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1 Tuesday, 11th May 2004

2 (10.30 am)

3 MR IAN THOMSON (continued)

4 Cross-examination by MR BREALEY

5 THE CHAIRMAN: Good morning, Mr Thomson. You are still  
6 under oath.

7 A. Thank you.

8 THE CHAIRMAN: Yes, Mr Brealey?

9 MR BREALEY: Good morning, Mr Thomson.

10 Just before I proceed, just to let the tribunal  
11 know, we have Sarah Silverwood and Jackie Wray, who are  
12 our other two witnesses.

13 THE CHAIRMAN: Thank you.

14 MR BREALEY: Mr Thomson, can we go to your witness  
15 statement, please? If you do not have it in front of  
16 you, it is at volume 2, tab 61.

17 Could I ask you to go to paragraph 38, please? This  
18 is 1999 trading terms.

19 A. Yes.

20 Q. Now on 23rd October 1998, there was the internal Hasbro  
21 meeting, is that correct?

22 A. That is correct.

23 Q. And you, Hasbro, wanted to stop the severe price cutting  
24 on core brands, that is correct?

25 A. That is right.

1 Q. And in order to stop that severe price cutting, you  
2 wanted to ensure that all your retailers priced at  
3 99 pence price points.

4 A. Only on the products that we outlined in our strategy,  
5 which was our core brands and games and Action Man.

6 Q. Those are the products at paragraphs 43 and 44?

7 A. Yes.

8 Q. That is the internal Hasbro meeting. If we go on to  
9 paragraph 46, this is where you deal with preparing the  
10 Index business plan, this is the individual basis. You  
11 did this individual Index business plan, I think it was  
12 your evidence yesterday, based on the autumn/winter 1998  
13 figures.

14 A. Yes.

15 Q. You prepared a draft, and I think you said yesterday  
16 that your final draft may have been after  
17 13th November 1998.

18 A. Possibly, but it is very difficult to say. I can only  
19 go by the information I have in my floppy disks.

20 Q. Of course. Another indicator, I think, is at  
21 paragraph 50, where you say:

22 "I think it was around this time,  
23 October/November 1998, that Jonathan Evans [he is one of  
24 the authors of the 23rd October document] left to go,  
25 and Mr Bottomley moved to the UK sales director post."

1 A. That is correct.

2 Q. Now Mr Bottomley tells us in his witness statement that  
3 this was probably in December 1998, so does that ring  
4 any bells? He arrived in this post in December 1998.

5 A. No, because David's office was in the same area as  
6 Mike Brighty's and Jonathan Evans' was, so David was  
7 around all the time. I think I checked my records with  
8 our personnel department, and they told me it was in  
9 November that he became UK sales director.

10 They could not be specific at what time, but his  
11 payroll changed to UK sales director from FOB sales  
12 director, because as FOB sales director, I think part of  
13 his salary was paid out of our Hong Kong operation.

14 Q. So he says he became a director in December 1998, and  
15 you think it was November?

16 A. I think it was November.

17 Q. Moving to paragraph 52, this is where you arrange the  
18 meeting with Index.

19 A. Yes.

20 Q. So we have had the 23rd October meeting, you have  
21 prepared your plan, and you are now having the meeting  
22 with Index. At paragraph 55, you say:

23 "We did talk about the retail prices of our core  
24 brands and how critical it was that Index would have to  
25 stick to the price points in my plan, in order for Index

1 to maintain the same profit levels as the previous  
2 years."

3 A. Yes.

4 Q. Could you just expand, please, on what you mean by that?

5 A. At that time, in order to go out at the 1999 price  
6 points, we had moved our list prices up from the  
7 previous year, which meant that the price points could  
8 not really go below 99 pence, in order to maintain any  
9 margin at all, so therefore, at that 1999 price point,  
10 the same margin would have been achieved that had been  
11 achieved in autumn/winter 1998.

12 Q. And how was this linked, if at all, with the core brand  
13 rebate?

14 A. It was linked with the number of listings that we asked  
15 the account to support us with. I forget how many it  
16 was in terms of Action Man and core games, but there  
17 were a number of items that we had singled out within  
18 these ranges. I think it was all of Action Man and  
19 there were a number of core games products.

20 Q. But the solution, as far as you are concerned, was to  
21 stop the price undercutting?

22 A. The solution was to try and stop the price undercutting  
23 in order to improve profitability within the accounts.

24 Q. And at paragraph 58, I think you say the spreadsheet  
25 showed that Index would need to price at the new

1           99 pence price points in order to make the necessary  
2           profit margins, and that is consistent with what you  
3           have just said.

4   A.   Yes.

5   Q.   We have some spreadsheets which were attached at the end  
6           of our skeleton. I understand that the spreadsheets  
7           have been handed up to the witness. It is a green  
8           bundle, I think. For the tribunal, these are the  
9           spreadsheets that are at the back ...

10   THE CHAIRMAN: Where do you want us to go, Mr Brealey?

11   MR BREALEY: Well, I would like the tribunal to go to B1.

12           I am not sure what it is in the witness's -- so it will  
13           be, I think, tab 1.

14   THE CHAIRMAN: You had better tell us what these documents  
15           are, having produced them.

16   MR BREALEY: The documents are explained in the text, so in  
17           our skeleton, in this blue file, we have our skeleton,  
18           and then we have our pricing analysis, which is before  
19           that.

20   THE CHAIRMAN: Yes.

21   MR BREALEY: These give the references to the underlying  
22           documents in all of the following tabs.

23   THE CHAIRMAN: Yes, so these are -- I am just saying this  
24           for the transcript, so that we know where we are. These  
25           are all spreadsheets prepared by Argos on the basis of

1 documents that are already in the file one way or  
2 another.

3 MR BREALEY: Absolutely, because without making submissions,  
4 as the tribunal know, the decision does not contain any  
5 evidence on RRP's, and we have tried to put that together  
6 from the documents in the file.

7 THE CHAIRMAN: Yes.

8 MR BREALEY: So if we go to the second page of tab 1, you  
9 will see there spring/summer 1999 on the left-hand side,  
10 and autumn/winter 1999 on the right-hand side.

11 A. Yes.

12 Q. I will just give you a few moments to have a look at  
13 that. (Pause).

14 A. Yes.

15 Q. Having just said to the tribunal that it was absolutely  
16 critical to price at 99 pence price points in order to  
17 stop undercutting, were you aware at the Index meeting  
18 in 1998 that Hasbro had already decided to price at many  
19 99 pence price points for the spring/summer 1999  
20 catalogue?

21 A. Sorry, I am not clear on what you are trying to say.

22 Q. Were you aware in the Index meeting in 1998 that Argos  
23 had already decided --

24 THE CHAIRMAN: You did say Hasbro, Mr Brealey, which  
25 slightly threw us all.

1 MR BREALEY: Sorry. Were you aware, when you had the  
2 Hasbro/Index meeting in 1998, that Argos had already  
3 decided to price at 99 pence price points?  
4 A. No, not at all.  
5 Q. Were you aware of this fact when you swore this  
6 statement?  
7 A. No, I am not aware of that.  
8 Q. If we can have a look at the prices, starting with core  
9 games. Tab 1 is dealing with core games. We see on the  
10 left-hand side Battleships, well that is not listed, the  
11 Trivial Pursuit is priced by Argos at £39.99, and we  
12 have an RRP, which is the RRP sent to the OFT in 2003,  
13 that is consistent with the RRP, correct?  
14 A. Yes.  
15 Q. If these figures are correct, I mean. The next one,  
16 Jenga, £9.99, £9.99?  
17 A. Yes.  
18 Q. Pictionary, £29.99, £29.99.  
19 A. Yes.  
20 Q. Mousetrap, £16.99, £16.99.  
21 A. Yes.  
22 Q. If you go towards the bottom, to  
23 Monopoly, £14.99, £14.99.  
24 A. Yes.  
25 Q. In all those cases, Littlewoods are cheaper than Argos,

1 or have not listed the product.

2 A. Right.

3 Q. Do you see there that for other products, Argos have  
4 priced at above the RRP, so for example, Guess  
5 Who, £13.99, £14.99; that is the Guess Who.  
6 Twister, £12.49, £12.95.

7 A. Yes.

8 Q. Kerplunk, £12.49, £12.95.

9 A. Yes.

10 Q. Frustration, £8.49, and so it goes on.

11 A. Yes.

12 Q. Are you able to comment on the RRPs where Argos has  
13 priced above the RRPs?

14 A. No, I am not. As I explained yesterday, there were some  
15 cases where some products were printed above RRPs, and  
16 that was a decision made by any particular account that  
17 we dealt with, that was their choice.

18 Q. Can we go to the next tab? This is Action Man. So this  
19 is B2, I think it is just tab 2 for you.

20 THE CHAIRMAN: Tab 2?

21 MR BREALEY: Tab 2.

22 THE CHAIRMAN: The Action Man range. Yes?

23 MR BREALEY: Again, just to identify the document, what we  
24 have done -- the first page is spring/summer 1998 on the  
25 left-hand side; on the right-hand side, we have



1 autumn/winter 1998, and in our pricing analysis, we have  
2 set out what are the common products, which ones are  
3 cheaper, whether Littlewoods are cheaper, whether Argos  
4 is cheaper.

5 But if we can go four pages in --

6 THE CHAIRMAN: 1999?

7 MR BREALEY: Spring/summer 1999. Again, I remind you of the  
8 evidence that you are saying that it is critical to go  
9 out at the 99 pence price point, in order to stop  
10 undercutting.

11 A. Sorry, the fourth page in I have is spring/summer 1998.

12 Q. Then can you go on?

13 A. Is this the one that says, "RRP sent by Hasbro to OFT in  
14 2003"?

15 Q. It is, Mr Thomson. Then you will see spring/summer  
16 1999, and autumn/winter 1999 on the right-hand side.

17 A. Yes.

18 Q. Do you see for example the first three products:  
19 Mountain Bike Extreme, Net Trapper, Action Kite?

20 A. I do.

21 Q. Argos have already gone to the 99 pence price point.

22 A. I do.

23 Q. So Mountain Bike Extreme, £19.99, Net Trapper, £14.99,  
24 Action Kite, £19.99. You then see further on Mission  
25 Defence, Mission Pack, Helicopter Attack -- they are not

1 listed by Littlewoods, but we have gone to £8.99 and  
2 then 1999 price point -- and a 1999 price point.

3 A. Yes.

4 Q. The Action Man Roller Extreme, £19.99. Again, 4 pence  
5 above Littlewoods. Bungee Jump Extreme Action Man. We  
6 are £19.99, the alleged RRP is £9.95, Littlewoods are at  
7 the RRP, and apparently, we are above the RRP, if that  
8 is the correct price.

9 A. Yes.

10 Q. This is a common theme throughout the Action Man range.  
11 Can I ask you, then, to go back -- we can put this away,  
12 and I would like to take you back to paragraph 62 of  
13 your witness statement.

14 A. Yes.

15 Q. Where you say:

16 "It was at this point that Mike McCulloch intimated  
17 to John McMahon that he had been having discussions with  
18 the major opposition Argos, and they were of the same  
19 opinion, ie that they could not agree to the new pricing  
20 structure for fear of being undercut. It did need the  
21 agreement of both parties in order for the plan to  
22 work."

23 Now in light of the evidence that we have just seen,  
24 are you certain that that is what Mr McCulloch said?

25 A. Yes.

1 Q. If he said that, would you agree that the statement is  
2 inaccurate?

3 A. Having seen what I see here, yes, but that is what was  
4 said at the meeting, and I can only report what was said  
5 at that meeting and my recollection of that at the time.

6 MR BREALEY: I have no further questions.

7 THE CHAIRMAN: Thank you. Do you have any re-examination,  
8 Mr Doctor?

9 MR DOCTOR: I do not.

10 THE CHAIRMAN: Thank you very much, Mr Thomson. That is the  
11 end of your evidence. Thank you very much indeed for  
12 coming.

13 (The witness withdrew)

14 THE CHAIRMAN: Mr Doctor, I just released the witness  
15 without actually asking whether anyone had any  
16 observations on it, but I assume he can be released.

17 MR DOCTOR: Yes, thank you.

18 Sir, I have a slight problem, I think Mr Wilson has  
19 gone for a walk, thinking that we had an hour. He  
20 indicated -- we were inside a stuffy room which has no  
21 windows, and he went for a walk outside. I understand  
22 he has a mobile. I said he should be back at least  
23 within three quarters of an hour, but I did not  
24 anticipate it was going to be quite so quick. I am sure  
25 if we adjourn for five minutes, he cannot have gone far.

1 THE CHAIRMAN: Yes, we will rise for five minutes.  
2 (10.47 am)  
3 (A short break)  
4 (10.58 am)  
5 THE CHAIRMAN: Mr Doctor, we have summoned the engineers to  
6 try and deal with the air conditioning, and I think in  
7 the meantime, we will just leave the doors open as much  
8 as we can. If people really do want a break, perhaps  
9 they can put their hands up and we will have a break.  
10 It is very dense in here.  
11 MR DOCTOR: Thank you. So we are going to call Mr Neil  
12 Wilson, who is now present.  
13 THE CHAIRMAN: Yes.  
14 MR NEIL WILSON (sworn)  
15 Examination-in-chief by MR DOCTOR  
16 THE CHAIRMAN: Thank you very much, do sit down. The  
17 questions will come from Mr Doctor over there, but if  
18 you would be kind enough to address your answers over  
19 here, so we understand what you are saying, that would  
20 be very kind.  
21 A. Sure.  
22 MR DOCTOR: Mr Wilson, I understand you have a bundle in  
23 front of you, open at tab 68.  
24 A. Yes.  
25 Q. There is a document that should be open in front of you

1           there, beginning with the witness statement of  
2           Neil Wilson, and going to page 20.

3   A.   That is correct, yes.

4   Q.   Is that your signature on the last page?

5   A.   Yes.

6   Q.   And is this your witness statement?

7   A.   Yes.

8   Q.   Could you just go to paragraph 39?  I would like you to  
9           get out the core bundle, which is bundle 26, I think.

10   THE CHAIRMAN:  26 on our numbering.

11   MR DOCTOR:  I am just going to identify some documents.  At  
12           paragraph 39, you refer to a trading strategy document,  
13           from which you go on to quote in the next few  
14           paragraphs.  I have produced for you a bundle 26; if you  
15           would look at page 48 in that bundle, I would like you  
16           to identify the document of which you see a copy at  
17           page 48, going up to page 80.

18           Is that the document which is the trading strategy  
19           document referred to in paragraph 39 of your witness  
20           statement?

21   A.   Yes, it is.

22   Q.   Right.  Would you then look in your witness statement at  
23           paragraph 44?  Keep open the bundle, because we will  
24           just identify another document.  At paragraph 44, you  
25           refer to a meeting that took place in December 1999

1 between Sue Porrit, Mike Brighty and yourself to review  
2 business and to open the trading terms 2000 discussion.

3 Now if you look at that, you then say:

4 "I made an internal contact report."

5 If you look at page 46 in the core bundle, there is  
6 a contact report referred to, or a copy of a contact  
7 report there; is that the document that you are  
8 referring to?

9 A. Yes.

10 Q. If you would look at page 41 of the core bundle, could  
11 you identify that document?

12 A. Yes, it was written by me. It is an internal contact  
13 report.

14 Q. Concerning what?

15 A. It would have been a business review of 1998 and to  
16 progress trading terms and negotiations for 1999.

17 Q. It records present for Hasbro yourself, present for  
18 Argos Sue Porrit, and a date; is that the date on which  
19 you met?

20 A. Yes, it is.

21 Q. And when would you have produced that report?

22 A. Maybe a few days after the date of the meeting.

23 Q. Thank you. Now if you turn back to your witness  
24 statement, do you confirm that the contents of this  
25 witness statement are true?

1 A. Yes.

2 MR DOCTOR: Thank you.

3 Cross-examination by MR BREALEY

4 MR BREALEY: Good morning.

5 A. Good morning.

6 Q. You have your witness statement in front of you; could  
7 we go to paragraph 1? That is a good place to start.  
8 I just want to get some timing issues clarified -- well,  
9 not clarified, but to get them confirmed.

10 At paragraph 1, you say that you were the account  
11 manager for Argos from the end of January 1999 until  
12 October 2000; is that correct?

13 A. Yes.

14 Q. So that is after the spring/summer 1999 catalogue came  
15 out, because that came out in --

16 A. Yes.

17 Q. And before the spring/summer catalogue 2001.

18 A. Yes.

19 Q. So you were responsible or you were involved in  
20 negotiations for autumn/winter 1999, spring/summer 2000  
21 and autumn/winter 2000?

22 A. Mm.

23 Q. You then say that from October 2000 to February 2002,  
24 you had responsibility for Toys R Us. What was that?  
25 Was that the account manager again?

1 A. Yes, the same position on the Toys R Us account.

2 Q. So you had been, I think, with Toys R Us before Argos,  
3 and then you moved from Argos back to Toys R Us, is that  
4 right?

5 A. Yes.

6 Q. You were interviewed by the Office of Fair Trading, the  
7 OFT, on 11th October 2001, and can I just read  
8 a sentence from that interview, rather than go to it?

9 THE CHAIRMAN: Should he have it in front of him?

10 MR BREALEY: If he -- yes.

11 THE CHAIRMAN: It is probably a good idea.

12 MR BREALEY: Tab 67. Four lines down, you say:  
13 "Argos ..."

14 THE CHAIRMAN: It is a bit difficult to read, Mr Wilson.  
15 Can you read it?

16 A. Just about, yes.

17 MR BREALEY: "Argos had an aggressive pricing strategy,  
18 driving down prices. When GUS took over Argos, they  
19 decided to change policy, and were more concerned with  
20 profit and less with market position."  
21 Correct?

22 A. Yes.

23 Q. What, in your view, was the change of policy?

24 A. In my view, the change of policy was that Argos were  
25 concerned with volume sales, with driving market share;



1 because of that, their pricing was extremely aggressive  
2 compared to the competition, and there was a gradual  
3 change in that policy, as I viewed it, in that Argos  
4 were looking for more margin, and one of the ways that  
5 they could achieve more margin was pricing at the RRP's  
6 of suppliers.

7 Q. You say at paragraph 7:

8 "I cannot recall exactly when this change in policy  
9 took place, but I think when I became an account manager  
10 for Argos at the end of January 1999, it had been around  
11 for a few months."

12 THE CHAIRMAN: We are back on the witness statement now?

13 MR BREALEY: I beg your pardon, back on to the witness  
14 statement, paragraph 7:

15 "I cannot recall exactly when this change in policy  
16 took place, but I think when I became an account manager  
17 for Argos at the end of January 1999, it had been around  
18 for a few months. I was well aware of it from  
19 conversations I had with senior management at Hasbro."

20 When you became the account manager at the end of  
21 1999, were you aware that the --

22 THE CHAIRMAN: In January 1999.

23 MR BREALEY: In January 1999, were you aware that the change  
24 of policy had occurred for the spring/summer 1999  
25 catalogue?

1 A. Yes, I had been aware from discussions with senior  
2 management within Hasbro, who had told me what the  
3 implications of the change in policy were.

4 Q. And what did they say the implications were?

5 A. That Argos were looking to build more margin into their  
6 business, and one of the ways that they were looking to  
7 do that was to price at recommended retail prices.

8 Q. What was your reaction to that?

9 A. My reaction? Well, I mean, Hasbro's company reaction  
10 was quite pleased with that, because the margins on  
11 Hasbro products were extremely low, so much so that  
12 a number of retailers were threatening to delist some of  
13 Hasbro's most popular products and take them off shelves  
14 and out of catalogues, so if Argos' policy was to move  
15 towards RRPs, then it meant potentially that there would  
16 be more margin in Hasbro's products, not only for Argos  
17 but for the rest of the trade.

18 Q. I would like to go to the 1999 trading terms, and the  
19 best way of picking this up is in Andrew Needham's  
20 second statement, which is in volume 1 of the witness  
21 statement bundle, tab 35.

22 Just to put this in context, what he is doing at  
23 paragraph 3, I think, to paragraph 9 is setting out how  
24 Argos go about pricing their products.

25 THE CHAIRMAN: Have you seen this before, Mr Wilson?

1 A. Yes.

2 MR BREALEY: So at paragraph 6, he says:

3 "From the time of the first preview meeting there  
4 would be conversations between Hasbro and the Argos  
5 buyers, including myself, to discuss trading terms. So,  
6 for example, on 19th February 1999 there was a written  
7 and oral presentation by Neil Wilson, 'Cat 52 Listings  
8 Proposal', which sets out a proposed rebate in return  
9 for listing certain core brands."

10 You referred to the listings proposal in your  
11 interview with the Office of Fair Trading. Did they ask  
12 you for any documents?

13 A. No.

14 Q. The document, we can identify, is at the next tab,  
15 tab 36. Could you please just give the tribunal and me,  
16 to a certain extent, a summary of what this proposal,  
17 this listings proposal is all about?

18 A. It is basically a sales presentation, if you like. We  
19 are identifying to Argos the lines that we want -- we  
20 would like in the catalogue, and including advertising  
21 and media plans on top of that.

22 Q. So if we go to -- and I am looking at Action Man core  
23 brand rebate at page 290. Action Man core brand rebate:

24 "Hasbro will reward Argos with a 3.5 per cent rebate  
25 in return for listing the following in 1999."

1           Then on the right-hand side, it says:  
2           "Total rebate projection", with a figure.  
3           Can you just explain what this is -- how  
4           commercially this is going to work out?  
5   A.   It is a reward for stocking the key Hasbro Action Man  
6           selling lines, so it is saying to Argos, "As a reward  
7           for stocking those products that are documented there,  
8           Hasbro will reward Argos with a rebate of 3.5 per cent".  
9   Q.   And how is the total rebate projection calculated?  
10   A.   That would have been based on a forecast for each of  
11           those lines, multiplied by the cost price and summarised  
12           to come up with a total of £304,000.  
13   Q.   So the total rebate projection is based on the cost  
14           price and the RRP?  
15   A.   No, the cost price and the forecast, the volume forecast  
16           sales, not the RRP.  
17   THE CHAIRMAN:   The rebate is based on the cost price, is it?  
18   A.   Yes.  
19   MR BREALEY:   So over on 292, can you just identify what that  
20           is saying?  
21   A.   This is a breakdown of the Action Man lines that we were  
22           proposing that Argos stock in their catalogue. It was  
23           the cost price, the recommended retail price, the  
24           margin, the Hasbro company forecast on those lines,  
25           across the whole of the trade, and a forecasted Argos

1 autumn/winter catalogue sales forecast.

2 THE CHAIRMAN: So the column headed "Hasbro Co F/C" is your  
3 total trade sales on those lines?

4 A. Yes, the forecast for that year.

5 THE CHAIRMAN: The forecast, absolutely.

6 MR BREALEY: I think we then see the same for games, if we  
7 can go to page 304, that is the same theme but relating  
8 to core games. Then if we go to 307, when was the  
9 rebate ultimately paid?

10 A. I think it was retrospectively the following year, but  
11 I cannot be 100 per cent sure.

12 Q. And was it based on the actual sales or the forecast?

13 A. It would have been based on the actual sales, not the  
14 forecast.

15 Q. Now at the same time that you are having these  
16 discussions with Argos, as I understand your evidence,  
17 other account managers are having similar discussions  
18 with other retailers, is that correct?

