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1 Friday, 14th May 2004

2 (10.20 am)

3 THE CHAIRMAN: Mr Green, before we start, we would just like  
4 to say a word, if we may, about the legal submissions  
5 that are to come. We have just, I think, circulated to  
6 the parties, for good order's sake, a list of the  
7 various decisions of the Court of Justice and the Court  
8 of First Instance that we will be looking at, so that  
9 everybody knows what cases we are looking at.

10 We are conscious of the fact that some of the issues  
11 in this case as to agreement and concerted practice  
12 arise in another case that is pending before the  
13 tribunal at the moment, in which judgment is awaited, so  
14 we have obviously cross-checked to see that the  
15 authorities we are considering in this case are the same  
16 as the authorities we are considering in the other case.

17 There is one particular passage that was heavily  
18 relied on in the other case that has not, I think, so  
19 far surfaced in this case, which is in the judgment of  
20 the Court of First Instance in Cement, 2000 ECR 2 491 at  
21 paragraph 1852, I think it is the appeal concerning the  
22 French company, Lafarge. I just want to read it into  
23 the transcript, so everybody is aware of what it is.

24 That is considering the concept of concerted  
25 practice, and it states:

1            "A concerted practice may consist of any direct or  
2 indirect contact between economic operators of such  
3 a nature as to disclose to a competitor the course of  
4 conduct which they themselves have decided to adopt or  
5 contemplate adopting on the market, where the object or  
6 effect of such contact is to create conditions of  
7 competition which do not correspond to normal conditions  
8 of the market in question. That constitutes a concerted  
9 practice prohibited by Article 81(1). In order to prove  
10 there has been a concerted practice, it is not therefore  
11 necessary to show that the competitor in question has  
12 formally undertaken, in respect of one or several  
13 others, to adopt a particular course of conduct, or that  
14 the competitors have colluded over their future conduct  
15 on the market. It is sufficient that by its statement  
16 of intention, the competitor should have eliminated or,  
17 at the very least, substantially reduced uncertainty as  
18 to the conduct to expect of the other on the market."

19            One reason why I have read that is it emerged in  
20 other proceedings before the tribunal that there may be  
21 a small glitch in the English translation of that  
22 particular passage, and that a comparison of texts  
23 suggests that the very last sentence of that passage, or  
24 the last part of the last sentence should read:

25            "... the competitor should have eliminated or, at

1 the very least, substantially reduced uncertainty as to  
2 conduct on the market to be expected on his part",  
3 rather than the text that is in the reported judgment.

4 So we would like, as it were, to make the parties  
5 aware of that particular passage which we shall take  
6 into consideration with the others listed on our list.

7 Also in relation to the legal submissions to come,  
8 could we draw attention to the fact that this is  
9 an appeal from the OFT's decision, and the decision  
10 therefore forms the central focus for the case. We  
11 would therefore, I think, find it helpful, when we come  
12 to submissions, to be taken particularly by the  
13 appellants to the decision, and to have indicated to us  
14 which particular parts of the decision they say in their  
15 submission have not been proved on the evidence or are  
16 otherwise passages that we should not rely on, or should  
17 disregard, or should reject, so that we have some  
18 central focus for the judgment to come in this case.

19 I think that is all we wanted to say about the legal  
20 submissions at this stage. You may proceed to the  
21 evidence.

22 MR GREEN: Thank you very much. Can I ask one point of  
23 clarification, which the tribunal may have the  
24 information about? The English text in Cement may be  
25 inconsistent with other language versions; is that the

1 French version?

2 THE CHAIRMAN: The French version.

3 MR GREEN: Are there any other versions which have been  
4 compared, do we know? Did that come up?

5 THE CHAIRMAN: Just let me check. It looks as if it is the  
6 French, Italian, Spanish and German versions.

7 MR GREEN: Inconsistent with all of them, is it?

8 THE CHAIRMAN: With the ones I mentioned.

9 MR GREEN: The only matter which I wish to raise concerns  
10 Ms Katharine Runciman. It transpired last night that  
11 her child is now ill, convulsions, high temperature and  
12 so on. She was a willing witness; she has not been  
13 served with a witness summons. I have discussed the  
14 matter with Mr Doctor; I think the solution is that  
15 I simply do not rely upon her evidence at all; I do not  
16 propose to call her, and therefore she falls out and by  
17 the wayside.

18 THE CHAIRMAN: Very well.

19 MR GREEN: Thank you.

20 MR BREALEY: The next witness is Mr Needham.

21 THE CHAIRMAN: Yes, thank you.

22 MR ANDREW NEEDHAM (sworn)

23 Examination-in-chief by MR BREALEY

24 THE CHAIRMAN: Thank you very much, Mr Needham. Do sit  
25 down.

1 MR BREALEY: Mr Needham, you should have in front of you the  
2 first volume of the witness statement bundle, tab 33.  
3 A. Yes.  
4 Q. If you can go to the end of that tab, the penultimate  
5 page, page 252, do you see your signature there?  
6 A. Yes, I do.  
7 Q. If you go on to tab 35, your second statement, and go to  
8 the last page, page 284, is that your signature?  
9 A. Yes, it is.  
10 Q. Can you confirm for the tribunal that the contents of  
11 both statements are true?  
12 A. I can.  
13 THE CHAIRMAN: Thank you, Mr Needham.  
14 Cross-examination by MR DOCTOR  
15 MR DOCTOR: Good morning, Mr Needham.  
16 A. Good morning.  
17 Q. Mr Needham, I understand from your witness statement  
18 that although Argos generally makes a poor margin on  
19 Hasbro's products, some of them are must-have products,  
20 and therefore it is in your commercial interest to stock  
21 them, even though you make such a poor margin on them.  
22 A. Yes, we would need to stock some of those products.  
23 Q. And about four years ago, the Argos policy was to price  
24 aggressively; this meant that Argos tried to go out into  
25 the market at the keenest prices, and that meant

1           undercutting the prices of other toy retailers, in order  
2           to gain a competitive edge. That would be your view?

3    A. That would be my view, yes.

4    Q. As far as you are concerned, if the margins that Argos  
5           was making were so unsatisfactory, one of the  
6           contributing factors to that was the fact that at that  
7           time, as you say, Argos was deliberately charging the  
8           lowest possible prices for these goods.

9    A. Argos was actually pricing very, very competitively in  
10           the market, and also at the same time had to work off  
11           very, very, very tight margins, especially on toys,  
12           which made the business unsustainable on toys, to  
13           actually continue with those prices.

14   Q. Yes. Well, you say that you continuously complained to  
15           Hasbro about the fact that you were dissatisfied with  
16           this lack of margin on their products; presumably, they  
17           said to you, "Well, one of the things you could do is  
18           perhaps charge a bit more", did they not?

19   A. Yes, they did actually state on numerous occasions, and  
20           it was over a long period of time, that one method of  
21           increasing our margins on their products would be to  
22           move the prices up. They also discussed other methods  
23           of increasing margins as well; some of those would  
24           include, for instance, improved trading terms, amongst  
25           other things.

1 Q. Yes, there are other things. But one thing that you  
2 could not say was, "Well, we will not be dealing in  
3 Hasbro toys, it is just not worth it".

4 A. Yes, we could actually do that, and in fact, in two  
5 instances, we did delist two products, that was  
6 Connect 4 and Battleships, I think that was in  
7 autumn/winter 1999, purely because those products were  
8 not sustainable any longer, in terms of their profit  
9 contribution. So yes, in selected instances, and they  
10 were the only two, we decided that we could actually  
11 delist the products and the business would carry on.

12 Q. Yes, but that is the only two. With regard to some of  
13 their high-profile brands, a retailer cannot afford not  
14 to list them, even if the products have very poor  
15 margins.

16 A. Could you repeat that question again, sorry?

17 Q. I thought I was just stating what you had said in your  
18 witness statement.

19 A. Can you refer me to --

20 THE CHAIRMAN: Let us go to it, Mr Doctor.

21 MR DOCTOR: Paragraph 23.

22 THE CHAIRMAN: Which witness statement? The first witness  
23 statement?

24 MR DOCTOR: Yes.

25 THE CHAIRMAN: Page 246.

1 MR DOCTOR: About halfway down:

2 "Hasbro is not concerned, however, with the  
3 retailers making sufficient margin on its products. On  
4 the contrary, in order to remain credible in the market,  
5 retailers need to list certain lines, such as Action Man  
6 and Star Wars, and cannot afford not to, even if these  
7 products provide very poor margins."

8 A. That would be correct.

9 Q. "Hasbro is aware of this, and uses its power in  
10 negotiations with Argos. There is practically no risk  
11 that Argos would delist a Hasbro line of products  
12 because of poor margin on power brands, such as  
13 Action Man, Star Wars or TV advertised games."

14 A. A large number of the products that Hasbro distributed  
15 in the marketplace were very, very important lines in  
16 terms of their profile in the marketplace. As I have  
17 mentioned in my statement, they were very heavily TV  
18 advertised lines as well. Their turnover was  
19 significant, so we had to list those products.

20 THE CHAIRMAN: Yes.

21 MR DOCTOR: And that applies to, in particular, the  
22 Action Man and these highly TV advertised games?

23 A. That would be correct, yes.

24 Q. Let me just finish this off: it is in your commercial  
25 interests, therefore, to stock certain Hasbro lines,



1           whatever the margins on them are?

2   A.   They provided for the business, it would actually drive  
3       customers into the stores, and yes, the turnover of  
4       those products was significant, but the margins were  
5       absolutely appalling.

6   Q.   Nevertheless, no matter how low the margins, there is  
7       still a commercial interest to list those products.

8   A.   There was a commercial interest to list those products,  
9       absolutely, but as I mentioned, in two instances, the  
10      products Connect 4 and Battleships, I think they were  
11      returning something like 0.5 per cent margin, which in  
12      monetary terms was about 10p per product, and this was  
13      the case in most of the Hasbro games products, and even  
14      Action Man as well.

15           We decided that the business could no longer  
16      actually afford to run those products, because if you  
17      looked at their net profitability and their overall  
18      contribution to the business, we were losing money.

19   Q.   We are told that in around August 1998, in relation to  
20      its business as a whole, not toy centred or toy focused,  
21      in relation to its business as a whole, Argos made  
22      an internal decision to move generally to market  
23      pricing.

24   A.   That is correct, yes.

25   Q.   This meant the end of Argos' aggressive or pre-emptive

1 pricing strategy on the whole of its business.

2 A. It would have -- we would question the pre-empting  
3 strategy going forward, yes.

4 Q. You say that this policy meant, in paragraph 16, that  
5 Argos would price generally closer to -- or in  
6 paragraph 17, at -- supplier suggested retail prices.

7 A. Sorry, was that in paragraph 17?

8 Q. In 16, you say:

9 "This change in policy meant that Argos would  
10 henceforth price generally closer to supplier suggested  
11 retail prices."

12 Paragraph 17, you put it even higher than that:

13 "Our final decisions would now be closer to or at  
14 recommended retail prices."

15 A. That would be the case, but also what we would take into  
16 consideration is the prevailing market price as well, so  
17 there was a second factor included in that. The  
18 prevailing market price in some instances could have  
19 been the supplier's recommended retail price, but we  
20 would look at what the prevailing market price was at  
21 that time as well, and should there be a price lower  
22 than recommended retail price being charged by  
23 a particular retailer, we would match that.

24 Q. Yes. It cannot be suggested that this was some overall  
25 decision, all prices in Argos stores would now be the

1 suggested retail price of the manufacturer or supplier,  
2 would it?

3 A. Sorry, could you repeat that?

4 Q. You were not going to a policy in which all prices in  
5 Argos stores were henceforth going to be the recommended  
6 retail price of all your manufacturers and suppliers?

7 A. We were going to a policy whereby we needed to move our  
8 prices up, we would actually price either to the  
9 prevailing market price -- and if that was the  
10 recommended retail price of a supplier, then so be it.

11 Q. The prevailing market price, certainly up to that stage,  
12 in many fields, and particularly toys, had been  
13 determined by Argos, had it not?

14 A. Argos did have an influence in factoring the market, in  
15 terms of price positioning, yes.

16 Q. I am just questioning whether -- we have heard from,  
17 I think, other people from Argos that there was no  
18 decision to price generally at RRP, that was not the new  
19 policy; the new policy was to price perhaps at sometimes  
20 higher prices, sometimes lower prices, to try and keep  
21 to what was perceived to be the market price.

22 A. The policy decision within the business was to either  
23 move to a market price -- and if that was the  
24 recommended retail price supplied by the manufacturer,  
25 and that was the prevailing market price, then that is

1 where we went.

2 Q. If this was generally going to involve you moving your  
3 prices up, you say you expressed your concern -- in  
4 paragraph 17, you say you expressed your concern at this  
5 new policy to Maria Thompson and Sue Porrit, because you  
6 felt it would leave Argos very exposed to its  
7 competitors.

8 A. I think this was a view shared by a number of buyers  
9 within the business, and I think you really need to  
10 understand where we were coming from.

11 THE CHAIRMAN: Just hang on, Mr Needham, I need to take  
12 a note. Yes?

13 A. We need to sort of look back at where Argos was prior to  
14 the GUS policy decision change in terms of pricing, and  
15 that is we were a very, very competitive retailer, our  
16 sales line very much in the past had been driven from  
17 our competitive position, and as a buyer, obviously, we  
18 would be concerned if we were to lose potential volume,  
19 where we could not meet our sales budgets, and also our  
20 margin budgets as well, and quite rightly, the buyers  
21 have a voice within the business.

22 I discussed this with Maria, but equally I was very,  
23 very aware of the fact that toys provided us with very,  
24 very little profit, and we had to have a change in  
25 direction to make that business more profitable;

1 otherwise, we would have had to de-range the toy range  
2 in favour of putting the options into more highly  
3 profitable areas within the business.

4 THE CHAIRMAN: Yes.

5 MR DOCTOR: Well, the concern that you expressed is  
6 a natural concern; if you are going to be pricing your  
7 products at market, or as you say, where that is the  
8 RRP, then at RRP prices the concern is that you will be  
9 undercut by others. If your prices go up, you allow the  
10 opportunity to others in the market to price less.

11 A. I think that is a very fair comment actually, but what  
12 the business was no longer concerned with was chasing  
13 market share at the expense of profit, and I could buy  
14 into that.

15 THE CHAIRMAN: Yes.

16 MR DOCTOR: But over time if you are consistently undercut  
17 by your competitors you will lose market share, you will  
18 lose business, it is not a situation which you could  
19 tolerate, and it is one which gave you concern, it seems  
20 obvious.

21 A. I think it is interesting to understand the dynamics of  
22 retailing. Price is one method of actually achieving  
23 market share. Argos printed 77 million flyers during  
24 1999, which allowed us the opportunity to reposition our  
25 prices at any time during that year.

1           Also, the business was very much concentrating on  
2           offering choice --

3   THE CHAIRMAN:   So you can reposition during the year?

4   A.   Absolutely, no problems whatsoever.   The business was  
5           also concentrating on choice and value, and offering  
6           different services to our consumers, which gave us  
7           an edge in the marketplace.

