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1 Wednesday, 12th May 2004

2 (10.35 am)

3 MRS LESLEY PAISLEY (continued)

4 Cross-examination by MR DOCTOR (continued)

5 THE CHAIRMAN: Good morning, Mrs Paisley.

6 A. Good morning.

7 THE CHAIRMAN: You are still under oath.

8 A. Yes.

9 MR DOCTOR: Good morning. Mrs Paisley, we had reached the
10 stage yesterday when we were going through this e-mail,
11 perhaps we could just get it out again, it is at the
12 core bundle, page 91.

13 We had been through some of these prices; now
14 Mr Thomson says that he telephoned you and told you to
15 destroy this e-mail, and you said that you were
16 surprised that he had sent it, but that you would
17 destroy it, and would tell the other buyers to do the
18 same.

19 A. I do not recall the telephone conversation at all.

20 Q. Yes. You realised, did you not, at the time, that this
21 e-mail was highly incriminating and improper?

22 A. I do not believe they were the words I used. Certainly
23 I was very surprised to receive the e-mail, based on the
24 fact that I found it inconceivable that Argos would
25 commit their prices to Hasbro.

1 Q. Well, I am putting to you a different question. I am
2 putting to you that you did in fact regard the e-mail,
3 at least the contents of the e-mail, and the deal it was
4 describing as highly improper, and the fact that it had
5 been recorded in writing, you considered to be highly
6 incriminating.

7 A. That is not the case at all. I was very surprised at
8 the e-mail, I was surprised that Hasbro felt able to
9 confirm Argos' prices, and I was surprised that Argos
10 would ever confirm their prices to Hasbro.

11 THE CHAIRMAN: So the surprise was the fact that they had
12 confirmed the prices.

13 A. Yes, and that Hasbro felt able to confirm that
14 situation, yes.

15 MR DOCTOR: When you said to Mr Thomson that you were
16 surprised, I am putting it to you that the surprise you
17 were expressing was simply that he should have recorded
18 all of this in writing.

19 A. I do not actually recall the conversation, the telephone
20 conversation with Ian Thomson.

21 Q. We discussed yesterday that when you were interviewed by
22 the OFT on 16th October, you had said to them -- if you
23 want to get it out, it is just in the bundle in front of
24 you at tab 45. You had said to them:

25 "I did not see this e-mail as improper, I saw it as

1 a list of retail prices that Hasbro was recommending to
2 us. I do not remember if Ian Thomson asked me to delete
3 it."

4 So at that stage, you first of all denied that it
5 was improper; and all you said was that you thought that
6 it was a list of retail prices that Hasbro was
7 recommending. You did not mention at all either that
8 you had been surprised to receive it or that the
9 surprise was that Argos would commit to any prices of
10 that sort, did you?

11 A. I think I explained yesterday that the situation was
12 that the OFT arrived, I was asked to be interviewed by
13 the OFT, and I think my description yesterday was that
14 myself and my team were -- I think rabbits in headlights
15 was the way I described it.

16 THE CHAIRMAN: What did you mean by that exactly,
17 Mrs Paisley?

18 A. I think it was -- I suppose, in a very naive language,
19 it was quite a daunting situation for us. We were very
20 surprised by the situation, and we were obviously,
21 I suppose, quite concerned about being interviewed by
22 a government body, as anybody would be, and I think we
23 went through that yesterday, where I described how we
24 felt, and, of course, this was just a discussion
25 situation with the OFT, and I think I did talk about the

1 notes I had made in those discussion notes with the OFT
2 yesterday.

3 MR DOCTOR: Yes. Yesterday, what you said was, on the
4 record:

5 "I think the best way I can describe myself and my
6 team that day were rabbits in headlights. We were
7 suddenly visited by the OFT and asked to be
8 interviewed."

9 So the picture that you conveyed yesterday was of
10 a sudden visit, they asked to interview you, you were
11 put forward and had to be interviewed, and you were
12 caught, as it were, in the sudden glare, without time to
13 consider your position or to, as it were, catch your
14 breath and think about your responses; that is the
15 impression you gave yesterday, and it seems as if you
16 have repeated that today.

17 A. That is certainly not the impression I was trying to
18 create. Maybe I --

19 THE CHAIRMAN: Well, how would you qualify what Mr Doctor
20 said?

21 A. I do not think we were -- can you just repeat the words
22 you were using?

23 MR DOCTOR: I can only go by what you said:

24 "We were suddenly visited by the OFT and asked to be
25 interviewed."

1 That is the description you gave of the words
2 "rabbits in headlights". Rabbits in headlights, one has
3 the picture: the OFT show up, demand to interview you,
4 you are interviewed, you have not got time to think
5 about the situation, you are suddenly asked questions
6 about events several months earlier -- actually, a year
7 and a half earlier -- and you had no time to carefully
8 consider your response. That is the impression you gave
9 yesterday, and it looks to be --

10 A. Well, that is certainly not the impression I was trying
11 to create. I think the impression I was trying to
12 create was that it was a situation where obviously we
13 had never met with the OFT before, and obviously, that
14 was quite a daunting task for both myself and my team,
15 purely from the point of view that we were sort of,
16 I suppose scared is the best way I can describe it, of
17 the situation; not about the comments we would make or
18 what we would discuss, we were scared of the whole
19 situation.

20 Q. Mrs Paisley, the words you used were:

21 "We were suddenly visited by the OFT".

22 "Suddenly" sounds as if it happened without warning,
23 does it not? That is what you intended to convey
24 yesterday.

25 A. There was no intention to convey that. Certainly we

1 were aware the OFT were coming in, I apologise if that
2 is what I conveyed, but that was not the case. We were
3 aware that the OFT were visiting us.

4 Q. Let us in fact get the facts correct, and then we will
5 come back to what you said and the impression you tried
6 to create. The fact was that the OFT visited the
7 premises on 26th and 27th September, correct?

8 A. That is correct, but I was not present when they visited
9 our premises.

10 Q. On that occasion, they looked -- and were given
11 documents which they took away, leaving Littlewoods with
12 a copy, numbered and labelled, of each document that
13 they had taken, and I understand that the number of
14 documents did not amount to more than half a bundle. So
15 it was not as if they took away 3,000 files; they took
16 away a small number of documents, and they left a copy
17 of all these documents with Littlewoods, properly
18 labelled and numbered, correct?

19 A. I am not aware of having seen sight of the bundle.

20 Q. Well, if there is any dispute about it -- we can find
21 it -- someone else will correct me.

22 Littlewoods then offered the OFT certain officials
23 for interview, for voluntary interview. The interviews
24 took place about three weeks later, after the initial
25 visit, on 16th October, by arrangement, voluntarily, at

1 the invitation of Littlewoods, and three people were
2 chosen to be put forward by Littlewoods: yourself,
3 Mr Burgess -- oh I see, it may not have been that
4 Littlewoods chose the individuals, but three people --
5 the individuals were offered, and three people were
6 chosen, it may be that the choice was made by the OFT:
7 yourself, Mr Burgess and, I think, Mr Cowley.

8 A. Yes, I believe so.

9 Q. There was plenty of opportunity between the time that
10 the offer was made and the date at which the interviews
11 were arranged for you and your team to look at the
12 documents which had been taken by the OFT, and to
13 consider them, was there not?

14 A. I am not sure of the timings now. We were actually in
15 the Far East, and I cannot entirely recall when we came
16 back. Certainly we had sight of the documents.

17 Q. The date that was chosen was not a date which was forced
18 upon Littlewoods by the OFT, it was a date chosen at
19 mutual convenience for both parties.

20 A. Yes, I believe so.

21 Q. You had had plenty of time, if you wanted it, to
22 consider the documents, consult with both your
23 colleagues, your lawyers -- that is in-house and your
24 external lawyers, if you wanted to do that; all of that
25 could have taken place before the interviews, correct?

1 A. From a time perspective, yes. I mean, certainly we did
2 not consult with external lawyers, we had our internal
3 lawyers.

4 Q. And indeed, your interview was attended by your internal
5 lawyer, Mr Greenaway.

6 A. That is correct, yes.

7 Q. I understand -- we can find out -- that there is
8 a possibility that the other two interviews were
9 actually attended not only -- oh, just Mr Greenaway,
10 right. So the suggestion that the answers you gave on
11 that occasion were answers given in a condition where
12 the OFT had suddenly visited, had asked to interview
13 you, and you had been caught like rabbits in headlights,
14 is, with great respect, very misleading.

15 A. I was not intending at all to be misleading. What I was
16 trying to describe was the way we were feeling that day.
17 Whether there was notice, which there was, I agree, it
18 was still quite a scary situation, and I -- as a layman,
19 not a legal professional, or understanding of the OFT,
20 I can only describe it as it was. But yesterday,
21 I would like noted on the record I was not trying to
22 mislead at all, I was trying to give a picture of how we
23 felt.

24 THE CHAIRMAN: And how you felt was scared?

25 A. Yes.

1 MR DOCTOR: And what you were trying to convey yesterday was
2 that there was a reason why the answers you gave on that
3 occasion were not the same as the answers you gave on
4 this occasion. On that occasion, you had simply said
5 you did not consider the e-mail to be improper; on this
6 occasion, you say (a) you were surprised to receive it,
7 and (b) you did not think it had any credibility, that
8 Argos would confirm their prices in that way. You were
9 trying to explain why you had given a different version
10 on that occasion.

11 MR GREEN: I am sorry to interrupt --

12 MR DOCTOR: Well, it is a matter of argument.

13 MR GREEN: No, there is a point here, which is that the
14 transcript -- it is not a transcript, it is a note of
15 a discussion. For example, and I do not know whether
16 this happened or not, the witness has been asked about
17 this word "improper"; it is not clear whether there was
18 a question put to her, for example, "Did you think this
19 was proper or improper?" We do not know what exactly
20 was said at the meeting. This is just a note of the
21 discussion.

22 If a great deal is going to be attached to the use
23 of a particular word, or the absence of a particular
24 word, it would have been better if we had had a full
25 transcript. That is the only point I wish to make.

1 THE CHAIRMAN: Well, we do not have a full transcript,
2 Mr Green. At the moment, what we have is a note which
3 says:
4 "LP: I did not see this e-mail as improper, I saw it
5 as a list of retail prices that Hasbro was recommending
6 to us. I do not remember if Ian Thomson asked me to
7 delete it."
8 I think you have said, Mrs Paisley, but correct me
9 if I am wrong, that that is what you did say on this
10 occasion, that is to say on 16th October, but your
11 explanation is that you were feeling scared at the time.
12 A. Yes.
13 THE CHAIRMAN: And that is how it came out on that occasion.
14 A. Yes. I do recall though that the word "improper" was
15 actually used by the OFT. That was not my word, I was
16 asked, "Did you believe the e-mail was improper?"
17 THE CHAIRMAN: So this is in response to the question -- as
18 far as you can tell us now -- "Did you believe this was
19 improper?"
20 A. The question asked was actually --
21 THE CHAIRMAN: And you replied, "No, I did not see this
22 e-mail as improper"?
23 A. Yes, but I was not trying to mislead the tribunal at
24 all, I was trying to explain my feelings of the
25 situation at the time.

1 MR DOCTOR: So you were actually asked the question, you
2 say, "Did you consider this to be improper?", and you
3 told the OFT on that occasion that you did not consider
4 it to be improper, although you said yesterday that you
5 do consider it to be improper.

6 THE CHAIRMAN: Did she say that yesterday?

7 MR DOCTOR: Yes.

8 A. I do believe that was the question that was asked to me,
9 the word "improper" was used by the OFT, yes.

10 Q. But yesterday you told us that it is your opinion that
11 this e-mail is improper -- we have been through this --
12 that Hasbro should be telling you this highly
13 confidential information, apparently from a competitor,
14 and you said yesterday that your view was that it is
15 improper, but on that occasion you told the OFT that you
16 did not think it was improper.

17 A. And as I explained yesterday, I was trying to describe
18 the situation I felt, the feelings I had that day, and
19 the environment I was in.

20 Q. I am going to suggest to you that when you were
21 preparing for this meeting, this is obviously one of the
22 e-mails, one of the documents that you would have
23 discussed both with your colleagues and with your
24 lawyers, because it stands out from the rest of the
25 e-mails quite dramatically, does it not?

1 A. I do not recall any major discussion about any of the
2 documents. I would need to check that with our company
3 solicitor and my colleagues, but I actually do not
4 recall any major discussions.

5 Q. And if this e-mail, if at the time it was received, that
6 is on 18th May 2000, if at that stage you or any of your
7 colleagues had been surprised in the way you now suggest
8 you were surprised to have received it, I suggest that
9 the general reaction of both you and your colleagues
10 would have been entirely different from the reaction
11 that has been conveyed in the witness statements and in
12 your evidence, which is just that you shrugged it off
13 and thought this lacked credibility.

14 A. My reaction is as I described it yesterday. I deal with
15 approximately -- probably about 300 suppliers, and they
16 all like to talk about the fact that they believe Argos
17 will go at recommended retail prices. But the reality
18 is we have to look at it in a global perspective and
19 understand that that is what suppliers like to say, and
20 so hence my treatment of this was the same incredulous
21 reaction that I would have to anything else.

22 Q. So now you are saying that all suppliers tell you that
23 Argos is going to go out at certain prices?

24 A. No, I said that all suppliers like to believe that they
25 can advise us that Argos will go out at their

1 recommended prices.

2 Q. They like to believe it because they do it, they all
3 tell you that Argos is going to go out at certain
4 prices.

5 A. Sorry, could you repeat that?

6 Q. Yes. The gist of what you are telling the tribunal now
7 is that all suppliers like to tell you, because they do
8 it, that Argos are going to go out at certain prices.

9 A. No, that is not at all what I said. What I was saying
10 was that suppliers like to make reference to the fact
11 that Argos may go out at their recommended retails.

12 Q. Have you ever received an e-mail in which a supplier has
13 told you the price, the exact price at which Argos is
14 going to go out?

15 A. No.

16 Q. In which it is stated that Argos is going to continue to
17 adhere to an arrangement in connection with two lines,
18 core games and Action Man, as previously.

19 A. You mean apart from this situation?

20 Q. Yes.

21 A. No.

22 Q. Ian Thomson also says that when he phoned you, you
23 expressed surprise. He said you did not clarify what
24 your surprise was, but he believed it was due to the
25 fact that he had put the agreement in writing.

1 He also says:

2 "Mrs Paisley did know that the initiative had taken
3 place on the extended products, because I had told her
4 in one of my meetings in Index previously."

5 A. I am not aware of any such meeting, and I do not believe
6 Mr Thomson is able to clarify when this meeting was,
7 which would enable me to actually try and recall the
8 meeting, but I do not recall any such meeting.

9 Q. And that is why you destroyed your copy of this e-mail.

10 A. No, I destroyed my copy of the e-mail because it was not
11 a relevant document, it did not have any interest to me,
12 and I did not believe it.

13 Q. Right. Now let us go back a bit. There was a meeting
14 which was held at your premises which Mr Thomson has
15 described in either late 1998 or early 1999 at which the
16 1999 business plan was presented to Index; do you recall
17 that?

18 A. No, I do not.

19 Q. He says that you were present at that meeting, but you
20 say in your witness statement that you cannot recall
21 whether you were present or not.

22 A. That is correct, I do not recall that meeting.

23 Q. So you would not have any recollection about what took
24 place there?

25 A. No.

1 (11.00 am)

2 Q. I am going to put it to you that you were present at a
3 meeting in which, such as described by Mr Thomson,
4 Mr McCulloch and Mr McMahon exchanged words to the
5 effect that when they presented their new plan whereby
6 retailers would go out at certain recommended prices,
7 there was a concern expressed by Index that if they went
8 out at these prices, if they complied with this
9 initiative, how could Hasbro make other retailers do the
10 same thing?

11 Of course, Argos was seen as the direct threat to
12 this; in other words, if Index went out in line with the
13 new plan at RRP, and Argos and other retailers did not
14 do it, Index would be left with the highest prices in
15 the market, and that was the concern that was expressed;
16 does this ring any bells with you at all?

17 A. I do not recall the meeting at all. In fact, I have
18 tried to look back in records and understand where
19 I was. Of course the initial difficulty is
20 understanding the actual date of the meeting. I think
21 Mr Thomson alluded to the fact that he thought it was
22 around 13th November. Mr Bottomley yesterday thought it
23 was January or even mid February, and the documents we
24 have submitted have a date on the front of 5th November.

25 I have worked on the basis of 5th November, and

1 because I was out of the business for most of 1998 on
2 maternity leave, I have checked my son's medical records
3 to try and understand if I was with him that day; I have
4 actually checked my dental records and my medical
5 records. I did not have a doctor's appointment or
6 a dentist's appointment that day, and I only worked
7 part-time at that time of the year, I came back
8 initially to the business on four days a week, so I have
9 tried to clarify that.

10 But the difficulty I have is the fact that we do not
11 actually know the date of the meeting. The other thing
12 that I have looked at is I keep the majority -- well,
13 I keep actually all documents, and particularly
14 suppliers' presentations, and I have supplier
15 presentations relating to Hasbro going back to 1997,
16 which the OFT did take, and obviously have viewed, but
17 I do not have the particular plan that was presented at
18 that meeting, and that I find strange, because I do keep
19 those documents.

20 THE CHAIRMAN: Do you have a work diary, Mrs Paisley?

21 A. No, I am sure -- I will have done in 1998, but
22 unfortunately I no longer have it.

23 THE CHAIRMAN: Thank you.

24 MR DOCTOR: At that meeting after this concern was
25 expressed, Mr McCulloch had said that he had been having

1 discussions with the major competition, and they were of
2 the same opinion, that is they could not agree to the
3 new price structure for fear of being undercut. It
4 needed the agreement of both, but if Littlewoods would
5 agree to go along, Mr McCulloch said he was confident he
6 could persuade Argos to do the same thing.

7 A. I can only repeat, I was not at that meeting, I have no
8 recollection of anything the counsel is talking about.

9 Q. Then Mr McMahon said that Index would go along with the
10 plan, but if Argos reneged on the plan, and did not
11 stick to the RRP's in the pricing initiative, Index would
12 be disadvantaged and in the next catalogue they would do
13 some serious price cutting?

