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5 **IN THE COMPETITION**
6 **APPEAL TRIBUNAL**

Case No: 1298/5/7/18

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8
9 Salisbury Square House
10 8 Salisbury Square
11 London EC4Y 8AP
12 (Remote Hearing)

13 Tuesday 12 October 2021

14
15 Before:
16 Andrew Lenon QC
17 Jane Burgess
18 Michael Cutting
19 (Sitting as a Tribunal in England and Wales)

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21
22 **BETWEEN:**

23
24 Achilles Information Limited **Claimant**
25 v
26 Network Rail Infrastructure Limited **Defendant**

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30 **A P P E A R A N C E S**

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32 Phillip Woolfe (On behalf of Achilles)
33 David Went (On behalf of Network Rail)

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1 **Tuesday, 12th October 2021**

2 **(10.30 am)**

3 **KATIE FERRIER (cont.)**

4 **Cross-examination by MR WENT (cont.)**

5 **MR WENT:** So, Miss Ferrier, I think we have seen that Achilles was trying to get its
6 marketing strategy agreed, certainly in the first quarter of 2018. We also
7 know the concession contract was causing difficulties in terms of putting out
8 communications to RISQS members to the market by Achilles.

9 I want to look now at what was happening with the enhanced RISQS product. So
10 can we turn to G4, tab 1, 77A? So this is a communication that went out to all
11 principal contractors of Network Rail on 1st February 2017. If you turn the
12 page and look at the first sentence under platform:

13 "Over the last few days your organisation should have received communications
14 from RISQS instructing your point of contact to log into the new RISQS
15 platform."

16 So you see here obviously Network Rail was encouraging its principal contractors to
17 log into the new enhanced platform. Yes?

18 **A.** That's correct, yes.

19 **Q.** And then just turning on to 180 in that, so tab 180, which we have already looked
20 at and then just turn the page to 2076. Just below the first hole punch it says:

21 "Depending on your renewal an audit."

22 So this is a communication that was put out by RSSB -- "Depending on your renewal
23 and audit dates some members already receiving invoices from RSSB RISQS
24 in the enhanced scheme is already booking audits and processing payments
25 from its members."?

26 **A.** Sorry. Where is this?

1 **Q.** On the second page. On 2076. Do you have that? Just below the first hole
2 punch on the left-hand side. So:

3 "Depending on your renewal and audit dates."

4 Do you see that?

5 **A.** Yes, I see it.

6 **Q.** So this was -- I think this is a document from 5th February 2018. So at this point
7 in time you can see that RSSB was also gearing up and trying to get people
8 moved over to the new system. Yes?

9 **A.** That's correct, yes.

10 **Q.** If we can turn to -- you might keep that out for one moment. If you turn to G5,
11 please, tab 270. So these are the minutes of 27th February 2018 meeting of
12 the RISQS committee. If you turn to page 2519 within that, and then if you
13 just look towards the bottom of the page under 3.3. So someone had queried
14 the RSSB RISQS -- how many suppliers RSSB RISQS had compared to how
15 many Achilles had. Then Richard Sharp stated that all Achilles suppliers from
16 the RSSB system. There are 445 supply records, some of which are archived
17 with possibly 3,860 live records. Of these 1,600 have already started
18 interfacing with RSSB system."

19 So you see that there. Again you can see the RSSB starting to move all the
20 suppliers over to the enhanced RISQS platform. Yes?

21 **A.** So I see. 1,600 of the 4,400 had actually logged in and accepted the terms.

22 **Q.** At that point in time. If we put that away and turn to quickly look at a document
23 we saw yesterday. It is at G3 at tab 342. That can't be right. It is the one in
24 terms of the number of suppliers. In opening. So the 2,200 suppliers. I may
25 need to find a reference, my Lord. I do not have it at the minute. In any event
26 there's a document. I think it was from April 2019, at that point saying there

1 were 2,200 suppliers already interacting with the RISQS platform. So again
2 you can see gradually the RSSB was moving suppliers on to the enhanced
3 platform list?

4 **A.** Yes. I am surprised actually it is so low, but given the messaging was "You must
5 do this or you will lose access to the infrastructure" to have less than half the
6 suppliers at that point surprises me, but if you tell me that is the case, then ...

7 **Q.** It is at 342 but it is at G6 just for the record. I don't think we need to turn to it,
8 because we have looked at it already. Actually we will just quickly. So it is at
9 342 in G6. You can see that. So you can see obviously there is some
10 concern expressed over the numbers that were migrating. You can see:

11 "However, the fact remains we have only 2,200 in the system."

12 Yes?

13 **A.** Yes.

14 **Q.** Nowhere in this communication does it suggest though that there was a problem
15 moving buyers over to the platform.

16 **A.** It is my belief that we didn't migrate or give the data of buyers to the RSSB. It is
17 not part of our contractual requirements to do that. We had the relationships.
18 We had account management. We had reasonable relationships, so we didn't
19 give them any of that data, no.

20 **Q.** There is no suggestion in those internal documents that they were having
21 problems migrating the buyers --

22 **A.** I can't see any reference -- I am just reading it now -- to buyers. So I don't know
23 what was happening in Network Rail at that time, but ...

24 **Q.** All right. Put that away. If you can turn to G7, please, and tab 425A. So this is
25 another RISQS scheme manager update. This one is from 24th May 2019. If
26 you go to page 3793 --

1 **A.** Should I read it all, because I don't think I have seen this before, or just go to the
2 page?

3 **Q.** I think it is fine if you go to 3793?

4 **A.** Uh-huh.

5 **Q.** It is an update sent from May 2019 rather. I just wanted to look at the first bullet
6 point there at the top. It says:

7 "Suppliers with in-date subscription 4,043."

8 So that's what the RISQS manager was reporting at that point in time, in May. Yes?

9 **A.** Yes. So we basically migrated the suppliers and one of the fields that we gave
10 them was in date subscription. So I assume that's the number of suppliers at
11 that point that had an in date subscription.

12 **Q.** Okay. If I can just go back to your fourth witness statement for a moment. If you
13 can just look at paragraph 129, please?

14 **A.** Sorry. I am just trying to find it. What tab is it?

15 **Q.** It's tab 4?

16 **A.** 4.

17 **Q.** Do you have that? It is just the first sentence there:

18 "So, as you say above, we did not give too much thought to formal or technical
19 requirements of integrating with Network Rail outside of RISQS assuming that
20 Network Rail gave its blessing to our new scheme as equivalent."

21 So I just want to quickly look at how Achilles approached this issue. So if we can go
22 to G3, please, tab 107, and if we could just look over the page at 1742, so the
23 second page there, I think this is an e-mail from Neil Willings just looking at
24 next steps around September 2017. So we see here he suggested that
25 Achilles look to progress conversation with Network Rail about recognition of
26 Link-up. He says there are a couple of routes. There is the technical

1 approach and goes through compliant team to request their review and
2 approval or alternatively try to arrange a follow-up call between your CEO and
3 Susan Cooklin of Network Rail."

4 Do you see that?

5 **A.** Yes. That is correct. This is the time when we were starting to hear rumblings
6 about not being compliant from a Sentinel perspective. Neil was our -- he
7 also led our audit function. So he was hearing those first-hand from his team
8 directly.

9 **Q.** Yes. We can put that away. If we go to folder C back to your exhibit in tab 10,
10 please. I should say actually, you say that Neil was hearing things in the
11 market about not being compliant with Sentinel. That was after Network Rail
12 had put out on Bravo the fact that all its suppliers needed to be on RISQS and
13 assured through RISQS?

14 **A.** That's correct. I think so from timing, I'm assuming.

15 **Q.** Yes. You can understand then why there might have been a bit of questions and
16 (overtalking)?

17 **A.** Yes. I mean, the feedback from buyers and suppliers was as long as we have
18 the Sentinel approval, as long as you can give us Sentinel, then everything is
19 fine. That's kind of the approach we had throughout that whole time period.
20 That's why if you see our documents it was business as usual. We were
21 assuming, we were making a big assumption that Sentinel approval was
22 going to be fine, because we'd been doing it for so many years. The
23 conversation with Susan, it's only when these started to raise concerns.

24 **Q.** But obviously a supplier who has to be on RISQ because they're a direct supplier
25 to Network Rail -- excuse me -- a supplier who has to be on RISQS because
26 they're a direct supplier to Network Rail couldn't choose to have an audit only

1 with TransQ, could they, only with Achilles?

2 **A.** If they are supplying directly to Network Rail, but the conversations we were
3 having with the buyers is you have got to remember that this process was so
4 intrinsic to a lot of our buyers and they used us not just for rail. They used us
5 for utilities. So the messaging we were saying to them is "It's fine. We have
6 been told by Network Rail, one of their board directors, that it is business as
7 usual and it shouldn't be an issue", and that's the messaging we were giving
8 them.

9 **Q.** Yes. Then if we just turn to page 567 in this document, please. So we looked
10 just now at Neil Willings talking about the technical approach or different
11 approach going back to Susan Cooklin?

12 **A.** Yes, we were either speaking to the compliance audit technical compliance team
13 or procurement team was kind of the two options.

14 **Q.** Yes. Then in the bottom left-hand corner here --

15 **A.** On 567.

16 **Q.** 567?

17 **A.** Yes.

18 **Q.** This is engagement planning, bottom left-hand corner there is a list of Network
19 Rail people. So there's been identification there of the relevant people at
20 Network Rail that would need to be contacted about it. Yes?

21 **A.** It had some of them. None of these people are actually the technical team.
22 They're not the engineering team, the safety technical engineering. These are
23 all procurement people.

24 **Q.** Yes, who had been identified as part of the engagement planning. Yes?

25 **A.** As part of it. Yes.

26 **Q.** I don't think we need to turn to it, but then I think there is a further e-mail to

1 Susan Cooklin on 8th November 2017. Do you recall that?

2 **A.** From Estelle Whittaker.

3 **Q.** Yes, I think that's right, isn't it, on that date? So that was obviously the next
4 communication, as it were. Just for the tribunal's reference that's at -- actually
5 it is in this bundle, bundle C, tab 10, page 569. I don't think we need to turn to
6 it.

7 The next follow-up message seems to be when your CEO then sent an e-mail to
8 Mitie on 19th January 2017 telling Mitie that you continue to issue validation
9 for Network Rail's audit modules. Is that right?

10 **A.** I think these are the written communications. I am pretty sure that Colin Flack
11 was trying to call various people as well, but these are the mail
12 communications I exhibited.

13 **Q.** Okay. Just for the tribunal's reference we have already seen that Mitie
14 communication. That's at G4, tab 168.

15 Then I think, you, Miss Ferrier, send e-mails to Gillian Scott and Ken Blackley on
16 22nd February 2018. If we can turn to that in G4, that's at tab 188.

17 **MR CUTTING:** Sorry. Could you give me the tab again?

18 **MR WENT:** Tab 188. This is just a short e-mail obviously. You say that you are
19 keen -- that Achilles is keen to meet up to discuss the transport offering after
20 1st May 2018 and you want to ensure that there's a seamless process to
21 ensure the assurance arrangements in the industry stay robust. Yes?

22 **A.** That's right, yes.

23 **Q.** If we can turn on to tab 198, and then if you can turn to page -- it is slightly further
24 back. Let me just find the reference for you. So it is at tab 193. If we can
25 turn to page 2099 first, just over the page, you are reporting here on
26 a conversation that you then subsequently had with Gillian Scott on 26th

1 February, and then if you look at the last paragraph on that page on 2099, you
2 explain that Achilles have made the approach to Mitie, and Gillian responded
3 that to work with Network Rail a supplier had to have a RISQS audit. So a
4 Network Rail supplier could have an Achilles and RISQS audit but not
5 an Achilles or RISQS. Yes?

6 **A.** I am just reading the paragraph. Yes, that's correct.

7 **Q.** If we turn back again, we see there you are reporting on the conversations you
8 had with Mr Blackley on 12th March. Then if you look at the second
9 paragraph there:

10 "As Gillian stated ..."

11 So again Mr Blackley telling you that RISQS must be used for Network Rail's direct
12 suppliers and then you also ask about equivalence, and you see at the end of
13 that paragraph he admitted he hadn't really throughout through those
14 implications?

15 **A.** Yes. We were quite worried at that point.

16 **Q.** Okay. Then if we look at -- we can put that away for a moment. If we go to
17 bundle G6, please, and tab 279, so this is an internal e-mail from you on
18 3rd April 2018, and if we can -- if you look at the next steps, please, at point
19 two, just the first sentence there:

20 "Approvals and equivalence scheme. Network Rail have not responded to our
21 correspondence in writing. However, we have not directly written to them
22 asking to."

23 So that is what you said on 3rd April. Yes?

24 **A.** That's correct. We had not formally written a letter to them. At this point
25 I thought it would be a good idea to do that, following the previous e-mail you
26 just read with Ken. He was really uncomfortable when I started discussing to

1 him, so actually are you telling me you are mandating it down the supply
2 chain. I think at that point, you know, I reported he was on shaky ground. So
3 I thought if we wrote a letter to them, it would all sort of be in a formal
4 communication and we'd get the affirmation back formally.

5 **Q.** Then if you turn on to tab 294, I think then that's the letter you were talking about,
6 the formal letter on 10th April 2018?

7 **A.** Yes, that's correct.

8 **Q.** Okay. Great. We can put that binder away.

9 **A.** You do see we had written to people on 19th and 20th March. So it wasn't the
10 first letter, but it was more of a formal -- had our legal team involved in terms
11 of the writing of it.

12 **Q.** Yes. Then just going back to your fourth witness statement at paragraph 103,
13 please, here you say:

14 "In practice there was nothing especially complicated about the day-to-day operation
15 of Achilles' platform and services under the RISQS brand and nothing we
16 particularly thought required much change at 1st May 2018."?

17 **A.** Correct.

18 **Q.** Okay. At the liability trial I think you accepted that Achilles was aware of the
19 safety critical nature of the assurance services in question. Yes?

20 **A.** Absolutely is safety critical. Part of the overall safety ecosystem that operates.

21 **Q.** The tribunal found that what Network Rail thought to be the safety purposes of
22 the RISQS-only rule could be achieved through interoperability. Yes?

23 **A.** That's correct, yes.

24 **Q.** So one had not thought that much needed to change. That wasn't, in fact,
25 correct, was it?

26 **A.** I am not sure it is correct actually, because even when we look at the API

1 specification today, if we look at what's in existence, it is a very, very simple
2 API that takes on I say around 20 fields, basic information. It is not an overly
3 complex piece of integration. We do lots of integrations with Bravo that has
4 hundreds and hundreds of fields. It was really simple. Have they passed?
5 Have they failed?

6 **Q.** I think we saw at the liability trial that whilst APIs in principle should be simple to
7 sort out, actually it can take a bit of effort and it doesn't always run smoothly?

8 **A.** Well, I think if you -- it depends on the effort you put in I think it is fair to say.
9 I don't think the API specification that we have received and we are delivering
10 today is at all complicated and could have been written really quickly.

11 **Q.** I suggest that Achilles should have realised that measures would need to be put
12 in place before a second supplier assurance provider could start to operate in
13 GB rail infrastructure. Yes?

14 **A.** I mean, for years and years it had been accepted that we would e-mail a
15 spreadsheet across that include a company registration number and whether
16 they had passed or failed and we had assumed actually it didn't matter
17 whether it was us or AN Other providing that data. It would be acceptable in
18 the same format. So I think that was a fair assumption to make.

19 **Q.** But, as we said in the liability trial at least the tribunal found that the safety
20 purposes the RISQS-only reward could be achieved through interoperability
21 provisions?

22 **A.** Yes, and interoperability can be achieved in many ways through a spreadsheet
23 consolidated, an API consolidated, the data at the end of the day is really
24 simple that is needed to be transferred.

25 **Q.** I also suggest to you that if the standard at the time didn't have the RISQ only
26 rule, because we are talking about the counterfactual, but a modified

1 RISQS-only rule and said that an equivalence by assurance providers could
2 be used, the sequence of events we have just been looking at wouldn't have
3 been any different in the counterfactual. Yes?

4 **A.** I think if the RISQS-only rule is accepted as being unlawful, as it is today, then
5 possibly in September '17, whenever we e-mailed Susan and she said "Yes,
6 I am sure it is fine" someone at Network Rail would have made some effort to
7 actually make it possible for us to operate in that market. However, no-one
8 did.

9 **Q.** All right. I want to move on to another point. So can we turn to your fifth witness
10 statement, please, and paragraph 4. That's at tab 6. There you say:

11 "It is more accurate to describe Achilles as the incumbent for the reasons I have
12 explained in my fourth witness statement."?

13 **A.** That is correct, yes.

14 **Q.** Now, your expert has given a slightly different gloss on this subsequently I think
15 and argued that both RISQS and Achilles had elements of incumbency. Do
16 you agree with that?

17 **A.** Yes, I've seen that statement.

18 **Q.** Okay. In reaching his view about incumbency Mr Parker relies on paragraphs 48
19 and paragraphs 103.1 of your fourth statement. If we go to paragraph 48 to
20 start with -- sorry. This is in the fourth statement, not the statement we are in.
21 Have you got that?

22 **A.** Yes.

23 **Q.** "As I say above ..."

24 So this is the concluding paragraph of the section of your statement examining the
25 subscription model. I think you said at paragraph 46 there that:

26 "... assurance contracts ... roll over each year on a 12 month rolling basis."

1 Then you say in paragraph 47 that:

2 "That [contract] model has a number of consequences in terms of customer loyalty
3 and reliability of income."

4 I think we have already looked at some of those passages in paragraph 47. Then in
5 paragraph 48 you say that:

6 "... Achilles maintained direct contracts with the scheme members and owned the
7 systems ..." Yes?

8 **A.** That's correct, yes.

9 **Q.** You needed to provide a copy of the supply data but there was no licence given
10 to Achilles by RSSB and no post-contractual restrictions?

11 **A.** That is correct, yes.

12 **Q.** Okay. If you turn to paragraph 103.1 of this statement, you just say there:

13 "As set out above, the contract between Achilles and the RSSB made clear that the
14 database of supplier information belonged to Achilles."

15 Yes?

16 **A.** That's correct, yes.

17 **Q.** So there's obviously reliance here on the contractual position when dealing with
18 the incumbency. If we can just go to some of the other points you have made
19 about the counterfactual position in your witness evidence. So if we go back
20 to your fifth statement at paragraph 5 again -- okay. I have a wrong reference
21 there. I don't think it matters. If we can, though, see what you said in your
22 sixth witness statement, please. That's in the miscellaneous tab 7. So
23 paragraph 12, please. So he says:

24 "It's a real challenge for Achilles to rebuild its rail business from scratch after three
25 years out of the market with no up-to-date database of rail suppliers as we
26 had until May 2018. It is not now an option for us to ask buyers and suppliers

1 to roll on existing contracts."?

2 **A.** That's correct, yes.

3 **Q.** So you seem to be presenting a picture of Achilles having existing contractual
4 relationships with buyers and suppliers which would ordinarily have rolled on
5 at the end of the contracts from 1st May 2018 onwards. That's right?

6 **A.** So the contracts didn't all finish on 1st May 2018. They carried on until the
7 renewal date for buyers and for suppliers. Up until 1st May 2018 we had
8 an up-to-date, you know, buyer/supplier data but from that point people were
9 updating information in RISQS, so that supplier data was out of date.

10 **Q.** Yes.?

11 **A.** Not all of the supply data, just the suppliers effectively that had updated the
12 information.

13 **Q.** So you were saying there was no contractual restrictions stopping this and so it
14 would be natural for buyers and suppliers to stay with Achilles at the transition
15 point?

16 **A.** Absolutely. Similar to what we did when we moved from the Link-Up to the
17 RISQS. We didn't go out and renew contracts for suppliers. It wasn't
18 necessary. We just continued and at the next renewal we changed the terms
19 and conditions basically.

20 **Q.** If you can just remind yourself in that same witness statement -- just remind
21 yourself what you said in paragraph 13, please?

22 **A.** Yes, this is the statement about today, how things were operating today.

23 **Q.** Okay. We have already seen I think yesterday that suppliers typically followed
24 the decisions of buyers. Yes?

25 **A.** That's correct.

26 **Q.** So existing contractual relationships with suppliers don't count for a lot in any

1 event if all their buyers decide to move to another scheme. That's right?

2 **A.** If all their buyers do, then possibly not, no.

3 **Q.** Okay. If we can turn to tab 16 in this folder?

4 **A.** There's no tab 16 in this one.

5 **Q.** So there should be a tab 16 apparently?

6 **MR WOOLFE:** It is the miscellaneous folder.

7 **MR WENT:** I thought we were in that.

8 **MR WOOLFE:** To clarify I handed up a copy of the supplier terms which should be

9 added as tab 16. Is that what you are referring to?

10 **MR WENT:** Yes. Miss Ferrier does not have that.

11 **A.** It is not in this one.

12 **MR WOOLFE:** I do have a paginated copy.

13 **MR WENT:** So this is the RISQS supplier standard terms and conditions. The

14 tribunal has already been taken to these. You can see that the RISQS

15 database is defined under the definitions halfway down. So the database and

16 supplier and other information operated by Achilles on behalf of RISQS board

17 and the rail industry. Then rail portal is defined separately a bit further down.

18 Yes?

19 **A.** Yes, correct.

20 **Q.** And then if we look at clause 2, the first sentence:

21 "Achilles will provide to subscribers the information provided by the supplier through

22 the questionnaires by loading the information received from the suppliers into

23 the RISQS database."

24 Yes?

25 **A.** That's correct, yes.

26 **Q.** So there's the RISQS database and not the rail portal. Yes.

1 **A.** It does, yes.

2 **Q.** Then if you turn to clause 5:

3 "Both suppliers and subscribers will contribute towards the administration costs of
4 operating RISQS database. For registration in this database an annual
5 non-refundable fee is payable by the supplier."