8           So we were moving our business forward into new  
9           areas which would have protected our business.

10   MR DOCTOR:   If you implement this new policy, which is not  
11           an overall policy of moving all prices up, but some  
12           prices go up, some prices go down, you try and find the  
13           market price; if you implement this policy, and you find  
14           that on the important key goods which bring the  
15           customers into the store, which are widely advertised on  
16           television, it is the sort of goods the customer notices  
17           in the catalogue; if you find you are undercut on those,  
18           presumably, the policy would require you to lower your  
19           prices on those goods, whilst perhaps keeping higher  
20           prices or RRP prices on other goods.

21   A.   What is the question there, sorry?

22   Q.   I am just asking you if that makes logical sense to you.

23   THE CHAIRMAN:   It was rather a long sentence, I think,

24           Mr Doctor.   Can we break these questions down a bit?

25   MR DOCTOR:   I beg your pardon.

1           If you find that you are being undercut -- you  
2           expressed a concern about being undercut, when you spoke  
3           to Maria Thompson and Sue Porrit; if you find you are  
4           being undercut, particularly on these high-profile  
5           goods, these TV advertised goods, the ones which have  
6           other commercial advantages, not just their own  
7           contribution to the margin; if you are undercut on those  
8           goods, that, presumably, is one which will leave you  
9           with the option of perhaps reacting to that  
10          undercutting.

11        A.   And yes, we would react to that, and as I have  
12          mentioned, we had many, many opportunities to inform our  
13          consumers that we had repositioned that price to be  
14          competitive, and our consumers expect that. Our  
15          consumers come into our stores, they pick up all the  
16          additional publications, these 77 million flyers that  
17          I have actually mentioned, and expect to see  
18          repositioned prices. So that in itself is a good  
19          failsafe mechanism for us being undercut.

20                In addition to that, we would use press advertising,  
21          we may even use TV advertising as well, to readvertise  
22          our offer, so yes, it was a concern, but it was not  
23          irredeemable.

24        THE CHAIRMAN:  Can you just help me, Mr Needham, on one  
25          point?  We have this new policy of moving to the

1 prevailing market price, so the first step is to try to  
2 determine what the prevailing market price is.

3 A. Correct, yes.

4 THE CHAIRMAN: I have the impression that in or around 1998  
5 for toys, the prevailing market price was the price that  
6 Argos was in fact charging at that time.

7 A. Yes, in most instances. Yes, we were competitive,  
8 correct.

9 THE CHAIRMAN: So that if the policy was to charge the  
10 prevailing market price in relation to toys, you would  
11 simply stay at or around the existing price.

12 A. What we would also do as well, as part of a pricing  
13 survey, is actually go out on to the High Street and  
14 check our competitors, so if a competitor was pricing  
15 below us we would react to that, and that would then be  
16 the prevailing price.

17 THE CHAIRMAN: Or you might even go down, depending on where  
18 you were.

19 A. Yes, prior to 1999 we would have pre-empted, absolutely.

20 THE CHAIRMAN: Yes, thank you.

21 MR DOCTOR: But if you generally put your prices up on these  
22 high-profile goods, the ones that have the other  
23 economic advantages as well, one of the things that  
24 would have occurred to you is that your competitors  
25 might wish to take advantage of the fact that your



1 prices have gone up, and they might wish to undercut you  
2 on these goods, even though they would no doubt be  
3 making either a loss or a lower margin than they had  
4 previously, because they would seek to derive the  
5 economic advantages that carrying these goods at low  
6 prices has.

7 A. I think I have actually answered that question  
8 previously. We were no longer prepared to chase market  
9 share at the expense of profit, and one big piece of  
10 research which really has not come out here in this past  
11 week is that Argos conducted a piece of research within  
12 the marketing department about the consumer's perception  
13 of price. The consumer's perception of price -- no  
14 longer were consumers shopping around for a 10p saving  
15 or a 20p saving, even a 50p saving; it did not actually  
16 stimulate them to be loyal to a particular retailer.

17 If other retailers undercut us, it would invariably  
18 be by only a small amount, so the question for us was:  
19 is it worth us doing this any longer? And it was not.

20 THE CHAIRMAN: Not in small amounts anyway.

21 A. Not in small amounts, no.

22 MR DOCTOR: We have been told that in catalogue retailing,  
23 since there is not much service --

24 A. I would disagree, there is a great deal of service  
25 within catalogue retailing.

1 Q. Well, it is not the same as going into Selfridges, is  
2 it? If you go into an Argos store, you do not exactly  
3 spend hours with a salesman --

4 A. I take exception to that. We have a very strong offer  
5 and a compelling offer that is equal to Selfridges.

6 Q. Yes. You look in a catalogue, you go into the  
7 catalogue, you fill in a form and you give it to a  
8 person behind a counter who goes and fetches it from the  
9 warehouse.

10 A. I think that is a really simplistic view of our  
11 business, and I think that is unfortunate.

12 THE CHAIRMAN: Yes, you tell us what you think the service  
13 is, Mr Needham.

14 A. Our customers actually look at three things within our  
15 business: choice, value and service. They come into the  
16 stores and shop the way they do with us because it is  
17 quick; we are offering a wide range of very high-profile  
18 branded products, a lot of those are TV advertised, and  
19 this is across the entire business. They trust the  
20 format, our customers trust the format, and we have  
21 a very, very loyal customer base.

22 THE CHAIRMAN: Yes.

23 MR DOCTOR: The service consists of simply being quick, as  
24 I understood -- you said it was choice, value and the  
25 fact that it is quick.

1 A. And I demonstrated by the very fact that I mentioned  
2 that we had this choice, we had lots of brands within  
3 the catalogue, we had a massive portfolio of products,  
4 and for me, it is: where would you go in terms of  
5 retailing --

6 THE CHAIRMAN: You see all that as part of the service?

7 A. It is, and that is what our customers recognise. So  
8 there is not only one factor, there are many, many  
9 factors why customers will come and shop at Argos.

10 MR DOCTOR: Yes, it is quick, and it is cheaper than other  
11 places. That is why they come.

12 A. Yes.

13 Q. We have been told that; we have been told that pricing  
14 is everything in catalogue retailing, because people can  
15 sit at home and make these comparisons.

16 A. I think it was very, very important in 1998. It is  
17 still important. We will be at parity on pricing. So  
18 yes, pricing is a very, very important part of our  
19 overall --

20 THE CHAIRMAN: I am sorry, I missed that. You will be at  
21 parity on pricing?

22 A. Yes, and on some selected products as well, we would  
23 actually be cheaper than the rest of the High Street,  
24 but part of the GUS strategy in terms of its pricing  
25 positioning was to start to introduce some special

1 offers for our consumers, and these special offers might  
2 be an entry price point product which might have been  
3 the lowest priced microwave in the market; it would also  
4 have some deal driven offers within the catalogue as  
5 well.

6 So we started to introduce some really great ways of  
7 marketing new value offers for our consumers.

8 MR DOCTOR: If you are going out, and your catalogue shows  
9 that you are going out on these high-profile goods which  
10 are must-have goods, which have these commercial  
11 advantages at prices --

12 A. I really do not -- what is a commercial advantage?

13 Q. Well, we have been through all of that, Mr Needham.

14 A. But I do not understand that.

15 THE CHAIRMAN: Mr Doctor, I think it is useful if you just  
16 put the question without the adjectives in the middle,  
17 because that is partly comment really.

18 MR DOCTOR: Mr Needham, if you are going out on these goods  
19 which you have told us have certain commercial  
20 advantages, the ones we are talking about, and let us  
21 confine it to core games and Action Man in this case --  
22 you put out a catalogue and find that actually your  
23 biggest competitor, Index, has prices which are either  
24 the same or lower than yours for a particular catalogue  
25 such as spring/summer 1999, the danger exists, does it

1 not, that in the following catalogue, they might  
2 undercut you on those particular items?

3 A. Well, nothing is a certainty.

4 Q. Nothing is a certainty. The risk must have existed, for  
5 example, in spring/summer 1999, when we have seen the  
6 prices of the core games and Action Man toys -- and you  
7 have been in court for three days, you have seen that;  
8 the risk must have existed, must it not, that at that  
9 point Index might well, in the next catalogue, slightly  
10 undercut you --

11 A. I think it is important --

12 Q. -- and thereby gain the commercial advantages which  
13 being lowest on these goods has?

14 A. In terms of the pricing reports that have been put  
15 together, I think it is really important to stress that  
16 in spring/summer 1999, Argos actually moved to RRP  
17 before other retailers, or before Index.

18 THE CHAIRMAN: Yes.

19 A. I cannot really legislate for how Index would price.  
20 Yes, there was a likelihood that they may undercut us,  
21 but as I have said previously, we were not prepared to  
22 throw margin away unnecessarily.

23 THE CHAIRMAN: Yes.

24 MR DOCTOR: But it was quite remarkable in spring/summer  
25 1999, after years of Argos consistently being the lowest

1 price on these sort of items, that the position had  
2 reversed itself, and Index found itself as lower on most  
3 of those items, lower than Argos.

4 A. I think we need to go back to what was said yesterday,  
5 and that is that when there was a 4p or 5p price  
6 difference, most consumers do not consider that to be  
7 an undercutting position. They see that as being the  
8 same. So in terms of my pricing position, that really  
9 is not an issue, and I would continue to price at the  
10 99 pence price points, even if Index were at 95p. It  
11 does not change --

12 Q. Yes, but on these items in particular, where there has  
13 consistently been an outcome where Argos was lower than  
14 Littlewoods, the position had reversed itself to  
15 a situation where either they were the same or  
16 Littlewoods was lower on the majority of goods.

17 A. Sorry, can you just repeat that question?

18 Q. Yes. From the position where for years and years there  
19 had been an outcome on each catalogue that Argos was  
20 lowest on these high-profile goods we are talking about,  
21 we reach spring/summer 1999 and we find that the  
22 position has largely reversed itself. Argos are either  
23 the same as or higher than the Littlewoods catalogue  
24 prices on those items.

25 A. Well, if I go back again to say that the 5ps, the 4ps

1           were classed as the same.

2   THE CHAIRMAN:   Could one imagine -- I just do not know,  
3           I would be glad of your view: if a customer is sitting  
4           at home, he is turning the pages through the catalogue,  
5           and he notices either Argos or Littlewoods are  
6           consistently 5p cheaper on many lines, does that not  
7           have some sort of psychological impact on the customer?

8   A.   The research that we conduct has suggested not, and the  
9           research was actually consumer research, so not really,  
10          no.

11  MR DOCTOR:   Mr Needham, when these tables were first put  
12          forward to us, they were put forward on the basis that  
13          wherever a figure was lower than another figure, even if  
14          it was only by 4p, it was a cheaper price, and that that  
15          had some significance.

16          During the course of this case --

17  MR BREALEY:   Can I interrupt?   That is not correct.

18  MR DOCTOR:   Well, we can argue about that later.

19          During the course of this case, it has been  
20          suggested that it makes no difference if the price is  
21          simply 5p or 4p different; whether it is 95p or 99p is  
22          the same outcome.   Are you sure that you would  
23          consistently accept a situation where, on these  
24          high-profile goods, these are the ones that bring the  
25          people into the store, Argos would have been content to

1 always be 4p more than Littlewoods? Argos would not  
2 have responded in any way to that outcome?

3 A. No, it would not have responded to that outcome.

4 Q. Is that across the whole range? You would accept the  
5 situation that a 4p difference would make no difference  
6 to the consumer at all?

7 A. The research that we have conducted in the business  
8 suggested not.

9 Q. When we have been told that differences of 25p can have  
10 dramatic effects, why is that? Why would a 25p  
11 difference have a dramatic effect but a 5p difference  
12 would have no effect?

13 A. I think in terms of volumes, then yes, 25p may slightly  
14 affect it, but the research that we conduct has  
15 suggested that even a 25p differential would not -- it  
16 would not change a consumer's opinion. However, on  
17 those products, if we were undercut at 25p, we probably  
18 would have reacted, for the very reasons that you have  
19 just mentioned about the customers going through the  
20 catalogue; 25p would probably have made a bit more of  
21 a difference.

22 THE CHAIRMAN: "If undercut by 25p, we would have reacted".

23 MR DOCTOR: The temptation must have been therefore that  
24 even if you found yourself in a situation for the first  
25 time where Argos and Littlewoods were charging the same



1 amount, because there is no difference, you say, between  
2 99p and 95p, either the temptation would have been there  
3 for you to cut by 25p, just to get that slight edge on  
4 these important --

5 A. No, because we were not pre-empting Index at that point.

6 Q. But the risk then existed that your competitor, Index,  
7 might have cut by 25p just to get that small edge.

8 A. There was a possibility that that would have happened,  
9 but as I have said previously, we would have reacted,  
10 and certainly, in the autumn/winter 1999 catalogue,  
11 which again has not come out here, we had a price  
12 promise in the catalogue.

13 THE CHAIRMAN: That is not just on toys, presumably?

14 A. It was across the whole catalogue, absolutely. So  
15 regardless of whether we had been undercut, we would  
16 take a commercial decision to actually match all  
17 competitors' prices through that price match guarantee.

18 THE CHAIRMAN: Yes.

19 MR DOCTOR: Well, I suggest that you would not have been as  
20 complacent as you now suggest to the situation in  
21 spring/summer 1999, having seen that --

22 A. I do not really understand what you mean by  
23 "complacent". The situation is --

24 Q. You are suggesting that a threat of a cut by one of your  
25 competitors, Index possibly, to your catalogue coming

1 out at RRP was not something that was particularly  
2 worrying to you.

3 A. No, I basically have said that if Index had undercut us,  
4 and gone to the 95p price point, that would have been  
5 a situation where it would not particularly worry me.

6 Q. But you would have been concerned if they had cut it by  
7 25p?

8 A. I would have been concerned and we would have reacted.

9 Q. What about 10p?

10 A. Possibly on that as well. I think one of the things  
11 that needs to be stressed here is that each pricing  
12 comparison, if we were going to react to it, we would  
13 have to take a really serious commercial decision about  
14 that product.

15 We would have to understand, is that product  
16 a really big key line that is recognised by the  
17 consumers?

18 THE CHAIRMAN: It is going to depend on the product, is it  
19 not?

20 A. Yes, absolutely.

21 THE CHAIRMAN: On some products, 10p might matter, and on  
22 others, it would not matter.

23 A. Correct, yes.

24 (11.00 am)

25 MR DOCTOR: Now it was unusual, was it not, to tell your

1 suppliers anything at all about your forthcoming prices  
2 in your next catalogue?

3 A. We categorically did not discuss, line by line, what our  
4 prices would be for the next catalogue.

5 Q. When you say line by line, if you are in fact intending  
6 to charge RRP and you tell your supplier, "We are going  
7 to be charging RRP", you may not have gone through it  
8 line by line, but you have given them a very good  
9 indication of what you are going to charge; correct?

10 A. Could I actually explain to the panel what was and was  
11 not discussed in terms of recommended retail prices with  
12 Hasbro?

