This Transcript has not been proof read or corrected. It is a working tool for the Tribunal for use in preparing its judgment. It will be placed on the Tribunal Website for readers to see how matters were conducted at the public hearing of these proceedings and is not to be relied on or cited in the context of any other proceedings. The Tribunal's judgment in this matter will be the final and definitive record.

IN THE COMPETITION APPEAL TRIBUNAL

Case No. 1160-65/1/1/10

Victoria House, Bloomsbury Place, London WC1A 2EB

20 October 2011

Before:

VIVIEN ROSE (Chairman) DR ADAM SCOTT OBE TD DAVID SUMMERS OBE

Sitting as a Tribunal in England and Wales

BETWEEN:

(1) IMPERIAL TOBACCO GROUP PLC (2) IMPERIAL TOBACCO LIMITED

Appellants

-v-

OFFICE OF FAIR TRADING

Respondent

CO-OPERATIVE GROUP LIMITED

Appellant

– v –

OFFICE OF FAIR TRADING

Respondent

WM MORRISON SUPERMARKET PLC

Appellant

-v -

OFFICE OF FAIR TRADING

Respondent

(1) SAFEWAY STORES LIMITED (2) SAFEWAY LIMITED

Appellants

-v-

OFFICE OF FAIR TRADING

Respondent

(1) ASDA STORES LIMITED
(2) ASDA GROUP LIMITED
(3) WAL-MART STORES (UK) LIMITED
(4) BROADSTREET GREAT WILSON EUROPE LIMITED

Appellants

-v -

OFFICE OF FAIR TRADING

Respondent

(1) SHELL UK LIMITED (2) SHELL UK OIL PRODUCTS LIMITED (3) SHELL HOLDINGS (UK) LIMITED

Appellants

- v -

OFFICE OF FAIR TRADING

Respondent

Transcribed using LiveNote by Opus 2 International
1 Bell Yard, London, WC2A 2JR
Tel: +44 (0)20 3008 5900
info@opus2international.com

HEARING (DAY 17)

Note: Excisions in this transcript marked "[...][C]" relate to passages excluded.

APPEARANCES

Mr Mark Howard QC, Mr Mark Brealey QC and Mr Tony Singla (instructed by Ashurst LLP) appeared on behalf of the Appellants Imperial Tobacco Group Plc and Imperial Tobacco Ltd.

Mr Rhodri Thompson QC and Mr Christopher Brown (instructed by Burges Salmon LLP) appeared on behalf of the Appellant Co-operative Group Ltd.

Mr Pushpinder Saini QC and Mr Tristan Jones (instructed by Hogan Lovells International LLP) appeared on behalf of the Appellants WM Morrison Supermarkets Plc and Safeway Stores Ltd and Safeway Ltd.

Mr James Flynn QC and Mr Robert O'Donoghue (instructed by Norton Rose LLP) appeared on behalf of the Appellants Asda Stores Ltd, Asda Group Ltd, Wal-Mart Stores (UK) Ltd and Broadstreet Great Wilson Europe Ltd.

Ms Dinah Rose QC and Mr Brian Kennelly (instructed by Baker & McKenzie LLP) appeared on behalf of the Appellants Shell U.K. Ltd, Shell U.K. Oil Products Ltd and Shell Holdings (U.K.) Ltd.

Mr Paul Lasok QC, Ms Elisa Holmes, Mr Rob Williams, Ms Anneliese Blackwood and Ms Ligia Osepciu (instructed by the General Counsel, Office of Fair Trading) appeared on behalf of the Respondent.

1	Inursday, 20 October 2011	1	A. Ukay.
2	(10.00 am)	2	THE CHAIRMAN: Yes, Mr Williams.
3	THE CHAIRMAN: Good morning, ladies and gentlemen. We	3	Cross-examination by MR WILLIAMS
4	asked, a day or so ago, for a revised timetable to cover	4	MR WILLIAMS: Good morning, Mr Culham.
5	the remaining factual evidence, and I understand that	5	A. Good morning.
6	that is well in hand.	6	Q. You explained in your witness statement that you only
7	MR HOWARD: Yes.	7	worked on the Safeway account from June 2003?
8	THE CHAIRMAN: We have another two weeks and a day or so of	8	A. That's correct. George Byas, who had the account before
9	factual evidence, and we really are going to have to be	9	me, retired I think in June 2003, and I looked after the
10	somewhat stricter with everybody's timings in order to	10	account after that.
11	make sure that we do get finished in time for the	11	Q. I think you understand that only covers a period of two
12	experts to start in the second week of November.	12	or three months of the period which we are specifically
13	MR HOWARD: Yes. We have prepared a revised timetable. We	13	interested in in this case, which is the period until
14	have not yet circulated it. It will be circulated later	14	some time in August 2003?
15	today. It's designed to ensure that the evidence is	15	A. I believe that's the case. I did work with George from
16	finished on that timetable.	16	1995 until he retired in not directly with him, but
17	THE CHAIRMAN: Thank you.	17	in the same team as him, so some of the things he
18	Now, Mr Howard, are you kicking off with Safeway?	18	like Richmond tactical support and things that were
19	MR HOWARD: As I think I indicated last night	19	going on, which I've seen the correspondence from
20	THE CHAIRMAN: Oh, you want to call Mr Culham?	20	George, Mr Byas, was similar to what I was doing with
21	MR HOWARD: we want to call Mr Culham, yes.	21	other accounts at the time.
22	Looking on the other side of the court, I think,	22	Q. When you say you have seen the correspondence, do you
23	I wasn't sure whether anybody was anticipating, it's	23	mean you saw it at the time you were running the account
24	obviously up to the OFT whether they were going to	24	in which we are interested in, that is June to August
25	amplify their response to the issues raised last night,	25	2003, or do you mean you have had seen it since as part
	1		3
		,	
1	or how one wants to deal with that. It's up to them	1	of these proceedings?
2	whether they	2	A. As part of the handover from George, what we did do is
3	THE CHAIRMAN: I think Mr Lasok said last night that he	3	spend a day or two going through important aspects of
4	would reconsider whether, having read over what was said	4	an account. I wouldn't say I saw every single document,
5	last night, he wanted to amplify it. As he is not	5	but the key things like the business plans, and things
6	leaping to his feet, I thought that meant he was happy	6	like that, I would have seen from the time when George
7	with what occurred last night and we would get on with	7	was leaving.
8	Mr Culham.	8	THE CHAIRMAN: You will have to slow down a little bit for
9	MR LASOK: Well, I had noticed that I haven't answered all	9	the transcript writers to follow what you say.
10	the specific questions that the Tribunal have put. I am	10	MR WILLIAMS: What you have just been saying ties into some
11	quite happy to answer those questions now, if	11	comments that you make in your witness statement,
12	the Tribunal wishes.	12	I think. Do you want to just read to yourself
13	THE CHAIDMAN MALL LALL LAND MACHEN LAND LAND	40	1 455 1454
1.4	THE CHAIRMAN: Well, let's have Mr Culham's evidence, as he	13	paragraphs 157 and 174.
	has come here, and perhaps we can deal with that point	14	(Pause)
14 15	has come here, and perhaps we can deal with that point later on.	14 15	(Pause) It's at tab 35 of that file. You start Safeway on
15 16	has come here, and perhaps we can deal with that point later on. MR HOWARD: As I understand it, Mr Culham is still under	14 15 16	(Pause) It's at tab 35 of that file. You start Safeway on page 35. That's where paragraph 157 is.
15 16 17	has come here, and perhaps we can deal with that point later on. MR HOWARD: As I understand it, Mr Culham is still under oath, so the position is he doesn't need to be re-sworn	14 15 16 17	(Pause) It's at tab 35 of that file. You start Safeway on page 35. That's where paragraph 157 is. (Pause)
15 16 17 18	has come here, and perhaps we can deal with that point later on. MR HOWARD: As I understand it, Mr Culham is still under oath, so the position is he doesn't need to be re-sworn or reintroduced.	14 15 16 17 18	(Pause) It's at tab 35 of that file. You start Safeway on page 35. That's where paragraph 157 is. (Pause) A. Which paragraphs?
15 16 17 18	has come here, and perhaps we can deal with that point later on. MR HOWARD: As I understand it, Mr Culham is still under oath, so the position is he doesn't need to be re-sworn or reintroduced. THE CHAIRMAN: Yes.	14 15 16 17 18 19	(Pause) It's at tab 35 of that file. You start Safeway on page 35. That's where paragraph 157 is. (Pause) A. Which paragraphs? Q. 157 and 174, because I think they set the scene in terms
15 16 17 18 19	has come here, and perhaps we can deal with that point later on. MR HOWARD: As I understand it, Mr Culham is still under oath, so the position is he doesn't need to be re-sworn or reintroduced. THE CHAIRMAN: Yes. MR KENNETH CULHAM (recalled)	14 15 16 17 18 19 20	(Pause) It's at tab 35 of that file. You start Safeway on page 35. That's where paragraph 157 is. (Pause) A. Which paragraphs? Q. 157 and 174, because I think they set the scene in terms of what you are saying.
15 16 17 18 19 20 21	has come here, and perhaps we can deal with that point later on. MR HOWARD: As I understand it, Mr Culham is still under oath, so the position is he doesn't need to be re-sworn or reintroduced. THE CHAIRMAN: Yes. MR KENNETH CULHAM (recalled) MR HOWARD: So, Mr Culham, you are here to give further	14 15 16 17 18 19 20 21	(Pause) It's at tab 35 of that file. You start Safeway on page 35. That's where paragraph 157 is. (Pause) A. Which paragraphs? Q. 157 and 174, because I think they set the scene in terms of what you are saying. (Pause)
15 16 17 18 19 20 21	has come here, and perhaps we can deal with that point later on. MR HOWARD: As I understand it, Mr Culham is still under oath, so the position is he doesn't need to be re-sworn or reintroduced. THE CHAIRMAN: Yes. MR KENNETH CULHAM (recalled) MR HOWARD: So, Mr Culham, you are here to give further evidence. You have given evidence before, so you will	14 15 16 17 18 19 20 21 22	(Pause) It's at tab 35 of that file. You start Safeway on page 35. That's where paragraph 157 is. (Pause) A. Which paragraphs? Q. 157 and 174, because I think they set the scene in terms of what you are saying. (Pause) A. And 174?
15 16 17 18 19 20 21 22 23	has come here, and perhaps we can deal with that point later on. MR HOWARD: As I understand it, Mr Culham is still under oath, so the position is he doesn't need to be re-sworn or reintroduced. THE CHAIRMAN: Yes. MR KENNETH CULHAM (recalled) MR HOWARD: So, Mr Culham, you are here to give further evidence. You have given evidence before, so you will now be asked questions by counsel for the OFT.	14 15 16 17 18 19 20 21 22 23	(Pause) It's at tab 35 of that file. You start Safeway on page 35. That's where paragraph 157 is. (Pause) A. Which paragraphs? Q. 157 and 174, because I think they set the scene in terms of what you are saying. (Pause) A. And 174? Q. Yes.
15 16 17 18 19 20 21	has come here, and perhaps we can deal with that point later on. MR HOWARD: As I understand it, Mr Culham is still under oath, so the position is he doesn't need to be re-sworn or reintroduced. THE CHAIRMAN: Yes. MR KENNETH CULHAM (recalled) MR HOWARD: So, Mr Culham, you are here to give further evidence. You have given evidence before, so you will	14 15 16 17 18 19 20 21 22	(Pause) It's at tab 35 of that file. You start Safeway on page 35. That's where paragraph 157 is. (Pause) A. Which paragraphs? Q. 157 and 174, because I think they set the scene in terms of what you are saying. (Pause) A. And 174?

- **Q.** I think I took two general points from those paragraphs.
- 2 The first is that the Safeway account worked in broadly
- 3 the same way as First Quench and T&S, and not Shell.
- 4 You draw a distinction with Shell. And that secondly,
- 5 there was continuity in the way that you ran the account
- 6 relative to the way it was run by your predecessor?
- 7 A. There was no major changes when I took over, no.
- 8 **Q.** Or at least you believed that's the case?
- 9 A. I believe that's the case, yes.
- 10 **Q.** The first thing I want to understand is what you mean
- 11 what you say that "Safeway was much the same as the
- 12 other accounts that I worked on". You will understand
- 13 that in this case we are principally interested in
- 14 pricing differentials; you do understand that, don't
- 15
- 16 A. I do understand that, yes.
- 17 Q. Could you turn back in your statement to paragraph 114,
- 18 which is a paragraph dealing with the T&S account, and
- 19 read that to yourself. If you want to read it in the
- 20 context of the previous paragraph, then that's fine.
- 21 (Pause)
- 22 A. Well, there is one difference that comes out of that.
- 23 **Q.** Well, I was going to ask you: when you say that Safeway
- 24 worked in much the same way as T&S, are you saying it
- 25 worked in this way?

5

- A. No, Safeway was different. When I say much the same, we
- 2 would have ongoing relationships, trading agreements
- 3 with customers, although the Safeway one was different
- 4 to T&S because that actually didn't have any mention in
- 5 the trading agreement with Safeway of any differential
- 6 requirements, it was just for Safeway to sell below RRP.
 - So -- but we used to do tactical bonuses from time
- 8 to time with accounts, we would look at their account --
- 9 the price they were charging consumers, making sure our
- 10 brands were well displayed. So the one difference was
- 11 there was no actual differential requirement in Safeway
- 12 trading agreement.

7

- 13 Q. You said that that's the one difference?
- 14 A. That I can think of, yes.
- 15 **Q.** It's obviously a significant difference given that this
- 16 case is about pricing differential, and paragraph 157
- 17 says that the account was much the same as T&S?
- 18 **A.** It was 90 per cent the same, apart from that one aspect,
- 19
- 20 **Q.** When you spoke a few moments ago about the trading
- 21 agreement with Safeway, what trading agreement are you 22
- talking about? Can you remember anything about that
- 23 trading agreement?
- 24 A. Yes. That --
- Q. For example, when did it date from? When was it in

- 1 operation?
- 2 A. From the correspondence on file, the trading
- 3 relationship with Safeway started in 1995, and Imperial
- 4 had four elements, four requirements within that trading 5
 - agreement.
- 6 One was for Safeway to sell below RRP; the second
- 7 was to accept new products that we would launch the 8
- market; the third was the distribution of our products;
- 9 and the fourth was the merchandising of our products.
- 10 That trading -- the 1995 correspondence I hadn't got but
- 11 I think it's in one of the tabs in the witness bundle,
 - I think it's tab 1, George refers back to: this is the
- 13 agreement and these are the four elements in it, and
- 14 that dates in 1999. So things just carried on from 1995
- 15 until the time I was handling the account.
- 16 **Q.** You are saying that there was effectively a long-term 17 trading agreement or a rolling trading agreement which
- 18 was still operating in 2003, having been concluded
- 19 sometime in the 1990s?
- 20 A. From the 1995, that same level of investment and that
- 21 same four elements carried through that period.
- 22 Q. Okay. We will come back to the trading agreement 23 position in a moment. Could you turn back to
- 24 paragraph 13 of your witness statement, then, which
- 25 deals with First Quench. Again, feel free to read this

 - in the context of the previous paragraph, if that's
 - helpful.

1

2

- (Pause)
- 4 A. I've read the document.
- 5 **Q.** So would you say that the Safeway account was much the
- 6 same as the First Quench account in the respects
- 7 explained in paragraph 13?
- 8 **A.** No, because there was no differential requirements in
- 9 the Safeway agreement.
- 10 Q. Right.
- 11 DR SCOTT: Sorry, can you just look at paragraph 13 for
- 12 a moment. What it says is:
- 13 "ITL also offered additional promotional support to
- 14 retailers to not increase the retail prices of ITL's
- 15 products above identified differentials compared with
- 16 the prices of identified brands of competing
- 17 manufacturers. This is referred to as ITL pricing
- 18 strategy."
- 19 What that suggests is additional?
- 20 A. We would do tactical bonuses, as I mentioned earlier, 21 within Safeway as an account, when we would have -- if
- 22 a competitor ran a promotion or we wanted a promotion,
- 23 we would do tactical bonuses at that point, but the
- 24 ongoing trading agreement, there were no investments
- 25 linked to other -- to our competitors' products.

A. Yes, I dealt with Trevor as well. (Pause). There is an

DR SCOTT: Just looking very carefully at paragraph 13,

1

2 2 would we be right in thinking that in fact you were earlier letter as well, isn't there? 3 3 doing that with Safeway, except that they weren't **Q.** That's right, there is a letter before. 4 4 additional in quite the same sense? (Pause) 5 5 A. We would do tactical promotions which could have the A. Okay. 6 6 effect of that, but that would be generally speaking **Q.** So I have chosen this letter just because the language 7 7 what was taking place across the market. So, for is very clear, and, as I read this letter, it reflects 8 8 example, we wouldn't -- and I can't remember, sorry, an understanding between ITL and Safeway that ITL was 9 ever going to Safeway and saying "We want to give you 9 pursuing the strategy of maintaining appropriate 10 10 a tactical promotion for this product because you are strategic pricing differentials in Safeway stores. So 11 11 completely too expensive on our product relative to do you agree with that? 12 someone else". Where we are doing promotions across the 12 A. The letter says that Imperial would like to achieve 13 marketplace, obviously tactical promotions would come 13 these pricing differentials, but as I said, there was 14 into Safeway, but there are exceptions where I think 14 nothing in the trading agreement with Safeway to 15 15 from memory there was a lot of activity regarding Drum actually -- this was just, we were offering tactical 16 16 and Amber Leaf pricing, and so we were doing tactical bonuses to achieve these strategic pricing levels. 17 promotions across the marketplace, which Safeway were 17 **Q.** It's slightly jargonistic, isn't it, the way this letter 18 18 included in. is written? It has the appropriate strategic pricing 19 19 **DR SCOTT:** Well, sticking with that point for the moment, differentials, it's not a phrase which I presume you 20 20 the last sentence is this is referred to as ITL pricing would just drop into -- when I say you, you mean ITL --21 21 a letter with a customer unless the customer knew what strategy. Are we right in thinking that just as you 22 were applying ITL pricing strategy to First Quench, you 22 you were talking about? 23 23 were also seeking to apply ITL pricing strategy to A. I can't say why Martin Downham used those words. We saw 24 24 a move in the marketplace of Mayfair, which is 25 25 a Gallaher product, and Imperial Tobacco's strategy was A. It would be an objective of me or George as an account 11 1 manager, but there was no reward or penalty for Safeway 1 to try and reduce our brands so the consumer has got 2 2 a cheaper price relative to the price of Mayfair. Why for doing it. 3 DR SCOTT: Unless it was an additional bonus. he has used those exact words I don't know, because on 4 4 A. Unless it was an additional thing where we would set the correspondence I saw when I had the account and 5 5 a maxima price or suggested price for a product. reviewing it afterwards, we weren't incentivising 6 6 DR SCOTT: Thank you. Safeway to achieve pricing differentials at any time, 7 7 MR WILLIAMS: You will appreciate the slightly puzzling apart from tactical promotions, which this is one of 8 thing is you have given a witness statement in a case 8 9 9 which is about pricing differentials and you have said **Q.** Would you agree with this: it does tend to suggest that 10 10 that the accounts all worked in much the same way, but Safeway understood what ITL meant by "appropriate 11 11 in the one material respect you are saying they didn't strategic pricing differentials", Safeway was familiar 12 12 work in the same way. with that strategy? 13 **A.** The accounts worked the same, ie they bought products 13 **A.** I don't believe they were, because quite a lot of the 14 from us, they sold products at a discount, we invested 14 correspondence is where prices are more expensive than 15 15 we would like them to be. in the accounts, the one aspect is in the trading 16 16 **THE CHAIRMAN:** Do you accept that it's clear in this letter agreement or trading relationship there was no 17 17 that Safeway would have realised that the reason why differential requirements, that's the one difference. 18 **Q.** We are going to look at a number of documents from the 18 this promotion was being offered was because of ITL's 19 19 period when you were running the account, but I just strategy with regard to Richmond and Mayfair? 20 wanted, before we do that, to look at one document from 20 A. Trevor would understand that, but I don't know if Trevor 21 the period before you ran the account. 21 in the year 2000 actually knew what our differential 22 22 requirements were, or our strategic needs were. At that Could you turn to tab 9 in annex 28, and just read 23 23 tab 9 to yourself. {D28/9/18}. This is a letter to time, Safeway's pricing policy, which was set by them, 24 24 Trevor Thomas, who I believe was the person you also was broadly to track Tesco's and Sainsbury's. It

25

dealt with when you took over the account?

25

changed as we go through the period we are looking at,

1 1 because they became more expensive relatively than between ITL and other manufacturers; do you agree with 2 2 Safeway and Tesco, but I don't know whether Trevor knew A. I wouldn't, because our strategic pricing differentials 3 exactly what the Imperial Tobacco strategy was or not, 3 4 4 I can't comment on that. do change at times when we are doing tactical 5 MR WILLIAMS: Presumably ITL wasn't in the habit of writing 5 promotions, so it could be 2p at one point or it might 6 letters to customers which it didn't expect them to make 6 be 6p at another, so it would change. head nor tail of? 7 7 Q. But you are familiar with ITL's strategy of maintaining 8 **A.** I would sincerely hope not. 8 pricing differentials, you do understand that strategy, 9 Q. I think the helpful thing to do is really to start off 9 don't you? 10 by looking at documents from the period when you were 10 **A.** Our objective to reflect the RRP differential in the 11 running the account. Do you want to turn to tab 77 of 11 retailers' shelf price, yes, as an objective. 12 the file you have there. {D28/77/308}. It's probably 12 **Q.** Yes, and elsewhere in the papers the words that are used 13 helpful, I am interested in the section that says "MPI 13 to summarise that strategy are "strategic pricing 14 23 June 2003", but if you want to look at that in the 14 differentials", aren't they? Is that a phrase which is 15 context of the letter, please feel free to do that. 15 unfamiliar to you? 16 (Pause) 16 A. Well, they weren't, because that document you took me to 17 So this is a letter from you to the same 17 was regarding a tactical promotion at the time, that Trevor Thomas? 18 18 wasn't our normal strategy. What was mentioned earlier 19 A. That's correct, yes. 19 isn't the RRP differences. 20 Q. I think you were asked some questions about a document 20 Q. Sorry, when you say "wasn't our normal strategy", are 21 a bit like this when you were here to deal with Shell; 21 you talking about ITL's normal strategy or are you 22 am I right in that? 22 talking about the way you ran the account with Safeway? 23 A. I think there was a similar document, I wouldn't say it 23 A. Our objective, across the marketplace, was to try and 24 24 was word for word but similar. ensure that our products were treated no worse than our 25 25 Q. No, I wasn't suggesting that. The basic idea of competing products. The document --13 15 1 a pre-buy on conditions, I think you were asked some THE CHAIRMAN: Are we at cross-purposes here because this is 2 2 referring to recommended selling prices, the RRP, questions about that sort of arrangement? 3 whereas I think you are saying that as regards tactical A. Yes, it was covered, yes. 4 4 Q. So we won't go into all of that again. But you will see bonuses, when tactical bonuses were given, there may 5 5 at the top of the second page it says that: have been a departure from the RRP? 6 6 A. That's correct, so it would be different. That's why "One of the conditions of the pre-buy is all Safeway 7 7 stores retail selling prices when changed will continue I am saying the document I looked at a while ago --8 to reflect the differentials in recommended selling 8 **THE CHAIRMAN:** As far as there being a policy of relating 9 9 ITL prices to the prices of competing goods, that seems prices between ITL and other manufacturers." 10 So "differentials in recommended selling prices 10 to be both reflected here and in that earlier letter. 11 11 A. Yes, well, that was an objective we had, all I was between ITL and other manufacturers", that's another way 12 12 of saying what we saw in the last letter, isn't it, trying to say was the earlier letter wasn't the normal 13 13 differences in RRPs that would occur. strategic pricing differentials? 14 14 A. It's a request to Safeway as part of the pre-buy for MR WILLIAMS: Sorry, but it was trying to reinstate the 15 them to recognise the differential in the RRPs of our 15 appropriate strategic pricing differentials, if 16 I remember rightly. Do you want to just go back to it. 16 brands, yes. 17 17 I do not want to dwell on that letter, but I think it is Q. Sorry, I don't think that answered the question, 18 actually. Do you remember we were just looking at tab 9 18 helpful to understand --19 and that we saw the phrase "appropriate strategic 19 THE CHAIRMAN: Well, I am not sure whether he is actually 20 pricing differentials"? 20 agreeing with you, subject to the fact that sometimes 21 21 A. And that was in response to a tactical promotion we were the differentials change because of tactical bonusing?

22

23

24

25

16

MR WILLIAMS: Yes, and the point I am making is that that

letter is about reinstating the differential rather than

about departing from the differential, so it's actually

the same thing, that is really what I am getting at.

setting up at the time, yes.

Q. I am just focusing on those words now. In ITL's

strategy, strategic pricing differentials is another way

of saying differentials in recommended selling prices

22

23

24

4	Danis and the first of bash to be 0. IM-	4	A Managashain maiasan hata ann an an
1	Do you want to just go back to tab 9. We are not	1	A. Many of their prices were, but some were not.
2	going to spend all morning on documents that Mr Culham	2	Q. So I think that presupposes that they were again
3	didn't deal with, but I think it's helpful to get the	3 4	familiar with the concept of pricing in line with
4	terminology straight, that's all.	5	recommended selling prices; do you agree with me? This
5	It says:	6	is not
6	"In response to your price reduction on Mayfair [so		A. Sorry, we didn't recommended the selling price. Sorry,
7	that's a Gallaher brand] and the subsequent equal move	7	you said there can you repeat the question?
8	of Richmond, I am confirming that the following price	8	Q. I don't think the question was very clear, I am sorry.
9	reductions will be implemented to achieve the	9	The way you have written this letter, it presupposes
10	appropriate strategic pricing differentials."	10	that this idea, this approach to pricing in line with
11	So this isn't a situation where, as Mr Culham was	11	pricing differentials, that's something they understand,
12	saying, a tactical bonus might move the differentials	12	that's a concept which is familiar to them?
13	out of line, this is the opposite, this is a tactical	13	A. Oh, but they didn't always follow it, it's our
14	bonus to put the differentials in line.	14	objective
15	Do you agree with that?	15	THE CHAIRMAN: You are not being asked whether they always
16	A. Well, I can't remember, it was a move	16	followed it, Mr Culham, you are being asked: were they
17	Q. No, you didn't deal with it.	17	familiar with the concept of pricing to reflect
18	A. I didn't deal with it, I don't know reading this	18	differentials in the RRPs.
19	document, it is suggesting that Mayfair was reduced to	19	A. I would hope so.
20	3.39, and we were seeking to reduce Lambert & Butler to	20	MR WILLIAMS: When you say you hope so, presumably that's
21	3.59. If the differential at that time was 20p, then	21	the reason you wrote the letter in this way. We talked
22	yes, it would be restoring but I don't know what the	22	a few minutes ago about writing letters which they could
23	differential was at that time. That's what I am trying	23	understand in terms which were comprehensible to them,
24	to say.	24	and what you are saying is that they have to continue to
25	Q. No, no, no, I am really just asking you about the	25	reflected those differentials, that is what you are
	17		19
1	terminology, that's all, and the strategy.	1	
1 2		1 2	saying to them? A. That's what I am requesting, yes.
	terminology, that's all, and the strategy.		saying to them?
2	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is	2	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring
2	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with	2	saying to them? A. That's what I am requesting, yes.
2 3 4	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think,	2 3 4	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in
2 3 4 5	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of	2 3 4 5	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other
2 3 4 5	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that?	2 3 4 5	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers?
2 3 4 5 6 7	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah.	2 3 4 5 6 7	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for
2 3 4 5 6 7 8	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your	2 3 4 5 6 7 8	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway,
2 3 4 5 6 7 8	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the	2 3 4 5 6 7 8 9	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential
2 3 4 5 6 7 8 9	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the differentials in recommended selling prices between ITL	2 3 4 5 6 7 8 9	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential THE CHAIRMAN: That's not what you are being asked,
2 3 4 5 6 7 8 9 10	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the differentials in recommended selling prices between ITL and other manufacturers.	2 3 4 5 6 7 8 9 10	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential THE CHAIRMAN: That's not what you are being asked, Mr Culham.
2 3 4 5 6 7 8 9 10 11 12	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the differentials in recommended selling prices between ITL and other manufacturers. So just breaking that down, it must be the case that	2 3 4 5 6 7 8 9 10 11	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential THE CHAIRMAN: That's not what you are being asked, Mr Culham. MR WILLIAMS: I am asking you whether you agree that this
2 3 4 5 6 7 8 9 10 11 12 13	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the differentials in recommended selling prices between ITL and other manufacturers. So just breaking that down, it must be the case that Safeway was previously, as far as you understand it	2 3 4 5 6 7 8 9 10 11 12 13	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential THE CHAIRMAN: That's not what you are being asked, Mr Culham. MR WILLIAMS: I am asking you whether you agree that this letter shows that it's entirely clear that it was part
2 3 4 5 6 7 8 9 10 11 12 13 14	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the differentials in recommended selling prices between ITL and other manufacturers. So just breaking that down, it must be the case that Safeway was previously, as far as you understand it anyway, reflecting those differentials in selling	2 3 4 5 6 7 8 9 10 11 12 13	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential THE CHAIRMAN: That's not what you are being asked, Mr Culham. MR WILLIAMS: I am asking you whether you agree that this letter shows that it's entirely clear that it was part of the relationship between ITL that they were supposed
2 3 4 5 6 7 8 9 10 11 12 13 14 15	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the differentials in recommended selling prices between ITL and other manufacturers. So just breaking that down, it must be the case that Safeway was previously, as far as you understand it anyway, reflecting those differentials in selling prices?	2 3 4 5 6 7 8 9 10 11 12 13 14 15	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential THE CHAIRMAN: That's not what you are being asked, Mr Culham. MR WILLIAMS: I am asking you whether you agree that this letter shows that it's entirely clear that it was part of the relationship between ITL that they were supposed to price in accordance with differentials in recommended
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the differentials in recommended selling prices between ITL and other manufacturers. So just breaking that down, it must be the case that Safeway was previously, as far as you understand it anyway, reflecting those differentials in selling prices? A. Across many products, yes, but there were some out of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential THE CHAIRMAN: That's not what you are being asked, Mr Culham. MR WILLIAMS: I am asking you whether you agree that this letter shows that it's entirely clear that it was part of the relationship between ITL that they were supposed to price in accordance with differentials in recommended selling prices between ITL and other manufacturers.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the differentials in recommended selling prices between ITL and other manufacturers. So just breaking that down, it must be the case that Safeway was previously, as far as you understand it anyway, reflecting those differentials in selling prices? A. Across many products, yes, but there were some out of line as well. So when I've used the word "continue",	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential THE CHAIRMAN: That's not what you are being asked, Mr Culham. MR WILLIAMS: I am asking you whether you agree that this letter shows that it's entirely clear that it was part of the relationship between ITL that they were supposed to price in accordance with differentials in recommended selling prices between ITL and other manufacturers. A. That was our aspiration, yes.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the differentials in recommended selling prices between ITL and other manufacturers. So just breaking that down, it must be the case that Safeway was previously, as far as you understand it anyway, reflecting those differentials in selling prices? A. Across many products, yes, but there were some out of line as well. So when I've used the word "continue", perhaps I have been overoptimistic but most of them	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential THE CHAIRMAN: That's not what you are being asked, Mr Culham. MR WILLIAMS: I am asking you whether you agree that this letter shows that it's entirely clear that it was part of the relationship between ITL that they were supposed to price in accordance with differentials in recommended selling prices between ITL and other manufacturers. A. That was our aspiration, yes. Q. That's not what I asked you. I asked you whether you
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the differentials in recommended selling prices between ITL and other manufacturers. So just breaking that down, it must be the case that Safeway was previously, as far as you understand it anyway, reflecting those differentials in selling prices? A. Across many products, yes, but there were some out of line as well. So when I've used the word "continue", perhaps I have been overoptimistic but most of them would have been in line, but some of them were out of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential THE CHAIRMAN: That's not what you are being asked, Mr Culham. MR WILLIAMS: I am asking you whether you agree that this letter shows that it's entirely clear that it was part of the relationship between ITL that they were supposed to price in accordance with differentials in recommended selling prices between ITL and other manufacturers. A. That was our aspiration, yes. Q. That's not what I asked you. I asked you whether you agreed this letter shows that it was part of the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the differentials in recommended selling prices between ITL and other manufacturers. So just breaking that down, it must be the case that Safeway was previously, as far as you understand it anyway, reflecting those differentials in selling prices? A. Across many products, yes, but there were some out of line as well. So when I've used the word "continue", perhaps I have been overoptimistic but most of them would have been in line, but some of them were out of line.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential THE CHAIRMAN: That's not what you are being asked, Mr Culham. MR WILLIAMS: I am asking you whether you agree that this letter shows that it's entirely clear that it was part of the relationship between ITL that they were supposed to price in accordance with differentials in recommended selling prices between ITL and other manufacturers. A. That was our aspiration, yes. Q. That's not what I asked you. I asked you whether you agreed this letter shows that it was part of the relationship between you, part of the terms on which you
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the differentials in recommended selling prices between ITL and other manufacturers. So just breaking that down, it must be the case that Safeway was previously, as far as you understand it anyway, reflecting those differentials in selling prices? A. Across many products, yes, but there were some out of line as well. So when I've used the word "continue", perhaps I have been overoptimistic but most of them would have been in line, but some of them were out of line. THE CHAIRMAN: Yes, just answer the question, please.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential THE CHAIRMAN: That's not what you are being asked, Mr Culham. MR WILLIAMS: I am asking you whether you agree that this letter shows that it's entirely clear that it was part of the relationship between ITL that they were supposed to price in accordance with differentials in recommended selling prices between ITL and other manufacturers. A. That was our aspiration, yes. Q. That's not what I asked you. I asked you whether you agreed this letter shows that it was part of the relationship between you, part of the terms on which you did business?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	terminology, that's all, and the strategy. Coming back to tab 77, {D28/77/308}, which is a letter you wrote, so now we are not dealing with a tactical bonus scenario here, are we, I don't think, we are dealing with an MPI and the conditions of a pre-buy. Do you agree with that? A. Yes, that's correct, yeah. Q. It says that the condition of the pre-buy is that your retail selling prices continue to reflect the differentials in recommended selling prices between ITL and other manufacturers. So just breaking that down, it must be the case that Safeway was previously, as far as you understand it anyway, reflecting those differentials in selling prices? A. Across many products, yes, but there were some out of line as well. So when I've used the word "continue", perhaps I have been overoptimistic but most of them would have been in line, but some of them were out of line. THE CHAIRMAN: Yes, just answer the question, please. MR WILLIAMS: So I am not putting an absolute proposition to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	saying to them? A. That's what I am requesting, yes. Q. So Safeway understood ITL's strategy of requiring retailers to price in accordance with differentials in recommended selling prices between ITL and other manufacturers? A. They knew what our objective was and we were happy for them to sell at prices well below that, but Safeway, I do stress, didn't actually follow the differential THE CHAIRMAN: That's not what you are being asked, Mr Culham. MR WILLIAMS: I am asking you whether you agree that this letter shows that it's entirely clear that it was part of the relationship between ITL that they were supposed to price in accordance with differentials in recommended selling prices between ITL and other manufacturers. A. That was our aspiration, yes. Q. That's not what I asked you. I asked you whether you agreed this letter shows that it was part of the relationship between you, part of the terms on which you did business? A. It was not part of the terms on which we did business,

the differentials in recommended selling prices?

18

25

25 **THE CHAIRMAN:** Well, do you accept at least that you were

1 setting it as a condition for this pre-buy --A. The letter is very clear, and that's what I, as the 2 2 account manager, was trying to achieve. It was my A. Oh, it was in there but the correspondence post it 3 3 clearly shows they never actually followed it. request, my condition, however you want to phrase it. 4 4 DR SCOTT: Well, you phrased it as a condition. THE CHAIRMAN: You are not talking about whether they 5 A. It was, yes, I've written the letter, yes. followed it, Mr Culham, those are two separate things, 6 6 DR SCOTT: Thank you. so do please try and focus on the questions you are 7 7 MR WILLIAMS: I think this was something that was explored being asked, which is: do you accept that you made it 8 clear to Safeway that you hoped or you wanted them to do 8 when you were giving evidence about Shell, but there is 9 that, and that they knew that you wanted to do that, and 9 a significant benefit to Safeway here, isn't there, 10 10 because you are offering them a pre-buy, so it's a good that was at the least one of the conditions that were 11 11 set for this pre-buy arrangement? opportunity for them to enhance their margin? 12 **A.** They were clear it was our aspiration, that that's what 12 A. If (a) they wish to pre-buy and (b) they change their 13 we wanted to achieve. 13 shelf pricing when they want to. 14 THE CHAIRMAN: Yes. 14 Q. So all I am saying is there is a real incentive for 15 MR WILLIAMS: And this isn't a complete snapshot, because it Safeway to do what you want them to do, that is comply 15 16 talks about continuing to reflect the differentials. Do 16 with the condition? 17 17 **A.** If they complied with the condition, there is you agree with that? A. The correspondence does mention "continue" and I wrote 18 an incentive, yes, if they chose to put their prices up. 18 19 19 the correspondence. However, just prior to this and But I do stress, Safeway didn't comply, but they still 20 20 post this, they are not actually reflecting had the stock. 21 differentials. 21 THE CHAIRMAN: Do you mean they didn't go forward with this 22 DR SCOTT: Mr Culham, you keep saying "aspiration". What 22 pre-buy? 23 I actually read in the letter is three words "on 23 A. No, they pre-bought the stock. 24 24 **THE CHAIRMAN:** They did pre-buy the stock. condition that". Can you explain to me what the words 25 25 A. But the differential objectives of Imperial were not "on condition that", at the bottom of page 308, mean in 23 1 the context of an agreement where you are offering them 1 reflected in the Safeway account. That's what I am 2 pre-buy on condition that, followed by (a), (b), (c), trying to say here. I asked for it but they didn't do --3 3 **THE CHAIRMAN:** Yes, I know what you are trying to say. 4 4 A. They were the four objectives that Imperial Tobacco MR WILLIAMS: Can we turn on, then, to tab 79, two documents 5 forward. {D28/79/242}. This is another letter from 5 would like to have achieved within the Safeway account. 6 6 you to Trevor Thomas. It's probably useful for you to So they were presented to Safeway, but ... 7 7 **DR SCOTT:** Are you suggesting that the words "on condition read the whole letter. I am going to ask you questions 8 8 about the letter starting at "petrol filling stations" that", to a normal recipient of a letter, means 9 9 for the moment. something other than "on condition that"? 10 10 (Pause) A. Well, hopefully it would mean that's our requirement, 11 that's our request, on condition, but what I stress is 11 A. I've read it, yeah. 12 Safeway didn't actually --12 Q. So the context of this letter is that there has been 13 **DR SCOTT:** No, no. Stick with your letter. 13 an MPI, many brands suffered from a double MPI, and you 14 14 A. Right. are identifying or commenting on certain errors that you 15 DR SCOTT: You write this letter --15 have identified in the shelf prices, and would that be 16 A. Yes. I did. ves. 16 through visits of ITL personnel to stores? 17 DR SCOTT: You include the words "on condition that", and in 17 **A.** I would assume so. This is -- we have identified errors 18 a normal contractual situation you are making an offer 18 against what Safeway have told us was their pricing 19 which is conditional, and you are very clear what those 19 policy. 20 conditions are, and those conditions include at (b) 20 Q. I just wanted to ask you some questions first of all at 21 21 "will continue to reflect the differentials". the petrol filling stations section. So you have

seems fairly clear on the -- 25 me in Bristol, yes.

22

23

24

Are you suggesting to us that you didn't mean that?

Leave aside for a moment what Safeway did with it

afterwards, that's a different question. But the letter

22

22

23

24

25

identified as we say errors in the PFS, and Stephen --

A. Stephen Carroll was a trading assistant who worked for

24

is that Stephen Carroll?

- 1 **Q.** He is going to send through details of those.
- 2 Underneath, there is a section dealing with 100s
- 3 multipacks, and you have been told that the position is
- 4 going to be as follows, and there is a sort of
- 5 calculation for how they have gotten to the price of
- 6 100s multipacks.
- 7 Underneath that, there are a number of examples of
- 8 particular brands. Do you see that?
- 9 **A.** Yes, that's highlighting some brands that weren't in
- 10 line with the pricing policy that Trevor had told me
- 11 they were adopting in petrol filling stations.
- 12 **Q.** Okay. We will come back to that in a minute. You see
- the last three there are brand pairs, aren't they? When
- 14 I say brand pairs, there is one ITL brand and one
- 15 Gallaher brand. Richmond and Dorchester Kingsize and
- then Superkings, and then Superkings and Berkeley?
- 17 **A.** Yes, they are, yes.
- 18 **Q.** Those are brand pairs that were linked under ITL's
- 19 differential pricing strategy, weren't they?
- 20 **A.** They were products which had the same RRP, so Imperial
- 21 Tobacco's strategy was to have our brand no more
- 22 expensive than the competing Gallaher brand, but Trevor
- 23 had told me, as it says here, their pricing policy in
- 24 petrol filling stations, RRP times five less 5p. So
- 25 they would naturally end up at the same price, as that

- 1 was Safeway's policy.
- 2 Q. Sorry, I didn't quite follow what you just said. Did
- 3 you say that they wouldn't end up at the same price?
- 4 **THE CHAIRMAN:** Yes, they would end up at the same price. So
- 5 what you are saying is that was Safeway's policy told to
- 6 him, not ITL's policy.
- $7\,$ $\,$ $\,$ $\,$ $\,$ $\,$ $\,$ A. Which is what it says there. I have actually put "you
- 8 informed me".
- $9\,$ $\,$ MR WILLIAMS: Well, "you informed me that the correct price
- 10 position is now as follows", it doesn't actually say on
- 11 what basis this is the correct pricing position, does
- 12 it?
- 13 A. Well, it does, it says "Recommended retail price times
- 14 five less 5p". That was Trevor telling me what their
- 15 policy was.
- 16 **Q.** That's how they have calculated the prices. But it's
- 17 also right to say, isn't it, that Richmond and
- 18 Dorchester, Richmond Superkings and Dorchester
- 19 Superkings, and Superkings and Berkeley, those brands
- 20 were all at parity under ITL's pricing strategy as well?
- 21 A. No, our objective was to have our brands no more
- 22 expensive, I agree, but --
- 23 **THE CHAIRMAN:** Are those linked brands as far as the ITL
- 24 strategy is concerned?
- 25 A. They are, but Safeway have used the RRP to get to their

- 1 pricing policy, which is what this is highlighting.
- 2 MR WILLIAMS: Yes, and you would have been happy with those
- 3 prices on Richmond and Dorchester and Superkings and
- 4 Berkeley, wouldn't you, because they reflected ITL's
- 5 pricing strategy?
- 6 A. As a maxima, if ours had been cheaper than that, we
- 7 would have been very happy, but no worse than parity,
- 8 that would achieve.
- 9 Q. Can we then move on to the section of the letter that's
- 10 headed "Stores". It says:
- 11 "Most of the errors have now been corrected, thank
- 12 you. I've highlighted the few that still need
- 13 adjustment following our discussion."
- 14 Then we see three headings, "Brand", "Suggested
- 15 Price" and "Comments".
- 16 Underneath the three headings, I just wanted to look
- at a number of the examples we see there. B&H Silver,
- 18 that's a Gallaher brand, isn't it?
- 19 **A.** Yes, produced by Gallaher, yes.
- 20 **0.** It says:
- 21 "Same as L&B Kingsize?"
- 22 A. Question mark.
- 23 **Q.** We will come to the question mark in due course. The
- 24 correction of an error means putting B&H Silver at the
- same price as L&B, from your point of view?