6 Then clause 8, if we just look at the second part there:

7 "The intellectual property rights and the information and other material entered by the
8 supplier on to the questionnaire shall at all times remains vested in the
9 supplier."

10 Yes?

11 **A.** That's correct, yes.

12 **Q.** Then clause 9:

13 "Achilles and the supplier agree to keep in confidence for a minimum period of five
14 years from the termination of these terms and conditions any information
15 obtained under these terms and conditions."?

16 **A.** That is correct.

17 **Q.** "and shall not disclose the same to any third party."

18 Then clause 10 on term and termination:

19 "This contract shall continue for the period to which the fee is paid by supplier
20 pursuant to clause 5 relates and shall terminate automatically at the end of
21 such period."

22 We have already seen that's an annual period. So there was no automatic renewal
23 of the contract obviously. That's right?

24 **A.** It is not an automatic renewal, but custom and practice was it just happened. To
25 be honest, the supplier terms and conditions typically are at the front page of
26 our website where you click agree and people tend to agree to these terms

1 and conditions rather than it being a detailed review, as you will be used to
2 with a lot of subscription services you subscribe to.

3 **Q.** And on annual review the suppliers would need to their information against each
4 year, check that the information was correct. Yes?

5 **A.** So typically the suppliers don't just check on an annual renewal. They will go into
6 the database if their insurance certificates run out or other pieces of
7 information. So they will be using the database at different points in time, not
8 just on the annual renewal.

9 **Q.** If we put that away and turn to G2, please, tab 29. So this is entitled "RISQS
10 audit standard terms and conditions." Now as far as I can see if you look at
11 the terms here it is very much dealing with subscription as well as the audit.
12 Do you know when these would have been used as opposed to the other
13 contract we just looked at?

14 **A.** To my understanding we only used this if we are auditing a supplier rather than
15 just subscribing to the system itself.

16 **Q.** So a supplier that needs to be audited would sign both contracts or just this one?

17 **A.** I believe so. That's typical.

18 **Q.** Okay. If we can turn to tab 32 within this, please. This is a confidential contract.
19 This is a buyer contract. Again the tribunal has already been taken to it. If we
20 turn to page 1,171, please, so this is a service schedule and you can see at
21 the top there it refers to the RISQS scheme subscription. Yes?

22 **A.** Yes, correct. So typically we have an overarching contract at the beginning and
23 then various service schedules that service the needs of that buyer, whether it
24 be a RISQS service schedule, a utilities service schedule and various others.
25 This is the RISQS one.

26 **Q.** Then at clause 1.4 you have the RISQS board defined. Yes?

1 **A.** Correct. Yes.

2 **Q.** And at 1.5 halfway down the RISQS scheme is explained?

3 **A.** That's correct.

4 **Q.** Then over the page, 1,173, at clause 6 there is a customer commitment. Yes?

5 **A.** That's correct.

6 **Q.** I will get you to read clause 6.1 or just the first part of that is fine. You will be

7 familiar with it anyway, and the first sentence of 6.2?

8 **A.** Yes. These are fairly standard terms we put in a lot of our schedules to be

9 honest.

10 **Q.** Just before we move from that can we just look at clause -- turn back to 1166,

11 please and just read clause 12.2. Okay. We can put that away. If I can go to

12 G4, please, tab 192 and then within that just turning on to page 2,097F,

13 please. So this is a draft position paper by Colin Black dated 25th February

14 2018. Then on 27A, can you just look at the first bullet point and then the

15 second sentence?

16 **A.** Uh-huh.

17 **Q.** Hold on?

18 **A.** It starts:

19 "An arbitrary date ..."

20 **Q.** No, that's not the sentence. No:

21 "It is access."

22 On 2097F, the first bullet right at the top, the second sentence:

23 "It is access to RISQS ..."

24 Can you just see that sentence?

25 **A.** Yes, I can see that.

26 **Q.** So it is clear that these were very much the contracts to the provision of RISQS

1 services and you were requiring buyers to encourage the use of RISQS
2 internally and with their supply chain throughout the four year period of the
3 concession. Yes?

4 **A.** That's correct, yes.

5 **Q.** We will return to bundle 4 in a moment. If we go to G6, please, tab 319. I fear it
6 may be in G7. Yes, it is G7 at tab 390. If we can go to page 3555, please, so
7 I think this is the perspective --

8 **MR CUTTING:** Sorry.

9 **MR WENT:** It is tab 390, page 3,555. So I think this gives a perspective of a RISQS
10 member in May 201 after receiving a reminder about moving to TransQ. If
11 you can look what's asked just below the first hole punch saying:

12 "What benefits will be getting from TransQ Global over and above RISQS whom we
13 have subscribed to for the last few years."

14 Yes?

15 **A.** That's correct, yes.

16 **Q.** Some the impression of this member of RISQS is RISQS was a service
17 regardless of whether it's Achilles or RSSB?

18 **A.** Yes. So this supplier who is looking at this has a renewal that is due on or
19 around 8th May. They have been chased by us. They have been chased by
20 RISQS. So both organisations have chased them for a renewal and they
21 have asked that question, which would have been difficult to ask when we
22 couldn't provide them a Sentinel audit to be honest -- answer.

23 **Q.** The point I am taking though is it is not surprising that a RISQS supplier would
24 think they were contracting with RISQS rather than necessarily with Achilles?

25 **A.** I think they recognised that there were two schemes here. TransQ had been
26 named and RISQS. So it was them making a choice about which scheme

1 they it would join.

2 **Q.** Okay. If we can go to G4 now, please, at tab 183. So this is quite a key
3 document. For some reason it is out of chronological order, but it is key. So
4 this is an e-mail from March 2018 from you, Miss Ferrier, to the Achilles team
5 and you are reporting on a call you had with your COO. Yes?

6 **A.** That's correct, why yes.

7 **Q.** Can I get you to remind yourself of points 1 and 2 in the e-mail, please?

8 **A.** That's correct, yes.

9 **Q.** Supplier and buyer data wouldn't automatically be put on the new TransQ
10 system, would it?

11 **A.** Yes. This was at the point we knew we couldn't offer a service that was
12 effectively the same as what we were offering previously. So we decided that
13 actually on the 1st May we would have a completely new database.

14 **Q.** Well, to be clear, it is only if buyers and suppliers agree to the terms and
15 conditions that their data would be transferred. Yes?

16 **A.** Yes, because we could not -- at this point it was becoming abundantly clear that
17 we couldn't continue to offer the Sentinel access service that was the same as
18 we had been offering previously. So by continuing down the road that we had
19 continued for the last 7 or 8 months actually that would not have been right for
20 our customers.

21 **Q.** We will see the reason as to why you are asking them to enter into new
22 contracts. It is very clear that it is because you think they have to, certainly
23 before you can use their data?

24 **A.** Well, I think it was because we knew we would not be able to offer the same
25 service. We had made assumptions that similar to when Link-up had moved
26 to RISQS actually we could continue. We were offering the same service in

1 all but name, but actually what was becoming really clear here, if we did that
2 to our customers, we would not be using their data in the correct way,
3 because actually we were not offering the same service, given the feedback
4 that we had had.

5 **Q.** You say you would keep the RISQ platform as a ghost platform that would not be
6 kept to you date. Yes?

7 **A.** We couldn't apply the suppliers to log in. We were not allowed to use the RISQS
8 name after that database basically. So suppliers could still have access to the
9 data, they have a right to access their data. So we did not want to get rid of
10 that straightaway.

11 **Q.** And you say you would have a link on the old RISQS platform taking buyers and
12 suppliers to the new RISQ platform. Yes?

13 **A.** To the new RISQS platform. I can't remember. Where does it say that? I am not
14 sure we linked to RISQS. (Overtalking).

15 **Q.** In that case, we should put directing them, at least directing them to the new
16 service provider. So you are at least providing information about the new
17 service provider. Yes.?

18 **A.** Yes. That was right to do that because we couldn't provide them the service that
19 we had provided them for 20 years.

20 **Q.** So surely none of this was a typical roll on contract situation, was it? So Achilles,
21 in fact, needed to enter into new terms and conditions with buyers and
22 suppliers for TransQ. Yes?

23 **A.** It absolutely wasn't when we were prevented from continuing doing what we had
24 always done.

25 **Q.** But suppliers and buyers had to enter into new TransQ terms and conditions with
26 you before you could start providing a service to them and before you could

1 start using their data. Yes?

2 **A.** Absolutely, because the service we were offering was not what we had planned
3 to offer, because we were not able to offer it.

4 **Q.** And you wouldn't normally want to direct your customers to a competitor's
5 website, would you?

6 **A.** No, but it was the right thing to do for them.

7 **Q.** Okay, well, I suggest this is not a typical annual renewal subscription model
8 situation, is it?

9 **A.** It absolutely wasn't when we were being prevented from offering a service we
10 had offered for 20 years.

11 **Q.** Then if we can turn to G6, please, tab 275, so these are the Link-Up TransQ draft
12 communications of 1st May 2018.

13 **A.** That is correct, yes.

14 **Q.** If you turn to page 2,999,so this was the communication to be sent to all RISQS
15 buyers. Yes?

16 **A.** That's correct, yes.

17 **Q.** It describes what's on offer and in the paragraph before the next steps?

18 **A.** That's correct.

19 **Q.** You can see it says:
20 "Buyers will have access to historic data, details and all suppliers."
21 Yes?

22 **A.** Yes.

23 **Q.** But unless the suppliers actually agreed to the TransQ terms and conditions,
24 then their data wouldn't be on the TransQ database, would?

25 **A.** Absolutely. This was the point where we were starting to revise our
26 communications to really try to salvage what was left of the business,

1 because we could not offer the same service and the same offering that we
2 were offering previously. So we knew he had to get our suppliers to sign up
3 effectively to different terms and conditions.

4 **Q.** So you were telling buyers that all the data would be there for marketing
5 purposes, but actually the data wasn't going to be there unless the suppliers
6 signed to the new terms and conditions?

7 **A.** No. We would only have the supplier data that was there for those that had
8 accepted the new terms and conditions.

9 **Q.** And then at the bottom under "next steps" it says:

10 "Your account manager will be in contact to discuss how you can take advantage of
11 the free subscription term."

12 Yes?

13 **A.** That's correct.

14 **Q.** So it wasn't an automatic registering for the new scheme on a roll over basis,
15 was there?

16 **A.** No, we couldn't, because it was a different service.

17 **THE CHAIRMAN:** What date is this document?

18 **A.** I remember this being done literally just before 1st May. I think if you look at
19 Saturday, I think it was probably the Saturday before 1st May from memory.

20 **MR WENT:** Okay. If we go on to page 3,003, please, so this is a draft
21 communication to RISQS suppliers. Then at the bottom under "What you
22 need to know" it says:

23 "To ensure your company information remains visible and accessible to
24 transportation buyers and to comply with GDPR requirements, please review
25 and accept the TransQ Global terms and conditions to enable us to retain
26 your data on Achilles platform."

1 Yes?

2 **A.** Yes, that's correct.

3 **Q.** And then over the page:

4 "Without this acceptance of the new terms we won't be able to hold your data."

5 Yes?

6 **A.** That's correct.

7 **Q.** So suppliers, as you said already, needed to enter into new terms and conditions
8 before they could be on TransQ and before their data could be used within the
9 new platform. Yes.?

10 **A.** Absolutely, and we had not done this before then because we had assumed we
11 were going to roll over and continue to offer a service. At this point on
12 a Saturday we sat down and we wrote all the communications because we
13 knew we would have been effectively lying to our customers if we had done
14 that and we could not do that. So we had to rewrite all our communications
15 and take a different strategy.

16 **Q.** Then if we could turn to G4, please, tab 201, we have already looked at this
17 document. It is from March 2018 by Colin Flack, an internal strategy
18 document. If we turn to slide 2,204, please, so this is looking at legal
19 constraints and then if you look right in the middle, obviously it quotes from
20 the concession contract. Yes?

21 **A.** Yes.

22 **Q.** Then if you turn on to page 2,206, if you can read the first bullet, please. I think
23 we already know there was no dissemination of the offering until
24 1st May 2018. Yes?

25 **A.** That's correct. Yes.

26 **Q.** If you can read the second bullet, please. So Colin Flack thought that the RISQS

1 customers would, in effect, automatically transfer to the enhanced RISQS
2 scheme but the buyers and suppliers if they were to move to TransQ would
3 need to read and sign the revised T and Cs. Yes?

4 **A.** I think in March 2018 he was predicting this, yes, and if you go back to the e-mail
5 he sent to Estelle, it highlights that there was different views of what was
6 going to happen in May. There was no clarity about what was going to
7 happen in May. That was clear.

8 **Q.** And if you turn on to 2,208, please, if you can read the third bullet there starting:
9 "Part of the aim ..."?

10 **A.** The third bullet? Sorry.

11 **Q.** Yes. Starting:

12 "Part of the aim ..."?

13 **A.** Uh-huh.

14 **Q.** So it is picking up on themes we have seen earlier and you are trying to shift
15 responsibility to buyers for this?

16 **A.** Yes, and we have invested -- so what we were trying to do, as this summarises it,
17 is really focus on the value of the suppliers as a business over the last three
18 years, that's it's been our entire focus. We have developed teams, spent
19 millions of pounds basically focusing on supplier value to shift that paradigm.

20 **Q.** But if Achilles doesn't want to be responsible for suppliers frustration why on
21 earth would buyers want to be responsible for that?

22 **A.** Typically buyers don't always consider the full supply chain actually, and I think
23 we should, because they pay us a fee and it's not just to provide data to
24 buying organisations. It is to offer them additional value.

25 **Q.** Okay. If we go back to G6, please, at tab 309. So if you look at the e-mail
26 starting -- it starts at the bottom of the page actually. So this is a proposal for

1 supplier communications on 1st May 2018. Yes?

2 **A.** Yes, that's right.

3 **Q.** It is basically setting out a number of reminders that would be sent to suppliers.

4 Then if we go over the page and read the message to be sent on 29th May?

5 **A.** Exactly. So I think --

6 **Q.** Suppliers accounts would be deactivated if they had not transferred over. Yes?

7 **A.** Yes. So this is the document I think date wise would precede the one we went

8 through in terms of the detailed communications pack which was actually on

9 our letter headed of how are we going to deal with this situation? What are we

10 going to do with our customers come 1st May. This is 17th April here -- 16th

11 April. Things were getting tight. We couldn't continue in the way we were

12 here.

13 **Q.** This is all very different from the idea of contracts for Achilles simply rolling on,

14 yes?

15 **A.** Well, it is, when we didn't know what situation and what service we were allowed

16 to offer on 1st May.

17 **Q.** To be clear, you simply couldn't ask buyers and suppliers to roll on existing

18 contracts, could you?

19 **A.** Not if we couldn't continue to offer the service that we had been offering for

20 20 years. It would be wrong.

21 **Q.** Yes, and you would no longer be concession provider for RISQS --

22 **A.** It was nothing to do with the concession, it was the fact that we couldn't say to

23 them honestly we could continue to audit you and you would be compliant

24 with Sentinel and we could continue to assure your supply chain and give you

25 access to the infrastructure. We could not do that any more and it was

26 becoming abundantly clear. So we had to do something.

1 **Q.** The reality is that this was about having to move buyers and suppliers on to new
2 terms and conditions for TransQ, partly for GDPR reasons. They had to
3 consent to their data being used in the new platform. Yes? We have seen
4 that?

5 **A.** That was one of the reasons, but it wasn't -- actually the reason we took this
6 approach was entirely because we did not -- we could not continue to offer the
7 service that we were offering.

8 **Q.** Well, the internal documents here identify, for example, GDPR as the reason as
9 to why you couldn't continue using the buyer and supplier data on the new
10 platform. Yes?

11 **A.** I think we stated that as a reason to suppliers, I don't know whether actually
12 realistically it was a GDPR constraint, but we did state that as a reason, that's
13 correct, as a lot of people were at that point in time.

14 **Q.** But that's what's stated in the internal communication, the internal documents --

15 **A.** Absolutely.

16 **Q.** It is not just what you say to suppliers and buyers, correct?

17 **A.** Absolutely. That is correct.

18 **Q.** So if you had GDPR reasons for not being able to use their data unless they
19 signed up to new terms and conditions, that would have been the case
20 regardless of whether the RISQS-only rule existed, wouldn't it?

21 **A.** I am not sure it was, because we would be using their GDPR -- we would be
22 using their data actually for a reason which wasn't to make sure we were
23 offering buyers access to supplier data so they could access the infrastructure
24 safely, and that's what we were genuinely concerned about. So we knew we
25 had to go back to square one and reboot everything, get the terms and
26 conditions signed, because we were not offering a service that was Sentinel

1 compliant. We were not offering our buyers access to suppliers who were
2 compliant at that point in time.

3 **Q.** So although the RSSB had not put any contractual constraints on you in terms of
4 the supply date, there were clear constraints on its use absent consent from
5 buyers and suppliers. Yes?

6 **A.** No. I think there were clear constraints from a moral perspective that if we are
7 not using this data for the reason, you know, we knew we were collecting it,
8 then we had to do something. That's why this has been done.

9 **Q.** And the date for in effect unusable was without the supplier consent. Yes?

10 **A.** If we were not using it for the same reason we have been using it for 20 years
11 then the supplier hasn't consented.

12 **Q.** Which was the RISQS platform?

13 **A.** No, it wasn't the RISQS platform. It was the fact we were to the offering suppliers
14 the chance to demonstrate that they were assured. The only question
15 suppliers asked us, the only question that really mattered to them was
16 whether or not we could offer a Sentinel compliant offering after then, and
17 when it became clear during this period we couldn't, we couldn't continue to
18 say this to our customers.

19 **Q.** Well, to be clear, you were drafting these communications. They were being
20 turned on the documents, drafted around this before the penny dropped that
21 we discussed yesterday. Right?

22 **A.** Yes. If you look at Colin's e-mail, Colin was saying "They are not going to do
23 this". I said "Well, I met with Ken. I can't believe he is going to restrict us
24 from doing this throughout the higher supply chain." Internally there was this
25 whole disbelief that this was going to happen, to be perfectly honest, because
26 a big organisation like Network Rail, who is supposed to be independent,

1 actually saying: "You may have operated for 20 years, it doesn't matter, we
2 are going to mandate this to everybody in the supply chain," frankly I just
3 couldn't believe and we were -- that's the situation. That's where we were.

4 **Q.** What I suggest is the reality that in effect RSSB had been migrating buyers and
5 suppliers to the enhanced RISQS platform prior to 1st May 2018, that most
6 had moved over, but you needed to persuade buyers and suppliers to take
7 out TransQ contracts from 1st May 2018. That's the reality, isn't it?

8 **A.** I have told you what my reality is and the actual reality was, and I am pretty sure
9 that perhaps Network Rail was having those conversations and many buyers
10 knew, as they had raised concerns with us before, what was going to happen
11 to Achilles on 1st May.

12 **Q.** Just turn back to your statement, your fourth statement at paragraph 51, please.

13 So you say here:

14 "Achilles was the only tried and tested provider."

15 Yes?

16 **A.** Yes, that's correct.

17 **Q.** It is fair to say the RISQS scheme had been associated with RSSB for four years
18 at that point in time?

19 **A.** Yes, for any four years. That's correct.

20 **Q.** And Altius was well-known in the supplier assurance industry. Yes?

21 **A.** Not known at all in rail. It was doing some supplier assurance, but not in rail.

22 **Q.** If we turn back to exhibits folder C, tab 10, page 538, so this is an internal
23 document of yours talking about your competition. It says all -- okay. I will not
24 read any more. If you can look under strengths it says what their strength is
25 for. Yes?

26 **A.** Platform knowledge. Correct.

1 Q. It is confidential?

2 A. Oh, sorry.

3 Q. Then if you look above at the top, Capita?

4 A. I think at this time Capita had a reputation of its own, which is one of the
5 strengths that we had I think.

6 Q. Yes, and right at the end it says "Threat" and you can see what's under there for
7 Capita. Yes?

8 A. That's correct, yes. Capita had not had any experience in rail audits and we had
9 people like Will, who will give evidence later, who has had 20 years of rail --
10 you know, they are railway people through and through.

11 Q. If you turn back to paragraph 53, please, of your statement, at the end of that you
12 say:

13 "... I believe that concern over technical credentials and reputation at that time would
14 have been a significant driver of buyers requiring suppliers to audit with
15 Achilles, given a choice of audit provider."
16 Yes?

17 A. Absolutely. I think every buyer I had conversations with was clear that the
18 Achilles audit offering was well respected in the industry and moving to Capita
19 was somewhat of a surprise to them. I think if we hadn't perhaps withdrawn
20 from the audit lot we would have been successful in that, is my view.

21 Q. I suggest that ignores the reputational issues that Colin Flack identified that we
22 looked at earlier. Yes?

23 A. I think when you have such a large customer base, some customers like you,
24 some customers don't.

25 Q. Then if you look at paragraph 57 you say:

26 "Neither Altius nor Capita nor the new RSSB contraction model", right at the end

1 "had a subscription banker in existing customer contract in contrast to
2 Achilles."

3 Yes?

4 **A.** That's correct.

5 **Q.** "However, we have seen that RSSB was ensuring that buyers and suppliers had
6 already migrated on to the new system prior to 1st May 2018."

7 Yes?

8 **A.** Yes, and getting them to accept new terms and conditions. That's correct.

9 **Q.** In fact, Achilles could not just continue with the existing contract, neither had
10 buyers and suppliers entered new contracts. That's the reality. Yes?

11 **A.** I believe we would have rolled those contracts over. We would have
12 continued in the way that we had previously when we migrated from Link-up
13 to RISQS, but we did not at the very last minute, because of the reasons that
14 we had just spoken about in some detail.

