

**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No. 1279/1/12/17

Victoria House,  
Bloomsbury Place,  
London WC1A 2EB

10 May 2018-25 May 2018

Before:

**MR ANDREW LENON QC**  
(Chairman)

(Sitting as a Tribunal in England and Wales)

BETWEEN:

**PING EUROPE LIMITED**

Appellant

- and -

**COMPETITION AND MARKETS AUTHORITY**

Respondent

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**MR ROBERT O'DONOGHUE QC** (Instructed by **K&L Gates LLP**) appeared on behalf of the Appellant

**MS MARIE DEMETRIOU QC** appeared on behalf of the Respondent

1 Wednesday, 16 May 2018

2 (10.30 am)

3 MS DEMETRIOU: Good morning. The CMA calls Mr Houghton.

4 MR JAMES HOUGHTON (affirmed)

5 Examination-in-chief by MS DEMETRIOU

6 MS DEMETRIOU: Mr Houghton, sorry I mispronounced your name.

7 A. It's okay. It's fine. No problem. Everybody does it.

8 Q. Do you have a copy of your witness statement in front of  
9 you? I think one will be handed to you now.

10 A. Yes, I do. Thank you.

11 Q. If you go to the final page on page 5, is that your  
12 signature there?

13 A. Yes.

14 Q. And is there anything in this statement that you want to  
15 change?

16 A. No.

17 Q. So are you satisfied that the facts in the statement are  
18 true to the best of your knowledge and belief?

19 A. Yes, I am.

20 MS DEMETRIOU: Mr Houghton, if you wait there, Mr O'Donoghue  
21 will have some questions for you.

22 Cross-examination by MR O'DONOGHUE

23 MR O'DONOGHUE: Good morning.

24 A. Good morning.

25 Q. It's "Houghton", is it?

1 A. "Houghton".

2 Q. There was a famous Liverpool player during the 1980s,

3 Ray Houghton --

4 A. Yes, Ray Houghton, correct.

5 Q. -- which is what's thrown me, but I will do my best.

6 So just to put your career in context -- so we can

7 pick this up from the first few paragraphs. The first

8 thing I should have said is that of the six people who

9 are giving evidence over the next few days, I have the least

10 number of questions for you.

11 A. Okay.

12 Q. That may or may not be good news. It depends on the

13 quality of the questions, rather than the quantity, but

14 we should be pretty brief.

15 Just to look at the archaeology of your career. So

16 you have been a PGA pro since 2007?

17 A. Correct.

18 Q. Then you spent just under two years working in

19 an American Golf retail -- or two retail stores;

20 correct?

21 A. Yes.

22 Q. Then in May 2015 you transferred to operations?

23 A. Yes, American Golf head office.

24 Q. Head office?

25 A. Yes.

1 Q. So that was a promotion?

2 A. Correct.

3 Q. Okay. Now, it is clear, I think, from your statement  
4 and Mr Mahon's that American Golf is highly committed to  
5 custom fitting in-store.

6 A. Correct, yes, we are.

7 Q. You say at paragraph 6, for example, that you have made  
8 significant investments in the custom fitting process.  
9 Now, just to give the Tribunal a sense of what that  
10 means, so American Golf, as I understand it, has about  
11 150 retail stores.

12 A. Slightly less. 130, we have.

13 Q. I thought there were some recent acquisitions of  
14 on-course stores which --

15 A. It is 130 currently. It will be 131 next week.

16 Q. Okay. So including the recent acquisitions?

17 A. Yes.

18 Q. So 130-odd, and all of them carry out custom fitting?

19 A. They -- to the best of my knowledge, they all do, yes.

20 Q. Could you give the Tribunal a sense of the type of  
21 equipment, the investments, the staff -- the basic costs  
22 in each of these stores in terms of set-up for custom  
23 fitting. That's physical space and things like that.

24 A. Yes, so generally that will be dependent on obviously  
25 the store's location and the facilities that they have

1 at each location. We have a range of different stores.  
2 Obviously some are basic golf courses where they have  
3 obviously a lot of space there with the open golf  
4 course. We have certain stores around A-roads, which is  
5 one of the first stores that I started in, which would  
6 just have a single net within that store where customers  
7 could be fitted in there. We have driving ranges with  
8 up to 80 bays. I think it's possibly our highest one.

9 We have approximately 80 bays in some of those  
10 bigger driving range stores, some of them being two-tier  
11 driving ranges, and depending on what type of store the  
12 custom fitting is operating on would depend on the type  
13 of fitting facilities that we have there. So, for  
14 example, the driving ranges, they would generally have  
15 something like either FlightScope or TrackMan, which is  
16 a radar-based fitting system, so they can see full  
17 flight of the shots when they're hitting them.

18 I think there is an indoor store with only a net or  
19 a closed facility. They would generally have --  
20 something called "GC2" is what we use in a lot of our  
21 stores, which is a photometric-based system. So they're  
22 the two types of fitting equipment that we have for full  
23 swing and some of our stores now have something called  
24 "SAM PuttLab", which we use for fitting purposes. That's  
25 not in all of the stores. That's an ongoing thing at

1 the moment.

2 Q. For the physical equipment, at the risk of using a pun,  
3 can you give the Tribunal of a sort of ballpark figure  
4 for what this equipment costs?

5 A. So TrackMan is approximately £18,000 per unit;  
6 FlightScope around about £15,000 per unit; GC2 is  
7 I think about £8,000 or £9,000 per unit and I'm not sure  
8 on SAM PuttLab.

9 Q. Would a typical store have all of this equipment or even  
10 multiples --

11 A. Yes.

12 Q. -- of that equipment?

13 A. So some of our stores are called "game improvement  
14 zones". So, for example, we have opened a store  
15 recently in Warrington, close to our head office, which  
16 has three in there. They have TrackMan, they have GC2  
17 and they have SAM PuttLab, so there are some stores that  
18 use multiples.

19 Q. Now, American Golf, of course, is in the business to  
20 make money. It's what it does. But one of the reasons  
21 American Golf makes these substantial investments across  
22 130-plus stores is that you firmly believe that custom  
23 fitting in person is beneficial for the customer?

24 A. Correct.

25 Q. We see, for example, in paragraph 6 of your statement

1       you set out the American Golf mission statement, "We  
2       exist to improve your game". And then we see for  
3       example at paragraph 14, further on in the page, where  
4       you talk about a better result for the end-user.

5             Now, just to tease that out a bit, there should be  
6       handed to you shortly bundle B2 and it's tab 3.

7   A.   Yes.

8   Q.   So just to fill you in, this is Dr Paul Wood, who is  
9       a very clever person who works in the engineering  
10      department of Ping.

11  A.   Mm-hmm.

12  Q.   He has given a witness statement on some of the  
13      engineering and technical aspects of custom fitting. If  
14      I can ask you to start at paragraph 32, please. So he  
15      sets out there -- so you get paragraph 32 (a) and (b)  
16      and (c). So (a) is about when the club is too upright,  
17      talking about irons, (b) is too little loft and (c) is  
18      too much flexibility in the shaft. If you can  
19      quickly skim through that. The basic question I want  
20      to ask you is: this is clearly correct? (Pause)

21  MS DEMETRIOU: Sorry to rise. There is a lot of detail in  
22      there. So can Mr O'Donoghue make clear whether he's  
23      asking whether the witness agrees with every single fact  
24      in these paragraphs or the general gist about custom  
25      fitting being beneficial because there is a lot of very

1 fine detail.

2 MR O'DONOGHUE: Anything you disagree with, by all means  
3 speak up.

4 A. No, I've read -- I'm happy that that's factually  
5 correct, yes.

6 Q. Now, he then goes on to say at 33 -- so at 33 he's  
7 talking about the professionals and he says that -- so  
8 Ping, as you know, has a number of pros with sponsors  
9 like Bubba Watson and other players. Then he says at  
10 the top of page 9 at 33 that some of these people, at  
11 least during tournament season, may have adjustments to  
12 their clubs on a weekly basis. Again that isn't very  
13 surprising to you?

14 A. No.

15 Q. No. And, again, it's an obvious point, but these are  
16 people who do this for a living. They make money out of  
17 playing golf. The only reason they would go through  
18 customisation and adjustment is they think that they  
19 have a better chance of making more money by doing that  
20 than not doing that. That's obvious, isn't it?

21 A. Correct.

22 Q. Then one final point at 34, the last sentence:

23 " ... the Driver Fitting article shows that players  
24 gain an average of 11 yards increased distance and have  
25 a 25 per cent better dispersion with their fitted club



1 when compared [with] their current club."

2 Again there is nothing very surprising about that in  
3 terms of custom fitting.

4 A. No, not if somebody has never been fitted before and  
5 they're optimised, then, yeah, I could agree with that.

6 Q. Now, when you spent two years in the retail stores and  
7 the customer came in and you were trying to encourage  
8 them to be custom fit, can you give the Tribunal some  
9 indication of the kind of pitch you would make to that  
10 customer.

11 A. Yes. So we use a standardised seller model called  
12 "GAMES", which is something that American Golf train all  
13 their staff on, and it's a seller model that we used to  
14 approach all of our customers in the same way so they  
15 get a standardised process, a standard visit, regardless  
16 of which location of the country they're in. Whether  
17 they're in Scotland, Northern England, Southern Wales,  
18 doesn't really make any difference. They can go in and  
19 get the same look and feel.

20 All of our staff are trained to go through that  
21 process and once they would take them through -- so the  
22 "G" standing for "Greet and approach the customer", "A",  
23 "Ask questions", "M" is "Match the products", "E" being  
24 "Sell essentials" and "S" is "Sell add-ons". So they  
25 are kind of the steps that we take each customer

1 through.

2 Q. On custom fitting specifically, what kinds of things  
3 would you say to them?

4 A. So when we take them in for a custom fit -- not  
5 everybody obviously comes in to buy custom fit golf  
6 clubs. They may well be in to buy soft goods, clothing.  
7 If somebody is into the store for a custom fit, we would  
8 then take them through our custom fit process, with the  
9 first part being a consultation with the customer. So  
10 we would ask them some general questions about their  
11 game, how they play the game, how long they have played  
12 for, strengths and weaknesses, any kind of injuries that  
13 they may have that obviously could affect their optimum  
14 performance. From that initial consultation we would  
15 then be able to conduct the best custom fitting to our  
16 ability.

17 Q. American Golf has been extraordinarily successful in  
18 promoting custom fitting. There are confidential  
19 figures in Mr Mahon's statement.

20 A. Mm-hmm.

21 Q. They're extremely high. You agree with that statement?

22 A. Correct.

23 Q. For its part, Ping has also been very supportive of  
24 American Golf in terms of promoting custom fitting. If  
25 I can just take you to Mr Clark's witness statement.

1 It's in B1, tab 1. If you can turn to internal page 10.  
2 Some of the information here is confidential to Ping.  
3 American Golf obviously will be aware of some of this  
4 information, but I would ask you, please, not to read  
5 out the figures.

6 A. Okay.

7 Q. I just want to put the general point to you. I mean,  
8 it's quite a simple point. So what we see here is there  
9 are free fitting clubs, discounted clubs, free training,  
10 demonstration days, fitting services and fitting  
11 centres. You are familiar that Ping uses these  
12 activities --

13 A. Yes.

14 Q. -- to support American Golf and other retailers in  
15 custom fitting?

16 A. Correct.

17 Q. Now, for American Golf itself, the process of being  
18 custom fit is a convenient one, so you can book  
19 an appointment on the American Golf website --

20 A. Correct.

21 Q. -- you can do a walk-in to a store --

22 A. Yes.

23 Q. -- and presumably you can ring up to have a custom  
24 fit --

25 A. Correct.

1 Q. -- using the telephone number on the website?

2 A. Mm-hmm.

3 Q. So there are multiple options open to customers who are  
4 or may be interested in custom fitting.

5 Now, turning to the American Golf fitting process,  
6 which really is the meat of your statement.

7 A. Yes.

8 Q. So there was a fundamental change in that process in  
9 2015/2016?

10 A. Correct.

11 Q. The point you make in your statement -- well, let's turn  
12 this up. It's at paragraph 7. So the point you make  
13 here is that you have 1,100 fitting personnel dotted  
14 around the country, fitting more than one brand, and  
15 that using a combination of different systems was  
16 frankly bit of a nightmare.

17 A. Yes.

18 Q. Then in 2016 a concerted effort was made to streamline  
19 the process across all of the brands and offer something  
20 which was more standardised from your perspective.

21 A. Correct.

22 Q. Is that fair?

23 A. Correct.

24 Q. Now, you accept that prior to that streamlining, which  
25 was quite recent, American Golf, at least to some

1 extent, would have used the Ping fitting process for  
2 custom fitting?

3 A. Yes.

4 Q. So for many, many years, until 2016, the Ping process  
5 would have been used specifically in a number of  
6 incidences?

7 A. Yes.

8 Q. And you're also aware that in respect of custom fitting,  
9 Ping was the pioneer -- it effectively invented custom  
10 fitting?

11 A. Correct.

12 Q. Now, American Golf, of course, has streamlined its  
13 process -- and you may or may not know the answer to  
14 this and if you don't that's perfectly fair -- so today  
15 you're using a standardised process for multiple brands,  
16 but do you know or do you accept that for, say, a small  
17 on-course retailer that has Ping and maybe one or two  
18 other brands, he or she may still be using the Ping  
19 custom fitting process?

20 A. Correct.

21 Q. Okay. Now back to a point we touched on. You say at  
22 paragraph 11 -- so it's the third line down. This is  
23 the method you mentioned, the GAMES method.

24 A. Mm-hmm.

25 Q. You use an interesting word, which is that it develops

1 a "rapport" with the customer. Now, I would suggest  
2 that what you mean by that, at least in part, is that in  
3 having a discussion with the customer about his or her  
4 game, the benefits of custom fitting, you can educate  
5 and persuade a customer who may be lukewarm about custom  
6 fitting to have it done. That's in part what you mean  
7 by "rapport"?

8 A. Correct.

9 Q. You build up trust based on your discussion. So, for  
10 example, you can say, "Well, I'm a PGA pro, I was custom  
11 fit and it made this difference or that difference", so  
12 that's how it would work?

13 A. Correct.

14 Q. Now, turning to the six steps you outlined. If I could  
15 ask you to keep your finger on paragraph 12 of your  
16 statement --

17 A. Mm-hmm.

18 Q. -- and at the same time if you can be given B1/1. It's  
19 tab F of that bundle. So this is the Ping fitting  
20 manual. What I want to do is to map the steps you  
21 outline at paragraph 12 onto the Ping fitting manual.  
22 So if we can start at page 5, please. So you will see  
23 there that step 1 in the Ping fitting process is the  
24 interview.