27

- 1 A. Our objective was for L&B to be no more than B&H Silver,
- 2 correct.
- 3 **Q.** It says "same as", actually, doesn't it?
- 4 A. Yes, but we have had a discussion nine -- eight years
- 5 ago. I don't remember what the discussion was, but
- 6 Trevor would have told me what his intention was, so
- 7 I was confirming whatever our discussion was.
- 8 **Q.** You aren't actually, because you say, "Most of the
- 9 errors have now been corrected, I've highlighted the few
- 10 that still need adjustment", so these are things they
- 11 haven't done rather than things they have done?
- 12 **A.** Correct, we had a meeting and these were prices that
- were discussed at the meeting, and that's my suggestion,
- only a suggestion to Safeway, following the discussion
- 15 we had at the meeting. I don't remember exactly what
- 16 the discussion was.
- 17 **Q.** The suggestion is that they should be at the same price.
- 18 **A.** Yes, or no more than, no more than would have been good
- 19 for us, yes.
- **Q.** But you have suggested the same price?
- 21 **A.** In this letter, yes.
- 22 Q. Moving down, Drum, you are saying, should be at the same
- price as Amber Leaf?
- 24 A. Yes, but I would also like to put, in the summary, the
- 25 prices that are highlighting are actually for them to

1 reduce the prices down in the stores --**Q.** Just carrying on down the list, if you just go back to 2 THE CHAIRMAN: You are not being asked about that, 2 the previous page, the last one on that page is 3 Mr Culham. Please just answer the question. 3 Golden Virginia 4p below Old Holborn. Now, can you just 4 MR WILLIAMS: Yes. What you were suggesting is that Drum 4 help me with this: it's right to say, isn't it, that at 5 5 should be at the same price as Amber Leaf. one stage Golden Virginia and Old Holborn were 6 6 A. Because -generally -- your strategy was based on parity and then 7 7 **0.** And -things move to minus 4 at a particular point in time. 8 A. Obviously I can't remember the exact prices from that Maybe you don't remember that? 9 far back in time. I would assume Drum was more 9 A. Golden Virginia and Old Holborn traditionally were, had 10 10 expensive than Amber Leaf prior to this letter. the same recommended retail price, but at different 11 11 **Q.** We will come on to that point. I am really just reading points in time, sometimes Old Holborn was dearer than 12 12 to you what the letter says. It says Drum should be at Golden Virginia, and sometimes Golden Virginia was 13 the same price with Amber Leaf? 13 dearer than Old Holborn, but I don't remember exactly. 14 **A.** With a question mark to ask the question. 14 From reading this document, I am assuming that 15 15 Q. Can we just turn over the page, because the summary Golden Virginia recommended retail price was 4p below 16 16 says: Old Holborn. "Hopefully you will be able to correct these **THE CHAIRMAN:** And why do you assume that? 17 17 18 urgently." 18 **A.** By the fact that my objective is to get 4p below 19 And there is your point about customers being 19 Old Holborn. 20 20 overcharged compared to "your our price policy and your MR WILLIAMS: Just going back to your comment about 21 competitors on most of the products highlighted". I am 21 continuity in the way that the account was run, I would 22 not sure whether it's "your and our" or "your or our"? 22 just like to look at some parts of this letter in the 23 A. I think it's a typo -- reading it back, it doesn't make 23 light of an earlier letter sent to Mr Thomas, which is 24 24 sense. I think it is "your own price policy" what at tab 55, {D28/55/110} if you could turn to that. 25 25 I should have put but I have mistyped there. I just want to take this in stages. Do you want to just 29 Q. But I suppose they are also being overcharged compared 1 read the first paragraph to yourself. 2 2 (Pause) to your price policy as well is the logic of that? 3 So parity with Dorchester is the objective in all **A.** I can read it that way now, yes, but that wasn't what 4 4 was intended. stores and PFS, and that's the objective for Richmond; 5 5 **Q.** But it is also true, isn't it? Whether or not that is you would agree with that? 6 6 what you meant it is also true that you weren't happy A. George is asking them to bring Richmond Superkings down 7 7 with these prices because they weren't consistent with to achieve, in this case he says parity, but the policy 8 8 was no more than, but he does say parity, yes. your price policy? 9 9 **A.** We were seeking to get the prices reduced, yes. **Q.** He says parity is the objective? 10 10 **Q.** Underneath that you say: A. I said I am agreeing, that's what he said, yes. 11 11 "Please confirm when these will be implemented. **Q.** It's probably useful for you, while we look at this 12 12 I will advise you if other 'errors' appear over the ... letter, to keep a finger in tab 79, which is where we 13 few days." 13 were just a minute ago, and do you remember we looked at 14 Although you have used the words "suggested price" 14 Richmond and Dorchester in the multipacks, so parity is 15 15 the objective, and we see Richmond and Dorchester are at and you have dotted a few question marks around, the 16 16 parity; you would agree with that? message is pretty clear, isn't it, you are expecting 17 17 **A.** The recommended retail prices were both the same, and Safeway to move to the prices that you have put in this 18 18 Safeway had told us their pricing policy was RRP times 19 19 **A.** We are asking them to reduce the prices down but as five less 5p. 20 always Safeway weren't the most efficient of companies 20 **Q.** Just keep a finger in tab 79 and turn back, then, to 55. 21 and some may have come down, some may not have come 21 Can you read the third and fourth paragraphs, please. 22 22 (Pause) 23 23 Q. It's more than a suggestion. You want them to do it? A. Okay. 24 **A.** I would have liked them to reduce the prices of our 24 **Q.** So in this, in the letter at tab 55, parity is the 25 25

brands to consumers, yes.

policy between Drum and Amber Leaf; you would agree with

- 1 that? 2 **A.** The RRPs were the same and we were trying to achieve 3 a price of Drum no more than Amber Leaf, yes. 4 Q. Well, it doesn't say that, does it, it says "parity is 5
- 6 A. George has used the word "parity" and, as you can see, 7 quite a lot of George's letters are quite brief in the
- 8 words he uses, yes.
- 9 Q. I don't find it especially brief, it's in prose, isn't 10 it, this is a longhand letter? Anyway, a bit further 11 down, "Golden Virginia, we are paying for parity", in 12 relation to Golden Virginia and Old Holborn. This is at 13 the time when Old Holborn and Golden Virginia were at 14 parity, as we just discussed a few minutes ago. 15 So back to tab 79, 4p below. I think really the 16 point I am making to you is that the way that the letter
- 17 at tab 55 is expressed is really the same as the way 18 that the letter at tab 79 is expressed, which is that 19 you are talking about specific fixed differentials 20 rather than maximum differentials?
- 21 A. No, I would disagree. I don't believe they are. The 22 use of the word "parity", as George has used it in his 23 letter at tab 55 isn't perhaps the best way to express 24 the word, but it's not the same. We were looking at
- 25 what Safeway, in my letter in tab 79, Safeway had told

1 me what their policy was, if we used the PFS one as

- an example because it's actually in the letter, their 3 policy was the RRP times something less 5p, Trevor would
- 4 have told me what their pricing policy was in the
- 5 stores, and all I was giving back to him was examples
- 6 where his pricing policy in stores didn't match up with
- 7 what his pricing --
- 8 THE CHAIRMAN: Well, suppose he told you that his pricing 9 policy was that Richmond would be 2p more expensive than
- 10 Dorchester. Now, would you then have written to him
- 11 pointing out all the instances in the shops where in
- 12 fact you found Richmond and Dorchester were priced the
- 13
- 14 A. No, because we would have been getting a benefit, and 15 generally speaking, we would highlight where our
- 16 brands --
- 17 THE CHAIRMAN: No, if he had told you that their policy was
- 18 that Richmond should be 2p more expensive than
- 19 Dorchester, ie not your policy but disadvantaging you as
- 20 against Dorchester, but they had decided that was going

34

- 21 to be their policy, would you then have written to him 22
- alerting him to instances where in fact Richmond and 23 Dorchester were being priced the same in the petrol
- 24 stations?
- 25 A. As a general rule, no, but I am sure there are

- 1 exceptions where it's happened. If that ... because
- 2 where Imperial was getting a benefit better than our
- 3 objective, we generally wouldn't highlight that to
- retailers. I am sure there are examples where --
- 5 THE CHAIRMAN: No, no, let me just ask one more time.
- 6 A. Sorry.
- 7 THE CHAIRMAN: You wanted Richmond to be the same price as
- 8 Dorchester or less?
- 9 A. Correct.
- 10 THE CHAIRMAN: Suppose Mr Thomas had said "Well, regardless
- 11 of that, we are going to make Richmond more expensive
- 12 than Dorchester in our shops, that's just what we have
- 13 decided to do". Now, would you, if you had nonetheless
- 14 found that actually some shops were selling Richmond at
- 15 the same price as Dorchester, have pointed out that
- 16 error to Safeway to say "You told us you wanted Richmond
- 17 to be more expensive, therefore you should correct these
- 18 prices by increasing them because I know you want
- 19 Richmond to be more expensive"?
- 20 A. As a general rule I probably wouldn't highlight it, but
- 21 I probably have done on one or two occasions.
- 22 MR WILLIAMS: Well, I think document 79 is on your own
- 23 evidence an example of you doing that, isn't it?
- 24
- **Q.** I thought that's what you were saying document 79 was?

- A. Sorry, saying what?
- **Q.** I thought you were saying that document 79 was
- 3 an example of you writing to Safeway and pointing out
- 4 that your brands were being priced relatively
- 5 uncompetitively?
- 6 A. More expensive than the Safeway policy. That's what
- it's pointing out.
- 8 Q. Just thinking about document --
- 9 **A.** Sorry, the Chairman was asking me if our brands were
- 10 priced better than we expected --
- 11 Q. No, the Chairman wasn't asking you that. The Chairman
- 12 was asking you if Richmond was being disadvantaged,
- 13 would you write --
- 14 MR HOWARD: I think this is unfair, quite frankly. The
- 15 question which Madam Chairman put was on the basis that
- 16 the policy was to disadvantage Richmond by putting it at
- 17 a higher price, and then you find that actually in
- 18 stores you are not being disadvantaged. The question,
- 19 as I understand it, to the witness was: what would you
- 20 do then? He answered "probably nothing, because", and
- 21 one can understand that. The other document at 79 is,
- 22 as he has said on a number of occasions, where Richmond
- 23 is being disadvantaged because their policy is not being
- followed. 24
- 25 **THE CHAIRMAN:** Yes, the reason I asked my question was

1 1 because Mr Culham is saying that the purpose of this was been. He could have said "Our policy is to sell X below 2 2 to correct errors in the policy that Safeway were RRP or Y", I don't know what he said. But this is 3 3 pursuing, not the policy that ITL were pursuing. following the discussions that I had with him, we have 4 MR HOWARD: Yes, and I think what he has explained to you, 4 noticed things which don't seem to be in line with what 5 which personally I find seems a perfectly natural 5 he thinks we should be doing. 6 explanation, is that he is interested in seeing that 6 **DR SCOTT:** Can I just understand one thing, and that is 7 they have followed their policy where that actually 7 this: you say that this letter is written in the context 8 8 accords with Imperial's interests. If they don't follow of them not being tactical promotion? 9 their policy in a way which is to Imperial's advantage, 9 A. I believe that's the case, yes. 10 then he is saying "Well, I am not going to tell them 10 DR SCOTT: Presumably that doesn't suspend the overall ITL 11 that, although occasionally I might". 11 pricing strategy, you are still looking --**THE CHAIRMAN:** Well, that was what I was trying to find out. 12 12 A. My objective, Imperial, would still be achieve our 13 MR HOWARD: Yes, and I think that's what he answered. 13 pricing differential or better across the accounts, yes. 14 MR WILLIAMS: Would you agree that the document at tab 55 is 14 DR SCOTT: Thank you. 15 not about Safeway's policy? When it says, "Parity is MR WILLIAMS: One thing we have not discussed in relation to 15 16 16 the objective, parity is the policy, and we are paying the letter at tab 79 is your comment on B&H Silver. No 17 for parity", that's about ITL's policy? 17 doubt you would say that that is you commenting on the 18 A. We were obviously doing tactical promotions on Drum, 18 fact that you believe that B&H Silver is not being 19 19 Drum Milde and Golden Virginia to achieve a position in priced in accordance with Safeway's own policy? 20 Safeway pricing -- sorry, a position in the Safeway 20 A. Yes, I would, yes. 21 21 Q. Can I suggest to you an alternative interpretation, stores, yes. 22 Q. Can we just take it in stages, Mr Culham, please. Do 22 which is that you are concerned about the price of 23 you agree that the letter at tab 55 is not about 23 a Gallaher brand, because you are concerned in this 24 24 Safeway's policy, it's about Imperial's policy? section of the letter about departures from ITL's 25 25 A. The start point for anything is Safeway have their strategy, that is pricing differentials? 37 39 1 policy, we have then in this case -- are offering A. My objective is to achieve Imperial Tobacco's pricing tactical bonuses to achieve our objective, yes. objectives, I agree. These brands were highlighted as Q. So when we talk about parity being the objective and 3 not being in line with what Safeway -- if Safeway had 4 4 "parity is the policy" and "we are paying for parity", told me, for example, they were going to do 10p off 5 5 that's ITL's policy? Lambert & Butler and 20p off Benson & Hedges Silver, 6 6 A. Imperial Tobacco's policy in the case of this was for that would have been their decision. I don't know what 7 Drum to be parity or below versus Amber Leaf, yes. 7 the discussion was, that's what I'm trying to say. 8 Q. Well, it doesn't say "parity or below", but that's 8 THE CHAIRMAN: Yes, but would this be fair: you would draw 9 a different point --9 their attention to instances where their policy, as you 10 THE CHAIRMAN: Well, I think you have asked these questions 10 understood it, coincided with ITL's policy but that 11 on this document. 11 actually the prices were not reflecting either their 12 policy or ITL's policy? 12 MR WILLIAMS: I agree. 13 What we then see at tab 79 {D28/79/186} is Drum 13 A. Correct. 14 MR WILLIAMS: Could we turn over to tab 81, please, and just should be the same as Amber Leaf, Golden Virginia, and 14 15 then there is a 4p below Old Holborn and we have talked 15 read that to yourself. {D28/81/190}. 16 about that. So isn't this letter also about Imperial's 16 (Pause) 17 17 We can deal pretty quickly with the line which says policy, not Safeway's policy? 18 A. No, because at this point we were doing no tactical 18 "Richmond should be not more than Dorchester Kingsize 19 19 promotions. As I said, we had a discussion at the multipacks", that is you expressing concern that 20 meeting, which is where I took over the account. 20 Dorchester, Richmond and Dorchester aren't being priced 21 I don't remember the exact conversations that took place 21 in accordance with ITL's strategic pricing 22 22 at the meeting. Trevor had clearly outlined their differentials, isn't it? Parity is the objective we saw 23 23 policy at the petrol stations, which, as you can see, in tab 55. A. It's highlighting that Richmond multipacks were more 24 I have repeated because it's a simple one. I don't know 24 25 what he said their exact policy at stores would have 25 than Dorchester, therefore I was seeking for him to

- 1 reduce Richmond multipacks.
- 2 **Q.** Because of ITL's pricing strategy?
- 3 A. And whatever Trevor had told me he was doing, yes.
- 4 Q. Now, the first line, "Classic 5s should be not more than
- 5 Hamlet 5s", that is again a reference to ITL's pricing
- 6 strategy, isn't it? It's a concern that brands aren't
- 7 being priced in accordance with ITL's --
- 8 A. I don't know what the price was, but Classic would have
- 9 been above Hamlet, so I was seeking to ask Trevor to
- 10 reduce Classic down to no more than Hamlet, yes.
- 11 **Q.** Are you aware that this is the first and only document
- 12 on the Safeway file in which differentials are expressed
- in the sort of language we see here "should be not more
- 14 than Hamlet"?
- 15 **A.** If you say so. I am not going through the document.
- 16 **Q.** This letter dates from, I think, August 2003. When you
- 17 wrote this letter, were you aware that the OFT was
- 18 already investigating the matters that are now before
- 19 the Tribunal?
- 20 A. I can't recollect the date when I was -- I don't know
- 21 when it started. I know it was 2003 some time, but
- I would have found out shortly afterwards, but I don't
- 23 know when it started, so I can't comment.
- 24 THE CHAIRMAN: You would have found out shortly afterwards;
- 25 shortly after what?

- A. If the OFT had investigated Imperial, obviously it
- 2 wouldn't come to my level first, but at some point
- 3 I would have been informed. But I don't know, when did
- 4 the investigation start? I don't know.
- 5 MR WILLIAMS: It started in March 2003.
- 6 A. Okay, so I probably would have been aware, yes.
- 7 **Q.** Can I suggest to you that the reason this letter is in
- 8 different terms from the rest of the correspondence in
- 9 the Safeway file is precisely because you were aware
- 10 when you wrote it that the matter was now under
- 11 investigation by the OFT?
- 12 **MR HOWARD:** Just as a matter of record, in fact, it was in
- 13 August 2003 that the section 26 notices were sent,
- 14 15 August.
- 15 **THE CHAIRMAN:** 15 August before they were sent to anybody?
- 16 **MR HOWARD:** Sent to Imperial. So this letter, this email,
- 17 seems to pre-date that by about a week. The fact that
- 18 the OFT might have commenced its own enquiries
- internally, I don't know when they did that, butImperial were informed in August.
- **A.** So obviously I was not aware when I wrote this letter,
- this email then.
- 23 Can I add to that, because I know I am questioning
- 24 other accounts as well. In other trading agreements we
- 25 had with other accounts. Since I think 2000 I had been

42

- 1 using the words "no more than" in other trading
- 2 agreements, but there wasn't one of those with Safeway.
- 3 MR WILLIAMS: I think while we are in this letter it's only
- 4 fair that I take you back to one other letter. Could
- 5 you just turn back to --
- 6 THE CHAIRMAN: Can I just ask, where it says "Both 18.75!",
- 7 is that your handwriting?
- 8 A. No, that's Trevor's. Sorry, I assume it's Trevor's,
- 9 because it's his little squiggle at the top of the
- 10 email
- 11 **MR WILLIAMS:** It's right that I just show you another letter
- 12 while we are here. Could you turn back to tab 15,
- please. {D28/15/26}. This is another fax to
- 14 Trevor Thomas which you won't have seen at the time.
- 15 I was interested in, just to draw your attention,
- 16 "BP/Safeway Pricing". It says:
- 17 "Following the rise, it would appear the following
- 18 ITL brands have been disadvantaged against the
- 19 competitive brands."
- 20 It then has, do you see the column "Target
- 21 Differential"?
- 22 A. Yes.
- **23 0.** On the second page:
- 24 "The target differential for Hamlet 5s and
- 25 Classic 5s is parity."

43

- 1 Is that's the way in which ITL had been
- 2 communicating with Safeway before the letter we see at
- 3 tab 81 about those brands, whereas you use for the first
- 4 time terminology which says "should be not more than
- 5 Hamlet 5s". So that is different from the way that your
- 6 predecessors had been communicating with Safeway about
- 7 the policy on those brands?
- ${f 8}$ A. They had used different terminology, yes.
- ${f Q}$. They had used the language we have seen in the other
- 10 letters before this one, that is parity rather than "not
- 11 more than?"
- 12 **A.** As a quick way of writing "not more than", yes. Parity
- 13 was our -- or better was our objective, and obviously
- they have just written parity on there or minus 6 or
- minus 5 or minus 20.
- 16 **Q.** The rest of the differentials are all specific
- differentials as well, they are specific target
- differentials, aren't they?
- 19 **A.** Or better than those, yes.
- 20 **Q.** But that isn't what it says.
- 21 A. It isn't what the document says, but obviously if it had
- 22 got better than the target differential, that would have
- been a better achievement by us.
- 24 Q. I just wanted to move to a slightly different topic
- 25 which we have already explored a bit. You are aware

1 1 that there was a trading agreement in place at some Then this just gives us a bit of context, a new 2 2 point in the relationship with Safeway. I can't trading agreement is shortly to be discussed, and you 3 remember whether you said that you saw it at the time? 3 have already given some evidence about that. 4 4 A. No. When I took over the account from George it was A. There wasn't a new trading agreement, it carried on the 5 explained to me how our ongoing investment was with the 5 6 account, and that was based on investments that were 6 Q. Yes. Could you just look on the next page at the 7 7 agreed in 1995, based on four elements that were section headed "Ongoing Bonus Payments". 8 8 important to Imperial, ie --(Pause) 9 THE CHAIRMAN: You went through those. 9 Now, as I read this passage, it's making two points: 10 10 A. I won't repeat them again, but no differentials were first of all, ITL has been paying ongoing bonuses to 11 11 mentioned in that trading agreement. Safeway for certain things, and those things are listed 12 12 MR WILLIAMS: I was just asking you, I can't remember in the last line. 13 whether you said, when we talked about this previously, 13 A. Can I correct you on that? We hadn't been paying on 14 that you saw it at the time you were running the 14 those listed in the last line, we had been paying under 15 15 account, you saw the trading agreement that you thought the four elements I mentioned earlier on. This was our 16 16 was rolling on at that point. strategy, our objectives to go forward. 17 17 A. There wasn't actually -- it was an investment package **Q.** What it says is that the investment needs to be 18 that was related to four elements, so yes --18 reconfirmed against specific measurable objectives, 19 THE CHAIRMAN: Was there a document in which it was 19 because the concern that's expressed in the first line. 20 20 contained which you saw at the time? it says that the investment is in danger of being 21 21 A. I didn't, I just knew how the investments were made up treated as a prerequisite, and what it goes on to say 22 within the Safeway account to cover those four elements, 22 23 23 there wasn't actually a physical trading document, no. "The investment needs to be reconfirmed against 24 24 MR WILLIAMS: Are you aware that, at least in 2001, before specific measurable objectives. This will cover pricing 25 25 you took over the account, there had been discussions differential, merchandising, availability and 45 47 1 between ITL and Safeway about a new trading agreement? 1 distribution." 2 2 **A.** Yes, we were very concerned because over the years the Of those, do you agree that at least merchandising, 3 level of our investment had stayed the same but Safeway 3 availability and distribution were all covered by the 4 4 were delivering less for it, so we were looking at how trading agreement at the time? 5 5 we could renegotiate a different trading agreement, but A. There were four elements in the trading agreement at the 6 6 time, and those were three of them. The other one was that never came to anything. 7 **0.** You know that, do you? 7 selling below RRP, not pricing differentials. **A.** Yes, because the investments I was paying were still 8 **Q.** What it says is that the investment needs to be 9 9 based on the same basis they had been since 1995, with reconfirmed against specific measurable objectives. The 10 10 word "measurable" seems to reflect the concern in the the same four elements. 11 11 **Q.** Given that you have said that, I am going to have to first line that the bonus is being treated as 12 12 show you a document before your time, just to ask you a prerequisite. So this is saying that bonuses were 13 some questions about it. Could you turn to tab 33, 13 being paid for compliance with pricing differentials, 14 please. You are familiar with these sorts of documents, 14 isn't it? 15 aren't you? {D28/33/360}. 15 A. No, it isn't, it's our objective, we were -- the four 16 A. Yes. 16 original elements that were in the trading agreement, 17 17 **Q.** You wrote them I think for other accounts and probably Safeway had put up their prices relative to RRPs, so the 18 for Safeway in due course. 18 investment we paid for selling below RRP had been 19 19 If you turn to the second page, do you see by the eroded. We had taken -- at some point we had stopped 20 second holepunch it says "In October 2000 ..."? 20 paying them any bonuses on the PFS, because they had 21 A. Sorry, second page? 21 gone to RRP. The original agreement included new

22

23

24

25

A. Sorry, yes, apologies.

"In October 2000 ..."

Q. Yes, this has 361, bottom right. Yes?

Q. Then down by the second holepunch it says:

46

22

23

24

25

product listing which at some point Safeway then said

they want more money for product listing. That's what

thought we were paying for had been eroded, and this was

you're saying when it eroded. The four elements we

1 George saying that going forward, perhaps we should have A. We were asking them to do it (a) because it was 2 these four elements in it, but it never did happen. 2 an objective of us to hopefully achieve our 3 **Q.** We have seen a lot of documents now, and they are not 3 differentials or better, and (b) it may have been 4 4 all the documents on the file, which show that ITL against Safeway's policy at that time. I don't know 5 5 expected Safeway to price in accordance with its pricing what -- I didn't write the letter, so I can't comment, 6 6 strategy. What I am suggesting to you is that Safeway but there was no incentive from us if Safeway hadn't 7 7 wasn't doing that out of the goodness of its heart, it chosen to do this. 8 was being incentivised to do that and this passage is 8 **Q.** It's very hard to understand a letter like this, isn't 9 consistent with that. 9 it, if there is no incentive, on Safeway? 10 **A.** I totally disagree. There was no incentive for Safeway 10 A. It could be these prices were not what Safeway wanted 11 to follow our differentials. Where we had tactical 11 them to be. As I say, I don't know in what context the 12 bonuses to achieve and specific requirements in reaction 12 letter was written. From Imperial Tobacco's perspective 13 to, say, a Gallaher promotion or something like that, 13 we would have liked to have achieved at least those 14 but on the ongoing business relationship with Safeway 14 differentials. George has outlined that to Trevor. 15 15 there was no incentive for them to deliver I don't know what the Safeway policy at the time was. 16 16 They could have been -- I don't know what their policy differentials. We would try and encourage them. We 17 would talk and ask, that there was no investment for 17 was, so I can't comment. 18 them against differentials. 18 **Q.** But you are experienced in dealing with retailers about 19 **THE CHAIRMAN:** Except when there were those pre-buy 19 these matters, aren't you? 20 agreements? 20 A. I have many years of experience, yes. 21 A. Yes. 21 **Q.** I think you have direct experience of a number of 22 MR WILLIAMS: Just while we are here, could you turn over to 22 accounts under which Imperial paid retailers bonuses, 23 tab 34, {D28/34/75} please, and just read that to 23 ongoing bonuses, when it wanted them to comply with its 24 24 yourself. Because this is a document which dates from pricing strategy, and then from time to time also paid 25 25 about the same time as the one we have just been looking them tactical bonuses to make particular price moves? 51 1 1 Obviously you know that -at. 2 2 **A.** There are trading agreements that I've entered into with (Pause) 3 3 This is another document which talks about errors in other accounts, yes. 4 4 the pricing, and then it says: **Q.** And they provide for the retailer to receive a bonus for 5 5 "The differential between L&B and JPS should be 16p application of your pricing strategy? 6 6 and 9p respectively." A. At no worse than the RRP difference, yes. Whether it's 7 Those are with reference to Mayfair and Sovereign. 7 a bonus or, in the case of Shell, we discussed last week 8 Do you agree that this is a reference to ITL's pricing 8 it was a -- two weeks ago -- fixed amount brand, yes. 9 9 strategy that shelf prices should reflect particular But there wasn't for Safeway. 10 10 pricing differentials? Q. You offered those bonuses because, when you were asking 11 11 A. I am assuming this is a reflection of our pricing a retailer to apply a particular pricing strategy, you 12 12 differential at that time, yes. thought you needed to offer them an incentive to do 13 Q. So what the letter says is that "the differential should 13 that? 14 be", and that's regarded as an error in Safeway's 14 A. It was part of our investment to make them consider it. 15 15 I wouldn't say -- I couldn't say how many retailers pricing, and then it goes on to say: 16 16 actually actively made their business decisions on the "Could you please increase the prices. This 17 17 increase will then make their prices in stores at", and money we offered them. Some it may influence, some 18 I don't see any reference in this fax to a tactical 18 would ignore it, some would take notice, some wouldn't. 19 bonus or anything of that sort? 19 **Q.** Would you agree that Safeway was no more likely to apply 20 A. There isn't, and going through the correspondence 20 a particular pricing strategy for you than any other 21 I think this situation carried on for many months 21 retailer if you weren't offered it an incentive to do 22 22 afterwards, ie Safeway didn't do what George was asking 23 23 A. Can I repeat, we weren't offering Safeway any incentive 24 24 **Q.** But you were asking them to do it, what, out of the for that differentials. There was nothing at for 25 kindness of their hearts? 25

Safeway in it.

50

1 THE CHAIRMAN: Why were you treating them differently, then MR WILLIAMS: Yes, but as I explained to you yesterday, 2 2 from First Quench and the others? Madam, the best evidence in relation to some of these 3 3 A. I don't know, because as I said the agreement went back points is derived from the period before Mr Culham took 4 to 19995 --4 over the account. As I say, I've only got, I think, 5 5 THE CHAIRMAN: When you were in charge of the account, three documents from before Mr Culham's time, and then 6 6 didn't it strike you as odd that they didn't have this I wanted to go back to one of the documents that he 7 7 pricing differentials aspect to their trading agreement? 8 8 A. Yes, and that's why the letter we referred to earlier on THE CHAIRMAN: We will take a break, then, and come back at 9 when I brought about the MPI, when I was asking them to 9 11.30. 10 reflect the differentials, I actually brought it to the 10 (11.20 am) 11 11 table. (A short break) 12 MR WILLIAMS: Just to round off on this, what I am 12 (11.35 am) 13 suggesting to you is that we don't have a copy of the 13 MR WILLIAMS: Mr Culham, just in order to test some of the 14 trading agreement, we don't know exactly how the 14 things you say in your witness statement, we are going 15 relationship with Safeway worked --15 to look at two particular documents from the period 16 A. Well, I think if --16 before you ran the account and look at them in a bit of 17 Q. Sorry, I do need to ask you the question before you can 17 detail. One of them is 55, but before we get there 18 18 answer it, Mr Culham. I want you to look at 54, please. 19 19 We don't have a copy of the trading agreement, but (Pause) 20 20 looking at the correspondence that we see, looking at A. Okay. 21 the documents that we do have, it's clear that ITL 21 Q. So this is another letter relating to errors in 22 expected Safeway to apply its pricing differential 22 Safeway's pricing. 23 strategy and, on some basis or other, it's hard to 23 There is a sort of generic explanation for this at 24 24 believe that Safeway wasn't incentivised to do that, the bottom, which is systems problems, which seems to be 25 wasn't remunerated for doing that? 25 the context, or possible context, for the letter. 53 55 A. As I said, we don't have a copy of the 1995 trading 1 I wanted to focus on the first point, and then the 2 agreements, and I never saw it. However, on tab 1 of 2 second half of the second point. Starting on the first 3 the book, there is a letter from George in 1999 3 point, would you agree that this shows that ITL wanted 4 confirming the elements that are in the -- as he calls 4 Richmond to match Dorchester in the context of its 5 5 it the bonus payment, which effectively means bonus pricing strategy when Dorchester went up in price, as 6 payment/trading agreement, that was the ongoing money. 6 well as when it went down in price? 7 So in tab 1 it clearly highlights the four elements that 7 **A.** I think this shows we have reviewed our tactical bonuses 8 were included. 8 and are reducing the tactical bonuses by 2p, which would 9 9 MR WILLIAMS: I would like to move on to a new topic. then necessitate Safeway, if they wanted to maintain 10 THE CHAIRMAN: How much longer do you have to go, 10 their margins, putting the price up by 2p. 11 Mr Williams? 11 Q. The letter says "Please increase the price to match, the 12 MR WILLIAMS: I am going to ask Mr Culham to look again at 12 bonus will be reduced accordingly". So it looks as 13 a few of the documents we have looked at, just to 13 though what you want is the increase in price to match 14 explore some of the points -- sorry, the documents from 14 and that the bonus is reduced in order to bring about 15 before his time, just to explore some of the general 15 that result? 16 points he makes in his witness statement, but I don't 16 A. All we can do, we can obviously influence the level of 17 think it will take enormously long. I think it will 17 bonuses, and we are reducing the level of bonus and 18 probably take another hour. 18 making it simple for Trevor, that if he needs to 19 THE CHAIRMAN: That does seem rather -- how long is he down 19 maintain his margin, he needs to go up by 2p. All we 20 to be cross-examined for? 20 can control is the 2p -- sorry, 2p reduction in our 21 MR WILLIAMS: I've tried to limit myself to a small number 21 tactical bonus. 22 of documents from the period before Mr Culham's time. 22 **Q.** You can control in the sense that you were given the 23 THE CHAIRMAN: Well, yes. We went through that exercise 23 right incentive to move to a particular price. 24 yesterday afternoon to try and limit the number of 24 **A.** No, we can't encourage him to go up. We can say we are

25

54

documents.

25

taking away part of a tactical bonus, that's all we are

1 doing. really looks like it's about the same thing, Dorchester 2 2 $\boldsymbol{Q}.\;$ But you are encouraging him to go up: you are saying and Richmond matching each other. 3 "please increase the price". A. Well, it's whatever Safeway had told us was their policy 4 in the petrol filling stations, yes, so it was RRP and A. We are making, outlining for him that we are reducing 5 this seems to be RRP plus 5p or 6p, which is what 5 the bonus, therefore if he wants to maintain the same 6 6 margin for him, he has to go up by 2p, yes. Safeway have told us is their policy. 7 7 Q. Then moving down, you can skip over the bit about PFS, Q. I think you said earlier on that you wouldn't write to I was not going to ask you about that. Sorry, you can Safeway in relation to errors in its application of its 9 skip over the first three lines about PFS in the second 9 own pricing policy, unless the errors were also 10 10 point. Then it says: incompatible with your pricing strategy. Is that right? 11 "In the PFS please correct the price of Superkings 11 **A.** I think what I said was I generally wouldn't but I think 12 down to 4.18." 12 there were one or two occasions when it may have 13 I wasn't going to ask you about that either. I was 13 happened. I think that's what I said. 14 going to ask you about the bit starting: 14 DR SCOTT: Just one small point of clarification, the budget 15 15 this year didn't occur until 17 April, so this is not --"Also Dorchester Kingsize Superkings are 3.58, 3.67. 16 Richmond Kingsize Superkings are at 3.63, 3.65. These 16 A. Apologies, I don't know the dates of the Budgets. 17 brands should be at 3.63, 3.66." 17 MR WILLIAMS: What you actually do, on Superkings, when this 18 18 letter is written -- and I shouldn't keep saying "you", So 3.63, 3.66, are those the tilt and non-tilt 19 19 prices? because obviously it isn't you, I am sorry. What the 20 20 A. I would assume so. letter does is that on Superkings, Richmond has a 2p 21 Q. Would you understand those prices to be the tilt and 21 advantage over Dorchester, but the letter suggests that 22 non-tilt prices? 22 that 2p advantage should be cancelled out in, by doing 23 A. Yes. 23 two things, moving Richmond up a penny and Dorchester 24 24 THE CHAIRMAN: I would have thought they were the Kingsize down a penny. 25 25 A. The letter suggests that, but I don't know what tactical and Superkings prices. 57 59 A. Yes, you are right. Thank you. 1 support was going on at that time. The letter you took MR WILLIAMS: Sorry, you are quite right. I have 2 me to a few minutes ago showed we were reducing tactical 3 3 a different document in mind, I am sorry. bonuses, I don't know what was going on at the time in 4 4 So what you have in mind, I think, is that terms of bonusing, tactical bonusing. 5 5 Dorchester Kingsize should move from 3.58 to 3.63. Q. But the tactical bonus, if there was a tactical bonus, 6 I say you, I mean ITL obviously, I beg your pardon. 6 would have been in order to make sure that the prices 7 Yes? So Kingsize moved from 3.58 we see in the middle 7 were at the level you wanted to see, wouldn't they? 8 of the second line there, to 3.63. Yes? 8 **A.** We would set an objective of our brands. In the case of 9 A. I am assuming, looking at the date of this letter, it's 9 Richmond and Dorchester, our brands no more expensive 10 probably just after a Budget increase. There is usually 10 than Dorchester. 11 11 a Budget in March, so ... Q. In theory, if the differentials are maximum 12 12 THE CHAIRMAN: Can you agree that that's what the letter differentials, if they moved the price to a level which 13 seems to be saying? 13 was more advantageous to you in circumstances where 14 A. Yes 14 a tactical bonus was being paid, then in theory that's 15 MR WILLIAMS: And Dorchester Superkings move from 3.67 to 15 something that ITL would be pleased about? 16 16 A. If we are receiving a shelf price better than, for 17 17 A. I think that's what the letter is saying, yes. Richmond, better than Dorchester, generally speaking we 18 Q. And Richmond Kingsize stay at 3.63, and Superkings move 18 would be pleased about that, yes. 19 19 Q. Yet what we see here is that, rather than rub your hands up a penny to 3.66. 20 **A.** Based on what the Safeway policy was in petrol filling 20 in celebration and keep quiet, what ITL does is write 21 stations at that time. 21 and say that Richmond Superkings should be moved to 22 Q. I think I am suggesting to you that this is not about 22 a price point where it's 2p less competitive with 23 Safeway's pricing policy, it seems to be about brands 23 **Dorchester Superkings?** 24 being priced at parity, because the first point we have 24 A. And that goes back to what I said earlier on. We 25 seen is about Richmond matching Dorchester, and this 25 generally would not bring this to retailer attention,

- 1 but petrol filling stations were selling at RRP and in
- 2 this occasion George has highlighted where a brand is
- 3 not at RRP.
- 4 **Q.** Isn't the reality that this letter is bringing this to
- 5 Safeway's attention because Superkings are not being
- 6 priced in accordance with ITL's pricing strategy, which
- 7 is what you would expect, given the evidence you gave
- 8 earlier on?
- 9 **A.** Our pricing objectives would remain that Richmond would
- 10 be no more than Dorchester. That's our objective. If
- 11 Safeway had said to us "our policy in petrol filling
- 12 stations is sell at RRP", that's perhaps what George has
- 13 highlighted here. I don't know what George has
- 14 highlighted. (a) I wasn't involved in the account then,
- but (b), Safeway were charging more in their petrol
- 16 filling stations and we were looking to get our
- 17 Superkings brand reduced, Superkings down from 4.20 to
- 4.18, so I am assuming that's in relation to an RRP
- 19 position

2

- 20 Q. You would assume that's because you want that brand
- 21 priced in accordance with ITL's pricing strategy?
- 22 A. And with whatever Safeway's policy was.
- **Q.** One more question about this part of the letter. This
- 24 is one of many, many documents on the Safeway file where
- 25 what ITL does is suggest to Safeway they move in the

61

- 1 price of a Gallaher brand. And we saw one of those in
 - your letter at tab 79 earlier on, B&H Silver. Isn't it
- 3 right to say that the reason why ITL was pointing out
- 4 errors in the price of Gallaher brands is because those
- 5 brands weren't being priced in accordance with ITL's
- 6 pricing strategy?
- 7 **A.** If our brands were being disadvantaged we would
- 8 highlight it. But there is another document in here
- 9 from, I think, Trevor's boss pointing out that it's
- 10 their pricing policy. One of the tabs in here somewhere
- 11 talks about he is stating to us Safeway set their own
- 12 pricing policy.
- 13 **Q.** But you didn't just highlight it, you suggested that the
- 14 Gallaher price should be moved?
- 15 **A.** It was highlighted in my case with a question mark after
- $16 \qquad \text{it as a suggested price. I couldn't encourage them to} \\$
- 17 do it. It's their choice.
- 18 **Q.** Would you agree that you believed that ITL's pricing
- 19 strategy had implications for the price not only of
- 20 ITL's brands but the price of Gallaher's brands?
- 21 A. I can't comment on Gallaher's brands.
- 22 Q. But Mr Byas has commented on a Gallaher brand and you
- commented on B&H Silver in the letter at tab 79.
- **A.** As a point of reference where, if it's not -- if our
- objective is not being met and we believe it's not in

- line with the retailer's objective, we would certainly
- 2 highlight it.
- 3 **Q.** Can we --
- 4 A. Because as I said, in this, it's saying, is it to do
- 5 with the systems problems, so we are highlighting things
- 6 that don't appear -- we go into the calls, we see some
- 7 pricing, it seems to be different to what the buyer is
- 8 telling us, we have highlighted it.
- ${\bf 9} \quad {\bf Q.}$ Can we just then move over the page back to 55, which
- 10 you have already read, but please cast your eye over it
- 11 again if you want to.

(Pause)

- 13 This is another letter where, in the fourth point,
- 14 and I was going to focus on that at the moment, you
- 15 recommend that ITL's preferred differentials are
- 16 realigned by moving both Golden Virginia and Old Holborn
- 17 up to the common price of 2.28. The reason for doing
- 18 that is to make sure that, firstly, Old Holborn and
- 19 Golden Virginia are priced at the same price point; do
- 20 you agree with that?
- 21 **A.** Reading this, we obviously were doing tactical bonuses
- on Golden Virginia so we are stopping tactical bonuses
- on Golden Virginia and obviously I don't know whether
- 24 Gallaher's were paying tactical bonuses on Old Holborn
- or not, but if they were, if we stopped it and then they

63

- 1 eventually stopped it, that would be a benefit for us.
- 2 **Q.** Yes, but I was just talking about what's happening to
- 3 the prices and what outcomes ITL wanted to see, and
- 4 I think the first point that I was putting to you is
- 5 that you wanted to see Golden Virginia and Old Holborn
- 6 at parity at 2.28; do you agree?
- 7 **A.** We would like to see Golden Virginia no more than
- 8 Old Holborn and the price is suggested of 2.28, yes.
- ${\bf 9} \quad {\bf Q.} \ \, {\rm And} \ \, {\rm you} \ \, {\rm also} \ \, {\rm want} \ \, {\rm Golden} \ \, {\rm Virginia} \ \, {\rm to} \ \, {\rm be} \ \, {\rm 10p} \ \, {\rm more} \ \, {\rm than}$
- 10 Drum --
- 11 MR HOWARD: When you say "you", do you mean Mr Byas?
- 12 MR WILLIAMS: Sorry, I keep doing this, but I have explained
- 13 I don't mean "you".
- 14 **THE CHAIRMAN:** The writer of the letter.
- 15 **MR WILLIAMS:** The writer of the letter.
- 16 Yes, ITL also wants to see Golden Virginia 10p above
- 17 Drum and Amber Leaf?
- 18 **A.** We had been, but then we were stopping that position.
- 19 **Q.** Is that right?

25

- 20 **A.** Yes, that's why were stopping --
- 21 **Q.** Golden Virginia is currently --
- 22 **A.** We were stopping the tactical bonus, so we had
- 23 a tactical bonus and we were stopping it.
- 24 **Q.** Yes, "We are paying for parity at 10p, 20p, 40p more
 - expensive than Drum/Amber Leaf", so you were going to

- 1 maintain the differential with Old Holborn at 2.28, and
- 2 we can't actually tell what the relationship between
- 3 Golden Virginia and Drum and Amber Leaf would have been,
- 4 because I don't think this letter tells us?
- 5 A. Well, it says in the first sentence we are paying for
- 6 a position, and then the current GV bonus will end, so
- 7 we were paying, then were stopping paying.
- 8 $\,$ **Q.** You are paying for parity at 10p, 20p, 40p more
- 9 expensive?
- 10 **A.** That was a tactical bonus, yes.
- 11 **Q.** And you are taking away the tactical bonus; is that
- 12 right?
- 13 A. Correct.
- 14 Q. And yet you still want to see Old Holborn and
- 15 Golden Virginia at parity at 2.28?
- 16 **A.** That would be an objective of ours, yes.
- 17 Q. So it's another example where your requests to Safeway
- 18 to achieve your parity and differential requirements
- don't depend on the payment of a tactical bonus?
- 20 A. We are suggesting a price to Safeway of 2.28, and
- 21 obviously if Old Holborn is paying a tactical bonus at
- $\,$ 22 $\,$ $\,$ the moment, which I don't know whether they are or not,
- $23\,$ $\,$ if they continue paying, obviously Old Holborn would be
- 24 cheaper than us.
- 25 Q. But what you say is that they should move both

- 1 Golden Virginia and Old Holborn up to the common price,
- 2 so you expect to see both your brand and the Gallaher
- 3 brand move to a common price?
- 4 A. George is recommending that for Safeway to make
- 5 a decision.
- 6 **Q.** I think what he is recommending is that they move into
- 7 line with other grocers at the particular price point,
- 8 but he does expect to see parity at 2.28 or parity at
- 9 some particular price at least?
- 10 $\,$ **A.** He has suggested it, but I don't know what did happen on
- 11 the pricing, but he suggested it to Safeway, whether
- 12 they did it or not I don't know.
- 13 **Q.** Underneath that he says:
- 14 "The current bonus on GV will cease from this date
- of implementation. Can you please advise Gallaher of
- 16 this move."
- 17 Can you explain why he might have said that?
- 18 **A.** We were ceasing our tactical promotions, so therefore GV
- 19 would have gone up on -- the shelf price would have gone
- $\,$ 20 $\,$ $\,$ up, we assume, and Gallaher would have either been told
- 21 by Safeway GV has gone up, or they would have seen it in
- stores that GV had gone up themselves.
- 23 Q. Why would you suggest that he advise Gallaher of the
- 24 move? Sorry, why would Imperial suggest that Mr Thomas
- 25 advise Gallaher of the move?

bb

- A. Because maybe they would have stopped their tactical
- 2 bonus, maybe they would have carried on with it, we
- 3 don't know.
- **Q.** Presumably if he was asking Mr Thomas to have that
- 5 conversation with Gallaher, that was because he wanted
- 6 Safeway and Gallaher to have a conversation about
- 7 whatever they needed to talk about in order to get to
- 8 the price point of 2.28; do you agree with that?
- 9 **A.** He's putting here "can you advise Gallaher"; whether
- 10 Trevor did speak to Gallaher about it or not, I don't
- 11 know.
- 12 **Q.** No, no, of course you don't know.
- 13 **THE CHAIRMAN:** The point is, Mr Culham, is he saying, "Can
- 14 you tell Gallaher that we are ceasing our bonusing of
- 15 GV" because he hoped that Gallaher would then respond by
- stopping their bonusing if they were bonusing
- 17 Old Holborn, which would make it more likely that they
- would re-establish at the same level price more quickly
- than they might if it was just left to Gallaher to
- 20 notice in the shops that this was happening.
- 21 **A.** It could save a couple of days, yes, because you would
- 22 notice the price change in a store, say for example on
- 23 a Monday --
- 24 **THE CHAIRMAN:** But the suggestion that he advise Gallaher of
- 25 the move, that's based on the assumption, do you think,

67

- 1 that that might prompt Gallaher to stop --
- 2 A. It could do, yes.
- 3 **THE CHAIRMAN:** -- bonusing Old Holborn if they knew that
- 4 ITL was stopping the bonusing of Golden Virginia?
- 5 **A.** That could, it would give them the information and
- 6 Gallaher would decide whether to carry on with it or to
- 7 cease it or to change it.
- 8 MR WILLIAMS: I just want to be clear why I am raising this
- 9 point. You had an understanding with Safeway that your
- 10 brand, Golden Virginia, would be at parity with
- 11 Old Holborn, and you didn't really care whether Safeway
- 12 achieved that strategy by going off and having a word
- 13 with Gallaher behind the scenes, if that was what
- 14 Safeway needed to do to achieve that price point. What
- 15 you were interested in is Safeway complying with your
- strategy, complying with the understanding between you
- 17 that they would price these brands at parity?
- 18 A. The same paragraph you are referring to, Golden Virginia
- was 1p or 8p more expensive than Old Holborn, so we
 weren't achieving our objective. We decided to stop our
- 21 tactical bonus and Safeway would decide what to do with
- 22 Gallaher.
- 23 Q. I am just going to move to a different topic now, if
- 24 I may. Do you have your witness statement there? You
- 25 deal with Safeway's own pricing --

1	A. Which paragraph are you in?	1	A. Yes.
2	Q. In various paragraphs. It's probably useful if you read	2	Q. They are not saying anything about the relativities
3	158, 159, 167 and 169. Then I'll ask you some questions	3	between ITL brands and Gallaher brands, you are not
4	about what I think is the point that all of them make.	4	commenting on that in these paragraphs?
5	A. Can I write down which ones?	5	A. I don't think I am, no.
6	Q. If you want to read them one by one, I am happy to tell	6	Q. In fact, it's perfectly possible for Safeway to choose
7	you.	7	whatever absolute price benchmark it wants to choose and
8	A. 158 first?	8	at the same time to achieve the pricing differentials
9	Q. 158 first, yes, and then 159.	9	between ITL brands and Gallaher brands that formed the
10	(Pause)	10	basis of your strategy?
11	A. 159?	11	A. They chose their own pricing policy and some of the time
12	Q. And then 167 and 169, but they are not freestanding	12	that was in line with our objectives and some of the
13	paragraphs, actually, they relate to a letter, so the	13	time brands were not in line with it.
14	discussion starts at 166.	14	THE CHAIRMAN: But their pricing policy that you are
15	(Pause)	15	discussing in these paragraphs was not of itself
16	A. 169 was the last one?	16	inherently making it impossible for them to decide on
17	Q. That was the last one. I am sorry to have given you	17	a pricing policy about differentials which in fact was
18	a lot of reading to do there, but there is just a few	18	the same as ITL's with some of the brands?
19	short questions that I think can cover this all off	19	A. If Safeway had whatever policy Safeway had was their
20	together.	20	choice. If you use the petrol filling stations as
21	As I read the paragraphs, they are all concerned	21	an example, because that's one common price, our
22	with the point that Safeway shows the absolute level of	22	differential policy was in line with the differentials
23	prices that it wanted to price at. Is it a particular	23	in the RRP, and Safeway had told us their pricing policy
24	benchmark it wanted to price at?	24	in the petrol filling stations was to sell at RRP. So
25	A. They did, however when we introduced tactical bonuses we	25	in other words the two would naturally, should be the
	69		71
1	would set a maxima benchmark price then.	1	same most of the time. In the case of the stores where
2	Q. Subject to that the point I am making really is that	2	they were doing more price activity it was going up and
3	this is all about absolute price levels, it's not about	3	down and they had the tilt and various premiums. So
4	pricing relativities between I don't think you are	4	it's not quite so easy to explain that one. But yes, if
5	saying anything about Safeway's strategy as regards the	5	Trevor knew exactly what the Safeway policy was and it
6	relativities between Gallaher and ITL brands, there is	6	was adopted correctly across all brands, it could well
7	no incompatibility between Safeway choosing this	7	be that our objectives would be achieved as well. But
8	absolute price level and then you having a strategy of	8	they weren't, and that's why all the letters referring
9	asking them to comply with pricing differentials between	9	to pricing are in the file.
10	the linked brands?	10	MR WILLIAMS: I think that's probably enough on that.
11	A. Well, we had our objectives, and the fact there are so	11	THE CHAIRMAN: Yes.
12	many letters where we have highlighted pricing confirms	12	MR WILLIAMS: I am just going to move on to the last set of
13	that Safeway weren't actually setting their pricing in	13	questions I want to ask you. I am going to ask you to
14	line with what our objectives were.	14	read a letter that you weren't involved in, just to read
15	Q. We have seen a lot of reference to errors which suggest	15	it for context, and then I am going to ask you some
16	that you were working on the basis that they should be	16	questions about a letter you were involved in.
17	implementing your strategy, but that is a different	17	Could you read the document at tab 65, please,
18	point. The point I was	18	{D28/65/138}, and you actually don't need to read all of
19	A. Either our strategy or	19	it, you can start with the words at the bottom of the
20	THE CHAIRMAN: Let's just try and get back to the point.	20	first page "At the MPI"
21	Could you put the first question again, Mr Williams.	21	(Pause)
22	MR WILLIAMS: Yes.	22	You can stop when you get to
23	These paragraphs of your statement, they are all	23	A. Sorry, I am just reading the bit above it because it's
24	saying Safeway chose the absolute level of its prices	24	relevant.
25	where it pitched itself in absolute terms?	25	Q. Okay.
	70		72