15 **Q.** Then if we can turn on to paragraph 148, please, so it just deals with the
16 contractual position in a bit more detail. At 149 you say:

17 "Renewals normally take place around three month before contract expiry."

18 Presumably some might happen earlier and some later. Yes.?

19 **A.** For suppliers, yes, that's correct.

20 **Q.** And you didn't think you could enter into a contract with a supplier which would
21 come into force on 1st May 2018 for a service you couldn't provide. Yes?

22 **A.** I think we were still chasing renewals up until that date. We were still chasing the
23 standard renewals up until 1st May. So --

24 **Q.** Well, if you look at paragraph 152, you say:

25 "We continued to take Neil's subscriptions up to January/February 2018."

26 That is what say in your evidence there?

- 1 **A.** That's correct.
- 2 **Q.** So if you hadn't gone through the process for renewing supplier subscriptions for
3 around three months prior to 1st May 2018, that's what you say there. Yes?
- 4 **A.** I think we did some of the renewals. I think this is the point where things were
5 becoming particularly ambiguous about renewals. So customers were raising
6 the question and I think there's an e-mail from me where I sat with our
7 supplier account management team for -- and I can't remember when it was --
8 sat with them for a period of time and I was listening to the supplier saying
9 "Are you still Sentinel approved on renewed? Are you still this". The
10 answer -- we couldn't give them a straight answer. So up until probably
11 February we could, we said yes, we were confident we were. Then even
12 internally we couldn't agree whether or not we were going Sentinel approved
13 from that point in time.
- 14 **Q.** But any contracts that then expired you wouldn't then be in contact with them
15 from 1st May onwards, would you, unless they had entered into new contracts
16 with you?
- 17 **A.** That's correct, yes.
- 18 **Q.** And then if we look at paragraph 200 of your statement, again you say there was
19 a single pool of suppliers at the end of April contracted to meet the case?
- 20 **A.** That is correct. I think if we had stopped renewing around February -- I said
21 January, February time, end of February, there would be suppliers up until the
22 end of February for the following 12 months that we still had all the data points
23 for.
- 24 **Q.** But some supplier contracts would have expired prior to the end of April. Yes?
- 25 **A.** Yes, that is correct.
- 26 **Q.** Most suppliers had registered on the new enhanced scheme. Yes?

1 **A.** I think we went through it 50% odd of suppliers had registered on the new
2 scheme.

3 **Q.** And they were all there by May, and as of 1st May you needed to have suppliers
4 sign new terms and conditions otherwise you couldn't use their data Yes.?

5 **A.** I didn't know whether they were all there by May. I don't think they were in the
6 documents we went to earlier, and we needed new terms and conditions,
7 given we were offering a different service.

8 **Q.** If you just turn back to paragraphs 153 and 154, please, so this is just looking at
9 buyer contracts. So in 154 you say:
10 "Achilles' intention was just to issue new service schedules for existing buyer
11 customers."
12 Yes?

13 **A.** Absolutely, yes.

14 **Q.** We have already looked at the contractual position on this and the sample buyer
15 contract, and you would have needed to have buyers obviously to agree to
16 this, wouldn't you?

17 **A.** Yes, we would.

18 **Q.** So it wouldn't just be a unilateral change on your part?

19 **A.** No.

20 **Q.** And prices had to be negotiated?

21 **A.** I think prices had been the same for quite a significant amount of time, so it is not
22 normally something that would form part of those discussions.

23 **Q.** Well, at this point in time when a competitor -- there would have been a situation
24 of competition in the market and you were proposing offering free
25 subscriptions --

26 **A.** Absolutely.

1 **Q.** So there needed to be a negotiation. Yes?

2 **A.** We had had several discussions and the documents around different pricing
3 strategies we could approach. The starting point would have been to carry on
4 as usual.

5 **Q.** If you look at paragraph 82, please, there you say:

6 "From Achilles' point of view, it is worth reflecting that the decision not to submit [in
7 the second part of the RISQ tender] meant walking away from approximately
8 £3 million of audit revenue".

9 if the new RISQ scheme launched as the only scheme on the market. Yes?

10 **A.** That's correct.

11 **Q.** "Our belief was that there was a considerably greater share of revenue available
12 if Achilles offered an alternative end-to-end scheme to the market ..."

13 I would suggest to you actually that that was a rewriting of history, and if you look at
14 the contemporaneous documents we saw yesterday that Colin Flack says the
15 reasons for withdrawing from the tender are unclear. That's right, isn't it?

16 **A.** Colin was not with Achilles at the time we withdrew from the tender. He was
17 brought in after that point in time and I am sure there's evidence we can
18 submit to that statement. So Colin may not have been clear on the reasons.
19 I think it is absolutely documented in letters, in communications, in internal
20 comms that the reason why we withdraw from the tender, and we actually
21 called Network Rail, we wrote to Network Rail and we documented that to the
22 RSSB. So I think there's no lack on clarity on why we withdrew from the
23 tender.

24 **Q.** It would be advising if you had never discussed with Colin Flack the reasons for
25 exiting?

26 **A.** I think he did know. Why he wrote that I have no idea.

1 Q. But if he thought the actual reason was a much bigger financial prize, he
2 presumably would have said so. Yes?

3 A. I don't know.

4 Q. And even if you had such a belief when withdrawing from the tender, that is
5 certainly not clear at all, this will have been before you realised that Network
6 Rail was entitled to specify RISQS assurance for its direct suppliers. Yes?

7 A. No. I don't think so. I think the whole premise was around the Sentinel audit
8 scheme.

9 Q. Well, you thought that RISQS couldn't specify RISQS -- (inaudible) supplies for
10 audits, assurance, didn't you?

11 A. I think a buyer can choose who they use. I don't think that was ever in question.
12 I think what we absolutely did not believe was that Network Rail could
13 mandate that the entire supply chain had to be audited by RISQS to access
14 the infrastructure. I think this is where there is always this muddying of the
15 waters from the Network Rail conversations today and indeed in 2018, is they
16 have two duties, a duty as a buyer, and that's their choice as to how they
17 procure and what systems, what qualification systems they use, and their duty
18 as an infrastructure operator. By crossing those two I think that has led to
19 where we are today.

20 Q. Thank you. I was going to move on to a new topic. Is this a good moment to
21 have a quick break?

22 **THE CHAIRMAN:** Yes. Five minutes.

23 **(Short break)**

24 **MR WENT:** Miss Ferrier, I just want to move on to Achilles JQS. So you presented
25 this as an analogy or comparator to show what would have happened in GB
26 Rail without an overbroad RISQS-only. That's right?

- 1 **A.** That's correct. Yes.
- 2 **Q.** You think it is as good as anything for showing like for like, what would have
3 happened in GB rail?
- 4 **A.** Yes, absolutely.
- 5 **Q.** Do you have direct knowledge of Achilles JQS?
- 6 **A.** I have never been responsible for JQS as a community. I still am not today, but
7 what we did do was set up a project team exactly the same way we did when
8 the RISQS transition was happening and followed in terms the same
9 principles of it. So not the depth of knowledge I would say I would have on
10 RISQS. We have our expert here.
- 11 **Q.** Do you have direct knowledge of what was happening in 2018 and 2019?
- 12 **A.** Yes, I do. It was part of the management reporting.
- 13 **Q.** And prior to that as well going back to 2016, for example?
- 14 **A.** I wasn't at Achilles then, no.
- 15 **Q.** That was before your time at Achilles, of course. Okay. So have you needed to
16 discuss this to some extent with colleagues to work out what was happening
17 there?
- 18 **A.** Yes. So as part of the managing reporting we do I would have received reports
19 every month on the progress of the projects of JQS when we were delivering
20 it and would have contributed and challenged on some of the aspects of it.
21 So that's my involvement.
- 22 **Q.** Achilles deals with both services and products?
- 23 **A.** That's correct.
- 24 **Q.** Do you charge for buyer subscriptions?
- 25 **A.** We do, yes.
- 26 **Q.** And Achilles JQS offers audits?

1 **A.** It offers audits in a sense now differently to how it does previously. We don't
2 offer lots but Atle will be able to discuss that in more detail.

3 **Q.** When did that change happen?

4 **A.** When the migration happened. We do still offer audits. We have done some but
5 not the scale of audits that we did previously.

6 **Q.** Do you have auditors in house?

7 **A.** We do have auditors in house, yes.

8 **Q.** Do you use third party audit services as well?

9 **A.** I am not sure to be honest in Norway. We do use third party auditors in some
10 places in the world depending on where suppliers are based.

11 **Q.** Do you know whether it was buyers or suppliers that pay for audits?

12 **A.** I believe previously it was buyers paid for audits. There was a combination of
13 buyer and supplier audit offerings that we offer across our whole business
14 now.

15 **Q.** Okay. Can I just turn to the miscellaneous bundle at tab 15, please? Can I just
16 ask you to read that?

17 **A.** Okay.

18 **Q.** Do you have any knowledge of what's being discussed there?

19 **A.** Not in the detail that you had better ask our head of audit and Atle about, if I am
20 honest.

21 **Q.** Okay. But are you aware that, for example, that EPIM operators -- within EPIM
22 JQS it is only the EPIM operators that can request audits --

23 **A.** So typically when we operate at JQS it was the operators that ask for the audits,
24 the operators that funded the audits. Our new offerings going forward, we
25 have a combination of buyers can pay for audits, suppliers can pay for audits.
26 You know, buyers can collaborate together if they have concerns around

1 particular issues such as modern slavery for labour practice audits. So the
2 audit, I would say, is a very diverse area at the minute for our business.

3 **Q.** In your fourth statement if we go to paragraph 63, please, just in the second
4 sentence there:

5 "In 2016, a group of oil and gas operators in the industry, who up until then had
6 individual 'buyer' contracts with Achilles, decided to develop their own supplier
7 assurance solution to be administered by EPIM."

8 **A.** Correct.

9 **Q.** So operators had individual contacts with Achilles JQS?

10 **A.** Correct.

11 **Q.** That moved to EPIM taking over that role on behalf of the operators. That's
12 right?

13 **A.** That is correct, yes.

14 **Q.** That happened in 2016, do you know?

15 **A.** I think 2017 is when the bid was issued. So it happened during that period. We
16 kept our -- we kept a lot of the organisations, not the operators.

17 **Q.** Are you aware that prior to the tender for the EPIM JQS service Achilles JQS had
18 entered into a contract with EPIM rather than the individual operators. Are
19 you aware of that?

20 **A.** I think -- I know there was a separate contract with EPIM. I don't know the detail
21 around that. That was prior to my involvement.

22 **Q.** We will see if Mr Gjertsen can assist when we come to that. Actually just very
23 quickly if you turn to G8, please, tab 442A?

24 **A.** Tab 442.

25 **Q.** Tab 442A, this is a version of the project, Athena report that I think there are
26 various versions of this, June 2018?

1 **A.** I am pretty sure this is confidential.

2 **Q.** Yes. Turn to 3,982 within that, and you can see a heading "JQS". Yes?

3 **A.** Correct.

4 **Q.** If you just read that.

5 **A.** I've read it.

6 **Q.** In the very first sentence you will see what it says about a reduction. Yes?

7 **A.** That is correct.

8 **Q.** You see the years that are referenced there?

9 **A.** I see what? Sorry.

10 **Q.** You can see the years that are referenced there?

11 **A.** That is correct, yes.

12 **Q.** So it is FY 18 and FY 19. If we go to paragraph 65, please, of your statement --

13 you can put that bundle away -- just at the very end of that paragraph you talk

14 about several large EPIM buyer organisations. You were talking about the 27

15 EPIM operators there. That's right?

16 **A.** No. I think it was about all the buyer organisations that there were then.

17 **Q.** It is more than several. If there were at least 27 EPIM operators, it was more

18 than several?

19 **A.** Yes.

20 **Q.** Then at 66.1 you are comparing the number of buyers before January 2019 and

21 then after. Yes?

22 **A.** Correct.

23 **Q.** Then at 66.2 you are comparing the number of suppliers on Achilles JQS in

24 January 2019 with January 2020. Yes?

25 **A.** Correct.

26 **Q.** You have not, though, looked at the pre-January 2019 position to see how many

1 suppliers might have been lost prior to that?

2 **A.** No, I haven't in this. Yes.

3 **Q.** No, the internal document we saw just now said that Achilles JQS might start to
4 see a reduction in suppliers in FY --

5 **A.** I think '19 and '20 which is our financial year definition?

6 **Q.** It talked about FY 18 in the previous document we just looked at?

7 **A.** That is correct, yes.

8 **Q.** If we just take the numbers here you have for buyers and suppliers, if we go back
9 to your third statement, please, at paragraph 20, which is at tab 3 -- do you
10 have that? So this says:

11 "At 28th January 2019 we understand that EPIM JQS had approximately 800
12 suppliers and 27 operator members. Achilles JQS had 49 buyers, 5 of which
13 are Norwegian operators."

14 Then it continues. It talks about suppliers renewables about 1,100 to the end of
15 January 2019?

16 **A.** And subscription renewals. Yes.

17 **Q.** Yes. 1,100. So if Achilles JQS had 49 buyers at this point in time EPIM JQS had
18 27, that totals 76. Yes?

19 **A.** That's correct, yes.

20 **Q.** Your fourth statement talks about 112 buyers pre-January. Yes.?

21 **A.** That's correct.

22 **Q.** So where did the other 36 buyers go?

23 **A.** I am not sure. You will be able to ask Atle that question.

24 **Q.** Okay. What about the considerable difference in terms of supplier numbers.
25 You have 1,100 here?

26 **A.** I'm not sure there is. I think this is suppliers, buyers subscription renewals total

1 1,100. So that was the number of renewals we had had at that point. I think
2 I was talking about from memory whereas -- what was the previous? It was
3 talking about the total number of suppliers. So we were retaining about 85%
4 of suppliers by way of subscription renewals, a total number of 1,100, so
5 1,100 had renewed to that point in time.

6 **Q.** Well, it says:

7 "We are currently retaining 85% of suppliers by way of subscription renewals."

8 So that suggests it is 85% of all suppliers. Yes. That's a total amount of 1,100
9 suppliers to the end of January 2019?

10 **A.** So I think that means the total number of 1,100 had renewed, but I am sure Atle
11 could give more details on the exact figures of those supplier numbers.

12 **Q.** Okay, but you can see here the buyer number of 49 as well for January 2019.
13 Yes?

14 **A.** So we had 49 JQS buyers in January 2019.

15 **Q.** That's quite different from the 60 figure you were reporting in your fourth
16 statement. Yes? It is lower?

17 **A.** I will need to check that. Can you refer me back to the reference?

18 **Q.** Well, it is what we just looked at, so it is 66.2 I think?

19 **A.** The statement 4.

20 **Q.** Yes, statement 4?

21 **A.** Achilles JQS has 61 buyers. So that's today, which I think this witness statement
22 was done 19th March '21. So that's the number of buyers we have today.

23 **Q.** Yes, today. Okay, but you weren't comparing the pre-January 2019 position with
24 the position straight after EPIM JQS had entered?

25 **A.** No, I was giving the number of buyers in this statement, so I don't think they
26 contradict each other. It is just different measures.

1 Q. If we can just a quick look at a document. It is very small in the bundle, so we
2 have had some slightly larger copies produced. This is bundle G9, tab 516,
3 page 4926?

4 A. What tab was it? Sorry.

5 Q. Is there a copy for the witness?

6 A. Thank you.

7 Q. There's one more there. If you just look down below "Construction", if you look
8 down you will see "JQS". Do you have that?

9 A. Transport, construction, JQS, correct.

10 Q. Have you got that?

11 A. Yes.

12 Q. And then you can see a number of numbers going along. So you have FY 17.
13 You have the number of suppliers there in FY 17. The number of lost
14 suppliers, number of new suppliers in FY 18. Yes?

15 A. Correct.

16 Q. Then the next one, the number of suppliers in FY 18, 3,820. Then you have lost
17 suppliers 1,126 there?

18 A. That is correct.

19 Q. And then you have new buyers for FY 19 and you have a total for FY 19 at 2,896.
20 Yes?

21 A. Correct.

22 Q. Are you familiar with this document?

23 A. We get these every month, yes.

24 Q. Okay. The loss of suppliers -- I mean there, there is a lot of suppliers lost
25 between FY 18 and FY 19. That was 1,126?

26 A. That's correct. Yes.

1 Q. That was because EPIM JQS entered the market?

2 A. I assume that's the timing, yes.

3 Q. Okay. Just briefly on this spreadsheet you can also see the revenues if you go
4 right the way across. I think for FY 18 supply revenue it is the 1,996 figure.
5 Then you have the FY 19 supply revenue figure the next year. Yes. Can you
6 see those?

7 A. Correct.

8 Q. Just going back to the supply numbers, just to the right of that you have
9 an average ACV. I think that's the annual contract value I guess per supplier?

10 A. That is correct, Yes.

11 Q. You can see the figures there. For FY 18, for example, it is £516. Yes?

12 A. Sorry. Where are you looking? I am not having a long ruler which I normally
13 have.

14 Q. FY 18, it says 516?

15 A. 516, yes.

16 Q. So that's the per supplier amount. So that is the total supplier revenues on JQS?

17 A. That is correct.

18 Q. Per supplier. If we just very briefly go back to your fourth statement,
19 paragraph 25, you can see some -- it is actually confidential information in
20 here so I guess I can't read it out. You can see the total revenue for suppliers
21 here. In 25.2 you have a total amount, so registration and audit amounts.
22 Yes? Then you have the total number of suppliers as well?

23 A. That is correct.

24 Q. So you could do a calculation of a per supply revenue as well on the basis of
25 those figures, couldn't you?

26 A. That's correct.

1 **Q.** Okay, and I think you would find it was considerably higher than the per buyer
2 revenues in Achilles JQS. Yes?

3 **A.** I am not sure where or what this document is or where it has come from. We
4 produce these. That's why I am a little bit hesitant to be honest. These are
5 produced monthly by various different teams in terms of finance. We have
6 issued board packs, draft ones. That is correct. That's why I am a little bit
7 hesitant just understanding the context of this document that has been ...

8 **Q.** Okay. Then it we just turn on to 67 -- I think we will finish with that document for
9 now -- 67C in your fourth statement, please. You say here:
10 "The number of the suppliers in the scheme and the revenue generated by them
11 don't rise and fall in proportion to the number buyers."
12 Yes?

13 **A.** That is correct, yes.

14 **Q.** It obviously depends on the profile of buyers. Some buyers are going to have
15 more suppliers and some less?

16 **A.** Absolutely. It depends on the messaging that buyer has. So even if it is a small
17 buyer with 500 suppliers as long as their messaging is "You must do this.
18 This is part of our overall assurance", then suppliers will register.

19 **Q.** In contrast to a buyer which might not drive much supply traffic to supply
20 assurance scheme, it is fair to say that Network Rail itself sits in a unique
21 position within GB Rail sitting on top of all the tiers of suppliers. Is that right?

22 **A.** So it contracts with a number of suppliers, like most large organisations, correct.

23 **Q.** But it sits in a unique position?

24 **A.** As the instructor operator, absolutely.

25 **Q.** Yes, it operates the vast majority of the rail infrastructure, so there is no other
26 buyer like that in the -- the uniqueness of Network Rail in GB Rail you don't

1 see, for example, in the Northern European oil and gas industry, do you?

2 **A.** No. I think the operators are similar sort of comparison. The strength and
3 breadth of them as individual operators is probably just as important as
4 Network Rail, to be honest.

5 **Q.** Okay. That may be what you are saying in your third statement. Just quickly
6 turn back to it at paragraph 18. If you look at the -- in your second sentence
7 at paragraph 18:

8 "There is no infrastructure owner in the sector akin to Network Rail."

9 This is obviously when you are thinking about the Northern European oil and gas
10 industry. You say:

11 "The large operators own their infrastructure and choose to manage their supplier
12 assurance in a collective way."

13 Yes?

14 **A.** Yes.

15 **Q.** You say:

16 "There is no infrastructure owner in the sector akin to Network Rail."

17 Yes?

18 **A.** I don't believe so, no.

19 **Q.** Then if you turn on to paragraph 35 in that statement, if you just read that
20 paragraph, please. Again talking about Network Rail's uniqueness. Yes?

21 **A.** Correct.

22 **Q.** Then if you go back to your fourth statement, paragraph 18, please, again talking
23 about Network Rail's uniqueness?

24 **A.** Absolutely, yes.

25 **Q.** Okay. I just want to check a few points on Achilles JQS to the extent you can
26 answer this. Did Achilles have any contractual restriction preventing Achilles

1 from telling Achilles JQS members about what Achilles would be offering from
2 1st January 2019 like it did in GB Rail?

3 **A.** I don't know the answer to that question.

4 **Q.** You don't know the answer?

5 **A.** No.

6 **Q.** So you don't know whether something that was the case in GB Rail, that that was
7 the case in Northern European oil and gas?

8 **A.** So I do not know whether there was a clause that existed similar to Link-up
9 where we weren't allowed to use that name basically. I don't know the answer
10 to that question.

11 **Q.** So you are presenting Achilles JQS Northern European oil and gas industry as
12 a very good comparator?

13 **A.** Correct.

14 **Q.** But you don't know whether that situation pertains Northern European oil and
15 gas?

16 **A.** No, because I don't believe the fact we couldn't use Link-up was a huge material
17 problem for us, as we went through in quite some detail yesterday. So ...

18 **Q.** It wasn't just not being able to use Link-up. It was -- I call it non-compete, but it
19 was not doing anything that conflicts with your concession --

20 **A.** Yes.

21 **Q.** -- that stopped you from marketing. Yes?