25 A. Correct.

1 Q. That is basically the same thing as your 12(a), which is  
2 the consultation.

3 A. Correct.

4 Q. Correct?

5 A. Yes.

6 Q. Okay. Thank you. Then if you go to 12(b), which is your  
7 static fit, if we then turn to page 8 of the Ping  
8 fitting manual, this is the height and wrist to floor  
9 measurements --

10 A. Correct.

11 Q. -- so that's identical to your 12(b).

12 A. Correct.

13 Q. Thank you. And 12(c), what in American Golf parlance is  
14 "dynamic fitting". If you go to page 16 of the fitting  
15 manual -- so there are a number of pages here on ball  
16 flight and dynamic iron fitting and in basic terms, if  
17 not in more or less complete terms, that is the same as  
18 your 12(c)?

19 A. Correct.

20 Q. Now, at the end of 12(c) you make an interesting comment,  
21 which is:

22 "Performance is important, but so is the look, feel  
23 and sound of the golf club to many customers."

24 Now, certainly feel and sound, if not look, that is  
25 not something you can observe on the internet. That has

1 to be done face-to-face.

2 A. Correct.

3 Q. So one of the benefits of custom fitting is that,  
4 through the interaction with another human being and the  
5 fitter, you can have a discussion that in some ways is  
6 quite subjective about things like feel. It's a hard  
7 thing to describe?

8 A. Yes, very -- it's very individual, yes.

9 Q. That cannot possibly be replicated on the internet?

10 A. No, it can't be.

11 Q. Thank you. Now, if we then go to 12(d), what you call  
12 "shaft selection" or "shaft fit". If you turn to  
13 page 11 of the Ping fitting manual, so at this stage you  
14 have had the interview and you have a static fit  
15 according to the Ping colour code, which is on your  
16 left, and then, on page 11, you have the initial shaft  
17 fit. That is essentially the same as your 12(d)?

18 A. Correct.

19 Q. Then 12(e) is what you call "lie angle and loft" and the  
20 lie board test?

21 A. Mm-hmm.

22 Q. If you turn to pages 12 and 13 of the Ping fitting  
23 manual, you can see on the right, for example, that is  
24 the lie board test.

25 A. Correct.



1 Q. That is exactly the same?

2 A. Yes.

3 Q. You may not know this, but are you aware that Ping  
4 invented the lie board test?

5 A. I wasn't aware they invented it, no.

6 Q. Finally, then, at 12(f), which is the "Grips", if you turn  
7 to page 61 of the Ping fitting manual, you see the two  
8 steps, measuring hand size and then over the page the  
9 grip chart.

10 A. Yes.

11 Q. That's basically the same as your 12(f)?

12 A. Correct.

13 Q. Now while we are on 61, to me as a layman it doesn't  
14 look very straightforward to accurately measure your  
15 hand size in this way. Is that a fair comment?

16 A. It would obviously be dependent on the accuracy of the  
17 person reading the result on the other end.

18 Q. The American Golf fitters will have training --

19 A. Yes, correct, they do.

20 Q. -- whereas if I was doing this at home, there is  
21 a chance that I could muck it up?

22 A. Correct.

23 Q. Now, if we then go to paragraph 13 of your statement,  
24 you make a number of points. You say:

25 "In addition to providing new clubs to improve the

1 customer's game, the face-to-face fitting process gives  
2 an opportunity for the fitter to observe the customer  
3 hitting numerous shots noting their swing speed,  
4 ball spin and shot distance."

5 So, again, I think an obvious point, but that  
6 process of observation in person with someone physically  
7 swinging a club, you cannot possibly replicate that on  
8 the internet?

9 A. Correct.

10 Q. You then make a second point, which is that, having had  
11 the fitting for the clubs, you say that the fitter then  
12 has the opportunity to make other recommendations, for  
13 example on ball selection, which may further improve  
14 a customer's game.

15 A. Correct.

16 Q. So there is a second benefit to custom fitting, which is  
17 that, having optimised the clubs, you can then  
18 cross-sell other equipment, such as the ball, which may  
19 further improve the consumer's game?

20 A. Yes.

21 Q. So there is a sort of --

22 A. -- chance to add on.

23 Q. A further benefit?

24 A. Correct.

25 Q. And a further sale for you?

1 A. Yes.

2 Q. Then you make a third point:

3 "In some situations, it may be clear that an  
4 improvement in one area may create a 'gap' in another area  
5 in the customer's bag. Our fitters are able to assist  
6 customers by identifying other clubs which might fill this  
7 gap."

8 So I think the point you're making there -- and  
9 correct me if I am wrong -- is that by correcting one  
10 thing, it may have a knock-on effect on something else  
11 and that may be something that needs to be streamlined  
12 to plug a gap?

13 A. Correct, yes. It gives us an opportunity again then to  
14 sell more product.

15 Q. Again, these three further benefits, that is not  
16 something that can be replicated online. That's  
17 something which is part of the discussion you have in  
18 the face-to-face custom fitting?

19 A. Correct.

20 Q. Now, having been through the steps of 12(a) to (f), it is  
21 fair to say, isn't it, that the current standardised  
22 streamlined American Golf system draws very closely on  
23 the steps we have seen in the Ping fitting manual?

24 A. Correct.

25 Q. There is a very high degree of consistency?

1 A. Yes.

2 Q. Again, you may not know this -- I put to you the point  
3 about the lie board -- that a number of these steps,  
4 such as the lie board, are a direct consequence of the  
5 innovations that Ping brought to the market in terms of  
6 custom fitting.

7 A. Correct.

8 Q. The point is that because Ping was the pioneer, others  
9 have followed -- we accept that --

10 A. Yes.

11 Q. -- but it is predominantly the Ping system which has  
12 brought about these benefits in the market?

13 A. Correct.

14 MR O'DONOGHUE: Sir, I have no further questions.

15 MS DEMETRIOU: There is nothing from me.

16 Questions from THE TRIBUNAL

17 PROFESSOR BEATH: I have a question. I want to go back to  
18 the discussion you had with Mr O'Donoghue on the mapping  
19 from the Ping system to the American Golf system.

20 A. Yes.

21 PROFESSOR BEATH: The way it came across to me anyway was  
22 that this was almost the perfect mapping. Every step in  
23 one could be matched to a step in the other. It is what  
24 you might call a one-to-one then onto mapping.

25 A. Mm-hmm.

1 PROFESSOR BEATH: Now, you mention, however, that  
2 American Golf had chosen to have its six-stage system --

3 A. Yes.

4 PROFESSOR BEATH: -- because all these other fitting  
5 processes, either a Titleist or TaylorMade and  
6 whatever -- all these other fitting processes, it was  
7 getting too complicated.

8 A. Correct.

9 PROFESSOR BEATH: So if that's the case, how do these other  
10 fitting processes differ from the Ping system? Is there  
11 some different step or do they not have quite so many  
12 steps?

13 A. So the main difference from my point of view, when we  
14 were writing this training, was getting staff to  
15 understand Ping's colour-code system. All the other  
16 brands generally use a numerical system, which they can  
17 quite easily understand. It was the whole process  
18 around the Ping's colour system that they were  
19 struggling to understand at certain points.

20 PROFESSOR BEATH: So that was the problem --

21 A. Correct.

22 PROFESSOR BEATH: -- the fact that the colour-code system  
23 was confusing to them or ...?

24 A. It was not so much that it was confusing. It was just  
25 different to the way TaylorMade, Titleist, Callaway,

1 Cobra, do all of their fittings and then even more so  
2 when the colour codes were changed fairly recently  
3 from -- they were changed very slightly in terms of the  
4 blue dot is not the same that it used to be. It is now  
5 creating 1, 2, 3, 4, 5 up, 1, 2, 3, 4, 5 flat, to kind  
6 of streamline almost with what the other brands are  
7 doing, so it's kind of helped us in that way. But that  
8 is more -- that is now more in line with the other  
9 brands. But, again, not necessarily -- all our guys  
10 would not necessarily know the black dot is standard if  
11 they've never been through the Ping fitting process --  
12 or the neutral line.

13 PROFESSOR BEATH: Thank you.

14 THE CHAIRMAN: The American Golf system, is that  
15 a colour-based system?

16 A. It's not, no. We use a numerical-based system, but  
17 into -- we use a custom fit app. So that is -- when the  
18 fitter would select, for example, "Neutral lie angle" --  
19 if the customer is trying to be fitted for Ping clubs,  
20 it would automatically select black if they chose  
21 neutral, so it matches in the number to the colour with  
22 Ping. So when we send our fit sheets to the guys at  
23 customer service at Ping, they can cross-reference them  
24 so it's -- you can't get confused with it, the way it is  
25 at the moment.

1 THE CHAIRMAN: Thank you very much, Mr Houghton.

2 MS DEMETRIOU: The CMA calls Mr Neil Mahon.

3 MR NEIL MAHON (affirmed)

4 Examination-in-chief by MS DEMETRIOU

5 MS DEMETRIOU: Mr Mahon, you should be given a copy of your  
6 statement. Can you go through to the final page,  
7 please, on page 9?

8 A. Yes.

9 Q. Is that your signature there on that page?

10 A. It is.

11 Q. Is there anything in this statement that you would like  
12 to clarify or change?

13 A. There are two revisions I would like to point out,  
14 please. In paragraph 2 it states we have 121 retail  
15 stores. That's now 130. I repeat it in 15 as well.

16 Q. Yes, so that's paragraphs 1 and 2, I think.

17 A. Yes. And there is a figure quoted in paragraph 18 which  
18 we have since revised, 18(c), custom fitting rate. It  
19 stated [redacted] per cent. That is now [redacted] per cent on  
20 revision.

21 Q. Thank you. Subject to those changes, are you satisfied  
22 that the facts in the statement are true to the best of  
23 your knowledge and belief?

24 A. I am, yes.

25 MS DEMETRIOU: Please wait there, Mr Mahon. Mr O'Donoghue

1 will have some questions for you.

2 Cross-examination by MR O'DONOGHUE

3 MR O'DONOGHUE: Mr Mahon, good morning.

4 A. Good morning.

5 Q. I am having a difficult day with names because in the  
6 country where I was born your name would be "Mahon".

7 A. That's where all my family are from, as well, yes.

8 Q. We will agree on "Mahon" for today. Just to put the  
9 American Golf group business in context, so there are  
10 the American Golf stores that I at least would associate  
11 with American Golf, so these are retail stores --

12 A. Yes.

13 Q. -- and there are 130-odd --

14 A. Yes.

15 Q. -- of those dotted around the country. Then that retail  
16 brand has an online website with the same name.

17 A. Yes.

18 Q. And then you have a separate online-only business called  
19 "Online Golf" --

20 A. Yes.

21 Q. -- which is purely a website?

22 A. Yes, it's pure online.

23 Q. Is it fair to say that there is a degree of  
24 differentiation between the American Golf website and  
25 that website in that the Online Golf website tends to be



1 somewhat cheaper clubs, perhaps more heavily discounted?

2 It's run as a different brand, as I understand it.

3 A. The Online Golf brand tends to be more deal-driven,  
4 whereas American Golf is all about the latest products,  
5 the latest season products and being able to buy the  
6 entire package.

7 Q. So you have a foot in two different camps?

8 A. Yes.

9 Q. Now, you make a point at paragraph 8 that, when you  
10 first joined American Golf 25 years ago, custom fitting  
11 was for the rich man or woman and it wasn't widely  
12 offered to the general public. But you accept that, at  
13 least in the case of Ping, Ping was at that stage  
14 involved in custom fitting.

15 A. Yes, albeit we didn't have a Ping account 25 years ago.  
16 They wouldn't give us one.

17 Q. Yes, I understand. You were here when I put this point  
18 to Mr Houghton, but it sounds like it's perhaps fairer  
19 to put it to you. If you can turn up Dr Wood's  
20 statement again. It's bundle B2, tab 3, and it's  
21 paragraph 20.

22 A. Yes.

23 Q. If you can quickly read through that.

24 A. Yes.

25 Q. So he makes the point that Ping was the first to create

1 a colour-code chart and fitting tools, online software  
2 and so on. Then you see at 19 the historical point  
3 about Karsten Solheim, that Ping pioneered custom  
4 fitting in the 1960s and 1970s. And you agree with all  
5 of that, presumably?

6 A. Yes, I would.

7 Q. Now, it is fair to say and I accept that in the interim  
8 other companies have cottoned on to the idea that custom  
9 fitting is a good thing and they have increased their  
10 own efforts in terms of their custom fitting offering.

11 A. I can't speak on behalf of the brands. It would be  
12 wrong of me to do so. I can speak on behalf of  
13 American Golf. I don't know when the brands developed  
14 their own fitting technology, so --

15 Q. It's not actually what I am asking you. I am asking you  
16 as a retailer --

17 A. Mm-hmm.

18 Q. -- stocking these brands --

19 A. Yes.

20 Q. -- they too are now interested in custom fitting?

21 A. Again, they could always have been involved in custom  
22 fitting to my knowledge. I really couldn't answer that  
23 question accurately.

24 Q. That is fair. We can't take that any further with you.

25 Going back to Ping, if we can go to Mr Clark's

1 statement, please. This is B1/1 --

2 A. Yes.

3 Q. -- and it's paragraph 40(f). Now some of this, Mr Mahon,  
4 is confidential, but I am going to take you to a few, so  
5 if you look at -- disregarding the bits in yellow,  
6 please.

7 A. Mm-hmm.

8 Q. So Mr Clark makes the point that:

9 "our competitors tend to focus on larger retailers  
10 with more significant sales volumes. Historically Ping Europe  
11 has always been comfortable doing business with PGA  
12 professionals, many operating small golf clubs ...",  
13 and so on.

14 Then he gives some confidential figures on the depth  
15 of the retailer base. Do you accept that in terms of  
16 retailer coverage, Ping goes further and deeper than the  
17 other brands?

18 A. Again, I can't speak on behalf of the other brands,  
19 I'm afraid, and I don't know what Ping's retail coverage  
20 is on-course or off-course.

21 Q. That is fair. Now, over the page, under (h) --

22 A. Sorry, which page are we on now?

23 Q. Sorry, it's the next page, Mr Mahon, page 10. So he  
24 says:

25 "A fundamental difference between Ping Europe and its

1 competitors that is not related to technical elements of  
2 the custom fitting process is the difference in attitude  
3 towards custom fitting. Ping Europe wants and is aiming  
4 for all of its golfers to buy Ping clubs after being  
5 face-to-face dynamically custom fitted. Ping Europe's  
6 competitors are achieving more of their sales [...]following  
7 custom fitting than before, but do not put as much  
8 emphasis on whether the sale is achieved by custom  
9 fitting or not."