1	(Pause)	1	written in the context of the June to September period
2	Now, I am not going to ask you questions about this	2	when everything was out of kilter, but on the second
3	document, but I will tell you what I think it shows,	3	page it says:
4	because I think that's relevant to the questions I am	4	"Cafe Creme brands should be 6p against Hamlet
5	going to ask you in a moment.	5	Miniatures but are currently the same price. Either you
6	I think it shows that ITL expects that when it puts	6	have not applied the MPI or Gallaher are holding down
7	its prices up, the price list differentials between, in	7	Hamlet Miniatures."
8	this case, Richmond on the one hand and on the other	8	I think we can work out from that that absent the
9	hand Sterling and Dorchester, that those differentials	9	MPI they would have been at parity, so that would have
10	will be maintained by the prices of the Gallaher brands	10	been the normal position, and it goes on to say:
11	being increased as well. That's what ITL expects to	11	"On the multipack there should also be parity."
12	see.	12	So that's the sort of normal relationship between
13	Now, you don't have to comment on that, but you can	13	them?
14	comment on it if you want.	14	A. Both RRPs were the same normally.
15	A. I think the background to this was Gallaher had had	15	Q. Yes, I just wanted to put that in the context of that
16	an MPI several months, two or three months earlier than	16	letter if that was helpful.
17	Imperial. We announced an MPI for September. And	17	Going back to tab 79, you say:
18	I believe between the Gallaher MPI, Gallaher had been	18	"Thank you for ensuring that the prices of
19	doing tactical bonuses on their brands. So that's	19	Cafe Creme were not increased."
20	what's behind this, I think.	20	So they have been held down with some form of bonus,
21	Q. I said I wasn't going to ask you questions about the	21	is that right?
22	letter. Could you move to tab 79 again {D68/79/146} and	22	A. I think the Imperial Tobacco MPI was in, was it June?
23	we will look at that bit of the letter that we didn't	23	Q. I think you are right, I think it was.
24	look at before, the very short first two lines about	24	A. Imperial Tobacco had an MPI on 23 June, but
25	Cafe Creme.	25	Henri Wintermans decided to have their MPI on 1 August,
	73		75
1	(Pause)	1	so they delayed it six weeks later for the MPI on
2	There are only two lines there. So this is dealing	2	that product was later.
3	with your Cafe Creme brand. Would you agree that, under	3	Q. Then it says:
4	ITL's pricing strategy, Cafe Creme was linked to Hamlet	4	"Don't forget to change these prices by 7p with
5	Miniatures? Do you remember that?	5	effect from 1 August 2003."
6	A. I believe well, Cafe Creme wasn't actually	6	So that is reminding them they should put their
7	an Imperial Tobacco brand, we distributed it on behalf	7	prices up on that date?
8	of Henri Wintermans but we were the distributor of it.	8	A. It's actually reminding him that the MPI for Cafe Creme
9	so Henri	9	was on 1 August 2003 and his costs would go up on that
10	THE CHAIRMAN: You need to slow down. Perhaps you would	10	day, and if he wants to maintain his margin, he has to
11	give that answer again.	11	put his prices up by 7p.
12	MR WILLIAMS: Sorry if you are taking your lead from me; we	12	Q. Well, it doesn't say again if you want to maintain your
13	are as bad as each other, perhaps.	13	margin, put the price up by 7p, it says "don't forget".
14	A. Apologies.	14	A. I didn't write all that, but that's what it meant.
15	Imperial Tobacco distributed Cafe Creme brands for,	15	Q. If we go over the page, you can see at the top it says:
16	I think, 20 or 30 years but they were manufactured in	16	"Cafe Creme Filter should be 2.96."
17	Holland by Henri Wintermans. They set the pricing	17	Do you see that?
18	policy and they set the retail price of it, but we acted	18	A. I do, yes.
19	as their agent in the UK, and the RRPs for Cafe Creme	19	$\boldsymbol{Q}\!.20p$ above Cafe Creme. From that I think we can work out
20	were set by Henri Wintermans which were the same as	20	that Cafe Creme Filter is at 2.76, because that's 20p
21	Hamlet Miniatures.	21	below 2.96?
22	Q. I will give you briefly a bit of context. Do you want	22	A. Cafe Creme would be 2.76.
23	to turn back to tab 61, {D28/61/126}, corresponding	23	Q. Sorry, that's what I meant to say, Cafe Creme would be
24	with Safeway about this. Very quickly, on the second	24	at 2.76.
25	page, this is a slightly confusing letter because it's	25	A. Reading this, yes.
	7∕1		76

1 1 **Q.** That's right. What I am suggesting to you is that when terms which were absolutely explicit, that it expected 2 2 you talked about Cafe Creme going up on 1 August, you Safeway to price in accordance with its pricing 3 3 would have been confident in the same way that Mr Byas strategy. 4 4 was confident when he wrote the letter we were just A. I disagree. I think it's just the change of my style of 5 5 looking at that the linked brand, that is Hamlet writing letters compared to George's style. The court 6 6 or the Tribunal saw various letters I wrote to Shell Miniatures, would also go up 7p? 7 7 A. I can't comment on what the price of Hamlet was at the a couple of weeks ago, and will see more in the 8 8 time. I don't know when the Gallaher MPI was, if there coming weeks. We are not told what to write in letters, 9 was one at that time. 9 we all construct the letters and they were typed 10 10 **Q.** I don't suppose you will remember, so I'll just tell you invariably by ourselves as well and we used different 11 11 what was happening on Hamlet, if that's the quickest way styles. But the policy from the company was the same, 12 12 it is just my style is different to George's. to do it. If we look at documents we have in annex 26, 13 we can see that on the same date that -- perhaps I'll MR WILLIAMS: Thank you very much. 14 just get it for myself to make sure that's correct. 14 THE CHAIRMAN: Mr Saini. 15 15 Cross-examination by MR SAINI A. Do I need to look at that document? 16 16 Q. It's a Gallaher document, so it's probably not MR SAINI: I have just a few questions, Mr Culham. I am 17 17 worthwhile. (Pause). Sorry, my file has just fallen to counsel for Morrisons and Safeway. 18 18 pieces, I won't be a moment. (Pause). So we see that Can I ask you just a general question? I am 19 on 1 July 2003 Hamlet Miniatures went to 2.76. We get 19 obviously restricting myself to the period from which 20 20 that from annex 26, document 56. {D26/56/129}. We see you became in charge of the Safeway account. 21 21 that after Cafe Creme went up to 2.83, Hamlet Miniatures We see in the file that we have been looking at, 22 22 that's annex 28, both when you were dealing with it and also went up to 2.83. We get that from document 59. So 23 23 what I am suggesting to you --Mr Byas, quite a substantial number of what I call error 24 24 THE CHAIRMAN: What's the question? letters being sent to Mr Thomas. 25 25 Was there something exceptional about the way MR WILLIAMS: -- is that when you put up the price of 77 79 1 Cafe Creme 7p, you expected Hamlet Miniatures to go up 1 Mr Thomas behaved that required so many letters? 2 7p, just as Mr Byas expected the price of Dorchester to 2 A. I think diplomatically I can only refer to what George Confidential 3 go up when the price of Richmond went up? 3 wrote in his business plan, he was ITL 4 4 A. This was just a statement that we had an MPI on 5 5 Cafe Creme that was delayed and reminding -- the reason , but secondly Safeway's own pricing 6 6 for the sentence there was I didn't want Trevor coming policy across all their stores for all products was 7 7 back to me in August saying "You owe me for a lower cost actually, I think, being changed and the buyers didn't 8 price for these products". I do not recollect what 8 actually know sometimes what was going on, because they 9 9 Hamlet was doing at the time or when Gallaher's -- did were -- they introduced the tilt pricing, premium 10 10 they have an MPI? pricing, systems errors, things seemed to be going on 11 THE CHAIRMAN: Well, if you don't recollect, then there is 11 far more in this account outside the buyer's control, or 12 12 no point going into it. he told us they were outside his control. 13 A. No. 13 Q. Can I ask you, please, to go to tab 77, in file 28, 14 MR WILLIAMS: Just looking again further down the page in 14 {D28/77/181}, which is a document you have been asked 15 79, I just wanted to put to you, now that we have looked 15 some questions about. This is your letter to Mr Thomas 16 at some other documents in the file, that the language 16 of 16 June 2003. Do you have that? 17 here of "suggested price" and the question marks, this 17 A. I do, yes. 18 is not representative of the way that the Safeway/ITL 18 Q. You will recall it's the one about the MPI of 19 19 relationship worked, it's a very different sort of 23 June 2003. 20 letter, it's a letter written in this same summer period 20 If you would please go to the second page and to 21 in 2003, and it isn't reflective of the way in which ITL 21 subparagraph (b) at the top, which was the focus of 22 dealt with Safeway. Safeway normally dealt with Safeway 22 certain of Mr Williams' questions. 23 23 (sic) in terms which made it clear --Could you explain to me what the concern was on the

24

25

What was your worry?

THE CHAIRMAN: Sorry, what are you saying is the normal --

78

MR WILLIAMS: Sorry, ITL normally dealt with Safeway on

24

part of ITL which made you include this paragraph there?

A. Safeway, because they had changed their pricing policy MR SAINI: Thank you very much. 2 2 over the last two years, had a propensity to inflate THE CHAIRMAN: Yes, Mr Howard. 3 prices more than either a Budget increase or an MPI. So 3 Re-examination by MR HOWARD 4 4 I was trying to, if there was a 6p MPI increase on **MR HOWARD:** Yes, just a few questions, Mr Culham. 5 5 products, basically asking Safeway not to increase the I want to try and go through it in the order that 6 6 price of that product by more than 6p. Mr Williams went through things. So go, please, to 7 7 Q. What actually happened after this? tab 9. Asking you about this letter, although you were 8 A. Obviously there are various documents. My recollection asked about a lot of letters that you weren't party to, 9 is several prices went up considerably more than were 9 but since you have been asked what was happening in 10 10 reflected in the cost price changes, and there is them, we should look at it. 11 11 instances of products having a double MPI effect like You were shown tab 9, but I think your attention 12 12 some brands that went up 6p went up 12p, some that went wasn't drawn to the last paragraph. Could you just read 13 13 up 8p went up 16p, so we were trying to keep the prices that to yourself. {D28/9/18}. 14 14 down. Safeway, either through a deliberate policy or (Pause) 15 15 inefficiencies, actually were increasing far greater So in terms of bonuses and so on and tactical 16 than the MPI. 16 bonuses, can you explain what's going on in this letter? 17 17 **A.** We have offered Safeway a tactical bonus to reduce the Q. Was that the subject of discussions between you and 18 Mr Thomas? 18 price of Lambert & Butler and John Player Special across 19 **A.** Oh, very much so, because we were trying to keep the 19 their estate, and offered to fully fund it from their 20 20 normal chosen shelf price. prices down, and I don't know whether he actually 21 21 controlled the prices himself or it was at a more senior Q. Right. Interestingly, we can see that, I think the 22 level than him in the Safeway business. 22 questions were put to you on the basis -- you have been 23 23 **Q.** Can I please ask you to turn, finally, to document 79, asked a number of questions to the effect that there 24 24 {D28/79/186}, which you were just being asked questions were differentials and the differentials were, I think, 25 25 about by Mr Williams, which is the suggested price of a fixed amount. Now, if we look at the letter for 83 1 document, you may recall, 1 July 2003. 1 a moment, we can see that Mayfair 20s you are 2 I think you had been informed that certain of the 2 suggesting, or Mr Downham was suggesting a move from 3 suggested prices are suggested prices of Gallaher 3 3.44 down to 3.39. Now, at 3.44, sorry, Mayfair --4 4 products. You recall that? sorry, he is not suggesting a move. Mayfair had moved. 5 5 A. I think there is -- yes, there are, yes. Mayfair had been at 3.44, and we can see that L&B 6 Q. Before I ask you about that specific question, can you Kingsize had been at 3.63, and JPS Kingsize and Lights 7 7 explain why, from ITL's perspective, it paid bonuses to had also been at 3.63, which by my maths is a 19p 8 Safeway and indeed any retailers, bonuses in respect of 8 differential? 9 9 tobacco products? A. Yes, that's correct, yes. 10 10 A. In the case of Safeway specifically, we paid ongoing Q. Right. Now, what I think Mr Williams said to you was 11 11 bonuses to encourage them to sell below RRP price, to the differential that was part of Imperial's strategy at 12 12 have our brands well displayed on their fixtures, and this stage was 20p, and I think he says it's fixed and 13 encouraging distribution of our products, because we 13 it must only be 20p. What do we learn from this where 14 wanted as wide a distribution of our products as 14 we see that here Safeway had themselves priced L&B at 15 15 a 19p differential? 16 **Q.** Was any element of these bonus payments connected to the 16 A. They -- if the differential was 20p, they were not 17 price of a Gallaher product? In other words, did you 17 achieving that in a store price whilst offering tactical 18 expect the Gallaher pricing to change depending on the 18 19 19 bonuses you paid? **Q.** Whose choice was it as to what differential they 20 $\boldsymbol{A.}\,$ Not in a long-term investment or even in the short-term. 20 actually applied? 21 We would increase -- sorry, we would introduce 21 A. Safeway set their own pricing. 22 22 a tactical bonus or remove a tactical bonus, depending **Q.** Right. So perhaps then we could go to 79, I would like 23 on what our brands were priced at, but ongoing certainly 23 to ask you something about that. 79 you were asked

24

25

regarding differentials at all.

there was nothing in the agreement with Safeway

24

25

quite a lot of questions about. {D28/79/187}. Can we

go to the second page, where, in the summary, you say:

- 1 "Hopefully you will be able to correct these 2 urgently, as currently your customers are being 3 overcharged compared to your [and you say that should 4 read] own price policy and your competitors' on most of 5 the products highlighted." 6
 - Who are you trying to benefit by this paragraph?
- **A.** (a) consumers by having lower prices, (b) Safeway that 8 hopefully would sell more if they were at lower prices, 9 and (c) Imperial because it has reduced the price of our 10 brands to make them more competitive so more people
- 11 might buy our brands.
- 12 **Q.** Then go back to tab 15, which is another one of these 13 letters that predates your involvement. You see at 14 tab 15 {D28/15/26} that this is, we see, you were shown
- 15 the bit under "BP/Safeway Pricing", as I understand it
- 16 Safeway are running petrol stations in some sort of
- 17 venture with BP; is that what it was?
- 18 A. Yes, they were BP petrol stations that then had
- 19 a Safeway little mini store on them, a bit like
- 20 Marks & Spencers do now with Simply Food. It was the
- 21 forerunner of that.
- 22 $\boldsymbol{Q}.$ We see that there is a complaint in the letter about ITL
- 23 brands being disadvantaged. What's the complaint in
- 24 terms of disadvantaged and why would Imperial be
- 25 concerned about that?

85

- A. From the reports it seemed that the BP/Safeway pricing 2 position was not treating -- sorry, was treating our
- 3 brands worse than Gallaher brands, and we were seeking
- 4 at least parity or better treatment. So we were being,
- 5 in our mind, disadvantaged. So our brands were more
- 6 expensive on the shelf than our competitors' similar
- 7 products.
- Q. Right. Then you mentioned on a number of times, but
- 9 Mr Williams didn't go to it, tab 1 of the bundle.
- 10 {D28/1/2}. I think we ought to turn to that. Can you,
- 11 first by reference to that letter, which is on
- 12 1 December 1999, which I think you have explained to us
- 13 that you would have seen contemporaneously when you took
- 14 over the account, what does that letter -- just taking
- 15 that -- tell us about the nature of the trading
- 16 relationship with Safeway?
- 17 **A.** It wasn't easy, because they kept increasing pricing.
- 18 Q. What does it tell us as to what you were paying for in
- 19 the trading relationship?
- 20 **A.** It was the four elements we were paying for them to sell
- 21
- 22 **Q.** Point out to us in the letter, how you get that out of
- 23 the letter.
- 24 A. Okay. It's the fifth paragraph down.
- **Q.** Take the third paragraph. What's that dealing with?

- A. It's specifically for reduction below -- price reduction
- 2 below RRP.
- 3 **Q.** Right. Then the fourth paragraph seems to be
- 4 complaining about them selling the brand at full price,
- 5 notwithstanding that they are getting this RRP bonus; is
- 6 that right?
- 7 A. Correct.
- 8 **Q.** To what extent was that a problem, as far as you
 - understood it, at Safeway, where they had said they
- 10 would be below RRP but actually were pricing at RRP or
- 11 above?

9

1

2

25

- 12 A. Sorry, I am not quite sure --
- 13 Q. To what extent, when you became involved, were you aware
- 14 that there was a problem of Safeway getting a bonus to
- 15 price below RRP, then proceeding to price at RRP or
- 16 above?
- 17 A. Okay. The action we took when I had -- prior to me
- 18 taking over the account and when I had the account was
- 19 we deducted from the bonus payment an amount which was
- 20 equal to the volume that was going through at RRP or
- 21 above. So, for example, we only got paid on a certain
- 22 percentage of their volume for the cut price element, so
- 23 the stores that were selling at RRP, ie petrol filling
- 24 stations, received no money for cut price. They only
- 25 received money for availability, distribution, new

- products. So there was only three elements paid to
- petrol filling stations.
- 3 Q. So we have seen this RRP element. Then the fifth
- 4 paragraph refers to a bonus of so much per thousand, and
- 5 containing additional payments for other factors such as
- 6 availability, merchandising and listing of brands, and
- 7 then there is a breakdown of the payment for
- 8 merchandising, listing and availability as so much per
- 9 thousand, and the remaining element is RRP.
- 10 So at this stage, does it appear that there is any
- 11 other element in the trading arrangement, any other
- 12 element of investment in the trading arrangements other
- 13 than these four categories?
- 14 A. No, there wasn't, and at the time I was managing the
- 15 account, later on in the file there is a price file and
- 16 the same amount that's shown in this document is
- 17 repeated in early 2003.
- 18 Q. Then if you go to tab 33 --
- 19 A. Sorry, apart from tactical bonuses.
- 20 Q. Yes, apart from tactical bonuses. If you then go to
- 21 tab 33, you were shown tab 33, page 361. {D28/33/361}.
- 22 Mr Williams showed you the paragraph that reads:
- 23 "In October 2000 Safeway moved to RRP."
- 24 But he didn't show you the preceding two paragraphs.
 - Could you just read those to yourself.

1 **A.** To sell at -- well, we thought their policy was to sell 2 2 Do those paragraphs reflect what we have just seen at RRP, but obviously this is highlighting they have 3 in the letter in December 1999 as to the nature of the 3 actually gone to a premium price position. 4 4 trading arrangement? Q. This Safeway policy where it's RRP plus, did you 5 5 **A.** Yes, in sentiment and actually the values as well. understand when they were doing that whether they 6 6 **Q.** Yes. Let's get the position absolutely clear. As far applied that across the board, so all cigarettes, RRP 7 7 as you were aware, was any other trading arrangement plus 5p, or did they have a policy which differentiated 8 8 other than the tactical bonuses and the situation of the between different cigarettes so that some cigarettes are 9 pre-buy, just leave that pre-buy on one side, other than 9 RRP plus 5p and some are at some different level? 10 that, are you aware of any other trading arrangement 10 A. Well, I wasn't managing the account at this time --11 with Safeway that was entered into other than what we 11 Q. No, but insofar as you had knowledge of the way the 12 12 see on page 361? account was done --13 13 A. The only exception is when, in 2001, we entered into A. They would have done it across the board. 14 negotiations over a unit contract(?), supplying the 14 **Q.** Yes. Now, we see that the letter is in fact relating to 15 15 units for the store, which I don't think is relevant to systems problems, and pointing out or asking whether 16 16 what we are talking about. So that was another this is the reason for errors. I think you were asked 17 17 different arrangement but ongoing, this was the only questions which were about Mr Byas here making reference 18 18 investment apart from tactical bonuses. to the price of Dorchester Superkings coming down. 19 19 Q. Mr Williams has suggested, oh, well, an incentive of Can we look at what he actually says. What he 20 20 some sort must have been paid, didn't tell us what it points out is that Dorchester Kingsize/Superking size 21 21 was, he just says there must be something, we don't know are at 3.58/3.67, Richmond Kingsize/Superking size are 22 22 at 3.63/3.65. These brands, by which I think he must be what it was, unfortunately. But let me ask you this: if 23 23 this unidentified incentive of some unidentified sum had meaning Dorchester and Richmond, applying the policy of 24 24 been paid, in other words if an incentive had been paid premium price plus, should be 3.63/3.66. 25 25 to Safeway, when you took over as national account Now, what we see is he is pointing out a discrepancy 1 manager for Safeway, would you have known about it? 1 in relation to the paired brands. What I wanted to ask 2 2 A. Yes, certainly. you is: if you were pointing out a discrepancy, for 3 **Q.** Would it be possible for sums of money to have been paid instance in relation to the price of Richmond Kingsize 4 4 to Safeway to do things in relation to this account against -- sorry, let me start again. 5 5 which you as national account manager would be ignorant The Kingsize and the Superking size, to what extent 6 6 of? are they looked at as a pair that go together? 7 7 A. Certainly not. Each national account manager wrote A. The Kingsize was a cheaper brand than the Superking 8 a business plan for each account, and estimated the 8 size, and the price difference between the two, Kingsize 9 9 budget or the funding throughout the year, and every and Superkings, has changed considerably over the years. 10 10 invoice that came in from a national account manager had I think originally it was a penny, and then it is 2p, 11 11 to be agreed and signed off. 3p. I don't know what it was at this time, but I am 12 12 **Q.** Now a separate point, can we go to tab 54. {D28/54/109} assuming it was 3p at this time. 13 This is a letter, you were asked some questions about 13 **Q.** What you can see is he is pointing out that in respect 14 the petrol filling station paragraph, but I am afraid 14 of Richmond Kingsize, Imperial is being disadvantaged 15 15 again your attention wasn't completely drawn to all because Dorchester is 5p below it, and in the case of 16 16 aspects of the letter, which I need to do. the Superking size, it has an advantage. Is there 17 17 Just before I do that, look at paragraph 2, where we anything surprising to you in his pointing out the 18 18 position on the Kingsize and Superking size as 19 19 "I note that prices of cigarettes in the petrol a package? Would it have made any sense to have simply 20 filling stations have also been increased by 5p/6p for 20 told them, made a complaint about Kingsize or Superking 21 20 in line with the stores in the superstores. They are 21 size without pointing out what the position was overall 22 22 now therefore premium priced by 5p/6p." in relation to these brands? 23 23 Stopping there for a moment, so at this stage what A. I think it would make sense to highlight that both were 24 24 did you understand Safeway's pricing policy was at the wrong or both were -- need to be considered or for 25 petrol filling stations? 25 Safeway to make a choice. Because if you are trying to

2 have to be honest, you can't withhold the true picture 3 fram them, and that's why last dealer on about 4 generally speaking we wouldn't identify if a product - 5 in a better position than we would like, but there are 6 occasions when the greater good you know, in terns of 7 getting the Kingstee down is actually a bispeer benefit. 6 Q. Then you were tilinen in tab's D(28755), and we see the 9 paragraph where Mr Byas recommended that Safeway move in 10 line with the other grocers, but not Tesco, Asda and 11 cold following up to the common grice of 2.28. Now, where 12 (Alf belborn up to the common grice of 2.28. Now, where 13 obligation on the part of the retailer to accept the 14 cross and that's white and the seek of the seek	1	get if you are trying to encourage retailers, you	1	because you were putting up the price of Imperial's
a generally speaking we wouldn't identify if a product— in a hetter position than we would like, but there are cocasions when the greater good, you know, in terms of getting the Kingstre down is actually a bigger benefit. 4 Q. Then you were taken to tab 50, (2024/55), and We would sold that Saleway move in life with the other grocers, but not Tesco, Asda and We would know and moved both Golden Virginia and life with the other grocers, but not Tesco, Asda We would know any obligation on the part of the retailer to accept the heave count, as far as you know, was there any heave count, as far as you know, was there any heave count, as far as you know, was there any heave count, as far as you know, was there any heave count, as far as you know, was there any heave count, as far as you know, was there any heave count, as far as you know, was there any heave count, as far as you know, was there any heave count, as far as you know, was there any heave count, as far as you know, was there any heave count, as far as you know, was there any heave count, as far as you know, any obligation on the part of the retailer to accept the recommendation? A Never, no Never, no	2	have to be honest, you can't withhold the true picture	2	product?
5 in a better position than we would like, but there are of cassions when the greater good, you know, in terms of getting the Kingsized down is actually a bigger benefit. 7 Pen you were taken to tab 55, (D28/55), and we see the paragraph where Mr Byas recommended that Safeway move in paragraph where Mr Byas recommended that Safeway move in line with the other grocers, but not Tesco, Asal and 10 line with the other grocers, but not Tesco, Asal and 11 kwik Save, and moved both Golden Virginia and 11 kwik Save, and moved both Golden Virginia and 11 kwik Save, and moved both Golden Virginia and 11 kwik Save, and moved both Golden Virginia and 11 kwik Save, and moved both Golden Virginia and 11 kwik Save, and moved both Golden Virginia and 12 kwik Save, and moved both Golden Virginia and 12 kwik Save, and moved both Golden Virginia and 12 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and moved both Golden Virginia and 14 kwik Save, and move the market profit and 14 kwik Save, and move the market pun 14 kwik Save, and 14	3	from them, and that's why I said earlier on about	3	A. There was no I can't envisage it at all. There is no
getting the Kingsize down is actually a bigger benefit. getting the Kingsize down is actually a bigger benefit. getting the Kingsize down is actually a bigger benefit. getting the Kingsize down is actually a bigger benefit. getting the Kingsize down is actually a bigger benefit. getting the Kingsize down is actually a bigger benefit. getting the Kingsize down is actually a bigger benefit. getting the Kingsize down is actually a bigger benefit. getting the Kingsize down is actually a bigger benefit. getting the Kingsize down is actually a bigger benefit. getting the Kingsize down is actually a bigger benefit. getting the Kingsize down is actually a bigger benefit. Kowlik Save, and moved both Golden Virginia and Kowlik Save, and moved both Golden Virginia and Kowlik Save, and moved both Golden Virginia and the account, as far as you knew, was there any the account as far as you knew, was there any the account as far as you knew, was there any the account as far as you knew, was there any about Mr Byas saying at the foot of the page: about Mr Byas saying at the foot of the page: about Mr Byas saying at the foot of the page: about Mr Byas saying at the foot of the page: about mr Byas or any body makes a recommendation? A Now, as a far as you know, any obligation on Safeway to follow getting the Kingsize down is serious and provided that say a december. A Now, as far as you know, any obligation on Safeway to follow getting the Kingsize down is serious and provided that say and the source of the pages and the say, and that's why it? A Now, as far as you know, any obligation on Safeway to follow George's encouragement? A Now, as far as you know, any obligation on the part of oil and this a figure. By bound family there had been occasions where we had introduced actical bounses to hold at MPIs and the say, and that's why it? A Now, as far as you were concerned, was there ever any agreement with Safeway that if you put it, they had on on safeway as a possibly and the source of the others	4	generally speaking we wouldn't identify if a product	4	incentive that we could offer that would encourage
the system of the Kingsize down is actually a bigger benefit. Q. Then you were taken to tab 55, (D28/55), and we see the paragraph where Mr Byas recommended that Safeway move in line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the obligation on the part of the retailer to accept the recommendation? A. Never, no. A. Never in Safe as you know, any obligation on bout tab 65, (D28/65) about Mr. Byas saying at the foot of the page: A. Never in Mr. White we wish to move the market up on a second brands and bring greater profliability to this end of the market, therefore on 2 September please a line market, th	5	in a better position than we would like, but there are	5	a retailer to do that.
the system of the Kingsize down is actually a bigger benefit. Q. Then you were taken to tab 55, (D28/55), and we see the paragraph where Mr Byas recommended that Safeway move in line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the other grocers, but not Tesco, Asda and line with the obligation on the part of the retailer to accept the recommendation? A. Never, no. A. Never in Safe as you know, any obligation on bout tab 65, (D28/65) about Mr. Byas saying at the foot of the page: A. Never in Mr. White we wish to move the market up on a second brands and bring greater profliability to this end of the market, therefore on 2 September please a line market, th	6	occasions when the greater good, you know, in terms of	6	MR HOWARD: Right. Thank you very much indeed.
9 paragraph where Mr Byas recommended that Safeway move in 10 line with the other grocers, but not Tesco, Asida and 10 line with the other grocers, but not Tesco, Asida and 10 line with the other grocers, but not Tesco, Asida and 11 here. Which price file did you have in mind? 14 line with the other grocers, and moved both Golden Virginia and 11 here. Which price file did you have in mind? 14 line with the other grocers are grown and the second of the part of the retailer to accept the 15 line with the count. So I line with the count, as fir as you knew, was there any 14 (Pause) 15 obligation on the part of the retailer to accept the 15 not Mr Byas saying at the foot of the page: 16 about Mr Byas saying at the foot of the page: 17 vector of the Mr Byas saying at the foot of the page: 18 not Mr Byas saying at the foot of the page: 18 not Mr Byas saying at the foot of the page: 19 and of the market, therefore on 2 September please 19 and of the market, t	7	getting the Kingsize down is actually a bigger benefit.	7	
paragraph where Mr Byas recommended that Safeway move in line with the other grocers, but not Tesco, Asda and Kewis Save, and moved both Golden Virginia and 11 here. Which price file did you have in mind? Mr Dyas or anybody makes a recommendation in relation to 15 the account, as fir as you knew, was there any 14 the common price of 2.28. Now, where 15 the account, as fir as you knew, was there any 14 the account, as fir as you knew, was there any 15 obligation on the part of the retailer to accept the 15 the account, as fir as you knew, was there any 16 the account of the common price of 2.28. Now, where 17 the A. Tab 68. (D28/68/147). If you go to page 2, this was a document that was ongoing within the account. So if 17 veromendation? A. Never, no. 17 veromendation? A. Never, no. 18 veromendation? A. Never is a substitution about tab 65. (D28/65) 18 the mount of the page: 19 a figure, the one to the right of that is a figure, 19 a figure, the one to the right of that is a figure, 20 those two figures added together times 5, because that's 21 per outer, gets back to the figure that was in tab 1, and that carried on throughout the whole time 21 increase Richmond brands by 4p and 6p. We would 23 the contrage you to follow on Sterling and Dorchester." We see he says "encourage". Again, was there, as 93 95 I far as you know, any obligation on Safeway to follow 24 encourage you to follow on Sterling and Dorchester." 24 A. It was promotional discount advice. It was an internal document where we paid retailers money, and 25 eorge's encouragement? 3 A. None at all. He is just highlighting that with the 3 Richmond family there had been occasions where we had 6 correct of was account where we paid retailers money, and 5 prices; 16 compared to some of the others we have seen 1 it's saying at the bottom out object the figure that was agreed with Customs & Excise it was actually paid exclusive of VAT, so that's why it's 2 got a strange name. 4 Pass Corr T. Thank you. One of the things I noticed on this prices; 19 bou	8	Q. Then you were taken to tab 55, {D28/55}, and we see the	8	DR SCOTT: I just had a couple of areas I wanted to touch
Illies with the other grocers, but not Tesco, Asda and Illies with the other grocers, but not Tesco, Asda and Illies with the other grocers, but not Tesco, Asda and Illies with the other grocers, but not Golden Virginia and Illies with the other grocers, but not Golden Virginia and Illies with the other grocers, but not Golden Virginia and Illies with the other grocers the did you have in mind? Illies with price file did you have in mind? Illies with a price of all with relation to the mind with relation to whole with as a grout oblight. Illies with as a grout of low. Illies a document that was ongoing within the account. So if we look down to line?, so if we look down to line as a figure, the one to the right of the sa gourned. Illies mind with a part to fee for the pare. Illies with a price fil	9	paragraph where Mr Byas recommended that Safeway move in	9	
Kwik Save, and moved both Golden Virginia and Old Holborn up to the common price of 2.28. Now, where of Mr Bysa or anybody makes a recommendation in relation to the account, as far as you knew, was there any of the account, as far as you knew, was there any of the account, as far as you knew, was there any obligation on the part of the retailer to accept the recommendation?	10	line with the other grocers, but not Tesco, Asda and	10	
12 Old Holborn up to the common price of 2.28. Now, where 13 Mr Byas or anybody makes a recommendation in relation to 14 the account, as far a syou knew, was there any 15 obligation on the part of the retailer to accept the 16 recommendation? 16 Q. You were then asked a question about tab 65, (D28/65) 17 A. Never, no. 18 Q. You were then asked a question about tab 65, (D28/65) 18 the middle that says "PDA bonus ITI. to pay", and that's 19 about Mr Byas saying at the foot of the page: 19 "At the MPI, we wish to move the market up on 20 "At the MPI, we wish to move the market up on 21 Richmond brands and bring greater profitability to this 22 end of the market, therefore on 2 September please 23 increase Richmond brands by 4p and 6p. We would 24 encourage you to follow on Sterling and Dorchester." 25 We see he says "encourage". Again, was there, as 30 95 1 far as you know, any obligation on Safeway to follow 26 George's encouragement? 27 A. Noven at all. He is just highlighting that with the 28 Richmond family there had been occasions where we had 29 introduced tactical bonuses to hold at MPIs and Budgets, 29 and on this occasion we were not doing that. So where 30 it is basically saying, "We are not doing a tactical 31 to that when Imperial's prices go up, then the price of 32 Gallaher's competing product is required to go up in 33 order to maintain the differentials. That's what he 34 says, and that's what appears to be the OPT's case. 35 Now, as far as you were concerned, was three ever 36 Gallaher's product severified to put up the price of 37 Gallaher's sproduct, even if Gallaher didn't put up its 38 prices; Parket, and Morrisons bought the business so they 39 and that down the margins and as I think, you put it, they 30 and a propensity for pricing up rather than pricing down 31 at the stage that you took over? 32 Q. Now, Mr Williams suggested to you that this letter shows 39 that were implicit in these figures look over? 40 A. Never in Safeway and in the time I was an account 41 manager for the company, 20	11	Kwik Save, and moved both Golden Virginia and	11	
Mr Byas or anybody makes a recommendation in relation to the account, as far as you knew, was there any obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer would cacept the account, as far as you knew, was there any obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the retailer to accept the obligation on the part of the page: 17 At the MPI, we wish to move the market up on 28 a figure, the one to the right of that is a figure, those two figures added together times, 5, because that's 29 per outer, gets back to the figure that was in tab 1, and that carried on throughout the whole time. 18 THE CHAIRMAN: What does PDA stand for? 29 A. It was promotional discount advice. It was an internal document where we paid retailers money, and document where	12	Old Holborn up to the common price of 2.28. Now, where	12	
the account, as far as you knew, was there any obligation on the part of the retailer to accept the boligation on the part of the retailer to accept the recommendation? A. Never, no. 17 A. Never, no. 19 A. Never then asked a question about tab 65, (D28/65) 18 B. digure, the one to the right of that is a figure, those two figures added together times 5, because that's per outer, gets back to the figure that was in tab 1, and that carried on throughout the whole time. 18 C. Hardwaha, What does PDA stand for? 18 C. Hardwaha, What does PDA stand for? 18 A. None at all. He is just highlighting that with the 18 C. George's encouragement? 19 A. None at all. He is just highlighting that with the 18 C. George's encouragement? 19 A. None at all. He is just highlighting that with the 18 C. George's encouragement? 19 C. Now, Mr. Williams suggested to you that this letter shows 10 C. Now, Mr. Williams suggested to you that this letter shows 11 C. Now, Mr. Williams suggested to you that this letter shows 11 C. Now, as far as you were concerned, was there ever 19 C. Rollaher's competing product is required to go up in 19 C. Now, Mr. Williams suggested to you that this letter shows 19 C. A. Never in Safeway and in the time I was an account 21 C. A. Never in Safeway and in the time I was an account 21 C. Now, as far as you were concerned, was there ever 19 C. Now, was far as you were concerned, was there ever 19 C. Not with any other account either. Can you envisage any 20 C. Not with any other account either. Can you envisage any 20 C. Not with any other account either. Can you envisage any 20 C. Not with any	13		13	_
obligation on the part of the retailer to accept the recommendation? A. Tab 68. [\text{128}/68/147\]. If you go to page 2, this was a document that was ongoing within the account. So if A. Never, no. 7. A. Never, no. 17. A. Never, no. 18. Q. You were then asked a question about tab 65, [\text{D28}/65\] 18 the well ook down to line 7, so if we go across to column in the middle that says "PDA bonus ITL to pay", and that's a figure, those two figures added together times 5, because that's end of the market up on 2 september please 22 increase Richmond brands by 4p and 6p. We would 23 increase Richmond brands by 4p and 6p. We would 24 encourage you to follow on Sterling and Dorchester." 24. It was promotional discount advice. It was an internal document where we paid retailers money, and 93 25. Far as you know, any obligation on Safeway to follow 2 George's encouragement? 26. A. None at all. He is just highlighting that with the 3 Richmond family there had been occasions where we had 2 it is basically saying. "We are not doing that. So where if's saying at the bottom to adjust the Richmond price, 16 saying at the bottom to adjust the Richmond price, 17 saying at the bottom to adjust the Richmond price, 18 saying at the bottom to adjust the Richmond price, 19 bonus after the MPI." 29. Now, Mr Williams suggested to you that this letter shows 10 that when Imperial's prices go up, then the price of 11 daily with any other accounted, was there ever any agreement with Safeway that if you put up your 19 prices; that they were required to put up the price of 20 Gallaher's competing product is required to go up in 20 galaber's competing product is required to go up in 20 galaber's competing product is required to go up in 20 galaber's competing product is required to go up in 20 galaber's competing product is required to go up in 20 galaber's competing product is required to go up in 20 galaber's competing product is required to go up in 20 galaber's competing product is required to go up in 20 galaber's competing p				
recommendation? A Never, no. 17 A. Never, no. 17 B. Never, no. 17 B. Never, no. 18 B. We look down to line 7, so if we go across to column in the middle that says "PDA bonus ITL to pay", and that's a figure, the one to the right of that is a figure. The one to the secure that the figures but to his a figure, the one to help us in a flat is a figure. The one to figure that was in tab 1, and that carried on throughout that bit and in an arrang	15			
A. Never, no. A. Never, no. You were then asked a question about tab 65, (D28/65) about Mr Byas saying at the foot of the page: "At the MPI, we wish to move the market up on Bickhomoth brands and bring greater profitability to this end of the market, therefore on 2 September please increase Richmond brands by 4p and 6p. We would encourage you to follow on Sterling and Dorchester." We see he says "encourage". Again, was there, as 93 1 far as you know, any obligation on Safeway to follow George's encouragement? A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical O, Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he any agreement with Safeway that if you up ut up your prices? A. Nover in Safeway and in the time I was an account and the middle that says "PDA bonus ITL to pap", and that's the middle that says "PDA bonus ITL to pap", and that's a figure, the one to the right of the tings to fluore to those two figures, and that's what is a figure, those two figures, the one to the right of these to the green that's per outer, gets back to the figure, tho the species back to the figure, thoese PDA Stack to the figure, the one to the right of these that's per outer, gets back to the figure, the one to the right of these that's per outer, gets back to the figure, thoese PDA Stack to the figure, thoese PDA Stady Stack to the figure, the one to the right of the species that's per outer, gets back to the figure, thoese PDA Stand to the figure, thoese PDA Stand that's what is a figure, thoese PDA Stand that's what the say an internal document where we paid retail				
the middle that says "PDA borus ITL to pay", and that's about Mr Byas saying at the foot of the page: "At the MPI, we wish to move the market up on "A. It was promotional discount advice. It was an internal document where we paid retailers money, and "A. It was promotional discount advice. It was an internal document where we paid retailers money, and "B. It was a actually paid exclusive of VAT, so that's why it's "B. A. None at all. He is just highlighting that with the "B. George's encouragement? "A. None at all. He is just highlighting that with the "B. George's encouragement? "A. None at all. He is just highlighting that with the "B. George's encouragement? "A. None at all. He is just highlighting that with the "B. George's encouragement? "A. None at all. He is just highlighting that with the "B. George's encouragement? "A. None at all. He is just highlighting that with the "B. George's encouragement? "B. SCOTT: Thank you. One of	17	A. Never, no.		
about Mr Byas saying at the foot of the page: "At the MPI, we wish to move the market up on the saying at the forton on a Joe and the saying at the forton on a Joe and the saying at the forton on the market up on the saying at the forton on adjust the Richmond price, "A None at all. He is just highlighting that with the "A Richmond family there had been occasions where we had introduced tractical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where "It is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever 15 Now, as far as you were concerned, was there ever 16 A. Never in Safeway and in the time I was an account manager for the company, 20 years, not with any other account either. Q. Not with any other account either. Can you envisage any commercial si				
"At the MPI, we wish to move the market up on 20 those two figures added together times 5, because that's Richmond brands and bring greater profitability to this 21 per outer, gets back to the figure that was in tab 1, and that carried on throughout the whole time. 32 and that carried on throughout the whole time. 33 and that carried on throughout the whole time. 34 and that carried on throughout the whole time. 35 and that carried on throughout the whole time. 35 and that carried on throughout the whole time. 36 and that carried on throughout the whole time. 36 and that carried on throughout the whole time. 36 and that carried on throughout the whole time. 37 and that carried on throughout the whole time. 36 and that carried on throughout the whole time. 38 and that carried on throughout the whole time. 39 and that carried on throughout the whole time. 39 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 30 and that carried on throughout the whole time. 31 and that carried on throughout the whole time. 31 and that carried on throughout the whole time. 31 and that carried on throughout the whole time. 31 and that carried on throughout the whole time. 31 and that carried on throughout the whole time. 31 and that carried on throughout the whole time. 32 Brackalout the whole time. 34 A. It was promotional discount advice. It was a				
Richmond brands and bring greater profitability to this end of the market, therefore on 2 September please 22 and that carried on throughout the whole time. THE CHAIRMAN: What does PDA stand for? A. It was promotional discount advice. It was an internal document where we paid retailers money, and 93 far as you know, any obligation on Safeway to follow 6 George's encouragement? A. None at all. He is just highlighting that with the 8 Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, 1t's basically saying. "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows 10 Cy. Now, Mr Williams suggested to you that this letter shows 11 Callaher's competing product is required to go up in 12 Callaher's competing product is required to go up in 13 conder to maintain the differentials. That's what he 14 says, and that's what appears to be the OFT's case. 15 Now, as far as you were required to put up the price of 26 A. Never in Safeway and in the time I was an account 21 concerned, with any other account either. 22 Concerned with any other account either. 23 Q. Not with any other account either. 24 Callaher's condition in which a retailer would accept 24 commercial situation to put up the price of 60 Gallaher's product.				
end of the market, therefore on 2 September please increase Richmond brands by 4p and 6p. We would encourage you to follow on Sterling and Dorchester." Me see he says "encourage". Again, was there, as 93 far as you know, any obligation on Safeway to follow 1 an arrangement that was agreed with Customs & Excise it 2 George's encouragement? 2 was actually paid exclusive of VAT, so that's why it's 3 A. None at all. He is just highlighting that with the 8 Richmond family there had been occasions where we had 5 introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where 6 is that it doesn't help us in relation to the margins it's saying at the bottom to adjust the Richmond price, 1 it's saying at the bottom to adjust the Richmond price, 1 it's saying at the bottom to adjust the Richmond price, 2 it's saying at the bottom to adjust the Richmond price, 3 it is basically saying, "We are not doing a tactical 5 bonus after the MPI." 9 the Safeway's about margin. Now, I do appreciate that when Imperial's prices go up, then the price of 11 Mr Thomas, but it does seem that Safeway's were very 12 Gallaher's competing product is required to go up in 12 concerned with margins, and as I think you put it, they 13 a prices; 2 was actually paid exclusive of VAT, so that's why it's 2 was actually paid exclusive of VAT, so that's why it's 3 got a strange name. 4 DR SCOTT: Thank you. One of the things I noticed on this introduced tactical bonuses to hold at MPIs and Budgets, 5 price file compared to some of the others we have seen is that it doesn't help us in relation to the margins it that were implicit in these figures. But we understand from your evidence that there was considerable concern 14 that when Imperial's prices go up, then the price of 15 Mr Thomas, but it does seem that Safeway's were very 16 concerned with margins, and as I think you put up they 12 concerned with margins, and as I think you put up 18 the stage that you took over? 1 A. Yes, they did, and obviously I				
increase Richmond brands by 4p and 6p. We would encourage you to follow on Sterling and Dorchester." We see he says "encourage". Again, was there, as 93 95 far as you know, any obligation on Safeway to follow George's encouragement? A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it's saying at the bottom to adjust the Richmond price, bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he assy, and that's what appears to be the OFT's case. Now, as far as you were required to gu tup tup your prices? A. Never in Safeway and in the time I was an account anager for the company, 20 years, not with any other commercial situation in which a retailer would accept an obligation to put up the price of Gallaher's product C. Not with any other account either. Can you envisage any commercial situation in which a retailer would accept an obligation to put up the price of Gallaher's product, seven in Gallaher's product, seven if Gallaher's product, and obligation to put up the price of Gallaher's product, seven if Gallaher's product commercial situation in which a retailer would accept an obligation to put up the price of Gallaher's product C. Not with any other account either. Can you envisage any commercial situation in which a retailer would accept an obligation to put up the price of Gallaher's product. A. Yes, it's actually true with other accounts, in my				
encourage you to follow on Sterling and Dorchester." We see he says "encourage". Again, was there, as 93 1 far as you know, any obligation on Safeway to follow 2 George's encouragement? 2 was actually paid exclusive of VAT, so that's why it's 3 A. None at all. He is just highlighting that with the 4 Richmond family there had been occasions where we had 5 introduced tactical bonuses to hold at MPIs and Budgets, 6 and on this occasion we were not doing that. So where 6 it's saying at the bottom to adjust the Richmond price, 8 it is basically saying, "We are not doing a tactical 9 bonus after the MPI." 9 the Safeway's about margin. Now, I do appreciate that 10 Q. Now, Mr Williams suggested to you that this letter shows 11 that when Imperial's prices go up, then the price of 12 Gallaher's competing product is required to go up in 13 order to maintain the differentials. That's what he 14 says, and that's what appears to be the OFT's case. 15 Now, as far as you were concerned, was there ever 16 Gallaher's product, even if Gallaher didn't put up its 17 prices? 18 A. Never in Safeway and in the time I was an account 19 manager for the company, 20 years, not with any other 20 Q. Not with any other account either. 21 Can be says "encourage". All It was promotional discount advice. It was an internal 22 document where we paid retailers money, and 24 Can be document where we paid retailers money, and 25 document where we paid retailers money, and 25 document where we paid retailers money, and 26 document where we paid retailers money, and 27 prices's encouragement? 2 an an arrangement that was agreed with Customs & Excise it 24 was actually paid exclusive of VAT, so that's why it's 3 an arrangement that was agreed with Customs & Excise it 25 was actually paid exclusive of VAT, so that's why it's 3 got a strange ment. 24 A. It was promotional described was actually paid exclusive of VAT, so that's why it's 3 got a strange ment. 25 PR SCOTT: Thank you. One of the things I noticed on this 3 price file comparted to some o				_
25 We see he says "encourage". Again, was there, as 93 95 1 far as you know, any obligation on Safeway to follow 2 George's encouragement? 3 A. None at all. He is just highlighting that with the 3 Richmond family there had been occasions where we had 4 Richmond family there had been occasions where we had 5 introduced tactical bonuses to hold at MPIs and Budgets, 6 and on this occasion we were not doing that. So where 7 it's saying at the bottom to adjust the Richmond price, 8 it is basically saying, "We are not doing a tactical 9 bonus after the MPI." 9 the Safeway's about margin. Now, I do appreciate that 10 Q. Now, Mr Williams suggested to you that this letter shows 11 that when Imperial's prices go up, then the price of 12 Gallaher's competing product is required to go up in 13 order to maintain the differentials. That's what he 14 says, and that's what appears to be the OFT's case. 15 Now, as far as you were concerned, was there ever 16 any agreement with Safeway that if you put up your 17 prices, that they were required to put up the price of 18 Gallaher's product, even if Gallaher didn't put up its 19 prices? 10 Q. Not with any other account either. Can you envisage any 24 commercial situation in which a retailer would accept 25 A. Yes, it's actually true with other accounts, in my				
1 far as you know, any obligation on Safeway to follow 2 George's encouragement? 3 A. None at all. He is just highlighting that with the 4 Richmond family there had been occasions where we had 5 introduced tactical bonuses to hold at MPIs and Budgets, 6 and on this occasion we were not doing that. So where 6 and on this occasion we were not doing that. So where 7 it's saying at the bottom to adjust the Richmond price, 8 it is basically saying, "We are not doing a tactical 9 bonus after the MPI." 9 the Safeway's about margin. Now, I do appreciate that 10 Q. Now, Mr Williams suggested to you that this letter shows 11 that when Imperial's prices go up, then the price of 12 Gallaher's competing product is required to go up in 13 order to maintain the differentials. That's what he 14 says, and that's what appears to be the OFT's case. 15 Now, as far as you were concerned, was there ever 16 Gallaher's product, even if Gallaher didn't put up its 17 prices? 18 Gallaher's product, even if Gallaher didn't put up its 18 Gallaher's product, even if Gallaher didn't put up its 19 prices? 20 A. Never in Safeway and in the time I was an account 21 commercial situation in which a retailer would accept 22 account either. 23 an arrangement that was agreed with Customs & Excise it 24 was actually paid exclusive of VAT, so that's why it's 25 an obligation to put up the price of Gallaher's product, 2 that were in plicit in that when lings I noticed on this introduced tactical by a fire a first at it doesn't have required to on the safe way so were implicit in these figures. But we understand the mean introduced tactical benue as the table that were implicit in these figures. But we understand the from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was considerable concern the Safeway's about margin. Now,				-
far as you know, any obligation on Safeway to follow George's encouragement? A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had Richmond family there had been occasions where we had Richmond family there had been occasions where we had Introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where It's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical Richmond family may be are not doing a tactical Richmond family may be are not doing a tactical Richmond family may be are not doing a tactical Richmond family may be are not doing a tactical Richmond family may be are not doing a tactical Richmond family there had been occasions where we had Richmond family there had been occasions where we had Richmond family there had been occasions where we had Richmond family there had been occasions where we had Richmond family there had been occasions where we had Richmond family there had been occasions where we had Richmond family there had been occasions where we had Richmond family there had been occasions where we had Richmond family there had been occasions where we had Richmond family there had been occasions where we had Richmond family there had been occasions where we had B of a strange mame. A DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen that it doesn't help us in relation to the margins from your evidence that there was considerable concern that we eniplicit in these figures. But we understand from your evidence that there was considerable concern that we eniplicit in these figures. But we understand from your evidence that there was considerable concern that we eniplicit in these figures. But we understand from your evidence that there was considerable concern that we as about margin. Now, I do appreciate that that when Imperial's prices. But we understa				
2 George's encouragement? 2 A. None at all. He is just highlighting that with the 4 Richmond family there had been occasions where we had 5 introduced tactical bonuses to hold at MPIs and Budgets, 6 and on this occasion we were not doing that. So where 6 and on this occasion we were not doing that. So where 8 it is basically saying, "We are not doing a tactical 9 bonus after the MPL." 9 the Safeway's about margin. Now, I do appreciate that 10 Q. Now, Mr Williams suggested to you that this letter shows 11 that when Imperial's prices go up, then the price of 12 Gallaher's competing product is required to go up in 13 order to maintain the differentials. That's what he 14 says, and that's what appears to be the OFT's case. 15 Now, as far as you were concerned, was there ever 16 any agreement with Safeway that if you put up your 17 prices, that they were required to put up the price of 18 Gallaher's product, even if Gallaher didn't put up its 19 prices? 10 PR SCOTT: Yes, we can understand that. 20 PR SCOTT: Yes, we can understand that. 21 manager for the company, 20 years, not with any other account either. 22 commercial situation in which a retailer would accept 24 that right? 25 A. Yes, it's actually true with other accounts, in my		••		•
A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had Richmond family there had been occasions where each on the margins in relation to the margins in the others we have seen is that it doesn't help us in relation to the margins in the attem exposure occarend Richmond family there had bedgets and saying and the thing the base seen that Safeway in the oncern that the safe from your own me for a lower cost price", and that seems to reflect that margin point. Is Richmond family there have seen to fallaher's product Richmond family there have seen that Safeway that if you put up the price of Gallaher's product Richmond family ther	1	far as you know, any obligation on Safeway to follow	1	an arrangement that was agreed with Customs & Excise it
Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it is saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever prices, that they were required to put up the price of Gallaher's product, even if Gallaher didn't put up its prices? A. Never in Safeway and in the time I was an account manager for the company, 20 years, not with any other account either. PIR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins in the distance of that it doesn't help us in relation to the margins is that it doesn't help us in relation to the margins. But we understand from your evidence that there was considerable concern that were implicit in these figures. But we understand that there was considerable concern that were implicit in these figures. But we understand that there was considerable concern that we understand that it is that it doesn't help us in relation to the margin. Now, I do appreciate that there was considerable concern that there was considerable concern that there was sometimes a certain amount of chaos with there was sometimes a certain amount of chaos with Implicate that there was sometimes a certain amount of chaos with Implicate that there was sometimes a certain amount of chaos with Implicate that there was sometimes a certain amount of chaos with Implicate that there was sometimes a certain amount of chaos with Implicate	2	George's encouragement?	_	
introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where 6 is that it doesn't help us in relation to the margins 7 it's saying at the bottom to adjust the Richmond price, 7 that were implicit in these figures. But we understand 8 it is basically saying, "We are not doing a tactical 8 from your evidence that there was considerable concern 9 bonus after the MPI." 9 the Safeway's about margin. Now, I do appreciate that 10 Q. Now, Mr Williams suggested to you that this letter shows 10 that when Imperial's prices go up, then the price of 11 Mr Thomas, but it does seem that Safeway's were very 12 Gallaher's competing product is required to go up in 12 concerned with margins, and as I think you put it, they 13 order to maintain the differentials. That's what he 13 had a propensity for pricing up rather than pricing down 14 says, and that's what appears to be the OFT's case. 14 at the stage that you took over? 15 Now, as far as you were concerned, was there ever 15 A. Yes, they did, and obviously I can't speak for the 16 any agreement with Safeway that if you put up your 16 internal reasons why in Safeway, but their business was 18 Gallaher's product, even if Gallaher didn't put up its 18 grices, that they were required to put up the price of 19 prices? 19 do. A. Never in Safeway and in the time I was an account 20 DR SCOTT: Yes, we can understand that. 21 manager for the company, 20 years, not with any other account either. 22 coming back and saying "you owe me for a lower cost 24 commercial situation in which a retailer would accept 24 that right? 25 an obligation to put up the price of Gallaher's product 25 A. Yes, it's actually true with other accounts, in my		deorge 3 encouragement.	2	was actually paid exclusive of VAT, so that's why it's
and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. The say, and that's what appears to be the OFT's case. The say agreement with Safeway that if you put up your prices, that they were required to put up the price of Gallaher's product, even if Gallaher didn't put up its prices? A. Never in Safeway and in the time I was an account prices? Q. Not with any other account either. Can you envisage any commercial situation in which a retailer would accept and obligation to put up the price of Gallaher's product, in my.	3			
it's saying at the bottom to adjust the Richmond price, it is saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever says agreement with Safeway that if you put up your May agreement with Safeway that if you put up the price of Gallaher's product, even if Gallaher didn't put up its prices? A. Never in Safeway and in the time I was an account manager for the company, 20 years, not with any other account either. Q. Not with any other account either. Can you envisage any commercial situation in which a retailer would accept concerned with margins, and as I think you put it, they manager for the company, 20 the time I was an account mit the was sometimes a certain amount of chaos with mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they mr Homas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they at thes tage that you took over? A. Yes, they did, and obviously I can't speak for the internal reasons why in Safeway, but their business was on the market, and Morrisons bought the business so they wanted to make the figures look as good as they could do. DR SCOTT: Yes, we can understand that. Earlier on you told us that you did not want Trevor coming back and saying "you owe me for a lower cost price", and that seems to reflect that margin point. Is that right? A. Yes, it's actually true with other accounts, in my		A. None at all. He is just highlighting that with the	3	got a strange name.
it is basically saying, "We are not doing a tactical bonus after the MPI." 9 the Safeway's about margin. Now, I do appreciate that 10 Q. Now, Mr Williams suggested to you that this letter shows 11 that when Imperial's prices go up, then the price of 11 Mr Thomas, but it does seem that Safeway's were very 12 Gallaher's competing product is required to go up in 13 order to maintain the differentials. That's what he 13 had a propensity for pricing up rather than pricing down 14 says, and that's what appears to be the OFT's case. 15 Now, as far as you were concerned, was there ever 16 any agreement with Safeway that if you put up your 17 prices, that they were required to put up the price of 18 Gallaher's product, even if Gallaher didn't put up its 19 prices? 19 do. 10 A. Never in Safeway and in the time I was an account 20 DR SCOTT: Yes, we can understand that. 21 manager for the company, 20 years, not with any other 22 account either. 23 Q. Not with any other account either. Can you envisage any 24 commercial situation in which a retailer would accept 25 an obligation to put up the price of Gallaher's product 26 A. Yes, it's actually true with other accounts, in my	4	A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had	3 4	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this
bonus after the MPI." 9 the Safeway's about margin. Now, I do appreciate that 10 Q. Now, Mr Williams suggested to you that this letter shows 11 there was sometimes a certain amount of chaos with 11 that when Imperial's prices go up, then the price of 11 Mr Thomas, but it does seem that Safeway's were very 12 Gallaher's competing product is required to go up in 13 order to maintain the differentials. That's what he 14 says, and that's what appears to be the OFT's case. 14 at the stage that you took over? 15 Now, as far as you were concerned, was there ever 16 any agreement with Safeway that if you put up your 16 internal reasons why in Safeway, but their business was 17 prices, that they were required to put up the price of 18 Gallaher's product, even if Gallaher didn't put up its 19 do. 20 A. Never in Safeway and in the time I was an account 21 manager for the company, 20 years, not with any other 22 account either. 23 Q. Not with any other account either. Can you envisage any 24 commercial situation in which a retailer would accept 25 an obligation to put up the price of Gallaher's product 26 A. Yes, it's actually true with other accounts, in my	4 5	A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets,	3 4 5	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen
10	4 5 6	A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where	3 4 5 6	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins
that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in 12 concerned with margins, and as I think you put it, they 13 order to maintain the differentials. That's what he 13 had a propensity for pricing up rather than pricing down 14 says, and that's what appears to be the OFT's case. 15 Now, as far as you were concerned, was there ever 16 any agreement with Safeway that if you put up your 16 internal reasons why in Safeway, but their business was 17 prices, that they were required to put up the price of 18 Gallaher's product, even if Gallaher didn't put up its 19 do. 20 A. Never in Safeway and in the time I was an account 21 manager for the company, 20 years, not with any other 22 account either. 23 Q. Not with any other account either. Can you envisage any 24 commercial situation in which a retailer would accept 25 an obligation to put up the price of Gallaher's product 26 A. Yes, it's actually true with other accounts, in my	4 5 6 7	A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price,	3 4 5 6 7	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand
Gallaher's competing product is required to go up in order to maintain the differentials. That's what he order to maintain the differentials. That's what he had a propensity for pricing up rather than pricing down says, and that's what appears to be the OFT's case. 14 at the stage that you took over? Now, as far as you were concerned, was there ever 15 A. Yes, they did, and obviously I can't speak for the internal reasons why in Safeway, but their business was prices, that they were required to put up the price of 17 on the market, and Morrisons bought the business so they wanted to make the figures look as good as they could prices? 19 do. A. Never in Safeway and in the time I was an account 20 DR SCOTT: Yes, we can understand that. Earlier on you told us that you did not want Trevor coming back and saying "you owe me for a lower cost price", and that seems to reflect that margin point. Is that right? A. Yes, it's actually true with other accounts, in my	4 5 6 7 8	A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical	3 4 5 6 7 8	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern
order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever says and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever says agreement with Safeway that if you put up your says agreement with Safeway that if you put up your says says prices, that they were required to put up the price of sallaher's product, even if Gallaher didn't put up its says says says says says says and in the time I was an account says says says says says says says say	4 5 6 7 8 9	A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI."	3 4 5 6 7 8 9	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that
says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever A. Yes, they did, and obviously I can't speak for the internal reasons why in Safeway, but their business was prices, that they were required to put up the price of Gallaher's product, even if Gallaher didn't put up its prices? A. Never in Safeway and in the time I was an account manager for the company, 20 years, not with any other account either. PR SCOTT: Yes, we can understand that. Earlier on you told us that you did not want Trevor coming back and saying "you owe me for a lower cost price", and that seems to reflect that margin point. Is that right? A. Yes, they did, and obviously I can't speak for the internal reasons why in Safeway, but their business was on the market, and Morrisons bought the business so they wanted to make the figures look as good as they could do. DR SCOTT: Yes, we can understand that. Earlier on you told us that you did not want Trevor coming back and saying "you owe me for a lower cost price", and that seems to reflect that margin point. Is that right? A. Yes, it's actually true with other accounts, in my	4 5 6 7 8 9	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows 	3 4 5 6 7 8 9	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with
Now, as far as you were concerned, was there ever any agreement with Safeway that if you put up your 16 internal reasons why in Safeway, but their business was prices, that they were required to put up the price of 17 on the market, and Morrisons bought the business so they Gallaher's product, even if Gallaher didn't put up its prices? 19 do. A. Never in Safeway and in the time I was an account manager for the company, 20 years, not with any other account either. 21 Earlier on you told us that you did not want Trevor coming back and saying "you owe me for a lower cost price", and that seems to reflect that margin point. Is commercial situation in which a retailer would accept an obligation to put up the price of Gallaher's product 25 A. Yes, it's actually true with other accounts, in my	4 5 6 7 8 9 10 11	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of 	3 4 5 6 7 8 9 10	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very
any agreement with Safeway that if you put up your prices, that they were required to put up the price of prices, that they were required to put up the price of allaher's product, even if Gallaher didn't put up its prices? In the time I was an account prices? In the time I was an account account account either. In the time I was an account account either. In the time I was an account account either. In the time I was an account account either. In the time I was an account account either. In the time I was an account account either. In the time I was an account account either. In the time I was an account account either. In the time I was an account account either account either. In the time I was an account account either account either. In the time I was an account account either account either account either account either. In the time I was an account account account either account either account either account either account either. In the time I was an account account account account either account either account either account either account either account	4 5 6 7 8 9 10 11 12	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in 	3 4 5 6 7 8 9 10 11 12	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they
prices, that they were required to put up the price of Gallaher's product, even if Gallaher didn't put up its prices? A. Never in Safeway and in the time I was an account manager for the company, 20 years, not with any other account either. Q. Not with any other account either. Can you envisage any commercial situation in which a retailer would accept an obligation to put up the price of Gallaher's product 17 on the market, and Morrisons bought the business so they wanted to make the figures look as good as they could do. DR SCOTT: Yes, we can understand that. Earlier on you told us that you did not want Trevor coming back and saying "you owe me for a lower cost price", and that seems to reflect that margin point. Is that right? A. Yes, it's actually true with other accounts, in my	4 5 6 7 8 9 10 11 12 13	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he 	3 4 5 6 7 8 9 10 11 12 13	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they had a propensity for pricing up rather than pricing down
Gallaher's product, even if Gallaher didn't put up its prices? A. Never in Safeway and in the time I was an account manager for the company, 20 years, not with any other account either. Q. Not with any other account either. Can you envisage any commercial situation in which a retailer would accept an obligation to put up the price of Gallaher's product 18 wanted to make the figures look as good as they could do. DR SCOTT: Yes, we can understand that. Earlier on you told us that you did not want Trevor coming back and saying "you owe me for a lower cost price", and that seems to reflect that margin point. Is that right? A. Yes, it's actually true with other accounts, in my	4 5 6 7 8 9 10 11 12 13 14	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. 	3 4 5 6 7 8 9 10 11 12 13	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they had a propensity for pricing up rather than pricing down at the stage that you took over?
prices? A. Never in Safeway and in the time I was an account manager for the company, 20 years, not with any other account either. Q. Not with any other account either. Can you envisage any commercial situation in which a retailer would accept an obligation to put up the price of Gallaher's product 19 do. DR SCOTT: Yes, we can understand that. Earlier on you told us that you did not want Trevor coming back and saying "you owe me for a lower cost price", and that seems to reflect that margin point. Is that right? A. Yes, it's actually true with other accounts, in my	4 5 6 7 8 9 10 11 12 13 14 15	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever 	3 4 5 6 7 8 9 10 11 12 13 14	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they had a propensity for pricing up rather than pricing down at the stage that you took over? A. Yes, they did, and obviously I can't speak for the
A. Never in Safeway and in the time I was an account manager for the company, 20 years, not with any other account either. Q. Not with any other account either. Can you envisage any commercial situation in which a retailer would accept an obligation to put up the price of Gallaher's product DR SCOTT: Yes, we can understand that. Earlier on you told us that you did not want Trevor coming back and saying "you owe me for a lower cost price", and that seems to reflect that margin point. Is that right? A. Yes, it's actually true with other accounts, in my	4 5 6 7 8 9 10 11 12 13 14 15 16	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever any agreement with Safeway that if you put up your 	3 4 5 6 7 8 9 10 11 12 13 14 15 16	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they had a propensity for pricing up rather than pricing down at the stage that you took over? A. Yes, they did, and obviously I can't speak for the internal reasons why in Safeway, but their business was
manager for the company, 20 years, not with any other account either. 21 Earlier on you told us that you did not want Trevor coming back and saying "you owe me for a lower cost price", and that seems to reflect that margin point. Is commercial situation in which a retailer would accept an obligation to put up the price of Gallaher's product 25 A. Yes, it's actually true with other accounts, in my	4 5 6 7 8 9 10 11 12 13 14 15 16 17	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever any agreement with Safeway that if you put up your prices, that they were required to put up the price of 	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they had a propensity for pricing up rather than pricing down at the stage that you took over? A. Yes, they did, and obviously I can't speak for the internal reasons why in Safeway, but their business was on the market, and Morrisons bought the business so they
account either. 22 coming back and saying "you owe me for a lower cost 23 Q. Not with any other account either. Can you envisage any 24 commercial situation in which a retailer would accept 25 an obligation to put up the price of Gallaher's product 26 coming back and saying "you owe me for a lower cost 27 price", and that seems to reflect that margin point. Is 28 that right? 29 A. Yes, it's actually true with other accounts, in my	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever any agreement with Safeway that if you put up your prices, that they were required to put up the price of Gallaher's product, even if Gallaher didn't put up its 	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they had a propensity for pricing up rather than pricing down at the stage that you took over? A. Yes, they did, and obviously I can't speak for the internal reasons why in Safeway, but their business was on the market, and Morrisons bought the business so they wanted to make the figures look as good as they could
 Q. Not with any other account either. Can you envisage any commercial situation in which a retailer would accept an obligation to put up the price of Gallaher's product price", and that seems to reflect that margin point. Is that right? A. Yes, it's actually true with other accounts, in my 	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever any agreement with Safeway that if you put up your prices, that they were required to put up the price of Gallaher's product, even if Gallaher didn't put up its prices? 	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they had a propensity for pricing up rather than pricing down at the stage that you took over? A. Yes, they did, and obviously I can't speak for the internal reasons why in Safeway, but their business was on the market, and Morrisons bought the business so they wanted to make the figures look as good as they could do.
24 commercial situation in which a retailer would accept 25 an obligation to put up the price of Gallaher's product 26 that right? 27 A. Yes, it's actually true with other accounts, in my	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever any agreement with Safeway that if you put up your prices, that they were required to put up the price of Gallaher's product, even if Gallaher didn't put up its prices? A. Never in Safeway and in the time I was an account 	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they had a propensity for pricing up rather than pricing down at the stage that you took over? A. Yes, they did, and obviously I can't speak for the internal reasons why in Safeway, but their business was on the market, and Morrisons bought the business so they wanted to make the figures look as good as they could do. DR SCOTT: Yes, we can understand that.
25 an obligation to put up the price of Gallaher's product 25 A. Yes, it's actually true with other accounts, in my	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever any agreement with Safeway that if you put up your prices, that they were required to put up the price of Gallaher's product, even if Gallaher didn't put up its prices? A. Never in Safeway and in the time I was an account manager for the company, 20 years, not with any other	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they had a propensity for pricing up rather than pricing down at the stage that you took over? A. Yes, they did, and obviously I can't speak for the internal reasons why in Safeway, but their business was on the market, and Morrisons bought the business so they wanted to make the figures look as good as they could do. DR SCOTT: Yes, we can understand that. Earlier on you told us that you did not want Trevor
	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever any agreement with Safeway that if you put up your prices, that they were required to put up the price of Gallaher's product, even if Gallaher didn't put up its prices? A. Never in Safeway and in the time I was an account manager for the company, 20 years, not with any other account either. 	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they had a propensity for pricing up rather than pricing down at the stage that you took over? A. Yes, they did, and obviously I can't speak for the internal reasons why in Safeway, but their business was on the market, and Morrisons bought the business so they wanted to make the figures look as good as they could do. DR SCOTT: Yes, we can understand that. Earlier on you told us that you did not want Trevor coming back and saying "you owe me for a lower cost
94	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever any agreement with Safeway that if you put up your prices, that they were required to put up the price of Gallaher's product, even if Gallaher didn't put up its prices? A. Never in Safeway and in the time I was an account manager for the company, 20 years, not with any other account either. Q. Not with any other account either. Can you envisage any	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they had a propensity for pricing up rather than pricing down at the stage that you took over? A. Yes, they did, and obviously I can't speak for the internal reasons why in Safeway, but their business was on the market, and Morrisons bought the business so they wanted to make the figures look as good as they could do. DR SCOTT: Yes, we can understand that. Earlier on you told us that you did not want Trevor coming back and saying "you owe me for a lower cost price", and that seems to reflect that margin point. Is
	4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	 A. None at all. He is just highlighting that with the Richmond family there had been occasions where we had introduced tactical bonuses to hold at MPIs and Budgets, and on this occasion we were not doing that. So where it's saying at the bottom to adjust the Richmond price, it is basically saying, "We are not doing a tactical bonus after the MPI." Q. Now, Mr Williams suggested to you that this letter shows that when Imperial's prices go up, then the price of Gallaher's competing product is required to go up in order to maintain the differentials. That's what he says, and that's what appears to be the OFT's case. Now, as far as you were concerned, was there ever any agreement with Safeway that if you put up your prices, that they were required to put up the price of Gallaher's product, even if Gallaher didn't put up its prices? A. Never in Safeway and in the time I was an account manager for the company, 20 years, not with any other account either. Q. Not with any other account either. Can you envisage any commercial situation in which a retailer would accept 	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	got a strange name. DR SCOTT: Thank you. One of the things I noticed on this price file compared to some of the others we have seen is that it doesn't help us in relation to the margins that were implicit in these figures. But we understand from your evidence that there was considerable concern the Safeway's about margin. Now, I do appreciate that there was sometimes a certain amount of chaos with Mr Thomas, but it does seem that Safeway's were very concerned with margins, and as I think you put it, they had a propensity for pricing up rather than pricing down at the stage that you took over? A. Yes, they did, and obviously I can't speak for the internal reasons why in Safeway, but their business was on the market, and Morrisons bought the business so they wanted to make the figures look as good as they could do. DR SCOTT: Yes, we can understand that. Earlier on you told us that you did not want Trevor coming back and saying "you owe me for a lower cost price", and that seems to reflect that margin point. Is that right?