14 THE CHAIRMAN: I am sorry, was that a question?

15 MR DOCTOR: Yes, perhaps I should just give the witness the
16 opportunity -- that is what was said at this meeting?

17 A. I do not believe I was at the meeting.

18 Q. In your witness statement at paragraph 21, tab 46, you
19 recount an incident shortly before the receipt of the
20 e-mail of 18th May 2000 which was, you think, on
21 2nd May 2000. You said:

22 "What happened was rather strange. In the middle of
23 the meeting, Mike McCulloch, who was not involved in the
24 meeting itself [but he is the one who was at the
25 previous meeting] suddenly entered the room. He

1 remained only for a few minutes, perhaps for five to ten
2 minutes. He came in apparently to say 'hello' for
3 reasons of courtesy. I cannot now remember the exact
4 words he used. But he observed that Hasbro's
5 recommended retail prices had been followed in the
6 previous season. He thought that that was a good
7 situation and said that they would be recommending
8 prices in the future. I was puzzled at this, because we
9 would already have received recommended prices on the
10 lines we had selected for the autumn/winter catalogue.
11 I just said words to the effect that that was fine, and
12 that I did not have any problem with him recommending
13 prices, after all Hasbro had done this in the past, as
14 had other suppliers. What I meant by this was that
15 I would in the usual way look at his recommended prices
16 and consider whether they were the appropriate prices
17 for the value that the products represented. I did not
18 say any more than that. I certainly did not agree to
19 adopt the recommended retail prices. It would all
20 depend on the value that the product represents.
21 I certainly gave no commitment to adhere to the two
22 recommended retail prices and Mike McCulloch did not ask
23 for any such commitment.

24 "I remember thinking at the time that his
25 intervention into the meeting was slightly odd. I then

1 forgot about this incident."

2 Mrs Paisley, Mr McCulloch's comment would have been
3 entirely consistent with the arrangement such as
4 Mr Thomson has described. McCulloch comes into the room
5 and says, "As you can see, people have stuck to the
6 retail prices".

7 A. Sorry, you --

8 Q. I said the comment that he made is entirely consistent
9 with what Thomson says took place earlier, and I am
10 going to suggest to you that when you heard
11 Mr McCulloch's words on that occasion you did not regard
12 them as strange, but you yourself understood them to
13 mean that he was referring back to this arrangement
14 which you knew existed between Index and Hasbro.

15 A. Okay, first of all, I was not aware of any such
16 arrangement, I was not at the meeting in 1998, which
17 I assume is -- when you said Mr McCulloch's previous
18 statement, you are referring to the meeting two years
19 earlier?

20 Q. Yes.

21 A. That is not the case, I was not at that meeting, I was
22 not aware of any such arrangement, and as recalled in my
23 statement is how this situation happened on
24 2nd May 2000.

25 Q. Well, you see, if he made this rather strange comment,

1 presumably you would have asked one of your colleagues,
2 "Do you know what this chap is talking about?" You do
3 not recount any such -- you say you just forgot about
4 it.

5 A. We were sat in a meeting to discuss logistics. There
6 was no reference there to the actual product side of the
7 business. I was there purely as a supplier contact with
8 our logistical and merchandising people. Mr McCulloch
9 simply came into that meeting, it was not a specific
10 meeting with him, he was not due to be there.

11 THE CHAIRMAN: Do you have any impression as to why he came
12 in?

13 A. I think he came in mainly out of courtesy, because I was
14 there at Stockley Park, and I was also with a more
15 senior member of the Index team, the head of
16 merchandising. I think he came in initially out of pure
17 courtesy, to say hello, because we were there, as
18 I would expect him to do.

19 MR DOCTOR: Three weeks later, on 18th May, you get this
20 strange e-mail, or this e-mail that you now say you
21 thought was strange, and still you do not -- the one
22 thing that is missing from all of this is that you do
23 not go to any of your colleagues and say to them, "What
24 on earth is going on? Why does McCulloch make these
25 strange statements? Why are they sending us these

1 peculiar e-mails, talking about abiding by agreements
2 and adhering to prices? What is going on here?"

3 The reason I am putting to you why none of this
4 happens, why you do not respond in this way, is because
5 on each of these occasions this is precisely what you
6 understand should be happening.

7 A. That is not correct. At the time, I did not associate
8 the two situations, and it was not until we came to make
9 the actual statements, and obviously I felt it was
10 appropriate that I put some reference in to that
11 meeting, and that was in there.

12 I mean, now, as I say in my statement, there could
13 have been an association, but at the time I did not make
14 that, and I certainly have no record or any
15 understanding of any arrangement with Hasbro that would
16 have led me to believe that that was the situation.

17 MR DOCTOR: I have no further questions.

18 THE CHAIRMAN: Can I just ask you, Mrs Paisley, I think you
19 told us, going back to the e-mail for a moment, that you
20 destroyed your copy of the e-mail because you said it
21 was not a relevant document, and you did not believe it.

22 A. Yes.

23 THE CHAIRMAN: Can you just remind us when you deleted your
24 copy of the e-mail?

25 A. I do not know, if I am honest. I get approximately --

1 probably about circa 100 e-mails a day, and purely from
2 a logistical point of view, we have 10 megabytes in our
3 inboxes, and I am deleting e-mails constantly, because
4 if I do not it stops the incoming of e-mails in
5 totality. I could not tell you precisely when I deleted
6 it.

7 MR DOCTOR: Well, can I ask a further question arising out
8 of that, sir? The conversation in which Mr Thomson
9 asked you to delete the e-mail would have taken place
10 about two days after you had received it, because
11 Mr Brighty told him to phone you straight away, and
12 Mr Thomson said that when he received the e-mail from
13 Mr Brighty, pointing out that it was all illegal, he had
14 phoned you and asked you to delete it.

15 So at that stage, you would not have -- you earlier
16 had suggested that you did delete it in response to his
17 request, and by that stage, your 10 megabytes of memory
18 would hardly have been the reason why you would delete
19 an e-mail from one or two days earlier.

20 A. Sorry, you said that earlier I had said I deleted the
21 e-mail at his request?

22 Q. Yes.

23 A. I do not believe I did say that.

24 MR DOCTOR: Well, we will have to look at the record for
25 that.

1 Re-examination by MR GREEN

2 MR GREEN: Let me just clarify the last point. I only have
3 a couple of things. Just explain precisely what your
4 position is in relation to the deletion of the e-mail.
5 Was it in response to Mr Thomson's request, was it
6 routine or whatever?

7 A. First of all, I do not recall the conversation. I did
8 not delete the e-mail in response to Mr Thomson's
9 request, I deleted the e-mail in line with my normal
10 administrative processes I have with my PC.

11 Q. Okay. Just a couple of things, please. On the
12 interview that you had with the Office of Fair Trading
13 on 16th October, which is at tab 45, would you please go
14 to that? You have been asked a large number of
15 questions about this.

16 If you turn to page 343 of the bundle, which is the
17 third page in --

18 THE CHAIRMAN: Sorry, Mr Green?

19 MR GREEN: 343, third page in. I just want to ask you about
20 a sentence at the top, first of all. Do you see in the
21 second line:

22 "I can categorically ..."

23 Do you see that? Second line down from the very
24 top.

25 A. Yes.

1 Q. "I can categorically state that we do not have any
2 co-operation or dialogue with Argos."

3 Now if you turn back, there does not appear to be
4 any question there.

5 A. No.

6 Q. First of all, can you confirm that that is an accurate
7 reflection --

8 THE CHAIRMAN: What is the question, Mr Green? We have to
9 be very careful at this stage about leading.

10 MR GREEN: I would like her to just simply confirm that some
11 of the other statements made here are, so far as she is
12 concerned, accurate, because they are relevant to
13 understanding the line of questions that was put to her,
14 so I wanted to confirm simply the accuracy of the
15 statement.

16 THE CHAIRMAN: Well, the question, "Is that statement
17 accurate?", is not a leading question, but the question,
18 "Can you confirm that the statement is accurate?", may
19 be more leading than the first way of putting it.

20 MR GREEN: Is it accurate? First of all, do you recollect
21 a question being put in advance of this answer?

22 A. It is really difficult to actually recollect, because
23 the questions were omitted from the discussion notes --
24 obviously it is not my handwriting, it was the OFT
25 making the notes. But certainly, I would have made that

1 statement that categorically I did not have any
2 co-operation or dialogue with Argos.

3 Q. If you look down the page, there is a statement:
4 "SH: Has Hasbro ever asked you ..."
5 That is about 10 or 15 lines down, do you see that?

6 A. Yes.

7 Q. "... to put your prices up to their RRP?
8 "LP: Hasbro has never ..."
9 Is that your writing?

10 A. Correct. That is my writing above, yes.

11 Q. Sorry, that is your writing, or is it not?

12 A. "To my knowledge" is my writing.

13 Q. Do you know what the word is which has been deleted?
14 Maybe it is not deleted, I cannot really --

15 A. I cannot read it, I am afraid.

16 Q. Would you just like to read the statement as you
17 understand it, and state whether it is accurate or not?
18 "Hasbro has never", that bit.

19 A. "Hasbro has never to my knowledge asked us to raise
20 prices to their RRP level."
21 That is accurate, that was my statement.

22 Q. Finally, at the bottom, three lines down:
23 "Would Hasbro have been aware of the margins Index
24 were looking for?
25 "LP: No, our margin decisions are made on a range of

1 products."

2 Is that accurate?

3 A. That is accurate. Hasbro could deduce obviously the

4 margins we were making on their products, but they could

5 not deduce the margin we were looking at on the range of

6 products.

7 Q. Finally, you stated that you deal with -- I think you

8 said over 300 or approximately 300 suppliers?

9 A. I now deal with more, but at this time, yes, it was.

10 Q. And you said that suppliers are likely to tell you that

11 Argos might go out at their RRP's. Do you believe them?

12 A. No, we do not.

13 Q. Why?

14 A. Because they have been proved wrong so many times.

15 MR GREEN: Thank you, I have no further questions.

16 THE CHAIRMAN: Mrs Paisley, just so that we are clear, as we

17 look through this note, you have made one or two

18 corrections here and there, we have just spotted one,

19 I think there is another one on the next page.

20 A. Yes.

21 (11.15 am)

22 THE CHAIRMAN: I cannot quite see --

23 A. I have changed the word "I" to "Peter Edmonds", and

24 I have changed the word "me" to "Peter".

25 THE CHAIRMAN: And then we see you have added a comment at

1 the bottom in your own writing, and then you have signed
2 it.

3 A. Yes.

4 THE CHAIRMAN: Can we take it from that that you did read
5 through this note?

6 A. Yes, I did read through the discussion notes.

7 THE CHAIRMAN: And made the corrections that you felt you
8 needed to make?

9 A. Correct. I think the difficulty at this stage is in
10 some cases, the OFT have put in the questions, and in
11 some cases, they have not, and that makes it a little
12 difficult to recall.

13 THE CHAIRMAN: Yes, thank you.

14 MR DOCTOR: May I just --

15 THE CHAIRMAN: It is a bit late now, I think, Mr Doctor.

16 MR DOCTOR: Well, the witness has led completely new
17 evidence about questions being asked in relation to
18 these answers, and I can just clarify something -- if
19 one just goes one page back, one will see what actually
20 happened. I only have 278 on the right, I do not have
21 a number at the bottom.

22 MR GREEN: 342.

23 Further cross-examination by MR DOCTOR

24 Q. You said that in relation to the top of the next page,
25 "I can categorically say we did not have any

1 co-operation or dialogue with Argos", you said you were
2 asked a question; in fact, what you were doing was you
3 were commenting on a document. If you go one page back:

4 "LP was referred to PJ064, a handwritten note of
5 Alan Cowley, in particular paragraph 5 of page 3."

6 I can identify that document, perhaps I will just
7 show it to you. (Handed). It is in the bundle, which
8 has been a bundle in the past, one of the section 27
9 documents, but that is the document that you were
10 commenting on; correct?

11 A. That is correct. And I think that demonstrates the
12 difficulty I am talking about, where I am -- it is hard
13 to remember whether I was actually responding to
14 a question or responding to a document, and obviously
15 now we are looking back three years ago.

16 Q. So perhaps that document had better be an exhibit in
17 this case.

18 THE CHAIRMAN: Where is it? Is somebody going to produce
19 it?

20 MR DOCTOR: It is one of the documents which was taken --
21 I referred earlier to a bundle of documents which was
22 taken that day, which I said was less than half
23 a folder. This is it, and that is the document that is
24 referred to as PJ064. We will get copies made and it
25 will become exhibit A or something.

1 THE CHAIRMAN: Yes. Having now asked that, I am sorry to
2 keep Mrs Paisley --

3 A. No, that is okay, no problem.

4 THE CHAIRMAN: There is one other thing. I do not want to
5 start a hare running. If we just look at the sentence
6 you have taken us to, that you can "categorically deny
7 we did not have any co-operation or dialogue with
8 Argos", after that, there is something in brackets. You
9 go on to say:

10 "I think he was referring to the fact that we can
11 now get details of Argos' listings from our mutual
12 suppliers. Previously, Argos had not made known what
13 its listings (products selected from the catalogue) were
14 going to be, but recently they have. We have always
15 given our listings to suppliers."

16 What are you referring to there?

17 A. Listings are basically the items we have selected for
18 a catalogue, and as catalogue showroom companies, we
19 have to obviously confirm our listings to suppliers in
20 advance, because we have to prepare estimates and
21 forecast sales, and obviously, we have to move
22 an element of that estimate into our warehouses.

23 THE CHAIRMAN: Yes. So you are saying that you can now get
24 from the people who are supplying you details of Argos'
25 listings.

1 A. Yes, and we discussed that yesterday, I confirmed
2 yesterday that we would know what Argos had listed in
3 their catalogue.

4 THE CHAIRMAN: And what is comprised in the word "details"?

5 A. Oh, simply just the product.

6 THE CHAIRMAN: I see, thank you. Yes, no examination from
7 Argos?

8 MR BREALEY: No, thank you.

9 THE CHAIRMAN: I think that is the end of your evidence,
10 Mrs Paisley, thank you very much.

11 (The witness withdrew)

12 MR BREALEY: I do not know whether the chairman wants to
13 have a break, or we can start, I think, Mr Duddy --

14 THE CHAIRMAN: Well, we did not start until 10.40, and it is
15 now only 11.20, so I think it is a little early for the
16 break, if the shorthand writers are happy to go on for
17 a bit.

18 MR BREALEY: I have asked Mr Doctor whether he is prepared,
19 in all senses, to cross-examination Mr Duddy and
20 Maria Thompson, and he is, so Argos' first witness is
21 Mr Duddy.

22 THE CHAIRMAN: You need to switch your microphone on,
23 Mr Brealey.

24 You are happy with that, are you, Mr Doctor?

25 MR DOCTOR: Yes, I am.

1 THE CHAIRMAN: So we are now going to interpose two Argos
2 witnesses, as I understand it.

3 MR TERENCE DUDDY (sworn)

4 Examination-in-chief by MR BREALEY

5 THE CHAIRMAN: Mr Duddy, do sit down. Thank you for coming.

6 MR BREALEY: I think you are going to be passed witness
7 statement bundle 1, and we need to go to two tabs. We
8 need to go to, first of all, tab 13, that should be
9 page 62, and if you go three pages on to page 64, is
10 that your signature?

11 A. It is.

12 Q. Then if we go a bit further on to tab 22, page 207, that
13 is your second statement, and then go to the end of that
14 document, to page 211, is that your signature?

15 A. It is.

16 Q. Can you confirm to the tribunal that the contents of
17 both statements are true?

18 A. They are true.

19 THE CHAIRMAN: Thank you.

20 Cross-examination by MR DOCTOR

21 MR DOCTOR: Good morning, Mr Duddy.

22 A. Good morning.

23 Q. You joined Argos as the CEO in September 1998.

24 A. Correct.

25 Q. And before that, you had worked for Dixons Group, and

1 after that, PC World.

2 A. I did.

3 Q. So are you familiar with the annual pattern of the
4 publication of catalogues by Argos?

5 A. I am now familiar. At the time, I was not.

6 Q. There are two catalogues every year, one for
7 spring/summer, one for autumn/winter.

8 A. I understand that now.

9 Q. And the typical autumn/winter catalogue is published in
10 late July, with pricing finalised in about May at the
11 latest?

12 A. That is correct.

13 Q. A similar process takes place six months later for the
14 spring/summer catalogue.

15 A. That is correct.

16 Q. With pricing finalised in about November.

17 A. That is correct.

18 Q. So when you arrived at Argos in September 1998, the
19 pricing discussions were already underway for the
20 spring/summer 1999 catalogue.

21 A. They were.

22 Q. And they were finished by about November 1998.

23 A. Yes.

24 Q. Right. Now in your witness statement, your first
25 witness statement, at paragraph 7, and at paragraph 10,

1 you use a phrase about having to move to a market
2 pricing position; that is the phrase you use in
3 paragraph 7:

4 "On prices, we had to move to a market pricing
5 position."

6 In paragraph 10, you use the phrase, at the last
7 sentence:

8 "This is a reference to the new pricing policy of
9 moving to market pricing."

10 And you exhibit a number of documents which you say
11 show this move of Argos to market pricing, and I would
12 like to have a look at some of these documents with you.

13 Now, they start with a report that you drafted in
14 November of 1998.

15 THE CHAIRMAN: Where are we, Mr Doctor?

16 MR DOCTOR: That is at tab 14 in the same bundle, and they
17 go on up to -- the last document is Argos 1999/2000
18 budget commentary, which is at tab 21.

19 THE CHAIRMAN: Yes.

20 MR DOCTOR: Those documents are exhibited by you to your
21 statement, mainly with a view to showing this policy of
22 moving to market pricing; correct?

23 A. That is correct.

24 Q. The proposals, that is the proposal of moving to market
25 pricing, this remains the same throughout these

1 documents.

2 A. That is correct.

3 Q. They are all illustrating the same thing, the same move
4 to market pricing.

5 A. The documents in general illustrate a broad number of
6 activities that were taking place, starting in 1998, all
7 of which were about making change within the Argos
8 business and improving the Argos business. As part of
9 that, market pricing was one of a number of activities
10 in which we were involved.