22 **A.** Well, it didn't stop us from marketing, because our communication strategy was
23 really clear on how we would market and we followed that communication
24 strategy. So I don't think it really had that impact that you are putting on it to
25 be honest.

26 **Q.** Obviously Achilles was not required to change name of Achilles JQS at this point

1 in time. The name continued?

2 **A.** No.

3 **Q.** Did Achilles need to enter into new contracts with Achilles JQ members?

4 **A.** I don't believe so. We just rolled our contracts on, similar to what we do with

5 every other migration.

6 **Q.** And Achilles could just continue to use the members' data from 1st

7 January 2019. Yes.?

8 **A.** Correct.

9 **Q.** Do you know whether EPIM JQS was transitioning the majority of buyers and

10 suppliers over to it in the run-up to 1st January 2019?

11 **A.** So the operators were big buyers. There is no doubt about that. They had

12 significant influence over the market as such. So ...

13 **Q.** But you said in your third statement that 27 operators had moved over and they

14 had 900 suppliers. Yes?

15 **A.** Yes, that's correct.

16 **Q.** In January?

17 **A.** Yes.

18 **Q.** Are you aware of JQS having any reputational issues in Northern European oil

19 and gas industry?

20 **A.** I think there were tensions between some customers. Yes, that's fair to say.

21 Like I said, previously, there is always when you operate with so many

22 thousands of buyers and suppliers, there is always issues with reputational

23 issues.

24 **Q.** If you look at just paragraph 68 in your fourth statement, please. If we can turn to

25 paragraph 163, please, in that statement. If you just briefly read that

26 paragraph, please. You say that overheads and fixed costs used across

1 communities including central management costs are not fixed costs specific
2 to Rail. That is correct?

3 **A.** That's correct.

4 **Q.** If you turn to bundle G8, tab 428A, please. I am afraid this is a very small print
5 document, for which I don't have a larger version. So apologies. If you look
6 at the names of the individuals right at the bottom on the left-hand side. Can
7 you see that?

8 **A.** Yes, correct.

9 **Q.** There's Colin, for example. Yes?

10 **A.** Correct.

11 **Q.** Now do some of these individuals have a central management role?

12 **A.** I am not entirely sure.

13 **Q.** If you look at the right-hand side?

14 **A.** Looking at the date of when this was it is not clear.

15 **Q.** If you look at the right-hand side, there is an allocation for FY 18. There are
16 some percentages there against those people's names?

17 **A.** Yes, correct.

18 **Q.** They are not all 100%, are they?

19 **A.** No. Some of them will be working on other projects. So if I look at Colin, for
20 example, he would have been working 5% of his time on another project,
21 which would have been another rail offering outside of the UK.

22 **Q.** And do some of these people have a central management role?

23 **A.** So I would have had a central management role at that point in time.

24 **Q.** Yes.

25 **A.** I think. It is not clear on what date this is.

26 **Q.** And what about the others?

1 **A.** No, I doubt that. They were project based staff.

2 **Q.** Okay. We can put that away?

3 **THE CHAIRMAN:** What is this document?

4 **MR WENT:** This is --

5 **A.** I think it is one of our disclosures. I am not sure.

6 **MR WOOLFE:** As far as I can determine it formed part of a review that Deloittes did

7 for Achilles as part of a commercial project and they were reviewing, costs

8 and so forth.

9 **MR WENT:** Yes, we look looked at the project Athena presentation just now. I think

10 there were various situations and costs studies and various things done

11 around that.

12 **A.** Probably why I don't recognise the percentages, because it was someone else's

13 view on what people were doing.

14 **MR WOOLFE:** It is dated 26th May 2018 in the index.

15 **MR WENT:** I just want to consider a little bit the service offering that would have

16 been available at 1st May 2018. You will have seen that Miss Grant says that

17 the enhanced RISQ platform worked more efficiently than when Achilles was

18 operating it. You responded to that at paragraph 65 of your fifth statement.

19 I don't think we need to turn to it. We see in the better platform functionality

20 the enhanced RISQS service was certainly something that RSSB was touting

21 in advance of the launch of the enhanced RISQS service. Yes?

22 **A.** Yes.

23 **Q.** If we look at bundle G7, tab 361. Have you got that, 361, just the first page?

24 **A.** Yes.

25 **Q.** This is feedback from an HSQE manager at JSS Rail on the new system. It says

26 there at the top:

1 "It took a few sessions to get used to the new platform but it is generally much better
2 and a lot quicker."
3 Yes?
4 **A.** Okay.
5 **Q.** Do you see that?
6 **A.** Yes, I do.
7 **Q.** So that's the supplier testing the system in advance of 1st May 2018, isn't it?
8 **A.** That's on 27th April.
9 **Q.** Yes, exactly. So now the platform you were going to use to TransQ was the
10 platform you had in place for the RISQS service (inaudible) session holder.
11 Yes?
12 **A.** That is correct.
13 **Q.** So buyers and suppliers who had seen the new RISQS enhanced platform in
14 action and tested it before 1st May would have seen the advantages of the
15 new platform. Yes?
16 **A.** They may have done, yes.
17 **Q.** Okay. If we can turn to paragraph 200 then in your fourth ...?
18 **A.** Fourth? Sorry.
19 **Q.** I think it is your fourth, yes. It might actually be -- I mean, this is in
20 a section generally describing your products, etc. What I want to do actually,
21 though, is just briefly look at what Mark Chamberlain told us at the liability
22 trial. So I think that's in tab 9 of this file at page 216. If you go over the
23 page and look at paragraph 5, please, so there it says:
24 "The current TransQ Global web portal comprises content and features that are
25 almost unchanged from when it was operated at RISQS -- as RISQS."
26 Yes?

1 **A.** Absolutely. We were focusing on business as usual.

2 **Q.** Yes. So this is an honest appraisal of the TransQ product --

3 **A.** Correct.

4 **Q.** -- that would have been available in May 2018. Yes. If we turn to paragraph 52

5 of this statement, and then if you look from the second sentence:

6 "Although data or evidence requirements for different industries can be quite specific,

7 Achilles already provides access to some buyers across multiple industries

8 and is investing heavily to make this an enhanced functionality in the near

9 future."?

10 **A.** Correct.

11 **Q.** This was at the time of the liability trial. Yes?

12 **A.** Yes, that's correct. I think we were quite excited that we could offer, potentially

13 offer customers that had previously not been able to access some of our other

14 offerings through the platform that was RISQS different things.

15 **Q.** Then if you look at the medium term solution enhancements, just carrying onto

16 the TransQ Global web portals, so these are medium term as at

17 January 2019. There you see supply dashboards, benchmarking. Point A.

18 Yes?

19 **A.** Yes.

20 **Q.** B. Analytics for buyers and suppliers?

21 **A.** Yes.

22 **Q.** Screening supply data, point C?

23 **A.** Yes.

24 **Q.** E is talking about sustainability?

25 **A.** Yes.

26 **Q.** G is performance feedback tools. Yes?

1 A. Correct.

2 Q. And I is scoring to facilitate quick and easy comparison of suppliers. Yes?

3 A. Correct.

4 Q. So that was the state of play for the liability trial. Correct?

5 A. Correct.

6 Q. If we can turn back to your fourth statement, please. I am just trying to find my
7 reference. Give me a moment, please. Okay. Can we turn -- we will come
8 back to those paragraphs in just a moment. Can we turn to folder 9,
9 tab 513A, please?

10 A. Sorry. 5...?

11 Q. 513A. This is the Project Athena report again?

12 A. Uh-huh.

13 Q. Turn to page 4786, please. If you can read the third bullet there starting
14 "Project". Do you see that?

15 A. Yes, I can.

16 Q. If you read that, and if you read the fourth bullet as well actually under
17 "Management". So this is a document from April 2019. So at that point in
18 time this was still in development. Yes?

19 A. It was. It was. I am a little bit hesitant about talking too much about this
20 document.

21 **MR WOOLFE:** If the witness wants to say something that's confidential about this,
22 do we need to go into closed session?

23 **MR WENT:** I think if the witness wants to say something, we may need to.

24 A. How much?

25 **MR WOOLFE:** Miss Ferrier, the document is marked as confidential in the bundle.
26 It has been for a reason. If there are things you want to say in your evidence

1 in relation to it, then we should arrange to clear the room.

2 **A.** Here we go.

3 **MR WENT:** I was not going to take anything else from that. This is partly related to
4 your statement where I think you said MyAchilles launched in 2018. This
5 project we are looking at is all to do with MyAchilles, isn't it?

6 **A.** Yes, so MyAchilles is a huge transformation of the whole business rather than
7 specific elements. What we are doing, and this is not confidential, is bringing
8 27 platforms across every point of the globe into one platform. So MyAchilles
9 was in various stages depending on which part of the world you were at. So
10 this is what this is referring to.

11 **Q.** When did the MyAchilles platform first actually go live in a community?

12 **A.** It went live with supply line -- I'm trying to remember exactly when it was -- 2018
13 I want to say, Christmas 2018, just before Christmas 2018.

14 **Q.** What did you say?

15 **A.** Supply Line.

16 **Q.** What is that?

17 **A.** This is our Irish business.

18 **Q.** Okay. And where did you operate UVDB to --

19 **A.** We did UVDB in 2020.

20 **Q.** And what about BuildingConfidence?

21 **A.** BuildingConfidence was done in March/April time of this year.

22 **Q.** Just to be clear, when you said MyAchilles launched in 2018 you were not saying
23 that was ready to be used then for TransQ, were you?

24 **A.** It could have been used for TransQ. We chose to migrate, so if you think about it
25 our existing customer base has thousands of supplier points of data, plus
26 they're using the system. So we work with individual customers on

1 a migration timeline that suits them. So yes, it was ready in 2018. The
2 functionality that we are speaking about was there to some extent. I think we
3 would have put TransQ on there if we could have.

4 **Q.** But you didn't migrate UVDB until much later and you have only done
5 BuildingConfidence this year?

6 **A.** No, we worked with our customers on that migration plan.

7 **Q.** If you look at bundle G11, please, at tab 583 and if you look over the page at
8 548, this is confidential, so I will not read anything out. You are talking to
9 a potential buyer in March 2020. Yes.?

10 **A.** Yes, that's correct.

11 **Q.** If you can read the second paragraph there?

12 **A.** That is correct. What I will say is we did have a platform that combined all of this
13 before we migrated BuildingConfidence and UVDB. So although the suppliers
14 were on boarded in a slightly different way, our buyers have been using in
15 BuildingConfidence, I want to say since probably a similar timeline to Supply
16 Line. They have been using a combined platform that basically pulls the data
17 from Supply Line, from UVDB, from BuildingConfidence into one area.

18 **Q.** Okay. We can put that away I think. If we go back to your statement and if we
19 look at paragraph 200.3 --

20 **A.** Uh-huh.

21 **Q.** -- here you are talking about the international offering with 70,000 registered
22 suppliers outside the UK. Yes?

23 **A.** Yes. It is actually more than that now. It is about 94,000.

24 **Q.** 94. Okay. However, you have still obviously completed the Project Titan
25 Switch-Over. You say that 40% of the global database from the platform.
26 Yes?

1 **A.** No. We have all of those 94,000 visible to buyers in one area. They log in to
2 a section of our platform called Achilles Insight. In that area they can access
3 the data if they are subscribed to all of the subscriptions of those 94,000
4 suppliers. What happens is actually that data is being collected currently in
5 different areas and we are slowly migrating it all into one area. So we have
6 completed the front end of the buyer functionality that you are talking about.

7 **Q.** Okay. 200.4, there you say:

8 "The major buyers I have met already to discuss the new Link-up offer have been
9 blown away from the scope of Achilles' service."

10 **A.** Absolutely. Buyers and suppliers, because if you think about it, previously
11 a supplier would have only have been invisible to a very small number of
12 people, whereas now we offer to them, if they choose to, to be visible to
13 a much broader audience.

14 **Q.** But to be clear, though, this was not a service you were offering in May 2018 with
15 TransQ?

16 **A.** It was shortly after May 2018 we were offering that service. Not to the scale. It
17 has ramped up over the time, but I would say by Christmas 2018 we had
18 a fully functioning insights platform that could enable buyer and suppliers
19 access.

20 **Q.** But we have seen already, MyAchilles, you have only launched that in --

21 **A.** No, I think you are mixing that up. MyAchilles is a whole transformation
22 programme for the entire business, not just the platform transformation.

23 **Q.** Okay. Understood. Then if you look at 204.1, just going on slightly, you talk
24 there, again back to MyAchilles:

25 "Includes the following features. Industry insights."

26 Yes?

1 **A.** So yes, we had actually done the industry insights prior to May 2018. We
2 thought that was a key component that actually when we launched the new
3 offering would be key. So we'd actually, and it is in the disclosure
4 somewhere, there is a whole insights deck that we had prepared
5 benchmarking suppliers across rail, with utilities, with international rail
6 offerings as well. So we had completed that way before May 2018.

7 **Q.** And RISQS offer insights as well, don't they?

8 **A.** Not to the scale we do.

9 **Q.** They offer insights, though?

10 **A.** Yes, basic insights on the data they hold which is quite limited and focused
11 entirely on rail.

12 **Q.** And then in 204.2 (inaudible) is benchmark I can. Yes?

13 **A.** Yes.

14 **Q.** Again that's offered within Rail on RISQS. Yes?

15 **A.** The basic functionality is offered, yes.

16 **Q.** Yes. I think you say that in paragraph 54 of your fifth statement. Then
17 paragraph 207 and following you are talking about customisable audits?

18 **A.** Correct.

19 **Q.** By definition not all buyers will want these, will they, or they might be content to
20 track it in-house themselves?

21 **A.** We are finding increasing requirement for them with the additional legislation and
22 requirement around sustainability, carbon, modern slavery. So companies
23 take a different view on RISQ and I think that's the key here.

24 **Q.** We have direct evidence from Balfour Beatty in this case and they say they are
25 carrying out the carbon reporting in-house. Yes?

26 **A.** Some companies do it in-house. I believe we are the only one registered globally

1 to do it in a very defined way that's recognised by International organisations.
2 So it's a big selling point for us. In fact, actually we had a meeting with
3 Network Rail on 7th July about whether we could offer that carbon reporting
4 tool to their supplier chain.

5 **Q.** Okay?

6 **A.** This year.

7 **Q.** All right. Then at paragraph 209.3 you talk about sustainability?

8 **A.** Correct.

9 **Q.** We saw in Mr Chamberlain's statement at the liability trial just now that
10 sustainability module was not going to be ready until the medium term after
11 January 2019. Yes?

12 **A.** I think we had a basic sustainability module but we wanted to go in much more
13 depth.

14 **Q.** I am just going on what Mr Chamberlain told the tribunal at that point in time.
15 Yes? Then at 209.3.2 you provide a screenshot there?

16 **A.** Yes.

17 **Q.** To be clear, that's not a screenshot of what would have been available in
18 May 2018, is it?

19 **A.** No, I think you have the benchmarking and insight reports separately which we
20 had off line.

21 **Q.** Then going backwards, at paragraph 187 onwards I think you are talking about
22 why buyers choose Achilles. The heading actually just comes on the previous
23 page. Just to be clear, you talk about various reasons why buyers choose
24 Achilles but you nowhere discuss the issue of cost to their supply chains, do
25 you?

26 **A.** No.

1 **Q.** You mention the price that buyers pay in paragraphs 215 and 216 and also
2 paragraph 229. I don't think we necessarily need to turn to those. Actually if
3 we go to paragraph 229, you say there:
4 "From a buyer's perspective multi-homing is an inexorable cost." Yes?
5 **A.** Yes.
6 **Q.** You are talking about the buyer's own cost. Right?
7 **A.** Correct.
8 **Q.** You are not talking about their supply chain costs in having to multi-home?
9 **A.** Yes.
10 **Q.** Despite what you have on offer now, and obviously you tell us a lot about it, there
11 are buyers that you have had direct discussions with, including those who
12 appear to have expressed interest in 2017 and 2018 who haven't been
13 persuaded yet of the advantages of Link-up. Right?
14 **A.** Yes. If we are going to go into the buyer discussions around the conversations
15 we are having with buyers, I know some of the figures are confidential and
16 what we are speaking about. So --
17 **Q.** Okay?
18 **A.** I don't want to stray into that area.
19 **Q.** I have a few questions on your sixth statement where we will have to. I was going
20 to come to that in a moment. Perhaps you can reserve what you want to say
21 about that for a moment and we will come back to it?
22 **A.** Okay.
23 **Q.** Can I just look at what we say is the delay to re-entry. If you look at
24 paragraph 43 of your statement, please?
25 **A.** Which?
26 **Q.** 43 of this fourth statement. At the end of that you say:

1 "I consider Network Rail have been slow and reluctant to recognise Achilles and
2 enable a return to the market."

3 Yes?

4 **A.** Yes, that is correct.

5 **Q.** And then at paragraph 256 you say here that:

6 "The first model proposed was obviously inappropriate as it would require suppliers
7 to register on RISQS."?

8 **A.** That is correct.

9 **Q.** "And Achilles would need to feed information through RISQS." Yes.?

10 **A.** That's correct.

11 **Q.** You accept, though, the tribunal in its liability judgment said that Network Rail
12 could make it a condition of recognition of another supplier assurance
13 provider that interfaces with RISQS. Yes?

14 **A.** And I think an interface is different to requiring a supplier to actually physically go
15 in and input their information and register as a customer, accept the terms
16 and conditions of RISQS.

17 **Q.** Well, let's look at that, because I don't think that was the proposal?

18 **A.** From my recall it actually was the proposal.

19 **Q.** We will look and see what the documents say if that's all right. So Network Rail
20 provided the standard and draft API to you initially on 18th February 2020. Is
21 that right?

22 **A.** That's correct, yes.

23 **Q.** That was obviously with the standards. It was clear at that stage that RISQS was
24 going to be Network Rail's nominated platform. Yes?

25 **A.** That is correct, yes.

26 **Q.** So you knew at that stage you were going to have to interface with RISQS. Yes,

1 on the basis of that proposal?

2 **A.** Yes. That's the first time we had seen that.

3 **Q.** And then I don't think it is controversial, there was a conference call with Network
4 Rail on 19th March 2020 during which you raised some questions, but you
5 didn't at that point say that the proposed intraoperability solution was
6 a non-starter?

7 **A.** I don't there was an issue with intraoperability. I think it was the mechanics of
8 how it was physically going to work. From memory -- it might be best to go to
9 the notes of that meeting, Altius and various people had been invited to that
10 meeting. So we were not even having actually an initial discussion about the
11 mechanics.

12 **Q.** So if you go to Bundle E, tab 125?

13 **A.** Sorry. Tab 5?

14 **Q.** No. It must be page 125. It is within Bundle E and it is page 125?

15 **A.** Yes. I don't want to get the meetings mixed up. That's all. We have had quite
16 a few.

17 **Q.** No. I was going to take you to these. So I think there's a meeting scheduled for
18 17th April 2020, and if you look at the last full paragraph on this page starting
19 "In addition", you say, "there are a number of confidential matters we would
20 like to discuss with Network Rail/Altius regarding the API approach in the
21 context of the Court Order - for example, how Network Rail/Altius will ensure
22 that any supplier data submitted by Achilles is not accessible to other buyers
23 subscribing to RISQS via the Altius system."

24 Yes?

25 **A.** Correct.

26 **Q.** You can see that?

1 **A.** Yes.

2 **Q.** Then if you look up at the top of the page, I think you can see Mr Blackley's

3 response just in the first bullet on that point: "How will Network Rail/Altius ..."

4 "With regard to the following matters on which you seek to maintain confidentiality:

5 How will Network Rail/Altius ensure that any supplier data submitted by Achilles is

6 not accessible to other buyers subscribing to RISQS via the Altius system (it

7 just needs to be visible to Network Rail as infrastructure owner)?"

8 So it is a question, but Mr Blackley was recognising the issue?

9 **A.** That's correct, yes.

10 **Q.** Then the meeting minutes, if we turn on to 128, and if we start by looking at the

11 bottom of that page at 1.1:

12 "Len outlined the Altius Exigo platform, the requirement for each supplier to have

13 a unique RISQS ID and for each approved Supplier Assurance Provider to

14 also have a unique ID ..."

15 **A.** It says here:

16 "... to complete a simple registration on the RISQS portal to generate a RISQS ID."

17 That's the bit that we were particularly concerned about.

18 **Q.** And then if we look at Mr Blackley's response, and that's towards the end of the

19 first paragraph on 129, do you see where it says:

20 "KF gave ..."

21 So that's --

22 **A.** Where? Sorry. 129.

23 **Q.** It is on page 129 just at the top?

24 **A.** Yes.

25 **Q.** Just over halfway down:

26 "KF gave assurances that contacts Achilles have with suppliers who choose to use

1 them as an assurance provider would cover any such concerns. KB stated" --
2 so this Mr Blackley stated -- "the supplier would not be required to accept
3 RISQS terms and conditions and the approved 'Supplier Assurance Provider'
4 could request a unique ID to be allocated."

5 So that's the idea that it is the suppliers assurance provider requests a unique ID.

6 Yes.?

7 **A.** Yes.

8 **Q.** "A simple pro forma would be completed by either the Supplier or the approved
9 Supplier Assurance Provider."

10 Yes?

11 **A.** Yes, it was all very confusing how you would expect a supplier's data to be put
12 into that platform with no acceptance of that supplier, the fact that it would go
13 in there. I think if you look down here, Mark was raising more issues. It was
14 a very confusing meeting around would you have a RISQS ID. Yes, you
15 would have a RISQS ID. How would you collect that? Would it be free? No,
16 it wouldn't be free is what Altius was saying. Ken was saying it was. I think it
17 was just completely unclear at that point and it raised a number of concerns
18 with us internally.

