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IN THE COMPETITION APPEAL TRIBUNAL

Case No. 1251/1/12/16-1255/1/12/16

Victoria House,
Bloomsbury Place,
London WC1A 2EB

13 March 2017

Before:

THE HON. MR. JUSTICE ROTH
(President)
MR HODGE MALEK QC
DERMOT GLYNN

(Sitting as a Tribunal in England and Wales)

BETWEEN:

GENERICS (UK) LIMITED
GLAXOSMITHKLINE PLC
(1) XELLIA PHARMACEUTICALS ApS
(2)ALPHARMA LLC
ACTAVIS UK LIMITED
MERCK KGaA

Appellants

\- and -

COMPETITION AND MARKETS AUTHORITY

Respondent

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HEARING

APPEARANCES

Stephen Kon and Christopher Humpe (instructed by MacFarlanes) appeared on behalf of the Appellant (Generics UK Limited).

James Flynn QC (Brick Court), David Scannell (Brick Court) and Charlotte Thomas (Brick Court) (instructed by Nabarro) appeared on behalf of the Appellant (Glaxosmithkline PLC).

Robert O'Donoghue QC (Brick Court), (instructed by Clifford Chance) appeared on behalf of the Appellant (Xellia Pharmaceuticals APS (1) Alpharma LLC (2)).

Sarah Ford QC (instructed by MacFarlanes) appeared on behalf of the Appellant (Actavis UK Limited).

Ronit Kreisberger (instructed by DLA Piper) appeared on behalf of the Appellant (Merck KGaA).

Jon Turner QC (Monckton), Marie Demetriou QC (Brick Court) David Bailey (Brick Court), Thomas Sebastian (Monckton), Ravi Mehta (Blackstone) and Elizabeth Kelsey (Monckton) appeared on behalf of the Respondent

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1 THE PRESIDENT: Yes, Mr. Scannell.
2 MR. SCANNELL: Good morning, Mr. President. GlaxoSmithKline calls Dr. Robert
3 Stillman again.
4 THE PRESIDENT: Yes, can I just say before we call the witnesses, we had a very useful week
5 last week and a lot of issues were covered in a way that we found helpful.
6 There is a certain amount of overlap in the joint statements and the reports from this stage.
7 We do not feel that it is necessary for any party to start cross-examining and putting to the
8 expert points that were already covered last week. If Ms. Webster is not cross-examined on
9 matters that were covered with Professor Shapiro, nobody from the Tribunal is going to take
10 that against any appellant and say you have not put your case to the expert. We know what
11 everybody's case is now on many of these issues.
12 Equally, the CMA we hope is not going to cross-examine experts we have already heard
13 from on matters that we covered with the same experts in the hot tub last week. So we
14 throw out that general indication to all.
15 Secondly, for my part I was quite struck with the agreement between Ms. Webster and Dr.
16 Stillman that is recorded in the joint statement at pages 28 and 29, where Ms. Webster says:
17 "We are not in a position to measure with 100% accuracy the impact of the supply
18 agreements on prices of paroxetine charged by GSK or any of the market
19 participants."
20 Dr. Stillman agrees because of numerous problems with the underlying data, and says:
21 "We should be talking about ranges as opposed to point estimates." {I/2/28}
22 That seemed to me very evidently the position here.
23 We have references to data being noisy, choppy, various metaphors are used, but basically
24 saying they are not totally reliable, as I understand it. I do not think anyone should get too
25 hung up on trying to get a precise percentage point as opposed to something a little different
26 when the underlying data is just incomplete or unreliable or subject to so many necessary
27 adjustments, each of which is based on various assumptions that one is chasing a spurious
28 accuracy, and I hope everyone will bear that in mind.
29 Otherwise one can, of course, go on with all these adjustments and evaluations in great
30 detail, no doubt for weeks, trying to work out whether it is 1% more or less.
31 Right, Dr. Stillman.
32 THE PRESIDENT: Can Dr. Stillman be sworn? I think he probably should be sworn again. DR.
33 ROBERT STILLMAN (affirmed)
34 Examination-in-chief by MR. SCANNELL

1 THE PRESIDENT: Thank you. Do sit down.
2 MR. SCANNELL: Mr. President --
3 THE PRESIDENT: Do you have your report with you, Dr. Stillman?
4 A. No, I was instructed just to come up empty handed.
5 THE PRESIDENT: I think you probably should have your report and the joint statement, in fact
6 probably the bundle of your report and Ms. Webster's report and the joint statement.
7 (Handed)
8 MR. SCANNELL: Mr. President, Dr. Stillman's evidence has been introduced already so I am
9 happy to take it that it has been introduced in evidence.
10 THE PRESIDENT: Correct.
11 If you stay there, Mr. Turner may have some questions. Cross-examination by MR.
12 TURNER
13 MR. TURNER: Hello, Dr. Stillman.
14 A. Good morning.
15 Q. Dr. Stillman, I do not have a great deal to ask you, but if you focus on answering these
16 questions as directly as you can we may therefore be quite quick.
17 Can we begin by looking at your first report in this appeal from April last year, which, on
18 the Magnum system, is {G/2/32}.
19 A. Is that the Magnum number or the internal number?
20 Q. That is the Magnum number. The internal number is 28.
21 A. I am there.
22 Q. So at the top, paragraph 95, you will remember this:
23 "In 2001 about 72% of GSK sales of 20mg paroxetine were through wholesalers, and
24 yet it appears that the CMA did not apply a pharmacy mark-up to bring the prices on
25 these sales to wholesalers 'up to' the pharmacy level."
26 Then underlined:
27 "As a result, the CMA's analysis underestimates the pharmacy prices implied by the
28 GSK's sales in 2001. This issue only affects the GSK data for 2001 because in 2002
29 GSK moved to a different distribution model ..."
30 There you conclude that there was an error.
31 Can we look at how you have recently described the significance for this case of the CMA's
32 error? If we turn to your witness statement, which you submitted at the end of last year on
33 16th December. You will find that on the Magnum system at {K/85/1} is where it starts.
34 Dr. Stillman, do you have a hard copy of that?

1 A. I do not believe I do. I can try to follow along on the screen.
2 Q. If we turn over to page {K/85/2} you have paragraph 4. You will see that four lines down
3 you say, towards the bottom of the page:
4 "In 1st Stillman Consumer Welfare, I identified a significant error in the modelling of
5 the price to pharmacy in the CMA's Decision. In short, the CMA in the decision
6 understated the pre-Agreement price by assuming that the price charged by GSK was
7 the price paid by pharmacists. That was wrong because, in 2001, 70% or so of GSK's
8 sales were not direct-to-pharmacy ... They were made via wholesalers who applied
9 their own mark-ups to those prices which had to be added ..."
10 You say:
11 "In her report ..."
12 If we turn the page {K/85/3}:
13 "... Dr. Haydock (who had not been involved in the CMA's work leading to the
14 adoption of the decision) accepted that I had correctly identified that error. She then
15 sought to add analysis not contained in the decision which was designed to show that
16 the CMA's admitted error in practice made no difference. Dr. Haydock's new
17 arguments not in the decision included her suggestion that explanations for the
18 reduction in prices lay in GSK's move from a wholesaler supply model to a 'DTP'
19 distribution model, and her comparison between 20mg and 30mg Seroxat prices."
20 If we go to paragraph 9 on page {K/85/4}, at the top of that page, do you have that?
21 A. I do.
22 Q. You say:
23 "The consequence of the admitted error is that the decision applied an analysis which
24 used a pre-Agreement input for pharmacy prices which was too low. Applying the
25 same analysis but correcting the error so that the pre-Agreement price is higher can
26 only rationally lead to the conclusion that the decision's conclusion that pharmacy
27 prices were left materially unchanged by the Agreements is wrong. Dr. Haydock's
28 analysis and, to an much greater extent, Ms. Webster's, seeks to cancel out this error
29 and rehabilitate the decision by retrospectively changing the underlying analysis."
30 Just pausing there.
31 That last part about how Dr. Haydock and Ms. Webster were seeking to rehabilitate the
32 decision by retrospectively changing the underlying analysis, was that your choice of
33 wording?
34 A. That was a little harsh.

1 Q. Was it your choice of wording?
2 A. First, the witness statement -- this witness statement was -- the first draft was done by the
3 barristers. I then reviewed it, edited and signed it.
4 Q. Yes. Now, you went on to correct for the error yourself by applying wholesale mark-ups to
5 the 2001 Seroxat prices, which in your view were reasonable. In your first report, of course,
6 you proposed adopting two different mark-ups by way of a sensitivity; you chose one and
7 then the other.
8 Could we go do that? It is at {G/2/33} on the Magnum system and if you have the hard
9 copy of your report, that is at the bottom of page 29.
10 A. I have it.
11 Q. Just above paragraph 100:
12 "Using the 11.25% pharmacy mark-up used by the CMA."
13 What you did at that point was to use an 11.25% mark-up for the Seroxat reflecting the
14 lowest wholesaler mark-up for the generic medicines which had been used in the CMA's
15 decision, as I understand it?
16 A. Yes, that is what I did in the first report, you are correct.
17 Q. Then, if we go to page {G/2/34} of the Magnum system, page 30 internal, we see from the
18 heading above paragraph 101 that you applied a sense check of your result. On page
19 {G/2/35}, if you turn the page, at the top, paragraph 103, we see there, clearly, that you
20 took an 8% mark-up.
21 A. Yes, that is correct.
22 Q. So if we now go back over to page {G/2/33} on the Magnum system, page 29 of yours,
23 paragraph 99, we see that you considered a different mark-up, you see from the third and
24 fourth line, of about 5%. But in your last sentence, beginning three lines up from the
25 bottom, you said then that:
26 "This is not a reasonable assumption; my understanding is that GSK expected to
27 increase its profit margins as a result of moving from the wholesaler model to the
28 DTP model."
29 A. Yes.
30 Q. So we have a specific rejection at that time of the mark-up of 5%.
31 Finally, if we go to paragraph 102, on page {G/2/34} of the Magnum system, we see from
32 the bottom four lines of that page that as part of your sense check, you spoke with GSK
33 personnel:
34 "The GSK personnel with whom I have spoken ..."

1 They are not named individually, but can I ask, did you speak at that point to Mr. Heath of
2 GSK, who then gave a witness statement in the proceedings?
3 A. No, I had not spoken to Mr. Heath at that time.
4 Q. Who were the personnel to whom you spoke?
5 A. I remember a phone call with Mr. Nick Lowen.
6 Q. Who was he?
7 A. L-O-W-E-N. He is a senior person in GSK's sales operations.
8 Q. Did you ask Mr. Lowen whether a 11.25% mark-up on the Seroxat wholesale price was
9 reasonable?
10 A. I do not recall asking him that specifically. I recall a conversation about the impact of
11 moving to DTP, what it would do for the business, and I recall him saying it would improve
12 GSK's profit margins by a few percentages.
13 Q. You did not ask Mr. Lowen what the wholesaler margin or mark-up was going to be on
14 sales of Seroxat? The question was not asked of Mr. Lowen?
15 A. I did not ask him about what he thought would be an appropriate adjustment to the CIMS
16 data, which have various problems, to get to a price to pharmacy level because, as I am sure
17 you are aware, there are two issues. There is the question of do the CIMS data take into
18 account missing rebates?
19 Q. Oh yes.
20 A. Then beyond that, there is this issue of the wholesaler mark-up, and the question then is
21 what percentage adjustment do you need to make to the raw CIMS data to get to the price to
22 the pharmacists. So there are two elements.
23 Q. Just focusing on that latter element, which we are dwelling on at the moment, given that it
24 was an issue why did you not ask Mr. Lowen about the correct wholesaler mark-up to
25 apply?
26 A. As I recall, this was an analysis that was under some time pressure and I had spoken to Mr.
27 Lowen about the impact of the change in the distribution system, but I did not have the
28 opportunity, or at least I did not -- in the pressure of time I did not feel it necessary or feel I
29 had the opportunity to go back to Mr. Lowen to double check this number.
30 Q. Okay. At what time did you become aware of Mr. Heath's witness evidence for the
31 Tribunal?
32 A. Let me get the dates here. So this is --
33 Q. Let us turn to it so you can see it. It is at {E/5/1}. You can see that was filed on 7th
34 October. If we go in that to page --

1 THE PRESIDENT: It is coming up on screen. For Dr. Stillman, would you prefer a hard copy or
2 do you think --
3 A. I think the screen is fine, for the dating certainly, and the date is October 7th. The appeal
4 went in in early April of 2016, so I recall doing further research on this question. Actually,
5 could you give me one more date? When did Dr. Haydock's report get filed?
6 Q. I can tell you that. That was with the defence and therefore would have been the end of
7 July.
8 A. So I think especially after reading Dr. Haydock's report and seeing some of the questions
9 she raised about how the comment from Mr. Lowen might be interpreted, I resolved to do
10 further research and so it would have been in the August/September timeframe when I had
11 my first conversations with Mr. Heath.
12 Q. So just to cut to where we get, it is appropriate now, I think we can agree, to use a lower
13 mark-up for Seroxat for that part of this problem and, indeed, it is appropriate to use a 3.3%
14 mark-up?
15 A. You know, we can try to separate these two elements, but Dr. Haydock put a 6% mark-up
16 on the raw CIMS data and got to a point which is not too different from using a 3.3% mark-
17 up on CIMS data where there has been a different kind of adjustment than was made with
18 the missing rebate problem in the decision or in my first report.
19 Q. Yes, but the answer to my question basically is "yes"?
20 A. I think I prefer my answer.
21 Q. Just to ensure that we are on the same page, let us turn to the joint statement at {I/2/17}. Do
22 you have that? I can show you what you also said in your third report.
23 A. No, I am happy to look at this.
24 Q. So in the middle of the page, that is {I/2/17}, internal page 17 as well, do you see
25 proposition 6?
26 "The experts agree that, if the CIMS data could be accurately adjusted for the problem
27 of 'missing rebates', a wholesaler mark-up of 3.3% would be appropriate to use in
28 adjusting for the fact that over 70% of GSK's sales of 20mg Seroxat in 2001 were
29 through wholesalers."
30 You simply said then:
31 "I agree ..."
32 A. Yes, to the sentence which had two parts. If the CIMS data could be accurately adjusted for
33 the problem of missing rebates then the wholesale mark-up of 3.3% would be appropriate.
34 It has the two elements.

1 Q. Of course. I am only focusing on that second element.
2 Now, the 3.3% mark-up --
3 A. The reason I mention this is because these other earlier analyses were based on trying to go
4 from the raw CIMS data, the CIMS data where the full difference between CIMS and
5 Unison had been treated as missing rebates, and then trying to work to the price to the
6 pharmacists.
7 So these earlier adjustments were in the context of trying to make an adjustment to both
8 elements.
9 Q. Let us close this down. The 3.3% mark-up was calculated by Ms. Webster on the basis of
10 Mr. Heath's statement, as you recall. Shall we just turn to that? That is in her report which
11 you can find on the system at {H/4/35}. Do you see that?
12 A. Just one moment, please.
13 Q. Of course.
14 A. Yes, because I wanted to get also out my analysis of the same issue, which is at {G/4/24},
15 paragraph 79.
16 Q. Yes. If we stick with the question for the moment.
17 You see what Ms. Webster did was that she relies, at the top -- that is paragraph 4.23 -- on
18 the evidence of Mr. Heath of GSK and she then applies that and finds that it leads to, at the
19 end of 4.24, a percentage mark-up of 3.3%.
20 She says in her footnote 110:
21 "As I discuss below, Dr. Stillman has also queried the previous allocation of rebates. I
22 believe that any reasonable allocation would allocate the majority of rebates to 20mg
23 Seroxat such that this percentage mark-up would not be materially affected."
24 Now, the 3.3% mark-up was also broadly consistent with the various pieces of evidence that
25 Dr. Jennifer Haydock had earlier cited in her report. If we go to her report on the Magnum
26 system at {H/2/9}, you will see from paragraph 26 she says that there were several reasons
27 to think that your mark-up figure of 11.25% for the Seroxat was likely to be too high, and
28 she runs through a range of different sources of evidence.
29 You see at paragraph 34 on page {H/2/12} --
30 A. Wait, I am not following you. Where are you?
31 Q. We are now in Dr. Haydock's report. We were starting at page 9 internal and also the
32 Magnum reference.
33 A. Which paragraph again?
34 Q. 26. She underlines:

1 "First, there are several reasons to think that the figure of 11.25% is likely to be too
2 high."
3 Then the whole of the next section is taken up with her giving different pieces of evidence
4 to support her view there. At page 12, for example, paragraph 34, you see that one of those
5 pieces of evidence was the medicines distribution market study. Do you see that in
6 paragraph 34?
7 A. Yes, I do.
8 Q. Just underneath that she refers also to a witness statement from Dr. Reilly in the patent
9 litigation for Apotex.
10 Were you, by the way, aware of the medicines distributions study when you wrote your first
11 report?
12 A. Yes.
13 Q. But this part of it you had not taken into account --
14 A. No, that is not correct at all.
15 Q. Well, for this part of it, in terms of the use of the margin and the mark-up that could be
16 used?
17 A. No, that is absolutely wrong.
18 Q. Why is that?
19 A. Because, again, there are two issues here. There is trying to figure out how to deal with the
20 missing rebate issue and then also how to deal with the mark-up that goes from the
21 appropriately calculated price to wholesalers to the price to the pharmacist. There are two
22 problems.
23 Q. But on this problem, where you applied a 11.25% mark-up, there was a clear piece of
24 evidence from the market study suggesting that the typical mark-ups that were applied were
25 of a much lower magnitude?
26 A. Again, you are trying to deal with one element of a two-element problem. What I am doing,
27 what I was doing with the 8% and the 11.25% in my first report, which I have
28 acknowledged was not correct, but what I was doing at that time was trying to figure out
29 how to take CIMS data that had been adjusted in a particular -- that -- CIMS data and figure
30 out what -- which were missing rebates -- and figure out how to go from those data up to the
31 price to the pharmacist, and when I say missing rebates what I actually mean is the raw
32 CIMS data are missing rebates, and then we made a particular kind of adjustment to get to
33 the price, of the selling price by GSK that was, we thought, net of the rebates, on 20mg.

1 But we were not sure that was the right number, and in fact what we did initially was got to
2 a figure that was too low.
3 Then what we were trying to do is take that adjusted CIMS data and work up to a price to
4 the pharmacist. Now, it is true if you had correct clean data on what GSK was selling to the
5 wholesalers at, which were netable, and taking into account all of the rebates, then you
6 would want to use something like a 3.3% mark-up.
7 That is what we know now -- what I know now from Mr. Heath's evidence in particular is
8 the right level. But you cannot go from general views of what wholesaler mark-ups are, or
9 even Mr. Heath's evidence, to figure out what the right thing would have been to do if you
10 had been constrained to use CIMS data which had adjusted for missing rebates in a way
11 which may have over adjusted for the missing rebates.
12 This is the headache that I have been having for many months with these data.
13 Q. Let us try and no longer prolong that headache. I think we have sufficiently explored that
14 point for the moment.
15 Let us return to the question of the significance of the CMA's admitted error for the
16 decision, which you described in your witness statement in very strong terms.
17 The error that you identify does not affect the CMA's analysis in the decision for either the
18 GUK agreement or the Alpharma agreement, does it?
19 A. Correct.
20 Q. Can we just be sure as to why. If we go to the decision at Magnum {V/1/348}, and we will,
21 only to orientate ourselves, look at the GUK and not the Alpharma anaylsis which is the
22 same. But you will see at the bottom of the page the decision said:
23 "For example, paroxetine 20mg and Seroxat 20mg prices in the three months after
24 GUK's entry were ... 1% lower and 0.5% lower respectively compared to the three
25 months before GUK's entry."
26 {V/1/349}
27 A. I am sorry, I thought I could do without the document, but could I get the pages in front of
28 me again?
29 Q. Yes, that is fine. So at the very bottom of the page, {V/1/348}, you see the reasoning of the
30 CMA there on the effects on pricing?
31 A. Yes, this carry-over sentence is now referring to -- well, it is referring to the average price
32 of paroxetine and also the Seroxat prices.
33 Q. That is it. Then if you turn the page.

1 A. You know, I think what we were talking about in this context is actually the Seroxat prices
2 in particular.
3 Q. Yes. So it is the case, as you can see, that the decision referred to both of those, but the
4 timeframe that it was using was the three-month period before GUK's entry and comparing
5 the three-month period after, both in 2002. In fact, the earliest data used therefore would
6 have been data from February 2002 for this agreement because the entry was in April. Of
7 course Alpharma was later than that.
8 So Dr. Stillman, we can see that the CMA's reasoning did not rely on data from 2001 at all.
9 A. Yes, that is correct in this part. I agree with that.
10 Q. The error that you have identified does only affect the data for 2001?
11 A. Correct.
12 Q. We can agree with the CMA's use of the CIMS data, as it has been called, for 2002 and
13 2003?
14 A. Ms. Webster and I have decided to agree on that and there is certainly none of the major
15 problems with the 2002, 2003 data for CIMS that you have in 2001. I think in our joint
16 statement we note that even in 2002 or 2003, if you start digging in and sort of looking
17 under rocks, you find things that you say, "How did that make sense?" But still, overall, I
18 think we have agreed that the 2002 and 2003 data can be used.
19 Q. So the error that you identified as significant, that potentially affects only the CMA's
20 analysis of the IVAX agreement because that was 2001?
21 A. Well, I think, it is certainly the case that the error does not affect price movements during
22 2002 and 2003. Some of the analyses that we have been talking about, about the collective
23 effects of the agreements, involved comparisons of prices -- even for the GUK or Alpharma
24 agreements will involve prices that we observe in the marketplace in 2003, with clean data,
25 but then what we are trying to compare against 2001.
26 I guess the simple way to put it is any comparison involving 2001 has this sort of question
27 mark around it.
28 Q. Yes, but the CMA's analysis did not?
29 A. The CMA's analysis of the impact of the entry of GUK and Alpharma focused only on 2002
30 and 2003 data, and thus was not infected, if you will, by the problems of the 2001 data.
31 Q. Just focusing on IVAX for a moment. If we go to CMA's skeleton at {S/6/105} -- I am
32 sorry, this is going to come up on screen. But you will have seen this before. This is from
33 the CMA's skeleton argument?
34 A. Will you remind me, this isn't a replication of figure 3.1 from the decision?

