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IN THE COMPETITION

Case No.: 1380/1/12/21

APPEAL
TRIBUNAL

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP
(Remote Hearing)

Monday 1 November – Friday 19 November 2021

Before:

The Honourable Mr Justice Marcus Smith
Bridget Lucas QC
Professor David Ulph CBE

(Sitting as a Tribunal in England and Wales)

BETWEEN:

BGL (Holdings) Limited

Applicant

v

Competition & Markets Authority

Respondent

A P P E A R A N C E S

Daniel Beard QC and Alison Berridge (on behalf of BGL)
Marie Demetriou QC. Ben Lask and Michael Armitage (on behalf of the CMA)

Digital Transcription by Opus 2

1 Wednesday, 10 November 2021

2 (9.30 am)

3 (Proceedings delayed)

4 (9.36 am)

5 Housekeeping

6 THE PRESIDENT: Mr Beard, good morning.

7 MR BEARD: Sir, good morning. Members of the Tribunal, good
8 morning. Before Ms Demetriou begins or rather I call
9 Ms Ralston again, the housekeeping issues that we left
10 over, we thought it was just worth touching on those.

11 THE PRESIDENT: Of course.

12 MR BEARD: Because Ms Demetriou and I have had a brief
13 discussion about them.

14 Firstly, in terms of timings, I think the consensus
15 has been reached that a very painful weekend may be
16 better than trying to split things off, try to
17 re-arrange diaries and so on. We have looked at various
18 possibilities, but I think there is a sense of we are
19 where we are with the timetable and trying to mess with
20 it now may be just too difficult or inefficient. If we
21 try and break issues off, for example, to separate
22 hearings, it becomes highly repetitious, it is probably
23 not convenient for the Tribunal and so on. So we
24 thought we will just have to live with that, unless the
25 Tribunal tells us otherwise.

1 THE PRESIDENT: We are certainly not going to do that. What
2 we have been discussing is anticipating that this would
3 be the issue because our own diaries are not
4 straightforward, we were wondering whether you could be
5 told that we would be happy with a much shorter
6 document, kind of speaking note or bullet points or even
7 nothing at all, but with a full set of submissions
8 following, keeping the oral submissions at the end of
9 next week, basically saying we would allow a period of
10 time for you to as it were flesh out with references and
11 things like that your speaking note and your oral
12 submissions.

13 That of course results in a very long tail, and each
14 side will quite naturally want the last word, so I float
15 that for the parties to think about, but if you think
16 that the way one ordinarily does it is the best way and
17 usually the way one ordinarily does it is that way for
18 a reason, then we of course will, with great regret for
19 having imposed a grim weekend on both parties, accede to
20 what you are saying.

21 MR BEARD: I am grateful for the indication. I will take it
22 away and both take instructions and speak to
23 Ms Demetriou.

24 I fear that the answer may be Churchillian virtue is
25 a democracy, the orthodox way may be the worst save for

1 all the others, in the sense that if we start getting
2 into further written, fuller written submissions, then
3 you do end up with rather a long tail, and I think it
4 can render the whole closure orally rather
5 unsatisfactory.

6 So I think in those circumstances it may add an
7 awful lot of work potentially but not necessarily add an
8 awful lot of value to the process, and, therefore,
9 I think it may be better to try and bring an end to
10 matters at the end of next week, but as I say I will
11 take instructions, but that will be my initial reaction,
12 but thank you very much for the suggestion.

13 THE PRESIDENT: That is helpful.

14 Ms Demetriou of course it goes without saying we
15 will want to hear if you disagree, from you in
16 particular. If you agree then obviously there is
17 nothing that you need say.

18 MS DEMETRIOU: No, thank you. I will also take instructions
19 and discuss with Mr Beard, but we are grateful.

20 THE PRESIDENT: Thank you. The only rider I would add is
21 oftentimes one gets questions after the event, and in
22 that case we will of course raise it with the parties
23 afterwards.

24 MR BEARD: That is in the purview of the Tribunal's
25 jurisdiction.

1 THE PRESIDENT: Indeed.

2 MR BEARD: The Tribunal can decide how it wishes things to
3 be dealt with and obviously can ask questions as and
4 when it feels appropriate. The Tribunal can call us
5 back in at a later date if the Tribunal so wishes.
6 Those are matters within your gift. I am not suggesting
7 any particular limit.

