 had said or Neil had said, "Interactive Pikachu is
9 £23.75, go back to Index and tell them." I would have
10 done that at that time.

11 Q. The evidence of the Index buyers -- and they will be
12 cross-examined on this -- is that they made up their own
13 minds. They understood that you were trying to give
14 them comfort or throwing things to them, but they say
15 other suppliers do that. At the end of the day they
16 have their own internal mechanism and internal policy
17 which happened to lead them to want to follow your RRP's,
18 but that was for their internal reasons. They had to
19 justify the prices to Lesley Paisley and she had to
20 justify them to John McMahon; and they had had advice
21 that they should raise their prices; and Argos would not
22 be so aggressive; and so on -- the things we have
23 discussed. That is their evidence. They do not suggest
24 that the bits of comfort you were throwing out to them
25 were pivotal.

1 A. They are entitled to say what they want in their
2 statements. I can only tell you the way I saw it and
3 the way I dealt with it and I was asked to come here
4 today and tell the truth and nothing but the truth, and
5 that is exactly what I am doing.

6 Q. That is their your perception. You plainly cannot speak
7 to their perception of their conversations with you.

8 A. They are entitled to say what they want in their witness
9 statements, and I am saying what I am saying, my
10 version.

11 THE CHAIRMAN: When you say that the Index witnesses
12 understood that Mr Thomson was trying to give them
13 comfort, what precisely did you mean by that?

14 MR GREEN: Only in the sense that he was -- I must not put
15 words into the mouth of the witness --

16 THE CHAIRMAN: No, but you clearly know what your case is.

17 MR GREEN: They were aware that he was plying them with
18 information, but it is the same sort of information that
19 other pliers provide, it is the sort of information
20 which goes to say, it is a good idea if you adhere to
21 our RRP's because everybody does it. The buyer can take
22 that piece of information with a pinch of salt or they
23 can check to see whether history proves it right, and
24 they can make up their own minds about whether they will
25 go out at the RRP. It is a fact that suppliers pass on

1 gossip or information. There are a lot of documents
2 which prove that and a lot of witnesses who say that.

3 THE CHAIRMAN: We will come back to it.

4 MR GREEN: Comfort may be a word which is from the
5 supplier's perspective but not necessarily from the
6 buyer's perspective.

7 Let me make sure I have covered matters in
8 Alan Burgess' statement, then I have only to deal with
9 Ms Gornall, and that is it.

10 I think that is all I want to put to you about
11 Mr Burgess. I want to deal finally with the position of
12 Andrea Gornall, witness statement tab 25. She deals
13 with her relations with you in paragraphs 5-12. I do
14 not think there will be much dispute on the basics. She
15 says you never forced, coerced or pressurised her to go
16 with your RRP's, is that correct?

17 A. Yes.

18 Q. She says she never committed to you that she would
19 follow your RRP's, is that correct?

20 A. No. As I said before, there was an indication when we
21 were talking about specific prices of specific products,
22 as detailed on the e-mails, that the indication was
23 that, yes, if we were looking to seek a common retail
24 price point, then yes, they would be interested in doing
25 that. But again, there was always this constant need

1 for reassurance in terms of whether it was actually
2 going to happen.

3 Q. So she can deal with it. Do you remember a specific
4 incident and do you remember the words used, because the
5 impression she might have obtained of a conversation
6 might be quite different from yours. Do you remember
7 a specific incident?

8 A. No.

9 Q. Therefore you do not remember the specific words used?

10 A. Not the specific words, but it was along the lines
11 I mentioned earlier, when we were talking about how
12 successful the previous plans had been and that we were
13 extending our range of products. I was talking to her
14 specifically, as I would have done to any of the buyers,
15 with her or with Alan Cowley, and I would have detailed
16 out the product specifically. There were still no
17 guarantees at the end of the day. Although we may have
18 been getting verbal guarantees, we were never very sure
19 until the catalogues came out.

20 Q. You said that you were talking to her about how
21 successfully the previous plans had worked and that:

22 "We were extending our range of products"?

23 A. Yes, which was the range from our Action Man core games.

24 Q. But that is quite different to Andrea turning around
25 and --

1 A. I cannot remember specific conversations with all the
2 buyers. I can remember the general conversations, which
3 were to do with products that would have been specific
4 to their ranges, because the only time I ever talked
5 about any other product that was not specific to any
6 buyer's range was when I talked to Alan Burgess about
7 the problems I had with Alan Cowley over a certain
8 Tweenies product.

9 Q. Let us be absolutely sure, so that she can deal with it
10 if needs be. I said to you, she did not commit to you,
11 you said she may have given the indication, and you then
12 said, you referred to your general -- you would have
13 said, "Well, following RRP's has been successful in the
14 past, and we want to extend our recommendations to you
15 to other products"?