2 Infragot to do this, can you pay me the house because 1 forgot to put the price up, or for an MPI or something 3 sets out that? 3 Infragot to put the price up, or for an MPI or something 3 sets out that? 4 A Yes, but nothing to do with their selling price, unless 5 there was tactical bonus. 5 DR SCOTT: Can we go back for a moment, and this is my last 5 point really, to tab 9, please, (1987)-148. 6 To You may remember Mr Williams took you to the end of 1 to 9 the paragraph. 7 You may remember Mr Williams took you to the end of 1 to 9 the paragraph. 8 Infragot to do 10 and Mr Howard took you to the end of 1 to 9 the paragraph. 9 The As always the reductions will be fully 10 funded. 9 The Salways the reductions will be fully 10 funded. 11 Funded 12 It wanted last to focus for a moment on those words 1 last plant of the concern about margins was some sort of 1 last plant of the concern about margins was some s	1	experience other buyers have come back and said:	1	setting out such bonus arrangements as there are, plus	
4 A. Yes, but nothing to do with their selling price, unless 5 DR SCOTT: Can we ploake for a moment, and this is my last 6 point really, to tab 9, please, (CBP)7418, 7 You may remember Mr Williams took you to the 7 beginning of tab 9 and Mr Howard took you to the end of 8 tab 9, the paragraph: 9 tab 9, the paragraph: 10 "As always these reductions will be fully 11 funded" 11 wonted just to focus for a moment on those words 12 I wonted just to focus for a moment on those words 13 "as always". What seems to be going on here in the 14 light of the concern about margins was some sort of 15 assurance from IT-1. Disfeways that as the prices moved 16 up and down the houssing would be such that their 17 margins would be maintained, provided they accepted the 18 yangestions that were being made. Have I get that 19 right? 19 A. Yes, but have, yes. 20 A. Yes, but nothing to do with their selling price, unless 10 the concern's point suidentified insentive. If 11 the was introduced at a time of the form of the concern about margins was some sort of 12 up and down the houssing would be such that their 13 right? 14 complete your evidence as for a Saleway is onnemed. 15 I complete your evidence as for a Saleway is onnemed. 16 I complete your evidence as for a Saleway is onnemed. 17 A. I should be staying here? 18 you have, yes. 20 A. Thankyou. 21 THE CHAIRMAN: But, for the moment I can release you from the withese box. 22 PR SCOTT: Thank you very much. 23 does that show what Sideway's shelf price is going to be 24 for thoses. 25 PR SCOTT: Thank you very much. 26 THE CHAIRMAN: So when you talk about the fact that the 27 february is not a part from if there was a tactical bonus on 28 Raffles. 29 A. Ordinarily, no, apart from if there was a tactical bonus on 39 Raffles. 30 does that show what Sideway's shelf price is going to be 30 A Thankyou. 31 The CHAIRMAN: Thank you were much. 32 A complete your sheet with the price on the seem of the part of the price of the	2	I forgot to do this, can you pay me the bonus because	2	where there is a tactical bonus, it then specifically	
b DR SCOTT: Can we go back for a moment, and this is my last rown really, to tab 9, please. (1979/18). You may remember Mr Williams took you to the beginning of tab 9 and Mr Howard took you to the end of tab 9, the paragraph: "As always these reductions will be fully "As always these reductions will be fully "I have been defended." I wanted just to focus for a moment on those words "I light of the concern about margins was some sort of sasurance from ITI. to Safeways that as the prices moved up and down the boursing would be such that their margins would be maintained, provided they accepted the sasurance from ITI. to Safeways that as the prices moved up and down the boursing would be such that their margins would be maintained, provided they accepted the sasurance from ITI. to Safeways that as the prices moved up and down the boursing would be such that their margins would be maintained, provided they accepted the sasurance from ITI. to Safeways that as the prices moved up and down the boursing would be such that their margins would be maintained, provided they accepted the sasurance from ITI. to Safeways to safe that right? A Yes, you have, yes. A RECOTT: Thank you very much indeed. THE CHAIRMAN. Isst sping back to the price file at tab 68, does that show what Safeway's shelf price is going to be for those? THE CHAIRMAN. Safeway's shelf price is going to be for those? THE CHAIRMAN. So when you talk about the fact that the letters that you send are pointing out errors so far as affelse. THE CHAIRMAN: So when you talk about the fact that the letters that you send are pointing out errors so far as a still be the price file where you are shown what their pricing policy you couldn't put the price on a price file because there's at least three different prices orgaing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. THE CHAIRMAN: So the yold you in conversation or at the superstores to be 69 above that. In the superstores to be 69 above that. In the supersto	3	I forgot to put the price up, or for an MPI or something	3	sets out that?	
b DR SCOTT: Can we go back for a moment, and this is my last rown really, to tab 9, please. (1979/18). You may remember Mr Williams took you to the beginning of tab 9 and Mr Howard took you to the end of tab 9, the paragraph: "As always these reductions will be fully "As always these reductions will be fully "I have been defended." I wanted just to focus for a moment on those words "I light of the concern about margins was some sort of sasurance from ITI. to Safeways that as the prices moved up and down the boursing would be such that their margins would be maintained, provided they accepted the sasurance from ITI. to Safeways that as the prices moved up and down the boursing would be such that their margins would be maintained, provided they accepted the sasurance from ITI. to Safeways that as the prices moved up and down the boursing would be such that their margins would be maintained, provided they accepted the sasurance from ITI. to Safeways that as the prices moved up and down the boursing would be such that their margins would be maintained, provided they accepted the sasurance from ITI. to Safeways to safe that right? A Yes, you have, yes. A RECOTT: Thank you very much indeed. THE CHAIRMAN. Isst sping back to the price file at tab 68, does that show what Safeway's shelf price is going to be for those? THE CHAIRMAN. Safeway's shelf price is going to be for those? THE CHAIRMAN. So when you talk about the fact that the letters that you send are pointing out errors so far as affelse. THE CHAIRMAN: So when you talk about the fact that the letters that you send are pointing out errors so far as a still be the price file where you are shown what their pricing policy you couldn't put the price on a price file because there's at least three different prices orgaing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. THE CHAIRMAN: So the yold you in conversation or at the superstores to be 69 above that. In the superstores to be 69 above that. In the supersto	4	like that or extend the promotions.	4	A. Yes, but nothing to do with their selling price, unless	
by point really, to an by please, [028/9/18]. Vom may remember Mr Williams took you to the beginning of the 3 and Mr Howard took you to the beginning of the 3 and Mr Howard took you to the beginning of the 3 and Mr Howard took you to the beginning of the 3 and Mr Howard took you to the beginning of the 3 and Mr Howard took you to the segment of the 3 the by, the paragraph: 'The always these reductions will be fully 'The always these reductions will be fully 'The always the served to be going on here in the search of the sear	5	-	5	there was tactical bonus.	
You may remember Mr Williams took you to the	6		6	0. The suggestion, just going back to the point that	
beginning of tab 9 and Mr Howard took you to the end of 19 tab 9, the paragraph: 10 "As always these reductions will be fully 10 "As always these reductions will be fully 11 finded" 11 Indied					
tub 9, the paragraph: 'As always these reductions will be fully lift funded.'' I wanted just to focus for a moment on those words 'I wanted just to focus for a moment on those words light of the concern about margins was some sort of sasurance from ITL to Safeways that as the prices moved up and down the bonssing would be such tat heir margins would be maintained, provided they accepted the sugestions that were being made. Have I got that right? A Ves, you have, yes. DA Ves, you have, yes. DA SCOTT: Thank you very much indeed. THE CHAIRMAN: I start going back to the price file at tab 68, does that show what Safeway's shelf price is going to be for those? A. Ordinarily, no, apart from if there was a tactical bonus 97 that was introduced at a time. So I think on page 235, at the top of that, we had offered a tactical bonus on Raffles. THE CHAIRMAN: So when you talk about the fact that the letters that you seed are pointing out errors so far as Safeway's pricing policy is concerned, how did you know what their pricing policy was? A The CHAIRMAN: There is no witness, I am not going to take you that was introduced at a time. So I think on page 235, at the top of that, we had offered a tactical bonus on Raffles. THE CHAIRMAN: So when you talk about the fact that the letters that you seed are pointing out errors so far as Safeway's pricing policy is concerned, how did you know what their pricing policy was? A They had to did us, like in petion filling stations it was so safe as a few you, and think is should show the two points before one moves on to the next writers is no P&D agreement. There is, however, a trading agreement to be I think 2 por 3 p more expensive than Tesco's, and in the superstores to be 6 padove that. THE CHAIRMAN: So they told you in conversation or at the trading agreement that has been discovered, and it's an price file because there's at least three different prices ongoing at any time. You have the tilt store as a price file because there's at least three different prices					
10 "As always these reductions will be fully 11 Indied" 12 I wanted just to focus for a moment on those words 13 "as always". What seems to be going on here in the 14 light of the concern about margins was some sort of 15 assurance from ITL to Safeway shat as the prices moved 16 up and down the bonusing would be such that their 17 margins would be maintained, provided they accepted the 18 suggestions that were being made. Have I got that 18 right? 19 right? 20 A. Yes, you have, yes. 21 DR SCOTT: Thank you very much indeed. 21 THE CHAIRMAN: Is though what Safeway's shelf price is going to be 22 for those? 23 A. Ordinarily, no, apart from if there was a tactical bonus on 24 for those? 25 A. Ordinarily, no, apart from if there was a tactical bonus on 26 Safeway's pricing policy is concerned, how did you know what their pricing policy was? 27 THE CHAIRMAN: So when you talk about the fact that the 28 letters that you send are pointing out errors so far as 29 safeway's pricing policy was? 20 A. They had told us, like in petrol filling stations it was to sell at RRP, in their supermarkets it was generally to be let think 2p or 3p more expensive than Tesco's and in the superstores to be 6p above that. 29 THE CHAIRMAN: So they told you in conversation or at meetings? 30 In the CHAIRMAN: The sin was that be even different a price singing at any time. You have the time a first the singer prices in Safeway. 31 If you would posses there's at least three different prices on soging at any time. You have the tits tros as a setting out a calculation of the retail price and what the superstores to be 6p above that. 32 THE CHAIRMAN: Thank you very much. The Chairman There is no witness, lam not going to take you through the correspondence, but I just wanted to make the top of that, we had offered a tactical bonus on the price on going on the witness of the price on going on the time. The price on a price file because there's at least three different price songing at any time. You have the tits tros as a setting out a calculati					
11 funded _" 12 wanted just to focus for a moment on those words 13 "as always". What seems to be going on here in the 14 light of the concern about margins was some sort of 15 assurance from ITL to Safeways that as the prices moved 16 up and down the bonusing would be such that their 17 margins would be maintained, provided they accepted the 18 suggestions that were being made. Have I got that 19 right? 19 right? 20 A. Yes, you have, yes. 21 OR SCOTT: Thanky you very much, Mr Culham, that 22 of the CHAIRMAN: Bust going back to the price file at tab 68, 23 does that show what Safeway's shelf price is going to be 24 for those? 25 A. Ordinarily, no, apart from if there was a tactical bonus 26 or that was introduced at a time. So I think on page 235, 27 at the top of that, we had offered a tactical bonus on 28 Raffles. 29 does have you see a pointing out errors so far as 29 does hat show what Safeway's shelf price is going to what heir pricing policy was? 30 A. Thenkyou. 31 Purther opening submissions by MR SAINI 42 at the top of that, we had offered a tactical bonus on 33 Raffles. 4 THE CHAIRMAN: So when you talk about the fact that the 16 letters that you send are pointing out errors so far as 4 Safeway's pricing policy was? 4 The CHAIRMAN: So when you talk about the fact that the 16 letters that you send are pointing out errors so far as 16 Safeway's pricing policy was? 17 The CHAIRMAN: So when you talk about the fact that the 16 letters that you send are pointing out errors so far as 17 the CHAIRMAN: So when you talk about the fact that the 18 letters that you send are pointing out errors so far as 19 to sell at RRP, in their supermarkets it was generally 10 to be I think 2 or 3 pmore expensive than Tesco's, and 11 in the CHAIRMAN: So were, and the price on going to take you 12 the CHAIRMAN: So they told you in conversation or at 13 meeting? 14 A. Yes. That's also why you couldn't put the price on going at any time. You have the tistore as 16 safeway's pricing policy was? 17 the CHAIRMAN: So they told you in c					
12 I wanted just to focus for a moment on those words 13 "as always". What seems to be going on here in the 14 light of the concern about margins was some sort of 15 assurance from ITL to Safeway shat as the prices moved 16 up and down the bonusing would be such that their 18 suggestions that were being made. Have I got that 19 right? 19 A. Yes, you have, yes. 21 DR SCOTT: Thank you very much indeed. 22 THE CHAIRMAN: Jost going back to the price file at tab 68, 23 does that show what Safeway's shelf price is going to be 24 for those? 25 A. Ordinarily, no, apart from if there was a tactical bonus 26 of that, we had offered a tactical bonus 27 THE CHAIRMAN: So when you talk about the fact that the 28 letters that you send are pointing out errors so far as 29 Safeway's pricing policy is concerned, how did you know what their pricing policy was? 30 Safeway's pricing policy is concerned, how did you know what their pricing policy was? 31 THE CHAIRMAN: So they told you in conversation or at meetings? 32 THE CHAIRMAN: So they told you in conversation or at meetings? 33 In the superstores to be 6p above that. 34 THE CHAIRMAN: So they told you in conversation or at meetings? 35 THE CHAIRMAN: So they told you in conversation or at meetings? 36 Safeway's pricing policy is concerned. 37 THE CHAIRMAN: So they told you in conversation or at meetings? 38 A. They had told us, like in petrol filling stations it was price file because there's at least three different prices in Safeway. 36 THE CHAIRMAN: So they told you in conversation or at meetings? 37 They had told us, like in petrol filling stations it was price file where you are setting out a calculation of the retail price and what the tribunal's accordance with the safe fill where you are setting out a calculation of the retail price and what the tribunal's accordance with the fill where you are setting out a calculation of the retail price and what the tribunal's accordance to the third of the memory. The shall with the discounts - sorry, not the discounts, it's 30 THE C					
13 "as always". What seems to be going on here in the 14 light of the concern about margins was some sort of 15 assurance from ITI. to Steways that as the prices moved 16 up and down the bonusing would be such that their 17 margins would be maintained, provided they accepted the 18 suggestions that were being made. Have I got that 19 right? 19 A. Yes, you have, yes. 20 A. Yes, you have, yes. 21 DR SCOTT. Thank you very much indeed. 22 THE CHAIRMAN: But for the moment I can release you from the 23 does that show what Safeway's shelf price is going to be 24 for those? 25 A. Ordinarily, no, apart from if there was a tactical bonus 26 A rothinary in the price of that was introduced at a time. So I think on page 235, 2 at the top of that, we had offered a tactical bonus on 2 Raffles. 2 Safeway's pricing policy is concerned, how did you know 2 Safeway and Gallaher? 3 does that Ry. In their supermarkets it was generally 3 to be I think 2p or 3p more expensive than Tesco's, and 3 in the superstores to be 6p above that. 4 THE CHAIRMAN: So they told you in conversation or a 4 meetings? 4 A. Pers That salso why you couldn't put the price on 3 a price fibe because there's at least three different 4 prices ongoing at any time. You have the tilt stores as 4 well, so it could be staying here! 4 Safeway shafts But for the moment I can release you from the 4 witness box. 4 THE CHAIRMAN: A sum for the moment I can release you from the 4 witness box. 5 THE CHAIRMAN: Mes Sain, are you going to talk to us about 5 Safeway and Gallaher? 99 10 that was introduced at a time. So I think on page 235, 4 They had to be sum offered a tactical bonus on 5 Raffles. 5 Safeway's pricing policy is concerned, how did you know 6 Safeway's pricing policy is concerned, how did you know 7 what their pricing policy was? 8 A. They had told us, like in petrol filling stations it was 9 to sell at RRP, in their supermarkets it was generally 10 to be I think 2p or 3p more expensive than Tesco's, and 11 in the superstores to be 6p above that. 11 the positi					
light of the concern about margins was some sort of sasurance from ITI. to Safeways that as the prices moved up and down the bonusing would be such that their margins would be maintained, provided they accepted the suggestions that were being made. Have I got that right? A. I should be staying here! Suggestions that were being made. Have I got that right? A. Yes, you have, yes. DA. A. Yes, you have, yes. A. Yes, you have, yes. THE CHAIRMAN: But for the moment I can release you from the withman. I misses box. A. Thank you. THE CHAIRMAN: But for the moment I can release you from the withman. I misses box. A. Thank you. THE CHAIRMAN: But for the moment I can release you from the withman. I misses box. A. Thank you. THE CHAIRMAN: I misses box. THE CHAIRMAN: I misses withdrew) THE CHAIRMAN: I misses with the you going to talk to us about THE CHAIRMAN: I misses with the your going to talk to us about THE CHAIRMAN: I misses with the your going to talk to us about THE CHAIRMAN: I misses with the year of the your going to talk to us about THE CHAIRMAN: I misses with the year of the your going to talk to us about THE CHAIRMAN: I misses with the year of your going to talk to us about THE CHAIRMAN: I misses with drew) THE CHAIRMAN: I misses with the year of your going to talk to us about THE CHAIRMAN: I misses with drew) THE CHAIRMAN: I misses with drew you going to talk to us about THE CHAIRMAN: I misses with drew you going to talk to us about THE CHAIRMAN: I misses with drew you going to talk to us about THE CHAIRMAN: I misses with drew you going to talk to us about THE CHAIRMAN: I misses with drew you going to talk to us about THE CHAIRMAN: I misses with drew you and the with drew and					
15 assurance from ITL to Safeways that as the prices moved up and down the bonusing would be such that their margins would be maintained, provided they accepted the suggestions that were being made. Have I got that 18 suggestions that were being made. Have I got that 18 suggestions that were being made. Have I got that 18 suggestions that were being made. Have I got that 18 suggestions that were being made. Have I got that 19 right? 19 witness box. 19 A. Yes, you have, yes. 20 A. Thank you. 20 THE CHAIRMAN: But for the moment I can release you from the witness box. 21 THE CHAIRMAN: But for the moment I can release you from the witness box. 22 THE CHAIRMAN: Illust going back to the price file at tab 68, 22 THE CHAIRMAN: Illust going back to the price file at tab 68, 22 THE CHAIRMAN: Mr Saint, are you going to talk to us about 24 for those? 24 Safeway and Gallaher? 25 A. Ordinarily, no, apart from if there was a tactical bonus 97 99 THE CHAIRMAN: What was introduced at a time. So I think on page 235, at the top of that, we had offered a tactical bonus on Raffles. 31 the top of that, we had offered a tactical bonus on Raffles. 32 the top of that, we had offered a tactical bonus on Raffles. 33 three that the 16 letters that you send are pointing out errors so far as 5 safeway's pricing policy is concerned, how did you know 40 their pricing policy was? 40 to sell at RRP, in their supermarkets it was generally 50 to sell at RRP, in their supermarkets it was generally 61 to be I think 2 por 3p more expensive than Tesco's, and 62 in the superstores to be 6p above that. 62 the third point apprecia on a price file because there's at least three different 61 greenment 50 to be I think 18 you you couldn't put the price on a price file because there's at least three different 61 greenment 50 to could be seven different prices in Safeway. 61 from the superstores to be 6p above that. 61 from the superstores to be 6p above that. 62 from the superstores to be 6p above that. 63 from the superstores to be 6p above that. 64 from t					
16 up and down the bonusing would be such that their 17 margins would be maintained, provided they accepted the 18 suggestions that were being made. Have I got that 19 right? 19 A. Yes, you have, yes. 20 A. Yes, you have, yes. 21 DR SCOTT: Thank you very much indeed. 22 THE CHAIRMAN: Just going back to the price file at tab 68, 23 does that show what Safeway's shelf price is going to be 24 for those? 25 A. Ordinarily, no, apart from if there was a tactical bonus 26 yor 27 THE CHAIRMAN: Mr Saint, are you going to talk to us about 28 affects 29 THE CHAIRMAN: Mr Saint, are you going to talk to us about 29 THE CHAIRMAN: So when you talk about the fact that the 20 at the top of that, we had offered a tactical bonus on 21 RASAINI: There is no witness, I am not going to take you 22 the CHAIRMAN: So when you talk about the fact that the 23 letters that you send are pointing out errors so far as 24 Safeway's pricing policy is concerned, how did you know 25 what their pricing policy is concerned, how did you know 26 what their pricing policy is concerned, how did you know 27 The position of Safeway is, in common with the 28 position articulated by Gallaher, that there is no P&D 39 agreement. There is, however, a trading agreement 30 to sell at RRP, in their supermarkets it was generally 31 to sell at RRP, in their supermarkets it was generally 32 a price file because there's at least three different 33 price file because there's at least three different 34 price file because there's at least three different 35 prices ongoing at any time. You have the tilt stores as 36 well, so it could be seven different prices in Safeway. 37 A. Yes. That's also why you couldn't put the price on 38 a price file because there's at least three different 39 prices ongoing at any time. You have the rit its stores as 30 well, so it could be seven different prices in Safeway. 31 a left chairman and incentives but I wanted to draw the Tribunal's attention, please, to the third 39 prices ongoing at any time. You have the rite of the price of the					
margins would be maintained, provided they accepted the suggestions that were being made. Have I got that right? A. Yes, you have, yes. A. Yes, you have, yes. B. SCOTT: Thank you wery much indeed. THE CHAIRMAN: How they suggestions that were being made. Have I got that was going to the price file at tab 68, does that show what Safeway's shelf price is going to be for those? A. Ordinarily, no, apart from if there was a tactical bonus of that was introduced at a time. So I think on page 235, at the top of that, we had offered a tactical bonus on Rafles. THE CHAIRMAN: So when you talk about the fact that the letters that you send are pointing out errors so far as Safeway's pricing policy is concerned, how did you know what their pricing policy was? A. They out was a factical bonus on Rafles. THE CHAIRMAN: So when you talk about the fact that the letters that you send are pointing out errors so far as to sell at RRP, in their supermarkets it was generally to be I think 2 por 3p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: So why you couldn't put the price on a price file because there's at least three different for prices ongoing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. Further re-examination by MR HOWARD MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? A. It is just effectively their cost price and what the price on the price and it's setting out essentially their discounts - sorry, not the discounts, it's					
suggestions that were being made. Have I got that pright? A. Yes, you have, yes. DR SCOTT: Thank you very much indeed. THE CHAIRMAN: Just going back to the price file at tab 68, does that show what Safeway's shelf price is going to be for those? A. Ordinarily, no, apart from if there was a tactical bonus of that was introduced at a time. So I think on page 235, at the top of that, we had offered a tactical bonus on Raffles. THE CHAIRMAN: Just going back to the price file at tab 68, afterway and Gallaher? A. Ordinarily, no, apart from if there was a tactical bonus on Raffles. THE CHAIRMAN: Mr Saini, are you going to talk to us about Safeway and Gallaher? Purther opening submissions by MR SAINI The CHAIRMAN: So when you talk about the fact that the two points before one moves on to the next witness, and that's in relation to the agreements concerning Safeway and Gallaher. THE CHAIRMAN: So when you talk about the fact that the two points before one moves on to the next witness, and that's in relation to the agreements concerning Safeway and Gallaher. The position of Safeway is, in common with the position articulated by Gallaher, that there is no P&D agreement. There is, however, a trading agreement to be I think 2p or 3p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: But for the moment I can release you from the witness box. THE CHAIRMAN: Thank you. THE CHAIRMAN: Thank you. THE CHAIRMAN: Mr Saini, are you going to talk to us about Safeway and Gallaher? A they of that was introduced at a time. So I think on page 235, and the top of that, we had offered a tactical bonus on the fact that the lefters that you send are pointing out errors so far as a trought of the wash of the point of the expension of the expension of the point of the page with the point on the agreement that has been discovered, and it that's bould show the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal's attention, please, to the th					
right? A. Yes, you have, yes. DR SCOTT: Thank you very much indeed. THE CHAIRMAN: Just going back to the price file at tab 68, 22 (The witness withdrew) THE CHAIRMAN: Just going back to the price file at tab 68, 22 (The witness withdrew) THE CHAIRMAN: Mr Saini, are you going to talk to us about Safeway and Gallaher? A. Ordinarily, no, apart from if there was a tactical bonus on 79 The CHAIRMAN: Mr Saini, are you going to talk to us about Safeway and Gallaher? THE CHAIRMAN: Mr Saini, are you going to talk to us about Safeway and Gallaher? THE CHAIRMAN: Mr Saini, are you going to talk to us about Safeway and Gallaher? THE CHAIRMAN: So when you talk about the fact that the 1 letters that you send are pointing out errors so far as 5 faway's pricing policy is concerned, how did you know 6 Safeway's pricing policy was? A. They had to did us, like in petrol filling stations it was 9 to sell at RRP, in their supermarkets it was generally 9 to be I think 2p or 3p more expensive than Tesco's, and 10 to be I think 2p or 3p more expensive than Tesco's, and 11 in the superstores to be 6p above that. THE CHAIRMAN: So why you couldn't put the price on 2 a price file because there's at least three different 5 prices ongoing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. Further re-examination by MR HOWARD 18 MR HOWARD 19 MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? A. It's just effectively their cost price and it's setting out essentially 24 their discounts sorry, not the discounts, it's 55					
A. Tres, you have, yes. Description of Sacord State Show what Safeway's shelf price is going to be for those? A. Ordinarily, no, apart from if there was a tactical bonus of that was introduced at a time. So I think on page 235, at the top of that, we had offered a tactical bonus on Raffles. THE CHAIRMAN: Journal of the top of that, we had offered a tactical bonus on Raffles. THE CHAIRMAN: So when you talk about the fact that the letters that you send are pointing out errors so far as Safeway's pricing policy is concerned, how did you know what their pricing policy was? A. They had told us, like in petrol filling stations it was to sel at RRP, in their supermarkets it was generally to be I think 2p or 3p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: So when you talk about the fact that the letters that you send are pointing out errors so far as Safeway's pricing policy is concerned, how did you know what their pricing policy was? A. They had told us, like in petrol filling stations it was to sel at RRP, in their supermarkets it was generally to be I think 2p or 3p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: Thank you. The CHAIRMAN					
THE CHAIRMAN: Isos going back to the price file at tab 68, 22 (The witness withdrew) The CHAIRMAN: Just going back to the price file at tab 68, 23 (The witness withdrew) The CHAIRMAN: Mr Saini, are you going to talk to us about 25 (Safeway and Gallaher? A. Ordinarily, no, apart from if there was a tactical bonus 97 that was introduced at a time. So I think on page 235, 24 the top of that, we had offered a tactical bonus on 3 Raffles. 3 through the correspondence, but I just wanted to make 4 two points before one moves on to the next witness, and 1 letters that you send are pointing out errors so far as 5 fareway's pricing policy was? 4. They fail and to the agreements concerning Safeway and Gallaher. 7 what their pricing policy was? 5 fareway's pricing policy is concerned, how did you know 4 what their pricing policy was? 6 safeway's pricing policy was? 7 the position of Safeway is, in common with the 9 position articulated by Gallaher, that there is no PRD agreement. There is, however, a trading agreement 5 to be I think 2 por 3 pm more expensive than Tesco's, and 10 between Gallaher and Safeway, and I think I should show 5 the Tribunal that, because I think I may not have 6 price on 1 a price file because there's at least three different 1 prices ongoing at any time. You have the tilt stores as 1 a price file because there's at least three different 1 prices ongoing at any time. You have the tilt stores as 1 a price file because there's at least three different 2 operated here, this is not a price file where you are 2 setting out a calculation of the retail price and what 2 the margin would be; that's right? 2 setting out a calculation of the retail price and what 2 their discounts sorry, not the discounts, it's 2 setting out a calculation of the retail price and what 2 their discounts sorry, not the discounts, it's 2 setting out assentially 2 their discounts sorry, not the discounts, it's 2 setting out assentially 2 their discounts sorry, not the discounts, it's 2 setting out assentially 2 se		-			
THE CHARMAN: Just going back to the price file at tab 68, does that show what Safeway's shelf price is going to be 7 to frothose? A. Ordinarily, no, apart from if there was a tactical bonus 97 1 that was introduced at a time. So I think on page 235, at the top of that, we had offered a tactical bonus on Raffles. 3 THE CHARMAN: Mr Saini, are you going to talk to us about 5 afeway and Gallaher? 99 1 that was introduced at a time. So I think on page 235, at the top of that, we had offered a tactical bonus on Raffles. 3 THE CHARMAN: So when you talk about the fact that the 5 letters that you send are pointing out errors so far as 5 fax's in relation to the agreements concerning Safeway and Gallaher. 7 WAS AINI: There is no witness, I am not going to take you through the correspondence, but I just wanted to make two points before one moves on to the next witness, and that's in relation to the agreements concerning Safeway and Gallaher. 7 The CHARMAN: So when you talk about the fact that the 5 letters that you send are pointing out errors so far as 5 fax's in relation to the agreements concerning Safeway and Gallaher. 7 The CHARMAN: So when you talk about the fact that the 6 letters that you send are pointing out errors so far as 5 fax's in relation to the agreements concerning Safeway and Gallaher. 7 The position of Safeway is, in common with the 7 position of Safeway is, in common with the 9 position articulated by Gallaher, that there is no P&D agreement. There is, however, a trading agreement 1 the Tibunal that, because I think I may not have 1 be 1 think 2 p or 3 p more expensive than Tesco's, and 1 between Gallaher and Safeway, and I think I should show 1 the Tribunal that, because I think I may not have 1 brought it to your attention in my original opening. 14 (206544(a)/125). This is the only signed trading agreement that has been discovered, and it's an ag					
does that show what Safeway's shelf price is going to be for those? A. Ordinarily, no, apart from if there was a tactical bonus 97 1 that was introduced at a time. So I think on page 235, at the top of that, we had offered a tactical bonus on Raffles. 3 the top of that, we had offered a tactical bonus on Raffles. 4 THE CHAIRMAN: So when you talk about the fact that the letters that you send are pointing out errors so far as Safeway's pricing policy is concerned, how did you know what their pricing policy was? A. They had told us, like in petrol filling stations it was generally to be I think 2p or 3p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: So they told you in conversation or at meetings? A. Yes. That's also why you couldn't put the price on a price file because there's at least three different prices ongoing at any time. You have the till stores as well, so it could be seven different prices in Safeway. Further re-examination by MR HOWARD MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? 23 THE CHAIRMAN: Mr Saini, are you going to talk to us about Safeway and Gallaher? 44 A. It was introduced at a time. So I think on page 235, and the top of that, we had offered a tactical bonus on the next witness, and through the correspondence, but I just wanted to make two points before one moves on to the next witness, and through the correspondence, but I just wanted to make two points before one moves on to the next witness, and through the correspondence, but I just wanted to make two points before one moves on to the next witness, and through the correspondence, but I just wanted to make two points before one moves on to the next witness, and the two points before one moves on to the next witness, and through the correspondence, but I just wanted to make that's in relation to the agreements concerning Safeway and Galla		• •		THE CHAIRMAN: Thank you.	
A. Ordinarily, no, apart from if there was a tactical bonus 97 99 1 that was introduced at a time. So I think on page 235, 2 at the top of that, we had offered a tactical bonus on Raffles. 3 through the correspondence, but I just wanted to make 4 two points before one moves on to the next witness, and 6 letters that you send are pointing out errors so far as 6 Safeway's pricing policy is concerned, how did you know 7 what their pricing policy was? 8 A. They had told us, like in petrol filling stations it was 9 to sell at RRP, in their supermarkets it was generally 10 to be I think 2p or 3p more expensive than Tesco's, and 11 in the superstores to be 6p above that. 11 THE CHAIRMAN: So they told you in conversation or at 12 meetings? 13 If you would please go to annex 26 and to tab 54(a). 14 A. Yes. That's also why you couldn't put the price on 15 a price file because there's at least three different 16 prices ongoing at any time. You have the tilt stores as 17 well, so it could be seven different prices in Safeway. 18 Further e-examination by MR HOWARD 19 MR HOWARD: Just to be clear, the way the price file 20 operated here, this is not a price file where you are 21 setting out a calculation of the retail price and what 22 the margin would be; that's right? 23 A. It's just effectively their cost price. 24 Q. It's their cost price and it's setting out essentially 25 their discounts sorry, not the discounts, it's 24 Safeway and Gallaher? 25 Safeway and Gallaher? Further opening submissions by MR SAINI Further pening submissions by MR SAINI MR SAINI: There is no witness, I am not going to take you 2 through the correspondence, but I just wanted to make 2 through the correspondence, but I just wanted to make 2 through the correspondence, but I just wanted to desired the correspondence, but I just wanted to desired the margin would be; that's right? 2 confidential 3 further opening submissions by MR SAINI A. It's just element of the catchian of the pening but is a water on the pening submissions by MR SAINI 4					
25 A. Ordinarily, no, apart from if there was a tactical bonus 97 99 1 that was introduced at a time. So I think on page 235, at the top of that, we had offered a tactical bonus on 3 Raffles. 3 through the correspondence, but I just wanted to make 4 THE CHAIRMAN: So when you talk about the fact that the 9 letters that you send are pointing out errors so far as 6 Safeway's pricing policy is concerned, how did you know 9 what their pricing policy was? 7 The position of Safeway is, in common with the 8 A. They had told us, like in petrol filling stations it was 9 to sell at RRP, in their supermarkets it was generally 10 to be I think 2p or 3p more expensive than Tesco's, and 11 in the superstores to be 6p above that. 12 THE CHAIRMAN: So they told you in conversation or at 13 meetings? 14 A. Yes. That's also why you couldn't put the price on 15 a price file because there's at least three different 16 prices ongoing at any time. You have the tilt stores as 17 well, so it could be seven different prices in Safeway. 18 MR VAINI: There is no witness, I am not going to take you 19 through the correspondence, but I just wanted to make 10 two points before one moves on to the next witness, and 11 two points before one moves on to the next witness, and 12 the position of Safeway is, in common with the 13 position articulated by Gallaher, that there is no P&D 14 position of Safeway is, in common with the 15 position articulated by Gallaher, that there is no P&D 16 agreement. There is, however, a trading agreement 16 between Gallaher and Safeway, and I think I should show 17 the Tribunal that, because I think I may not have 18 brought it to your attention in my original opening. 19 If you would please go to annex 26 and to tab 54(a). 10 (D26/54(a)/125). This is the only signed trading 19 a price file because there's at least three different 15 agreement that has been discovered, and it's 16 prices ongoing at any time. You have the tilt stores as 17 well as the price in the tribunal's attention, please, to the third 18 page,	23	does that show what Safeway's shelf price is going to be		THE CHAIRMAN: Mr Saini, are you going to talk to us about	
that was introduced at a time. So I think on page 235, at the top of that, we had offered a tactical bonus on Raffles. THE CHAIRMAN: So when you talk about the fact that the letters that you send are pointing out errors so far as Safeway's pricing policy was? A. They had told us, like in petrol filling stations it was to sell at RRP, in their supermarkets it was generally to be I think 2p or 3p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: So they told you in conversation or at meetings? A. Yes. That's also why you couldn't put the price on a price file because there's at least three different prices ongoing at any time. You have the tilt stores as Further opening submissions by MR SAINI MR SAINI: There is no witness, I am not going to take you through the correspondence, but I just wanted to make two points before one moves on to the next witness, and that's in relation to the agreements concerning Safeway and Gallaher. The position of Safeway is, in common with the position articulated by Gallaher, that there is no P&D agreement. There is, however, a trading agreement between Gallaher and Safeway, and I think I should show the Tribunal that, because I think I may not have brought it to your attention in my original opening. If you would please go to annex 26 and to tab 54(a). A. Yes. That's also why you couldn't put the price on a price file because there's at least three different prices ongoing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. Further re-examination by MR HOWARD MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? A. It's just effectively their cost price. Q. It's their cost price and it's setting out essentially their discounts sorry, not the discounts, it's	24	for those?		Safeway and Gallaher?	
that was introduced at a time. So I think on page 235, at the top of that, we had offered a tactical bonus on Raffles. THE CHAIRMAN: So when you talk about the fact that the letters that you send are pointing out errors so far as Safeway's pricing policy is concerned, how did you know what their pricing policy was? A. They had told us, like in petrol filling stations it was to sell at RRP, in their supermarkets it was generally to be I think 2p or 3p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: So they told you in conversation or at meetings? A. Yes. That's also why you couldn't put the price on a price in le because there's at least three different prices on going at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. Further re-examination by MR HOWARD MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? It where the top of that's right? A. It's lust effectively their cost price. The position of Safeway is, in common with the position of Safeway is, in common with the position articulated by Gallaher, that there is no P&D agreement. There is, however, a trading agreement between Gallaher, that there is no P&D agreement. There is, however, a trading agreement to be think 2p or 3p more expensive than Tesco's, and the Tribunal that, because I think I may not have between Gallaher and Safeway, and I think I should show the Tribunal that, because I think I may not have brought it to your attention in my original opening. If you would please go to annex 26 and to tab 54(a). [V26/54(a)/125}, This is the only signed trading agreement that has been discovered, and it's an agreement from I January 2003 to 31 December 2003. Page 1 deals with volume and incentives but I wanted to draw the Tribunal's attention, please, to the third gallaher. Confidential Gallaher.	25	A. Ordinarily, no, apart from if there was a tactical bonus	25		
at the top of that, we had offered a tactical bonus on Raffles. 3 through the correspondence, but I just wanted to make two points before one moves on to the next witness, and letters that you send are pointing out errors so far as Safeway's pricing policy is concerned, how did you know what their pricing policy was? A. They had told us, like in petrol filling stations it was to sell at RRP, in their supermarkets it was generally to be I think 2p or 3p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: So they told you in conversation or at meetings? A. Yes. That's also why you couldn't put the price on a price file because there's at least three different prices ongoing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. Further re-examination by MR HOWARD MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the agreements oncerning Safeway and Gallaher. The position of Safeway is, in common with the position of Safeway is, in common with the position articulated by Gallaher, that there is no P&D agreement. There is, however, a trading agreement between Gallaher and Safeway, and I think I should show the Tribunal that, because I think I may not have brought it to your attention in my original opening. If you would please go to annex 26 and to tab 54(a). (D26/54(a)/125). This is the only signed trading agreement from 1 January 2003 to 31 December 2003. Page 1 deals with volume and incentives but I wanted to draw the Tribunal's attention, please, to the third page, which is marked 259 in the bottom right-hand corner. If I may read it, I quote paragraph 3: Confidential Gallaher Confidential Gallaher		97		99	
at the top of that, we had offered a tactical bonus on Raffles. 3 through the correspondence, but I just wanted to make two points before one moves on to the next witness, and letters that you send are pointing out errors so far as Safeway's pricing policy is concerned, how did you know what their pricing policy was? A. They had told us, like in petrol filling stations it was to sell at RRP, in their supermarkets it was generally to be I think 2p or 3p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: So they told you in conversation or at meetings? A. Yes. That's also why you couldn't put the price on a price file because there's at least three different prices ongoing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. Further re-examination by MR HOWARD MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the agreements oncerning Safeway and Gallaher. The position of Safeway is, in common with the position of Safeway is, in common with the position articulated by Gallaher, that there is no P&D agreement. There is, however, a trading agreement between Gallaher and Safeway, and I think I should show the Tribunal that, because I think I may not have brought it to your attention in my original opening. If you would please go to annex 26 and to tab 54(a). (D26/54(a)/125). This is the only signed trading agreement from 1 January 2003 to 31 December 2003. Page 1 deals with volume and incentives but I wanted to draw the Tribunal's attention, please, to the third page, which is marked 259 in the bottom right-hand corner. If I may read it, I quote paragraph 3: Confidential Gallaher Confidential Gallaher	1	that was introduced at a time. So I think on page 235	1	Further opening submissions by MR SAINI	
THE CHAIRMAN: So when you talk about the fact that the Iters that you send are pointing out errors so far as Iters that you send are pointing out errors so far as Safeway's pricing policy is concerned, how did you know what their pricing policy was? A. They had told us, like in petrol filling stations it was what their supermarkets it was generally agreement. There is, however, a trading agreement to be I think 2 p or 3 p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: So they told you in conversation or at price file because there's at least three different prices ongoing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. Further re-examination by MR HOWARD MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? A. It's just effectively their cost price. It would be some moves on to the next witness, and two points before one moves on to the next witness, and two points before one moves on to the next witness, and though a two points before one moves on to the next witness, and that's in relation to the agreements concerning Safeway and Callaher. The position of Safeway is, in common with the position are leadened. The position of Safeway is, in common with the position and Callaher. The position of Safeway is, in common with the position and Callaher. The position of Safeway is, in common with the position and Callaher. The position of Safeway is, in common with the position and Callaher. The position of Safeway is, in common with the position and Callaher. The position of Safeway is, in common with the position and Callaher is in P&D and Callaher. The position of Safeway is, in common with the position and Callaher is not As Two in the Way D&D agreement and Callaher is not a price file where you are and that she be of safeway is, in common with the position and Callaher					
THE CHAIRMAN: So when you talk about the fact that the letters that you send are pointing out errors so far as Safeway's pricing policy is concerned, how did you know what their pricing policy was? A. They had told us, like in petrol filling stations it was to sell at RRP, in their supermarkets it was generally to be I think 2p or 3p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: So they told you in conversation or at meetings? A. Yes. That's also why you couldn't put the price on a price file because there's at least three different prices ongoing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. Further re-examination by MR HOWARD MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? A. It's just effectively their cost price. The position of Safeway is, in common with the that's in relation to the agreements concerning Safeway and Gallaher. The position of Safeway is, in common with the position of Safeway is, in common with the position articulated by Gallaher, that there is no P&D agreement. There is, however, a trading agreement the tast there is no P&D agreement. There is, however, a trading agreement the tribunal that, because I think I may not have brought it to your attention in my original opening. If you would please go to annex 26 and to tab 54(a). [D26/54(a)/125). This is the only signed trading agreement that has been discovered, and it's an agreement from 1 January 2003 to 31 December 2003. Page 1 deals with volume and incentives but I wanted to draw the Tribunal's attention, please, to the third page, which is marked 259 in the bottom right-hand corner. If I may read it, I quote paragraph 3: Confidential Gallaher		-			
betters that you send are pointing out errors so far as Safeway's pricing policy is concerned, how did you know what their pricing policy was? A. They had told us, like in petrol filling stations it was so to sell at RRP, in their supermarkets it was generally to be I think 2p or 3p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: So they told you in conversation or at meetings? A. Yes. That's also why you couldn't put the price on a price file because there's at least three different prices ongoing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the ridiscounts sorry, not the discounts, it's that's in relation to the agreements concerning Safeway and Gallaher. The position of Safeway is, in common with the position articulated by Gallaher, that there is no P&D agreement. There is, however, a trading agreement between Gallaher and Safeway, and I think I should show the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribunal that, because I think I may not have the Tribuna					
6 Safeway's pricing policy is concerned, how did you know 7 what their pricing policy was? 8 A. They had told us, like in petrol filling stations it was 9 to sell at RRP, in their supermarkets it was generally 10 to be I think 2p or 3p more expensive than Tesco's, and 11 the Superstores to be 6p above that. 12 THE CHAIRMAN: So they told you in conversation or at 13 meetings? 14 A. Yes. That's also why you couldn't put the price on 15 a price file because there's at least three different 16 prices ongoing at any time. You have the tilt stores as 17 well, so it could be seven different prices in Safeway. 18 Further re-examination by MR HOWARD 19 MR HOWARD: Just to be clear, the way the price file 20 operated here, this is not a price file where you are 21 setting out a calculation of the retail price and what 22 their discounts sorry, not the discounts, it's 25 their discounts sorry, not the discounts, it's 26 and Gallaher. 7 The position of Safeway is, in common with the 28 position articulated by Gallaher, that there is no P&D 29 The position of Safeway is, in common with the 20 position articulated by Gallaher, that there is no P&D 20 position articulated by Gallaher, that there is no P&D 21 position of Safeway is, in common with the 20 position articulated by Gallaher, that there is no P&D 20 position articulated by Gallaher, that there is no P&D 20 position articulated by Gallaher, that there is no P&D 21 position articulated by Gallaher, that there is no P&D 22 position articulated by Gallaher, that there is no P&D 22 position articulated by Gallaher, that there is no P&D 23 position articulated by Gallaher, that there is no P&D 24 position articulated by Gallaher (10 position articulated by Gallaher, the Sallaher (10 position articulated by Gallaher, the Sallaher (10 position artic		-		_	
what their pricing policy was? A. They had told us, like in petrol filling stations it was between Gallaher, that there is no P&D to sell at RRP, in their supermarkets it was generally to be I think 2p or 3p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: So they told you in conversation or at meetings? A. Yes. That's also why you couldn't put the price on a price file because there's at least three different prices ongoing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. Further re-examination by MR HOWARD MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? A. It's just effectively their cost price. The position of Safeway is, in common with the position articulated by Gallaher, that there is no P&D pagement. There is, however, a trading agreement between Gallaher and Safeway, and I think I should show the Tribunal that, because I think I may not have between Gallaher and Safeway, and I think I should show the Tribunal that, because I think I may not have between Gallaher and Safeway, and I think I should show the Tribunal that, because I think I may not have between Gallaher and Safeway, and I think I should show the Tribunal that, because I think I may not have between Gallaher and Safeway, and I think I should show the Tribunal that, because I think I may not have between Gallaher, that there is, however, a trading agreement the Tribunal that, because I think I may not have between Gallaher, that there is, however, a trading agreement the Tribunal that, because I think I may not have between Gallaher, that is not pagement that has been discovered, and it's an agreement that has been discovered, and it's an agreement that has been discovered, and it's an agreement from 1 January 2003 to 31 December 2003. Page 1 deals with volume and incentives					
8 A. They had told us, like in petrol filling stations it was 9 to sell at RRP, in their supermarkets it was generally 10 to be I think 2p or 3p more expensive than Tesco's, and 11 in the superstores to be 6p above that. 12 THE CHAIRMAN: So they told you in conversation or at 13 in meetings? 14 A. Yes. That's also why you couldn't put the price on 15 a price file because there's at least three different 16 prices ongoing at any time. You have the tilt stores as 17 well, so it could be seven different prices in Safeway. 18 Further re-examination by MR HOWARD 19 MR HOWARD: Just to be clear, the way the price file 20 operated here, this is not a price file where you are 21 setting out a calculation of the retail price and what 22 the margin would be; that's right? 23 A. It's just effectively their cost price and it's setting out essentially 24 their discounts sorry, not the discounts, it's 28 position articulated by Gallaher, that there is no P&D agreement. There is, however, a trading agreement 29 dagreement. There is, however, a trading agreement 20 between Gallaher and Safeway, and I think I should show 20 the Tribunal that, because I think I may not have 21 the Tribunal that, because I think I may not have 22 the Tribunal that, because I think I may not have 23 the Tribunal that, because I think I should show 24 the Tribunal that, because I think I may not have 25 the Tribunal that, because I think I may not have 26 the Tribunal that, because I think I may not have 27 the Tribunal that, because I think I may not have 28 the Tribunal that, because I think I may not have 29 the Tribunal that, because I think I may not have 20 the Tribunal that, because I think I may not have 20 the Tribunal that, because I think I may not have 21 the Tribunal that, because I think I may not have 22 the Tribunal that, because I think I may not have 23 the Tribunal that, because I think I may not have 24 the Tribunal that, because I think I may not have 25 the Tribunal that, because I think I may not have 26 the Tribunal that,	_				
to sell at RRP, in their supermarkets it was generally to be I think 2p or 3p more expensive than Tesco's, and to be I think 2p or 3p more expensive than Tesco's, and the Superstores to be 6p above that. THE CHAIRMAN: So they told you in conversation or at meetings? THE CHAIRMAN: So they told you in conversation or at meetings? THE CHAIRMAN: So they told you in conversation or at meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told you in conversation or at Meetings? THE CHAIRMAN: So they told secure I think I may not have Meetings? THE CHAIRMAN: So they told secure I think I may not have Meetings? The Tribunal that, because I think I the Tribunal that, because I think I the Tribunal sequence of and to ab 54(a). The Tribunal that, because I think I the Tribunal the program of the bottom in my original opening. The Tribunal that, because I think I the Tribunal that be out ab 54(a). The Tribunal that, because I think I the Tribunal that be out ab 54(a). The Tribunal that, because I think I the Tribunal that because I think I the Trib				•	
to be I think 2p or 3p more expensive than Tesco's, and in the superstores to be 6p above that. THE CHAIRMAN: So they told you in conversation or at meetings? THE CHAIRMAN: So they told you in conversation or at meetings? A. Yes. That's also why you couldn't put the price on a price file because there's at least three different prices ongoing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. Further re-examination by MR HOWARD MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? A. It's just effectively their cost price. Details have a between Gallaher and Safeway, and I think I should show the Tribunal that, because I think I may not have the tile that. It have because I think I may not have the the Tribunal that, because I think I may not have the vecause I think I may not have the think I may not have the tile that, because I think I may not have the vecause I the Tribunal Safeway. Page 1 deals with volume and incentives but I wanted to draw the Tribunal's attention, please, to the third page, which is marked 259 in the bottom right-hand corner. If I may read it, I quote paragraph 3: Confidential Gallaher Confidential Gallaher					
11 the Tribunal that, because I think I may not have 12 THE CHAIRMAN: So they told you in conversation or at 13 meetings? 14 A. Yes. That's also why you couldn't put the price on 15 a price file because there's at least three different 16 prices ongoing at any time. You have the tilt stores as 17 well, so it could be seven different prices in Safeway. 18 Further re-examination by MR HOWARD 19 MR HOWARD: Just to be clear, the way the price file 20 operated here, this is not a price file where you are 21 setting out a calculation of the retail price and what 22 the margin would be; that's right? 23 A. It's just effectively their cost price. 24 Q. It's their cost price and it's setting out essentially 25 their discounts sorry, not the discounts, it's 26 brought it to your attention in my original opening. 26 brought it to your attention in my original opening. 27 also brought it to your attention in my original opening. 28 brought it to your attention in my original opening. 29 annex 26 and to tab 54(a). 20 PD26/54(a)/125}. This is the only signed trading agreement that has been discovered, and it's 29 an agreement that has been discovered, and it's 20 an agreement from 1 January 2003 to 31 December 2003. 29 Page 1 deals with volume and incentives but I wanted to 20 draw the Tribunal's attention, please, to the third 20 apage, which is marked 259 in the bottom right-hand 20 corner. If I may read it, I quote paragraph 3: 21 Confidential 22 Gallaher 23 A. It's just effectively their cost price. 24 Q. It's their cost price and it's setting out essentially 25 their discounts sorry, not the discounts, it's					
THE CHAIRMAN: So they told you in conversation or at meetings? 13 If you would please go to annex 26 and to tab 54(a). 14 A. Yes. That's also why you couldn't put the price on a price file because there's at least three different prices ongoing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. 15 Further re-examination by MR HOWARD 16 MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? 20 Q. It's their cost price and it's setting out essentially their discounts sorry, not the discounts, it's brought it to your attention in my original opening. 16 brought it to your attention in my original opening. 17 If you would please go to annex 26 and to tab 54(a). 18 (D26/54(a)/125). This is the only signed trading agreement that has been discovered, and it's an agreement from 1 January 2003 to 31 December 2003. 18 Page 1 deals with volume and incentives but I wanted to draw the Tribunal's attention, please, to the third page, which is marked 259 in the bottom right-hand corner. If I may read it, I quote paragraph 3: 20 Confidential Gallaher 21 Confidential Gallaher				-	
meetings? 13 If you would please go to annex 26 and to tab 54(a). 14 A. Yes. That's also why you couldn't put the price on 15 a price file because there's at least three different 15 agreement that has been discovered, and it's 16 prices ongoing at any time. You have the tilt stores as 16 an agreement from 1 January 2003 to 31 December 2003. 17 well, so it could be seven different prices in Safeway. 18 Further re-examination by MR HOWARD 19 MR HOWARD: Just to be clear, the way the price file 20 operated here, this is not a price file where you are 21 setting out a calculation of the retail price and what 22 the margin would be; that's right? 23 A. It's just effectively their cost price. 24 Q. It's their cost price and it's setting out essentially 25 their discounts sorry, not the discounts, it's 26 the margin would be; that's right's attention on the retail price and what their discounts sorry, not the discounts, it's 25 their discounts sorry, not the discounts, it's 26 If you would please go to annex 26 and to tab 54(a). 40 {D26/54(a)/125}. This is the only signed trading agreement that has been discovered, and it's 40 {D26/54(a)/125}. This is the only signed trading agreement that has been discovered, and it's 40 an agreement that has been discovered, and it's 40 an agreement that has been discovered, and it's 40 an agreement that has been discovered, and it's 40 an agreement that has been discovered, and it's 40 an agreement that has been discovered, and it's 40 an agreement that has been discovered, and it's 40 an agreement that has been discovered, and it's 40 an agreement that has been discovered, and it's 40 an agreement that has been discovered, and it's 40 an agreement that has been discovered, and it's 40 an agreement that has been discovered, and it's 40 an agreement that has been discovered, and it's 41 an agreement that has been discovered, and it's 41 an agreement that has been discovered, and it's 41 an agreement that has been discovered, and it's 41 an agreement that has been discov		•		•	
14 A. Yes. That's also why you couldn't put the price on 15 a price file because there's at least three different 16 prices ongoing at any time. You have the tilt stores as 17 well, so it could be seven different prices in Safeway. 18 Further re-examination by MR HOWARD 19 MR HOWARD: Just to be clear, the way the price file 20 operated here, this is not a price file where you are 21 setting out a calculation of the retail price and what 22 the margin would be; that's right? 23 A. It's just effectively their cost price and it's setting out essentially 25 their discounts sorry, not the discounts, it's 26 the margin would be; that's right; 27 this is the only signed trading 27 agreement that has been discovered, and it's 28 an agreement from 1 January 2003 to 31 December 2003. 29 Page 1 deals with volume and incentives but I wanted to 20 draw the Tribunal's attention, please, to the third 21 page, which is marked 259 in the bottom right-hand 22 corner. If I may read it, I quote paragraph 3: Confidential Gallaher 29 Q. It's their cost price and it's setting out essentially 20 their discounts sorry, not the discounts, it's 20 This is the only signed trading 20 agreement that has been discovered, and it's 20 an agreement that has been discovered, and it's 20 an agreement that has been discovered, and it's 20 an agreement that has been discovered, and it's 21 agreement that has been discovered, and it's 22 an agreement that has been discovered, and it's 23 an agreement that has been discovered, and it's 24 agreement that has been discovered, and it's 25 agreement that has been discovered, and it's 26 agreement that has been discovered, and it's 27 agreement that has been discovered, and it's 28 agreement that has been discovered, and it's 29 agreement that has been discovered, and it's 29 agreement that has been discovered, and it's 29 agreement that has been discovered, and it's 20 an agreement from 1 January 2003 to 31 December 2003. Confidential agreement from 1 January 2003 to 31 December 2003. Confidenti		• •			
a price file because there's at least three different 15 agreement that has been discovered, and it's 16 prices ongoing at any time. You have the tilt stores as 17 well, so it could be seven different prices in Safeway. 18 Further re-examination by MR HOWARD 19 MR HOWARD: Just to be clear, the way the price file 19 operated here, this is not a price file where you are 20 corner. If I may read it, I quote paragraph 3: 21 setting out a calculation of the retail price and what 22 the margin would be; that's right? 23 A. It's just effectively their cost price. 24 Q. It's their cost price and it's setting out essentially 25 their discounts sorry, not the discounts, it's 15 agreement that has been discovered, and it's an agreement from 1 January 2003 to 31 December 2003. Page 1 deals with volume and incentives but I wanted to draw the Tribunal's attention, please, to the third page, which is marked 259 in the bottom right-hand corner. If I may read it, I quote paragraph 3: Confidential Gallaher 24 Q. It's their cost price and it's setting out essentially their discounts sorry, not the discounts, it's		C			
prices ongoing at any time. You have the tilt stores as well, so it could be seven different prices in Safeway. Further re-examination by MR HOWARD MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? A. It's just effectively their cost price. Q. It's their cost price and it's setting out essentially their discounts sorry, not the discounts, it's an agreement from 1 January 2003 to 31 December 2003. Page 1 deals with volume and incentives but I wanted to draw the Tribunal's attention, please, to the third page, which is marked 259 in the bottom right-hand corner. If I may read it, I quote paragraph 3: Confidential Gallaher Confidential Gallaher					
well, so it could be seven different prices in Safeway. Further re-examination by MR HOWARD MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? A. It's just effectively their cost price. Q. It's their cost price and it's setting out essentially their discounts sorry, not the discounts, it's Page 1 deals with volume and incentives but I wanted to draw the Tribunal's attention, please, to the third page, which is marked 259 in the bottom right-hand corner. If I may read it, I quote paragraph 3: Confidential Gallaher					
Further re-examination by MR HOWARD 18 draw the Tribunal's attention, please, to the third 19 MR HOWARD: Just to be clear, the way the price file 20 operated here, this is not a price file where you are 21 setting out a calculation of the retail price and what 22 the margin would be; that's right? 23 A. It's just effectively their cost price. 24 Q. It's their cost price and it's setting out essentially 25 their discounts sorry, not the discounts, it's 18 draw the Tribunal's attention, please, to the third 29 page, which is marked 259 in the bottom right-hand 20 corner. If I may read it, I quote paragraph 3: Confidential Gallaher 24 Lit's their cost price and it's setting out essentially 25 their discounts sorry, not the discounts, it's				•	
MR HOWARD: Just to be clear, the way the price file operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? A. It's just effectively their cost price. Q. It's their cost price and it's setting out essentially their discounts sorry, not the discounts, it's page, which is marked 259 in the bottom right-hand corner. If I may read it, I quote paragraph 3: Confidential Gallaher 24 25 their discounts sorry, not the discounts, it's				-	
operated here, this is not a price file where you are setting out a calculation of the retail price and what the margin would be; that's right? A. It's just effectively their cost price. Q. It's their cost price and it's setting out essentially their discounts sorry, not the discounts, it's corner. If I may read it, I quote paragraph 3: Confidential Gallaher 24 25 their discounts sorry, not the discounts, it's		-			
21 setting out a calculation of the retail price and what 22 the margin would be; that's right? 23 A. It's just effectively their cost price. 24 Q. It's their cost price and it's setting out essentially 25 their discounts sorry, not the discounts, it's 21 Confidential Gallaher 22 23 24 25 25					
the margin would be; that's right? A. It's just effectively their cost price. Q. It's their cost price and it's setting out essentially their discounts sorry, not the discounts, it's				corner. If I may read it, I quote paragraph 3:	
the margin would be; that's right? A. It's just effectively their cost price. Q. It's their cost price and it's setting out essentially their discounts sorry, not the discounts, it's Callaher 24 25 26 Gallaher				Confide	ential
23 A. It's just effectively their cost price. 23 24 Q. It's their cost price and it's setting out essentially 24 25 their discounts sorry, not the discounts, it's 25	22	the margin would be; that's right?			
25 their discounts sorry, not the discounts, it's 25	23				
· · · · · · · · · · · · · · · · · · ·	24	O It a their goot price and it a getting out eggentially	24		
98 100		Q. It's their cost price and it's setting out essentially	24		
	25	their discounts sorry, not the discounts, it's			