13 THE CHAIRMAN: Yes.

14 A. Basically, there were two situations when recommended  
15 retail price would come up. The first situation really  
16 was around previews time, when we would actually go to  
17 Hasbro and look at all the products for the forthcoming  
18 season, and at those previews they would have a list of  
19 cost prices and a list of recommended retail prices.

20 What that allowed us to do was to work out a typical  
21 margin of what that product could afford us, and at  
22 those previews Hasbro would elicit our views constantly,  
23 and to my knowledge other retailers' views, about  
24 whether that product's retail price was suitably  
25 commercially set for that product.

1           Hasbro knew that we had previews with other  
2           suppliers for the forthcoming catalogue, and  
3           consequently we would have a very, very good judgment  
4           value in terms of whether their products sat well with  
5           what was going to happen within the forthcoming  
6           autumn/winter, so it was an information gathering  
7           exercise.

8   THE CHAIRMAN:   But you are basically discussing where the  
9           RRPs should be pitched, or whether --

10   A.   Basically whether it was suitable or not, whether it was  
11           too expensive, and whether they were going to do  
12           anything about that.

13   THE CHAIRMAN:   You would say, "Well, I do not think it can  
14           stand more than" something or other, and they would  
15           say --

16   A.   Absolutely, yes.   And that discussion would actually go  
17           on to the London Toy Fair, the New York Toy Fair, right  
18           up until the point where we would be selecting.   So the  
19           pricing of those products would change constantly until  
20           it settled prior to the selections that we went into.

21           So yes, there were general conversations then about  
22           recommended retail price.

23   THE CHAIRMAN:   But they would get down to a degree of  
24           specific discussion on particular lines, on  
25           a particular --

1 A. It may get down to --

2 THE CHAIRMAN: -- a particular game?

3 A. Absolutely, does this game sit well in terms of

4 recommended retail price with all these other games as

5 well within the range.

6 THE CHAIRMAN: Yes, thank you.

7 A. And we would give our views, and quite frankly, we had

8 to give those views in order to be able to manage our

9 own margin expectations as well.

10 The second discussion around recommended retail

11 price -- and I think there are three of those examples

12 in my statement -- is where Hasbro would try to elicit

13 my views on the next catalogue pricing. For instance,

14 I would take the --

15 THE CHAIRMAN: This is your pricing?

16 A. Absolutely, yes, but that was -- in my statement, and

17 I think that was part of Neil Wilson's statement -- on

18 three products; I bought in the region of maybe 50 to 60

19 products from Hasbro during an autumn/winter season, so

20 in terms of its significance, it is a very small part.

21 THE CHAIRMAN: Yes.

22 A. What I would have said if Hasbro had actually elicited

23 my views on a forthcoming catalogue price is that, yes,

24 would I be happy with that price point or recommended

25 retail price as it stood? If we had already run that

1 product at the recommended retailer's price and had not  
2 been undercut, was it likely that it was going to carry  
3 on with that recommended retail price? Well, if there  
4 was no reason for us not to, then we would. So those  
5 are really the two instances of where we would generally  
6 talk recommended retail price, but what I have really  
7 got to stress is that under no circumstance did we go  
8 line by line and say what we would actually be going out  
9 at in the next catalogue. It was never done, and it  
10 never will be done, quite frankly.

11 THE CHAIRMAN: Yes.

12 MR DOCTOR: Well, would you just look at your witness  
13 statement, and see what you said there?

14 A. Where, sorry? Would you point me to that, please?

15 Q. We are coming to that. You have just told us that all  
16 you discussed with Hasbro was in one or two items, you  
17 would discuss the individual recommended retail price,  
18 whether it was your view that it should be X or Y, but  
19 look what you say in your witness statement,  
20 paragraph 18. You say:

21 "When the Argos policy changed to market pricing,  
22 the buyers indicated to Hasbro that they were thinking  
23 of moving to market pricing and/or RRP's (if the RRP was  
24 felt to be the market price) as part of the normal  
25 discussion of them talking of improving margins."

1           Look at paragraph 26:

2           "During our discussions with Hasbro, when Argos  
3           buyers intimated that it was considering moving to  
4           market pricing and/or RRP's (if the RRP was felt to be  
5           the market price) as a business ..."

6           I will just stop there. So as I understood your  
7           evidence, there had been this change of policy, and your  
8           buyers generally went to Hasbro and said to them, "We  
9           are moving to market pricing, which will be the RRP if  
10          the RRP is the market price", and that is what happened  
11          over the --

12        A. No, that did not happen.

13        Q. -- general run of toys at least which you are obviously  
14          giving evidence about.

15        A. That did not happen.

16        Q. Well, let us just stop there.

17        A. May I be allowed to actually answer --

18        THE CHAIRMAN: Just a minute, I think the witness wanted to  
19          add something.

20        A. We did not actually sit down with suppliers and actually  
21          say, "Look, guys, we are going to recommended retail  
22          price because there is a policy change decision". What  
23          it was very much a case of was Hasbro coming to Argos  
24          and saying, "We have seen all this PR about Argos  
25          wanting to make more profit, and one of the ways you can

1 do that, Argos, is by increasing your recommended retail  
2 prices", and we have accepted that situation, but it was  
3 not a one-off discussion.

4 Hasbro constantly came to the business -- when we  
5 were complaining about the very, very poor margins, they  
6 would always say to us, "Well, Argos, you can actually  
7 put your recommended retail prices up". So that was  
8 a constant conversation that was going on for years  
9 before, and certainly, when we had the policy change,  
10 and there was the publicity about that, most suppliers  
11 would come in and say, "We have heard that you now want  
12 to actually make more margin, does that mean that you  
13 might go to recommended retail pricing?"

14 MR DOCTOR: Mr Needham, you have said twice, and perhaps it  
15 was a mistake, that Hasbro said to you, "If you want to  
16 make more margin, Argos, you can actually put your  
17 recommended retail prices up".

18 A. That is correct, yes, they would say that.

19 Q. But Argos does not have recommended retail prices; it is  
20 Hasbro which has recommended retail prices.

21 A. That was an error; it is prices, the Argos prices.

22 Q. Yes. Well, what they actually said to you was, "Well,  
23 why do you not charge our recommended retail prices?  
24 That is one way of putting your prices up".

25 A. Well, to put some context behind that, invariably --



1 Q. Do you agree that that is what they said?

2 A. They would say, "Why do you not actually go to the  
3 market price or the recommended retail price?", correct,  
4 yes.

5 THE CHAIRMAN: I am still stuck with the difference, on this  
6 particular sector, the toy sector, between what the  
7 market price is and what the RRP is, because the market  
8 price seems to be lower than the RRP.

9 A. Absolutely, and I think in most instances, when you look  
10 at what the market price was and the recommended retail  
11 price was, there was very, very little difference  
12 between the two, because the margins were so tight. So  
13 in some instances, it may have only been a 10p or 15p  
14 difference in terms of the recommended retail price. So  
15 they were very, very close.

16 THE CHAIRMAN: Yes, thank you.

17 MR DOCTOR: Because in that field, the market price, insofar  
18 as you were discussing it, was largely determined by  
19 whatever Argos chose to price at.

20 A. Not necessarily, no. Our closest competitors at that  
21 point of time were Woolworths and Toys R Us, and  
22 Woolworths or Toys R Us could have actually led our  
23 price down; consequently, we would have had to react to  
24 that.

25 Q. Yes, but Argos comes out with a catalogue, which

1 millions of people in the country have. The catalogue  
2 prints a price which, whatever you may try with your  
3 flyers, is largely the price associated in the public's  
4 mind with your price for that good, that particular  
5 item; correct?

6 A. Correct, yes.

7 Q. The High Street retailers can adjust to that  
8 immediately, in their stores.

9 A. Absolutely, yes.

10 Q. So if you are coming out consistently at the lowest  
11 price in these items it is inevitably going to drive the  
12 High Street retailers down to your prices.

13 A. Yes.

14 Q. Because they are going to try and meet your catalogue  
15 price.

16 A. Well, that is a statement of fact --

17 Q. Of the obvious, yes.

18 A. Absolutely.

19 Q. So when you are saying to the Hasbro people, "Well,  
20 I think what we want to do is we want to move to a new  
21 market price, this is our new policy, we have had it  
22 from on high, we want to move in this field to a new  
23 market price", essentially you were saying, "Well, we  
24 want to put our prices up to the recommended retail  
25 price, and that will drive the market up?"

1 A. That would not necessarily be so. I could not legislate  
2 for how other retailers would price against the  
3 catalogue. It just happened, and we would have to  
4 respond to that and handle it accordingly.

5 Q. Well, Mr Needham, in your statement twice, in fact,  
6 three times you give this formula, that you tell Hasbro  
7 that you have a new policy of:  
8        "... moving to market pricing and/or RRP (if the RRP  
9 was felt to be the market price)".

10 A. That conversation was always elicited by Hasbro asking  
11 me that question, whether we would move to market price,  
12 whether we would move to recommended retail price.  
13 I was never offering that information up to them.

14 Q. Well, I suggest it would be very unusual anyway to be  
15 discussing your retail prices at all with them, was it  
16 not?

17 A. Yes, it was.

18 Q. Outside of this case, it is not your common practice to  
19 discuss your retail prices with your suppliers.

20 A. But this was just a very, very general conversation that  
21 Hasbro were having with us, and also it was a very, very  
22 general conversation that many, many suppliers were  
23 having with us as well.

24 Q. Well, you do not say when these discussions took place,  
25 but I am going to suggest that these discussions about

1 moving to the market price and/or RRP, if RRP is the  
2 market price, took place around the time and after the  
3 spring/summer 1999 catalogue came out. You saw the  
4 situation that --

5 A. First of all, I cannot recollect actually when those  
6 conversations took place. The only thing I do recollect  
7 is that the new GUS pricing policy decision took place  
8 for the spring/summer 1999 catalogue.

9 Q. Well, when that came out it was discovered that your  
10 prices were actually, in number terms, higher than  
11 Index's in most cases, although you say that makes no  
12 difference, although they were certainly higher.

13 A. Yes.

14 Q. You were no longer the lowest on these high-profile  
15 goods, and the danger existed that in the next  
16 catalogue, Index might have simply priced these items,  
17 if no others, at small amounts, maybe 10p, maybe 25p  
18 below the prices which you -- apparently everyone knew  
19 you were going out at these higher prices, these RRP  
20 prices.

21 A. There was a possibility that they could have undercut  
22 us. I would never know that. But as I have mentioned  
23 previously, we would not let that go without some sort  
24 of a response, and quite honestly, we had the price  
25 match guarantee in the autumn/winter 1999 catalogue; we

1 had all the mechanics available for us to remain  
2 competitive.

3 THE CHAIRMAN: Yes.

4 MR DOCTOR: I want to suggest that there must have been  
5 a good reason for you to be having these conversations  
6 round about that time with Hasbro, telling them that you  
7 are going to be pricing at the market and/or RRP prices,  
8 but let us have a look at the reason you give for why  
9 these conversations were being held.

10 Have a look at paragraph 18, in the middle. You  
11 say:

12 "When Argos' policy changed to market pricing, the  
13 buyers indicated to Hasbro that they were thinking of  
14 moving to market pricing and/or RRP's (if the RRP was  
15 felt to be the market price) as part of the normal  
16 discussions about improving margin", ie Argos was taking  
17 action itself to improve its margins.

18 So what you are suggesting there is that you are  
19 telling them this to show them that you are now taking  
20 action to improve the margins after years of complaining  
21 that the margins have been too low.

22 A. Sorry, is that a question?

23 Q. Yes, that is the reason you give in your statement as to  
24 why you are having these conversations. You are saying  
25 to them, "We are going to do this in order to show them

1 that we are taking action ourselves to improve margins".  
2 A. I think I go back to what I said previously, it was only  
3 in response to a question that Hasbro were asking of us,  
4 given all the publicity that surrounded the GUS  
5 takeover, and the way that we may have wanted to improve  
6 profitability, and again, it was just a question that  
7 was raised, and we were responding to that question.

8 (11.15 am)

9 Q. But surely that does not make any commercial sense, to  
10 tell a supplier who has been plaguing you for years with  
11 very low margins, to tell him, "Well, what we are going  
12 to do is raise our prices to market and/or RRP prices in  
13 order to improve our margins". That is not likely to  
14 induce him to do anything, is it?

15 A. It is not, but my statement also suggests that there was  
16 no indication of what prices would be gone to; the word  
17 "may" appears in there as well, so there was also  
18 an indication that we may not go to those prices, or put  
19 the retail prices up. It was just a very generalised  
20 comment.

21 Q. Yes, but if you --

22 A. Nothing more specific than that. I cannot understand  
23 what the issue is with not talking about that.

24 Q. Well, if you tell them, at a time when you have these  
25 very low margins -- if you tell them, "Well, from now on

1 I am going to put my prices up and charge market price  
2 and/or RRP" --

3 A. Which could be anything.

4 Q. Well, the general thrust of it is, "I am going towards  
5 RRP, because if that is the market price, I am going to  
6 be charging market price".

7 A. Yes, but the market price could be anything.

8 Q. Yes, but Hasbro would have understood that, if Argos was  
9 the market leader, if Argos went to RRP the market would  
10 go generally to RRP, unless of course somebody else  
11 decided to undercut them, but all things being equal, if  
12 Argos goes to RRP and you tell Hasbro, "Argos is going  
13 to the market price and/or RRP, if that is the market  
14 price", you are actually saying to them, "We are going  
15 to RRP".

16 A. No, that is not the case.

17 Q. Logically, it must be the case.

18 A. Well, I disagree with that, because the RRP could have  
19 been one price, the market price could have been  
20 another, so it is a very ambiguous statement.

21 THE CHAIRMAN: As I understood it in your statement -- put  
22 me right if I am wrong. As far as I have understood it  
23 so far, the policy of going to market pricing did not  
24 necessarily imply that you were going to RRP.

25 A. Correct, yes.

1 THE CHAIRMAN: It might or it might not.

2 MR DOCTOR: But what you told them was, "If the RRP is the  
3 market price, then we are going to that price"; that is  
4 what your statement says three times.

5 A. I could not legislate for that, because that was six  
6 months in advance. I did not know what the market price  
7 was going to be. I had a set of recommended retail  
8 prices from Hasbro, absolutely, but also, we would go  
9 through the final pricing process before we would  
10 actually print the catalogue, and if we had found out  
11 that a competitor had priced aggressively on a product,  
12 we would match that, so consequently, we would not have  
13 been at the RRP.

14 Q. Now go back to paragraph 18; I want to deal with this  
15 point you have just made. You say that you told them:  
16 "... that we were thinking of moving to market  
17 pricing and/or RRP (if the RRP was felt to be the market  
18 price). We were doing this to improve our margins.  
19 Argos also stated to Hasbro that if Argos prices became  
20 uncompetitive, it would respond. In order to do this,  
21 ie reposition our selling prices to match the  
22 competition, it might require some support from Hasbro  
23 in the form of a reduction in the cost price, or Hasbro  
24 funding the cost of flyers advertising the new reduced  
25 prices."



1 A. Correct, yes.

2 Q. When you say you would respond, in other words, you were  
3 not simply telling them, "We are going to the market  
4 price, and if that is the RRP, we will go to the RRP",  
5 you were saying, "We might require some support from  
6 Hasbro".