19 A. Yes.

20 Q. And they are all trying to persuade the retailers of the  
21 commercial sense of this document, or similar documents.

22 A. Yes.

23 Q. Who would the major retailers be?

24 A. Major retailers would be Woolworths, Toys R Us and  
25 Index.

1 Q. Sorry, Woolworths, Toys R Us --

2 A. And Index.

3 Q. Woolworths and Toys R Us were a big competitor of Argos,

4 were they?

5 A. Yes.

6 Q. And from your time, for example, at Toys R Us, do

7 Toys R Us phone up and sometimes complain about other

8 retailers being at the RRP, or not at the RRP?

9 A. There has always been a constant dialogue about retail

10 pricing, and retail pricing that buyers and retailers

11 see in the marketplace from other retailers.

12 Q. Could you just say that again, sorry?

13 A. There has always been a constant dialogue about retail

14 prices in the marketplace, particularly when a buyer

15 will see a product on a promotion or at a cut price in

16 another retailer.

17 Q. You say, quite properly, in your witness statement that

18 Hasbro could not make the rebate conditional on sticking

19 to the RRP. Could you tell the tribunal why?

20 A. Because Hasbro was told by its legal department, or

21 Hasbro senior sales managers were told by its legal

22 department that that would be illegal.

23 Q. And you were aware of that?

24 A. Yes.

25 Q. Going back to Andrew Needham's witness statement, which

1 is at tab 35, so that is going one back, we have looked  
2 at the trading terms, and then at paragraph 8, he says:

3 "A short time after the Argos product selection  
4 meeting, Argos completed formal range and price forms  
5 which confirmed to Hasbro the selected products and the  
6 agreed cost prices. Neil Wilson would have checked all  
7 the details in this document, and would have inserted  
8 the RRPs, signed the forms and sent them back to Argos."

9 I think that is uncontroversial.

10 A. Yes.

11 Q. We can see an example of such a form at tab 39. This is  
12 for Cat 53, spring/summer 2000. We have the description  
13 of the product on the left-hand side, the manufacturer's  
14 reference, the country of origin, the cost price -- that  
15 is filled in by Andrew Needham, I think. Then is that  
16 your --

17 A. Yes, they would be, I think, Hasbro RRPs.

18 Q. So where it says, "RRP £12.99", you filled that in?

19 A. Yes.

20 THE CHAIRMAN: And that is your signature at the bottom  
21 there, Mr Wilson, is it?

22 A. Yes.

23 MR BREALEY: So throughout this process, there are several  
24 instances where Andrew Needham may say, "I am happy with  
25 an RRP".

1 A. Yes.

2 Q. If we could go back once again to Andrew Needham's  
3 witness statement --

4 THE CHAIRMAN: What do you mean exactly by that question,  
5 Mr Brealey, "I am happy with a RRP"? It sort of hangs  
6 in the air. Are we talking about a specific RRP?

7 Sorry, I have just not followed the point. You said:

8 "So throughout this process, there are several  
9 instances where Andrew Needham may say, 'I am happy with  
10 an RRP'."

11 Meaning what, that they had discussed RRP's, or  
12 that --

13 MR BREALEY: If I can go to paragraph 16 of your witness  
14 statement -- if I can answer that by reference to --

15 THE CHAIRMAN: Yes.

16 MR BREALEY: You say at paragraph 16:

17 "When I was given the products selected for the  
18 catalogue, I established which were the common products  
19 carried by the majority of retailers, not specifically  
20 Index, and asked Argos what its price intentions were in  
21 relation to each of these products."

22 We do not have an actual timing for when you asked  
23 Andrew Needham whether he was happy, and that word comes  
24 later on in the passage, but the fact that you have  
25 established what the common products are, does that give



1 an indication when the timing might be? Would that be  
2 round about the price and range forms, or could it have  
3 been at any time?

4 A. It could have been at that time, yes.

5 Q. Or at any time.

6 A. Around final pricing would be a time when there would be  
7 a lot of discussion about retail selling prices.

8 Q. "I did not do this for products that were not common.  
9 I informed Argos what the Hasbro RRP's for the common  
10 products were ..."

11 MR DOCTOR: The witness is in a conversation with the usher  
12 about this not being his statement or something. Can we  
13 just sort this out?

14 A. Sorry, I am looking at Andrew Needham's statement here.

15 THE CHAIRMAN: Yes, I am sorry, you are quite right,  
16 Mr Wilson. Could you just go to paragraph 16 of your  
17 own statement?

18 MR BREALEY: I will be going to paragraph 16 of --

19 THE CHAIRMAN: We already have gone to paragraph 16.

20 MR BREALEY: Paragraph 16 of your own statement:

21 "When I was given the products selected for the  
22 catalogue, I established which were the common products  
23 carried by the majority of retailers (not specifically  
24 Index) and asked Argos what its price intentions were in  
25 relation to each of these products. I did not do this

1 for products that were not common. I informed Argos  
2 what the Hasbro RRPs for the common products were and  
3 asked them whether any of our RRPs were a problem for  
4 them to match. Argos let me know whether they  
5 considered that a particular RRP was inappropriate.  
6 This was nearly always because Argos had spotted  
7 a different retailer charging a lower price, but it  
8 could also be because Argos felt the market would not  
9 stand the RRP and wanted to reduce the price to drive  
10 sales. By and large, when I presented Argos with  
11 Hasbro's proposed RRPs ..."

12 This is relating to core games and Action Man:

13 "... they said they were happy to follow them,  
14 although they did not give any guarantees and were  
15 subject to change. Occasionally, their price would  
16 differ from the indication they had previously given."

17 Now that is your evidence. Could I ask you to go to  
18 paragraph 16 of Mr Needham's second statement, so that  
19 is at tab 35, page 281 of that bundle:

20 "If Neil Wilson did ask me whether I was happy or  
21 comfortable with an RRP, I may have said yes. But we  
22 did not have a discussion about whether Argos would be  
23 pricing at the RRP for each of the core games and  
24 Action Man products that were being listed. He did not  
25 go through each product line by line and ask me whether

1 I was happy with each RRP. Neil Wilson sometimes asked  
2 me whether Hasbro RRPs were set at the correct level.  
3 Hasbro, as did other toy manufacturers, sought our view  
4 on certain RRPs at the toy previews and toy fairs that  
5 I mentioned above. We also sometimes had general  
6 discussions about where we both thought the market price  
7 for a Hasbro product was likely to settle (ie what the  
8 future anticipated price for the product was likely to  
9 be during the life of the Argos catalogue). This  
10 discussion helped both of us, and provided Hasbro with  
11 some insight into where its products were going to  
12 settle in the market (as compared with other  
13 manufacturers' products). It helped me to ensure that  
14 the prices I set for Argos at catalogue launch were near  
15 what I anticipated the market price would be."

16 Do you consider that paragraph 16 is a fair  
17 reflection of the process that you say you went through  
18 at paragraph 16 of your statement?

19 THE CHAIRMAN: I think you had better break it down into  
20 bite sized chunks, Mr Brealey. Take it sentence by  
21 sentence.

22 MR BREALEY: Is the first sentence a fair reflection?

23 A. Yes.

24 Q. Is the second sentence, that you did not actually sit  
25 down and line by line say, "Are you happy?", it was more

1 of a general --

2 A. There was no systematic procedure, there was a general  
3 willingness across Argos and the rest of the trade to  
4 move towards the retail prices, so to a degree it was  
5 assumed that that would be the case, and we would only  
6 have discussed by exception the items where there may  
7 have been a problem with sticking to the RRP, so there  
8 was no systematic procedure, no.

9 THE CHAIRMAN: What about the rest of the paragraph there,  
10 Mr Wilson?

11 MR BREALEY: Did you sometimes ask Mr Needham whether he  
12 thought that the RRP was set at the correct level?

13 A. Yes.

14 Q. Was it the case that Hasbro, as did other toy  
15 manufacturers, sought retailers' views on certain RRP  
16 at toy previews and toy fairs?

17 A. Yes, that is correct.

18 Q. And did you have general discussions with Mr Needham  
19 about where you both thought the market price for  
20 a Hasbro product was likely to settle?

21 A. Yes, we did.

22 Q. Did the discussion help both of you?

23 A. Yes.

24 Q. Because it provided Hasbro with some insight into where  
25 its products were going to settle, and it helped Argos

1 to ensure that its prices were near at what he  
2 anticipated the market price would be.

3 A. Yes.

4 THE CHAIRMAN: Thank you.

5 MR BREALEY: As far as the 2000 trading terms are concerned,  
6 these are at file 26, page 48. Could you give the  
7 tribunal and me, again, a general summary of what this  
8 document is designed to achieve?

9 A. It is an internal Hasbro document that would have been  
10 presented by Mike McCulloch, and it is the trading  
11 strategy for 2000, which would contain a review of 1999,  
12 and spell out the trading strategy and trading terms for  
13 all accounts for 2000.

14 Q. So the trading strategies, for example, I think, are at  
15 page 58.

16 THE CHAIRMAN: Page 58.

17 MR BREALEY: Pages 58 and 59. And then at 60, we have key  
18 2000 terms strategies, "How do we overcome the key  
19 obstacles?" Can you just summarise what these  
20 strategies mean? "Segment the terms versus defined  
21 category requirements".

22 THE CHAIRMAN: What is the question exactly, Mr Brealey?

23 MR BREALEY: Could the witness summarise what key strategy  
24 number 1 is meant to be?

25 THE CHAIRMAN: Are you there on page 60, Mr Wilson?

1 A. Yes, I am.

2 THE CHAIRMAN: What does that mean, "Segment the terms  
3 versus defined category requirements", et cetera?

4 A. Okay. Hasbro's product portfolio was segmented into  
5 three different areas: boys' toys, games and what were  
6 called growth drivers, and different terms of rebates  
7 and discount applied to the different areas --

8 THE CHAIRMAN: Can you just talk a bit in our direction, so  
9 we can get a note of it?

10 A. Sorry.

11 THE CHAIRMAN: Yes. So what is that telling us, that you  
12 want to make sure there are different terms for the  
13 different segments?

14 A. Yes, what it is saying is that the trading terms  
15 initiatives on games and Action Man have been rolled out  
16 to other products.

17 THE CHAIRMAN: I see.

18 MR BREALEY: And then:

19 "Build significantly improved margin across the  
20 portfolio, in line with the new segmentation and  
21 calculated against new lower retail pricing initiatives  
22 on games and Action Man, driven by marketing."

23 Very briefly, can you tell us what that means?

24 A. Yes, there were listings rebates that were given in 1999  
25 against Action Man and games. That was being extended

1 to other brands within Hasbro in 2000. In terms of  
2 bought-in margin, the only way that could be affected  
3 would be by the cost price and the retail price, and the  
4 difference between them.

5 So although Hasbro were giving rebates for giving  
6 a certain amount of listings, Hasbro were also talking  
7 to all accounts about retail pricing and parity with the  
8 RRP's alongside that.

9 Q. What is the relevance of that?

10 A. Well, the relevance is that Hasbro wanted the market to  
11 move to RRP's, so that the trade made more margin out of  
12 Hasbro products, so there would be no threat of  
13 delistings. But they knew that they could not make  
14 retail pricing conditional on payment of a rebate.

15 Q. So "Introducing new games growth rebate", what does that  
16 mean? That is number 4.

17 A. I think that is part of the roll-out where previously,  
18 in 1999, it was Action Man and games, and the growth  
19 driver is a new sector which was created which contained  
20 some of Hasbro's other key brands.

21 Q. And this is a kind of -- as you say, it is a roll-out  
22 for quite a few of the retailers. We can see this at  
23 page 71, I would imagine, where we have a plan to commit  
24 several million, and there is a focus on priority  
25 customers.

1 A. That is actually not particularly relevant, that is --  
2 the JMA budget is the amount of money which would be  
3 spent on advertising and promotion.

4 Q. Right. If we go back to 69, that margin enhancement, is  
5 that all part of this overall roll-out to all the  
6 retailers?

7 A. I think that was something in addition to the core  
8 strategy.

9 Q. And when was this new segmentation created, can you  
10 remember?

11 A. It would have been in preparation for 2000 trading terms  
12 and negotiations, so beginning of 2000.

13 THE CHAIRMAN: Sorry, Mr Wilson, I have not quite  
14 gathered -- if we go back to page 60, when you say in  
15 number 1:  
16 "Segment the terms versus defined category  
17 requirements in line with retail buying structures, eg  
18 boys' toys, games", et cetera, what exactly do you mean  
19 by "segment the terms"?

20 A. Okay, if you go to 63?

21 THE CHAIRMAN: I am actually on 63.

22 A. That was the way that the brands were segmented, in  
23 terms of umbrella categorisations of core boys, games  
24 and creative and growth drivers.

25 THE CHAIRMAN: Yes.



1 A. Within that are other brands which are under those  
2 particular headings.

3 THE CHAIRMAN: Yes. And the idea -- please correct me if  
4 I have it wrong -- was that the core rebate approach  
5 would be extended across to the growth drivers from  
6 Action Man and games.

7 A. Yes, in 1999, the rebates applied to just one boys' toy,  
8 which was Action Man. The following year, it was  
9 extended to Star Wars, Transformers, Micro Machines and  
10 Batman. The games rebate was extended to creative play,  
11 and the growth drivers were new for 2000, they were not  
12 in existence in 1999.

13 THE CHAIRMAN: Yes, thank you.

14 MR BREALEY: Sir, I do not know -- I am going on, but what  
15 time you want to have your break. We have had a short  
16 break already --

17 THE CHAIRMAN: Well, we have had a short break already. You  
18 have some time to go presumably?

19 MR BREALEY: Yes, I have another 45 minutes, or something  
20 like that. I am in your hands. I just notice it is  
21 11.30.

22 THE CHAIRMAN: Well, we normally stop at 11.40, but we have  
23 already had a break, so if the shorthand writers are  
24 happy to go on for another ten minutes? Thank you.

25 MR BREALEY: I would like to go on to the 18th May e-mails,

1 if I may, and we can pick this up at page 90 of the core  
2 documents bundle, which is file 26.

3 By way of general introduction, you say on numerous  
4 occasions in your witness statement that Argos did not  
5 guarantee the price that it had indicated to you, and at  
6 paragraph 57 of your statement, I think you give several  
7 reasons, so just to be fair, if you want to go to  
8 paragraph 57 of your witness statement --

9 THE CHAIRMAN: Yes, let us look at it, Mr Brealey:

10 "I understand that Argos have emphasised", is that  
11 the one?

12 MR BREALEY: Yes. I am obviously going to come on to the  
13 first sentence a bit later on, but just picking up:

14 "However, as regards the other three products, I do  
15 not recall Argos informing us when they had changed the  
16 pricing intentions in respect of these particular  
17 products, but it would probably have been the result of  
18 their having seen the product on sale at a lower price  
19 elsewhere ..."

20 That is one of the reasons that it would not go out  
21 at an RRP, correct?

22 A. Mm.

23 Q. "... or a belief that the RRP would not be maintained in  
24 the period before Christmas, perhaps due to television  
25 or other promotions for a particular product."

1           Is that correct?

2   A.   Yes.

3   Q.   Can you suggest any other reasons why Argos would not go  
4       out at the RRP?

5   A.   No, I cannot.

6   Q.   Perhaps Argos feels that it has sufficient margin  
7       already, at a price below the RRP?

8   A.   Possibly.

9   Q.   The particular account manager has already met the  
10      forecast, the targets that have been set for them? That  
11      is possible?

12  A.   Sorry, I do not follow.

13  Q.   That Vanessa Clarkson has already met her targets, and  
14      therefore, she has sufficient margin in which to play  
15      with. Are you aware that the Argos buyers had targets?

16  A.   Yes.

17  Q.   So if they have already met their target, they have more  
18      room for manoeuvre.

19  A.   Okay.

20  Q.   We have this e-mail on one side -- I am also looking at  
21      paragraph 50 of your statement.

22  THE CHAIRMAN: Paragraph 50, all right. Just glance at  
23      paragraph 50, Mr Wilson.

24  MR BREALEY: Again, just to identify the e-mail, this is the  
25      internal e-mail from -- it says from Ian Thomson and

1 Neil Wilson, and then "(Ian Thomson)"; why is  
2 Ian Thomson in brackets, do you know?

3 THE CHAIRMAN: If you want the witness to look at the  
4 e-mail, you have to ask him to look at the e-mail,  
5 Mr Brealey. He is looking at his witness statement,  
6 I think.

7 A. Yes, I was. Why is what, sorry?

8 MR BREALEY: If you have them in front of you, the e-mail  
9 and also paragraph 50 of your witness statement. In the  
10 e-mail, it says from Ian Thomson and Neil Wilson, and  
11 then "(Ian Thomson)".

12 A. Because Ian Thomson wrote the e-mail.

13 Q. Can you remember whether you saw this before it went  
14 out?

15 A. I cannot remember 100 per cent. I do not think I saw  
16 it. I do know that Ian told me that he was going to  
17 send out an e-mail similar to this.

18 Q. You say in the witness statement at paragraph 50, "of  
19 this type"; does that mean you had never sent an e-mail  
20 of this type out before?

21 A. To my knowledge, there was no e-mail of this type sent  
22 out before.

23 Q. Basically, what is happening here is -- and I put it to  
24 you that this is part of the process which you have  
25 already identified in your statement, where all the

1 account managers try to elicit the intentions or  
2 indications from all of the retailers, is that correct?

3 A. Yes, it is.

4 Q. And if one looks at the bottom of this e-mail, where it  
5 says:

6 "Both accounts have agreed to the above price  
7 points, so this information should be translated to the  
8 other accounts."

9 Where Mr Thomson says, "Both accounts have agreed",  
10 I think that you would agree that the use of the word  
11 "agreed" is inaccurate?

12 A. Yes.

13 THE CHAIRMAN: Can you just simplify that as a question?

14 MR BREALEY: Is the use of the word "agreed" inaccurate?

15 A. It is, yes. There was no guarantee, and no formal  
16 agreement that cases that were given by Argos would be  
17 the actual prices in their forthcoming catalogue.

18 Q. If we go over to the next e-mail, this is at page 91 of  
19 the core bundle, we see that there are 17 products  
20 listed. I take it you have obviously seen this e-mail,  
21 and your witness statement does --

22 A. Yes.

23 Q. As far as you are concerned, Andrew Needham is dealing  
24 with the Pokemon and the Micro Machines?

25 A. Yes.

1 Q. So he is the buyer for Pokemon and Micro Machines, and  
2 then Vanessa Clarkson is the buyer for the rest, which  
3 is Hand Held Electronic.

4 A. Yes.

5 Q. The Girls, the Get Set, the Design and Draw and the  
6 Tweenies. So you would have had separate discussions  
7 with Andrew Needham as regards Pokemon and Micro  
8 Machines, and then separate discussions with  
9 Vanessa Clarkson for the rest.

10 A. Yes.

11 Q. Could you please -- I appreciate we are getting a few  
12 documents out here -- go to the green file with our  
13 spreadsheets in, because I would like to go through the  
14 list of these products by reference to spreadsheets.  
15 This will be tab 3. For the tribunal, it is B3. It is  
16 the third page which is the relevant page, which is  
17 spring/summer 2000, autumn/winter 2000. Have you got  
18 that, Mr Wilson?

19 A. Yes, I have.

20 Q. I do not know whether you have seen this document  
21 before? I doubt whether you have.

22 A. No.

23 Q. On the left-hand side, we have got the products which  
24 are simply the products which are on the e-mail, and  
25 then we have got the various sources for RRP's. Then we

1 have the spring/summer 2000, and then we have, on the  
2 right-hand side, the autumn/winter 2000, and again, the  
3 products and the prices.

4 So far as the Battle Figures product is concerned,  
5 that is at £4.99 by Argos, that is the RRP, as far as we  
6 can work out; yes?

7 A. Yes.

8 Q. But you will note also that Argos in the spring/summer  
9 2000 sold it at £4.99, so they priced the same. And  
10 Littlewoods, which were at £4.75, went up to £4.99,  
11 which was the RRP; correct?

12 A. Yes.

13 THE CHAIRMAN: They went up to £4.99 in autumn/winter 2000,  
14 you mean?

15 MR BREALEY: Yes. The next, the Pokeball Blaster, on the  
16 e-mail, it says £6.99, whereas in actual fact, Argos  
17 went out at £6.95. So that figure is, I think you know,  
18 it is incorrect.

19 THE CHAIRMAN: Sorry, are we talking about spring/summer  
20 2000 or autumn/winter 2000?

21 MR BREALEY: The figure on the e-mail concerns autumn/winter  
22 2000.

23 THE CHAIRMAN: Yes.

24 MR BREALEY: That says that Hasbro believe that the Pokeball  
25 Blaster is going to be priced at £6.99. In actual fact,

1 in autumn/winter 2000, Argos price it at £6.95.

2 THE CHAIRMAN: Yes.

3 MR BREALEY: Do you see, Mr Wilson, any pattern between the

4 Battle Figures and the Blaster?

5 MR DOCTOR: I am not sure -- is the question related to

6 a pattern as between the spring/summer and

7 autumn/winter, or within autumn/winter between the two

8 companies? What does it relate to?

9 THE CHAIRMAN: I mean, are these facts in issue, Mr Brealey?

10 What is it you are trying to get at?

11 MR BREALEY: All right, I will put it to the witness, rather

12 than him trying to work it out. For the Battle Figures,

13 we go spring/summer 2000, £4.99, Littlewoods are £4.75.

14 The RRP is £4.99, we are £4.99, and they match our

15 spring/summer price, correct?

16 A. Yes.

17 Q. The Blaster, in spring/summer 2000, we are £6.99 and

18 Littlewoods are £6.95; correct?

19 A. Yes.

20 Q. We go at the lower Littlewoods figure in spring/summer

21 2000, £6.95, but Littlewoods go at £6.99. In other

22 words, the pattern is that both Argos and Littlewoods

23 are reacting to the previous prices in spring/summer

24 2000. That is a fair assumption, correct?

25 A. Yes.



1 THE CHAIRMAN: Mr Brealey, sorry to interrupt you, could  
2 I just ask you, what is the column, "Annex A to Argos'  
3 written representations", which seems to have some  
4 different prices yet again?

5 MR BREALEY: On the RRP's?

6 THE CHAIRMAN: Well, for example --

7 MR BREALEY: "Annex A to Argos' written representations" is  
8 some figures that we have that were the RRP. It is one  
9 of the astonishing things in this case, that we have to  
10 come up with what the RRP were; we are accused of price  
11 fixing at RRP. Nowhere in the decision is there an RRP  
12 figure, nowhere in the supporting documents -- whereas  
13 we have tried to put various sources to the tribunal, as  
14 one can see. One of the sources is "Annex A to Argos'  
15 written representations", and that is at file 4/6164.

16 THE CHAIRMAN: Right.

17 MR BREALEY: If we go on, the Interactive Pikachu in the  
18 e-mail of 18th May, Ian Thomson is confident that Argos  
19 will price at 23.99, correct?