1 Q. No, because what we have here is the effect of applying the mark-up in 2001 which the
2 CMA decision failed to do.
3 A. Okay.
4 Q. So you can see that is the difference between the blue line, which is the decision, and the
5 red line.
6 A. Now I see.
7 Q. What this illustrates is the impact of adopting that wholesaler mark-up, and we do have, as
8 you see from the top of the page, just the text above that figure 6:
9 "The CMA found that prices increased slightly following IVAX's restricted entry ...
10 and the necessary adjustment to wholesale prices [because of the error] results in a
11 slightly smaller increase."
12 Then it is illustrated.
13 So there is a slight effect in turning a small increase in the Seroxat price, after the IVAX
14 entry, into a slightly smaller increase?
15 A. Well, I would have to double check those numbers, but I should say that -- I think this is a
16 point that Ms. Webster and I went back and forth during the process of preparing the joint
17 statement -- while I take the point that you may have a period of time where you have got
18 generic entry coming in and then the lesson we observe in the marketplace, the price is
19 actually going up because of miscellaneous other factors in the marketplace, I do not think
20 there is any theory that I have heard in the case that would say that the incremental effect of
21 the agreements would be to cause an increase in price.
22 Q. No, but what we can see is that the magnitude of the effect of the error is relatively small?
23 A. Well, I guess what struck me -- I mean, I think we should all step back as you are urging us
24 to do and look at the picture, and the picture is clear that there is -- the line is pretty flat.
25 Certainly with the adjustment the line is pretty flat.
26 When you go into the decision, which you have, in the decision is actually, as I recall, the
27 implication that GSK's prices from 2001 to the 2003 period actually increased by about
28 3.5%, which was one of the red flags for me that something was not quite right.
29 But I think the big point is just looking at the chart and assuming those data are right, and I
30 think they are right it, and certainly in basic terms we have -- and I think it is all agreed --
31 we talked about it previously -- the agreements did not lead to any significant response in
32 GSK's prices over the period.

1 There is the mix effect we talked about a lot, but even though I would say, as I said at the
2 end of the last week, if you asked me to predict in October 2001 what would happen, I
3 would have expected GSK to respond by reducing its prices, we actually do not see that.
4 Q. Yes, we are not going to revisit the hot tub discussion, so we will move to a different point
5 which is that there is a disagreement between you and Ms. Webster on whether the
6 company's CIMS data should be used to calculate the level of Seroxat prices to wholesalers
7 in 2001, or this spreadsheet that Mr. Andrew Sellick discovered on the laptop, which was
8 then brought in with GSK's reply.
9 They differ in certain ways, the company's CIMS data and the Sellick spreadsheet, and I just
10 want to identify a couple of these. The first, which I hope is uncontroversial, is the Sellick
11 data only gives a snapshot of prices under contracts which are recorded in GSK's database
12 as of 25th July 2001.
13 A. That is correct.
14 Q. The CIMS data, whatever else one says about it, it covers prices under contracts that
15 concluded all the way through the year 2001.
16 A. It covers all shipments, I believe, during 2001. Whether it is pursuant to a contract or not
17 pursuant to a contract, it has got all the -- it is an attempt to have all the volumes that were
18 shipped.
19 Q. Yes.
20 A. I forget whether or not the IVAX sales are included or not. I will have to think about that.
21 But basically it is supposed to be -- it is their shipments.
22 Q. So that is the time difference and it therefore covers the key period shortly before the supply
23 agreements in 2002 and then in 2003, the following year, whereas the Sellick spreadsheet is
24 just up to that point in 2001?
25 A. What is your question?
26 Q. It is simply concluding the point that the CIMS data therefore runs until the end of the year,
27 which is nearer to the point when these generic supply agreements come on stream?
28 A. Yes, CIMS data has lots of problems, but on the plus side of the CIMS data is that they go
29 through the whole year.
30 Q. There is a second point which is that the coverage of the customer base is more complete in
31 the CIMS data than in the Sellick spreadsheet.
32 A. Yes, that is another plus. It is complicated in 2001 because we do not have the actual
33 customers, it is through the wholesalers, but the universe of transactions is broader in the
34 CIMS data than in the Sellick data.

1 The Sellick data I think in my report I say covered about 75/80%. Maybe it is 78; anyway,
2 somewhere in that ballpark. But the CIMS coverage is broader.
3 Q. 72%?
4 A. No, 72% is the wholesaler percentage. I am looking at your --
5 Q. We will pull that out. But leaving aside the number, did you hear Mr. Sellick's evidence in
6 court or read the transcript?
7 A. Both.
8 Q. So he said very clearly, and he repeated it a number of times, that his spreadsheet excluded
9 the up-to-date information on what he called national accounts.
10 A. Correct.
11 Q. That excludes Boots, Sainsbury's, New Mark or Superdrug or Tesco, all of those sorts of
12 people?
13 A. I do not remember the exact list, but he made a point that this was not a database covering
14 national accounts. As you know, I have done some looking since then about the implication
15 -- about what effect that might have on the numbers, but the short answer to question is, I
16 think, yes.
17 Q. On this question of whether it is 78% or 72%, I am told neither of us is right.
18 If you go to {G/4/22} just so you have the figure.
19 A. Thank you.
20 Q. I am trying to avoid spurious precision. At the end of paragraph 73 you said it was 73.%?
21 A. I would say you were closer.
22 Q. I got that wrong too. If we turn to your second report, {G/4/18}, this was filed with the
23 reply for GSK in October 2016, and at paragraph 67, bottom of the page, you have that.
24 A. I do.
25 Q. You say three lines down:
26 "However, for reasons that I will now explain, the data recently discovered by Mr
27 Sellick provide us with direct evidence on the prices paid by pharmacists in 2001 for
28 20mg Seroxat. Because we have this direct evidence, it is no longer necessary to
29 estimate the prices they were paying by applying an assumed mark-up to CIMS data
30 that have been adjusted to reflect an uncertain estimate of rebates that appear to be
31 missing from the CIMS data in 2001."
32 So there are two reasons really that are given for preferring the Sellick data. The first one is
33 that you avoid having to estimate the wholesaler mark-ups, and the second is the point you
34 were referring to earlier about avoiding estimating the level of the missing rebates.

1 A. Yes, that is correct.
2 If I can just put this into a little context. These CIMS data were the real bane of my
3 existence for a long time, and we had a lot of problems with them and a lot of adjustments,
4 and there is a lot of back and forth between GSK and the CMA and, previously, OFT about
5 what was going on with the CIMS data, and it was just a mess.
6 So when these Sellick data appeared it was like manna from heaven. Suddenly we had real
7 data. We had contemporaneous evidence in the market.
8 Now, they are not perfect, they do not cover everything, but they were data that were
9 reflecting real marketplace activity and I was so delighted to have them, which maybe is a
10 statement about myself that I get delighted about these things, but I was. Maybe that comes
11 through in this report.
12 Q. Well, let us talk a little about manna from heaven.
13 These two dimensions, the estimation of wholesaler mark-ups which is avoided and the
14 level of the missing rebates. Can we begin with the first of those.
15 We were just talking about the fact that if the missing rebates is assumed at a certain level,
16 that 3.3% can be taken as an accurate estimate of the wholesaler mark-up for the purpose of
17 the analysis; we saw that?
18 A. That is correct.
19 Q. The Sellick data also contained estimated elements itself, of course, for sales to the
20 pharmacies through the wholesalers. For example, as you know, the wholesaler discount
21 that we were looking at when Mr. Sellick gave evidence, that is also an estimated figure?
22 A. That is correct.
23 Q. You obviously pointed that out yourself in your own report, but we agree on that.
24 So the concern about avoiding estimation is not a sufficient reason in itself to disregard
25 CIMS completely and simply turn to the Sellick data?
26 A. Again, I think we are choosing between two, and in the end -- I think it is in our joint
27 statement -- I do not think it makes much difference because we all sort of when you step
28 back and say "Where are we?", we have got, well, the range, maybe it is flat, maybe it is
29 0.5%, maybe it is up to 1%. We are coming back always to that chart you showed, which is
30 that there is not a lot of response in the GSK prices over the period. I do not deny that.
31 Mr. Turner, I know you are asking me questions, but we are on this page, on {G/4/19},
32 internal 16. This is the section where there was the one, what I would call flat-out mistake
33 in what I wrote that I later tried to change, and that was at "brand share". Do you see the
34 second to last bullet on that page?

1 Q. Yes.
2 A. What I should have said is:
3 "This is GSK's estimate of the percentage of a pharmacy's total purchases that it
4 would make from GSK if GSK did not provide a product-specific rebate."
5 MR. MALEK: Do we delete those words?
6 A. Delete "parallel importers and generic suppliers" and put in "GSK".
7 MR. TURNER: Essentially, Dr. Stillman, I think we agree on where this is going, so let us just
8 focus on one more element of this which is the other reason that was given for preferring
9 Sellick about estimating the rebate levels.
10 If we go to the joint statement {I/2/17}, under what we were just looking at we have
11 proposition 7, paragraph 7 in bold, which says:
12 "The experts disagree on the reliability of adjustments for missing rebates presented in
13 ... the Webster report ..."
14 That is the difference between the Unison and CIMS database.
15 If we flip over the page and go to page 18 at the bottom, just to cut to the end of your
16 section there, it says "Stillman" about halfway down {I/2/18}. You say in the last sentence:
17 "... with this separation in mind, I can accept considering both Ms. Webster's 94% and
18 86% rebate allocations [that is allocating it to the 20mg version] when analysing the
19 net prices paid by pharmacists for 20mg ..."
20 So this is something which you say at the top of that paragraph, second line:
21 "... I do not believe that the Tribunal should regard this as an important area of
22 disagreement."
23 So this is an area where you have really narrowed your disagreements and you do agree
24 now that the allocations of 86% or 94%, they can both be used to assess the net prices?
25 A. Yes. I do not think this is something that we should get too excited about. 94% or 86%, I
26 think we can look at both of them.
27 I think we also ought to compare -- see how it stacks up relative to the Sellick data, because
28 I think that is a useful data point. I do have these issues about sort of odd observations in
29 the data which I think, to my mind, I would want to -- because they have a material impact,
30 I would take them out. But when you step way back, we know the big picture. We know
31 that there really is not much of a change in the GSK prices in response to the authorised
32 generic entry. There are mixed effects, but in terms of the impact on GSK's prices, I think
33 on balance I would still say the data show they came down a little, but it is so little.

1 Q. Yes. I mean, we are converging on this now, I think. So let us go to your ultimate
2 conclusion.
3 If you go to page {I/2/32}, it says "Stillman" just under halfway down. You are looking at
4 the tables which are attached to the joint statement, and under the bullets you say:
5 "The only versions of the attached tables that make it through [your] filters are column
6 2 of tables 4D and 5D. These tables imply that the prices paid by pharmacists for
7 20mg Seroxat changed between January-November 2001 and February-November
8 2003 by between -0.4% and -1.5%."
9 A. Right, and if I had to pick between those two I would say -0.4% because it is based on a
10 figure for 2001 that is really closer to the Sellick data. So it is really small.
11 Q. So these are not significant figures reflecting clear downward pressure on the Seroxat price?
12 A. That is what the data show, correct; as best we can tell.
13 Q. If we turn just to one more area, the parallel imports pricing data. This is the question
14 whether the parallel import prices in 2001, which feed into your estimate of the overall
15 average paroxetine prices that year, whether those were overstated or not.
16 If we have the joint statement there, if you go in it, please, to page {I/2/39}. Here we have,
17 halfway down the page, under the heading:
18 "Prices paid by pharmacists for parallel imports," the proposition at paragraph 21:
19 "The experts disagree on whether the evidence indicates that the PI prices used in the
20 decision are likely to have materially overstated the actual PI prices."
21 If we then go forward to page {I/2/46}, you have the first full paragraph beginning "in her
22 comments". So this is you talking about Ms. Webster's view?
23 A. Yes. I mean, what I have done first, as you know, is explain why I do not buy at all the
24 explanation in the decision for why these PI prices are not right, and I also comment on the
25 explanations that were offered by Dr. Haydock and embraced by Ms. Webster concerning
26 2002 prices. But then I go beyond that.
27 Q. Yes. So here I am concerned with your debate with Ms. Webster, and you say:
28 "In her comments above in the joint report, Ms. Webster has presented a new analysis
29 in which she compares the PI prices to pharmacists implied by the data received from
30 Waymade and Sandoz for 2001 with her estimates of the prices paid by pharmacists
31 for 20mg ... in 2001. The problem with this comparison is that any analysis based on
32 GSK’s prices in 2001 is affected by all the problems with the data on GSK’s prices in
33 2001 -- which is why Dr. Haydock based her analysis (which has its own problems)
34 on data from 2002 and 2003."

1 You then go on to say that:

2 "Ms. Webster's new analysis compares the ... price data for 2001 used in the decision
3 with her estimates of GSK's prices to pharmacists assuming a 94% rebate allocation
4 and not excluding what [you] have termed 'non-customer entries'. However, if one
5 examines the weighted average GSK prices over the period January-November 2001
6 in [various tables] (discussed above in Statement 18), one sees that Ms. Webster's
7 new analysis is not robust. Even if one focuses on Ms. Webster's calculation of the
8 so-called open prices ..."

9 You recall what that term means.

10 A. I do.

11 Q. That is the contestable area:

12 " ... (which have been derived using a method that I do not accept), one sees that in
13 Table 4D (which also uses Ms. Webster's 94% rebate allocation but excludes the 'non-
14 customer entries') the average GSK price is £13.44."

15 13.44 for Seroxat:

16 "This is a little low relative to the PI price for 2001 of £13.43 used in the decision
17 (because even with respect to open prices one might expect GSK to be able to
18 compete with prices that were at a small premium over the PI price), but a GSK open
19 price of £13.44 is not obviously out of line with the PI price for 2001 used in the
20 decision."

21 So I just want --

22 A. I guess everybody can read, but the paragraph continues where I compare the PI price in the
23 decision with some of the other prices implied by Ms. Webster's analysis.

24 Q. Yes. I just wanted to pause at this point because, as you say, and you have a qualification
25 yourself in brackets in your own text, we have a 1p difference between the GSK open price,
26 which you do not accept the methodology for, for 13.44, and you say:

27 "It is not obviously out of line with the PI price for 2001 used in the decision."

28 Which you see a few lines up.

29 A. Yes. In other words, we do not have a situation where we have an open price of 13.44 and a
30 PI price of 13.70, some difference that makes no sense.

31 You know, I think that the PI price -- we know the PI prices should be less than the GSK
32 prices, but this is not a -- this one data point is not grossly at odds with normal expectations
33 of economic theory. Whereas the additional analysis that she shows, when using other
34 calculations you get relative prices that seem completely sensible.

1 It is always against a backdrop that there is really nothing in the CMA's basic logic for
2 throwing out these -- suggesting there is some problem with the parallel import data. This
3 whole idea that these data did not include rebates makes no sense. I cannot see how they
4 reached that conclusion.
5 Q. Let us stay with this point for the moment.
6 I think, therefore, you would agree that if the GSK price looks virtually identical to a
7 parallel import price, that is obviously out of line, it is not not obviously out of line? It
8 suggests that the parallel import price should be lower because GSK is able to charge
9 premium compared to the parallel import prices.
10 A. I agree completely that the GSK price, you can expect it to be above the parallel import
11 price. What I meant by that, as I said a moment ago, is when we look at these data we do
12 not have some kind of gross inconsistency. We have a lot of data moving around here. We
13 are trying to work out the pattern and what we can conclude from it.
14 We are not looking at a data point where we have just a PI price that is 13.70 and a GSK
15 price of 13.44. We do not have a gross inconsistency like that.
16 Q. There was a suggestion at one point in the hot tub, I just want to ask about your view about
17 that, that it might be useful to try to gauge the size of that premium possibly by comparing
18 the average GSK deal prices in the Sellick spreadsheet with the average parallel import
19 prices shown there.
20 A. I remember that discussion.
21 Q. Do you think that that could be a useful approach?
22 A. To which question?
23 Q. To trying to gauge the size of the premium that GSK was able to charge over the parallel
24 import prices paid by pharmacists.
25 A. Yes, you could do some -- I guess if you want to do some analysis of -- I think of the final
26 offer price relative to, I guess the match price would be the most -- the way I would start.
27 Q. Why not compare it with what they say is the parallel import price?
28 A. Well, yes, you could also -- yes, that would be -- I mean, then we could get into this
29 question of trying to -- whether we are comparing a blended price versus a PI price, or
30 whether it should be an attempt to estimate the price -- the implicit price on the contestable
31 units.
32 Q. Yes. Certainly I would not suggest that it would give you an accurate figure, but merely as
33 a guide it could be an approach that one might adopt.
34 A. To?

1 Q. To trying to assess the magnitude of the premium.
2 A. The premium, yes. You could look at the Sellick data in that way.
3 Q. I am taking it that you have not performed such a --
4 A. I have. I looked at this data every which way, but the problem is I do not remember the
5 numbers.
6 Q. Okay. Having done a quick calculation now, and perhaps you can just therefore tell us
7 whether this seems to be in line from your perspective, if you adopt a simple average for the
8 parallel import prices which are shown in the spreadsheet, you do find a premium compared
9 to the deal prices of around 2%?
10 A. Yes, those are the numbers -- what I think about is 13.73 I know is the Sellick price, the
11 weighted average of the Sellick prices, and then we have the CMA using 13.43 in 2001, and
12 that is about a 2% differential there.
13 Q. And I do not know if you looked --
14 A. I was checking -- I do not know whether it is in the record or not because that is the kind of
15 -- 2 to 3% is the kind of numbers I have heard as being the sort of typical premiums on
16 parallel imports. But someone will have to check through the record to see if that is a
17 number that has actually been introduced. I do not know that it has.
18 Q. Not in this way, no, it has not. But I just put to you another figure. You were choosing
19 simple averages, I will come onto that in just a moment, but the premium goes up to about
20 8% if you use weighted average prices for parallel imports, weighted by volume of
21 purchases.
22 A. I have not -- I do not know that calculation. If you have done it, then that is what it -- that is
23 what it implies.
24 Again, the reason why 2% felt right to me is I do have a recollection, but again I am not
25 sure it is in the record or from my conversations, which I guess do not count, that 2 to 3%
26 was the right ballpark for the PI premium.
27 Q. All right. So the last point of detail which I am going to ask you about then relates again to
28 the parallel import data for 2001, and it is the dispute about how to interpret the estimates
29 that Mr. Sellick's spreadsheet gives for those parallel import prices.
30 This was an area of disagreement between you and Ms. Webster and your conclusions about
31 the level of the parallel import prices depend on taking the simple average of all of the
32 parallel import prices shown in the spreadsheets?

1 A. Yes, we get different results if you take a simple average versus whether you take a
2 weighted average based on the volumes of the customers in the Sellick data set. You
3 definitely get different results. I think I am right, but let us explore it.
4 Q. Well, it is a short point. If your approach does not weight these prices by volume of
5 purchases at all, it means that even where the pharmacies' expected volume of purchases is
6 very small, for example there are some in the spreadsheet around 50 packs a month, you
7 give that the same importance as where the pharmacies' expected volume of purchases of
8 paroxetine is a lot higher, 40,000 packs a month?
9 A. There is a couple of -- I mean, there is at least two points here. One is, with respect to this
10 question of whether a small value -- small customers might matter, in my report I report not
11 just the mean, but I also report the median, and I think I report the seventy-fifth and twenty-
12 fifth percentile, so you get some sense of the distribution to see whether, you know, some
13 really crazy high PI price for a no volume customer is affecting the mean. I checked for
14 that.
15 Secondly, and probably more importantly, you know, what would we like to do? What we
16 would like to do is we would like to have a weighted average based on the weight of PI
17 volumes. We would like to -- if you want to know what the average price of PI was in
18 2001, we would like to know, okay, go across pharmacies, how much PI did you take?
19 How much PI did you take? And we would like to use those volumes to get to the weighted
20 average.
21 We do not have that. What we have is the volumes from the Sellick spreadsheet which are
22 focused on these larger customers, interesting enough customers to be attracting a deal,
23 customers who GSK is actually trying to retain and not -- and prevent from taking PI. So
24 with the weights of those customers -- I mean, the big customer there is rather the customer
25 you would expect to be somebody who would be taking relatively less of the PI because
26 GSK is going to really want to retain those customers.
27 So we just have no way of taking the volumes of the total volumes from these pharmacies
28 we see in the Sellick set and trying to treat those as appropriate weights for what the
29 weighted average PI price was.
30 So we get this sort of, I do not know, to me it is I think pretty clear what you do. You have
31 a choice. Do you want to use completely wrong weights? In the absence of right weights,
32 do you want to use completely wrong weights, or do you want to say, well, we just say rely
33 on just looking at the overall distribution and see what the centre of tendency is in the
34 distribution, and I come down completely confidently on the second camp.