10 You presumably agree with that?

11 A. Again I can speak for American Golf in that our desire  
12 is for every customer to have a custom fitting. That is  
13 our aim.

14 Q. Well, do you accept as a retailer for Ping that Ping  
15 wants all of its golfers to be custom fit?

16 A. 100 per cent. We're brand agnostic. That goes right  
17 across every brand we sell. To be custom fitted -- we  
18 would sooner a customer walk away having had a custom  
19 fitting whether they purchase or not.

20 Q. I am asking a slightly different question, which is: do  
21 you accept as a Ping retailer that Ping wants all of its  
22 golfers to be custom fit?

23 A. Yes.

24 Q. Now, staying in the same bundle, if you turn to tab J of  
25 B1/1, so this is a letter to account-holders which

1 I assume American Golf would have received at some  
2 point.

3 A. Mm-hmm.

4 Q. It's the penultimate paragraph. So Mr Clark is here  
5 explaining Ping's custom fitting policies and he says:

6 "To some of you this may sound restrictive in these  
7 difficult times and will result in fewer sales for Ping.  
8 However, it emphasises our commitment to our core  
9 philosophies and demonstrates that the quality of what  
10 we do is more than important than the quantity. It is  
11 a commitment for the long-term strength of the brand and  
12 we believe that the vast majority of our customers  
13 understand and support these policies and we thank you  
14 for this support."

15 So what Mr Clark is saying there is that, "We have,  
16 through custom fitting, an unrelenting commitment to  
17 quality. We appreciate and expect in the short term  
18 that that may result in us losing some sales, but in the  
19 long term we think that that quality-based method of  
20 competing is the best thing for the brand", and you  
21 don't disagree with that?

22 A. If I'm being honest with you, I can't answer that with  
23 a "Yes" or a "No". If I could add more sort of context  
24 around that?

25 Q. Please.

1 A. Not every customer will want a custom fitting. It is  
2 entirely up to the consumer whether they want to go  
3 through the process or not. We stock a range of Ping  
4 clubs in every store that are on a Ping stand as we do  
5 for all of the other major brands. A 10.5 regular  
6 right-handed driver is considered to be a standard  
7 driver. If a customer walks in, picks it up off the  
8 rack and brings it to the cash desk and says "I want to  
9 purchase this", we would always recommend that the  
10 customer goes into the net and goes through the fitting  
11 process to make sure it's the right club for them.  
12 However, if they insist that they know that's what they  
13 want and they want to pay for it and take it away,  
14 that's what they're allowed to do.

15 Q. I understand. We will come to standard-fit clubs.  
16 That's a different part of your statement. But at this  
17 stage I am asking you a slightly different question,  
18 which is: you as a Ping retailer would have received  
19 this letter --

20 A. Mm-hmm.

21 Q. -- and it makes clear that Ping's commitment to custom  
22 fitting is as absolute as it can be. I appreciate some  
23 people, you can't force someone to be custom fit. We  
24 agree on that.

25 A. Yes.

- 1 Q. But from Ping's perspective, this is what Ping is  
2 telling you and you have no reason to doubt that is  
3 accurate in any respect?
- 4 A. No. No, as a statement that Ping wants everyone to be  
5 dynamically custom fitted, that is what American Golf  
6 would prefer as well.
- 7 Q. Let me put the question another way: no brand apart from  
8 Ping has ever written to you and said, "We are happy to  
9 lose sales because we think in the long term that will  
10 improve quality"?
- 11 A. I couldn't answer that question factually because  
12 I don't know whether any other brand has written to us  
13 throughout the 25 years I have been with the business  
14 with a similar statement or not.
- 15 Q. Well, that's fair. I am asking you a factual question,  
16 which is: to your knowledge, American Golf has not  
17 received any similar communication from any other brand?
- 18 A. To my knowledge that's -- yes, I don't know that.
- 19 Q. Thank you. So when you say -- if we turn to  
20 paragraph 19 of your statement, the last sentence, "Ping  
21 is very well known globally and invests in marketing and  
22 promoting custom fitting, but it is no different from other  
23 brands in that respect", truly based on the letter we  
24 have seen Ping is fundamentally different.
- 25 A. In what respect?

1 Q. Well, they have written you a letter saying, "We have  
2 a full commitment to custom fitting. If that commitment  
3 comes at the expense of losing some sales in the short  
4 term, so be it. We are committed to long-term quality  
5 because that is the best thing for the consumer and the  
6 best thing for the brand". That is different.

7 A. Again, I don't know whether the other brands have  
8 written a letter of that nature. I did make that  
9 statement before.

10 Q. Well, let's look at it another way: the reason we're  
11 having this trial is that Ping's commitment to custom  
12 fitting through this internet policy is different to  
13 other manufacturers and, in particular, it does not  
14 authorise sales online of its products, whereas, by  
15 contrast, non-Ping manufacturers do allow the sale of  
16 their clubs online. That is a fundamental difference.

17 A. Are you just referring to Europe here and not the US?

18 Q. Yes.

19 A. Yes.

20 Q. Now, there are retailers other than American Golf which  
21 do allow significant so-called custom fit sales online.  
22 Are you aware of that?

23 A. I am, yes.

24 Q. If I could just show you one website. There should be  
25 a screen in front of you.



- 1 A. Yes.
- 2 Q. So this is a website called "Golf Online".
- 3 A. Yes.
- 4 Q. Are you aware of that?
- 5 A. I am.
- 6 Q. It gives a custom-build option and then, depending on  
7 the drop-down, you get a range of --
- 8 A. Yes.
- 9 Q. -- variables. Now, American Golf doesn't offer this  
10 facility, does it?
- 11 A. No.
- 12 Q. You would accept that it is potentially quite dangerous  
13 if these specifications are being selected by consumers  
14 who have not been custom fit?
- 15 A. There is a case in which a customer could be custom  
16 fitted not by American Golf and have access to the  
17 specification sheet which they would then replicate  
18 online through this retailer. That could happen.
- 19 Q. Yes, we will come to that. Let's assume we're in the  
20 American Golf territory, where they don't have the  
21 specifications and they're on this website having a go  
22 themselves.
- 23 A. Mm-hmm.
- 24 Q. That is potentially quite dangerous --
- 25 A. Yes.

1 Q. -- because they could get it radically wrong --

2 A. Correct.

3 Q. -- which could have a dramatic effect on their game --

4 A. Yes.

5 Q. -- and an adverse effect?

6 A. Yes.

7 Q. Just to put this in context, if we go to Dr Wood's  
8 statement, please. Mr Mahon, if you can look at  
9 paragraph 36, there is some confidential information,  
10 which I would ask you not to read out, but you can see  
11 clearly the gist of what is being said.

12 A. Okay.

13 Q. In particular it's the last sentence. (Pause)

14 So what he is saying is that, even where you have  
15 been through a custom fitting and in the early steps  
16 you've had a recommendation, by the time you get to the  
17 dynamic fitting stage that recommendation is very highly  
18 likely to be wrong. That doesn't surprise you?

19 A. That's a study of [confidential] golfers. Again, I  
20 couldn't comment on the generalised rule of that, that  
21 that percentage would apply to every fitting.

22 Q. Well, you have no reason to doubt that this study is  
23 correct as far as it goes?

24 A. Yes. I would agree with that statement.

25 Q. Then if we go over the page to 38, please, we have

1 a very large study of tens of thousands of people.

2 A. Mm-hmm.

3 Q. If you can look at the second half of that paragraph,  
4 please. (Pause)

5 A. Yes.

6 Q. So it's a very similar point that, where you start out,  
7 having had a dynamic fitting, is highly unlikely to be  
8 where you end up.

9 A. From a static to dynamic fitting?

10 Q. Yes.

11 A. Yes, yes, I would agree with that statement.

12 Q. Now, if that's true within some level of custom fitting,  
13 it must follow that, if you haven't been custom fit and  
14 you're on a website attempting to guess and select  
15 specifications, that is likely to be a complete  
16 disaster?

17 A. Potentially, yes.

18 Q. Now, on American Golf's own commitment to custom  
19 fitting -- and we have been through this with Mr -- so I  
20 can take it very quickly -- but just to be clear on your  
21 evidence.

22 A. Yes.

23 Q. So you say at paragraph 9 that custom fitting gives  
24 a better experience and outcome for the consumer; right?

25 A. Yes.

1 Q. Then at 25, you say:

2 "American Golf would always recommend that a customer  
3 is custom fit before a purchase."

4 Again the point is obvious, but the only reason to  
5 make these statements is that there are great benefits  
6 to being custom fit?

7 A. Absolutely.

8 Q. Then at 21, back a couple of pages, bottom of page 5,  
9 you talk about the significant investments and you give  
10 the example of a £40,000 investment in Aintree --

11 A. Yes.

12 Q. -- and that you plan to roll out a similar level of  
13 investment across at least ten other sites over the  
14 course of the year. These are obviously big investments  
15 that are not easy to justify. It's a big decision for  
16 the company.

17 A. Yes.

18 Q. Now, I think you also agree with Ping, as we have  
19 established, that custom fitting is very beneficial --

20 A. Yes.

21 Q. -- and that those benefits cannot be achieved in  
22 an online environment.

23 A. Again, I refer back to if you've got your specification  
24 from the professional.

25 Q. Yes.

1 A. Yes.

2 Q. We will come to that. If we can go to bundle A, please.

3 So this is the CMA's decision. It's at page 82, please.

4 A. Sorry, repeat that. Sorry.

5 Q. Page 82.

6 A. 82.

7 Q. It's footnote [redacted], which is confidential, but it's

8 confidential to American Golf. Please don't read it

9 out, but obviously you can read it. (Pause)

10 A. Okay.

11 Q. So the point you're making there is the one we

12 discussed, which is that custom fitting is beneficial to

13 virtually all consumers and cannot be done online. Is

14 that still American Golf's view?

15 A. Yes.

16 Q. These two points I would suggest are clearly

17 demonstrated by the fact that American Golf does not

18 sell custom fit golf clubs online. That's at

19 paragraph 29 of your statement. So you say:

20 "American Golf only offers standard-fit clubs on our

21 websites as we have decided not to promote the sale of

22 custom fit [golf] clubs online."

23 A. That's correct.

24 Q. In doing this, you do not want to give the confusing

25 impression that by buying a standard-fit club with

1 minimal variation that the customer is thereby buying  
2 a custom fit club.

3 A. Correct.

4 Q. These are two different things.

5 A. They are.

6 Q. Now, turning to the terms and conditions, you make the  
7 point at paragraph 20 -- so here we're talking about  
8 Ping's custom fitting policy -- and you say:

9 "In my experience, Ping's custom fitting policy in  
10 its terms and conditions is simply accepted as standard  
11 business practice, and it is understood that  
12 American Golf will offer custom fitting for the clubs  
13 that are sold."

14 Now, to be clear, what you're saying there is that  
15 for American Golf it is accepted as a standard business  
16 practice.

17 A. Yes.

18 Q. You're not suggesting that it is accepted as a standard  
19 business practice by each and every other retailer, are  
20 you?

21 A. I can't speak for them, no.

22 Q. At paragraph 20 you're only referring to American Golf?

23 A. I am.

24 Q. Now, that may well be the position today, but that was  
25 not always the position with American Golf. For

1           example, in 2014 you had a change in management and  
2           there was a shift to a heavy discounting policy. That  
3           has since been reversed in favour of a more  
4           service-based model.

5   A. Correct.

6   Q. Is that correct?

7   A. Yes, it is.

8   Q. So when you say in paragraph 20 that it is accepted as  
9           a standard business practice by American Golf, you mean  
10          today. That was not always the case?

11  A. No, the statement wasn't retrospective.

12  Q. And you would accept that Ping's custom fitting policy,  
13          that you have to do everything reasonable to promote  
14          custom fitting, for a retailer like American Golf that was,  
15          in 2014, less focused on custom fitting, it would be  
16          necessary to have such a term and condition to encourage  
17          the retailer to custom fit?

18  A. It was American Golf's choice to change the direction of  
19          the business. It wasn't brand-influenced.

20  Q. I understand that, but I'm making a different point,  
21          which is that the contractual clause obliges you to do  
22          everything possible --

23  A. Mm-hmm.

24  Q. If a retailer as American Golf was not doing -- at least  
25          at some point in the past -- was not properly promoting

1 custom fitting, it would be open to Ping to say, "Well,  
2 you have a contractual obligation to do a bit more than  
3 you're doing and I am going to hold you to that"?

4 A. I would agree with that statement, yes.

5 Q. So, to be clear, when you say "standard business  
6 practice", all you mean is that today for American Golf  
7 it is a standard business practice and you're not  
8 disputing for a second that for other retailers who were  
9 more ambivalent it may be necessary to have such  
10 a contractual term to support custom fitting?

11 A. Again, I can't speak for other retailers, but for  
12 American Golf, yes, I accept that point.

13 Q. Now, American Golf is in a fortunate position because  
14 your commitment to custom fitting, at least today, is  
15 extremely high.

16 A. Yes.

17 Q. You are aware, I think, from having followed this case,  
18 that not every other retailer in the market shares  
19 American Golf's level of commitment to custom fitting?

20 A. Again, I don't wish to sound repetitive, but I can't  
21 speak for other retailers and their commitment to custom  
22 fitting. I can only speak for American Golf.

23 Q. Does American Golf consider itself among the leading  
24 retailers in terms of custom fitting?

25 A. I would like to believe so, yes.



1 Q. So it must follow that there are other retailers who are  
2 or may be less committed?

3 A. Maybe. I can't answer the question, I'm sorry.

4 Q. Well, do you at least accept that there are retailers  
5 who may have bricks and mortar outlets, but are heavily  
6 focused on online sales mainly?

7 A. Again, it is difficult for me to comment on other  
8 retailers.

9 Q. Well, the website we just saw is an example of that; no?

10 A. That's a pure play website. They offer custom fitting  
11 online. I don't know whether that demonstrates  
12 a commitment to custom fitting or not. They simply  
13 offer a service as far as I can see.

14 Q. But you certainly accept that there may be a need for  
15 Ping, for retailers other than American Golf, to use  
16 contractual terms to support and promote custom fitting?

17 A. I 100 per cent accept that statement, yes.

18 Q. And if you didn't have those terms at least with those  
19 retailers, there is a chance that custom fitting would  
20 fall?

21 A. Yes.

22 MR O'DONOGHUE: Sir, I am now coming to a different point.

23 I am obviously happy to continue, but I don't know if  
24 that's a convenient moment.

25 THE CHAIRMAN: Let's have a break.

1 (11.30 am)

2 (A short break)

3 (11.43 am)

4 MR O'DONOGHUE: Mr Mahon, if you can turn to bundle A,  
5 please, page 33. If we can start at 3.48 over the page.  
6 This is CMA's decision; right?