20 A. Yes.

21 Q. But in actual fact, we go out -- or Argos goes out at  
22 £23.75. So again the e-mail, the price on the e-mail is  
23 inaccurate; correct? I know there is a subsequent  
24 correspondence on the Pikachu, but as far as the price  
25 on the e-mail, the confidence is misplaced.

1 A. At the time that the e-mail was written, Argos had given  
2 me an indication that they would be the RRP on that  
3 product, and the RRP is £23.99.

4 Q. So that is the categories -- the other boys' toys that  
5 Mr Needham is responsible for. We then go to Micro  
6 Machines, and again, if we look at the e-mail, Micro  
7 Machines, Transforming Team Truck, £29.99; so  
8 Ian Thomson is confident that Argos is going to price  
9 that truck at £29.99.

10 In actual fact, in the catalogue, it prices it at  
11 £28.99, a pound lower; is that correct?

12 A. Yes.

13 Q. And we see that Littlewoods is a pound higher, at  
14 £29.99. The other product in Micro Machines,  
15 Ian Thomson is confident that the track is going to be  
16 priced by Argos at £19.99, this is in the e-mail,  
17 whereas in actual fact, Argos price it at £18.99;  
18 correct?

19 A. Yes.

20 Q. Littlewoods go out at a pound higher. So just pausing  
21 there, before we get to the other products, I think you  
22 would accept that as far as this e-mail is concerned,  
23 and so far as the conversations with Andrew Needham are  
24 concerned, Ian Thomson has got it 80 per cent wrong.

25 A. At the time, Argos had given an indication that either

1           they would be happy to go with an RRP, or they would not  
2           be. That was the information that I relayed back to  
3           Ian, and that is the information that he has put in the  
4           e-mail there.

5           Obviously, subsequently, after that time, through  
6           a number of possible reasons, Argos' pricing intentions  
7           changed, maybe through competitive pricing that they saw  
8           in the marketplace, and those particular retails were  
9           not adhered to on those items that you state.

10       THE CHAIRMAN: Shall we break there, Mr Brealey?

11           We are just going to rise for five minutes to give  
12           the shorthand writers a break, Mr Wilson. If you would  
13           be kind enough not to discuss your evidence with  
14           anybody?

15       (11.55 am)

16                               (A short break)

17       (12.05 pm)

18       MR BREALEY: I am going to continue going through the list  
19           of documents on the e-mail, which is at page 91 of the  
20           core bundle, file 26. We have done Pokemon and Micro  
21           Machines. The Hand Held Electronic, that is the  
22           Monopoly, that is at £29.99; an observation, it is not  
23           listed by either in spring/summer 2000.

24           If we go back to the e-mail, the Bop It, that  
25           product is not on the internal e-mail which is at

1 page 90, the previous page. Have you any explanation  
2 for that? That product is not actually on the internal  
3 e-mail, unless it is under another name.

4 A. No, I have no explanation for that.

5 Q. The Baby All Gone, which is under girls, does not have  
6 any price, so that just then takes us to eight more  
7 products, and I think they can be categorised -- and  
8 correct me if I am wrong -- as creative toys, which is  
9 the Get Set and Design and Draw, and Tweenies?

10 A. Yes.

11 Q. If I can take the Tweenies first, this is at the bottom  
12 of the spreadsheet --

13 THE CHAIRMAN: Do you have the spreadsheet there, Mr Wilson?

14 A. I have, yes.

15 MR BREALEY: We have three products, autumn/winter 2000, on  
16 the right-hand side, £14.99, £24.99, £24.99.

17 Vanessa Clarkson, she priced the Tweenies All Standard  
18 Plush at the same price as spring/summer 2000, correct?

19 A. Yes.

20 Q. On the Tweenies, I would like to just refer you to what  
21 she says in her witness statement, and this is at  
22 volume 1 of the witness statements, tab 7, paragraph 14,  
23 page 39 at the bottom. Really the only evidence you can  
24 give I think is related to the first two sentences:

25 "When new product lines were launched, I would have

1 a conversation with Neil Wilson about the suitability of  
2 the RRP. In relation to Tweenies, I recall expressing  
3 concern to Neil Wilson that the RRP seemed high when  
4 compared with other plush toys, such as Bob the Builder.  
5 I believe Neil Wilson told me that Tweenies were a hot  
6 property and other retailers were happy with the RRP."

7 Can you remember a conversation with  
8 Vanessa Clarkson to the effect that going out at the RRP  
9 was a good price, it was a hot property?

10 A. I cannot remember a specific conversation I had with  
11 her, but that is not inconsistent with what I might have  
12 said.

13 Q. Just to put the time on that, in her statement, she says  
14 she listed the Tweenies first for the Christmas flyer in  
15 1999, is that correct?

16 A. Possibly, yes.

17 THE CHAIRMAN: Well, she says she decided to list it in the  
18 Argos Christmas 1999 catalogue.

19 MR BREALEY: Yes.

20 THE CHAIRMAN: That is not the flyer, is it?

21 MR BREALEY: It is, yes.

22 THE CHAIRMAN: I see, it is a separate thing that goes out  
23 before Christmas?

24 MR BREALEY: Just before Christmas.

25 THE CHAIRMAN: Okay, fine.

1 MR BREALEY: So it was not in the autumn/winter 1999, but  
2 just before Christmas.

3 THE CHAIRMAN: I see, yes.

4 MR BREALEY: Then going back to the e-mail, but do not put  
5 Vanessa Clarkson away just at the moment --

6 THE CHAIRMAN: We have quite a lot of files open,  
7 Mr Brealey. Can you simplify it a little?

8 MR BREALEY: I will.

9 Go back to the e-mail, that leaves us with  
10 essentially the creative toys: there is the Chocolate  
11 Factory, Egyptian Mystery, Mastering Mosaics, Gardens  
12 Galore not listed, Spirograph and Super Sticker Factory.

13 In terms of importance -- so if you take the list in  
14 the e-mail: Pokemon, Micro Machines, Hand Held, Girls,  
15 Get Set, Design and Draw, Tweenies. Where do Get Set  
16 and Design and Draw come in in the order of importance?

17 MR DOCTOR: Importance in volume, value? To children?

18 MR BREALEY: If Mr Doctor would stop interrupting the  
19 cross-examination --

20 THE CHAIRMAN: Well, I think it is a reasonable request for  
21 a bit more clarity in the question, probably. In whose  
22 mind? In Hasbro's mind, in terms of total turnover, in  
23 terms of importance as --

24 MR BREALEY: In terms of importance, in Hasbro's mind, in  
25 terms of value to Hasbro.

1 A. All the lines set out there are deemed key -- were  
2 deemed key lines to Hasbro. I would not say that  
3 creative was any less important than any of the other  
4 products towards the top of the e-mail.

5 Q. If you go over the page, this is the spreadsheet, to  
6 spring/summer 2001 --

7 THE CHAIRMAN: We are back to the spreadsheet volume now?

8 MR BREALEY: This is the last document I am going to refer  
9 to.

10 THE CHAIRMAN: Yes?

11 MR BREALEY: This is the last page of the spreadsheet; when  
12 one compares the products in autumn/winter 2000 and  
13 spring/summer 2001, to go down the list again, we see  
14 Pokemon not being listed, correct? Is spring/summer  
15 2001 after your time, or just about on the cusp?

16 A. It was after the -- yes, I was on the Toys R Us account  
17 at this time, yes.

18 Q. Very well, I will still ask you for your impression as  
19 to what is happening. Pokemon is not listed. Micro  
20 Machines, we saw from the autumn/winter 2000 that Argos  
21 had not gone out at the RRP, it was at £28.99 for the  
22 truck and £18.99 for the track, and do you see what is  
23 happening in spring/summer 2001?

24 A. Yes, quite clearly, it looks as though Index are  
25 matching the autumn/winter Argos price of the previous

1 year.

2 Q. Thank you. And we see that the only other products  
3 listed for spring/summer 2001 which are listed in the  
4 e-mail are the two Tweenies products, correct?

5 A. Yes.

6 MR BREALEY: Mr Wilson, thank you very much for being  
7 patient. I think Mr Green may have some questions.

8 THE CHAIRMAN: We are just going to put one or two files  
9 away, Mr Green, before you start, if you will forgive me  
10 just for a moment. (Pause).

11 Yes? We are quite happy to get them all out again,  
12 if you are about to ask us to?

13 MR GREEN: No.

14 Cross-examination by MR GREEN

15 MR GREEN: Mr Wilson, just one thing. You were asked about  
16 the fact that you knew that to condition rebates on  
17 adherence to RRP's was unlawful; why did you know that?

18 A. Well, because Hasbro senior management, back in late  
19 1998, had -- when they were looking at putting the  
20 strategy for 1999 together, had specifically asked  
21 Hasbro's legal department on what was and was not  
22 acceptable.

23 Q. And they communicated that to you?

24 A. Who, the legal department?

25 Q. Well, the senior management.



1 A. Yes.

2 Q. And Mr Thomson would have known that as well?

3 A. Yes.

4 MR GREEN: Thank you. No further questions.

5 MR DOCTOR: I have no questions.

6 THE CHAIRMAN: Thank you very much for coming, Mr Wilson.

7 That is the end of your evidence.

8 (The witness withdrew)

9 MR DOCTOR: I have another apology to make.

10 THE CHAIRMAN: We are running ahead of ourselves again?

11 MR DOCTOR: Mr Bottomley is going to be here at 1.00, I told

12 him to be here at lunchtime, because I expected that he

13 may not be called at all today, but thought he might be

14 slipped in late afternoon. So if we may perhaps have an

15 early lunch, or adjourn now and come back at 1.30, or

16 1.45, whatever suits the tribunal?

17 THE CHAIRMAN: That is probably a good idea, yes. Would

18 that be convenient, if we rise now and resume at 1.30?

19 Is that acceptable?

20 MR GREEN: It is certainly fine by us, we have no problems

21 with that. Our people are here.

22 THE CHAIRMAN: Very well. Thank you, Mr Doctor. We will

23 start at 1.30.

24 (12.17 pm)

25 (The short adjournment)

1 (1.35 pm)

2 MR DOCTOR: I have been told, sir, that I have been  
3 forgetting to switch on my microphone. I am under  
4 strict instructions to do that.

5 We call our next witness, Mr Bottomley.

6 MR DAVID BOTTOMLEY (sworn)

7 Examination-in-chief by MR DOCTOR

8 THE CHAIRMAN: Thank you, Mr Bottomley. Do sit down. Try  
9 and direct your answers towards us in a general way,  
10 although the questions will come from over there. Thank  
11 you very much.

12 MR DOCTOR: Mr Bottomley, the bundle in front of you over  
13 there, is that labelled volume 1?

14 A. It is, yes.

15 Q. Right. Would you open that to tab 3? Do you find there  
16 a document beginning, "Witness statement of David  
17 Bottomley"?

18 A. I do, yes.

19 Q. Does that go up to page 18 at the bottom, paragraph 49?

20 A. Yes, it does.

21 Q. Is that your signature on that page?

22 A. It is indeed, yes.

23 Q. And is that your statement?

24 A. It is, yes.

25 Q. Do you confirm the truth of the contents of that

1 statement?

2 A. I do, yes.

3 MR DOCTOR: There will be some questions for you.

4 Cross-examination by MR GREEN

5 MR GREEN: Good afternoon, Mr Bottomley. I am counsel for

6 Index and Littlewoods, so I will be asking you about

7 Index and Littlewoods, not Argos.

8 A. Right.

9 Q. If there are any questions concerning Argos, then  
10 Mr Brealey will put them to you.

11 A. Okay.

12 Q. You are fortunate in that questions about general issues  
13 have been put to the previous two witnesses, and I am  
14 not going to go over ground with you that I have been  
15 over with them, but I have a number of questions I want  
16 to ask you about your statement.

17 Can I start, please, with paragraph 2 of your  
18 statement? You state here that from September 1998, you  
19 were the sales director for the FOB, free on board  
20 division of Hasbro:

21 "... and in December of that year, until I left  
22 Hasbro, I worked as a sales director with  
23 a responsibility for a variety of sectors, which during  
24 2000 and 2001 included Littlewoods, Toys R Us, WH Smith  
25 and the independent trade."

1           Could you explain to the tribunal what FOB product  
2           is?

3   A.   FOB product is used by -- or was used at that time by  
4       major manufacturers.  It is where many retailers in the  
5       toy industry, like Argos, Index, Woolworths, Toys R Us  
6       would buy product from you directly from the Far East,  
7       and all the freight costs et cetera would be borne by  
8       the retailer.  It was a way of injecting margin into the  
9       retail trade.

10   THE CHAIRMAN:  Yes.

11   MR GREEN:  And the retailers would also buy FOB directly  
12       from the Far East themselves, would they not?

13   A.   Absolutely.

14   Q.   And these were often high margin products?

15   A.   Indeed, yes.

16   Q.   And they were often based on branded products, they may  
17       be copycat products, or products which are just slightly  
18       different to a branded product?

19   A.   The only thing I would disagree with in that is given  
20       the initiatives by retailers in the last five years,  
21       a lot of the product they have brought in themselves is  
22       actually better than branded goods.  What I was involved  
23       in at Hasbro was selling accessory products to branded  
24       goods that fulfilled a margin need within that business.

25   Q.   You then say that in 2000 and 2001, you worked as

1 a sales director. Could you explain to the tribunal  
2 what your responsibilities included?

3 A. I had a team of people working for me who handled  
4 various sectors of the business, whether it was the  
5 Index business or WH Smith, or I actually had the whole  
6 of the independent field sales operation reporting into  
7 me, so my day-to-day duty was to manage those teams as  
8 they went about their business, to implement the  
9 strategies of the business.

10 Q. What do you mean by "independent trade"?

11 A. The independent retailers such as members who belong to  
12 Toymasters, and Youngsters, who are the two big buying  
13 groups for independent toy retailers --

14 THE CHAIRMAN: These are -- I was going to say  
15 old-fashioned --

16 A. They are totally independent retailers, yes, still  
17 a very strong part of the toy industry.

18 MR GREEN: And how many people did you have reporting into  
19 you?

20 A. At one time, probably up to -- if you include the  
21 co-ordinated staff and secretarial support, between 25  
22 and 30 people.

23 Q. So your working day was spent monitoring, supervising  
24 what was going on in relation to a very large number of  
25 accounts?

1 A. Absolutely, yes.

2 Q. And as a result of that, you got your information about  
3 a particular account from the account managers beneath  
4 you?

5 A. I did indeed, yes.

6 Q. As a result, it would not have been your role to have  
7 day-to-day discussions with the accounts, that was left  
8 to the account managers.

9 A. That would be correct, apart from my involvement would  
10 have been to have had contact with my counterparts  
11 within the various retail operations.

12 Q. And those would be -- I do not want to be pejorative --  
13 middle management, senior management within the  
14 accounts?

15 A. Yes, middle to senior management within the respective  
16 accounts, yes.

17 Q. And you would be having general conversations with them  
18 on a periodic basis.

19 A. Absolutely.

20 Q. About what sort of matters?

21 A. Matters relating to the overall business, trading terms,  
22 profitability certainly, because in my near 14 years in  
23 the toy industry, profitability has always been the  
24 biggest single issue.

25 Q. Presumably it would be rare that you would be

1           considering individual products, an individual line  
2           with, let us say, Woolworths or WH Smith?

3   A.   I think it would be fair to say that, yes, albeit  
4           I started my working career as a salesman, and I have  
5           always been a salesman, therefore the joy of selling  
6           a product still remains, at whatever level of the  
7           business.

8   THE CHAIRMAN:   Yes.

9   MR GREEN:   Could you just turn to paragraph 16 of your  
10           statement, please?  This happens to be a paragraph  
11           concerning Argos, but it may be typical.  You say  
12           there --

13   THE CHAIRMAN:   Do you have it there, Mr Bottomley?

14   A.   Yes, I have, sorry.

15   MR GREEN:   Page 10 of the bundle:

16           "I did not deal with Argos directly; however, as  
17           a result of the discussions that Mike Brighty of Hasbro  
18           had with Sue Porrit of Argos, I came to understand ..."

19           So your knowledge of what went on at the coal face,  
20           as it were, was based upon what you were told by someone  
21           else within Hasbro.  Here, you are referring to the fact  
22           that you get your information from Mike Brighty.  Would  
23           that be typical of the way in which you were dealing  
24           with any particular account?

25   A.   Well, that is a typical situation where you had -- the

1 way that Hasbro structured its business in the UK was to  
2 have two sales directors at the top, and split people  
3 and account responsibility, so a gentleman called  
4 Mike Brighty at the time had responsibility for Argos,  
5 so the information that I knew to come from Argos came  
6 from either Mike Brighty or Neil Wilson, or from other  
7 people in the business, not myself directly, yes.

8 Q. And would your understanding of, let us say,  
9 Neil Wilson's relationship with Argos come through  
10 Mike Brighty as well?

11 A. Partially, yes. But you have to remember that we were  
12 a sales and marketing operation team in the UK of 50  
13 people, we met on a regular basis, we all shared the  
14 same office, not too much bigger than this room I am in  
15 today, so a lot of interaction between people, yes.

16 Q. Could you look at paragraph 7 of your statement, please?  
17 Page 7 of the bundle, paragraph 7 of your statement.

18 A. Yes.

19 Q. You say:

20 "In April 1998, however, Argos was taken over by  
21 GUS. GUS wanted to increase Argos' profitability, and  
22 to that end, wanted to drive margin back into the  
23 industry."

24 What was the source of your information at that  
25 time? How was it that you came to learn that GUS wanted



1 to drive margin back into the industry?

2 A. I think there is documentary evidence to support the  
3 fact that GUS, when they bought Argos, made statements  
4 that they -- one of their desires was to increase the  
5 profitability of the business, but, you know, that would  
6 have been based on conversations that were taking place  
7 across the whole of the manufacturing industry within  
8 the UK toy trade; I think it was generally assumed, and  
9 that is what I mean in that statement, that GUS wanted  
10 to drive margin back into the Argos business.

11 Q. And would you have seen coverage in the press about that  
12 at the time?

13 A. I could not answer that question.

14 Q. But as you say, you were generally aware?

15 A. Yes, I would agree with that.

16 Q. I mean, it was a significant event, when GUS took over  
17 Argos, given Argos' position in the market; it was  
18 a significant event to retailers generally, would you  
19 agree?

20 A. Yes, I would.

21 Q. One way for Argos to drive margin is to go with RRP's,  
22 that is one way they could do it, is it not?

23 A. Yes, it is.

24 Q. Did anyone at Index or Littlewoods ever tell you that  
25 Index had instructed external consultants who had

1           advised them that Argos under GUS would not initiate  
2           a price war in the future?

3   A.   Categorically no.

4   Q.   You were not aware of any internal advice which Index or  
5       Littlewoods had received?

6   A.   Absolutely not.

7   Q.   Would you look at paragraph 10 of your statement,  
8       please?  You say here:

9           "The development of the pricing initiative [which  
10       you described in previous paragraphs, and we have heard  
11       a great deal about it from Mr Thomson and Mr Wilson]  
12       came at the right time insofar as Argos' business  
13       strategy was concerned.  At that time, Argos wanted  
14       margin injected into the sector."

15         Now as I have just explained, Index actually  
16         procured a consultants' report in September 1998, just  
17         before, as it happens, the Hasbro price initiative, and  
18         it has been shown to the tribunal and to Mr Thomson.  
19         That report, amongst other things, advised Index that  
20         Argos was less likely to initiate a price war.

21         Now in the context of what you are saying in  
22         paragraph 10, the timing of your initiative also came at  
23         the right time vis-a-vis Index, did it not?  I mean, if  
24         Index had been advised independently that Argos was less  
25         likely to initiate a price war, then as you say here,

1           there was a sort of coincidence of timing.

2   A.   Is there a limit to how long I am allowed to answer  
3       a question?

4   THE CHAIRMAN:   No, there is no limit at all.

5   MR GREEN:   You should answer as you see fit.

6   THE CHAIRMAN:   Tell us whatever it is you want to tell us.

7   A.   The situation was very coincidental timing.   Hasbro came  
8       out with a pricing strategy that suited the retail trade  
9       at that moment in time.

10   THE CHAIRMAN:   Yes.

11   A.   The initiative that came out -- that Hasbro came up  
12       with, which was instigated by Hasbro, fitted into nicely  
13       the fact that, you know, retailers wanted to generate  
14       more profit from toys, and the reason that that is the  
15       situation is in the 14 years I have been in the toy  
16       industry, working for some very big branded companies in  
17       my career, I go back to the heyday of products like  
18       Trivial Pursuit and Pictionary, where the retailer was  
19       selling it at cost plus VAT.

20           If they were taking a sale on a credit card, they  
21       were losing money; there was no margin in toys.   So  
22       everybody, the retail trade, wanted to put margin back  
23       into the toy industry.   So a pricing initiative  
24       instigated by Hasbro fitted into that situation  
25       perfectly at that moment in time.

1 MR GREEN: Okay, thank you. Paragraph 14, please. In  
2 paragraph 14, if you look down to the sixth line, you  
3 will see that you have crossed out some words, and you  
4 have signed it on the right-hand side, 17th June 2003,  
5 which was the date you signed your statement; do you see  
6 that?

7 A. I do indeed, yes.

8 Q. I think the words which you crossed out are as follows:

9 "I would ask them, 'What do you think about  
10 maintaining retail prices?'"

11 Now the statement, as I understand matters, was put  
12 together for you by the OFT, is that correct?

13 A. The statement that is here in front of me in this  
14 booklet is a statement that I gave when called in by the  
15 Office of Fair Trading initially in May of last year to  
16 give further evidence regarding my initial statement to  
17 Mr Bob Lawrie of the OFT in October 2001. The reason  
18 that I crossed out that wording is I did not use that  
19 wording or personally would never have used that  
20 wording, which is why it is crossed out.

21 Q. You are perfectly entitled, obviously, to speak to the  
22 lawyers, there is no criticism in any way of that. What  
23 I am curious about is the deleted wording. The reason  
24 you deleted the words is because you disagree that you  
25 asked retailers to maintain retail prices, presumably;

1           that is why you crossed it out and signed it.

2   A.   I totally agree with the comment you just made, yes.

3           I personally have never asked a retailer to maintain  
4           a recommended retail price.

5   Q.   And it follows that you never coerced them or threatened  
6           them or pressurised them?

7   A.   I have never threatened, coerced or pressurised any  
8           retailer to maintain a retail price.  I was part of  
9           an initiative instigated by Hasbro that asked retailers  
10          to sell at a recommended retail price.

11  Q.   In paragraph 15 of your statement, you refer to an  
12          example of a meeting -- let me just read it to you:

13                 "One example of such a meeting was when I gave  
14                 a presentation with Ian Thomson to the Index buying team  
15                 about the importance of selling close to RRP's.  
16                 Alan Burgess and Lesley Paisley were present at this  
17                 presentation.  This was the Index presentation that  
18                 I referred to in my interview with Mr Lawrie."

19                 Do you recollect when this meeting was?

20  A.   My recollection of the meeting is that it took place  
21          some time between the end of January and the middle of  
22          February of 1999.

