IN THE COMPETITION APPEAL TRIBUNAL

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

Victoria House,
Bloomsbury Place,
London WC1A 2EB

3 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

A P P E A R AN C E S

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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THE PRESIDENT: Yes.

MR. FLYNN: Good morning, sir.

I think we now move to the factual evidence and we call Dr. Mark Reilly.

THE PRESIDENT: Yes.

DR. WILLIAM MARK REILLY (affirmed)

Examination-in-chief by MR. FLYNN

THE PRESIDENT: Do sit down, Dr. Reilly.

MR. FLYNN: Dr. Reilly, I think you have just been handed a file which contains a witness statement and exhibits. If you open the witness statement, do you see in tab 1 the document headed "Witness statement of Dr. William Mark Reilly"? {E/2/1}.

A. That is correct.

Q. Do you see that?

A. Yes.

Q. If you turn to page 25 within that document, is your signature on the end of that document? {E/2/25}.

A. It is.

Q. That is your signature?

A. It is.

Q. You have told me there is one detail that you need to correct in this witness statement.

A. Yes, in paragraph 50, the dates are misstated in terms of 2003; they should be 2002.

MR. FLYNN: Does the Tribunal see that? These are the dates of meetings with Alpharma and obviously there is just a typographical error.

THE PRESIDENT: Yes.

MR. FLYNN: Other than that, Dr. Reilly, is there anything that you wish to correct in this statement?

A. No, nothing further.

Q. So this is your evidence?

A. It is indeed.

Q. It is true?

A. Yes.

MR. FLYNN: Thank you. There will be some questions.

THE PRESIDENT: Yes, Mr. Turner. Cross-examination by MR. TURNER

MR. TURNER: Dr. Reilly, you should keep in front of you two documents which are handed up, which should be separate from the bundle, I hope, your witness statement in these proceedings and the transcript of the interview that you gave with the CMA.

A. Right.

Q. Do you have those separately for your convenience?

A. Yes, I do.

Q. You also have the hard copy bundle and for everybody's reference I am going to take you to documents in that bundle so you can flick through them if you want, but they reflect documents that are also going to come up on screen so everybody will be able to see.

A. Okay.

THE PRESIDENT: Can you give us the reference to the other witness statement that you just mentioned?

MR. TURNER: I beg your pardon?

THE PRESIDENT: The reference to the witness statement in the CMA interview -- you said Dr. Reilly has it.

MR. TURNER: That is at {E1/12/2}. The main witness statement for these proceedings is {E/2/1}.

THE PRESIDENT: Yes, thank you.

MR. TURNER: Dr. Reilly, I am going to ask you a series of questions. In the interests of efficiency if you can please begin with yes or no and if you feel that your answer needs qualification, then just go on to do that.

A. Okay.

Q. If you have your main statement, paragraph 1 --

A. Yes.

Q. -- I just have a few introductory points.

You were employed in management roles by GSK for roughly 25 years?

A. That is correct.

Q. Between October 1999 and June 2003 you were the finance director for GSK UK?

A. Yes.

Q. In that role you had responsibility for all of the finance activities for UK business?

A. Yes.

Q. It included forecasting sales and expenditure for the UK business?

A. That was part of it, yes.

Q. You were also part of the executive management team for the UK pharmaceutical business?

A. It was not called that but I understand what you mean.
Q. Yes. But you were part of what you understand to be the executive management team?
A. Correct.
Q. If we go, just to show you why I use that expression, you say it was not called that, to {B6/225/2} for everybody else and for you in your cross-examination bundle it is at tab 2A.
A. Right.
Q. Do you have that? So this is a statement that was given by your successor, Ms. Parr.
A. Okay.
Q. If you read what she says in 1.3, she says this:

> "As UK finance director I was responsible for GSK's UK financial accounts and for forecasting both sales and expenditure. I was also part of the executive management team for the UK pharmaceutical business."

There was no real difference between her role and yours in that respect?
A. She was my successor. So she characterised it in the way that she feels fit, that is all. I do not think there was an official title -- this is called an executive management team -- at all.
Q. That is fine. In terms of the paroxetine market and your company's Seroxat product, in around the year 2000, you were asked by the management team to act as the primary contact for generic companies who may have posed a threat of potential patent infringement to GSK.
A. I was specifically asked by Eddie Gray, who was the managing director of UK pharmaceuticals.
Q. If you go to your statement at paragraph 9 {E/2/4} you see how you began there, you were asked by the UK management team to act as the principal point of contact for the generic companies threatening infringement?
A. I agree, specifically Eddie.
Q. You were personally involved in negotiating the agreements between GSK on the one hand and IVAX, GUK and Alpharma.
A. Let us be clear: I was the point of contact.
Q. You were involved also in negotiations.
A. I was involved in the discussions.
Q. Yes. You signed them on behalf of GSK?
A. True, correct.
Q. Apart from you, who were GSK's decision makers in the UK business for making these agreements?

A. The team members as I say in paragraph 9 were specifically Cameron Marshall, Eddie Gray, Cynthia Robinson and myself in the UK business. Also we had participation from people like Mike Thompson who was also on the management team.

THE PRESIDENT: Sorry, the last name was Mike Thompson?

A. Mike Thompson, yes.

THE PRESIDENT: What was his position?

A. He looked after the smaller businesses that were grouped together. So there was the primary care business, then there was the other businesses that he looked after. The reason I reference it is that some of the information from the commercial operations team actually reported into him, so when we were finding information in the marketplace, etc, that would be coming in through Mike Thompson's team.

MR. TURNER: He is not somebody mentioned as one of the team in your statement at paragraph 9, which is not a criticism, but is that because his role was more peripheral than the people you do mention?

A. Yes.

Q. Please turn now to the transcript of your interview by the CMA, which again for everybody's reference on the Magnum system is at {E1/12/3}.

If you turn into that on page 3 -- do you have that? You will see that it was introduced by an official from the CMA called Mr. Moore and Mr. Moore says to you that answering questions in this interview is a serious matter. He says at the bottom of the transcript on page 3:

> "It is a criminal offence knowingly to provide to the CMA information false or misleading in a material particular."

That was read to you at the time?

A. Yes.

Q. If you turn over the page, top of page 4 {E1/12/4}, you were told that you were compelled to answer the questions today and you must answer them truthfully and you said that you understood that too.

A. Yes.

Q. If you go to page {E1/12/12} in this document, about a third of the way down the page you will see Mr. Moore asking you:

> "Yes. And who would you say was the decision maker in relation to the decision as to whether to enter into those agreements and the terms that were included in those agreements?"

You refer there to:

" ... myself with Cynthia Robinson, who was legal counsel, with Cameron Marshall."

You refer to a group of individuals there. You say at the end that it related also to decisions raised to the European management team, led by Chris Viehbacher; is that right?

A. Yes.

Q. You presented a couple of times to him:

"... or several times to him and also on occasion to David Stout who wanted to understand the overall strategy of the businesses within Europe."

Can you just clarify again who David Stout was?

A. David Stout was the president, I think, of pharmaceuticals at that point. So he saw all the activities of the pharmaceutical businesses across the world.

Q. So the decision making, as we see from this, did include liaison with the European management team, and indeed wider than that, with whom all of these decisions were raised in the way you describe here.

A. The reviews would be of the overall business of which this was one small element that was discussed with Chris Viehbacher and with David Stout, so senior members of GSK.

THE PRESIDENT: Just so I can understand you, was Chris Viehbacher senior or junior to David Stout?

A. Junior. He reported to David Stout.

THE PRESIDENT: The other name you mentioned was David Redfern.

A. He was the finance director for Europe.

THE PRESIDENT: Was he senior or junior to Chris Viehbacher?

A. He reported to Chris Viehbacher from a management perspective.

THE PRESIDENT: Right. So David Redfern reports to Chris Viehbacher and Chris Viehbacher -- David Stout is above them all, as it were?

A. That is right.

MR. TURNER: We see from this that the process of making these deals fell within part of the overall strategy of the businesses within Europe.

A. The businesses were reviewed in totality by Europe and by the pharmaceutical group, not specifically these deals. These deals would have been mentioned as part of the overall business review.

Q. But the presentation that you mentioned and what you refer to as the oversight relating to these decisions, those were specific features?

A. They would be discussed.

Q. Yes.
A. The oversight of course was not just around the formal presentations; there would have been discussion by the UK managing director, for example, Eddie Gray talking to his bosses.
Q. Yes. If we go to your main statement again, paragraphs 8 and 9 {E/2/4}. We see you say at 8 that you were:

" ... involved in the discussion and negotiation of the settlement agreements ..."

Do you see that?
A. Yes.
Q. Both of those:

" ... under the direction of GSK's UK and European management."

A. Agreed.
Q. These agreements and this negotiation took place with you as part of a team under the direction of the European management in that way?
A. The European management directed overall strategy within GSK, of which this was a part and an element of what was being discussed at the time. I think we have to put it in that context. This was not the only thing the team and indeed myself were working on. We were working on lots of different projects and we had just been through a merger.
Q. I understand, there were other things that you also had to take care of.
A. Lots of activities ongoing.
Q. Of course.
A. This was just a small part.
Q. If you turn back to the transcript of your interview, that was {E1/12/5}. For you in the hard copy that is at page 5. We see there, just under halfway down the page, that you describe how you were:

" ... finance director during that period, obviously responsible for all the finance activities of the UK organisation."

You were also sitting on the European finance team responsible for all the transaction processing, books and records and an adviser to the management team in terms of how to run the business on a day-to-day basis; is that right?
A. Can you just explain page 5?
Q. If go to the bottom right, not the internal numbering, but in the bottom right you will see it says {E1/12/5}.
THE PRESIDENT: Rather confusingly you have these numbers one apart: 4 in the document internally and 5 in the standard numbering.

MR. TURNER: I am merely bringing out that you clarified to the CMA that you also sat on the European finance team and, as an adviser to the management team, your responsibility extended to how to run the business on a day-to-day basis.

A. So rather bad grammatically I would say -- so, yes, I characterised this as -- I was finance director for that period responsible for all of the UK organisation finance activities, overseeing the business with the rest of the management team, adviser to the UK management team, and I sat on the European finance team. I would not presume to be guiding the European business in any way.

Q. Thank you.

Let us go back to your main statement. Just to situate the evidence you have given this Tribunal in the wider picture, you have been very closely involved in the progress of the patent disputes over generic paroxetine and you were also closely involved in the competition proceedings; that is right, is it not?

A. Could you just explain what you mean?

Q. You were involved both in the patent disputes over generic paroxetine coming into the market 2001, 2002, 2003?

A. You mean I was asked to give witness statements?

Q. Among other things you were asked to give witness statements but you were involved directly in it. Among other things --

THE PRESIDENT: Explain what you mean by "involved".

MR. TURNER: You took part on behalf of GSK in the discussions about how to deal with the patent dispute over generic paroxetine in 2001 and 2002 and 2003.

A. I would not presume to be a patent expert.

Q. Ah.

A. I was involved in the overall discussions for witness statements about some of the commercial activities that were going on and how the market might respond to certain circumstances.

Q. Who of your colleagues was more of a patent expert than you?

A. Vivien West.

Q. What about Cynthia Robinson?

A. I would not say Cynthia was a patent expert. She had some knowledge of it and she being in the legal team would talk to the patent team because that reported into legal.

Q. Did you also talk to the patent team or was it they who did that?

A. Cynthia mainly did that and Eddie Gray also had some input.

THE PRESIDENT: You would have discussions with Cynthia Robinson about what strategy -- you are not a lawyer, they give legal advice and so on, but you would be involved in strategic decisions about the litigation?

A. Absolutely. We would have those discussions but I am not a patent expert although I have some knowledge and understanding of what was told to me at the time.

THE PRESIDENT: Yes.

MR. TURNER: Thank you. As well as your main witness statement, you referred just now to having made others earlier; is that right?

A. Right.

Q. If we go to paragraph 10 of your statement for this Tribunal, which is on page 4.

A. Okay.

Q. Here you say, given your proximity on the discussions with the generic companies and GSK's senior management at the time, you are well placed to comment on the agreements, their purpose and the context in which they were made; is that right?

A. Correct.

Q. At paragraph 3 of your statement {E/2/2} you explain that in your evidence to this Tribunal what you are doing is building on evidence that you have previously given in the administrative phase of these proceedings; yes?

A. If by that you mean was I talked to or interviewed by various bodies then, yes, I have given some interviews.

Q. You previously stated your position on these matters in the witness statement to the underlying CMA. This witness statement, you say, reinforces a number of points you made in the earlier witness statement and so forth.

A. Agreed.

Q. You are now referring there to the two meetings that you had with, first, the Office of Fair Trading and then it became the Competition and Markets Authority. The first was on the 19th December 2011, which you attended with other representatives from your company and counsel.

A. Yes.

Q. The second was an interview that you attended with GSK's external lawyers, Nabarro's, after the Statement of Objections.

A. Yes.

Q. That blanking out in the third paragraph relates to when that took place.

A. Agreed.

Q. You gave a statement in the administrative investigation before the decision was adopted, as you say. That was your witness statement of 1st August 2013. I am not going to turn this up immediately but just to get the full suite, you also gave evidence in the form of six witness statements in the three sets of patent proceedings that were between GSK, GUK, Alpharma and Apotex.

A. Okay.

Q. You will have to say yes for the transcript rather than nod, I am afraid.

A. Yes.

Q. If you can turn to paragraph 5 of your statement {E/2/3} you stress there at the top that these events took place many years ago, so your recollections now are limited.

A. Agree.

Q. You would agree that your evidence at the time is more likely to be accurate than your recollections today.

A. Agreed. I can only tell you what I recall.

Q. Of course.

Again at paragraph 5 we see that you say, halfway down that:

> "The process of reading materials for the interview and for the preparation of this witness statement has sometimes triggered a fragment of memory of events that I may not have remembered earlier unprompted or may have recalled slightly differently."

A. It has been a long time, so yes.

Q. So for the preparation of this statement, the materials that prompted your fragments of memory, were those the one you were shown by GSK's lawyers?

A. Yes, I would say that is right.

Q. We see from paragraph 4 {E/2/2}, at the bottom, that you discussed the issue with GSK's lawyers before you wrote your statement.

A. So they have asked me questions, yes, and then wrote a statement.

Q. They wrote the statement?

A. It is my words; they transcribed.

Q. Your witness statements in the patents litigation and the competition investigation, those were reliable when they were made and your subsequent fragments of memory now are at least consistent with them?

A. I think so.

Q. Yes.

A. There are some points I do not particularly agree with, how they were characterised in some of those interviews but ...

Q. We will come to those. The statements in the patent proceedings -- in particular I focus on those -- it is fair to say those were based on a careful contemporaneous analysis of GSK's data and its activities; is that right? Careful, contemporaneous analysis of GSK's data --

A. Is that written somewhere?

Q. I am asking you if that is the case.

A. That is not how I would necessarily characterise it but it seems a little formal.

Q. But inaccurate or accurate?

A. It is my understanding of the situation is how I would characterise it.

Q. Well, let us look at -- in your bundle it is the third tab and for everybody else it is {G1/14/36}. This is a response that was given by GSK to a request for information by the Office of Fair Trading as it then was.

You will see --

THE PRESIDENT: Can we just go to the top, to the first page so Dr. Reilly can see what this is? {G1/14/1}. I see. It is a response.

MR. TURNER: The Office of Fair Trading sent questions to the company.

THE PRESIDENT: They responded on the 4th May 2012?

MR. TURNER: Yes. You will see at 12.6 for "Annual direct cost data", GSK says --

THE PRESIDENT: That is on page?

MR. TURNER: This is on page {G1/14/36}, this is the one we were at originally. My apologies.

You will see if you go to footnote 56:

> "GSK notes that in some cases the data it has collated in response to this question differ from figures cited in contemporaneous witness statements."

That includes yours:

> "GSK considers that the figures cited in witness statements would have been based on careful and contemporaneous analysis of GSK's data and activities."

Really what I am just asking is for you to confirm, although it is written in a formal way, that that is in fact the case, that there would have been, for you to provide those statements to the High Court, such careful and contemporaneous analysis.

A. I have provided information based on my recollection and what I remember from the time and what I remember from going through those particular processes, etc. So that I can say.

THE PRESIDENT: Sorry, I think you may be slightly at cross-purposes, Dr. Reilly. This is about the witness statements, I think, in the patent proceedings. So it is not based on

recollection going back like the current witness statement is. So what I think you are being asked is, when you made the witness statements at the time in the patent proceedings, when it was all very live, not trying to remember what happened 12 years ago, which is always difficult.

A. Okay. Thank you very much for that.

I can then confirm that those witness statements were on the basis that you --

MR. TURNER: As set out here? Very good.

Let us turn to your evidence about paroxetine specifically and the market in which Seroxat was being sold. If you go to your main statement and open it at paragraph 13. You give a brief statement and three lines from the bottom, you say:

"Seroxat was an important product for GSK."

A. It was an important product, yes. It had about 10% or so of sales, a bit less in profit for the organisation.

Q. Yes, it was very important -- I am grateful. I was going to explore with you just how financially important profits from Seroxat were to the business but that is fair.

A. It is important but it is not a huge part of the overall business.

THE PRESIDENT: Was it your biggest -- I thought I saw somewhere it was your biggest selling your biggest selling drug at the time.

A. It was biggest within GlaxoSmithKline and then post-merger that changed so there were many products within the portfolio post-merger.

MR. TURNER: Let us have a look at a few specific details. If you go to the fourth tab in your bundle, which is --

THE PRESIDENT: Before we do that, what was the biggest post-merger?

A. The most important product was Seretide, the asthma product.

MR. TURNER: If we go, first of all, in view of what you have just said, to the seventh tab in your bundle, which is your witness statement of September 2001 in the GUK proceedings -- patent proceedings, which is at {E2/27/1}

THE PRESIDENT: When was the merger, just for my note?

A. 2000.

MR. TURNER: Do you have that?

A. Sorry?

Q. Go to the second page {E2/27/2}. At 3.1 at the bottom, there is a heading there:

"Importance of Seroxat to SB and GSK."

You said:

"Both in the UK, and worldwide, Seroxat is the best-selling drug in the GSK group and was previously the best-selling drug in the SB (sic) group before the merger."

A. SK group.

Q. Yes.

A. So it would be wider than just the UK.

Q. So after the merger as well it remained the best-selling drug?

A. Within the overall organisation.

MR. GLYNN: But not for the UK?

A. I do not think for the UK at that time.

MR. TURNER: Let us turn then on to --

MR. MALEK: So that reference in the last sentence of that paragraph, you are talking about the 10.4, that is for the whole company and not just the UK?

A. I believe that is the case.

MR. MALEK: Okay, thank you.

MR. TURNER: 10.4% of the merger company.

If we turn now onwards to your fourth tab, {A5/85/1} for everybody else the first page shows you that this was a witness statement from a person called Heinz Redwood. Can you just tell the Tribunal who he was?

A. Heinz Redwood?

Q. Yes.

A. I know he was somebody who gave a witness statement; I am not aware that I ever met him.

Q. Yes. Let us turn to page {A5/85/3} to 4 in this. Look at paragraph 16 on page 4, he said in his expert opinion -- I am sorry.

(Pause)

" ... sales of Seroxat in the UK of £78.5 million in the year 2000 would be regarded as a major commercial target by generic competitors."

That statement, does that reflect your understanding of the figures at the time, so far as you can now recall?