7 A. Can I explain what I mean by "respond"?

8 THE CHAIRMAN: Yes.

9 A. What we were explaining there to Hasbro was that yes,  
10 there was a policy change within the business, that  
11 generally, we were maybe moving our prices up to meet  
12 them in the market, and if that was the RRP, fine, but  
13 if we were going to be undercut, we would actually go  
14 back to the supplier to seek some support in terms of  
15 being able to reposition our retail price.

16 Now that was a conversation that we had had with  
17 Hasbro for many years, and they understood that we would  
18 be on the phone to them saying, "We have seen X, Y, Z  
19 lower than us, we need some help in terms of  
20 repositioning our price". Again, that was not  
21 an exclusive conversation with Hasbro, it was  
22 a conversation that we would have with all suppliers,  
23 and it is a normal practice within the industry to seek  
24 margin support, or some support to enable you to  
25 actually reposition your prices, as plainly as that.

1 MR DOCTOR: Well, "respond"; you said you would explain the  
2 word "respond".

3 A. We would respond by moving our price to the market  
4 price, or the undercut price.

5 THE CHAIRMAN: In other words, you would cut your price?

6 A. Absolutely.

7 MR DOCTOR: So you would reduce your price and go back to  
8 trying to beat the price that --

9 A. No, I would disagree with that. We would actually move  
10 to the prevailing market price --

11 THE CHAIRMAN: So you would match the lower price?

12 A. We would match it, yes.

13 MR DOCTOR: The prevailing market price is the price which  
14 is the lowest price which is being charged, and you  
15 would move to that?

16 A. The prevailing market price would be the lowest price in  
17 the market, and we would match it, yes.

18 Q. Now why would your buyers be telling Hasbro this?

19 A. It was a conversation that we always -- that was always  
20 being brought up at all sorts of meetings that we had  
21 had with Hasbro, and many other suppliers as well. It  
22 is an industry standard for buyers to go back and seek  
23 compensation in terms of margin support if they are  
24 being undercut; Toys R Us do this, Woolworths do this,  
25 we do this, and it is a regular occurrence. It was just

1 saying to Hasbro, as we had said on many, many previous  
2 occasions, "We will come back for margin support if we  
3 are undercut", as we would normally do.

4 THE CHAIRMAN: Yes.

5 MR DOCTOR: Unless you had suspended the laws of the free  
6 market --

7 A. Sorry, I do not understand what you --

8 Q. It is obvious, is it not, that if you go out at a price  
9 and you find that your competitors are charging at a  
10 lower price, you would have to bring your prices down.  
11 Why are you telling this to Hasbro, why are you stating  
12 to them the obvious?

13 A. Well, as I have mentioned previously, it was a continual  
14 conversation, we do it to this day, where if we spot  
15 an undercutting in the market and we have to match it,  
16 we just pick the phone up and say, "Look, guys, are  
17 these retailers getting a lower price? Is it  
18 a temporary price promotion, and will the price go back  
19 up?", and we would seek that sort of information from  
20 them.

21 Equally so, we would ask for money out of them to  
22 support our margin. In most instances, they never gave  
23 us anything to be able to support the price  
24 repositioning.

25 Q. Mr Needham, I am not disputing with you that it happens,

1 I would imagine it has happened since Argos began  
2 business --

3 A. Absolutely.

4 Q. -- that if it goes out in its catalogue and it finds  
5 that an important competitor, either Index, Woolworths,  
6 whoever it is, is going out with a particular item at a  
7 much lower price, you would cut your price in order to  
8 try and meet that.

9 A. Correct.

10 Q. We are not in dispute about that. I am asking you: why  
11 are you saying specifically to your supplier, round  
12 about 1999 -- why are you telling him these obvious  
13 things, "I have got a new policy which involves going  
14 out" --

15 A. Could I answer that?

16 THE CHAIRMAN: I think you have put the question, and the  
17 witness would like to answer it.

18 A. When the GUS policy was announced to the wider world,  
19 a lot of the suppliers were coming in asking a very,  
20 very similar question, and, of course, we were starting  
21 to share a little bit -- it would be trust with the  
22 suppliers -- that we were likely to move our prices up,  
23 "But, Mr Supplier, if we are undercut, we still reserve  
24 the right to come back to you to seek margin support".

25 Now that was a general conversation, we were not,

1 and it was not -- there was not anything different about  
2 that conversation than any others that we had.

3 MR DOCTOR: Well, Mr Needham, I am suggesting to you that  
4 there is something different.

5 A. Well, I disagree with that. It was nothing more than  
6 that, quite an innocent comment.

7 Q. All you would be saying to them would be, "Argos will  
8 continue its business as before, if we put up our prices  
9 and we find we are undercut, we will reduce our prices".  
10 Why would you need to spell that out to them?

11 I am going to suggest a reason to you, but let us  
12 look at the reason you give, because you did not just  
13 make a statement of the obvious to Hasbro --

14 A. Well, I did, and that was a statement of the obvious  
15 that we are constantly making.

16 Q. The reason you give in paragraph 18:

17 "In order to do this [ie reposition the selling  
18 price to match the competition] it might require some  
19 support from Hasbro in the form of a reduction in the  
20 cost price or Hasbro funding the cost of flyers  
21 advertising the new reduced prices."

22 You were saying to them, "Well, we will go out at  
23 this market price, and if that is the RRP, that is the  
24 price we are going out at" --

25 THE CHAIRMAN: I think he is saying, "We were intimating we

1           were going to try to put the prices up", basically.

2    A.   Yes.

3    MR DOCTOR:  "But if we find our competitors are undercutting  
4           us we will respond by lowering the prices again and we  
5           will look to you, Hasbro, to reduce the cost price that  
6           we have agreed on, or you must pay for flyers to  
7           advertise our new prices, or both"; that is what you  
8           were saying.

9    A.   As I have said on numerous occasions, yes.

10   Q.   You say the same thing at paragraph 29, that is what you  
11        would do.

12   THE CHAIRMAN:  I think that is what Mr Needham has been  
13        saying in the witness box the last ten minutes.

14   MR DOCTOR:  Presumably you would not have told them this  
15        unless you were serious that that was what you expected  
16        to see happen.

17   A.   I could not legislate for what might happen, I have  
18        already stated that.  We were talking about a catalogue  
19        that was going to print in spring/summer 1999; anything  
20        could happen with pricing, and it was just a general  
21        statement; Hasbro had come in, many other suppliers had  
22        come in to ask us, "Oh, what is this all about, this new  
23        GUS pricing, move to increase margins?  What does that  
24        mean?"  And we had a general discussion with them to try  
25        to explain that.

1           In sharing that information with them, which was  
2           very, very generalised information, we backed that up by  
3           saying, "Well look, guys, if that is used against us, we  
4           will come back to you to seek margin support, as we have  
5           always done in the past with every line".

6   THE CHAIRMAN:   What would you expect them to do about it?

7   A.   I would expect them to either reduce their cost prices  
8           to us or to provide margin support in terms of a lump  
9           sum of money.   I would expect them to maybe pay for  
10          flyer inclusions, so that could reduce our price.   There  
11          were many things -- many negotiations and ways of  
12          recompensing us.   They might have given us free stock to  
13          actually support the margin.   It was just that sort of  
14          conversation.

15   THE CHAIRMAN:   I follow.

16   MR DOCTOR:   You do not say what Hasbro's response to these  
17          statements was.   Did they agree that they would provide  
18          this support?

19   A.   No, Hasbro would never agree to anything like that.  
20          Their stock reply was, "We will consider it", but when  
21          it ever came to us actually picking the phone up and  
22          speaking to them saying, "Look, guys, this has happened,  
23          we need some help here" it was a case of, "No, we cannot  
24          do that".

25   Q.   So they said they would consider it?

1 A. They would consider, yes, if we were undercut, but only  
2 in terms of margin support or flyer inclusion.  
3 (11.30 am)

4 Q. If you went along this route, they might well provide  
5 you with the support; the possibility existed?

6 A. They may help support the margin to allow us to  
7 reposition our prices.

8 Q. So there was an understanding at the very least that if  
9 you put your prices up to the new higher prices -- let  
10 us use that neutral word -- and if it turned out that  
11 the price was undercut when the catalogue came out,  
12 Argos would look to Hasbro for support to reduce the  
13 cost price or pay for the flyers, and Hasbro indicated  
14 that they would look on that favourably.

15 A. Well, Hasbro would never --

16 THE CHAIRMAN: I think he said they would consider it. I do  
17 not think he said they would look on that favourably.

18 MR DOCTOR: Did they say they would consider it, or look on  
19 it favourably, or what?

20 A. No, they would never look on anything favourably, quite  
21 honestly, in terms of margin support. They would  
22 consider it, but it was a veiled word --

23 THE CHAIRMAN: It was a veiled word for saying, "You can ask  
24 if you want to".

25 MR DOCTOR: Did they just leave it at that, "You can ask if



1           you want to"?

2   A.   Absolutely, and we have had some very heated  
3       negotiations in the past with Hasbro when they have not  
4       offered to support, and these have been very big  
5       conversations or negotiations, and have gone on in all  
6       sorts of different manners; we have tried to get  
7       recompense in all sorts of ways, to no avail. We have  
8       never had any support --

9   Q.   Well, that is the point. You could never have expected  
10      that they would give you support, certainly not by way  
11      of cutting their prices.

12   A.   No, but I think what we were registering is that we  
13      reserved the right to actually go into negotiation with  
14      you guys, if this happens.

15   Q.   Well, Mr Needham, you do not have to reserve the right  
16      to go to negotiation with your suppliers, you can pick  
17      up the phone at any time in light of developments and  
18      discuss things with them.

19   A.   It is also a degree of posturing in terms of  
20      negotiation; it is a negotiation tactic. It is very  
21      innocent, in terms of how it is coming across.

22   THE CHAIRMAN: Mr Doctor, when you get to a convenient  
23      moment, we will take our morning break.

24   MR DOCTOR: This may be it.

25   THE CHAIRMAN: We will just rise for a few minutes.

1 Mr Needham, please do not discuss your evidence with  
2 anyone.

3 (11.32 am)

4 (A short break)

5 (11.45 am)

6 THE CHAIRMAN: Are we going to move on to specifics now,  
7 Mr Doctor?

8 MR DOCTOR: I hope so, sir.

9 Mr Needham, would you just look at paragraph 26 of  
10 your witness statement? You say:

11 "During our discussions with Hasbro, when Argos  
12 buyers intimated that it was considering moving to  
13 market pricing and/or RRP's, if the RRP was felt to be  
14 the market price, as a business ..."

15 Just pause there; we now must understand that that  
16 simply means you were telling them you were going to try  
17 to raise prices, is that correct?

18 A. Mm.

19 Q. "... I made it clear that if this information was used  
20 by Hasbro against Argos in any way, Argos would  
21 respond."

22 A. Yes, I think that --

23 Q. You specifically said to them, "We are going to try and  
24 raise our prices, but if you, Hasbro, use that  
25 information against us, we will respond."

1           Let me put the question: what does "respond" mean in  
2           this sentence? "If you use this against us, we will  
3           respond"?

4   A.   By repositioning our prices. It was just a case of --  
5           we trusted Hasbro implicitly --

6   THE CHAIRMAN: But in what circumstances would Hasbro use  
7           that information against you?

8   A.   My concerns would be if they went out to our competitors  
9           and discussed with them the discussions that we had had  
10           in that meeting, and if they used that to their  
11           advantage, or to the competition's advantage, and we  
12           were undercut, then we would respond to that, and we  
13           would ask them to help support our profitability.

14   THE CHAIRMAN: I see, if they went and told somebody else  
15           that you were going up.

16   A.   Absolutely.

17   THE CHAIRMAN: So that the somebody else could safely --

18   A.   Price below us, or do whatever they choose to do; then  
19           we would come back to Hasbro and ask for compensation.

20   THE CHAIRMAN: I see.

21   A.   All that was saying was, "Look, we are imparting some  
22           very confidential information here; although it is very  
23           general, we expect that same level of confidence".

24   MR DOCTOR: Mr Needham, if all you had said to them was, "We  
25           are going to try as part of our policy of increasing

1 margin to raise our prices on some of our goods", if  
2 that is all you had said to them, I suggest to you you  
3 would never have written that sentence there which says  
4 that if they used that information against you, you  
5 would respond, because there is no conceivable way they  
6 could use that information against you. How could they  
7 use the information against you? Argos is going to try  
8 to raise prices --

9 A. I think I just clarified that, insofar as we had shared  
10 some generalised information with them in response to  
11 a question that they had asked, with a shared  
12 co-operation and trust, we had indicated that we might  
13 be moving to market price or the recommended retail  
14 price, "But please, Mr Hasbro, do not actually use that  
15 against us", because we will need some help if they did  
16 impact that information to anyone.

17 Q. Yes, I can understand the sense that if you told them,  
18 "We are thinking of moving to recommended retail price,  
19 but if you use that information against us, we will  
20 respond", then the sentence makes sense, but if you  
21 simply say, "We are going to try to raise some prices",  
22 it makes no sense at all.

23 A. It was just part of that general conversation, and that  
24 was the conversation, the fact that we had indicated we  
25 may move to market price -- Hasbro always knew that we

1 would move to the cheapest price in the marketplace,  
2 they had evidenced that in the past, and if it was the  
3 recommended retail price, then so be it.

4 I think the whole thing is being taken way out of  
5 context in terms of what it is saying. There is a lot  
6 being implied into that conversation, and what I said,  
7 when there is nothing there, quite honestly, it is just  
8 part of my everyday negotiations; I was doing my job.

9 Q. Well, let me put it to you in summary, Mr Needham: you  
10 say that whatever you wrote there, all you were trying  
11 to convey was that you were going to put up your prices  
12 on some items. I am putting it to you firstly that you  
13 would never have made such a statement of the obvious to  
14 your suppliers.

15 A. I always made that statement, in numerous conversations  
16 and numerous meetings that I had, and I would also refer  
17 to my chief executive officer, Mr Terence Duddy -- in  
18 his statement, he has actually mentioned the same  
19 things, so it was not me alone; the whole business was  
20 using that opportunity to say to suppliers, "If we are  
21 undercut, we are a competitive retailer, we need to  
22 remain competitive, we will come to you to seek  
23 assistance in that", and again, it was not an unusual  
24 comment, it was not a comment made in connection with  
25 anything else, it was a comment or a mechanic that the

1 whole business and all buyers -- and all buyers in other  
2 retailers -- would actually go through.

3 Q. Nor would you have said to them, "Well, we are going to  
4 try and put our prices up, but if we find we are  
5 undercut, we will bring them down again". It is just --

6 A. Well, that was a --

7 Q. It was just a statement of the obvious, you would never  
8 have made that statement.

9 A. I did not need to make that statement, because  
10 basically, Hasbro already knew -- we had worked on that  
11 premise with Hasbro for many, many years, they knew that  
12 if we were undercut we would seek every opportunity to  
13 readvertise the price in the catalogue; nothing more  
14 than that.

15 Q. Nor would you have said to them, "I am going to put my  
16 prices up; if I am undercut, I will bring them down  
17 again, and you will have to reduce your cost prices"?