23  Q.   Was it only you and Ian Thomson who attended from  
24          Hasbro?

25  A.   No, a gentleman called Mike McCulloch attended from

1 Hasbro as well.

2 Q. I see. You did not mention him here.

3 A. No.

4 Q. Why did you not mention Mike McCulloch?

5 A. The honest answer to that was this statement was given  
6 in a full day that I spent with the Office of Fair  
7 Trading last year, and it may have slipped my mind at  
8 that moment in time. It was a very intense day, as I am  
9 sure you can appreciate.

10 Q. Yes, I mean, it is five years ago. Again, I am not  
11 critical. Was anybody else there?

12 A. My belief is that Alan Burgess was there and  
13 John McMahon was there.

14 Q. So John McMahon also was at the meeting; again, you did  
15 not mention him at the time. Is that just because it is  
16 a long time ago?

17 A. I think that would be a fair comment, yes.

18 Q. You give the impression here that you made  
19 a presentation; is that entirely correct?

20 A. Well, Ian Thomson would have made a presentation, yes.

21 Q. You say, "when I gave a presentation":  
22 "One example of such a meeting was when I gave  
23 a presentation with Ian Thomson."  
24 Did Ian Thomson give it, did you give it?

25 A. Well, Ian would have started every presentation, but

1           unfortunately, to come back to my original comment,  
2           being a natural salesman, one of my weaknesses in my  
3           career is my wanting to get involved, so I would have  
4           probably got involved.

5    Q.   You say "probably", is that because you do not remember  
6           the details? I know it is a long time ago; again,  
7           no one is criticising you for not remembering details.

8    A.   It is a long time ago. This is a general business  
9           meeting taking place between a supplier and a retailer  
10           that had a good working relationship, so it was  
11           a meeting that would have lasted some time and would  
12           have been conducted in a very good spirit.

13   Q.   Do you remember the details of it?

14   A.   Of the actual meeting?

15   Q.   Yes.

16   A.   Well, the only thing I remember about it is -- and why  
17           I am pretty sure of the time is in the UK toy industry,  
18           the Toy Fair in the UK is at the end of January, and the  
19           New York Toy Fair is always around Valentine's Day,  
20           about 14th February, and my recollection is it was  
21           either after the UK Toy Fair or after the New York Toy  
22           Fair that we went up to Liverpool, because we flew up  
23           from Heathrow to Manchester and hired a car. That is my  
24           recollection.

25           I have -- more than the intimate details of the

1 meeting, which is, given the timeframe involved, very  
2 difficult to remember any conversation that would have  
3 taken place in that meeting.

4 Q. The draft transcript said, "I have blank"; you said,  
5 "I do not have intimate details", is that what you said?  
6 Can you just clarify?

7 A. I do not have intimate recollection of the details of  
8 all of that meeting.

9 Q. Have you read Mr Thomson's statement?

10 A. No, I have not.

11 Q. Do you remember Mr McCulloch saying anything at the  
12 meeting? Again, it is five years ago.

13 A. No, I cannot. I can only comment at this point that,  
14 you know, we had lots of meetings with lots of  
15 customers. This is a general meeting. All I would keep  
16 coming back to, the point, sat here today, is that  
17 Hasbro initiated or instigated a pricing initiative, so  
18 conversations would have taken place, led by Hasbro,  
19 about a pricing initiative.

20 Q. Okay. Could you turn to paragraph 18, please? Just  
21 look at the last sentence.

22 THE CHAIRMAN: Do you think he ought to just read the whole  
23 paragraph?

24 MR GREEN: Yes, of course. Read the whole paragraph, just  
25 so as to remind yourself of what you said. I want to



1 ask you about the last sentence of 18 and the last  
2 sentence of 19, so read 18 and 19. (Pause).

3 A. Okay, I am familiar with that.

4 Q. This is a point which a number of witnesses have  
5 referred to. You say you would never know for certain  
6 what Argos or Index's price would be in the next  
7 catalogue, and that is a correct statement, is it not?

8 A. Absolutely correct, yes.

9 Q. There was always an element of uncertainty; both of the  
10 companies might go with the RRP or they might  
11 strategically undercut or possibly even overtop.

12 A. Absolutely, yes.

13 Q. You say in paragraph 23 of your statement -- would you  
14 please look at it, just to remind yourself of it -- that  
15 after publication of the autumn/winter 1999 catalogue,  
16 there was little need to have discussions over pricing,  
17 and that is, from your perspective, true, is it not?

18 A. Yes, it is.

19 Q. So after -- when would this be? After the catalogue  
20 came out in July 1999, would that be right, there was  
21 less debate generally in the retail sector about prices?

22 A. There was less debate, yes.

23 Q. Less debate: a great deal less, a little less, virtually  
24 none? What is the scale of the debate?

25 A. A lot less debate, yes. A lot less debate than would

1 have taken place previously. As I say, it was Hasbro  
2 who instigated this initiative on pricing, and so from  
3 our point of view, at that time, it had worked, and  
4 therefore there was a lot less need to have  
5 conversations.

6 Q. Now if you turn, please, to 24 through to 36, you deal  
7 here with the May 2000 e-mail.

8 THE CHAIRMAN: Where do you want us to read?

9 MR GREEN: I just want to identify that that is what you are  
10 dealing with. Could you take file 26 at page 91,  
11 please? (Pause). This is the e-mail sent by Ian Thomson  
12 to the Index buyers and to Lesley Paisley. Would you  
13 just look at a paragraph in your statement, please,  
14 paragraph 32? You say:

15 "It would be incorrect to say that Ian Thomson was  
16 simply taking a risk based on what he hoped Argos might  
17 do. Hasbro was not in the business of risk taking. He  
18 was saying what he believed to be the reality, based on  
19 the discussions he and colleagues had had with the  
20 industry."

21 Now when you were asked to sign your witness  
22 statement last year, were you aware that Argos did not  
23 in fact go out at retail prices on all of these items?

24 A. No, I was not.

25 Q. So you did not know that Argos did not stick to the

1 price, for example, on Pokeball Blaster, or, in fact,  
2 three other products?

3 A. No, I was not.

4 Q. So in that respect, he was taking a risk, was he not?

5 A. I think -- I can only answer that question in the  
6 context of how the situation was handled at the time,  
7 that the account managers within the Hasbro business  
8 were asked -- required to, as part of their day-to-day  
9 operation, discuss retail pricing with retailers.

10 THE CHAIRMAN: Yes.

11 A. So there would have been a fair expectation by Ian that  
12 the pricing that he had been told by colleagues would  
13 happen.

14 MR GREEN: Mr Wilson and Mr Thomson have both given evidence  
15 about this. Can I just clarify one thing? I think it  
16 is implicit in what you say in your statement, from  
17 paragraph 24 onwards, that your understanding of this  
18 e-mail derives from conversations you had at the time  
19 with Neil Wilson and Ian Thomson, would that be correct?

20 A. Well, with Ian Thomson, Neil Wilson and other colleagues  
21 within the Hasbro sales and marketing operation, yes.

22 Q. The point is -- and I do not think we are in  
23 disagreement at all about this -- your understanding of  
24 it was not based on discussions you personally had with  
25 individuals at Index or Argos.

1 A. Absolutely, yes.

2 Q. What was your relationship with Mike McCulloch?

3 A. I reported into Mike McCulloch. He was the business  
4 head of the Hasbro UK operation.

5 Q. Did you know that he had taken legal advice and had a  
6 list of dos and don'ts approved by Hasbro's internal and  
7 outside lawyers in relation to the price initiative?

8 A. No, I did not.

9 MR GREEN: I have no further questions for this witness.

10 THE CHAIRMAN: Thank you, Mr Green.

11 MR BREALEY: I have no questions.

12 THE CHAIRMAN: Thank you. Mr Doctor?

13 MR DOCTOR: I have no questions.

14 THE CHAIRMAN: Thank you.

15 Well, Mr Bottomley, I think that is actually the end  
16 of your evidence. Those are all the questions. Thank  
17 you very much for coming.

18 A. Thank you.

19 (The witness withdrew)

20 THE CHAIRMAN: Well, we are halfway through Day 2 --

21 MR DOCTOR: We are making very good progress.

22 MR BREALEY: We made a promise --

23 THE CHAIRMAN: And indeed you have kept it.

24 MR DOCTOR: Sir, there is only one point I want to just draw  
25 attention to, but I have no further witnesses. There

1 was a suggestion made to Mr Thomson that a certain  
2 document contains the catalogue prices. It is  
3 a document which is at tab 49 in the witness bundle.  
4 (Pause).

5 THE CHAIRMAN: Which page?

6 MR DOCTOR: Page 456. It was put to Mr Thomson, this  
7 document -- he said he did not compile it, and did not  
8 know about the document, or it was not compiled by him.

9 It was put to him that the prices shown against  
10 Argos and Index, the first and fourth columns, are the  
11 catalogue prices for autumn/winter 1998, and that they  
12 are, in each case, the same.

13 I just want to make it clear that they are not the  
14 catalogue prices; that can easily be established by  
15 going to the catalogues, and just inviting my learned  
16 friends to establish that. We can do it the long way or  
17 the short way. I can go and produce all the catalogues  
18 one by one and show you that that is not correct, or  
19 they can check it for themselves and we can get  
20 agreement.

21 If it is necessary for me to produce each catalogue  
22 three times for the tribunal to see, I can do that, but  
23 I will not for the moment waste time --

24 THE CHAIRMAN: It should be possible to agree what the  
25 prices were, I would have thought.

1 MR GREEN: It may or may not be. As I recollect, this  
2 witness said this was compiled as a result of checking  
3 catalogues and the shelves. This is a matter which  
4 should have been the subject of re-examination. It may  
5 be there is not a dispute, but I am certainly not in  
6 a position to agree it, and I recollect the witness  
7 saying that his marketing department got it from two  
8 sources, and he then gave an explanation of why there  
9 might be commonality of pricing at an early stage.

10 THE CHAIRMAN: As I remember the explanation, and I may have  
11 misremembered it, what was said was that the Argos and  
12 Index prices were taken from the catalogues and the  
13 other prices had been taken from going round looking at  
14 shelves.

15 MR DOCTOR: I think that is correct. The witness, however,  
16 said he did not know, that it was not himself --

17 THE CHAIRMAN: But it was not the witness's own document.

18 MR DOCTOR: He did not know how it had been compiled.

19 THE CHAIRMAN: Perhaps the parties can make some behind the  
20 scenes effort --

21 MR DOCTOR: It is already being done. It is in Mr Brealey's  
22 skeleton, the pricing analysis. The true catalogue  
23 prices are set out there; these are not the catalogue  
24 prices. That is not a matter which we can have a debate  
25 on; as I say, we can go through each catalogue and see

1           it, and it does not depend in any way on Mr Thomson's  
2           knowledge.  Nothing would have been achieved by asking  
3           Mr Thomson to try and recollect from memory why  
4           a document that he had already disclaimed any knowledge  
5           of was or was not in the form it was.

6   THE CHAIRMAN:  As a matter of fact, do we physically have  
7           the catalogues?

8   MR DOCTOR:  We do have them, yes.

9   THE CHAIRMAN:  Do we have them?  Somebody has them.

10  MR DOCTOR:  I do not think the tribunal has them.

11  THE CHAIRMAN:  No, I do not think we have.

12  MR DOCTOR:  They have been referred to from time to time by  
13           all the parties.

14  MR GREEN:  I just want to say in relation to this, there may  
15           be no disagreement as to what was in the catalogue, but  
16           Mr Thomson, as you will recollect, used this as part of  
17           his presentation; he gave various explanations about it.  
18           Obviously, if it is relevant to our case, we will be  
19           relying upon whatever is relevant from his  
20           cross-examination in closing, but I do not think I need  
21           say anything more about it at this stage.

22  THE CHAIRMAN:  Yes.

23  MR DOCTOR:  Subject to that, I have nothing further to add.

24  THE CHAIRMAN:  Thank you very much, Mr Doctor.

25  MR BREALEY:  Mr Green is going to start with his witnesses.

1           We have Sarah Silverwood in court. I am told that  
2           Mr Doctor does not intend to cross-examine her. She is  
3           in court, and I merely say that in case the tribunal  
4           want to ask her any questions; if not, she can be  
5           released, but she is in court, and would be prepared to  
6           swear to her evidence. I merely say she is here if the  
7           tribunal want to ask her any questions.

8   THE CHAIRMAN: Well, the tribunal's general approach is to  
9           listen to any oral evidence that the parties want to  
10          call. There are no particular questions we wish to  
11          volunteer ourselves to any witness.

12   MR BREALEY: Then it is pretty pointless putting her in the  
13          box.

14   THE CHAIRMAN: Yes, well, if her evidence is not challenged,  
15          that is the evidence she gives.

16   MR BREALEY: Can I take the evidence, that she has given it  
17          on oath?

18   THE CHAIRMAN: Well, evidence that is in a witness statement  
19          that is not challenged, as far as the tribunal is  
20          concerned, bears such weight as it bears; it is there,  
21          that is the evidence. It does not necessarily imply  
22          that we accept it, but it is the evidence.

23   MR BREALEY: Of course, but I do not want it to be said  
24          that --

25   THE CHAIRMAN: That she had not been prepared to be



1 cross-examined; no. Which is Ms Silverwood? Yes, thank  
2 you very much for coming. It looks as if you are spared  
3 the ordeal of the witness box.

4 MR BREALEY: Also, before Mr Green jumps up, he is going to  
5 call a couple of witnesses this afternoon; this is  
6 something for Mr Doctor. We may have no witnesses from  
7 Index tomorrow, and therefore, Argos would be happy to  
8 call their witnesses tomorrow, so that we do not have a  
9 gap. I just put Mr Doctor on notice that, if we are  
10 going as quickly as we are, that would be the situation,  
11 and although Index have some witnesses today and  
12 Thursday, we can interpose the Argos witnesses tomorrow,  
13 if that fits in with the tribunal's --

14 THE CHAIRMAN: Just let me see if I can find my list of  
15 witnesses. (Pause).

16 MR BREALEY: As I understand it, Mr Green is going to call  
17 Mr McMahon and Mrs Paisley this afternoon, they may run  
18 over to tomorrow. Mr Cowley and Mr Burgess are not  
19 available until Thursday.

20 THE CHAIRMAN: Right. What is the situation?

21 MR GREEN: The situation is I am going to be calling  
22 Mr McMahon next, and then Mrs Paisley, who are obviously  
23 two of our most important witnesses. It may be there  
24 will be no timing hiatus; if there is, we are proposing  
25 to call Mr Cowley third. He has planned to come down on

1 Thursday morning, and I think it is simply suggested  
2 that if we do have a gap, we might as well use the time  
3 and call some of the principal Argos witnesses. We  
4 simply wanted to make sure that Mr Doctor had proper  
5 warning of that.

6 THE CHAIRMAN: What about some of your other witnesses?  
7 Runciman, Gornall, Riley?

8 MR GREEN: Some of those again -- Ms Runciman, for example,  
9 they have to come down from the North.

10 THE CHAIRMAN: So they are not warned for tomorrow?

11 MR GREEN: They are not warned for tomorrow, no. The next  
12 was Mr Cowley, and we would like to keep that order. It  
13 may be there is not going to be a gap, it depends how  
14 long Mr Doctor is with my two principal witnesses, but  
15 we just thought we ought to note that, that there are  
16 other witnesses -- the main witnesses from Argos who can  
17 go in, and in some respects, the senior management can  
18 come first.

19 MR BREALEY: We have our senior management, which is  
20 Mr Duddy and Maria Thompson. They are prepared to give  
21 evidence tomorrow; so is Andrew Needham.

22 THE CHAIRMAN: So it looks as if we have enough for  
23 tomorrow, if we interpose those witnesses.

24 MR GREEN: Yes. My first witness is Mr McMahon.

25 THE CHAIRMAN: I think Mr Doctor just wants to finish off

1           that part of the conversation -- it may not be entirely  
2           satisfactory, Mr Doctor, but it might be one way of  
3           keeping things going.

4   MR DOCTOR:   The only reason I rise to my feet is because  
5           I was given a list and an order --

6   THE CHAIRMAN:  Yes, and you have prepared yourself  
7           accordingly.

8   MR DOCTOR:   I have concentrated on being obviously prepared  
9           for the first three witnesses from Littlewoods, and by  
10           tomorrow, I would have been totally prepared for the  
11           next three, and Argos was therefore left somewhat to the  
12           end of the week.  I think I am ready to cross-examine  
13           Mr Duddy and Ms Thompson tomorrow, but if I should  
14           arrive tomorrow and I am not, I would ask for  
15           indulgence, because I thought they were only coming next  
16           week.

17  THE CHAIRMAN:  Of course.  You take your own course, we will  
18           leave it up to you.

19           Yes, Mr McMahon.

20                           MR JOHN McMAHON (sworn)

21                           Examination-in-chief by MR GREEN

22  THE CHAIRMAN:  Thank you, Mr McMahon, do sit down.  Good  
23           afternoon.  Listen to the question and then direct the  
24           answer over here, if you would be kind enough.

25  MR GREEN:   Mr McMahon, do you have a witness statement

1 bundle in front of you? If so, I think your first  
2 witness statement is at tab 31.

3 A. Yes, I have it.

4 Q. Do you see that statement?

5 A. I do.

6 Q. Is that your statement?

7 A. It is.

8 Q. Could you turn to the third page, please, where there is  
9 a signature? Is that your signature?

10 A. That is my signature.

11 Q. Is that statement true to the best of your knowledge and  
12 belief?

13 A. It is.

14 Q. Could you turn over, please, to tab 32? Do you see  
15 there your second statement?

16 A. I do.

17 Q. Is that your signature?

18 A. It is.

19 Q. Again, is it true to the best of your knowledge and  
20 belief?

21 A. Yes, it is.

22 MR GREEN: Thank you.

23 Cross-examination by MR DOCTOR

24 MR DOCTOR: Good afternoon, Mr McMahon. You have been in  
25 the court, have you not, since the start of these

1 proceedings?

2 A. Yes, I have.

3 Q. And you have heard the other witnesses give their  
4 evidence.

5 A. I have.

6 Q. And you have retired at each tea and lunchtime to  
7 a common room, together with the other Littlewoods  
8 witnesses, and your solicitors.

9 A. Correct.

10 Q. And there have been discussions about the evidence that  
11 has been given in those meetings?

12 A. We talked about it, yes.

13 Q. All the witnesses have joined in and discussed generally  
14 and in common the evidence that has been given by the  
15 witnesses --

16 A. We have had some discussions, yes.

17 Q. Right. Now, Mr Thomson, you will recall he gave  
18 evidence first, he says that he attended a meeting  
19 together with Mr McCulloch and yourself, Mrs Paisley and  
20 Mr Burgess in late 1998 or early 1999, in order to  
21 present the 1999 business plan; do you recall that?

22 A. I can recall the meeting, yes.

23 Q. I think that in your statement, in paragraph 5, you  
24 refer to Hasbro and Mike McCulloch being very much aware  
25 of your requirements for extra margin, and were

1 concerned that Argos and Index were in a price war that  
2 was not good for either company:

3 "Mike made certain suggestions regarding the  
4 recommended retail prices that he felt the product  
5 should be retailed at. I was always concerned that  
6 I could not trust Argos to price sensibly, and on most  
7 occasions, ignored the recommended price."

8 Would that be a reference to this meeting, late  
9 1998/early 1999?

10 A. No, I had many strategic meetings with Mike McCulloch.  
11 I used to meet him about once every six months, and the  
12 main thrust of the meeting was the product, the quality,  
13 the service and also the pricing, and what was very  
14 important to us, the margin. As we have already  
15 discussed, or witnesses have --

16 THE CHAIRMAN: Go a little bit slower.

17 A. As witnesses have said earlier, there was not a massive  
18 amount of margin in the toy industry, so I was forever  
19 talking to Mike McCulloch about how we could improve  
20 margins and he often said to me, "Would you sell at  
21 recommended retail price? Then you could improve your  
22 margin".

23 THE CHAIRMAN: "He often said to me, 'Will you sell at  
24 recommended retail price?'"

25 A. He said to me, "If you want extra margin, sell at

1 recommended retail price".

2 MR DOCTOR: Presumably those sort of comments were also made  
3 at the meeting that I have just described, late  
4 1998/early 1999.

5 A. Yes, Mike would have talked to me about if I wanted  
6 extra margin, sell at RRP.

7 Q. Mr Thomson says that there was general concern as to how  
8 Hasbro could get other retailers to do the same thing,  
9 that is to sell at RRP. Do you agree with that?

10 A. He never said that to me.

11 Q. No, it was general concern on your behalf, your side,  
12 that if Littlewoods were going to price at RRP, how  
13 could Hasbro get the other retailers to price at RRP?

14 A. I never had that discussion. I would never talk about  
15 that to anybody, because frankly, as I have said in my  
16 witness statements, I never trusted what Argos did,  
17 Argos did not trust what we did, and basically, we never  
18 discussed our pricing position with our suppliers, and  
19 it was a problem --

20 THE CHAIRMAN: Just a minute, I am trying to take a note,  
21 "I never had that discussion, I never trusted what Argos  
22 did", yes?

23 A. Correct.

24 MR DOCTOR: What I put to you, and what Mr Thomson said, was  
25 that your concern, that is Littlewoods' and your

1 personal concern, was how Hasbro could make other  
2 retailers do the same thing. You say that was not  
3 discussed at all, but look at paragraph 5 of your own  
4 witness statement. It says, in the last sentence:

5 "Mike made certain suggestions regarding recommended  
6 retail prices that he felt the product should be  
7 retailed at. I was always concerned that I could not  
8 trust Argos [that is another retailer] to price  
9 sensibly, and on most occasions, ignored the recommended  
10 price."

11 Is that not correct? You were concerned that if you  
12 were to go out at recommended retail price, other  
13 retailers, such as Argos, might not go out at  
14 recommended retail price.

15 A. I was concerned, yes.

16 Q. And you were concerned that if you were to agree to the  
17 terms or the suggestion that Mr McCulloch and Mr Thomson  
18 were putting to you -- you were concerned if you agreed  
19 to their suggestion to go out at recommended retail  
20 price, how could Hasbro get the other retailers to go  
21 out at recommended retail price?

22 A. I never had that discussion. I never said --

23 Q. I am suggesting that is your concern.

24 A. No, I never had that discussion.

25 Q. Argos was seen as a threat to any plan or decision of



1           yours to go out at recommended retail price, was it not?

2   A.   Argos was always a threat and had been for a long, long  
3       time. I mean, I joined Index in 1995, and I mean, one  
4       of my chief executives said at the time that we were in  
5       a price war with Argos, and we were losing, and it was  
6       always a problem for us that we never knew what Argos  
7       were pricing the products at; indeed, Argos never knew  
8       what we were pricing the products at.

9   Q.   So when he suggested to you, as he did on many  
10       occasions, apparently, that you should improve your  
11       margins by charging recommended retail prices, it is  
12       fair to say that you would have expressed the concern,  
13       "But what if I do that and Argos does not do that?"

14   A.   No, I would never do that, because to be honest, I would  
15       not trust anybody else to go out at retail prices, so my  
16       view was, when he said, "Go out at recommended retail  
17       price", I really took it with a pinch of salt. In some  
18       instances I did, and in some instances, I did not. The  
19       problem I had is I was trying to drive the margin  
20       forward within Index, and in some instances, I had to go  
21       at recommended retail price, because I had no choice.