16 A. Yes.

17 Q. Is that the sort of conversation you would have had with
18 her?

19 A. The conversation to try to persuade Andrea or anyone
20 else with regard to product would have been that we have
21 been successful in dealing with some of our other
22 ranges, we are looking to establish this, I have talked
23 to the other buyers about it and this is the product
24 I want to look at. I would have singled out certain
25 products. I would have talked about the fact that we

1 could improve the profitability of the products if we
2 went out at the retail price point and I would then have
3 discussions to make sure that this would happen back at
4 Hasbro with my colleague.

5 Q. She would, like any of the other buyers, have been able
6 to see from previous catalogues, from Index's own
7 experience, whether or not it was safe to go out at RRP?

8 A. Yes, and that would have been the assurance as well, but
9 what I was doing and saying was correct, that it had
10 worked and it was happening.

11 Q. She would have worked that out for herself?

12 A. Give the fact that I also had to add to that confidence,
13 to say that negotiations were still going forward, we
14 were still trying to extend the range of products,
15 because it is in everyone's interest to do that because
16 it was bringing more profit back into the business.

17 Q. She will say that her evidence -- I will not put words
18 in her mouth. She says:

19 "Our view internally was, well, we are going to go
20 out with RRPs, it is our internal policy, we have
21 a margin, our internal consultants..."

22 I do not know if she knew about the consultant, that
23 was their internal policy?

24 A. Yes, and Hasbro was a key linchpin in that, because we
25 were the supplier in the industry and up to that point

1 most of the catalogues had been subject to fairly
2 substantial discounting and low profit margin. So we
3 were coming along presenting a range of product, which
4 in many cases was high volume, which before had been low
5 margins and were now earning higher margins.

6 Q. At page 221, paragraph 10, she says:

7 "I have never confirmed to Ian Thomson that I am
8 definitely going out at his recommended retail prices.
9 He has never asked me to do this but, on the other hand,
10 he will know as well as I do that these are likely to be
11 the prices that we will decide upon and which other
12 retailers will adopt because, in creative, this is the
13 tradition and practice."

14 You say that you are the linchpin. How do you know
15 that? You do not know what internal processes go on
16 with Index which lead them to adopt a particular policy.
17 Why do you say that you are the linchpin which forces
18 her to do anything?

19 A. I did not say we forced her into doing anything at all.
20 What I said was that Hasbro as a company was a major
21 driver in the toy business at that time. We were the
22 number one supplier, therefore if we were able to put
23 more profitability back into the account, it was in
24 their interests to follow.

25 Q. Yes, that is a different thing. If you can put in more

1 profitability by recommending that they go out as an RRP
2 and they see the wisdom of that, that is one thing. Is
3 that all you are saying, that you were saying, "Andrea,
4 I recommend that you go out at the RRP because that will
5 help you get more profitability into the business"?

6 A. Especially with a high profile product where we knew
7 that there was a commonality between catalogues, then
8 yes, the interests were to maintain that retail price
9 point, to stop any price cutting, because that would
10 then be a disadvantage.

11 Q. This is an additional element you are throwing in, where
12 you are saying it would not have gone out at your RRP
13 unless you said, "Everybody is doing it, we can
14 guarantee that Argos were doing it". But you could not
15 guarantee Argos were doing it because they set their own
16 prices.

17 A. You could not guarantee it, but when I discussed with my
18 counterpart about the ranges, I would go back and say,
19 "These are the prices we are proposing, I would
20 recommend that you adhere to it at the same price".

21 Q. You have seen the 18th May e-mail?

22 A. Yes.

23 Q. Did you go back to Andrea Gornall and say, "I have got
24 additional assurances"?

25 A. I cannot say specifically, but I did have considerations

1 with the buyers, most of them, to say, "Yes, we have got
2 assurances, you would be quite comfortable to go ahead
3 and price at that price point".

4 Q. They would say, "We will take it on board, or think
5 about it"?

6 A. They would say, "Yes, thanks very much".

7 Q. You do not know who the specific individuals were?

8 A. Not specifically, it could have been any of them.

9 Q. How often did these things happen?

10 A. Leading up to selection process, it could be two weekly
11 depending on how crucial the products were, how crucial
12 their plans were, whether it fitted within a range of
13 products. They were ongoing all of the time.

14 THE CHAIRMAN: There comes a point, Mr Green, where one
15 cannot put the same point indefinitely.

16 MR GREEN: You may well be right, sir. Thank you very much,
17 I have no further questions.

18 THE CHAIRMAN: Mr Thomson, I think we will have to ask you
19 to come back tomorrow morning, if you would be so kind.
20 We will start at 10.30 tomorrow morning. As over lunch,
21 if you would be kind enough not to talk about the case
22 or your evidence to anybody at all in the meantime.

23 A. Okay.

24 THE CHAIRMAN: Thank you very much. 10.30 tomorrow.
25 (4.30 pm)

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(The hearing adjourned until 10.30 am
on Tuesday, 11th May 2004)

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