A. That to me seems about right in the context of the UK market and in the context of GSK UK where sales were in excess of 500 million.

Q. It also accurately records that:

"Seroxat was a target for generic pharmaceutical companies ... very attractive profit opportunities opened up."

A. Of course; it was a big product.

Q. So let us go now to the decision, {V/1/218} for everybody else, and it should be the fifth tab in your bundle. These are two tables with data that has been provided by your company, used to compile them, showing Seroxat profits, first for the 20mg dose and below that for the 30mg dose. You see that?

We see for the 20mg that GSK's profit -- and I will look at the cumulative figure at the bottom, the total -- the 20mg stood at £110.2 million; do you see that?

A. Yes.

Q. For the 30mg, the equivalent figure stood at just over £85 million.

THE PRESIDENT: A 5-year total is it?

MR. TURNER: So this is a cumulative total over the five years; does that seem right to you?

A. I can see the numbers that you are quoting. They are not in a form that I have seen before or understand.

Q. But what we see from that is that the profits first derived from the 30mg Seroxat, those were considerable, they are not negligible when one is talking about the Seroxat product more generally. They are very strong figures.

A. Personally, I am not sure how they have been calculated. That does not necessarily resonate with me with my experience as finance. I do not know how the calculations, for example, have been allocated for field force costs to these products that you are characterising here. Because actually my recollection of the Unison system was that field force costs were not allocated into particular products and certainly not by 30mg or 20mg. So I am not sure how you could say that that is the profit of the 30mg tablet if you are not in any way allocating the cost of the field force to that.

Q. We will explore that separately without the need to trouble you.

A. But it is accounting. It is a simple accounting exercise which is not done by the company.

Q. We will deal with that separately. Can we at least ourselves agree that the 30mg dose was a very important part of the Seroxat business for your company?

A. It was part of the business; it was not a very important part and I would not characterise those profits as being correct. In fact, that cannot be true.

Q. So your evidence is that these figures cannot be right?

A. I do not recognise those figures because you are not allocating the costs to broker it, in my opinion.

Q. That is a debate we will have to take up elsewhere.

THE PRESIDENT: Can I just ask, on a simpler level, whether the figures are right or not, just as between the 20mg and the 30mg, whether the actual figures are correct, is it right or is it not

right that the -- although the 20mg seems to generate greater revenue, the revenue and profit on the 30mg was also significant?

A. I would characterise the 30mg as significant but bearing in mind I have not seen these numbers before -- so my recollection -- and I can only tell you what I can remember from the time -- is that the 20mg was a much bigger product than the 30mg. 30mg was important but was not the primary focus and primary competitive product that GSK was putting resource behind.

THE PRESIDENT: Yes, thank you.

MR. TURNER: Can we just check one thing before leaving this then, Dr. Reilly? The accounting -- the possible accounting failure to account for the field force costs in the profit line, that would not affect the first column which are the figures obtained from your company reflecting GSK's sales, would it?

A. No.

Q. So that column should be reasonably accurate?

A. It should be.

Q. Yes --

A. But I can only say what I remember. That proportion between 20 and 30 does not seem to gel quite with me.

THE PRESIDENT: The sales figures?

A. Yes. The 30 seems higher than I would remember.

Q. We will deal with that separately.

But let us take these figures for moment at face value, as they were provided by your company pursuant to a compulsory request for information.

A. If you added the two together, that seems about right, but the split I cannot really comment.

Q. In terms of the sales -- let us compare the sales value for different years for the 20mg dose for the first table, the 30mg dose in the second.

Take the year 2003. There we see sales reflected of 25.9 million in relation to the 20mg dose and 22.6 for the 30mg dose. Does that seem to you that it must be wrong?

A. I have never seen this split before, so I am finding it difficult to comment on that in terms of a split between the two presentations.

THE PRESIDENT: Do you want to spend time on this? It says it is based on GSK's response, which we can turn to.

MR. TURNER: Yes, it is the question whether the 30mg dose is important and the witness is saying that he does not believe that it was that important.

THE PRESIDENT: He is surprised by that figure which he does not recognise, the split. I think the total is right but -- is that my understanding?

A. That is correct but please do not mischaracterise my words. What I did say was that it was an important product but I cannot -- it is an important presentation but I cannot tell you whether 22 million is the right number. It seems, to me, to be a little high.

MR. TURNER: That is fine.

Finally then, if we look at 2004, we see the 30mg profit -- sales as in excess of the 20mg sales; would that seem right to you in that year, 2004?

A. I was not in the UK business; it does not seem right to me.

Q. Well, we will not take this --

THE PRESIDENT: This is a long time ago that you are asking --

MR. MALEK: That is sales by value but if you look at volumes, the volumes are less for 30 than 20, is it not?

MR. TURNER: Because the value of the 30mg dose is higher.

MR. MALEK: I understand that.

MR. TURNER: What we are exploring merely is the importance of this particular product.

If we turn then back to Mr. Redwood's statement, which you had in the fourth tab.

THE PRESIDENT: Just before you leave that. "DDD" means what in the volume?

MR. TURNER: Something daily dose.

MR. GLYNN: Defined daily dose.

MR. TURNER: I am grateful.

A. But defined daily dose, not tablet or pack?

MR. TURNER: Yes.

A. Pack? Tablet?

MR. TURNER: No. I am not going to explore that now, sir. We do not need to worry about it.

Can we turn, please, back to Mr. Redwood --

A. I do take the point that that is not a pack. A tablet would be a much easier volume number to deal with than something that you cannot describe.

Q. Yes, we perhaps will not deal with that now, Dr. Reilly --

THE PRESIDENT: We understand your point.

MR. TURNER: Can I ask you to turn back to Mr. Redwood's statement in the fourth tab, which others will have at {A5/58/5}. If you could go in that please to the fifth page.

If you go to page 5, paragraph 20(iii), there Mr. Redwood's evidence was that he carried out case studies and said that:

" ... generic paroxetine can be expected first to offer price discounts. Later, when these are reflected by the National Health Service in reducing the official drug tariff price of paroxetine, generics will probably undercut the pre-generic price of Seroxat by around 30% within 6 months of launch and by 45% to 50% after 12 months and by 60% after 24 months."

Two years. So, in view of that evidence -- and it is no criticism of your company or indeed of what you did -- but you would agree that GSK had strong commercial incentives to delay generics coming onto the market with independent products for as long as they could? Do you agree that they have those incentives?

A. This statement would be based on what would happen for genericisation in the absence of patents.

Q. Yes if true generic competition, as you have heard it being called in these proceedings, happens, this is the prediction of the expert at the rate at which your business would have been impacted.

But my question to you is a more general one arising from this -- again, I am not leveling any criticism, but I am merely asking whether you would agree that in view of this your company had strong commercial incentives to delay generics coming on the market with independent products for as long as they could.

A. At the time the company had patents in place and was in a slightly unusual situation with the data exclusivity expiring earlier than would normally be the case for genericisation.

So a slightly unusual situation, but patents were still in place, a whole raft of patents, so you would not expect these numbers to materialise in that given situation. This would be the sort of erosion you would see if there was no patents at all.

In terms of the question you raised in terms of actual incentives: as we have, I think, already agreed, paroxetine was an important product, but it was not -- the UK organisation or the group was not dependent on only Seroxat; there were lots of other products and there were lots of other opportunities for profit. This was about deciding what was the best course of action to move forward for the overall business.

Q. I will put the question just one more time in case it was not clear.

Would you agree that GSK had strong commercial incentives to delay generics coming on the market with independent products for as long as they could?

A. I would say it would characterise the discussion at the time but actually there was an incentive in terms of potential generics coming on board that would cause a lot of profit but

it was about balancing the other things that could be done in the business and there were a lot of options.

Q. Thank you. Let us move on.

We will turn to the state of the market in 2001 and 2002. If we go to your first witness statement in the patent litigation with GUK, which you should find in the seventh tab and everybody else should have at {E2/27/1}. You will see from the first page, it is up on the screen, that it is dated 25th September 2001.

A. Sorry, can you give me the reference again, please?

Q. Yes I am sorry, it is the seventh tab in your bundle?

A. Okay.

Q. You will see that is your statement and the top right tells you the date.

A. Okay.

Q. If you could please go to page {E2/27/8} using the numbering in the bottom right-hand side. Go, first, to paragraph 7.4 at the top. This was your evidence to the Patent Court. You pointed out that paroxetine is one of the best-selling medicines in the UK and the world and is therefore a very attractive target for all UK and European generic pharmaceutical companies, subject only to SB's patent protection.

A. I agree.

Q. You went on to say:

"There are no significant technical difficulties in producing paroxetine ..."

That is right?

A. That is what I said at the time.

Q. It is correct now to the best of your recollection?

A. To the best of my knowledge -- I am not a manufacturing expert, but that is what I understand.

Q. That is the evidence you gave and you went on to say:

"There are also --

THE PRESIDENT: In saying that, you, I imagine, as you are not a technical expert, you would have been informed by discussion, if you are prepared to say that, with technical experts; would that be right?

A. Yes, agreed.

THE PRESIDENT: That was your understanding.

A. Yes.

MR. TURNER: Equally, you went on to say that:

"There are already several known suppliers of bulk paroxetine hydrochloride suitable for formulation."

A. Yes, that was my understanding.

Q. "That transport of the active ingredient in bulk in the quantities necessary to manufacture tablets is relatively simple and so the wide geographic spread of the above manufacturers would be no obstacle to generics wishing to manufacture and sell paroxetine tablets in Europe."

Again, to pick up the President's question, how much of that would you have recorded based on advice from your colleagues and how much of that would have been in your direct knowledge?

A. I, of course, would have talked to all of the relevant experts within GSK to put this together.

Q. At 7.5, the next paragraph, you say in the last sentence concerning Norton or IVAX:

"Whilst I am not able to obtain formal confirmation of this, from my past experience of Norton's activities ..."

I think that must be your own:

" ... I would expect it to want to be in the advance guard of generic companies competing with Seroxat."

Yes? Can you elaborate then on your personal experience which led you to that view?

A. My personal experience in terms of the generic companies was that --

Q. This is about Norton --

THE PRESIDENT: Specifically Norton.

A. Specifically Norton, but they were one of the premier generic companies at the time. All of the generic companies wanted to be on to the market first. It gave them kudos within the market, it was a source of competition between them.

MR. GLYNN: Could I ask: were they involved in parallel imports as well as the generics business?

A. Norton were not, as I understand it.

MR. TURNER: Is there any further basis for what you say there, as far as you recollect now, about Norton's activities? Nothing more specific?

A. No.

Q. If you go back to paragraph 3.1 in this document, {E2/27/2} at the bottom, and go over to page 3. At the top of page 3 {E2/27/3} you said:

"SB has committed a great deal of investment in marketing Seroxat in the UK."

Do you see that?

A. Sorry, where is that?
Q. That is three lines down from the top of the page, if it is on the screen. You will see it is three lines down in the hard copy.
A. Yes, got it.
Q. So that was the position in relation to your company. Your evidence to the Patent Court in October 2001 was that the generic companies did not carry out substantial marketing; do you recall that?
A. Sorry, where is that?
Q. We will go to it in a moment but before we do, as a general proposition, is it right that generic companies do not tend to carry out substantial marketing?
A. They do some. They do not do the same type of scientific marketing but it depends on the product.
Q. In relation to Seroxat?
A. They were not on the market.
Q. What would you have expected?
A. It is not for me to speculate.
Q. I see. Let us go then to your comment that you did produce and you were commenting on the witness statement from one of the Generics and their witness, Mr. Saynor.
If you go to -- I think it is tab 19 of the bundle in front of you, which for everybody else is at {A2/15K/3}. You were involved in this patent dispute and the witness on the other side was a Mr. Saynor; do you recall that?
A. Yes.
Q. If you go in that to paragraph 10 on page 3, you see his description of his business and its approach to marketing. Note what he said in the final sentence:
"The total marketing budget for the company is relatively small, approximately £400,000 per year."
That was not a surprisingly small figure to you, was it?
A. Why would it be any surprise? Why would that be of any relevance to me?
Q. I will come on to that but the figure itself, that did not surprise you that it was so small?
A. I do not think I have ever commented on it.
Q. Well, you say that, but if we go then to the eighth tab in this bundle, which for everybody else is {B2/84/1}.
THE PRESIDENT: Mr. Saynor does comment on his marketing activities then?
MR. TURNER: Yes, let us follow this through, if I may, then please do feel free.

If you go to {B2/84/1}, which for you is tab 8. Here we have an exhibit to your second witness statement in that litigation and it is dated October 2001 you will see from the top. Do you see that?

A. Sorry, just point me to that one again.

Q. This was part of your responsive evidence in that case --

A. Right, yes, I understand.

Q. -- commenting on what he had said.

A. Okay.

Q. If you turn over the page, {B2/84/2}, look at -- your comment on his paragraph 10 you will see there at the top left; do you see that? Shall we read together what you commented:

> "The reason why GUK's marketing budget is so small is that, like all generic companies, it is able to rely on the very substantial investment in marketing made by the ethical pharmaceutical companies. Because there is so little marketing by generic companies, there is very little differentiation between their versions of the same product and they can compete only on price."

So you did, in fact, have reason to, and did comment on that, did you not?

A. I did not comment on the quantum and I think here we have to differentiate between --

Q. Here you say:

> "The reason why GUK's marketing budget was so small --"

A. You specifically asked me about the 400,000. I think we have to make a differentiation between the type of marketing that we have within the R&D companies and the type of marketing within the generic companies.

The marketing from an R&D perspective is to doctors, to educate for the products, the presentations that they have, etc. That is not the case for the generic companies. They are marketing to wholesalers, outlets etc, different type of marketing, different space.

Q. Different scale in terms of the size of the budget?

A. I do not work for a generic company, so I cannot comment on that.

Q. No, I am merely referring to the fact that you said that the reason why GUK's marketing budget is so small is that and then you gave a reason at the time.

A. Smaller than GSK, which is quite considerable. Smaller than R&D companies.

THE PRESIDENT: You say it is a different kind of marketing but as I understand it, they rely and piggyback to some extent on the marketing that you undertake.

A. Agreed because the brand has been built, the essence of the product, what it can do, its clinical features, etc, have all been established in the physician's mind by the R&D companies.

The generics rely on that when they say they are generic products, so they market it to a different space, which is actually to substitute what has been generated in terms of prescriptions by the medical staff into the supply chain.

MR. MALEK: You accept that the marketing is not going to be that great, is it?

A. It is not as big as you would expect from a R&D company, agreed.

MR. TURNER: Although you talk about it being marketed, directed at a different space, you were commenting on what was the overall total marketing budget for their company, that was the comment?

A. My comment here?

Q. Yes.

A. I think I am saying there is little marketing by generic companies into the space in terms of physicians.

Q. You were actually referring -- he was referring and you were commenting on the total marketing budget, Dr. Reilly.

A. In here. But I am clarifying that they are marketing to a different space, that is all I am saying.

THE PRESIDENT: I think the two things are consistent. They spend much less and where they spend it is to a different space --

A. To a different space.

THE PRESIDENT: -- as Dr. Reilly puts it.

MR. TURNER: Yes.

THE PRESIDENT: Because of that he is not surprised that it is not a large figure, as I understand it.

A. Yes, agreed.

MR. GLYNN: While we are on this point, would you say the marketing by the parallel importers and the marketing by the generics companies is essentially similar?

A. Very similar.

MR. GLYNN: Thank you.

A. Again they are to a different space. The parallel importers are not trying to market at all to physicians; they are just going into the supply chain and again substituting for paroxetine Seroxat.

MR. TURNER: Sir, just to guide me and the witness, time can go very quickly when you are cross-examining. It is now after 11.30 am. If the Tribunal would indicate when you feel it is necessary to have a break, I will just otherwise continue.

THE PRESIDENT: Well, the break is primarily for the transcribers. So at a convenient moment between now and 12.00 pm, when we come to a sensible point, when you are moving from one topic to another and you know when that is.

MR. TURNER: I will press on.

Dr. Reilly, sales of Seroxat had been increasing, as of around 2002/2003, year on year, and your projections suggested that there would be continued growth; is that not right?

A. We were projecting small continued growth for the life of the patent in the original plans, yes.

Q. Yes. Let us turn to tab 9 of your bundle, which for everybody else is {E2/28/1}. This is a witness statement that you also made in the patent proceedings, dated 22nd October 2002. Do you have that? This was the Apotex litigation?

A. Agreed.

THE PRESIDENT: You remember there were three sets of proceedings, there was GUK, Alpharma and Apotex; this is the third.

A. The third one?

MR. TURNER: If you turn to page 3, you have {E2/28/3} and go to the foot of the page, paragraph 4.2, this was your evidence in late October 2002:

> "Sales of Seroxat have continued to increase, both on a global basis and in the UK, each year. Prescriptions for paroxetine increased by 12% in 2000, and by a further 6% in 2001, the last full year for which figures were available. This is the result of GSK's continuing investment in marketing and in developing and approving new indications."

You said in the last sentence:

> "UK sales are projected to continue to grow in future years."

That is probably the best statement of what the expectation was at that time, is it not?

A. Yes, but let me just clarify, if I can. We do talk about prescriptions. So prescription growth was a very important part of the commercial strategy, as I have said in many places in these witness statements, but the actual sales growth was a slightly different number because of parallel trade impacting us, the business.

So there were lots of dynamics in terms of what we are trying to grow in terms of prescriptions but then what the actual sales growth would be, would be slightly different, usually lower.

Q. I understand that. However in your evidence for the Patent Court you begin by talking about sales of Seroxat, you ended by talking about sales of Seroxat being projected to continue, so presumably you thought that the figures on the prescriptions of paroxetine increasing were a good guide to the trend for sales.

A. If we could continue the growth in prescriptions then the business is healthy, that is correct. If the patents are not in place then of course it is a different situation.

Q. Yes.

Let us now go to your main witness statement again. You have that separately at {E/2/5} and look at paragraph 13.

We see in the second sentence that:

"Normal business practice --"

Pausing there, do you mean within your company?

A. Yes.

Q. "... involves planning on annual three-year and ten-year cycles and that long-range forecasting was critical in managing investor expectations ..."

Please turn back now to the transcript of --

A. Sorry, just a comment. That was the practice followed within GSK. You could argue that a lot of companies followed that particular practice.

Q. Yes. Thank you for that.

Can we now turn back, please, to the transcript of your CMA interview in the second tab, which for everywhere else is at {E1/12/1}. If we can go please to page {E1/12/14}.

On page 14 is part of your interview by Mr. Moore. If we take it from the bottom section, you are responding to Mr. Moore and you say after, "Well, of course it is important":

" ... nobody wants to be caught with surprises, nobody wants something untoward to happen; everybody had expected that there was going to be at least another five years ..."

Pause there. If I go up three quotes to Mr. Moore, we can see that means from 2001, so five years from 2001:

" ... without generic competition. That is the basis on which the business was planning. That is the basis on which the whole investment behind this particular

product was made. So to find ourselves in the position that generics were trying to enter the market early was not a good position, actually."

So, what in sum was happening was that the challenge to the patent position posed a threat from the point of view of your business planning. Yes?

A. Agreed. Can I give some context?

Q. Of course.

A. So, normal business planning would involve scanning the horizons, making sure you understand the threats, making sure you understand, from a whole business perspective what the risks and opportunities are to that business and then you can plan accordingly. So we are not just focused on Seroxat, we are focused on Seroxat plus all of the other products within the portfolio, looking at the risks but also the opportunities.