22   THE CHAIRMAN: The question that is being asked, I think, at  
23       the moment is: if Mr McCulloch had suggested to you that  
24       you should go out at RRP's, would you have said anything  
25       back to him about your concern about what other

1           retailers would do if you were to try to move to RRP?

2    A.   If he had said, "Go out at RRP", I certainly would have  
3           said to him, "Well if I go out at RRP as a good  
4           opportunity, I will be beaten by the competition", yes.

5    MR DOCTOR:   At this meeting, which we say was late 1998 or  
6           early 1999, at that point, where this topic of RRPs had  
7           come up, Mr McCulloch said to you that he had been  
8           having discussions with the major competition, and they  
9           were of the same opinion as you were, which is they  
10          could not agree to go out at RRP, which was part of this  
11          new price structure, for fear of being undercut.

12   A.   Mr McCulloch and I never discussed that he had had  
13          discussions with the competitors on price.

14   THE CHAIRMAN:   Yes.

15   MR DOCTOR:   In order for you to go along with this plan he  
16          was putting to you, to charge RRP, it needed the  
17          agreement of yourself, that is Littlewoods, and Argos,  
18          did it not?

19   A.   No, because it was not something we discussed.

20   Q.   And Mr McCulloch said to you that if Littlewoods would  
21          agree to go along with it, he was confident he could  
22          persuade Argos to do the same.

23   A.   Mr McCulloch never said anything of the sort.

24   Q.   And you said to him that you would go along with it or  
25          play ball or fit in, and go along with the plan, but if

1 Argos reneged on the deal and did not stick to the RRP's  
2 in their autumn/winter 1999 catalogue, and Index did  
3 that, you would be seriously disadvantaged and you would  
4 do some serious price cutting.

5 A. Frankly, that is a load of nonsense. I never said  
6 anything of the sort, and I never would.

7 Q. Now you say that you knew that Argos were attempting to  
8 improve the margins?

9 A. I had heard through what I had read in the press --  
10 being a director of Index, we were very close to what  
11 was happening with the GUS acquisition, and we actually  
12 got daily newspaper clippings of what was happening. We  
13 were aware of the daily or twice or three times a week  
14 briefing by Stuart Rose to the financial press. We were  
15 aware anecdotally from talking to other suppliers, not  
16 just in the toy industry, that Argos were going for  
17 extra margin, and I am talking in terms of electronics,  
18 I am talking jewellery, I am talking housewares,  
19 principals of major businesses all were of the opinion  
20 that Argos were going to be going for extra margin after  
21 the acquisition.

22 Q. So at about that time, end of 1998/beginning of 1999,  
23 Argos were not pricing as aggressively as previously  
24 they had.

25 A. Correct.

1 Q. And indeed, Littlewoods were beginning to win on the  
2 win/lose analysis.

3 A. Correct.

4 Q. And if we look at the pricing analysis that was  
5 prepared --

6 THE CHAIRMAN: This is Argos, is it?

7 MR DOCTOR: Yes, in the Argos skeleton argument. This will  
8 not be a document you have seen before, but if we could  
9 just look at the pricing analysis, it is the second  
10 tab -- it is called A. Do you have that? I am not sure  
11 you will have a copy of this.

12 MR BREALEY: It is the green bundle.

13 MR DOCTOR: I understand that is the spreadsheets only.

14 THE CHAIRMAN: It is the tribunal's file 28.

15 MR BREALEY: The A tab is our skeletons.

16 MR DOCTOR: We would like the pricing analysis given to the  
17 witness. (Handed). Just put that in the front of that  
18 bundle 28.

19 MR BREALEY: Just for form's sake, that has got certain spin  
20 and submissions from our part --

21 THE CHAIRMAN: Sorry, Mr Brealey?

22 MR BREALEY: It does have submissions on our part; not spin,  
23 but submissions.

24 THE CHAIRMAN: I thought you said spin, but I may have  
25 misheard. I will treat myself as having misheard.

1 MR BREALEY: But I think the tribunal knows what I mean. It  
2 has our submissions in it.

3 THE CHAIRMAN: At the moment, we are just looking at  
4 figures, are we not?

5 MR DOCTOR: Yes, we will be careful not to --

6 A. I am not a fast reader, so I will not take it all in.

7 Q. Mr McMahon, would you look at -- we start with  
8 spring/summer at page 1, spring/summer 1998. This is  
9 a summary of what the catalogues say, and we begin with  
10 core games, which is -- you know what that is, these are  
11 the key games in this industry.

12 A. Yes.

13 Q. In spring/summer 1998, there are nine common products  
14 between your catalogue and Argos' catalogue. None are  
15 at the same price, and Argos are cheaper on all of them.  
16 That would be in accordance with what you said, that  
17 Argos were always undercutting in the past, and beating  
18 Index all the way. You nod your head; I take it that  
19 means you agree?

20 A. Yes, correct.

21 Q. Right. And we see that Argos' prices had no clear  
22 pattern, and this was consistent with the fact that  
23 Argos was trying to undercut Littlewoods. We then go to  
24 autumn/winter 1998, that is the middle of the year; that  
25 is the most important catalogue, is it not?

1 A. That is correct.

2 Q. GUS had taken over Argos in late April 1998, and  
3 presumably the catalogue was almost prepared by that  
4 time, which came out in July.

5 A. I have no idea.

6 Q. Well, from your own experience --

7 A. I have no idea what the pricing dates would be for  
8 Argos.

9 Q. But they would be some time in April or May, possibly  
10 June 1998?

11 A. If it was based on the same schedule that we had at  
12 Index, then yes, but I am not aware of the dates.

13 Q. Well, we have been told that the takeover had not yet  
14 had effect. Now if we look at that autumn/winter  
15 catalogue, we see there are 13 common products in the  
16 core games, this is paragraph 8; four are at the same  
17 price, Argos is cheaper on eight, and Littlewoods is  
18 cheaper on one. So again, consistent with your  
19 impression that in the past Littlewoods had been more  
20 expensive than Argos on these key items.

21 A. It does state that, yes.

22 Q. Then we come to the next catalogue, spring/summer 1999.  
23 This is at a time when the industry has been told,  
24 according to you, you have read in the papers, you have  
25 discussed it with people, that Argos have made a policy

1 decision to put more margin into the business, right?

2 A. Correct.

3 Q. In that catalogue, which comes out after this policy has  
4 begun to be implemented, there are nine common products:  
5 Argos and Littlewoods had five of these at the same  
6 prices, and Littlewoods are cheaper on four of the  
7 products; do you see that?

8 A. I can see it, yes.

9 Q. If we go to the next page, paragraph 17, of the nine  
10 common products Argos have priced six at the RRP; of the  
11 total twelve core games stocked by Argos, Argos  
12 apparently sold eleven at a price equal to or greater  
13 than RRPs.

14 So by January 1999, it looks as if Argos' new policy  
15 has begun to kick in, in the sense that they are moving  
16 their prices upwards, either to or even higher than RRP,  
17 and that Littlewoods' prices are beginning to beat, in  
18 some instances, or at least equal the prices of Argos.

19 A. The figures there suggest that.

20 Q. Yes. Well, let us look at Action Man. If you go on to  
21 page 7, going back to pre-policy change, spring/summer  
22 1998, in paragraph 31 there are 18 common products, one  
23 is at the same price, Argos is cheaper on 11 and  
24 Littlewoods is cheaper on six. So again, Argos usually  
25 wins the battle, correct?

1 A. According to those figures, yes.

2 Q. Autumn/winter 1998, prior to the policy kicking in,  
3 there are 17 common products; three at the same price,  
4 Argos is cheaper on ten and Littlewoods is cheaper on  
5 four. Again, Argos wins.

6 A. Correct.

7 Q. Right. Come to spring/summer 1999, this is now when the  
8 policy, we are told, has begun to influence pricing.  
9 There are 12 common products, none are at the same  
10 price: Argos are cheaper on three, but Littlewoods are  
11 cheaper on nine. So it looks as if Littlewoods again  
12 has begun to get the edge, in terms of lowness of  
13 prices.

14 A. According to that, yes.

15 Q. If you go to page 13, this is a rather artificial  
16 category, but nevertheless, just for what it is -- this  
17 is a selection of other toys which subsequently were  
18 featured in an e-mail, but even on these, well, for  
19 spring/summer 1998 there was only one common product and  
20 Argos was cheaper; autumn/winter 1998, there were six  
21 common products, Argos is cheaper on four, Littlewoods  
22 on two; and spring/summer 1999, there are only two  
23 common products, Littlewoods is cheaper on both. So  
24 again, we see that pattern.

25 Previously, Argos had been cheaper; a policy change,



1           about which you have read, takes place in Argos, and  
2           Littlewoods either begins to equal or indeed, in the  
3           majority of cases, is cheaper than Argos, right?

4   A.   According to those figures, yes.

5   Q.   We are told that when you get the catalogue each year,  
6           this would be in January 1999, you draw up something  
7           called a win/lose analysis.

8   A.   That is correct.

9   Q.   And you have now discovered, it must have been certainly  
10          in the field of toys, to your surprise, that whereas  
11          consistently Argos had always been cheapest, Littlewoods  
12          was now apparently beating Argos in the majority of  
13          cases.

14  A.   On those products illustrated, yes.

15  Q.   And these, let us not forget, are the high-profile  
16          products.

17  A.   Would you mind if I make a point there?

18  Q.   Just let me finish the question, and then you can make  
19          as many points as you like.  These are the high-profile  
20          products, I am talking about core games and Action Man,  
21          which we have heard described as the must-have goods,  
22          the ones that just have to be carried by the retailers.  
23          These are the ones in which Littlewoods is now beginning  
24          to make a considerable impact, in terms of winning the  
25          battle on prices.

1 THE CHAIRMAN: What was the point you wanted to make?  
2 A. The point I was going to make is really the illustration  
3 here is for the spring/summer season, which is the  
4 substantially smaller season, in terms of toys, than any  
5 other season. Really in the toy industry it is all  
6 about the last three months of the year. We do quite  
7 well -- or Index used to do quite well in spring/summer,  
8 but we used to reduce the size of the offer in  
9 spring/summer and increase it substantially in  
10 autumn/winter.

11 Also, what we are looking at here is a snapshot of  
12 just a few toy products. What we would need to do is  
13 look at all the other products in the catalogue that  
14 were all part and parcel of the same win/lose/draw  
15 analysis, to get a full picture of the real pricing  
16 position.

17 THE CHAIRMAN: Yes. Now what about Mr Doctor's question,  
18 that these particular toy products are must-have?

19 A. I agree that Action Man is high-profile, and we would  
20 always, in spring/summer, have Action Man in the range,  
21 even though it was a smaller collection than we would  
22 have in the autumn/winter.

23 THE CHAIRMAN: Yes, but you are saying we need to look at  
24 the whole picture to get a full picture of what is  
25 happening at this time, across the catalogues as

1 a whole.

2 A. Correct, because what we are talking about here is  
3 probably 10 or 12 lines. In spring/summer 1999, there  
4 was probably 7,000 lines in the Index catalogue,  
5 probably, I am not sure, 8,000 or 9,000 lines in the  
6 Argos catalogue, and this really gives you a small  
7 snapshot, a small picture.

8 MR DOCTOR: Yes. Well, you are not responsible for all the  
9 items in the Index catalogue, you are dealing  
10 essentially with toys, I think it is.

11 A. No, I was responsible for every single line in the Index  
12 catalogue, in terms of final pricing, and I was in that  
13 position for spring/summer 1999 catalogue, and then we  
14 changed it for autumn/winter 1999, where I became  
15 responsible for toys, gifts, jewellery, giftware,  
16 cycles, nursery, Christmas shop; so quite a large  
17 proportion. But at the time of the spring/summer 1999  
18 catalogue, I did the final pricing for the whole  
19 catalogue.

20 Q. Right. Anyway, you have seen, at least in the field of  
21 toys, and in particular the must-have items of toys,  
22 an indication that Littlewoods on these key items is  
23 winning, and you are now preparing your catalogues for  
24 autumn/winter, which come out at the end of July.

25 A. Correct.

1 Q. And that would be July 1999, correct?

2 A. Correct, I would do final pricing for my departments for  
3 autumn/winter 1999 probably in May of 1999.

4 Q. Yes. Well, let us concentrate on toys. Your colleague,  
5 Lesley Paisley, who I understand is going to give  
6 evidence, and has given a witness statement, says that  
7 everyone knew that as a result of this change of policy,  
8 Argos was going to price inevitably at RRP; was that  
9 your impression at that time?

10 A. No, my impression was Argos would price as aggressively  
11 or unaggressively as they required, and I did not expect  
12 them to sell at RRP.

13 Q. Well, I understand the whole thrust of your statement is  
14 that there had been a policy change in which Argos are  
15 not simply going to price aggressively; what they are  
16 going to do is they are going to move towards higher  
17 margins, and that inevitably means moving towards RRP.

18 A. Possibly, yes, but I think there have been some  
19 instances that have been highlighted where they have  
20 actually gone above RRP as well, so I just had no idea  
21 really what sort of prices Argos would sell at.

22 Q. You say you have no idea what sort of prices Argos would  
23 sell at, then you say -- you have a paragraph in your  
24 witness statement in which you tell us that you were  
25 aware that GUS had acquired Argos, and wanted to improve

1 margins. You say:

2 "Therefore, during late 1998 and early 1999, Argos  
3 pricing was not as aggressive as previously, and  
4 Littlewoods were winning on more common lines than  
5 previously."

6 A. I agree.

7 Q. That is what you said.

8 A. I agree to that, and I stand by that, but the situation  
9 is it did not mean I knew what prices Argos were going  
10 to sell the product at. Their selling prices were their  
11 business.

12 Q. I have not put to you that you knew their prices yet;  
13 I have put to you that you knew they were going to  
14 increase their prices to or near RRP; that is what  
15 I understood you to be saying, but you are now saying  
16 you did not think that at all.

17 A. No, what I was saying is I expected Argos to be driving  
18 for more margin.

19 Q. Just driving for more margin. Well, when Mrs Paisley  
20 and some of the other witnesses tell us that they  
21 understood that this inevitably meant RRP, you are  
22 saying they were wrong?

23 A. No, I am not saying they were wrong, I am just saying  
24 that as far as I was concerned, I did not expect Argos  
25 to be going at RRP. What was happening is Mrs Paisley

1 and the team were talking to a lot more people in the  
2 toy industry, I was talking to people at a macro level  
3 rather than a micro level, and they had a better  
4 understanding from other suppliers of what was  
5 happening.

6 THE CHAIRMAN: How would they drive for more margin? What  
7 possibilities are open to them?

8 A. Well, I mean, to improve the margin, there are plenty of  
9 ways. Obviously, you can buy better, you can put your  
10 retail prices up, you can take some costs out of the  
11 business, you can actually change the mix of products  
12 within a catalogue, because, for example, in  
13 spring/summer, toys is a smaller percentage of sales  
14 within the catalogue.

15 They could have increased participation in another  
16 high margin department; say, for example, jewellery,  
17 which would be unlikely they would do in spring, because  
18 jewellery is really geared to the autumn period, but  
19 they could have done something in housewares or  
20 textiles, and the overall mix of the book would have  
21 given them a certain margin, and they could have  
22 increased their margins by doing that. That could have  
23 been one of one or two different things that they did.

24 THE CHAIRMAN: Thank you.

25 MR DOCTOR: Are you saying that the possibility that Argos

1           might increase their prices did not occur to you at all  
2           at that time?

3   A.   No, I am not saying that.

4   Q.   Are you saying that the possibility that Argos would  
5           increase their prices was a factor in your thinking?

6   A.   What I am saying is Argos -- one of the things Argos  
7           could have done to increase their margin is put selling  
8           prices up, which I have done on numerous occasions.

9   Q.   Well, theoretically, they could certainly have, but I am  
10          trying to establish whether it was part of your thinking  
11          at the time that the policy change you had heard about  
12          emanating from Argos led you to believe that Argos were  
13          going to put up their prices.

14   A.   I was of the opinion that it was a possibility that  
15          might happen, but that was not my only thought.  
16          I thought there were other opportunities where they  
17          could get extra margin.

18   Q.   And when you saw the spring/summer 1999 catalogue, and  
19          you realised that on these key items they appear to have  
20          put their prices up, surely you concluded that that is  
21          what they were doing.

22   A.   Yes, I concluded that they are obviously going for some  
23          extra margin.

24   Q.   Well, going for extra margin in the form of putting up  
25          their prices.

1 A. No, I just confirmed that we did not lose as many  
2 products as we have done previously, therefore Argos  
3 were not as aggressive on pricing.

4 Q. So when we read in some of the other statements that at  
5 the end of 1998/beginning of 1999, Littlewoods had  
6 concluded that Argos was inevitably moving towards RRP's,  
7 as far as you were concerned, that was not Littlewoods'  
8 thinking.

9 A. No, it was part of Littlewoods' thinking, but we cannot  
10 be complacent, and we did not know what GUS were going  
11 to do. If we had all of a sudden thought that Argos  
12 were going to put massive price increases in and we had  
13 as well, and they had not materialised, we would have  
14 been seriously disadvantaged.

15 THE CHAIRMAN: Yes.

16 MR DOCTOR: So you are saying that you had no particular  
17 reason to believe that Argos would put their prices up.  
18 They might try and cut their margins in some other way.

19 A. It was generally thought, and the feedback from other  
20 industries within the retail trade was that Argos would  
21 be looking to improve the margin, and one of the ways  
22 they could improve the margin was by putting prices up.

23 Q. On the other hand, they might have used one of the many  
24 other ways that you have suggested.

25 A. Correct.



1 Q. It is correct, is it not, that in catalogue retailing,  
2 price is everything? There is no customer loyalty as  
3 such.

4 A. I am not totally sure I agree with that, and I am not  
5 a marketing guru, but I think there is some loyalty, and  
6 I think Argos have built up a lot of loyalty over the  
7 years. I think they are a destination shop, and I think  
8 people go to them.

9 Q. Well, I am only reading from what your colleague  
10 Mrs Paisley says, but it appears you do not agree with  
11 much of what she says.

12 She also says that very small differences in price  
13 can have dramatic consequences, for instance the price  
14 in the catalogues can have dramatic consequences.

15 A. Yes, it is a perception. As we said yesterday, most  
16 people in the UK will have an Argos catalogue in their  
17 house, and a lot of people will also have an Index, and  
18 if they are comparing like with like -- I mean, I do not  
19 work in this industry now, but if I am looking at  
20 a price, the first place I go to is either an Argos or  
21 an Index catalogue to get a benchmark price, and I think  
22 it is fair to say that if there was a lot of price  
23 differences on products that people were looking at,  
24 then Index would have been seriously disadvantaged.

25 Q. Anyway, you are in early 1999, you see that Littlewoods

1 is now lower in price on these key items, you are  
2 preparing your autumn/winter catalogue; it must have  
3 occurred to you that if this was repeated for  
4 autumn/winter, Littlewoods might be cheaper on all the  
5 items in these key high-profile toys.

6 A. The prices in spring/summer gave me some confidence that  
7 possibly there might be an opportunity for us to make  
8 a bit of extra margin in autumn/winter. That was not  
9 just across toys, it was across all areas.

10 Q. But since you say you could not be sure whether Argos  
11 was going to move their prices up or down, because they  
12 could have made margin in some other way, it would have  
13 been very unwise or very risky for you to have increased  
14 your prices on these key items to RRP's, would it not?

15 A. I took a calculated risk based on the information that  
16 I had, and the knowledge that I had.

17 (2.45 pm)

18 Q. Well, the information you had, according to you, was  
19 just that there had been a change of policy, that they  
20 would increase margin, but there was a possibility they  
21 might increase their prices; on the other hand, there  
22 was a possibility they might do it in some other way.  
23 Why would you have taken the risk?

24 A. I took the risk because I needed extra margin. The  
25 reality of it is that Index is a loss-making business,

1 we had been pushing for extra margin since I joined in  
2 1995, it gained some momentum when Barry Gibson, the new  
3 chief executive, started in October 1997; it was  
4 highlighted in the management horizons report that we  
5 really needed to get some extra margin. I was targeted  
6 with significantly extra margin on an ongoing basis  
7 season by season, and I needed some extra margin.

8 Q. Mr McMahon, your prices on these key items, core games  
9 and Action Man, in the autumn/winter catalogue were in  
10 fact RRP prices from Hasbro, and I am putting it to you  
11 that you could not have taken a risk in putting your  
12 prices up to RRPs if your state of mind at the time had  
13 simply been, "Argos may or may not put up their prices,  
14 Argos may price at any level".

15 How could you have taken the risk of putting them up  
16 to RRP knowing that Argos could have undercut you by  
17 small amounts?

18 A. Because I needed the margin, I had no choice, because  
19 the margin on these particular products is so low that  
20 we were all being busy fools, and I could not afford to  
21 carry on selling them at that low margin.

22 Q. But we have been told, Mr McMahon, that if one of the  
23 catalogue retailers comes in at a small price difference  
24 to the other, this can have dramatic effects on sales of  
25 that item and on the knock-on effect of bringing people

1           into the store. So how could you take the risk that you  
2           would simply price at RRP knowing only that Argos might  
3           or might not price at RRP?

4    A. I took a business risk, based on the information that  
5           I had, the market information that I was receiving, and  
6           I took a considered business risk.

7    THE CHAIRMAN: On the basis of the market information you  
8           were receiving?

9    A. What I was hearing from a lot of different people, from  
10           housewares, from jewellery, et cetera, that Argos were  
11           going for margin. I also took this same risk not just  
12           in the toy department, I took it in one or two other  
13           departments as well, because I was chasing margin.

14   MR DOCTOR: But when I asked you what it meant to chase  
15           margin, and indeed the tribunal chairman asked you the  
16           same thing, you said that chasing margin might have  
17           meant anything: cutting prices, changing the product  
18           mix, doing all sorts of things, of which the possibility  
19           that there would be a price increase was only one minor  
20           possibility.

21   A. But we were doing that as well, because at the same time  
22           we were increasing our jewellery offer within the  
23           catalogues, and that is a very high margin department,  
24           and that would have helped our margin mix as well.

25   THE CHAIRMAN: That is a changing the mix example?

1 A. Yes, changing the mix, and depending on your sales  
2 ratio, you waited and then you get your overall margin  
3 for the catalogue. The bottom line is on these  
4 products, the margin was very poor, I needed some extra  
5 margin, I took a calculated business risk on these  
6 products to go to RRP.

7 MR DOCTOR: But these are the products which bring the  
8 people into the store. Why would you take a risk of in  
9 fact being beaten by Argos on these very items if in  
10 fact these are the very items which have the knock-on  
11 effect of bringing people into the store for other  
12 items?

13 A. I mean, I had no choice, because the margins are so low  
14 on these products. I needed to get the extra margin.

15 Q. But Mr McMahon, in spring/summer 1999, you had had the  
16 same choices. Why did you not put up your prices to RRP  
17 in that catalogue?