1 Q. You said a moment ago, Dr. Stillman, rightly, that these are obviously customers whom
2 GSK wants to retain, they are the ones whose business they are fighting for, that is why they
3 are in the Sellick spreadsheet. But at the same time, if I may press the point, they are not a
4 homogeneous group; there are numerous customers there where the level of purchases is 35
5 packs a month, 50 packs a month and others where it is many, many thousands of packs a
6 month.
7 A. Agreed.
8 Q. So weighting would, you would expect, be likely to make a difference? It is a significant
9 point.
10 A. It matters as a matter of arithmetic, but I do not think it is the right thing to do as a matter of
11 economics.
12 Q. Surely as a matter of economics one would want to weight this, if you could weight it, with
13 some --
14 A. If I had the right weights.
15 Q. Yes.
16 A. If my choice is wrong weights or no weights, I do not want to use wrong weights. Weights
17 where I think actually, it is not, hmm, just a little noisy, they are basically right, but they are
18 not perfect, I think these weights could get completely the wrong answer.
19 I think most of the PI is -- we actually discussed this I think during the hot tub: where are
20 the PIs likely to be for those pharmacies that are too small. Dr. Reilly talked about this. Too
21 small to attract a deal. I really worry about trying to use volume weights from the Sellick
22 data set, even though I think the data set has a lot going for it, but in this particular aspect I
23 do not think using those volume weights to get to the sense of what is going on with the PI
24 prices is appropriate, and certainly not appropriate to say that we ought to be jettisoning the
25 data that the CMA obtained from Waymade in particular, in the sense they are real data, and
26 where there is no evidence that this data from Waymade are missing any rebates.
27 THE PRESIDENT: Is one of the problems with the Waymade data that they are such a small
28 part, about 14% I think from memory, of parallel imports?
29 A. I thought it was a little higher than that, but I could be wrong.
30 MR. TURNER: You are thinking of the combined Waymade and Sandoz, which adds up to 20%,
31 I think.
32 A. Okay. I know the Waymade had most of the parallel import data.
33 Q. And the answer to the President's question?

1 THE PRESIDENT: Yes, what I am saying is that one of the difficulties is that is only a relatively
2 small part of the total parallel imports?
3 A. It is true, it is to be considered. You know, I do not know why we would expect a big
4 variation across parallel importers in the prices that they are charging for the parallel
5 imports, but, you know, I would rather have more data.
6 THE PRESIDENT: I suppose you might, in that that is very much an arbitrage market depending
7 on what they can get at what point in time. I think Mr. Sellick said in his evidence that their
8 price varies. It is a much more fluid market.
9 A. Yes, but --
10 THE PRESIDENT: The grey market.
11 A. Then you might expect it to be noisy. I use "noisy" maybe a few too many times in my
12 report, but sometimes it might be a little bit lower than the average, sometimes a little bit
13 higher. I cannot really think, of a -- maybe there is a hypothesis, but as I sit here I do not
14 think why -- I cannot think of a reason why they are going to be systematically higher than
15 the average price. But, again, that is -- somebody may have a hypothesis.
16 THE PRESIDENT: On this point on the averaging, as I understood it you are saying, ideally, one
17 would take the weighted average if one had the right weights, but we have not got them.
18 A. Yes.
19 THE PRESIDENT: So you do not want to use the wrong weights. That is not going to be helpful,
20 so you have taken a simple average which was correct for what it shows as a method.
21 Would it be fair to say that one should then take the simple average, which is a reliable
22 figure, but recognise that it has the limitation that one would wish to weight it, which might
23 produce a different number, but there is no reliable way of doing it?
24 A. Yes, we do not know what the right weights would produce.
25 THE PRESIDENT: But therefore the simple average has that limitation as a figure?
26 A. Yes, it does not mean -- yes, the simple average is not necessarily going to be the same as
27 the weighted average, and so to that extent there is a limitation. But, again, I do not want -- I
28 think that by checking whether there is -- that simple average is being affected by outliers,
29 that is important, and then I compare the alternative by using weights that I think actually
30 might be backwards, if you will, for reasons that I explain. That does not strike me as very
31 attractive. Then I always am stepping back and saying "What is the point here? What are
32 we doing?" We are trying to evaluate whether the parallel import prices used in the
33 decision should be basically overridden because of some concerns where the stated concern,
34 as best I could tell, is there is no basis for it.

1 MR. TURNER: Shall we have a look at how Ms. Webster does deal with the weighting. It is in
2 her report, which you might not have with you in hard copy. It is on the Magnum system at
3 {H/4/43}. Do you recall this? It is paragraph 4.56 where she deals with this question of
4 weighting or simple averages.
5 You will see at (i) in (a) that:
6 "If monthly expected volumes are used as weights to reflect the relative size of
7 different pharmacies the average price of parallel imports in the ... data [that is the
8 Sellick data] is £12.68."
9 Then in (ii) she adopts a more conservative approach. She gives the reason that customers,
10 especially large customers, may have been unable to switch all their purchases to parallel
11 imports. But her opinion is that an assessment of average prices that fails to take any
12 account of differences between the size of customers is likely to be less accurate than one
13 which does so, albeit imperfectly.
14 She says at the end of that (ii), that if you knock out the -- I think it is the five largest
15 accounts, which is two-thirds of GSK's expected volumes, altogether then the average price
16 of PIs is £13.06?
17 A. Yes, it is still a weighted average, correct?
18 Q. Exactly. So she works on the weighted average and she is adopting it using that assumption
19 and finds that you get to £13.06.
20 Then (b):
21 " ... Dr. Stillman's analysis does not take account of the fact that the price of parallel
22 imports included within the ... data relates to the month prior to the beginning of the
23 relevant deal between GSK and the pharmacy in question. This means that the results
24 of Dr. Stillman's analysis places significant weight on parallel import prices from
25 2000 when attempting to calculate the price of parallel imports in 2001."
26 If you only use data from 2001 to estimate the average then the conclusions no longer hold.
27 You can go over the page and see the figures there {H/4/44}. On the first approach it is
28 £12.70, then the average price with the stripping out of the five largest customers, you get
29 £13.28. Yes, that is the simple average price, £13.28.
30 Your response to the debate that you had, we find if we go to the joint statement at {I/2/47}.
31 In the first full paragraph, you pick up on that and say:
32 "Ms. Webster separately observes that, even if one uses simple averages, the simple
33 average of the PI prices in the CMS Export (Sellick) data would be only £13.28 if one
34 limited the analysis to the deals in the Sellick data that had start dates in February

1 2001 or later. I agree that the focus should be on PI prices from 2001. However, I
2 also note the explanation in paragraph 10 of Mr, Sellick's second witness statement as
3 to why the PI prices recorded in the CMS Export data may be underestimates of the
4 prices at which PI were actually available to the customers covered by this dataset.
5 £13.28 is 1.1% less than the 2001 average PI price of £13.43 used in the decision. In
6 various places in Section 5 of her report, Ms, Webster reports the results from a
7 sensitivity analysis in which she assumes that the PI prices used in the decision should
8 be reduced by 5%. 5% is a very large haircut in the context of this case – it implies
9 that the true PI price to pharmacists in 2001 was only £12.76. Based on the £13.28
10 figure derived by Ms. Webster, a sensitivity analysis that assumes that the PI prices in
11 the decision are too high by about 1% would be more appropriate."
12 So, yes, she does come to an implication that the true PI price to pharmacists in 2001 is
13 £12.76, a number that we should remember.
14 But I want to focus on your reasons for scepticism. Here, you observe that this is a very
15 large haircut in the context of the case and observing the size of the haircut is not an
16 economic reason for objecting, is it?
17 A. I just wanted to point out this is not a trivial adjustment. This moves the price by quite a bit.
18 Q. But there is no reasoned basis beyond the observation about the haircut for dismissing her
19 view that the parallel import prices could be overstated by 2% or even 5%?
20 A. Correct. If this whole bit -- debate had started with a claim that PI prices are too high by
21 5%, I do not think you would start off by saying, well, that, just right there, that is wrong.
22 You would want to know more about the data. What is the starting point? Data that
23 implied 13.43. What is the nature of the problem that you think there might be with this
24 data. Let us investigate this. Do you think it might include rebates? Let us look into that.
25 Okay, you are worried it is only 14 or 15, whatever the exact number was, per cent of the
26 market. Let us think about if that might matter.
27 So, yes, I would take those -- those are the kind of things I would think about, and then -- I
28 say in the joint statement, I think this is a relevant point to say, namely that the point that
29 Ms. Webster makes in the second full paragraph on page 47, that if we were to look only at
30 2001 in the Sellick data, we have an average of 13.28. Well, that is a little lower than the
31 13.43. It is about a percentage point lower. I would say, yes, we should consider that.
32 So that is my thought process, and my thought process says I start with the CMA's data,
33 which has this -- implies a PI price about 2% less than what the Sellick price is for the

1 overall data, and I look at this other piece of data which implies maybe a PI discount of 3%.
2 That, based on things I know on the case, that all sounds within the zone of reasonableness.
3 Q. So to wrap up on this, can I accept your invitation for us to get perspective on this dispute.
4 If you go to the joint statement at {I/2/63}, we have proposition at paragraph 39.
5 Here, we can see, if the parallel imports in the decision, if they were adjusted downwards by
6 around 5% as Ms. Webster suggests could be plausible, we have the difference that that
7 would make to your estimate of a decline in the overall average price to pharmacies of
8 paroxetine, of which the parallel imports are one of the components, together with the
9 generic and the Seroxat.
10 We see right near the bottom, just above the paragraph that goes over the page, Ms. Webster
11 says:
12 "Adjusting parallel imports by these amounts [that is 2.5 and 5%] reduces my estimate
13 of the range for the likely decline in the average paroxetine price by between 0.6%
14 [that is the 2.5] and 1.2% [that is the 5%] points respectively."
15 So that is really just giving some context to how this feeds into the overall number and the
16 size of that mix effect that we were referring to earlier on.
17 A. That is correct. I do not think I disagree with those numbers.
18 Q. So the last question, Dr. Stillman, at the end of all of this is as follows. If these fixed
19 volume supply agreements by GSK, if they were designed to maintain stability of
20 paroxetine prices in the market, particularly of Seroxat prices, the evidence is consistent
21 with GSK having achieved that aim?
22 THE PRESIDENT: You need to distinguish paroxetine prices and Seroxat prices, I think.
23 MR. TURNER: Let us take them in stages. If they were designed to maintain stability of the
24 Seroxat prices in the market, the evidence which you have considered is consistent with
25 them having achieved that aim?
26 A. Well, with respect to Seroxat prices, we know that these agreements meant that we did not
27 have -- the settlements meant that we did not have the possible litigation outcome that
28 would have led to independent generic competition, which would have led to really big
29 price decline. So we certainly know that the settlements -- of course, not surprising, that is
30 what settlement is about, it is about stepping away from litigation -- but the settlements
31 meant that there was not the possibility of the independent generic competition.
32 So in that sense, the settlements plus the supply agreements had -- resulted in, what is the
33 phrase, market stability? Or whatever the exact phrase was. Then we have a bunch of
34 additional questions which is in the nature of the supply agreement agreements and how

1 they were introduced. To what extent did those supply agreements lead to disruptions
2 relative to the status quo ante in the market for paroxetine? I say market in inverted
3 commas. That, of course, will be a big topic in a few days' time.
4 There, the evidence seems quite clear that even though I would have predicted some decline
5 in the GSK prices following the authorised generic entry, we do not see that in the data.
6 That is the story on Seroxat.
7 Now, I think the question --
8 MR. TURNER: Can I -- before you do --
9 A. -- I will pause there.
10 Q. Before you do then, just to clarify, taking that first part of the question. So far as Seroxat is
11 concerned, the evidence that we have considered is consistent with these agreements having
12 been designed to maintain stability of the Seroxat prices in market and achieving that aim?
13 A. Relative to what?
14 Q. Relative to the status quo ante --
15 A. Okay. Yes, it is consistent with that.
16 Q. Then if we move on to the paroxetine prices in the market. Again, the same question: the
17 evidence overall is consistent with GSK having achieved an aim of maintaining stability of
18 overall paroxetine prices in the market?
19 A. I do not know why GSK cares about the overall level. They care about the prices they are
20 getting. So, I am having a little difficulty with your question.
21 Q. It is a very fair point and I understand that entirely. But are you able to answer the question
22 in any event?
23 A. Well, I think that the fact that we did not see a decline in the GSK prices does not imply
24 anything about what the effect of the agreements was or could've expected to have been on
25 the average price paid by pharmacists for 20mg paroxetine, because of the mix effect which
26 is a consequence of shifts in shares that were a predictable consequence of the supply
27 agreements.
28 Q. Exactly. But GSK is concerned, as you say, with the price of its own product?
29 A. GSK cares about its products.
30 MR. TURNER: No further questions, sir.
31 THE PRESIDENT: I have held off taking a break so you could finish.
32 Do you know now, Mr. Scannell, do you have any re-examination?
33 MR. SCANNELL: I do, but it will be extremely brief.
34 THE PRESIDENT: I think we had better take a break. We have gone on.

1 (11.58 am) (A short break)
2 (12.05 pm) Re-examination by MR. SCANNELL
3 THE PRESIDENT: Yes, Mr. Scannell.
4 MR. SCANNELL: Thank you, Mr. President.
5 Dr. Stillman, the suggestion was made to you by Mr. Turner that the so-called Sellick
6 spreadsheet, otherwise known as the CMS export data spreadsheet, might not have included
7 up-to-date information on national suppliers, including Boots.
8 Can I just confirm, based on your own recollection but we can call up the spreadsheet if
9 needs be, that the CMS exports spreadsheet does actually include Boots?
10 A. Yes, it certainly includes Boots. But what I was referring to, there was a discussion I think
11 with Mr. Sellick about whether the Boots data that was in the spreadsheet was the most up-
12 to-date, because I think the last agreement ended 31st March, if I am not mistaken.
13 Q. Is it your recollection that the Sellick spreadsheet also includes Tesco's, the supermarket?
14 A. That is one I was pausing over because there were some supermarkets it included and some
15 supermarkets that it did not, and I discuss this in my further report. But I would have to pull
16 it up to confirm which ones were included and which ones were not.
17 The main point was that whichever supermarkets -- there were some supermarkets that Ms.
18 Webster pointed out were not included in the Sellick data set and I basically said, yes, but
19 there are other ones that are. If you then go into 2002 and compare the price across the
20 supermarkets where you had data on all supermarkets, there was no reason from that
21 comparison to believe that the supermarkets that were not in the Sellick data set would have
22 had appreciably different prices.
23 Q. Perhaps I can ask the question whether you recall that some supermarkets are included,
24 some national supermarkets are included in the Sellick spreadsheet?
25 A. That is correct.
26 Q. And other national accounts, are they also included on the spreadsheet?
27 A. Yes, Lloyds, for example. There are some really big customers that are included in the
28 Sellick data set.
29 Q. Now, Dr. Stillman, I understand, or at least I understood, your evidence earlier this morning
30 to be that given the structure of the agreements that we are talking about in this case,
31 including with their binding volume constraints, you would have expected a downward
32 pressure to have been imposed on GSK's Seroxat prices. Is that a fair characterisation of
33 what you said earlier this morning?
34 A. Yes, it is what I said this morning, what I said last week and what I said my reports.

1 Q. Can I, therefore, just ask you the same question as Mr. Turner asked you: do you think that
2 these agreements were designed to stabilise GSK's Seroxat prices?
3 MR. TURNER: That was not quite my question.
4 MR. MALEK: We would still like to hear the answer anyway. Let us hear the answer to that
5 question first.
6 A. I do not think you can reach a conclusion about -- that they were designed to stabilise the
7 prices. I explain how I think, standing in 2001, how I think the prices would have
8 responded, and I would have expected the prices at GSK to have declined in response to this
9 new supply in the marketplace.
10 So against that backdrop, I do not think it would be correct to conclude that the agreements
11 were designed to stabilise prices relative to the status quo ante.
12 MR. SCANNELL: Thank you, Dr. Stillman. Questions by THE TRIBUNAL
13 MR. GLYNN: If I may -- thank you, President -- in the discussion in the hot tub there was an
14 agreement, I thought, between the experts of the importance of looking at quality adjusted
15 prices if one could; in other words, taking into account the difference in the quality of
16 generics and of parallel traded products and of branded Seroxat.
17 If one takes that into account and looks at the decision made by the wholesalers or the
18 pharmacists to switch from parallel imports to generic supply, is it possible to have a view
19 on the size of the improvement in the quality adjusted price that would be needed to make it
20 worthwhile their switching?
21 A. I do not know that we have enough information to do that. I think we know that we have
22 some data on what prices the generic was put in relative to the PI. We know there was
23 substitution of that direction. We know that there was substitution from the Seroxat over to
24 the authorised generic as well. So we have behaviour that is telling us something, but I do
25 not think I have enough data that allows me to quantify the net effect on the quality.
26 That is a short answer. Slightly longer, I did point out that this quality -- and I think it is
27 implicit in your questions -- effects are of two types going in different directions. But
28 trying to exactly sum them all up, I do not think we have enough data to sum them up.
29 MR. GLYNN: Thank you.
30 THE PRESIDENT: Is there any question arising out of that?
31 Dr. Stillman, you are released.
32 A. For a short while.
33 THE PRESIDENT: For a short while. But you are free to discuss, as I know you may have done
34 in any event pursuant to Mr. Flynn's request, but --

1 MR. FLYNN: He did not, sir.
2 THE PRESIDENT: -- the Chapter II case. (The witness withdrew)
3 Yes, Mr. Kon.
4 MR. KON: May I present Dr. Majumdar. He has been introduced already.
5 THE PRESIDENT: Yes.
6 MR. KON: Thank you.
7 THE PRESIDENT: I think, just for courtroom order, I will ask that he be formally sworn. DR.
8 ADRIAN MAJUMDAR (affirmed) Cross-examination by MR. TURNER
9 THE PRESIDENT: Thank you very much, Dr. Majumdar.
10 Yes.
11 MR. TURNER: Dr. Majumdar, can we begin by going to the joint statement which you may have
12 in hard copy, but otherwise it is on the Magnum system at {I/2/51}.
13 A. Yes.
14 Q. Now, at the foot of that page you have propositional paragraph 26:
15 "GSK's prices to pharmacies did not change as a result of the entry of any of IVAX,
16 GUK and Alpharma."
17 If you turn to page {I/2/52}, at the top you have Ms. Webster agreeing with that. Ms.
18 Webster says that even on the assumptions which you have made, the estimated price
19 reduction is no more than 1.5%. She says that a price reduction of this magnitude -- three
20 lines from the top -- cannot be distinguished from general movements in the Seroxat price.
21 Your opinion is just over halfway down the page. Do you see that?
22 A. Yes.
23 Q. You disagree with the statement. You consider that the price to pharmacy of Seroxat fell as
24 a result of the supply agreements and the price to pharmacy of Seroxat therefore did react to
25 the entrants.
26 You then go on to say, if we go to page {I/2/53} at the top, just under the short paragraph,
27 "in addition":
28 "As I explained in my statement on Issue 3 above, I do not consider whether or not an
29 incumbent reacted to entry to be material. The key question is not who reacted to
30 whom but whether the Supply Agreements gave rise to a better outcome for
31 wholesalers and pharmacists by permitting wholesalers to obtain a lower PTW than
32 the 'no entry' option ..."
33 I would like to focus first on your assessment of the size of GSK's price cut of Seroxat.

1 We find your assessment in the joint statement on page {I/2/33}, just above the bold
2 paragraph 2.3.
3 A. Yes.
4 Q. You see four lines down from the bottom:
5 "In either case I come to a similar finding: I estimate that the weighted average price
6 of Seroxat was around 1% lower when at least one of the Entrants was active (ie
7 November 2001-November 2003) compared to January-October 2001. (By 'around
8 1% lower', I mean that I expect that the weighted average PTP of Seroxat fell by 0.5-
9 1.5%.)"
10 A. Yes.
11 Q. Now, Dr. Majumdar, having seen your firm opinion, I would suggest this does seem like a
12 very small change in the price of Seroxat, and I would like to ask you how you reach your
13 independent professional view that this is a competitive effect of the agreements that put
14 downward pressure on Seroxat and not just simple fluctuations in the average Seroxat
15 prices?
16 A. So the reason why I expect there to have been a fall in the price of Seroxat, and as I say here
17 I do not anticipate that the fall was large, it was in the 0.5 to 1.5% range, but I expect that
18 to have been caused by the agreements because of the discussions that we had been having
19 in the previous week; namely, my expectation that the supply agreements themselves
20 increased competition to supply wholesalers which in turn fed through to a reduction in the
21 price of the entrants' products when sold to pharmacies, which means there would also be a
22 knock-on effect to GSK in terms of increased competitive pressure.
23 It is a combination of the ex ante expectation that I had combined with this ex post
24 evidence.
25 Q. Put to one side your ex ante expectation, which was covered in the hot tub, and merely
26 focusing on this figure of 0.5 to 1.5%, I am asking you whether you can be clear, based on
27 that evidence that that is not simply a fluctuation that one is observing in the average price
28 of Seroxat?
29 A. One cannot rule out that that is a fluctuation, that is noise. But as I say, when interpreting
30 evidence I also take into account the ex ante expectation that I have, and that led me to think
31 that although it could be noise it is more likely to be an impact of the supply agreement.
32 Q. So let us go to Dr. Haydock's report at {H/2/1}, the cover page. If you go in it to page
33 {H/2/28}. Do you have that?
34 A. I do, yes.