19 **Q.** Well, I suggest to you that Mr Blackley is setting out some proposals that he
20 thinks will deal with the issue you that you have raised. So --

21 **A.** But I do not think we did because the concern around:

22 "Noted that appropriate wording to be in place to address GDPR."

23 GDPR at that stage was a key concern. So if you have say supplier accepting
24 Achilles terms and conditions, but actually having to have a registration with
25 RISQS, my understanding is you would have to accept some sort of level
26 there. So I don't think it had been addressed at that point.

1 **Q.** Then looking down to the third paragraph there:

2 "KB confirmed" -- Mr Blackley confirmed -- "that the expectation was that there would
3 be no charge to the supplier as the charge levied by Network Rail on
4 applicants to become approved supplier assurance provider would include
5 any set-up associated ..."

6 **A.** Yes, after Altius had said there would be a cost, that is correct; Ken confirmed
7 there wouldn't in the same meeting.

8 **Q.** Then if you look at 1.5, question 3, just slightly further down, this is a question:

9 "Will the Achilles Information passed via the API be available to Network Rail only?"

10 Then you see the answer there:

11 "Yes."

12 **A.** Uh-huh. Correct.

13 **Q.** So he was specifically dealing with a concern he had raised over e-mail prior to
14 the meeting that other buyers wouldn't see this information but Network Rail --
15 just Network Rail. Yes?

16 **A.** That's correct.

17 **Q.** Then if we can turn the page at 2.2:

18 "Do Achilles now have the information required to prepare their API?"

19 Then Mark Chamberlain I guess gave the answer:

20 "Yes, it's a simple API. Achilles have started to stand up a team."

21 Yes?

22 **A.** Yes, we had got a team ready to do this.

23 **Q.** You didn't say at the meeting that the first API proposal was a non-starter but
24 only afterwards?

25 **A.** Yes, because we were pretty confused at the meeting. We had our competitors
26 on the phone so we had an immediate call after the meeting and got our

1 concerns together and then responded formally.

2 **Q.** So I would suggest to you that the first proposed API solution, the use of RISQS
3 nominated platform was entirely compliant with the tribunal's judgment and it
4 was clear that a message would be in place to ensure that Achilles
5 information would only be seen by Network Rail. Yes?

6 **A.** I think all of these minutes highlight that nothing was particularly clear about that
7 meeting. It was being made up as people went along and I think that was our
8 concern when we came away and we needed to be really clear on what was
9 going to happen going forward.

10 **Q.** Well, we have just seen what Mr Blackley said about buyer information. He said
11 it would only be seen by Network Rail. Yes. That's clear?

12 **A.** It is clear, but how a supplier would register on RISQS, the GDPR implications of
13 that, none of that was clear.

14 **Q.** Well, the suggestion is from Mr Blackley that the supplier assurance provider
15 could be getting unique numbers from RISQS and then those could be
16 applied -- those unique numbers could be applied to the suppliers that you
17 have on your system and on the basis of that you would be providing
18 information back to RISQS?

19 **A.** And how physically would that be agreed within the supplier terms and
20 conditions? I think there was a lot of questions still following this call, which is
21 why we responded and said after the call things weren't clear.

22 **Q.** They were questions that would need to be asked in your providing supplier
23 information to the aggregator as well?

24 **A.** Yes, absolutely.

25 **Q.** So this was not peculiar to this API solution?

26 **A.** Well, no. It was the overall API solutions. It was the only thing we had presented

1 to us at that point in time.

2 **Q.** What was being presented here again I say was that you would be given unique
3 numbers that you could apply to your suppliers and those unique numbers
4 could be used to feed through information to RISQS?

5 **A.** I think that came out as part of the conversation. It wasn't what was proposed at
6 the beginning of the meeting. It wasn't what was proposed during it and it was
7 something we were really concerned about.

8 **Q.** Yes. It was something that came out during the meeting but Mr Blackley gave
9 you assurances on that. Yes?

10 **A.** Yes, and it wasn't clearly what Altius were thinking when they went into the
11 meeting. The meeting was absolutely chaotic in terms of Altius would say one
12 thing. Ken would then say "No, that's not the case. This is what would
13 happen". We would have a question. It would have a slightly different slant
14 on it. So our take on it was there was not real clarity on how this was going to
15 work at all.

16 **Q.** I suggest to you that the meeting minutes do show there was clarity from
17 Mr Blackley as to what was being proposed. I also say if you had accepted
18 this solution this would have enabled you to re-enter the market around 2020.
19 Therefore it was not reasonable for Achilles to have questioned this proposed
20 solution and not to have gone with it?

21 **A.** I don't agree with that statement.

22 **Q.** Okay. I think we can put that binder away. I was going to move into some
23 questions around Miss Ferrier's sixth statement that obviously gives rise to
24 confidentiality issues. I am conscious of the time. I don't know whether you
25 want to press on or whether to take a break now and then start at 1.50.

26 **THE CHAIRMAN:** How long do you plan to be with your confidential material?

1 **MR WENT:** I suspect -- I'm hoping it won't be more than half an hour.

2 **THE CHAIRMAN:** Let's carry on now and go into closed session then.

3 **MR WENT:** Okay.

4

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6 **TRANSCRIPT]**

7

8 **MR WOOLFE:** However, in the interests of time I might press on if that's okay. Can

9 the witness be handed Bundle E and turn to page 129, which I think is in the

10 first tab. This should be the note of the meeting at which you were asked

11 some questions about, the meeting on Friday, 17th April. Just to situate it for

12 you, on page 129 -- on page 128 it starts off at A1:

13 "... it was stated by Altius and Phil Bower that the supplier would be required to

14 complete a simple registration on the RISQS portal to generate a RISQS ID."

15 Then over on page 129 about five lines down:

16 "MC stated this was essentially requiring the supplier to join RISQS. KF raised

17 concerns - it would be confusing for the supplier to have created a RISQS

18 account."

19 Then you made a suggestion that either Achilles could do it on behalf of the

20 supplier -- this is your suggestion -- or that RISQS issue Achilles with

21 a number. Then it says:

22 "Altius raised concerns regarding GDPR and the need for suppliers to accept ...

23 terms and conditions."

24 You gave some assurance about your contracts.

25 "Mr Blackley stated the supplier would not be required to accept RISQS terms and

26 conditions and the approved 'Supplier Assurance Provider' could request a

1 unique ID to be allocated."

2 It refers to simple pro forma, but then it says Altius reiterated the need for data
3 integrity and then obviously a few minutes later two paragraphs down it says:
4 "MC", Mark Chamberlain, "asked if the RISQS account would be free ... or if there
5 was a paywall. Altius commented that there would be a cost."

6 Then Mr Blackley confirmed his understanding.

7 My question is this: coming away from this meeting what was your understanding as
8 to whether or not suppliers would be required to register with the RISQS?

9 **A.** I think I thought they would still be required to be registered.

10 **Q.** Thank you. Then you can put that bundle away. If you can go to the
11 miscellaneous bundle, tab 15. It should be an e-mail dated 30th
12 September 2021 from Torma(?) Thomassen to a Natasha Winter. I think you
13 were asked some questions about the JQS generally. If you read -- it says:
14 "Dear Natasha",
15 and there is a first paragraph finishing:
16 "Our role in this is as follows."
17 Then you have a series of dates. Does that fit with your understanding of when
18 EPIM JQS launched?

19 **A.** Yes, it does.

20 **Q.** This suggests that it was launched on 1st January 2019. Is that your
21 recollection?

22 **A.** I can't recall the exact date.

23 **Q.** But it is not inconsistent?

24 **A.** Yes.

25 **Q.** Okay. Then I think if you -- can we put that one away now and go to G8, tab
26 442A. This is a confidential one. I am not going to have to read out any

1 confidential parts.

2 For the tribunal's benefit, 442A, this is an Athena report prepared by Deloitte's dated
3 19th June 2018. Unusually in the middle of cross-examination I am going to
4 tell the tribunal there are actually three Athena reports in the bundle each with
5 a different date. They are different reports. I have the references here. If
6 I perhaps read them out, you will have them for when you want them. So
7 there is a June 2018 one, which is this one at G8, tab 442. There is
8 an April 2019 one and that's in G9, tab 513A, and then an October 2019 one,
9 which is G10, tab 539. They are not just a different version of the same.
10 They are different reports in case there is any confusion about when you are
11 looking at things.

12 Now to find the relevant part of this. So this was dated June 2018. So that's
13 obviously before the launch of the EPIM scheme. Where are we? If you go to
14 page 3,982, you were referred to the second bullet point on JQS and to
15 a reduction. This is for FY 18 and FY 19. What actual period of time would
16 FY 18 be? Do you know?

17 **A.** I am not sure in this one.

18 **Q.** It says it is ending in January 2019. So this --

19 **A.** I assume it would have covered the year of 2018 they are referring to and they
20 did various iterations of this report over the period of that time.

21 **Q.** Okay. Then you can put that one away now. Go to G4, tab 201. Can I ask you
22 to turn to page 2205 within this? Actually perhaps can you start at
23 page 2,204? Second bullet point at page 2,204:

24 "So far as the development of any new product goes the following extract is
25 germane."

26 It is an extract from the concession contract. 4.5(b):

1 "The Service Provider shall not undertake activities outside this Agreement ..."

2 You were asked questions about that, the implication in that provision. Next bullet
3 point:

4 "There are 2 ways I believe of looking at this, these relate to RSSB's responsibilities
5 for 4.5(a) and Achilles' responsibilities for 4.5(b)."

6 Turning over the page:

7 "Starting with the latter."

8 So Achilles' responsibilities under 4.5(b), could I ask you just to read that
9 paragraph to yourself. I think the author of this, if you turn to the front page, is
10 Mr Colin Flack. To what extent was this first bullet point a shared view
11 amongst those at Achilles dealing with the situation at the time?

12 **A.** So the fact was we could communicate post 1st May 2018 however we wished
13 with the market. I think that was accepted. Pre-2018 I think there was
14 various discussions around how we should communicate with the market.
15 Should we go out and be very robust but our communication plan was quite
16 laid out all the way from September 2017.

17 **Q.** So this was clearly Mr Flack's view on the issue of what was allowed?

18 **A.** Yes.

19 **Q.** What was your view in terms of what you thought you should do?

20 **A.** My view is that we should have done exactly what we did and what we did do.
21 We told our customers pre-2018 it would be business as usual, contracts
22 were all over. I thought we should have basically gone out and been a bit
23 more robust. We should have gone public and said "You will Sentinel
24 accepted", because then there would have had to be a rebuff a little bit sooner
25 than that but we didn't. We chose not to as an organisation.

26 **Q.** Thank you. If you go to G6. So put that bundle away and we can be passed G6,

1 tab 275? Links in. This is the communications plan?

2 **THE CHAIRMAN:** Sorry.

3 **MR WOOLFE:** G6, tab 275. This document is titled "Link-up TransQ comms." In
4 the index it is dated April 2018. It says "Saturday afternoon", in the bottom
5 left-hand corner. I think you said your recollection was this was the Saturday
6 before 1st May.

7 **A.** It was around that time.

8 **Q.** Around that time. Thank you. If you go to page 3,003, I think you were being
9 asked questions about the bottom of that page and the top of the next
10 page about changes to supply terms.

11 **A.** Uh-huh.

12 **Q.** And you said in response to my learned friend, Mr Went, that you were looking to
13 change terms because you couldn't offer the service that you had been
14 offering including Sentinel. If you had been able to offer Sentinel, what was
15 your plan for what should happen with terms and conditions of suppliers?

16 **A.** We would have updated them at the point of renewal, which varied across the
17 year for buyers and suppliers.

18 **Q.** Thank you. You can put that one away now. I have got I think just three more to
19 go. Can you be passed bundle G13 and go to tab 662? You were asked
20 some questions -- wait for the tribunal to catch up. You were asked some
21 questions about the extract at the top of page 6,648, which is over the page,
22 but this document is an e-mail exchange between you and Mr Eric Whittle of
23 Simply Safety Limited. Can you explain who Simply Safety Limited are?

24 **A.** They are a company that supports suppliers in health and safety.

25 **Q.** Okay. The date I think of this e-mail -- the one at the bottom of that page 6,647
26 is 6th August 2020?

1 **A.** That is correct.

2 **Q.** Had Link-up relaunched by this stage?

3 **A.** No.

4 **Q.** Then on page 6,648:

5 "There was a situation in the industry at present. Due to the new protocol being
6 launched in September against the NR302 standard. There are now
7 additional audit days."

8 Do you know why there were additional audit days being required?

9 **A.** I don't know why they were added. However, Mr was under the impression that
10 they were just trying to maximise the amount of audit days they could bill
11 a supplier for and they were getting frustrated with it.

12 **Q.** When you say "they", who do you mean.

13 **A.** The RSSB.

14 **Q.** But were any additional audit days due to the people having to be audited by
15 Achilles?

16 **A.** Oh, no. We didn't even have an offering then. So ...

17 **Q.** The penultimate one, if you go to G3, tab 90, I think you were asked some
18 questions on page 1678, competition with Alstom. Also on the front page of
19 that, 1677, you refer to a conversation with Ian Anderson of Colas Rail. Who
20 are Colas Rail?

21 **A.** They're a rail company in the UK.

22 **Q.** What do they do in the rail industry?

23 **A.** Major contracts. They are a big provider. They have done everything across
24 major infrastructure projects for the likes of Network Rail but also operate as
25 a tier 2 supplier to some of the bigger organisations like Balfour and they also
26 have done Middle Metro as well. So outside of.

1 **Q.** How big are they as an organisation?

2 **A.** Huge. They're one of the big buyers.

3 **Q.** Okay. About halfway down that first paragraph a line starting:

4 "He does not think ..."

5 "He does not think the change to a split system and service provider is workable and
6 that RSSB will struggle to manage..."

7 Then the next sentence -- sorry:

8 "He thinks we should really publicise the fact that we are business as usual. Same
9 product code offering, same approved assurance levels. He does not think
10 people will want to spend the time or money. Product code set as long as we
11 are not more expensive."

12 So how did communications from the market factor into the strategy that you
13 developed?

14 **A.** It was -- we were on a listen mode during that period. We spoke to our buyers.
15 The account managers had meetings with them, you know, what was best for
16 them. This is why we didn't do the massive communications and shouting
17 actually, because people wanted it to be business as usual. They wanted us
18 just to continue to offer the service. You have to remember that a lot of our
19 systems were intrinsically linked into these big buying organisations, internal
20 processes of how they do things. So actually a lot of our customers said "Just
21 key going and then we don't have to have different training, different system
22 log-ins, all that sort of stuff. That's what you have".

23 **Q.** Thank you. Then this is the last bundle you are going to be passed today. We
24 can take a break. Bundle G4, tab -- hang on. Wrong -- tab 180?

25 **A.** Tab what?

26 **Q.** Tab 180. Sorry. I had a handwriting issue. This is a transition guide published

1 by RSSB dated 5th February 201 in the index. You were asked some
2 questions about it.

3 Now on page -- I think you were asked some questions about the top of page 2,076
4 and about the time you need to have audits carried out and so forth. I think it
5 was suggested to you that there a choice was being offered. The last
6 sentence of that paragraph:

7 "It is up to you. RSSB's concern is you should have every opportunity to have your
8 audit so you can continue to enjoy the benefits of RISQS and continue to work
9 track side if registered in Sentinel."

10 That last phrase:

11 "Continue to work track side if registered."

12 What did you understand by that?

13 **A.** That if you did not continue to maintain your -- you wouldn't be able to work track
14 side basically.

15 **Q.** Then in the two bullet points it says:

16 "Please ensure that you only pay invoices (inaudible) RISQS for renewals due on or
17 after 1st May and you only pay invoices for audits sent by RSSB RISQS when
18 your audit will take place on May 1st or later."

19 What did Achilles make of this communication from the RSSB?

20 **A.** It was clear that we had no place to do business in the industry from their
21 perspective.

22 **Q.** Thank you. Sir, those are all the questions I had by way of re-examination.

23 Miss Ferrier, there may be some questions from the tribunal, so just wait there for
24 the moment.

25 **THE CHAIRMAN:** We don't have any questions. Thank you very much,
26 Miss Ferrier.

1 A. Thank you.

2 **(Witness withdrew)**

3 **MR WOOLFE:** The next witness I am calling is Mr Gjertsen.

4

5 **ATLE GJERTSEN (affirmed)**

6

7 **Examination-in-chief by MR WOOLFE**

8 **MR WOOLFE:** First of all, Mr Gjertsen, have I pronounced your name more or less
9 correctly?

10 A. More or less, yes.

11 Q. Thank you. Could we have bundle B passed to the witness, please? Could you
12 turn to tab 11 in that bundle? You should see there a document, a witness
13 statement. Is that your witness statement?

14 A. Yes, it is.

15 Q. And you are familiar with that document?

16 A. Yes, I am.

17 Q. If you can turn to page 242 in the bottom right-hand corner, you see a heading
18 "Statement of truth" and then a signature. Is that your signature?

19 A. Yes, it is.

20 Q. And can you confirm that that is the evidence you would like to give to the
21 tribunal?

22 A. Yes.

23 Q. Mr Gjertsen, can I ask you one thing in case you are not familiar? Can you turn
24 to page 241, paragraph 11? You will see that certain information is
25 highlighted as yellow?

26 A. Yes.

1 **Q.** If you go to the next tab in the bundle, you will see that information is highly
2 confidential. If you go to the next tab, tab 12, you will see the next information
3 is blacked out. Just to make you aware that if you feel the need to refer to
4 matters that fall within the scope of confidential, do tell Mr Went when he is
5 cross-examining and we can make arrangements --

6 **A.** I will. Thank you.

7

8 **Cross-examination by MR WENT**

9 **MR WENT:** Good afternoon, Mr Gjertsen, if I am pronouncing that correctly. If it is
10 not confidential, can you tell us what price Achilles JQS charged for supplier
11 subscriptions?

12 **A.** Yes, that is not confidential. We have an average of 5,500 Norwegian Krone.
13 That's about £550.

14 **Q.** So it varies depending on the number of products and services?

15 **A.** Yes.

16 **Q.** What price, again it is not confidential -- it may be -- do you charge for buyer
17 subscriptions?

18 **A.** That differentiates also depending on the kind of contract they have with us. It's
19 about the size of the companies. So it varies from small to large.

20 **Q.** So that's confidential. Okay. That's all right. We know I think that Achilles JQS
21 offers audits. I think we have heard that already from Miss Ferrier. Are there
22 different types of audits that you offer?

23 **A.** Yes. Well, we offer all the sort of audit services that we have in Achilles, but
24 what we mainly do is management system audits, which is based on the
25 NORSOK standard that we have in Norway.

26 **Q.** Okay, and who pays for the audits? Is it the suppliers? Is it the buyers?

1 **A.** Well, the suppliers are not paying for these audits. They can, but they are not. It
2 is purely buyer paid, all the audits that we do.

3 **Q.** And do you provide audits for a company like BW Off-shore?

4 **A.** Yes, we do.

5 **Q.** And how long have you provided audit services for that company?

6 **A.** It's not a regular thing. It's by need. So they have a need. Then come to us and
7 we perform the audit. So maybe -- I am not 100% sure, but about a couple of
8 years.

9 **Q.** Okay. I think we have seen in Miss Ferrier's evidence that at some point prior to
10 2018 the EPIM operators were contracting directly with Achilles JQS and at
11 some point in time that changed, did it, so that EPIM was contracting on
12 behalf of the operators? Do you remember when that happened roughly?

13 **A.** Yes. That was 9th December 2015. We signed a contract with EPIM and EPIM
14 sort of distributed the usage of Achilles JQS to their members, which were the
15 operators, an oil or gas company with an operator licence from the state of
16 Norway.

17 **Q.** Okay. Just moving for a moment to EPIM JQS, to the extent you know -- I think
18 you billed them as your leading competitor -- do you know what this costs to
19 join EPIM JQS as a supplier?

20 **A.** I am afraid not. I do not know that.

21 **Q.** Okay. Can we look at a document, please? It should be in the miscellaneous
22 bundle I think at tab 15?

23 **A.** Page 280.

24 **Q.** Yes, page 280. If I could just ask you to read that document, if I may. I should
25 say for your benefit this is an e-mail from Mr Thomassen -- I'm probably
26 pronouncing that horrendously -- just last month being sent to one of the

1 | lawyers in this case. Do you know Mr Thomassen?

2 | **A.** I know Mr Thomassen, yes.

3 | **Q.** He is in charge of EPIM JQS. Is that right?

4 | **A.** Yes, yes, yes.

5 | **Q.** Sorry. With that background if you can -- I'll let you read it.

6 | **A.** Thank you.

7 | **Q.** So you can see I think one of the points we just discussed, in January 2016

8 | EPIM becomes the contract holder with Achilles on behalf of the operators on

9 | the Norwegian continental shelf and then EPIM JQS enters in January 2019.

10 | So that is your understanding as well, is it?

11 | **A.** Yes, that's correct.

12 | **Q.** He also says that only EPIM operators can request audits within EPIM JQS and

13 | not contractors. Is that your understanding?

14 | **A.** Well, based on the things -- the letter here, yes, but I don't work for EPIM, so

15 | I really can't tell.

16 | **Q.** Is there anything that makes you think what they say should not be correct?

17 | **A.** Well, why should he?

18 | **Q.** He also says that EPIM operators fund the audits. Is that your understanding?

19 | **A.** Yes. I mean, EPIM is now part of Norwegian Oil and Gas Association and that's

20 | a lobbying body owned by the Norwegian operators, and they have always

21 | been, in my understanding, founded by the operators, all of their activities, so

22 | I am guessing that is also a supply to new EPIM JQS now under the umbrella

23 | of Norwegian Oil and Gas Association.

24 | **Q.** So what he says here on the funding of the audits makes sense from what you

25 | know?

26 | **A.** Yes.