Yes, it would be disappointing if we had a patent challenge and lost to the generics earlier than we had actually anticipated in the patents but there were lots of other things to do from a business perspective that meant that we could grow other businesses, invest in other businesses. We just need to understand what is happening but it takes some time to actually make some of the changes that would have been necessary to minimise the impact on the business and on people, so, for example, we had six field forces behind Seroxat at the time these challenges started to come in. We could easily redeploy those onto different products because we had excess products just post-merger -- in fact we could have sold one product or licensed in others if things had not -- if there were issues from a portfolio perspective.

So we can do those sort of activities. Where it takes a little bit longer, where you need to have planning in advance is around the factories. Although the factories had been moved, from a business reporting perspective, out of the UK group into the manufacturing group, there was still a close alliance between UK pharma and the Crawley factory because it was the sole supplier of paroxetine and they wanted to know what was happening from a business perspective so they could minimise disruption. So that is the sort of planning/horizon scanning we were looking at.

Q. So you could have coped in various ways with generic entry. Had it happened, it would not have been an entire disaster.

A. Agreed.

Q. However it was an important risk for the business?

A. It was important to identify.

Q. Also to counter?

A. To identify and then decide what is the best strategy to impact it moving forward. I think what is important is not to be caught unawares by these things, not for something to happen and you to be totally surprised. If something happens in the normal course of business, we can cope with it, but to be surprised means that you are not really managing that business effectively.

THE PRESIDENT: Because it is -- I mean it is part of life really for a big R&D pharma company that there is going to be generic challenges for your successful -- really successful drugs.

A. Indeed and in fact for most of those drugs there is a phrase in terms of life-cycle management that means you prepare for those events coming and there are lots of commercial strategies that can help you manage those events so that is something that is in the ordinary course of business.

Here, as I mentioned previously, there is a slightly different scenario because the data exclusivity was lost earlier and therefore the Generics could use that information to come on board with their marketing authorisations because it is not the job of the regulators to tackle the patent issues. So they would just grant a licence, products could come to the market, but they could be contravening the patent protection that we legitimately had and that was the big discussion around at the time.

Q. Can we perhaps follow up the President's question there. Paragraph 15 in your main statement, if we go to that, {E/2/5}. The evidence you have given the Tribunal in the second sentence is this:

> "As a matter of general principle, legitimate generic competition [then you underlined in your words] after patent expiry was a fact of life."

But as the President has just put you, it is equally true that patent challenges by generics are a fact of commercial life also in your industry.

A. Correct.

Q. A company like GSK is well aware that its patents might be invalidated in court.

A. Agreed.

Q. That people might circumvent them so that it might have to try to sue to enforce its patents?

A. Yes, compounded here by the data exclusivity issue.

Q. Absolutely. With all of that context, patent litigation is a very significant commercial risk for a company like yours because it is a route by which generics can break into the market and compete with companies like yours for business?

A. They can launch products, that is correct. They would then be at risk when they do that because there are legal remedies, etc.

Q. My question was again that therefore it is a significant commercial risk, because it is a route by which generics can do that, faced by a company such as yours?

A. It is a risk.

THE PRESIDENT: Would that be a sensible point, Mr. Turner?

MR. TURNER: Perhaps one more question or so and then that would be a sensible point.

THE PRESIDENT: Sure.

MR. TURNER: If we turn to {E1/12/13}, that is the second tab for you again. It is your interview and if we go in that to page 13.

A. Sorry, can you just say again?

Q. Yes. This is the second tab. It is the interview. It is page 13.

A. Of the interview?

Q. Yes, I am sorry.

A. Right, page 13.

Q. It is the second place on the page where your name appears, a third of the way down. Are you looking at page 13 in the bottom right-hand corner?

THE PRESIDENT: In the large numbering, large page numbering, the stamped numbering.

A. Got it now.

THE PRESIDENT: The page that begins:

"So that was one consideration."

MR. TURNER: Yes, that is the one; do you have that?

A. Yes.

Q. The second place where your name appears you refer to the commercial benefit that you got from these particular agreements in response to Mr. Moore's question. You say:

" ... well, its benefit was -- it did not get a full generic entry scenario, so it was a more controlled scenario."

A. It was not a full generic entry. It was not ideal because we had patent protection. We actually did not believe that there was a legitimate entry but there we go.

Q. It was a controlled scenario?

A. I think that was the phrase I used at the time, yes.

Q. We will come onto the details in a moment. Halfway down -- yes, I am sorry. Halfway down the page, at the end of Mr. Moore's question to you in the middle, he said:

"Can you just talk me through the actual business planning benefits that are obtained as a result of this agreement or these agreements?"

Do you see that?

A. Yes.
Q. Your answer was:
"There is more stability in terms of the business moving forward. If the other scenario you are looking at is essentially that there would be full generic entry and even if the generics enter at risk, then the market could not be recovered, and so the damages would be much more significant moving forward."
So, again, we take from this, do we not, that maintaining stability was very important to your business?
A. Again, I am saying is that maintaining stability was something that these agreements -- was worked into these agreements because we thought that was appropriate at the time. Important from a business perspective? Yes, but not critical. There were other things that could have been done in the overall business.
Q. Thank you. Sir, that may be a convenient moment.
THE PRESIDENT: Dr. Reilly, because everything is being transcribed, which takes huge concentration from the transcribers, we always take a short break mid-morning and mid-afternoon. You are free to go out for a moment but as you may know you must not discuss your evidence with anybody.
A. Okay, I will not.
THE PRESIDENT: So 11.55 am.
(11.50 am) (A short break)
(12.00 pm)
MR. TURNER: Dr. Reilly, moving now to the pricing of paroxetine and the prescriptions. Paroxetine is a prescription-only medicine?
A. Correct.
Q. Do you happen to know if it is prescribed privately or only in the NHS?
A. I believe there could be some private prescriptions but very, very few.
Q. Can we turn please to tab 7 of your bundle? It is {E/2/27} of the Magnum system. This is your witness statement in the patent proceedings with GUK in September 2001. If you go to paragraph 4.1 on page 3, at the foot of the page, you point out there in 4.1 that a prescription can be done either by brand, such as by identifying Seroxat, or generically by just noting paroxetine; yes?
A. Yes.
Q. Also that when a prescription is made out for Seroxat, it is true that the pharmacist has to dispense Seroxat.

A. Correct.
Q. They could not dispense a parallel import product, at least, if it is not overstickered with exactly the same brand name, as we understand it.
A. That is correct I think, yes.
Q. Conversely, where a prescription is made generically, any form of paroxetine can be dispensed, generic, parallel import or the branded original?
A. Correct.
Q. Can we go then to -- for the Magnum system it is {E/1/13} and it is, I think, tab 6 in your hard copy bundle. If you turn the page you will see that this is your first witness statement in the Alpharma litigation, and this one is dated 10th June 2002.
If you go in it to paragraph 5.1 on page {E1/13/5} of the bundle numbering, not the internal numbering. There you explain that in the years 2000, 2001, prescriptions for paroxetine were written in the region of 90% generically, that is paroxetine, and not Seroxat; yes?
A. That is correct, yes.
Q. You explained that GSK relied on what you called brand equalisation deals as a way of responding to generic competition on price.
Let us turn to where you deal with that. It is in your bundle at tab 7, you need to go on one tab. For everybody else it is at {E2/27/1}. If you go in that to page 5. {E2/27/5}. Here is your description of the process of competition that your company engaged in when there is generic competition; do you see that? It begins at 4.6. Halfway down the page; do you see that?
A. Yes, I do.
Q. You describe the process of brand equalisation deals in 4.6 to 4.8. In particular at 4.7, halfway down, you say that:
> "SB in common with many other pharmaceutical companies therefore offers its patent-expired branded medicines to pharmacists at a blended discounted price which is calculated so that a pharmacist dispensing the branded product against all prescriptions, branded or generic, would be in the same financial position as if he had purchased generic products at the prevailing discounted price to dispense against generic prescriptions and branded products at the appropriate discount off list price to dispense against branded prescriptions and that has the advantage to the pharmacist of simplicity."

Yes?
A. Correct.

Q. Over the page you explained that in this way, when generic equivalents to a branded product become available, your company is obliged to compete to drop its price to customers to match the discounted generic price in respect of that proportion of its former sales, which would correspond to the percentage of prescriptions written generically. That was 93% then in the case of Seroxat. Furthermore, brand equalisation deals can be negotiated only with pharmacy chains who purchase direct from you, since, in practice, the blended discounts are usually negotiated on a monthly basis, it is not practicable to negotiate such discounts with wholesalers.

So there we have a description, from your point of view, of how your company dealt with generic competitors on the market in terms of price competition for the business of pharmacy chains; yes?

A. Yes. I would also point out there were also some indirect deals later on introduced into that -- into the brand equalisation process as well, but that was a later stage.

Q. "Later" meaning after this witness statement?

A. Possibly before. This was my -- I think my understanding at the time. I think there are people who have a much greater understanding of these things than me, but I just flag for reference there may be also indirect deals. It is a question.

Q. So was this information, to go back to the President's question earlier, something that you knew of your own knowledge or which you would have been advised about before you wrote statement?

A. This is my understanding based on conversations with people in the team within GSK.

Q. What you are saying is that GSK's discounts would apply to that part of the business with the pharmacy corresponding to the generic prescriptions that it was meeting?

A. For generic products.

Q. Yes, there was a part of it that dealt with the branded and your discounts were focused on the generic competition?

A. Yes.

Q. Yes. If we can now go to your second witness statement in the Alpharma litigation, which you should have at tab 10. Everybody else should have it at {E2/29/1}. This is dated 30th July 2002. Do you have that?

A. Yes.

Q. Can we go in it please to the second page {E2/29/2} at 2.2 where you say that there was an important point.

The important point was that:

"GSK's brand equalisation discounts are only offered [and you emphasise] in reaction to market pressures, principally the prices charged by parallel importers. GSK offers them only when it has to do so to retain custom. It is bizarre to suggest that GSK would offer such discounts without having to do so."

Does that therefore accurately reflect the fact that GSK's pricing behaviour was reactive?

A. So just a point of clarity, that you were talking previously about brand equalisation against generic competition, which we discussed. This is generic competition in terms of parallel importers, which is slightly different but it is also carried out.

Q. In what way is it materially different? You say it is slightly different? In what way it is materially different?

A. Branded products would have discounts given against parallel imports and generic products would have brand equalisation against generics.

Q. Apart from that there is no other difference you are referring to?

A. You said specifically genericised products; there could be discounts against branded products as well.

Q. In relation to both generics and parallel imports, would it be true that your approach would be, as you listed here for parallel products, reactive?

A. Mainly reactive.

Q. Let us move on to the question of parallel trade and what you say about that and inefficiencies. If we go to your main statement in these proceedings again and turn in it to paragraph 7 {E/2/3}. At the end of paragraph 7 you refer to parallel trade being another issue:

"... for the UK business around that time. Traders were bringing non-UK pack into the UK from other European countries and sales for these packs were not fully credited to the UK business as I explain below."

So this was an issue for your company and you refer to the problem that sales were not fully credited to the UK business. That was the problem; yes?

A. There was imperfections in the system, so that caused the problem, yes.

Q. Those are the imperfections that you are referring to in your statement?

A. Two imperfections. One is not being credited fully and also non-UK pack was impacting the factory output in terms of planning for the factory, etc.

Q. Let us see the full detailed explanation that you do then give below. If we can turn to paragraph 64 on page 17, you deal with it there at the foot of that page; do you have it?

A. I have.

Q. "This parallel import point was a big issue for us. I recall a lot of management time being taken up with it at the time."

Yes?

A. Yes.

Q. "Given that these agreements were about settling patent disputes and the generic companies were seeking supply agreements as part of that, it was beneficial that the agreements helped to address the problem of parallel trade."

So that was a plus side of these agreements, which we are going to go on to consider from your company's point of view?

A. It was a plus side from dealing with that particular issue but we would rather have dealt with the parallel trade issue than have to enter into those agreements.

Q. But it was a plus side from entering into these agreements, taken from there?

A. It was a benefit that some of the parallel trade issues would be addressed, some.

Q. If we go back to paragraph 63 {E/2/17}. Just the paragraph before. You explain halfway down:

> "That sales made by the European subsidiaries of GSK were credited to GSK UK at the export price for internal accounting purposes. However, due to limitations in the data available ... not all sales of parallel imported product sold in the UK were credited to GSK UK."

Not all:

> "The supply of paroxetine to the generic companies had a benefit to the UK ... business in countering these inefficiencies since the generic companies had distribution links into smaller retail accounts which had been purchasing parallel imports and which GSK had not been very successful at penetrating."

So you describe what these inefficiencies are to clarify what the benefit to your company was and these are inefficiencies caused by the group's internal accounting for parallel import products, as you explain.

A. The internal accounting but based on external data. So the way the process worked was that IMS data was used from each of the countries and then credited to the recipient market. But because of timing issues, because of difficulty in finding all of the data and the fact that IMS is based largely on samples, there were some inherent problems with the overall reconciliation. It is not something that could be said, France sells a number of packs, Greece sells a number of packs, Spain sells a number of packs, several countries sell a

number of packs, and they all come to the UK and it is all added up nicely; unfortunately that was not the case.

Q. So these were internal accounting inefficiencies you are describing?

A. Based on external data.

Q. Let us move on to Project Dyke and your response to generic effects. We turn in your statement to paragraph 12 {E/2/5}. You say there that:

> "GSK, operating like any originator with patented product, was surveying the horizon for risks, which is a normal part of business activity."

You are conscious of the need to monitor, that is to say the potential emergence of competition?

A. All sorts of risks but whether there would be challenges to the brands, what the generics were doing, etc. They were all things that should be risk -- or observed in terms of overall business management.

Q. That need to monitor those risks applied across the European business?

A. It applies across GSK, all businesses. There are processes that we have to go through.

Q. At paragraph 19 of your statement {E/2/7} you make the point in the penultimate sentence:

> "There was no overarching European policy on settlement."

You mean patent settlement disputes; yes?

A. Agreed.

Q. "If there had been a strategy, I would have been made aware of it."

So let me leave aside patent settlements particularly. There was, was there not, a coordinated approach to the potential threat across GSK's European business, including the UK, whether through patent disputes or otherwise?

A. There was a team that was set up to scan the horizon with regard to these particular challenges and to find out what was going on across Europe.

Q. Scanning the horizon or monitoring what was wrong is not all there was, was there? There was also a role in developing a strategy to counter the threat of potential generic competition, was there not?

A. The strategy for dealing with any issues that came up in the market was left to the markets themselves.

Q. Each individual territory?

A. Each of the individual territories.

Q. So you say now that there was no joined-up approach across Europe for GSK; is that your evidence now?

A. I think I said at the time that there was no overarching strategy.
Q. For settlement?
A. For settlement.
Q. I am talking now more generally.
A. More generally there was a process for observing what was happening across all of Europe, sharing best practice across each of the markets and then allowing the markets to decide what was the best strategy moving forward.
THE PRESIDENT: I think the question is whether this team that you said had been set up was only concerned with monitoring what is happening, gathering information, or was it also concerned with discussing strategy.
A. My understanding was it was mainly regulatory and patent people that were observing and monitoring what was going on, so they reported in -- so they were not developing any commercial strategy.
THE PRESIDENT: The team that you referred to, never mind who was reporting it, the team that you described -- you say a team was set up. That team --
A. Was monitoring.
THE PRESIDENT: Did that team also discuss strategy?
A. No.
THE PRESIDENT: It was purely that the discussions in -- the team were only monitoring what is going on?
A. That is my understanding.
MR. GLYNN: If I might, I apologise. If it was thought that there would be an implication in other markets for a possible patent settlement or some arrangement in one particular market, how would that have been taken into account in the overall business decision taking?
A. So that would have been dropped down to the actual market itself, the individual territory. They would have developed what they thought was the best response to it in the market and then discussed that for approval to go forward.
MR. GLYNN: If a decision in one market would have had ramifications in another market, that surely would have been taken into account somehow.
A. That is why they had to get permission from the European management to move forward, but it was not something that was dictated downwards; it went back up for approval.
THE PRESIDENT: It went back up to European management?
A. For approval for exactly the reason that you cited.

MR. GLYNN: So the effect is that European management as a whole can influence the factors in each market because it has an importance for the whole of the European market?

A. If it has an importance overall for Europe, which could be -- pricing was a big concern. There are other issues from a patent perspective. So things like the mesylate issue had different implications for different markets, so that was handled differently and that was the case for all of the issues that were identified.

MR. TURNER: Shall we turn back please for your interview with the CMA? For everybody's reference it is {E1/12/7}. Turn in it to page 7. You will see towards the top Mr. Moore says:

> "Yes. Can I just go back to GSK's particular strategy in relation to paroxetine? Are you aware of the project named Project Dyke?"

Do you see that?

A. Correct.

Q. "I think in relation to these matters [you reply] there are two teams or two Project Dykes. One was a European initiative that was looking at what are the patent challenges that were arising during that period across the European markets; and then there was a local team set up to review actually, specifically what was happening in the UK with regard to generic challenges."

So there were two aspects, two Project Dykes?

A. We considered from a European perspective there was information flowing in from the UK that we needed to analyse, but also we needed to analyse what was happening in the market, so there were small teams set up within the commercial operations group that would find out if anything is impacting the business such as with the wholesalers, etc, and pick up that information and feed it in. That is the team I previously referred to that reported into Mike Thompson.

Q. But feeding into any coordinated strategy or was it all ad hoc?

A. It was feeding into the team that was led by Eddie Gray, the general manager in the UK.

Q. Let us go to the bottom of that page. You say there -- it is the second up from the bottom:

> "I -- by the way, just to be clear, I did not attend any of the European Project Dyke meetings; I wasn't involved in the team, etc; I merely handled the UK."

On reflection, do you think that that statement requires any qualification?

A. I do not believe so.

Q. Let us go to, in your bundle, tab 11, which for everybody else is {B2/37/1}. Do you have that?

A. Yes.
Q. Have you seen this document recently? This is a document bearing your name, jointly authored by you and Nicola Course of 5th February 2001. Have you seen it recently?
A. I have seen it recently, yes. It has been in a bundle of documents given to me, yes.
Q. So this is a presentation that you put together with her and she was then, I believe, head of regulatory for the UK business?
A. She was.
Q. This presentation did not only apply to the UK, did it?
A. This was Nicola Course reporting on what was happening or her information as head of regulatory. There were people attending the European Project Dyke meetings and therefore she was reporting to the UK management team what was happening.
Q. Was this therefore really only Nicola Course and something that you had nothing to do with?
A. I was asked to contribute something to the final slide, that was it.
Q. Other than that you were not familiar with the contents of it at all?
A. I was not, not at all. It was reported.
Q. Let us turn to the final page of it at page 4 {B2/37/4} and look at that slide:
"Norton Healthcare have a confirmed source of anhydrous salt."
Then the bullet under that but one:
"Recommend establishment of supply agreement."
Do you see that?
A. Agreed.
Q. "Commence mid-2001 (in 2001 Op plan)."
Yes?
A. Yes.
Q. Then below that:
"Generic price 75% MSP."
MSP stands for?
A. Manufacturing selling price.
Q. " ... to compete with PI."
THE PRESIDENT: Manufacturing what?
A. Manufacturing selling price.
MR. TURNER: Not market supply price, which we have seen elsewhere?
A. Well, I can only repeat what came into my head at the time.