8 THE PRESIDENT: No.

9 MR BEARD: That takes us, I think, across to
10 confidentiality.

11 Now, I understand from those behind me that the
12 Tribunal has already written indicating that the
13 Thursday hearing is not going to occur so many thanks
14 for that because that obviously helps with timing and so
15 on.

16 Ms Demetriou and I have been discussing these
17 issues. One of the things that has come up in the
18 correspondence is people writing in saying, "We do not
19 know what has actually been referred to in the
20 transcript that might be of concern to us".

21 Now, obviously the CMA will have to deal with those
22 issues if we persist in proceeding with it. It did
23 strike us that actually it was the judgment that was
24 going to be truly critical here and that although making
25 available transcripts was an important part of the

1 public face of the CAT and ensuring that justice is done
2 in public, it was really the judgment that was critical,
3 and we did wonder -- and obviously this is a matter that
4 can be considered in due course at any further
5 hearing -- whether the solution might be that what one
6 did was one put in place a slightly longer than normal
7 embargo on any judgment that the Tribunal writes, that
8 the Tribunal writes the judgment as if everything is
9 open, and then the CMA will be put in a position of
10 actually knowing what it is that the Tribunal is
11 intending to refer to and then can have more specific
12 contact with people.

13 So we are obviating a risk of having abstract
14 arguments about issues of confidentiality and we are
15 focusing on the specifics.

16 Now, I realise that that does not solve the issue in
17 relation to transcripts, but I do wonder whether there
18 is a risk that the level of expense that will be
19 incurred and the time that may be involved in this --
20 and obviously I am not acting for the CMA in this
21 regard, but we do have sympathy for the difficulties
22 that might arise, and we wondered whether focusing on
23 the judgment and having that sort of practical course
24 towards the end of the process might be the most
25 cost-efficient, but I leave it for the Tribunal. I have

1 mentioned it to Ms Demetriou who thinks there may be
2 virtue in that and obviously it is her clients that
3 would bear the burden of the expense in relation to
4 these issues. But I thought I would mention it now.
5 Since the matter has been postponed nothing needs to be
6 resolved, but I thought it might be sensible to put it
7 in the Tribunal's mind.

8 THE PRESIDENT: No, because the horse has in a sense bolted,
9 there is I think some virtue in that, and one can of
10 course do the same with the in private transcripts in
11 that what I will be minded to do is invite the CMA to
12 articulate in light of the ruling that we handed down
13 that which ought to be redacted in the private portions
14 so that they can in due course be put up in public, but
15 that again is something which we can let --

16 MR BEARD: I will leave that to the Tribunal. From our
17 point of view we were trying to come up with a solution
18 for the judgment.

19 THE PRESIDENT: I understand, that is helpful.

20 MR BEARD: As I say, I think the Tribunal can take as read
21 our long-running concerns and objections in the way that
22 confidentiality has been dealt with but we are trying to
23 be helpful in relation to how these things should go
24 forward.

25 THE PRESIDENT: That is very useful. We will take that away

1 and think about that very helpful suggestion because the
2 last thing we want to do is add to the costs of these
3 proceedings by dragging in five or more third parties
4 who may or may not be clear on what it is they are
5 arguing about.

6 MR BEARD: Yes, and I am sure it needs no articulation, but
7 from our side we would be very concerned if any of this
8 confidentiality issue imposed any further cost on us in
9 relation to this. It is something that we have done our
10 best to help with, and there is little more we can do
11 about it. Anyway, I think a matter for another day.
12 Thank you very much.

13 I think in those circumstances we move to calling
14 Ms Ralston for a second time. I think because she was
15 formally released she needs to be formally sworn in
16 again, but I am not sure --

17 THE PRESIDENT: I do not think I released her. I think
18 I said that she was released from her purdah but not
19 from her obligation to attend.

20 MR BEARD: That is perfect. I need do nothing more then.
21 I do not even need to go to the reports. All I have to
22 do is ask for Ms Ralston to step up to the hot seat.

23 I should say Ms Ralston has with her copies of
24 certain documents that we do not think are in the
25 bundles. They include, for instance, the joint experts'

1 statement, the agree/disagree, and the material that has
2 been extracted from what was the putative second Baker
3 report. Ms Ralston very properly has indicated the
4 copies she has and has shown them to the CMA, and
5 Ms Demetriou very kindly looked through them, has no
6 objection because they are unmarked but for one
7 highlight which Ms Demetriou is very properly not
8 concerned about. So that is the reason that Ms Ralston
9 is bringing documents into the box, just because
10 otherwise trying to add things to files becomes
11 problematic.