18 A. That is exactly.

19 Q. Particularly in circumstances where there is no recorded  
20 instance in the past that they had ever reduced their  
21 cost prices to you.

22 A. Well, we would ask the question regardless. There may  
23 be the one opportunity that they may have given us some  
24 support.

25 Q. Nor would you have said, "We are going to try and raise

1       our prices; if we find we are undercut, we will bring  
2       them down again, but you had better not use that  
3       information against us, because otherwise, we will  
4       respond".

5   A.   Sorry, what is the question from that?

6   Q.   You would never have made that statement, "We are going  
7       to try and raise our prices, but if we are undercut, we  
8       will bring them down again. You had better not use that  
9       information against us, because if you do, we will  
10      respond".

11  A.   I am sorry if I am sounding repetitive, but the same  
12      answer applies, unfortunately. I cannot really give  
13      a different response to the one that was actually in  
14      place, and how I have represented it.

15  Q.   Let me tell you what I suggest, so that you can comment  
16      on it, what you were actually saying. You were saying,  
17      as you suggest in your witness statement, "We will go  
18      out at RRP" --

19  A.   Or the market price.

20  Q.   -- "particularly in the context of core games and  
21      Action Man, we will go out at RRP; if we find, however,  
22      that the others do not go out at RRP" --

23  A.   Could you clarify who you mean by others?

24  Q.   "Our competitors, in particular Index; if we find that  
25      they do not go out at RRP, we will respond to that by

1 bringing the price below RRP again".

2 A. I would have never said that, I would have never  
3 included Index in any conversations. We would respond  
4 to any retailer that undercut our price.

5 But let me emphasise that Index was not our concern  
6 at that point in time. The bigger issue that surrounded  
7 our toy business was the activities of Woolworths and  
8 Toys R Us. Index's market share at that point in time  
9 was something in the region of maybe 3 or 4 per cent  
10 market share, which is very, very tiny.

11 We were more concerned about the threats from  
12 Woolworths and Toys R Us. Woolworths -- we had about a  
13 17 per cent market share, Woolworths were very close  
14 behind us, they were hot on our heels at maybe a 14 or  
15 15 per cent market share; Toys R Us had 10. So no,  
16 I would have never said that in the context of Index.

17 Q. The largest competitor which has a similar business to  
18 yours, of catalogue retailing, is Index, is it not?

19 A. We actually view all formats of retailing as our  
20 competitors, and the retailers that could have the most  
21 effect on our toy business would have been most  
22 certainly Woolworths or Toys R Us, and to a much, much  
23 lesser extent, Index. Consequently, that is why the  
24 business was very, very comfortable in putting the GUS  
25 policy into practice. Index did not feature on the



1 Richter scale.

2 Q. Yes. What did feature was the fact that Index's  
3 millions of catalogues were in the same homes as your  
4 catalogues, and that if the prices came out and showed  
5 that Index's prices in its catalogue were lower than  
6 your prices, that would have a serious effect on Argos'  
7 business, would it not?

8 A. It would not have a serious effect on Argos' business.  
9 As we have proven, our business is a profitable  
10 business; Index's business was not. And our business  
11 still remains profitable. Index produce only 7 million  
12 catalogues, in comparison to the 15 million catalogues  
13 that Argos produce. So yes, quite right, the catalogues  
14 would be -- sorry, the Index catalogue holdership, they  
15 would probably have an Argos catalogue in their house at  
16 the same time, but again, going back to the market  
17 research that we conducted internally, it suggested that  
18 the marginal price differences were not going to  
19 actually persuade a customer to change their loyalties  
20 to one particular retailer.

21 Q. Can you just give me a moment? (Pause).

22 Mr Needham, this phrase, "we would respond", or "we  
23 would react", is a phrase which has been emphasised by  
24 others. Would you just look at the core bundle  
25 documents, page 38? This is an e-mail which came from

1 Sue Porrit, who I think in the hierarchy was between  
2 yourself and Maria Thompson.

3 A. Correct.

4 Q. Within Argos.

5 A. Yes.

6 Q. She was reporting back on a meeting with Hasbro which  
7 had been attended by Maria Thompson and Mr Duddy to the  
8 merchandise toy teams; would that include you?

9 A. It would include me, yes.

10 Q. Under item 3, the heading, "Pricing Strategy vs Rebate  
11 Pricing", she was reporting that Maria Thompson had  
12 indicated at that meeting to Hasbro that Argos will  
13 react heavily to being undercut, should it happen.

14 So that same phrase that you have used, and you say  
15 you yourself used, was used by her; a warning to Hasbro  
16 that if the --

17 A. This is not a warning. Can I explain what it is?

18 Q. Well, a statement to Hasbro that should something  
19 happen, should Argos find itself being undercut, first  
20 of all, Argos will react heavily, Argos will bring its  
21 prices down, presumably.

22 A. Correct, yes.

23 (12.00 pm)

24 Q. "Hasbro will not put money on the table to support this,  
25 but will look at other methods of support."

1           So apparently, the discussion there was also along  
2           the lines of, "If we put our prices up in a certain way,  
3           and we find we are undercut, we will bring them down  
4           again, and we will look to Hasbro to do something about  
5           that."

6    A.   Can I explain what this sentence means, and I think  
7           I need to put it into context; I was not obviously at  
8           the meeting with Maria Thompson or Terry Duddy, and  
9           also, I would receive sort of lots and lots of e-mails  
10          per day from Sue Porrit, but I do believe I have  
11          an explanation for this.

12          The pricing strategy was the GUS change in pricing  
13          strategy, change in policy, and again, I believe that  
14          that first sentence suggests that given that suppliers  
15          were generally aware of the move in terms of the pricing  
16          policy for Argos through the GUS takeover, should it  
17          happen that we are undercut, we would seek for  
18          compensation, and that is what the rebate pricing  
19          section refers to as well, that we would look to go back  
20          to them for compensation.

21    Q.   Although you knew that Hasbro would not lower its prices  
22          by way of giving you money back, or as you said, it will  
23          not lower its prices --

24    A.   Yes, I would still ask the question though.

25    Q.   -- it will look at other methods of support, so it

1 indicated that it might well look at other methods of  
2 support.

3 A. That is correct, yes. Can I explain what I think that  
4 means? I believe that we would have asked for monies to  
5 support a price repositioning in all our flyers that we  
6 were producing. It goes back to the same point that  
7 I have been making on numerous occasions that other  
8 support could be many, many things; it could have been,  
9 "We will give you an element of free of charge stock to  
10 make up the loss in profit that you would make", it  
11 could have been an inclusion in flyers --

12 THE CHAIRMAN: You have explained that to us; we have got  
13 the point, I think.

14 A. It is all back down to that, and it is the same point.

15 MR DOCTOR: If you look at the same bundle at pages 41 and  
16 42, Mr Wilson -- you know Mr Wilson?

17 A. I do know Mr Wilson, yes.

18 Q. He was the Hasbro Argos manager. He has a meeting with  
19 Ms Porrit on 19th March 1999, and if you go to the  
20 second page, he has a point about the middle of the page  
21 in the context of the discussion regarding profitability  
22 and so on:

23 "Hasbro's retail pricing strategy to increase trade  
24 brought in margin was discussed. Sue understands our  
25 strategy, but categorically stated that Argos will react

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

4 Now the point that the Hasbro representative has  
5 derived from the conversation is that Argos will react  
6 to being undercut, if it finds, on publication of its  
7 next catalogue, that it is being undercut by  
8 a competitor.

9 A. I have never seen this document before.

10 Q. No, I am not suggesting you have, I am asking you to --

11 A. And consequently, the content of it I really would not  
12 be able to comment on.

13 THE CHAIRMAN: You do not think you can help on this?

14 A. No, it was between Neil Wilson and Sue Porrit, and  
15 I have looked at the people who have been cc'd on this,  
16 and my name is not on here. It would be inaccurate of  
17 me to actually comment on that. I would not know what  
18 to say, basically.

19 MR DOCTOR: If it had been put to Mr Wilson that he was  
20 being asked in some respect for Hasbro to give support  
21 of any monetary kind, or compensation of any kind to  
22 Argos, presumably that would have made some impression  
23 on him, would it not?

24 A. I do not understand what type of impression --

25 THE CHAIRMAN: I am not sure how far this witness can take

1           that, Mr Doctor.

2   MR DOCTOR: Well, you yourself had discussions with

3           Mr Wilson, did you not?

4   A. I had numerous discussions. He was my main contact at

5           Hasbro.

6   Q. So when you talk about the discussions in which you are

7           saying to Hasbro, "We will respond and if we respond, we

8           will be asking for support", they must have been

9           conversations in your case that you had with Mr Wilson.

10   A. Yes, we would have those conversations with Mr Wilson.

11           We would have those conversations with numerous people

12           at Hasbro, not just him alone.

13   Q. Of course, you would not have expected that Mr Wilson

14           personally could have authorised so momentous a decision

15           as to pay support.

16   A. Absolutely not.

17   Q. So he would presumably have had to convey that to his

18           superiors.

19   A. Yes, and he did do that. As my main contact, and the

20           representative of Argos within Hasbro, I would expect

21           him to try his best to get that, but it was invariably

22           not forthcoming.

23   Q. I suggest to you that what Mr Wilson took back from his

24           discussions with you and Ms Porrit was that Argos would

25           go out at these RRP's, but that if others did not, Argos

1 would respond, and no longer go out at the RRP's.

2 A. I think that would be, certainly from my point of  
3 view -- I would not have actually conveyed that to him.  
4 If he went back and actually discussed that internally,  
5 I do not know, that would be pure supposition. I think  
6 what was discussed with Neil is exactly what I have said  
7 previously, and that is that we had intimated to him and  
8 his colleagues that there was a general move in terms of  
9 our pricing policy, and I do not believe there was  
10 anything wrong in saying that, and as a result of  
11 sharing that information -- and the trust and confidence  
12 that unfortunately seems to be a bit misplaced, in light  
13 of this case, with Hasbro, we would seek compensation if  
14 they used that privileged information against us.

15 THE CHAIRMAN: Yes. I think we have gone round this track  
16 several times now.

17 MR DOCTOR: Well, let me put it to you, to make clear that  
18 I have put it to you: what you understood was that  
19 Hasbro was going to get the others in the marketplace,  
20 your competitors, to go out at these Hasbro RRP's --

21 A. That could never happen.

22 Q. Let me just finish the sentence; if they did not achieve  
23 that, that is what you would respond to.

24 A. No, that is definitely not the case, and I would never  
25 be as naive to assume that Hasbro had the ability to

1 dictate what the retail prices -- to all retailers in  
2 that manner, and I believe in Neil Wilson's own witness  
3 statement he says exactly the same, that he could never  
4 ever guarantee or force retailers to go out at  
5 recommended retail prices. So that is unfortunately  
6 a bit of a complete nonsense.

7 Q. Well, Mr Needham, with respect, that is a bit of a straw  
8 man really. No one has ever suggested that Hasbro was  
9 in a position to force anybody to do anything.

10 A. It was just the choice of a word.

11 Q. What we are talking about here is a policy, an  
12 understanding, an agreement that Hasbro would go out and  
13 try to get others to go out at RRP, and on that  
14 understanding, Argos said that they would go out at RRP.

15 A. There was no agreement or no policy ever presented to  
16 me.

17 Q. And that was why it was stressed that if Hasbro did not  
18 achieve the outcome desired, that others should go out  
19 at RRP, then, of course, Argos would not stick to the  
20 understanding. It would then have to undercut and not  
21 charge RRP.

22 A. I really do not know what the understanding is. One,  
23 I do not believe that -- and I still do not believe --  
24 Hasbro could ever guarantee recommended retail pricing  
25 to anyone. It is just going over the same old points



1           again, I believe.

2   Q.   By the way, where is Sue Porrit at the moment?

3   A.   I cannot recollect.  I think she may have just been

4           recruited by Hamley's toy retailers.

5   THE CHAIRMAN:  She is not with --

6   A.   She is not with Argos, no.

7   MR DOCTOR:  She is working for Hamley's, here in London?

8   A.   Yes.

9   THE CHAIRMAN:  When did she leave Argos?

10  A.   I cannot recollect, unfortunately.

11  THE CHAIRMAN:  Recently?

12  A.   No, it must be at least two or three years ago.  The

13           month was definitely August, because it was my birthday.

14  MR DOCTOR:  Do you know of any reason why Argos could not

15           get in contact with her, if they wanted to, at Hamley's,

16           or wherever else she might be?

17  A.   What is that question?

18  Q.   I am just asking, do you know of any reason why Argos

19           could not get in contact --

20  A.   I do not know of any reason.  That is a very strange

21           question.

22  THE CHAIRMAN:  It is not really for Mr Needham.

23  MR DOCTOR:  If we can go back to paragraph 26 again of your

24           statement, you say, in addition to what we have gone

25           through, that the information, such as it was, that you

1 gave Mr Wilson, depending on where one takes it from,  
2 either that you just were trying to increase your prices  
3 or that you were going to market price and/or RRP, you  
4 say you never expected that Hasbro:

5 "... much less that it would pass this information  
6 to other account managers at Hasbro ..."

7 I am assuming you were meaning that Mr Wilson would  
8 not pass that on to other account managers at Hasbro.

9 A. Absolutely, I was astonished.

10 Q. Presumably, if you had told Mr Wilson that you would be  
11 looking for support, as you have already said, he was  
12 going to plainly pass that on to his superiors, was he  
13 not?

14 A. His superiors were aware of the change in policy, the  
15 fact that we would ask for margin support. In  
16 Mr Duddy's statement, he had had meetings with very  
17 senior management at Hasbro, and imparted that same  
18 information, so people knew.

19 Q. Yes, well, Mr Needham, the point you are making is that  
20 this information was so confidential that you never  
21 expected him to pass it on, but as I understand it, the  
22 whole point of the information is, "We are going to go  
23 out at higher prices, if we are undercut we will be  
24 looking to you for support", Mr Wilson has to tell his  
25 superiors that, because his superiors are the ones who

1 are going to be affected by this demand for support.

2 A. Well, his superiors knew that. All the Hasbro internal  
3 managers had seen the same newspapers, and consequently,  
4 yes, I suppose it is a little bit naive not to assume  
5 that they were generally talking about the change in the  
6 GUS/Argos pricing policy.

7 Q. Why would you have written down here in your witness  
8 statement that you would not expect him to pass on this  
9 information if you now suggest that this is the sort of  
10 information they could have read about in the  
11 newspapers?

12 A. I think this is in relation to some of the  
13 documentation, and what Neil Wilson and indeed  
14 Ian Thomson have put into their witness statements,  
15 about the fact that Ian Thomson was passing  
16 information -- and inaccurate information -- on to  
17 Index. I find that very, very alarming.

18 Q. Well, it just says you did not expect that Hasbro would  
19 use the information, that is the information you have  
20 given them, to infer something:

21 "... much less that it would also pass this  
22 information to other account managers at Hasbro ..."

23 If it is something which is either just plain common  
24 sense, as you have tried to suggest, or, which you have  
25 now said, they could read about in the newspapers, why

1 would you not have expected them to pass it on?