Q. Okay:

"... to compete with PI."

A. Parallel imports.

Q. "Supply price ... 47% MSP."

Then we have this:

"Sales/profit impact £2.3m/£7.4m/£13.2m/£16.8m."

You will see some manuscript next to it which someone has written -- it is rather faint:

"Plan 2001-4."

To take this in stages.

When it says here "to compete with PI", "Supply agreement to compete with PI", what did you understand by that?

A. That was in terms of possible scenarios when we were looking at the supply deals in terms of what we thought might be the market behaviour.

Q. This is a slide therefore that you were party to in giving this presentation?

A. As I said, I contributed into this slide.

Q. This is this slide?

A. Yes.

Q. Thank you. Please therefore continue. When you referred at the end to the sales and profit impact, are we seeing there really cumulative figures year-by-year for each of those years of the sales and profit impact on your company on entering into these agreements, is that what we are looking at?

A. That would be some of the potential impacts forecasted as of that date to say what could have happened under one scenario --

THE PRESIDENT: Again it is year by year, that is what the figures are. So the first year is what?

MR. TURNER: 2001.

THE PRESIDENT: If this is February 2001 -- is that right?

A. So it would probably have been 2001 and --

THE PRESIDENT: What was the financial year of the company?

A. December.

THE PRESIDENT: Calendar year?

A. Yes.

MR. TURNER: Perhaps before we ask any further questions about it, if I may show you one document.

In your bundle -- keep this open please, but go to tab 12 in your bundle and for everybody else it is {A2/18/1}.

At page {A2/18/6}. Just to situate, this is another response by the company, Glaxo, responding to an Office of Fair Trading questionnaire. If you go to 7.2 the company has explained what was meant by the term MSP there. Do you see that, Dr. Reilly?

"MSP refers to the market supply price ..."

A. Okay, I apologise.

Q. It is fine.

THE PRESIDENT: That would be right, market supply price?

A. Market supply price.

THE PRESIDENT: "... ie", which is then explained. That is what it means?

A. Yes.

THE PRESIDENT: Thank you.

MR. TURNER: Just before we leave it, what the company explained to the Office of Fair Trading was that:

"The reference to 'Supply price 47% of the market selling price' was a proposal that GSK's supply price to IVAX could be set around 47% of the price at which GSK sold directly to the market. This appears to be broadly consistent with what was subsequently included in the IVAX supply agreement, 2001, where the supply price to IVAX was £8.45 a pack and the list price at the time was £17.76, ie around the 47% ratio envisaged."

Does that seem right to you?

A. Agreed.

MR. MALEK: Mr. Reilly, would you have been consulted on this response.

A. No, I was not consulted on this.

MR. TURNER: If we go back to the document {B2/37/4}. Norton Healthcare confirmed the source or had a confirmed source of the anhydrous salt and a recommendation is given internally to establish the supply agreement in view of that; would that have been your recommendation?

A. It would have been a recommendation of the team and for discussion at this particular meeting, which would have been the larger management team.

THE PRESIDENT: Sorry, I am a little confused on teams. This is a recommendation of the team; which team is that?

A. So this would have been the recommendation of the subteam that was looking at these particular issues which would have included myself, Eddie Gray, Cameron Marshall and Cynthia Robinson, that I referenced previously. This would have been a presentation to show what was happening and what possible impacts there could be to this threat, to the wider management team.

MR. MALEK: Was the idea that this would be shown up on the slide and then you would take people through?

A. Then it would be discussed.

MR. MALEK: Could you just take me through this page?

A. Okay. For this presentation what is being highlighted is there are particular threats to the generic environment. We found in the UK that Norton Healthcare have approached and said they have a source of anhydrous salt they say does not infringe the patent. Therefore, they are likely to try to come onto the market. We are saying that we are going to try to test the product because we believe the patents are strong and therefore we will be challenging them in terms of their claim of non-infringement. I do not believe at this point we actually started any discussions. It was more what they had been communicating in. One of the possible ways forward for discussion with the management team is the establishment of supply agreements.

MR. MALEK: So the recommendation was, let us establish a supply agreement even before Norton or IVAX had approached you with the whole idea of --

A. It was one potential remedy to this particular situation.

THE PRESIDENT: This is a recommendation for the subteam, yourself, Eddie Gray, Marshall, Robinson, to the wider management team?

A. That is right. Mainly to talk about the fact that they did not want commercial disruption. They wanted to keep the field force focused, etc. So to make sure that we had -- continued to have Seroxat on the market throughout.

MR. MALEK: Carry on.

A. Then in terms of when would this particular supply agreement start, it would be impacting the operating plan, it had some potential impacts for 2001. Rate of take up of the molecule from the generic company, cited here, for some pretty basic financial planning, and then some pricing, possible impact, which is how the profit is then calculated. Then what the sales and profit impacts could be over the life of the planned period based on just that one scenario.

MR. MALEK: That is very helpful, thank you.

MR. TURNER: In this slide you are envisaging 75% of the MSP in order to compete with PI; that was your expectation?

A. That was one scenario. It was again what we thought would be the behaviour in the market.

Q. At the end you refer to "sales and profit impact". You are quantifying the anticipated financial effect on your company there?

A. Very basically, yes.

Q. You have given the cumulative impacts over the period 2001 to 2004 it seems.

A. It is not clear to me, looking back over such a long period of time, exactly what the numbers are and how they have been calculated.

Q. Well, they were based, were they not, on your expectations of the prices that the generics would set to compete with parallel importers.

A. They would have been set on the assumptions above which would have been, as you said, 75% MSP.

Q. Can we go to your transcript of the interview with the CMA again, please, at page 33. Keep it open, the other document.

THE PRESIDENT: That is {E1/12/33}.

MR. TURNER: As part of your interview, you were shown this presentation you see at the top of that page. About a third of the way down Mr. Moore asked you:

> "In terms of the generic price, which is the next level up, 'Generic price 75% MSP to compete with PI', could you just explain that to me as well?"

You say:

> "So these were just assumptions in the marketplace that we thought would happen when these agreements were initiated, simple as that."

Is that right? That is what you thought would happen when these agreements were initiated?

A. Sorry, could you point that out?

Q. Yes, I am sorry. It is just under halfway on that page.

A. Page 33?

Q. Page 33 of the bottom right numbering. It should say at the top "tab 13:

> "No, this is a presentation ..."

Do you see that?

A. Got it, thank you.

Q. If you go down three answers of yours, you had said then:

> "The supply price would be approximately 47% of the selling price."

Then below that:

" ... these were just assumptions in the marketplace that we thought would happen when these agreements were initiated, simple as that."

A. Agree. I think consistent with what I just said.

Q. Of course. Going back to the slide, what we see there are "Sales and profits impacts cumulative over 2001 to 2004" {B2/37/4}. Those were positive impacts or the negative impacts you are describing?

A. They were negative impacts and there would have been some simple modeling based on those assumptions, as I said.

Q. If those are the negative impacts?

A. Possible impacts I am saying; this is just risk at this point.

Q. If these are the possible negative impacts, what was the benefit to you of entering the supply agreements?

A. Only the risk that we are countering here is that we have a patent or we have several patents in place and if they challenge, come onto the market, then, and enter at risk, there is a possible much bigger disruption to the marketplace.

Q. So this is a sacrifice that you were prepared to make and have quantified to avoid that risk?

A. I do not think it is quite as scientific as that. This is an illustration for discussion with the team: what would be the financial impact if you did this sort of deal versus entering at risk and having to see the market disrupted. Bear in mind injunctions had not been achieved in the marketplace, so if somebody entered at risk, at that point, before these proceedings started, there had not been any injunctions granted, so the market would be disrupted and the chances of getting the market back when you prevailed with patent were very small or considered very small.

THE PRESIDENT: You say it is a discussion of what might happen?

A. Yes.

THE PRESIDENT: It is a bit more than a discussion, is it not? This is a recommendation, is it not?

A. For this. The way this particular forum worked was this was a discussion format to say, this is what we would be considering moving forward with, and then would consider formalising this into the planed submission --

THE PRESIDENT: You say would be considering, but it says "recommend".

A. It is not actually going into the planning cycle at this point; it is just for discussion.

THE PRESIDENT: It has to be, as you explained -- or you probably would not have a client again -- this is a presentation to the wider management team. They might say, we do not like your recommendations --

A. Yes.

THE PRESIDENT: -- we do not agree.

But what this document is doing, as I understand it, as a matter of ordinary English, this is your -- you say you had had a hand in this slide, it is recommending it, they might say, we do not agree with you, in which case it would not happen, but is that not right?

A. Agreed. "It was recommended" does not mean to say it would have been adopted as a strategy but it was put out therefore for discussion. So the team felt we had at least a discussion and a strategy in terms of how to move forward. So we were considering the commercial options.

MR. TURNER: The strategy you just mentioned, Dr. Reilly, concerning entering into a supply agreement of this kind, would that have in any way fitted into a wider strategy within the European business about how to respond to generic threats of this kind?

A. It would have had to have been discussed at the European level but I do not believe -- well I was not aware of any overarching strategy to do these sort of deals, supply arrangements, settlement agreements in every single market.

Q. Not in every single market?

A. Or majority. I was not aware that there was anything being discussed at the European level that said you should do these sorts of agreements.

Q. Are you aware that it was considered at the European level?

A. It would have been considered, as I mentioned previously when -- a recommendation. If the management team recommended this, Eddie Gray would have discussed it at the European level and then the European considerations would have had to have been brought on board.

Q. Let us go to a further document, please {B2/34/1}. For you, Mr. Reilly, it is at tab 13 of your bundle; do you have that?

A. I have.

Q. It is a presentation, PowerPoint presentation entitled "How do LOCs cope with the generic attack?"

Before anything else, can you explain what LOCs are?

A. Local operating company.

Q. For the purpose of the presentation, which local operating companies would this have meant? Would this have meant ones in the Glaxo organisation? This is directed is it not at the local operating companies in the Glaxo --

A. It is a GSK presentation, yes.

Q. -- and about how local operating companies in different territories cope with generic attack; is that right?

A. That appears to be the case.

Q. There is no date on this document but the CMA understands it to date than no earlier than October 2002 -- I am sorry 2001. If you go to the third page {B2/34/3} -- this might not be distinct on your copy -- there is a map showing where generic supply agreements for Europe were then in place and you will see that a large part of Europe is covered as being in place including at that time the UK. So we say that it must be at least later than October 2001, given the supply agreement entered into with IVAX. Does that sound right to you?

A. I do not know.

Q. Can I ask you --

THE PRESIDENT: Do we know to whom this was a presentation?

MR. TURNER: I will come to that -- yes, Dr. Reilly do you know --

THE PRESIDENT: I do not know if it was ascertained in any of the CMA interviews.

MR. TURNER: If we go to the last page it may help. Page 13 {B2/34/13}. You will see there a whole list of contributors from different places and the third of those is you. Is this a document that you have again seen recently in the bundle presented to you?

A. I have only seen it in the bundle presented to me, yes.

THE PRESIDENT: Do you mean today or --

A. Not today.

THE PRESIDENT: Recently?

A. Recently, yes.

THE PRESIDENT: Presumably you would have seen it at the time if you were a contributor?

A. Not necessarily. Somebody could have spoken to me. I do not recall a presentation and seeing the presentation at all. There is a slide, I note, on "Brand equalisation deals: the UK trading model". It is probably where I got asked a question.

MR. TURNER: Before we get to that, you are listed as one of the contributors but you do not remember the document, is that where we are?

A. Yes.

Q. If we turn to page {B2/34/4}, that one is entitled "Supply agreements"; do you have that?

A. Right, yes.

Q. Let us read it together:

"In place in most markets ... can stabilise molecule market share of GSK compound at 70-80%."

Third indent in particular:

"Can be tailored to specific market situation (patents, major players, etc) on a country-by-country basis."

Pausing there. This does suggest that there was a wider consideration of the advantages to Glaxo of these forms of supply agreement, does it not? Again this is no criticism merely an inference from what this says?

A. This looks to me like a typical reporting document. Somebody is picking up information and reporting it out in some forum, it does not say which forum, within the European environment.

Q. You say that Dr. Reilly but it does not look like merely reporting information out. It is a statement about advantages of supply agreements and a statement that they can be tailored to specific market situations?

A. I am afraid I cannot comment on the words. It is not my presentation.

Q. Well, you are a contributor to it.

A. I did not see the presentation and I have not participated in preparing the presentation specifically. If somebody asked me questions to which I responded, that is a different matter. Sorry to be pedantic but ...

THE PRESIDENT: I think the position is this, you are the most senior -- no longer working for GSK -- but from the time, executive from GSK giving evidence. This is a GSK document. It is being relied on. You say you are not able to help us. So we will just have to do our best to interpret what it says and what one can infer from it if you say you are not able to comment on it.

A. I can give you my interpretation, if that would help? Happy to do that.

MR. TURNER: All right. Just before going to the slide that, Dr. Reilly, you would like to go to, you mentioned a moment ago, if you look at page {B2/34/10} for completeness. We see that this does not appear to be again merely reporting out. It is expressed as "Conclusions & Next Steps" in relation to the local operating companies in the Glaxo business.

Again, you may not be able to comment but does it rather not suggest to you, having been in the business and named as contributor, as more than you have described?

A. No, I think having worked for GSK and particularly just after the time of the merger, knowing how the new structures were being put in place across Europe and how they were interacting with the LOCs and the incountry management, this is somebody who is pulling together lots of threads of information. As you can see from the back page, there are lots of contributors from lots of different markets.

It is difficult to say which forum that this is being presented in but this is obviously being presented for informational purposes to say: this is what is happening in various markets, these are some of the things you should consider.

Q. I see.

A. But it is a bit tricky because I do not know where it was presented and at what time.

Q. All right. Shall we go to the slide that you mentioned earlier then, on page {B2/34/7}.

"UK Trading Model" is the title. Prior to you seeing it recently, you do not, presumably, recall having contributed to this slide either, is that right?

A. I did not draw this particular slide, somebody has obviously put it together. But, it looks like diagrammatically trying to show what the basis for the brand equalisation deals could be in the UK market.

Q. Now, the final bullet on that page says:

"GSK selling at high price to keep drug tariff price high, but fights generics by providing substantial rebates to the pharmacists (trading)."

Yes? So, this suggests, does it not, that the list prices in themselves do not reflect the process of competing for customers and the net price is being faced by the pharmacists, is that right?

A. There is always a lag in terms of the drug tariff price coming down, which is why you need to discount it.

Q. So, the aim was to sell at high prices to keep the drug tariff price high. That was part of the strategy in the UK, yes?

A. The strategy/goal (?) in the UK was actually not to amend the price at all or any particular product going off patent, it was to keep it at the same price and then discount it, and the price came down anyway because of the drug tariff mechanism which takes into consideration all of the generic prices.

Q. Thank you.

Could we please turn to, for everybody else, {B2/31/1}. In your bundle Dr. Reilly it is tab 13A. Do you have this? This is a strategy document which, as far as we can tell, because it

is undated, is around December 2002. If you look at the bottom of the first page, it talks about targets going forward in 2003. Do you see that?

THE PRESIDENT: Why are the names blanked out?

MR. TURNER: One would need to ask Glaxo.

MR. MALEK: I can see why the telephone numbers are blanked out.

THE PRESIDENT: Yes. Mr. Flynn why should we not know who was the Commercial Strategy Director of Europe at that time?

MR. FLYNN: I honestly cannot say, sir.

THE PRESIDENT: Could you find out because I would like to know?

MR. FLYNN: Who these names are?

THE PRESIDENT: I do not need to know about communications but certainly the first two and pricing as well please, so I would have thought the simple thing is put in all the names.

MR. FLYNN: Indeed.

MR. TURNER: Dr. Reilly, is this a document that was shown to you recently in the bundle and you have seen before this hearing as well?

A. This was one that was shown to me in the bundle recently.

Q. Is this a document that was otherwise familiar to you, that you recall in any way?

A. No, this would not have been one that I saw.

Q. Go to page {B2/31/5} in this document please. If we read under the rather obscure figure at the top:

> "With a combination of heightened market awareness to all new registrations for either anhydrate or mesylate, legal and regulatory actions implemented immediately to defend our patent, and co-marketing strategies, all orchestrated through the Dyke project, Seroxat has successfully maintained sales in 2002 with only a 2% decline on 2001 performance. This performance is even more extraordinary if compared to the immediate decline in Prozac sales seen post patent."

Then further down the page:

> "The levers of anxiety and brand fragmentation as outlined above have yet to significantly impact giving clear indication of the value of Project Dyke (patent defence and co-marketing) in maintaining the value of Seroxat in 2002."

Pausing there Dr. Reilly. There is a clear reference in this document to orchestration of co-marketing strategies as well as legal actions through Project Dyke to maintain Seroxat sales, is there not?

A. That is what it says.

Q. What it says is accurate, is it not?
A. That is not my experience of working in GSK at the time. As I mentioned previously, my experience was Project Dyke was scanning the horizon and providing information as to what was happening and not orchestrating.
Q. No more than scanning the horizon and providing information?
A. That was what was my experience at the time. Now, I was not attending European meetings apart from the finance team meetings. Whether this was presented to Eddie, in terms of his role as general manager or to the commercial directors, I am not aware unfortunately.
THE PRESIDENT: Maybe I misunderstood you, Dr. Reilly. I thought you had said that Project Dyke, at European level, was just monitoring?
A. It was monitoring the regulatory and patent positions in each of the markets.
THE PRESIDENT: Yes. I asked you whether it was dealing with strategy and you said, no, just monitoring.
A. Agreed.
THE PRESIDENT: Now this document is clearly inconsistent with that. Are you saying this document you believe is misleading and inaccurate or are you saying you actually do not know about Project Dyke at European level?
A. I am saying I believe, and again it is just my personal view, that this is a misleading document. It was not my experience at the time.
THE PRESIDENT: So it is misleading and wrong?
A. Yes.
THE PRESIDENT: Thank you.
MR. TURNER: Dr. Reilly, do you understand the terms that are used here co-marketing strategies, is that something you would have know about from your time in the business?
A. It is something that has been discussed from time to time, I am not an expert in these fields but I do know something about it, yes.
Q. Would co-marketing be a term that would aptly describe the supply agreement that we were just looking at the plan for?
A. No.
Q. Why not?
A. Because they were supply agreements and settlement agreements, not a co-marketing agreement.
Q. What was a co-marketing agreement?

A. So a co-marketing agreement would be specifically where you decide what is going to happen in the market for a particular brand. It is not just giving people supply and settling a patent agreement.

Q. To take this --

THE PRESIDENT: I am just trying to understand, to decide what would happen in the market for a particular site with whom?

A. For example, if you wanted a co-marketing agreement with a particular product and you hired that particular company to go to areas of the business that you are not strong, then that would be a co-marketing agreement.

For example, if you were mainly a hospital business and you wanted somebody to take the product into the GP sector, so you might hire another company to do that for you.

MR. TURNER: So co-marketing with generic companies, would that fit the description that you have just given to the Tribunal please?

A. No, it would not at all.

THE PRESIDENT: It is a very different thing from patent defence; totally different?

A. Totally different.

MR. TURNER: Absolutely. So you say that, Dr. Reilly, will you please turn the page {B2/31/6}.

Do you see that?

"Market lever."

In the first row:

"Dyke Project."

"Apart from legal defence of patent rights, co-marketing agreements established with generic companies."

It is not what you said a moment ago?