1 Q. Did EPIM operate as user Achilles JQS for audits prior to 2019?

2 A. When you say EPIM operators, is that oil and gas companies?

3 Q. Yes. I am talking about the Norwegian continental shelf operators that sits within
4 EPIM?

5 A. Yes. We run a verify scheme for the operators and the management contractors
6 and the Norwegian continental shelf and the Danish continental shelves. That
7 was when EPIM went over to have their own system. That followed to EPIM.
8 So we don't do a joint audit scheme for the Norwegian operators any more.

9 Q. When did you stop providing the audit function for the EPIM operators?

10 A. That's a dual answer, because what we did at the beginning was that from
11 January '16 till June '16 we had a contract with EPIM to perform about 20, 30
12 audits on their behalf.

13 Q. Yes.?

14 A. So that will be until June. So after June 2016 that stopped. So we haven't
15 performed anything after that.

16 Q. So the audits stopped at that -- Achilles JQS providing that audit function for
17 EPIM operators stopped at that point in time?

18 A. Yes, it did.

19 Q. And then at some point after that EPIM JQS ran a tender for the IT provision for
20 the EPIM JQS service. Is that right?

21 A. Yes.

22 Q. And I think Achilles JQS decided not to participate in that tender. Is that right?

23 A. We participated in the beginning, but then we withdraw and I cannot remember
24 the date and when we did it, but yes, we did it.

25 Q. But at that point in time that was just for the IT service, not for an audit function.
26 Is that right?

- 1 **A.** Yes. They had divided those two. So they wanted a pure IT development project
2 first and then they wanted a separate bid for the audit services.
- 3 **Q.** Okay. Thank you. So based on what Mr Thomassen says if a contractor buyer
4 on Achilles JQS, like BW Off-shore we have just heard about, if they want to
5 have their supplier chain audited, they couldn't use EPIM JQS for that, could
6 they?
- 7 **A.** Now no, they can't. They have to -- they can do it themselves, of course, but
8 they are likely to ask us to do it.
- 9 **Q.** So they need to be on Achilles JQS if they want the provision of audit for their
10 supply chain?
- 11 **A.** Yes, but it is then paid by BW Off-shore, one buyer instead of divided to
12 everyone.
- 13 **Q.** So the buyers, the contractors within Achilles JQS are paying for that audit
14 service that they want their suppliers to be part of?
- 15 **A.** Yes.
- 16 **Q.** Okay. Do you have any sense -- you may not -- of what EPIM JQS's annual
17 revenues are?
- 18 **A.** No, I am afraid not.
- 19 **Q.** In terms of the supply contracts you have with your suppliers on Achilles JQS are
20 they annual contracts?
- 21 **A.** For the suppliers?
- 22 **Q.** For the suppliers on Achilles JQS?
- 23 **A.** Yes, it is an annual 12 months' period and there is a roll over. So they have to
24 update their information within those 12 months. If not, they are not
25 pre-qualified and approved anymore. So then ... Yes.
- 26 **Q.** Will renewals happen continuously over the year because suppliers have entered

1 into them at different points in time?

2 **A.** That is correct.

3 **Q.** Okay. We know that EPIM JQS started 1st January 2019 or around then. Do
4 you know whether EPIM JQS started on-boarding the suppliers prior to that?

5 **A.** Yes, they did.

6 **Q.** They did. Do you know when that started?

7 **A.** Yes, I do. They started in September 2018 at the Offshore Northern Seas
8 conference in Stavanger. That's the second largest oil conference in the
9 world. That's where they launched their new pre-qualification scheme on
10 behalf of the Norwegian operators.

11 **Q.** And they started on-boarding suppliers at that point in time?

12 **A.** Yes, they did.

13 **Q.** Can we turn to a document? I think you should have it. I think it is the paper just
14 behind you?

15 **A.** This one?

16 **Q.** Yes. This is the document at G9, tab 516, page 4,926 that we have already
17 looked at. If you can look down on the left-hand side, you can see it says
18 "Construction". Below that there are a number of communities listed, one of
19 which is JQS?

20 **A.** Yes, I see it.

21 **Q.** This is obviously an internal Achilles document. Is this a document you are
22 familiar with?

23 **A.** Well, I've seen in the likes of it. I can't say exactly this one, no.

24 **Q.** Okay. That's fine. If you look at FY 18 -- it says "9 plus 3 new", but FY, and then
25 you can see the volume of supplies. It says 3,820. Can you see that?

26 **A.** Yes. The FY 89 plus 3 total.

1 Q. Exactly. Do you know what the 89 plus 3 total refers to?

2 A. That is the forecast, isn't it? Yes.

3 Q. It goes on to FY 19 in the next column. So it looks as though you have already

4 got FY 19 data there?

5 A. Yes.

6 Q. Okay. Don't worry. You can see the FY 19 total. That's 2,896. Yes, can you

7 see that?

8 A. I am trying to find it.

9 Q. It is just literally three columns across to the right of the previous figure, the FY

10 19 total. So 2,896?

11 A. 2,896.

12 Q. I think you are going too far by the looks of where your finger is on the page?

13 A. Am I? Oh, sorry. Yes.

14 Q. It was three columns across?

15 A. My bad. I see it now.

16 Q. No worries. You can see just to the column of the left of that it says 202. That

17 seems to be the new suppliers in FY 19. Yes.?

18 A. Yes.

19 Q. So the figure of 2,896 is going to include those new buyers as well for FY 19 by

20 the looks of things?

21 A. By the looks of things, yes.

22 Q. Then you can see just to the left of that there's a negative number. It is 1,126?

23 A. Uh-huh.

24 Q. That appears to be the number of suppliers lost as between FY 18 and FY 19?

25 A. Yes.

26 Q. So 1,126 suppliers?

1 **A.** 1,126.

2 **Q.** So this was obviously the time that EPIM JQS was being established. You said
3 that EPIM JQS started on-boarding suppliers from September. Does it make
4 sense to you that that figure of 1,126 is going to be in large part due to
5 suppliers moving to EPIM JQS? Does that make sense?

6 **A.** Yes, that makes sense.

7 **Q.** Okay. That's all I wanted to ask about that document. Now presumably the
8 contractor buyers you have on Achilles JQS will vary as to the number of
9 suppliers they have in their supply chain. Does that make being sense?

10 **A.** Yes.

11 **Q.** We have talked about AV Off-shore already -- oh, no, we haven't. I think you say
12 AB Off-shore is one of your large buyers on Achilles JQS?

13 **A.** I haven't mentioned AB Off-shore. I don't know that company.

14 **Q.** It may be that I have got the names wrong. There is a BW Off-shore?

15 **A.** Yes.

16 **Q.** That is my mistake. My apologies. I think they are a large supplier of vessels,
17 ships?

18 **A.** They are one of the largest operators of FPSOs in the world. FPSOs are floating
19 production and off-loading vessels producing oil and gas.

20 **Q.** Do you have a sense as to whether that type of company, so they run maritime
21 vessels, whether they are likely to have a different type of supply chain, for
22 example, from one of the Norwegian continental shelf operators?

23 **A.** Yes and no. BW Off-shore, if that's the case you want me to talk about?

24 **Q.** Yes, please?

25 **A.** In their nature they buy different things than an oil company like Shell, for
26 example, but they also have the same suppliers. So they have both. So

1 I can't say yes or no, yes.

2 **Q.** There may be some suppliers of the type that only serve BW Off-shore?

3 **A.** Some will, yes.

4 **Q.** Yes.?

5 **A.** But mostly it's a mix of everything.

6 **Q.** Okay. A different question not related to that. I just want to check. Did Achilles
7 JQS have any reputational issues in the Northern Europe oil and gas sector
8 industry prior to 2019?

9 **A.** Reputational issues? Could you please clarify?

10 **Q.** For example, groups of customers that you have suggesting that your service
11 was not up to scratch?

12 **A.** Yes.

13 **Q.** This type of issue?

14 **A.** Yes. Yes, we did, and this is part of the reason why EPIM was asked to take
15 over the sort of contract for the oil operators, because they were not pleased
16 with the way that we handled a couple of, if that's the reputational side in your
17 question. I am not sure.

18 **Q.** Yes. Are you able to say what the type of those couple of things were?

19 **A.** Well, this is from memory. If I knew that, I would have sort of re-read it, but some
20 of the points were that they wanted more control of their own supply chains.
21 Hence they didn't want a private company to do that. They wanted to do that
22 themselves even if they are private companies themselves, and they wanted
23 to have this governed by the organisation that governs all of the joint systems
24 that they have, which is quite a number actually, and that organisation is
25 Norwegian Oil and Gas with EPIM. So that fitted in their view -- we fitted into
26 their line of joint systems.

1 Q. Okay?

2 A. Yes.

3 Q. If we can turn to your statement, if we can turn to paragraph 8, please?

4 A. Is that number 12? Not in this.

5 Q. This is in tab 11 -- this is in your witness statement?

6 A. Yes.

7 Q. So it is tab 11 in the folder?

8 A. And you said number?

9 Q. Paragraph 8, please?

10 A. Yes.

11 Q. I just want to the look at just the end of that paragraph. So you say:

12 "To my mind at this time we were competing with EPIM JQS for the business of all

13 buyers and suppliers in the Achilles JQS scheme, not just for the operators."?

14 A. Uh-huh.

15 Q. So I think we have established that if a non-operator buyer wants his supply

16 chain audited, it would have to stay on Achilles JQS. That's right, yes?

17 A. If you ask if they could have done the same, if a non-operator could do the same

18 with EPIM, that is yes, because they can't. It is only the operators that can do

19 that via EPIM.

20 Q. So suppliers wanting that -- I think we have already established that suppliers

21 wanting -- well, we have established that. Then obviously suppliers wanting

22 to serve those non-operator buyers would have had to stay on Achilles JQS

23 as well?

24 A. Yes.

25 Q. And Danish operators weren't part of EPIM or involved in setting up EPIM JQS,

26 were they?

1 **A.** No.

2 **Q.** So they needed to stay on Achilles JQS as well?

3 **A.** Yes.

4 **Q.** So suppliers seeking to serve those Danish operators would also need to stay on

5 Achilles JQS?

6 **A.** Yes.

7 **Q.** In paragraph 9, if you can turn to that, I think it is the first sentence. Yes. You

8 are saying here:

9 "On the Achilles JQS buyers list all but six have a location in Norway."

10 Yes.?

11 **A.** Uh-huh.

12 **Q.** Now we may need to turn to it. If we turn to the document providing the list of all

13 the buyers, I think there are ten which have a location other than Norway or

14 a location in both Norway and outside Norway. Does that sound right?

15 **A.** Yes. I need to see the reference list, but it's in that ball game, yes.

16 **Q.** I mean, it's there. I don't think we need to turn to it?

17 **A.** No.

18 **Q.** Now you say that Danish buyers make up 3% of the activity on Achilles JQS.

19 Can you explain to me what you mean by "activity" in that sense?

20 **A.** Well, in that sense -- and I've used the word "activity" otherwise as well. Activity

21 in our business is when a buyer, an oil company or whatever actually are

22 active users of the system, that they are engaging themselves in the

23 committees that we have to develop the system and they are actively

24 promoting suppliers to come and pre-qualify, because we are their way into

25 them as a supplier. So that is what I mean by "activity".

26 **Q.** So when you say that:

1 "The Danish oil and gas industry are very small in comparison to Norway. I estimate
2 they make up less than 3% of activity on Achilles JQS".

3 You are talking about their involvement within the scheme and the amount of
4 procurement they do on the scheme or ...

5 **A.** Yes. Well, activity also leads to more turnover, because when a buyer is active
6 they also bring in more suppliers which raises the turnover. Denmark has
7 always been small and the reason why -- and this is before I started in
8 Achilles -- the Danish continental shelf's operators were invited in and the
9 reason for that is we have a joint HSE standard for Norway and Denmark. So
10 there's a good fit for the small Danish operator numbers to join the Norwegian
11 ones, because we have the same sort of common grounds on the HSE,
12 health, safety and environment. So the standard that we use is a really strict
13 one. They liked it and they joined us. So the Danish continental shelf is really
14 small so there are not many players there.

15 **Q.** I am still trying to be clear on this 3% metric that you are using. You are saying
16 that obviously buyers will drive suppliers to the system. How do you calculate
17 the 3%? Have you looked at all the suppliers on the system, worked out how
18 many supply the Danish operators and then come up with an estimate of 3%
19 based on the revenues from those suppliers supplying the Danish buyers, or
20 is it something else, this 3%?

21 **A.** It is something else. To me it's just a sort of way of showing that it is a small
22 number. It could have been 5. It could have been 7. It is a small number.

23 **Q.** It might be 7?

24 **A.** No, no, not at all. No. It's below 5, believe me.

25 **Q.** But what is the metric? Is it number of suppliers? Is it the revenues the suppliers
26 are generating?

- 1 **A.** It is a combination of how many operators or buyers we have in Denmark and the
2 number of suppliers, the number of Danish suppliers we have, which is really
3 marginal.
- 4 **Q.** And we have talked about there being ten buyers on Achilles JQS that are either
5 Danish or Norway and another place, so outside Norway. Do you know
6 what -- can you give me a sense as to what those ten buyers -- how much
7 activity they drive?
- 8 **A.** Some of them uses the system just to make sure that they have -- that their
9 suppliers are qualified for this region. Some use it to actually get suppliers
10 that are qualified to take them and use them in other regions like in Africa and
11 Asia and things like that. So it is really hard for me to say -- to answer directly
12 on your question, because it varies a lot.
- 13 **Q.** And in paragraph 11 in the confidential section, so we will not read it out, but
14 obviously you give a percentage there for your largest buyers?
- 15 **A.** Yes.
- 16 **Q.** So when you say 80% -- when you give the figure there, again it's the same type
17 of sense, the same metric?
- 18 **A.** It is the same methodology I used, yes. It is just for me to try to explain that
19 these five or the bundle of suppliers -- buyers here are the largest ones that
20 we have and they represent almost 100% of what we do at the time.
- 21 **Q.** And obviously we have a figure in this paragraph. There is the balance of that
22 figure, what's left of 100%. So you're saying that the remaining 50 buyers or
23 so, however many it is, account for that remaining percentage, including the
24 3% for the Danish operators. Is that right?
- 25 **A.** Yes, because the nature of the oil and gas industry is that not every buyer have
26 projects, because this is a project driven industry. Hence if you don't have

1 a project, you don't need to buy anything. If you don't need to buy anything,
2 you don't need suppliers and that varies over time. Some of them have major
3 projects going on like the Arca Solutions, for example, just as a management
4 contractor, who is one of the largest we have. They have all sort of a good
5 pipeline, but others don't, and others of these 66 that we refer to are small
6 suppliers themselves, who use our system to find their suppliers again, and
7 they may have small activity at the point. So it varies during the year and by
8 year. Remember, we just came out of a huge oil crisis where there was
9 really, really no activity at all. When we finally saw some light in the tunnel,
10 we were hit by COVID-19. So it varies.

11 **Q.** Yes.?

12 **A.** If you ask me next year, this may be changed to someone else.

13 **Q.** Okay?

14 **A.** And that's the nature of this industry.

15 **Q.** That's fine. Then just in paragraph 16 of your statement?

16 **A.** 6?

17 **Q.** 16?

18 **A.** 16. Sorry.

19 **Q.** Towards the end you say:

20 "For the reasons above my belief and understanding has always been that since its
21 launch EPIM JQS has been operating in the same market as Achilles JQS, in
22 competition, and not only in one portion of our market."

23 Just to be clear, EPIM JQS does not offer audit for the supply chain of contractors,
24 does it? Again it is the same point that we discussed?

25 **A.** We just read about Mr Thomassen's -- sorry -- Mr Thomassen's statement that
26 they provide for the operators, so no.

1 Q. I think those are all the questions I have. Thank you.

2 A. Okay.

3

4 **Re-examination by MR WOOLFE**

5 **MR WOOLFE:** Thank you, Mr Gjertsen. I just have a short question. Do you have
6 the miscellaneous bundle, tab 15, Mr Thomassen's e-mail? First of all I will
7 just be really grateful if you would clarify, they seem to distinguish between
8 operators and others in the oil and gas industry? Can you just be clear what
9 do operators do.

10 A. Okay. An operator is an oil company, as you know, like Shell, for example, BP.
11 That's an operator. To be an operator you have to get a licence from the state
12 to operate a field, whatever field it is called off-shore. So you can't be an oil
13 company without being an operator.

14 Q. Okay. Thank you. The others are everybody else who doesn't operate an oil
15 field essentially?

16 A. Everyone else. You can be an oil company, but by being an oil company you can
17 also buy licences in other fields that are owned by an operator and the rest if
18 you say operators there, and the rest is defined as suppliers, no matter how
19 large they are.

20 Q. Thank you. Then if you look at the e-mail that's in front of you, I think in the last
21 paragraph, the second sentence says:

22 "The audit service is run by Norwegian Oil and Gas (formerly EPIM) for operating
23 members only and is paid for by them."

24 So that seems to say that it is only operators who can request audits. Is that right?

25 But then in the preceding paragraph it says:

26 "The audited supplier can choose to market the audit report available for everyone or

1 only for operators."

2 If you see the previous sentence?

3 **A.** Yes, I have seen that.

4 **Q.** So can other people who are non-operators, can they join EPIM as buyers and

5 see the information on EPIM as buyers?

6 **A.** Yes, yes, they can. Do you want me to --

7 **Q.** Yes. Go on.

8 **A.** The reason I know that is that I have pre-qualified Achilles JQS in EPIM, because

9 we are a provider of services to some of the oil companies, and by doing that

10 as a supplier I can also look at all of the other suppliers and I can search as

11 a buyer in that. So yes.

12 **Q.** Are you allowed to request audits in that capacity?

13 **A.** No, no, I am not.

14 **Q.** Thank you, Mr Gjertsen. Those are all the questions I had. The tribunal may

15 have other questions for you, however.

16 **THE CHAIRMAN:** No questions, Mr Gjertsen. Thank you very much.

17 **A.** Thank you.

18 **(Witness withdrew)**

19 **MR WOOLFE:** Sir, I am just conscious of the shorthand writers. Would now be

20 a convenient moment for a short break?

21 **THE CHAIRMAN:** Yes. Five minutes until 3.25.

22 **(Short break)**

23 **MR WOOLFE:** Our last witness is Mr Nelson. Mr Nelson, would you go into the

24 witness box?

25

26 **MR WILLIAM NELSON (affirmed)**

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Examination-in-chief by MR WOOLFE

MR WOOLFE: Could Mr Nelson be given volume B, please?

A. Thank you.

Q. Thank you. Can you open that? First of all can you turn to tab 7? You should see there a witness statement you gave in the liability trial. I want to see if you recognise that and it is there?

A. Yes.

Q. Thank you. Now if you turn to tab 8 and you will see a document entitled "Second witness statement". Do you recognise that statement?

A. Yes.

Q. And can you turn to the page 214, the last page in that tab?

A. Yes.

Q. You see a signature. Is that your signature?

A. Yes, it is.

Q. Is there anything you would like to change or correct in this statement at all?

A. No.

Q. Is this the evidence you would like to give in these proceedings?

A. Yes, it is.

Q. Thank you.

Cross-examination by MR WENT

MR WENT: Good afternoon, Mr Nelson.

A. Afternoon.

Q. If you could just look at paragraph 12 of your statement, please. Right at the start of that paragraph you say: "I was surprised to read the comments of Mr

1 Matthews and Miss Grant." Yes?

2 **A.** Yes.

3 **Q.** Did you go back to check what feedback they had provided while Achilles was
4 a concession holder?

5 **A.** I went back to check general feedback and see what I could find. I didn't find any
6 specific feedback for those people I don't believe.

7 **Q.** Okay. You provided us I think with some specific comments for a selection of
8 months, February 2017, July 2017 and November 2016?

9 **A.** Yes.

10 **Q.** I suppose you have chosen months where the feedback was particularly
11 positive?

12 **A.** I have chosen months where there was good feedback but I think it is fair to say
13 that there wasn't any significant swing between months. I mean, we operated
14 a fairly consistent service. So ...

15 **Q.** I think we know that there was potentially some confusion in the marketplace
16 after September 2017 but you have not provided any comments or
17 information on feedback from September 2017 onwards?

18 **A.** I am not sure what you -- specifically in relation to audit?

19 **Q.** No, I mean more in terms of Achilles putting out amounts in September, they
20 were going to continue to provide a competing service with Link-up and then
21 apparently there was confusion in the industry. Network Rail put out a notice
22 saying that all their direct contractors would need to be assured through --

23 **A.** To be honest that is not something I was really involved in, very much audit
24 focused.

25 **Q.** That's fine. If we can look at paragraph 12(d), please?

26 **A.** Yes.

1 **Q.** So you say as part of that:

2 "So we proactively approached suppliers and engaged with them early in order to
3 provide a smooth service. We built in this notification process because we
4 could see it would be helpful for our customers."

5 If we just go to your exhibit, which is at bundle C, tab 12?

6 **A.** Yes.

7 **Q.** If you turn within that to page 788, so I think this is starting to give some specific
8 comment from customers?

9 **A.** Yes.

10 **Q.** This is from February 2017, you can see on the left-hand side. If we just turn
11 over the page to 789, so this is -- sorry. If you go back to 788 at the top it
12 says "Satisfaction comment for audit"?

13 **A.** Yes.

14 **Q.** So that's what's being looked at. Then if you go over the page to 789 if you look
15 at the right-hand side, the second comment down:

16 "Two days before the audit date we called to confirm the details and the fact that this
17 was a reduced audit. With only 24 hours notice it was changed to a full four
18 day audit, which gave us little time to collect the additional evidence." Then
19 they give you a score of 3 there?

20 **A.** Yes.