18 A. Because what was happening is as a business, we were  
19 always more geared towards the autumn period, which was  
20 the much higher percentage of sales, and I think if you  
21 look at margin targets for autumn/winter 1999, they had  
22 gone up quite considerably.

23 At the same time, we had just changed the business,  
24 and we had actually amalgamated the business into  
25 Littlewoods Retail, and we were looking to try and, as

1 a business, overall, in all departments, to increase the  
2 margins quite considerably, because the business was not  
3 making the money and Index was not making any money, and  
4 it could not have carried on any longer, and the chief  
5 executive, I think, had given it a year or two to be  
6 turned round, which is why he brought in Management  
7 Horizons.

8 Q. You keep saying that you wanted to improve the margin,  
9 I am asking you to concentrate on why you put the prices  
10 up to RRP for autumn/winter 1999 if all you knew was  
11 that Argos wanted more margin. I am putting it to you  
12 that you could not have made that decision rationally  
13 unless you knew that Argos was also going to charge RRP.

14 A. I do not think it was a rational decision, I think it  
15 was just a business decision.

16 THE CHAIRMAN: I do not have in my head, Mr McMahon, and  
17 maybe you cannot quite remember either, but at this  
18 stage, what percentage of the catalogue revenue is  
19 represented by toys?

20 A. In the autumn period, pretty significant, in terms of  
21 turnover, and I cannot give you those numbers, I am  
22 sorry. What I can recall is significant in terms of  
23 turnover; pretty small in terms of actual profit  
24 contribution.

25 THE CHAIRMAN: Yes, thank you.

1 MR DOCTOR: And that is because -- you run these toys  
2 because you then bring the people -- you run these items  
3 which have low margins to bring the people into the  
4 stores, and they buy other things at the same time.

5 A. Yes, it does add authority to our range, but it is not  
6 just toys, it is also the same in electronics: we had to  
7 have a lead-in video at the time, we had to have  
8 a lead-in 14-inch colour TV. Now you have to have  
9 a lead-in price DVD. So it is not just about the toy  
10 industry --

11 THE CHAIRMAN: One would imagine, as a layman, that at  
12 Christmas time toys are quite significant.

13 A. Toys, jewellery and gifts are very important.

14 THE CHAIRMAN: As a lead-in.

15 A. Yes, very, very important.

16 MR DOCTOR: And indeed, if you are cheaper in price in your  
17 catalogue than Argos for autumn/winter 1999, if you are  
18 cheaper in price, it makes a dramatic impression on the  
19 public, many of whom have both catalogues, and can  
20 compare prices, and would be likely to look up these  
21 popular goods to see who is cheaper.

22 A. I said that a few minutes ago, that a lot of the people  
23 in UK houses had catalogues in their houses and did  
24 compare prices.

25 Q. Well, if all of that is correct, you would not have

1 taken the risk of putting your prices up to RRP unless  
2 you were fairly confident that Argos was going to do the  
3 same.

4 A. I took a calculated business risk.

5 Q. Well, I am putting it to you that it was not  
6 a calculated business risk, it was because of those  
7 discussions you had had with Mr McCulloch back in late  
8 1998 or 1999, in which you understood from him that he  
9 was asking you to go out at RRP, and you indicated to  
10 him that you would go out at RRP, provided he could get  
11 the other players in the market, principally Argos, to  
12 do the same.

13 A. I had no discussions with Mike McCulloch on that, and  
14 never would have.

15 Q. And if you had not had that discussion, and that  
16 assurance from him, that he would do his best to achieve  
17 that, if you had not had that discussion, you would  
18 never have taken the risk of going out at RRP on these  
19 particular lines, the very ones which the public would  
20 look at in the catalogue and see whether you were higher  
21 or lower than your competitors.

22 A. I did not have the discussion with Mike McCulloch, and  
23 I took a calculated risk in going out on those prices.

24 THE CHAIRMAN: I want to take a break at some point,  
25 Mr Doctor.



1 MR DOCTOR: That is a good time.

2 THE CHAIRMAN: Is that a convenient time? We will just rise  
3 for a few minutes to give the shorthand writers a break.  
4 If you would be so kind, do not talk about your evidence  
5 to anyone else now.

6 (2.55 pm)

7 (A short break)

8 (3.02 pm)

9 MR DOCTOR: Mr McMahon, you ended by saying that you had not  
10 had that discussion with Mike McCulloch. Can I refer  
11 you to another incident? I understand that in the last  
12 quarter of 1999, there was a time when your colleague,  
13 Mr Cowley, came to speak to you about the pricing of  
14 a Tweenies doll; you nod your head and agree with that.

15 A. Yes, I put that in my --

16 THE CHAIRMAN: That is in your statement, yes.

17 MR DOCTOR: He told you that he had been told that he should  
18 price this at the recommended retail price of £14.99,  
19 whereas Cowley told you that he thought that was risky,  
20 and advised that it should be priced at £12.99; do you  
21 recall that?

22 A. I vaguely recall having the discussion --

23 Q. Well, just wait until I put my questions. So his advice  
24 was that it is risky to price at £14.99 because the  
25 opposition might price lower than £14.99; correct?

1 A. Well, I can vaguely remember the discussion that we had,  
2 and to be honest, I cannot remember the advice I gave  
3 him, but if Alan Cowley says I advised him to sell at  
4 £14.99, then Alan Cowley is absolutely correct, because  
5 he is a reliable man, but I cannot remember what the  
6 advice would have been.

7 Q. Yes. Tweenies was a high-profile line, it was a fairly  
8 new line, it is linked to some television programme,  
9 I understand, is that correct?

10 A. Absolutely correct. You mean you have not watched it?

11 Q. I cannot say I have ever seen it. Perhaps I should say  
12 that I must be one of the few people in this court who  
13 has never seen or heard of any of these games except  
14 Monopoly.

15 But this is a high-profile line linked to some  
16 television programme, and it would have been quite  
17 damaging for Littlewoods' price cutting credentials to  
18 be undercut by the competition, ie Argos, on an item  
19 like that, would it not?

20 A. It was for the spring/summer 1999 catalogue, I think, or  
21 spring/summer 2000, and once again I cannot recall the  
22 advice I gave him, I can just say what happened. I am  
23 responsible for a lot of the individual lines, often the  
24 buyers talk to me about it. I can vaguely remember Alan  
25 stopping me saying, "What about this?" I could not

1 remember what I actually said to him, it would either  
2 have been -- it would have been either, "Go with  
3 whatever your gut tells you to go with", or, "Go get  
4 some extra margin for us". It was the spring/summer  
5 season, it would have been less damaging for us in  
6 spring/summer if we had got it wrong, but I cannot  
7 really honestly recall the advice I gave him.

8 But Alan is a really good man. If he says I said  
9 £14.99, then I said £14.99.

10 Q. Well, what he says is that you told him that you had  
11 spoken to Hasbro about this, and you recommended that he  
12 goes out at £14.99.

13 A. I never told him that I had spoken to Hasbro about it.

14 Q. Well, that is what he says. And I am putting it to you  
15 that, obviously, you were referring to either  
16 a conversation or a discussion you had had at some time  
17 prior to that at which you knew that if Hasbro told you  
18 that a price of Argos was going to be £14.99, that could  
19 and should be relied on.

20 THE CHAIRMAN: Is that a question?

21 MR DOCTOR: Well, I am putting it to you that that is what  
22 happened.

23 A. That is a question, is it? No, I cannot recall that  
24 conversation.

25 Q. Given the very sensitive position of this product, and

1 the advice of your experienced buyer as to the risk of  
2 being undercut by Argos, I am suggesting to you that you  
3 would not have made that recommendation unless you knew  
4 there was an agreement with Hasbro that they would work  
5 to ensure that Argos stuck to the recommended retail  
6 price as well.

7 A. I cannot recall why I made the recommendation, and  
8 I certainly had no agreement with Hasbro on any prices  
9 whatsoever.

10 MR DOCTOR: I have no further questions.

11 THE CHAIRMAN: Thank you. Any re-examination?

12 MR GREEN: No re-examination.

13 THE CHAIRMAN: That, I think, is the end of your evidence.

14 Thank you very much, Mr McMahon.

15 (The witness withdrew)

16 MR GREEN: My next witness is Mrs Paisley.

17 MRS LESLEY PAISLEY (sworn)

18 Examination-in-chief by MR GREEN

19 THE CHAIRMAN: Do sit down, Mrs Paisley. Try and talk  
20 across to the three of us when you are answering your  
21 questions.

22 MR GREEN: Do you have the witness statement bundle in front  
23 of you? Could you just locate that? Perhaps the desk  
24 could be tidied a bit, there are other files there.

25 Your first statement, Mrs Paisley, is at tab 46 in

1 witness statement bundle 2. Is that your statement?

2 A. Yes.

3 Q. Can you turn to the final page, please, which is

4 page 353 internal numbering. There is a signature

5 there; is that your signature?

6 A. It is, yes.

7 Q. Can you confirm that this statement is true to the best

8 of your knowledge and belief?

9 A. It is, yes.

10 Q. Can you turn to tab 48, please? This is your second

11 witness statement. Can you confirm that that is your

12 statement?

13 A. That is correct.

14 Q. If you turn over, you will see a signature; is that your

15 signature?

16 A. It is, yes.

17 Q. Can you confirm that that statement is true to the best

18 of your knowledge and belief?

19 A. It is, yes.

20 MR GREEN: Thank you.

21 Cross-examination by MR DOCTOR

22 MR DOCTOR: Good afternoon, Mrs Paisley.

23 A. Good afternoon.

24 Q. Is it Miss or Mrs Paisley?

25 A. It is Mrs.

1 Q. Mrs Paisley, your statement in paragraph 3 makes the  
2 point that the retail margins for these very  
3 high-profile branded toys are typically very low.

4 A. That is correct, yes.

5 Q. These are items which are advertised on television, and  
6 so they become must-stock items, notwithstanding the  
7 very high wholesale prices.

8 A. Yes, that would be true on some of these toys, yes, that  
9 is the case.

10 Q. We are talking about very famous brands like Action Man,  
11 Tweenies, games like Monopoly, Pikachu, Pokemon and so  
12 on.

13 A. They are very famous certainly within the toy industry,  
14 but on a global basis, they are perhaps not very famous.  
15 But yes, they are famous in the toy industry.

16 Q. Right. You say that the situation of the branded toys  
17 must be contrasted with non-branded and direct purchase  
18 products.

19 A. That is correct, because of the very low margin on some  
20 of these branded toys, we would look to balance our  
21 range margin, the mix within the range, by developing  
22 ranges of non-branded or direct imports.

23 Q. The margins on these non-branded or direct imports are  
24 far greater, so they compensate for the low margins on  
25 the branded goods?

1 A. That is generally true, yes.

2 Q. Even though the margins on branded goods are not always  
3 good, they do have advantages which make them must-stock  
4 items. Can I suggest some to you?

5 A. Sorry, I was not clear on your first statement. Could  
6 you just repeat that?

7 Q. Yes, I said that although the margins are not always  
8 good, they do have some advantages for a business such  
9 as Index, and I will suggest -- you can then comment and  
10 tell me whether I am right or not -- they are widely  
11 advertised on television and in newspapers.

12 A. Yes, potentially some of these products have TV  
13 advertising. Yes, there is no question.

14 Q. They are very popular.

15 A. Yes, potentially we would sell volumes of some of these  
16 lines, yes.

17 Q. They bring customers into the store, if the prices on  
18 those goods are low.

19 A. Not just those goods alone; as John McMahon stated,  
20 customers come in for lots of other product categories,  
21 toys is one component of that.

22 Q. Yes, but if someone is looking for a toy, that would  
23 bring him into the store, would it not? If he saw the  
24 product was available lower at Index, that would be  
25 an incentive to come into Index.

1 A. They may come in for other products as well, it is not  
2 just specifically toys.

3 THE CHAIRMAN: But it includes toys?

4 A. Yes, it does.

5 MR DOCTOR: And they have a knock-on effect on turnover  
6 generally, because once the person is in the store,  
7 coming in anyway, they will buy other toys or other  
8 goods.

9 A. Potentially, yes, although the average sale in Index is  
10 actually quite low, it is around about £8, so our  
11 statistics do not show us that they necessarily buy  
12 several toys, or several items.

13 Q. Yes. Customers are very impressed if they see that the  
14 branded goods are cheaper in your catalogue than in  
15 other catalogues or in the High Street.

16 A. It is fair to say that customers do make their buying  
17 decision at home; not all customers, but a lot of  
18 customers do, and they shop with us for two reasons: one  
19 is price, but the other one is service. They are very  
20 keen to be served quickly and efficiently, once they  
21 actually reach the store.

22 Q. Well, service has a special meaning in catalogue retail.  
23 As you said, it is that they should be served quickly.

24 A. Well, it actually has two meanings in catalogue  
25 retailing. One is the service level which determines



1 the availability of stock, and the other is the service  
2 they actually receive in the store, the customer  
3 service.

4 Q. So when they arrive there, they want to be shown it is  
5 there, in that store, and they want to be treated  
6 quickly --

7 THE CHAIRMAN: So it comes up quickly from the back, or  
8 wherever it is kept?

9 A. That is correct, yes.

10 MR DOCTOR: They are not looking for large amounts of advice  
11 from a salesman, who has half an hour to speak to them,  
12 about which product is better.

13 A. No, typically our customers would use the catalogue as  
14 that vehicle --

15 THE CHAIRMAN: They have already made up their mind, they  
16 just want to go in and get it?

17 A. Correct, but they still like to have some human  
18 interaction at the point of sale and we do aim to  
19 provide that as well.

20 MR DOCTOR: And the comparisons between catalogue stores are  
21 made --

22 A. Would you mind, at the beginning of your last statement  
23 you said that branded toys were incredibly good for  
24 us --

25 Q. No, I said they had advantages.

1 A. And you went through those advantages. Would it be  
2 possible just for me to add something to that?

3 THE CHAIRMAN: You add anything you want at any time,  
4 Mrs Paisley.

5 A. That is not always the case, because in a lot of cases,  
6 these branded toys -- because of the level of margin we  
7 operated on, which would normally be in the region of 6  
8 or 7 per cent, then they actually could potentially and  
9 were in many cases loss-making lines. The average cost  
10 of distributing a product through the Index supply chain  
11 is round about 90 pence. If you are working on what is  
12 intrinsically a very low margin, you probably will  
13 struggle to cover the distribution costs. So they were  
14 not always a great advantage to us.

15 MR DOCTOR: I do not think I put the question unfairly,  
16 I said even though the margins are not good, which is  
17 a disadvantage, they have advantages, and we went  
18 through them; correct?

19 A. Sorry, I did not realise you had put that in.  
20 Apologies.

21 Q. You wanted to stress that they sometimes are sold at a  
22 loss.

23 A. Yes, I did. Thank you. Thank you for that.

24 Q. That is why you have to have the product mix, so that  
25 you have some items which have low margins, and

1           therefore may even be sold at a loss, and you try and  
2           get the customers to buy other items which have much  
3           larger margins.

4    A.   That is true, but we would aim not for all low margin to  
5           be loss-making, we would aim that to be a very small  
6           percentage.

7    Q.   Yes, but everyone has heard about loss leaders and  
8           things of that kind, which bring the people into the  
9           store.

10   A.   Well, yes, probably more so with supermarkets. With  
11          High Street rentals, it is not something we would  
12          advocate on a large scale.

13   Q.   Right. The comparisons that are made by customers  
14          between catalogue retailers are made mainly on the basis  
15          of the catalogue, not the flyers that are issued during  
16          the course of the season.

17   A.   I have never actually seen any analysis to agree with  
18          that statement. At Index, we do not have a system which  
19          allows us to understand whether the sale has come from  
20          the main catalogue or from a flyer, should it be the  
21          same product featured in both, so I cannot agree or  
22          disagree with that statement.

23   Q.   I am a bit surprised, because I got it out of  
24          paragraph 12 of your statement. Just have a look at  
25          your statement, paragraph 12. (Pause).

1           You say:

2           "A high proportion of households and consumers have  
3 both the Argos and Index catalogues. These catalogues  
4 are easily attainable and people tend to pick them up as  
5 a reference book. Where customers have both catalogues,  
6 it is highly likely they will compare prices on the  
7 particular products they wish to buy. Because people  
8 have time to make this price comparison, they can do it  
9 in their homes without walking between stores.  
10 Customers are extremely price-sensitive, they have no  
11 loyalty to a store. A price difference of, say,  
12 25 pence can have a dramatic impact on volumes. This is  
13 one of the reasons why as soon as the Index and Argos  
14 catalogues are published we produce a win/lose/draw  
15 analysis on prices; this enables us to take a view as to  
16 the volumes that we should order. Moreover, where we  
17 are out on price, we will do what we can to remedy the  
18 situation by producing brochures or leaflets with  
19 revised lower prices [I think those are what I called  
20 the flyers]. However, the brochures and leaflets are  
21 not very effective in capturing the sales that are lost  
22 by being undercut in the main catalogue since this will  
23 be the main point of reference for most consumers."  
24 A. Yes, in my statement, what I am referring to there is  
25 the fact that because we print 7 million catalogues, but

1           then typically when we print a flyer, it is probably --  
2           well, certainly under a million print run, so the  
3           relative volumes of the print runs will have an impact,  
4           and that is why they are not able to recover the sales.

5    Q.   And if the customer has looked at home at both  
6           catalogues and seen that Argos is cheaper or Littlewoods  
7           is cheaper on a particular item, it is only by the time  
8           he gets to the store that he will be able to see your  
9           flyer, which shows that actually it has been changed  
10          around, and Argos or Littlewoods has brought their price  
11          down, if there has been any change.

12   A.   Yes, to some extent, that is true, but we also would  
13          distribute flyers maybe in different ways at times.  But  
14          yes, in the main, that is possible.

15   Q.   So there would be very great advantages for a catalogue  
16          retailer if he comes out at the lowest price in the  
17          catalogue; correct?

18   A.   It is fair to say that we would look to have our main  
19          catalogue as competitively priced, yes.

20   THE CHAIRMAN:  Just remind me, Mrs Paisley, how you  
21          distribute your catalogues.  Is there a mailing list  
22          that you send them out on, or do people go into the  
23          store and pick up a catalogue?  What happens?

24   A.   People go into the store and pick them up.

25   MR DOCTOR:  The difficulty, of course, is to achieve the

1 desired status of being lowest in the catalogue, is it  
2 not?

3 A. We aim to make our catalogue as competitive, yes, and  
4 that is not an easy situation. But it is something that  
5 we do.

6 Q. Now prior to the GUS takeover of Argos in about  
7 April 1998, Argos had been the most aggressive price  
8 cutter and the winner of most of these price  
9 comparisons, including in the case of these high-profile  
10 toys?

11 A. As a generality, that is true, yes. For me to comment  
12 on high-profile toys without the figures in front of me,  
13 I would find that difficult to do.

14 THE CHAIRMAN: But in general terms?

15 A. In general terms, that is the case, yes.

16 MR DOCTOR: Now the takeover is at the end of April 1998;  
17 you say that you were aware of a change of policy on the  
18 takeover. There was a public announcement that Argos  
19 intended to take measures to improve service in the  
20 stores and profit margins.

21 A. That is correct, yes.

22 Q. And you say:

23 "Soon it became very clear to the entire retailing  
24 industry that the policy of Argos was going to be to  
25 seek more margin."

1 THE CHAIRMAN: Where were you reading from, Mr Doctor?

2 MR DOCTOR: It is in paragraph 5 of the witness statement.

3 A. Sorry, paragraph 5 of my statement?

4 Q. Yes, in the middle of that paragraph:

5 "Part of this could be achieved through a better

6 product mix with more non-branded goods and different

7 products such as soft furnishings, where margins tended

8 to be higher. It also became known that the search for

9 margin would include being less inclined to undercut

10 other retailers."

11 Do you see that?

12 A. Yes.

13 Q. Then you say:

14 "In the field of toys, a search for margin and

15 suppliers' branded segment [that is the one we are

16 dealing with], where typically products are heavily

17 promoted and retail margins are low, would inevitably

18 imply moving to recommended retail prices."

19 Is that still your opinion?

20 A. Yes, I think on these branded high-profile toys there

21 were very few other options. As John detailed in his

22 statement, two of the potential options would have been

23 to buy direct from the Far East to improve margin; that

24 was not available to us on these highly branded --

25 THE CHAIRMAN: It was available or it was not?

1 A. It was not available. Although Hasbro and other branded  
2 toy manufacturers did offer an FOB programme, they did  
3 not offer it on these highly advertised branded toys,  
4 they offered it on secondary branded toys. They were  
5 still Hasbro or whoever brands, but they were not these  
6 toys.

7 So that option was not available. It was not  
8 feasible to change the mix significantly, as the counsel  
9 pointed out, customers would expect us and would look  
10 for certain toys --

11 THE CHAIRMAN: You would have to stock these anyway?

12 A. So my conclusion was that on some of these toys, the  
13 only option Argos would have would be to move to RRP's.

14 MR DOCTOR: So if this is your view, you say in the field of  
15 toys, a search for margin would inevitably imply moving  
16 to RRP -- if we look at the word "inevitably",  
17 I understand that to mean "it cannot be avoided".

18 A. Well, my understanding, as I have just explained to the  
19 tribunal, is that of the three options, the three  
20 ways --

21 THE CHAIRMAN: This was the only practical one?

22 A. It was the only option, that is why I felt it was  
23 inevitable -- on those particular toys, I hasten to add.

24 MR DOCTOR: So it would mean that Argos, if it wanted to  
25 carry out its policy, could not avoid charging RRP, if



1 its aim was to improve margin.

2 A. On those limited number of toys, yes.

3 Q. These branded toys. Nothing could be done to avoid it.

4 A. Not on those limited number of toys, no. It is not just  
5 brand -- the counsel is saying "branded toys". There  
6 were some branded toys we could move to an FOB  
7 situation, so Argos could look to make more margin that  
8 way.

9 Argos at that stage -- my understanding was they did  
10 not have a significant FOB programme, that was not  
11 something that -- but they were looking to increase it  
12 very significantly so that would have been an option to  
13 them on other branded toys, yes.

14 Q. Now it was important then, as it is now, or certainly  
15 then, let us talk about that only, that Index was seen  
16 in the market as a price discounter, was it not?

17 A. Sorry, could you repeat that?

18 Q. I said it was important at that time that Index should  
19 be seen in the market as a price discounter.

20 A. I am not sure why you would think that.

21 Q. Again, I just pick it up from your own witness  
22 statement. Look at paragraph 16:

23 "It is important for Index generally to be seen as  
24 a price discounter."

25 A. Can I just check -- your question included "at that

1 time".

2 Q. Yes.

3 A. That is not actually -- I am referring generally there  
4 to the fact that Index would need to be seen as  
5 a discounter, because it was competing with somebody up  
6 to that point who had been, you know, quite  
7 an aggressive price discounter.

8 Q. Well, at that time it was important to be seen as  
9 a price -- in fact, the sentence here, Mrs Paisley,  
10 makes it look as if it is general:

11 "It is important for Index generally to be seen as  
12 a price discounter."

13 I did not read that to mean that it was confined to  
14 any particular time, but it is including the time which  
15 we are talking about, 1999, 2000 and 2001.