A. But it is not referring to the UK deals there. In Germany, for example, that would be the strategy they moved to for Seroxat because Seroxat in Germany is a much smaller product and has totally different characteristics and the German business was centred around hospital businesses and it used or it wanted to try to have a co-marketing agreement to reach the GP sector, where it would have a much wider reach. So that is why it would enter into a co-marketing agreement.

MR. MALEK: Could you just explain for me, under "Impact" what do these letters me, H/M/L?

A. High, medium, low.

MR. MALEK: Thank you.

MR. TURNER: Dr. Reilly, I will just put it to you for the moment, and then we can look at a couple more documents perhaps, that co-marketing, as used here in this presentation, at the European level, orchestrated through the Dyke project, is referring to co-marketing projects generally with generic companies. This is not specific to Germany or any individual territory.

A. I think the co-marketing characterisation is incorrect, probably because they were looking at the type of arrangement in Germany and that is just one that I happen to be aware of, but it does not apply to the UK.

MR. TURNER: Sir, it may be a convenient moment.

THE PRESIDENT: Yes, we will break for lunch until 2 o'clock and just to repeat, you do not have to have lunch in isolation but if you do have lunch with anyone else, you must not talk about the case or your evidence. You understand?

A. I understand.

THE PRESIDENT: Thank you. 2 o'clock.

(1.00 pm) (The short adjournment)

(2.00 pm)

MR. FLYNN: Sir, I apologise to my learned friend, just before he resumes, in case he may find it of assistance, there was a document which was at {B2/31/1}, which was the presentation "CNS psychiatry -- depression and anxiety" with names blanked out. These were blanked out in accordance with a protocol agreement with the OFT at the time but I have the names if you would like them.

I can hand them out or I can read them out --

THE PRESIDENT: Do you have copies?

MR. FLYNN: We do not have copies here because this was based on a file back at Nabarro, but I have the names.

THE PRESIDENT: What I suggest you do is if you give us the names and then supply someone --

MR. TURNER: We have copies.

THE PRESIDENT: You have copies? We do not need the phone numbers.

MR. FLYNN: I do not have the phone numbers.

THE PRESIDENT: You have copies, Mr. Turner?

MR. TURNER: I have. I see that the phone numbers are not redacted but if the Tribunal is willing to take it on that basis.

THE PRESIDENT: Mr. Flynn has the names.

MR. FLYNN: Shall I give you the names and you can have the copies.
THE PRESIDENT: Rather than writing them all down, it would be much easier --
MR. FLYNN: You can take Mr. Turner's copies. (Handed)
THE PRESIDENT: Yes.
MR. TURNER: Sir, for present purposes, if you are looking at that document, under "Pricing responsibility" there is a man called Miguel Sleeper; we will meet him again.
THE PRESIDENT: Perhaps I can just ask Dr. Reilly -- I do not know if you have that document in front of you. Where was it in Dr. Reilly's file? (Handed). I have the Magnum reference.
MR. TURNER: Yes, sorry.
THE PRESIDENT: He has a copy, I think, but can you just help us, Dr. Reilly, Bernadette Cummings, where does she fit into the picture?
A. Bernadette Cummings I do not know, but the commercial strategy director from Europe would report in to somebody who then reports into Chris Viehbacher, so the head of commercial. She would be one of the therapy people reporting into the overall commercial director.
MR. MALEK: Who would have been the commercial director at the time?
A. I am sorry I just do not know, I just cannot recall.
MR. MALEK: Okay. I am sure Mr. Flynn can find out for us.
THE PRESIDENT: Yes, thank you.
A. I am afraid to say that apart from Miguel Sleeper, the other names I do not recognise either.
THE PRESIDENT: Yes Mr. Turner.
MR. TURNER: Now, Dr. Reilly, before the short adjournment we were looking at defensive strategies in relation to patent challenges faced by your company. There is one document which I am afraid I will have to hand to you in hard copy. The reference for everybody else should be {Z/127/1}. That is authored by the said Mig Sleeper.
First of all, it is dated 29th August and we can infer -- I have a false reference -- this is August 2002. I am sorry, page {Z/127/5}.
You will see there this is a timeline for pivotal events in relation to Seroxat across all of the various territories. The line begins at 2002 and it explains that the actions were taken of various kinds in different territories from 2002 and projecting forward. Do you see that?
A. Yes.
Q. Now --
THE PRESIDENT: You say this document was dated 29th August; is that right?
Q. Yes.

THE PRESIDENT: But there is something here about something happening on the 1st October in Sweden -- or is it an Americanised date?

MR. TURNER: Yes, that is not clear, I apologise. I am not sure. It would appear to be because the document is consistent with actions in August 2002. Let us leave it for the moment as unclear whether it is 2002 or 2003. Dr. Reilly, you mentioned Mig Sleeper and that you knew him. Can we please go to bundle {E1/12/1} and the transcript of your interview.

MR. MALEK: Sorry, if you look at page {Z/127/18} --

MR. TURNER: Yes:

"Italy: generic expected by September 02."

Thank you, sir.

THE PRESIDENT: Yes, and it was facing and in force in October 2002. So that is consistent. So it has not yet happened, it is expected and it does look as though it is August 2002.

MR. TURNER: I am obliged.

Dr. Reilly, if we can go to your transcript of interview at {E1/12/7}. There you were asked about a different slide authored by Mr. Mig Sleeper, just over halfway down the page. You were asked by Mr. Moore over halfway down, end of his quotation:

"Do you know Mig Sleeper?"

You said you knew who he was, he was in the European pricing group. Was the European pricing group there something distinct from your own organisation in GSK UK or was it connected with it in any way?

A. No, totally separate.

Q. In what way did you have intercourse with Mig Sleeper?

A. I had very little to do with Mig Sleeper. He was a fairly low-level analyst within Europe pricing.

Q. How did you come to know him?

A. Actually I knew of him because a few years before this he worked in a different division. I worked in the same division, so I knew him from that, but when I moved to the UK he moved in to a different job and he eventually surfaced here.

Q. Before lunch you were saying that the co-marketing strategy being described in the slides we had seen had no relevance to the UK; is that not right?

A. That is right.

Q. Can we turn back to document {Z/127/4}, the 29 August 2002 document:

"Seroxat: the story so far ..."

It looks to be a European-wide survey, does it not, Dr. Reilly?

A. I have not seen this document before.
Q. No absolutely. Take your time.
A. It would appear that again, as I remarked, that the European teams are collating information and comparing information from across Europe.
Q. The third bullet refers -- well, the second refers to "Legal actions outstanding" and it mentions the UK; yes?
A. Yes.
Q. The third bullet refers to:

> "Defensive strategies being pursued (co-marketings, 2nd brand) in [among others] UK ..."

Do you see that?
A. I see that.
Q. What could that mean in your recollection other than the supply agreements?
A. It is not a recollection so it is just my interpretation is that actually we are protecting the patents that are in place in the UK.
Q. This is in relation to Seroxat and how were you protecting the patents in the UK?
A. We had legal cases ongoing.
Q. This is not referring to the legal cases, Dr. Reilly.
A. It says in the point above --
Q. Underneath that point. In the UK --
A. Well, "defensive strategies" would include all legal cases.
Q. Underneath that it also refers to the UK, Dr. Reilly.
A. Yes, defensive strategies being what we were doing in terms of pursuing the patent rights that we have in the UK.
THE PRESIDENT: Does it not appear, Dr. Reilly -- and you may not have seen it before -- to any sensible reading that the second bullet describing "legal actions" including the UK -- the third bullet is describing "defensive strategies" and it explains -- it is not repeating the second bullet; it is talking about something else.
A. Well, at the time, the only defensive strategy in terms of legal actions and then taking -- or listening to discussions around possible supply agreements and settlements around those litigations.
MR. TURNER: Yes.
THE PRESIDENT: Possible supply agreements and settlements around the litigation?
A. Yes.

Q. So might that be what this is referring to?
A. It could be.
Q. If we go to page {Z/127/6}, please. There is a reference to "Competitive defence strategies", again looking at different territories with the UK at the top.
We see the "legal" and we see two others "Financial/NSP" -- can you explain that one, please, or perhaps you do not know what that might mean?
A. No, I am afraid I do not know.
Q. We see also in indigo the reference to "co-marketing" there as one strategy applied in the UK as well as in various other territories in that column; do you see that?
A. Yes, I do. As I explained before lunch, co-marketing was not something you could describe the supply agreements and settlement arrangements in the UK --
Q. But leaving aside the characterisation?
A. It is being described that way here, I agree.
Q. Turn to page {Z/127/7}, "Competitive defence strategies."
"Legal challenge" is in the first bullet and then:
"3rd party supply agreements/co-marketing."
That rather suggests, does it not, that co-marketing is being used interchangeably with third party supply agreements in this context as a defence strategy or alternative to legal challenge?
A. I think it is being used in that way; it is wrong.
Q. Let us turn to page {Z/127/8}:
"Seroxat: pricing map of Europe."
Here we have a picture of different defence strategies being applied. You will see for the UK co-marketing is one of the strategies referred to as well as NSP; do you see that?
A. It is referred to here.
Q. If we can turn over to page {Z/127/9}, please.
THE PRESIDENT: Are you saying, Dr. Reilly, whoever wrote this document is calling it co-marketing, you would not describe it by that term, it is not the way you would use the term co-marketing in Britain anyway but they seem to be using it to describe the supply agreements? Is that what you are saying?
A. I agree that seems to be what is happening. I would argue that it is an incorrect use of co-marketing. The supply agreements were not co-marketing agreements.
THE PRESIDENT: Because co-marketing is as you explained it to us before?
A. Yes.

THE PRESIDENT: It is a terminological thing?

A. Yes.

MR. TURNER: Finally, at page 9 we can see the question:

"Seroxat: what are we trying to protect?"

If we turn the page and look at one more slide {Z/127/10}, we see the answer to that given by reference to sales by market over the period 2002/2003, with the UK on the left-hand side showing the highest figures.

MR. MALEK: What is the difference between series one and series two?

A. I do not think it is explained there. I think it would be budget versus forecast. They just have not put it in correctly.

Q. All right. We can put that away.

In terms of the characterisation that you have used -- and for completeness if we go back to {E1/12/9} and the transcript of the interview.

You will see there -- this is really for the Tribunal's note -- that at about a third of the way down Mr. Moore asks you about co-marketing strategies and just above the halfway point you say:

"They are not the same thing. It looks from what this slide is saying that they are being characterised in that way, but in the UK and certainly in the agreements that I was involved in, these are supply agreements, not co-marketing."

THE PRESIDENT: That is rather the same point.

MR. TURNER: Absolutely sir. For completeness that completes that point.

Let us turn -- you can put that away -- to the UK position and go back to your witness statement for these proceedings at {E/2/7}, paragraph 20. Do you have that?

A. I have it now.

Q. Here you said:

"Our position in the GSK UK business was that we would take legal action to defend our patent rights."

A. Agreed.

Q. "The generic companies to which this investigation relates each approached us about settlement and supply agreements ..."

A. They did.

Q. Although the slide that we saw earlier did not bear that out.

A. I do not think that is true.

THE PRESIDENT: Well, it did not say who actually approached; it suggested that GSK was considering whether to approach, that it might approach Norton. It did not actually -- there was a discussion as to whether they should, but I do not think it established that they did.

MR. TURNER: It was a consideration in that slide.

THE PRESIDENT: Yes, it was being discussed or perhaps even recommended but it does not prove it happened.

A. The reality was we never actually approached anyone; the generic companies approached us in all instances.

Q. All right.

A. I think as I explain, the commercial operations team would gather information. If anyone was saying that they would come to market, we would send a letter to say that we will enforce our patent rights. That was the extent of our contact with these companies.

Q. You say in the final sentence:

"GSK had no discussions of this nature ..."

That is the settlements and supply agreements:

" ... with the other companies to whom we sent warning letters ..."

A. Yes.

Q. Do you remember why, for example, you did not have such discussions with Apotex? Was that a general policy or for any specific reasons?

A. They did not approach us.

Q. You have given some evidence about that, in fact. If we go to your interview again with the CMA at {E1/12/61}. You see the question I have just asked was asked of you by Mr. Moore towards the top of the page, the end of the first chunk of text; do you see that?

"Do you recall any discussions with Apotex with respect to settlement?"

"I do not believe so."

A. Yes.

Q. "Do you have any understanding of why that might not have been the case? Is there any particular issue in relation to Apotex?"

You gave one:

"There was a particular belligerence by Apotex against GSK because of what happened in different jurisdictions. Canada, I believe."

So that is right, is it not, there was a particular reason in Apotex's case, the one that you referred to at the time?

A. That is my understanding.

Q. Yes. GSK did in fact also reach a settlement with BASF, on a worldwide basis, for paroxetine in 2005; are you aware of that?

A. I have no knowledge of that, I am afraid.

Q. If you have no knowledge that is all right but we will just show you at {B4/192/8}. Here we have a response by BASF to an information request by the Office of Fair Trading for information on 26th July 2002. It is tab 13B, Dr. Reilly.

It is 13B and the last page in that is page 8. Do you have page 8? You will see a question was put:

> "Please confirm if SmithKline Beecham made any offers to settle the paroxetine litigation with BASF in 2001 to 2005. If this if so, please provide details ..."

You will see that GSK contacts BASF:

> " ... with regard to settlement after GSK had started facing damage claims based on anti-competitive behaviour ...."

There was an insistence on a worldwide settlement of the matter the. Were you in post at the time?

A. I am afraid I do not know anything about a BASF settlement or any contact with that company.

Q. All right, we will leave it there.

Let us move on to a different topic --

A. I think you have to bear in mind that there were a lot of people working in different areas. This was not something handled from the UK business.

Q. That is fine. Let us go on to a different topic of potential competition.

Can I invite you to look at paragraph 18 of your statement for these proceedings, please. At {E/2/6}, you refer in that paragraph to there being -- third line:

> "While there was a lot of noise from generic companies at the time ..."

About a possibility of them entering the market. Do you see that reference in the third line, paragraph 18 --

A. I do.

Q. -- on page 6 of your statement?

A. I do.

Q. So in reality the three companies with which you entered these supply agreements were the main credible entrants to the market at that time?

A. There was a lot of companies that were considering entering, as I list quite a few there.

Q. Let us turn to, again, the transcript of your interview at {E1/12/60}. Halfway down that page, just over halfway, if you can turn there, please. Mr. Moore asks you:

> "Was there a test that you would use for whether somebody was a credible threat? What I am trying to understand here was was it ... well, have they got an MA [marketing authorisation] or was it they have got particular people?"

You responded:

> "It was things like MA -- it was -- and this again is where some of the European information, were they on the market in, another market jurisdiction? What was their supply source? Because you know some of this -- supply sources could switch so if one company did not take them on then they would switch to somebody else, so actually the threat was not going away."

You refer there to a number of considerations when you were asked about a test and you referred to the possession of a marketing authorisation.

A. Yes.

Q. You refer to whether there was a product already available on another market and you referred to what the supply source of the other product is and so forth.

A. Yes.

Q. Taking those in stages. In terms of supply, your evidence in the GUK litigation, in September 2001, if we go to your first witness statement at {E2/27/8}; do you have that?

A. Yes.

Q. You said in the fourth line down, after "no significant technical difficulties in producing paroxetine" that:

> "There are already several known suppliers of bulk [Seroxat] suppliers suitable for formulation: one in Europe (Knoll), one in the United States (Brantford chemicals) and two in Japan (Sumika and Asahi)."

Your evidence was that there were credible sources of supply already in existence at that time and to your knowledge?

A. There were credible sources of supply; I think I do not list all of them, I list a number. The first stage is to -- the generic companies would have to get a source of supply, then they would have to get an MA. They could get an MA through mutual recognition. So they would have to go through some processes which would then mean they could then launch onto the market.

Q. Sumika were the suppliers of the active pharmaceutical ingredient to GUK, were they not?

A. I believe they were.

Q. Knoll and its parent BASF were the suppliers to IVAX and indirectly through Delta to Alpharma, were they not?

A. I do not know about the Alpharma piece. I did not realise that Delta were from the same BASF source but if you tell me that is true then --

Q. It is really to hear what you can recollect about it.

A. That piece I cannot connect, I am afraid.

Q. Let me then turn to the other factor that you mentioned, presence on other markets. Can I invite you to go to tab 6 of your bundle, which is {E1/13/8}.

There at 6.10, this is your evidence, you recorded that:

> "In summer 2001, GSK learned that GUK proposed to start selling in the UK generic paroxetine manufactured by Alphapharm ... its Australian sister company."

A. Yes.

Q. So they already had a product on the market from August 2001 in a different territory?

A. They did.

Q. That made the threat of entry to the UK market more credible because it underlined GUK's resources?

A. They still had to go through all of the procedures for regulatory purposes.

Q. I understand. There were other steps that needed to be satisfied, including overcoming a patent hurdle.

A. Indeed.

Q. Let us turn then to activity on this market and turn back to your first witness statement in the GUK litigation in September 2001. That is tab 7 of your bundle. For others it is {E2/27/11}. In paragraph 8.6 you said:

> " ... I believe that a number of suppliers of generic paroxetine will enter the UK marketplace within the next few months and this process will be accelerated if the defendant is not injuncted. The effect of the price competition between them will be to drive down the price at which pharmacists can obtain generic paroxetine. SB will have to respond to this by reducing its price of paroxetine (probably by using discount schemes)."

So there was, as a result, evidence of a number of suppliers ready to enter the UK marketplace within a number of months subject to being injuncted?

A. So there were a number of suppliers. They had to go through the regulatory processes -- mutual recognition meant they could get MAs eventually in the UK and then could come on at risk into the UK market. It was believed -- it was considered at the time that getting an

injunction was quite difficult and if one company launched at risk then quite a few companies would also launch at risk.

Q. Yes. If we go back in the same document to page {E2/27/6} to paragraph 5.4, you refer to the fact that GUK, the defendant's representatives, had informed GSK's customer, Day Lewis, that a generic version of paroxetine would be available from GUK in the UK from mid-October therefore showing the imminence, as you perceived it at that time, of the threat.

A. Yes, they were actually saying that they were coming to the market and quite a few other companies were, as I said, making noises that they would do the same.

Q. If we go from this to your second witness statement in Alpharma, which is at tab 10 of your bundle, {E2/29/5} for others.

At the bottom of that page we have paragraph 6.4. You said there that:

> "In the light of these matters, particularly the freedom of GUK, IVAX and Tillomed to sell paroxetine from whatever source they choose, I think it is clear there that there are a number of entities which could enter the market for generic paroxetine almost immediately if they deemed it necessary ..."

That included GUK, IVAX and Tillomed. This is therefore July 2002 and that was your commercial perspective at that point.

A. I am a little confused by what you are saying there.

Q. I am saying that at the time that you made this witness statement, which was the end of July 2002, you said that there were a number of entities which could enter the market for generic paroxetine almost immediately, that was your commercial perspective at the time and what you told the Patent Court.

A. There was litigation ongoing and they could enter at risk at that point, as I have said previously. Once you have been through the regulatory processes then they can launch -- not just those companies, but others.

Q. Others too. Let us go then to your statement in the Apotex litigation at tab 9 of your bundle, {E2/28/9}.

On page 9, if you look at paragraph 8.9, we now have a statement dated 27 October 2002 and here you make it clear, last sentence but one and following:

> " ... because of the substantial profits which generic companies could make from selling generic paroxetine, I expect that a number of them are proceeding through the regulatory approval process and can be expected to seek to launch their generic paroxetine within the next few months."