2 A. Now you have made that point, I did not expect my  
3 account manager to be discussing private information  
4 that we exchanged with Hasbro with other leading account  
5 managers within their business, be it general or  
6 specific information. I did not expect that. I was  
7 disappointed that had happened.

8 (12.15 pm)

9 Q. What private information? You first say that it is just  
10 information that you are going to increase your prices,  
11 you yourself said a moment ago they could have read  
12 about it in the newspapers. What is private about that?

13 A. Well, nothing is private about that, but I think this is  
14 in relation -- more in relation to the other documents  
15 that we have seen, and the information that was passed  
16 on to Ian Thomson.

17 THE CHAIRMAN: Forgive me a moment, Mr Doctor: the  
18 impression I am getting here is that at some stage, your  
19 conversations with Neil Wilson got a bit more specific  
20 about what you were about to do, and you are expressing  
21 surprise at that --

22 A. Absolutely, and with the three instances that have come  
23 out of the witness statements, that I have responded to,  
24 where specific information on those three items did go  
25 back to Hasbro, that is what alarmed me -- sorry, went

1 back to the Index account manager at Hasbro. That was  
2 what was alarming me.

3 THE CHAIRMAN: Yes, of course.

4 MR DOCTOR: Now let us go to the specific items, Mr Needham.  
5 In spring/summer 1999, we have either a situation where  
6 Littlewoods is lower or the same, depending on which  
7 part of the case one comes at it from; autumn/winter  
8 1999, spring/summer 2000, all the prices on core games  
9 and Action Man, which are common products to both the  
10 Argos and Littlewoods catalogues, are exactly the same,  
11 except, I think, for one item in autumn/winter, Walkie  
12 Talkie.

13 A. Can I --

14 Q. But the other items are not the same that we have seen,  
15 the range of other toys.

16 A. Can I respond to that question?

17 THE CHAIRMAN: Yes.

18 A. In terms of our own strategy on toys, where we needed to  
19 improve margins the most, that was on Action Man and  
20 core games. In terms of their total turnover  
21 contribution to the boys' toys range, it was substantial  
22 turnover, so consequently, the easiest way to increase  
23 profitability in the first instance on boys' toys was to  
24 go after those two categories in terms of putting their  
25 prices up.

1 THE CHAIRMAN: Yes.

2 A. That was the decision. The other categories that have  
3 been mentioned actually provided less opportunity for us  
4 in terms of turnover potential, so at that point in time  
5 they were not as critical.

6 MR DOCTOR: We then know that on 18th May an e-mail is sent  
7 which contains -- not to you or to Argos, but an e-mail  
8 is sent which contains statements, confirmed by  
9 Mr Wilson, that he has received confirmation from Argos  
10 that on a certain list of additional toys Argos is going  
11 to price at certain levels.

12 A. I have seen the document.

13 Q. That information must have come from you or one of your  
14 other buyers.

15 A. That is certainly not the case, and what I would like to  
16 point out at this stage is that on those other toys,  
17 there is a number of errors, and especially just  
18 isolating those other toys, there was a large number of  
19 errors in terms of what our final catalogue price was,  
20 and what Ian Thomson had advised Index of.

21 Q. Well, we will come to the detail in a moment. The  
22 e-mail also says that Argos have indicated that they are  
23 going to continue to adhere to the arrangements with  
24 regard to core games and Action Man.

25 THE CHAIRMAN: Do you want to look at the document,

1 Mr Needham?

2 A. No, I think I can recollect it. I do not know why that  
3 statement was put in there, I cannot respond to that,  
4 purely because the first time I saw that e-mail was as  
5 part of this case. Quite honestly, we had actually  
6 moved our pricing up in spring/summer 1999, and  
7 continued with those retail prices into the  
8 autumn/winter 1999 catalogue, and into 2000 as well. So  
9 there was a pattern there that anybody could have  
10 actually picked up on. So I cannot really comment on  
11 why Ian Thomson would have put that statement in that  
12 e-mail.

13 MR DOCTOR: Well, he says he got the information from  
14 Wilson, and Wilson has told the court that he got that  
15 information from you, that is Argos.

16 A. But Neil Wilson has also stated that he never asked for  
17 specific product detail, in his own statement, from me,  
18 so that disproves that, surely.

19 Q. About a week after this information is passed to  
20 Littlewoods, there is apparently a telephone  
21 conversation between yourself and Mr Wilson. Now we  
22 know about this because Mr Wilson sent an e-mail on  
23 25th May --

24 A. Sorry, I do not recollect a telephone -- where is this  
25 telephone conversation coming from?

1 THE CHAIRMAN: I think we had better look at the document.

2 MR DOCTOR: It is page 93 of the core bundle. In that,

3 Mr Wilson sent an e-mail to his colleague Ian Thomson:

4 "Argos have confirmed that Interactive Pikachu will  
5 be at £23.75, not £23.99, for autumn/winter. Please  
6 advise Index accordingly."

7 Mr Wilson's evidence about that was that he had  
8 had --

9 A. It certainly was not a telephone conversation, that was  
10 incorrect.

11 Q. -- a telephone conversation with you, I think.

12 A. I do not recollect a telephone conversation on this.

13 I recollect a meeting about this, and I can explain this  
14 to the panel.

15 Q. Can I just put to you what Mr Wilson says, and then you  
16 can comment on that.

17 A. Absolutely, yes.

18 Q. Mr Wilson said that Argos had indicated that they were  
19 prepared to price Interactive Pikachu at the RRP, which  
20 was £23.99, and that is why the price was included in  
21 the 18th May e-mail to Littlewoods. This is at  
22 paragraph 67 of his witness statement.

23 He then said:

24 "Andrew Needham of Argos then contacted me, and  
25 indicated that they were no longer proposing to go out



1 at that price. I said in the 25th May e-mail that Argos  
2 had confirmed the price would be £23.75, although of  
3 course there was no guarantee. I cannot now recall  
4 whether, in this particular instance, Argos specifically  
5 informed me they were intending to price the Interactive  
6 Pikachu at £23.75, or whether I understood that this was  
7 their intention because it was the prevailing price in  
8 the market."

9 A. Correct, it was. Can I respond to that, please?

10 THE CHAIRMAN: Yes, Mr Needham.

11 A. A fairly clear explanation of this; Interactive Pikachu  
12 was a very, very hot product within the marketplace  
13 during 2000, and in the spring/summer 2000 catalogue we  
14 launched the product at £23.99 in the catalogue. The  
15 recommended retail price was actually £24.99 for that  
16 product from Hasbro, but because it was such a hot  
17 property, this is one of those selected products where  
18 we decided to actually go below the recommended retail  
19 price.

20 Index launched their catalogue within days of ours,  
21 and had actually priced the product at £23.75. Now as  
22 part of our policy of matching the lowest price in the  
23 marketplace, that all our suppliers knew we would  
24 respond to, we decided to go to £23.75 in the  
25 autumn/winter catalogue, and I do recollect

1 a conversation with Neil Wilson -- he was trying to  
2 persuade me to hold at the £23.99 spring/summer  
3 catalogue price, and I basically said, "No, Neil, Index  
4 have undercut us here, this is the prevailing price, so  
5 I have to go out at the prevailing market price, which  
6 is £23.75". That was a very, very simple conversation,  
7 in very clear context.

8 MR DOCTOR: In your witness statement, you say that Argos  
9 never discusses its prices with its suppliers, but here  
10 is a clear example of you having a most detailed  
11 conversation with Mr Wilson about your prices.

12 A. But that is -- that statement was very much a case of me  
13 saying, "I do not go to Hasbro or anyone else and tell  
14 them what my prices are". He elicited a conversation  
15 with me asking what my intentions were with that  
16 product. I was stating the obvious, that Neil Wilson  
17 would have understood anyhow, because we would have  
18 reacted to the Index price.

19 Q. If Wilson comes to you and says, "Look, will you not  
20 hold firm at £23.99?", you could say to him, "What has  
21 this got to do with you? We do not discuss our prices  
22 with you". If your policy was as you describe it, that  
23 is what I would have understood your response to be. In  
24 fact you tell him, "No, we have been beaten by Index in  
25 the catalogue, and we are going to go to that price".

1 A. Sorry, is that a question to me?

2 Q. Yes. That is what happens. Instead of your saying to  
3 him, "Get lost, we do not discuss our prices", you tell  
4 him what your price is going to be.

5 A. No, I was not telling him what our price was going to  
6 be, I was telling him we would have to respond to the  
7 lowest market price, it was nothing more than that. Let  
8 us put this into context again: this was one instance.  
9 I bought 60 or 70 products from Hasbro during  
10 an autumn/winter season, and consequently there were one  
11 or two instances of Hasbro eliciting information from  
12 me, which I believe was just a normal conversation, it  
13 was not part of some orchestrated pricing activity --  
14 that is all it was.

15 Q. Well, in fact, what you say you said was:  
16 "I would have to react to the lower pricing."  
17 That is in Index's --

18 A. Absolutely, yes, and we did do that.

19 Q. What that is a reference to is the arrangements you had  
20 earlier, which is, "Of course I am not going to stick to  
21 the RRP if you cannot get others to stick to the RRP".

22 A. No.

23 Q. "If you can get them to go up to £23.99, I can stick to  
24 it".

25 A. I totally disagree with that, there was not any

1 initiative in place for me to even comment on that, it  
2 was purely a part of the normal process that Argos  
3 adopts.

4 Q. But why would you even tell him that you are going to  
5 react to that? I mean, he may use that against you, as  
6 you put it, by going to Index and saying, "Well, it  
7 looks as if Argos are going to respond on this  
8 particular very hot property in their catalogue", that  
9 would encourage Index to, as it were, undercut you  
10 again.

11 A. I was just basically responding politely to a question  
12 that Neil had raised. He was very keen on us actually  
13 holding the price at £23.99, for whatever reason that  
14 may have been, and I responded that, "No, Neil, you know  
15 the policy, we respond to the prevailing market price,  
16 this is it". And there is nothing more than that to it.

17 Q. Mr Needham, on an item as crucial as this one, even to  
18 tell Mr Wilson, "We are not holding firm on £23.99 as we  
19 had been in the previous catalogue, we are going to  
20 react to the Index catalogue price of £23.75", even  
21 telling him that would be contrary to your normal policy  
22 unless there was some understanding between you and  
23 Hasbro --

24 A. There was no understanding at all.

25 Q. -- that Hasbro would try to get people to price at RRP,

1 and that if they could not, you would have to  
2 unfortunately also go down in price below RRP.

3 A. There was no understanding at all, whatever you are  
4 suggesting that may be. I was just responding to  
5 a lower price in the market. Neil had asked me the  
6 question; this was one of many, many products that I had  
7 to price within the catalogue, and I do not really see  
8 what the issues are in having discussed that.

9 Q. Do you accept that by telling him --

10 THE CHAIRMAN: I think at this stage, Mr Needham -- we are  
11 not yet at the stage of deciding what is right and what  
12 is wrong, or anything of that kind, we are just trying  
13 to get to the bottom of what happened, and it is not  
14 very easy, because some of it took place quite a long  
15 time ago, and some of the nuances in this case arise to  
16 some extent when people are looking at the same sort of  
17 facts from a different perspective.

18 A. Yes.

19 THE CHAIRMAN: I think what we would be particularly  
20 interested in from your perspective is to what extent,  
21 when Neil Wilson is coming on the phone to you, to what  
22 extent he is raising questions about particular  
23 products, and in particular, the way particular products  
24 are being priced.

25 A. I think part of his conversation really stemmed from the

1 fact that, you know, this was a key product in the  
2 market, somebody had undercut us, and yes, he was  
3 probably trying to elicit my intentions for the  
4 forthcoming catalogue. I responded accordingly -- which  
5 is what I said previously, that we would just respond to  
6 it, and nothing more than that.

7 THE CHAIRMAN: Yes.

8 MR DOCTOR: Do you accept that it would have been obvious to  
9 you, or to anyone in your position, that if you told him  
10 that, if you told him, "I am going to respond to the  
11 Index price of £23.75", that he may have used that by  
12 going back to Index? It must have been obvious that  
13 that is a possibility.

14 A. That could have been a possibility. At the time,  
15 though, I believe that we had the full trust and support  
16 of the national account manager that represented our  
17 business within Argos, and I did not expect that  
18 specific exchange of information would be going on with  
19 any retailer, and that is the most disappointing part of  
20 this.

21 Q. Mr Needham, with great respect, witness after witness  
22 has told us how Hasbro was always coming to them and  
23 trying to tell them what their competitors were going to  
24 price at. Why would you have expected that, if you had  
25 told Mr Wilson what you were actually going to do, in

1       respect of a specific item, hot property, that he would  
2       not use it in the same way against you by going to the  
3       other suppliers and telling them?

4    A.   Because I believed, and probably quite wrongly now, that  
5       there was this degree of trust between our two  
6       businesses that would protect our position.  I cannot  
7       legislate for why Neil Wilson would have gone off and  
8       started to use that information.  He did that of his own  
9       volition.

10   Q.   What is also very significant about this, Mr Needham, is  
11       it somewhat contradicts your previous evidence that  
12       Index was not really very important, does it not?  When  
13       I asked you about whether Index --

14   A.   But I would not expect Neil Wilson to pass information  
15       on to Index about my pricing, even though it was not  
16       significant.

17   Q.   You have missed the point.

18   A.   What is the point?

19   Q.   Earlier, I suggested to you that in the context of these  
20       particular lines, the price at which Index went out was  
21       an important factor in your thinking.  You said, "No,  
22       Index was at 3 per cent market share, it is of no  
23       interest to us whatsoever.  Our real competitors are  
24       Woolworths and Toys R Us".  I put it to you that their  
25       catalogue -- "Oh, their catalogue is not known to many

1 people".

2 Here is a specific example of you saying to him,

3 "Index's price is £23.75, we have to react to that".

4 A. Well, absolutely.

5 Q. Index is not quite unimportant when it comes to these

6 high-profile, crowd-moving goods.

7 A. Regardless of who the competitor may have been, we would

8 have still responded to it.

9 Q. Now as it happens, we know, Mr Wilson e-mailed Thomson

10 to confirm that Argos -- in fact, it is that e-mail,

11 Argos is going out at £23.75. Whatever words you used,

12 whether it was, "we will react", or whatever it was, he

13 had understood that you would be going out at £23.75,

14 and not £23.99 as he had previously advised his

15 colleague, Wilson. And he asked Thomson to advise Index

16 accordingly.

17 A. I responded to a question that Neil Wilson had asked of

18 me. I do not know what happened in the meantime with

19 all this information that was going on. I did not

20 expect that information to be passed on to anyone, let

21 alone a retailer.

22 Q. Mr Thomson has told the court that he did pass that on

23 to Index; the result was that both Index and Argos went

24 out in the autumn/winter 2000 catalogue at the price of

25 £23.75.