12 THE PRESIDENT: No, that is fine. As long as the CMA is
13 happy, then I am content.

14 MS DEMETRIOU: Yes, of course.

15 MS HELEN RALSTON (recalled)

16 THE PRESIDENT: Ms Ralston, good morning. Do sit down, make
17 yourself comfortable. You do not need to be resworn,
18 because the oath or the affirmation you made last time
19 still holds, so welcome, but the formalities do not need
20 to be repeated. I will hand you over to Mr Beard.

21 You do have water there, do you?

22 A. Yes, I will get some.

23 THE PRESIDENT: You do.

24 MR BEARD: Ms Ralston has with her pen and paper, blank. We
25 have indicated to her that if there were matters --

1 I understand Ms Demetriou is going to start in open --
2 where Ms Ralston would like to refer to closed material,
3 she will indicate that to -- or material she thinks may
4 be closed or confidential, because she does not have
5 a full view of these things, the sensible thing would be
6 for her to mention that and then Ms Demetriou can decide
7 whether or not we have to move into private depending on
8 what the questioning is --

9 MS DEMETRIOU: Sir, sorry, I should speak to the Tribunal
10 rather than Mr Beard.

11 MR BEARD: I will sit down.

12 MS DEMETRIOU: I propose to start in private, get out of the
13 way the cross-examination that I want to do in private
14 because I have looked at it, it is too awkward, really,
15 both for -- especially for Ms Ralston but also for me
16 frankly to ask the questions skirting around or using
17 the cipher, but then once I have finished with this
18 chunk we can proceed fully in public.

19 THE PRESIDENT: That is very helpful. Well, for the reasons
20 that I gave in the earlier ruling, we will sit in
21 private. Should we rise for two minutes to enable that
22 to happen?

23 MR BEARD: Yes. The point I make would then apply in
24 relation to those periods afterwards where Ms Demetriou
25 is in open.

1 THE PRESIDENT: Indeed.

2 MR BEARD: Because although Ms Demetriou may not anticipate
3 that Ms Ralston wants to refer to stuff I cannot predict
4 what Ms Ralston will --

5 THE PRESIDENT: Ms Ralston, look, I do not want you to worry
6 about confidentiality at all. If it should be the case
7 that your answers begin to trespass into
8 confidentiality, do not worry about it, let Ms Demetriou
9 worry about it. If it is a problem, we will revert to
10 private and redact the open transcripts to delete
11 whatever reference. But I do not want you to think
12 about that sort of thing at all. You just answer as you
13 see fit and do not trouble yourself with any
14 confidentiality because if you in open court say
15 something that is confidential, we will handle the
16 problem, you do not have to worry.

17 A. Okay, thank you.

18 THE PRESIDENT: We will rise for two minutes to enable that
19 to happen, thank you.

20 (9.49 am)

21 (A short break)

22 (9.53 am)

23 In private

24 MS HELEN RALSTON (continued)

25 Cross-examination by MS DEMETRIOU

1 MS DEMETRIOU: Good morning, Ms Ralston. There is quite
2 a lot to get through. I am going to start with your
3 assessment of effective coverage, and can we please turn
4 up your first report just to see what you have done.
5 You explain it at paragraphs 5.30 to 5.31 of your first
6 report. So that is {A/5/82}. What you say here is that
7 you have done two things. You have drawn on the
8 qualitative evidence --

9 A. Yes.

10 Q. -- from 17 HIPs, wide MFN HIPs, from whom the CMA
11 obtained evidence, and you say that these statements
12 describe the extent to which the wide MFNs in their
13 contracts influenced their pricing behaviour; yes?

14 A. Yes, it is on the next page that you cannot see
15 {A/5/83}.

16 Q. Yes, I am just at the moment looking briefly at the
17 methodology to locate it. So this should all be common
18 ground. Secondly that --

19 A. What you were just explaining because it is not on the
20 EPE.

21 Q. Oh, I see. You are quite right, yes, thank you. Then
22 at 5.31, so if we just go back one page, I think, so on
23 to page {A/5/82}, at the bottom of the page you say that
24 you have sought to analyse the pricing behaviour of 15
25 of those insurers using the CI data, and you say that

1 you have done this, and then if we go back over the page
2 again {A/5/83}, you have done this to check whether
3 their pricing was consistent with what they told the CMA
4 about the effects of the WMFNs on their pricing
5 behaviour; yes?