21 **Q.** If we go to page 790, next page, right at the top, the very top comment on the
22 right-hand:

23 "Although audit was good, the preparation was poor, as dates booked with auditors
24 were incorrect initially and confirmation at the very last moment. The first
25 auditor did not know if the Sentinel audit was required or not and had to get
26 feedback from the office on the day of the audit causing confusion. Auditors

1 were both excellent."

2 But they gave you a score of 4 for that because of the comments?

3 **A.** Yes.

4 **Q.** If we go to page 791 onwards.

5

6 **A.** Sorry. 791?

7 **Q.** Yes. Just the next page. In the middle column right -- towards the bottom, the

8 third comment up, so this is asking for improvement comments in the audit

9 I think:

10 "Tell us that changes have taken place. Explain the changes and what we may need

11 to do because of these changes."

12 That was the comment there. Then page 792, right-hand side right at the bottom:

13 "Achilles still have work to do in its back office administration and people related

14 'customer service'. Process interactions are transactional in nature and

15 inefficient in implementation. Consequently this leads to uncertainty, rework

16 and undermines the customer in preparing for the output of the process,

17 which is the audit itself. The auditor and the audit itself saved Achilles from a

18 lower score."

19 That was a score of 5. We can see that. yes?

20 **A.** Yes.

21 **Q.** Then 793 over the page in the middle column right at the bottom, this is about

22 booking audits in:

23 "So send out the correct protocols with the audit e-mail. Not a big deal, but some

24 people might not realise they have been sent the incorrect one", etc.

25 You can see that there?

26 **A.** Yes.

1 Q. Then 798, if we can go on -- I think this is just from a different time period?

2 A. Yes.

3 Q. It is July 2016. On 798 just on the right-hand side, final column, this is audit
4 experience. If you look at the fourth one up from the bottom for Charvel it
5 says: "Finally got a decent auditor."

6 A score of 1 in terms of likely to recommend for audit. You can see that?

7 A. Yes, I can see that.

8 Q. Then page 800, a couple of pages on, again the middle column. This is looking
9 at satisfaction comment for the audit. Right at the bottom, four up from the
10 bottom it says:

11 "Was not given enough information as to how things should be set out for a first time
12 audit."

13 And a score of 5 you can see?

14 A. Yes.

15 Q. And then 814, if you turn on to that page, again I think this is for another month
16 again?

17 A. 814?

18 Q. 814, yes, exactly. Then if you look, it is sort of the comments on the right-hand
19 side in between the two hole punches?

20 A. Yes.

21 Q. It says:

22 "Overall satisfaction is about 10 for both."

23 You see the improvement comment more:

24 "Support during the planning stages especially under circumstances where there
25 have been changes to the protocol."

26 Beneath that:

1 "Booking process poor this year compared to previous years, several requests made
2 for a date and date given was not followed up."?

3 **A.** Yes.

4 **Q.** I mean, it is fair to say obviously that not everyone has been happy with Achilles'
5 proactive approach prior to the audit. That's fair enough?

6 **A.** I think that's entirely fair. I mean, if you think about the sheer number we did, we
7 are never going to be perfect across all audits.

8 **Q.** Yes.?

9 **A.** But I think that we hit a consistent good standard and I think that that standard
10 was recognised through the industry.

11 **Q.** Yes. This is just three months' worth of comments. If this was multiplied over
12 four years or longer, then there would be no negative comments. Yes?

13 **A.** Yes, there would be more negative and more positive.

14 **Q.** Yes, indeed. If we can look then just at page 803, please?

15 **A.** 803?

16 **Q.** Page 803. I just want to briefly look at the graph at the top. So this shows us
17 during the period, I think it is February 2016 to December 2016, it shows the
18 areas you need to prioritise and can't leverage based on the feedback during
19 that period. Yes?

20 **A.** Sorry. Can't leverage?

21 **Q.** Yes. That's what it seems to say. You have on the left-hand side prioritise at the
22 top of the graph. The right-hand side says leverage and it says maintain at
23 the bottom?

24 **A.** Okay. Sorry.

25 **Q.** It's priorities at the left-hand side. Prioritise, the numbers there, you can see
26 number 2. "That's satisfaction support from Achilles to prepare for the audit."

1 Yes.?

2 A. Yes.

3 Q. Number 5. "Satisfaction the audit booking process"?

4 A. The audit booking process.

5 Q. Number 3 "Satisfaction Achilles explanation of the process." Yes?

6 A. Yes.

7 Q. In paragraph 22 you explain --

8 A. We are back in the --

9 Q. Sorry. Keep that open, because I think we are going to come back to it in

10 a moment. At paragraph 22 you explain here (inaudible) for your feedback in

11 the customers surveys?

12 A. Yes.

13 Q. If we can turn to 810, please back in the bundle -- back in your exhibit again?

14 A. Page 110.

15 Q. Page 810?

16 A. 810. Sorry. Yes.

17 Q. So this top chart here is called the audit net promoter score likely to recommend?

18 A. Yes.

19 Q. This is from the period December 2015 to November 2016. So this shows the

20 net promoter scores for that period. I think it shows you had 477 responses

21 during the period. That's at the top there?

22 A. Yes.

23 Q. And that's something like from a total of 1932 audits you can see there at the

24 bottom. So something like a 25% response rate. If we look at the top chart,

25 for example, in November 2016, you can see a score of 35.7?

26 A. Yes.

1 **Q.** We have obviously looked already. We have the detail for November 2016 at
2 page 813 onward. I just want to check that I understand this correctly. So we
3 are looking at the likely terrain category from feedback comments. There
4 were 42 responses in that month in total. 7 of the 42, and that's 17% of the
5 total, gave a score of 6 or less. So I think they are then described as
6 detractors. Does that sound right?

7 **A.** I am not exactly sure how net promoter scores in regards to talking about
8 translating between percentages and feedback, because, as I understand it,
9 with net promoter score you get options to put yourself down as whether you
10 promote the service, whether you are neutral or whether you would actually
11 dissuade. So actually how the percentages work I couldn't ...

12 **Q.** I have had a quick look at it. So maybe I can give you what I think it is saying?

13 **A.** Okay.

14 **Q.** I have counted up. So 7 of the 42, that's 17% of the total, gave a score of 6 or
15 less. So they are the detractors. 13, and that's 31% of the total, gave a score
16 of 7 or 8 and I think they are described as passives.

17 **A.** Okay.

18 **Q.** Does that sound right in terms of the terminology?

19 **A.** It could be.

20 **Q.** Then 22, that's 52% of the total, gave a score of 9 or 10 and so they are the
21 promoters. Then if you subtract the detractors from the promoters you get the
22 next score of 35. So it is 17% subtracted from 52% and that leaves 35. Does
23 that sound right?

24 **A.** I don't know how they create the net promoter score so I can't -- it sounds like
25 a reasonable methodology you put before me but I can't agree or disagree.

26 **Q.** As this was an exhibit to your witness statement I assumed this is something you

1 would be able to help us on?

2 **A.** It is something that if you read it from a net promoter's score it is shown that we
3 are positive in people wishing to promote us as against people that are
4 detracting from us.

5 **Q.** Understood. If I am right that there are 17% detractors every month, that is not
6 an insignificant number of detractors, is it?

7 **A.** But if you are then going to get into the mentality of people that actually feel
8 strongly enough to react to an event, so that's 17%, but you have got -- you
9 are not counting people who had a perfectly acceptable audit that they didn't
10 respond to.

11 **Q.** Okay. If you look at July 2016, there's a net promoter score of 17.8?

12 **A.** Yes.

13 **Q.** Again we've got the detail behind.

14 **A.** Yes.

15 **Q.** And that shows that there were 22% detractors and 40% promoters, and that
16 gives you the figure of roughly 18?

17 **A.** Yes.

18 **Q.** I just suggest in this context it shouldn't be surprising at all that Network Rail
19 witnesses in this case are given negative feedback. Is that fair?

20 **A.** Sorry. I am not ...

21 **Q.** Well, you said you were surprised to read negative comments from Network
22 Rail's witnesses. I am just suggesting to you actually you do get negative
23 feedback. I am just saying --

24 **A.** I don't think I have ever denied that across all of our audits some of the audits
25 don't go as we would like. More from reading the witness statements put in
26 I was surprised at the blanket statements about the overall audit performance,

1 because I think our audit performance is overwhelmingly positive in my
2 personal opinion. I know I am here to give facts but in my opinion I believe
3 our audit was held in high regard and was delivered to a high standard.

4 **Q.** But you do get negative feedback?

5 **A.** We absolutely do. We do thousands of audits a year and do get negative
6 feedback from some of those audits.

7 **Q.** That includes now from the Network Rail witnesses. Yes?

8 **A.** What do you mean by Network Rail witnesses?

9 **Q.** The negative comments in their witness statements?

10 **A.** Okay. Yes, in relation to the individual witnesses. So Sue Grant I believe was
11 talking about her audit.

12 **Q.** Yes.

13 **A.** And it is entirely right that she may have had a negative experience. I wasn't part
14 of that audit, but we do have some audits, as you have seen, as you have
15 pointed out, 17%, where there may be a negative event, or they may have
16 been unhappy about something related to that audit. I mean, the other point
17 to make about the findings is the audit is spread over a whole range. So we
18 engage with the supplier about four months before their expiry date, and
19 actually there's a lot of coordination, a lot of coordinating and booking and
20 making sure that the information is correct, and then making sure that the
21 auditor is there at the right time and does the audit to a high standard.

22 So with our audits there are probably four to five individual phases and if one of
23 those areas goes wrong and, as you pointed out, you know, support before
24 the audit or something like that, if that doesn't go quite to plan, there may well
25 be a negative comment. My reaction to the witness statements was much
26 more around they seem to be -- where they were talking about the overall

1 audit service, and I thought that our overall service was strong, was held in
2 positive regards and was a credit to Achilles.

3 **Q.** Okay. I don't have any further questions. Thank you.

4
5 **Re-examination by MR WOOLFE**

6 **MR WOOLFE:** Just a short question. How many audits did you perform a year
7 when Achilles was operating RISQS?

8 **A.** When Achilles was operating RISQS it was almost 2000 audits a year.

9 **Q.** Thank you very much. I have no further questions.

10 **THE CHAIRMAN:** Thank you very much, Mr Nelson.

11 **A.** Thank you.

12 **(Witness withdrew)**

13 **MR WENT:** If I can call Mr Blackley, please?

14
15 **KENNETH BLACKLEY (affirmed)**

16
17 **Examination-in-chief by MR WENT**

18 **MR WENT:** If Mr Blackley could be passed volume D, please. If you can turn to
19 tab 8 within that. Just for the tribunal's reference as he is turning to that,
20 Mr Blackley gave two witness statements at the liability proceedings. They
21 are at D1 and D3. Do you have that? Do you recognise that statement?

22 **A.** I do, yes.

23 **Q.** If you turn to the last page?

24 **A.** Yes, that's my signature.

25 **Q.** And that's the evidence of your third statement. Yes?

26 **A.** Yes.

1 Q. Then if you turn over to the next tab, again do you recognise that statement?

2 A. Yes, and that's also my signature.

3 Q. And that's your signature. Then if you just turn to the miscellaneous bundle,
4 I think it is tab 10. Do you recognise that signature?

5 A. Yes.

6 Q. If you turn to the back, that's your signature?

7 A. Yes.

8 Q. That's the evidence you want to give in these proceedings?

9 A. Yes.

10 Q. If you wait there, there will be some questions for you.

11

12 **Cross-examination by MR WOOLFE**

13 **MR WOOLFE:** Do you have bundle D in front of you, Mr Blackley, bundle D?

14 A. Yes.

15 Q. That's great. So the first thing I want to turn to with you is the issue of to whom
16 Network Rail can mandate the use of RISQS. So in your third statement,
17 which should be at tab -- where are we -- tab 8 of that bundle, I just want to
18 make sure I understand your position on this. If you go to paragraph 21 on
19 page 80, you refer to the chicken and egg, as you call it, problem of the
20 difficulty a new scheme would have in attracting buyer and supplier members.

21 You say in I think the third sentence of that paragraph:

22 "From a table in schedule 3 the vast majority of buyers in the scheme supply directly
23 to Network Rail. As direct suppliers to Network Rail they are required to be on
24 RISQS."

25 Then at paragraph 22 I think you say -- 22(b) -- you refer to the fact that:

26 "Suppliers to our tier 1 suppliers will be in RISQS already for the purpose of

1 prequalifying with Network Rail."

2 The suggestion there is that not just your tier 1 suppliers but suppliers to your tier 1
3 suppliers will need to be in RISQS already. Then at paragraph 36, so a few
4 pages further over, page 85, you refer to suppliers who are interested in
5 working with Network Rail and so they can register in BravoNR at any time.
6 BravoNR -- Bravo is sort of brand of procurement system and BravoNR is the
7 implementation of it in Network Rail?

8 **A.** BravoNR we describe that as an NTN contract management system but it also
9 includes the procurement portal which we operate.

10 **Q.** Right, and BravoNR is your own one that they provide to you and you use. It is
11 all specified --

12 **A.** That's correct.

13 **Q.** And you say -- you refer "to those suppliers who register with BravoNR to
14 participating intenders". You say in the fifth line down:

15 "They are therefore a company seeking to tender and contract directly with Network
16 Rail. As such, these suppliers on a RISQS and BravoNR are not surprised
17 with whom Achilles could likely provide authentic assurance in the rail
18 industry, given as set out in paragraph 20 above, Network Rail were and are
19 entitled to specify the use of RISQS for suppliers contracting directly with
20 them."

21 I want to see how this is put through into your analysis at paragraph 38, and just
22 below 38 you have a table you prepared where it seems what you did, as
23 I understand it, was start out with all the suppliers and then you have
24 successfully removed anyone who either Network Rail have expenditure with,
25 or had in some way indicated an interest in contracting with Network Rail
26 either by having a Bravo ID, that's the second line, or having responded in

1 a questionnaire to say they were interested.

2 So you had excluded anybody who had contracted with Network Rail or was
3 interested in contracting with Network Rail.

4 Then at 39 -- I just want to get this all straight -- you say at the bottom of that page:

5 "There is a very limited pool of suppliers Achilles could realistically have sought to
6 pursue since May 2018."

7 Perhaps look at your statement and see what you said:

8 "Even assuming that any buyers chose to move over to Achilles' platform."

9 Now to make sure I have understood your evidence, are you saying even if there are
10 buyers on the Achilles scheme, Achilles can't compete for these suppliers
11 because they are suppliers who contract with Network Rail?

12 **A.** I think principally those suppliers that contract with Network Rail directly, and this
13 exercise was borne out of a request that Achilles made for Network Rail to
14 provide quite a lot of analysis of our supply chain. So that analysis really led
15 to this table and this table was really saying that the statement we make on
16 our website is that where Network Rail contract directly, we use RSSB RISQS
17 to assure those suppliers we contract directly with for safety critical goods,
18 works and services. So that's one of the things we deducted. When it comes
19 to the Bravo comment, there are currently over 14,000 suppliers in Bravo and
20 that tells me that they are interested in contracting with Network Rail directly
21 and that was another role deduction.

22 **Q.** What I'm sort of not understanding is -- I can understand why somebody who
23 does contract with Network Rail, they have to be on RISQS because you
24 make it a pre-condition of employing them as a supplier that they are on
25 RISQS. That's right, isn't it?

26 **A.** Not every supplier.

1 Q. Sorry?

2 A. Not every supplier has to be on RISQS.

3 Q. No, but if you have a supplier who needs to do track side work, you make it

4 a pre-condition of supplying Network Rail --

5 A. Yes.

6 Q. -- that they are on RISQS?

7 A. Correct.

8 Q. But that doesn't mean they can't be on Achilles, does it?

9 A. No, because it is open for other buyers to use Achilles to assure their supply

10 chain.

11 Q. So you are not -- I want to put a series of propositions and just check what you

12 accept and what it means to your analysis.

13 First, do you accept that Network Rail can't tell its suppliers what supplier assurance

14 system they should use when those suppliers are themselves acting as

15 buyers downstream?

16 A. That is correct.

17 Q. Secondly, do you accept that if another buyer chose to mandate Achilles as its

18 supplier assurance scheme, then any supplier who wanted to provide services

19 that buyer would have to register with Achilles in order to supply that buyer?

20 A. That's correct as well.

21 Q. And do you accept that you are not entitled to require your suppliers to only

22 obtain assurance through RISQS?

23 A. Yes. Correct. I think typical except insofar as when we are contracting directly

24 with the supplier to carry out goods, works or services or safety critical. That's

25 when we do require them to be on RISQS (inaudible).

26 Q. Yes, you can require them to be on RISQS, but you can't require them to only be

- 1 on RISQS and not on Achilles. Yes?
- 2 **A.** No.
- 3 **Q.** Fine. Do you accept that if Network Rail continues to mandate RISQS, but other
4 buyers choose to mandate Achilles, then some suppliers would have to be on
5 both systems?
- 6 **A.** It is possible that suppliers can be on both systems, but I think what I was trying
7 to do with this table was look at the likelihood to try and size the pool of those
8 suppliers that would be likely open to other approved supplier assurance
9 providers.
- 10 **Q.** But the only reason you give for removing these suppliers in your analysis is that
11 they do contract with you?
- 12 **A.** There are other reasons there where, say, they are likely to want to contract with
13 us and I use that for a reason as deducting as well.
- 14 **Q.** Okay. You are presenting the numbers at the bottom of that table. So a total --
15 this is the second -- the easiest way of doing it is not the last row but perhaps
16 the one just above it, "Total remaining". You are presenting that as the total
17 pool of suppliers for whom Achilles could possibly compete?
- 18 **A.** That is me saying that is what I think is the likely pool for which Network Rail --
19 Achilles could compete.
- 20 **Q.** So you are excluding any possibility that -- sorry. Are you excluding any
21 possibility that any buyers at all could stay with Achilles?
- 22 **A.** If they are contracting directly with Network Rail for safety critical goods, works or
23 services, I am expecting those suppliers to be on RISQS.
- 24 **Q.** But on this analysis you are expecting to only be on RISQS and not be on
25 Achilles?
- 26 **A.** No, because a supplier will -- if a supplier sees a benefit for being on any other

1 system, whether it is Achilles or some other system, if they see value in that,
2 then they are likely to join and pay the subscription because of the value, but
3 so far as rail-related work is concerned, I am envisaging that suppliers are
4 looking at the economies of scale of not requiring their supply chains to spend
5 unnecessary money and be in multiple systems.

6 **Q.** But you can't remove these numbers of suppliers, can you, simply on the basis
7 that they supply Network Rail?

8 **A.** That was just one piece of the analysis.

9 **Q.** Well, it is the only piece of the analysis, because the only reason you have put
10 forward in this table that each for these chunks of suppliers being removed is
11 not you have taken a sort of proportionate view of how likely these people are
12 to stay with Achilles and removed a portion of them; you have removed the
13 entirety of those who have direct expenditure and the entirety of those who
14 have Bravo ID and the entirety of those indicating any interest in supplying
15 Network Rail. The logic of that must only be if somebody is supplying you,
16 Network Rail, they can't take assurance from Achilles at all. Is that your
17 evidence?

18 **A.** I wasn't thinking about it as they can't take it from Achilles. I am looking at this
19 from a Network Rail point of view and seeing, when I analyse the numbers,
20 and you will see you have deducted numbers there for TfL London
21 Underground, because based on my understanding that TfL London
22 Underground also require their supply chain to be in RISQS. That's another
23 reason why I am not envisaging them joining the Achilles scheme. So I have
24 tried to look at this and segment the areas that I can actually deduct from the
25 top line number.

26 **Q.** Okay. Then you have an equivalent table under paragraph 42 on page 88 and

1 you give some explanation about it at paragraph 43, and am I right in
2 understanding that first line of that table you have removed as potential
3 buyers any company with whom Network Rail had direct procurement
4 expenditure? That's what you have ...?

5 **A.** Any buyer who had direct expenditure with Network Rail within a five year period
6 is what Achilles asked us to include in the exercise.

7 **Q.** But you are doing something different. You are not simply presenting the data
8 which Achilles asked for. You are making a point at paragraph 42 that
9 Achilles could not have had a viable assurance offering because you take out
10 at the first step 63 companies who are buyers purely on the basis that they
11 are companies whom you spend money with?

12 **A.** Correct.

13 **Q.** But you accepted a few minutes ago that Network Rail can't tell its suppliers what
14 system to use when they are acting as buyers, can you?

15 **A.** Correct.

16 **Q.** So these people may well have chosen to specify Achilles?

17 **A.** I am looking at the likelihood of the available buyer pool to Achilles, and I am
18 looking at if suppliers have contacted with Network Rail in the five-year period
19 and they are likely to continue to contract with Network Rail, then they are
20 required to be on RISQS.

21 **Q.** But what I am saying to you is the fact that you require them to be registered as
22 suppliers on RISQS is fairly irrelevant to whether or not they choose to act as
23 buyers on RISQS, isn't it?

24 **A.** Yes. They are entitled to act as buyers on RISQS and they clearly say that on
25 their website. Network Rail don't stipulate which supplier assurance provider
26 any of the tier 1s can use.

1 Q. Okay. In terms of -- you say you are giving evidence to the likelihood and that's
2 how you get these numbers. So I understand, your role is in procurement at
3 Network Rail. Is that right?