7 A. Yes.

8 Q. And CMA says:

9 "In order to be able to supply customers with custom  
10 fit clubs 'off the shelf', retailers told the CMA that  
11 they purchase custom fit clubs [...] from Ping in order to  
12 have stock which suits a proportion of consumers  
13 (whether or not the consumer has had a custom fitting)."

14 Do you see that?

15 A. Yes.

16 Q. And then over the page there is a quotation from  
17 American Golf and they said:

18 [REDACTED]

19

20

21 You see a footnote to an information request  
22 response by American Golf.

23 As I understand it quite clearly from that, what you  
24 were saying is that [REDACTED]

25

1

2 A. Correct.

3 Q. If we then quickly turn to the underlying document which  
4 is in F2/113, so this is the document in the footnote  
5 which you have just seen.

6 A. Mm-hmm.

7 Q. At the bottom of the page you say:

8 [REDACTED]

9

10 So it's the same point.

11 A. Yes.

12 Q. So if we now turn to 26 of your statement, you say:

13 "American Golf ..."

14 This is the last sentence. Do you see that?

15 A. Mm-hmm.

16 Q. "American Golf purchases Ping clubs which we sell to  
17 customers from stock on display in our retail stores,  
18 without any individual customisation, just as we do for  
19 the other brands of custom fit clubs."

20 A. Yes.

21 Q. So, as I understand it based on what we have seen, what  
22 you're saying there is that it may turn out that, having  
23 had a fitting, a standard fit fits that customer --

24 A. Yes.

25 Q. -- and it doesn't need any further customisation --

1 A. Yes.

2 Q. -- for that customer. So that's all you're saying  
3 there?

4 A. Yes, and if we have it in stock in the store, then the  
5 customer is free to take it away on the day.

6 Q. Thank you. Now, in terms of stocking, you say in your  
7 evidence at 27 -- you say, at the end:

8 "Although the manufacturers would like us to, we do  
9 not hold all of the options available in every club  
10 range."

11 Just to unpick that, are you saying there that  
12 manufacturers would like you to hold a lot of stock in  
13 stock?

14 A. I think every manufacturer would like us to have  
15 a representation of their entire range in stock. That  
16 goes across left-handed, right-handed, ladies, gents,  
17 juniors, senior, where physically we are restrained and  
18 can't do that and commercially we wouldn't want to do  
19 that, to have that amount of stock sat on the shelf.

20 Q. Well, that can't be true of Ping because, if Ping is in  
21 the business of custom fitting, it doesn't want or need  
22 lots of standard stock lying around.

23 A. That would be for Ping to answer, not for me.

24 Q. Well, you're a stockist. I am asking you.

25 A. We stock what we think is commercially viable.

1 Q. Can we look at Mr Clark's statement on this point? It's  
2 B1/1 and it's paragraph 8, please. Do you see that?

3 A. Yes.

4 Q. So he's saying,  
5 there is no obligation on the retailers to hold any  
6 minimum stock.

7 You're not disagreeing with that, are you?

8 A. No, not at all.

9 Q. So would you like to correct, therefore, what you say  
10 in 27, which is, "Although the manufacturers would like  
11 us to ...", you do not include Ping in that statement?

12 A. I would include Ping in that statement, yes.

13 Q. So Mr Clark is wrong?

14 A. No, it's saying they don't impose obligations to hold a  
15 minimum level of inventory. They haven't stated that's  
16 a minimum level of inventory. I've stated that it's  
17 options available.

18 Q. I see. So there are two different points. There is  
19 a minimum volume of inventory --

20 A. Correct.

21 Q. -- and then there is a variety of clubs within --

22 A. Yes. As I stated earlier, there are left-handed,  
23 right-handed, ladies, gents, senior.

24 Q. All you're saying in 27 is that you can't have all the  
25 options for everyone?

1 A. We can't, no.

2 Q. And you're not saying anything more than that?

3 A. No.

4 Q. Okay. Thank you.

5 Now, turning to the question of online sales, if we  
6 can pick up at paragraph 29 of your statement, please.  
7 So you make the point that we have just seen, which is  
8 that American Golf only offer standard-fit clubs on  
9 their website and " ... we decided not to promote the  
10 sale of custom fit clubs online".

11 Then you say:

12 " ... American Golf does not allow customers to  
13 select from all the different customisable options  
14 through an online sale. We only provide a choice in  
15 some cases of basic options ..."

16 You make the point we discussed, which is,  
17 however, for some customers a standard fit may be  
18 the correct fit, and so on.

19 A. Yes.

20 Q. Now, we can pick this up again at 31. So you elaborate  
21 and you give three main reasons for why you do not  
22 promote custom fitting online through the use of  
23 drop-down boxes.

24 A. Yes.

25 Q. So you say first that:

1           "American Golf does not want to sell custom fit  
2           clubs to customers who have not been fitted using our  
3           own trained staff and the process that we have  
4           developed."

5           So I think what you're saying there -- and correct  
6           me if I am wrong -- is that you don't want to be  
7           responsible for somebody else perhaps being misfitted,  
8           coming into your store with those specifications --

9           A. That's correct.

10          Q. -- or going to your website?

11          A. Yes.

12          Q. You're not willing to take responsibility for that?

13          A. Or into our store. You were right in your first  
14          statement. We wouldn't use somebody else's fitting  
15          information. We would want to fit a customer ourselves.

16          Q. And likewise for online?

17          A. Yes.

18          Q. So there is a risk there for American Golf is what you  
19          are saying --

20          A. Yes, there is.

21          Q. -- and therefore for the consumer?

22          A. Yes.

23          Q. Now, the second point is about the guarantee:

24                 "we would not want to offer our 30-day fitting  
25                 guarantee on a sale based on another [fitter's]

1 recommendation."

2 That's a somewhat similar point.

3 A. It's a leading back to same point, yes.

4 Q. Then the third point we will come back to.

5 Now, in terms of Ping's policies and online sales --  
6 if you can go back to B1/1 again, please. It's tab H.

7 A. H.

8 Q. So these are Ping's terms and conditions and if we can  
9 start at clause 14, please.

10 A. Yes.

11 Q. So this is the dynamic face-to-face custom fitting  
12 policy. Ping says it:

13 " wants to ensure that each consumer is  
14 sold the right product, custom fitted to their personal  
15 specifications, thereby enabling them to obtain the  
16 maximum benefit to their game from Ping clubs and to  
17 play their best. To achieve that outcome the seller  
18 fundamentally believes that the sale of its clubs are  
19 best transacted through a face-to-face meeting between  
20 the consumer and the buyer. This ensures that the  
21 consumer has the opportunity both to understand and go  
22 through the seller's custom fitting process and it enables  
23 the buyer to measure with precision the exact club  
24 set-up required on the model the consumer is considering  
25 purchasing. This is part of the Ping ethos."



1           Now you obviously agree with all of that?

2   A.   I would subscribe to that, yes.

3   Q.   Then at the end of the second paragraph of that clause:

4           "It should be noted that for the same consumer, the  
5           fitting specifications may change from model to model  
6           and therefore the benefits of being dynamically custom  
7           fitted for each new model should always be explained to  
8           the consumer."

9           And you don't disagree with that, I take it?

10   A.   To a degree, no.  Model to model, I would -- there is  
11           a point in there that certainly models will be the same  
12           fit as other models.  So if you are 1 inch longer than  
13           the standard in one model, you will -- you are 1 inch  
14           longer in the standard in another model.  It's not  
15           necessarily uniform across the entire range, but, yes,  
16           in general I do agree.

17   Q.   Last paragraph:

18           "the seller requires the buyer to do everything  
19           reasonable to educate the consumer about the  
20           benefits of having a dynamic face-to-face custom fit.  The seller  
21           expects the buyer to be proactive in this respect,  
22           not passive ...", and so on.

23           Then at the end:

24           "This policy is incorporated as a contractual term  
25           of the seller's agreement with the buyer."

1           Then if you go back a page to clause 12, please, it  
2           says:

3           "In order to protect the Ping brand and consumer and  
4           to ensure that custom fitting remains at the heart of  
5           the sale of hard goods, the seller's internet policy  
6           does not allow the buyer to execute sales transactions  
7           of hard goods with consumers on the internet. Custom  
8           fitting is a very important part of the process of  
9           selling hard goods in order to ensure that consumers  
10          receive clubs that are custom built to their own  
11          specifications. The seller wants to promote the  
12          opportunity for a personal conversation to take place  
13          between the buyer and the consumer prior to [I think it  
14          should say] the purchasing decision, so the buyer can  
15          explain the benefits of Ping custom fitting and strongly  
16          recommend that a dynamic face-to-face custom fitting  
17          appointment be arranged. Internet transactions do not  
18          fulfil this philosophy."

19          Then the last paragraph of that clause is the point  
20          we have seen:

21          "the seller requires the buyer to do everything  
22          reasonable to persuade the consumer of the benefits of  
23          having a dynamic face-to-face custom fit."

24          And you see the point about being proactive and not  
25          passive.

1           Now, if we can look at what the decision says about  
2           this, back to bundle A -- well, Mr Mahon, pausing there,  
3           it is crystal clear, I would suggest, if one reads  
4           clauses 14 and 12 together --

5   A.   Mm-hmm.

6   Q.   -- that the reason the internet policy exists is to  
7           support and promote and maximise dynamic custom fitting.

8   A.   Yes, I would agree.

9   Q.   If we pick this up then in the decision, at 4.99 at  
10          page 100, so:

11               "The CMA finds that Ping's aim to promote custom  
12               fitting is a genuinely held commercial concern,  
13               reflected in its contemporaneous documents and that Ping  
14               adopted the internet policy containing the online sales  
15               ban to support its custom fitting policy. The CMA's  
16               conclusion is that promoting a custom fitting service  
17               and the distribution of a high-quality or  
18               high-technology product, such as a custom fit [golf] club,  
19               in principle constitutes a legitimate aim."

20               So the CMA agrees at least to that extent.

21               Now, I want to be clear about what happens when  
22               a consumer goes on the American Golf website. If you  
23               can look at the screen in front of you again, please.  
24               So this is a random Ping iron, a G400.

25   A.   Yes.

1 Q. So I have been doing my research, I have been thinking  
2 about buying a set of irons or a set of clubs, I have  
3 been asking my friends, I have been looking at the  
4 internet, I have been ruminating for a period of weeks  
5 about this purchase. Now, if I go to your website or  
6 any other retailer website and I am potentially  
7 interested in Ping, the message I get is -- the internet  
8 policy -- right? We see that:

9 "As a Ping authorised retailer, American Golf  
10 believes that every Ping golfer should experience a free  
11 in-store custom fitting process. Therefore Ping clubs  
12 cannot be purchased online."

13 So at that stage it is impossible for me, subject to  
14 a point we will come to, to buy these clubs online.

15 A. Yes.

16 Q. You then see on the same page, about two-thirds of the  
17 way down, it says:

18 "Book a free custom fitting."

19 So if I am remotely interested in Ping golf clubs or  
20 perhaps in custom fitting more generally, I can go on  
21 your website and book a free custom fitting  
22 instantaneously --

23 A. Yes.

24 Q. -- and that will lead me to the local store where the  
25 custom fitting will be done.

1 A. Yes.

2 Q. That is obviously a very clear example where the  
3 internet policy has caused me to go to your store for  
4 a custom fitting.

5 A. Yes, that's not unique to Ping. That is on all of our  
6 hardware pages.

7 Q. Yes, but in the case of Ping there is a critical  
8 difference because I do not have the option of clicking  
9 to basket online.

10 A. Yes.

11 Q. So if I am interested in Ping or if I may be, my options  
12 are at this stage to book in for a custom fitting.

13 A. Yes.

14 Q. So, again, the internet policy stops me making  
15 a purchase online and causes me to go to the store.

16 A. Yes.

17 Q. Now, you then say in paragraph 30 that there is  
18 a further possibility.

19 So if we go back to the website first -- so to  
20 attack this in stages. So the first possibility is  
21 that, because of the message I get and the facility to  
22 book a free custom fitting if I am interested in the  
23 Ping club, the policy causes me to go to the store and  
24 get custom fit. So that's the first possibility.

25 A. Yes.

1 Q. You agree with that. Now, the second possibility is  
2 that you then see a telephone number, "If you're  
3 interested in Ping, call this number", so that's  
4 a second potential stage, and at that stage, if I call  
5 the number, I can have a further discussion with someone  
6 from American Golf during which I could be advised to  
7 have custom fitting; correct?

8 A. Correct. Most people use that number to ask why we  
9 don't sell Ping products online.

10 Q. That's paragraph 30. We will come to that.

11 A. Yes.

12 Q. So this is a second example of me calling up the number  
13 and I may get advice to go to the store and get custom  
14 fitted for Ping. So, again, the policy has created  
15 a second possibility for me to be custom fitted  
16 in-store?

17 A. Yes.

18 Q. Now, the third possibility, I think, is the one you pick  
19 up in paragraph 30, so if you want to read that again  
20 and just refresh your memory. (Pause)

21 So we're now at a third stage. So I haven't booked  
22 in for an online fitting, I have ignored your advice on  
23 the telephone that "Maybe you should have a custom  
24 fitting" and I am trying to understand this policy.

25 Now, I think what you're saying -- and correct me if

1 I am wrong -- is that in that third situation you would  
2 again explain Ping's internet policy to the consumer --

3 A. Yes.

4 Q. -- and if they still didn't get it, you may do what you  
5 call this manual --

6 A. Manual basket load.

7 Q. -- manual workaround.

8 A. Yes.

9 Q. You make the point about two-thirds of the way down --

10 A. Yes.

11 Q. -- that this method of sales is obstructive to  
12 customers. I think what you mean -- first of all  
13 I would suggest what you mean is that that leads to less  
14 Ping products being sold without a custom fitting;  
15 correct?

16 A. Yes.

17 Q. Then you go on to make a further point, which is that  
18 these telephone sales of Ping clubs are lower than  
19 online sales of clubs manufactured by other members of  
20 the big six.

21 A. Yes.

22 Q. So even this third possibility leads to a reduced level  
23 of online sales compared to other brands. That's the  
24 point you're making.

25 A. Yes, I believe it's the not -- the ability to not click

1 to basket that is the most obstructive.

2 Q. Therefore we see with each of these three possibilities  
3 Ping's internet policy has led to more people going to  
4 the American Golf store to be custom fit than in a world  
5 where there was no such policy, as we have in the case  
6 of the other manufacturers.