1 A. I think what is also important to actually point out on  
2 this e-mail is the level of inaccuracy in there as well.  
3 If I actually had given information about our  
4 forthcoming catalogue to Index on things like the  
5 Pokemon Battle Figures, the Micro Machines Transforming  
6 Team Truck, it would have been inaccurate, because these  
7 are the wrong prices. We did not go out at those prices  
8 in our autumn/winter catalogue. For instance, on the  
9 Transforming Team Truck, we went out at £28.99.

10 Now Neil Wilson -- sorry, Ian Thomson's e-mail is  
11 suggesting that we were going out at £29.99, and there  
12 are a number of other instances on this; so there is  
13 a degree of inaccuracy here, so how could I have passed  
14 that information on?

15 Q. Yes, there are three items which are inaccurate, or at  
16 least, which according to Mr Wilson, were changed after  
17 he had the information. The other items are correct,  
18 those are the prices you did go out at.

19 There are three items which Argos did not go out at  
20 these prices, the other items, it did go out at these  
21 prices.

22 A. I can only speak for the products that I bought, which  
23 was the Pokemon and Micro Machines, and in those  
24 instances, the majority were incorrect.

25 Q. The particular price, the £23.75, is not a natural price

1 point, is it?

2 A. Yes, it is.

3 Q. £23.75 is a natural price point?

4 A. Absolutely. £23.50 is a natural price point. £23.99 is  
5 a natural price point. We price many, many products at  
6 the £23.75 price point, so would John Lewis.

7 Q. I see. So whoever gave the evidence that the natural  
8 price points are always at .99, we should take that with  
9 a pinch of salt as far as you are concerned?

10 A. I do not think it is in the same context. It is  
11 a different context in which that was mentioned. So  
12 I do not think that has any -- you cannot compare the  
13 two.

14 Q. Can I take you forward slightly to March/April 2001? At  
15 that point, the various catalogue retailers are  
16 preparing their catalogues for autumn/winter 2001.

17 A. That is correct, yes.

18 Q. Mr Thomson states that he came under pressure from Index  
19 to improve the margins on certain goods, of which Ferris  
20 Wheel was one. Mr Thomson says that he indicated to  
21 Gary Smith, who was a buyer at Index --

22 A. I do not know --

23 Q. -- that he would see if he could get his counterpart for  
24 Argos, Mr Cooper, who was the buying manager at Hasbro  
25 for Argos at that stage, to see if they could do

1 something.

2 If you would like to see -- I am not suggesting  
3 these e-mails went to you, but you can see what  
4 happened, and perhaps comment on it, if you go to the  
5 e-mail at page 123; Mr Thomson wrote to his colleague,  
6 Mr Cooper, telling him that Index were keen to price  
7 this Ferris Wheel at the Argos spring/summer price, that  
8 is the past price, of £49.99 in their autumn/winter 2001  
9 catalogue, and asked him to ensure that Argos would  
10 match the price:

11 "... and if you know of any retail price difference,  
12 will you try and get them to comply."

13 Mr Cooper reported back on the next day:

14 "No change planned."

15 Now Ferris Wheel was one of your products, I think?

16 A. Yes, it was.

17 Q. So I am putting to you that Mr Cooper must have spoken  
18 to you about the price that Argos was going to go out at  
19 in the autumn/winter 2001 catalogue, and he must have  
20 received from you information that the price would  
21 remain at £49.99 for the autumn/winter catalogue.

22 A. May I actually put into context the conversation that we  
23 had?

24 THE CHAIRMAN: You had a conversation?

25 A. Yes, absolutely, with Charles Cooper. What happened

1 was, at this instance, Argos alone, in spring/summer  
2 2001, decided to run the K'NEX Ferris Wheel, we were  
3 virtually the only retailer stocking that product, and  
4 we were at £49.99 with that product. We had told,  
5 through the selection process, Charles Cooper that the  
6 product was going to carry on into the autumn/winter  
7 catalogue. Now I did not know at that point who else  
8 would be stocking that product. He had said to me, "Oh,  
9 that is just going to carry on at £49.99, is it?" Yes,  
10 fine, no problems.

11 THE CHAIRMAN: Is that a sort of typical question that  
12 Charles --

13 A. No, it was not, it was just a one-off, which is again --  
14 you know, the three instances that are in these witness  
15 statements, out of all the products, it was just one  
16 conversation clarifying to Mr Cooper that I did not need  
17 to respond to any lower price in the marketplace,  
18 because in spring/summer, we were the only people  
19 stocking it. So why would I not carry on at £49.99?

20 MR DOCTOR: Well, okay. And then we know that  
21 Jackie Wray -- well, I understand she is coming to give  
22 evidence, so I will raise that with her.

23 A. She is here today.

24 Q. From time to time, Mr Wilson has said, you used to phone  
25 him and say that you had seen a product such as

1 an Action Man on sale for £2 less than RRP, and you  
2 would ask him whether Hasbro could do anything about it.  
3 Would you like to comment on that?

4 A. Yes, I would like to comment on that. Frequently we  
5 would actually monitor the marketplace, and produce  
6 pricing comparisons with all our leading competitors'  
7 prices, and invariably, if we were being undercut, we  
8 would want to understand what was happening in that  
9 instance, we would want to understand whether that  
10 undercutting was a short-term price promotion that would  
11 only last for a few weeks, for instance.

12 So in that instance, we could actually make  
13 an informed decision whether or not to react to that  
14 price or not. It may have been, for instance --

15 THE CHAIRMAN: So you wanted to make --

16 A. We needed to an informed decision.

17 THE CHAIRMAN: What you have said is an informed decision,  
18 a decision on the basis of the best information you  
19 could get.

20 A. Correct, yes. The other instance is maybe that perhaps  
21 some of those products were old clearance items that  
22 they were discounting. So there were many, many factors  
23 that we would try to collect from our account managers  
24 to ascertain whether it was the right decision or not to  
25 actually match that lower price, and in some instances

1 we did, and if it was a short-term promotion, sometimes  
2 we did not.

3 THE CHAIRMAN: So you would try and establish with them, "Is  
4 this a short-term promotion with X, or is this an end of  
5 line sale, or have they got some special deal?"

6 A. Absolutely, yes.

7 THE CHAIRMAN: And you would do your best to find out from  
8 them.

9 A. Absolutely.

10 THE CHAIRMAN: On the whole, would you be able to find out  
11 from them what you were seeking?

12 A. Yes, they would tell us if it was a short-term  
13 promotion, they would tell us if it was clearance stock.  
14 They would not discuss whether it was through better  
15 trading terms, of course, because they would always  
16 insist that Argos had the same trading terms, which was  
17 part of their standard negotiations.

18 In that telephone conversation we may have said,  
19 "Right, okay, if this is a longer term promotion, what  
20 are you going to do about this for Argos? Are you going  
21 to actually help support us in our promotional activity,  
22 so that we can match the market price?"

23 Now that was not only the type of conversations that  
24 happened on toys, it happened across the entire  
25 business, and it was very much a case of trying to

1 establish what we needed to do to remain competitive and  
2 what options were available to us in terms of the  
3 support packages that we would try to obtain from  
4 suppliers.

5 MR DOCTOR: Well, Mr Wilson said, and this is in  
6 paragraph 32 of his statement, that your purpose in  
7 calling him to say that you had seen an Action Man  
8 product for, say, £2 less than the RRP, was that you  
9 wanted Hasbro to persuade the retailer to go back to  
10 RRP, or, if Hasbro could not achieve that, to confirm  
11 that to you, so that you could take account of that in  
12 your pricing.

13 A. We did not expect that at all. We knew that that could  
14 never happen, and those conversations were never had.

15 Q. He says it was clear from this that you knew that Hasbro  
16 was persuading accounts to go to RRP.

17 A. Can I answer that question? I think that is a statement  
18 of the obvious in many respects from Neil Wilson.  
19 Neil Wilson and Hasbro were constantly going round to  
20 retailers, when retailers were complaining about  
21 margin -- and this had been going on for years. When  
22 retailers complain about margin, their first stock  
23 response would be, "Well, put your recommended retail  
24 price up", so it would have been naive of me to assume  
25 that other account managers within Hasbro were not

1           having these same sorts of conversations with the  
2           competitors.

3   THE CHAIRMAN:   Yes.

4   MR DOCTOR:   Sir, I wonder if I may just have a minute to  
5           find something?

6   THE CHAIRMAN:   Yes.   Are you all right there, Mr Needham?

7   A.   Fine, thank you.  (Pause).

8   MR DOCTOR:   Mr Needham, we have heard from many of the  
9           witnesses on both sides that whenever any catalogues  
10          were published, immediately a win/lose/draw analysis was  
11          conducted between Argos' catalogue and Index's  
12          catalogue.  Is that correct?

13  A.   I have heard that the Index people have quoted that,  
14          yes, that they conducted a win/lose analysis, or  
15          whatever it was called.

16  Q.   Are you saying that you did not do that?

17  A.   Absolutely, we actually conducted a pricing survey  
18          shortly after catalogue launch to understand how  
19          competitive the catalogue was.  This was  
20          a catalogue-wide comparison --

21  THE CHAIRMAN:   So you would go through the catalogues and  
22          see where everything was?

23  A.   But we would also go through to the High Street, we  
24          would actually go to Woolworths, we would go to  
25          Toys R Us.  The same process was happening on consumer



1           electronics, on small electrical appliances, throughout  
2           the entire catalogue, and it would give us a snapshot of  
3           how competitive we were at that time.

4   MR DOCTOR:   And that, of course, would include obviously the  
5           Index catalogue?

6   A.   That would have been one of many, many, many retailers,  
7           yes.

8   MR DOCTOR:   I have no further questions.

9   THE CHAIRMAN:  Thank you.

10  MR BREALEY:   I have no re-examination.

11  THE CHAIRMAN:  Thank you.  Thank you very much, Mr Needham,  
12           that is the end of your evidence.

13                               (The witness withdrew)

14  MR BREALEY:   Do we have time for Mrs Wray?

15  THE CHAIRMAN:  What would you like to do, Mr Doctor?  I do  
16           not know how long you anticipate being with Mrs Wray.  
17           I have an estimate of half an hour here.

18  MR DOCTOR:   Well I certainly will not be longer than that,  
19           so why do we not start, and see if we can --

20  THE CHAIRMAN:  Shall we start?  Yes.

21                               MRS JACQUELINE WRAY (sworn)

22                               Examination-in-chief by MR BREALEY

23  THE CHAIRMAN:  Thank you, Mrs Wray.  Do sit down.

24  MR BREALEY:   Your witness statement is at tab 69, volume 2,  
25           page 754.  Mrs Wray, I think you are at tab 69; could

1           you go to page 756, which is the penultimate page? Is  
2           that your signature?

3   A.   It is.

4   Q.   And can you confirm for the tribunal that the contents  
5           of this statement are true?

6   A.   It is.

7                           Cross-examination by MR DOCTOR

8   MR DOCTOR:   Good afternoon.  Is it Miss or Mrs Wray?

9   A.   It is Mrs Wray.

10  Q.   Mrs Wray, Mr Bottomley has told the court that you rang  
11           Hasbro on a number of occasions to complain about retail  
12           prices.

13  A.   If we have sightings where we are more expensive than  
14           the marketplace, yes, I would phone Hasbro and find out  
15           if there was any promotion, if it was for the remainder  
16           or if it was indefinite; basically saying things Andrew  
17           said, just to find out -- sorry, I am really nervous.

18  THE CHAIRMAN:  That is all right, you relax there, Mrs Wray,  
19           we are just interested in discovering how your business  
20           sort of works.  You know it better than we do, so we  
21           just want to hear how you explain it to us.

22                           When you are ringing up these people at Hasbro, what  
23           sort of reaction would you get on the other end of the  
24           phone?

25  A.   Sometimes they would not know about it, and they would

1 say, "Oh, we will look into it and come back to you".  
2 If they had known about it, they would say -- as in my  
3 witness statement, "It was a clearance line, it was old  
4 packaging, they are just clearing old stocks, that is  
5 the reason why they have reduced their retail prices".  
6 MR DOCTOR: He says that when you called, you did not ever  
7 phone to discuss with him or find out about the cost  
8 prices that were being charged to other retailers.  
9 A. Sorry?  
10 Q. Well, I am putting it to you that that is what he says.  
11 He says you never phoned to call about cost prices, what  
12 were other retailers getting by way of cost prices.  
13 A. I am sorry, I do not quite understand.  
14 THE CHAIRMAN: I think you had better put the passage that  
15 you want to put, tell her what Mr Bottomley --  
16 MR DOCTOR: It is Mr Bottomley at paragraph 46 of his  
17 statement, tab 3.  
18 A. Sorry, I do not know where this is.  
19 Q. Paragraph 46, I beg your pardon. He says:  
20 "Jackie Wray rang Hasbro on a number of occasions  
21 complaining about retail prices. She did not call about  
22 cost prices. She knew that as Hasbro's largest  
23 customer, Argos were getting terms as good as those  
24 given to the rest of the industry by Hasbro. She would  
25 want to know why other retailers were pricing

1 differently from Argos. The reason she would contact  
2 Hasbro about it was because she would expect us to do  
3 something about it, ie persuade those other retailers to  
4 price at Hasbro's RRP."

5 Let us take that slowly; there is too much there for  
6 one question. He says, first of all, you did not ever  
7 phone to discuss the cost prices that other retailers  
8 were getting from Hasbro; what do you say about that?

9 A. We would telephone the suppliers, as I said, when we  
10 spotted a price cheaper than ourselves; we would  
11 telephone the supplier and say, "Is it in a promotion,  
12 is it indefinitely?" If it was indefinitely, we would  
13 possibly say, you know, can we have the same terms, is  
14 it funded by yourselves or is it just something they  
15 have done on their own back?"

16 Q. He says that the reason you were phoning up was to  
17 convey a message from Argos that Hasbro should do  
18 something about it, that is to persuade the other  
19 retailers to price at Hasbro's RRP.

20 A. I have never asked a supplier to go to another retailer  
21 and insist they put their prices up, and I have hardly  
22 had -- I have had very few conversations with  
23 David Bottomley, in fact I can hardly remember having  
24 any conversations with David Bottomley. My port of call  
25 would always be with David Snow or Charles Cooper, who

1           was the account manager at the time.

2   THE CHAIRMAN:   Yes.

3   MR DOCTOR:   If you want to look in the core bundle at  
4           page 125, this is an e-mail within Hasbro, I am not  
5           suggesting you have ever seen this, you obviously have  
6           not, or at least it was not circulated to you; you have  
7           seen it since then.

8           Mr Snow says that he had a call from you that day,  
9           so you did speak to him on occasion.

10   A.   I did.

11   Q.   He says:

12           "I had a call today from Jackie Wray at Argos,  
13           stating the following items are on sale in the trade at  
14           prices lower than recommended retail prices."

15           Then it is stated what they are; Wal-Mart are four  
16           items, and Asda are two items.

17   A.   That is true.

18   Q.   Why would you have mentioned that the prices that were  
19           being charged by these people were lower than the  
20           recommended retail prices?

21   A.   Sorry, could you repeat the question?   Why would?

22   Q.   Yes, why would you have phoned him up, if that is what  
23           you did, and drawn to his attention that the items for  
24           sale in the trade are at prices lower than the  
25           recommended retail prices?