1 Q. You will remember this. This is Dr. Haydock looking at the fluctuations in the price of
2 Seroxat during the relevant period, and you see there tables 11 and 12?
3 A. Yes.
4 Q. Take a moment to refresh yourself about those. If you look at 2002 and 2003 in particular,
5 we do see the Seroxat price moving up and down over time by at least that order of
6 magnitude, the 1%, and doing it in a way that appears to be unrelated to the agreements, do
7 we not?
8 A. Well, I agree that we see some noise, some fluctuation in the price of Seroxat, yes. I agree
9 with that part.
10 Q. And also that that noise or fluctuation is of a magnitude which is greater than the 1% which
11 you had been attributing to the competitive impacts of the supply agreements?
12 A. Well, the minus 1.9% does not -- I think we can ignore that one because that covers both the
13 period when IVAX was in the market and was not. So really you are talking about July to
14 December, 1.5% --
15 Q. Let us take that. So that is 2003, after Alpharma, the data show an increase of 1.5% in the
16 Seroxat price. Does that not suggest to you that the tiny change of 1% should not be
17 attributed to competitive pressure on GSK from the supply agreements, using your
18 expression from your report, to try to stem the loss of share to the entrants' products?
19 A. So I think I would go back to my first answer, which is that, yes, I accept there is some
20 noise in the data when one looks at a weighted average across the period. My assessment is
21 that there was a slight fall in the price of Seroxat, and I am asked: do I think that is caused
22 by the agreements, or is it noise? I think because of my ex ante expectation that competitive
23 pressure would go up, I think it is reasonable to say it is caused by the agreement.
24 THE PRESIDENT: Did you look at the price of 30mg Seroxat over that same period?
25 A. I did not, sir, no.
26 THE PRESIDENT: If you saw the same movements in the price of 30mg, which is clearly not
27 due to the agreements, would that not be a fairly obvious check?
28 A. I think, sir, that if one was confident that the price series was determined by very similar
29 facts to the 20mg price series, with the exception, of course, of the supply agreements, then
30 one could do that comparison.
31 What I am less certain about, sir, is the nature of the discounts supplied to Seroxat, and I
32 must confess the Seroxat data is one that Dr. Stillman has assessed much more closely than
33 I have. But my understanding is that, with the discounts, they may been more targeted on
34 the 20mg than 30mg, in which case there might be some reasons for the price series to move

1 in slightly different directions. But I would acknowledge that I am not an expert on those
2 two data series, sir.
3 THE PRESIDENT: Yes, but can you see it might have been useful, even if one has to then take
4 other factors into account, because we have the same product in different dosage which is
5 not affected by the agreements? They were the same period, rather unusually.
6 A. Absolutely, sir. I understand the point you are making and I think that that exercise, it does
7 make sense to me, sir.
8 I would also want to just double check that the -- as I said before -- that we have very
9 similar influences on the price of 30mg and 20mg, just to be sure that it is a valid
10 comparison to make, sir.
11 MR. TURNER: So, Dr. Majumdar, focusing on the point that you picked up, July to December
12 2003, showing a 1.5% increase on the Seroxat price for the previous six months, if one is
13 going to be drawing conclusions from the data, then does not that datum suggest that prices
14 for Seroxat went up after the entry of Alpharma? If that is right, how does that fit with
15 your approach?
16 A. Well, as I said before and I think as I said in the joint statement, it is very difficult to
17 identify the impact of any particular entrant on the price of Seroxat. So it is more looking at
18 the period as a whole, and I think it is important to look at the period as a whole because of
19 this noise in the data one has to, I think, try to minimise the impact of noise by taking an
20 average across as many months as possible.
21 So that is why I say, firstly, it is hard to assess the impact of any particular entrant. But
22 comparing the two average levels, combined with my discussion of the ex ante expectation,
23 that is why I expected the price decline to be caused by the supply agreements.
24 Q. But you are not suggesting that would be a reason for disregarding a 1.5% increase
25 compared to the previous six months, that you want to look at the entire period?
26 A. Well, the 1.5% price increase is just an example of noise in the data. I mean -- which is
27 why I am saying that one has to look at an average across as many months as possible to try
28 to smooth out --
29 THE PRESIDENT: When you say "noise in the data", can you help me. Maybe that is a
30 technical --
31 A. I am sorry, sir.
32 THE PRESIDENT: What do you think is the explanation of the 1% increase?
33 A. It could be a situation where if there are different pharmacies with different prices, as I
34 would expect to arise when there is customer by customer pharmacy negotiations, then it

1 could be that there is a period of time when, for some reason, one of the pharmacies which
2 has a slightly higher price has purchased more product, which means that when one
3 calculates a weighted average price, the price looks as if it is going up, just because in the
4 weighting procedure more weight is given to the higher price.
5 So I would imagine that it is something to do with the mix of different pharmacies paying
6 different prices for Seroxat, sir.
7 THE PRESIDENT: Can I just check, Mr. Turner, these are weighted averages, are they, these
8 prices, or --
9 MR. TURNER: They should be, yes.
10 Dr. Majumdar, to start to bring this to a conclusion then, the ex ante expectation you had
11 was that there should be downward pressure on Seroxat's prices to try to stem the loss of
12 share to the entrants' products, and you interpret the 1% change that we see in this data as
13 supporting your view.
14 May I --
15 THE PRESIDENT: To be fair, Dr. Majumdar did not say it supports his view; he says it does not
16 get him to depart from his view.
17 MR. TURNER: To depart from your view. There was a rival opinion offered by Professor
18 Shapiro that he would not ex ante expect downward pressure on Seroxat's prices. I would
19 suggest that the absence of any real effect here is consistent with Professor Shapiro's
20 expectation.
21 A. I disagree. I mean, I think that takes us back to last week's discussion, and the experts had
22 different views on ex ante expectation of whether or not there would be downward pressure
23 on the price of Seroxat, and I explained my view, as I said earlier. But let me repeat it.
24 I explained my view was that the mechanism would be as follows. There would be an
25 increase in competition to supply wholesalers. Wholesalers would obtain a lower price.
26 Some of that would be passed on to pharmacies where the entrants' products would be sold
27 at a lower price than would otherwise have been the case, which would cause some
28 downward pressure on the price of Seroxat. That is the mechanism by which I expected
29 downward pressure to arise on the price of Seroxat.
30 Q. My question was only whether the pricing information we now see you would accept is
31 consistent with Professor Shapiro's opposed view to yours on the economic theory?
32 A. It is consistent with the amount of downward pricing pressure on GSK being relatively
33 small. But it does not rule out any of the other two important mechanisms that I described
34 in the chain there.

1 So it has no bearing on whether wholesalers got a better deal and no bearing on whether
2 pharmacies got a better deal when buying the entrants' products.
3 Q. Let us go, if you have Dr. Haydock's report there still, to page {H/2/8}. You have figure 1
4 in her report. That is the trend in the price of Seroxat. You see that?
5 A. Yes.
6 Q. If we just look at paragraphs 22 and 23 below, she said:
7 "The chart shows that GSK's 20mg Seroxat price was fairly stable throughout this
8 period. This is confirmed by the figures in the table below, which show average
9 20mg Seroxat prices before GUK's entry, between the two entry events, and after
10 Alpharma's entry."
11 23:
12 "The small fall in price after GUK's entry amounts to a decrease of around 1%, around
13 half of which was reversed following the entry of Alpharma. Hence these data
14 indicate that there was no material decrease in the average 20mg Seroxat price paid by
15 pharmacies following the entry of GUK, and no decrease following the entry of
16 Alpharma."
17 Now, we have seen that the price of Seroxat does marginally increase in the data following
18 Alpharma's entry, and we know that the date of the Alpharma entry is exactly the time when
19 GSK knew that it was going to be giving up Seroxat sales under the supply agreements
20 because by that point the parallel imports in the marketplace had been effectively
21 eliminated. Yes?
22 A. So do you mind just repeating those --
23 Q. Yes. We know that the price of Seroxat is shown to marginally increase after Alpharma's
24 entry, and we also know that the Alpharma deal, November 2002, entry February 2003, that
25 is the time when GSK knows that under the supply agreement it is going to be giving up
26 Seroxat sales, inelastic market. The parallel imports by that point have been effectively
27 eliminated. I do not know if you recall the timeframe?
28 A. I do.
29 Q. So that, therefore, I would suggest, is the point in time when GSK would be most pressed to
30 respond to this generic entry, because it is not just PIs that are being affected and when you
31 would most expect the Seroxat price to go down and not up?
32 A. As I say, I think what we see here is some noise and fluctuation in the data, and I do not
33 think -- because of the short time periods between the entry events, I do not think one
34 would necessarily expect entry to occur and there immediately to be a price reduction. If

1 there are lagged effects, the impact of GUK's or IVAX's entry could be spread out over a
2 long period of time.
3 I think one is really reading too much into the data if one says that in the second half of that
4 period, which, by the way, includes the entry by the independents in December 2003 as
5 well, I think one is reading too much into the data if --
6 Q. It does not include that. If you see the end of the chart, it is the end of that year?
7 A. But the table you showed me was all the way through to December 2003 which, therefore,
8 included the first month of independent entry.
9 Q. Now, why would you --
10 THE PRESIDENT: I think the table on page 8, that one stops in November, does it not?
11 MR. TURNER: And there you see the rise from the second row, pound per pack, for Seroxat,
12 13.60, goes up to 13.67.
13 A. Yes, I see that.
14 Q. You see it is quite a long period of time. Why would you expect a lag effect to exceed that
15 length of time?
16 A. In terms of -- okay. So what I said was it is difficult to interpret the impact of any particular
17 entrant on the price of Seroxat because the entry dates all are relatively close to each other.
18 Why would I expect there to be certain lag effects? It is because there would be a time
19 period when an entrant builds up its volumes and would not necessarily expect the entrant
20 straightaway to come in and sell its entire volumes. It might take a few months.
21 To the extent that there are contracts which last for six months or 12 months, then that
22 would also create lag effects. I am unaware of the extent to which there were such long-
23 term contracts, but to the extent that there were, that would also be a reason for why there
24 may be certain lag effects in the data.
25 Q. Now, there are periods of months here. While I see that you are putting forward a
26 hypothesis of lag effects, you would accept though, presumably, that the data is consistent
27 with your theory not being correct because we do not see a reduction in the Seroxat price
28 for many months after Alpharma's entry?
29 A. No, I do not accept it. It is also consistent with my theory being correct, because what I
30 said, and I recall being quite careful with my wording -- let us go through the mechanism
31 again. I said I would expect the increase in competition among the entrants to supply --
32 sorry, I think I said I expected an increase in competition to supply wholesalers. I said
33 there would be some of that passed on to pharmacies via lower prices of the entrants, and I
34 said that could put downward pressure on GSK.

1 The evidence to my mind indicates that there was a small price rise, which says to me there
2 was a small amount of pressure placed on GSK. So that is consistent with my theory; it just
3 says that in terms of the increase in competitive pressure on GSK it was relatively limited
4 according to the ex post data analysis.
5 Q. Let us move to a different point you make about the supposed downward pressure on
6 Seroxat prices coming from these supply agreements. In the joint statement at page 52
7 {I/2/52}, if you turn it up, if we look halfway down -- we looked at this before -- I am
8 focusing on your last sentence, which you have just emphasised again in your testimony:
9 "I do not think one can meaningfully attribute which part of the overall price fall was
10 caused by a given entrant."
11 Now, here, if we go to page {I/2/32} in the joint statement and look at the bottom, you
12 explain your methodology for getting to your 1% figure. Do you have that?
13 A. Page 32.
14 Q. {I/2/32}.
15 A. Yes, I have it.
16 Q. At the bottom of that page, you say:
17 "... my staff and I have replicated tables, Tables 4B-4D and 5B-5D ..."
18 And when doing so, you noticed what you considered to be an important point.
19 Over the page, page 33 at the top, you say that:
20 "November 2001 is potentially a "blip month" because it has a large downward spike
21 in the price of Seroxat?
22 A. Yes.
23 Q. You include that month as part of the period when the generics were active. Then what you
24 do is to compare average prices over the whole two-year period, November 2001 to
25 November 2003, against average prices over the whole ten-month period from January 2001
26 to October 2001?
27 A. Yes.
28 Q. That is how we get to your conclusion that average prices to pharmacies of Seroxat when
29 generics were on the market was around 1% lower, yes?
30 A. Yes, that is right.
31 Q. We know that the Seroxat data for 2001 is problematic and the Seroxat data for 2002 and
32 2003, when GUK and Alpharma come in, that is clean. You do not have the same
33 problems as for 2001, yes?
34 A. Yes, I am aware of the debate between Dr. Stillman and Ms. Webster about the 2001 issues.

1 Q. Because of that problem with 2001, to the extent that your economic reasoning relies on the
2 estimation of price levels in 2001, there is doubt about that approach?
3 A. I think it is probably helpful just to explain what I have done here, for the Tribunal's benefit.
4 I have just taken exactly the same method that Dr. Stillman and Ms. Webster were using to
5 calculate the price fall, if there was one, following entry. I used the same methodology as
6 them and I noticed when my staff were replicating their figures that they had included
7 November 2001 in the before period, ie they treated that as a period when there was no
8 entrant active, and it turns out that that is inaccurate because IVAX was active.
9 So I said let us see what happens if one just changes by one month the period to,
10 appropriately in my view, include November 2001 as a period in which the entrants were
11 active, and I noticed that that had a marked impact on the results, suggesting that prices fell.
12 So that is what I did. Hence November 2001 seemed to be an important month to take into
13 account, and as I say, to take out of the before period when doing a before and during
14 comparison.
15 Q. You are aware that the IVAX entry began at the end of November 2001?
16 A. I am aware that IVAX had a 3% share in November, so it was certainly in the -- certainly
17 selling in that period.
18 Q. Yes. You are therefore including it as part of the during category?
19 A. Yes, I also tested the sensitivity of just not including it at all, because if there is uncertainty
20 as to whether you should put it in or put it out, then you can just ignore that month, and I
21 tested that as well and one still sees that by just excluding that November 2001 month, as an
22 outlier, one still sees that there is a price decline during the period when we had the supply
23 agreements.
24 Q. Let us return to your point that you cannot meaningfully attribute which part of the Seroxat
25 price fall that you have identified was caused by any given entrant.
26 It must be right that any price changes in Seroxat before April 2002 could not have been
27 caused by GUK or Alpharma, could it, because they had not yet entered the market?
28 A. I agree with that, yes.
29 Q. So any effects on Seroxat prices that you see before April 2002, that must have been caused
30 by the IVAX volumes?
31 A. Yes, that would make sense.
32 Q. Is there any reason you can see, as a matter of economic principle, for expecting that GSK's
33 price response to IVAX's entry, at the end of November 2001, would have been any

1 different or more aggressive from its response or lack of response to GUK's and Alpharma's
2 entry?
3 A. It would depend on the price that IVAX sold to wholesalers. So, for example, if IVAX had
4 a higher price than GUK, it may be that the introduction of GUK by putting in lower price
5 paroxetine into the supply chain would create greater downward pressure on Seroxat -- on
6 GSK's price.
7 It really would depend very much on the -- as I say, the price at which IVAX sold to
8 wholesalers because that is the mechanism by which the competition filters down through
9 the supply chain.
10 Q. To return to what we were saying a few moments ago, it is at the time of entry of the
11 Alpharma product that one might, as a matter of economic reasoning, expect there to be a
12 greater response from GSK on price, if at all, because then the parallel imports have
13 vanished from the marketplace?
14 A. I agree that with all three entrants selling paroxetine, one would expect that that period is
15 one when GSK would face greater pressure than, say, when there is only one entrant selling.
16 Q. Let us turn to not the question of the response by GSK to the introduction of these new
17 volumes, but the response by the generics who were already on the market to the new
18 volumes when a new supplier came in; first IVAX when GUK and then Alpharma join, and
19 then GUK when Alpharma joins.
20 If you have open the joint statement on page {I/2/53} at the top, we were looking earlier at
21 your statement in the first full paragraph:
22 "... I do not consider whether or not an incumbent reacted to entry to be material."
23 Yes?
24 So your evidence is that the key question is not who reacted to whom, but whether the
25 supply agreement gives rise to a better outcome.
26 But Dr. Majumdar, the importance of looking at competitive responses is not just to identify
27 who reacted to whom, it has a wider point, which is to see whether there are competitive
28 responses at all. Do you agree?
29 A. So the point I am trying to make there is that when an entrant comes into the market
30 offering substantially better terms to wholesalers than they otherwise would have got, then
31 wholesalers benefit substantially from those terms because they obtain a lower price relative
32 to what they would pay for parallel imports. That is a clear benefit if the IVAX, or whoever
33 was the entrant -- the incumbent firm does not react to that.

1 That does not detract from the fact that the entrant was delivered a substantial benefit to
2 direct customers. That is the point that I am making there.
3 Q. But to focus on my question, if you are looking at the way in which these firms are
4 responding to each other, that tells us something about the competitive responses that they
5 are making to the introduction of new volumes into the marketplace. It surely must do?
6 A. So I agree that, in terms of the question: to what extent are the entrants competing with each
7 other? I think I explained on Friday in response to a question from the President that I
8 thought that to the extent that the entrants had different customer bases then they would not
9 necessarily be competing that closely with each other if, for example, Alpharma was selling
10 to full-line wholesalers and GUK was selling to short-line wholesalers. But I nonetheless
11 saw that there was an increase in competition between the entrants and parallel imports.
12 Q. Let us look at whether there is indeed good evidence of IVAX responding to an introduction
13 of new volumes by GUK or by Alpharma in what IVAX did, and that question we can see
14 picked up at proposition 27 in the joint statement {I/2/52} near the bottom:
15 "The price of IVAX's product – with or without adjusting for a wholesaler mark-up –
16 did not change as a result of entry by either of GUK and Alpharma."
17 We see that both Ms. Webster and Dr. Stillman, they both say that there is no good evidence
18 about this because the IVAX price data is volatile?
19 A. I see that.
20 Q. Ms. Webster refers -- if we can put it on the screen briefly -- to figure 3 in her report which
21 is at {H/4/26}. So that is what she is looking at for the IVAX movements.
22 But you say at the bottom of that page, page {I/2/52}, that the issue depends on the
23 assumptions about IVAX's level of rebates to customers in 2002 for which the data are
24 missing.
25 You say that if the IVAX rebates in 2002 are not the same as those in 2003, which was
26 12%, but if they are the mid-point of the 2001 level, 4%, and the 2003 level of 12%, if in
27 other words you are at 8%, then IVAX's price to the wholesalers looks like it is lower after
28 the entry of GUK and then Alpharma, yes? That is your --
29 A. That is right. It is a small amount and I would emphasise not so much that point, I would
30 more emphasise that because of the spikiness, noise, prices changing up and down, it is very
31 difficult to read much into the data. If we go back to the chart --
32 Q. Before we do that, you say it is a small point. Is it a point that you still think is a good
33 point, or not?

1 A. It is a factual point in response to the question. So what I stated is correct, but in terms of
2 what the Tribunal should take away from that is, I would emphasise more that it is very
3 difficult to read much into the --
4 Q. Noisy data?
5 A. -- noisy data. I am not suggesting there was a strong reaction by IVAX. That is certainly
6 not what I am suggesting.
7 Q. When you say it is reasonable to take the mid-point that you and your staff have taken
8 between the 2001 pricing by IVAX and the 2003 pricing by IVAX, if I can ask you to take a
9 reality check. How many full months of trading with paroxetine are you talking about for
10 2001?
11 A. How many full months of trading? IVAX was selling in November and December --
12 Q. End of November?
13 A. -- one month.
14 Q. One month. Just over a month. That does not seem to be a sensible basis, to take a mid-
15 point between that one month and a full-year period for 2003?
16 A. It depends on the question that you are trying to ask. Just, again, to be clear, what the CMA
17 had was it had information on rebates for IVAX in 2001 which was 4%, and in 2003 which
18 was 12%. The CMA did not have information for 2002 and proceeded on the basis that the
19 discount was 12%. By doing that, that pushes the price down and actually will give you the
20 lower price to pharmacy than taking a more conservative approach, which is what I did.
21 So I think the point there is we do not actually know what the rebate was in 2002, and I
22 simply adopted the mid-point because at the time it seemed reasonable to adopt that mid-
23 point. I am happy to acknowledge that the discount could have been 12% instead of 8%, or
24 some other figure. It is not known.
25 Q. You said that it is an important point that you and your had staff picked up, but then can we
26 agree that we are in some danger of being in the realm of angels dancing on a pinhead?
27 A. Sorry, what is your precise question? In relation to what point?
28 Q. The point about November 2001 and the difference between here taking an 8% rebate level
29 for IVAX in 2002 now instead of the 12% rebate level which was assumed, if I focus on
30 that last point, that hardly makes a difference, does it, 8 or 12%?
31 A. It hardly makes a difference. I was just picking out that you said I had made out that this
32 was an important point. I was not sure I had said that, but I certainly agree that 4% or 8% in
33 the large scheme of things does not make a difference --
34 Q. Or 8 or 12%?

1 A. Or 8 or 12%.
2 Q. Just to clarify, we sent you a chart which you probably looked at over the weekend before
3 this cross-examination. I do not know if the Tribunal -- we have also circulated it generally.
4 Do you have a copy of that?
5 A. I do now, thank you.
6 Q. You read this over the weekend, I assume?
7 A. I did.
8 Q. So there is one or two things that we see from this, a picture of the IVAX prices over the
9 period when, first one and then the other come in. We see first that there is hardly any
10 difference between the 8% and the 12%. Yes?
11 A. Yes, I agree.
12 Q. Although this IVAX price line is essentially flat, the time when GUK came into the market,
13 that doubled the amount of generic paroxetine that was available and so, Dr. Majumdar, if
14 that had brought about a genuine increase in competitive pressure against IVAX, surely one
15 would have expected to see some discernible reaction from IVAX?
16 A. So, I think there are two points here. Again, it is worth emphasising that it is hard to read
17 much into this chart because one sees the dark line for GUK's entry and it looks as if there
18 are -- there is a couple of -- maybe a small fall for a couple of months in this chart price rise,
19 which seems strange because the price goes up to a higher level than the prior period and
20 then it comes down again and there is another spike in September or August 2003.
21 This price series is hard to interpret because of the various spikes in the data. I think that is
22 the point I was trying to emphasise in the answer to question 27.
23 Q. We do not however see, to summarise, in the data a discernible reaction from IVAX?
24 A. I agree that following GUK's entry there is no sharp decline in IVAX's price. I agree with
25 that point, yes.
26 Q. One final question before lunch. If we turn to the GUK response to the new entry by
27 Alpharma in February 2003, if we could go to {H/4/26} which is figure 4 from Ms.
28 Webster's report. It is the bottom picture. There we can see GUK's prices gliding over
29 time. In this chart we see not even a hint of a price decline until some five months after
30 Alpharma has come in. Five months.
31 Are you really sure, in your view, that there is no doubt based on these data that GUK
32 responded to Alpharma's entry or, on the contrary, does this not give significant doubt about
33 the question whether GUK did not respond to Alpharma's entry at all?