6 A. Yes.

7 Q. So it is a combined approach?

8 A. Yes.

9 Q. What you are doing is using both strands of evidence, so
10 their statements to the CMA and your pricing analysis,
11 to take a view on the evidence overall, so you say to
12 take a view on the qualitative and empirical evidence
13 overall --

14 A. Yes.

15 Q. -- as to whether each HIP was or was not influenced by
16 its wide MFN?

17 A. Yes.

18 Q. Where you conclude that a HIP was not influenced, you
19 exclude it from your coverage calculation; yes?

20 A. Yes.

21 Q. We see that in fact at 5.32. So you say that you have
22 taken a conservative approach and you say that you have
23 included -- we see this from 5.32 -- you say that you
24 have included the HIP in your coverage calculation where
25 the evidence is mixed; yes?

1 A. I have taken a conservative approach by including those
2 three insurers because their evidence was mixed. I have
3 thought about this statement, and you may be pointing
4 this out, that the evidence on the other insurers, there
5 is also mixed parts of that.

6 Q. I will come to that, do not worry. So I am not going to
7 shut you out from saying anything you want to say, but
8 at the moment I am just looking at what your methodology
9 is in the report.

10 A. Yes, you have described it.

11 Q. What you say at 5.32 is you say that where the
12 insurer -- where the qualitative and empirical evidence
13 suggests that an insurer was not influenced, it is more
14 informative to exclude it, and you say where the
15 evidence is mixed you have taken a conservative approach
16 and included the insurer in the market coverage, yes,
17 that is what you have purported to do?

18 A. Yes.

19 Q. So the upshot, just to skip to the punchline in terms of
20 what you have done, is that of the 15 HIPs you consider
21 you have only included three in your calculation; yes?
22 In your coverage assessment.

23 A. I think I include the 17 that -- the 15 that the CMA did
24 not collect evidence for as well.

25 Q. Right, so --

1 A. Can we go to -- yes, if you look at table 5.5, I include
2 the 15 insurers the CMA did not speak to and collect
3 evidence from. This is on page {A/5/102}.

4 Q. Page, sorry?

5 A. 102, in the foot --

6 Q. So let us go to {A/5/102}. Yes, so these are the 15
7 HIPs which represent 2% of the PCW sales. So you have
8 included those, you have included three of the 15, but
9 you have included the other -- you have excluded the
10 other 12 of the 15?

11 A. Yes.

12 Q. Thank you. If we go back to page {A/5/85}, and I just
13 want to look at your flowchart at figure 5.1, so you
14 have divided the 17 HIPs that provided evidence to the
15 CMA into four categories by reference to the type of
16 statement they have made. That is right, is it not?

17 A. Yes.

18 Q. Each HIP, I think it is right to say, falls into one
19 category of statement only?

20 A. I have allocated it.

21 Q. You have allocated it to one only?

22 A. To one only, yes.

23 Q. So you have not found, for example -- I think this
24 follows -- that any HIP has both stated that it believed
25 its wide MFN to be enforceable, so that is box 1 at the

1 top on the left, but that it nonetheless influenced its
2 pricing behaviour. So you allocate to one box only in
3 each case. You do not recognise that a HIP may fall
4 into more than one box for the purpose of this analysis.

5 A. When I go through each of the insurers' testimonies,
6 I have perhaps drawn on broader qualitative statements
7 by the insurer. I try to keep a -- try to keep this as
8 simple and tractable as possible and allocated an
9 insurer to each of those points on the decision tree.

10 Q. Thank you. That is what I thought you had done. You
11 have reached a view, then, as to which of these boxes in
12 the decision tree is most apt for each insurer?

13 A. Yes.

14 Q. One you have decided which of the four categories they
15 fall in, you then see in the flowchart that you allocate
16 a particular pricing test to that insurer, and in fact
17 for the second category you apply two of your pricing
18 tests?

19 A. Yes.

20 Q. You have three different types of pricing test.

21 A. Yes.

22 Q. You select -- so your position really is it is
23 appropriate to test each of these statements in
24 different ways, so each test that you have selected is,
25 you think, appropriate to test the type of statement

1 that you have allocated the insurer to?