7 A. Yes.

8 Q. It must logically follow that Ping's internet policy is  
9 therefore more effective at stopping non-custom fit  
10 sales.

11 A. It's a difficult point for me to argue because Ping's  
12 share of custom fit is marginally the same as TaylorMade  
13 and Callaway is to American Golf.

14 Q. Let's unpick that. You agreed with me that in stage one  
15 a customer may book in for a custom fitting that it  
16 would not otherwise do because of this policy.

17 A. Mm-hmm.

18 Q. You agreed with me in stage two that as a result of  
19 a telephone conversation, a customer may still book in  
20 for a custom fitting that it was otherwise not willing  
21 to undertake. And you agreed with me in stage three,  
22 because this is what you say in your statement, that  
23 even with the manual workaround, the pass-through rate  
24 of Ping is lower than the other brands who do permit  
25 online selling.



1 A. Yes.

2 Q. So it must follow that the internet policy is more  
3 effective at incentivising and maximising custom fitting  
4 for Ping than in the case of retailers who do not have  
5 such a policy?

6 A. That is a difficult point for me to argue. I can only  
7 give you what I know to be our stats as a business.

8 Q. To be clear, that's not the point I am putting to you.  
9 The stats for the business are assuming that the  
10 consumer has come to the store. What we are addressing  
11 at this stage is whether the internet policy causes  
12 consumers to come to the store in the first place.

13 A. We fit the same percentage of customers for Ping,  
14 TaylorMade and Callaway to within a couple of percentage  
15 points.

16 Q. Let me put the point again. That's not what I am  
17 suggesting. I accept that American Golf, once the  
18 consumer comes to the store, has very high rates of  
19 custom fitting across all brands. That's the point  
20 you're making.

21 A. Yes.

22 Q. I am putting to you a different point, which is that the  
23 Ping internet policy based on the three steps we have  
24 outlined causes more consumers to come to the store in  
25 the first place and that, once they come, then they may

1 be fitted with Ping or they may be fitted with something  
2 else. You agree with that, I take it?

3 A. I can't agree with that point nor disagree.

4 Q. Well, I must push you.

5 A. I don't think the question is clear enough because the  
6 only option people have to order Ping online is for us  
7 to click to basket. Consumers just find it to be  
8 obstructive, so the take-up on that is absolutely  
9 minimal. So by dint of that fact, if they choose to  
10 visit our stores to then be fitted for any brand, it's  
11 hard to argue that that policy supports the level of  
12 people who then come for Ping custom fitting because  
13 they have no other option but to come to our stores to  
14 be custom fitted.

15 Q. That's the point I am making, that the policy drives  
16 them to your store.

17 A. But that is not unique to Ping as such if you want  
18 custom fitting; we don't offer that for anybody. So if  
19 you want custom fitting, you will come to our stores  
20 anyway.

21 Q. But there is a critical difference which you're  
22 overlooking, which is apart from this workaround, which  
23 I think you agree is obstructive and minuscule or minor,  
24 if you're interested in Ping, this policy drives you to  
25 the store --

1 A. Yes, absolutely.

2 Q. -- otherwise you cannot buy Ping.

3 A. It's unique to Ping, yes, in that it will drive you into  
4 store.

5 Q. So the policy is effective at maximising the number of  
6 people who come to the store?

7 A. Yes.

8 Q. I now want to turn to a slightly different topic. We  
9 can pick this up in the paragraph 22 of your statement.

10 You say at 22:

11 "American Golf does not charge for [...] custom fitting."

12 A. Mm-hmm.

13 Q. I think you agreed with me earlier when you saw  
14 Mr Houghton's evidence that there is a significant  
15 investment by American Golf in custom fitting in terms  
16 of equipment, 1,100 staff, physical space --

17 A. Yes.

18 Q. -- and so on. This is a very, very substantial  
19 investment by the company.

20 A. Yes.

21 Q. Are you in a position to give a sort of ballpark, if we  
22 aggregate the 130-odd stores, of what level of  
23 investment we're talking about. It must be in the  
24 millions, surely.

25 A. It is. The coaching alone to the process James Houghton

1 alluded to earlier on is in the millions.

2 Q. Because American Golf is offering custom fitting for  
3 free, the custom fitting as a service is obviously  
4 loss-making on a stand-alone basis. It's effectively  
5 a loss-leader to try and get somebody in in the hope  
6 that they will then --

7 A. It's not a loss-leader. We offer that as a responsible  
8 golf retailer.

9 Q. I appreciate that, but I am making a slightly different  
10 point, which is that, given that it's free and you have  
11 all these costs, that the service, at least on  
12 a stand-alone basis, is not something which is  
13 profiting. That must be true as a cost (Inaudible)?

14 A. It's a dint of doing -- it's a cost of doing business,  
15 yes.

16 Q. Now you also make the point at paragraph 24 which  
17 I think you have mentioned, which is:

18 "we do not provide customers with fitting data  
19 unless they place an order on the same day."

20 I would suggest to you that one of the reasons or  
21 the most obvious reason you do that or don't do that,  
22 rather, is that you're offering custom fitting for free,  
23 it has cost the company millions of pounds to create  
24 these facilities and, if someone can get this free  
25 service, get the piece of paper and say, "Thank you very

1           much, but no thanks", that is devastating for the  
2           business.

3    A.   It could be potentially upsetting, yes.

4    Q.   Not merely upsetting.  It affects the bottom line.

5    A.   Yes.

6    Q.   You incur these enormous costs for which you do not  
7           charge for fitting and there will be no return.

8    A.   It's a commercial business decision of ours, yes.

9    Q.   It would be disastrous, I would suggest, not merely  
10           upsetting.

11   A.   Well, disastrous, I couldn't answer that.  I would say  
12           no, it wouldn't be disastrous, but it wouldn't be  
13           sensible of us to do so as a business.

14   Q.   Let me simplify it then.  You have agreed with me that  
15           you invest many millions of pounds.  You're offering  
16           a free service.  If that free service leads to no sales,  
17           that is commercially disastrous?

18   A.   Not every custom fit leads to a sale.  We accept that as  
19           a business that certain customers will choose to walk  
20           away and not buy, but they don't walk away with the  
21           technical specifications of the fit.

22   Q.   Well, that's a matter of degree.  What I am saying to  
23           you is that, if you have this free service and consumers  
24           have this piece of paper, they can then leave and go to  
25           someone who hasn't undertaken a custom fitting, who

1           hasn't made your investments and you do not secure the  
2           sale, that is potentially disastrous for the company.

3   A.   It would be a mistake of ours to do so, yes.

4   Q.   Now, American Golf is an enormous retailer. I think you  
5           have turnover of over £100 million --

6   A.   Yes.

7   Q.   -- and you have 130-odd stores dotted around the  
8           country.

9   A.   Yes.

10  Q.   Now, you agree with me that there would be an adverse  
11           impact on American Golf if it gave out these  
12           specifications and, as a result, offered a free service  
13           for which there was zero return.

14  A.   Yes.

15  Q.   So that is American Golf, which is the largest retailer  
16           in the country.

17  A.   Yes.

18  Q.   Now, suppose I am a small on-course retailer with  
19           £10,000 of annual turnover and I carry Ping and another  
20           brand. If there would be such an adverse effect on  
21           American Golf, given its size, then the implications of  
22           this prescription for that small retailer would be even  
23           more disastrous, wouldn't they? That must follow.

24  A.   Again.

25  Q.   That must follow.

1 A. I couldn't argue for other retailers. If I'm being  
2 absolutely honest with you, I don't know that other  
3 retailers have got the overheads that we have so maybe  
4 they could afford to lose those sales.

5 Q. Well, it is a hypothetical example. Now, you agree with  
6 me that American Golf is the largest retailer in the  
7 country, it has 150- or 130-odd stores --

8 A. Mm-hmm.

9 Q. -- dotted round the country, and that the implications  
10 for a company that large of offering a free or  
11 subsidised fitting service for no return are potentially  
12 disastrous. So what I am suggesting to you -- and  
13 I think it's obvious -- is that a small retailer with  
14 tiny turnover, with none of the scale and scope, would  
15 be even more adversely affected in that situation. It's  
16 obvious.

17 A. Again, I can't answer your question. I'm sorry, it's  
18 a supposition. If you're asking me to make that  
19 supposition, I would say potentially yes.

20 Q. You have come here to give evidence on the impact of  
21 these policies on the industry and competition. If  
22 you're not going to assist, that's fine --

23 A. I can only speak for American Golf I think is the point  
24 I am making.

25 MS DEMETRIOU: Sir, the witness has now said several times

1           that he can't speak for other retailers, which is a fair  
2           point, and I think that needs to be understood if this  
3           line of questioning is going to be continued. So he's  
4           obviously trying to be helpful, but he has made a fair  
5           point that he is speaking for American Golf.

6   THE CHAIRMAN: I agree with that. He's not being called as  
7           an expert witness. He's here to give evidence about  
8           American Golf and I understand if he has difficulty in  
9           answering questions about other retailers.

10  MR O'DONOGHUE: Sir, that is fair.

11           Just to put it as a context, as I understand it  
12           you're head of operations --

13  A. Yes.

14  Q. -- and you don't seem to have a very strong sense of  
15           what your competitors are doing in terms of other  
16           retailers or a very strong sense of what other  
17           manufacturers of golf clubs are doing. Is that  
18           a function of your job as head of operations?

19  A. It would be commercial. I'm not commercial.

20  Q. So you can't assist us on commercial matters?

21  A. No, to the point whereby the evidence I have given is  
22           where I have commercial knowledge and that's what's  
23           contained within this -- the pack that I have submitted.

24  Q. I see.

25           Now, in relation to custom fitting and charging, you



1 make the point at paragraph 31 that today American Golf  
2 offers free custom fitting and if it had to charge for  
3 that service, it would undermine your ultimate selling  
4 point or unique selling point of free custom fitting.

5 A. Mm-hmm.

6 Q. So from American Golf's perspective, if you had to  
7 charge for custom fitting, that would eliminate  
8 an important competitive advantage that you have  
9 today --

10 A. Yes.

11 Q. -- and that is something that you would not wish to do?

12 A. Correct.

13 Q. Now, the second point, I would suggest, is that  
14 American Golf is not in business to be a custom fitting  
15 business. It is in business to sell hardware and soft  
16 goods and to use custom fitting as a way to support that  
17 sales activity.

18 A. It's one of the services we offer, yes, as a retailer.

19 Q. But to put it another way, you don't want to be in the  
20 business of custom fitting as a service simply to assist  
21 sales by other people?

22 A. Sorry, could you -- I didn't understand that question.

23 Q. Well, you're not in the business of offering custom  
24 fitting for its own sake. It is only or mainly being  
25 offered to support follow-on sales activity?

- 1 A. No, no, we offer custom fitting because it's the right  
2 thing to do. As a responsible golf retailer, custom  
3 fitting is absolutely key to our business.
- 4 Q. Yes, but with a view primarily to promoting sales?
- 5 A. We're a retailer. Every retailer's ambition is to  
6 promote sales through whichever channel they can.
- 7 Q. Now in a world where retailers had to charge either  
8 something or the full cost of custom fitting, in the  
9 case of American Golf, given that the fitting is free  
10 today, those charges would go up significantly?
- 11 A. Again, could you elaborate on that please?
- 12 Q. Well, in a world where -- to recoup the cost of  
13 fitting --
- 14 A. Mm-hmm.
- 15 Q. -- because customers are armed with their prescriptions,  
16 buying elsewhere, then the charges for custom fitting  
17 where it's zero, they would probably have to go up;  
18 right?
- 19 A. Well, any charge above zero for American Golf will be  
20 an increase in charge because we don't charge for the  
21 service.
- 22 Q. Yes, that's the point I'm making.
- 23 A. Is that the point -- yes, is the answer to the question.
- 24 Q. If that did happen, that would be a deterrent to custom  
25 fitting in the first place, I would suggest.

- 1 A. Other retailers do that as standard practice. They make  
2 you pay for the fitting service. We don't. We see it  
3 as a USP to American Golf.
- 4 Q. Yes, and by offering it free of charge you are  
5 incentivising people to be custom fit relative to  
6 a situation where there would be a full charge?
- 7 A. Yes, it's a USP to us, yes.
- 8 Q. If you did have to impose a charge, then it must follow  
9 that the custom fitting rates would fall?
- 10 A. It's a supposition. I can't answer the question.
- 11 Q. Now, one of the CMA's suggestions in the alternative  
12 measures in the decision is that there would be a full  
13 series of drop-down menus in which one could then choose  
14 a range of custom fit options.
- 15 A. Yes.
- 16 Q. Now, that is not something that American Golf obviously  
17 offers today --
- 18 A. No.
- 19 Q. -- and you accept that, certainly in a situation where  
20 the consumer does not have specifications, which would  
21 be the case for American Golf, there are real risks in  
22 consumers selecting these options themselves.
- 23 A. Yes, I agree with that totally.
- 24 Q. Do you also accept that, even in relation to standard  
25 clubs where the consumer has not been custom fit, there

1 is also a risk that the consumer may end up choosing the  
2 wrong club for him or her?

3 A. Yes, that is always a risk again.

4 Q. Now, a further measure suggested by the CMA is that  
5 there would be an online chat facility available on the  
6 website.

7 A. Yes.

8 Q. Now, as matters stand, American Golf does offer a chat  
9 facility --

10 A. We do.

11 Q. -- during -- I think its retail hours plus Saturday  
12 morning --

13 A. Correct.

14 Q. -- and therefore not at night or for the bulk of the  
15 weekend. It would be very expensive, wouldn't it, to  
16 roll out such a service 24/7?

17 A. It would.

18 Q. In particular, if the objective is to assist with custom  
19 fitting, you would need to have access to a PGA  
20 professional during those times?

21 A. Potentially, yes.

22 Q. To put it another way, it's very difficult for pure  
23 sales staff, if they get a technical query, to answer  
24 it?

25 A. It depends on the nature of the question. Yes, in

1 essence, is the answer.

2 Q. Now, the final measure the CMA suggests is that you  
3 could have a message promoting custom fitting online.

4 I think you agree with me that the message that Ping has  
5 today in its internet policy is the strongest possible  
6 message that can be sent from that perspective.