1 A. So, I do not think I have claimed that GUK responded in a huge way to Alpharma's entry. I
2 think in the joint statement there is agreement that GUK's price following Alpharma's entry
3 was relatively stable for a few months and then fell about by 2.6%, if I remember the
4 number correctly.
5 MR. TURNER: Sir, that may be a convenient moment.
6 THE PRESIDENT: Yes, thank you. We will break until 2 o'clock. As you know, Dr. Majumdar,
7 you cannot discuss your evidence with anyone.
8 (1.03 pm) (The short adjournment)
9 (2.00 pm)
10 THE PRESIDENT: Yes, Mr. Turner.
11 MR. TURNER: Dr. Majumdar, can we turn to a new topic, which is your estimates on the level
12 of prices to pharmacies of which the entrants were selling, or their fixed volumes of
13 paroxetine were being sold, and how that relates to the level of parallel import prices in the
14 market.
15 Now, the Tribunal has heard and now seen a lot of contemporaneous evidence from the
16 business people on all sides that the entrants' products were going to be set at or perhaps a
17 little above the prevailing parallel import prices for paroxetine, and also that that is what
18 they thought had happened.
19 Some of that is summarised in the CMA's skeleton argument, which perhaps we can just
20 call up on screen, at {S/6/61}. At paragraph 141 at the bottom of the page, there is (a), and
21 if you turn over the page {S/6/62} (b), (c), (d); just cast your eye over that.
22 Have you read this?
23 A. I have read the CMA skeleton. If you just give me a second to remind myself of the
24 paragraphs, I would be grateful.
25 Q. Of course, remind yourself. (Pause)
26 A. Yes, I have read those bits.
27 Q. If you turn over to (e) and (f), over the page {S/6/63}, more from Mark Reilly. Then the
28 brand strategy document:
29 "... referring to GSK's actions ... as 'crucial to protect Seroxat price," and the
30 agreements described as "... 'a key strategy to maintain market stability for Seroxat
31 across the plan period' ..."
32 Now, I just want to begin by asking you whether you took any of that material referred to
33 into account in helping you decide on the right market price level to pharmacies of the
34 generic product in your expert report, or not?

1 A. I did in the sense that when I read the CMA's potential concern with their series for parallel
2 imports, my understanding of what the CMA said there was that they had data on parallel
3 imports. There was a possibility that the data they had from Waymade, which is by and
4 large what drives their estimate of parallel imports, may not include certain product specific
5 discounts.
6 So the CMA did not say there was -- the series was definitely wrong. The CMA said that
7 their estimate of parallel imports may be too high because possibly the Waymade data on
8 which they relied did not include certain product-specific rebates.
9 Their reality check, if you like, was that the CMA wanted to test whether the parallel import
10 price was above the price of Seroxat, and so I had a look to see if that was the case. In the
11 CMA's data, over the period, for example, when IVAX was present, the parallel import
12 price was I think at about 2% or thereabouts below the price of Seroxat.
13 So I had a look at a number of pieces of evidence, including benchmarking against IMS
14 data as well, which led me, by no compelling reason, to think that the CMA had got its
15 numbers wrong. So effectively I said, well, look, in that case, I am happy to rely on the data
16 that the CMA itself has put in its decision.
17 Q. I am asking a more specific question, quite a narrow question, not referring to any specific
18 numbers.
19 Here, if we go back to 141 at (a) on page {S/6/61} and on the following paragraphs, the
20 evidence is about the relative levels of parallel imports prices to pharmacies in the market
21 and the levels at which the generic product, when it came on stream, was being sold at.
22 If we turn over the page {S/6/62}, at the top of the page you will see there from the
23 underlined quote at the top:
24 "... selling paroxetine [product] at the parallel import price."
25 This is the expectation for IVAX.
26 Four lines down on the screen:
27 "[GSK] therefore expects that Norton would probably be selling at a similar price to
28 that charged by parallel importers ..."
29 (c), the second line, this is Mark Reilly:
30 "In reality, the price of distributed paroxetine is probably slightly higher than parallel
31 imported paroxetine."
32 (d), bottom of the page, again Mark Reilly:
33 "IVAX would be unlikely to want to undercut the existing price paid by customers for
34 parallel imported paroxetine."

1 My question is whether that evidence about what was expected to and did happen in the
2 price positioning of the generic product compared with parallel imported product, was taken
3 into account by you in your expert evidence or not?
4 A. So, I mean, there is also mention of the same ballpark as well. So it is not clear to me that --
5 you know, it seems to me that in these quotes here there is some element of, if you like,
6 margin of error. So ballpark could mean plus or minus a few percentage points.
7 So in terms of whether this was an ex ante expectation of where parallel imports would --
8 sorry, where the price of the entrants' products would be relative to parallel imports, for the
9 purpose of my ex post evidence, I did not look at these particular ex ante expectations. I
10 looked at the data because I think for the purpose of an ex post analysis, that is what one
11 does. One says, "Let us have a look at what the data say", and I then ask myself, "Given the
12 CMA's concerns about the level of the parallel import price that they have relied on, do I
13 think there is any reason to depart from the numbers used in the decision?" I decided there
14 was no compelling reason.
15 In an ex post assessment, I did not take into account these ex ante expectations because that
16 did not seem to me the right thing to do for an ex post assessment based on the data.
17 Q. Let us just look at (c), (d) and (e) again. (c) you have on that page.
18 A. Yes.
19 Q. It is June 2002. Mark Reilly is there saying:
20 "In reality, the price of distributed paroxetine is probably slightly higher than parallel
21 imported paroxetine."
22 That is when it is already on the market.
23 (d), October 2002:
24 "IVAX would be unlikely to want to undercut the existing price paid by customers ...
25 This is the price to which GSK is already discounting ..."
26 (e), November 2002, Mark Reilly states:
27 "The distributed paroxetine sold by IVAX and its subdistributors does not displace
28 parallel imported Seroxat on price, but because there is a demand for UK packaging."
29 So this is not merely ex ante. This is the appreciation of the businessman in the market
30 when this is happening.
31 A. Could we just go back to those -- back up one page, please?
32 Q. Of course.
33 A. Thank you. {S/6/62}

1 In (d), IVAX would be unlikely to want to undercut. That is an ex ante point, I think. This
2 is the point to which GSK is already discounting.
3 Q. Read on.
4 A. "... a number of brand equalisation deals ... I believe that the current situation, therefore ..."
5 Q. Sorry, read that aloud.
6 A. "... therefore, is that the price at which both IVAX and its subdistributors sell distributed
7 paroxetine has remained stable since the coming into effect of the IVAX agreement."
8 {S/6/63}
9 I am aware that there is some evidence that suggests that the prices of parallel imports were
10 at some points in time similar to those of the entrants' products. But I think the point is that
11 the price of parallel imports changes over time. When one looks at the data series, in
12 certain months it is quite high, and in some months it is quite low, which is why I took a
13 weighted average for the price of parallel imports. Because that, as we discussed a bit
14 earlier on today, is a good way of removing some of the noise one gets, some of these high
15 price months and low price months. So I took an average and I compared that average price
16 against the price of Seroxat; that seemed to be the reality check that the CMA was applying,
17 and I found that for the period when IVAX was present, for example, the price of parallel
18 imports, the price to pharmacies of parallel imports was below about 2 percentage points
19 below the price of Seroxat which, as I said before, there was no reason to depart in a
20 material way from the CMA's data.
21 That is the approach that I took.
22 Q. Just so that I have this quite clear, did you take into account this sort of material about the
23 relativity that was to be expected, or that was observed between parallel imported product
24 and distributed paroxetine in your expert evidence, or not?
25 A. I focused much more on what the data were in the decision and then reality checks against
26 the price of Seroxat and also against the IMS data, which I am happy to explain as well. So
27 my focus was that triangulation against those two data points.
28 Q. We can see your analysis of the relative levels of the generic paroxetine on the one hand
29 and parallel imported on the other from a table which is taken from your spreadsheet
30 accompanying your report. (Handed)
31 So this is your figures?
32 A. Yes.
33 Q. This comes from the spreadsheet that you submitted with your report, and we see on the
34 left-hand column the entrant identified, either IVAX, GUK or Alpharma; the period for

1 which they were selling; then the average price to the pharmacies that you have estimated;
2 and then in blue on the right is the average parallel import price in your report that was
3 assumed to correspond with that.
4 We can see looking at this that the average parallel import price to pharmacy in your report
5 is in each case significantly higher than the average price to pharmacy of the generic
6 product. In fact, almost 10% below. The generic product is almost 10% below the parallel
7 import.
8 A. Yes, I can see that the estimated price to pharmacy of the entrants' products is below the
9 price to pharmacy of the parallel imports using the CMA's numbers. That is right.
10 Q. Would you say this is significant, this price differential? Given that we have said that a 1%
11 figure might be significant, presumably an almost 10% difference should be regarded as a
12 significant price differential?
13 A. I have said in my expert report that I think there is a material difference between these two
14 prices and that the entrants products were likely to have been sold materially below the
15 price of parallel imports when we are talking about price to pharmacy, yes. So there is a
16 material difference between the two.
17 Q. Which is intentioned with the qualitative statements that we were looking at a moment ago?
18 A. It is intentioned with some of them, but as I say, this is taking an average across the period
19 as opposed to looking at particular months when prices may -- parallel imports prices may
20 be volatile.
21 Q. Shall we turn to how you get to your parallel import prices. If we can call up the CMA
22 decision at {V/1/168}, please. We have footnote 616 that everybody has been talking
23 about.
24 You are probably familiar with this. In fact, you probably know it by heart, Dr. Majumdar.
25 A. I do dream about it sometimes.
26 Q. So do I:
27 "The CMA notes that after January 2003 ... volumes of parallel imported paroxetine ...
28 fell to virtually nothing. Therefore, prices for parallel imports after this date may not
29 be representative of actual prices as in the absence of other information the CMA has
30 calculated estimated prices by applying an appropriate discount to the Seroxat list
31 price. For this reason, parallel import prices of paroxetine 20mg have not been
32 presented beyond January 2003 ... Even for the period in which the CMA has actual
33 price data for parallel importers, from Waymade and Sandoz, the CMA notes that
34 these companies made up less than 20% of parallel import volumes overall (based on

1 IMS data) and therefore those prices may not have been representative of parallel
2 import prices more generally. Further, the price comparison between parallel import
3 prices and generic paroxetine prices is further complicated by the fact that whereas
4 prices for GSK and the generics companies were adjusted for sales rebates (albeit that
5 those rebates were not product specific ...) it appears unlikely that the price data
6 supplied by parallel importers was adjusted for rebates. In this regard, the CMA
7 considers that parallel import prices recorded in this section appear to be higher than
8 they would have been in practice, because it is unrealistic for parallel import prices to
9 exceed GSK's Seroxat prices given that GSK would have been selling UK packaged
10 product (for which pharmacies had an apparent preference), and that GSK was
11 matching parallel import prices through deals similar to brand equalisation deals."
12 If we look at the statement five lines up from the bottom:
13 "The CMA considers that parallel import prices recorded in this section appear to be
14 higher than they would have been in practice ..."
15 The parallel import prices based on Waymade and Sandoz data, they were viewed as
16 problematic and were used with a health warning that they were likely to be overstatements.
17 Do you see that?
18 A. I do.
19 Q. The Waymade and Sandoz data on parallel import prices is also quite a bit higher than the
20 Sellick estimates -- I am referring to that spreadsheet that he produced with his statement --
21 of parallel import prices for the period up to 25th July 2001. You are aware of that?
22 A. I am aware of the Sellick data that was discussed earlier on with Dr. Stillman, yes.
23 Q. Did you at any stage compare the parallel imported data from that spreadsheet with the data
24 that is presented in the decision?
25 A. So I did not look closely at the Sellick data. I did not view that as manna from heaven in
26 quite the same way as perhaps Dr. Stillman did.
27 So the focus of that data was on 2001, and when we are talking about the entrants' products
28 we are interested in understanding whether the entrants' products were sold at a price to
29 pharmacy below the price of parallel import. So we are looking at 2002 and we are looking
30 at 2003, as opposed to the Sellick data which I believe was first half of 2001 from what was
31 said this morning.
32 Q. But you know that in the expert dialogue Ms. Webster referred to the Sellick information on
33 parallel import prices when she was considering whether the prices in the decision were
34 indeed too high as the footnote supposed.

1 If we pick up the joint statement and go to page {I/2/63}, if you go in that to the footnote at
2 the bottom.
3 A. Yes.
4 Q. You see that she refers there to the reason why the parallel import prices could have been
5 inflated by 5% in the decision, observing the difference between the weighted average price
6 in the Sellick data for customers with deals for which the information relates to 2001 that is
7 around 5% less than the weighted average price for PI used in the decision; specifically
8 £12.70 in the Sellick data against £13.43 in the decision, and so forth.
9 You are familiar with what she said in that footnote and that it implied that the parallel
10 import prices used in the decision could be 2.5% to 5% too high?
11 A. So I am aware of this footnote 15 in the joint statement. This relates to the discussion that
12 occurred this morning between you and Dr. Stillman.
13 The 5% estimate, if I understand correctly, assumes a weighting whereby even the -- well, it
14 is a weighted average and where every single customer is included, even the largest ones
15 that Dr. Stillman said would have been supplied primarily by GSK. I think the 2.5% is an
16 approach where Ms. Webster drops some of the larger ones and takes a different type of
17 weighted average.
18 I think what we are getting at here is there are different ways of weighting the data, and
19 different weights give different results, but we do not know what the true weights should
20 be. In my opinion, the 5% sensitivity is too large and so I do not place great weight on that
21 myself.
22 Q. Now, at the moment I am just pausing to see that the Sellick data on parallel import prices
23 has been a feature of the expert dialogue about the right level to adopt. Were you in court
24 when Mr. Sellick confirmed to the Tribunal that there was no systematic understatement of
25 the parallel import prices in his spreadsheet?
26 A. I was in court when he gave his evidence, yes.
27 Q. Do you remember him saying that?
28 A. I do not doubt that you are correct. I cannot precisely remember the wording he used.
29 Q. No. Short point. The Sellick data on parallel imports could be a useful benchmark at the
30 very least for gauging the level of parallel import prices received by the pharmacies which
31 you have not used yourself?
32 A. It goes back to the same issue that we discussed on weighting. It could be a good
33 benchmark if we knew exactly how to weight the data. As I mentioned before, I do not
34 agree with the weighting that gives -- we do not know what the weights are. Full stop. I

1 think that is probably the best way to leave it, and so the usefulness of this data as a
2 benchmark is questionable for that reason.
3 Q. It does, however, provide a comparison with the Waymade and Sandoz data that is referred
4 to in the decision and is at least a useful benchmark for that purpose?
5 A. It provides a comparison point. So does the IMS data that I analysed in the joint statement
6 as well where I benchmarked against the IMS data, and that suggested to me that the CMA's
7 figures were not out of line, which is one reason why I did not find a compelling reason to
8 depart from them.
9 Q. The Waymade and Sandoz data is also inconsistent with some other contemporaneous
10 evidence, is it not? For example, if you are not aware of this, it is inconsistent with the
11 statement of a marketing manager at Alpharma, Helen Toogood, on 28th October 2002,
12 saying that parallel imports were then available in the market at £12.90.
13 If we call up {H3/11/3}, here you have an email from Ms. Toogood, who is the Alpharma
14 marketing manager. If you go to the bottom of that page you will see she refers to PIs
15 already being available at £12.90 in the UK:
16 "... and as most of our business will be through wholesale we cannot expect to earn
17 more than £10 per pack maximum."
18 She is looking at the competitive price at which parallel imports are available at that time at
19 the end of October 2002.
20 A. So my understanding is that when parallel import prices are quoted, the norm was for
21 parallel imports to be in packs of 28, whereas the entrants' products were in packs of 30. So
22 this reference to £12.90 could quite conceivably be reference to a price of a 28 pack, in
23 which case we would have to increase the amount by about 7% to make it comparable to a
24 30 pack, and it is not clear from this statement whether that has occurred or not. So I do not
25 read very much into the £12.90 figure for that reason.
26 Q. Thank you for reminding us of that.
27 Let us take it in stages. This statement was in fact used by the CMA's expert Ms. Webster
28 in her report, as you probably recall. That is at {H/4/16}.
29 So that is at 3.20(b) you see at the very top of the page. Ms. Toogood's reference to the
30 internal email, and she also refers to Mr. Collier there.
31 Then you engage with her on this in the joint statement. Indeed, you do give a couple of
32 reasons for why what Ms. Toogood said about parallel import prices should be disregarded
33 or given little weight. The first reason that you gave -- and I have just got to find the
34 reference -- is that Ms. Toogood's figure, £12.90, could be monthly noise.

1 A. Yes.
2 Q. It is {I/2/48}. At the very bottom of the page, you begin the paragraph:
3 "I acknowledge that the price series for parallel imports is somewhat noisy ..."
4 At the bottom of that page:
5 "I do not find Ms. Webster's references to Ms. Toogood convincing: the apparent
6 difference could be monthly 'noise' or because when quoting prices for parallel
7 imports it was normal (as Mr. Reilly has stated) to refer to packs of 28 tablets, whilst
8 the CMA decision data is based on a 30 pack equivalent."
9 {I/2/49}
10 Now, the reference to "monthly noise" I suggest is speculative in circumstances where you
11 have a business person using this as a reference point to gauge her business decision, the
12 company's business decision, about pricing and profit for their own distributed paroxetine.
13 She is taking that as a reference point for her business decision. So it is wrong to dismiss it
14 as monthly noise.
15 A. Well, I am not the expert in interpreting evidence, but equally if it was understood by
16 everybody that parallel imports were quoted in packs of 28, which I understand from Mr.
17 Reilly's statement to be the norm, it may be that it would be clear to people what the £12.90
18 meant.
19 So I am simply raising the point that it is important to bear if mind, for my opinion at least,
20 that often parallel import prices were often in relation to packs of 28, and Mr. Reilly did
21 state that in his evidence.
22 Q. Let us go back to the email itself at {H3/11/3}, just to have it in front of you.
23 So your second reason is that she may have been referring to a pack of 28 tablets, as you
24 say. Whereas under the settlement they were going to be selling packs of 30 tablets in the
25 UK, and so you are right that if she had made a mistake, parallel imports would indeed have
26 a higher price. But this email does suggest that Ms. Toogood is evaluating a settlement
27 offer from GSK very carefully, and although you are not an expert in interpreting evidence,
28 you have offered the opinion that there may be that error. I will therefore put to you that
29 there is no basis for assuming that Ms. Toogood made a basic error of that kind. In other
30 words, that she was comparing like with like.
31 A. That is possible, yes.
32 Q. Finally on this topic, you would presumably agree that you would expect parallel import
33 prices to pharmacies to be somewhere below the Seroxat prices. We have seen some
34 evidence on that already, yes?