2 A. I am not sure it was necessary to undertake all the
3 tests I took. I thought -- these tests are -- when
4 I say "tests", these are criteria. I wanted to set out
5 the criteria I had applied when I look at these charts,
6 and -- sorry, the criteria I apply when I look at the
7 charts, so it would -- so it was tractable.

8 Q. Let us look at the test so we are not talking about this
9 in the abstract. If we go back to page {A/5/83},
10 please, it is the bottom of that page, and we see there
11 the first of the tests in your flowchart which is the
12 adherence test; yes?

13 A. Correct.

14 Q. So this looks at whether the HIP priced more
15 expensively --

16 A. Sorry to interrupt you --

17 Q. Is it not on the screen? Ah, I am so sorry, it is the
18 next page {A/5/84}. Rather disturbingly it is different
19 in my hard copy. Anyway, I hope it is not going to trip
20 me up too much. I will try and keep an eye on both.

21 Looking at the adherence test at the top of the
22 page, what you are asking is whether the HIP priced more
23 expensively on CTM during the relevant period; yes?

24 A. Yes.

25 Q. So you say if it did price more expensively on CTM

1 during the relevant period, that would suggest the wide
2 MFN did not influence its behaviour?

3 A. Yes, I say that is consistent with it saying it is
4 unenforceable, we do not care too much for it.

5 Q. Yes. Then looking at the second test which is
6 constraint test 1, that looks at whether the HIP priced
7 more cheaply on CTM during the relevant period and again
8 you say that if it priced more cheaply on CTM during the
9 relevant period that would suggest that the wide MFN did
10 not influence its behaviour, yes, that is the purpose of
11 your test?

12 A. Yes.

13 Q. To be clear about this, what you are doing with test 2,
14 constraint test 1, is you are observing the real world
15 behaviour of the HIP in question during the relevant
16 period; yes?

17 A. Yes.

18 Q. So you are not drawing or you cannot draw any conclusion
19 from that data as to whether that behaviour might have
20 been different in the counterfactual, can you?

21 A. I think you can, I think this is part of the picture.
22 The theories of harm about wide MFNs revolve around them
23 creating a relative price restriction between the PCW so
24 that the insurer wants to reward another PCW who has
25 offered lower commissions, for example, by discounting

1 on that other PCW, and so this is -- but the wide MFN
2 is, you know, creating this relative price restriction,
3 but if we are seeing that the insurers are pricing
4 materially cheaper on CTM or strictly cheaper, not up to
5 this price restriction, this price floor or price
6 ceiling, I can infer that they are -- especially when
7 they have made statements to the effect that they did
8 not care for the wide MFN or it had no impact, I think
9 it is reasonable to infer that they would not have
10 behaved differently in the counterfactual where there
11 was no wide MFN.

12 Q. Okay, so what you are drawing on, you are making
13 inferences based on their actual pricing behaviour and
14 on what they have said and on theories of harm, yes, you
15 are making inferences from those three strands, that is
16 what you have just said?

17 A. Yes.

18 Q. But let me put to you a more specific question. Let us
19 assume that in a counterfactual world without any wide
20 MFNs there was more vigorous price competition, yes, so
21 we are assuming that, and it is possible in principle,
22 is it not, that a HIP which you see in the real world
23 pricing more cheaply on CTM might not have priced more
24 cheaply on CTM because other PCWs in that counterfactual
25 world were able to compete more effectively by offering

- 1 lower commission fees. That is possible, is it not?
- 2 A. This is my first step of analysis. It is looking at
3 whether there is a direct influence. I look for broader
4 effects in the effects analysis.
- 5 Q. I know, we are going to come to that. I just want to at
6 the moment look at this strand. What I am establishing
7 at the moment is by looking at the pricing information
8 alone you cannot reach robust conclusions as to what
9 would have happened in the counterfactual, and in fact
10 observing that CTM is pricing more cheaply may be
11 reflective of the softening of competition found by the
12 CMA, no?
- 13 A. I do not see why an insurer would price more cheaply on
14 CTM is consistent with any softening of competition.
- 15 Q. Well, Ms Ralston, relative to a counterfactual world in
16 which without wide MFNs there was more vigorous price
17 competition, and the other PCWs were able more easily to
18 compete on price. In those circumstances, they may have
19 competed more effectively and what you may have seen is
20 something different.
- 21 A. No, because then they would be pricing at the limit, and
22 they would not choose to -- the insurer on CTM would not
23 choose to price more cheaply on CTM. It would be
24 wanting, as you have just explained, to offer lower
25 prices on the other PCWs.