7 A. By way of custom fitting being the right way --

8 Q. Yes.

9 A. -- yes, I would agree with that. Yes.

10 MR O'DONOGHUE: Sir, I have no further questions.

11 Re-examination by MS DEMETRIOU

12 MS DEMETRIOU: Mr Mahon, I just have a few questions. Can  
13 we go back to the website that Mr O'Donoghue put to you  
14 this morning? (Pause)

15 I think there was -- sorry, it's Golf Online.

16 A. It's Golf Online I think you're looking for. (Pause)

17 Q. If we scroll up, do you see that there is "Custom build"  
18 and "Standard"?

19 A. Yes.

20 Q. So if we look at "Custom build" and if we scroll down  
21 and look, for example, at "Shaft options" --

22 A. Yes.

23 Q. -- and then "Shaft length", there are various  
24 possibilities.

25 A. Yes.

1 Q. If we go back to the top of the page and press  
2 "Standard", then we see here that there are fewer  
3 different combinations that can be selected.

4 A. Mm-hmm.

5 Q. Now, Mr O'Donoghue put to you -- and you accepted --  
6 that if a customer who didn't know their  
7 specifications -- he took you to the "Custom build"  
8 part.

9 A. Yes.

10 Q. If a customer who didn't know their specifications tried  
11 to select from the custom build options, that that would  
12 present risks and you accepted that.

13 A. Yes.

14 Q. So the question I want to put to you is if, in the case  
15 of such a customer who has not been custom fit and  
16 doesn't know what their specifications are, in your  
17 experience as a retailer, do you think they're more  
18 likely to select from the standard options or the custom  
19 build options?

20 A. Again, it's difficult to answer. There are a number of  
21 recognised standard fit items throughout the industry.  
22 A 10.5 regular driver is considered to be standard, so  
23 if we refer to that particular model across every  
24 product from every manufacturer, that will be considered  
25 to be a standard model therefore a customer could order

1 a 10.5 regular driver from any website and get the same  
2 outcome.

3 Q. Okay. Now, another point I wanted to explore with you  
4 a little bit is Mr O'Donoghue asked you at some length  
5 about the investments that American Golf is making in  
6 relation to custom fitting. Now, if it were the case --  
7 so depending on the outcome of this appeal -- if Ping  
8 has to drop its online sales ban, would American Golf,  
9 in your view, carry on investing in custom fitting?

10 A. Yes.

11 Q. Can you explain, perhaps, why you say that, why that is.

12 A. Because we still believe that face-to-face custom  
13 fitting is the right thing for the customer.

14 Q. Thank you. Then in relation to -- I just want to take  
15 you back to -- this is a point that was put to you after  
16 the short break. But going back to your statement at  
17 paragraph 18, we see there the rate that you give for  
18 custom fitting of Ping clubs --

19 A. Yes.

20 Q. -- at (b).

21 A. Yes.

22 Q. So if you deduct that from 100, you have the rate for  
23 non-custom fit Ping clubs.

24 A. Yes.

25 Q. Can you help us with how that comes about? So if

1           somebody chooses to buy a Ping club and is not standard  
2           fit, how would you go about selling them the club?  
3           Would you order it or would they generally come from  
4           your stock?

5   A.   It's ordered.  So we developed an app which is used  
6           in-store whereby, at the launch of each brand's products  
7           for the season, we have a team of people who basically  
8           maintain quite a substantial database with every variant  
9           for every brand that is customisable.

10  Q.   So that's for the custom fit.  But for the customer who  
11           comes in and just wants a standard-fit club --

12  A.   If we have that club available in stock, they can take  
13           it on the day.

14  Q.   I see.  So when at paragraphs 26 and 27 you talk about  
15           American Golf keeping a core of stock standard-fit  
16           clubs --

17  A.   Yes.

18  Q.   -- would you be selling some of those clubs to customers  
19           that don't want to be custom fit at all?

20  A.   Yes, we would.

21  Q.   Then finally Mr O'Donoghue asked you about that core  
22           stock of Ping clubs and he took you to Mr Clark's  
23           statement and I think you agreed with what Mr Clark  
24           said, which is that Ping don't have a minimum  
25           requirement of stock.



1 A. That's right.

2 Q. Do they impose a maximum level of standard stock that  
3 American Golf is allowed to order?

4 A. No.

5 MS DEMETRIOU: Okay. I have no further questions.

6 Questions from THE TRIBUNAL

7 THE CHAIRMAN: I have a question, Mr Mahon.

8 A. Yes.

9 THE CHAIRMAN: Going to paragraph 30 of your witness  
10 statement --

11 A. Yes.

12 Q. -- you mention that telephone sales of Ping clubs are  
13 lower than online sales of clubs manufactured by other  
14 members of the big six. Are you able to put any sort of  
15 figure on that, any estimates as to the degree by which  
16 Ping club sales are lower?

17 A. I have submitted a data table to the CMA and it is  
18 detailed within there what percentage of Ping clubs we  
19 sell using this and it is in the low thousands of  
20 pounds -- not in the millions of pounds where we have  
21 other brands retailing online.

22 THE CHAIRMAN: So that data is available somewhere, is it?

23 MS DEMETRIOU: I'm sure that data will be available  
24 somewhere.

25 THE CHAIRMAN: Thank you.

1 A. Sorry. I can't remember off the top of my head.

2 THE CHAIRMAN: No, that's understandable.

3 MR DORAN: I have one question, if I may, Mr Mahon. You  
4 said I think at two stages that there was a real risk of  
5 people buying custom fit clubs online when they haven't  
6 had custom fitting.

7 A. Yes.

8 MR DORAN: I think at an earlier stage you agreed with  
9 Mr O'Donoghue -- he said it would be a disaster and  
10 I think you agreed with him, so you see risk for  
11 consumers doing that. Do you have any idea of people  
12 who come into your stores having done that, having taken  
13 the risk, about what the incidence of that as a problem  
14 is?

15 A. Our return rate on hardware, which -- we sort of support  
16 the incorrect selling of clubs -- is very low. It's sub  
17 1 per cent of every piece of hardware that we sell. If  
18 a customer was taking away the wrong club for them based  
19 on the fact that they have self-fitted or self-selected,  
20 we get minimal amounts of returns for that.

21 MR DORAN: Of course they couldn't do it for Ping on your  
22 site and they can't do it for anybody else --

23 A. No, we don't offer custom fitting of any kind online.

24 MR DORAN: So this would be somebody who has used somebody  
25 else's website and then thought "I have seen the light.

1 I must go to people who promote custom fitting. They  
2 will know what to do about the risk that I've taken on  
3 board and it's proved to be a bad risk". Do you know of  
4 any evidence of that sort of incidence?

5 A. We get that from both a positive and negative  
6 perspective. We get customers who we have fitted who  
7 come back and say "I'm not happy with the fit" and then  
8 we can refit them. We also get customers coming in who  
9 have been fitted elsewhere, who say "I'm finding it  
10 difficult to use these clubs", and then we will see what  
11 we would recommend to them as their fit. It doesn't  
12 mean they will necessarily buy from us, but we can  
13 advise them.

14 MR DORAN: Yes, and I suppose mine was a slight elaboration  
15 on that, which was people who have fitted themselves  
16 online and then come to you and said, "A bit of  
17 a disaster here".

18 A. We couldn't record that, I'm afraid. Sorry.

19 MR DORAN: Okay. Thank you very much.

20 THE CHAIRMAN: Thank you very much, Mr Mahon.

21 A. Thank you.

22 MS DEMETRIOU: The CMA calls Ms Aspinall.

23 MS SUE ASPINALL (sworn)

24

25

1 Examination-in-chief by MS DEMETRIOU

2 MS DEMETRIOU: Ms Aspinall, I think your third witness

3 statement will be put in front of you.

4 A. Thank you, yes.

5 Q. And I think it's right, isn't it, that witness

6 statements 1 and 2 were produced at earlier stages --

7 A. That's right.

8 Q. -- of this appeal for the purposes of -- so what's in

9 issue for the purposes of this part of the appeal is

10 your third statement. Can you turn to the end of your

11 statement to page 7?

12 A. Yes.

13 Q. Is that your signature there?

14 A. It is.

15 Q. Are you satisfied that the facts in the statement are

16 true to the best of your knowledge and belief?

17 A. That's correct, yes.

18 MS DEMETRIOU: If you wait there, Ms Aspinall, Mr O'Donoghue

19 will have some questions.

20 A. Thank you.

21 Cross-examination by MR O'DONOGHUE

22 MR O'DONOGHUE: Can we first go to the decision, please, at

23 paragraph 4.76?

24 A. Yes, I have that. Thank you.

25 Q. So it says:

1           "The CMA finds the online sales ban [...] restricts  
2 competition."

3           Then you give, over the page, two reasons.

4   A.   Yes.

5   Q.   The second reason is:

6           "Consumers cannot compare the prices of Ping golf  
7 clubs by digital comparison tools (eg price comparison  
8 websites)."

9           This was obviously an important reason because it's  
10 one of two reasons you give why there is said to be  
11 a restriction of competition.

12   A.   To get a bit of -- provide a bit of context here, the --  
13 what the decision is looking at there is how -- as you  
14 say, competition is restricted and there's two factors  
15 that we put in on the bullet points.

16           The main one is that consumers cannot complete  
17 a purchase online, which therefore means that they can't  
18 access a greater number of product offerings and it  
19 therefore makes it very difficult for retailers to reach  
20 a greater number of consumers and therefore they're  
21 limited to their catchment areas.

22           The second bullet point is really explaining how  
23 retailers are losing that visibility because the online  
24 sales ban makes it difficult for them to gain  
25 visibility on price comparison websites, in particular

1 Google Shopping, which we also set out in the statement  
2 objections.

3 Q. Well, it doesn't just say Google Shopping. It says --

4 A. It gives a couple of other examples, which is Shopzilla  
5 and Pricerunner.

6 Q. So it was one of two reasons, albeit I think you're  
7 saying the first reason was an important reason.

8 MS DEMETRIOU: Sir, can I just point out that over the page  
9 there are three more reasons, so it's not quite right to  
10 say that it's one of two reasons.

11 A. There are further bullets on the next page which further  
12 explains how competition is restricted.

13 MR O'DONOGHUE: That is fair. Now, if we look at what  
14 Mr Holt says in C1, please. So it's 6.5.6.

15 A. Yes.

16 Q. So what he does, he searched on Google Shopping and got  
17 a variety of options for the G400 driver.

18 A. Yes.

19 Q. So you see the options at 6.5.8 and then, over the page,  
20 6.5.9, you have got for Pricerunner.

21 A. Mm-hmm.

22 Q. Then at 6.6.3 he says that:

23 "the CMA has made a serious factual error in  
24 its assessment of whether consumers can compare prices  
25 between retailers."

1           Now, he's obviously right to call it a "serious  
2           factual error" because in the second bullet we have seen  
3           you make a categorical statement that consumers cannot  
4           compare the prices. That is clearly incorrect.

5    A. Well, it should also be read in light of what we said at  
6           4.54 of the decision, which says that it limits the  
7           ability -- the ability -- it limits the ability for  
8           consumers to use comparison tools in order to find the  
9           best available deals and it then references 4.76.

10   Q. Well, in the second bullet the CMA makes a statement,  
11           "consumers cannot compare". That is incorrect. You  
12           accept that?

13   A. At the time that we conducted the searches, we genuinely  
14           believed that what we were saying in 4.54 and 4.76 of  
15           the decision was accurate.

16   Q. Well, had you actually checked whether consumers could  
17           compare?

18   A. A member of the case team checked Google Shopping,  
19           Pricerunner and Shopzilla and for the products in  
20           question, which I can't recall -- it would have also  
21           included irons -- we couldn't compare prices for the  
22           Ping product.

23   Q. Would you now accept that that categorical statement is  
24           not correct?

25   A. Since your notice of appeal, we have obviously gone back

1 to check our results and they do change. So when we  
2 filed the defence -- before filing the defence, we  
3 carried out some further searches, which I believe was  
4 annexed to my third statement, and I explained in that  
5 that what Mr Holt does say as regards the G400 driver is  
6 right. There is some limited comparability -- and it is  
7 very limited --

8 Q. We will come to that.

9 A. -- but we also conducted searches related to irons which,  
10 again, we found that we couldn't find a comparison on  
11 Google Shopping.

12 Q. Well, we will come to that. I am asking you a very  
13 simple question. Do you now accept that when it says  
14 "consumers cannot compare", that is untrue?

15 A. I think I answered your question already. I explained  
16 in the context of paragraphs 4.54 and also 4.76 in the  
17 searches that we carried out at the time, we genuinely  
18 believe that what we had said in the decision was true.

19 Q. But it wasn't true. That's the point.

20 A. Well at the time it was on the searches that we had  
21 carried out, which were on Google Shopping, Shopzilla  
22 and Pricerunner.

23 Q. Let's look at what you say in paragraph 10 of your  
24 statement. You say:

25 "the results of the CMA's test searches on these



1 price comparison websites were broadly consistent with  
2 the results described by Mr Holt in his report."

3 A. That's right. So these are test searches done in  
4 January 2018 and the decision was recording results that  
5 we had carried out before the decision was issued, so  
6 before August 2017.

7 Q. But the decision makes a categorical statement, which is  
8 "consumers cannot compare". It doesn't qualify that by  
9 the particular day the search was carried out, does it?

10 A. That is correct.

11 Q. You accept now that is incorrect?

12 A. What I can say is that the results at the time is what  
13 we're reflecting in the decision and the position has  
14 changed. We have carried out further tests in January  
15 and I imagine, if we carried out further reviews today,  
16 we would find slightly differing results again possibly.

17 Q. But the statement you make in the decision is  
18 unqualified. You accept that is now wrong?

19 A. I think you've asked me the same question a number of  
20 times in different ways and I've tried to give you  
21 an answer. At the time, what we had said in the  
22 decision we felt was accurate based on the results that  
23 we had seen.

24 Q. And you now accept it is not accurate?

25 A. Well, that's correct, because you can see from my

1 statement and also from the -- what we have said in the  
2 defence that there are limited results for the driver on  
3 Google Shopping, but as regards irons, there is still --  
4 we couldn't find any comparison for -- if we wanted to  
5 go online and you wanted a set of irons from Ping, we  
6 couldn't see that you could compare those prices on  
7 Google Shopping.

8 Q. We will come to that. I don't accept that. So, to be  
9 clear, you accept that the statement in the second  
10 bullet in its categoric terms is now incorrect and  
11 you're making a different point now, which is that the  
12 comparison in your view is more limited?

13 A. So you mean 4.76?

14 Q. Yes.

15 A. Yes, and that's reflected in the defence.

16 Q. So your position now is not a categoric one. It is  
17 a matter of degree?

18 A. It's as reflected by the search results that with the  
19 driver there was some very limited ability to compare,  
20 but the general position is that comparability is still  
21 a lot more limited than in relation to other brands.