1 A. I do not believe I would have said recommended retail  
2 prices, I would have probably said, "They are lower than  
3 the prices in the Argos catalogue". I do not recall  
4 saying -- I do not normally say, when I am making these  
5 conversations now, that they are lower than the  
6 recommended retail prices.

7 Q. Well, is it possible that you were told by somebody to  
8 phone him up and tell him that?

9 A. No, I cannot recall who asked me. It is not unusual  
10 even as of now, if I spot a price cheaper than the Argos  
11 catalogue, to telephone the supplier, so I would have --  
12 I could have possibly initiated it myself, or Andrew  
13 could have said, "Can you find out if it is a promotion  
14 or clearance or what the case may be?", but no, nobody  
15 asked me to --

16 THE CHAIRMAN: How does it normally work with these kinds of  
17 conversations, Mrs Wray? Does somebody come to you and  
18 tell you what these prices are, or if you have spotted  
19 some yourself -- does it come from Andrew or from  
20 somebody else in the buying team?

21 A. It is possible it could have come from Andrew, this one,  
22 or it was Rebecca, who was the junior buyer at the time,  
23 and even presently, it depends who has sighted the  
24 problem first, they would say, "Can you phone up and  
25 find out what is occurring with these prices?" It would

1 just be the same standard call, "Is it a promotion, is  
2 it a realign?" That is basically it really.

3 (1.00 pm)

4 MR DOCTOR: If you were asked on that day to call them up  
5 and to tell them that these products are on sale in the  
6 trade at prices lower than recommended retail prices,  
7 would you know why you had made that statement?

8 A. I thought I -- I have not made that statement. I would  
9 not have phoned David and said, "These have gone out at  
10 the recommended retail prices", I would have said, "They  
11 are cheaper than the Argos catalogue", possibly. I have  
12 never said the recommended retail prices. In my job  
13 role, I would not know the recommended retail prices.

14 THE CHAIRMAN: You would just know the catalogue price?

15 A. I would always go by our catalogue price, or our  
16 prevailing catalogue price, if it was in a flyer.

17 MR DOCTOR: Do you recall David Snow saying to you, "Hasbro  
18 cannot control retail prices, due to it being illegal"?

19 A. Sorry, I cannot recall him saying that to me. I am not  
20 saying he did not, he possibly could have. I probably  
21 would not have thought much of that.

22 Q. I take it that you do not really recall that  
23 conversation much at all, this particular one about  
24 Argos -- these Asda and Wal-Mart prices?

25 A. I do recall what David said to me, that he said the

1 packaging had changed, and they had the old Monopoly,  
2 the Junior Monopoly, the Pictionary, the Payday and the  
3 Twister, that the outer box had changed design, and they  
4 were clearing stocks of the old packaging. I do recall  
5 that.

6 Q. Did you report that back to Mr Needham, or whoever had  
7 told you to --

8 A. I would have reported that back to Andrew, yes.

9 THE CHAIRMAN: That is Mr Needham at the time, is it?

10 A. Sorry, Mr Needham, yes.

11 MR DOCTOR: Do you know whether Argos decided to get rid of  
12 those six products at low prices, in order to clear it  
13 quickly, so it could be superseded by a repackaged  
14 product?

15 A. I cannot remember, to be very honest. I believe we  
16 possibly -- I really cannot recall. I could surmise and  
17 say we already had the new packaging; I really cannot  
18 remember.

19 Q. How do you recall then the conversation so clearly, that  
20 you were told it had been due to repackaging, if you  
21 cannot recall anything else about it?

22 A. I remember this conversation with David, I remember he  
23 told me it had been repackaged. I do remember --  
24 because we had had new packaging, and there was a lot  
25 that just changed after those years, so I just recall



1           that conversation.

2   MR DOCTOR:   I have no further questions.

3   MR BREALEY:   I have no re-examination.

4   THE CHAIRMAN:  It is all over, Mrs Wray.  Thank you very  
5           much for coming.

6                               (The witness withdrew)

7   MR GREEN:   Can I mention one thing, if there is nothing  
8           else, just about Ms Runciman?  When I mentioned it  
9           earlier, it occurred to me afterwards that what I said  
10          could not be actually entirely accurate.  Ms Runciman's  
11          statement was produced, as were all our witnesses'  
12          statements, over two years ago, for the purpose of the  
13          OFT administrative proceedings, so it is already in  
14          evidence, and the OFT have referred to it in the  
15          decision.

16          So it is not something I cannot rely on, or not  
17          something Mr Doctor --

18   THE CHAIRMAN:  It is in the case.

19   MR GREEN:   Can I suggest the sensible, pragmatic way to deal  
20          with it is that -- I would not for one moment suggest  
21          that because it has not been challenged, Mr Doctor is  
22          not entitled to say what he likes about it, but it is  
23          simply admitted, and we can make comments on it; it is  
24          a matter for weight, although it will be taken, of  
25          course, that it has not been cross-examined on.  That

1           may be the most sensible way to deal with it, if that is  
2           all right with my learned friend.

3   MR DOCTOR:   That sounds correct.

4   THE CHAIRMAN:  Yes, now, we have come to the end of the  
5           evidence, I think, so if you do not mind just waiting  
6           for a minute while we discuss it, so that we can, as it  
7           were, all get away for lunch, how do you now see things  
8           unfolding next week?

9   MR BREALEY:  Mr Green and myself envisage -- we were always  
10           going to have one day off to do closing, or a day and  
11           a half -- that we would take Monday off and then come  
12           back on Tuesday.  I will have half a day, Mr Green will  
13           have half a day, and then Mr Doctor would have half  
14           a day on Wednesday morning.  So that is how we see it;  
15           so we give a written document, a written closing, and  
16           then start on Tuesday.

17   THE CHAIRMAN:  So you really basically feel that you can get  
18           through your closing submissions in half a day and half  
19           a day?

20   MR BREALEY:  Yes.  Two or three hours each, yes.

21   THE CHAIRMAN:  So in principle, that sounds as if you have  
22           got the morning on Tuesday, or I do not think it much  
23           matters who goes first, and the other has got the  
24           afternoon.

25   MR BREALEY:  Then Mr Doctor has half a day, and any

1 questions, and a very brief reply on Wednesday; to  
2 finish on Wednesday. Now whether that is convenient to  
3 Mr Doctor, I understand that he may want some more time,  
4 but he does now have a day and a half, this afternoon  
5 and Monday, and the weekend.

6 Basically, what I am saying is that that is our  
7 preferred route, to start on Tuesday and finish on  
8 Wednesday.

9 MR GREEN: We are the same, we believe we can be ready to  
10 produce a written document which will set out all the  
11 details by Tuesday morning, we would make oral  
12 submissions Tuesday morning, including submissions as to  
13 the law, and we would do short replies, approximately  
14 half a day is I think what we originally budgeted for,  
15 and it seems about right, if we have the opportunity,  
16 which we will have, to put in a written document.

17 THE CHAIRMAN: Yes. How does that strike you, Mr Doctor?

18 MR DOCTOR: Well, I have mentioned already to my colleagues  
19 my suggestion, which is that we stick to the existing  
20 days, namely that we come back on Thursday and Friday,  
21 which we were going to do in any event for the argument.

22 I am obviously going to --

23 THE CHAIRMAN: That is to say they could still proceed on  
24 Tuesday -- sorry, what is the suggestion?

25 MR DOCTOR: No, the suggestion is that we come back for the

1 argument on Thursday and Friday. The actual breakdown  
2 of the argument I will come to later --

3 THE CHAIRMAN: We take a three day break?

4 MR DOCTOR: We have a gap of three days, in which we would  
5 have obviously an opportunity to produce very detailed  
6 written submissions in this case, which I think is  
7 probably useful. We have had a very intense week,  
8 I have had an intense week, I have not been able to make  
9 notes, obviously, but fortunately it is all on the  
10 record, and it requires me to go back and read this, to  
11 find the passages that I am looking for, and put it all  
12 together.

13 I feel that if I have more time to do this, you will  
14 get a more helpful document which contains more of what  
15 I have to say, so that what I have to say may be  
16 therefore a lot shorter than it otherwise would be, and  
17 indeed, I would be quite prepared to send it to the  
18 tribunal before even the other side began, so that you  
19 could read it and possibly I would therefore need only  
20 to make a shorter address, or perhaps field answers to  
21 questions arising out of what I have written.

22 THE CHAIRMAN: How far are you suggesting that you should  
23 see their document before you complete yours, as it  
24 were?

25 MR DOCTOR: In an ideal world, I would like to see it, but

1 I do not -- the best suggestion would be if they could  
2 produce something by the end of Tuesday, I would produce  
3 mine by the end of Wednesday, and it would then be to  
4 some extent responsive, in fact, and then we would have  
5 the oral argument on Thursday and Friday, and I would be  
6 quite happy to do that.

7 But even if my colleagues do not want to give me  
8 their written speeches beforehand, I am still happy to  
9 give them mine, and to give everybody mine, by some time  
10 before the speeches begin, so that everybody knows what  
11 I have to say. I do not think any of it will be a great  
12 surprise. It would certainly make the oral address  
13 a lot more useful in the sense that we could  
14 essentially -- well, I might ask for a brief period to  
15 put our best points or something of that kind, but then  
16 devote to any questions that might arise.

17 I know I am asking for extra time; one of the  
18 reasons, it is a personal reason, is that I have agreed  
19 to help out for the whole of tomorrow with something --  
20 a training course -- so I do not have tomorrow  
21 available, otherwise I could have done part of it then.  
22 But in my respectful submission it should not  
23 inconvenience anyone, since everyone had the week  
24 allocated to the case, and I think that if we do have  
25 the extra time, it will actually make the argument a lot

1 shorter, and probably a lot more effective. So that is  
2 my suggestion.

3 If there is to be a compromise, and I do not raise  
4 this -- one always lowers the stakes, because by raising  
5 it, you make it sound as if you are prepared to go along  
6 with it, although I suppose in the end I have to go  
7 along with anything the tribunal directs, but  
8 I certainly think that one day would be far too short,  
9 particularly given my commitment tomorrow, to produce  
10 a really useful document by Tuesday morning, and, of  
11 course, we will be busy the whole of Tuesday.

12 I suggest that my scheme may actually turn out to be  
13 a greater saving of time for the tribunal than trying to  
14 force it on very quickly.

15 THE CHAIRMAN: Yes. Well, what I would suggest -- I think  
16 we will just rise for a minute or two, and find out how  
17 we are all placed, and see what we want to do, and if  
18 you would just all be kind enough to wait for a minute  
19 or two, while we have a small discussion?

20 (1.12 pm)

21 (A short break)

22 (1.16 pm)

23 THE CHAIRMAN: For various reasons, including our own  
24 internal planning, we prefer the OFT's suggestion at the  
25 moment, so I think we would be glad, if we may, to have

1 the appellants' written submissions by close of play on  
2 Tuesday, to have the OFT's written submissions by close  
3 of play on Wednesday, and to have the oral argument on  
4 Thursday and Friday, with Argos and Littlewoods going  
5 first on Thursday, and then the OFT on Friday.

6 Close of play is normally 5.30, is it not? I think  
7 close of play is technically 4.30, but we can say 5.30  
8 for these purposes.

9 MR BREALEY: Can I just make an observation on that? Our  
10 written submissions have to be in at 5.30 on Tuesday.  
11 That means that the OFT then get 24 hours to look at  
12 them, so effectively, they are getting the last word on  
13 the case, which to us would seem quite unfair.

14 THE CHAIRMAN: Why are they getting the last word? We have  
15 two days of argument.

16 MR BREALEY: They essentially have 24 hours to look at what  
17 we are saying, and we then have to react almost  
18 immediately to their document; Mr Green says that is, to  
19 a certain extent, shifting the burden of proof.

20 Either they do not get their 24 hours' notice, or we  
21 would want some time in which to see their document.

22 But it does seem quite unfair from my perspective that  
23 the OFT get 24 hours to look at our document, but we do  
24 not get the same treatment to look at theirs.

25 MR GREEN: Normally, the party with the burden of proof

1           would put their case forward first.

2   THE CHAIRMAN: Well, their case is already in the decision.

3           The case has been there for months.

4   MR GREEN: But the case on this evidence, and the inferences  
5           they draw from the evidence given by the witnesses --  
6           the tribunal may disagree, but it seems to us, after  
7           four and a half days of evidence, that a great deal is  
8           going to turn on what happened, who said what to whom,  
9           how, why, when, what, who and where; that is what a lot  
10          of our submissions will necessarily focus on.

11   THE CHAIRMAN: Yes. Let us see what Mr Doctor says.

12   MR DOCTOR: Well, sir, obviously I would favour the ruling  
13          you have made, even if it is not a formal ruling yet,  
14          but I would not want it to be suggested that there is  
15          any unfairness in this; if necessary, I am perfectly  
16          happy to put forward our submissions, say, on Wednesday  
17          at 1.00, whether or not we get their submissions; if  
18          they would prefer to see my submissions first, I will  
19          need more time orally, in order to respond to what they  
20          say, if I do not see it until I hear it. But I will  
21          produce a written submission, I do not mind if they see  
22          it before they go.

23   THE CHAIRMAN: Bearing in mind we have now got Friday  
24          afternoon, and we have got Monday, and the practicality  
25          is we have got some of the weekend, I am afraid, but



1           that is the practicality: how feasible would it be for  
2           you to produce your document by the end of Tuesday?

3   MR DOCTOR:   Are you envisaging an exchange of documents?

4   THE CHAIRMAN:  There are two ways of doing it.  Either  
5           everybody could exchange simultaneously at the end of  
6           Tuesday, or you could do yours by the end of Tuesday and  
7           we could reverse the order and have theirs by the end of  
8           Wednesday, so they see yours first, as it were.

9   MR DOCTOR:  I would suggest the best may be to just exchange  
10           them at the end of Tuesday.  We would then have an  
11           opportunity to respond.  I might still produce a written  
12           document in response, but I would certainly think that  
13           it would save a lot of time if I saw the argument, and  
14           had an opportunity to produce something in writing,  
15           rather than to simply respond orally, so perhaps the  
16           best -- obviously that would meet any problem they  
17           have -- is an exchange at the end of Tuesday.

18   MR GREEN:  I would view an exchange on Tuesday as fair,  
19           giving the tribunal an entire day to read everybody's  
20           submissions.  We do a simultaneous exchange at close of  
21           play Tuesday; the tribunal has a day, and we are all  
22           then au fait with what everybody else has to say.

23   THE CHAIRMAN:  Shall we say that then, Mr Doctor?

24   MR DOCTOR:  Yes.

25   THE CHAIRMAN:  I mean, that is not far from the compromise

1           you suggested, I think. There we are, we have finished  
2           up there. So we will expect to see those documents by  
3           the end of Tuesday.

4   MR DOCTOR: Can we make it 6.00?

5   THE CHAIRMAN: Yes, we will make it 6.00. In fact, the  
6           tribunal members will already be in London, so that is  
7           probably convenient. We will look forward to seeing you  
8           all on Thursday. Thank you very much.

9   (1.22 pm)

10                           (Hearing adjourned until 10.30 am  
11                           on Thursday, 20th May 2004)

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