1 Q. It may be that the other PCWs in this real world are not
2 able to compete very effectively which is why CTM would
3 steal a march, but had they been able to compete more
4 effectively in a world without the wide MFNs they may
5 have come in much lower, so then you would have seen
6 a different picture. That is possible, is it not,
7 Ms Ralston? But you are drawing on all three strands of
8 evidence, as you say, to make inferences. The point
9 I put to you, observing the data that is possible, is it
10 not?

11 A. It is possible.

12 Q. Looking at test 3, constraint test 2, again we have this
13 in the middle of the page, and what you are doing here
14 is looking at whether the HIP priced more expensively on
15 CTM after the relevant period; yes? So you are saying
16 if it did not price more expensively, this would suggest
17 that the wide MFN did not influence its behaviour. That
18 is the test, is it not?

19 A. Yes, sorry, I missed -- which test did you refer to?

20 Q. I am so sorry, it is constraint test 2.

21 A. Yes, you have described that correctly.

22 Q. Thank you. The inference that you draw assumes, does it
23 not, that CTM did not itself change its behaviour after
24 it disapplied its wide MFNs? So let me put it another
25 way. If CTM competed harder after disapplication of its

1 wide MFNs because it was facing more intense price
2 competition from the other PCWs, then it may well have
3 been able to achieve the same effect in terms of
4 relative pricing compared to the other PCWs but on the
5 merits; yes?

6 A. So the analysis, because we have not looked at the
7 charts yet, I think it is useful for people to be aware
8 that the analysis is very transparent and shows every
9 month of behaviour. So we can see immediately if there
10 are any changes in behaviour, so whilst I cannot rule
11 various possibilities out, you could start to see some
12 patterns. So if you have a hypothesis that CTM had done
13 something, you could look at the data and say does that
14 match my hypothesis.

15 Q. You are talking about your regressions now?

16 A. No, the pricing charts in the appendices.

17 Q. But the point I put to you, the point of principle, is
18 that you are assuming here that CTM did not change its
19 own behaviour, are you not, as a result of the wide MFNs
20 being disapplied?

21 A. So why I am referring to the chart is they look at
22 the -- why I think it is a reasonable assumption to make
23 is because the charts look at the behaviour immediately
24 after, so I think it is quite reasonable to not have to
25 make any assumptions about changes in behaviour by

- 1 a PCW.
- 2 Q. That would depend, would it not, on how long competition
3 took to pan out or to be stimulated after the end of the
4 relevant period?
- 5 A. So this analysis does not require such judgments to be
6 called because we are looking at the pricing over time,
7 so we can see if patterns change.
- 8 Q. Right, okay. Moving on to the data on which your tests
9 are based, I am right in thinking, am I not, that they
10 are based entirely on the commercial intelligence data,
11 this is the pricing aspect?
- 12 A. That is correct.
- 13 Q. That data set is incomplete, is it not, so you have only
14 included analysis for periods where you consider there
15 to be sufficient data available to you?
- 16 A. It is correct I have only considered data -- periods
17 where there is a nice large sample of data. I think
18 incomplete is a bit mean, I cannot think of a word,
19 but ...
- 20 Q. Okay, but you have not -- let us take the Ageas analysis
21 as an example so we can look at this in a more concrete
22 way.
- 23 If we turn to paragraph A4.33 which I am hoping is
24 at {A/5/210}, but let us just have a look at where it
25 comes out on the screen. Yes, happily this one is okay.

1 So here you explain -- this relates to Ageas, and
2 this is in your appendix where you give a little bit
3 more detail about your effective coverage assessment.
4 You say that there is only sufficient data for 12 months
5 of the relevant period. That is right, is it not?

6 A. Actually for three of the 12 months.

7 Q. Sorry, for three of the 12 months for which -- no, you
8 say:

9 "... for three of the 12 months for which there is
10 sufficient data to analyse, Ageas priced more than 50%
11 of [the] risks ..."