11 THE CHAIRMAN: What do you mean by market pricing, Mr Duddy,
12 in your mind?

13 A. By market pricing, what I mean is the prevailing market
14 price, that is at the time the catalogue would go out.
15 Clearly it is a situation where pricing, as has already
16 been mentioned -- final pricing takes place in November,
17 and buyers in that part have to take an estimate of what
18 they believe the price of that product will be at the
19 time that the catalogue is issued, and partly for the
20 time the catalogue will exist, and they make that
21 estimate based upon market information that they have
22 and their intuition.

23 THE CHAIRMAN: Yes, thank you.

24 MR DOCTOR: Right. I think I am going to take you through
25 these documents, because they illustrate essentially

1 what you have said, but they also illustrate something
2 which is, I think, conveyed in your statement, which
3 I disagree with.

4 Moving to market pricing does not mean increasing
5 the prices, does it?

6 A. Moving to market prices may or may not mean increasing
7 the prices.

8 Q. Yes. It means going to where the market is, whether
9 that be up or down; it can include increasing the prices
10 and decreasing the prices.

11 A. When I use the term "moving to market prices", I am
12 comparing circumstances where Argos had previously
13 pre-empted the market price, and by that, they had
14 priced below what I thought was the average market price
15 for those products, and by moving to market prices, what
16 I mean was that in circumstances where we were actively
17 pre-empting those prices, that we would move to a market
18 price for those products.

19 THE CHAIRMAN: So when you say they pre-empted those prices,
20 you mean charged less than what you thought was the
21 market price.

22 A. Charged less than the price that I thought was the
23 reasonable market price. However, market price could be
24 up or it could be down.

25 THE CHAIRMAN: So if you were above the market price, what

1 then?

2 A. If we were above the market price, my expectation would
3 be that the buyers would move the prices down.

4 THE CHAIRMAN: I see.

5 A. I think you see it in the documents, that we talk about
6 selective pricing, and some prices were put down and
7 some prices were put up.

8 THE CHAIRMAN: Yes, thank you. Sorry, Mr Doctor.

9 MR DOCTOR: Yes. The market consists of all the players in
10 the market, those who sell a particular item, does it
11 not?

12 A. Yes.

13 Q. So if an important player in the market has a price
14 which is lower than other prices, essentially that
15 establishes the market price, does it not?

16 A. Not necessarily.

17 Q. How would you establish a market price without taking
18 into account the price of one of the major players in
19 the market?

20 A. We would take into account all the prices that were
21 available in the market, as wide a sample as we could
22 obtain, and therefore, we had knowledge of many prices,
23 so that our circumstances, where competitors would go
24 out with a market price -- with a price that we knew was
25 below the market, they would do it for a promotional

1 period, and then return to a higher price.

2 So when competitors take prices down, they do not
3 always stay down. They take prices down in promotion
4 and put prices back up, so at times we have to ascertain
5 what we think is the prevailing market price.

6 THE CHAIRMAN: Yes, Mr Doctor, you wanted to go to these
7 documents?

8 MR DOCTOR: I think we can shorten this somewhat in view of
9 the answers that have been given, but let us go to
10 tab 19; this is a document with your name on the front
11 of it. It is a position paper or a report that you have
12 prepared. Can you say what the date is?

13 A. The document which I have is not dated.

14 Q. It is a budget presentation.

15 THE CHAIRMAN: Can you put a date on it, Mr Doctor?

16 MR DOCTOR: Yes, I think I can. It is a budget presentation
17 to the GUS executive committee. I think it is some time
18 early in 1999. It is January 1999, 11th January. It is
19 referred to in your witness statement at paragraph 11.

20 A. Mm.

21 Q. If you go to page --

22 THE CHAIRMAN: I think it is 18th January.

23 MR DOCTOR: 18th January. If you go to page 173, here we
24 have a good description of the policy of market pricing,
25 which is:

1 "Match key competitors, including Index.

2 "Selective selling price increases.

3 "Selective price cutting on high-profile products."

4 So this would be a good summary, would it not, of
5 your policy of moving to market pricing?

6 A. It is a summary, yes, of market pricing, and could be
7 viewed as that, but actually, this document is meant to
8 describe a number of different actions which have been
9 taken throughout a budget period, and not solely talking
10 about the definition of what market pricing would be.

11 THE CHAIRMAN: Yes.

12 A. So this document relates to the whole issue of margin
13 management, of which these are a number of actions which
14 may be taken, of which market pricing would be one of
15 them.

16 MR DOCTOR: Yes. Well, we have not yet got on to margin
17 management --

18 A. I would just like to refer -- the document does refer to
19 margin management.

20 Q. Indeed, and one of the aspects of margin management is,
21 according to you, moving to market pricing, which would
22 be to match key competitors, including Index, selective
23 selling price increases; and selective price cutting on
24 high-profile products.

25 The last one suggests that you might continue with

1 the policy of cutting prices on high-profile products,
2 even if they are below what you say is the market price,
3 does it not?

4 A. The total activity which we -- I am not quite clear of
5 the question, so maybe you could --

6 Q. Market pricing, you have already agreed, includes going
7 up and going down in order to try and meet whatever the
8 market is, that is your competitors, but this suggests
9 that in addition, there might be a separate treatment of
10 high-profile products on which you might consider
11 selective price cutting, precisely because they are
12 high-profile products, even if that is, as it were,
13 below what your competitors are expected to price at.

14 A. Perhaps I could answer in this way.

15 THE CHAIRMAN: Yes.

16 A. This document deals with margin management. When
17 I arrived in September 1998, there were a number of
18 activities that were already embarked upon in terms of
19 increasing prices on products and moving to market
20 pricing.

21 I do not believe as a business that we could embark
22 on that as a sole action, we had to embark on a number
23 of actions in order to manage our margin and take
24 a number of actions which were combined. Some of them
25 would be where we could selectively increase pricing,

1 where I thought discounts were too high; others could be
2 where we could lower prices.

3 So towards November 1998, which is prior to this
4 document, but actually is the start of what was the
5 preparation for this as a budget document in
6 January 1999, there would be a full round of activities
7 which involved providing entry price point products,
8 which this would refer to; promotional activity, which
9 would be about whether we could take prices down for
10 a while or reduce prices; and where we would include
11 market pricing. So this document relates to all of the
12 issues of margin management.

13 THE CHAIRMAN: And of those, in relation to market pricing,
14 does market pricing include each of these three things
15 that you have listed here: matching selective price
16 increases or selective price cutting, or do you use the
17 words "market pricing" in some other sense?

18 A. Well, market pricing, as I have described, is the
19 prevailing market price. If we are trying to define it
20 exactly in two sentences, and it is difficult to do --

21 THE CHAIRMAN: Of course.

22 A. -- and to understand that. Therefore it would be
23 matching key competitors and it would be selective price
24 cutting; or selective selling price increases.

25 THE CHAIRMAN: Yes. In other words, you -- yes.

1 MR DOCTOR: If you go to your second witness statement,
2 which is at tab 22, you deal again with this policy of
3 market pricing, about halfway down; paragraph 9,
4 page 210.

5 I just want to concentrate on this phrase, we will
6 come to the occasion itself later:

7 "... Argos would move to market pricing or 'pricing
8 on the market'. Argos would no longer pre-emptively
9 reduce prices in an effort to be absolutely the lowest
10 price retailer in the High Street. Argos would look to
11 price competitively, bearing in mind the prices charged
12 by its major competitors such as Woolworths, Toys R Us
13 and Index -- this is what I meant by 'pricing on the
14 market'."

15 A. That is what I meant by pricing on the market relative
16 to the description of the Hasbro meeting and relating to
17 toys.

18 Q. Now the one thing which "pricing on the market" does not
19 mean, as a phrase, is a move to pricing at RRPs.

20 A. The phrase "market pricing" does not mean moving to
21 prices on RRPs. However, RRPs tend to be established in
22 the market, and it is difficult for retailers to price
23 above an RRP if it has become the prevailing market
24 price.

25 THE CHAIRMAN: Yes.

1 MR DOCTOR: So would you agree that your evidence does not
2 show a general policy on the part of Argos having been
3 adopted in late 1998/early 1999 to increase prices
4 across the board to move towards pricing at or close to
5 RRP?

6 A. Our position was not to move close or near to pricing on
7 RRP's, our position was to move to pricing on the market.
8 However, as I said earlier, it may be a circumstance
9 where RRP had become the prevailing market price.

10 Q. Now at paragraph 5 of this second witness statement, you
11 point out that when you arrived at Argos in the second
12 part of 1998, you found, from your discussions with
13 Maria Thompson, that she had already come up with
14 suggested ways for improving profitability:

15 "Maria discussed with me her suggestions for
16 improving profitability in spring/summer 1999. I agreed
17 with her suggestions and these were implemented,
18 resulting in selective price cutting and selective price
19 increases across product ranges, including toys."

20 So that seems to be much the same idea as what you
21 have been conveying today.

22 A. I am not quite clear what your question is.

23 Q. Well, what you found when you arrived was what
24 Maria Thompson was already talking about, was a similar
25 policy to the one you are now talking about, selective

1 price increases and selective price decreases, and
2 generally something which would move towards, as you put
3 it, market pricing.

4 A. That is not quite accurate, and if I may explain some of
5 the background to that, it may be helpful. From my
6 original discussions even before taking the job at
7 Argos, and in discussions that I had with the chairman,
8 Lord Wolfson, the chairman and chief executive,
9 Lord Wolfson, talking about moving to a non-pre-emptive
10 discount pricing approach happened then. So the idea
11 was not necessarily solely related to Maria and my
12 discussion.

13 My concern at that point was that it was something
14 that needed to take place quickly, but it was also
15 something that needed to be combined with a total move
16 towards margin management. My interest was moving at
17 the margin overall.

18 So it was feasible for us to think about taking
19 price action in the spring/summer 1999 catalogue, and it
20 was important at that time, when I joined, to move
21 swiftly to do that.

22 We did that into the spring/summer 1999 catalogue
23 partly to give us an indication of what may happen in
24 the future should we take these prices. A very
25 important catalogue would be the following catalogue,

1 autumn/winter 1999.

2 However, as I had said earlier, I did not want to
3 take these price actions alone. It had to be a combined
4 action of other actions, including introducing value
5 added prices, introducing EPP prices -- entry price
6 point products is what I mean by that term.

7 THE CHAIRMAN: You had better explain that term.

8 A. May I come back to that in a second? So it was
9 a combined action that needed to be taken. So we could
10 take some actions that would give us an indication of
11 what customers may react, we could take some actions
12 that give us an indication of what may happen to sales,
13 and we needed to take those promptly, and therefore they
14 had to happen in the spring/summer 1999 catalogue.

15 However, our policy was to move further on with
16 other actions that we knew had to combine with that one,
17 because alone, that would be a problem for us.

18 By entry price point product, I mean -- I believe
19 there were a number of gaps in the product ranging for
20 Argos, one of which was very low prices, which is the
21 entry price or the lowest price that could be available
22 in the market, because if we had the right product --
23 and some of those products were not available in the
24 product ranging.

25 So over the next year, we introduced more products

1 that were at lower prices --

2 THE CHAIRMAN: What sort of things are we talking about?

3 A. Low specification products, there would be a colour
4 television, they would be in a wide range of product
5 areas. We would introduce a number of products, and at
6 the same time we introduced products which were what
7 I would call value added and hero products, that is
8 another range of products where customers could see the
9 opportunity, attracted by a lower price, could see an
10 opportunity to buy a product that was more attractively
11 featured and well priced, and our margin would be in
12 those prices.

13 So it is a combination of activities that had to
14 take place the following year. However, to repeat,
15 I needed to take the actions in spring/summer 1999 to
16 get a feeling for what might happen.

17 THE CHAIRMAN: The impression I am getting, I just want you
18 to say whether or not I am on the right lines, is that
19 when you said in paragraph 9 of your second witness
20 statement that Argos would no longer pre-emptively
21 reduce prices in an effort to be absolutely the lowest
22 priced retailer in the High Street, there seemed to have
23 been a previous policy, if I may use a phrase that
24 refers to another well-known retailer, of never being
25 knowingly undersold, always being in a position -- or

1 aiming to be pre-emptively in a position of having the
2 lowest price, and you wanted to move away from that to
3 a much more considered situation in relation to
4 particular groups of products, some higher and some
5 lower, but all more related to where people saw what the
6 market actually was.

7 A. That is exactly right, but may I add that the comment
8 that has been made relates to a meeting that took place
9 relating to the toy products.

10 THE CHAIRMAN: Yes.

11 A. Which is paragraph 9. Specifically on those products,
12 the margins were too low. We were not making money. We
13 were not making money on those areas, we had very low
14 margins, so specifically on those products, I would be
15 saying, "We do not want to pre-empt in that product
16 area, and reduce our margins even further, and I will
17 not chase market share, but I will be chasing a better
18 margin position for the business".

19 Elsewhere, in other products within the business,
20 where we had higher margins, I might be saying, "I am
21 happy to reduce those further", but that is the
22 combination, if you like, but specifically on toys, and
23 specifically relating to Hasbro, we had had a position
24 where we pre-empted prices, I was not happy to continue,
25 and as part of the overall policy in recruiting (?)

1 margin management, we were not chasing market share.

2 THE CHAIRMAN: Yes, thank you.

3 MR DOCTOR: Mr Duddy, I am not in any way challenging the
4 fact that a margin management policy would include many,
5 many aspects to it, but I want to discuss and
6 concentrate on that part of it, of this margin
7 management policy, which relates to pricing, and as you
8 have described it, this move to market pricing.

9 I think you have agreed, but just in case there is
10 any dispute about it, when you arrived at Argos in the
11 second half of 1998, you describe in paragraph 5 your
12 discussions with Maria Thompson, and said she had
13 already come up with certain ways -- I am not suggesting
14 she had thought of your whole plan, but she had come up
15 with certain ways of improving profitability, and her
16 way included suggestions for selective price cutting and
17 price increases.

18 All I am saying is that the policy she was
19 describing to you with regard to pricing was not
20 different from the policy you have described in regard
21 to pricing, ie a move to market pricing. It includes
22 prices going up and down in order to try and meet the
23 point where the market will be or is.

24 A. If I can clarify that --

25 Q. I think what I want you to concentrate on is: was there

1 a difference between what you have described to the
2 court and what you heard from Maria Thompson with regard
3 to pricing? That is all I am asking you to concentrate
4 on at the moment.

5 A. Yes, there is a slight difference, if I can explain it.

6 THE CHAIRMAN: Yes, please.

7 A. The move to market pricing -- there is a difference, and
8 I was talking about the approach to the whole catalogue
9 and the move to market prices. Maria had been in the
10 circumstance where she had had three -- I was the third
11 chief executive in six months, so from the first -- as
12 I understand it, even from the first chief executive, in
13 the April, they talked about putting prices up, "Can you
14 put prices up?", and selective price increases, and ways
15 of obtaining margin.

16 So I think Maria had reacted to those things, but
17 what Maria had not said is that we should take
18 an overall approach, and that we should move to market
19 pricing approach. What she had looked for, absolutely,
20 was opportunities to increase prices on an ad hoc basis
21 where she could, where she could gain some margin, but
22 it was only in November 1998, after discussions with
23 Maria and others, that we took the approach which said,
24 "Absolutely, we will move to this term market pricing",
25 but decisions on price increases were certainly being

1 taken that were effective in the spring/summer 1999
2 catalogue.

3 THE CHAIRMAN: Sorry, Mr Doctor: if I have understood it, at
4 an earlier point before your arrival there had been
5 a general instruction to try to put up prices?

6 A. Correct.

7 THE CHAIRMAN: You arrive and say, "We want to align
8 ourselves with the market, and that may well imply
9 putting up prices, but it also implies being closer to
10 the market, and in some cases, not putting up prices or
11 even putting them down".

12 A. If it was necessary, absolutely, and it was a combined
13 action. However, if I may --

14 THE CHAIRMAN: Combined with other actions you were taking.

15 A. And what we had to do was ensure we could get a read on
16 that happening, so making it happen in the spring/summer
17 1999 catalogue was important.

18 THE CHAIRMAN: I see, thank you.

19 MR DOCTOR: Even with regard to the spring/summer catalogue,
20 the position you found when you arrived there, if you
21 look at the core bundle, page 43, there is a document
22 called "Margin Contributors", which is dealing with
23 catalogue 51, which was the one for spring/summer 1999.
24 It has your name on the top left-hand corner, although
25 I understand the document is produced by Maria Thompson.

1 A. Yes.

2 Q. Did you see this document at the time?

3 A. I believe I saw the document at the time, although
4 I could not remember it prior to seeing it.

5 Q. For spring/summer 1999, catalogue 51, it includes, if
6 you go down to the second item:

7 "Pricing (putting prices up) C [circa] 760 lines
8 increased."

9 Underneath that, we see:

10 "Catalogue 51 margin reductions. Competitive
11 pricing: 922 UK RI lines reduced in price."

12 So there is a combination of putting some prices up
13 and putting other prices down.

14 A. If I can explain that, there was already an action
15 related to general putting prices down in each
16 catalogue, so I believe this line relates to what we
17 would call products that were re-included from the
18 previous catalogue, and those prices, on average, would
19 probably be reduced from one catalogue to the next.

20 What this document also does, I think, is start to
21 give you an idea of the total mix of things that needed
22 to happen, in terms of the margin.

23 THE CHAIRMAN: So some are going up, some are going down,
24 and some are staying the same.

25 A. Mm.

1 MR DOCTOR: Now I would like to take you to a meeting, and
2 I want you to focus your mind on this meeting that you
3 attended on 17th February 1999 with Alistair Richards
4 and Simon Gardner of Hasbro. You give your account of
5 that in paragraph 9 of your second statement, which is
6 at tab 22.

7 Now this is a meeting that was attended by you and
8 Maria Thompson on behalf of Argos, with the fairly
9 senior representatives of Hasbro.

10 You say that at this meeting you told Hasbro that
11 Argos was not making sufficient profit margin on sales
12 of Hasbro toys, and that this was a situation which had
13 to change; do you recall that?

14 A. As I say in the statement, I say it is likely that
15 I would have explained that, and I believe that I would
16 have done.

17 Q. You stress to Hasbro that Argos wanted to improve its
18 profitability; okay? You say that you explained to --

19 THE CHAIRMAN: I think, Mr Duddy, just glance at
20 paragraph 9, so you can remember what it is that that
21 paragraph says. (Pause).