1 A. Yes.
2 Q. So if we go to {I/2/41} in the joint statement, part of the dialogue between you and Ms.
3 Webster involved her producing this figure at the top of the page. That picture shows what
4 things look like if you take the parallel import prices from the Waymade and Sandoz data in
5 the decision and you compare them to the Seroxat prices in that period as estimated by Ms.
6 Webster.
7 The black line is the parallel import prices, the coloured lines are the estimated Seroxat
8 prices. So one sees from that that if she is right in her calculation of the Seroxat price for
9 2001, on that assumption the parallel import prices are not plausible because they are above,
10 or they are at least very close to the Seroxat prices.
11 A. So I have really two points on that. It is probably best explained if we look a few pages
12 down at {I/2/47} of the same report.
13 Q. Yes, I was going to take you to {I/2/48}, but start at 47.
14 A. So footnote 10 right at the bottom is the point that I was making earlier.
15 My understanding of the CMA's concern of the parallel import prices, footnote 616 of the
16 decision, is that the CMA was concerned that the parallel import price might be above the
17 price of Seroxat. So I calculated to see whether that was correct or not, and footnote 10
18 presents my results. I found that typically the price of parallel imports to pharmacies was
19 indeed below the price of Seroxat. So that is my first point.
20 One has to take a weighted average across the time period. This leads me to think that the
21 CMA's decision is -- there is no compelling reason to depart from the numbers the CMA
22 used.
23 The second point would be over the page at the top of page {I/2/48}. Here, these bullet
24 points -- what I have done here is I fully acknowledge that the price series do have monthly
25 jumps up and down which are recording spikes or noise, and I had a look to see how
26 frequently the price to pharmacy of parallel imports was above the price to pharmacy of
27 Seroxat, which would be the CMA's reason for saying that the price of parallel imports was
28 too high.
29 Then I compared that to the same for IVAX, for GUK and Alpharma, and I found that
30 actually one was more likely to see the price to pharmacy of IVAX, GUK and Alpharma
31 being above the price to pharmacy of Seroxat.
32 So that is to say there is just noise in these price series, and if we are to shave down or
33 reduce the price to pharmacy of parallel imports then by that logic we should be doing the

1 same for IVAX, for GUK and Alpharma because they actually seem to rise above the price
2 of Seroxat more frequently than the price of parallel import.
3 So we just come out in the same place. It is a noisy data series, therefore let us take an
4 average. If we do take an average it does not look as if the price of parallel imports is
5 substantially overstated.
6 Q. You go on to make a further observation. Is that still part of your opinion?
7 A. The next one down?
8 Q. This is you saying that Ms. Webster focuses only on the comparison of price to pharmacies
9 of Seroxat and of parallel imports in 2001. But you say when comparing the parallel
10 imports and the price to wholesalers of the entrants' products, the relevant period is 2002
11 and 2003 and do not assess 2001?
12 A. There are different questions that are asked in relation to the role of parallel imports. One
13 question is the one that we discussed before lunch, which is the extent to which there is an
14 overall fall in the average price of paroxetine where the relevance of parallel imports in
15 2001 -- where parallel imports in 2001 are relevant because we are doing a before and
16 during assessment.
17 Then there is the second question, which is the extent to which, when the entrants' products
18 were in the market, whether their price to pharmacy was below the price to pharmacy of
19 parallel imports. That analysis is a 2002 and 2003 analysis.
20 So there are two different questions, and I think we need to be clear which question we are
21 looking at.
22 Q. Here, we are looking at data for parallel imports in 2001. You appear to be saying that the
23 relevant period to look at is 2002/2003 and you do not assess 2001, but you are not saying
24 that that is a reason for disregarding the 2001 parallel import data full stop, or are you?
25 A. I am not saying that one needs to disregard the 2001 data. I am simply saying that there are
26 two different questions to which the data refer. I was also making the point there that there
27 is a difficulty comparing the price of parallel imports in 2001 with the price of Seroxat in
28 2001, because the price of Seroxat in 2001 is subject to the mark-up issues that we have
29 discussed on a number of occasions.
30 Q. All right. Let us conclude on this point.
31 Dr. Majumdar, there is not a good reason, taking the totality of the evidence that was
32 available to you, to find that the entrants' allocated volumes were being sold at lower prices
33 than the parallel import prices. Do you agree with that?

1 A. No. The first thing is it is very clear to me that the entrants' products were sold to
2 wholesalers at substantially lower prices than the price to wholesaler of parallel imports.
3 Q. Let us focus on pharmacy prices.
4 A. Let me just finish what I was saying. Even if one adjusted the price of parallel imports by
5 5%, so that is the largest sensitivity Ms. Webster suggests, even then one sees a very
6 substantial decline in the price to pharmacy of the entrants' products -- sorry, price to
7 wholesaler of the entrants' products versus the price to wholesaler of parallel imports. So
8 that is an important point where I disagree with you.
9 The second point, taking it down to the --
10 Q. I have not covered price to wholesaler. I am only talking about price to the pharmacy.
11 A. Understood. When you phrased your question I thought you just said "price", so apologies
12 if I misunderstood.
13 The second question was in relation to the price to pharmacy, and to my mind I
14 acknowledge there is a margin of error around these prices because once we talk about
15 prices to pharmacy there is a mark-up assumption that needs to be made. But nonetheless,
16 based on the estimates that I have in my reports and even flexing them somewhat to allow
17 for a margin of error, it seems to me that the price to pharmacy of the entrants' products was
18 still below the price to pharmacy of parallel imports based on the data that I have seen for
19 conducting the ex post analysis.
20 Q. I understand that based on the data that you have used, and I am putting to you that the
21 totality of the evidence, including the material I have now drawn to your attention, should
22 lead you to revisit your opinion.
23 A. I do not -- I still maintain my view that the price to pharmacy of the entrants' products was
24 likely below the price to pharmacy of parallel imports because, as I said before, that is what
25 the data indicate, and even if we flexed the parallel import price, one would still come to
26 that view unless one flexed the parallel import price by a very substantial degree.
27 As I say, yes, there is a margin of error around this, but I would still expect the price of the
28 entrants' products to pharmacies to be below the price to pharmacy of parallel imports.
29 Q. Ms. Webster is right that the parallel import prices used by the CMA in the decision, as the
30 decision itself says, are likely to be an overstatement and are likely to be similar to the
31 prices of the entrants?
32 A. No, I do not think that necessarily follows. I disagree. As I said before, I think there will be
33 a material difference between the two prices. I think it is hard to say with confidence the
34 gap between the two because we make so many -- we have to make so many assumptions

1 here. But my expectation is that there will still be a gap between the two; namely, that the
2 price to pharmacy of the entrants' products will be below the price to pharmacy of parallel
3 imports.
4 Q. Can you think of a good economic reason why that might be the case given the pharmacy
5 preference for UK packaging?
6 A. Yes, I can. Really it gets down to the bargaining that pharmacies do with their suppliers.
7 So if one assumes that a wholesaler selling an entrant's product to a pharmacy leaves that
8 pharmacy no better off than its outside option of buying parallel imports, ie the pharmacy
9 has no bargaining power at all, then the pharmacy will end up paying the same price for the
10 entrant's products as parallel imports. But if the pharmacy has some bargaining power, then
11 I would expect the pharmacy to retain some amount of the additional bargaining pie that we
12 discussed last week that is available from the entrant's products.
13 That would be my mechanism. Even if wholesalers would like to charge as high a price as
14 possible, pharmacies do not want to pay that price, and so there is an element of negotiation
15 between the two. That is what causes the gap, in my view.
16 MR. TURNER: I will not revisit now the debate we have already had about that. I will turn to a
17 different issue: how you figured out what mark-up you would apply to the generics' prices
18 to the wholesalers to arrive at the price to pharmacy of the generic products.
19 If I could begin with Alpharma, Ms. Webster took the account of the Alpharma director of
20 sales and marketing at the time, Mr. Andrew Collier?
21 A. Yes.
22 Q. You know that he is also a witness in this case, although he has not been asked to come for
23 cross-examination. Are you aware that he gave a very clear account on this point, and have
24 you considered it?
25 A. I am aware of Mr. Collier's witness statement, yes. I have read it.
26 Q. Shall we refresh ourselves. If we can go, please, to {F/1/1}, we have Mr. Collier's evidence
27 for these proceedings, 28th July last year.
28 If we can go forward, please, to page {F/1/5}, we have under the heading "Wholesale
29 Distribution Fee/Discount", paragraph 14, the beginning of his explanation of the wholesale
30 distribution fee that the wholesalers in Alpharma's scheme receive.
31 He says:
32 "As I have explained above, wholesalers in Alpharma's scheme were given a
33 wholesale distribution fee (or wholesaler discount), which corresponded to the

1 difference between the price that Alpharma set for the wholesaler to sell to pharmacies
2 and the price that the wholesaler paid to Alpharma."
3 Pausing there, he says that Alpharma sets the price for the wholesaler to sell to pharmacies
4 and the price the wholesaler then pays to Alpharma:
5 "For example, if a pharmacy paid a price of £10 for a particular product, then the
6 wholesaler would typically have paid £8 for the product. I understand that the CMA
7 would refer to this as a 25% wholesale mark-up ..."
8 Over the page {F/1/6}:
9 " ... (ie a percentage increase applied to the wholesale price to obtain the pharmacy
10 price)."
11 Paragraph 15:
12 "Referring to my previous witness statement ... My reference to a 20% wholesale
13 distribution fee was based on my recollection of Alpharma's sales model and my
14 experience of setting Alpharma's (and its predecessor, Cox's) prices for over ten
15 years. A 20% wholesaler discount was the norm within the Alpharma Scheme at the
16 time in 2002 to 2003, although there would be some variation in the precise
17 arrangements."
18 He refers to the example of Unichem.
19 Finally, paragraph 17:
20 "I note that my email to Torben Laursen supports my recollection that a 20%
21 wholesaler discount was applicable to Alpharma sales to scheme members during this
22 time ... in the email I wrote that '£13.15 per pack is an accurate reflection of current
23 retail prices' and that '[w]ith UK business now 85% wholesale, then on this basis our
24 expected ASP would be circa £10.50'. The price of £10.50 is around 20% lower than
25 the prevailing current retail price of £13.15."
26 He says:
27 "It is clear from the email that I checked the price of paroxetine at the time."
28 If you want to go over the page you will see how that concludes {F/1/7}. So that is the
29 unchallenged evidence of the Alpharma director of sales and marketing, and you have
30 criticised the 25% mark-up which Ms. Webster uses. We see that in the joint statement
31 {I/2/38} at the bottom of the page. The paragraph one above the bottom, three lines down:
32 "She also adopts a 25% mark-up for Alpharma based on Mr Collier's evidence, whilst
33 other evidence cited by the CMA in its decision indicates that the relevant wholesaler

1 mark-up range to be 18%-25% based on the CMA's Decision ... I therefore see no
2 compelling reason to prefer her assumptions over those adopted in the decision."
3 A. Here we are talking about the assumptions as a whole. So the three mark-up assumptions:
4 there is IVAX, there is GUK, and Alpharma.
5 Q. I am asking you just at the moment to focus on Alpharma.
6 A. Sure.
7 Q. See that you go on to say:
8 "I also note that even before Ms. Webster's mark-up assumptions, the entrants' PTP is
9 frequently above the PTP of Seroxat ... Ms. Webster criticises the use of the CMA
10 decision's price series for parallel imports on the basis that it gives rise to prices
11 above the PTP of Seroxat. However, this same issue applies for the PTP of the
12 entrants' products to a greater degree ..."
13 Which you have already alluded to.
14 Now, taking your first observation about Ms. Webster's choice of the 25% mark-up based
15 on Mr. Collier's witness statement, you said that other evidence indicated that the relevant
16 wholesaler mark-up was different: 18 to 25%. It is what you said there.
17 A. Yes.
18 Q. Item 38.
19 A. I think Actavis indicated a mark-up equal to 15% to 20% of to price to pharmacy, which in
20 the terms used here means a mark-up of 18 to 25%, is my understanding.
21 Q. That is right. We perhaps do not need to call it up.
22 You were referring by other evidence to a single document, which is at Actavis' submission
23 for the Magnum reference -- we do not need to go there -- it is {A2/22/2}. As you say, that
24 gave a range for a mark-up of 18 to 25%.
25 Now, leaving aside that, Dr. Majumdar, there is no good reason for you simply to dismiss
26 the unchallenged evidence of Mr. Collier and the contemporaneous email that supported his
27 account?
28 A. So in terms of, as I said before, I am addressing, or I was addressing here the issue of should
29 we depart from the CMA's mark-up assumptions as a whole -- namely 11.25 IVAX, 20%
30 GUK, 20% Alpharma -- to Ms. Webster's proposed alternatives as a whole?
31 I do not dispute Mr. Collier's evidence. I am not in any way suggesting that Mr. Collier has
32 said something that is not correct. I am simply saying that as a whole, the combination of
33 the three mark-up assumptions -- do I think the three mark-up assumptions used in the
34 decision are more representative than the three proposed by Ms. Webster? Yes, I do. I

1 think the ones in the decision are more representative or more reliable. That is the point I
2 am making.
3 Q. I understand that, but I am staying at the moment with Alpharma as our starting point.
4 Just go to the second point you make about Alpharma, which is over the page at the top of
5 page {I/2/39}.
6 You point out that the mark-up which has been used by Ms. Webster implies a concern that
7 the Alpharma prices as well as the others are sometimes above the price of Seroxat, and that
8 that is made worse if you use her mark-up assumptions.
9 A. Yes, I do say that.
10 Q. You say the same issue applies, yes, to a greater degree.
11 A. Yes.
12 Q. But with Mr. Collier's proposed 25% mark-up, Alpharma's average pharmacy price between
13 February and November 2003, that was below the average pharmacy price of Seroxat, was
14 it not?
15 A. I understand so, yes.
16 Q. So we see that if we go to {H/4/22}. We have Ms. Webster's table 2, which is highly
17 informative.
18 It shows for each of the entrants the difference in their prices to pharmacies compared to
19 Seroxat. We have your assumptions in the column in the middle. We have the open
20 Seroxat assumptions there, the penultimate column, and the adjusted assumptions, which we
21 can take as Ms. Webster, to the right. There we see for each of the entrants average prices
22 which are at a discount. That should read as a discount to the Seroxat prices. So that there
23 too, using Mr. Collier's mark-up, Alpharma's average pharmacy price we see is below the
24 average pharmacy price for Seroxat: 5%.
25 A. Yes, I see that.
26 Q. If we turn to the evolution of the prices on a monthly basis and go in the joint statement to
27 {I/2/43}, here we have the monthly figures charted and Alpharma's prices which are using
28 Ms. Webster's assumptions. They are shown there on page {I/2/43}, and we see that there
29 are only two months where the Alpharma price exceeds the GSK Seroxat price, the adjusted
30 GSK price in the blue line. That is for February and April 2003.
31 Those prices, they sit above GSK's prices if any mark-up is applied to them, because the
32 pre-mark-up prices, they are already higher than the Seroxat prices to pharmacies in those
33 rather peculiar months.

1 If one leaves them aside one sees that the series shows the Alpharma price is below the
2 Seroxat prices consistently. Yes?
3 A. I see that, yes.
4 Q. So to summarise, there is no good reason simply to dismiss Mr. Collier's unchallenged
5 evidence about the level of the Alpharma mark-up.
6 A. I agree there is no good reason to dismiss it. I do not think I did dismiss it.
7 It might save us some time. If, as I said before, my concern is the combination of the mark-
8 up assumptions. If we said -- if we increased the Alpharma mark-up to 25% and decreased
9 the GUK mark-up from 20% to 15%, as Ms. Webster has done, I am absolutely fine with
10 that. I do have an issue with Ms. Webster's treatment of the IVAX mark-up. That is the one
11 that I particularly disagree with. So if that helps us move on.
12 Q. Thank you very much, it does. That shortens things.
13 If you have a good picture of the price to pharmacies of the Alpharma product, then it
14 enables you to get a good picture of the price to pharmacies both of the GUK and the IVAX
15 products, I would suggest, and that is because the evidence suggests the price for
16 paroxetine supplied by each of these entrants -- IVAX, GUK, Alpharma -- will be at similar
17 levels.
18 A. Well, it depends what we mean by similar. So when I -- what I said in my report was my
19 expectation would be that the price to pharmacy of GUK would be lower than the IVAX
20 price to pharmacy and the Alpharma price to pharmacy. That is what I said.
21 I did not say I expected them all to be similar. I said the price to pharmacy of GUK I would
22 expect to be lower than the other two because of the three entrants GUK had the largest
23 share.
24 Q. I think you mean you would not have expected it to be lower, just to be clear?
25 A. Price to pharmacy?
26 Q. Yes.
27 A. No, GUK's price to pharmacy I would expect to be lower, or certainly not materially higher
28 than the others because it had the largest market share. I did not say I expected everyone to
29 be charging the same price.
30 Q. No. Let us look at what you did say at {G/6/38}.
31 At paragraph 130:
32 "I do not consider it likely that GUK's paroxetine would have been sold at a
33 substantially higher price to pharmacies than the other entrants' products ..."
34 A. Yes.

1 Q. The same is true, I would suggest, equally so, for the others.
2 A. I am not sure about that. It depends what we talk about when we mean similar. Within a
3 few percentage points, then yes, they would be similar to that degree. One can imagine a
4 situation where Mr. Collier in his witness statement talks about the Alpharma scheme and
5 how he considers that to be a high quality scheme. So it seems to be possible that Alpharma
6 could get away with charging a higher price because it is offering higher quality. In which
7 case, just looking at the price is missing out on some of the benefits the pharmacies would
8 get. I do not think we necessarily assume everyone charges the same price.
9 Q. Mr. Collier did not quite say that, Dr. Majumdar. If we go to what he did say at {F/1/8}, he
10 did not suggest that Alpharma might be selling at a higher price at all.
11 Paragraph 21, yes. In paragraph 21, four lines down, he says:
12 "As the person who was responsible for setting prices for Alpharma's paroxetine
13 product, I can also say that it was never my intention to sell paroxetine at prices that
14 were much different from the prices charged by IVAX and GUK."
15 So he was not setting out to sell at different prices from the other entrants?
16 A. I think my point was: what does "much different" mean here? Does much different mean
17 3%, 4%, 5%? Because he does go on to say Alpharma's strategy was to offer a high level of
18 service by, for example, ensuring continuity of supply, and so on.
19 My reading of that is that if his prices were not much different, they could be slightly higher
20 because of offering the high level of service. That is the point that I am making.
21 Q. All right. Well, a natural reading of that is that he was not competing on price but only
22 competing on the level of service.
23 Now, you have also raised the question that IVAX and GUK's prices to the pharmacy will
24 be above Seroxat prices, in your words "to a greater degree", if Ms. Webster's mark-ups are
25 adopted. We saw that before at {I/2/28}.
26 A. Not for GUK, because Ms. Webster suggested that GUK's mark-up should fall from 20% to
27 15%, and I am fine with that. The GUK reduction from --
28 Q. So for IVAX, your concern is that the price to pharmacy will be above Seroxat if her mark-
29 up is adopted?
30 A. I disagree with the IVAX mark-up, and the reason is we discussed the evidence from IVAX
31 on Friday. I think we looked at an IVAX document where IVAX said that the -- it referred
32 to margins. It referred to margins on paroxetine being in the range of 5% to 17.5%, and for
33 that reason the CMA took a mid-point because it did not know what the mark-up would be,
34 and it took a mid-point.

1 I think what Ms. Webster says is that one needs to interpret those margins in the same way -
2 - when IVAX refers to margins they do so in the same way that Mr. Collier does, and so
3 that 5 to 17.5% should really be thought of as 5 to 22% in mark-up terms. Then she adopts
4 20%, and what I say is that because we do not know where the mark-up would be in that
5 range and because the CMA has adopted a mid-point, it seems to me that it is unbalanced to
6 take the extreme and one should stick with the mid-point and, hence, stick with the 11.25 or
7 thereabouts that the CMA actually did.
8 So that is my concern. It is primarily with the IVAX adjustments.
9 Q. Let us just look at the IVAX adjustment. The suggestion that the IVAX price would be
10 above the Seroxat price certainly on an average basis, if you use Ms. Webster's mark-up, is
11 wrong, yes?
12 A. On an average basis that could well be -- I do not dispute that.
13 Q. Let us see it again. Let us find the best place for this. If we go to {I/2/35}, this is a very
14 long section from Ms. Webster, and in the middle of the page, the second full paragraph,
15 five lines down, she says in this regard:
16 "I also note that there are several months when the IVAX PTP was markedly below
17 the PTP of Seroxat. In this regard, I note that the average PTP of paroxetine supplied
18 by IVAX over the period November 2001 to December 2003 is £12.75 per pack,
19 which compares to a price of at least £13.36 per pack for ... Seroxat ..."
20 So, on her assumptions you do not have average prices for IVAX at or above the Seroxat
21 price?
22 A. But as I say, if we go to the evidence that I cited -- we looked at it before -- footnote 67 of
23 my expert report on page 30, that is where we have the documentary evidence from IVAX
24 itself. So I am willing to concede that having looked at the documentary evidence from Mr.
25 Collier, there is -- I do not deny his view that the 25% mark-up might be right. But equally,
26 looking at the evidence from IVAX, IVAX says that the range is a wide range and the CMA
27 took the mid-point, and it seems to me that one should do the same in relation to IVAX
28 which is why I disagree with the 20% assumption. That seems to be too high, the extreme
29 end of the range.
30 Q. You say that. Your opinion is, therefore, boiling down to the Teva response or the IVAX
31 response and the implications that you get from that single document; is that right?
32 A. My opinion is that that is indeed the -- this document is the one that the CMA relied on for
33 its mark-up assumptions, and that suggests to me that 20% is too high a mark-up to apply
34 for IVAX, yes.

1 Q. So before leaving it, shall we just turn and look at it again. It is {A2/23/2}. You will see
2 under "Scheme business", this is what you are referring to, is it not?
3 A. Yes.
4 Q. "Teva estimates that wholesalers margin on IVAX product would on average range between
5 17% and 20% of the IVAX retail price list."
6 Lower down:
7 "The figure would also vary depending on market conditions, and the figure would
8 vary for a wholesaler from time to time. For paroxetine the margins would have
9 ranged from around 5% and 17.5% and would have varied between customers and
10 over time."
11 A. Yes, so it makes very clear that paroxetine margins, are 5% to 17.5%, not 20%.
12 Q. What we see here is, in fact, two estimates in tension with each other, in proximity with
13 each other. We see a range of 17% to 20% and then we see a range of 5% to 17.5%.
14 A. I had read that as meaning that the scheme in general, ie products as a whole, were 17% to
15 20%, but when you look at paroxetine, the figures are different, ie 5% to 17.5%.
16 Q. Teva gives no reason why a lower mark-up would apply to paroxetine.
17 A. It could be negotiation. I mean, my reading of that -- again, I will defer to the Tribunal on
18 interpreting evidence, but my reading on this is it is very clear that paroxetine margins are
19 5% to 17.5%, not 17% to 20%.
20 Q. We will leave that as a matter of interpretation.
21 Just to conclude, Dr. Majumdar, your opinions that we observe the price of Seroxat coming
22 under any downward pressure in the data from the allocation of fixed volumes to the
23 generics, those opinions are not robust.
24 A. No, I disagree with that. So, as I mentioned before lunch, the mechanism by which the
25 competitive pressure on GSK arises is that wholesalers get lower prices of paroxetine.
26 Some of that is passed onto pharmacies, and I consider that the price to pharmacy of the
27 entrants' products was below the price to pharmacy of parallel imports. That will put some
28 downwards pressure on GSK.
29 Now, I acknowledge that GSK's price did not fall by very much, but I disagree with the
30 view that there was no downward pressure placed on GSK --
31 Q. I am asking you for your opinion concerning the observation concerning the price of
32 Seroxat. Based on what we see, your 1% change, we do not observe from that significant
33 downward pressure being applied?