So this was your evidence just before --

A. At the time there is very little transparency of where the marketing authorisation processes were so it is very difficult to tell what was progressing in terms of the mutual recognition process, direct applications for marketing authorisations. So it was a difficult and opaque area, so we had to assume that there would be various suppliers coming in and some of these you heard from the marketplace when they would talk to customers -- for example, as GUK did -- and talk about when they thought they would be launching.

But the MA process was variable, there was resourcing issues at the regulatory authority, so sometimes they said they would be coming on the market faster than that could actually materialise, so there was some risk there for them too.

Q. Faster than that could actually materialise or are you saying it would not happen?

A. No, what I am saying is they would say they are coming on in on October but the reality of the regulatory process is that --

Q. It might take longer?

A. It might take longer.

Q. Yes, I see.

Finally on this topic, if you go to your second witness statement in Apotex, which was after the injunction granted by Mr. Justice Jacob. For others it is at {H2/31/1}, for you Mr. Reilly it is at tab 15 of your bundle. This is a statement you made on 8 November 2002. You tell the High Court, 2.2 at the bottom of that page:

> "Alpharma, Tillomed and Hexal possess stocks of generic paroxetine hydrochloride which are packaged, licenced and ready for immediate sale and distribution in the UK and it will be possible for these three companies to start sales of paroxetine into their distribution networks, within 2-3 days of a launch by Apotex, through their two distributors, Neolab and Waymade."

So, again, there November 2002, consistent with what has been said before, you point out that generic companies are technically able to launch, so far as you knew at the time, very quickly?

A. They were able to work on the back of the data from clinical trials, etc, to get the MAs, so they were technically ready. Some of them would invest in stock -- there was quite a layout in terms of resources to get to that position, but, yes, to get first on market with products such as paroxetine meant that they would get a lot of kudos in the market, so a lot of people wanted to do it very quickly, but we had the patent position in place.

Q. You mentioned marketing authorisations and you have also just mentioned the mutual recognition procedure; were you familiar with the mutual recognition procedure?
A. I am not familiar with the details of it, only from what I understand to be the procedure within Europe that enabled companies to apply in different territories and then get a marketing authorisation in the UK.
Q. But on a commercial level, rather than the technical details --
A. Of course, yes.
Q. Others in your company were familiar with those details?
A. Yes.
Q. If we turn to your first witness statement in the GUK litigation, which in your bundle is at tab 7 and for others is {E2/27/8}. You have paragraph 7.7 at the bottom of the page; do you see that?
A. Yes.
Q. On a commercial level, certainly, or on information from your colleagues, you gave evidence to the High Court that you understand from your recent experience that the granting of marketing authorisations for essentially similar products can take as little as 7 months from the date of application. That was your understanding then?
A. That was my understanding that it could take as little as, but often it did not.
Q. GUK and Alpharma had obtained marketing authorisations for paroxetine by the time of your settlements with them?
A. I understand so, yes.
Q. Turning to a different topic, which is the investments made by generics. In the negotiations with the generic companies, you were made aware that substantial investments had been made by them to prepare for launch, were you not?
A. Sorry, are you referring to a point here?
Q. I am sorry, you can put this away for the moment. I am making a point not referred to in this document that you were aware at the time because it was drawn to your attention that both GUK and Alpharma certainly had made significant preparations for launch by the time that you settled with them.
A. Certainly GUK were mentioning a lot that they had invested considerable amounts preparing for launch, yes.
Q. If we go to your main witness statement and look at page 13 {E/2/13}, paragraph 46, there you noted, three lines from the bottom that:
" ... GUK were at a very advanced stage in the launch ..." before the settlement; Yes?

A. They were but they would have to launch at risk because the patent position was still there and then they were injuncted.
Q. Or they would have to succeed in the patent litigation?
A. That is true.
Q. Which is a risk you faced?
A. Which is a risk they faced as well.
Q. As far Alpharma, you were also aware of their investments for stock acquisitions but those were ultimately intercepted before they took the receipt of the stock; is that right?
A. That seems to be right, yes.
Q. If I may stand back and apply the factors that you gave to Mr. Moore for assessing the credibility of competitors entering into the market. We do therefore see, from your perspective, credible threats from IVAX in 2001; yes?
A. Yes.
Q. GUK in 2001 and 2002?
A. Yes.
Q. Alpharma in 2002?
A. Yes, but there were other companies as well.
Q. There were others as well, certainly.
Turning now to the question of the agreements. I want to turn to the purpose of these agreements and then look at the evidence you have given about their terms. So let us talk about the rationale. Go in your witness statement to paragraph 59 {E/2/16}.
A. Right.
Q. You say:
"The main benefit we derived from the settlement agreements was to avoid or settle patent litigation with all the uncertainty, risks, costs and disruption to business that litigation involved."
A. That is correct.
Q. If you turn to paragraph 68 {E/2/18}, you say that:
"The main function of the agreements was to settle the patent disputes and [to use your phrase] maintain the integrity of the patents."
A. Agreed.
Q. That is your phrase, "maintain the integrity of the patents"?
A. Yes, make sure they were still in place.

Q. When you speak of maintaining the integrity of the patents, does that mean pre-empting a challenge in court to your patents that you might lose?

A. As I said to you, when we were made aware of people wanting to enter the market, we would send a note to them to say that we will defend the patent rights and take legal action accordingly.

Q. But to answer my question, when you speak of maintaining the integrity of the patents, did you mean pre-empting a challenge in court to your patents which you might lose?

A. No, we were prepared to go to court.

THE PRESIDENT: What do you mean, rather than Mr. Turner suggesting what you mean? You just tell us: what you do you mean by "maintain the integrity of the patent"?

A. There is a risk when you go to court that you would lose, there is a high chance, and certainly the advice we got from the patents team was that we had very strong patents in place. But there is a risk and it was that which drove some of the discussions with regard to settlement in terms of that risk that something could go wrong and that we did not get what we thought we might from the patent protection.

THE PRESIDENT: So what do you mean by "maintain the integrity of the patent"?

A. So that the patents would stay in place and there was not then a complete loss of the patent position.

THE PRESIDENT: So avoid the risk you have described?

A. Avoid the risk, yes.

MR. TURNER: If you go to paragraph 61 of your statement in similar terms, at {E/2/16} you link the patent hurdle to commercial stability. You say:

> "As I clarified in my CMA interview ... the patent hurdle was the major source of stability from GSK's perspective and was the position we were seeking to protect."

That is right?

A. Because we had the patents in place, either they would be validated -- the issue is that they are either validated or you lose everything in terms of the patent protection. That is quite a big difference in terms of financial positions and business positions.

Q. This objective was reflected in your company's UK 2003 business plan which you will find at tab 16 of your bundle and for others is at {B8/269/1}.

The CMA understands this document is November 2002. At the moment I should say that is because that is the date given on the case file. Is this a document that in your position you would have seen at the time and approved in your role as finance director?

A. This would have been something reviewed at the time by the management team, yes, and the financials in it would have been reflected in the planning.

Q. You personally would have had a role in this?

A. I personally would have seen it, yes.

Q. Is this also a document which was in the bundle before you came to court and you would have reviewed before this hearing?

A. Yes it was.

Q. If we turn to the bottom of page 1, "Critical success factors" is the heading. If we go to the top of page {B8/269/2} you will see heading 2:

> "Generic paroxetine: settlement has been reached with IVAX and GUK ... and a supply agreement has been established with IVAX. This is a key strategy to maintain market stability for Seroxat across the plan period. In the plan it is assumed that one further party joins the supply agreement. The plan assumes that growth of the Seroxat molecule will achieve £4.3 million, while the lost margin as a result of the supply agreement will be £14 million."

This encapsulates the rationale for GSK, which you communicated to the other parties to the negotiations, did it not?

A. To the?

Q. To the generic companies. You indicated to them that GSK's objective was to maintain market stability for Seroxat in your discussions with them.

A. I think the primary words we used were "we will defend the patent position".

Q. Before we leave this paragraph again, we see that:

> "The loss margin as a result of the supply agreement will be £14 million."

So you will be entering into a supply agreement which, on this measure, is going to cause you a defined amount of financial damage; yes?

A. This would be an estimate and would be in terms of the overall financial impact of those supply agreements.

Q. Again, why would Glaxo enter into supply agreements that would cause it such damage?

A. Because the alternative, if we lost the patent position totally, and generics came in -- the financial damage is much greater than that.

MR. MALEK: Can you just explain to me: how do you calculate the loss margin? It may be a more complicated question than it sounds.

A. Because the loss margin is down to the selling price if we sold the packs in the normal commercial channel at £17.70-odd versus actually selling to the generics at £8.45.

MR. MALEK: That is what the difference is?
A. That is the difference.
MR. TURNER: With defined quantities going into the assumption, Dr. Reilly? In order to arrive at that figure there will have been an assumption as to the number of --
A. Of course there was an estimate made as to the volumes that would have gone through the process.
Q. Yes.
A. But it is an estimate.
MR. MALEK: Would you factor anything else in, such as taking away part of the parallel imports coming in?
A. It would have been factored in because although we were getting credit for the parallel trade, through the internal allocation system, actually it was not a perfect system and we were still making loss because it is only allocated on the French or Spanish or Greek, or whatever pack is being entered into that system. So there was still a financial impact to the parallel trade but we would factor in that there would be a downside to that, but that downside would be less than losing a UK patent. Again these would be estimated in terms of the volumes, etc.
MR. MALEK: The 14 million, is that just going to be a rough and ready figure?
A. Yes.
MR. MALEK: You are not going to have to have a scientific calculation where you --
A. No, it is very difficult to do that.
MR. MALEK: That is what I thought.
A. Also there would be -- in terms of the risk, there are also risks that you might lose the patent and what would the financial impact of those be if in proceedings the patent claims were not upheld, etc, so you have to factor those in as well.
MR. GLYNN: Did you put a number on the second set of calculations to compare with the 14 million?
A. Sorry?
MR. GLYNN: When you said the alternative would have been more costly --
A. Yes.
MR. GLYNN: -- did you put a number together which would compare with the 14 million?
A. We would have had a number, yes.
MR. GLYNN: Do you recall what it might have been?

A. It would have been substantially more than this number, but not as large as you might expect because actually if we got full genericisation, one of the first things you do, of course, is to change the allocation of field force to different products so there would be a big sales downside as you lost that supply to generics. That would then of course give you a big gross profit downside but offset by all of the savings on the field force because you would not promote a product that was just genericised. Actually that would then be calculated out in terms of what the net profit impact would be.

MR. GLYNN: So when you thought through those business responses you would have come to a figure that would be significantly more than still the 14 million?

A. It would have been bigger than the 14 million, yes. But not 50 million because actually the sales force savings, etc, were quite considerable because of the amount of resource that was put behind Seroxat as a product.

MR. MALEK: But you would still had the sales force, you are just saying you would give them other drugs to market?

A. Yes, that would then be allocated to different products.

MR. GLYNN: You move your resource into another more promising area?

A. Exactly, where we could sell and get upsides in growth and that would also mitigate the losses you would get in Seroxat.

THE PRESIDENT: It would boost the sales of the other products?

A. It would boost the sales of the other products, yes.

MR. GLYNN: Would there have been a document which set out these calculations on the alternative scenario?

A. There would have been some documents, yes, backing up what you are seeing here which was just the summary.

MR. GLYNN: I meant, there is the documents backing up the 14 million, you have just described to us very interestingly how you would think about the alternative position, which would have been more than 14 million.

A. Yes.

MR. GLYNN: Was there a document which draws those thoughts together?

A. There would have been, backing up this document, the detail behind it. Where it is now I cannot say unfortunately because of the passage of time.

MR. GLYNN: Thank you.

A. But it would definitely be there.

MR. TURNER: Dr. Reilly, I was saying a few minutes ago that the rationale that is referred to here as a key strategy to maintain market stability for Seroxat was the same rationale that you told the generics in your discussions and negotiations with them was your objective in the supply agreements.

A. I think I said that the major discussion point was we will enforce our patents; that is where we started these things.

Q. Shall we turn --

THE PRESIDENT: Just before you leave that document then, Mr. Turner.

When you say -- when it is said here rather in paragraph 2:

"In the plan it is assumed one further party joins the supply agreement."

So the planning here was on the basis that IVAX will sign one, GUK will sign one, we are expecting that there will be another one?

A. There was a lot of noise and several other companies were out there, nobody -- I do not recall whether anybody had approached it at this time but then Alpharma made the approach.

THE PRESIDENT: It was expected that was what it was going to do?

MR. TURNER: Dr. Reilly, if we go to tab 17 of your bundle, which is {A2/15I/1} of the Magnum system. If you go to the bottom of the page, here we have a series of notes made by Alpharma, Mr. Torben Laursen, following a meeting with you, as you will see from the bottom of our page.

At the bottom of that you will see that this is a note of meeting a meeting that took place in October 2002, with you, VP finance for GSK, and Cynthia Robinson, legal for Europe.

A. Mm.

Q. Do you recall that meeting?

A. Sorry, legal UK I think she was.

Q. Yes. So it is misreported here by them. Do you recall that meeting now?

A. I cannot recall specifically that meeting.

Q. Is this again one of the documents that you saw before coming to court?

A. I saw this some -- quite a long time ago.

Q. These notes following the meeting begin really in the middle of the second page where there is a report of what the two GSK representatives, yourself and Cynthia Robinson, said {A2/151/2}. There was a discussion about figures for settlement and after a figure of 20 million has been canvassed, you will see a third of the way down:

"GSK said that figure was much higher than they anticipated. The key issues for them was ... stay within the law and not making any settlement that can be counterproductive for them in other jurisdictions around the globe ... keep patent defence intact ... maintaining stability and predictability (they are also in the middle of budget 2003)."

Pausing there, it is likely that that last rationale was communicated to them by you rather than Cynthia Robinson, I suppose.

A. I think they are using words that I do not think we actually specifically stated in those meetings but, as I said, the position we took -- we want to make sure that we keep our position on patents, that we will defend those patents, if you come into the market we will take legal action against you.

Q. But here you are negotiating about the price that would be necessary to buy that off?

A. No, not negotiating; I am saying that that is what we would do in terms of our approach. As soon as we hear that you are coming onto the market we will issue proceedings against you which we did with several companies.

Q. Dr. Reilly, this is talking about numbers and a settlement deal here, is it not?

A. I think they are talking about numbers.

Q. Let us go halfway down the page --

THE PRESIDENT: You say the figure was much higher according to them, you said it was higher than you anticipated. So that suggests you said we are expecting a number but a lower one; is that not what it says?

A. The negotiations always went along similar lines. They would always tell us, we have a non-infringing product, we are going to come to market, you are going to lose so much money, it is going to be a huge impact for you, you need to do this now. Actually, we would just say, we are going to defend the patent position, we will take legal action against you and this is where we are. We would always say, actually, we do not think that the large numbers that you have cited would be the actual impact because they did not understand what we would do in terms of moving resources to other products, etc.

THE PRESIDENT: Reading down the email, they state the settlement they would offer; so you were offering numbers, were you not, to pay money?

A. Not at this stage.

Usually they would make a big fuss and then there would be some discussion to see whether there was some sort of number that could go for discussion to the team to see whether that would be in line with the risk that we thought we were undertaking.

THE PRESIDENT: So when they record you as saying you will offer you a lump sum on a monthly payment, they had invented that?

A. That is their interpretation of the actual discussion. I do not think we ever said, we will give you a lump sum payment at all. I think what they are referring to was the structure of the deal around the marketing allowances, which I am sure we will come to.

THE PRESIDENT: So that is not right, what they are recording that you said? They do not specify that there are any figures mentioned but that that is what was said and they said, well, we are going to have to negotiate this further to get to the right figures. Does that reflect fairly what was discussed?

A. What was discussed was, if we were going to settle, this would be the structure of the agreements that were in place already and that was a consistent structure across all of the deals.

THE PRESIDENT: They are saying this is what you were offering. That is what they say.

A. We never went out to offer these companies anything, they would discuss --

THE PRESIDENT: At this meeting, never mind whether you went out to, the meeting took place -- I think that is right.

A. Right.

THE PRESIDENT: They say what they want. They record you as saying, no, and, as you have explained, you say, we have good patents, we will defend them, we are not afraid to go to court, and then it goes on but there can be a settlement and in the commercial -- in the start of commercial negotiations they say, this is the sort of offer you are prepared to settle at, and it has the following elements.

A. Has the following elements in terms of the supply agreement and there would be a marketing allowance because of the structure of the deals that were proposed by legal. I think that is where they have mischaracterised that in terms of payment -- monthly payments.

MR. TURNER: Dr. Reilly, just to summarise, I think there are three elements there and I would just like to be clear whether you are denying all of them.

Are you denying that this shows that an offer by GSK was being discussed at this meeting?

If you see halfway down:

"The settlement they will offer has the following elements ..."

Do you deny that that happened?

A. My recollection of the meeting, as I said, was towards the end of the meeting there was a supply agreement that we could discuss and this would be the structure and then we would move forward.

Q. Do you deny, secondly, that the specific elements that are listed there as part of your offer were offered by you at that meeting?

A. I do not agree with the characterisation of lump sum.

Q. That is it?

A. So the monthly payment -- I can understand how they have said that that could be out in terms of the marketing allowances.

THE PRESIDENT: They say either a cross-undertaking or part of the settlement -- a cross-undertaking or a promotional fee. That is what they say. That is their note at the time. Are you saying that is a misunderstanding by them?

A. I think I did reference this in the earlier meetings. I do not have a recollection around the cross-undertaking position.

THE PRESIDENT: Is it possible? This was a meeting I think -- being asked about in a meeting in October 2002; that is more than 14 years ago. Can you clearly remember that discussion?

A. No, that is why I am saying I know the sort of position we went out with but I know that lump sum was not part of those discussions.

MR. MALEK: Okay, but was a monthly payment a part of the discussion? What they seem to be doing is saying you are going to offer a lump sum or a monthly payment, ie you are leaving it open, you are not tying yourself down.

A. The payment would be related to the promotional allowances, the marketing allowances. That would be paid on a monthly basis. So that is where I think they have got that from.

MR. MALEK: Okay, you accept the monthly payment point but not the lump sum point?

A. Not the lump sum.

MR. MALEK: As regards the second part of this, where it says:

> "... which can be turned into either a cross-undertaking as part of the settlement or a promotional fee ..."

Is that something that you suggested? Did you say, well, it can either be a cross-undertaking or a promotional fee? Is that something you think you may have suggested?

A. As I mentioned, I think in the other interview, I do not have a clear recollection about cross-undertakings, I am afraid, it was such a long time ago.

MR. MALEK: But you do remember the promotional fee bit?

A. The promotional fee being the marketing allowances, etc?
MR. MALEK: Yes.
A. Yes.
MR. MALEK: Looking at it from my point of view there are two ways of looking at it: you either say you have made the offer and they are making a lump sum or a monthly payment which you said at the same time can be either turned into one of those two things or you made the first half and they have deduced, well, we can turn this into one of those two things. It was not clear to me in this very short note which one it was likely to be.
A. All I can say is we would not offer a lump sum. We were not doing that. We would not say, this is a deal at any price, or, we are offering to buy you off, or anything. This would be, there is a supply agreement, this is the structure of it.
THE PRESIDENT: Have I got this right, you do not remember every detail, you would be superhuman if you could after all this time, but you remember the general discussion and you are fairly confident that you would not have offered a lump sum?
A. Right.
MR. TURNER: The third question, Dr. Reilly, is whether you accept or deny that you were also continuing phone talks with Alpharma's representatives. As you see at the bottom of the page, under "Next steps", "Decide minimum lump sum" is under the "Next steps for Alpharma":

"Phone talks with Mark Reilly Wednesday afternoon."