22 MR DOCTOR: You said it is likely that you would have
23 explained to Richards and Gardner that Argos would move
24 to market pricing or pricing on the market.

25 A. Mm.

1 Q. But you then say, in the last sentence:
2 "I would not have indicated to Alistair Richards and
3 Simon Gardner that Argos would price only at RRP."
4 A. Correct.
5 Q. I understand by that sentence that RRPs were discussed
6 at that meeting.
7 A. No, that is not the case, and not my understanding.
8 I clearly state that I would not have indicated to
9 Alistair Richards and Simon Gardner that I would not
10 have priced only at RRP, because I did not see RRP as
11 being the relevant factor relating to market pricing.
12 In our previous discussion, we talked about market
13 pricing, and we said RRP was not relevant to market
14 pricing, it was only relevant when it became the
15 prevailing --
16 THE CHAIRMAN: When it was the market price, yes.
17 A. So I would not have said to Simon Gardner or
18 Alistair Richards that I would only price at RRP,
19 because that would not have been a proper description of
20 a market price or the prevailing market price.
21 THE CHAIRMAN: Yes.
22 MR DOCTOR: Well, the sentence does not say, "I would only
23 price at RRP", it says, "I would not have indicated that
24 Argos would price only at RRP."
25 The sentence suggests that there was a discussion

1 about RRP, but that you would not have indicated to them
2 that you would price only at RRP?

3 A. Can I make it clear to the tribunal that there was no
4 discussion about RRP at that meeting, no discussion that
5 I remember relating to RRP at that meeting, and that
6 this is a description of my -- of what I believe -- what
7 I would have said to them relating to the Argos move to
8 market pricing. So in that, I try and clarify for the
9 benefit of this circumstance that I would not have
10 discussed RRP, because it would not have related back to
11 the market pricing of prevailing market price.

12 THE CHAIRMAN: Thank you.

13 MR DOCTOR: There was a discussion at that meeting about
14 Hasbro's new pricing initiative, was there not?

15 A. I do not remember a discussion about Hasbro's new
16 pricing initiative at that meeting.

17 Q. Well, the essence of Hasbro's new pricing initiative was
18 that all retailers would go out at RRP, at the price
19 that Hasbro was recommending, and I am suggesting to you
20 that initiative and that pricing strategy was discussed
21 at that meeting?

22 A. Can I be clear, that that pricing initiative and that
23 strategy was not discussed at that meeting?

24 Q. Well, would you look at the core bundle, document 37?

25 THE CHAIRMAN: We need to take a break at some point,

1 Mr Doctor. I do not want to interrupt you. You go on
2 for the time being, until you finish a convenient train
3 of thought.

4 MR DOCTOR: I am going to ask some questions about this
5 meeting, so perhaps this is a good time to have a break
6 now, because it will not just be five minutes.

7 THE CHAIRMAN: Right, very well. We need to break from time
8 to time for the shorthand writers, Mr Duddy. I want you
9 please now not to talk to anybody else about your
10 evidence or about the case while we are having a break.

11 A. Of course.

12 (11.58 am)

13 (A short break)

14 (12.07 pm)

15 MR DOCTOR: I was about to show you a document at page 37 of
16 the core bundle, which is a document that was prepared
17 by Hasbro, apparently in connection with this meeting on
18 the 17th, so it is not an Argos document, I make that
19 clear to you.

20 It looks as if these were the issues either
21 discussed or to be discussed at this meeting:

22 "Issue 1: BIM [bought-in margin] eroding 5.5 per
23 cent 1998."

24 THE CHAIRMAN: Sorry, did you say tab 37?

25 MR DOCTOR: Core bundle 37.

1 THE CHAIRMAN: I am sorry, I am in the wrong bundle.

2 MR DOCTOR: It is page 37:

3 "BIM eroding 5.5 per cent 1998. Cover: dialogue
4 opened to stabilise RRP's (initially core games,
5 Action Man). Build in additional rebate earning."

6 I am suggesting to you that that was one of the
7 issues discussed at this meeting on 17th February; the
8 dialogue they were opening with Argos to stabilise RRP's,
9 initially on core games and Action Man, in line with
10 what they call their pricing initiative, which covered
11 those two ranges.

12 A. I had not seen this document until --

13 Q. I started by my telling you it is not your document, so
14 would you just respond to what I am putting to you, that
15 this is what was discussed there?

16 A. This was not discussed at the meeting. I have
17 reconstructed from my notes, from preparation that was
18 made for that meeting at the time, the subject matter of
19 the meeting.

20 THE CHAIRMAN: You have some notes, do you, Mr Duddy?

21 A. I did, I had notes that -- calling them notes might be
22 a little bit grand actually, there were some doodles and
23 some aide memoires within the meeting, but -- because
24 I take notes of my meetings and then I keep the books
25 prior, and I can go back and remind myself of the little

1 points that I have made.

2 So I did have some notes from the meeting that
3 I could go back and refer to, I had the letter that came
4 after the meeting, and, of course, I had my diary, to
5 respond to -- as to what took place on the timing of the
6 meeting. This issue was not part of the meeting.

7 THE CHAIRMAN: Can you just remind us of the provenance of
8 this document?

9 MR DOCTOR: I understand this is one of the documents
10 provided by Hasbro in connection with this case.

11 THE CHAIRMAN: And do we know who prepared it, or what it
12 was for, or anything more about it? Is there a witness
13 who explains it to us?

14 MR DOCTOR: No, no witness explains it. It was provided by
15 Hasbro as being related to this case.

16 A. Can I confirm that I had not seen this document, and
17 this document was not the agenda for the meeting, and
18 was not produced at the meeting.

19 Q. Well, you must have discussed, because you have told us
20 that is what you discussed, your move to market pricing,
21 Argos' move to market pricing.

22 A. It was one of a number of matters that were discussed.
23 It was an introductory meeting with Hasbro, I had had no
24 prior contact with them, so there were other matters
25 that were discussed at the meeting, one of which was

1 market --

2 THE CHAIRMAN: This is the first time you had met Hasbro?

3 A. The first time I had met Hasbro, actually it was the
4 only time --

5 THE CHAIRMAN: The first and only time you met them.

6 MR DOCTOR: Yes. Now it is not your normal practice,
7 I presume, to discuss your selling prices with your
8 suppliers, is it?

9 A. I personally do not get into discussions with suppliers
10 about selling prices. I do get into discussions about
11 what our strategy and what our actions would be. So
12 individual selling prices or individual matters are
13 rarely discussed by me.

14 Q. Would you look at paragraph 11 of your second witness
15 statement? In paragraph 11, you say you may also have
16 indicated to Richards and Gardner that should market
17 prices drop during the life of an Argos catalogue, Argos
18 would react and would look to Hasbro for support in
19 order to maintain its profit margins.

20 Now I would like to just explore that a bit. The
21 only way in which the market price can drop is if
22 someone in the market charges less than the previous
23 market price, correct?

24 A. That is correct. It is possible though for
25 manufacturers to realign their prices. It is not always

1 competitors who change prices. Manufacturers themselves
2 sometimes realign prices; sometimes with products that
3 have been discontinued they will take the price of
4 a product down in order to clear it from the market.
5 Therefore, there are other ways in which prices may be
6 dropped other than by competitors.

7 Q. Well, if the manufacturer reduced its price, that would
8 be the reason why one or more of the other retailers
9 reduced their price, but the manufacturer reducing its
10 price as such is not a reduction in the market price.

11 A. The manufacturer reducing the price is a reduction in
12 the market price.

13 Q. Mr Duddy, we are talking about the retail market price
14 at the moment. How can a manufacturer reducing its
15 price as such constitute a reduction in the retail
16 market price?

17 A. Where manufacturers -- you are quite right, it is
18 a circumstance where manufacturers would be getting --
19 coming to the end of their product ranges, would reduce
20 cost prices, and market prices would drop in the market.

21 Q. Because a manufacturer has reduced his price, one or
22 more of the retailers would in consequence reduce his
23 price, which would constitute the reduction in the
24 market price.

25 A. Yes.

1 Q. Right. So what you are saying is if you go out at
2 a price -- what you were telling Mr Richards and
3 Mr Gardner was that if Argos goes out at a price which
4 you think is the market price, and someone in the market
5 charges less than that price, Argos would react by
6 dropping its price to the new market price.

7 A. Correct.

8 Q. But since your policy is to price at the market price,
9 why should that entitle you to any support from Hasbro?

10 A. It would not necessarily entitle us to any support.
11 I am pretty sure that Hasbro would have responded in
12 that way. However, what I told them is that my
13 intention was to keep my margins up, and therefore, to
14 make more profit. There were other matters in which
15 they could provide support, in terms of paying for
16 promotional flyers, they could provide stock; there were
17 other matters in which they could support us when we
18 actually took prices down and sales would increase, so
19 there was a total issue of support, rather than simply
20 margin. I would have expected that as my prices came
21 down and my margins got squeezed, I would be going back
22 to them and looking for improved margin.

23 Q. If your policy is to price at the market price, and
24 market price is whatever anyone happens to price at, and
25 you then have to meet that price, I do not understand

1 why you should be entitled or why you should mention to
2 Hasbro that you would react and look to them for
3 support?

4 A. Because whilst we may intend to price at the market
5 price, my job is also to ensure that I get the margin,
6 and the manufacturer themselves have to be aware of what
7 prices are available in the market, and the margins that
8 retailers have to make, so I would be going back to the
9 manufacturer and saying, "This is a product that I am
10 making less money on, I need to make more money, I am
11 not making enough margin on your product right now,
12 I want more margin from you", and I would use any excuse
13 to go back to a manufacturer and ask them for that
14 opportunity.

15 Q. Did you have an agreement with Hasbro that if you went
16 out at a price which was the market price, and you were
17 undercut by some other retailer, that Hasbro would give
18 you support?

19 A. No, we did not have such an agreement.

20 Q. So what you are saying then is you are describing to
21 them your new policy of moving to market pricing, you
22 are saying, "If we find that we have pitched it
23 somewhere which is not the market price, because
24 somebody else prices lower than that, we will then
25 continue to bring our price down, and price it at the

1 market price, and in those circumstances we would look
2 to you for support".

3 A. This needs to be -- if I can, this needs to be looked at
4 in the context of the fact that we made no profit on the
5 Hasbro business, we made very, very low margins on toys,
6 we were in a circumstance where those margins were
7 decreasing, and I was saying to Hasbro that I would not
8 be chasing sales in those circumstances, that I would
9 not be chasing market share alone, I would not bear the
10 brunt of what was the reducing margins in those prices,
11 and as a manufacturer, they had to understand I would be
12 coming back to them for more margin, so that we could
13 make profit on the area in which they were supplying us.

14 THE CHAIRMAN: Yes.

15 MR DOCTOR: If you are expecting support, it suggests that
16 what you are saying to them is that you are going to go
17 out at a price which is set. If the price goes below
18 that price, you are going to come to them and ask for
19 support. In other words, if the price which you call
20 the market price falls, you would be entitled to go to
21 them to ask for support. If it does not fall, you do
22 not get this support; is that correct?

23 A. It is incorrect in the use of the word "entitled".

24 THE CHAIRMAN: Yes. It is a horse trade situation, is it
25 not?

1 A. I am sure that any manufacturer would say that I was not
2 entitled; that would not stop me from asking.

3 THE CHAIRMAN: No, but you would bring to bear your
4 bargaining power and see what you could get.

5 A. Exactly, and our point was that this was an area where
6 the margins that were made in this area were lower than
7 our fixed costs, and I am sure that as part of the
8 conversation I had with them I would have expressed
9 that, "I am making less gross margin than the fixed
10 costs of my business, this is not a profitable way for
11 me to go, and I have to get my margins up, so I can
12 maintain myself in that business".

13 As a manufacturer, if you are interested in
14 continuing business then you need to take that into
15 account.

16 THE CHAIRMAN: Just as a matter of interest, why were you in
17 the business at all if you were selling lower than your
18 fixed costs?

19 A. I asked myself that question a number of times, but it
20 was the circumstance that I inherited, and it was good
21 for the Argos business in its totality, because toys
22 were an attractive part of bringing people in, and we
23 made money overall on toys.

24 THE CHAIRMAN: Because of the footfall -- I think that is
25 the expression, is it not?

1 A. Hasbro had a number of what was described as must-have
2 products. I would prefer it in circumstances where
3 I could have made money on those products, but they had
4 a strong bargaining chip at that time.

5 THE CHAIRMAN: Yes, thank you.

6 MR DOCTOR: Mr Duddy, I am going to suggest to you that you
7 would not be talking about support before the
8 undercutting takes place unless you had some expectation
9 in relation to that support that you mentioned;
10 otherwise why mention it at all at that point, before
11 the undercutting has taken place?

12 A. The explanation of the market pricing was done for
13 a number of issues. It was talking about the total
14 change that was happening within the Argos business. So
15 within that market pricing was something that also
16 allowed me to talk about the approach that we were
17 taking whereby we were willing to move prices up if
18 necessary, at the risk of losing sales and losing
19 customers, as an effort to make more margin. And that
20 was an indication to them of the extent that I would go
21 to.

22 THE CHAIRMAN: As I have understood it, you are saying to
23 them, "If we do that, and later the market prices move
24 down, we look to you, Hasbro, to help us", basically.

25 A. Yes, "We look to you as a manufacturer, as a supplier in

1 this business, to help us with that". I had no
2 expectation of support. I did not enter that
3 conversation with an expectation that they would say,
4 "That is all very well, Argos, we will give you whatever
5 we want".

6 THE CHAIRMAN: "Of course we will support you", yes.

7 MR DOCTOR: Mr Duddy, you were describing to them your new
8 policy, in which you were no longer going to be the
9 lowest in the market, you were now going to be pricing
10 at the market price -- or you were no longer going to be
11 pre-empting the market, you were now looking to price at
12 the market price.

13 Why would you mention to them, in that context, that
14 if you price at the market price and the market price
15 falls, it has something to do with them, they have got
16 to support you in that? Your policy is, "I am going to
17 price at the market price. I have taken everything else
18 into account". Why would you say to them now, "I am
19 going to price at the market price, and if the market
20 price should fall below the price in my catalogue, I am
21 going to look to you for support"; what does it have to
22 do with them?

23 A. It has to do with them that they are a manufacturer, and
24 they have to be concerned with the basic economics of
25 the business they are in. Therefore, if they are

1 supplying products which have costs higher than the
2 prevailing market prices, then we are unlikely to want
3 to sell them at those prices.

4 So I will return to them, because they understand
5 that I have to make money, and for me to be sustained in
6 the business, and the business that we are in, we needed
7 to make a reasonable profit.

8 So turning to a manufacturer and saying, "If your
9 prices are falling, I intend to come back to you and ask
10 you for more margin", I think is the real basics of the
11 way in which business is done, and certainly the basis
12 of the way in which retail business is done. So in this
13 context, I do not find it at all difficult to say,
14 "Well, why would I not mention it to them?" I would
15 have expected to, and they would expect me to.

16 Q. Yes. You just said, if your prices are falling, that is
17 Hasbro's prices, on the retail market, you would expect
18 them to provide support.

19 The reason you are mentioning it at that stage is
20 because you are discussing with them some understanding
21 or arrangement whereby you will go out at a price, you
22 like to call it the market price, but you want them to
23 know that if their prices elsewhere in the market should
24 fall, prices which they can influence, you will come
25 back to them for support. You will expect something as

1 a result of that; is that what you are saying?

2 A. I do not think I said it was an arrangement. I did not
3 even say it was an expectation. But I do say that if
4 the circumstances happened where market prices were
5 falling, I would go back to them and look for help and
6 support: margin support, promotional flyer support,
7 stock support, but I was indicating to them I would
8 squeeze them for margin.

9 Q. The reason you were mentioning it, Mr Duddy, is because
10 you believed that they were in a position to influence
11 the retail price in the future, the market price that
12 you talk about, and you were warning them at that stage
13 that your policy and your decision to go out at
14 a certain price was dependent on them ensuring that
15 no one else went out at a lower price, because if they
16 did, you would come back to them for support.

17 A. Absolutely not.

18 Q. Why else would you mention to them before it happens
19 an event over which they have no control, and say to
20 them, "If that event happens, I will penalise you by
21 looking for support", unless you expected that they
22 would hear your warning and ensure that the event did
23 not happen, ie that you did not go out at the market
24 price and find, six months later, that someone else came
25 out with a lower price.

1 A. It is entirely -- it would be entirely naive of me, with
2 my retail background, to actually think for one second
3 that Hasbro had control of the market price. It was not
4 the circumstances. They could not and would not be able
5 to do it. So I cannot think of a circumstance where
6 I would think that.

7 Q. Mr Duddy, you talked about, a little earlier, your
8 prices, meaning Hasbro's prices -- sorry, your prices;
9 you were talking about Hasbro's prices -- when your
10 catalogue came out, your prices, that is Hasbro's
11 prices, were lower, you would then react by asking them
12 for support.

13 The only possible reason you could have mentioned it
14 at that stage, that you could have raised this with
15 them, was because you were expecting them to do
16 something about it. That is the only context in which
17 your demand or the request or warning or whatever you
18 like to call it about coming back to them for support
19 makes any sense.

20 A. Could I say, I think the sense in which I do -- firstly,
21 it was part of a number of things that I was telling
22 them, so to talk to them about market pricing was one
23 part of the changes I was explaining were happening to
24 Argos, and it provided me the opportunity to talk to
25 them about the change that we were talking about.

1 Would I expect them to do something about it? Yes,
2 I would expect them to do something about it. They had
3 to find a way of providing more margin in that product
4 area. We were not making money, we were losing money on
5 that business, they would have to go back to their
6 manufacturing, whatever they needed to do, and find
7 a way of providing more margin.

8 So in answer to the question, what would I expect
9 them to do about it: go back into your business, find
10 a way where we can make more margin, and then cutting
11 cost prices -- whatever was needed, find a way in which
12 we could make the margins that could make this market
13 sustainable for us.

14 THE CHAIRMAN: Mr Doctor, I have the impression we have
15 probably addressed this point quite thoroughly now. You
16 have put the point to the witness, he has given you his
17 answers.