16 A. Yes, that is correct. And now you have rephrased it  
17 saying including that time, but it was still important  
18 that Index made a profit, and Index as a business have  
19 never made a profit. To my knowledge, toys actually as  
20 John referred to made a significantly less proportionate  
21 contribution than any other product category.

22 Q. So at the beginning of 1999, your understanding is that  
23 Argos is inevitably going to charge RRP for toys, there  
24 was nothing that could be done to avoid that --

25 A. Can I just go back to that? I do not think that is what

1 I did say. I said that Argos would charge RRP on  
2 a limited number of high-profile toys.

3 Q. Okay, you are absolutely right to correct me there. In  
4 1999, on the branded high-profile toys such as  
5 Action Man and these core games, it was inevitable that  
6 Argos was going to charge RRP for that, because their  
7 policy had been determined and announced, and everyone  
8 knew it; correct?

9 A. Not entirely, no. I am not qualified, I do not think,  
10 to say that core games and Action Man are high-profile  
11 toys. That is probably something the buyers are more  
12 able to answer. I would say that not necessarily all  
13 the core games are high-profile, so I cannot entirely  
14 agree with that. But the principle, yes.

15 Q. Well, you agree with the principle. I am saying to you  
16 that given that here are these high-profile toys, Argos  
17 is intent, and there is nothing that can be done to  
18 avoid it, on charging RRP; here was the opportunity of  
19 a lifetime for Littlewoods, was it not, to undercut them  
20 in the autumn/winter 1999 catalogue?

21 A. I am not sure we would have wanted to do that. As  
22 I referred to earlier, with the very low margins we were  
23 working on already, further undercutting them would just  
24 actually have created a bigger loss for us on those  
25 lines, so we had to make a rational business decision

1 based on the individual profitability of those lines.

2 Q. All you had to do was to find out the RRP, charge  
3 a little less, and you could have had a dramatic  
4 consequence for your business.

5 A. Sorry, could you repeat that?

6 Q. Yes. Given that you know that Argos are inevitably  
7 going to charge RRPs in their next autumn/winter 1999  
8 catalogue on these high-profile toys, there is the  
9 opportunity of a lifetime for Littlewoods, because all  
10 Littlewoods had to do was find out what the RRP was and  
11 charge slightly less, perhaps even as low as 25 pence  
12 less, and they could make a dramatic impact in terms of  
13 turnover and attracting customers to the stores.

14 A. I think even whilst we were reading the articles, and  
15 obviously there was a great deal of publicity around the  
16 Argos takeover, or the GUS takeover of Argos, it still  
17 needs to be pointed out that we as a business were still  
18 wary of the situation, and we had to make some fairly  
19 difficult business decisions, as John alluded to, in  
20 those seasons; whether we actually trusted it was going  
21 to happen or not is another matter. We had to consider  
22 that very carefully.

23 (3.30 pm)

24 Q. At that time, you would have done your pricing  
25 comparisons on the spring/summer catalogue, and I am

1           conscious of the fact that that is not as important as  
2           the autumn/winter catalogue.

3   A.   Yes.

4   Q.   But you would have seen that already, by spring/summer,  
5           if this policy of Argos was reflected in that catalogue  
6           Littlewoods was already, as it were, winning the battle  
7           for low prices, or to be seen as the lowest priced.

8   A.   Would you mind if I just have that spreadsheet in front  
9           of me that you referred to earlier with John?

10  Q.   Yes, I think it is bundle 28.  It is not a spreadsheet,  
11           it is something called a pricing analysis; it is  
12           a summary of the information behind it.

13  A.   Do you have the actual prices that the summary is made  
14           up from?

15  Q.   No, I do not have them.

16  THE CHAIRMAN:  They are further on in the document.

17  MR DOCTOR:  They are here.

18  A.   Can I take a look at them?

19  Q.   Can I just ask you this: did you look at them before you  
20           came into the witness box?

21  A.   I am not sure -- being a buying manager, I am not  
22           actually that close to individual prices, that is why  
23           I think it is important that I can actually see the  
24           schedule that you refer to in the summary.

25  Q.   I am asking you a different question.  Before you came

1 into the witness box, have you been looking at this  
2 pricing analysis and the supporting documents which go  
3 behind it?

4 A. Do you mean --

5 Q. I mean yesterday and today. Have you been looking at  
6 them?

7 THE CHAIRMAN: It is prepared by Argos --

8 MR DOCTOR: Yes, I am aware of that.

9 A. No, I --

10 Q. Have you looked at it before -- have you ever seen this  
11 document before?

12 A. I have never seen the document prepared by the Argos  
13 side.

14 Q. You were sitting in court when you heard this discussed  
15 in my opening speech, were you not?

16 A. Yes, and I think you referred to the summary in your  
17 opening speech.

18 Q. At that point, was that discussed between you and other  
19 members of the Littlewoods team?

20 A. I do not recall it being discussed, no.

21 Q. So this is the first time you have looked at these  
22 documents?

23 A. Well, I do not know until I actually see it. I am  
24 pretty sure I have not, but it is difficult to say until  
25 I see it.

1 Q. What do you want to look at?

2 A. The schedule that gives the summary that you refer to.

3 Q. Well, let us look at the first one. Spring/summer

4 1998 -- well, I want to talk about spring/summer 1999,

5 that is the one I have asked you about, that is the only

6 one I have mentioned so far.

7 A. Yes.

8 Q. So let us look at that. Nine common products --

9 THE CHAIRMAN: That is page?

10 MR DOCTOR: Well, I am not sure. I just go by the summary.

11 I assume Mr Brealey got it right.

12 MR GREEN: B1, second page, I think. That is for core

13 games, and then B2 for Action Man.

14 A. Thank you.

15 MR DOCTOR: That is the core games. Five are at the same

16 prices, and Littlewoods are cheaper on four.

17 A. Sorry, we are looking at spring/summer 1999 here, are we

18 not?

19 Q. Yes.

20 A. So the cheaper you refer to is 4 pence.

21 Q. Well, cheaper, yes.

22 A. It is just that certainly in our win/lose/draw analysis,

23 we would class 95 and 99 as the same.

24 Q. This document is prepared on Argos' behalf, and it is

25 described as cheaper; you are now saying that that is

1 not cheaper, it is the same?

2 A. Certainly in the eyes of the analysis that Littlewoods  
3 would conduct, yes.

4 THE CHAIRMAN: Sorry, just to interrupt you, Mr Doctor, just  
5 for my benefit, when a customer sees one price of £14.99  
6 and another price of £14.95, what sort of difference do  
7 you think that makes from the customer's point of view?

8 A. We do not believe that that makes any difference at all,  
9 4p.

10 MR DOCTOR: So you do not believe it makes any difference,  
11 but Argos consider it to be cheaper.

12 A. I do not think I -- I cannot comment for Argos,  
13 obviously.

14 THE CHAIRMAN: But you would see it as --

15 A. We see it as the same, yes.

16 MR DOCTOR: What you see, however, is that Argos has priced  
17 at RRP in respect of all these items -- well, not all of  
18 them, yes, all of them, or maybe eleven out of twelve --  
19 or above RRP.

20 A. Yes, and over.

21 Q. You are either the same in your terms, or in Argos'  
22 terms cheaper, on four of them.

23 A. Yes, in our eyes we were the same.

24 Q. Okay. In respect of Action Man for spring/summer  
25 1999 --



1 A. Sorry, which page are you on now?

2 Q. I think that is tab 2, the fourth page.

3 On this one, there are 12 common products; none of

4 them are at the same price, Argos are cheaper on three

5 and Littlewoods are cheaper on nine.

6 A. Again, you are using 5s and 9s as different, and we

7 would not -- that is not how we would analyse those

8 prices.

9 Q. But what is clear is that these are the RRP prices.

10 A. The Argos prices are the RRP.

11 Q. Yes.

12 A. I am not entirely sure about that.

13 THE CHAIRMAN: Well, they are slightly above.

14 MR DOCTOR: Slightly above, in fact, yes.

15 A. We are at the RRP.

16 Q. Yes, and they are slightly above or they are the same,

17 or in most cases you are slightly below them in terms of

18 numbers.

19 A. I think I would need to do that analysis, but just

20 looking at it quickly there, it appears that we are at

21 the RRP more often than Argos.

22 Q. Yes, we have RRP for 11 of them, Littlewoods are priced

23 at the alleged RRP, right. So you are at early 1999,

24 you know now that Argos are going to price inevitably at

25 RRP.

1 A. On a selected number of toys, that is potentially their  
2 option, yes.

3 THE CHAIRMAN: Yes.

4 MR DOCTOR: Littlewoods wants to be seen as a big  
5 discounter, knows the advantages of being seen as lower  
6 in price on these key must-stock items, and I put it to  
7 you that after years of being undercut by Argos,  
8 Littlewoods would have seen this as an opportunity to go  
9 in at slightly lower prices than RRP on these very  
10 items, in the autumn/winter 1999 catalogue.

11 A. As I said earlier, the difficulty is that opportunity  
12 could have actually rendered us more unprofitable than  
13 we were, so it was a case of making a rational business  
14 decision.

15 As John stated, we were under pressure from our new  
16 CEO to achieve margin, and that had to be taken into the  
17 balance as well.

18 Q. Well, you may have made losses on some of these items,  
19 but you would have gained the enormous advantage of (a)  
20 being seen as cheaper in an important catalogue, (b)  
21 having dramatic effects on your turnover and revenues on  
22 other items; and generally having the advantages of  
23 presenting a catalogue to the public that was less than  
24 Argos, in circumstances where you were fairly confident  
25 that Argos was going to charge at RRP.

1 A. Can we just start at the top and break that one down?  
2 Sorry, what was the first point you wanted me to respond  
3 on?  
4 Q. Well, I say to you that you would have had the  
5 opportunity to go in at slightly lower prices, which  
6 would have brought the advantage of being seen to be  
7 lower on these important items.  
8 A. That could be true, yes, but I think what we have to see  
9 here is the complete picture. We were not just looking  
10 at toys. Argos and their situation did not just purely  
11 relate to toys, and John, as the buying director, and  
12 myself as one of the buying managers, would have had to  
13 have looked at the global picture.  
14 But yes, there could have been some advantage,  
15 assuming we were still profitable on those lines, if we  
16 did undercut.  
17 THE CHAIRMAN: What are your responsibilities beyond toys at  
18 this time?  
19 A. At this time I had toys, DIY, sports, nursery and  
20 cycles.  
21 MR DOCTOR: Another advantage would have been the dramatic  
22 effect on your turnover generally, would it not?  
23 A. That is true, we could have potentially increased our  
24 volumes, but I must reiterate again that could have just  
25 potentially increased our loss as well.

1 Q. But more generally, the dramatic effect on your turnover  
2 more generally; that is not on these items alone, but on  
3 the other, high margin items.

4 A. It is still true though that the average spend of  
5 a customer in Index is relatively low. We do not see  
6 them purchasing big baskets of product.

7 Q. Surely here was the opportunity to try and improve that,  
8 if you knew, as you say, that Argos was going to charge  
9 at RRP.

10 A. Not something I ever considered. It was not kind of my  
11 realm to consider that. I think it would have been  
12 a risky thing to assume.

13 Q. Well, what in fact happened is that you chose a large  
14 range of similar products in the Action Man and core  
15 games categories for autumn/winter 1999, and priced at  
16 exactly the same price as Argos; correct?

17 A. You are referring to the right-hand side of this  
18 document, are you?

19 Q. Well, I am not actually, but I suppose it must be  
20 reflected there, yes.

21 A. I mean, I would need to just go away and look at that,  
22 in order to agree or disagree with your statement.

23 Q. I think you can take it from me that it is; give or take  
24 one or two, they are exactly the same.

25 A. They seem to be the same as the RRPs; I think your

1 comment was the same as Argos.

2 Q. Yes, and the same as Argos; everyone is charging RRP.

3 A. Well, just scanning it, not on all of them, but there is  
4 some similarity on some of the prices with RRPs, but  
5 I do not think I can agree or disagree with you unless  
6 I have had time to actually look at that.

7 Q. Well, perhaps we will look at that overnight, because  
8 I think there is very little difference at all, but we  
9 will come back to that tomorrow.

10 In paragraph 11 of your statement, you say that  
11 Hasbro, like most suppliers, choose price points as  
12 often as they can as their RRP.

13 THE CHAIRMAN: That is where?

14 MR DOCTOR: Sorry, yes. This is the beginning of  
15 paragraph 11:

16 "Hasbro, like most suppliers, will recommend prices  
17 at the strongest price point they could find. They are  
18 constrained to a degree by the cost price and the need  
19 for certain minimum retail margin. Hasbro will choose  
20 price points such as £9.99 and £19.99 as often as they  
21 possibly can."

22 So for their RRPs, they choose RRPs as often as they  
23 can at these price points, which you say are £9.99 or  
24 £19.99.

25 A. Yes. As per my statement, I would say that Hasbro, like

1 most suppliers, will recommend prices at the strongest  
2 price point, and examples of these would be £9.99 and  
3 £19.99.

4 Q. Can I just ask you this? You then go on to make  
5 a series of propositions which I assume are limited to  
6 Hasbro, or am I wrong in that, and in fact you have  
7 moved on in the course of that paragraph to more general  
8 observations about retailing generally. Can you just  
9 enlighten us about that?

10 A. Which particular points --

11 Q. Well, paragraph 11. After that, you say:

12 "The consequence is that retailers dare not break  
13 the price point, and these are likely to become  
14 an effective maximum."

15 Is that retailers of Hasbro, or just retailers  
16 generally?

17 "They are often very close", and so on; do you see  
18 what I mean?

19 A. I would say it is difficult for any retailers to break  
20 an RRP, and particularly in this case I would say so.

21 THE CHAIRMAN: By "break", you mean going over?

22 A. Go above, yes. The RRP is generally the maximum price.

23 MR DOCTOR: Are you saying that is retailing generally? Do  
24 we understand this is retailing generally, it is across  
25 the board? You are not talking about Hasbro's price

1 points and Hasbro's RRP's.

2 A. Obviously here I am talking about Hasbro, that is what  
3 my statement is about.

4 Q. So this is Hasbro, okay. So the thrust of this is you  
5 say that if you go below a Hasbro price point, it could  
6 almost certainly mean a significant loss, so that the  
7 greater the volume, the greater the loss.

8 A. Correct, yes.

9 Q. And you say:  
10 "Profit on return would at best be small, and  
11 decisions to undercut RRP would mean a negative  
12 financial position/contribution to the business."

13 A. Yes.

14 Q. I am going to put it to you that even in relation to  
15 Hasbro, that is something of a generalisation, is it  
16 not?

17 A. I do not believe so, no.

18 Q. How could any of Hasbro's retail prices be lower than  
19 RRP, if this were true across the board? I mean, we  
20 know that they have been for years lower than RRP.

21 A. Sorry, I am not quite clear what you are asking me  
22 about.

23 Q. I am saying this cannot be true even of Hasbro's goods,  
24 and you say you are confining yourself simply to  
25 Hasbro's goods, that it is simply impossible to go below

1 RRP, because it would mean a negative financial  
2 contribution to the business.

3 A. I am sorry, I am --

4 Q. You see, I am trying to work out whether this paragraph  
5 is confined to Hasbro and its goods, or whether it is  
6 confined to retailers generally. You have said it is  
7 confined to Hasbro only, these points.

8 A. No, I think what I said is in my statement, I am  
9 obviously talking specifically about Hasbro, but I also  
10 think -- I believed I said that this could refer to  
11 other retailers, other product categories as well.

12 Q. Well, it could refer obviously to other categories, but  
13 we have heard that in some categories of goods the  
14 margins are very high, so it cannot possibly apply to  
15 those.

16 A. No, it would generally only apply to categories where  
17 margins are very low, and toys is not on its own there,  
18 there are other categories, like electrical categories,  
19 where margins can be very low.

20 THE CHAIRMAN: So can we assume for the purposes of  
21 discussion that we are talking about Hasbro products  
22 here?

23 A. Yes, I was obviously referring to Hasbro here.

24 MR DOCTOR: And many of these Hasbro lines are very  
25 high-profile lines.



1 A. I am not sure; I am not in at line level, as such. It  
2 would depend how many were actually on TV, and what were  
3 the relative volumes.

4 Q. Well, let us think about the high-profile ones. On  
5 these high-profile lines, core games and Action Man --

6 A. They are not actually products though, they are product  
7 categories, so not all products within Action Man would  
8 be high-profile. There would probably be one or two  
9 that were actually going to be on TV. The same in core  
10 games, there would be one or two within core games, so  
11 that --

12 Q. Well, you cannot generalise in this way even in relation  
13 to Hasbro's toys. I think what you are trying to convey  
14 in paragraph 11 is that it is not actually possible for  
15 a retailer to cut or go below RRP in the case of Hasbro.  
16 If we are agreed that that does not apply even to  
17 Hasbro's whole lines, then we do not have to take this  
18 very much further.

19 Do you agree that you are really speaking about one  
20 or two lines which, if you cut the RRP, you will be  
21 selling at a loss, but it does not apply to all goods,  
22 it does not apply to all of Hasbro's goods. On some  
23 lines, however, if you sold them below RRP, there would  
24 be a loss.

25 A. Yes, and indeed, even at RRP, on some there is a loss.

1 Q. So if all the items which we have seen in the  
2 catalogues, all these common items in the Argos and  
3 Littlewoods catalogues -- if only some of them are these  
4 lines where you cannot cut the margin without creating  
5 huge losses, the others are not in that category.

6 A. No, they are not, but they would still be very low  
7 margin. I mean, I am trying to think typically what  
8 sort of margin we would achieve on the Hasbro account.  
9 It was still overall only circa 8 or 9 per cent, so it  
10 was not a big margin overall.

11 Q. And it would be the normal part of any business  
12 decision, an everyday decision, that on some lines,  
13 particularly those that have the advantages we discussed  
14 earlier, you might in fact run the line and run a loss,  
15 in order to get the knock-on effects of other goods.

16 A. I think you would only look to make those lines the  
17 lines that are going to interest the consumer, and just  
18 because a Hasbro product had a higher margin, it would  
19 not necessarily mean that it would attract the customer  
20 to come into the shop and buy more products.

21 I have to point out again, we were looking at a  
22 complete basket of products here. It could have been we  
23 chose to undercut Argos in the electrical category and  
24 not necessarily in the toy category. So I think there  
25 are a lot of issues to be balanced up in that decision.

1           It is not something I can specifically agree with or  
2           disagree with, based purely on these Hasbro products.

3   Q.   Can we agree that if it is intended to apply to  
4           retailing generally, it would be an absurd  
5           generalisation.

6   A.   Yes.

7   Q.   If it is intended to apply to Hasbro products, it is  
8           something of a generalisation. What you intended to  
9           apply it to was certain individual items.

10  A.   Yes, but I would still make the point that it is only  
11           worth undercutting on lines that have genuine consumer  
12           interest.

13  THE CHAIRMAN:   Yes.

14  MR DOCTOR:   Right, and indeed -- I was going to take you to  
15           the statement of one of your competitors, Mr Needham of  
16           Argos, who actually tells us that he cut the prices on  
17           certain of these particular lines we are talking about  
18           because he felt there was sufficient margin, but you  
19           will agree your statement is limited.

20  A.   Sorry, my statement is?

21  Q.   Is limited to certain lines, with very low margins.

22  A.   Yes, I mean, I do not understand Argos' cost basis,  
23           obviously, and they may work on a significantly  
24           different cost base, and be able to do that.

25  Q.   You say also in paragraph 16 that if you are undercut on

1 high-profile lines it can jeopardise your whole trading  
2 operation.

3 THE CHAIRMAN: It is the last sentence.

4 A. Yes.

5 MR DOCTOR: So it may be that you sometimes have to endure  
6 losses on those high-profile lines in order to retain  
7 credibility and customers overall.

8 A. Sorry, there I am referring to the fact if we are  
9 undercut, not if we undercut somebody else.

10 Q. I beg your pardon, yes, I see what you mean. Point  
11 taken. Well, the question may still be a valid one: if  
12 you are undercut by others on these lines, it could  
13 jeopardise your whole operation.

14 A. Yes, it would not be something that we would be too  
15 pleased with, that is for sure.

16 Q. But you might sometimes have to reduce your prices to  
17 ensure you do not find yourself undercut, in order to  
18 avoid jeopardising your whole operation.

19 A. Sorry, could you repeat that? We sometimes have to --

20 Q. If it is true that by being undercut on certain of these  
21 lines it can jeopardise your whole operation, you would  
22 sometimes have to price very low in order to ensure you  
23 are not undercut, because whatever disadvantages come  
24 from making an increased loss or whatever it is on that  
25 particular item, you avoid being undercut, and thereby

1           jeopardising your whole operation.

2   A.   I still think that would be a serious business  
3       consideration if we were making a loss on a line, to  
4       further increase that loss.

5   Q.   So what I am putting to you is that when we come to the  
6       items in the autumn/winter 1999 catalogues which we have  
7       looked at, Action Man and core games, it is not true  
8       that you simply could not sell these for less than RRP  
9       without making a loss, or even that if you did make  
10      a loss, there would not be compensating advantages to  
11      offset the loss.

12           I will go through that slowly again.

13   A.   Please.

14   Q.   It is not true, is it, that you simply could not sell  
15      the goods in the 1999 autumn/winter catalogue which are  
16      common, which we are talking about, the core games and  
17      Action Man -- it is not true that you could not sell  
18      them for less than RRP?

19   A.   It would depend on the profitability of each of those  
20      lines. I cannot agree or disagree unless I had  
21      an analysis of the individual cost prices and bought-in  
22      margins of those lines.

23   Q.   Yes. It would not be true that you would necessarily  
24      make a loss on all of those items?

25   A.   I honestly do not know. I am not familiar enough with

1 the lines. I mean, I know Action Man generally as  
2 a category is low margin, but I am not familiar with the  
3 lines. I do not have that level of detail.

4 THE CHAIRMAN: Yes.

5 MR DOCTOR: And if you did make a loss, there may still be  
6 compensating advantages to offset the loss.

7 A. What would you envisage they would be?

8 Q. Well, the ones we have been through, that it would avoid  
9 your business being seriously affected, it would  
10 increase footfall, improve your image; all those sort of  
11 things. These are advantages.

12 A. They are potentially, but as I said earlier, I think it  
13 has to be a weighed-up business decision, to confirm  
14 there was an outright advantage, even with those  
15 prevailing factors.

16 Q. Now would you look in the core bundle? I just want to  
17 move to that at this point. I think it is volume 26.

18 If you get tired or you want a break or anything,  
19 just say so.

20 A. Okay.

21 Q. Would you go to page 91? This is an e-mail that was  
22 sent to you on 18th May 2000 by Ian Thomson which you  
23 received and saw at the time.

24 A. That is correct, I recall receiving the e-mail.

25 Q. And it was also sent to various other personnel at

1 Littlewoods, being Mr Burgess, Mr Cowley, Ms Runciman  
2 and Mr Riley.

3 A. That is correct, and London.GWIA as well, I am not sure  
4 who they are.

5 Q. Yes, that is a mystery to me. You say in your witness  
6 statement that about two weeks prior to this, that is  
7 some time in May, you had been at a meeting at Hasbro  
8 when Mr McCulloch had made what you regarded as a very  
9 odd remark about their RRP's. That is at paragraph 21.  
10 In fact, you think it was on 2nd May.