12 So you say there is sufficient data for 12 months?

13 A. Yes.

14 Q. So for the other 12 months you say the data is not
15 sufficient to analyse; yes? It is not good enough?

16 A. I do not state that.

17 Q. You have not done it.

18 A. That is -- in this report I have not done it.

19 Q. You have not done it, okay. You are aware that the CMA
20 found that the CI data has significant limitations, you
21 know that that is the CMA's position in relation to the
22 data?

23 A. Yes, and I have responded to why I consider those
24 limitations have been overstated.

25 Q. Right, well, let us look at what the CMA says. So can

1 we turn to the Decision at {A/1/649}. This is annex
2 0.21 and following.

3 We see there that the CMA's concerns relate to the
4 content and format of the questions -- do you want to
5 turn that up in the hard copy?

6 A. Thank you.

7 Q. Do you have the page, Ms Ralston?

8 A. I do, thank you.

9 Q. So the concerns that the CMA are expressing here relate
10 to variations, do they not, in the content and format of
11 the questions used by PCWs to generate a quote; yes?
12 These are the CMA's concerns. The CMA is saying that as
13 a result of being asked different questions by different
14 PCWs a customer may submit slightly different quotes for
15 the same product from different PCWs; yes?

16 A. Yes.

17 Q. In fact the CMA says at 0.23 that all the Big Four PCWs
18 identified this as a possible cause of pricing
19 differences. I am just establishing the CMA's case at
20 the moment.

21 So too, if we go over the page, please {A/1/650}, we
22 see at 0.24, so too did nine of the nine HIPs that were
23 asked about this.

24 If we go up the page, please, to 0.23, if we can see
25 the top of the page -- perhaps it is the previous page

1 {A/1/649}, thank you.

2 We see that -- this may be a wrong reference. I am
3 so sorry, can we go to 0.26 on {A/1/652}.

4 So there is another concern which relates to mapping
5 of data, yes, which the CMA has identified. Essentially
6 what the CMA is explaining there is that there may be
7 inconsistencies in the data mapping used by PCWs to
8 transfer consumer information to HIPs and that this can
9 result in price differences, and again what we see is
10 that evidence from three of the Big Four PCWs and six of
11 the nine HIPs that were asked supported the CMAs, it
12 drew on evidence from those parties. You address those
13 limitations in section 7 of your first report, do you
14 not, which is in the section dealing with your
15 regressions?

16 A. Yes, I have a very strong response to this.

17 Q. Yes, let us have a look at that. The reason that you
18 address it in that section of your report is because you
19 use the CI data for the regressions as well, do you not,
20 so let us turn up paragraph 7.21 of your report, so we
21 are {A/5/129}.

22 Now, 7.21 you see there the CMA's reservations are
23 set out. We have just looked at those, but you are
24 explaining what they are; yes?

25 A. Yes.

1 Q. Then at 7.22 you say you respond to each critique in
2 turn, and you say:

3 "First, I do not consider it likely that differences
4 in question sets would materially affect the robustness
5 of my results."

6 Yes?

7 "From discussions with CTM, I understand that
8 question set and mapping issues predominantly arise
9 between a PCW's question set and an insurer's own
10 question set, and are less frequent between different
11 PCWs. This is because PCWs raise fewer questions,
12 limiting the scope for discrepancies, whereas insurers
13 may choose to have more bespoke insurance pricing. This
14 is supported by statements from various HIPs."

15 You have a footnote. So this is your first reason.

16 Now, do you know how many questions CTM
17 approximately asks its customers?

18 A. No.

19 Q. Was that something that you discussed -- you did not
20 discuss that, then, did you, in your discussions with
21 CTM that you refer to here in this paragraph?

22 A. I cannot recall the answer if they told me.

23 Q. Right. Because you are saying that there are fewer
24 questions asked of -- fewer questions asked by PCWs than
25 HIPs, so you did not explore those differences that you

1 can recall in number terms?

2 A. I was -- it was explained that insurers often ask many
3 more questions to do tailored -- to do more tailored
4 pricing.

5 Q. But you did not ask how many more?

6 A. No.

7 Q. Let us have a look at bundle F, tab 15, please, page 23
8 {F/15/23}.

9 This is a response from Gocompare. Can we have
10 a look at 8.4(C). Can you just read that.

11 A. (Pause) So the times you are referring me to?

12 Q. Yes. That is evidence because it is saying there that
13 it takes twice as long for a consumer to respond on
14 a PCW than on a HIP website. So that is evidence that
15 rather implies there are more questions on a PCW
16 website, does it not, it takes twice as long, one
17 assumes that is because there are more questions?