Do you also deny that that occurred and that there were phone talks which then shortly led to a settlement?
A. There were, I think, one -- possibly two -- very few phone calls that took place and then Cynthia handled a settlement agreement.
Q. Not you after that?
A. Not after that.
Q. Shall we then just jog forward to -- I think it is tab 35 of your bundle {E2/26/1}. We see the follow-up meeting shortly afterwards, dated 23rd October 2002. The email is dated 24th October. Do you see that? It is entitled in the subject line:

"Quick note on UK settlement for paroxetine."

Do you see that?
A. Yes.
Q. This note does suggest that you did continue the discussions and it was not only Cynthia Robinson.

A. Let us be clear about what I said. There were one or two phone calls and then I handed over to Cynthia to carry out the final contractual discussions.

Q. I see. Let us read what it says:

"Brendan and I yesterday concluded the UK settlement for paroxetine with Mark Reilly, VP finance for GSK UK, and Cynthia Robinson, VP legal for Europe."

Then the content of the deal is set out there.

If you cast an eye over it, we see at 3:

"£0.1 million promotional allowances per month, ie £1.2 million on a 12-month basis."

Then at 4:

"£3.5 million 'other' [lump sum figure]. For this amount we need input from finance to ideal timing, so we can try to phrase the contract accordingly."

A. Lump sum --

Q. £3.5 million is going to be paid over and defined as "other"?

A. Does it say "lump sum"?

Q. It says "other". It appears to be paid in one tranche according to this, does it not, Dr. Reilly?

A. It does not say.

Q. Would you like to comment on that 3.5 million "other" figure, Dr. Reilly?

A. I do not have a specific comment on it right now.

THE PRESIDENT: You were at the meeting, were you?

A. Yes I was.

THE PRESIDENT: This was the deal?

A. This was the deal but I cannot recall --

THE PRESIDENT: You cannot remember --

A. What it was characterised -- how it would be split. I would have to see the final agreement.

THE PRESIDENT: I am not talking about the final agreement. I am just trying to see if you can remember what was the deal agreed at the meeting on 23rd October. If you cannot remember, that is fine.

A. I do not recall any lump sum or characterisation of a lump sum.

THE PRESIDENT: So you do not remember when -- it was quite a lot of money, 3.5 million -- even for GSK, I think.

A. Yes, quite a lot of money.

THE PRESIDENT: You cannot remember whether, in the deal you agreed, that was to be paid upfront or spread over 12 months? Is that your evidence?

A. Well, my recollection would be that it would -- these things would be paid over 12 months, but I cannot specifically recall.

THE PRESIDENT: Yes.

MR. TURNER: If we go back, Dr. Reilly, to the document we were looking at before at {A2/15I/2}.

This is the earlier note of the meeting that we were looking at before. It will be on your screen. You will find it in tab 17 of your bundle and it is the second page. You took issue with the reference to lump sum; do you accept that a component of the offer that you made was:

> "They will be ready to offer 500,000 packs of the 20mg tablet pack at a transfer price of £8.45 per pack. They claim generic selling price is around £13.15. Andrew, we have to look into this Monday morning."

Would that have come from you or is that a complete error on the part of the author?

A. No in terms of the offer to supply it was up to that -- so the pack volumes would have been discussed, yes.

Q. That is 500,000 packs at a stated transfer price?

A. 8.45 was the consistent transfer price.

Q. You told them a generic selling price of 13.15 to enable them to know what the profit margin per unit would be?

A. They would know better than I would.

Q. You were telling them and they were saying we have to look into this Monday morning; right?

A. I think we would have had -- that would have been part of the discussion, yes.

Q. How would you have known the prevailing generic price?

A. Because that was just market intelligence. We are competing with the generics.

MR. TURNER: Sir, it is 3.10 pm, perhaps before I move on I should ask whether the shorthand writer does want a break.

THE PRESIDENT: We will take a break in the afternoon; it is a question of whether you wanted it now or in 5 or 10 minutes. If it is convenient now, let us do it now.

(3.15 pm) (A short break)

(3.26 pm)

MR. TURNER: Dr. Reilly, perhaps to complete the story on the negotiations and conclusion of a deal with Alpharma, we can go from that email of 23rd October 2002 to the written

settlement agreement which was reached with them. You will find in your bundle at tab 36 and for everybody else it is {A4/70/1}.

THE PRESIDENT: I think we are in the L bundle, some of us.

MR. TURNER: Are you?

THE PRESIDENT: For the written agreement at {L/11/1}.

MR. TURNER: It is on screen in any event.

THE PRESIDENT: Yes.

MR. TURNER: Otherwise L/11; do you have that?

A. Yes, I do.

Q. You are familiar with its terms?

A. I am looking at it now.

Q. If you look at paragraphs 3 and 4 together, we see there that a matter of weeks after the deal has been done, referring to £3 million "other", paragraph 3 refers to GSK paying to Alpharma £3 million in respect of the production and preparation costs for launch in the UK market by Alpharma; yes?

A. Okay.

Q. Paragraph 4 refers to contributing £500,000 towards Alpharma's legal costs occurred "in the above litigation". Those together, of course, are £3.5 million.

A. Right.

Q. If we turn over the page, at paragraph 8 {A4/70/2}, we see that the payments detailed in paragraphs 3 and 4 above:

"... shall be payable by GSK by wire transfer within 5 business days ..."

Dr. Reilly, that is a reference to paying what amounts to a lump sum of £3.5 million in a single payment, is it not?

A. That is a payment referenced here per the settlement agreement.

My point is, as I mentioned, we never discussed lump sum payments; it was just not something that we did in terms of negotiating or going out and offering to pay any costs such as that.

Q. Leaving aside the terminology, the use of the words "lump sum", the effect of it was this is what it was, was it not? The effect.

A. We discussed and in here, as you said, in the settlement there are payments, as you said, to the tune of 3.5 million, but it was never characterised as a lump sum payment or paying anybody off, anything like that.

THE PRESIDENT: But it is a one-off payment of 3.5 million?

A. Yes.
THE PRESIDENT: Which some people might say is a lump sum?
A. Yes, I think my point is that that is now how it was characterised. We never said anything like that in the meetings.
MR. TURNER: If we then turn back to your main statement and go in it to page {E/2/15} at paragraph 56, this is under the heading "Confidence and risks"; do you see that?
A. Paragraph 15?
Q. Paragraph 56 on page 15. You said there in the second sentence:

> "As I said of the position at the time of the IVAX agreement, GSK was confident in the strength of its patents and was prepared to go to court to defend them."

If you turn the page, top of page {E/2/16} you say:

> "We felt that the patent position was strong but it turned on highly technical and complicated arguments involving an understanding of organic chemistry and you cannot be completely sure of what the judge's interpretation of these might be."

Yes?
A. Okay.
Q. At paragraph 57, finally, you give a more general statement in the last two sentences, in saying -- we are now not just talking about the IVAX position. Generally you thought GSK thought the patents were strong:

> "As I mentioned a number of times in my CMA interview ... we were disappointed to have had to enter into these agreements because we felt the patent position was strong."

You are now referring to all three of them?
A. Right.
Q. "We entered into them because they settled the disputes on reasonable terms, taking into account both our confidence in the patent position and the associated litigation risks."
A. Correct.
Q. Did GSK consistently hold the view at all times throughout 2001 and 2003 that its patent position was strong?
A. It was consistent in that view that the patent position was strong, that we did not actually want to enter into these agreements unless we thought, as I said, there was a risk that the patent position would be lost because of technical issues, etc.

Q. Was GSK's view uniform in all cases -- because these were different cases -- and at all times that the patent position was strong or did it vary at any point according to the circumstances?

A. My understanding was that it was strong all through. I mean, there would be discussions going on particularly with some of the discussions around the litigation, etc, but what was communicated to me was consistently: we have strong patents.

Q. Communicated to you by whom?

A. Vivien.

Q. For example, July 2002, the High Court invalidated the product claims of the anhydrate patent as you know; did that affect GSK's confidence?

A. It did but again other patents were in place and the view was there is still enough to warrant a high probability of success.

THE PRESIDENT: The other patents in place, what are you referring to?

A. So in terms of the hemihydrate patents and some process patents.

THE PRESIDENT: Hemihydrate and the process, yes.

MR. TURNER: But GSK had not always expected to lose that part of the court case; it came as a shock.

A. Again it was a communication to me was that we still had positions of strength.

Q. In October --

THE PRESIDENT: I do not think that quite answered the question. You were asked:

"Was it a surprise that you lost the product claims on the anhydrate patent?"

A. Yes, it was to me and I understand there was some disappointment around that.

MR. TURNER: Then again in October 2002, there was an inspection of Delta's plant in Iceland to see if Delta was using a protected process or not and the result was inconclusive; do you recall that?

A. I do not recall much of the detail around that. Again, that was dealt with -- it was not dealt with by me, I did not do the inspection but my recollection from the communication was that it was inconclusive but there was still reason to be optimistic for the patent.

THE PRESIDENT: Just pausing there, when you say "reason to be optimistic about the patent", what do you mean?

A. That there was still a patent in place and there would not be genericisation immediately within the territory.

THE PRESIDENT: You would have to prove --that the product infringed would you not?

A. Yes.

THE PRESIDENT: You are saying after the inconclusive inspection you were still -- how did you feel about your chance of -- I mean, did that affect your valuation and -- commercially you are not a lawyer but you were told by the lawyers, we have to prove infringement, we have to prove that the process may be valid, indeed it has been found valid, was it infringed, there has been an inspection, it is inconclusive?

A. Again, the communication to me was that there was still -- that they still had belief that the patent protection was still there and that they would be able to do what was necessary.

Q. To be clear, Dr. Reilly, was your dialogue only with Vivien West or was it also with Cynthia Robinson or with any external counsel?

A. Cynthia would have been in the discussions and Vivien would have briefed Eddie, myself, Cameron Marshall and Cynthia.

Q. Did you have yourself any dealings with external counsel?

A. No.

Q. You were asked about the patent position in your interview by the CMA, by reference to the notes of Ms. Parr, your successor; do you recall that?

A. Yes, I do.

Q. Shall we go to that? It is in the second tab of your bundle at {E1/12/25} on the Magnum system.

A. Sorry, which page?

Q. It should be page 25. You will see at the top of that page, page 25, that Mr. Moore refers you to some notes from Rachel Parr; yes?

A. Yes.

Q. Just before we go to that, if we go back to page {E1/12/24}, you will see that Mr. Moore asked you towards the top of the page about the knowledge or understanding you have of the role of your successor, Rachel Parr, and he asked you one or two quick points on the extent of the handover.

He asks you, at the top:

"Can you recall sort of the level of handover that you personally had with Ms. Parr when you relocated within GSK in 2003?"

A. Yes.

Q. You will see halfway down he asks you about the degree of handover which referred to these particular agreements between yourself or a discussion or a note you may have penned to Ms. Parr, and you said:

"I had a brief discussion with her on a handover on a range of issues and one of the things we covered was these agreements."

A. Yes.

Q. You were asked -- and I appreciate the passage of time:

"Can you recall the nature of the discussion that you had with Ms. Parr with respect to these agreements?"

You said:

"Mainly around the fact that, you know, these were important to keep an eye on and you should work closely with the legal guys and the management team to understand what is going on."

Finally:

"Did you provide any explanation to her as to the background to these particular agreements?"

Your answer then was:

"A little bit in terms of the patent position, etc, as you would expect."

A. Could I just see that?

Q. Yes.

A. Right, okay.

Q. So you did brief her in terms of the patent position, as one would expect? That is what you said then.

A. As I said, very briefly.

Q. So you gave to her your understanding of the patent position?

A. I gave to her a small briefing where my understanding was we had a very good patent position.

Q. She then will reflect her understanding in the notes we will come back to.

A. In my understanding they are not notes in any conversation with myself.

Q. In your interview you were shown the notes and you were asked to comment on them and then we go forward to the middle of the next page. {E1/12/25}

Just beyond the halfway point, Mr. Moore asks you:

"'All payments reflect negotiated (sic) at the time given above pressures and no real strengths of negotiating position.'"

You see that. Your answer was:

"No. As I said to you, we had a negotiating position. We had a strong patent position, that was our belief."

Yes?

A. Yes.

Q. You then comment -- this is towards the end of that chunk of text:

" ... I am sure Cynthia's able to talk in detail about how those happened ..."

So you referred to Cynthia Robinson who was present with you at the time of the negotiations; yes?

A. Agree.

Q. "So, I would not say that we did not have a position or no real strength; actually the patents were good."

A. That reflects my understanding.

Q. But Cynthia Robinson, you are saying, would have been more familiar with the detail of the legal advice than you?

A. She was in all of the discussions and did all the negotiations.

MR. MALEK: Can I just clarify one thing you said earlier: you had no direct contact with the external lawyers; is that right?

A. The patent lawyers, no.

THE PRESIDENT: At the time of the --

A. At the time. I did not have a direct dealings with any patent lawyers --

THE PRESIDENT: You did not go to any meetings with the solicitors?

A. No, not at all.

MR. MALEK: But you must have met the solicitors in the context of the litigation because you gave so many witness statements.

A. The Simmons & Simmons lawyers, yes. They asked me about the commercial aspects, etc, which were reflected in the witness statements.

MR. MALEK: But you did not discuss with them anything about the underlying case --

A. No.

MR. MALEK: -- apart from your evidence?

A. Yes.

MR. TURNER: Finally, at the bottom of this page, you were asked again by Mr. Moore, when he took you, just before the bottom, to a final part of the note:

"'WK patent and stopped entering the market.' We understand that comment to mean 'weak' in that context. Do you have a comment on that?"

Then you replied:

"The advice we got was that the patents were reasonable and we had a fair shot at it."

Okay?

A. Okay.

Q. That is a summary of the advice you received, a reasonable and fair shot.

A. I think I said a few times that we thought the position was strong, so that is consistent with what I am saying.

Q. A Reasonable and fair shot?

A. We were saying -- and I have said quite a few times -- that we thought the patent position was strong.

Q. Are you resiling from what you said at the bottom of that page or not, Dr. Reilly?

A. I do not think there is any inconsistency here. We had good strong patents, we thought. I characterised them as reasonable and --

Q. Fair shot?

A. We had a good chance of winning.

Q. To be clear, this relates both to the position of GUK and Alpharma; is that right?

A. I believe so.

Q. Go to the top of the next page {E1/12/26}. You are there asked to comment on another part of Ms. Parr's note. Look at the second line:

"... 'payment the agreement were mechanisms for paying a certain amt' or presumably amount, they settled on. 'We then devised these mechanisms.'"

And you were asked what is your understanding of that comment. There is some dialogue and your answer finally appears halfway down that page:

> "My understanding -- we had a good commercial discussion at the time; the risk versus the benefits of coming into the agreement. You know, this is not my note, it is not something I wrote, so you would have to ask Rachel."

You refer to it as good commercial discussion at the time. Is that how one would fairly characterise the deal that was done: a commercial deal in order to achieve your objectives?

A. As I have said many times, these were settlement agreements based on a good patent position and then we came to agreements that resolved the litigation.

Q. It was a good commercial discussion in which you achieved the objectives that we have discussed so far; is that right?

A. That is slightly mischaracterising it. Yes, I would have said this, yes, but as I have said, these were patent settlement agreements.

THE PRESIDENT: Just so I understand: good commercial discussion; are you referring to internally at GSK; is that what you mean? I am just trying to understand your own words there, that is all. You mean -- I was not quite clear.

Do you mean commercial discussion with the generic with whom we are settling or do you mean a commercial discussion within GSK?

A. I think this is referring to the external discussions. I could not characterise that as being -- we did have good commercial discussions within GSK, but I do not think that is what this is referring to. I think what I am saying here is that we had a good discussion, as I have characterised it.

The generics would always come in and say, we have a non-infringing product, this is what is going to happen, you are going to lose lots of money, etc, and then the pushback was always, actually, we think we have a good patent position, we will litigate, we will defend our patents.

MR. TURNER: Dr. Reilly, after the good commercial discussion you had with your counterparties, the money you paid them helped secure the commercial deal, did it not?

A. Well, they are settlement agreements, so they settled the patent litigation.

Q. Without defining words, the money you paid helped secure the commercial deal, Dr. Reilly?

A. Without defining words? What do you mean?

Q. The money that you paid under the deal helped secure --

A. I do not think you can say that.

Q. Why not?

THE PRESIDENT: I do not know if this is -- I am not sure of the significance of the question but would you have paid 3.5 million if you did not think it was necessary to get the other party to sign?

A. We paid and that is how we reached the settlement agreement. That was the negotiation that went -- in terms of settling the agreement, that is what we have to pay, do we think that is a fair settlement or --

THE PRESIDENT: I was not asking you whether it was fair; I was just asking you would you, as GSK, have agreed to pay 3.5 million if you did not think it was necessary in order to get the other side to agree to the deal?

A. No.

THE PRESIDENT: It seemed to me a fairly obvious point but I am not sure why it needs asking but, no, you would not.

MR. TURNER: Good.

THE PRESIDENT: Who would, I think.

MR. TURNER: If we go forward now, please, to tab 19 in your bundle. For everybody else this is {A2/15K/1}. Here you have the first witness statement of GUK's Mr. Richard Saynor in the GUK litigation, dated 15th October. Do you see that?

THE PRESIDENT: Are we going on to the GUK agreement now?

MR. TURNER: Not immediately, this is still just finishing the patent strength point.

THE PRESIDENT: Okay.

MR. TURNER: In this, if you go to page {A2/15K/11}, at the very bottom of that page, Mr. Saynor said under the heading "Context of application":

> "In my experience of the generics market, no pharmaceutical company has ever attempted to join forces with a generics company to supply a version of its product 5 years prior to the patent on the branded product expiring. Yet that is precisely the position here, which begs the question: why is SB doing this?
>
> "There are only two possible reasons that I can think of. The first and most likely is that it is a reflection of SB's views on the strength of its anhydrate patent, which was granted as recently as 1997. That is to say the reason that SB is going to start selling generic paroxetine is that it can see that generic competitors will shortly be entering the market in any event either because the anhydrate patent is invalid or because the competitors have a non-infringing product. The only other possible reason I can think of is the impending genericisation of Cipramil, which is discussed below."

Dr. Reilly, the truth is that GSK was concerned about protecting itself from the risk of losing uncertain litigation. That is clear; yes?

A. Uncertain litigation, of course --

Q. That was why --

A. I do not think -- as I think I say in many points in the discussion there is some uncertainty around patent litigation. It is quite a complicated matter, so it needs to be resolved. But I think what Richard is also missing here is the fact that, yes, it would be unusual, but the patent situation with GSK was -- with paroxetine was unusual because of the loss of data exclusivity and that is what made it different.