18 MR DOCTOR: I would ask your permission to take it a bit
19 further if I may. Bearing in mind your comment, I will
20 make it short, but I do feel I have not yet reached the
21 end.

22 THE CHAIRMAN: Right.

23 MR DOCTOR: Mr Duddy, you said you did expect the retailer
24 to do something about it, to keep his prices down, and
25 so on and so forth, but if you expected the retailer to

1 keep his prices down and to do something about the fact
2 that margins were low, you would not be telling him that
3 you would expect support in the future, you would be
4 telling him, "I would like a lower price today, in order
5 to achieve higher margins".

6 A. I am not quite sure what that question means, because
7 you are referring to a retailer keeping the prices down;
8 is that what you mean?

9 THE CHAIRMAN: Put the question again, Mr Doctor.

10 MR DOCTOR: Let me put the question again. If you, as
11 a retailer, were speaking to a supplier, and you said,
12 as you said earlier, that you did expect the supplier to
13 do something about the fact that there were lower
14 margins, you would not have said, "I will look for
15 support in the future if something happens", you would
16 have said, "Today, I want you to do something about it
17 today, I want you to give me these goods at a lower
18 price".

19 A. I did say that. That was the point of -- part of the
20 point that I wanted to make at the meeting, "We are not
21 making enough money in this area, you need to know that
22 it is going to be hard for me to sustain growing sales
23 in this area unless I start to make more money", and
24 therefore I asked him for it now, and I had asked him
25 for it for the future, and I would ask at every

1 opportunity that it was available to ask.

2 Q. You would ask for lower prices today, and insofar as you
3 mention what is going to happen in the future, if you
4 find that the price you have gone out at is undercut by
5 someone else, you are mentioning that to them because
6 you are expecting them to prevent that from happening,
7 and therefore, you tell them now that if it happens, if
8 they do not prevent it from happening, you will come
9 back to them then, at that stage, for support.

10 A. That is categorically not true.

11 Q. Let me just move on: Hasbro representatives at that
12 meeting gave you that assurance, they would keep the
13 prices -- they would ensure that you could go out at
14 what you call your market price, and they would ensure
15 that others charged the same prices.

16 A. That is not true. That conversation did not take place.
17 It was impossible that it could have taken place.

18 Q. That is exactly what happened in the autumn/winter 1999
19 catalogue, in respect of the core games and Action Man
20 which they discussed with you at that meeting. You went
21 out at the RRP's and so did your competitors, Index.

22 A. That is not true. Those matters were not discussed at
23 the meeting. I had gone through an agenda of the
24 matters that were discussed at the meeting; that was not
25 a discussion at any point, and would not have been

1 something I would ever embark upon in any conversation
2 with a manufacturer.

3 Q. That reassurance you got from them was extremely
4 important, and you stressed to them at that meeting that
5 if they did not comply with and perform their
6 reassurance, Argos would react to that, in various ways,
7 including looking for support. That is what happened;
8 I am giving you the opportunity to comment on it.

9 A. I was at the meeting, that did not happen.

10 Q. Right. Have a look at the core bundle, page 38. This
11 meeting was also attended, was it not, by
12 Maria Thompson?

13 A. The meeting was attended by Maria Thompson.

14 Q. Right. Sue Porrit reported to Maria Thompson, I think
15 that is the line of authority; correct?

16 A. Correct.

17 Q. Two days after the meeting there is an e-mail from
18 Sue Porrit of Argos to the merchandise toy teams, it is
19 titled:

20 "Hasbro Debrief from Terry Duddy Meeting."

21 I assume that is referring to this meeting.

22 A. I assume that it refers to that meeting.

23 Q. "The meeting sounded as if it went well with Maria
24 noting the following specific points:

25 "1. Playskool brand and our use of it. It would

1 seem that all the conversations I have had with them
2 have never been passed upwards and it was the first that
3 Alistair Richards had heard of it! He is going away to
4 look at it. I will follow this up with him.

5 "2. Games Rebate."

6 You were talking about specific products, the games:

7 "The specific issue of being forced to range
8 Battleships and Connect 4 was raised. AR
9 [Alistair Richards] advised that we can have an
10 individual conversation around specific issues. Andrew
11 [Needham] will you take this up with Mike Brighty.

12 "3. Pricing Strategy vs Rebate Pricing."

13 That is a reference to the discussion about the
14 pricing strategy which you were discussing with the
15 Hasbro representatives at that meeting. What she has
16 recorded is this:

17 "MT [Maria Thompson] indicated that we will react
18 heavily to being undercut should it happen. Hasbro will
19 not put money on the table to support this, but will
20 look at other methods of support. I will follow this up
21 with Mike Brighty."

22 The clear import of this, Mr Duddy, is that there
23 was a discussion, there was an agreed price, and it was
24 made clear to Hasbro that they would go along with it,
25 but that they would react heavily to being undercut

1 should it happen, ie should they be undercut.

2 A. The interpretation that I take from that e-mail is that
3 it is broadly in line with the conversation that I have
4 already had, that I have already stated here, that
5 should we go out at market pricing, and those prices
6 fall, then we would go back to Hasbro and look for
7 support.

8 Q. Well, unless you had agreed with the Hasbro people on
9 some meaning for this word "market pricing", the
10 sentence would not make any sense, because if you simply
11 said, "Well, we are going to be pricing on the market",
12 and you came back six months later and you said, "Well,
13 we have put our price in at £9.99 and we find that is
14 not the market price, someone else is pricing at £7.99",
15 they would come back to you and they would say, "What
16 are you talking about? That is the market price; you
17 did not price at the market price".

18 What you agreed with was that there would be
19 a price, ie the prices recommended by Hasbro in their
20 pricing initiative, you would go along with that, but
21 you would react heavily if you found that anyone else
22 was undercutting you when the catalogue was published.

23 A. I think I have talked through this already, and I will
24 repeat the same thing, that there is a market price; the
25 use of pricing on the market or market pricing is

1 something that would be used in retail.

2 THE CHAIRMAN: What meaning do you attach, Mr Duddy, to the
3 words, "We will react heavily to being undercut"?

4 A. I see that to be a circumstance where we would go back
5 to Hasbro and say, "We want support for that, we intend
6 to keep our margins up".

7 THE CHAIRMAN: That is not referring to a market reaction,
8 that is referring to you going back to Hasbro?

9 A. It is hard for me to say what was entirely meant by
10 this, but that is how I would read that, that we would
11 react -- we would cut our prices and we would go back to
12 Hasbro --

13 THE CHAIRMAN: So you are saying the message here is, "If
14 other prices are cut or fall, we will cut ours -- so
15 that we are being undercut, we will in turn cut our
16 prices, and in those circumstances we will go back to
17 you, Hasbro, for support".

18 A. Yes.

19 MR DOCTOR: And Hasbro simply would not put money on the
20 table, but they would look at other methods of support?
21 So that is what you understood. You said to them, "If
22 our prices, as we publish them in the catalogue, in
23 autumn/winter 1999, are undercut, we will come back to
24 you and we are going to look for support", to which they
25 said, "Well, we will not put money on the table, but we

1 will look at other methods of support".

2 A. I cannot remember Hasbro actually saying that, but

3 I would expect them to say straight away, "We will not

4 put money on the table". That is what I would expect --

5 THE CHAIRMAN: It sounds plausible, does it not?

6 A. Yes, it sounds plausible, and that would be the normal

7 response.

8 THE CHAIRMAN: I think it is the spring/summer catalogue we

9 are still talking about here, is it not?

10 MR DOCTOR: No, we are talking about the autumn/winter one.

11 Spring/summer had come out a month ago.

12 THE CHAIRMAN: Yes.

13 MR DOCTOR: Now in paragraph 12 of your witness statement,

14 you talk about a letter which you had received from

15 Alistair Richards dated 18th March, and that is also in

16 the core bundle at page 39. This is a reference back to

17 that meeting.

18 You do not comment on this letter in your witness

19 statement --

20 A. In the witness statement at 12, I say:

21 "After the meeting, I received" --

22 Q. You received the letter, yes. Now first of all, do you

23 know whose handwriting is on this letter? Do you

24 recognise it at all?

25 A. No.

1 Q. It looks as if it is a -- well, the document comes from
2 Hasbro, I understand, this particular copy of the
3 document, and somebody in Hasbro presumably has written
4 the words:

5 "I guess this adds weight to our 'thinking outside
6 the box' discussion yesterday."

7 Do you know anything about that?

8 A. How could I know anything about it? I have a clean copy
9 of this letter in my file, so when the meeting was
10 discussed I went back to my file and found --

11 THE CHAIRMAN: You have the original in your file?

12 A. I have the original in my file.

13 THE CHAIRMAN: So this is a photocopy of the signed version
14 that went, obviously, because it is signed. Can you
15 just help us again what the provenance of this document
16 is?

17 MR DOCTOR: It comes from Hasbro.

18 THE CHAIRMAN: It was also sent to Maria Thompson and
19 Simon Gardner, we notice. Are you going to take us
20 through whose writing this might be?

21 MR DOCTOR: We do not know. The witness does not know
22 either.

23 THE CHAIRMAN: "cc: NW", it might be possible to guess,
24 might it not?

25 MR DOCTOR: Neil Wilson, yes.

1 THE CHAIRMAN: And it looks as if somebody has said
2 something to "N", who might be the same person, but we
3 do not quite know what that squiggle is at the bottom of
4 the note.

5 MR DOCTOR: We think it could be Mike Brighty or
6 Mike McCulloch.

7 THE CHAIRMAN: It does look a bit like an "M" at the
8 beginning.

9 MR DOCTOR: This is the one that must have been sent to
10 Neil Wilson, so it is one of the people dealing with
11 him, which could have been either of the two.

12 Now in the third paragraph it refers first of all to
13 the business relationship between the two companies:

14 "Though you and Maria made clear that product
15 availability and particularly profitability needs extra
16 focus by Hasbro, I know that plans are in place, but
17 Simon and I will keep a personal watch on these areas,
18 and will expect to show you progress the next time we
19 meet."

20 "Plans are in place"; what is that a reference to,
21 Mr Duddy?

22 A. Well, my view is, and I am not saying I know exactly
23 what the writer intended from this, I received this
24 letter, as you can see, on 18th March, following the
25 meeting on 17th February, so I cannot --

1 THE CHAIRMAN: So it was a month after the meeting.

2 A. So I cannot tell you what was meant by that, but I can
3 tell you what I interpret from that, if it would be
4 helpful. It would be correct to say:

5 "As we discussed in the meeting, total business to
6 business relationship between our two companies is seen
7 as positive and effective by both companies. Though you
8 and Maria made clear that product availability and
9 particularly profitability needs extra focus", and
10 during the meeting that we had with Hasbro, as I have
11 said, we talked about profitability, we talked about
12 market pricing, but we also talked about other matters,
13 and one of them was the poor record in providing
14 availability of products.

15 They particularly had a problem with a new system
16 that they are putting into the business, and they had
17 informed us that they were improving it over time, so
18 I read this to say, "You told us that we had a problem
19 with our profitability, you told us that you had
20 a problem with your availability. I know that plans are
21 in place", they said at that time that plans were in
22 place to improve availability.

23 "... and I will keep a personal watch on these
24 areas". I said, "Who is in charge of this?" I would
25 have said that, that is the type of thing I would say.

1 They responded by saying, "We will keep an eye on this".

2 "I expect to show you progress the next time we meet";

3 we never met.

4 MR DOCTOR: I suggest to you that the plans in place to
5 improve particularly profitability are the assurances
6 that the Hasbro representatives had given you that if
7 you went out at the prices in line with their pricing
8 initiative or pricing strategy, and if you found that
9 you were undercut -- let me put it another way, that you
10 would go out at the prices which were in the pricing
11 initiative, and they would ensure that you would not be
12 undercut by the other retailers, to which you responded,
13 "Well, if we are, we are going to be reacting heavily",
14 and that is the plan that is being referred to in this
15 document.

16 A. I think I have already said what my interpretation of
17 this is. I do not understand how you can make the other
18 interpretation.

19 THE CHAIRMAN: So the answer is --

20 A. "Though you and Maria made clear that product
21 availability and particularly profitability needs extra
22 focus", both of those things, "I know that plans are in
23 place", well, there is plans in place to do what they
24 need to do in terms of availability and profitability,
25 "and I will keep a personal watch on these areas".

1 MR DOCTOR: Thank you, I have no further questions.

2 THE CHAIRMAN: Thank you very much, Mr Doctor. There is no
3 re-examination; in that case, I think that is the end of
4 your evidence. Thank you very much.

5 A. Thank you very much.

6 (The witness withdrew)

7 MR BREALEY: The next witness is Maria Thompson. She is
8 being interposed and she does need to get away by 3.45,
9 and she is available tomorrow. I do not know whether --
10 it is obviously within the tribunal's discretion.

11 THE CHAIRMAN: We will ask Mr Doctor in a moment.

12 MR BREALEY: If we do not finish, she can come back
13 tomorrow.

14 MRS MARIA THOMPSON (sworn)

15 Examination-in-chief by MR BREALEY

16 THE CHAIRMAN: Good day, Ms Thompson. Please do sit down.
17 Are you Mrs Thompson or Miss Thompson?

18 A. Mrs.

19 MR BREALEY: I think you are going to be shown volume 2.
20 You have sworn two statements, one is at tab 62, and one
21 is at tab 64. I believe that you wish to make a small
22 correction to paragraph 21 of the first statement, which
23 is at tab 62. That is at page 679 of the bundle. What
24 is the correction?

25 THE CHAIRMAN: Are you there, Mrs Thompson?

1 A. Yes.

2 MR BREALEY: What is the correction you would like to make?

3 A. I made an error, and Mike McCulloch was not at the
4 meeting on 17th February; that should have been
5 Simon Gardner.

6 Q. If you go to the end of that statement at 682, is that
7 your signature?

8 A. Yes.

9 Q. We can move on to tab 64, which is your second witness
10 statement, at page 697; is that your signature?

11 A. Yes.

12 Q. And can you confirm to the tribunal that the contents of
13 both statements are true?

14 A. Yes.

15 THE CHAIRMAN: Thank you. Yes, Mr Doctor? I do not know on
16 timing whether you are able to finish by 3.45, or
17 whether you would like us to go on through lunch
18 a little?

19 MR DOCTOR: I should be able to finish by 3.45.

20 THE CHAIRMAN: We can always go on tomorrow if necessary.

21 Cross-examination by MR DOCTOR

22 MR DOCTOR: Good morning. In March 2000, you were trading
23 director for toys, is that right?

24 A. I was the trading director for toys, jewellery, leisure,
25 furniture and home, plus I was responsible for the

1 direct import team, the quality assurance team within
2 Argos, and stock supply chain.

3 Q. In June 2000, you became commercial director.

4 A. Yes.

5 Q. Does that mean that you were the trading director for,
6 amongst other things, toys from 1998 to June 2000?

7 A. No, I became the trading director for the areas that
8 I outlined earlier in summer -- I think it was
9 June 1999, until I was promoted, I think it was
10 May 2000, and I became commercial director in June 2000.

11 THE CHAIRMAN: Thank you.

12 MR DOCTOR: When you became commercial director, obviously
13 your responsibilities expanded greatly into other
14 fields, and from that time onwards, at least, in
15 relation to toys, you must have only been dealing with
16 them at a very high level of policy.

17 A. I only dealt with toys at a very high level of policy
18 anyway, because prior to being appointed trading
19 director for toys, jewellery, leisure and home,
20 et cetera, I was the associate director for merchandise,
21 and I was responsible for all of the Argos portfolio of
22 product, plus the direct import and QA teams, but I did
23 not have stock consistently at that time.

24 Q. So, for example, you had limited contact with Hasbro,
25 you may have seen them two or three times a year.

1 A. I only saw Hasbro a couple of times a year.

2 Q. You were not involved in the negotiation or finalisation
3 of terms on their stock?

4 A. No, I was not involved in the day-to-day running or
5 certainly not in the finalisation of terms.

6 THE CHAIRMAN: Yes.

7 MR DOCTOR: Now up until 1998, Argos was the aggressive
8 price cutter, its policy being to undercut all other
9 retailers.

10 A. Prior to 1998, Argos used to price the catalogue to
11 pre-empt the marketplace.

12 THE CHAIRMAN: What do you mean by that, Mrs Thompson?

13 A. The catalogue would be priced to be below what we
14 believed would be the prevailing price in the High
15 Street on the market when the catalogue launched.

16 However, in 1997, what we found was that that policy
17 really did not pay any dividends, particularly in toys,
18 Woolworths reacted to the Argos prices within 24 hours
19 of the catalogue being launched, whereas hitherto, Argos
20 had had the benefit of having months where actually the
21 Argos price had been cheaper than a key competitor.

22 THE CHAIRMAN: Yes.

23 MR DOCTOR: Now following the Argos takeover by GUS in
24 April 1998, you say that there were discussions between
25 yourself and various people from GUS, following which

1 a decision was taken in summer 1998 to improve
2 profitability and to implement in the spring/summer 1999
3 catalogue a new pricing policy of moving towards market
4 pricing on all product categories.

5 A. Yes, I entitled it "Market Pricing", but actually it was
6 about improving profit, and I had many discussions with
7 Lord Wolfson, the then chairman of GUS, and the interim
8 managing director, Graham Frost, and they were very
9 concerned that Argos seemed to be throwing away profit
10 unnecessarily, because Argos was working to a policy or
11 had been working to a policy of trying to undercut the
12 market for really no benefit, because all competitors
13 immediately matched.

14 Q. Now Mr Duddy has told us that a policy of moving to
15 market pricing does not mean a policy of moving to RRP's;
16 do you agree with that?

17 A. Yes, I do.

18 Q. Now in your statement, however, paragraph 9, your first
19 statement -- do you have paragraph 9?

20 A. Yes.

21 Q. You say:

22 "A decision was taken in summer 1998 to improve
23 profitability and to implement, in the spring/summer
24 1999 catalogue, a new pricing policy of moving towards
25 market pricing on all product categories."

1 Then you go on immediately to say:

2 "The pricing policy meant that Argos would go out
3 close to recommended retail prices, or at least would
4 not reduce the last catalogue's prices unnecessarily."

5 So that is the very thing which he said it did not
6 mean, and you agreed; it did not mean going out at
7 recommended retail prices, although in your witness
8 statement, that is what you seemed to convey.

