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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 RRPs" --

19 A. Or the market price.

20 Q. -- "particularly in the context of core games and
21 Action Man, we will go out at RRPs; 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 RRPs, 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 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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