Confidential Gallaher

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

2

3

4

5

6

7

8

9

10

11

12

13

14

21

22

23

m) (11)		
Then at (ii):		

So the position is that there is no P&D clause in the sense one has seen, for example, in the Morrisons trading agreements, and some others, but we have a very similar opportunity to respond clause.

In short, after here ITL have started a promotion, Gallaher have to be given an opportunity to respond to

From the perspective of Gallaher, I would ask the Tribunal please to go to annex 3. We can put away annex 26. If you could go to tab 17 in that document, {D3/17/419} which I hope is a copy of a communication from Gallaher to the OFT, and if you could please go within that document to page 17, and to the middle of the page after the bold typeface referring to PFS, if I may quote, three paragraphs down:

"As explained at section (i) of the introduction, it is Gallaher's objective to ensure that its brands are

101

priced competitively as against key competitor brands. Safeway never had a 'parities and differentials' clause, nor was there ever any understanding between Safeway and Gallaher that Safeway would observe parities and differentials, however Safeway knew this to be Gallaher's objective and would not have wanted to price differently in any event." I won't ask the Tribunal now to go to paragraphs 1.11 and 1.14 earlier in this document, but

there Gallaher provide an explanation of why retailers generally would have wanted to price in a particular fashion irrespective of P&D clauses, which is very similar to some of the evidence the Tribunal has heard in this case. So standing back from that, the position of Safeway

15 16 as regards Gallaher is, yes we have a trading agreement 17 with an opportunity to respond clause, no P&D clause, 18 and that's common ground certainly between Gallaher and

19 Safeway. 20

The remainder of the case is a case to be argued according to the documents, and I am not going to take the Tribunal to those documents now because that's a matter for closing submissions.

102

24 Thank you very much.

Official Court Reporters

25 THE CHAIRMAN: Yes, thank you. So that then completes the evidence and submissions

2 as regards Safeway. So then, after the short

3 adjournment, it's going to be you, is it, Mr Flynn?

4 MR FLYNN: Yes, Madam, it is. I think in agreement with

5 Mr Howard, I was proposing to do a short mini opening on

6 behalf of Asda. If Mr Howard has anything to add, no

7 doubt he will. Mr Jolliff apparently has just arrived,

8 so he is ready to come on this afternoon.

9 THE CHAIRMAN: Yes.

10 MR FLYNN: And we will see where we get to, because Mr Hall

11 of course has to be dealt with tomorrow.

12 **THE CHAIRMAN:** Is that Mr Iolliff at the back of the court?

13 MR FLYNN: It is not, Madam. Not that I met him, but I know

14 he would be escorted.

15 MR SAINI: Madam, I do not want to spoil the game plan, but

16 we don't want to remain in court while Mr Flynn makes

17 his opening -- without any disrespect to Mr Flynn -- or

18 the evidence that is given in relation to his clients,

19 but we would like to hear Mr Lasok's answers to the

20 questions from yesterday.

21 **THE CHAIRMAN:** I was just coming to that, Mr Saini.

22 Mr Lasok, is there something that you would like to

23 say as regards the exchanges that occurred at close of

24 business yesterday afternoon, as now might be 25

an opportune moment for you to do so.

103

1 Submissions re Tribunal direction by MR LASOK

MR LASOK: In the exchanges yesterday, the Tribunal put

3 certain specific questions to the OFT, and there are

4 direct answers to those questions that are best

5 understood in the context of the case set out in the

6 decision.

2

7 What I am going to do is to go to the first of the

8 questions that was put and dispose of that one. That

9 first question was the one that -- I am going to give

10 the references to the transcript: Day 16, page 152,

11 line 24, to 153, line 13.

12 This is a question about the focus of

13 cross-examination. The cross-examination focused on

14 grant and withdrawal of bonuses and the link changes in

15 the retail prices arises because those communications

16 commonly are expressed by the manufacturer in terms of

17 moving the retail price to a specified price point, and

18 the alteration of the bonus is a consequence of the

19 move, and therefore the OFT's contention is that such

20 communications are evidence of a P&D arrangement between

21 the manufacturer and the retailer. The reason for that

22 is that the specified price point to which the move is

23 made has been identified by reference to the

24 manufacturer's P&D strategy. In some instances, that

25 appears on the face of the communication, in other

1	instances it can be deduced by looking at other	1	it presaged, if you like, by the fact that 6.213 in the
2	evidence.	2	second sentence says "if a parity or fixed differential
3	I come now to the second specific question that was	3	requirement is implemented."
4	put, and this is at Day 16, page 153, line 14, to	4	So the position in the decision is based on
5	page 154, line 1. This relates to paragraph 40(d) of	5	an analysis that focuses on the nature of a P&D
6	the OFT's skeleton. That paragraph refers to the	6	requirement and then it acknowledges points put to the
7	situation where, under an ITL P&D agreement with	7	OFT by the appellants, and that arise from the
8	a retailer, if the retail price of the Gallaher brand	8	evidence we see this in paragraph 6.223 where the
9	decreases then the retail price of ITL's brand must also	9	OFT has to grapple with the scenario in which the P&D
10	decrease.	10	requirement may not be the subject of full
11	Now, the OFT's case as set out in the decision, and	11	implementation, that's to say implementation in every
12	indeed in its defence and skeleton, has never been based	12	respect and/or at all times.
13	on the premise that under such a P&D agreement that's	13	So the decision is actually based upon a scenario in
14	to say an ITL P&D agreement the retail price of the	14	which there may be partial implementation, and that is
15	ITL brand must or will decrease even if there is no	15	why, in 6.223 to 6.225, we find the language that is
16	decrease in the net wholesale provides of the ITL brand.	16	used there.
17	That's dealt with specifically in paragraphs 6.223	17	So we have, in 6.223, the OFT expressly recognising
18	to 6.224 of the decision. The decision recognises that,	18	that the manufacturers' uncertainty regarding the retail
19	in the case of a decrease in the price of a Gallaher	19	price movement of a competing linked brand was not
20	brand, there might not be a decrease in the price of the	20	completely eliminated. It is for that reason that the
21	linked ITL brand if ITL decided not to assist or	21	OFT to say not assert that a P&D requirement in the
22	encourage the retailer to move the price of the ITL	22	context of the particular cases or agreements that we
23	brand down by reducing the net wholesale price in some	23	are looking at would have had all the features that are
24	way or another, such as by increasing a tactical bonus	24	described in paragraph 40 of the OFT's skeleton
25	or whatever.	25	argument. That in fact is made abundantly clear in
	105		107
1	It's in relation to that, and before I turn to the	1	paragraphs 42 to 44 of the OFT's skeleton argument
1	It's in relation to that, and before I turn to the	1	paragraphs 43 to 44 of the OFT's skeleton argument,
2	next specific question that was raised by the Tribunal,	2	because, for example, the full panoply of the features
2	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision	2	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument
2 3 4	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is	2 3 4	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical
2 3 4 5	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been	2 3 4 5	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says.
2 3 4 5 6	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear	2 3 4 5 6	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore,
2 3 4 5 6 7	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to	2 3 4 5 6 7	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object,
2 3 4 5 6 7 8	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect.	2 3 4 5 6 7 8	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in
2 3 4 5 6 7 8 9	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D	2 3 4 5 6 7 8 9	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each
2 3 4 5 6 7 8 9	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the	2 3 4 5 6 7 8 9	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40
2 3 4 5 6 7 8 9 10	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D	2 3 4 5 6 7 8 9 10	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument.
2 3 4 5 6 7 8 9 10 11 12	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what	2 3 4 5 6 7 8 9 10 11	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in
2 3 4 5 6 7 8 9 10 11 12 13	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what happens if a P&D requirement is implemented.	2 3 4 5 6 7 8 9 10 11 12 13	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in paragraph 40 must exist for a P&D requirement to be
2 3 4 5 6 7 8 9 10 11 12 13	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what happens if a P&D requirement is implemented. 6.213, when it refers to implementation, is not	2 3 4 5 6 7 8 9 10 11 12 13	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in paragraph 40 must exist for a P&D requirement to be anticompetitive by object?, is essentially a matter for
2 3 4 5 6 7 8 9 10 11 12 13 14	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what happens if a P&D requirement is implemented. 6.213, when it refers to implementation, is not limited to implementation by the retailer acting alone.	2 3 4 5 6 7 8 9 10 11 12 13 14 15	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in paragraph 40 must exist for a P&D requirement to be anticompetitive by object?, is essentially a matter for expert evidence and submission.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what happens if a P&D requirement is implemented. 6.213, when it refers to implementation, is not limited to implementation by the retailer acting alone. The OFT does not consider that the manner of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in paragraph 40 must exist for a P&D requirement to be anticompetitive by object?, is essentially a matter for expert evidence and submission. The OFT considers that the number of features
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what happens if a P&D requirement is implemented. 6.213, when it refers to implementation, is not limited to implementation by the retailer acting alone. The OFT does not consider that the manner of implementation is relevant. Accordingly, it simply	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in paragraph 40 must exist for a P&D requirement to be anticompetitive by object?, is essentially a matter for expert evidence and submission. The OFT considers that the number of features referred to in paragraph 40 of the OFT's skeleton
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what happens if a P&D requirement is implemented. 6.213, when it refers to implementation, is not limited to implementation by the retailer acting alone. The OFT does not consider that the manner of implementation is relevant. Accordingly, it simply doesn't matter if the manner of implementation involves	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in paragraph 40 must exist for a P&D requirement to be anticompetitive by object?, is essentially a matter for expert evidence and submission. The OFT considers that the number of features referred to in paragraph 40 of the OFT's skeleton argument present in the arrangement goes to the extent
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what happens if a P&D requirement is implemented. 6.213, when it refers to implementation, is not limited to implementation by the retailer acting alone. The OFT does not consider that the manner of implementation is relevant. Accordingly, it simply doesn't matter if the manner of implementation involves action by the retailer alone or action by the retailer	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in paragraph 40 must exist for a P&D requirement to be anticompetitive by object?, is essentially a matter for expert evidence and submission. The OFT considers that the number of features referred to in paragraph 40 of the OFT's skeleton argument present in the arrangement goes to the extent of the harm to competition arising from the arrangement,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what happens if a P&D requirement is implemented. 6.213, when it refers to implementation, is not limited to implementation by the retailer acting alone. The OFT does not consider that the manner of implementation is relevant. Accordingly, it simply doesn't matter if the manner of implementation involves action by the retailer alone or action by the retailer acting in combination with the manufacturer, such as	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in paragraph 40 must exist for a P&D requirement to be anticompetitive by object?, is essentially a matter for expert evidence and submission. The OFT considers that the number of features referred to in paragraph 40 of the OFT's skeleton argument present in the arrangement goes to the extent of the harm to competition arising from the arrangement, but not to its anticompetitive object.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what happens if a P&D requirement is implemented. 6.213, when it refers to implementation, is not limited to implementation by the retailer acting alone. The OFT does not consider that the manner of implementation is relevant. Accordingly, it simply doesn't matter if the manner of implementation involves action by the retailer alone or action by the retailer acting in combination with the manufacturer, such as where the manufacturer reminds the retailer to act, eggs	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in paragraph 40 must exist for a P&D requirement to be anticompetitive by object?, is essentially a matter for expert evidence and submission. The OFT considers that the number of features referred to in paragraph 40 of the OFT's skeleton argument present in the arrangement goes to the extent of the harm to competition arising from the arrangement, but not to its anticompetitive object. That is, I think, a completion of the submission
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what happens if a P&D requirement is implemented. 6.213, when it refers to implementation, is not limited to implementation by the retailer acting alone. The OFT does not consider that the manner of implementation is relevant. Accordingly, it simply doesn't matter if the manner of implementation involves action by the retailer alone or action by the retailer acting in combination with the manufacturer, such as where the manufacturer reminds the retailer to act, eggs on the retailer or provides an inducement.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in paragraph 40 must exist for a P&D requirement to be anticompetitive by object?, is essentially a matter for expert evidence and submission. The OFT considers that the number of features referred to in paragraph 40 of the OFT's skeleton argument present in the arrangement goes to the extent of the harm to competition arising from the arrangement, but not to its anticompetitive object. That is, I think, a completion of the submission that I've just made in response to the second question
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what happens if a P&D requirement is implemented. 6.213, when it refers to implementation, is not limited to implementation by the retailer acting alone. The OFT does not consider that the manner of implementation is relevant. Accordingly, it simply doesn't matter if the manner of implementation involves action by the retailer alone or action by the retailer acting in combination with the manufacturer, such as where the manufacturer reminds the retailer to act, eggs on the retailer or provides an inducement. In decision paragraphs 6.223 to 225, the OFT	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in paragraph 40 must exist for a P&D requirement to be anticompetitive by object?, is essentially a matter for expert evidence and submission. The OFT considers that the number of features referred to in paragraph 40 of the OFT's skeleton argument present in the arrangement goes to the extent of the harm to competition arising from the arrangement, but not to its anticompetitive object. That is, I think, a completion of the submission that I've just made in response to the second question put by the Tribunal yesterday and it also enables me to
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what happens if a P&D requirement is implemented. 6.213, when it refers to implementation, is not limited to implementation by the retailer acting alone. The OFT does not consider that the manner of implementation is relevant. Accordingly, it simply doesn't matter if the manner of implementation involves action by the retailer alone or action by the retailer acting in combination with the manufacturer, such as where the manufacturer reminds the retailer to act, eggs on the retailer or provides an inducement. In decision paragraphs 6.223 to 225, the OFT acknowledges the possibility that a P&D requirement may	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in paragraph 40 must exist for a P&D requirement to be anticompetitive by object?, is essentially a matter for expert evidence and submission. The OFT considers that the number of features referred to in paragraph 40 of the OFT's skeleton argument present in the arrangement goes to the extent of the harm to competition arising from the arrangement, but not to its anticompetitive object. That is, I think, a completion of the submission that I've just made in response to the second question put by the Tribunal yesterday and it also enables me to move into the next question, which is the one at Day 16,
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	next specific question that was raised by the Tribunal, then it's worthwhile going back to what the decision actually says. Because what you have in the decision is the following, and in part this has already been mentioned by me in opening, but since it does not appear to have been put by me in opening clearly, I am going to have to try and remedy that particular defect. Paragraph 6.213 of the decision describes a P&D requirement. If you have 6.213, it's at page 131 of the decision, the first sentence describes a P&D requirement, and the second sentence describes what happens if a P&D requirement is implemented. 6.213, when it refers to implementation, is not limited to implementation by the retailer acting alone. The OFT does not consider that the manner of implementation is relevant. Accordingly, it simply doesn't matter if the manner of implementation involves action by the retailer alone or action by the retailer acting in combination with the manufacturer, such as where the manufacturer reminds the retailer to act, eggs on the retailer or provides an inducement. In decision paragraphs 6.223 to 225, the OFT	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	because, for example, the full panoply of the features referred to in paragraph 40 of the skeleton argument apply where there are parallel and symmetrical agreements. That's what paragraph 44 says. The case made out in the decision is, therefore, that a P&D requirement is anticompetitive by object, even if, in the particular factual circumstances in which it operates or applies, it does not possess each and every one of the features mentioned in paragraph 40 of the OFT's skeleton argument. The question: just how many of the features in paragraph 40 must exist for a P&D requirement to be anticompetitive by object?, is essentially a matter for expert evidence and submission. The OFT considers that the number of features referred to in paragraph 40 of the OFT's skeleton argument present in the arrangement goes to the extent of the harm to competition arising from the arrangement, but not to its anticompetitive object. That is, I think, a completion of the submission that I've just made in response to the second question put by the Tribunal yesterday and it also enables me to