9 A. By matching the market, by going to the market price, we
10 would go to the market price, and many key competitors
11 priced many products and many product categories at RRP;
12 therefore, Argos would be moving close to the RRP.

13 Q. Why would you have specifically explained this market
14 pricing in terms of its closeness to recommended retail
15 pricing?

16 A. For the reason I just gave, because many of our
17 competitors did price products at the RRP, we would be
18 aiming to match our competitors; so if our competitor
19 was at an RRP, we would probably go to an RRP.

20 Q. Yes, but as I understand market pricing, the fact that
21 it happens to be at or near the RRP is not relevant, it
22 is the question of what everyone else is pricing at;
23 that is the important point.

24 A. Yes, it is, and I was just clarifying that that could be
25 RRP.

1 Q. Well, it could be and it might not be.

2 A. Absolutely.

3 Q. The real reason that you, in paragraph 9, were putting
4 that into your witness statement at that stage was to
5 try to explain the parity of pricing and the RRP pricing
6 which was to be found in the autumn/winter 1999
7 catalogue on the items which are the subject of this
8 case, was it not? You were trying to suggest at that
9 stage that what we see in autumn/winter 1999, where both
10 Index and Argos go out at the RRP, exactly the same in
11 both cases, on Action Man and core games, had somehow or
12 other been explained by the fact that the previous
13 summer, you and various people in Argos had decided to
14 go out at those prices. That is why you included that
15 statement, is that not so?

16 A. The move to near RRP or RRP would be driven purely and
17 simply by us matching our competitors' prices.

18 Q. Have you seen that -- well, I think you are the author
19 of it, the document at --

20 THE CHAIRMAN: Which at that time would be higher, on this
21 scenario?

22 A. In most instances, yes, but sometimes the competitors
23 would have reduced their prices during the life of the
24 catalogue, and so we would be reacting to whatever was
25 the prevailing price.

1 MR DOCTOR: Mrs Thompson, would you look in the core bundle
2 at page 43? This is a document which you prepared,
3 headed "Margin Contributors", initially in relation to
4 the spring/summer 1999 catalogue, that is catalogue 51.
5 You were describing both margin enhancers and margin
6 reductions, and we find, for example, that you were
7 putting prices up on about 760 lines, and reducing them
8 on 922 lines.

9 A. Yes, however it also shows, under "Catalogue 51 Margin
10 Enhancers", the third point, "Pricing (not putting
11 prices down)" was benefitting the Argos margin to the
12 tune of £4 million, year on year.

13 Q. Well, you may not put prices down on existing items,
14 that is a particular category, but what this clearly
15 shows is that the policy that you were thinking about or
16 had already adopted was a flexible policy of putting
17 prices up or down, depending on circumstances, that is
18 point number one; you agree with that?

19 A. Yes.

20 Q. And secondly, it bears no relationship whatsoever to
21 RRP's; they are irrelevant, it is not mentioned in this
22 document.

23 A. RRP's are not relevant.

24 Q. Yes. It is completely irrelevant, this question of
25 RRP's, to this policy that you were planning in

1 August 1998.

2 A. Only to the extent that we would price to the market,
3 and hence if the market was at RRP, we would price to
4 RRP.

5 Q. Yes. The only reason why you said in paragraph 9 of
6 your statement, "We introduced a new policy, a new
7 pricing policy of moving towards market pricing on all
8 product categories, the pricing policy meant that Argos
9 would go out close to recommended retail prices", was to
10 convey the misleading impression that that pricing
11 policy had something to do with the fact that in
12 autumn/winter 1999, all the prices on the core games and
13 Action Man ranges were priced at recommended retail
14 prices.

15 A. Our pricing reflected the pricing policies of our
16 competitors, so if our competitors sold at recommended
17 retail prices, our pricing policy assumed that we would.

18 THE CHAIRMAN: Yes. Shall we break now, Mr Doctor?

19 Now, Mrs Thompson, I would be very grateful if you
20 would not discuss your evidence or the case during the
21 luncheon adjournment with anybody else. Thank you.

22 (1.00 pm)

23 (The short adjournment)

24 (2.00 pm)

25 THE CHAIRMAN: Yes, Mr Doctor.

1 MR DOCTOR: Thank you. Mrs Thompson, would you mind having
2 a look at the pricing analysis which was prepared by
3 Argos' team, which has now been put in front of you in
4 this green bundle?

5 THE CHAIRMAN: Which bundle is it?

6 MR DOCTOR: It is the skeleton.

7 THE CHAIRMAN: The Argos skeleton, right.

8 A. Sorry, before --

9 THE CHAIRMAN: Just give me one minute to get the document
10 we are talking about.

11 Yes, what was it you wanted to say?

12 A. Before we broke for lunch, we were looking at the
13 "Margin Contributors" paper, and I did want to make
14 a couple more points on that. May I do that now?

15 THE CHAIRMAN: Yes, you tell us what you want to say.

16 A. I made the point that I have shown there, that not
17 putting prices down had benefitted the margin by
18 £4 million. The other issue --

19 THE CHAIRMAN: Can you just give me the number -- 43. Yes,
20 I am with you. Yes, go on.

21 A. The other important point on that page was putting
22 prices up at 760 lines increased in price, that was
23 a huge increase on previous catalogues. Historically,
24 Argos only put the price up of about 200 lines per
25 catalogue.

1 The other point was made about 922 lines reduced in
2 price; that was a huge reduction on what Argos had done
3 previously, and again, usually, that was in excess of
4 about 2,000 lines.

5 THE CHAIRMAN: So more lines were increased and fewer lines
6 were decreased.

7 A. Considerably fewer decreased for that catalogue.

8 THE CHAIRMAN: Yes, I see. Yes, thank you. Yes, Mr Doctor,
9 we have the Argos skeleton; what do you want to take us
10 to?

11 MR DOCTOR: This is the comparison between Argos' and
12 Littlewoods' prices in the catalogues for 1998 and 1999.
13 There is a document headed "Pricing Analysis", do you
14 have that?

15 A. Yes.

16 Q. And behind it are the spreadsheets which provide the
17 data on which the conclusions are based, so you can have
18 a look at either, but let us start in the pricing
19 analysis at core games. Spring/summer 1998, there are
20 nine common products. Argos are cheaper on all nine;
21 this supports the view that Argos' strategy was to
22 undercut.

23 If you want to look at the core games, you will find
24 that just behind B1, for spring/summer 1998, and then
25 for autumn/winter 1998.

1 Then at the top of the next page, paragraph 5 of the
2 pricing analysis, Argos' pricing had no clear pattern;
3 this is consistent with the fact that Argos was trying
4 to undercut Littlewoods on individual products.

5 Then we have the GUS takeover in April, but the
6 final pricing for autumn/winter 1998 took place in
7 April/May, so that takeover did not yet affect the
8 prices.

9 In the catalogue, we have 13 common prices; four are
10 the same, Argos is cheaper on eight, and Littlewoods is
11 only cheaper on one. This indicates that Argos'
12 strategy was still to undercut.

13 Then we are told again that Argos' prices had no
14 clear pattern, this is consistent -- yes, I have read
15 that.

16 Then we come to the spring/summer catalogue, where
17 we are told that your new move to market pricing has
18 begun to influence the catalogue. There are nine common
19 products: Argos and Littlewoods had five of these
20 products at the same price, Littlewoods are cheaper on
21 four of the products. That is core games.

22 If you go to Action Man, you will see that at
23 page 7, in spring/summer 1998 there are 18 common
24 products. One is the same, Argos is cheaper on 11,
25 Littlewoods are cheaper on six.

1 Autumn/winter 1998, 17 common products; three are
2 the same, Argos is cheaper on 10, Littlewoods are
3 cheaper on four.

4 Then spring/summer 1999, when we are told the policy
5 of moving to market pricing is beginning to be
6 implemented, 12 common products; none are at the same
7 price, Argos are cheaper on three but Littlewoods are
8 cheaper on nine.

9 So one can see that something was beginning to
10 happen, but the consequence was that Argos was finding,
11 at least in relation to these items -- and those are the
12 only ones we are talking about at this stage -- that
13 contrary to years of experience, Argos was no longer the
14 cheapest; Littlewoods was winning the battle. Do you
15 agree --

16 THE CHAIRMAN: Is that right? You are nodding, but for the
17 transcript you have to say something.

18 MR DOCTOR: Do you agree with that? This is the result of
19 the beginning of the implementation of your policy --
20 that was the effect of it.

21 A. In spring/summer 1999 our catalogue was less
22 competitive, so we were cheaper on fewer lines than we
23 historically had been, but our intention was no longer
24 to be cheaper, our intention was to be the same price as
25 the market.

1 THE CHAIRMAN: Hang on. (Pause). Yes?

2 MR DOCTOR: Well, you are not the same price as the market;
3 as it happens, Index is cheaper than you.

4 A. Yes, Index in these instances, in these examples that
5 have been cited, were cheaper than us.

6 Q. Yes.

7 THE CHAIRMAN: I think the witness wanted to carry on. You
8 carry on.

9 A. No.

10 MR DOCTOR: You are sure I did not interrupt you
11 unnecessarily? Right. Whatever the policy, if this had
12 continued into the important autumn/winter catalogue for
13 1999, the result would have been that Littlewoods would
14 have been cheaper on most of the items. Is that
15 something that Argos was prepared to just countenance at
16 that stage?

17 A. In the autumn/winter 1999 catalogue, Argos launched for
18 the first time a price match promise for our customers,
19 so that if Argos had been undercut by Index, Argos would
20 reduce the price.

21 Q. Were you prepared to accept that on reading the
22 catalogue -- we have been told millions of people have
23 these catalogues at home, and they sit in their homes
24 and they compare prices, and they are sensitive even to
25 small variations -- that Argos was content to continue

1 with a situation in which it was actually beaten on most
2 of the prices or the majority of prices on these
3 high-profile goods by Index?

4 A. Pricing is -- though there is a pricing policy, you have
5 to be sensitive to the individual needs of products, and
6 the individual profit requirements of the business, and
7 we were not in the business of chasing sales blindly.

8 So on certain Hasbro products, and indeed on Hasbro
9 in total, Argos made a loss. We also asked ourselves:
10 do we really want to chase a competitor who has yet to
11 make any profit? So that too was part of our thinking
12 around saying, "Well, yes, Index are a key competitor;
13 however, we will not be driven and led by Index, by
14 Index's pricing".

15 Q. Well, let us have a look at that. So here you are at
16 the beginning of January 1999, the new policy of moving
17 towards market pricing is beginning to be implemented,
18 and in this field you are finding that Index are lower
19 than you, if anything; that is the market price, it is
20 the lower price, not your price.

21 A. The market price would be based on our key competitors,
22 and Index was one of our key competitors. If Index had
23 been cheaper than us, we would take that into
24 consideration when pricing for the following catalogue,
25 but we would also take into consideration our other key

1 competitors on toys, namely Toys R Us and Woolworths,
2 who are significantly bigger than Index, and are
3 a significantly bigger threat to Argos.

4 Q. Yes, but in this field, Argos is generally -- or at
5 least at that stage, was the price setter. The price
6 set by Argos was to a large extent determinative of what
7 the market would arrive at, was it not?

8 A. Prior to the GUS takeover, as I mentioned, the policy
9 was for Argos to be the price setter, to be cheaper than
10 the market. That was no longer really required. What
11 we wanted to be was on the market.

12 (2.15 pm)

13 Q. Other retailers could always respond -- whatever their
14 prices were, they would see your catalogue, like
15 Toys R Us and Woolworths, and they could respond for the
16 season; they would wait until July and then they could
17 see what your price was, and they could price
18 accordingly for Christmas, or September, or any time
19 they liked; correct?

20 A. Yes, competitors can price as they want, whenever they
21 want.

22 Q. Index, however, came out at the same time as you;
23 correct?

24 A. I cannot remember the exact dates, but usually within
25 a few days of each other, the catalogues come out.

1 Q. Yes, the catalogues would come out. So if Argos had
2 printed a price at that point in its catalogue, the
3 Index catalogue would have come out at the same stage,
4 and if it was lower, it would have set the market price
5 for those items on which it was lower at that point?

6 A. The market did not follow Index. I mentioned that the
7 key competitors, Argos' key competitors: Woolworths and
8 Toys R Us on toys, reacted -- and in Woolworths' case,
9 reacted within 24 hours of the catalogue coming out.
10 Those two competitors did not react to Index pricing.

11 THE CHAIRMAN: But they reacted to your pricing?

12 A. They reacted to Argos' pricing.

13 MR DOCTOR: As long as Argos was the lowest, as had
14 historically been the case. The others had reacted to
15 Argos pricing because Argos was the lowest. Woolworths
16 are not going to offer the same goods at a higher price
17 than Argos, but if it became known over a period of time
18 that Index was now the lowest, Index would be the price
19 leader, would it not?

20 A. We did not measure the reaction from Toys R Us and
21 Woolworths to Index's pricing, so I cannot comment on
22 how soon they may have reacted to the Index pricing, but
23 certainly when we would have done our market surveys,
24 which we do regularly, we did not find that those key
25 competitors had dramatically reduced their prices.

1 Q. Well, Mrs Thompson, we are talking about things that
2 happen over a period of time. Are you seriously
3 suggesting that if Argos had put up its prices so that
4 its prices were now generally higher, particularly on
5 these high-profile goods, and Index, catalogue after
6 catalogue, was coming up with prices which were lower
7 than your prices, that the market, Woolworths and
8 Toys R Us, would be saying to themselves, "Oh, we will
9 price at the higher price", all three of you now pricing
10 at some higher price, knowing that Index is undercutting
11 you season after season. It is not conceivable, is it?

12 A. Our competitors, like us, would take into consideration
13 the market share of that player, and the importance of
14 that retailer that was undercutting them. They would
15 also take into consideration how is that retailer
16 exposing the market to their pricing?

17 Argos obviously had a significant catalogue print
18 run with, you know, 10 to 15 million catalogues per
19 print run, so 15 million homes potentially having an
20 Argos catalogue, whereas Index was in less than half of
21 that number of homes. So the impact would be
22 considerably less.

23 Q. Well, Index might have started off with a mere 7 million
24 homes; keep that up for much longer, with Index
25 consistently being lowest in price, and within a short

1 space of time Index would be the market leader, with the
2 customers pouring over into Index; while they are there,
3 they buy other things at the same time, and within
4 a relatively short space of time, Index would have had a
5 much larger market share, Index would have been the
6 price leader, and all the other retailers would have
7 followed Index. That is what competition is all about.

8 A. Yes, that could conceivably happen. However, at the
9 same time, if Index's cost model is anything like Argos'
10 cost model, Index's losses would only increase, because
11 certainly our -- we did not make any profit on certain
12 elements of toys, and toys per se, as a product
13 category, earned Argos considerably less than the normal
14 contribution from products, after all of our fixed
15 costs.

16 Q. Well anyway, let us have a look at your second witness
17 statement. You say Argos first had a meeting with
18 Hasbro in late 1998, possibly November, although you
19 were yourself not at the meeting. If you want to see
20 it, it is tab 64, paragraph 8. Already at that stage,
21 the thrust of what Hasbro was telling you was that they
22 wanted you to go out at RRP's; they had come up with some
23 plan whereby you would go out at RRP's, you and the other
24 retailers. This was going to somehow or other improve
25 margins; correct?

1 A. I was not at this meeting, the meeting was between
2 Sue Porrit and Mike McCulloch. It was at the Argos
3 offices in Milton Keynes, and the first I knew of it was
4 when Sue told me that Hasbro had proposed that they
5 could get everybody to sell at RRP, and they were going
6 to link the payment of rebates to the retailers selling
7 at RRP.

8 Q. So their whole proposal was, "All retailers should go
9 out at Hasbro's RRP on certain products", we know it is
10 Action Man and core games; according to what Sue Porrit
11 told you, they suggested at that meeting that you would
12 get a rebate: all retailers should sell at a given
13 price, and they would only be paid rebates if they
14 agreed to sell at the relevant RRP; that is the proposal
15 that was made to Sue Porrit.

16 A. Yes.

17 Q. And she reported back to you.

18 A. Yes.

19 Q. So it is clear, never mind whether it is legal or
20 illegal, that that is what Hasbro is aiming at. They
21 want everyone to go out at RRP.

22 A. That certainly is what they told Sue Porrit and she
23 passed on to me.

24 Q. Right. Now you did attend a second meeting with Hasbro
25 on 17th February 2000, and you say that at paragraph 10.

1 A. In February 1999.

2 Q. I beg your pardon, 1999. This was a meeting you and
3 Mr Duddy attended, and it was also attended by
4 Mr Richards and Mr Gardner.

5 A. Yes.

6 Q. Mr Duddy told Hasbro that they were not going to
7 tolerate low margins on toys.

8 A. Terry told Hasbro that Argos were unwilling to accept
9 low margins on toys, and low margins on Hasbro.

10 Q. And you say this:
11 "We told Hasbro that Argos would no longer tolerate
12 low profit on toys and that if we did not make better
13 profit, Argos would reduce its exposure to toys."
14 So they were told that?

15 A. Yes.

16 Q. "Second, we discussed the GUS policy, in the sense that
17 we were very clear that we were not going to continue to
18 pre-empt the market. We told Hasbro we were not going
19 to tolerate low margins on toys. We indicated that
20 Argos intended to price more at a market price, but
21 would not compromise its competitive position, ie it
22 would react if it was undercut by key competitors."

23 A. Yes.

24 Q. First of all, just let us stop there. Was it normal to
25 discuss with your suppliers the selling prices to your

1 customers?

2 A. No, it was not normal to discuss the selling prices, and
3 we did not discuss the specific selling prices.

4 However, we made no profit, we made a loss on Hasbro.

5 We made next to nothing in terms of profit on toys. We
6 had to make it very clear to the supply base that Argos
7 would no longer just blindly chase market share, that we
8 were in the business of making profit, and if we did not
9 make it on toys, we would look at different product
10 categories.

11 Q. You say you were going to charge the market price --
12 this is to very experienced people who know that Argos'
13 price is actually the market price, Argos sets the
14 market price in toys. You are telling them, "We are
15 going to charge the market price", and then you add,
16 "This obviously meant that prices were going to be
17 higher than they were before". Why? If you were
18 setting the market prices, why did telling them that it
19 was going to be the market price mean they were going to
20 be higher?