1 A. Yes, I agree that a 1% price decline for Seroxat does not suggest that GSK itself reacted to a
2 great -- to a material degree in terms of lowering its price.
3 Q. Similarly there is no competitive interaction that can be observed from the data, as opposed
4 to inferred ex ante, between any of the generic entrants on price whatsoever in the sale of
5 their allocated fixed volumes?
6 A. It seems to me that the generics were competing more with parallel importers than with
7 each other. There is some indication at the end of the period of GUK lowering its price
8 following Alpharma's entry. I acknowledge that that does not occur until a few months after
9 Alpharma's entry.
10 So just to recap, the main competition seems to be between the entrants and parallel
11 importers. But there is some indication of GUK reacting in a relatively small way to
12 Alpharma's entry.
13 Q. Finally, in relation to the level of parallel import prices and how those relate to the level of
14 the entrants' prices for paroxetine against which those were competing, you have not taken
15 into account clear evidence from the business people concerned, including
16 contemporaneous and unchallenged evidence which should have informed your opinions?
17 A. As I said before, the way I -- an ex post assessment to my mind is looking at what the data
18 tell me. I assessed the data, I came to a view there was no compelling reason to depart from
19 the CMA's numbers on the price of parallel imports. Based on the data and the CMA's
20 mark-up assumptions, that indicated to me that the price of the entrants' products was
21 materially below the price to pharmacy of parallel imports.
22 I remain of that view, and I acknowledge that because of the assumptions that one has to
23 make, there is a margin of error around those estimates.
24 Q. The other evidence to which I have taken you during the course of this evidence is
25 something you could have had regard to in forming your opinions, but you did not?
26 A. In terms of an ex post assessment, I did not take them greatly into account, that is correct.
27 MR. TURNER: No further questions, sir.
28 THE PRESIDENT: We will take a short break of 5 minutes.
29 (3.10 pm) (A short break)
30 (3.15 pm)
31 THE PRESIDENT: Mr. Kon, any re-examination? Re-examination by MR. KON
32 MR. KON: Several questions.
33 Dr. Majumdar, thank you for bearing with us. A great deal was discussed, in particular
34 earlier on today with Mr. Turner, on the prices of paroxetine and how they reacted to the

1 entrants' products and the reaction between the entrants inter se to the introduction of
2 generic competition.
3 I have got a general question I would like to ask you on that, which is: do you think it is
4 possible to infer the competitive effects and the benefits of the supply and settlement
5 agreement simply by looking at the evolution of the GSK and entrants' prices during the
6 relevant period?
7 A. Simply by looking at the evolution of GSK's and the entrants' prices, no. To my mind there
8 are three components of assessing the competitive effects of the supply agreement. The
9 first component is the extent to which the supply agreements gave rise to lower priced
10 paroxetine for wholesalers. So that is not an evolution question. That is a level question.
11 Did wholesalers get a lower price relative to their alternative, which would have been the
12 price of parallel imports? I think -- well, I am very confident that they did.
13 So that is the first point. The second point then is -- sorry, that is a direct gain to
14 wholesalers, direct customers of the entrants.
15 The next question, as we have discussed before, is if we are interested in what happens to
16 pharmacies, there is another question which is the extent to which that price was passed on.
17 Again, that is not an evolution question, that is a question of to what extent was the gain
18 experienced by wholesalers passed on to pharmacies?
19 There is more uncertainty on that point, because there are mark-up assumptions required,
20 which is why I would say let us just look at the two together and consider them as direct
21 customers, in which case we do not have to argue about the mark-up. But that is the second
22 component of assessing the impact of the supply agreement.
23 Then the third component is: was there an impact on GSK's price? There -- it is an
24 evolution question in some senses, but it is more did GSK's price fall. So there were three
25 components. I do not think any of them are evolution issues as such.
26 Q. All equally important in assessing the competitive effects of the agreements?
27 A. They are all equally important in the sense that ultimately what we are interested in is,
28 again, to my mind ultimately what we are interested in is a gain to direct customers, and so
29 that will be the sum of the gain at the wholesaler level, plus the sum of the gain experienced
30 by pharmacies purchasing the entrants' products plus the sum of the gain by pharmacies
31 purchasing Seroxat.
32 So I estimate the value of that gain is about 7% to 8% of the price to pharmacy, but they are
33 all equally important in that sense. One has to add them all up and not just focus on one.
34 Q. Thank you.

1 The second and supplementary question on a similar theme concerning the mark-up
2 assumptions which we have heard a great deal about from you and others over the last few
3 weeks: to what extent do you consider it matters, or makes a material difference at least,
4 what mark-up assumptions one applies if the overall effect is assessed at both the
5 wholesaler and pharmacy level?
6 A. So in that situation I do not think it really does matter, because what the mark-up does is it
7 takes -- it effectively shifts gain from the wholesaler to pharmacy. So, for example, if one
8 assumes a very low mark-up, then any lower price experienced by a wholesaler at the
9 wholesale level is passed on to pharmacies. On the other hand, if one sees a high mark-up
10 then the wholesalers keep that gain for themselves and pass on less to pharmacies.
11 So there is uncertainty about what that mark-up is, but if we take into account the two levels
12 together -- and in my view, one can do that by simply proceeding on the basis that mark-ups
13 did not change, ie that wholesalers marked up the entrants' products by 5%, the same
14 amount as they marked up parallel imports, in that scenario one assumes that all of the gain
15 made by wholesalers is passed on to pharmacies, and then I estimate a 7 to 8% price fall in
16 that scenario.
17 That is the way of thinking about capturing all of the gains in one common measure.
18 Q. In that regard, it may just be useful, although I do not think we need to spend very much
19 time on it at all, just to take you to your joint statement at paragraph 20, top of internal page
20 39. {I/2/39}
21 I think your final point there, which I do not think was focused on very much during your
22 cross-examination by Mr. Turner, I think that is the very point that you are making there, is
23 it not?
24 A. Yes, that is right. I am saying there that provided you take into account both levels,
25 wholesaler and pharmacy, then that mark-up assumption in many respects is not material.
26 Yes, that is right.
27 Q. Thank you. Just one further point of clarification and hopefully I will get the reference right
28 here.
29 Can we just go back to Mr. Collier's witness statement {F/1/7} and if we could go to
30 paragraph 20 at the bottom of that page. Again, in that we heard a great deal about
31 Alpharma's likely discount from wholesaler to the pharmacy, but presumably in looking at
32 Mr. Collier, which you acknowledged you did --
33 A. Yes.

1 Q. -- you can confirm that that was very much in your mind as well in terms of GUK's
2 discount?
3 A. That is right. I was aware that --
4 Q. Could you go over the page once it has been read, please. I will not read it, but if I could
5 ask you to have a look at it {F/1/8}.
6 A. Yes, that is right. He says he thinks it is difficult, he does not know what GUK's average
7 discount -- what GUK's mark-up would be. That is right. Yes, it is likely to vary from
8 customer to customer. He also did not know what IVAX's discount mark-up would be as
9 well.
10 Q. Yes.
11 A. Which is why I looked at the IVAX evidence for the IVAX mark-up, and I noted in my
12 report not only this, that GUK itself said it was not sure what the mark-up would be on
13 GUK's products. So GUK itself said it was not sure what GUK's products would be marked
14 up by, hence there is that uncertainty.
15 MR. KON: Thank you.
16 THE PRESIDENT: Thank you very much, Dr. Majumdar. You are released and I think that
17 concludes your participation in this case. I hope from now on your dreams are free of
18 thoughts of footnote 616.
19 A. Thank you very much, sir. (The witness withdrew)
20 MR. TURNER: Sir, as we have a bit of time in hand, I can call Ms. Webster for the CMA.
21 THE PRESIDENT: Yes. We are very much in your hands. If we can start certainly cross-
22 examination of Ms. Webster now, or if you are confident, Mr. Flynn, I know you were
23 concerned if you would have only less than a day, now you have more than a day. Or Mr.
24 Scannell; I do not know which of you it is. Or we can start in the morning.
25 MR. SCANNELL: I am happy to begin now, but I am entirely in the Tribunal's hands --
26 THE PRESIDENT: I think we should begin now.
27 MR. TURNER: We call Ms. Webster. MS. RACHEL WEBSTER (affirmed)
28 Examination-in-chief by MR. TURNER
29 THE PRESIDENT: Do sit down, Ms. Webster.
30 A. Thank you.
31 THE PRESIDENT: Ms. Webster, have you got -- perhaps it is coming up to you now. It should
32 be the bundle with your report and the bundle of the joint statement.
33 A. I do, yes. Thank you.

1 MR. TURNER: Ms. Webster, you have open in front of you, I believe, the document at tab 4 in
2 bundle H {H/4/1}.
3 A. Yes.
4 Q. Is that a copy of your expert report of 12th December 2016?
5 A. Yes, it is.
6 Q. If you turn, please, to page {H/4/52}.
7 A. Yes.
8 Q. Is that your signature?
9 A. It is.
10 Q. Does this report represent your evidence before this Tribunal?
11 A. It does.
12 Q. Is there anything in it that you would wish to correct or qualify?
13 A. No.
14 MR. TURNER: Sir, I leave there --
15 THE PRESIDENT: Can we just also, for form's sake --
16 MR. TURNER: The joint statement.
17 THE PRESIDENT: -- the joint statement.
18 MR. TURNER: Could you open, please, the joint statement at bundle {I/2/1}. Do you have that?
19 A. Yes.
20 Q. Is this the document to which you contributed with the other experts?
21 A. Yes, it is.
22 Q. Are the statements attributed to you in this document your supplementary evidence in this
23 proceeding?
24 A. Yes, they are.
25 Q. Is there anything in this that you would wish to correct or qualify?
26 A. No.
27 MR. TURNER: Thank you. Would you please wait there. There may be some further questions.
28 THE PRESIDENT: Yes, Mr. Scannell.
29 Cross-examination by MR. SCANNELL
30 MR. SCANNELL: Good afternoon, Ms. Webster.
31 A. Afternoon.
32 Q. Now, there are obviously quite a few points of disagreement between you and the other
33 experts in this matter and I will turn to some of them presently. But for the benefit of the
34 Tribunal, could I begin by asking you about some of the points of agreement between you.

1 You and the other experts agree, do you not, that although Seroxat prices might not have
2 changed massively over the period that we are concerned with in this case, that is to say
3 from 2001 to 2003, the average price paid by pharmacies for 20mg paroxetine from all
4 sources declined over that period?
5 A. I do agree that there was some small decline in the overall average price of paroxetine.
6 Q. Yes. According to the joint statement -- we do not have to turn it up quite yet -- you say
7 that the decline in prices that we are thinking of is between 2.7 and 3.4%; is that right?
8 A. Yes, that is one of the measures that I provide. That is the measure that I estimate prior to
9 taking into account the overstatement, which I believe is in the decision in relation to
10 parallel imports prices. The second qualification I would add is that it does not take into
11 account -- sorry, that measure is one which is the actual decline. It is not the measure that
12 one -- would have existed had one taken -- had one not factored into account this big drop in
13 the overall market volumes.
14 So once I strip that out and the parallel import price overstatement, it is more likely to be in
15 the region of 1% to 2%, rather than 2.7% to 3.4%.
16 Q. Yes. So you have a PI pricing point that you want to make and you have an overall decline
17 in volumes point that you want to make as well, and we can turn to those in due course.
18 Dr. Stillman, his position in the joint report, if I am not mistaken, is that the decline that we
19 are talking about over the same period is between 3.5% and 4.3%. Is that your recollection?
20 A. That is my understanding.
21 Q. Now, one of the issues between you and the other experts is the question of whether it is
22 better to use the so-called Sellick spreadsheet. Do you know what I am referring to when I
23 am referring to that, because I can call it something else?
24 A. No, that is fine, I do.
25 Q. Whether it is better to use that spreadsheet or the 2001 CIMS data. That is right, is it not?
26 A. That is correct.
27 Q. For now, can you confirm that when we look at the joint statement, the statement in bundle
28 {I/2/1}, what we are seeing there playing out is the debate you have had with the other
29 experts not on the Sellick spreadsheet, but on the CIMS 2001 basis?
30 A. So if I understand the question correctly, it is in relation to the tables that are set out at the
31 back of that joint statement and those tables are all prepared on the basis of the CIMS data.
32 Q. Yes, that is what I was getting at.

1 A. I understand that Dr. Stillman looks at those tables and when he is interpreting the correct
2 columns to read from and the correct tables to use, he takes into account his findings from
3 the Sellick data.
4 Q. Thank you, Ms. Webster.
5 Can we begin, then, with the CIMS 2001 data. Just a few questions on that. First, you
6 accept, do you not, that that data was not audited?
7 A. I do accept that.
8 Q. Could we turn, please, to a document in bundle {G4/114/1}. I hope this will come up on
9 the screen. Are you being handed documents at the same time, Ms. Webster?
10 A. I am.
11 Q. Okay. If there is any particular way that you would like documents to be presented to you
12 please do not be shy and just say what is useful.
13 A. Thank you.
14 THE PRESIDENT: Do you prefer them in hard copy to on screen?
15 A. I am not sure at the moment. It depends which document.
16 THE PRESIDENT: We will see how we go.
17 MR. SCANNELL: The document that you are looking at on the screen, Ms. Webster, is a
18 document dated 1st May 2015 and it is a response to a Section 26 notice that GSK received
19 from the CMA, dated 30th March 2015.
20 If we turn over the page, please, {G4/114/2} what I want to focus on is the middle of
21 paragraph 2.8. Do you see mid-way through that paragraph a sentence beginning "Because
22 of the passage of time"?
23 A. I do.
24 Q. So this is GSK speaking, and they say:
25 "Because of the passage of time and the lack of supporting documentation, GSK
26 Finance still cannot be sure of the exact reasons for the differences between CIMS and
27 Unison in 2001."
28 Going on to paragraph 2.9 below that paragraph, GSK continues:
29 "GSK believes it is important to underline that the difficulties it has had in reconciling
30 the various data sources to which it still has access regarding these apparent rebates
31 derive from the very long passage of time between the period under review and the
32 present time (over 13 years). That is a direct consequence of the CMA's decision to
33 pursue this investigation at this time."
34 It goes on:

1 "The difficulties that result involve not just the retrieval and reconciliation of data ...
2 but also questions such as whether entries were most likely to be provisions or actual
3 rebates. The finance staff within GSK who are best placed to answer the CMA's
4 questions now ... were not involved with these databases at the time, and indeed the
5 main person, Erika Patteson, was not even employed by GSK at the time. Further
6 GSK's systems at the time – 2001 being a critical transition year in which, following
7 the merger of GW and SB, the two companies' different distribution and reporting
8 models were in the course of being integrated – were not as perfectly ordered as the
9 CMA's questions imply. The combination of all of these factors has made the process
10 of answering the CMA's questions a difficult one and means that the analysis still
11 cannot be regarded as in any sense conclusive."
12 Now, looking at that document, which is a GSK document they have sent to the CMA in
13 response to CMA questions about this 2001 data, do you accept that it is clear that GSK at
14 least cannot conclusively make sense of the 2001 CIMS data?
15 A. I am not sure that I would fully agree to that. My understanding is that when GSK has
16 looked at this CIMS data and compared it to the Unison data which is audited, they find
17 there to be a gap, and that gap is I think £7,890,000. There has then been a process of trying
18 to identify what explains that missing amount, and I believe it is in relation to that element
19 that there is uncertainty as to quite what explains it. GSK's view, that I have taken from the
20 document, is it is most likely to be associated with missing rebates to customers that were
21 not included in the 2001 CIMS data.
22 Q. So at least in respect of the £7 million discrepancy between the CIMS 2001 data and the
23 Unison data, do you accept that GSK cannot definitively get to the bottom of the problem?
24 A. Yes, I would agree with that.
25 Q. Now, there has been some reference throughout the case to this problem of GSK's
26 wholesaler mark-ups. You are familiar with that problem, presumably?
27 A. I am.
28 Q. I do not believe that this is a matter of continuing controversy between you all, so I will take
29 it shortly.
30 You accept, do you not, that if you want to use the CIMS 2001 data to gauge GSK's Seroxat
31 prices in 2001, you have to make adjustments to it to account for the fact that 72% of GSK's
32 sales in 2001 were not to pharmacies directly but were made via wholesalers?
33 A. I agree that there needs to be a wholesale mark-up that is applied to those sales.
34 Q. The CMA failed to do that in the decision, did it not?

1 A. So my understanding is that a mark-up was not added, but I think it was in the context of
2 analysing prices -- GSK's prices 3 months prior to the GUK agreement and then 3 months
3 afterwards, and similarly for Alpharma, and in that context those sales were not made
4 during 2001.
5 Q. Just to be absolutely clear, the CMA did not apply a wholesaler mark-up to GSK's prices in
6 2001.
7 A. That is my understanding.
8 Q. You accept, do you not, that that was an error in the decision?
9 A. If the CMA was trying to work out the before and after prices 3 months around the GUK
10 entry and Alpharma entry, I am not sure that I would agree that it is an error.
11 Q. I am sorry, you would not agree that it is an error?
12 A. Well, not if the period prior to GUK's entry is a period that falls entirely within 2002, and
13 during 2002 there was -- all sales were made direct to pharmacies, there is not a need during
14 that period to add on a wholesale mark-up. No sales were made to wholesalers at that point.
15 Q. Well, can we have a look, please, at what you have actually said in your evidence in the
16 case in relation to this omission from the decision, if I can call it that.
17 Can we begin, please, in bundle {H/2/1}. So this is the expert report of Dr. Haydock.
18 Turning forward within that to page {H/2/9}, paragraph 24. Now, this is obviously Dr.
19 Haydock speaking, not you, but at the end of that paragraph Dr. Haydock said:
20 "In this regard, I agree with Dr. Stillman that the CMA erred in the analysis in its
21 decision by not adding any mark-up to GSK's 2001 prices."
22 Now, could we then look at the same bundle, {H/4/1}. Now we are looking at your report
23 and {H/4/7} within it.
24 Paragraph 2.5; do you see there you say that you fully adopt the evidence and opinions set
25 out in Dr. Haydock's report in support of her first and second findings, that is paragraphs 10
26 to 42? So that includes paragraph 24 that we have just looked at. So can I simply ask you
27 again: do you accept that there is an error in the decision of not marking up GSK's prices in
28 2001?
29 A. So if I go to footnote 22, which immediately follows Dr. Haydock's statement, she says:
30 "See for example prices shown in figure 3.1 ..."
31 I do not have figure 3.1 in front of me. It is quite possible that 3.1 was plotting prices over a
32 longer period and the earlier prices should have included that mark-up. To that extent, yes,
33 those prices would not have been -- should have included a wholesale mark-up. But my

1 point was in relation to that element of the ex post pricing analysis that the CMA undertook
2 in support of its decision, was there an error in those.
3 Q. You accept that there was an error in those?
4 A. Well, sorry, Dr. Haydock's comment is in relation to footnote 22.
5 THE PRESIDENT: Would it help to look at figure 3.1? Would that be helpful to you?
6 A. That might be instructive.
7 MR. SCANNELL: Figure 3.1 should be on page 169 of the decision. {V/1/169} I may be wrong
8 about this.
9 THE PRESIDENT: That is right. It is 169. That is a figure of paroxetine prices going back to
10 January 2001.
11 A. That is right. So I would agree that those prices that went back and included 2001 should
12 have included a wholesale mark-up.
13 MR. SCANNELL: Thank you, Ms. Webster.
14 All things being equal, it is right to say, is it not, that the effect of that omission from the
15 decision is that pharmacy prices in 2001 were understated in the decision?
16 A. That is correct.
17 Q. As I said at the outset of this line of questions, I think you have managed to resolve the
18 position with the other experts on this front. So you have agreed with the other experts that
19 if you use CIMS 2001 to gauge the price to pharmacy, you have to apply 3.3% mark-up to
20 the price suggested by CIMS to account for this problem; is this right?
21 A. Yes, that is the figure that both Dr. Stillman and I agree is consistent with the evidence.
22 Q. Thank you.
23 Moving on, then, away from that problem with the CIMS data to another one that you
24 referred to already, the rebates discrepancy.
25 To recap for the benefit of the Tribunal, what we are talking about here is the fact that the
26 Unison system recorded sales of paroxetine of 60.8 million in 2001, whereas the CIMS data
27 from 2001 recorded sales of 67.9 million in 2001. That is right, is it not?
28 A. Yes, I recognise those figures.
29 Q. So there is a discrepancy of 7 million-odd between the two data sets.
30 Now, just pausing here, that is a significant difference between the two data sets, would
31 you agree?
32 A. Yes.
33 Q. Now, the 2002 and 2003 CIMS data sets, they are not affected by the same problem, are
34 they?