1	Now, here we move to consider the situation where	1	a couple of minutes, and it's probably better if I deal
2	the retailer had agreed or concerted with ITL that the	2	with them now, even though it means that there is
3	retailer's prices would conform to ITL's P&D	3	a slight delay before the flow of the gastric juices is
4	requirements and in that scenario it was, we submit,	4	satisfied.
5	envisaged that the retailer would reduce the retail	5	The next question is the one at Day 16 page 160,
6	price of the ITL brand when the retailer had, on its own	6	lines 15 to 23. This was a point about communications
7	initiative, reduced the retail price of the Gallaher	7	from a manufacturer to a retailer asking or instructing
8	brand, and that would be so even if ITL had not adjusted	8	the latter to move to a specific price point. Those
9	the bonus so as to maintain the retailer's margin,	9	communications are referred to in the decision as
10	because that scenario was the one in which the retailer	10	forming part of the infringing agreements and one
11	has decided to suffer a reduction in its margin for the	11	example of that, but not the only one, is
12	linked Gallaher brand. The effect of ITL's P&D	12	paragraph 6.225 of the decision.
13	arrangement with the retailer and, I might add, the	13	So I come now to the last question, which is the one
14	common sense commercially obvious effect of the P&D	14	at Day 16, page 165, line 23 to page 166, line 5. The
15	arrangement is that the retailer cannot disadvantage the	15	OFT's case is that, depending upon the terms of the
16	ITL brand in those circumstances. So if the retailer is	16	particular infringing agreement and the circumstances,
17	willing to suffer a reduction in its margin in relation	17	a P&D arrangement created the expectation that the
18	to the linked Gallaher brand, the operation of the P&D	18	retailer would maintain the parity or differential in
19	requirement is that it must do the same in relation to	19	question even if there was no corresponding change in
20	the ITL brand because ITL fundamentally does not want	20	the wholesale price. So in the case of a P&D
21	its brands to be disadvantaged.	21	arrangement between ITL and a retailer, the latter would
22	Now, the position is different where the retailer	22	be expected to increase the retail price of an ITL brand
23	has reduced the retail price of the linked Gallaher	23	if the retail price of the linked Gallaher brand
23 24		24	increased, even if there was no increase in the
2 4 25	brand at the instigation of Gallaher, because there we	25	•
23	have the opportunity to respond clause in the trading	23	wholesale price of the ITL brand. That again makes
	109		111
1	agreement with ITL where, of course, there is such	1	common sense and it makes commercial sense, and is
1 2	agreement with ITL where, of course, there is such a clause. That's the scenario specifically envisaged in	1 2	common sense and it makes commercial sense, and is supported by the evidence of Mr Batty, because ITL's
2	a clause. That's the scenario specifically envisaged in	2	supported by the evidence of Mr Batty, because ITL's
2	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no	2	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since
2 3 4	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages	2 3 4	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in
2 3 4 5	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL	2 3 4 5	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the
2 3 4 5	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense	2 3 4 5 6	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at
2 3 4 5 6 7	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked	2 3 4 5 6 7	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain
2 3 4 5 6 7 8	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price,	2 3 4 5 6 7 8	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D
2 3 4 5 6 7 8 9	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But	2 3 4 5 6 7 8 9	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted
2 3 4 5 6 7 8 9 10	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would	2 3 4 5 6 7 8 9 10	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want
2 3 4 5 6 7 8 9 10 11	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the	2 3 4 5 6 7 8 9 10 11	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened
2 3 4 5 6 7 8 9 10 11 12 13	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the retailer's margin, the OFT assumes that the retailer	2 3 4 5 6 7 8 9 10 11 12 13	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened between the related ITL and Gallaher brands, subject of
2 3 4 5 6 7 8 9 10 11 12 13 14	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the retailer's margin, the OFT assumes that the retailer would be unwilling to reduce the price of the ITL brand	2 3 4 5 6 7 8 9 10 11 12 13	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened between the related ITL and Gallaher brands, subject of course to the possibility that ITL might make
2 3 4 5 6 7 8 9 10 11 12 13 14 15	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the retailer's margin, the OFT assumes that the retailer would be unwilling to reduce the price of the ITL brand commensurately without assistance from ITL and therefore	2 3 4 5 6 7 8 9 10 11 12 13 14 15	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened between the related ITL and Gallaher brands, subject of course to the possibility that ITL might make a strategic move altering the differential as occurred
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the retailer's margin, the OFT assumes that the retailer would be unwilling to reduce the price of the ITL brand commensurately without assistance from ITL and therefore we have the situation contemplated in paragraph 6.224 of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened between the related ITL and Gallaher brands, subject of course to the possibility that ITL might make a strategic move altering the differential as occurred when they repositioned Richmond by moving the parity
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the retailer's margin, the OFT assumes that the retailer would be unwilling to reduce the price of the ITL brand commensurately without assistance from ITL and therefore we have the situation contemplated in paragraph 6.224 of the decision.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened between the related ITL and Gallaher brands, subject of course to the possibility that ITL might make a strategic move altering the differential as occurred when they repositioned Richmond by moving the parity from a parity between Richmond and Mayfair to a parity
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the retailer's margin, the OFT assumes that the retailer would be unwilling to reduce the price of the ITL brand commensurately without assistance from ITL and therefore we have the situation contemplated in paragraph 6.224 of the decision. If ITL decided not to give the support required to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened between the related ITL and Gallaher brands, subject of course to the possibility that ITL might make a strategic move altering the differential as occurred when they repositioned Richmond by moving the parity from a parity between Richmond and Mayfair to a parity between Richmond and Dorchester.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the retailer's margin, the OFT assumes that the retailer would be unwilling to reduce the price of the ITL brand commensurately without assistance from ITL and therefore we have the situation contemplated in paragraph 6.224 of the decision. If ITL decided not to give the support required to enable or assist the retailer to reduce the price of the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened between the related ITL and Gallaher brands, subject of course to the possibility that ITL might make a strategic move altering the differential as occurred when they repositioned Richmond by moving the parity from a parity between Richmond and Mayfair to a parity between Richmond and Dorchester. If ITL increased the wholesale price of the ITL
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the retailer's margin, the OFT assumes that the retailer would be unwilling to reduce the price of the ITL brand commensurately without assistance from ITL and therefore we have the situation contemplated in paragraph 6.224 of the decision. If ITL decided not to give the support required to enable or assist the retailer to reduce the price of the ITL brand, the OFT assumes that the price reduction	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened between the related ITL and Gallaher brands, subject of course to the possibility that ITL might make a strategic move altering the differential as occurred when they repositioned Richmond by moving the parity from a parity between Richmond and Mayfair to a parity between Richmond and Dorchester. If ITL increased the wholesale price of the ITL brands, and we are now looking at the matter the other
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the retailer's margin, the OFT assumes that the retailer would be unwilling to reduce the price of the ITL brand commensurately without assistance from ITL and therefore we have the situation contemplated in paragraph 6.224 of the decision. If ITL decided not to give the support required to enable or assist the retailer to reduce the price of the ITL brand, the OFT assumes that the price reduction would not take place, and that situation is, or that	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened between the related ITL and Gallaher brands, subject of course to the possibility that ITL might make a strategic move altering the differential as occurred when they repositioned Richmond by moving the parity from a parity between Richmond and Mayfair to a parity between Richmond and Dorchester. If ITL increased the wholesale price of the ITL brands, and we are now looking at the matter the other way around, whether or not the retailer would be
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the retailer's margin, the OFT assumes that the retailer would be unwilling to reduce the price of the ITL brand commensurately without assistance from ITL and therefore we have the situation contemplated in paragraph 6.224 of the decision. If ITL decided not to give the support required to enable or assist the retailer to reduce the price of the ITL brand, the OFT assumes that the price reduction would not take place, and that situation is, or that possibility, is catered for in paragraphs 6.224 to 6.225	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened between the related ITL and Gallaher brands, subject of course to the possibility that ITL might make a strategic move altering the differential as occurred when they repositioned Richmond by moving the parity from a parity between Richmond and Mayfair to a parity between Richmond and Dorchester. If ITL increased the wholesale price of the ITL brands, and we are now looking at the matter the other way around, whether or not the retailer would be expected to increase the price of the linked Gallaher
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the retailer's margin, the OFT assumes that the retailer would be unwilling to reduce the price of the ITL brand commensurately without assistance from ITL and therefore we have the situation contemplated in paragraph 6.224 of the decision. If ITL decided not to give the support required to enable or assist the retailer to reduce the price of the ITL brand, the OFT assumes that the price reduction would not take place, and that situation is, or that possibility, is catered for in paragraphs 6.224 to 6.225 of the decision.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened between the related ITL and Gallaher brands, subject of course to the possibility that ITL might make a strategic move altering the differential as occurred when they repositioned Richmond by moving the parity from a parity between Richmond and Mayfair to a parity between Richmond and Dorchester. If ITL increased the wholesale price of the ITL brands, and we are now looking at the matter the other way around, whether or not the retailer would be expected to increase the price of the linked Gallaher brand would depend upon the circumstances and why.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the retailer's margin, the OFT assumes that the retailer would be unwilling to reduce the price of the ITL brand commensurately without assistance from ITL and therefore we have the situation contemplated in paragraph 6.224 of the decision. If ITL decided not to give the support required to enable or assist the retailer to reduce the price of the ITL brand, the OFT assumes that the price reduction would not take place, and that situation is, or that possibility, is catered for in paragraphs 6.224 to 6.225 of the decision. Now, that brings me to the last two questions that	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened between the related ITL and Gallaher brands, subject of course to the possibility that ITL might make a strategic move altering the differential as occurred when they repositioned Richmond by moving the parity from a parity between Richmond and Mayfair to a parity between Richmond and Dorchester. If ITL increased the wholesale price of the ITL brands, and we are now looking at the matter the other way around, whether or not the retailer would be expected to increase the price of the linked Gallaher brand would depend upon the circumstances and why. Because if ITL was altering the P&D requirement, the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	a clause. That's the scenario specifically envisaged in paragraph 6.223 of the decision. Where there was no formal opportunity to respond clause, the OFT envisages that a commensurate reduction in the price of the ITL brand would not occur for practical common sense reasons. Because in that scenario Gallaher would have assisted the retailer to reduce the price of the linked Gallaher brand by reducing the real wholesale price, whether by way of a tactical bonus or otherwise. But ITL, on this hypothesis, would not have done so or would not yet have done so. And due to the thinness of the retailer's margin, the OFT assumes that the retailer would be unwilling to reduce the price of the ITL brand commensurately without assistance from ITL and therefore we have the situation contemplated in paragraph 6.224 of the decision. If ITL decided not to give the support required to enable or assist the retailer to reduce the price of the ITL brand, the OFT assumes that the price reduction would not take place, and that situation is, or that possibility, is catered for in paragraphs 6.224 to 6.225 of the decision.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	supported by the evidence of Mr Batty, because ITL's policy was based upon parities and differentials since they had concluded that the best place for them in relation to these linked brands would be either a parity or a differential. So for them, as Mr Batty says, the best place for Richmond as against Dorchester was at parity with Dorchester. Hence, in order to maintain that best place, it was inevitable that under the P&D arrangements if the Gallaher price went up they wanted to take advantage of that because they didn't want a situation in which a gap emerged or a gap widened between the related ITL and Gallaher brands, subject of course to the possibility that ITL might make a strategic move altering the differential as occurred when they repositioned Richmond by moving the parity from a parity between Richmond and Mayfair to a parity between Richmond and Dorchester. If ITL increased the wholesale price of the ITL brands, and we are now looking at the matter the other way around, whether or not the retailer would be expected to increase the price of the linked Gallaher brand would depend upon the circumstances and why.

1	price under the arrangement between the retailer and		uecision.
2	ITL, because the instruction or the communication	2	I think I should make clear what Asda's position has
3	between ITL and the retailer would such that the	3	been in its appeal throughout, in the light of certain
4	retailer understood that the ITL price increase was not	4	comments that the Tribunal has made. Asda's position is
5	connected with the maintenance of the pre-existing price	5	that the OFT has not established that Asda was party to
6	relativity between the two linked brands, but was	6	any arrangement with either Gallaher or Imperial, in
7	a change.	7	which it accepted, became part of, if you like, the
8	Now, obviously if the retailer had a P&D arrangement	8	manufacturers' parity and differential strategy. If you
9	with Gallaher, that might cause a change.	9	want references to our pleadings, I've written them
10	Now, if we move to the situation where ITL was not	10	down. If you look on the our notes of appeal,
11	altering the P&D requirement, the expectation would be,	11	paragraph 4, if you look at paragraphs 25 to 28, and 95
12	we submit, that the price of the linked Gallaher brand	12	to 183 of the notice of appeal. Likewise in the reply
13	would also go up. However, the OFT does not say that	13	it's 4 to 15 and 99 to 164 in the reply and paragraphs 6
14	that would be inevitable, because that situation falls	14	to 13 and 26 to 74 of the skeleton.
15	within the scenarios envisaged in the decision in	15	Exclusion and exemption case, which you have
16	paragraphs 6.224 to 6.225, because the OFT is actually	16	mentioned, has always been put in the alternative, in
17	contemplating a factual scenario set out in the decision	17	other words assuming against our principal position that
18	that may have involved imperfect or incomplete	18	the OFT does convince you that there was such
19	implementation of the P&D requirement.	19	an arrangement, so if you look, for example, at our
20	As I've said earlier, it isn't the OFT's case, and	20	notice of appeal, paragraph 184, you will see that. Our
21	it's never been set out in the decision or anywhere	21	case on the object characterisation of the infringement
22	else, that in order for a P&D requirement to be	22	is likewise made without prejudice to the submission
23	•	23	• /
	anticompetitive by object, you have to have each and		that the OFT has not made out the alleged arrangement.
24	every one of the particular features identified in	24	So where you said, Madam, that retailers seemed to
25	paragraph 40 of the skeleton argument.	25	be saying yes, they had those arrangements but they were
	113		115
1	Now, I am going to end the answer to that question	1	pro-competitive, that is not exactly Asda's position.
2	now because I've already dealt with the scenarios that	2	I can't speak for others, but it's certainly not ours.
3	arise where there is a price reduction, and I don't need	3	I did say in my original opening, of course, that
4	to repeat them in dealing with this particular question.	4	our expert, Mr Dryden, says that depending on how you
5	THE CHAIRMAN: Yes, thank you very much, Mr Lasok.	5	characterise these arrangements, very little changes in
6	We will come back at 2.15, and hear from Mr Flynn in	6	the structure of the arrangements may turn the predicted
7	relation to Asda. Thank you very much.	7	effects to pro-competitive effects so they are very fact
8	(1.17 pm)	8	sensitive, and that feeds into an argument as to whether
9	(The short adjournment)	9	this is suitable for object characterisation.
10	(2.15 pm)	10	I think you have also said that you had been
11	Further opening submissions by MR FLYNN	11	somewhat surprised at the extent to which retailers are
12	THE CHAIRMAN: Mr Flynn.	12	downplaying the written agreements. I think that
13	MR FLYNN: Madam, on behalf of Asda, then. Discussions in	13	obviously depends on what's in the written agreements,
14	the Tribunal over the last couple of days, may	14	and I will come back to the detail of that shortly. But
15	I suggest, show that each case in this appeal needs to	15	it's important to bear in mind what, in each case, the
16	be looked at on its own merits. You are going to have	16	written agreements are. In the case of Asda, there is
17	to ask yourself in each of the retailer appeals whether	17	-
18		18	no written agreement for any part of the relevant period
19	the retailer concerned accepted an arrangement, entered	19	with Gallaher which makes any reference or provision for
	into an arrangement of the kind alleged by the OFT with		P&Ds. It just isn't that sort of agreement. Likewise
20	each of the manufacturers.	20	with Imperial, the first agreement in the bundles which
21	Mr Lasok has answered some of your questions earlier	21	we provided because the OFT didn't refer to it, likewise
22	today, and obviously we hope that case will be put	22	makes no reference to P&Ds, and that I think more or
23	clearly to the witnesses, and we will have our	23	less coincides with the period for which Mr Jolliff was
24	opportunity later in the day to respond on whether that	24	responsible for the account, more or less.
25	case is well made out or corresponds with what is in the	25	We then have the two agreements which are in the

1	bundles, one of which was signed in the middle of 2002,	1	range, and display.
2	and one which was signed after the infringement period	2	There is quite a lot in our evidence we may not
3	was over. Those have certain specific features which	3	need to discuss it, there may not be questions about
4	I will come back to, but I make the initial point that	4	it about Imperial's obsession with the fact that
5	it's important to remember, when you say what did you	5	Gallaher was the category captain in Asda and so was in
6	sign up to, then one really has to look at the	6	charge of the planograms and so forth. Those are
7	agreements.	7	extremely important matters to the manufacturers.
8	And of course the OFT's case isn't limited and can't	8	The other point is that we are focusing to
9	be limited to the scope of the written trading	9	an obsessive level on the manufacturers' strategies, and
10	agreements, certainly it would be the end of its case as	10	I think what needs to be borne very clearly in mind is
11	regards Asda and Gallaher if it were to, and it would	11	that the retailers have their own strategies.
12	have some considerable difficulties in the case of	12	Mr Lasok essentially, in his opening and in
13	Imperial. But all the more so because in the case of	13	cross-examination, is ignoring those, if I may
14	Asda, it says the differentials were applied as fixed.	14	respectfully suggest. He goes so far as to say Asda,
15	It doesn't put an alternative case on the basis that	15	and he specifically said it of Asda, was a compliant
16	they were maxima, and given the terms of the schedule,	16	instrument in the hands of the manufacturers, and he
17	even to the agreement that we signed, it would have to	17	asserted without reference to any specific part of the
18	prove that case by reference to conduct, context, rather	18	evidence that Asda thought it had no bargaining power
19	than to the written agreements.	19	vis-a-vis the tobacco manufacturers. We are talking
20	I am not in this mini opening, as we are calling	20	about Asda. He doesn't say where he got that from, and
21	them, going to go through the documents. That would be	21	no doubt he will put it to the witnesses.
22	time-consuming, and we are short of time. I think you	22	The reality, in my submission, is that each party in
23	would say, well, we are about to hear from the	23	these retailer/manufacturer arrangements with which you
24	witnesses, so what are they going to say? But I do	24	are concerned needed the other. Imperial had to be in
25	repeat, of course, that we did go through such documents	25	Asda. It would be inconceivable for Imperial not to
	117		119
	* * *		· · ·
1	as were cited in the decision in our evidence and we	1	have its brands on Asda's shelves. Likewise Asda would
1 2	as were cited in the decision in our evidence and we expect those to be put to the witnesses and any new	1 2	have its brands on Asda's shelves. Likewise Asda would have to stock Imperial's leading brands, you wouldn't be
2	expect those to be put to the witnesses and any new	2	have to stock Imperial's leading brands, you wouldn't be
2	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied	2	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those
2 3 4	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points.	2 3 4	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves.
2 3 4 5	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out	2 3 4 5	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy
2 3 4 5 6	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in	2 3 4 5 6	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to
2 3 4 5 6 7	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is	2 3 4 5 6 7	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having
2 3 4 5 6 7 8	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that.	2 3 4 5 6 7 8	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for
2 3 4 5 6 7 8 9	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point	2 3 4 5 6 7 8 9	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage.
2 3 4 5 6 7 8 9	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't	2 3 4 5 6 7 8 9	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware,
2 3 4 5 6 7 8 9 10	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't a criticism of anyone, this is just we are focusing in	2 3 4 5 6 7 8 9 10	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware, is not to be beaten on price. The evidence is that Asda
2 3 4 5 6 7 8 9 10 11 12	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't a criticism of anyone, this is just we are focusing in on certain aspects of these dealings, so you are	2 3 4 5 6 7 8 9 10 11	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware, is not to be beaten on price. The evidence is that Asda wanted to be a price leader, and certainly was not going
2 3 4 5 6 7 8 9 10 11 12 13	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't a criticism of anyone, this is just we are focusing in on certain aspects of these dealings, so you are influenced or the nature of the discussions which are	2 3 4 5 6 7 8 9 10 11 12 13	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware, is not to be beaten on price. The evidence is that Asda wanted to be a price leader, and certainly was not going to be more expensive, if it could help it, in really any
2 3 4 5 6 7 8 9 10 11 12 13	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't a criticism of anyone, this is just we are focusing in on certain aspects of these dealings, so you are influenced or the nature of the discussions which are being had are influenced by the fact that we have	2 3 4 5 6 7 8 9 10 11 12 13	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware, is not to be beaten on price. The evidence is that Asda wanted to be a price leader, and certainly was not going to be more expensive, if it could help it, in really any line of any importance, than its chosen rivals. So
2 3 4 5 6 7 8 9 10 11 12 13 14 15	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't a criticism of anyone, this is just we are focusing in on certain aspects of these dealings, so you are influenced or the nature of the discussions which are being had are influenced by the fact that we have only one manufacturer here. Gallaher isn't here, that	2 3 4 5 6 7 8 9 10 11 12 13 14 15	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware, is not to be beaten on price. The evidence is that Asda wanted to be a price leader, and certainly was not going to be more expensive, if it could help it, in really any line of any importance, than its chosen rivals. So that's particularly Tesco but also Morrisons, for
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't a criticism of anyone, this is just we are focusing in on certain aspects of these dealings, so you are influenced or the nature of the discussions which are being had are influenced by the fact that we have only one manufacturer here. Gallaher isn't here, that mustn't be forgotten. You only have major retailers	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware, is not to be beaten on price. The evidence is that Asda wanted to be a price leader, and certainly was not going to be more expensive, if it could help it, in really any line of any importance, than its chosen rivals. So that's particularly Tesco but also Morrisons, for example. It watches those very carefully and is watched
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't a criticism of anyone, this is just we are focusing in on certain aspects of these dealings, so you are influenced or the nature of the discussions which are being had are influenced by the fact that we have only one manufacturer here. Gallaher isn't here, that mustn't be forgotten. You only have major retailers here, whereas, say, MPIs were introduced right across	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware, is not to be beaten on price. The evidence is that Asda wanted to be a price leader, and certainly was not going to be more expensive, if it could help it, in really any line of any importance, than its chosen rivals. So that's particularly Tesco but also Morrisons, for example. It watches those very carefully and is watched by them very carefully. Indeed, I think the evidence
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't a criticism of anyone, this is just we are focusing in on certain aspects of these dealings, so you are influenced or the nature of the discussions which are being had are influenced by the fact that we have only one manufacturer here. Gallaher isn't here, that mustn't be forgotten. You only have major retailers here, whereas, say, MPIs were introduced right across the board and would generally apply and there might be	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware, is not to be beaten on price. The evidence is that Asda wanted to be a price leader, and certainly was not going to be more expensive, if it could help it, in really any line of any importance, than its chosen rivals. So that's particularly Tesco but also Morrisons, for example. It watches those very carefully and is watched by them very carefully. Indeed, I think the evidence is, particularly in that period, that Asda was the one
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't a criticism of anyone, this is just we are focusing in on certain aspects of these dealings, so you are influenced or the nature of the discussions which are being had are influenced by the fact that we have only one manufacturer here. Gallaher isn't here, that mustn't be forgotten. You only have major retailers here, whereas, say, MPIs were introduced right across the board and would generally apply and there might be some specific and special arrangements for the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware, is not to be beaten on price. The evidence is that Asda wanted to be a price leader, and certainly was not going to be more expensive, if it could help it, in really any line of any importance, than its chosen rivals. So that's particularly Tesco but also Morrisons, for example. It watches those very carefully and is watched by them very carefully. Indeed, I think the evidence is, particularly in that period, that Asda was the one to watch.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't a criticism of anyone, this is just we are focusing in on certain aspects of these dealings, so you are influenced or the nature of the discussions which are being had are influenced by the fact that we have only one manufacturer here. Gallaher isn't here, that mustn't be forgotten. You only have major retailers here, whereas, say, MPIs were introduced right across the board and would generally apply and there might be some specific and special arrangements for the particularly important retailers.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware, is not to be beaten on price. The evidence is that Asda wanted to be a price leader, and certainly was not going to be more expensive, if it could help it, in really any line of any importance, than its chosen rivals. So that's particularly Tesco but also Morrisons, for example. It watches those very carefully and is watched by them very carefully. Indeed, I think the evidence is, particularly in that period, that Asda was the one to watch. Now, Mr Howard has already said, none of these
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't a criticism of anyone, this is just we are focusing in on certain aspects of these dealings, so you are influenced or the nature of the discussions which are being had are influenced by the fact that we have only one manufacturer here. Gallaher isn't here, that mustn't be forgotten. You only have major retailers here, whereas, say, MPIs were introduced right across the board and would generally apply and there might be some specific and special arrangements for the particularly important retailers. More importantly, we are only talking about pricing,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware, is not to be beaten on price. The evidence is that Asda wanted to be a price leader, and certainly was not going to be more expensive, if it could help it, in really any line of any importance, than its chosen rivals. So that's particularly Tesco but also Morrisons, for example. It watches those very carefully and is watched by them very carefully. Indeed, I think the evidence is, particularly in that period, that Asda was the one to watch. Now, Mr Howard has already said, none of these companies is a charity, and everyday low pricing doesn't
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't a criticism of anyone, this is just we are focusing in on certain aspects of these dealings, so you are influenced or the nature of the discussions which are being had are influenced by the fact that we have only one manufacturer here. Gallaher isn't here, that mustn't be forgotten. You only have major retailers here, whereas, say, MPIs were introduced right across the board and would generally apply and there might be some specific and special arrangements for the particularly important retailers. More importantly, we are only talking about pricing, we are focusing in on pricing, but there were many other	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware, is not to be beaten on price. The evidence is that Asda wanted to be a price leader, and certainly was not going to be more expensive, if it could help it, in really any line of any importance, than its chosen rivals. So that's particularly Tesco but also Morrisons, for example. It watches those very carefully and is watched by them very carefully. Indeed, I think the evidence is, particularly in that period, that Asda was the one to watch. Now, Mr Howard has already said, none of these companies is a charity, and everyday low pricing doesn't mean giving the goods away, it means offering the best
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	expect those to be put to the witnesses and any new documents, different documents that the OFT has relied on without responding to our initial points. Essentially all the permutations which are set out in the famous paragraph 40 of the OFT's skeleton are in fact answered in the evidence, and we will see what is put to the witnesses on that. Perhaps I could just say by way of a general point that the Tribunal needs to be aware, this isn't a criticism of anyone, this is just we are focusing in on certain aspects of these dealings, so you are influenced or the nature of the discussions which are being had are influenced by the fact that we have only one manufacturer here. Gallaher isn't here, that mustn't be forgotten. You only have major retailers here, whereas, say, MPIs were introduced right across the board and would generally apply and there might be some specific and special arrangements for the particularly important retailers. More importantly, we are only talking about pricing, we are focusing in on pricing, but there were many other aspects of the relationship between, say, Imperial and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	have to stock Imperial's leading brands, you wouldn't be doing the job for the shopper if you didn't have those brands on the shelves. Now, that does not lead, in fact, to a cosy, happy relationship. It leads, as the evidence shows, to a testy and antagonistic relationship with each having to deal, but playing each other off, and looking for advantage. Asda's own strategy, as I think you are well aware, is not to be beaten on price. The evidence is that Asda wanted to be a price leader, and certainly was not going to be more expensive, if it could help it, in really any line of any importance, than its chosen rivals. So that's particularly Tesco but also Morrisons, for example. It watches those very carefully and is watched by them very carefully. Indeed, I think the evidence is, particularly in that period, that Asda was the one to watch. Now, Mr Howard has already said, none of these companies is a charity, and everyday low pricing doesn't mean giving the goods away, it means offering the best price that is available, whilst still making a profit,

1	well as price, and there is evidence on that which	1	movements in the market?
2	I shall not take you to, but both from our witnesses but	2	In our submission, the issue of tactical bonusing to
3	also from Imperial. They had a pretty good idea what	3	achieve desired price levels, as a means of delivering
4	Asda's strategy is, you see that in Mr Hall's witness	4	the manufacturers' pricing desires, doesn't close that
5	statement, you see Mr Batty also gives some evidence as	5	circle for the OFT, whatever its case exactly is on that
6	to what they understood Asda's strategy to be. And of	6	now.
7	course it's pretty accurate, it's not accurate in every	7	That doesn't establish the necessary degree of
8	respect, but they had a good idea about that.	8	acceptance or agreement on the part of Asda to their P&D
9	Now, it's not in dispute in this case that the	9	strategies. For Asda it's simply a question of a cost
10	manufacturers had internal strategies of trying to	10	price reduction.
11	position their brands as they thought best against the	11	I think it's significant that the OFT hasn't given
12	competing manufacturers, and particularly, but not only	12	a single reason why it might be in the interests of
13	in this case, those of Gallaher. Those P&D aspirations	13	a retailer such as Asda, what advantage it might
14	were not central at all to Asda's own strategy. The	14	actually gain from agreeing to a sort of ratchet of
15	reality for Asda was that it would decide its prices	15	fixed P&D strategy. The reality is, the evidence is,
16	according to its own strategy of being the best in the	16	that Asda couldn't care less, frankly, what the
17	market, and making a profit on the cost prices that it	17	differentials were between the brands. It didn't matter
18	could obtain. Every Day Low Prices, actually, as	18	whether for Asda it wouldn't worry if Richmond was
19	I understand it, will also mean everyday low costs, so	19	priced 5p above or below Dorchester. The question was:
20	you are always trying to chip away at the wholesale	20	how was Richmond priced on Asda shelves as against
21	price because otherwise you can't be the best in the	21	Richmond on Tesco shelves. How was Dorchester priced on
22	market, another reason for the constant difficulty.	22	Asda's shelves against Dorchester on Morrisons' shelves.
23	The agreed evidence as between our expert and the	23	The differential was a matter of complete irrelevance.
24	OFT's is that Asda's prices coincided with the	24	I do make this point again, the OFT may not confront
25	manufacturer aspirations only 40 per cent of the time.	25	it, but it is significant that Tesco has not been found
	121	20	123
	121		120
1	In other words, the manufacturers, if they knew how to	1	to infringe. Because that shows very clearly it's not
1 2	In other words, the manufacturers, if they knew how to read these things, could only have be a worse than	1 2	to infringe. Because that shows very clearly it's not simply enough, on the OFT's own case, assuming that it
2	read these things, could only have be a worse than	2	simply enough, on the OFT's own case, assuming that it
2 3	read these things, could only have be a worse than evens chance that Asda pricing would match with their	2	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't
2 3 4	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or	2 3 4	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these
2 3 4 5	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any	2 3 4 5	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired
2 3 4 5 6	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just	2 3 4 5 6	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to
2 3 4 5 6 7	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening	2 3 4 5 6 7	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some
2 3 4 5 6 7 8	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any	2 3 4 5 6 7 8	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom.
2 3 4 5 6 7 8 9	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's	2 3 4 5 6 7 8	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this
2 3 4 5 6 7 8 9	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the	2 3 4 5 6 7 8 9	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They
2 3 4 5 6 7 8 9 10	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the aspirations would have been higher if Asda had simply	2 3 4 5 6 7 8 9 10	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They are a feature which are exogenous to the theory, because
2 3 4 5 6 7 8 9 10 11	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the aspirations would have been higher if Asda had simply priced according to the recommended selling prices,	2 3 4 5 6 7 8 9 10 11	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They are a feature which are exogenous to the theory, because the question is: what freedom, whatever room for
2 3 4 5 6 7 8 9 10 11 12 13	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the aspirations would have been higher if Asda had simply priced according to the recommended selling prices, which of course wouldn't raise any question of legality.	2 3 4 5 6 7 8 9 10 11 12 13	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They are a feature which are exogenous to the theory, because the question is: what freedom, whatever room for manoeuvre the manufacturer had, what restriction on that
2 3 4 5 6 7 8 9 10 11 12 13	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the aspirations would have been higher if Asda had simply priced according to the recommended selling prices, which of course wouldn't raise any question of legality. The idea that Asda's freedom to price in accordance	2 3 4 5 6 7 8 9 10 11 12 13	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They are a feature which are exogenous to the theory, because the question is: what freedom, whatever room for manoeuvre the manufacturer had, what restriction on that room for manoeuvre did it accept? I am sorry, I am
2 3 4 5 6 7 8 9 10 11 12 13 14 15	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the aspirations would have been higher if Asda had simply priced according to the recommended selling prices, which of course wouldn't raise any question of legality. The idea that Asda's freedom to price in accordance with its own strategy was or would be given up at the	2 3 4 5 6 7 8 9 10 11 12 13 14 15	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They are a feature which are exogenous to the theory, because the question is: what freedom, whatever room for manoeuvre the manufacturer had, what restriction on that room for manoeuvre did it accept? I am sorry, I am talking about retailer, not manufacturer. That is the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the aspirations would have been higher if Asda had simply priced according to the recommended selling prices, which of course wouldn't raise any question of legality. The idea that Asda's freedom to price in accordance with its own strategy was or would be given up at the beginning of the trading period by signing up to some	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They are a feature which are exogenous to the theory, because the question is: what freedom, whatever room for manoeuvre the manufacturer had, what restriction on that room for manoeuvre did it accept? I am sorry, I am talking about retailer, not manufacturer. That is the question. The margins may be low, we know there are all
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the aspirations would have been higher if Asda had simply priced according to the recommended selling prices, which of course wouldn't raise any question of legality. The idea that Asda's freedom to price in accordance with its own strategy was or would be given up at the beginning of the trading period by signing up to some obligation or accepting it in the course of it, frankly,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They are a feature which are exogenous to the theory, because the question is: what freedom, whatever room for manoeuvre the manufacturer had, what restriction on that room for manoeuvre did it accept? I am sorry, I am talking about retailer, not manufacturer. That is the question. The margins may be low, we know there are all sorts of other difficulties with this market, the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the aspirations would have been higher if Asda had simply priced according to the recommended selling prices, which of course wouldn't raise any question of legality. The idea that Asda's freedom to price in accordance with its own strategy was or would be given up at the beginning of the trading period by signing up to some obligation or accepting it in the course of it, frankly, to move its prices of competing brands irrespective of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They are a feature which are exogenous to the theory, because the question is: what freedom, whatever room for manoeuvre the manufacturer had, what restriction on that room for manoeuvre did it accept? I am sorry, I am talking about retailer, not manufacturer. That is the question. The margins may be low, we know there are all sorts of other difficulties with this market, the impossibility of advertising, the impossibility of doing
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the aspirations would have been higher if Asda had simply priced according to the recommended selling prices, which of course wouldn't raise any question of legality. The idea that Asda's freedom to price in accordance with its own strategy was or would be given up at the beginning of the trading period by signing up to some obligation or accepting it in the course of it, frankly, to move its prices of competing brands irrespective of any wholesale price change, is just completely	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They are a feature which are exogenous to the theory, because the question is: what freedom, whatever room for manoeuvre the manufacturer had, what restriction on that room for manoeuvre did it accept? I am sorry, I am talking about retailer, not manufacturer. That is the question. The margins may be low, we know there are all sorts of other difficulties with this market, the impossibility of advertising, the impossibility of doing deals, you can't sell a packet of cigarettes with every
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the aspirations would have been higher if Asda had simply priced according to the recommended selling prices, which of course wouldn't raise any question of legality. The idea that Asda's freedom to price in accordance with its own strategy was or would be given up at the beginning of the trading period by signing up to some obligation or accepting it in the course of it, frankly, to move its prices of competing brands irrespective of any wholesale price change, is just completely counterintuitive. How can it be expected that in this	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They are a feature which are exogenous to the theory, because the question is: what freedom, whatever room for manoeuvre the manufacturer had, what restriction on that room for manoeuvre did it accept? I am sorry, I am talking about retailer, not manufacturer. That is the question. The margins may be low, we know there are all sorts of other difficulties with this market, the impossibility of advertising, the impossibility of doing deals, you can't sell a packet of cigarettes with every packet of cornflakes bought. This market is somewhat
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the aspirations would have been higher if Asda had simply priced according to the recommended selling prices, which of course wouldn't raise any question of legality. The idea that Asda's freedom to price in accordance with its own strategy was or would be given up at the beginning of the trading period by signing up to some obligation or accepting it in the course of it, frankly, to move its prices of competing brands irrespective of any wholesale price change, is just completely counterintuitive. How can it be expected that in this market where things are changing, when you have Budget	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They are a feature which are exogenous to the theory, because the question is: what freedom, whatever room for manoeuvre the manufacturer had, what restriction on that room for manoeuvre did it accept? I am sorry, I am talking about retailer, not manufacturer. That is the question. The margins may be low, we know there are all sorts of other difficulties with this market, the impossibility of advertising, the impossibility of doing deals, you can't sell a packet of cigarettes with every packet of cornflakes bought. This market is somewhat different. The question is: within that margin of
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the aspirations would have been higher if Asda had simply priced according to the recommended selling prices, which of course wouldn't raise any question of legality. The idea that Asda's freedom to price in accordance with its own strategy was or would be given up at the beginning of the trading period by signing up to some obligation or accepting it in the course of it, frankly, to move its prices of competing brands irrespective of any wholesale price change, is just completely counterintuitive. How can it be expected that in this market where things are changing, when you have Budget increases, where you have manufacturers' increases once	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They are a feature which are exogenous to the theory, because the question is: what freedom, whatever room for manoeuvre the manufacturer had, what restriction on that room for manoeuvre did it accept? I am sorry, I am talking about retailer, not manufacturer. That is the question. The margins may be low, we know there are all sorts of other difficulties with this market, the impossibility of advertising, the impossibility of doing deals, you can't sell a packet of cigarettes with every packet of cornflakes bought. This market is somewhat different. The question is: within that margin of manoeuvre did Asda, in my particular case, renounce any
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	read these things, could only have be a worse than evens chance that Asda pricing would match with their strategy. But to the extent of that 40 per cent or whatever it may be, that's not, we say, evidence of any agreement or consensus or joint expectation, it's just where the strategies coincide. I pointed out in opening and I don't repeat the point again, at least not in any detail, that it is also established that Asda's adherence in that sense of happening to match the aspirations would have been higher if Asda had simply priced according to the recommended selling prices, which of course wouldn't raise any question of legality. The idea that Asda's freedom to price in accordance with its own strategy was or would be given up at the beginning of the trading period by signing up to some obligation or accepting it in the course of it, frankly, to move its prices of competing brands irrespective of any wholesale price change, is just completely counterintuitive. How can it be expected that in this market where things are changing, when you have Budget increases, where you have manufacturers' increases once or twice a year, can it really be seriously suggested	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	simply enough, on the OFT's own case, assuming that it had rational reasons for finding that Tesco didn't infringe, it's not simply enough to accept these tactical bonuses for the purpose of achieving desired shelf price levels. There has to be something else to establish the infringement, some X factor, some limitation on pricing freedom. Low margins have been mentioned as a feature of this market. That, in my submission, is what they are. They are a feature which are exogenous to the theory, because the question is: what freedom, whatever room for manoeuvre the manufacturer had, what restriction on that room for manoeuvre did it accept? I am sorry, I am talking about retailer, not manufacturer. That is the question. The margins may be low, we know there are all sorts of other difficulties with this market, the impossibility of advertising, the impossibility of doing deals, you can't sell a packet of cigarettes with every packet of cornflakes bought. This market is somewhat different. The question is: within that margin of manoeuvre did Asda, in my particular case, renounce any freedom?