21 A. It was common knowledge, and obviously quite visible,
22 because it was printed in the catalogue, that Argos
23 looked to undercut the market prior to the GUS takeover.
24 What we were saying was that Argos were not going to try
25 and second guess the market and then reduce the price;

1 Argos was going to sell at what we believed would be the
2 prevailing market price.

3 So Argos was looking at its internal strategy, and
4 what Argos could do and control to improve profit.

5 Q. Is it not rather a strange way of opening negotiations
6 with your suppliers by telling them that you are going
7 to be increasing your retail prices, thereby taking the
8 pressure off them to give you lower wholesale prices?

9 A. Sorry, could you repeat the question?

10 Q. Yes. If you are saying to your suppliers, "Look, we
11 want more margin, but we are starting by telling you we
12 are going to increase our prices", you have taken off
13 all the pressure you can exert on them to lower their
14 prices. They would say to you --

15 A. First of all --

16 Q. They would say to you, "If you charge more, you will get
17 more margin". If you add to that, "No, this means you
18 must reduce your prices", they would say, "What are you
19 talking about? You are putting up your prices, that is
20 how you will get more margin".

21 A. I think you have to take that in context of the fact
22 that Argos made a loss on Hasbro, and made very little
23 on toys, and again, if you consider even the RRP's on
24 some of these products, and the cost prices charged to
25 Argos, Argos still would only make a few pennies, and

1 after you have taken into consideration the cost of
2 putting the product through our supply chain, you still
3 would not make a profit.

4 Q. Well, you see, if you came to them and said, "Look, we
5 want to raise our prices", they would have said to you,
6 "Well, that is most convenient, because as it happens,
7 our pricing initiative, which we have mentioned to you
8 already at the last meeting, in late November, that is
9 just ideal, because that involves everybody going out at
10 our recommended retail price, and you, Argos, will no
11 longer be undercutting that, so that is perfect"; that
12 presumably is what they must have said, if you had
13 spoken in this way about raising your prices.

14 A. No, not at all. The point that we were making was that
15 we made an unacceptably low profit on toys; we were
16 trying to improve our profitability in the areas we
17 controlled, which is the retail price, and what we were
18 doing was that we were no longer going to pre-empt the
19 market.

20 However, Mr Hasbro, we would also be looking to you
21 to improve the profit on the product, so the price that
22 we buy the products at.

23 Q. But would you not have said to them, "Look, we are going
24 to put up our prices, we have done that already for
25 spring/summer 1999, the result has been that Index's

1 prices are still too low, because they are now lower
2 than our prices, we cannot have that continue", to which
3 the Hasbro people say, "Well, that is just exactly what
4 our pricing initiative is meant to avoid. Everybody
5 will charge RRP, and we will see to it that that is what
6 happens". Is that not what they said?

7 A. No.

8 Q. "Everybody will follow our pricing initiative, everybody
9 will charge the RRP's".

10 A. Hasbro did not discuss any price initiative with us.

11 THE CHAIRMAN: Hasbro did not discuss any price initiative?

12 A. None.

13 MR DOCTOR: Do you want to see the document -- I showed it
14 to Mr Duddy, you were in court at the time; you nod your
15 head.

16 A. Yes.

17 Q. Hasbro has a document which indicates that they did
18 discuss a pricing strategy on core games and Action Man
19 which they describe as stabilising prices at RRP's at
20 that meeting, but you say -- you can look at it if you
21 like, but you say it did not happen.

22 A. First, we had never seen that document until the OFT
23 produced it, it was never shown at the meeting, and it
24 was not the agenda for the meeting. I do not know how
25 you can assume that Hasbro discussed those points.

1 Certainly, they were not discussed at the meeting.

2 Q. Well, I am assuming it not only because of that document
3 but because at a previous meeting they had already
4 raised with you -- and you accept that -- their policy
5 of getting all retailers to go out at RRP. Why would
6 they not have repeated it in response to Mr Duddy's
7 statements, "Well, we are planning to raise our prices
8 now, or to go out at the market price", and they would
9 have come back at you and said, "Yes, that just
10 perfectly fits in with our new pricing strategy".

11 A. First, the previous meeting, the 1998 meeting, I was not
12 at; that was with Sue Porrit, who told me about their
13 plan around rebates being allied to selling at a certain
14 price. She went back and told them that she believed,
15 we believed it was illegal; I certainly never heard
16 anything more about it. So there was no previous policy
17 or strategy or whatever from Hasbro on the table.

18 Q. Mrs Thompson, look at your statement in paragraph 12:

19 "We indicated that Argos intended to price more at a
20 market price but would not compromise its competitive
21 position, ie it would react if it was undercut by its
22 key competitors."

23 Why is that of any interest to them? Why are you
24 telling them this, that you are going to go out at a
25 market price, but if you find that that price is

1 undercut by somebody else, which suggests it is not the
2 market price, then you are going to react? They would
3 say, "What business is that of ours?"

4 A. We were giving them notice that we would be coming back
5 to them to assist us in repositioning prices if we were
6 undercut.

7 (2.30 pm)

8 THE CHAIRMAN: How can they assist you in repositioning
9 prices?

10 A. In giving us money, in giving us some free stock.

11 THE CHAIRMAN: How does that help to reposition the price?

12 A. Oh, anything that helps us to take cost out, helps us to
13 support the margin.

14 THE CHAIRMAN: I thought you were telling us the price would
15 depend on what the competitors were doing, rather than
16 on what your margin was.

17 A. Yes, absolutely. We would react regardless of whether
18 a supplier supported us or not, but we would always ask
19 the question.

20 THE CHAIRMAN: Yes.

21 MR DOCTOR: So presumably, you were telling them, "Something
22 bad will happen if we are undercut, we will be looking
23 to you, Hasbro, for support".

24 A. Not something bad will happen, other than yes, if we
25 have to reposition the price, we will be coming and

1 asking you to help us to reposition, but we would
2 reposition and make that call by ourselves.

3 Q. Well, from Argos' -- sorry.

4 A. In terms of something bad, the something bad would be
5 that Argos was making less profit than it thought it
6 would when it set the catalogue prices, so we were not
7 addressing the profit issue on toys per se, which meant
8 toys would not be as attractive to Argos as it was
9 previously. We would reduce the exposure to toys, and
10 grow some other product categories that were more
11 profitable.

12 THE CHAIRMAN: Do you normally discuss your catalogue
13 pricing or at least the general level of your catalogue
14 prices with your suppliers?

15 A. We did not in general. However, toys really were
16 a particular issue, because we made -- well, we made
17 a loss on Hasbro, as I mentioned, and next to nothing on
18 toys as a general category.

19 We had to get the supply base to look at their
20 internal business, to say where can they take cost out,
21 so that we could earn better margins and carry on
22 focusing on toys.

23 THE CHAIRMAN: What was preventing you simply putting the
24 prices up?

25 A. We did put the prices up on certain toys to make more

1 profit.

2 THE CHAIRMAN: Yes, well, why could you not just do that,
3 without explaining all this to Hasbro?

4 A. Because our policy, our stated intention was to be at
5 market pricing, so still competitive vis-a-vis the key
6 competitors. So in toy terms, Toys R Us and Woolworths,
7 and not more expensive than them.

8 THE CHAIRMAN: As I understood it, and this is something
9 I have not quite grasped yet, at this stage, at the time
10 when you had your previous policy of pre-empting the
11 market, you were, I think you have told us, the price
12 setter; so at this stage, at least, Toys R Us and
13 Woolworths are not above your price, they are at your
14 price.

15 A. Yes, in most instances; not in all.

16 THE CHAIRMAN: And what you were telling us earlier was that
17 you wanted to move to RRP where other competitors were
18 at RRP, to match other competitors' RRPs, and what I am
19 puzzled about is how that works in toys when you are the
20 price setter, and it is basically your prices that
21 determine what everybody else's prices are going to be.

22 A. The situation is that other retailers would react to the
23 Argos price on toys.

24 THE CHAIRMAN: Yes.

25 A. And Argos made the decision, we made the decision that

1 we no longer needed to be as aggressive on toys, because
2 all the major competitors reacted to us so quickly, that
3 gave us no advantage, so why not price at what the other
4 competitors would otherwise sell -- or we believed our
5 competitors would otherwise sell the products at.

6 THE CHAIRMAN: So you are going to move your prices up.

7 A. Yes.

8 THE CHAIRMAN: Why are the other competitors not going to
9 react immediately, as they have in the past, and sell at
10 a lower price or maintain their previous low prices?

11 A. I cannot speak for their own strategies. However, given
12 the low profit in toys, obviously we did not know what
13 they would do, but it would be unlikely that they would
14 be willing to throw away money unnecessarily. They were
15 reacting to Argos, there was no need for them to react
16 any longer, on certain products.

17 MR DOCTOR: Well, if Argos wanted to move to market pricing
18 or close to RRP if that was the market pricing, to
19 improve its margin, but as you say here, it did not want
20 to be visibly undercut by its key competitors, if it was
21 the Toys R Us and the Woolworths competitors, you would
22 not be undercut by them, because you would move to
23 a price and they would follow. Whatever price you had,
24 they would have the same price, presumably.

25 A. Historically, that was the case; whatever Argos did,

1 Woolworths and Toys R Us followed, and in some
2 instances, undercut as well.

3 Q. So when Argos said to Hasbro, as you have it here, "It
4 would react if it was undercut by its competitors", it
5 is a clear reference to the only competitor who was
6 almost certain to undercut you, and that was Index, who
7 could not react as such, but would come out with its
8 catalogue at the same time. They are the ones that you
9 are referring to, they are the ones you do not want to
10 be seen to be undercut by.

11 A. No, absolutely not. It was our key competitors,
12 particularly Woolworths and Toys R Us. But Index was
13 also a key competitor, so they would be one of the
14 people, as well as Woolworths and Toys R Us.

15 Q. Because if you come out at a price, you know that the
16 High Street retailers just follow that price; but if you
17 come out at a price, you will find that you are undercut
18 if Index, in their parallel catalogue, undercuts you;
19 that is what you are talking about.

20 A. No, I am talking about anybody, any of our key
21 competitors undercutting us. Yes, most of our --
22 Toys R Us and Woolworths we believed, because
23 historically they had always sold at a higher price and
24 then brought their price down to match the Argos price,
25 and then in 1997 also, in Woolworths' case, slightly

1 undercut the Argos price. If we were undercut by those
2 people, we would move to match their prices, and
3 perhaps, in certain instances, possibly undercut their
4 price.

5 Q. Well, as I understand it, the margins on the Hasbro
6 toys, and in particular these Action Man and core games,
7 have been described by you as appalling.

8 A. Yes.

9 Q. Even if you put your prices up a bit on these items, it
10 is very unlikely that the High Street retailers would
11 have undercut you once your catalogue came out,
12 particularly on these items, where the margins were
13 already appalling.

14 A. Unfortunately, that was not the case. Woolworths and
15 Toys R Us did undercut Argos, and certainly in 1997,
16 Woolworths reacted within 24 hours; they reacted and
17 shaved some more money off versus the Argos price. That
18 was on all common products between Woolworths and Argos
19 on toys.

20 Q. Your main concern was Index, which would publish at the
21 same time as you and be seen in 7 million or 15 million
22 homes to have undercut you.

23 A. First, Index would not be in 15 million homes, because
24 they only printed -- I think you said it was 7.

25 THE CHAIRMAN: Well, 7 million homes.

1 A. No, the concern was not specifically Index.

2 MR DOCTOR: That is why the Hasbro initiative was of such
3 interest to you, provided they could ensure that Index
4 would also not undercut you.

5 A. We were not aware of any Hasbro initiative.

6 Q. The statement by you that you would look to them for
7 support is only understandable on the basis that they
8 would be looked to to provide money or terms or
9 something, when the catalogue came out and you found
10 that the price you had gone out at was undercut by
11 someone else.

12 A. We would look to the supplier, in this case Hasbro, to
13 assist us in maintaining our profit, should we have to
14 reposition. Whether that be immediately at catalogue
15 launch or some time into the catalogue life, it would be
16 no different. We always -- and we make a point of
17 asking for support.

18 Q. Well, you could ask for support in the event, but the
19 point of telling them that at the 17th February meeting
20 was so that they should understand that if you went
21 along with this and they were undercut, you would come
22 back to them, so they should take all steps they could
23 to ensure that you were not undercut.

24 A. No, the point was that we were making it very clear that
25 we were not willing to chase toy market share at any

1 cost, and that toys were reducing in attractiveness to
2 Argos, given the profit, and unless we did something,
3 we, Argos, did something to improve the profit on toys,
4 we would see the exposure to toys reduce over time.

5 What we, Argos, were doing was that we were moving
6 away from pre-empting the market, so giving away money
7 unnecessarily. What we were looking to the suppliers to
8 do was to improve the profit that they gave us, our cost
9 prices as well, regardless of any competitive issue.

10 Q. Mrs Thompson, would you look at page 38 of the
11 core bundle? This is an e-mail from Sue Porrit two days
12 after this meeting, at which she is setting out for the
13 merchandise toy teams essentially your account of what
14 had happened at the meeting; is that correct? Because
15 she was not at the meeting.

16 A. I have given the date of this e-mail, it is not from me,
17 and I am not copied in on it, so I was not able to
18 discuss any points with Sue. I would believe that this
19 would be the points that she believed --

20 Q. That she had understood from you; she reported directly
21 to you in the structure of --

22 A. Yes, she did at this time.

23 Q. So insofar as she is telling them what happened at the
24 meeting, the debrief from this meeting, she would have
25 got it from you?

1 A. Yes.

2 Q. Right. The one we are talking about is paragraph 3, or
3 item 3; she records -- well, first of all, the heading:

4 "Pricing Strategy versus Rebate Pricing."

5 It is quite clear that this is a reference to what
6 was discussed at the meeting, this pricing strategy that
7 had come up between Hasbro and Argos, and also probably
8 covered the question of the rebates which Hasbro was
9 offering at the same time.

10 A. Sorry, what --

11 Q. This was a general reference, those four words, to this
12 overall discussion that was going on about the pricing
13 initiative, what has been called the listing or rebate
14 initiative that Hasbro was putting forward, and your --
15 that is Argos' -- new policy of moving towards market
16 pricing.

17 A. My interpretation of that heading is the Argos pricing
18 strategy and the need to improve terms. Rebate pricing
19 specifically, or rebates specifically were not
20 discussed. Overall profit was discussed at the meeting.
21 That might have been Sue's terminology.

22 (2.45 pm)

23 Q. Yes. So the most important thing that comes out of it,
24 that is recorded here for the information of the toy
25 teams, is your indication at the meeting that Argos

1 would react heavily to being undercut, should it happen.
2 In other words, "We are not expecting it, but if it does
3 happen, we have a strategy". The strategy is that
4 Hasbro will be asked to support this; they are being
5 asked to put money on the table, but they have said they
6 will not do that, but they will look at other methods of
7 support.

8 You are saying to the team, "We are going to price
9 in accordance with this new policy at a certain price,
10 we will go along with this, but if we find we are
11 undercut, Hasbro is going to be held responsible".

12 A. No. Hasbro cannot be held responsible for Argos'
13 pricing. Argos is responsible for Argos' pricing. My
14 understanding of what that point 3 means is that we have
15 adopted the Argos pricing strategy on toys, and if we
16 are undercut, we will reduce our prices, we will go back
17 to Hasbro and ask them to assist us in supporting the
18 margin.

19 THE CHAIRMAN: So the words, "We will react heavily to being
20 undercut, should it happen", really have two meanings
21 within them. First of all, you will respond and reduce
22 your own prices.

23 A. Yes.

24 THE CHAIRMAN: And secondly, you will go back to Hasbro and
25 seek their support.

1 A. Yes, we will ask them.

2 MR DOCTOR: Well, unless you had some understanding or
3 assurance from Hasbro that they would do their best to
4 prevent this from happening, there is no reason at all
5 why you would have stressed this, that if you should go
6 out at these new prices and find yourself undercut, you
7 would go back to Hasbro.

8 It may have nothing to do with Hasbro. You may go
9 out at your new price and Woolworths have a special
10 promotion on something in connection with the birthday
11 of the chairman or something. What on earth does that
12 have to do with Hasbro? Of course, if you went to
13 Hasbro and said, "Woolworths have got some special price
14 because they are having a promotion in timing with the
15 Queen's birthday" or something like that, they would
16 say, "What are you talking about? What does that have
17 to do with us?" This was directed at Hasbro, it was
18 a kind of sanction held over the head of Hasbro.

19 "We will go along with this, but if you do not
20 ensure that we are not undercut, we will be coming back
21 to you, because you are the ones who have made us or
22 agreed with us or given us the assurance that we can go
23 out at this price".

24 A. Sorry, what is the question?

25 Q. I am putting to you what the inference of the stress on

1 reacting and getting -- holding Hasbro in some way to
2 account for the undercutting.

3 THE CHAIRMAN: You had better put the inference again,
4 Mr Doctor.

5 MR DOCTOR: The inference of this is that if you go out at a
6 certain price and you find that you are undercut, Hasbro
7 will have to do something about it, because Hasbro is
8 being held responsible for that undercutting.

9 A. Hasbro are not held or were not held then responsible
10 for retailers' pricing, our competitors' pricing. They
11 could not be. What Hasbro could be a contributor to was
12 the profit that was earned on their products, and
13 certainly the example of its -- somebody's 50th birthday
14 and the price cut, that would not stop us going back to
15 the supplier and asking, "Could we have something so
16 that we can run a promotion?" It may not be a 50th
17 birthday, but perhaps 25th or something.

18 Q. Yes, but it would not make any sense to mention that
19 beforehand, because anything can happen in the future.
20 What you were stressing to Hasbro is actually that you
21 would go out at their new RRPs, and if you found that
22 the rest of the market did not, as Hasbro were assuring
23 you they could get the rest of the market to comply with
24 it, if you found they could not do that, you would go
25 back to Hasbro and ask them to provide support, and what

1 is more, you would then cut your own prices.

2 A. No, that certainly was not the case.

3 Q. You are saying to them, "We will go out at your RRP,
4 but if we find that you have not got the rest of the
5 market to do the same, we are going to first of all cut
6 our prices, so we will no longer be at RRP, and
7 secondly, we will look to you for support".