1 A. That is my understanding.
2 Q. So to that extent, the 2001 CIMS data set is not comparable to the 2002 and 2003 CIMS
3 data sets; is that right?
4 A. I am not sure I would go so far as to say that they are not comparable. I think there is a
5 missing element that is relevant to the price in 2001 that needs to be captured, and if that
6 element can be captured with missing rebates, then I believe that the data in 2001 is
7 comparable with 2002 and 2003.
8 Q. That does depend, then, on being satisfied that the 7 million is down to missing rebates and
9 how you deal with that problem. Is that fair?
10 A. Yes, that is fair.
11 Q. Would you agree that you can have more confidence in the accuracy of the prices recorded
12 in the later data sets than you can have in the 2001 data set?
13 A. So, yes. To the extent that I do not need to make any assumptions when looking at 2002
14 and 2003, that is right. I feel relatively comfortable in terms of the work that I have been
15 able to do on rebates and where that has come out, that I have narrowed the position such
16 that I have got a fairly good feel for actually how to make the adjustment in 2001, to put
17 some bounds on the extent to which that needs to be adjusted.
18 Q. Yes. But there are quite a few adjustments that you make to the 2001 CIMS data set
19 overall; would you agree with that?
20 A. I think you would need to be specific.
21 Q. Well, you suggest that an adjustment must be made to deal with the problem of missing
22 rebates. Is that not right?
23 A. Yes, I agree with that.
24 Q. You also accept that adjustments have to be made to account for odd entries in the 2001
25 CIMS data. We will get to this in due course. But references, for example, to sales of
26 paroxetine by SmithKline Beecham against which no values are recorded?
27 A. So I do not necessarily agree that adjustments do need to be made. What I observe when I
28 look at the CIMS data across the whole period, 2001 to 2003, is there are some odd entries.
29 In 2002 and 2003, most of those take the name of something like "dummy entry",
30 something like that, and they involve very small -- typically very small volumes, and those
31 ones, I think, you know, when they are labelled such as dummy entries, then I am sort of
32 happy for them to be taken out. Because they are such small volumes they do not actually
33 make any material difference to the average prices that are calculated in 2002 and 2003
34 using the CIMS data.

1 In 2001 there are two entries which are not labelled dummy or anything like that. They are
2 labelled "unknown" and they occur -- I think one is in -- I forget, August, I think, and the
3 other in November. They are more material. Dr. Stillman suggests that these should be
4 removed because we do not know what they are. I believe that because we do not know
5 what they are, one does not know whether to remove them or not, and I have not seen
6 evidence to suggest that they are not real volumes that were sold. It could well be the case,
7 for example, that when selling through wholesalers in 2001, when GSK comes to do its
8 reconciliation of the volumes that are actually sold with what it has against customer
9 accounts, it finds that actually they do not tally perfectly, so it enters a balancing item.
10 Now, I do not know that for certain, but that is a possible explanation which would be
11 consistent with these being real sales, and therefore should not be excluded. It is possible
12 that they are not and we do not know.
13 Q. Ms. Webster, we will return to those entries in the CIMS data in just a moment, which may
14 make it a little easier. You will be able to see the lines when we are talking about it.
15 At the moment just focusing on the missing 7 million from the 2001 CIMS data set, do you
16 accept that it is fair to say that although the experts have reached the conclusion that it is
17 probably safest to proceed on the basis that the 7 million is explained by missing rebates,
18 one cannot be definitive about that?
19 A. So of the documents that I have seen, the reason that has been put forward, and I believe
20 that GSK itself also said that this was the most likely explanation, the most likely
21 explanation is that they are missing rebates and I do not have a reason to doubt that. I do
22 accept that it may not be definitive.
23 Q. So it may be that the £7 million gap or hole in the data might not be down to missing
24 rebates at all. It might be down to something else that we just do not know about?
25 A. If I may, I suspect that that is relatively unlikely. The reason for that is that we know from
26 the evidence of several GSK witnesses that GSK gave brand equalisation deals to customers
27 in order to compete with parallel imports. If there were not discounts, ie missing rebates in
28 the 2001 data, I believe that we then would not be capturing the extent to which GSK was
29 competing with those parallel imports; we would not be catching those brand equalisation
30 deals.
31 So it seems to me that it is likely that at least some portion of the £7 million difference
32 between the CIMS data and the Unison data is associated with discounts of brand
33 equalisation.
34 Q. Thank you.

1 Could we perhaps look at some of the evidence before the Tribunal to see what the fairest
2 inference to draw from that might be. Could we turn, please, to bundle {G1/13/1}.
3 Now, this is a GSK response to another Section 26 notice dated 4th February 2015, which
4 they have sent to the CMA on 19th February 2015.
5 Before we go any further, if we turn to the top of page {G1/13/2} and look at the paragraph
6 at the very top of the page, there is a reference there to all of this CIMS 2001 data having
7 been given to the CMA back in 2012. Is that your understanding as well?
8 A. So I am not aware of exactly when the data was provided.
9 Q. Looking at that paragraph, that is what GSK is explaining to the CMA, that they handed
10 over this data in 2012. So we are talking now about a Section 26 response three years later.
11 Looking at the same page, page 2 of this document, what GSK is trying to get across to the
12 CMA in this document is the efforts that they have gone to to try to understand what
13 accounts for the £7 million discrepancy.
14 Now, if we could take it from mid-way down the page, the paragraph beginning "despite".
15 So they are saying:
16 "Despite considerable effort, GSK is simply unable at this point, many years after the
17 relevant events, to say more about how rebates were treated in the pre-2002 data. In
18 addition to probing the memories of ex-SB employees and exploring whether the
19 original SB records might still be available, GSK also attempted to carry out a high-
20 level reconciliation between data from CIMS and data from Unison at the time of the
21 response to the SO. GSK compared the Seroxat/paroxetine sales implied by CIMS
22 with the Seroxat/paroxetine sales reported in Unison, GSK's global financial reporting
23 system. The working assumption was that all rebates ... would be reflected in Unison.
24 The question was whether the sales indicated by CIMS were consistent with the sales
25 indicated by Unison.
26 "This investigation also proved inconclusive."
27 Then turning over the page to page {G1/13/3}, at the top of the page they are referring in
28 the first main paragraph to a document that they have managed to find dating from 2001,
29 called a "'flash sales' Excel reconciliation file". They have looked in that file to see if that
30 helps with the reconciliation.
31 Do you see that?
32 A. Yes.
33 Q. Then down at the bottom of the same page, do you see a paragraph beginning "As
34 discussed"?

1 A. Yes.
2 Q. The second sentence in that paragraph:
3 "The difficulty GSK has had in responding to the CMA's questions is that despite
4 lengthy and repeated inquires of GSK sales and finance teams and staff still within
5 GSK with potentially relevant contemporaneous knowledge of the finance systems, as
6 a result of the considerable expiry of time GSK's investigations have proven
7 inconclusive. In particular, no one that GSK has been able to identify as relevant has
8 been able to confirm:
9 (a) what the 2001 provisions amounting to approximately -£7m relate to; nor
10 (b) the extent to which these provisions proved to be accurate; nor even
11 (c) whether or not these were actually paid out in 2002."
12 Looking at that, is it not clear that three years after having sent the CIMS 2001 data to the
13 CMA, GSK, at least, cannot explain what the £7 million difference is accounted for
14 between CIMS 2001 and Unison?
15 A. So I had not seen that particular document before. I think I may have seen later
16 correspondence between GSK and the CMA on this issue.
17 From memory, that later correspondence, it continued on the same topic and I recall that
18 there was one document which said -- forgive me, because I have not seen this document
19 before. I am not sure if the document I have seen post-dates this one or pre-dates it, but
20 there certainly was a document which said: we have looked at this further, we do not
21 necessarily now believe that certain items were -- I forget the name of it -- adjustments to
22 the accounting information. We believe that it was rebates. It is most likely it is made by
23 missing rebates.
24 Now, apologies, I am doing this without being able to look at exactly that document, but
25 others may be able to help in terms of making sure that the full series of correspondence
26 between GSK and the CMA on this issue comes to light, because I think there was an
27 evolution in the thinking around what explained the 7 million and that the result of that
28 evolution in the thinking was that GSK had become comfortable. Again, sorry, this is
29 factual evidence, so please -- this is my recollection of it. But that GSK had become
30 comfortable that it was most likely explained by missing rebates, and that is the basis on
31 which Dr. Stillman and I have been working when trying to understand the evolution of
32 Seroxat prices.
33 Q. Do you --

1 THE PRESIDENT: Is there any relevance in footnote 8 of this document? I do not know if
2 anyone is relying on that.
3 MR. SCANNELL: That is more likely to confuse at this point.
4 THE PRESIDENT: I see. That is suggesting an explanation.
5 MR. SCANNELL: It is indeed. It is an explanation which was subsequently resiled from.
6 THE PRESIDENT: Right. So that slightly ties in with what Ms. Webster is saying, that there
7 was some subsequent further discussion about this; is that right?
8 MR. SCANNELL: Yes, indeed. There were indications in later Section 26 notices that it may be
9 rebates, but that on reflection they could not be conclusive about that.
10 We can leave that point there, Ms. Webster.
11 In the decision, the CMA dealt with this discrepancy in the 2001 CIMS data by assuming
12 that the sum did relate to rebates; is that not right?
13 A. Yes, that is my understanding.
14 Q. They then adjusted the CIMS data accordingly.
15 Now, if I understand what they did, they scaled down the sales volumes appearing in the
16 2001 CIMS data by the full £7 million value. Is that your understanding of what the CMA
17 did in the decision?
18 A. So I have not looked in detail at the calculation that was done by the CMA in its decision. I
19 have adopted the evidence of Dr. Haydock, I believe that is the approach she took, and also
20 the approach of Dr. Stillman.
21 Q. So did you not look at the decision to see what the CMA did to deal with the £7 million
22 discrepancy in the CIMS 2001 data?
23 A. I assumed that the approach that was taken by Dr. Haydock and Dr. Stillman was consistent
24 with it. I had no reason to doubt that.
25 Q. Did you actually look at the decision to see how the CMA had dealt with the problem?
26 A. No.
27 Q. To be clear on this point, it is right, is it not, that the more value you take away from the
28 CIMS 2001 data set in this way -- sorry, that is probably unclear. Let us imagine that you
29 have got a high CIMS 2001 figure for sales compared to Unison's £7 million higher. So the
30 more you take away from the CIMS 2001 data set, the lower the resulting Seroxat price
31 will be in 2001?
32 A. That is correct.

1 Q. Your position as I understand it is that the CMA made a further error in the decision, if I am
2 not mistaken, by subtracting 100% of the £7 million from the CIMS 2001 data set; is that
3 right?
4 A. So to call it an error I think is possibly somewhat strong. It is clear that there is uncertainty
5 around what proportion of the 7 million should be taken away from sales value of 20mg
6 Seroxat specifically. I note that Dr. Stillman took the same approach. Dr. Haydock took
7 the same approach. It is an assumption.
8 I found that when Dr. Stillman raised the question in his second report about the validity of
9 the adjustment that had been made on rebates, that I thought that I would look into it in
10 more detail. On my view, I believe that one can be slightly more sophisticated than just
11 assuming that all 100% should be allocated to 20mg Seroxat, so I made small adjustments
12 so I ended up with a base case where I would attribute 94% of the missing rebates to 20mg,
13 and then my alternative case where I allocate 86% of the missing rebates of 20mg.
14 Q. Thank you, Ms. Webster. We will return to how you adjust it in just a moment.
15 But perhaps we can agree on this for now, that the approach you have taken to the £7
16 million rebates and the adjustments that one makes to deal with that issue is different to the
17 approach taken in the decision, as reflected in Dr. Haydock's evidence at least?
18 A. Yes, to a small degree.
19 Q. Okay. Could we look, then, at this other problem that we have with the CIMS 2001 data
20 set, which is -- I like to call it phantom entries, but I am sure you have your own description
21 to capture all of these odd entries that we are talking about.
22 I think the easiest way to show the Tribunal what we are talking about is to have a look at
23 the famous CIMS data. It is in bundle {K/64/1}. I promise I am not going to go into this in
24 much detail. I am not an economist.
25 This is an Excel spreadsheet, so it does have to be uploaded or downloaded from the
26 Magnum system. It has probably crashed, I hear from the back. This is the first page.
27 Could we go to the second page, please. {K/64/1} Just down a page.
28 If you click on "data by customer", that is the one. So what I am talking about now, and I
29 say this as much for the benefit of the Tribunal as for you, Ms. Webster --
30 THE PRESIDENT: Yes, we have not looked at this before, as you will appreciate.
31 MR. SCANNELL: Yes. What we are looking at now is the famous CIMS data. To be clear, it is
32 not the CIMS 2001 data alone; it is all of the CIMS data and that is why it has taken such a
33 long time to upload. There are millions of lines of data in this document, as I understand it.

1 Some of it is 2001. One sees that at the left-hand side. Some of it is 2002, and no doubt
2 some of it is 2003. For the moment what I want to focus on is this oddity in the 2001 data
3 which one sees at the very top of this page, where the customer is identified as "unknown",
4 where the product column exhibits a volume of Seroxat having been sent out, but where the
5 value that is put against that volume is zero.
6 Can I first ask, is that a fair description of lines 2 to 11 of this page?
7 A. Yes, it is.
8 Q. Thank you. Again, if you want to use CIMS 2001 data to work out the Seroxat price in
9 2001, you have to make some sense of that kind of entry in CIMS 2001, do you not?
10 A. Yes.
11 Q. As I understand your position, you say unless those entries can be shown not to be real
12 sales, keep them in?
13 A. Yes, that is right.
14 Q. Just so that the Tribunal can understand what that means, if you do leave entries like that in,
15 in 2001, it is going to suggest a lower Seroxat price in 2001, is it not?
16 A. Yes, the effect is very small, so the effect can be seen by looking at the tables. You can see
17 it from table 4D at the back of the joint report, and just allow me to look at that briefly. I
18 can give you the order of magnitude.
19 So it would suggest that in comparison to table 4(c) where we are looking at an overall price
20 change for Seroxat of somewhere, I would use the two columns on the right, between a
21 price increase of 0.2 and 0.6. We would instead be looking at a price decline of 0.4 to 0.1.
22 So roughly 0.6 of a per cent.
23 Q. Yes.
24 A. That is the implication. Table 4(d) is calculated by excluding any volumes associated with
25 an entry against an unknown customer where there is a volume but no value, and table 4(c)
26 keeps those entries in.
27 THE PRESIDENT: You are comparing -- is it the bottom line of the two tables?
28 A. Yes, that is right.
29 MR. SCANNELL: Now, the electronic evidence display operator might be able to control-F
30 within this document to find SmithKline.
31 In the top left-hand corner I think we can see that the system is beavering away to find that.
32 There are other entries in the CIMS 2001 data where the customer is identified as
33 "SmithKline Beecham Pharmaceuticals" and where, again -- this is not a great example

1 because it is a Seroxat liquid, but I think I can make the point uncontroversially -- there are
2 outgoings of Seroxat 20mg and no values. Is that right?
3 A. I do see that in this data. I also note here for these entries the volumes are incredibly small.
4 Q. Yes, I appreciate that for SmithKline Beecham Pharmaceuticals the volumes are small. At
5 the moment I am simply enquiring as to whether it is your understanding of the CIMS 2001
6 data set that we have these anomalous lines as well, which require some explanation?
7 A. I do not know that that is necessarily anomalous.
8 Q. You do not think that is anomalous, to have what looked like sales of paroxetine going out
9 for zero value from GSK?
10 A. Well, I think it -- one does not really know how the database was managed.
11 Q. No.
12 A. So I do not have confidence. When I see things written as a dummy entry, I totally agree
13 with Dr. Stillman that that causes me to be nervous. When I see other entries which are
14 either unknown or written in this way, I am not necessarily as sure that they are
15 problematic.
16 Q. Sorry, Ms. Webster, do continue.
17 A. I have not been given any explanation for what they might be or whether there has been a
18 process to identify what is problematic about these, what they relate to or not.
19 Q. Thank you.
20 THE PRESIDENT: These are 2001 -- no, they cannot only be 2001 entries. What year are we
21 on?
22 MR. SCANNELL: If we go to the left, this one is indeed 2001.
23 THE PRESIDENT: Well, they vary.
24 MR. SCANNELL: They do. This is mixed in with other years as well. This is not just CIMS
25 2001 data that we are looking at.
26 THE PRESIDENT: No, it is not, but it includes 2001.
27 MR. SCANNELL: It does indeed.
28 THE PRESIDENT: I am just looking to see, 2001 we are only concerned with the 20mg, are we
29 not?
30 MR. SCANNELL: That is correct. I do not want to give the impression --
31 THE PRESIDENT: I think if I see this correctly, there are only three entries, a total of 31 packs;
32 is that right? In the quantity column, what are the units?
33 MR. SCANNELL: They are, I believe, packs.
34 THE PRESIDENT: 31 packs in 2001.

1 MR. SCANNELL: Showing up here, that is correct. Showing here at this point.
2 THE PRESIDENT: I thought this is SmithKline Beecham entries. Is that not what you are asking
3 about?
4 MR. SCANNELL: It is. I cannot say whether there are other entries in the data. I have not been
5 through the millions of lines.
6 THE PRESIDENT: I thought we are doing a name search, are we not?
7 MR. SCANNELL: We have and this is the first hit that we have --
8 THE PRESIDENT: I see. Are there other hits?
9 A. If it helps, I could comment on the exercise that I understand Dr. Stillman to have done.
10 THE PRESIDENT: Yes.
11 A. Which is to look through the data for 2001, 2002 and 2003 and to identify any such entries
12 where you have -- that look like this or that record an unknown customer, where there is
13 positive volumes but zero value, to identify things like dummy entries, similarly positive
14 volumes but no value, and that he has sort of fully scoured the data, if you like, to identify
15 all such cases.
16 In table 4(d) he takes them all out, is my understanding, such that that gives us the full
17 extent of the impact assuming we have caught them all in the underlying data set. What I
18 would seek to do is to just draw a distinction from ones that I agree do look like they may
19 not be real sales and some where it is just unclear.
20 MR. SCANNELL: Just to be clear on that point, Ms. Webster, your position as I understand it is
21 that where we see a line like the line we see on the screen with SmithKline Beecham
22 Pharmaceuticals, you are happy to exclude those from the analysis; that is correct, is it not?
23 A. I believe that is the approach that I have taken. There is a footnote --
24 Q. We can see that from the second joint statement at bundle {I/2/19}. I believe that is the
25 footnote that you are referring to at the bottom of the page?
26 A. That is correct.
27 Q. You agree that:
28 "... those marked 'dummy practice entry', 'dummy SPV practice entry', 'stock swap'
29 and 'SmithKline Beecham Pharmaceuticals' are unlikely to relate to actual customer
30 sales and should therefore be excluded from the analysis."
31 But where the reference is to customer unknowns, and paroxetine is shown leaving GSK
32 without any value, you leave those in. Is it not right that the volumes that we are talking
33 about for the customer unknowns are much bigger than the volumes in the categories that
34 we see in that footnote?

1 A. Yes, that is correct. That in part explains why I would be nervous about taking them out
2 without further investigation.
3 Q. Thank you.
4 Now, looking at where we come out with all of this CIMS data, we have seen from GSK's
5 internal documents that it cannot reach any conclusive assessments on the CIMS 2001 data.
6 You have agreed that in order to make any sense of it, one must adjust it for the missing
7 rebate problem. Do you agree?
8 A. Yes.
9 Q. The GSK wholesaler mark-ups --
10 A. Yes.
11 Q. These entries that we have just looked at from the CIMS 2001 data.
12 A. Yes, although I do not think that the adjustments in relation to the last of those is -- to the
13 extent an adjustment is needed to remove things like dummy entry, I believe it is immaterial
14 and I do not believe that there is a strong case that has been made to take out the unknown
15 entries.
16 So I believe that the adjustments that are needed are to apply the 3.3% mark-up, which Dr.
17 Stillman and I are agreed on as the appropriate mark-up, and then to make an assumption
18 around how to treat missing rebates.
19 Q. Can I just be clear about what exactly you do say about these customer unknowns where
20 Seroxat is leaving GSK and no value is being attached to it. What do you think was
21 actually going on at GSK? You do not believe it was giving away Seroxat for free, do you?
22 A. No. I do not know how GSK managed its own internal records, but I do note that there was
23 substantial relative material volume in August and another one three months later in
24 November. I am speculating, but it is possible that that was associated with a reconciliation
25 between observing actually what had been sold and a product that had been put into the
26 market and the accounting records by customer.
27 So GSK was simply trying to say: actually, we do know what total has left the building and
28 so we must make an adjustment for it.
29 Q. But you accept that that explanation is based on a speculation on your part?
30 A. Yes, I do.
31 Q. Looking at all of those factors that we have seen with the CIMS 2001 data, is the position
32 not that the CIMS 2001 data is a bit of a mess?
33 A. No.
34 Q. You do not accept that?

1 A. No.
2 Q. You are quite happy to rely on the data despite all of the adjustments that you have to make
3 to make it work?
4 A. So to be clear, I think the adjustments that we need to make which are material are (1) in
5 relation to mark-up, and as I have explained I think Dr. Stillman and I are in the same place
6 and we agree that the mark-up should be 3.3%. In relation to rebates, I believe that there is
7 a relatively narrow bound that the rebates would need to sit within to make sense of the data
8 in total, and that includes the implications of any rebate assumption that we make in relation
9 to 20mg, the effect that that then has on the 30mg price analysis.
10 That does put some boundaries around what is reasonable to assume, and I think that that
11 gives us a way forward with the CIMS data where there is not huge uncertainties that
12 remain.
13 Q. Do you at least accept that the CIMS 2001 data is substantially less clear than the CIMS
14 2002 and CIMS 2003 data?
15 A. I would take issue with the word "substantially". I think to the extent that it is less clear it is
16 because we have to make assumptions in relation to the allocation of the rebate.
17 So to the extent that it is less clear, that explains the difference between my tables 4 in the
18 back of the joint expert report, and tables 5.
19 MR. SCANNELL: That is very helpful, Ms. Webster.
20 Mr. President, that might be a useful juncture.
21 THE PRESIDENT: Yes, it seems a sensible point.
22 Ms. Webster, I think you know, you are now in the process of giving evidence so you must
23 not discuss the case with anyone either in the legal team or your colleagues in the front here.
24 A. Yes, thank you.
25 THE PRESIDENT: 10.30 tomorrow morning.