1 1 simply a patsy giving up its freedom, a powerless tool To take one particular example which Mr Lasok did 2 2 in the hands of the manufacturer. put before the luncheon adjournment, there is absolutely 3 3 One example that you raised yourself, Madam, in no evidence that Asda felt under any constraint from 4 4 questioning was: was there ever any push-back from making an own initiative reduction of, say, a Gallaher 5 5 retailers about this rather complicated accounting brand whilst leaving the Imperial brand at the existing 6 6 system of bonusing and, you know, yes, there most level. On the contrary, there are examples where 7 7 certainly was, and it's in our evidence, Asda pushed for precisely that happened. An example is given by 8 8 and eventually secured what they called "net net Mr Mason at paragraph 36 of his witness statement. Such 9 pricing" to make the pricing more transparent to reduce 9 a thing might be done to damage their competition, such 10 10 the manufacturers' influence and ability to negotiate as Tesco, it might be done to incentivise Imperial to 11 11 towards the end of the period or whatever, simply to offer better terms, but there was absolutely no sense of 12 12 give it as much freedom as possible to price as it saw restriction and no sense that that was something that 13 13 best, and that is in the evidence. they couldn't do in pursuance of their own strategy; so 14 There are plenty of other examples of Asda using its 14 parlaying we haven't(?). 15 15 power to put pressure on the manufacturers, and a good Focusing specifically on Gallaher, you may remember 16 16 example of that is its own label, which you will see, that in his opening Mr Lasok dealt in a bit of detail 17 17 with Asda and Imperial and then at the end said: no, it's referred to in passages in the witness statements 18 18 which are marked "Confidential", I don't know to what I don't have the time, for reasons of time, but for 19 19 extent they still are. But you will see that Gallaher it's the same picture. 20 20 essentially the own label product was put there to be Well, in my submission, it really isn't the same 21 21 the cheapest in store and to exert downward pressure on picture at all. There isn't any P&D trading agreement. 22 the manufacturers for the cost prices of their ultra low 22 There are very, very few documents -- I ran through this 23 23 cigarettes. in the initial opening and I shan't labour the point --24 24 So without going through all the permutations in in annex 4, which is the statement of objection annex 25 25 paragraph 40 or in Mr Lasok's revised theory, what for Asda/Gallaher. There are, I think, 19 of them. 125 127 1 possible interest would Asda have in agreeing in advance 1 There are internal Gallaher documents, there are 2 2 these sort of parallel movements, up or down? As I say, documents outside the infringement period, leaving about 3 3 a scant dozen documents which of course cannot amount to evidence is given on those matters for each category, 4 4 I think, each permutation of the OFT's case. much bombardment over the period of the infringement. 5 5 There are also plenty of instances of Asda using its As Dr Scott pointed out, even bombardment is 6 6 knowledge that the manufacturers had these desires to essentially unilateral. I mean, that's usually the 7 7 secure better terms from them. What Professor Shaffer position with bombing, actually; it's not necessarily 8 calls parlaying, playing it off, simply saying "this is 8 desired by the recipient. But this is not bombardment 9 9 or pestering. Most of those exchanges are completely what we are charging for Gallaher, Imperial, are you 10 10 irrelevant to the OFT's case. They are "here is our going to match it, are you going to beat it?" Plenty of 11 11 MPI, here are details of our MPI". So you have examples of that. 12 12 A particular example was mentioned by Mr Lasok in something like five documents a year, which really don't 13 opening, which is where Mr Lang made it absolutely plain 13 take the OFT anywhere, we say. Very little could, on 14 14 that he was not going to be funding any discounts. any stretch, be said to have anything to do with the 15 Mr Lasok said -- I didn't fully follow this -- this 15 relative price of the competing brand, and none of them, 16 16 showed that there was some underlying expectation and we say, show any agreed linkages to that brand. 17 17 Mr Lang was looking for a sweetener. No, he wasn't As regards Imperial, as I have already said, the 18 looking for a sweetener, he was looking for absolute 18 first trading agreement that is on the file, although 19 19 neutrality. He was not looking for any benefit for Asda it's not cited in the decision and it wasn't in the SO20 on that. He was simply saying "If you want to compete 20 annex as originally constituted, doesn't have any 21 with Gallaher at that level, well, you are simply going 21 reference to P&Ds at all. 22 22 to have to fund it". He wasn't taking a benefit for The other two, one of them is outside the period and 23 23 the 2002 one signed in the middle of 2002 is, in my Asda. We say that taking of the funding to achieve 24 24 submission, one of the loosest and the vaguest of those those is simply no indication of buying into the P&D 25 25 that we have looked at during the course of these strategies. 126 128

1	hearings.	1	is saying is it's good, as long as it's no worse, we are
2	It applies without distinction to a number of	2	fine. If it's a penny off or 5p off in Asda, there is
3	desiderata requirements that ITL would like to see	3	no reason for Mr Batty to be upset about that, he may
4	fulfilled, and as I have already said, those are	4	think that will be even better. The products are one is
5	actually important, should not be taken as also-rans	5	slightly better than the other, but if the price is even
6	listing availability, stocking range, display, these	6	better, that surely is something that Mr Batty would
7	things are of vital importance to the manufacturer.	7	welcome. It might not be something that Asda would
8	There is no apportionment as between the many, as	8	welcome because of the margin.
9	between the pricing and the others.	9	So there you may see a difference in the strategies
10	The amount given by way of what I think we are	10	or the commercial appreciation of these situations as
11	calling ongoing bonus under that trading agreement is,	11	between retailer and manufacturer. The commercial
12	in the Asda case, strikingly small compared with some of	12	rationality of the OFT's case is, in our submission,
13	the others that you have seen. It is extremely small.	13	highly questionable.
14	There is no clawback provision for partial compliance,	14	Now, I said I wouldn't go through and I won't go
15	that sort of thing has been mentioned before. There is	15	through the documents as between Asda and ITL but no
16	no opportunity to respond clause. As to that, I did	16	doubt we will explore that with the witnesses. I just
17	make submission in my initial opening. Firstly to say	17	point out that about a third of those are
18	that insofar as that is being used by Mr Lasok and the	18	pre-infringement period documents. So where the OFT has
19	OFT as saying "There is a sort of structural element	19	said it relies principally on documents dealing with the
20	going to the linkages between the prices", that is	20	infringement period, that has not the case. These are
21	absent in the Asda case. But of course, as I said, it	21	disproportionately cited, I should also say, in the
22	doesn't preclude actual responses, and of course on	22	OFT's pleadings. So it's relying more heavily, it would
23	occasion Asda would seek such a response in pursuance of	23	seem, on pre-infringement period documents than others.
24	its own strategy to get the prices down as much as	24	I just make that point because that may come up in the
25	possible. The fact that it makes use of the	25	cross-examination.
	129		131
1	manufacturers' pricing and differential desires in order	1	Now, unless Mr O'Donoghue thinks I should be saying
2	to secure that funding is pro-competitive, as I think	2	anything else, at that point I would be proposing to
2	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did	2	anything else, at that point I would be proposing to call Mr Jolliff.
2 3 4	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To	2 3 4	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you.
2 3 4 5	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not	2 3 4 5	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside.
2 3 4 5 6	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To	2 3 4	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you.
2 3 4 5 6 7	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is	2 3 4 5	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN
2 3 4 5 6 7 8	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look	2 3 4 5 6 7 8	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn)
2 3 4 5 6 7 8 9	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is	2 3 4 5 6 7 8 9	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you.
2 3 4 5 6 7 8 9	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as	2 3 4 5 6 7 8 9	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please,
2 3 4 5 6 7 8 9	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in	2 3 4 5 6 7 8 9 10	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name
2 3 4 5 6 7 8 9 10	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional	2 3 4 5 6 7 8 9 10 11	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please?
2 3 4 5 6 7 8 9 9 10 11 11 12	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional and in our case relatively small ongoing discount off	2 3 4 5 6 7 8 9 10 11 12 13	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please? A. Yes, it's John David Jolliff of [redacted].
2 3 4 5 6 7 8 9 110 111 112 113	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional and in our case relatively small ongoing discount off the prices, but no obligations are placed on Asda to	2 3 4 5 6 7 8 9 10 11 12 13	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please? A. Yes, it's John David Jolliff of [redacted]. Q. Thank you. Could Mr Jolliff please be given core
2 3 4 5 6 7 8 9 110 111 112 113 114	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional and in our case relatively small ongoing discount off the prices, but no obligations are placed on Asda to secure that. It can comply or not, as it chooses. The	2 3 4 5 6 7 8 9 10 11 12 13	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please? A. Yes, it's John David Jolliff of [redacted]. Q. Thank you. Could Mr Jolliff please be given core bundle 10, which is the Asda file. Mr Jolliff, I think
2 3 4 5 6 7 8 9 9 110 111 112 113 114 115	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional and in our case relatively small ongoing discount off the prices, but no obligations are placed on Asda to secure that. It can comply or not, as it chooses. The evidence is that it inevitably it always was paid and	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please? A. Yes, it's John David Jolliff of [redacted]. Q. Thank you. Could Mr Jolliff please be given core bundle 10, which is the Asda file. Mr Jolliff, I think if you turn to tab 109, {C10/109/373}, you should find
2 3 4 5 6 7 8 9 110 111 12 13 14 15 16	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional and in our case relatively small ongoing discount off the prices, but no obligations are placed on Asda to secure that. It can comply or not, as it chooses. The	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please? A. Yes, it's John David Jolliff of [redacted]. Q. Thank you. Could Mr Jolliff please be given core bundle 10, which is the Asda file. Mr Jolliff, I think if you turn to tab 109, {C10/109/373}, you should find a copy of a witness statement?
2 3 4 5 6 7 8 9 110 111 112 113 114 115 116	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional and in our case relatively small ongoing discount off the prices, but no obligations are placed on Asda to secure that. It can comply or not, as it chooses. The evidence is that it inevitably it always was paid and there wasn't any discussion about it whatsoever. Now, we have also said that the amounts in any	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please? A. Yes, it's John David Jolliff of [redacted]. Q. Thank you. Could Mr Jolliff please be given core bundle 10, which is the Asda file. Mr Jolliff, I think if you turn to tab 109, {C10/109/373}, you should find
2 3 4 5 6 7 8 9 110 111 112 113 114 115 116	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional and in our case relatively small ongoing discount off the prices, but no obligations are placed on Asda to secure that. It can comply or not, as it chooses. The evidence is that it inevitably it always was paid and there wasn't any discussion about it whatsoever.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please? A. Yes, it's John David Jolliff of [redacted]. Q. Thank you. Could Mr Jolliff please be given core bundle 10, which is the Asda file. Mr Jolliff, I think if you turn to tab 109, {C10/109/373}, you should find a copy of a witness statement? A. That's correct. Q. If you turn to nearly the end of that, to two pages
2 3 4 5 6 7 8 9 9 10 11 11 12 13 14 15 16 17 18 19 19 19 19 19 19 19 19 19 19 19 19 19	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional and in our case relatively small ongoing discount off the prices, but no obligations are placed on Asda to secure that. It can comply or not, as it chooses. The evidence is that it inevitably it always was paid and there wasn't any discussion about it whatsoever. Now, we have also said that the amounts in any	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please? A. Yes, it's John David Jolliff of [redacted]. Q. Thank you. Could Mr Jolliff please be given core bundle 10, which is the Asda file. Mr Jolliff, I think if you turn to tab 109, {C10/109/373}, you should find a copy of a witness statement? A. That's correct.
2 3 4 5 6 7 8 9 10 11 11 12 13 14 15 16 17 18 19 20 21	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional and in our case relatively small ongoing discount off the prices, but no obligations are placed on Asda to secure that. It can comply or not, as it chooses. The evidence is that it inevitably it always was paid and there wasn't any discussion about it whatsoever. Now, we have also said that the amounts in any differential schedule are expressed as maxima, not as	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please? A. Yes, it's John David Jolliff of [redacted]. Q. Thank you. Could Mr Jolliff please be given core bundle 10, which is the Asda file. Mr Jolliff, I think if you turn to tab 109, {C10/109/373}, you should find a copy of a witness statement? A. That's correct. Q. If you turn to nearly the end of that, to two pages
2 3 4 5 6 7 8 9 9 10 11 11 12 13 14 14 15 16 17 18 19 20 21 22 22	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional and in our case relatively small ongoing discount off the prices, but no obligations are placed on Asda to secure that. It can comply or not, as it chooses. The evidence is that it inevitably it always was paid and there wasn't any discussion about it whatsoever. Now, we have also said that the amounts in any differential schedule are expressed as maxima, not as fixed. I don't understand, but Mr Lasok can explore	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please? A. Yes, it's John David Jolliff of [redacted]. Q. Thank you. Could Mr Jolliff please be given core bundle 10, which is the Asda file. Mr Jolliff, I think if you turn to tab 109, {C10/109/373}, you should find a copy of a witness statement? A. That's correct. Q. If you turn to nearly the end of that, to two pages short of the end of that tab, you should see a signature? A. Correct.
2 3 4 5 6 7 8 9 9 10 11 11 12 13 14 15 16 17 18 19 20 21 22 22 23	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional and in our case relatively small ongoing discount off the prices, but no obligations are placed on Asda to secure that. It can comply or not, as it chooses. The evidence is that it inevitably it always was paid and there wasn't any discussion about it whatsoever. Now, we have also said that the amounts in any differential schedule are expressed as maxima, not as fixed. I don't understand, but Mr Lasok can explore that with the witnesses, the case that's being put	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please? A. Yes, it's John David Jolliff of [redacted]. Q. Thank you. Could Mr Jolliff please be given core bundle 10, which is the Asda file. Mr Jolliff, I think if you turn to tab 109, {C10/109/373}, you should find a copy of a witness statement? A. That's correct. Q. If you turn to nearly the end of that, to two pages short of the end of that tab, you should see a signature?
2 3 4 5 6 7 8 9 9 10 11 11 12 13 14 15 16 17 18 19 19 20 21 22 22 23 24	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional and in our case relatively small ongoing discount off the prices, but no obligations are placed on Asda to secure that. It can comply or not, as it chooses. The evidence is that it inevitably it always was paid and there wasn't any discussion about it whatsoever. Now, we have also said that the amounts in any differential schedule are expressed as maxima, not as fixed. I don't understand, but Mr Lasok can explore that with the witnesses, the case that's being put forward about the obvious commercial rationality of some of the aspects of this that the OFT puts forward. It will be seen that if Mr Batty thinks that it's good for	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please? A. Yes, it's John David Jolliff of [redacted]. Q. Thank you. Could Mr Jolliff please be given core bundle 10, which is the Asda file. Mr Jolliff, I think if you turn to tab 109, {C10/109/373}, you should find a copy of a witness statement? A. That's correct. Q. If you turn to nearly the end of that, to two pages short of the end of that tab, you should see a signature? A. Correct. Q. Is that your signature? A. That is my signature, yes.
2 3 4 5 6 7 8 9 9 10 11 11 12 13 14 15 16 17 18 19 20 21 22 22 23	to secure that funding is pro-competitive, as I think the OFT accepts, and certainly as Professor Shaffer did in the famous paragraph 51 of his advisory report. To coin a phrase: that paragraph is written in English, not in Arabic, Chinese or Greek. We also say very clearly that the ongoing bonus is an incentive payment, the contract, if you want to look at it as a contract, although I think the evidence is that certainly in our case it wasn't looked at as a document of vital importance, it's not referred to in the daily correspondence, it is simply an additional and in our case relatively small ongoing discount off the prices, but no obligations are placed on Asda to secure that. It can comply or not, as it chooses. The evidence is that it inevitably it always was paid and there wasn't any discussion about it whatsoever. Now, we have also said that the amounts in any differential schedule are expressed as maxima, not as fixed. I don't understand, but Mr Lasok can explore that with the witnesses, the case that's being put forward about the obvious commercial rationality of some of the aspects of this that the OFT puts forward. It	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	anything else, at that point I would be proposing to call Mr Jolliff. THE CHAIRMAN: Yes, let's have Mr Jolliff then, thank you. MR FLYNN: Mr Jolliff has been dutifully waiting outside. MR JOHN DAVID JOLLIFF (sworn) Examination-in-chief by MR FLYNN THE CHAIRMAN: Do sit down, Mr Jolliff. A. Thank you. MR FLYNN: Good afternoon, Mr Jolliff. Would you please, just for the record, give the Tribunal your full name and your address, please? A. Yes, it's John David Jolliff of [redacted]. Q. Thank you. Could Mr Jolliff please be given core bundle 10, which is the Asda file. Mr Jolliff, I think if you turn to tab 109, {C10/109/373}, you should find a copy of a witness statement? A. That's correct. Q. If you turn to nearly the end of that, to two pages short of the end of that tab, you should see a signature? A. Correct. Q. Is that your signature?

1 your evidence before this Tribunal? an agreement between you and him about a movement in the 2 2 A. That's correct, yes. price of Richmond. 3 **Q.** And is it true? 3 A. Right, well --A. It is true, yes. Q. Can I just say, if we go to your paragraph 64 of your **Q.** There is nothing in it that you wish to change at this witness statement, and look at the second line, you say: 6 6 point? "The suggestion is that I have told ITL when the 7 7 **A.** There is nothing in it that I wish to change at all. Gallaher price change will happen." 8 MR FLYNN: In that case, Madam, that's Mr Jolliff's evidence Then the sentence after that you say: 9 and Mr Jolliff, Mr Lasok will have some questions for 9 "I do not know whether I actually did tell 10 10 you on behalf of the OFT. Graham Hall when we would be increasing the Gallaher 11 11 Cross-examination by MR LASOK price, or it is just posturing by ITL but it would be MR LASOK: Now, Mr Jolliff, am I right in thinking that Asda 12 12 highly unusual, as I would not want to give ITL 13 13 did not stock tobacco products because Asda was getting an excuse to push up prices." 14 a good margin on them; the reason why you stocked them 14 Is the truth that you don't actually remember the 15 15 circumstances surrounding this letter? was because they were a must-have product and a footfall 16 16 driver? A. The only thing I can say in answer to that is that 17 A. It was a must-have product and a footfall driver. 17 I don't make common practice of giving information to 18 **Q.** I just want to deal with various miscellaneous matters rival suppliers about other suppliers' brands. 19 first. I think in your witness statement you say that 19 **Q.** If you go to paragraph 67, you are now referring to the 20 you were the buyer responsible for tobacco products from 20 next document, which is number 10 in annex 14, 21 1997 until the summer 2002? 21 {D14/10/29} and this is an internal ITL document which 22 A. That's right. 22 obviously you wouldn't have seen at the time? 23 **Q.** Can you remember when in the summer? 23 A. No. 24 24 A. Unfortunately not. **Q.** You are commenting on that in paragraph 67, and in the 25 Q. I think the last document that I think that we have and 25 middle of paragraph 67 of your witness statement, you 133 135 1 which you are involved is dated to 11 June 2002, so you 1 say: 2 2 must have left sometime after June or sometime after "This seems unusual to me as I would not normally 3 3 11 June but vou can't -discuss with him what we were planning to do with our 4 4 A. That's right, I moved into a department which was retail prices." 5 5 called -- well, I was already in a department called A. Yeah, that's right, that's what I just said. 6 6 Impulse. Tobacco went over to Petrol. **Q.** In the next sentence you have a "presumably". 7 **Q.** I wonder whether you could turn to 64 of your witness 7 8 8 Q. What I am asking you is: do you actually remember any of statement, please. 9 9 A. Where it says "On Richmond"? all this? 10 10 A. The only thing I can say is that I never, ever --Q. Yes. This, together with paragraph 63, deals with 11 11 a particular document, and the document is at annex 14, I mean, I have been buying for 30 odd years, I have 12 12 if you have a look at that, at tab 9. (Pause). never given a supplier another supplier's retail prices, 13 13 {D14/9/27}. Just check that we are looking at the because that is just not ethics. 14 same --14 Q. Could you turn to paragraph 101 of your witness 15 A. Concept tobacco. 15 statement, please. Now, if you have paragraph 101, this 16 16 **Q.** -- thing, it should be a letter dated 5 October 2000. relates to a document 40, and I am quite happy if you 17 17 A. That's right, yes. finish reading your paragraph 101 and then we look at 18 **Q.** The bit I am interested in at the moment is a bit on 18 document 40, but if you want to look at it first before 19 19 refreshing your memory, by reading your witness page 2, and it's the paragraph under the heading 20 20 statement, it's up to you. "Richmond Pricing". A. Yes. (Pause). Right. 21 21 (Pause) 22 22 **Q.** What the letter says is that you had advised the writer A. Right, what am I looking at now? 23 of the letter, who was Mr Graham Hall of ITL, that 23 Q. Could you look at tab 40, please. You have two emails 24 24 on that page, and we are looking at the moment at the Dorchester Kingsize was going to move to a particular first email in point of time, which is the one that 25 25 price on a particular date. Then he refers to

10

11

12

13

14

1 starts in the middle of the page. It's an email from 2 Mr Hall to yourself, sent on October 1, 2001. 3 A. Yes. 4 Q. You see, in your paragraph 101, in the first line, you have an "apparently", and if you look at the fourth 6 line, towards the end of the line you have 7 an "I imagine". Then if you go four lines below that, 8 you have again, towards the end of the line, a sentence

that starts "it may be", so you may:

- "It may be that I told ITL when we would be increasing Gallaher's Sterling, as I wanted the price for ITL's Richmond to increase across the market so that I could restore my margin. It may also be that the information I had apparently given ITL was not true."
- 15 Then in the last sentence you start off by saying:
- 16 "This would suggest either ..."
- 17 Just how much about all of this do you actually 18 remember?
- 19 **A.** The only thing is that at the time when I made this 20 statement on 11 June 2010, it refers back to something 21 that happened in 2001, which is nine years previous.
- 22 I could only think that I wouldn't have told ITL that
- 23 Sterling was going to move, because that was a brand
- 24 that I brought in from Gallaher's, and that brand was
- 25 brought in sole as to Asda. So I wouldn't be telling

- 1 those particular retails to ITL although they are 2 surmising that I did.
- 3 I mean, if they were looking at increasing the 4 Richmond brand, because the marketplace was ready to 5 take an increase, I would obviously look at it, provided

137

6 it was for the benefit of Asda and our customers if we

7 needed to move the retails.

> But I think he is being a bit presumptuous saying that I've told him they were Sterling retail because I wouldn't do it.

- 11 **Q.** So what you are saying is that you now remember this 12 incident?
- 13 **A.** No. I don't actually remember the incident. The only 14 thing I can say is that trying to remember a way back to 15 2001 in 2010 I can only surmise that that was what

16 happened.

8

9

10

- 17 **Q.** Well, this is what I am trying to get at because the 18 reason why I've been taking you through this paragraph 19 is because you are using phrases like "this seems
- 20 unusual", "presumably", "apparently", "I imagine", "it 21 may be", and this gives me the impression that you don't
- 22 actually remember the circumstances surrounding these 23 documents.
- 24 A. I can only work on the information that I have been 25 given, and that is the reply that I gave.

Q. Well, now, when you use phrases like the ones I've

2 mentioned, like "this seems", "presumably",

3 "apparently", "I imagine", "it may be", when we see this

4 appearing in your witness statement, are you really

5 saying that you have no recollection of the matters

6 covered by the document and you are just surmising?

7 A. The only thing I can say is that retailers moved up and

moved down, to actually recollect this actual event on

9 that specific day is difficult, but I am surmising what

10 was going on was the fact that they wanted to move the

11 Richmond brand, and they were trying to say that we,

12 being Asda, were trying to move the -- were going to

13 move the Sterling brand. Otherwise I wouldn't have even

14 moved the Richmond brand, I wouldn't have even looked at

15 the Richmond brand, and I wouldn't have even looked at

16 the Sterling brand. So it's a bit of supposition on

17 both sides, I think.

drinks.

21

5

6

7

18 Q. Well, it doesn't appear to be supposition from Mr Hall, 19 because he is sending you an email and he says:

20 "Many thanks for your phone call."

A. But I've just said that I never ever gave retail prices 22 out, ie on Sterling brand, to another supplier. I mean, 23 I have been buying 31 years, not just in tobacco, but 24 throughout very big portfolios like beer and soft 25

139

Q. Could you turn to your paragraph 110, please. This 2 refers to document 49, and again it's up to you whether 3 you would like to look at 49 first before you read 4 paragraph 110 of your witness statement.centre.

49 is a single page, it has two emails. The one at the bottom is the earlier of the two.

(Pause)

- 8 A. But this email here is an internal email, with no input 9 from myself, apart from what Graham is saying, that he 10 had called me this morning, which I am disputing.
- 11 **Q.** If you could turn to your paragraph 110, you start off 12 by saying:

13 "This is an internal ITL email chain in which 14 Graham Hall suggests I have told him the dates" and so 15 forth.

16 A. That's correct.

17 **Q.** Then there is a reference to document 40 and further 18 down the paragraph, and you say:

19 "I am not sure whether these price moves had not 20 actually happened or had reduced again in the interim or 21 whether I did actually give this information to ITL. 22 I cannot remember making this telephone call and it is 23 hard to believe that I ever made such a call."

24 A. I definitely didn't make the telephone call. I am

25 presuming there that if we had got this email here and

- 1 these documents had been sent out to myself, that the
- 2 price increase would possibly have happened, if I had
- 3 had the deal sheets and the marketplaces had moved which
- 4 didn't disadvantage Asda's margin or disadvantage our
- 5 consumers.
- 6 Q. You see, the point I am putting to you, and I'll put it
- 7 to you again for the sake of clarity, is that you are
- 8 using language yet again in paragraph 110 that suggests
- 9 that you don't remember the event?
- 10 **A.** The actual date of the event, as I've already said,
- 11 could be a bit difficult. But certainly price increases
- 12 happened on and off throughout the trading period, which
- will have been into a situation where Asda either moved
- 14 the prices of Richmond or didn't. I am not trying to
- lie, I am trying to say that at that particular time,
- 16 definitely didn't tell them about Sterling, but the
- 17 situation could have been that we moved Richmond,
- 18 provided I got the deal sheets from Imperial Tobacco and
- 19 that the market was ready to take the move. You don't
- 20 just take price increases from suppliers willy-nilly, we
- 21 actually look at the marketplace, for example my brief
- 22 from Asda is to be equal to or better than the Big Five,
- as it was in those days, ie Tesco, Sainsbury's,
- et cetera, et cetera, and I wouldn't be moving retails
- 25 unless I knew that they were going to be moving their

- 1 retails. And I used to go out every week price checking
- 2 to make sure that Asda was competitive, and used to get
- 3 many telephone calls from suppliers saying "Tesco's
- 4 reckon you are too cheap".
- 5 **THE CHAIRMAN:** Just focusing back on this email, are you
- 6 saying that you remember this incident or not, and are
- 7 you saying that it's hard to believe that you made this
- 8 call, or are you now saying you definitely didn't make
- 9 the call?
- 10 A. As far as I am aware, I have never ever given any
- 11 information out so I wouldn't have made that telephone
- 12 call.
- 13 MR LASOK: I think I would like to be precise about this,
- because in many respects I was rather surprised when you
- $15\,$ $\,$ $\,$ raised the question of lying, because I've not, up until
- 16 now, suggested that you were lying at all, I was trying
- $\,$ 17 $\,$ $\,$ to help you out, because I was putting to you that the
- 18 impression I was getting was that you simply didn't
- 19 remember, and I was moving on to a different point,
- which is that when we see in your witness statement language like "this seems", "presumably", "apparently",
- 22 "I imagine" and so forth. Is it the case that you
- 23 simply can't remember? Because if you can't remember

142

- 24 and you are just surmising, there is no point in my
- 25 asking you questions.

1 A. No. I cannot remember that exact thing. Prices used to

- 2 go up and down, and I was probably -- well, was
- 3 surmising that this was the case at that particular
- 4 time
- 5 **Q.** Wait a minute. So in 110, paragraph 110, do we have
- 6 here surmise?
- 7 A. (Pause). I mean, yes, because I can't actually remember
- 8 because of so many prices moving --
- 9 **Q.** Right, you can't remember. So do I take it, therefore,
- 10 that in your witness statement, when we come across the
- 11 same kind of language that you use here -- you know,
- 12 "I am not sure", "I cannot remember", and other language
- 13 like "this seems unusual" and "presumably" and
- 14 "apparently" and "I imagine" -- when we are looking at
- 15 language like that, you are telling us that you can't
- 16 remember?
- 17 A. Yes.
- 18 **Q.** You are just surmising?
- 19 A. Yes.
- 20 **0.** Right.
- 21 **DR SCOTT:** Mr Jolliff, I think we should say that if you
- can't remember, that's not a reflection on you, it's
- just a fact that you can't remember.
- 24 A. Yes. I understand. I mean, the fact of the -- I mean,
- 25 I know I shouldn't be saying this, but it is very

143

- 1 difficult to remember something that went on in 2001, so
- 2 to try to give you an answer, you give the answer to the
- 3 best of your ability, and to the best of my ability
- 4 that's what happened at that particular time.
- 5 **THE CHAIRMAN:** What's taken Mr Lasok by surprise is that you
- 6 seem now, in the witness box, to be being rather more
- 7 categorical that you were in your witness statement by
- 8 saying, if it is what you are saying, "Graham Hall must
- $9 \qquad \text{have been incorrect in saying to Roger Batty in this} \\$
- $10 \qquad \text{email 'John Jolliff has advised me of the following} \\$
- 11 prices'. That must be wrong because I would never have
- 12 discussed prices with Graham Hall"?
- 13 A. I would never ever give competitor prices out to another
- 14 supplier.
- 15 **THE CHAIRMAN:** Well, these are retail prices.
- 16 A. Yes.
- 17 **THE CHAIRMAN:** These are the prices at which they, Asda,
- 18 was, it's said, going to sell these products on its
- 19 shelves. This is not talking about the price that you,
- Asda, are going to be paying.
- 21 A. Yes, I understand that.
- 22 **THE CHAIRMAN:** So you are saying you wouldn't have discussed
- 23 retail prices?
- 24 A. No. I wouldn't discuss Sterling retail prices with
- 25 Imperial Tobacco, because Sterling is a Gallaher's

- 1 brand, and not only that, Sterling was sold to Asda for
- 2 six months and then it went onto Tesco, so we were both
- 3 stocking it.
- 4 **DR SCOTT:** But would you expect them to discuss those prices
- 5 with you, bearing in mind that they can see them in the
- 6 store? I mean, imagine for a moment that I am the
- 7 national account manager, I have been to an Asda store,
- 8 I have observed something which I don't like, because my
- 9 competitor's product looks to be being advantaged
- against mine, am I not likely to be on the phone to you
- 11 to say "What about the price of Sterling?"?
- 12 A. Well, yes, I mean, they did phone up saying, you know,
- "How come this price is that when we have agreed that",
- but unfortunately from a supplier's point of view, the
- 15 Asda retail is Asda's policy, and if I am selling below
- 16 the recommended selling price, the reason for that is to
- 17 give the customers a good offer and to be beneficial to
- 18 Asda. But they would ring me up and say, you know, "how
- 19 come this price is so low", but you would say "it's got
- 20 nothing really to do with you, they are Asda's prices,
- 21 not your prices".
- 22 **DR SCOTT:** But if I am the national account manager, I am
- 23 not so much concerned with the absolute price, that's
- down to your margin.
- 25 A. Yeah.

145

- 1 **DR SCOTT:** I am concerned to ensure that my product is not
- 2 disadvantaged against the rival's product.
- 3 A. I understand that. I understand that.
- 4 **DR SCOTT:** So you wouldn't be surprised if I am wanting to
- 5 discuss with you the relative price of the two products?
- 6 A. Yeah, but if it was another brand, I wouldn't give them
- 7 that answer. It's like when I was buying soft drinks,
- 8 if Coca-Cola phoned up and said, you know, "What's the
- 9 price of Pepsi", I am making this up, "How come the
- price of Pepsi is 89p, and we are 99p, and Pepsi is
- 11 always 99p", I would say, "Well, it's got nothing to do
- 12 with you, what do you think it is?" So he would
- probably say, "Well, I think it's probably a promotion".
- 14 I would say, "Well, you are right".
- 15 **DR SCOTT:** And you would look for a promotion in return?
- 16 A. Of course, yes.
- 17 **DR SCOTT:** Thank you.
- 18 MR LASOK: Right, well, now up to this point, we have had
- $19 \qquad \text{four documents in which it is stated that you have} \\$
- $20 \qquad communicated \ to \ ITL \ the \ shelf \ price \ of \ a \ Gallaher$
- 21 product. The very first one is a letter that's written
- 22 to you, and I think the last one is an email to you,
- 23 a couple of them are emails to you. The first and the
- third and the fourth involve you.
- 25 A. Yes.

146

- 1 **Q.** We don't have any response from you in which you say to
- 2 Mr Hall "you have got it wrong"?
- 3 A. Well, no, because that's after the event. You know, the
- 4 event has happened. I have either put my prices up or
- 5 not. And it's got nothing really to do with Graham.
- 6 It's either happened or it hasn't happened.
- 7 Q. Well, I am not looking at --
- 8 **A.** Because they would be out price checking to see what's
- been going on in the market anyway, because price really
- is all that we have got on all sides to fight on.
- 11 **Q.** Well, you see, if you look at tab 40, you have the email
 - from Mr Hall to yourself on October 1, 2001, in which he
- 13 thanks you for your phone call confirming that Sterling
- 14 would move. We don't have a response from you saying
- 15 "I don't understand what you are saying". Is there any
- 16 explanation for that, that you can think of?
- 17 **A.** Because it's just a passing comment from Graham saying
- 18 that Sterling will be moving. I mean, I've no --
- 19 I can't understand why I should really reply to him
- 20 saying "put it in writing" or by telephone saying
- something different. If he wants to think that, let him
- 22 think it.
- 23 **Q.** Think what?
- **A.** Let him think that Sterling is going to rise back to
- 25 those prices.

147

- 1 **Q.** No, let him think that you had called him on the phone
- 2 on Friday confirming the Sterling move. He was under
- 3 a misapprehension, was he?
- 4 A. As far as I am aware, yeah. I mean, I have never given
- 5 any information about an own brand product to
- 6 a supplier.
- 7 **Q.** If you go back to 49, the second page, and the bit under
- 8 "Richmond Pricing", he has written to you saying that
- 9 you have advised him about the Dorchester move and you
- 10 never thought of writing back --
- 11 A. Sorry, which --
- 12 Q. It's at tab 9, page 2. It's under the heading "Richmond
- 13 Pricing". The first line:
- 14 "Subsequent to our meeting, you have advised ..."
- 15 If you didn't do this sort of thing, wouldn't you
- $\,$ 16 $\,$ $\,$ have written back to him saying "You have got the wrong
- end of the stick, there is a confusion here"?
- 18 A. No.
- 19 **DR SCOTT:** Mr Jolliff, why does this letter refer to
- 20 29 October?
- 21 **A.** Presumably he had a meeting with me on 29 October and
- 22 then he is trying to say that Dorchester Kingsize would
- 23 move on -- sorry.
- 24 MR LASOK: I think the meeting was on 3 October, though, if
- 25 you look at the first line --

October 20, 2011 Imperial Tobacco and Others v OFT A. The letter stated 5 October and --**Q.** Then if you go to paragraph 19, you start off by 2 Q. If you look at the first line of the letter after 2 referring to the basic cost price, and that was in the 3 "Dear John", does that help your memory? 3 price list, wasn't it? 4 **DR SCOTT:** Why is he wanting the price of Richmond to move 4 5 on 29 October? 5 Q. You say that that was set at a level which allowed Asda 6 6 A. I presume because the price of Dorchester Kingsize is to make a specified margin if it sold at the RSP 7 moving to 3.34 on 29 October. 7 provided. The RSP provided is the RSP provided in the DR SCOTT: How does he know that? Has Gallaher told him price list; am I right? 9 9 A. Yes. 10 A. He is trying to say that it's me, but as I say, I don't 10 **Q.** Then you say: 11 discuss other people's -- it could have come from 11 "We did not have to sell at the RSP but the thin 12 Gallaher's, it could have come from anybody, really, it 12 margins available to us meant that often we would. 13 could have come from ... 13 Asda's competitive pricing policy made it highly 14 DR SCOTT: But I thought you said that Asda chose its own 14 unlikely that we would price above RSP." 15 pricing, so it couldn't have come from Gallaher unless 15 Then after the bit in brackets you say: 16 Gallaher were telling you what to do. 16 "And discounting below RSP did not seem to lead to A. Asda do choose their own pricing, as I say, we get the 17 17 increased volumes, only to reduced margins. It 18 18 price sheets down, and the Asda recommended, but that is therefore did not generally make sense for us to reduce 19 19 not necessarily Asda's price. So unless the margin is our retail prices only slightly below RSP as these would 20 20 quite correct, and it's beneficial to Asda -not increase sales while larger decreases made the 21 THE CHAIRMAN: But if it was true that Asda was planning to 21 product unprofitable." 22 move to 3.34 on 29 October, suppose that that was true, 22 Pausing there, it was the case, though, that if you 23 who would have decided within Asda to make that move in 23 felt that you had sufficient headroom you would increase 24 24 Dorchester? 25 25 A. I would have done. A. No. We would, when we got these deal sheets down -- as 149 151 1 THE CHAIRMAN: You would have done? 1 I call them deal sheets -- look at the margin that was 2 A. Yeah. 2 available from the supplier, and if we required more THE CHAIRMAN: Yes. 3 margin, we would get on to the supplier saying "You 4 4 MR LASOK: Well, let's move on to a different topic. Let's know, this isn't good enough, we require a better margin 5 5 have a look at price lists, because you referred to the to get to this price" or whatever price we wanted to go 6 6 price lists a moment ago. We will come back to that at, because it was actually Asda who was making the 7 7 decision on the actual retail prices that landed in file that you have with annex 14 in it later, but we 8 will not look at this document for a bit at any rate. 8 store. 9 9 A. Right. Q. Well --10 **Q.** So could you have a look at your witness statement? A. So because of the lack of margin available, if you look

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

- 10 11 A. Yes. 12 **Q.** I am going to draw your attention to particular bits of 13 the witness statement that concern the price lists. The 14 first one I'll look at is paragraph 9 of your witness 15 statement. Your witness statement is at tab 109, and 16 I'll just see whether I've got the story right. 17 If you look at paragraph 9, you say in the first 18 line after referring to the constant changes in tobacco 19 prices: 20 "... we would receive new price lists (showing 21 changes in cost prices, discounts and recommended 22 selling prices) every month from manufacturers to 23 reflect pricing changes, in particular promotional
- A. So because of the lack of margin available, if you look at the situation because of the taxation, because of the situation where we had literally very little margin to play with, we couldn't sort of say "Well, we want to do a "buy one get one free" on tobacco", because it would never happen, to increase our sales, so we had to look very closely at our margin to make sure we were going to make the correct margin and the correct profit from an Asda point of view. It may mean that some of those recommended prices we adhered to, but it may also mean that we didn't, depending on how it suited Asda's competitive situation.

competitive situation.

Confidential
Asda

152

150

discounts."?

A. Yeah.

24

Confidential Asda

1

2

3

5

6 7

8

9

10

11

12

13

Q. When did you do that?
A. I can't remember the exact dates, but it was initiated
when Allan Leighton was at Asda, where he wanted to
he had been over to Wal-Mart and he had seen what
Wal-Mart were doing, and

We had to report that, because we were losing margin and not only we were losing margin, we were also into a situation where we were losing money and we weren't actually getting any more sales.

- 14 Q. Do you know approximately when it was?
- 15 **A.** No, I am sorry.
- Q. Was it --16
- 17 A. Certainly within my time as buyer. In fact, the 18 suppliers phoned up saying "How come you haven't told us
- 19 about this situation where these prices are very good
- 20 prices and everybody is complaining with them?"
- 21 I asked them to fund it because we were trying to
- 22 increase their sales and they wouldn't fund it.
- 23 **0.** Was it before or after 2000?
- 24 A. It would be before 2000.
- 25 THE CHAIRMAN: Is that a good point at which to have the

153

1 short break?

- MR LASOK: Yes.
- **THE CHAIRMAN:** We are just going to have a break for ten
- 4 minutes, Mr Jolliff. As you are in the middle of your
- 5 evidence, you mustn't speak to anybody on your legal
- 6 team or anyone else about your evidence in the case.
- 7 That applies throughout any break where you are giving
- 8 your evidence.
- 9 A. Okay.
- 10 THE CHAIRMAN: We will come back at 20 to 4.
- 11 (3.30 pm)
- 12 (A short break)
- 13 (3.45 pm)
- 14 MR LASOK: Now, Mr Jolliff, what we were doing was going
- 15 through the witness statement picking up points that you
- 16 are making about the pricing and more particularly the
- 17 price files that were sent to you by both manufacturers.
- 18 We had just looked at paragraph 19, and I want now to
- 19 take you to paragraph 39 of your witness statement. If 20
- we look at this, here you start off by saying that
- 21 parity requirements were not important to Asda. You say 22
- that you would simply have considered the underlying 23
- position and decided on the best pricing position for
- 24 Asda. Then you say:
- 25 "Indeed, the manufacturers' RSP was frequently the

154

commercially rational retail price for Asda to set,

- 2 regardless of whether it was also at parity with or at
- 3 a specific differential to the competing brands of the
- 4 other manufacturers."
- 5 Then if you go to paragraph 80, here you are
- 6 commenting on document 22, but I would like to draw your
- 7 attention to the last seven lines. It's the sentence
- 8 beginning "As I have said ..." Do you have that?
- 9 A. "As I have said" --
- 10 **Q.** This is paragraph 80?
- A. Yes. 11
- 12 **Q.** Towards the bottom, there is a quote:
- 13 "Almost all stores continue to achieve strategy
- 14 pricing."
- 15 That's in italics. Then you say:
- 16 "As I've said, because we had such thin margins on
- 17 tobacco products, we would generally price at or close
- 18 to the RSP. A byproduct of this was that the
- 19 manufacturers' brand hierarchy and ITL's strategic
- 20 pricing objectives would often be met. This was not
- 21 through any conscious decision on Asda's part to observe
- 22 their strategic pricing, it was simply that through
- 23 moving cost prices and aware of our thin margin
- 24 position, ITL was able to have an influence on the
- 25 retail price we would decide to sell at."

155

- 1 So that's what you said there. I appreciate this is
- 2 a whole range of different bits of your witness
- 3 statement that I am taking you to, but you will see the
- 4 point that I am coming to when we get to the end of this
- 5 particular trajectory.
- 6 A. Right.
- 7 **Q.** If you go to paragraph 97, and look at the last sentence
- 8 of that, do you have that?
- 9 A. Yes.
- 10 Q. You say:
- 11 "On cigarettes where margins were much thinner, the
- 12 manufacturers would often match each other's price
- 13 increases to increase the profits on the sales rather
- 14 than maintain lower prices to try and increase market
- 15
- 16 Okay? So now let's move back to paragraph 5,
- 17 towards the beginning of your witness statement. It
- 18 should be the second page of the witness statement.
- 19 A. Yeah:

25

- 20 "My pricing decisions were made on the basis of our 21 cost prices."
- 22 **Q.** So there you say that the pricing decisions were made on
- 23 the basis of cost price margin and competitors'
- 24 positions, but you go on to say:
 - "To the extent that the actual retail price we chose

1	corresponded with the manufacturer's recommendation,	1	Asda's benefit and not for any benefit
2	this was because they set the recommendation at a level	2	THE CHAIRMAN: No, that's not the question you were asked,
3	they knew we would think to be the competitive level.	3	Mr Jolliff.
4	So we followed the recommendation because we decided it	4	A. Sorry.
5	made sense for us, not because we agreed the price with	5	THE CHAIRMAN: The question you were asked is: were you
6	the manufacturer. To the extent that this also	6	saying that you chose prices which were most of the time
7	coincided with the manufacturer's parity or differential	7	at the recommended retail prices, both in relation to
8	aspirations, this was because the manufacturer set cost	8	ITL and Gallaher, so if they were, unbeknown to you or
9	prices at a level which would encourage that outcome.	9	known to you, actually setting those prices with
10	Again, we were not agreeing to follow PDRs."	10	particular differentials in mind, your prices would then
11	As I understand it, what essentially you are saying	11	accidentally or unconsciously, as Mr Lasok put it,
12	is this, and you will correct me if I am wrong: It made	12	reflect those?
13	sense for Asda to follow the RSPs in the price files	13	MR LASOK: Could I just intervene before you answer, because
14	generally, because the RSPs in the price files provided	14	I think it's not recommended retail price, the RRP, we
15	you with a price that made commercial sense generally;	15	are here looking at the RSP.
16	it wasn't a price you say that you agreed with the	16	THE CHAIRMAN: Oh, I am sorry.
17	manufacturer, it's just that when you looked at the	17	MR LASOK: It's my fault for not making it clear.
18	position generally, it made sense to follow the RSPs.	18	I think you confirmed this before, but in the price
19	I'll just stop there. Do I have that wrong?	19	list that you received from the manufacturer, you had
20	A. It had to be a commercial benefit for Asda. The	20	a recommended selling price, the RSP?
21	commercial benefit for Asda was the actual margin that	21	A. Yeah.
22	we had, and I was given a budgeted margin to aim for as	22	Q. That's not the same as the RRP?
23	well as sales and as well as profit, and that is what	23	A. No, it's not.
24	I would look at. The deal sheets that were given were	24	Q. So I think the Chairman's question is really directed at
25	recommended retail selling prices, not actual selling	25	your following, generally speaking, the RSP?
	157		159
1	prices. There are cases, for example, when you get	1	DR SCOTT: I think you put it very nicely at the end of
2	a manufacturers' price increase and I'll make this up to	2	paragraph 80 in your witness statement, and I think
3	make it easier, say for example not manufacturers'	3	Mr Lasok referred to that, and it may be helpful to you
4	price increase but the Budget, say for example they went	4	to refresh your memory of that.
5	up by 10p from the Government, I would be expecting	5	(Pause)
6	there to be a 10p price increase on that, because we had	6	A. Yeah, I mean, it's because of the brand hierarchy. For
7	to pay the Government back. When you actually looked at	7	example, you had premium, subpremium, et cetera,
8	the recommended retail selling prices, if for example	8	et cetera, and it may be for an example that somebody's
9	Gallaher's or Imperial had actually put 11p on,	9	on promotion with a particular brand, an account manager
10	I wouldn't accept that, because it wouldn't be	10	goes into our stores and sees that we have got
11	commerciable for the customers to expect the cigarettes	11	a particular product on promotion, and they may want to
12	to go up 10p and then put 11p on. So the margin had to	12	match that. Now, to me, that makes good business sense,
13	be correct for me to achieve the requirements that Asda	13	because we are giving the customer the best value that
14	would pay me for.	14	we can get, which is part of Asda's values, and also
15	Q. Now let's move to the next stage. If the manufacturers	15	it's giving Asda a good deal because we are not funding
16	were setting these RSPs by reference to their own parity	16	it, the suppliers are funding it. And that's what it's
17	and differential strategies, and then generally speaking	17	at all about, the suppliers funding their actual
18	you adopted the RSPs because they made commercial sense	18	products and looking after their products. Because the
19	to Asda, which is what you say in your witness	19	only thing that we have, the only thing that suppliers
20	statement, as I understand it, you would end up Asda	20	have, because of the taxation, et cetera, is the actual
21	would end up unconsciously pricing in accordance with	21	product that's on sale, and they can either promote it
22	the manufacturers' parity and differential requirements,	22	or not. So the only thing that we have is price.
23	and that's what you appear to be saying in your	23	MR LASOK: Now, would you agree with me that you actually
24	paragraph 80, last sentence. Is that right?	24	knew that the RSPs in the price files reflected the
25	A. No, the only thing I can say is that I was pricing for	25	manufacturers' parity and differential strategies?
	158		160

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

2

10

21

- 1 A. No, because you haven't got time to sit and look at 2 a Gallaher's price file or, as I call them, deal sheets, 3 and an Imperial deal sheet, both at the same time. And 4 you don't look, for example, at what price may be, 5 because that is the price. You know, if there is a deal 6 to go on, the product has gone up 3p, you put 3p on. If 7 the product goes up at manufacturers' price increase by 8 5p, you put 5p on, because that's what the consumer is 9 expecting. If it goes up 10p in the Budget, you put 10p 10 on. You don't go around comparing prices against 11 various manufacturers. What you would do, after a price 12 increase and what I used to do, was to go out myself to 13 check what the prices were out in the marketplace. So 14 I would go to Morrisons, Sainsbury's, Tescos, et cetera, 15 to make sure that I was competitive and that I was doing 16 the right thing. 17 If I was then out on price, I would come back and
 - get hold of the supplier and say "Look, this particular product is being sold at such and such a store, I want a deal to match that, because we just accepted your deal based on the margin that's acceptable to Asda, but I am out on price, so I need a deal."
- 23 **Q.** Could you look at tab 2 of annex 14, {D14/2/6}, please, 24 it's not the witness statement file, it's the one on 25 your right.

161

A. Right.

18

19

20

21

22

- 2 **Q.** Could you read that to yourself, please.
- 3 (Pause)
- 4 A. Right.
- 5 **Q.** Now, you see that this is an instance in which ITL is 6 writing to you telling you about price changes, and the 7 price changes are listed there, and we have the parity 8 with Mayfair, we have, so far as L&B are concerned, it's 9 Mayfair 20s plus 20p, so far as JPS Kingsize Lights it's 10 Mayfair 20s plus 20p, and in the penultimate sentence 11 the writer of the letter, Mr Downham, says that 12 an updated price file will follow.
- 13 A. Yeah.
- 14 Q. If you look at the next tab, tab 3, could you read 15 tab 3, please.
- 16 (Pause)
- 17 A. Right.
- 18 **Q.** So that's the same thing. We also see that price 19 changes to ITL products in the case of Richmond to 20 achieve a parity with Mayfair 20s. In the case of L&B, 21 it's to achieve a plus 20 price versus Mayfair. In the 22 case of JPS Kingsize, again plus 20p versus Mayfair. 23 And the letter states that, because there is
- 24 an attachment to this, the revised figures are in the 25 price file.

162

- 1 If you look at tab 7, {D14/7/25}, can you read that?
- 2 A. Yes. (Pause).
- 3 **Q.** Again, price changes in order to -- in pursuance of
- 4 ITL's parity and differential requirements, and the last 5
- 6 "Details will be confirmed in a price file update."
- 7 And tab 13. {D14/13/36}.

(Pause)

It's the same thing.

A. But what's probably happened here is that Imperial -well, what has happened here is that Imperial Tobacco are reacting against the Gallaher's brands, which they are obviously Mayfair -- these are Gallaher's brand, and the Richmond product is an Imperial Tobacco, and they are looking at bringing the price down for the benefit of their brands and also for the benefit of the consumer who smokes those particular brands who won't be out on price.

I wouldn't accept anything based on somebody saying "Well, because I want them 20p different". When I looked at my price file, provided the margin is correct, and provided that I am in a situation where it is of benefit to Asda, commercially viable to Asda and I am not losing money, I would accept those particular products.

163

- Q. Can we complete the picture by looking at annex 4,
 - please. It's tab 3, and if you have tab 3 you should
- 3 have at the top an email from Chris Halford sent to you
- 4 on 22 March 2001. Do you have that?
- 5 A. 22 March 2001, yes.
- 6 **Q.** Okay. That's a response to, or at least not a response, 7 it follows on from an email that starts just after the
- 8 second holepunch on that page. Could you possibly read
- 9 that email first and then the follow-on email.

(Pause)

- 11 A. Right.
- 12 **Q.** Now, if you look at the first email in time, not the one
- 13 that starts at the top of page 1, but the one that 14
- starts just below the second holepunch, he starts off by 15 pointing out that he's attached the new Budget pricing
- 16
- schedule covering costs and retails, and then he goes
- 17 into various details about holds and stuff like that.
- 18 If you go on the second page to the penultimate
- 19 paragraph, just above the first holepunch, it's the
- 20
- single sentence that says:
- "Our objective is to maintain price list 22 differentials at discounted prices, all extra discounts
- 23 for reduced retails are confirmed on the attached."
- 24 The first thing is when he talks about discounted 25 prices, is that discounted by reference to the RRPs?