Q. The loss of data exclusivity made it different because?

A. We still had patents in place but they could get MAs, marketing authorisations to get onto the market.

Q. Making it a particular threat?

A. Making it a threat. It was slightly different to other generic positions.
Q. The other possible reason that was given was the impending genericisation of Cipramil; do you want to comment on that?
A. In terms of competitiveness of Seroxat within the SSRI market?
Q. No, in terms of whether that was a motivation for you to enter into the supply agreement or not.
THE PRESIDENT: Can you just remind me, who makes Cipramil?
A. Lundbeck. I am not sure I follow the point.
MR. TURNER: He gives there, you will see, two possible reasons for why you had entered into the supply agreement. For completeness, I am just covering that second one to see if that was relevant or not.
A. I do not see how he is drawing that into that debate.
THE PRESIDENT: As far as you are concerned, it was not a reason at all?
A. No.
Q. One final document on this topic.
If we can go back to a document we were looking at before, at tab 11 of your bundle, for others {B2/37/4}. This is the slide that we were looking at before. Do you have that?
A. Yes.
Q. This is the slide you contributed to. If you could look at that slide again:
"Norton Healthcare have confirmed source of anhydrous salt."
A. Sorry, where are we?
Q. Top bullet:
"Norton Healthcare have confirmed source of anhydrate salt."
THE PRESIDENT: I think Dr. Reilly is in a different document.
MR. TURNER: I am sorry, you should be in tab 11 in your bundle.
A. Right.
Q. It is the document of 5th February 2001 and you referred to your contribution to the last slide. We are on the last slide. If you turn back to it for one final point in this section. First bullet:
"Norton Healthcare have confirmed source of anhydrous salt."
Would I be right in saying that means that Norton Healthcare have a confirmed source of anhydrous salt?
A. That is right.
Q. "Test required to ensure no patent infringement."

Not to ensure patent infringement, but to ensure no patent infringement. That is what it says.

A. It does.

Q. It is in that context, the tests required to ensure no patent infringement, that you go on to say:

"Recommend establishment of supply agreement."

Is that right?

A. I am not sure that is quite the right characterisation. Norton Healthcare had approached GSK and had said they have a salt. When this was picked up, they said, can I get a sample if there is a discussion -- it was as simple as that -- so they could test for non-infringement/infringement position and they could do some chemistry on it.

Q. The way you expressed it was:

"Test required to ensure no patent infringement."

A. Well, it needed testing.

Q. We will leave that there.

Turning to another topic, the reflection of the cross-undertaking in damages. We have touched on this already in one of emails we have seen with Alpharma. But when you were negotiating these agreements, did you factor in the value to GSK of being released from cross-undertakings that GSK had given to GUK and Alpharma or not? Did you do that?

A. Do you have a reference to a document?

Q. I am asking you a question first.

A. I have -- and I think I said this previously -- a very hazy recollection with regard to the cross-undertaking and I think I said this in previous meetings.

Q. You went further than that before. If we can turn to your CMA interview again at tab 2 {E1/12/59}, you will see that Mr. Moore asked you that question just above your final intervention on that page:

"We have already discussed the cross-undertaking in the context of GUK."

He asked:

"Do you have any comment or explanation in relation to cross-undertaking in the context of this email?"

"I would say the same thing. I do not recall any discussion around cross-undertakings. I am not even sure I know what that really means ..."

Is that your evidence?

A. I thinks that what I said at the time.

Q. Is it likely to be accurate?
A. I cannot actually see where you are yet.
Q. I am sorry.
THE PRESIDENT: Page 59. I think it is about the middle hole punch -- the lower hole punch.
Mr. Moore:
"Yes. Could I just understand ..."
And again it is part of this, the same section. Then at the end:
"Do you have any comment or explanation in relation to cross-undertaking in the context of this email?"
You say:
"I would say the same thing. I do not recall any discussion around cross-undertakings. I am not even sure I know what that really means, so."
A. I think what I said earlier this afternoon is consistent with that.
MR. TURNER: Which is that this is correct?
A. That I really cannot remember much about the cross-undertaking discussions.
Q. More than that, what is written here is likely to be correct. You are not even sure you know what that really means.
A. I do not think I can say at the time in that particular meeting.
Q. Let us move on to the question of parallel import products. In your statement, if we go to 63 to 66 and paragraph 91, another objective of these agreements was replacing parallel imports was it not?
A. Sorry, can you take me back to where we were?
Q. I am just situating you at the minute, I am not asking you to read it. We are going to go to, in your statement, paragraphs 63 to 66. I am going to ask you the general question: is it true that another objective for you and your company was indeed to displace/replace parallel import products in UK pharmacies? {E/2/17}
A. It would have been -- as I think I characterised earlier, it would have been a benefit to replace some of the parallel imported trade with generic products. There was a financial downside to doing so, but it still would have been advantageous.
Q. Let us turn to your first statement in the Alpharma litigation which is at {E1/13/1} --
A. So not 63?
Q. No, leave that to one side.

In your bundle, if you could go to tab 6, please. There you have your first statement in the Alpharma litigation. In it, please, go to page {E1/13/6}. If you go first to 5.4 on that page, near the top, you report in the last sentence that:

> "There are a large number of pharmacists, about 40% of the market, in respect of whom it is impracticable to negotiate."

This must mean brand equalisation discounts; yes? You can see that from the top of the page. It must be brand equalisation discounts.

A. Okay.

Q. Let us go to your second statement in the Alpharma litigation, which for you is at tab 10, otherwise it is at {E2/29/5}. This is 30th July 2002. If you go in that to page 5. You explain at 5.3:

> "... GSK does target those customers who do not currently buy from it, as I have stated above. GSK employs 50 staff alone whose job it is to try to sell Seroxat to the smaller retailers. The reason that it is harder for GSK to attract the custom of smaller retailers is that they regard the mechanics of brand equalisation discounts to be unnecessarily complex. It is far easier for them to simply to buy from parallel importers or distributors of distributed paroxetine."

Let us now go back to your witness statement for these proceedings and go first to paragraph 91 on page 24. {E/2/24}. Having identified the place of the parallel importers in the UK, at 91 in your main statement, you say, second line:

> " ... I expected the generic companies would target the parallel import price. I also expected they would target the independent pharmacies channel. I do not think the parallel import price would have been a floor for them necessarily in terms of their incentives."

Pausing there. Again, is that your chosen word, incentives? That is your expression?

A. Yes, it is written there, so.

Q. It is written there; I am just asking whether it is your expression.

A. So "particularly incentives" --

Q. Yes.

A. -- you want me to define?

Q. No, not to define, but whether it was your chosen word.

A. Well, I do not think it would have been a floor in terms of the overall deal --

THE PRESIDENT: Dr. Reilly, I think you are just being asked whether that is your expression, "incentives"; that is all.

A. I think it is. Okay, yes.
MR. TURNER: You continue:
"Like any business --"
These are the reasons why it would not necessarily have been a floor for them, the parallel import price:
" ... the different competitive prices for pack being sold into pharmacy would be factors for them to consider ..."
That was your statement. Can we explore that? It is no doubt true that if there are lower prices, the generics may have tried to meet them, but, Dr. Reilly, if the only market prices are GSK's price and the parallel import price, they would not want to price substantially lower than the parallel import price, would they?
A. No.
Q. In reality --
A. But the parallel import price could change depending on the source, depending on the supply.
Q. That could change, but your answer was that they would not want to price substantially lower than the parallel import price.
A. They would have to compete for the volume, but that they could do versus the parallel trade, given volumes could increase, price does could come down, etc.
Q. In reality, at this time, you expected these agreements to lead to the generic companies pricing their products at or around or even slightly above the parallel import price, did you not?
A. We expected them to be competitive with other packs on the market, including all of the parallel trade, which could fluctuate and go down, and, yes, there is a premium that some retailers would pay for UK pack because some patients do not like over stickers, they do not like foreign writing that they cannot understand on the packs, etc. So they would have to judge what they have to compete with.
Q. So the answer to my question is yes?
A. I also gave some context.
Q. Can we turn to your second witness statement in the GUK litigation? For you it is tab 20, otherwise it is at {A2/15L/2}. This is a statement you gave on 20th October and in it at 2.6 on page 2, if you have that, on the left-hand side near the bottom, you explain to the High Court:

"In essence Norton will want to maximise its return to the price which it pays to SB, and so it is unlikely to want to undercut the existing prices paid by customers. SB therefore expects that Norton would probably be selling at a similar price to that charged by the parallel importers and this is confirmed by what Mr. Saynor says Norton has told his colleagues at GUK, that:

"'The selling price for generic paroxetine to wholesalers would be in the same ballpark as the parallel import price for Seroxat ...'

"This is a price to which SB is already discounting in a number of existing brand equalisation deals."

So that was an accurate reflection of your expectation at the level that the distributors of distributed paroxetine would set their prices under the arrangements that you made with them; is that right?

A. They would set them at a competitive level with other product in the market. That is what you would expect. I think that characterises it -- as long as you remember the parallel traded pack price could go up and down.

Q. Do you disagree with what you wrote?

A. No.

Q. That is correct?

A. I am just giving some context.

Q. Turn now, please, to your first witness statement in the Alpharma litigation, which is your sixth tab and for others at {E1/13/7}.

In it again you say here in a statement dated 10th June. Halfway down that at 6.5 in the middle of the page:

"Therefore IVAX would be unlikely to want to undercut the existing price paid by customers for parallel imported [product]. This is the price to which GSK was already discounting a number of deals and so the financial impact on GSK of the deal with IVAX would be minimised."

So your perspective in entering these deals was that the financial impact on GSK would be minimised for the reason that you gave in this paragraph; is that right?

A. Not minimised.

Q. It is the word you used.

A. Okay. I think you are using that slightly out of context, but it would be competitive. There was a financial impact to doing these particular deals but to solve the patent litigation and the inherent uncertainty, that was deemed to be acceptable.

Q. The next paragraph --

THE PRESIDENT: I understand that but you are dealing with something else here. Obviously it was acceptable because I suppose you would not have signed it otherwise.

A. Agreed.

THE PRESIDENT: But you are explaining the rationale and the thinking about it a little bit in terms of pricing effects and you are talking here about IVAX and you are saying, we have already got parallel importers, you do not expect IVAX to undercut those prices, and for that reason, the pricing position that you, GSK, face from others' pricing, you do not expect it is going to change markedly, is that not what you are saying?

A. It is not going to change markedly, it could go up and down a little bit depending on the source of supply.

THE PRESIDENT: The parallel importers can always go up and down, but the difference between it being IVAX selling or parallel importers selling is not going to be significant. That is your expectation, as I understand it. Otherwise there would be -- if I just finish what I am trying to say -- otherwise the fact that IVAX would be selling if their price went down significantly, it could have a bigger financial impact on GSK, is that not right? Is that not what you are saying or have I misunderstood it?

A. I am saying that when we sell to IVAX, there is a financial impact versus competing with a parallel traded pack.

MR. GLYNN: That difference is not very great because of these brand equalisation deals which are already effectively taking your net price down to about the parallel trade price?

A. It is not as great as from 17.76 to -- whatever the parallel trade pack discount is. But selling at 8.45 to IVAX was still a financial impact to the organisation. So it is not from 17.76 to 8.45 because we were discounting certain volumes to the parallel traded price.

MR. GLYNN: So the comparison is between the 8.45, or whatever it was, and the net amount you were receiving per pack through these brand equalisation deals --

A. Agreed, yes.

MR. GLYNN: Thank you.

MR. TURNER: To complete the explanation of what you expected the impact on your business to be, if we read the next paragraph 6.6, you dealt with IVAX's position. If you look at 6.6, four lines up from the bottom your evidence was:

" ... GSK concluded, since IVAX's selling price to its subdistributors is likely to be above the price which IVAX pays to GSK, any subdistributors' prices to their

customers are unlikely greatly to undercut IVAX's own and, therefore, the financial impact on GSK would, again, be minimised."

Again you were not expecting therefore significant competition to take place between the generic entrants on the authorised basis, were you?

A. There would be some but they would be competing with the parallel trade. It depended what the parallel trade did. It is difficult to foresee what would happen in the future.

Q. Everything is difficult to foresee but you were not expecting there to be competition between the generic distributors, were you?

A. The generic distributors would have to compete with the parallel trade and the other people who are playing in that market. Once they are supplying, then they are all competing.

Q. Is your evidence that you expected a process of competition to break out which would lead to prices falling, placing pricing pressure on Seroxat? Is that your evidence?

A. No, I am saying here that there was some consideration of the pricing impact and it was difficult to foresee that moving forward.

Q. That is the extent of your evidence. If we go to 6.7:

"I believe the current situation therefore is that the price at which both IVAX and its subdistributors sell distributed paroxetine has remained stable since the coming into effect of the IVAX agreement. In reality, the price of distributed paroxetine is probably slightly higher than parallel imported paroxetine. This is because purchasers of distributed paroxetine are willing to pay a slight premium to avoid perceived customer resistance to parallel imported products."

That accurately reflects the position, does it not, Dr. Reilly?

A. Yes.

Q. So then if we go back to 91 of your main statement again for these proceedings {E/2/24}, we have covered the competitive situation, but you also cover how to persuade pharmacies, two lines up from the bottom of that paragraph:

"... to take their pack and so forth. In this connection they have also had the promotional funds which could be used for discounting, as explained below."

We are going to come on to the promotional funds in the context of the agreements, but in fact the generic companies did displace parallel import products very rapidly when they came on to the market, did they not?

A. They did displace them, yes.

Q. Very rapidly, did they not, within a matter of months?

A. No, within a matter of years.

Q. Let us turn to the transcript of your interview again at tab 2 for you, {E1/12/12} -- I am sorry, I will come back to that; I have a false reference.

If we now go to your statement in the Alpharma litigation in 2002, which is at {E1/13/7} to 8. For you, Dr. Reilly, it is at tab 6 of your bundle. Here, if we go to 6.8, bottom of the page, going back to this:

> "Before the coming into effect of the IVAX agreement, about 40% of paroxetine dispensed against prescriptions in the UK was parallel imported. I believe distributed paroxetine sold by IVAX and its subdistributors has now largely displaced that parallel imported product."

The date of this statement, you will recall, is June 2002. So by that time, there had been, not in a matter of years but very rapidly, a large replacement of the parallel import product.

A. Over quite a long period of time, yes.

Q. Over a period of months. In the second half of that paragraph you make clear that GSK's market share for Seroxat had not been materially affected by such entry. You concluded:

> "GSK has managed to maintain its own level of Seroxat sales against this competition."

Yes?

That was the position that you happily reported to the High Court at the end of paragraph 6.8.

A. The dynamic of the distributed paroxetine replacing the parallel trade means that the UK sales continued to grow on a very small amount but not as much as the paroxetine scripts.

Q. Turning to the agreements themselves now, I am going to ask you about certain general features which they shared --

THE PRESIDENT: Mr. Turner, when would be a sensible time to stop?

MR. TURNER: I have some more to go.

THE PRESIDENT: You are not going to finish today, clearly. So at some point soon I think we need to stop.

MR. TURNER: Yes.

THE PRESIDENT: He has had a long day.

MR. TURNER: It has been a long day.

THE PRESIDENT: If you were about to start turning to the agreements, perhaps that could be done on Monday, I think, sensibly.

MR. TURNER: Yes, I am very happy to do that.

THE PRESIDENT: Can I just ask you something that is puzzling me, Dr. Reilly, and one saw with Alpharma agreement, which you were taken through, we saw there was that meeting -- we can turn up the email -- there was an internal email about Alpharma about when you met them with Cynthia Robinson, I think, in October 2002 and there were the initial discussions which they recorded. That was on, I think, the 11th October from memory. Then you meet them again on 23rd October when the deal is done and then, of course, the formal agreement has to be drawn up by the lawyers and that is on the 12th November. So there is a gap between each stage and when you sign it but the deal done on 23rd October. Going back to what you told us right at the beginning about the various people, there was Eddie Gray, I think, to whom you reported.

A. Yes.

THE PRESIDENT: He, I think, reported to someone with a Dutch name I cannot pronounce -- I think it is a Dutch name. Someone in Europe.

A. Chris Viehbacher.

THE PRESIDENT: Viehbacher. Then it was David Stout --

A. Yes.

THE PRESIDENT: Did you have authority yourself to agree those amounts or did you have to get clearance?

A. No, I had no authority. I was there to listen and to carry the messages into the team and then the team would discuss and then Eddie would escalate those discussions up to Europe.

THE PRESIDENT: Who would actually have to sign-off to tell you, yes, you can sign to that?

A. That would be Chris Viehbacher, David Redfern and somebody from Europe legal.

THE PRESIDENT: Yes.

A. That is when, as you pointed out, they would consider the European impacts of these particular deals.

THE PRESIDENT: For them to do that, to give that approval -- I mean, did you just ring them up and tell them, this is what we are proposing to do or would like to do, or would you report to them? How was it done?

A. Eddie would call up and have a discussion and then get the viewpoint and then would instruct myself and Cynthia in terms of what the overall discussion was.

THE PRESIDENT: Was it all done over the phone?

A. Mainly done over the phone.

THE PRESIDENT: Or was there any -- to go up to David Stout, would there be a note to him saying --

A. Very rarely. It would be within the context of the overall plan and discussions.
THE PRESIDENT: Setting out the figures?
A. Setting out the figures.
THE PRESIDENT: That would just be relayed over the telephone, would it, or would someone do a note saying --
A. There generally would not be a note if it was within expectations. It is only if there is a very big difference between what was being impacted and what was being expected that they would have to then write a note.
THE PRESIDENT: Was this deal -- we are looking at the Alpharma, when we come on to it, was it within expectation or was it one --
A. As we saw in the plan, there was an expectation of another coming in.
THE PRESIDENT: Yes. So there was within expectation of the plan --
A. Indeed.
THE PRESIDENT: -- because the plan had been approved?
A. The plan had been approved. So as long as it was within those sort of expectations and could be managed from a financial perspective, then it was just done on a discussion.
MR. MALEK: We are not going to find any board minutes or anything like that approving any of these deals?
A. No.
THE PRESIDENT: Would there be a report afterwards to the board about this sort of expenditure on a deal? Were you on the board of --
A. On the board of the UK companies. It is not characterised as a board; it is the management team.
THE PRESIDENT: Yes, but would there be a European board as well?
A. There was a European management team, yes.
THE PRESIDENT: Were you on that?
A. No.
THE PRESIDENT: Would there have been a report to them saying GSK UK --
A. The sort of documents that collate information that you have seen, there were attempts to do that. This was just after the merger and the European infrastructure was not really in place. There were two different cultures that had come together in the merger. One was a very operating-unit-centric organisation, which was SB, so everything was sort of UK and everything reported into the UK. After the merger, everything was done on a functional

basis. So the legal were separate, HO was separate, the commercial operations were separate.

The European structures were new and were just being put in place at the time of these deals.

THE PRESIDENT: It is quite an upheaval when that happens, is it not?

A. Huge upheaval. Some of these reporting issues caused problems as you can see from the documents because people did not understand, they were new into role, and that is why I do not recognise a lot of the names on some of these documents because there are people who come in from completely different organisations.

THE PRESIDENT: Yes. Thank you very much.

10.30 am --

MR. TURNER: Sir, I was going to ask whether it might be better to start at 10.00 am, if it would be convenient to the Tribunal.

THE PRESIDENT: Yes, just a moment. (Pause). Yes. One of us has some business on another case at 9. We can do 10.15 and take a shorter lunch break if necessary.

Thank you very much, Dr. Reilly; you have had a long day.

I must warn you formally now, because it is a long weekend until you come back, that it is extremely important that you do not discuss the case with anyone.

A. I will not discuss it with anyone.

THE PRESIDENT: 10.15 am on Monday.