22 Q. Well let's explore that, please. I am going to hand you  
23 some further screenshots, please.

24 PROFESSOR BEATH: Could we see them?

25 MR O'DONOGHUE: Yes. (Handed) (Pause)

1           Ms Aspinall, these are further Google Shopping  
2           results which we did yesterday.

3    A.   Mm-hmm.

4    Q.   So the first point is that you see quite a large number  
5           of companies offering this product via Google Shopping,  
6           so there is at least American Golf, Scottsdale Golf,  
7           Golfgeardirect, Clickgolf --

8    A.   Which documents are you referring to specifically? I've  
9           got four or five versions.

10   PROFESSOR BEATH: I'm sorry, Mr O'Donoghue. Can you please  
11           explain what the three different bundles are that we  
12           have got before you actually start your question so  
13           that --

14   A.   I've got four different bundles.

15   MR O'DONOGHUE: So there is the first document is entitled  
16           "Ping G400 driver".

17   A.   This one (Indicated)?

18   PROFESSOR BEATH: They're all Ping G400 drivers.

19   MR O'DONOGHUE: It should say, "G400 Driver Mens Right  
20           Alta CB". Do you have that?

21   A.   Is this with the larger heads?

22   Q.   Yes.

23   A.   Okay.

24   Q.   I want to start -- you see where it says "38 product  
25           reviews", at the top of the page?

- 1 PROFESSOR BEATH: Okay.
- 2 A. I can't see "38 ..."
- 3 PROFESSOR BEATH: They all start with "38 product reviews".
- 4 A. 15 May, 9.14 ...
- 5 MR O'DONOGHUE: Yes, so it says "16.42" at the bottom of the
- 6 page.
- 7 A. Okay. I have found it now.
- 8 Q. Sorry for the confusion.
- 9 PROFESSOR BEATH: So the one that says "16.42" is the one
- 10 we're going to focus on, is it, at the bottom?
- 11 MR O'DONOGHUE: Sir, yes, that's where we start.
- 12 A number of points. So first of all, you will see
- 13 quite a wide spread of retailers. I count at least
- 14 five: American Golf, Scottsdale Golf, Golfgeardirect,
- 15 Clickgolf and Greaves Sports. Do you see that?
- 16 A. I can see "Best match". It doesn't give me any
- 17 information -- oh, "from three shops", and then
- 18 "Other matches" from American Golf. Then it has
- 19 "Decathlon" --
- 20 Q. Exactly, and if you go over the page, you see
- 21 Scottsdale Golf, Greaves Sports and so on.
- 22 A. Yes.
- 23 Q. So there are a number of retailers. So that's the first
- 24 point. Then --
- 25 A. The prices seem similar.

1 Q. Yes. Then if we look at paragraph 15 of your  
2 statement --

3 A. Yes.

4 Q. -- you say, for example, there were -- you could only  
5 find 14 product reviews and, for example, we see in  
6 a number of these entries there are 38 product  
7 reviews -- some have eight, some have 37, so there are  
8 larger numbers of product reviews.

9 Doesn't this illustrate I think the point you  
10 mentioned, which is, depending on the particular day you  
11 search on Google Shopping, you may get more or less  
12 entries at any given point in time? That's what it  
13 shows?

14 A. Well, I can't make the general point because I don't  
15 search for Ping clubs every day, but it does show that  
16 the comparison for the best match is just from three  
17 shops, but we haven't -- you haven't gone into that to  
18 see what the three shops are.

19 Q. Well, there are five shops. There are --

20 A. The top result says "three shops". Now, when we looked  
21 in January, two of the shops were actually affiliated  
22 and part of the same entity, Medway Golf, and the other  
23 shop was based in Guernsey and I think the prices  
24 offered were all the same, but, you know, these  
25 print-outs, they don't tell me that much because

1 I haven't gone in and done the search myself.

2 Q. Well, I am putting to you first of all that there are  
3 a number of different retailers. I have given you the  
4 names. I am putting to you second of all that there  
5 seem to be a large number of product reviews, 38 in some  
6 cases, and you make the point at paragraph 15 that when  
7 you searched it was just 14. All I am saying to you is  
8 that the evidence you have given is of a snapshot in  
9 time, that if one replicates these searches across  
10 different days and dates and times, one can get  
11 different and richer sets of results. That's the point  
12 I am putting to you.

13 A. Well, I can't say whether you would get a richer set of  
14 results. I mean, what you have shown me here still from  
15 the first page is that you have £349. There's no price  
16 variation at all from three shops and I'm not sure  
17 where -- what are the three shops. Are they of -- are  
18 they similar to the results we carried out in January  
19 when the two shops were actually part of the same entity  
20 and the third shop was based in Guernsey? The other  
21 point I've made is that the comparability for irons is  
22 far less. In fact we couldn't find any comparability  
23 for Ping irons.

24 Q. Let's take this in stages. So you agree with me that  
25 this particular search generates a larger suite of

1 retailers than the searches you conducted?

2 A. I don't think I have agreed with you on that. I have

3 just said on the first page you have three results.

4 When I conducted -- or when the team conducted and

5 I reviewed their search, they also got three results.

6 Q. Well, if you flick over the page -- so you will see

7 American Golf at the bottom of the first page,

8 Scottsdale Golf, the second page, Greaves Sports, the

9 third page --

10 MS DEMETRIOU: Sir, in fairness to the witness, these are

11 different specification clubs and so Ms Aspinall is not

12 being asked to compare like with like, whereas in her

13 statement she is quite clear that she's looking at the

14 same specification. So I'm a bit concerned about this

15 because it's just been handed up, but these are

16 different specification clubs so I don't think the

17 question is being put fairly.

18 A. Which is why I have said that the comparability only

19 relates to the first result, which is for the

20 G400 driver, and the ones across the page do look as if

21 they're a slightly different spec. I wouldn't be able

22 to judge, not having played golf for about 15 years,

23 what -- if I'm actually comparing the same product or

24 not, whereas I think from the first result -- as

25 a consumer I think I am comparing the same product.

1 MR O'DONOGHUE: Now, at 17 and 18 of this statement you make  
2 the point that Google Shopping terms may not permit you  
3 to advertise because you can't click to buy, but, again,  
4 at least based on these results -- and I take on board  
5 the points you make -- it hasn't stopped these companies  
6 advertising, has it?

7 A. I think it depends -- my understanding is it depends on  
8 the individual relationships with what they -- what the  
9 individual businesses may have agreed. But the evidence  
10 that we had, which is where this all comes from, from  
11 a couple of retailers is that their terms and conditions  
12 with Google -- so they signed the merchant agreement --  
13 was that their product won't show up on the Google  
14 search results unless they could execute the sale. So  
15 I can't comment on why these -- you know, what the  
16 position is with Google vis a vis these retailers. But  
17 all I can say is, my understanding from having seen the  
18 policy, that Google's general policy is that they won't  
19 allow the search results to appear if a particular  
20 retailer can't execute the sale.

21 Q. But it hasn't stopped these retailers appearing.

22 A. Well, that's correct, but I can't comment on the reason  
23 why. Maybe they have entered into some other  
24 arrangement or they're breaching the policy. I'm afraid  
25 I don't know why.



1 Q. Now, can we look at other possibilities to advertise,  
2 please? This time thankfully it's just one page. If  
3 I can hand that up. (Handed).

4 So the evidence in your statement in respect of  
5 advertising only covers Google Shopping; correct?

6 A. Sorry, say that again.

7 Q. The evidence in your statement in respect of online  
8 advertising concerns Google Shopping?

9 A. Also I think it referred to Pricerunner.

10 Q. A couple of other price comparison services.

11 A. Yes.

12 Q. Now, just to put this in context -- so for  
13 the Tribunal's benefit, at the top of the page, where it  
14 says "Shopping", that is the Google Shopping icon;  
15 correct?

16 A. Is this --

17 Q. You see the top of the page, it says "All" and then next  
18 to that you see "Shopping".

19 A. I can't see a Google icon.

20 Q. "Shopping" is "Google Shopping"; right? So "Google  
21 Shopping" doesn't actually appear on the main Google  
22 results page; right?

23 A. Okay.

24 Q. You will then see -- at the second -- highlighted under  
25 red you will see the word "Ad".

- 1 A. I think I'm a bit lost to be honest. I am sorry.
- 2 Q. Well, at the top of the page, one of the icons is
- 3 "Google Shopping". Do you see that?
- 4 A. I can't see the icon which is -- is this ...
- 5 (Indicated)?
- 6 Q. It says "Shopping" on the top left. So if you want to
- 7 go to Google Shopping, that's what you click on.
- 8 A. Oh, you click on here, yes (Indicated).
- 9 Q. Yes.
- 10 A. Yes, I see.
- 11 Q. That is "Google Shopping".
- 12 A. Mm-hmm.
- 13 Q. The results about the price comparison services in your
- 14 witness statement concern Google Shopping.
- 15 A. Yes.
- 16 Q. Now, "Google Shopping" does not appear on the main
- 17 Google results page. It's on a separate sub-domain that
- 18 you get to by clicking on this icon. That's the first
- 19 point.
- 20 Now, the second point, you will see a box
- 21 highlighted in red.
- 22 A. Yes, there's two boxes in red.
- 23 Q. Yes, sorry, the one in the middle. So you have a line
- 24 and then two boxes. So where it says "Ad", that is
- 25 Google AdWords; all right?

- 1 A. Mm-hmm, okay.
- 2 Q. And it is possible in Google AdWords to advertise Ping  
3 clubs. Do you see that?
- 4 A. Yes.
- 5 Q. Now it's also possible, which is the bit with the red  
6 line on the right-hand side, in "Google product search"  
7 to advertise Ping clubs.
- 8 A. Mm-hmm.
- 9 Q. So you will see, for example, American Golf shows up  
10 there, Affordable Golf, Online Golf and so on.
- 11 A. Yes.
- 12 Q. So that is a second possibility to advertise Ping clubs  
13 on Google's main results page.
- 14 A. Well, I'm not a golf retailer so I can't comment on  
15 whether that's a possibility or not.
- 16 Q. Well, it says "American Golf".
- 17 A. Well, it looks as if that's possible, then.
- 18 Q. Well, this is a search we did for Ping golf clubs and  
19 this is what came up.
- 20 A. Mm-hmm.
- 21 Q. Do you see "American Golf"?
- 22 A. Yes.
- 23 Q. Then there is a third possibility, which is  
24 cartographic, which is the box at the bottom whereby you  
25 can locate stores on the map.

1 A. Yes.

2 Q. Then there is a fourth possibility at the bottom of the  
3 page, which is the normal generic or blue link results  
4 on Google and over the page. So you will get a wide  
5 range of links to websites which are a further way of  
6 advertising and promoting.

7 A. Yes.

8 Q. Now, the point I want to put to you is you have given  
9 evidence on Google Shopping, which is a separate  
10 sub-domain that does not appear on the Google main  
11 results page, and when a consumer searches for  
12 golf clubs or Ping golf clubs, he or she is presented  
13 with quite a number of other advertising possibilities  
14 on the main Google results page. So we have AdWords, we  
15 have "Product search", we have blue links and we have  
16 geo-location. Surely in terms of advertising, this main  
17 results page, which is the first and perhaps only thing  
18 the consumer would see, is far more relevant than  
19 a separate sub-domain which they may never get to?

20 A. Well, I think, looking at it in context, the point that  
21 we have been trying to make as regards the ban and the  
22 way it limits the ease of comparison shopping is related  
23 to retailers saying that, because they could not  
24 advertise on Google Shopping, it limited their ability  
25 to access a greater number of consumers and we know,

1 I think, from the decision that UK retailers are more  
2 likely to discount than European ones. So the point  
3 being made is that, if you are one of the 20 to 30 Ping  
4 authorised retailers that has a transactional website  
5 and you decide that you want to offer a discount on  
6 a product, because of the ban it's more difficult for  
7 you to have that visibility to a greater number of  
8 consumers to do that and therefore could restrict price  
9 competition.

10 Q. But sticking with the point I am putting to you, do you  
11 now accept that when one puts in "Ping golf clubs" as  
12 a search term on Google's search engine, there are  
13 a number of possibilities to advertise prices quite  
14 apart from Google Shopping?

15 A. On the advertising side it's still not the same as the  
16 ability to be able to execute a sale. So as  
17 a consumer -- and I would find these sets of results  
18 quite extensive and confusing -- it doesn't give me the  
19 convenience that I would have from just going onto --  
20 and this is my own personal preference --  
21 Google Shopping and typing in the product that -- the  
22 particular brand of golf club that I might want to buy.

23 Q. You say Google Shopping for you is a personal  
24 preference. Do you accept that for most consumers the  
25 main page of interest will be the main results page and

1 on that main results page we see a number of  
2 possibilities that advertise Ping's clubs?

3 A. I'm afraid I can't speak for most consumers, but what  
4 I can say from having worked on the investigation is --  
5 from the retailer evidence -- is that if they are  
6 proposing to provide a discount for Ping golf clubs,  
7 it's more difficult for them to reach a greater number  
8 of consumers to offer them a better deal.

9 MR O'DONOGHUE: Sir, I see the time. Is that a convenient  
10 moment?

11 THE CHAIRMAN: Yes.

12 (1.03 pm)

13 (The luncheon adjournment)

14 (2.00 pm)

15 MR O'DONOGHUE: Ms Aspinall, before the lunch-break I was  
16 putting to you the main Google search results page and  
17 I put to you that, apart from Google Shopping, there  
18 were at least four other ways in which advertising of  
19 clubs, including Ping clubs, could be conducted.

20 So just for the Tribunal's assistance, they are the  
21 Google product search results, which is the box at the  
22 top (Indicated), AdWords, which is the box underneath,  
23 the cartographic advertising, which is the second box on  
24 the table, and then the fourth possibility is the blue  
25 links at the bottom of the page and over the page. So

1           these are four other ways in which golf clubs can be  
2           advertised.

3           Now, one small point: you made a point before lunch  
4           about Ping irons, but do you now accept that when one  
5           looks at the Google product search results, at the top  
6           of the page under "American Golf", that Ping irons do  
7           appear? Do you see that in the top of the page,  
8           "Ping G30 irons, steel"? Do you see that?

9   A. Yes, I do, but it's not the same as a comparison on  
10       price.

11   Q. I accept that. Do you accept that Ping irons do appear  
12       as advertised products?

13   A. I do, but I don't quite see the relevance when we're  
14       talking about the limited ability for consumers to  
15       compare the price of Ping irons. Just because a product  
16       appears is not the same thing as being able to compare  
17       the price for the same product. A number of --

18   Q. Let's now stick to advertising, please. You have made  
19       your points about price comparison. That is fair.

20           Now, when I put these four possibilities to you,  
21       your answer is -- and I am quoting from the transcript:

22           "Well, I'm not a golf retailer so I can't comment on  
23       whether that's a possibility or not."