1 A. No, that's discounted that are put into your margin, so back to your witness statement in paragraph 101, please. 2 2 it's your discounts that you receive to bring the price You may remember, we have looked at this before, 3 3 this paragraph deals with document 40 in annex 14. If down or up as the case may be. 4 4 **Q.** Okay, but he talks about the objective being to maintain you want to refresh your memory, please do so. It's 40. 5 5 price list differentials and he is confirming 6 6 an attachment that sets out the price file. You can If you want to read the email, it's the one in the 7 7 look at the attachment. middle of the page, the email from Mr Hall to you. 8 8 A. I mean, all I can say to that is that coming out of the (Pause) 9 Budget, obviously both Imperial Tobacco and Gallaher's 9 A. Right. 10 were suffering a shock from the price increase of the 10 **Q.** If we go back to your paragraph 101 in your witness 11 Budget, and they were wanting to hold their prices down, 11 statement, and to a sentence in the middle, which is on 12 12 to keep people smoking, because they are all the cheap the right-hand side of the page and it starts with the 13 13 brands, they are not premium brands. Normally if words "It may be that ..." Do you have it? 14 premium brands could go up, they would hold the cheaper 14 A. Yes. 15 15 ones down which these are, and there is also various Q. You say: 16 16 "It may be that I had told ITL when we would be multisaves that are taking place, as well as some price 17 17 marked pack, and they then wanted to increase the price increasing Gallaher's Sterling as I wanted the price for 18 18 after the Budget because they had exhausted whatever ITL's Richmond to increase across the market so that 19 monies they had available to keep on funding the brands. 19 I could restore my margin." 20 20 A. Well, I --**Q.** The point that I am putting to you, though, is that we 21 21 Q. You knew, didn't you, that there was a 5p difference can see from these documents that time and time and time again you are being informed by manufacturers of prices 22 22 between Sterling and Richmond? 23 23 that are included in the price files and that reflect **A.** I knew that Sterling was our brand. 24 24 the manufacturers' pricing and differential policies. Q. Sterling was a Gallaher brand. 25 A. Was a Gallaher brand, but we used it for six months as So the point I am putting to you is that you knew that 165 167 1 these RSPs that you were getting from the manufacturers 1 an Asda only brand. 2 2 were oriented around the manufacturers' pricing and I mean, if they wanted to move the prices, move us 3 3 differential strategies? up and they were finishing the actual bonuses, for 4 4 A. It doesn't necessarily mean that I moved to these -whatever reason, I can see no problem in moving the 5 5 THE CHAIRMAN: No, you are not being asked what it meant. price up, because, you know, this Sterling brand was put 6 6 Just listen to the question again. You are being asked in there to keep Richmond on its toes, I must be honest, 7 7 about the state of your knowledge as a result of so for it to increase in price wouldn't be of any 8 receiving these letters that we have seen, or emails, 8 benefit to me because all I would be doing was to get 9 9 did you know that the prices that were being suggested Gallahers to keep the Sterling down and fund that, 10 10 by the manufacturers were suggested pursuant to their because I couldn't afford to fund it. 11 11 policies about how their brands should be priced in **Q.** The point I am putting to you is that in paragraph 101 12 12 relation to each other? you actually reveal that you knew that there was 13 A. I mean, I would just take it that if they were saying 13 a differential requirement in existence concerning 14 they were 11p below and what have you it makes logical 14 Sterling and Richmond, so that if Sterling went up, 15 for them to go up by 11p because that's what the 15 Richmond would be pushed up; that's so, isn't it? 16 supplier would be expecting and the retailer would be 16 A. Well, that's what it says here, but I mean, you know --17 17 expecting if that's what they had funded them down to or **Q.** Well, it's your witness statement. 18 whatever the Budget was. 18 A. Gallaher's supplied us with Sterling, and I would've 19 So you wouldn't actually notice the actual parity or 19 been back onto Gallaher's straightaway stating that 20 the price differential, apart from him saying it in this 20 I didn't want to do this because of various things that 21 actual letter, which is obviously saying that he is 21 had happened in the marketplace and I don't want to move 22 looking to hold them at those particular prices, which 22 these prices. 23 I would make a commercial decision on, ask them to hold 23 Q. Could you go to tab 31, please. Just to be clear about 24 24 them or not. what we have, you should have at the top of the page the

25

MR LASOK: You can put away that file. Could you look now

name "Stephen Carroll", and you see that at the top of

1 1 the page there, there is an email from Martin Downham -manufacturers' pricing and differential requirements. 2 2 A. Yes, that's right. You knew that, and you went along with the prices 3 Q. -- dated 20 March. The bit we are interested in, again 3 proposed to you by the manufacturers, because your 4 it's a sequence of three emails, the first one starts evidence is that generally, at least, you priced in 5 5 below the second holepunch, and it's from Martin Downham accordance with the RSPs. Isn't that so? 6 to you on March 20, 2001. 6 A. If you turn over the page, it actually states "these 7 7 A. Yes. prices will be achieved by withdrawing the bonus **Q.** So what he wants to do is he wants to increase the 8 support". If they are going to withdraw the bonus 9 retail prices of ITL's roll-your-own range following the 9 support, I or Asda can't afford to be funding products 10 increase in the retail prices of Amber Leaf. Your 10 for suppliers, because, as I've already stated, we 11 11 price, which is in the middle of the page, it may be haven't got any cash to spend, because of the margins 12 a bit difficult to read, but it's the first page. 12 being so thin. 13 Sorry, it's the tab. 13 **Q.** That's why I pointed out that your response was 14 A. Which? 14 virtually immediate, and you made no attempt to 15 **Q.** Tab 31. 15 negotiate a continuation of the bonus, there was no A. Yes. 16 16 suggestion by you that the move should be a different 17 17 Q. The one we are looking at. It's a bit difficult to read 18 but in the middle of the page there is a "from 18 A. Because we are in a situation where it would probably 19 John Jolliff". Do you have that? 19 have been those prices prior to the product being on 20 20 A. Yeah. bonus. You see, if we can point this out to you as 21 21 well, we have what we call a system where you can Q. You say: 22 "Martin, this will be okay." 22 actually put bonuses in on various dates, and it will 23 23 A. Yeah. trigger when that particular product's bonus has 24 24 **Q.** So you were confronted here with ITL's intention to finished. So you can sort of say Benson & Hedges being 25 25 increase the price of its roll-your-own range following on price at, say, £1, and now are going up 10p because 169 171 1 the increase in Amber Leaf, and the timing of 1 of bonuses, so that date will trigger it. 2 2 Mr Downham's email to you is 11.09 am, and the timing of So that's how basically they all work. But if, for 3 your reply to him is also 11.09 am, so you responded 3 example, somebody extends it and you don't know how long 4 4 pretty quickly, or it appears that you responded pretty they are going to extend it for, you will have to hold 5 5 quickly, just by saying that it was okay? it with no date on it, they call it a cost and retail. 6 6 A. Yeah. You understand what I mean? It's hard to explain, but 7 7 Q. In other words, you were quite happy to go along with it's on the computer where you put it in, price bonus 8 such price changes, and you didn't try to negotiate 8 from such and such a date to such and such a date. 9 9 a continuation of the bonus or a move to a different **Q.** But the position was that in practice, in general, you 10 10 price or anything like that? priced in accordance with the RSPs, and that 11 11 A. No, because if a competitor's brand like Amber Leaf had necessarily, I put it to you, built up an expectation on 12 12 gone up in price, one would assume that any other the part of the manufacturers that in general your 13 competitive brand would be moving in price at a later 13 pricing would follow their RSPs and therefore their 14 date. Now, you would be expecting if Amber Leaf went up 14 parity and differential requirements? 15 that Drum and Golden Virginia would be moving up as 15 A. No, Asda pricing was based on the best margins that we 16 well, because they would probably have been on promotion 16 could get to get the best retails we could get to create 17 17 more sales for Asda, in difficult times. against Amber Leaf. 18 Q. So the position was --18 Q. Can I move to tab 41 in this annex. {D28/41} This is 19 19 A. You see, you can't continually hold down your prices if an internal ITL document that you commented on in your 20 you haven't got the funding to do it, otherwise your 20 witness statement, but obviously you would have seen it 21 margin just disappears completely. 21 at the time. I just wanted to look at page 3. We have 22 22 **Q.** The position was that you were in frequent receipt of here a page which is headed "Asda prices effective from

23

24

A. Yeah.

1 October 2001 until further notice".

Q. Now, that's shelf prices that Asda communicated to ITL,

172

these price files and other communications from the

RSPs in the price files were oriented around the

manufacturers like the one we are just looking at. The

170

23

24

be engaging in a kind of private conversation. 1 isn't it? 2 2 A. I am not too sure. Are you sure it's not the other way A. That's all right, no problem. 3 about, it's where they have been out and checked our MR LASOK: There is, I think, an issue concerning Mr Hall. 4 4 THE CHAIRMAN: Yes. 5 MR LASOK: As I understand it, he needs to be finished 5 Q. Mr Hall says that they are the shelf prices communicated 6 6 tomorrow. In those circumstances, I would prefer it, to ITL by Asda. For the Tribunal's note, that's 7 because Mr Hall has to be finished tomorrow, if we just 7 Mr Hall's witness statement, which is core bundle 3, 8 8 tab 41, paragraph 28, penultimate sentence. He is there dealt with Mr Hall tomorrow, because what I am slightly 9 referring to document 52(a) but it's the same type of 9 concerned about is that if we carry on with Mr Jolliff 10 10 document we have just seen. and then there is further cross-examination by ITL, 11 11 If you go to -- it will only take us about a minute re-examination by Mr Flynn, we will cut far too much 12 12 into tomorrow so far as Mr Hall is concerned. He is or two to deal with this -- tab 48, $\{D28/48\}$ and this is 13 13 again another one of these internal ITL documents that a very important witness so far as ITL's side of the 14 you have commented on in your witness statement, but if 14 Asda case is concerned, and I will use my best 15 15 endeavours to ensure that Mr Hall will leave at the end we go to page 3 we have also another one of these 16 16 tables, Asda prices effective from 25 February 2002. Do of Friday with everything done and dusted. But I don't 17 17 think it's realistic to suppose that we could do that if these ring any bells? 18 18 A. No. we are dealing with Mr Jolliff as well tomorrow. 19 THE CHAIRMAN: Yes. So that would mean that Mr Jolliff 19 **Q.** If you go to 52(a), page 3, this is another internal ITL 20 20 would need to come back on Tuesday morning. document which you wouldn't have seen at the time, but 21 21 MR FLYNN: An alternative which doesn't necessarily preclude at page 3 you have another table, Asda prices effective 22 22 that anyway would be that Mr Lasok could at least finish from 27 May 2002. 23 23 his 45 minutes or so tomorrow morning and then move on A. I'll be quite honest with you, I've never seen one of 24 24 those before. to Mr Hall, rather than leave things hanging in this 25 25 way, perhaps he could complete his 45 minutes or so and **Q.** These don't ring any bells? 173 175 1 A. No. 1 then spend the rest of the day on Mr Hall, and Mr Howard 2 2 Q. If Mr Hall says that they are shelf prices communicated and I can concert as to whether we have more for 3 by Asda to ITL, you have no recollection of that? 3 Mr Jolliff at that point. I just offer that as another 4 4 A. If Mr Hall says that, I must believe him, but I can't possibility. **THE CHAIRMAN:** The only disadvantage for that is that there 5 5 remember them, to be quite honest with you. Because how 6 6 may then be quite a squeeze on any questioning of I would be able to tell that we had price marked packs 7 7 Mr Hall other than by Mr Lasok, and given some of listed on here in our stores, I don't know. I would 8 8 have to physically go out and price check our stores, Mr Jolliff's answers, it may be that you have some 9 9 questions for Mr Hall, I don't know. because price marked packs go in and come out. I am 10 10 MR FLYNN: That is possible. My friend hasn't given presuming, I don't honestly know, I think this is 11 11 an estimate for how long he would ordinarily want for actually an internal one that has been checked by 12 12 Imperial Tobacco. Mr Hall anyway. I just suggest that if it's --13 **Q.** Why does it say, for example, "effective from 13 THE CHAIRMAN: How long do you think you will need? Do you 14 14 27 May 2002"? All these ones that we have been looking think if you finish Mr Jolliff tomorrow morning with his 15 at say "effective from" a specific date, and then they 15 cross-examination ... 16 carry on with the words "until further notice". 16 MR LASOK: I am very doubtful whether we could fit Mr Hall 17 17 A. I don't honestly know. in comfortably tomorrow. As you know, one of the major 18 Q. That's fine, if you can't shed any light on these --18 problems is giving a reasonably accurate estimate of 19 19 A. I can't shed any light on it. cross-examination, because sometimes, and Mr Jolliff,

20

21

22

23

24

25

now face -- I am terribly sorry, Mr Jolliff, but we may

1 and certifoly sorry, in joinin, but we may

MR LASOK: I have just observed the time. I have not yet

regrettably finished with Mr Jolliff. I probably would

have another 45 minutes' cross-examination. I don't

estimate that was given previously. The problem that we

think that its excessive by reference to the

interrupt what the witness is saying.

with all due respect, this is not a comment directed at

a speech and I take the view that it's inappropriate to

THE CHAIRMAN: Well, in order to be sure of finishing

Mr Hall tomorrow, I think we should start with Mr Hall

176

you, but sometimes when you put a question the answer is

20

21

22

23

24

15 MR HOWARD: 10.30 is fine. I just want to make one thing 16 clear. I have told Mr Lasok on more than one occasion 17 that Mr Hall has to be finished because he is going into 18 hospital on Tuesday, and so I think 10.30 should be fine 19 but I think Mr Lasok does have to make sure that the 20 questions are put in such a way that he gets through in 21 time and leaves time for re-examination. 22 THE CHAIRMAN: It may be that either you or I do need to 23 Tuesday and so I think 10.30 should be fine 24 THE CHAIRMAN: It may be that either you or I do need to 25 FLYNN 26 Turther opening submissions by MR	2	to make sure we finish.	1	MR HOWARD: No.	
THE CHARMAN: Yes. The question is whether we would ask Mr Jolliff to wait her tee monrow outside the room on the off-chance that he would have time at the end of the day, but I realise that's rather awdward. The CHARMAN: The theorem of the would have time at the end of the aspersions, it's ne-one's fault, Mr Jolliff has messed sapersions,	_	MR FLYNN: I am absolutely in your hands on that, Madam,	2	THE CHAIRMAN: We will come back at 10.30 tomorrow morning.	
5 Mr Jollift to wait here tomorrow outside the room on the 6 off-chance that he would have time at the end of the 6 day, but I realise that I realise walvard. 7 AR FLYNN: With respect, Madam, and I am not casting any 9 aspersions, it's no-one's fault, Mr Jollift has messed 10 around quite a bit afreedy and I suggest we decide today 11 whether he be on tomorrow or not. If he has to come 12 back and postpone his holiday yet again, I think he 12 should know that now. 13 14 THE CHAIRMAN: I think we will devote tomorrow, then, to 14 Mr Hall, and that, I am afraid, means that you will need 16 to come back next Tuesday morning to finish your 17 evidence. 18 MR LASOK: Madam, might I raise the question of -1 think 19 that Mr Jollift Josen's need to continue to sit around. 19 THE CHAIRMAN: I think we will respect to the wilness box. Again, 10 Logistics questions, I think I will rise briefly because one of the 17 members of the Tribunal has to leave now, so if there is 18 members of the Tribunal has to leave now, so if there is 19 members of the Tribunal has to leave now, so if there is 10 members of the Tribunal has to leave now, so if there is 11 man LASOK: Mach obliged. 12 mR LASOK: Mach obliged. 13 mR LASOK: Much obliged. 14 mR FLYNN: unless my friend has something specific, counsel 15 man feed with those. 16 mR LASOK: Mach obliged. 17 mR FLYNN: unless my friend has something specific, counsel 18 mR FLYNN: unless my friend has something specific, counsel 19 man feed with those. 19 mR FLYNN: unless my friend has something specific, counsel 10 man feed with those. 10 mR LASOK: Usued have thought 10.30 would be fine, but obspired to make sure that the 19 questions are put in such a way that he gets through in baspital on Truesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the 19 questions are put in such a way that he gets through in think may be that either you or I do need to 19 tribute and eaves time for exeramination. 19 tribute and eaves time for exeramination. 20 tribute a	3	I've made my suggestion.	3	(4.30 pm)	
6 off-chance that he would have time at the end of the 7 day, but I realise that's rather awkward. 8 MR FLYNN With respect, Madam, and I am not casting any 9 aspersions, it's no-one's fault, Mr Jolliff has messed 9 around quite a bit already and I suggest we decide today 10 around quite a bit already and I suggest we decide today 10 whether he be on tomorrow on to. If he has to come 11 back and postpone his holiday yet again, I think he 12 should know that now. 13 should know that now. 13 THE CHARMAN: I think we will devote tomorrow, then, to 14 Mr Hall, and that, I am afraid, means that you will need 15 to come back next Tuesday morning to finish your 16 evidence. 17 will all that Mr Jolliff doesn't need to continue to sit around. 19 THE CHARMAN: I think rear argoing to be some further 10 glostics questions, I think I will rise briefly, 17 In Jolliff, you can leave the witness box. Again, 17 because you are in the middle of your evidence, you 18 mustn't discuss this with your legal team between now 18 members of the Tribunal has to leave now, so if there is 18 members of the Tribunal has to leave now, so if there is 19 members of the Tribunal has to leave now, so if there is 20 mr LASOK: Which obliged. 21 MR LASOK: Which obliged. 22 MR LASOK: Which obliged. 33 MR RELINAMAN: We will rise briefly because one of the 24 Cross-examination by MR WILLIAMS	4	THE CHAIRMAN: Yes. The question is whether we would ask	4	(The court adjourned until 10.30 am on	
day, but I realise that's rather awkward. MRELYNN: With respect. Madam, and I am not casting any appressions, it is no-one's fail, the failt is a messed around quite a bit already and I suggest we decide today in whether he be on tomorrow or not. If he has to come back one stop stop his holiday vet again, I think he is back and postpone his holiday vet again, I think he is back and postpone his holiday vet again, I think he is back and postpone his holiday vet again, I think he is back and postpone his holiday vet again, I think he is back and postpone his holiday vet again, I think he is back and postpone his holiday vet again, I think he is back and postpone his holiday vet again, I think he is back and start in think we will devote tomorrow, then, to the hash to come back next Tuesday morning to finish your is come back next Tuesday morning to finish your is come back next Tuesday morning to finish your come back next Tuesday morning when you come back. 177	5	Mr Jolliff to wait here tomorrow outside the room on the	5	Friday, 21 October 2011)	
8 MR FLYNK: With respect, Madam, and I am not casting any a papersions, it's no-one's fault, Mr Joliff has messed 9 a around quite a bit already and I suggest we decide today 10 whether he be on tomorrow or not. If he has to come 11 should know that now. 13 should know that now. 13 should know that now. 13 should know that now. 14 THE CHAIRMAN: I think we will devote tomorrow, then, to 14 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning the interest to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around to such a folliff doesn't need to sit around to such	6	off-chance that he would have time at the end of the	6		
8 MR FLYNK: With respect, Madam, and I am not casting any a papersions, it's no-one's fault, Mr Joliff has messed 9 a around quite a bit already and I suggest we decide today 10 whether he be on tomorrow or not. If he has to come 11 should know that now. 13 should know that now. 13 should know that now. 13 should know that now. 14 THE CHAIRMAN: I think we will devote tomorrow, then, to 14 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning the interest to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around. 19 that I folliff doesn't need to continue to sit around to such a folliff doesn't need to sit around to such	7	day, but I realise that's rather awkward.	7		
9 aspersions, it's no-one's fault, Mr Jolliff has messed 9 around quite a bit already and I suggest we decide today 10 whether he be on tomorrow or not. If he has to come 11 back and postpone his holiday yet again, I think he 12 should know that now. 13 THE CHAIRMAN: I think we will devote tomorrow, then, to 14 THE CHAIRMAN: I think we will devote tomorrow, then, to 15 Mr Hall, and that, I am afraid, means that you will need 16 to come back next Tuesday morning to finish your 16 evidence. 17 ARIASOK: Madam, might I raise the question of I think 18 that Mr Jolliff doesn't need to continue to sit around. 19 THE CHAIRMAN: If there are going to be some further 10 logistics questions, I think I will rise briefly. 21 logistics questions, I think I will rise briefly. 22 Mr Jolliff, you can leave the witness box. Again. 23 because you are in the middle of your evidence, you 24 mustri discuss this with your legal team between now 25 and Tuesday morning when you come back. 26 177 179 179 1 A. Right. 2 THE CHAIRMAN: We will rise briefly because one of the 2 members of the Tribunal has to leave now, so if there is 3 members of the Tribunal has to leave now, so if there is 4 further logistical natters! will come back in myself 3 and deal with hose. 4 MR LASOK: Much obliged. 5 Cross-examination by MR WILLIAMS	8		8		
nowthere he be on tomorrow or not. If he has to come 11 back and postspone his holiday yet again, I think he 12 should know that now. 13 hould know that now. 13 hould know that now. 13 hould know that now. 14 HE CHAIRMAN: I think we will devote tomorrow, then, to 14 Mr Hall, and that, I am a fraid, means that you will need 15 to come back next Tuesday morning to finish your 16 evidence. 17 widence. 17 widence. 17 NR LASOK. Madam, might I raise the question ofI think 18 that Mr Jolliff doesn't need to continue to sit around. 19 THE CHAIRMAN: If there are going to be some further 20 logistics questions, I think lift lifts briefly. 21 logistics questions, I think lift lifts briefly. 21 logistics questions, I think lift lifts briefly. 22 mustrix fluxious shis with your legal team between now 24 and Tuesday morning when you come back. 25 members of the Tribunal has to leave now, so if there is 6 members of the Tribunal has to leave now, so if there is 6 and deal with those. 17 MR LASOK. Much obliged. 5 Cross-examination by MR WILLIAMS. 3 MR FLYNN: Unless my friend has something specific, counsel 6 and deal with those. 18 Cross-examination by MR SAINI	9		9		
whether he be on tomorrow or not. If he has to come back and postpone his holiday yet again, I think he should know that now. 13 should know that now. 13 THE CHAIRMAN: I think we will devote tomorrow, then, to 14 hr Hall, and that, I am afraid, means that you will need 15 to come back next Tuesday morning to finish your 16 to come back next Tuesday morning to finish your 17 evidence. 17 make LASOK: Madam, might I raise the question of -1 think 18 that Mr Jolliff doesn't need to continue to sit around. 19 THE CHAIRMAN: If there are going to be some further 20 logistics questions, I think I will rise briefly 21 mustn't discuss this with your legal team between now 24 and Tuesday morning when you come back. 25 and Tuesday morning when you come back. 25 and Tuesday morning when you come back. 25 and Tuesday morning when you come back. 26 further logistical matters I will come back in myself 2 further logistical matters I will come back in myself 2 further logistical matters I will come back in myself 2 further logistical matters I will come back in myself 2 further logistical matters I will come back in myself 2 further logistical matters I will come back in myself 2 further logistical matters I will come back in myself 2 further logistical matters I will come back in myself 2 further logistical matters I will come back in myself 2 further logistical matters I will come back in myself 3 further logistical matters I will come back in myself 3 further logistical matters I will come back in myself 3 further logistical matters I will come back in myself 3 further logistical matters I will come back in myself 3 further logistical matters I will come back in myself 3 further logistical matters I will come back in myself 3 further logistical matters I will come back in myself 3 further logistical matters I will come back in myself 3 further logistical matters I will come back in myself 3 further logistical matters I will logistical matters I will logistical matters I will logistical matters I will logistical matters I wil	10		10		
back and postpone his holiday yet again, I think he should know that now. THE CHAIRMAN: I think we will devote tomorrow, then, to to ome back next Tuesday morning to finish your evidence. Mr Hall, and that, I am afraid, means that you will need to come back next Tuesday morning to finish your evidence. MR LASOK: Madam, might I raise the question of I think that Mr Jolliff doesn't need to continue to sit around. THE CHAIRMAN: I think i will rise briefly, 21 logistics questions, I think I will rise briefly, 22 my Jolliff, you can leave the witness box. Again, 22 because you are in the middle of your evidence, you mustn't discuss this with your legal team between now and Tuesday morning when you come back. 177 179 179 A. Right. 1 INDEX 1719 A. Right. 1 Cross-examination by MR WILLIAMS 3.3 MR KENNETH CULHAM (recalled) 2.2 and deal with those. MR LASOK: Much obliged. MR FLYNL fulness my friend has something specific, counsel 6 can discuss that and we can raise it first thing 5 comorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR HASOK: I would have thought 10.30 would be fine but other people may take a more cautions view. MR HASOK: I would have thought 10.30 would be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in that Mr Hall has to be finished because he is going into that mr Hall has to be finished because he is going into that mr Hall has to be finished because he is going into that mr Hall has to be finished because he is going into that mr Hall has to be finished because he is going into that mr Hall has to be finished because he is going into that mr Hall has to be finished because he is going into 1 that mr Hall has to be finished because he is going into 1 that mr Hall has to be finished because he is going into 1	11		11		
should know that now. 13			12		
THE CHAIRMAN: I think we will devote tomorrow, then, to Mr Hall, and that, I am afraid, means that you will need to come back next Tuesday morning to finish your evidence. MR LASOK: Madam, might I raise the question of — I think that Mr Jolliff doesn't need to continue to sit around. THE CHAIRMAN: If there are going to be some further logistics questions, I think I will rise briefly, Mr Jolliff, you can leave the witness box. Again, because you are in the middle of your evidence, you mustrt discuss this with your legal team between now and Tuesday morning when you come back. 177 1 A. Right. THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is and deal with those. MR LASOK: Much obliged. MR KENNETH CULHAM (recalled) MR KENNETH CULHAM (recalled) Cross-examination by MR WILLIAMS MR KENNETH CULHAM (recalled) MR KENNETH CULHAM (recalled) MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better course then. MR LASOK: That may well be the better that the questions are put in such a way that he gets through in that Mr Halb as to be fini			13		
15 Mr Hall, and that, I am afraid, means that you will need 16 to come back next Tuesday morning to finish your 16 evidence. 17 evidence. 18 MR LASOK: Madam, might I raise the question of – I think 19 that Mr Jolliff doesn't need to continue to sit around. 19 THE CHAIRMAN: If there are going to be some further 20 logistics questions, I think I will rise briefly, 21 logistics questions, I think I will rise briefly, 22 Mr Jolliff, you can leave the witness box. Again, 23 because you are in the middle of your evidence, you 24 mustn't discuss this with your legal team between now 25 and Tuesday morning when you come back. 26 THE CHAIRMAN: We will rise briefly because one of the 27 PAGE 28 members of the Tribunal has to leave now, so if there is 29 and deal with those. 40 MR LASOK: Much obliged. 51 MR FLYNN: Unless my friend has something specific, counsel 52 can discuss that and we can raise it first thing 53 conditions that and we can raise it first thing 54 conditions that and we can raise it first thing 55 coros-examination by MR WILLIAMS. 56 MR RLASOK: That may well be the better course then. 57 MR LASOK: That may well be the better course then. 58 MR RLASOK: That may well be the better course then. 59 MR LASOK: That may well be the better course then. 50 MR RLASOK: That may well be the better course then. 50 MR RLASOK: That may well be the better course then. 51 MR LASOK: That may well be the better course then. 51 MR LASOK: That may well be the better course then. 51 MR LASOK: That may well be the better course then. 52 MR LASOK: That may well be the better course then. 53 MR LASOK: That may well be the better course then. 54 Cross-examination by MR HOWARD. 55 MR LASOK: That may well be the better course then. 56 Can discuss that and we can raise it first thing 57 tomorrow or do you think we need to start at 10.30 58 MR LASOK: That may well be the better course then. 59 MR LASOK: That may well be the better course then. 50 MR LASOK: That may well be the better course then. 51 MR LASOK: That may well be the be			14		
to come back next Tuesday morning to finish your evidence. MR LASOK: Madam, might I raise the question of — I think that Mr Jolliff doesn't need to continue to sit around. THE CHAIRMAN: If there are going to be some further 20 logistics questions, I think I will rise briefly, 21 Mr Jolliff, you can leave the witness box. Again, 22 because you are in the middle of your evidence, you 23 mustr't discuss this with your legal team between now 24 and Tuesday morning when you come back. 177 179 A. Right. 1 INDEX THE CHAIRMAN: We will rise briefly because one of the 2 PAGE members of the Tribunal has to leave now, so if there is 2 and deal with those. 4 further logistical matters I will come back in myself 3 and deal with those. 4 further logistical matters I will come back in myself 4 mR LASOK: Much obliged. 5 Cross-examination by MR WILLIAMS 3 mR FLYNN: Unless my friend has something specific, counsel 3 can discuss that and we can raise it first thing 4 tomorrow. 8 mR LASOK: Hat may well be the better course then. 9 mR LASOK: I would have thought 10.30 would be fine, but 3 other people may take a more cautious view. 4 tomorrow or do you think we need to start at 10? 4 tomorrow or do you think we need to start at 10? 5 mR LASOK: I would have thought 10.30 would be fine, but 4 other people may take a more cautious view. 4 tomorrow or do you think we need to start at 10? 5 mR LASOK: I would have thought 10.30 would be fine, but 5 other people may take a more cautious view. 4 the MR HABI has to be finished because he is going into 4 that Mr Hall has to be finished because he is going into 4 that Mr Hall has to be finished because he is going into 4 that Mr Hall has to be finished because he is going into 4 that Mr Hall has to be finished because he is going into 5 that may are put in such a way that he gets through in 5 und and eaves time for re-examination. 21 further opening submissions by MR			15		
evidence. MR LASOK: Madam, might I raise the question of1 think that Mr Jolliff doesn't need to continue to sit around. THE CHAIRMAN: If there are going to be some further logistics questions, I think I will rise briefly, THE CHAIRMAN: If there are going to be some further logistics questions, I think I will rise briefly, MR HASOK: Again, Decause you are in the middle of your evidence, you and Triesday morning when you come back. 177 A. Right. THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR LASOK: Much obliged. MR PLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.20 Tomorrow or do you think we need to start at 10.20 The CHAIRMAN: Very well. Is it all right to start at 10.20 The CHAIRMAN: Very well be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to					
MR LASOK: Madam, might I raise the question of I think that Mr Jolliff doesn't need to continue to sit around. THE CHAIRMAN: If there are going to be some further 20 THE CHAIRMAN: If meet are going to be some further 21 logistics questions, I think I will rise briefly, 22 Interest CHAIRMAN: It may be that either you or I do need to 177					
that Mr Jolliff doesn't need to continue to sit around. THE CHAIRMAN: If there are going to be some further logistics questions, I think I will rise briefly, 21					
THE CHAIRMAN: If there are going to be some further logistics questions, I think I will rise briefly, Mr Jolliff, you can leave the witness box. Again, because you are in the middle of your evidence, you and Tuesday morning when you come back. 177 1 A. Right. THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is members of the Tribunal has to leave now, so if there is and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel acan discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10:30 THE CHAIRMAN: Very well. Is it all right to start at 10:30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10:30 would be fine, but other people may take a more cautious view. MR HOWARD: 10:30 is fine. I just want to make one thing clear. I have told Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to					
logistics questions, I think I will rise briefly, Mr Jolliff, you can leave the witness box. Again, because you are in the middle of your evidence, you mustn't discuss this with your legal team between now and Tuesday morning when you come back. 177 179 1 A. Right. 1 INDEX 2 THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. 5 Cross-examination by MR WILLIAMS					
Mr Jolliff, you can leave the witness box. Again, because you are in the middle of your evidence, you mustn't discuss this with your legal team between now and Tuesday morning when you come back. 177 179 1 A. Right. 1 INDEX THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. 4 MR LASOK: Much obliged. 5 Cross-examination by MR WILLIAMS					
because you are in the middle of your evidence, you mustn't discuss this with your legal team between now and Tuesday morning when you come back. 177					
mustn't discuss this with your legal team between now and Tuesday morning when you come back. 177 1 A. Right. 1 INDEX THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. 4 MR KENNETH CULHAM (recalled)					
and Tuesday morning when you come back. 177 179 1 A. Right. 1 THE CHAIRMAN: We will rise briefly because one of the 2 PAGE 3 members of the Tribunal has to leave now, so if there is 4 further logistical matters I will come back in myself 5 and deal with those. 6 MR LASOK: Much obliged. 7 MR FLYNN: Unless my friend has something specific, counsel 8 can discuss that and we can raise it first thing 9 tomorrow. 10 MR LASOK: That may well be the better course then. 11 THE CHAIRMAN: Very well. Is it all right to start at 10.30 12 tomorrow or do you think we need to start at 10? 13 MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. 14 other people may take a more cautious view. 15 MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. 21 THE CHAIRMAN: It may be that either you or I do need to 25 PAGE 179 18 MR KENNETH CULHAM (recalled)					
1 A. Right. 1 INDEX THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is 2 further logistical matters I will come back in myself 3 MR KENNETH CULHAM (recalled)					
1 A. Right. 2 THE CHAIRMAN: We will rise briefly because one of the 3 members of the Tribunal has to leave now, so if there is 4 further logistical matters I will come back in myself 5 and deal with those. 6 MR LASOK: Much obliged. 7 MR FLYNN: Unless my friend has something specific, counsel 8 can discuss that and we can raise it first thing 9 tomorrow. 10 MR LASOK: That may well be the better course then. 11 THE CHAIRMAN: Very well. Is it all right to start at 10.30 12 tomorrow or do you think we need to start at 10? 13 MR LASOK: I would have thought 10.30 would be fine, but 9 other people may take a more cautious view. 14 MR HOWARD: 10.30 is fine. I just want to make one thing 16 clear. I have told Mr Lasok on more than one occasion 17 that Mr Hall has to be finished because he is going into 18 hospital on Tuesday, and so I think 10.30 should be fine 19 but I think Mr Lasok does have to make sure that the 19 questions are put in such a way that he gets through in 20 time and leaves time for re-examination. 21 THE CHAIRMAN: It may be that either you or I do need to 22 FAGE ARR KENNETH CULHAM (recalled)	25		25	170	
2 THE CHAIRMAN: We will rise briefly because one of the 3 members of the Tribunal has to leave now, so if there is 4 further logistical matters I will come back in myself 5 and deal with those. 6 MR LASOK: Much obliged. 7 MR FLYNN: Unless my friend has something specific, counsel 8 can discuss that and we can raise it first thing 9 tomorrow. 8 MR LASOK: That may well be the better course then. 10 MR LASOK: That may well be the better course then. 11 THE CHAIRMAN: Very well. Is it all right to start at 10.30 12 tomorrow or do you think we need to start at 10? 13 MR LASOK: I would have thought 10.30 would be fine, but 14 other people may take a more cautious view. 15 MR HOWARD: 10.30 is fine. I just want to make one thing 16 clear. I have told Mr Lasok on more than one occasion 17 that Mr Hall has to be finished because he is going into 18 hospital on Tuesday, and so I think 10.30 should be fine 19 but I think Mr Lasok does have to make sure that the 20 questions are put in such a way that he gets through in 21 time and leaves time for re-examination. 21 THE CHAIRMAN: It may be that either you or I do need to 22 PAGE 3 MR KENNETH CULHAM (recalled)		177		179	
2 THE CHAIRMAN: We will rise briefly because one of the 3 members of the Tribunal has to leave now, so if there is 4 further logistical matters I will come back in myself 5 and deal with those. 6 MR LASOK: Much obliged. 7 MR FLYNN: Unless my friend has something specific, counsel 8 can discuss that and we can raise it first thing 9 tomorrow. 80 10 MR LASOK: That may well be the better course then. 11 THE CHAIRMAN: Very well. Is it all right to start at 10.30 12 tomorrow or do you think we need to start at 10? 13 MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. 14 MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion 17 that Mr Hall has to be finished because he is going into 18 hospital on Tuesday, and so I think 10.30 should be fine 19 but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. 21 THE CHAIRMAN: It may be that either you or I do need to 22 PAGE MR KENNETH CULHAM (recalled)					
members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to MR LASOK: MR LASOK: MR KENNETH CULHAM (recalled)	1	A. Right.	1	INDEX	
5 and deal with those. 6 MR LASOK: Much obliged. 7 MR FLYNN: Unless my friend has something specific, counsel 8 can discuss that and we can raise it first thing 9 tomorrow. 8 10 MR LASOK: That may well be the better course then. 11 THE CHAIRMAN: Very well. Is it all right to start at 10.30 12 tomorrow or do you think we need to start at 10? 13 MR LASOK: I would have thought 10.30 would be fine, but 14 other people may take a more cautious view. 15 MR HOWARD: 10.30 is fine. I just want to make one thing 16 clear. I have told Mr Lasok on more than one occasion 17 that Mr Hall has to be finished because he is going into 18 hospital on Tuesday, and so I think 10.30 should be fine 19 but I think Mr Lasok does have to make sure that the 19 questions are put in such a way that he gets through in 20 time and leaves time for re-examination. 21 THE CHAIRMAN: It may be that either you or I do need to 22 FLYNN 25 Cross-examination by MR WILLIAMS					
5 and deal with those. 6 MR LASOK: Much obliged. 7 MR FLYNN: Unless my friend has something specific, counsel 8 can discuss that and we can raise it first thing 9 tomorrow. 8 10 MR LASOK: That may well be the better course then. 11 THE CHAIRMAN: Very well. Is it all right to start at 10.30 12 tomorrow or do you think we need to start at 10? 13 MR LASOK: I would have thought 10.30 would be fine, but 14 other people may take a more cautious view. 15 MR HOWARD: 10.30 is fine. I just want to make one thing 16 clear. I have told Mr Lasok on more than one occasion 17 that Mr Hall has to be finished because he is going into 18 hospital on Tuesday, and so I think 10.30 should be fine 19 but I think Mr Lasok does have to make sure that the 19 questions are put in such a way that he gets through in 20 time and leaves time for re-examination. 21 THE CHAIRMAN: It may be that either you or I do need to 22 FLYNN 25 Cross-examination by MR WILLIAMS	2	THE CHAIRMAN: We will rise briefly because one of the	2		
7 MR FLYNN: Unless my friend has something specific, counsel 8 can discuss that and we can raise it first thing 9 tomorrow. 8 10 MR LASOK: That may well be the better course then. 11 THE CHAIRMAN: Very well. Is it all right to start at 10.30 12 tomorrow or do you think we need to start at 10? 13 MR LASOK: I would have thought 10.30 would be fine, but 14 other people may take a more cautious view. 15 MR HOWARD: 10.30 is fine. I just want to make one thing 16 clear. I have told Mr Lasok on more than one occasion 17 that Mr Hall has to be finished because he is going into 18 hospital on Tuesday, and so I think 10.30 should be fine 19 but I think Mr Lasok does have to make sure that the 20 questions are put in such a way that he gets through in 21 time and leaves time for re-examination. 22 THE CHAIRMAN: It may be that either you or I do need to 23 Cross-examination by MR SAINI	2	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is	2 2	PAGE	
can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to TO Cross-examination by MR HOWARD	2 3 4	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself	2 2 3	PAGE	
9 tomorrow. 10 MR LASOK: That may well be the better course then. 11 THE CHAIRMAN: Very well. Is it all right to start at 10.30 12 tomorrow or do you think we need to start at 10? 13 MR LASOK: I would have thought 10.30 would be fine, but 14 other people may take a more cautious view. 15 MR HOWARD: 10.30 is fine. I just want to make one thing 16 clear. I have told Mr Lasok on more than one occasion 17 that Mr Hall has to be finished because he is going into 18 hospital on Tuesday, and so I think 10.30 should be fine 19 but I think Mr Lasok does have to make sure that the 20 questions are put in such a way that he gets through in 21 time and leaves time for re-examination. 22 THE CHAIRMAN: It may be that either you or I do need to 23 Re-examination by MR HOWARD83 10 Questioned by THE TRIBUNAL95 11 Questioned by THE TRIBUNAL95 12 Further re-examination by MR HOWARD91 13 Further re-examination by MR HOWARD91 14 Submissions re Tribunal direction by	2 3 4 5	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those.	2 2 3 4	PAGE MR KENNETH CULHAM (recalled)2	
9 tomorrow. 10 MR LASOK: That may well be the better course then. 11 THE CHAIRMAN: Very well. Is it all right to start at 10.30 12 tomorrow or do you think we need to start at 10? 13 MR LASOK: I would have thought 10.30 would be fine, but 14 other people may take a more cautious view. 15 MR HOWARD: 10.30 is fine. I just want to make one thing 16 clear. I have told Mr Lasok on more than one occasion 17 that Mr Hall has to be finished because he is going into 18 hospital on Tuesday, and so I think 10.30 should be fine 19 but I think Mr Lasok does have to make sure that the 20 questions are put in such a way that he gets through in 21 time and leaves time for re-examination. 22 THE CHAIRMAN: It may be that either you or I do need to 23 Re-examination by MR HOWARD	2 3 4 5	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged.	2 2 3 4 5	PAGE MR KENNETH CULHAM (recalled)2	
10 MR LASOK: That may well be the better course then. 11 THE CHAIRMAN: Very well. Is it all right to start at 10.30 12 tomorrow or do you think we need to start at 10? 13 MR LASOK: I would have thought 10.30 would be fine, but 14 other people may take a more cautious view. 15 MR HOWARD: 10.30 is fine. I just want to make one thing 16 clear. I have told Mr Lasok on more than one occasion 17 that Mr Hall has to be finished because he is going into 18 hospital on Tuesday, and so I think 10.30 should be fine 19 but I think Mr Lasok does have to make sure that the 20 questions are put in such a way that he gets through in 21 time and leaves time for re-examination. 22 THE CHAIRMAN: It may be that either you or I do need to 23 FLYNN 24 Questioned by MR HOWARD	2 3 4 5 6 7	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel	2 2 3 4 5 6	PAGE MR KENNETH CULHAM (recalled)2 Cross-examination by MR WILLIAMS3	
11 THE CHAIRMAN: Very well. Is it all right to start at 10.30 12 tomorrow or do you think we need to start at 10? 13 MR LASOK: I would have thought 10.30 would be fine, but 14 other people may take a more cautious view. 15 MR HOWARD: 10.30 is fine. I just want to make one thing 16 clear. I have told Mr Lasok on more than one occasion 17 that Mr Hall has to be finished because he is going into 18 hospital on Tuesday, and so I think 10.30 should be fine 19 but I think Mr Lasok does have to make sure that the 20 questions are put in such a way that he gets through in 21 time and leaves time for re-examination. 22 THE CHAIRMAN: It may be that either you or I do need to 23 TEVENTON 24 Questioned by THE TRIBUNAL95 12 Questioned by THE TRIBUNAL95 12 THE CHAIRMAN: Is all right to start at 10.30 11 Questioned by THE TRIBUNAL95 12 THE CHAIRMAN: It may be that either you or I do need to 15 Further opening submissions by MR	2 3 4 5 6 7 8	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing	2 2 3 4 5 6 7	PAGE MR KENNETH CULHAM (recalled)2 Cross-examination by MR WILLIAMS3	
tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. 11 Questioned by THE TRIBUNAL95 12 13 Further re-examination by MR HOWARD98 13 Further opening submissions by MR	2 3 4 5 6 7 8 9	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow.	2 2 3 4 5 6 7 8	PAGE MR KENNETH CULHAM (recalled)2 Cross-examination by MR WILLIAMS3 Cross-examination by MR SAINI79	
13 MR LASOK: I would have thought 10.30 would be fine, but 14 other people may take a more cautious view. 15 MR HOWARD: 10.30 is fine. I just want to make one thing 16 clear. I have told Mr Lasok on more than one occasion 17 that Mr Hall has to be finished because he is going into 18 hospital on Tuesday, and so I think 10.30 should be fine 19 but I think Mr Lasok does have to make sure that the 20 questions are put in such a way that he gets through in 21 time and leaves time for re-examination. 22 THE CHAIRMAN: It may be that either you or I do need to 23 Further re-examination by MR HOWARD	2 3 4 5 6 7 8 9	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then.	2 2 3 4 5 6 7 8 9	PAGE MR KENNETH CULHAM (recalled)2 Cross-examination by MR WILLIAMS3 Cross-examination by MR SAINI79	
other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to	2 3 4 5 6 7 8 9 10	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30	2 2 3 4 5 6 7 8 9 10	PAGE MR KENNETH CULHAM (recalled)	
15 MR HOWARD: 10.30 is fine. I just want to make one thing 16 clear. I have told Mr Lasok on more than one occasion 17 that Mr Hall has to be finished because he is going into 18 hospital on Tuesday, and so I think 10.30 should be fine 19 but I think Mr Lasok does have to make sure that the 20 questions are put in such a way that he gets through in 21 time and leaves time for re-examination. 22 THE CHAIRMAN: It may be that either you or I do need to 23 FLYNN 24 THE CHAIRMAN: It may be that either you or I do need to 25 FLYNN 26 Further opening submissions by MR	2 3 4 5 6 7 8 9 10 11	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10?	2 2 3 4 5 6 7 8 9 10 11 12	PAGE MR KENNETH CULHAM (recalled)	
15 Further opening submissions by MR	2 3 4 5 6 7 8 9 10 11 12 13	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but	2 3 4 5 6 7 8 9 10 11 12 13	PAGE MR KENNETH CULHAM (recalled)	
that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to	2 3 4 5 6 7 8 9 10 11 12 13	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view.	2 3 4 5 6 7 8 9 10 11 12 13 14	PAGE MR KENNETH CULHAM (recalled)	
hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to Submissions re Tribunal direction by	2 3 4 5 6 7 8 9 10 11 12 13 14	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing	2 3 4 5 6 7 8 9 10 11 12 13 14 15	PAGE MR KENNETH CULHAM (recalled)	
but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion	2 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	PAGE MR KENNETH CULHAM (recalled)	
questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to THE CHAIRMAN: It may be that either you or I do need to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	PAGE MR KENNETH CULHAM (recalled)	
time and leaves time for re-examination. 21 Further opening submissions by MR114 22 THE CHAIRMAN: It may be that either you or I do need to 23 FLYNN	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	PAGE MR KENNETH CULHAM (recalled)	
22 THE CHAIRMAN: It may be that either you or I do need to 22 FLYNN 22 FLYNN	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	PAGE MR KENNETH CULHAM (recalled)	
ZZ FLINN	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	PAGE MR KENNETH CULHAM (recalled)	
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	PAGE MR KENNETH CULHAM (recalled)	
20	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	PAGE MR KENNETH CULHAM (recalled)	
24 MK JOHN DAVID JOHEH I (SWOTH)	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to make sure that things move along swiftly tomorrow with	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	PAGE MR KENNETH CULHAM (recalled)	
178 180	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to	2 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	PAGE MR KENNETH CULHAM (recalled)	
20	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	PAGE MR KENNETH CULHAM (recalled)	
20	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	THE CHAIRMAN: We will rise briefly because one of the members of the Tribunal has to leave now, so if there is further logistical matters I will come back in myself and deal with those. MR LASOK: Much obliged. MR FLYNN: Unless my friend has something specific, counsel can discuss that and we can raise it first thing tomorrow. MR LASOK: That may well be the better course then. THE CHAIRMAN: Very well. Is it all right to start at 10.30 tomorrow or do you think we need to start at 10? MR LASOK: I would have thought 10.30 would be fine, but other people may take a more cautious view. MR HOWARD: 10.30 is fine. I just want to make one thing clear. I have told Mr Lasok on more than one occasion that Mr Hall has to be finished because he is going into hospital on Tuesday, and so I think 10.30 should be fine but I think Mr Lasok does have to make sure that the questions are put in such a way that he gets through in time and leaves time for re-examination. THE CHAIRMAN: It may be that either you or I do need to make sure that things move along swiftly tomorrow with Mr Hall. So is there anything further that we need to	2 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	PAGE MR KENNETH CULHAM (recalled)	

1	Examination-in-chief by MR FLYNN132
2	•
2 3 4	Cross-examination by MR LASOK133
4	•
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
	181