8 A. We did not discuss RRP. There was no commitment, there
9 was no policy plan on the table to discuss with Hasbro.

10 Q. And then for the first time in autumn/winter 1999, when
11 the catalogues come out, all the catalogues, that is
12 Index and Argos, they are at the same price on RRP in
13 this particular category, Action Man and core games.
14 And that was what you had been discussing beforehand;
15 the policy had worked.

16 A. There was no policy discussed at the meeting. What was
17 discussed was the appalling profit that Argos made on
18 toys, and the loss that we made on Hasbro after putting
19 it through our supply chain.

20 Q. Now you say at paragraph 19 of your first witness
21 statement that you spoke to Mike McCulloch in early
22 1999, some time after the February 17th meeting; you say
23 you were complaining about the poor margin on Hasbro
24 products. Let us just stop there for a moment.

25 Why would you need to complain again? Apparently,

1 Mr Duddy had made it clear at the meeting of the 17th
2 that this problem of margins was a historical and
3 long-time problem, and Argos were now addressing it, in
4 a particular way, by pricing, you say, at market
5 pricing. Why would it be necessary for you to go back
6 to him again and start the conversation all over again
7 about very low margins? He was well aware of it, so
8 were you.

9 A. The meeting with Mike McCulloch was held at his request,
10 and it was following a product selection at Argos, where
11 Argos had proposed or had dropped certain games
12 products. He was very unhappy that Argos had chosen to
13 drop these games, and I believe these games were part of
14 the games that were subject to a listing rebate.
15 I think he was surprised that Argos had made the
16 decision to drop some core games or key games from
17 Hasbro, and potentially lose the rebate that was
18 associated with stocking those products.

19 So he asked to come and see me, and I said to him
20 that we had dropped the games because frankly we made no
21 profit on them, and that all of our competitors had
22 equivalent FOB, free on board, direct import lines that
23 they sold at -- I cannot remember the exact prices, but
24 considerably less, potentially half the price of the
25 Hasbro product. So that was why I was complaining about

1 the profit on Hasbro.

2 Q. But you do say that in that conversation, "He did say
3 that Hasbro could make sure that the other retailers
4 would go out at recommended retail prices".

5 A. He did.

6 Q. And you say you did not believe him.

7 A. Well, I had thought it was absurd. I do not know how he
8 could make anybody do anything, he could not make Argos
9 price in a certain way.

10 Q. You must have been very interested and surprised to hear
11 that, because it has made quite an impression on you,
12 that you should remember that one conversation and that
13 one statement some three years later when you made your
14 witness statement.

15 A. It certainly did, because it was quite preposterous,
16 I thought, that Hasbro could think that they could force
17 the market to sell at certain prices.

18 Q. Mrs Thompson, no doubt when Mr McCulloch said that to
19 you, he did not intend to convey that he could force
20 them to do anything. What he intended to convey was
21 presumably what had already been conveyed to you now on
22 two occasions, which was that they had been speaking to
23 other retailers, and that they were working on them all
24 to ensure that they would all go out at recommended
25 retail prices.

1 Why should that have been so completely
2 unbelievable?

3 A. First of all, Hasbro had not communicated to me on two
4 different occasions, in fact on no occasions, that they
5 had been talking to competitors.

6 Q. At least on one occasion you had received a report that
7 that had happened. Sue Porrit came back and told you
8 that Mr -- I think it was Mr McCulloch on that occasion
9 as well, that he had said -- sorry, let me find my
10 reference again.

11 Yes, at the meeting with Ms Porrit, she told you
12 that:

13 "Hasbro was proposing that all retailers should sell
14 at RRP's."

15 THE CHAIRMAN: That is which document?

16 MR DOCTOR: That is paragraph 9 of the second witness
17 statement. (Pause).

18 "The meeting was with Sue Porrit and Mike McCulloch
19 at Argos [which was reported back to you]. Hasbro was
20 proposing that all retailers should sell at a given
21 price, and they would only be paid rebates if they
22 agreed to sell at the relevant RRP."

23 So you had been previously told that they were
24 suggesting a plan whereby they would get all retailers
25 to sell at RRP.

1 A. Yes.

2 (3.00 pm)

3 Q. At that stage, according to Ms Porrit, the proposed
4 sanction was that -- well, to you, was that they would
5 get the rebate only if they agreed to sell at the RRP.

6 A. Yes.

7 Q. So it is not at all unbelievable that Hasbro should
8 believe that they could go around speaking to all their
9 retailers and encouraging them to move up to RRP, is it?

10 A. I am sorry, could you repeat the question?

11 Q. I say it is not at all unbelievable that Hasbro should
12 be able to go round to all their retailers, and should
13 be able to -- what were the words you used here? "Make
14 sure that other retailers would go out at RRP".

15 A. The issue was that Hasbro could not make sure; nobody
16 can make sure that the retailers would do anything.

17 Q. Yes, but not in the sense -- obviously not in the sense
18 that Hasbro, somehow or other, can hold a gun to the
19 head of its retailers, but when he said "make sure", he
20 meant "take sufficient steps to try and ensure this",
21 and that is how you would have understood it.

22 A. I would have understood it as Mike McCulloch saying that
23 Hasbro could ensure that retailers sold at a certain
24 price. My view on that is that there is no way
25 a supplier can ensure that any retailer will sell at any

1 price.

2 Q. Yes, he must have known that as well, so he could not
3 possibly have meant it in that sense, could he? He is
4 speaking to a highly placed and experienced executive
5 from one of the largest retailers in the country. He
6 could not have tried to pull a fast one over you by
7 pretending to you that he could force retailers to do
8 anything.

9 When he said to you that he could make sure that all
10 retailers went out at the same price, he must have been
11 conveying to you that they had a plan whereby if
12 everybody would go along with it, they would bring about
13 a situation where retailers would all go out at the same
14 price. That is not at all unbelievable.

15 A. I cannot speak for what Mike McCulloch believed he was
16 telling me. I can only give you my interpretation of
17 what was said to me, and what I took out from it.

18 Q. Well, I am just suggesting to you that you would not
19 have jumped to the most absurd interpretation, because
20 you would not have thought, "This man must think I am
21 an idiot that he should make an absurd statement like
22 that"; you must have understood the subtlety of what he
23 was saying, that he would make sure, meaning he would
24 try to make sure they would all go out at the same
25 price.

1 A. No, not at all, I must have missed the subtlety in it,
2 because I believed that he was saying there was some way
3 Hasbro could ensure that the market would all go out at
4 a certain price, all retailers would price at a certain
5 price.

6 Q. And Mrs Thompson, if, in fact, you had misunderstood on
7 that occasion, and you had said to him, "You must take
8 me for a complete idiot, you cannot force people to go
9 out at anything", at that stage, he would have said to
10 you, "Of course I cannot force them to go out at any
11 price, but as you know, we have this pricing initiative
12 whereby everybody agrees to go out at the same price,
13 and we encourage everybody in the market to do that, and
14 as long as everybody sticks to it, it will work".

15 A. No, quite to the contrary. I did say to him, "This is
16 absurd, you cannot make Argos do anything", and he
17 said -- well, he did not say anything actually, as far
18 as I remember. He did not elaborate.

19 Q. In fact, if you go back to paragraph 15 of your second
20 statement:

21 "It was at the end of this meeting that
22 Mike McCulloch said to me that Hasbro had thought up
23 a way of improving the profit which would get everyone
24 to sell at RRP's. I asked McCulloch how he was going to
25 do that, and he told me he had a plan. I asked him if

1 this included supermarkets, he said yes. I said that
2 was not possible ... I also reminded him he could not
3 control Argos' pricing [well, as if he needed reminding,
4 Mrs Thompson]. He did not give details of his plan."

5 So it does not look as if he was suggesting that he
6 had supernatural powers, it looks as if he had a plan,
7 and I am putting it to you that you understood that he
8 certainly -- you would have understood it in that sense,
9 that he had a plan.

10 A. Well, I said that he had a plan, but my understanding
11 was that his plan was to ensure that all retailers sold
12 at a given price.

13 Q. Well, far from being absurd in itself, the idea that he
14 would have a plan, that he would have a strategy for
15 trying to achieve it is not absurd in itself, unless you
16 have heard what the plan is.

17 A. I think that it is absurd for a supplier to assume that
18 they can control the prices that retailers sell at.

19 THE CHAIRMAN: Was he suggesting he could control the
20 prices, or that he had a means of encouraging everybody
21 to raise the prices in such a way whereby they did not
22 undercut each other?

23 A. I do not know. I do not know the answer specifically to
24 that, but I remember his conversation was that he
25 could -- or Hasbro could get everyone to sell at RRP's.

1 MR DOCTOR: Well, the way he put it, or you remember he put
2 it in your statement, is:

3 "He said to me that Hasbro had thought up a way of
4 improving the profit which would get everyone to sell at
5 RRP's", and I suggest to you that in itself, that is
6 neither absurd nor inherently unbelievable or any of the
7 things you are trying to suggest now. It is a statement
8 which is interesting, and you could not possibly have
9 dismissed it out of hand without getting the detail of
10 this plan.

11 A. It is absurd to assume that you could get everyone to
12 sell at RRP's, or indeed get anyone to sell at RRP's, or
13 at any particular price.

14 Q. Well, we have taken that as far as we can. Would you
15 look at the letter at core bundle page 39? This is
16 a letter written by Mr Richards of Hasbro to Mr Duddy
17 about a month after the 17th February meeting, but
18 referring back to that meeting. In the middle of the
19 letter, paragraph 3:

20 "Though you and Maria made clear that product
21 availability and particularly profitability needs extra
22 focus by Hasbro. I know plans are in place, but Simon
23 and I will keep a personal watch on these areas."

24 There again is a reference to plans, in the context
25 of particularly profitability, and also product

1 availability, needing extra focus. Obviously you and
2 he, that is Hasbro and Argos, knew what was being talked
3 about here. Some plan was afoot to bring back
4 profitability, was it not?

5 A. My understanding of what this refers to is that during
6 the meeting, we made it very clear to Hasbro that they
7 should make available to us the amount of product we say
8 we require at the beginning of the season, and that
9 profitability, ie improving the profit on Hasbro
10 products -- well, the profit on Hasbro products needs to
11 be improved.

12 In terms of, "I know that plans are in place",
13 I believe at this stage, Hasbro had just put in SAP,
14 which is a logistics system which controls their stock,
15 and had actually lost visibility of some of their stock,
16 and they were using, I think, some sort of external
17 consultants to sort the programme out. They had given
18 us assurances in the meeting that we would not have any
19 more stock issues.

20 In addition to that when we talked about profit,
21 they did say that the terms package for that year was
22 still to be proposed or still to be agreed, I cannot
23 remember the exact language, and that is my
24 interpretation of that -- that is what was mentioned at
25 the meeting.

1 Q. Yes. There is no letter from Argos in which they asked
2 for clarification of what these plans might be, or
3 anything like that?

4 A. Well, we did not need clarification, because my
5 understanding was, as I just explained, that it was to
6 improve SAP, and to agree the trading terms for the
7 forthcoming year.

8 Q. Well, I am suggesting to you that the plan being
9 referred to here -- one of the plans being referred to
10 here is plainly the sort of thing which we have seen
11 being discussed, which is that everybody is going to go
12 out at RRPs, including Argos, and Hasbro will work hard
13 to ensure that, and see what happens. If Argos finds
14 that it is undercut, it will no longer charge at RRP, it
15 will react, cut its prices, and look for support, and
16 that is plainly what is being discussed, what is
17 understood at this stage.

18 A. Well, that is not my interpretation, and I was at the
19 meeting, I know what was discussed, and certainly, RRPs
20 were never discussed, and no plan around RRPs.

21 Q. Can you suggest any reason other than pure coincidence
22 why in the autumn/winter 1999 catalogue, the prices of
23 the core games and Action Man, which was the subject of
24 Hasbro's initiative, were priced at exactly the same
25 prices in both the Index and Littlewoods catalogue,

1 file?

2 THE CHAIRMAN: Is this something you need to get the
3 witness's evidence on, or can you introduce it in some
4 other way?

5 MR BREALEY: Well, I want the witness to look at the actual
6 prices. It goes to the very last question that you were
7 asked, which was:

8 "Can you suggest any reason other than pure
9 coincidence why in the autumn/winter 1999 catalogue the
10 prices of core games" were essentially the same?

11 Maria Thompson was not taken to the prices, and
12 I think it is fair that you have a look at the actual
13 prices. So if we go to tab 1 in that bundle, we see
14 a spreadsheet which relates to core games, the first
15 page is spring/summer 1998 and autumn/winter 1998 --
16 yes, I think that is ...

17 And then the second page, do you see it says
18 spring/summer 1999 and autumn/winter 1999. If we just
19 have a look at the prices of the core games, we have the
20 RRP on the left-hand side, and then Argos and
21 Littlewoods for spring/summer 1999, and then we have got
22 the autumn/winter 1999 on the right-hand side.

23 A. Yes.

24 Q. We see, for example, Trivial Pursuit, the RRP was £39.99
25 and Argos was £39.99, Littlewoods did not list it.

1 Jenga, RRP £9.99, Argos £9.99, Littlewoods were £9.95.
2 And then we see in autumn/winter 1999, Argos remain at
3 £9.99 and Littlewoods have gone up 4p from £9.95 to
4 £9.99.

5 Come down, for example, to Cluedo: RRP £14.99,
6 Argos, spring/summer 1999, Littlewoods were £14.95, 4p
7 less than Argos, and we jump over to autumn/winter 1999,
8 Argos £14.99 and Littlewoods have gone to the same
9 price, £14.99, they have raised it by 4p.

10 You were asked, was it coincidence or plan, or any
11 other reason; can you give the tribunal a reason why the
12 autumn/winter 1999 prices are fairly similar?

13 MR DOCTOR: I think the answer has been given already.

14 I think the answer was coincidence.

15 THE CHAIRMAN: I think she has answered that.

16 MR BREALEY: When you say coincidence, is it purely -- do
17 you mean coincidence, or is there another reason?

18 A. I think that what this shows is that Littlewoods had
19 decided to follow the Argos pricing as opposed to
20 pre-empting, and was taking the opportunity of making
21 a few pennies more. The Argos prices, by and large,
22 stayed static.

23 MR BREALEY: I think the question that was asked, without
24 taking Maria Thompson to the prices, was an unfair
25 question.

1 THE CHAIRMAN: I am sorry, Mr Brealey, I did not catch that.

2 MR BREALEY: Asking that question without taking her to the
3 actual prices was an unfair question.

4 THE CHAIRMAN: Well, you could have objected at the time and
5 asked for her to go to the prices.

6 MR BREALEY: Well, I have done it in re-examination, and she
7 has given the answer. I have no further questions.

8 THE CHAIRMAN: Could I just ask one thing, Mrs Thompson,
9 just to tie up one loose end? It is probably not
10 particularly important. You mentioned at a certain
11 point that Mr McCulloch had been concerned because
12 Hasbro had dropped certain games from its list.

13 Just looking at the documents we have got in front
14 of us, I cannot actually see anything that had been
15 dropped. I can see some things that have been added
16 back in, but in the core games range, what were you
17 referring to?

18 A. Argos had proposed -- had dropped, at the time of
19 selection, certain core games. I cannot remember
20 specifically, but I know Connect 4 was one of them.
21 Mike McCulloch came to see me, was very upset about it;
22 I said we would not do anything, the profit was too
23 poor.

24 He then came back subsequently to Sue Porrit with
25 a revised proposal, which considerably improved the

1 profit on the lines that had been dropped, so they were
2 relisted.

3 THE CHAIRMAN: I see. Yes, thank you.

4 MR DOCTOR: Arising out of that, could I just ask ...

5 Further cross-examination by MR DOCTOR

6 MR DOCTOR: Is that a reference to -- if you go to page 38
7 of the core bundle, there is a reference to:

8 "2. Games rebate. The specific issue of being
9 forced to range Battleships and Connect 4 was raised."

10 You have just mentioned Connect 4. Is that
11 conversation with Mike McCulloch related to this? This
12 is the conversation about Connect 4.

13 A. I cannot remember the specific games that I discussed
14 with Mike McCulloch, but I believed that Connect 4 was
15 one of them.

16 Q. This was just a discussion about being forced to list --
17 I take it the word "range" means list, or to include in
18 the range?

19 A. Yes.

20 Q. -- Battleships and Connect 4, in order to get the games
21 rebate.

22 A. Yes.

23 Q. This was not a threat to delist these important core
24 games and Action Man toys that we are talking about.

25 A. Well, this is not any threat, it was just a case of the

1 rebate being linked to stocking a certain number of
2 games, specific games, and some of those games were
3 loss-making.

4 What subsequently happened, at the selection of the
5 products, was certain games were dropped, and that is
6 when Mike McCulloch came in.

7 THE CHAIRMAN: I think we have come to the end of your
8 evidence. Thank you very much, Mrs Thompson.

9 A. Thank you.

10 (The witness withdrew)

11 MR DOCTOR: I understand, sir, that the rest of the
12 Littlewoods witnesses will be here tomorrow, and I would
13 prefer it certainly if they started their evidence
14 tomorrow, rather than this evening. I will hope to
15 finish four of them tomorrow, or deal with four of
16 them --

17 THE CHAIRMAN: Can I just check -- while we are on it, why
18 do we not spend a moment doing a bit of housekeeping?
19 Who do we have now tomorrow?

20 MR DOCTOR: I am told, in this order: Mr Cowley, Mr Burgess,
21 Mr Riley and Ms Gornall. Ms Runciman can only come on
22 Friday, and I have no objection to that. Then
23 Mr Needham and Ms Wray from Argos would be also on
24 Friday, and hopefully we would be able to complete it by
25 then, but I give no promises.

1 THE CHAIRMAN: And Mrs Clarkson, I think, is not coming.

2 MR DOCTOR: She is not coming.

3 THE CHAIRMAN: So do you estimate that those witnesses will
4 take most of the day tomorrow?

5 MR DOCTOR: Yes.

6 THE CHAIRMAN: Very well. Thank you all very much. We will
7 say then 10.30 tomorrow.

8 (3.30 pm)

9 (Hearing adjourned until 10.30 am the following day)

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