4 A. Commercial procurement, yes.

5 Q. Commercial procurement, and how long have you worked in that field?

6 A. 27 and a half years.

7 Q. How long have you worked at Network Rail?

8 A. 27 and a half years.

9 Q. In that context you use supplier assurance as a buyer yourself, don't you?

10 A. Yes.

11 Q. And you are familiar with using it as a service in that context?

12 A. Yes. I have been familiar with the various stages of the evolution of the
13 system probably since the early '90s.

14 Q. But have you ever worked for a third party supplier assurance provider like
15 Achilles?

16 A. No.

17 Q. You don't have any particular experience of how supplier assurance schemes
18 market themselves, do you?

19 A. No, no direct experience at all.

20 Q. Have you ever worked in any form of marketing role?

21 A. No.

22 Q. Okay. Can I jump now to your evidence about the implementation of the
23 judgment? So within your third statement paragraphs 61 and I think 63.
24 Again I want to make sure I have your evidence straight on this. You refer at
25 61 to:
26 "... despite Network Rail's efforts to expedite the stakeholder consultation process

1 and facilitate early engagement by Achilles with the terms of the Standard",
2 that's the NR302 standard, "and the API requirements, Achilles has not
3 re-entered the market."

4 This was your statement given in March of this year. You refer to what you call
5 frequent unsolicited and unjustified complaints about Network Rail's approach.

6 Then at 63 you say:

7 "Achilles' decision to contest Network Rail's design of the Standard and API interface
8 has undoubtedly caused considerable unnecessary delay to Achilles' re-entry
9 into the market for supplier assurance in the railway industry, none of which
10 Network Rail was responsible for."

11 That's your evidence. Then in your fourth statement, which is the next tab over,
12 tab 9, at paragraphs 37 to 38, in response I think to Miss Ferrier's evidence on
13 this issue, you dealt particularly with an issue about -- having dealt with
14 standard and API in your first statement, she wrote an issue about the
15 auditing.

16 You refer at paragraph 38 to the fact that Network Rail had selected a company
17 called RDPA Ltd to act as Achilles' auditors and the fact they had been
18 deselected for a conflict of interest. You say that:

19 "... I believed that RDPA have the right skill set and expertise to undertake these
20 senior level audits for Network Rail. However, the conflict of interest that has
21 led to the Achilles' audit being postponed ... is not the one raised by Achilles,
22 as Miss Ferrier mistakenly infers ... Rather, it is a commercial matter between
23 Network Rail and RDPA ... concerning a non-disclosure by RDPA ... of its
24 membership of RISQS."

25 Then at 40 you say, the last sentence of that:

26 "... Network Rail has certainly not adopted any adversarial attitude to the

1 implementation of the Tribunal's Judgment but have rather made every effort
2 to accommodate issues raised by Achilles even beyond the scope of what
3 was required ..."

4 So am I right, summing all that up, essentially your evidence is Network Rail always
5 acted in good faith when trying to implement the judgment. Is that your
6 evidence?

7 **A.** Absolutely and sincerely, because there is no reason why we should drag our
8 heels in getting Achilles access to the market place.

9 **Q.** And you always sought to implement the judgment as quickly as possible?

10 **A.** That has always been our intention.

11 **Q.** You put the delays down entirely to Achilles raising unjustified points about the
12 standard and API and choice of auditor?

13 **A.** I believe if there had been a willingness between the parties to kind of keep the
14 communication going, we would have found a solution, you know, to various
15 issues that arose, but I believed that we had guidance from the original case
16 that said, for example, Network Rail were able to use the RISQS system as
17 their platform. So logically -- certainly in my mind logically that was -- using
18 that system that was already ready made and having a bolt-on section to it
19 was the quickest way that Network Rail could facilitate access to the market
20 from the platform point of view.

21 **Q.** We are going to be looking in some detail at sort of the story of implementation of
22 the judgment and we will look at the documents. You can put away volume B
23 for the moment. You won't be needing it for a little bit.

24 Can you get out volume G10, please? It is G10 and the first tab we are going to go
25 to in it is 518, which is quite close to the front of that. You should have tab
26 518. It is an agenda for a meeting held on 11th September 2019, top left, at

1 Jury's Inn, Milton Keynes. It was a morning meeting, on the right-hand side.

2 The attendees includes you. You remember that meeting?

3 **A.** Yes.

4 **Q.** It also includes -- the attendee list includes a Damon Snell from the RSSB and
5 Richard Sharp from the RSSB.

6 **A.** Yes.

7 **Q.** Richard Sharp, he had been the RISQ Scheme Manager previously. Is that
8 right?

9 **A.** Correct, yes.

10 **Q.** By this time -- Gillian Scott was the RISQ Scheme Manager at the time of the
11 trial. Was she still at the time of this meeting? Am I right?

12 **A.** I believe Gillian had taken over by the time of the trial, but Richard Sharp was still
13 employed by RSSB in some capacity.

14 **Q.** Okay. Thank you. You can see what that was about. The purpose was:

15 "To review options and next steps to implement Competition Appeal Tribunal
16 decision"

17 and there was the CAT judgment, which referred to implications for Network Rail,
18 and the question:

19 "What does this practically mean for Network Rail and the current RISQS?"

20 and some proposed steps. This is the agenda for the meeting.

21 Now just to get the timing straight, this was after the judgment but this was before
22 the tribunal made its order. Is that right? Do you recall?

23 **A.** I don't recall the timing of those two things.

24 **Q.** Okay. What we can see if we turn over to tab 520 is an e-mail from you to
25 Richard Sharp of the RSSB, dated Thursday, 12th September, 2019 at 8.39.
26 So this is the day the agenda we have just seen for the meeting. It says:

1 "Richard, can you cast your eye over this, please?"

2 This seems to me to be effectively your notes, your minutes of the meeting, perhaps
3 a bit in the form of an e-mail but your minutes of the meeting?

4 **A.** Yes, these are my notes of the meeting.

5 **Q.** Fine. You prepared this the morning after. Now I think, just so you are aware,
6 he sends a version of this back to you at tab 521, but I think that the changes
7 are fairly minor, so we are going to stick to the one here.

8 Now the first point to note, certain key assumptions:

9 "Network Rail's understanding of the CAT judgement ... will be ruled to be correct ..."

10 So I think this is before the hearing had taken place.

11 Second key assumption:

12 "Network Rail may use a third party system as a repository, eg RSSB, to facilitate
13 storage and data management."

14 Then we have in the next bullet point under "We established that":

15 "RSSB offered to allow NR to use their platform (under RISQS) to facilitate a solution
16 for the storage and communications associated with suppliers assurance
17 records ..."

18 So that was something that either Damon Snell or Richard Sharp volunteered at the
19 meeting. Is that right?

20 **A.** No. Actually that had been a previous meeting which I held in RSSB's offices to
21 gain their tacit approval that should we be asking for help and support to
22 expedite this process, that that wouldn't be unreasonably withheld and they
23 would willingly give that.

24 **Q.** Okay. So they said they were willing to do that. Now over the page, although we
25 will come back to this page, at 4935 under "Appropriate IT requirements",
26 there's a reference under the first bullet point to:

1 "... significantly help[ing] manage the downstream risks associated with the Sentinel
2 interface."

3 It sets out a series of points that you agreed.

4 "Achilles [etc] ... would transfer ... records electronically ...

5 RSSB would be responsible for checking the ... records ...

6 RSSB would store records on Network Rail's behalf and facilitate Network Rail being
7 able to view ...

8 RSSB to provide details of field names and requirements to Network Rail within 14
9 days. Network Rail will reflect the requirement in 302 and explore the
10 possibility of sharing this early with Achilles such that Achilles's can
11 commence the development of their API ..."

12 So that reference to "details of the field names and requirements", that's the API
13 specification that they are talking about. Is that right?

14 **A.** That's correct.

15 **Q.** Yes. It refers to the possibility of sharing that early with Achilles, but, in fact, that
16 was not ultimately shared until March, was it? February. I apologise. Until
17 February 20...?

18 **A.** No, I think it had been prepared the previous November, but it wasn't ultimately
19 shared until either February or March.

20 **Q.** Okay, but at this point you were envisaging the possibility of preparing the API
21 and sharing it at an early stage with Achilles and it could be available in 14
22 days, but you didn't ultimately send it to Achilles until February. Is that right?

23 **A.** That's correct.

24 **Q.** Now if you turn back to the previous page, there is I think just between the two
25 hole punches the "Standard with which supplier assurance providers must
26 comply":

1 We acknowledged that:

2 RIS2750 is 'high level' ..."

3 The RIS2750, that's an RSSB standard dealing with standards for supplier
4 assurance both internal and external in the rail industry. That's right.

5 "We agreed that:

6 NR", Network Rail, "should proceed by reintroducing the equivalent of
7 'NR/L2/CPR/302 - Supplier Qualification - Core Requirements' which was
8 withdrawn in February 2019."

9 So we are going reintroduce an old standard, albeit, as you say, next sentence:

10 "It requires a significant re-write to bring it up-to-date ..."

11 So that's essentially what the NR302 standard was. It was your re-write, was it, of
12 an early standard that existed, a very substantial re-write?

13 **A.** So the best way I can describe this is I was aware of the very old 302 and
14 therefore in order to speed things up within Network Rail proposing it as
15 re-write using the old number, but equally taking on board the information that
16 I knew to exist within the RSSB, and my view was that rather than the
17 traditional approach of writing standards in a very prescriptive way with
18 working group members and (inaudible) group members, what I wanted to do
19 was gather that information together at an early stage, essentially pull all that
20 information together and actually get a very early draft so I could try to get it
21 through Network Rail's working group and stakeholder approval group quicker
22 than a normal standard.

23 **Q.** Okay. Now the end of that paragraph in bold says:

24 "RS Contracts and Procurement shall own this action ..."

25 RS, that is Route Services. Is that right?

26 **A.** Yes.

- 1 **Q.** And Route Services Contracts and Procurement, that's you in effect, Mr Blackley.
- 2 Correct?
- 3 **A.** Yes.
- 4 **Q.** That is the way you sit, as it were. It refers to a completion date of the end of
- 5 October 2019. So at this point, which I think is 12th September, you thought
- 6 that the reintroduction of NR302 could be done in about seven weeks. Is that
- 7 right?
- 8 **A.** Certainly getting the draft available to then go through the various stakeholder
- 9 group, that proved to be a bit more problematic in terms of getting people's
- 10 buy-in and time available to review.
- 11 **Q.** Okay.
- 12 **A.** But I definitely wanted to set the scene that this wasn't a case of Network Rail
- 13 taking their time over it or protracting it out for a year to write. The essence of
- 14 the message was we are required to do this quickly, so we are going to get on
- 15 with it.
- 16 **Q.** Yes. You were required to do it quickly, so you thought you would get a draft in
- 17 seven weeks. I think we will see later on there is provision within Network
- 18 Rail for standards to take effect even before they've finished going through the
- 19 entire process, isn't there?
- 20 **A.** There is a process where they are published with a later implementation date.
- 21 **Q.** This would be previewing standards, where they can actually take effect earlier.
- 22 Is that right?
- 23 **A.** Yes, that's even at an earlier step. We did that in this case. We issued it for
- 24 preview in March, then there was another status in June and then it was to be
- 25 implemented by the September.
- 26 **Q.** You could have done it in about seven weeks to write it.

1 Last point on this document before we move on, I think -- where are we? Under

2 "Monitoring Compliance ...":

3 "We acknowledged that:

4 It is not appropriate for the RSSB Scheme Manager to monitor other supplier
5 assurance providers compliance with NR's new 302 supplier qualification
6 standard."

7 So it is not appropriate for the current Scheme Manager to take on that role.

8 Go back over the page to 4935. We've dealt with stuff about RSSB to provide the
9 API essentially to Network Rail within 14 days. So you basically handed over
10 specification of the API to the RSSB. Is that right?

11 **A.** So asked them to facilitate via their service provider a suitable approach so that
12 again we can do it quickly rather than take a long time over it.

13 **Q.** Okay. By this stage you thought you could rewrite the standard in about seven
14 weeks and write the API specification in about 14 days?

15 **A.** I was envisaging having a first draft of the standard for then to go through the
16 various groups to review it relatively quickly. I accept that that says seven
17 weeks and actually we probably weren't that far beyond it. It then had to go
18 through the various stakeholder groups, getting their buy-in.

19 **Q.** Okay. Now -- this was -- we had the hearing before judgment -- had the
20 judgment before the order. They both seemed pretty urgent. Now the next
21 thing that happened was the tribunal hearing where the order was made
22 actually implementing the judgment. That, in fact, was later the same day you
23 wrote this e-mail. Are you aware of that?

24 **A.** No.

25 **Q.** You weren't at that hearing. I think you sent the e-mail at 8.39 in the morning of
26 12th September, and we were in the tribunal. So the day after the meeting we

1 had the tribunal hearing.

2 Since you weren't there can I hand up a copy of the transcript of that hearing for the
3 witness to be able to see and I have copies for the tribunal as well. There are
4 three for the tribunal, one for the witness and a couple for you. Thank you.

5 Now on page 9 of that -- so this is the hearing at which, the judgment having been
6 handed down, the principle having been decided, the tribunal is trying to
7 decide what specific order to make to remedy the situation.

8 Now on page 9, lines 8 to 21, this was me speaking. I am delighted quoting myself:

9 "On the issue of time for compliance with the tribunal's order we were proposing 21
10 days", I said. "They", that's Network Rail, "was just any time limit at all."

11 We were asking for a time limit by which things had to be remedied. We said:

12 "There is no magic to 21 days. It can be 28, 35 or 21, but the problem is that
13 Network Rail have not come forward and said, 'We need X amount of time'
14 and so it is difficult to have any debate over the time limit that should be
15 allowed. Therefore we stuck to 21 days."

16 But we were willing to envisage a longer period. We thought there should be a time
17 limit.

18 Now page 14, lines 18 to 23, and this is my learned friend speaking on instruction:

19 "Here is the problem. Having set out in detail", he said, "the internal procedures that
20 Network Rail have to go through when updating its standards and risk
21 assessments, safety assessments forming working party groups, and to go
22 through this process Network Rail says that it takes six months for standards
23 to be revised and there is good reason for that."

24 Now don't you think that Network Rail should have volunteered at the hearing before
25 the tribunal that the day before the hearing it had held a meeting which had
26 determined it could produce a revised draft standard in seven weeks --

1 A. Yes. That's --

2 Q. -- and revised a API in 14 days?

3 A. Yes. The other Network Rail people are not accustomed to producing
4 documents as quick as that. Typically even saying six months, that is actually
5 fast for Network Rail. Typically standards in Network Rail can take up to
6 a year to actually follow this process that exists.

7 Well, I believed we could do it quicker. The reason we could do it quicker was my
8 approach was going to be different to the normal approach. As I said earlier,
9 that involved gathering information from people that I knew already existed so
10 that I could actually very rapidly in the scheme of things compile a draft and
11 then start walking around the system persuading people that this works and to
12 endorse or approve it, as the case may be.

13 It was when I got to the involving other people that then started to get more pushed
14 back and they wanted to consider it and wanted to change things round, but
15 I put myself in a good position, because I got off to a good start, because the
16 document was then created for people to comment on, and I think overall it
17 did end up taking just over six months.

18 Q. Well, we will look at the chronology as we go through, but I am suggesting to you
19 that when you said in response to my question that you always acted in good
20 faith in trying to implement the judgment and you were seeking to introduce
21 the judgment as quickly as possible, that failing to tell the tribunal that you
22 could get workable drafts out in the space of a handful of weeks is not
23 consistent with your evidence?

24 A. I mean, they had to give an approach to actually make this rapid rather than --
25 rather than the normal process.

26 Q. Okay. Now similarly in the same transcript I think page 15, lines -- where are we

1 -- lines 14 and 15 the chair asked how much time Network Rail needed, how
2 much more time, and the answer was the six months.

3 Then line 17, member 3, which I believe is Mr Cutting, was:

4 "Are these new standards going to be applying to the RSSB?"

5 He raised a point I think at lines 22 to 25 that you were going to have to behave in
6 a non-discriminatory way, subject to scope, in relation to Achilles and other
7 competitors. He said:

8 "I don't see why you suddenly need to move the goalposts of the relevant
9 standards."

10 I think the point was that it should be relatively straightforward and the answer was
11 again that it would take time. Again Network Rail did not volunteer, had not
12 instructed its counsel to say, "Actually we can produce the standard based on
13 pre-existing materials in seven weeks"?

14 **A.** As I say, that's me kind of going at it quite vigorously to produce the first draft so
15 I can actually get the whole exercise complete as quickly as possible.

16 **Q.** Okay. Then the final point from this transcript is on page 26 to 27. The tribunal
17 made a ruling on the order. I just want to call your attention to lines 4 to 7 on
18 page 27. This is not about timing so much as:

19 "The indication is the better course would be for Network Rail to formulate the
20 conditions which it considers to be reasonable and proportionate, to notify
21 Achilles in advance of its publications, giving Achilles the opportunity to bring
22 the issue back to the tribunal in the event of dispute. It is not necessary for
23 that notice requirement to be included in the order."

24 So an expectation is set as to notice but it is not included in the order. Were you
25 aware that the tribunal had said this?

26 **A.** No.

1 Q. Okay. Nobody informed you after the event that this had been said?

2 A. Well, I don't recall.

3 Q. But were you aware that you shouldn't simply present Achilles with a fait
4 accompli?

5 A. No.

6 Q. Okay. Now I can finish fairly shortly. Can you go to -- in bundle G10 can you go
7 to tab 523? I am afraid you may at this point need to have two bundles open
8 at the same time in a moment. Just to see this. You should have an e-mail
9 from Mr Sharp, Richard Sharp, to you, attaching an API initial draft on 16th
10 October, and he says:

11 "Please find attached a draft of the API for Sentinel that is able to be shared. This is
12 not the final version but will provide sufficient detail for a supplier assurance
13 provider to evaluate the level of development required."

14 So would you agree that by 16th October a version of the API existed that was
15 sufficiently developed to be commented on by alternative supplier assurance
16 providers?

17 A. Except this still didn't take into account the final version of standard 302.

18 Q. Okay. We will come to that in a moment. Keep G10 open at that page. Do you
19 want to be given G11 at the same time? It is good that you have some desk
20 space. In G11 can you open tab 599, page 5610? What you should see
21 there is an e-mail that's forwarding another e-mail. The original e-mail is from
22 a Rachel Civval at Altius, whose signature says "Software Solutions
23 Manager". Seems to be a software developer of some sort. That's dated
24 Wednesday, 16th October as well at 16.48 and forwarded to Richard Sharp at
25 RSSB the API doc, saying:

26 "Sorry I've only just finished it, please find new draft attached."

1 What we can then see at 599 that's forwarded again in March, but that's not relevant
2 for this purpose.

3 If you just look back to bundle G10, you can see that Mr Sharp from his RDPA e-mail
4 address is then forwarding to you the standard that Altius has just sent him.

5 Now there seems to be a slight discrepancy about the timing, but, as I understand it,
6 if you look at the "Sent" line in the e-mail from Mr Sharp to you, that says it is
7 sent at 4.25 pm (UTC). UTC I understand is the same as Greenwich Mean
8 Time. On 16th October 2019 we were still on British Summer Time
9 and therefore it would have been at 5.25 sort of local time, which is why I think
10 it is actually after the e-mail from Rachel Civval that you see in bundle G11.

11 So would you agree that what seems to have happened is that Rachel Civval from
12 Altius has e-mailed Mr Sharp at the RSSB with the draft and then Mr Sharp
13 from his RDPA Ltd e-mail address has then forwarded the API to you on that
14 date?

15 **A.** Yes, that appears to be the case.

16 **Q.** Okay. Then, my Lord, the last thing -- I appreciate it is 4.30 -- is -- I am going to
17 come back to this I think tomorrow morning. Please go to G10, tab 530. You
18 said that the API needed to be in parallel with the NR302. At the bottom of
19 that page, G10, 530, page 5141, we have an e-mail from you to a section of
20 Network Rail dated 17th October 2019, so this is the day after you got the API
21 specification.

22 "Subject: NR302.

23 John, Caroline", and so forth.

24 "I have now created rough drafts of the two documents that NR require in order to
25 implement a solution. I now seek your help in turning these rough drafts into
26 a workable Network Rail standard within an extreme timescale. We must

1 issue a draft to Achilles within seven days. by Friday, 24th October to enable
2 Achilles to commence preparations to satisfy Network Rail that they can put in
3 place the necessary arrangements to meet our standard. If Boris can get
4 a new Brexit deal done in a week, I trust we can all move heaven and earth to
5 get this done and issued within seven days, acknowledging that it will formally
6 require to go through the standards approval process."

7 So does it seem to be the case that you expected within seven days of the 17th
8 October, so by 24th October, that you could have in place a workable Network
9 Rail standard and the API specification?

10 **A.** Yes. I think you can read into that a degree of tongue in cheek. I am trying to
11 say to Network Rail, "We should be able to do these things really quickly.
12 Why does it take us weeks and months to get things through approval
13 panels? Why can't we find different ways of doing it?" You know, the reality
14 was it didn't take seven days. It then took into the New Year to actually get it
15 through the various committees.

16 **Q.** Okay. Sir, I am conscious of the time. We should perhaps stop there for the
17 day.

18 **THE CHAIRMAN:** Mr Blackley, you know that you must not discuss your evidence
19 with anybody while you are in the witness box.

20 **A.** Yes.

21 **THE CHAIRMAN:** Thank you. 10.30 tomorrow.

22 **MR WOOLFE:** Thank you, sir.

23 **(4.33 pm)**

24 **(Court adjourned until 10.30 am on Wednesday, 13th October 2021)**

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Key to punctuation used in transcript

--	Double dashes are used at the end of a line to indicate that the person's speech was cut off by someone else speaking
...	Ellipsis is used at the end of a line to indicate that the person tailed off their speech and did not finish the sentence.
- xx xx xx -	A pair of single dashes is used to separate strong interruptions from the rest of the sentence e.g. An honest politician - if such a creature exists - would never agree to such a plan. These are unlike commas, which only separate off a weak interruption.
-	Single dashes are used when the strong interruption comes at the end of the sentence, e.g. There was no other way - or was there?