24           Now, did the CMA ask retailers about these four  
25       other possibilities of advertising? Were retailers

1 surveyed on these four other possibilities?

2 A. No --

3 Q. Why not?

4 A. Because the evidence base for what the CMA has said  
5 about the fact that price comparison is more difficult  
6 is derived from some retailer evidence which I believe  
7 is set out in 3.57 of the decision -- sorry, that's the  
8 wrong reference. It is, I think ... my apologies, 3.58.  
9 It's the next paragraph. So retailers told the CMA that  
10 the ban meant that they couldn't advertise on Google  
11 Shopping and therefore it meant that they were losing  
12 sales because their visibility was more likely to be  
13 restricted to their local catchment area. So our  
14 finding relates to the fact that the comparison shopping  
15 is not as straightforward because of the ban.

16 Q. Well, I accept --

17 A. And I think also in --

18 Q. Let's put that to one side.

19 A. -- in the decision we talk about the advertising,  
20 I think at 4.78, and we say that the online sales ban  
21 restricts competition irrespective of whether  
22 account-holders may advertise online -- so we have  
23 acknowledged that there is advertising online -- and we  
24 say that the -- it's the restriction of internet  
25 selling, the inability to click online, which reduces



1 the ability of distributors to sell the products outside  
2 their contractual territories.

3 Q. Ms Aspinall, you're arguing your case. We have the  
4 decision.

5 A. I'm answering your question as to --

6 Q. With respect, you're not answering my question.

7 A. -- whether we were looking at advertising and I've  
8 explained that we weren't looking at the ability to  
9 advertise because we have explained in the decision that  
10 the online sales ban restricts competition irrespective  
11 of whether account-holders may advertise online.

12 Q. Well, let's stick to purely factual questions. So  
13 leaving aside the two people, one of whom was the  
14 complainant, who made the point about Google Shopping --

15 A. Yes.

16 Q. So the first factual question: did you investigate that  
17 Google Shopping question with any one of the other 1,200  
18 Ping account-holders?

19 A. No we didn't.

20 Q. Of the four other advertising possibilities which I have  
21 outlined to you on the Google main results search page,  
22 did you investigate any of those possibilities with any  
23 other retailer?

24 A. No, we didn't for the reasons I explained.

25 Q. Well, don't you think, as a matter of simple good

1 administration, it would have been useful to check the  
2 extent of advertising in this industry?

3 A. Well, our finding is that the ban restricts competition  
4 irrespective of advertising, so the fact that the  
5 product is advertised on numerous sites didn't affect  
6 our finding that the ban hinders the ability to compare  
7 prices for Ping product on Google Shopping.

8 Q. Well, the CMA makes the point that consumers cannot  
9 compare. I put to you at least four ways in which they  
10 can compare. There is a question mark over  
11 Google Shopping. Surely it would have been appropriate  
12 to investigate this properly.

13 A. We took the view at the time that we did the  
14 evidence-gathering that we conducted and we did not  
15 conduct that evidence-gathering.

16 Q. Did you also investigate whether and to what extent  
17 manufacturers placed any restrictions on retailers on  
18 the promotion of their products? Did you investigate  
19 those terms and conditions?

20 A. We were aware, I think, that there had been previous  
21 restrictions placed by manufacturers on retailers, so,  
22 for example, there was the Acushnet litigation in the  
23 High Court in 2011, where Acushnet had restricted online  
24 sales of golf clubs and that ban was lifted, and we're  
25 also aware in some of our preliminary research that

1           there had been previous bans that had also been lifted.

2   Q.   If we can turn to F2/104, please.

3   A.   Yes.

4   Q.   That's tab 104.

5   A.   I haven't got a tab.  He's kindly handed it to me.

6   Q.   This is the complaint.

7   A.   Yes.

8   Q.   If you look at paragraph 11.  [REDACTED]

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13  Q.   Did the CMA gather the terms and conditions of the

14       manufacturers as imposed on retailers?

15  A.   Were they provided as an evidence source?

16  Q.   Did the CMA gather the terms and conditions imposed by

17       Ping and other manufacturers on retailers?  It's a "Yes"

18       or "No" answer.

19  A.   Well, we had some information from the complainant.

20  Q.   So the answer is "No"?

21  A.   We did -- I can't fully recollect, but obviously we

22       saw -- I think Ping's terms and conditions were provided

23       and the other terms and conditions were also provided,

24       but I'd have to check my recollection because this was

25       a while ago and I wasn't directly involved in the

1 initial stages.

2 Q. But apart from the Ping terms and conditions, no other  
3 terms and conditions are set out in the decision.

4 A. Because we're investigating Ping.

5 Q. Well, the Tribunal is interested in understanding what  
6 does Ping do relative to the other manufacturers in  
7 terms of promotion, advertising and so on and it has no  
8 idea of what the other terms and conditions are. How is  
9 this supposed to compare what Ping does? It has been  
10 asserted that Ping is no different to the others.  
11 The Tribunal can't even do that exercise. It has no  
12 terms and conditions.

13 A. Well, I think in the decision we make clear that to our  
14 understanding from the evidence that we have seen that  
15 no other manufacturer currently has a direct ban in  
16 place on their retailers.

17 Q. So that we're crystal clear on this, did the CMA gather  
18 the terms and conditions imposed by manufacturers other  
19 than Ping on retailers?

20 A. I wasn't involved at this stage so I cannot give you --  
21 I don't know. I can't -- I wasn't directly involved at  
22 this stage of when the CMA decides which cases to  
23 prioritise.

24 Q. So is the answer "Yes" or "No" or you don't know?

25 A. I wasn't involved so I don't know.

1 Q. Well, you're the only CMA witness we have.

2 A. I can only talk about facts that I know about.

3 Q. But you would accept, wouldn't you that if the CMA  
4 didn't gather the terms and conditions of manufacturers  
5 other than Ping, that would be quite extraordinary?

6 A. I don't quite follow.

7 Q. Well, the mantra in this case is that Ping is no  
8 different to the others.

9 A. Yes.

10 Q. The Tribunal has no idea what terms and conditions the  
11 others impose. How is it supposed to reach this  
12 conclusion?

13 A. Because I think the decision mentions that there are  
14 no -- the CMA is not aware of any other manufacturer  
15 having a ban and that's based on the evidence that we  
16 obtained from other sources, such as retailers, so if we  
17 speak to retailers, that none of them said that there  
18 was another ban in place. There might be some  
19 third-party platform bans in place, which is a slightly  
20 different beast from this, but there is no direct ban on  
21 authorised retailers to sell hard goods on the internet.

22 Q. Well, it's not just about the ban. We're also  
23 interested in the question of advertising and promotion.  
24 It's all the terms and conditions, surely.

25 MS DEMETRIOU: Excuse me, sir, could Mr O'Donoghue be asked

1 to explain which bit of the decision he's asking the  
2 witness to comment on because obviously this case, the  
3 decision has found that the ban is anti-competitive and  
4 I'm not quite sure where this is going. Is there some  
5 other finding in the decision that required the CMA --  
6 is that what's being put, that there is some other  
7 finding relating to something other than a ban that  
8 required evidence-gathering? If so, could it be  
9 identified for the witness because I think it's not  
10 clear.

11 MR O'DONOGHUE: I'm happy to do so. It has been suggested  
12 on multiple occasions during this trial that Ping's  
13 efforts in promoting its custom fitting and the  
14 dissemination of its products are no different to other  
15 manufacturers who do not have the terms and conditions  
16 of the other manufacturers. That's the point. Were  
17 they gathered?

18 A. Well, as I explained, I wasn't involved at the -- this  
19 phase of the investigation, but Ping has had access to  
20 our full file so you can see whether it's not -- what is  
21 on the file. So I think you're asking me a question  
22 that you already know the answer to. The other  
23 manufacturers' terms and conditions are not on the case  
24 file.

25 Q. We certainly have not been able to find them.

1 A. They're not on our -- if they're not on our -- if we  
2 haven't disclosed to them to you, we haven't withheld  
3 them from you, so they're not on our case --

4 Q. So your evidence is that this information was not  
5 gathered?

6 A. Well, we have spoken to a range of retailers in the  
7 industry, all of -- a number of Ping account-holders  
8 received section 26s. We held discussions with them and  
9 we also interviewed a number of witnesses and we had  
10 American Golf on the stand today and no one has said  
11 that there is currently another ban in place.

12 Q. But did the CMA survey the manufacturers concerned --

13 A. No.

14 Q. -- to obtain their terms and conditions?

15 A. Of other manufacturers? No.

16 Q. No. I am going to put the point again for a last time  
17 and then I will sit down: how is this Tribunal supposed  
18 to determine whether Ping is any different to its  
19 competitors without even understanding the terms and  
20 conditions imposed by the other manufacturers?

21 A. Well, I think we know from the facts so far that  
22 currently there is no ban in place from the other  
23 main -- the other five main manufacturers of custom fit  
24 golf clubs in the UK and so Ping is the only one who has  
25 an online sales ban that operates in the UK.

1 Q. But the complaint was made against two other  
2 manufacturers.

3 A. That's correct.

4 Q. Where are their terms and conditions?

5 A. Well, one of the other manufacturers withdrew its ban  
6 and the other one, from my recollection it related to  
7 third-party platforms.

8 Q. So there was another ban?

9 A. I've just said that, yes, which was withdrawn, and I've  
10 also said there was a ban in the -- I think related to  
11 Titleist products, which was a matter of a stand-alone  
12 litigation in the High Court, Acushnet, which was --  
13 I believe, as a result, Titleist withdrew its ban in  
14 respect of online sales by its account-holders.

15 Q. But the issue in this case -- the Ping internet policy  
16 is to promote custom fitting.

17 A. That's right.

18 Q. The Tribunal has no information whatsoever on what as  
19 a matter of contract, if anything, the other  
20 manufacturers require by way of promotion. It's a black  
21 hole.

22 A. I think there's some retailer evidence on what the other  
23 manufacturers require, which relates to stocking  
24 requirements, but from what I have read is that a number  
25 of the retailers consider that Ping is very similar to



1 two or three of the other main brands, such as Callaway  
2 and TaylorMade.

3 Q. But don't you think it would have been useful for this  
4 Tribunal to see the contractual terms? What is the  
5 obligation, if any.

6 A. I'd have to leave that to the Tribunal to ...

7 Personally we didn't -- I didn't -- I mean, I think  
8 we have the evidence that we have before you and the  
9 position is that -- the facts are that there is no  
10 direct ban in place by TaylorMade, by Callaway, by  
11 Titleist. The only custom fit manufacturer that has  
12 a ban in the UK is Ping.

13 MR O'DONOGHUE: Sir, I have no further questions.

14 THE CHAIRMAN: Thank you.

15 Re-examination by MS DEMETRIOU

16 MS DEMETRIOU: Ms Aspinall, you were just asked a series of  
17 questions as to why the CMA hasn't discussed, for  
18 example, the advertising practices of other  
19 manufacturers. Can you explain whether or not you  
20 thought that was relevant to the restriction of  
21 competition that the CMA did find?

22 A. Well, as I hoped I was trying to explain to  
23 Mr O'Donoghue, we don't think it is relevant. We made  
24 that very clear in our decision.

25 Q. Can we just go back to that part of the decision?

1 A. Yes. So it's page 92, headed "Online sales ban  
2 restricts competition irrespective of whether  
3 account-holders may advertise online".

4 Q. Yes. And so that's the heading, but --

5 A. Yes, but what we say is we acknowledge that Ping  
6 submitted that the online sales ban doesn't prevent or  
7 restrict advertising, but what we have said in 4.78 is  
8 that we're looking at the restriction on internet  
9 selling which reduces the ability of retailers to sell  
10 the golf clubs outside their local areas and the fact  
11 that the ban doesn't have more restrictive features  
12 doesn't change our assessment that a ban on online sales  
13 restricts competition for those sales over the internet.

14 Q. Thank you. One final question, which is that you just  
15 explained again, in relation to this last series of  
16 questions that Mr O'Donoghue put to you, that the CMA  
17 satisfied itself as far as it was aware that Ping is the  
18 only manufacturer with an online sales ban.

19 A. On a direct account-holder.

20 Q. On a direct account-holder.

21 A. Mm-hmm.

22 Q. Mr O'Donoghue asked you why you didn't obtain terms and  
23 conditions for the selective distribution networks of  
24 the other manufacturers. Do you think that those terms  
25 and conditions are of relevance to your finding that

1 Ping's ban constitutes a restriction of competition?

2 A. No, I don't think they are relevant because our  
3 investigation looks at the restriction of competition  
4 relating to Ping products and therefore I think it wouldn't  
5 be relevant to gather evidence from the other  
6 manufacturers and, as I explained, we also have evidence  
7 from the retailers that weren't aware that any other ban  
8 is currently in operation on account -- direct  
9 account-holders.

10 MS DEMETRIOU: Thank you. I do not have any further  
11 questions for this witness.

12 THE CHAIRMAN: Thank you very much, Ms Aspinall.

13 MS DEMETRIOU: Sir, there are three further CMA witnesses.  
14 They are scheduled at the moment for tomorrow and Friday  
15 morning. Mr O'Donoghue did alert me yesterday after  
16 court to the fact that he may not be as long as a day  
17 with the witnesses that we have heard today.

18 The CMA did endeavour to persuade the witnesses who  
19 are due tomorrow to come today and unfortunately they  
20 weren't, at that late notice, able to change their plans  
21 and so we're not able to call the next witness until  
22 tomorrow morning. I apologise for that. The timetable  
23 was extensively discussed and agreed in advance and  
24 these are not CMA employees, you will appreciate.

25 THE CHAIRMAN: No, I understand. Is there any possibility

1 of calling the complainant on Thursday or is that going  
2 to be difficult?

3 MS DEMETRIOU: Yes, so that rather depends on how  
4 Mr O'Donoghue gets on. So what we have done is secured  
5 that the complainant will be available on Thursday  
6 afternoon.

7 THE CHAIRMAN: Good.

8 MS DEMETRIOU: So if Mr O'Donoghue finishes -- he does have,  
9 it's fair to point out -- he can take the next day and  
10 a half if he needs it, but if he were to finish early,  
11 then the complainant will be available tomorrow  
12 afternoon and so that would free up Friday as  
13 a non-sitting day.

14 THE CHAIRMAN: Very well.

15 MR O'DONOGHUE: Sir, I will obviously do my level best to  
16 finish tomorrow if I can, but it rather depends.

17 THE CHAIRMAN: Thank you very much then.

18 (2.22 pm)

19 (The hearing adjourned until 10.30 am on Thursday,

20 17 May 2018)

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