11 A. Yes.

12 Q. By the time you received this e-mail, Littlewoods would  
13 have known what Hasbro's RRP's for any of the listed  
14 items were, would they not?

15 A. By the time we received the e-mail?

16 Q. Yes, 18th May.

17 A. Yes, that is correct.

18 Q. And you also would already have known what items you  
19 were likely to include in the Littlewoods catalogue for  
20 autumn/winter 2000.

21 A. That is correct, yes.

22 Q. And so here it is telling you that Mr Thomson is  
23 confirming (a) the list of these products, these toys,  
24 Argos are going to include in their catalogue; and (b)  
25 the prices that Argos have committed to. Do you see

1           that?

2   A.   Yes.   He would not necessarily tell me all the items.

3   Q.   No, he just tells you Argos are going to carry these

4           items in their catalogue, and their prices are going to

5           be the following.

6   A.   Yes, that is what is written in the e-mail.

7   Q.   And you know already -- your catalogue has not been

8           necessarily printed by that stage, but you know what is

9           going to be in the Littlewoods catalogue, and what the

10          Littlewoods prices are going to be.

11  A.   We would not have fully decided our prices at that

12          stage.

13  THE CHAIRMAN:   So this arrives just before you have fully

14          decided the prices?

15  A.   I do not remember precisely the final pricing date for

16          that particular season.

17  MR DOCTOR:   Now this document makes no mention, as far as

18          I know, of RRPs.   It just says:

19                 "This is the list of products and prices that Argos

20                 have committed to."   Do you see that?

21  A.   Yes, that is what the e-mail says.

22  (4.00 pm)

23  Q.   Well, it is not common, is it, to be told that your

24          biggest competitor has committed to include certain

25          products in its next catalogue, and the price of those



1 products?

2 A. It is not common, I found it inconceivable that Hasbro  
3 could confirm such detail.

4 Q. Well, in fact, it is extremely uncommon, in fact you  
5 have probably never seen something like that before.

6 A. No, I have not. No, that is fair to say.

7 Q. Mr Cowley in his witness statement, and perhaps you  
8 would agree with it, says that in his discussions with  
9 his link, Mr Thomson of Hasbro, he would never tell him  
10 what prices Littlewoods are going to go out at in their  
11 catalogue.

12 A. That is correct.

13 Q. It is highly confidential information until the  
14 catalogue is printed, is it not?

15 A. That is correct.

16 Q. And if that is correct, you would probably be extremely  
17 surprised if any other retailer had divulged this highly  
18 confidential -- could I say secret -- information to  
19 Hasbro, would you not?

20 A. Yes, I was very surprised to see that Ian Thomson felt  
21 he was able to confirm what the Argos prices would be,  
22 and I was surprised that he was confirming that Argos  
23 had committed to Hasbro.

24 Q. Even more surprising that -- first of all, that Argos  
25 passes on to Hasbro, but even more surprising that

1 Hasbro passes it on to you; is that not so?

2 A. No, I think my surprise was more around the fact that  
3 Mr Thomson was confirming that Argos had committed to  
4 those prices.

5 Q. Right.

6 A. I just felt it was inconceivable that Argos would have  
7 committed their prices to Hasbro.

8 THE CHAIRMAN: Yes, but you were a bit less surprised at the  
9 fact that Mr Thomson had passed on what he thought the  
10 Argos prices were going to be?

11 A. No, sorry, that is not what I was saying at all.

12 THE CHAIRMAN: Right, what are you saying?

13 A. I was surprised that Mr Thomson believed that Argos  
14 had -- you know, that Argos would commit to him on those  
15 prices; and I was also surprised that Mr Thomson felt  
16 able to confirm, you know, that information to us.

17 THE CHAIRMAN: Yes.

18 MR DOCTOR: All right, well, it is the most sensitive  
19 information that any catalogue retailer could possibly  
20 have, is it not? The price in the next catalogue.

21 A. Yes, it is sensitive information. There is other  
22 information as well, but yes, it is sensitive  
23 information. I think that is why I felt -- I struggled  
24 to understand that Argos would have committed to that,  
25 because it is sensitive information.

1 Q. And obviously, if a catalogue retailer published the  
2 proposed catalogue inclusions of what he is going to  
3 include, and moreover, their prices, to the world before  
4 the catalogue goes out, he would be undercut on every  
5 item that he publicised in this way.

6 A. I think it is fair to point out that we would have  
7 sometimes indications of what Argos was listing, and  
8 that was for all sorts of different reasons,  
9 particularly on the distribution of a product, it is  
10 important that we understood if we had exclusivity on  
11 a product or not, so that is something that we would  
12 sometimes have information on.

13 Q. Yes, but that is because the supplier is simply telling  
14 you, "No one else is going to carry this, you have  
15 exclusivity"; by definition, he is including the whole  
16 world, but he is really talking to you.

17 A. That is true, but also we would sometimes be aware of  
18 what Argos were listing.

19 Q. You say in your witness statement, at paragraph 26 if  
20 you want to just turn to that, that you remember being  
21 surprised to receive this e-mail.

22 A. Yes.

23 Q. You say:

24 "I was surprised that he even suggested that Argos  
25 was committed to these prices."

1           Do you see that?

2   A.   Yes, I do.

3   Q.   If you look back in the bundle you have there one tab,  
4       you were interviewed by the OFT in October 2001.

5   A.   Correct.

6   Q.   Which was slightly closer to the date than today. The  
7       notes, I think, were sent to you -- how does it happen?  
8       You have signed them at the end. You read it and  
9       approved it either then or later.

10  A.   Yes, the discussion notes were written by the OFT.

11  Q.   Yes. So it must have been -- perhaps you read them and  
12       signed them at the end of the --

13  A.   I am not sure, to be honest. It is my signature.

14  THE CHAIRMAN: And you have put a sort of reservation just  
15       above your signature.

16  A.   Yes.

17  MR DOCTOR: Yes, you say:

18       "I do not believe that we have acted outside the law  
19       and am deeply shocked along with my team at this  
20       situation. I expect due consideration to be given to my  
21       discussion notes and that any notes/documents belonging  
22       to myself or my team are understood and interpreted as  
23       they were written."

24       If you would go to the second page of this, against  
25       line 32 --

1 A. I am sorry, I do not have lines.

2 Q. Sorry, I have numbered it.

3 THE CHAIRMAN: We do not have that either.

4 MR DOCTOR: If you count the first full paragraph as 1, 2,  
5 3, 4, 5, and it begins:  
6 "LP [that is yourself] was referred to [some  
7 number], an e-mail from Ian Thomson, Hasbro, to various  
8 people at Littlewoods regarding price points of various  
9 products dated 17th May 2000."  
10 I think that is a mistake for 18th May 2000, or is  
11 it the same?

12 A. If it is referring --

13 Q. I think it is an 8. So that was referring to that  
14 e-mail, was it not?

15 A. I assume so, yes. I do not know what "PJ5024A" is, but  
16 I can assume it is that.

17 Q. And you were shown that e-mail at that time, presumably?

18 A. Yes.

19 Q. Your response was:  
20 "I did not see this e-mail as improper. I saw it as  
21 a list of retail prices that Hasbro was recommending to  
22 us. I do not remember if Ian Thomson asked me to delete  
23 it."  
24 The response you gave on that occasion did not  
25 express surprise, it expressed simply a comment that you

1 did not see this e-mail as improper.

2 A. That is correct. I think what we have to bear in mind  
3 here, this was 16th October, I think. I think the best  
4 way I can describe myself and my team that day were  
5 rabbits in headlights. We were suddenly visited by the  
6 OFT and asked to be interviewed, and in hindsight,  
7 I think my use of "improper" was probably not  
8 appropriate. I can see how that e-mail is improper, but  
9 I think that needs to be taken into account, the way we  
10 were feeling that day, and what we were going through.

11 Q. Right. You see, there are at least two kinds of  
12 surprise that you may have felt, if you did feel  
13 surprise. The one is surprise at the contents of the  
14 e-mail, what it actually says, you are being told that  
15 Argos has committed to prices, and here is the list of  
16 their products and prices on these items; the other kind  
17 of surprise is the surprise that this information had  
18 been reduced to writing, and there was therefore  
19 a record of it. Do you understand the distinction I am  
20 making?

21 A. Could you just repeat that for me, please?

22 Q. Yes. The one kind of surprise is a surprise at the  
23 content of the information, that a competitor's  
24 confidential information is being sent to you at all;  
25 that is one kind of surprise.

1           The other kind of surprise is surprise that the  
2           contents -- there is no surprise that you are getting  
3           the information; what is surprising is that the man  
4           sending it to you has put it in writing.

5    A.   So can I just clarify that? One is surprise about the  
6           content, and one is surprise that the situation is put  
7           in writing.

8    Q.   Writing, yes.

9    A.   Is that correct?

10   Q.   Yes.

11   A.   Well on that basis, I found it inconceivable and was  
12           surprised that Hasbro were able to confirm those prices,  
13           and also that Argos -- I just did not find it believable  
14           that Argos would have committed to Hasbro.

15   Q.   You see, if you were surprised at the contents, the fact  
16           that this highly confidential information from one of  
17           your competitors was being passed to you, if that was  
18           the surprise you felt at the time, you would undoubtedly  
19           have asked one of your colleagues who was also  
20           a recipient of that, "Have you seen this amazing  
21           e-mail?", or had a discussion -- expressed this surprise  
22           aloud to the other four people at the fact that you have  
23           been sent this amazingly confidential information.

24   A.   I think I just thought the whole document lacked  
25           credibility, and I really did not consider it beyond

1           that.

2    Q.   I suggest that if you had felt surprise, you would have  
3           said, "What is going on? Why are we being sent this?  
4           I wonder if Argos knows that we have been sent this".

5    A.   No, I did not feel that, I just felt the whole thing was  
6           inconceivable, that that would have happened. I felt  
7           the e-mail itself lacked credibility, and then I suppose  
8           in turn potentially the author did as well.

9    Q.   So you are simply saying that you got this and you did  
10           not think it was true.

11   A.   That is correct, yes.

12   Q.   Well, I suggest that if you had got this and you did not  
13           think it was true, you would nevertheless have spoken to  
14           one of your colleagues about it.

15   A.   I did not see it as that important. It was not  
16           something I felt the need to go and discuss with people.

17   Q.   And any one of the five people here who had received  
18           this e-mail would have been surprised at it, if they had  
19           genuinely been surprised at its content, and would have  
20           raised it with one of the other recipients.

21   A.   I cannot comment on how my colleagues felt, or how they  
22           would have reacted.

23   Q.   You see, what I am suggesting to you is that you and the  
24           other four who received this were not surprised at the  
25           contents of this document, because it was exactly in



1 line with the sort of thing that you had been receiving  
2 and continued to receive all along.

3 A. That is categorically not the case.

4 Q. You see, he does not only give you --

5 THE CHAIRMAN: I think the witness just wanted to add  
6 something.

7 A. Yes, that is categorically not the case. I have never  
8 seen anything else like this. This was not the norm, it  
9 was not something that I received.

10 MR DOCTOR: Well, have a look at the rest of this. It is  
11 not just that he has given you the prices, you say,  
12 "They did not have any credibility, those prices", it  
13 says:

14 "Games and Action Man prices will continue to be  
15 adhered to, and the retails are on your range sheets  
16 provided by me as part of the selection proposal  
17 process."

18 Let us read the whole thing:

19 "Following on from various conversations regarding  
20 price points and opportunities to make more margin, I am  
21 able to confirm a list of products and prices that Argos  
22 have committed to. Games and Action Man prices will  
23 continue to be adhered to ..."

24 The sentence means "by Argos".

25 A. Not necessarily, no. Can I just state here that that

1 was something that was written by Ian Thomson? In his  
2 mind that may have been the case, but the reality is we  
3 decided our own pricing. We took all sorts of factors  
4 into account, and we decided our own pricing. Whether  
5 Ian Thomson wrote to me and said, "These will be adhered  
6 to", is inconsequential really. We decide our pricing,  
7 not Hasbro.

8 Q. Well, that part of it:

9 "Games and Action Man prices will continue to be  
10 adhered to, and the retails for those are already on  
11 your range sheets provided by me as part of the  
12 selection proposal process", that part of it was  
13 a direct statement by him that Argos were going to  
14 continue to adhere to the prices on games and  
15 Action Man.

16 A. That may have been Ian Thomson's belief. I cannot  
17 comment for that. But it was not my belief; we decided  
18 our own pricing, not Ian Thomson and not Hasbro.

19 (4.15 pm)

20 Q. Well, the fact that he was not only telling you what  
21 they were going to do but he was referring back to  
22 an existing arrangement, "Games and Action Man prices  
23 will continue to be adhered to" --

24 A. We have no such arrangement. We decided our own selling  
25 prices. Ian Thomson did recommend retail prices on his

1 selection sheets, as we have seen in previous evidence,  
2 but we made up our mind on our own prices.

3 Q. Mr Thomson could not have sent you an e-mail referring  
4 to past events in the hope that you would be impressed  
5 by it if it had not happened, because he would know that  
6 the moment you read that, you would say, "The man must  
7 be mad. We have never had anything from Argos and  
8 Action Man adhering to prices, and continuing to do so".

9 A. I think I probably did think that at the time. I was  
10 confused as to what he was actually doing. He may have  
11 felt that prices were adhered to, and I would need to go  
12 and look at the prices, because of what he had done, but  
13 the reality was we put prices in ourselves, and there  
14 were all sorts of business factors that came into play  
15 as to why we priced and where we priced.

16 Q. I am suggesting that it is not that you thought that  
17 this was unconvincing; the fact that he referred to  
18 a previous arrangement, and was now setting out prices  
19 for the next catalogue in an expanded range of goods,  
20 was something which you expected to receive in terms of  
21 the arrangement that you knew was in operation between  
22 Argos and Hasbro.

23 A. We had no --

24 Q. I beg your pardon, between Index and Hasbro.

25 A. We had no such arrangement, that is not the case. I can

1           only reiterate again, we made our mind up on our own  
2           prices.

3   Q.   You had agreed, that is Littlewoods, that they would go  
4           out at these recommended retail prices, suggested by  
5           Hasbro, provided that Hasbro would work to ensure that  
6           Argos went out at the same prices.

7   A.   I am not aware of any such arrangement.   How was I aware  
8           of any such arrangement?

9   Q.   Well, because that is what happened, and the fact that  
10           there was no response to this e-mail on the part of  
11           Index -- not one of these five people picked up the  
12           telephone, spoke to each other, asked what on earth was  
13           going on, queried it, did anything about it -- suggests  
14           that each one of them received this document and did not  
15           regard it as something which they were not expecting;  
16           rather, it was in line with the information they  
17           expected to receive.

18   A.   I totally disagree with that statement.

19   Q.   When Thomson phoned you a few days later and asked you  
20           to delete it, you said to him that you found it  
21           surprising that he had sent it, by which you meant that  
22           he had put it in writing.

23   A.   No, I did not mean that, but I think if we think back to  
24           Mr Thomson's evidence yesterday, he was not actually  
25           clear that he did ask me that, and if I refer to his

1 statement, he uses the word "destroy", not "delete", and  
2 I know for a fact if Ian Thomson had rung me up and  
3 said, "Destroy an e-mail", I would have reacted to it.

4 THE CHAIRMAN: Did he ring you up?

5 A. I do not recall the telephone call.

6 MR DOCTOR: We also know that your colleague, Mr Burgess,  
7 had a copy of this e-mail, no other copy was produced  
8 from within Littlewoods, and Mr Burgess had worked off  
9 this e-mail; that is the next page, 92. Presumably, you  
10 do not know about that.

11 A. I think you would need to talk to Alan Burgess about  
12 that.

13 Q. Yes. Let us just look at the prices on this e-mail.  
14 The point has been made on Littlewoods' behalf over and  
15 over again that some of the prices Argos did not in fact  
16 price at when the catalogue eventually came out.

17 A. Yes, I have heard that in the evidence.

18 Q. One of them, we have been told, is Interactive Pikachu,  
19 which was at £23.99; do you see that? So on 18th May  
20 you are being told that Interactive Pikachu, Argos has  
21 agreed it to go out at £23.99.

22 A week later, on 25th May, there is, we have seen,  
23 an e-mail from Mr Wilson to Ian Thomson and Mike Brighty  
24 in which Mr Wilson tells them that Argos have confirmed  
25 that Interactive Pikachu will be at £23.75, not £23.99,

1 for autumn/winter, and they asked him to advise Index  
2 accordingly.

3 Mr Thomson has said that he did that, and we find  
4 that in the catalogues, both parties have that price,  
5 at £23.75. Does that not suggest that somebody at  
6 Littlewoods was receiving this information, that it was  
7 relied on, and subsequently corrected through  
8 Mr Thomson? Does that not suggest that to you?

9 A. I am not in a position to talk particularly on that  
10 line, and it is probably something that needs to be  
11 clarified with Alan Burgess, but, as I understand it, we  
12 were already running Interactive Pikachu. We had it in  
13 the previous catalogue.

14 Q. Yes.

15 A. So there was already a market price set for that  
16 product.

17 Q. I think the RRP --

18 A. Which I think is what Argos were reacting to, so we  
19 already knew our price, we knew the price positioning,  
20 it was not something we would have needed an arrangement  
21 on.

22 Q. Yes, but if you had been told that Argos are pricing at  
23 £23.99, it would be important information if it should  
24 be decided by you that you would put your price up to  
25 £23.99, because at that price you will not be undercut.

1 A. Not necessarily. As I say, I find it difficult to  
2 comment on one product, but certainly, we had run that  
3 product and established a price on it in an earlier  
4 catalogue.

5 Q. We have also been told that the three others which went  
6 out on which Argos charged a price which was not RRP  
7 were Pokeball Blaster, Transforming Team Track and Rally  
8 Race Track, okay? I think in fact, from the document we  
9 saw this morning, but we can explore that later, one of  
10 those is not in fact the RRP; nevertheless, Littlewoods  
11 went out at these prices in the e-mail, on those three  
12 items?

13 A. I do not know. I cannot comment on the individual  
14 products.

15 Q. Yes. Well, you do say in paragraph 27, you do comment  
16 in your witness statement on whether these are or are  
17 not --

18 A. Yes, if I can refer to that, I can comment.

19 Q. It is paragraph 27.

20 A. Yes.

21 Q. You do comment there, and I think according to --

22 A. My comment is that Argos did not go with the prices as  
23 recommended in the e-mail, which is precisely how  
24 I suspected they would play it.

25 Q. Yes, but you certainly went out at those prices, that is

1 Littlewoods.

2 A. But that was not anything to do with an arrangement,  
3 that was our decision on our pricing.

4 Q. Yes. And in fact, one of them, I think it is the  
5 Pokeball Blaster -- we can go and check overnight --  
6 I think I saw a document this morning which suggested  
7 that the RRP on Pokeball Blaster was not £6.99 but  
8 £7.99, and Littlewoods went out at the price in the  
9 e-mail, rather than the RRP, but we will check that  
10 overnight.

11 Finally, let us just do -- because another point you  
12 make is that these prices are not RRP. You refer to  
13 three of the items which you say are not RRP, never mind  
14 whether Argos stuck to the agreement, you say there are  
15 three that are not RRP. One of them is Gardens Galore,  
16 which you deal with, which is £24.99, and you went out  
17 at £24.99, not £19.99. I beg your pardon, £19.99 is the  
18 price in the e-mail, and it tells you that it is not  
19 listed in Argos; do you see that?

20 A. Yes.

21 Q. If you go back to page --

22 A. Can I just respond on that one, please? My buyer made  
23 a genuine mistake there, and she had not picked up the  
24 change in the RRP and the change in the relevant list  
25 price of that product.



1 Q. Yes, well, if you look back to 4th May, there is  
2 an e-mail at page 89. Here is Mr Thomson with an e-mail  
3 to your colleague Karen Sobers, copied to  
4 Katharine Runciman:  
5 "Karen, I would like to confirm that Gardens Galore  
6 has been reduced in price to £13.67 and will retail at  
7 £19.99. The product has not been selected by your major  
8 opposition, so it will be an excellent margin  
9 opportunity."  
10 Do you see that?  
11 A. Yes.  
12 Q. The product was reduced to £19.99, and I understand it  
13 went out in your catalogue at £24.99.  
14 A. That is correct. The cost price had been reduced as  
15 confirmed there, but Katharine, the buyer, had failed to  
16 pick that up and made an error.  
17 Q. Benefiting from this extremely interesting information  
18 that it was not going to be carried by Argos or major  
19 opposition, you priced it not at £19.99 but at £24.99.  
20 A. No, that is not correct. Katharine failed to pick up  
21 the reduced cost price of £13.67.  
22 Q. But you are saying you did price it at £24.99, that was  
23 just a mistake.  
24 A. She failed to pick up the reduced cost price, so she was  
25 working on a higher cost price, so was obviously looking

1 to retail at a higher price, hence £24.99.

2 Q. Interactive Pikachu, we have dealt with that, that was  
3 also not charged at RRP, but there was an exchange of  
4 information about that.

5 There is one more, but perhaps we can deal with that  
6 tomorrow. We are at a good point anyway.

7 THE CHAIRMAN: We will bring proceedings to an end there,  
8 Mrs Paisley, but I have to ask you, please, now, while  
9 you are still giving your evidence, do not talk about  
10 your evidence or about the case --

11 A. No, I understand.

12 THE CHAIRMAN: -- to anybody else overnight.

13 A. That is fine.

14 MR GREEN: Can I just make one point? Some of the questions  
15 which were asked right at the very beginning of the  
16 cross-examination were designed to suggest that  
17 Mrs Paisley may have had discussions about her evidence  
18 with others. Can I just make sure -- I do not want it  
19 to be an issue, but they have all been given a very  
20 clear emphatic warning that their evidence is to be  
21 their own, it is not to be influenced by anything else,  
22 and they are to respond honestly to all questions.

23 THE CHAIRMAN: 10.30 tomorrow.

24 (4.30 pm)

25 (Hearing adjourned until 10.30 am the following day)

1	INDEX	
2		PAGE
3	MR IAN THOMSON (continued) .....	1
4	Cross-examination by MR BREALEY .....	1
5		
6	MR NEIL WILSON (sworn) .....	12
7	Examination-in-chief by MR DOCTOR .....	12
8	Cross-examination by MR BREALEY .....	15
9	Cross-examination by MR GREEN .....	48
10		
11	MR DAVID BOTTOMLEY (sworn) .....	50
12	Examination-in-chief by MR DOCTOR .....	50
13	Cross-examination by MR GREEN .....	51
14		
15	MR JOHN McMAHON (sworn) .....	75
16	Examination-in-chief by MR GREEN .....	75
17	Cross-examination by MR DOCTOR .....	76
18		
19	MRS LESLEY PAISLEY (sworn) .....	108
20	Examination-in-chief by MR GREEN .....	108
21	Cross-examination by MR DOCTOR .....	109
22		
23		
24		
25		