18 Did you see this document when you were having your
19 discussions with CTM or discuss it with them?

20 A. No, I did not review this document.

21 Q. Okay, well, we will leave this document, then. Let us
22 have a look at {F/477/1}.

23 This is BGL's response to a Section 26 request from
24 the CMA; yes? It is dated 10 May 2019. If we can go to
25 page {F/477/6}, please, I am looking at the response to

1 question 4(b)(vi) which is the one on the page:

2 "Please explain why BGL uses a £3 threshold in its
3 assessment of providers' quoted prices that are cheaper
4 or more expensive on all Big Four PCWs and the direct
5 channel."

6 So they are being asked about their tolerance
7 threshold; yes? So you know about their tolerance
8 threshold.

9 A. Yes.

10 Q. Do you see that what they are saying there is that there
11 may be a number of differences -- I am looking at the
12 third paragraph:

13 "There may be a number of reasons why different
14 prices are returned: for example, differences in
15 question sets, price testing by HIPs, mapping
16 issues ... (as listed in paragraph 185 of the
17 Submission) can result in a lower price being returned
18 by the same HIP for the same customer on another PCW ...
19 rather than as a result of any conscious decision to
20 price more expensively on CTM on the part of the HIP."

21 Do you see that is BGL's response to the CMA?

22 A. Yes, I can comment on all of this at some opportunity.

23 Q. Yes, let us look at some more documents and then you can
24 comment, Ms Ralston, if that is okay.

25 A. Okay.

1 Q. We then see -- can we go to {F/69/26}. This is an
2 earlier response by BGL to another Section 26 notice,
3 and what we see at question 36.2, we see this again:

4 "... CTM appreciates that there can be a number of
5 reasons why a partner may price differently in a given
6 month, such as price testing ..." which is not relevant
7 to my point, but then "... mapping errors, question set
8 differences etc."

9 So again that is a document, is it, that you
10 discussed with BGL when you were having these
11 discussions that you refer to in that paragraph of your
12 report?

13 A. This particular paragraph I do not think came up. What
14 came up was the whole question set mapping issue, why --
15 where that is prevalent, and they explain this is
16 typically in response to when they query an insurer
17 regarding their direct pricing, they explain that more
18 often there can be question set and mapping issues.

19 Q. Between a PCW and a direct -- and a HIP. But that is
20 not what they are saying here, is it? They are saying
21 differences between PCWs. Let us look at some
22 contemporaneous documents of BGL. So can we look at
23 {F/195/5}.

24 "Why might ... pricing differences occur.

25 "Deliberate partner pricing due to:

1 I am looking at the second bullet:

2 "Different products not being consistent across
3 PCWs/direct websites."

4 Then at the end:

5 "Question set differences between the PCWs."

6 Do you see that? That is relating to differences
7 between the PCWs themselves, that last bullet, is it
8 not, it is not referring to differences between PCWs and
9 HIPs?

10 A. Yes, I acknowledge that these issues can arise, and
11 I have a response to them when we get to it.

12 Q. Right. Then can we look at {F/215/3}, please. Again,
13 this is another -- a document -- a BGL document from the
14 time, and then we see:

15 "Product differences across other" --

16 At 3:

17 "Product differences across other PCWs ..."

18 At 6:

19 "Errors/issues with CI data."

20 Then if we look at {F/229/4}, please --

21 A. Are these reasons that they have been told by insurers
22 that differences have arisen, or --

23 Q. No, these are their own internal documents.

24 A. Are you inferring that, or are you -- they often report
25 the reasons that insurers have told them as to why they

1 have observed a pricing difference.

2 Q. Let us go to page {F/215/1} of this document to see what
3 it is.

4 A. I would internally report to my seniors the reasons that
5 I have been given from my partners, the insurers, as to
6 why pricing differences. That does not mean that those
7 are factually correct as to why the pricing difference
8 has arisen.

9 Q. Well, Ms Ralston, what we have are a number of
10 contemporaneous documents from BGL, let us look at the
11 last one, I will come back to the point you made, so
12 {F/229/4}. Here you see, let us go to page {F/229/1} to
13 locate the document, please. So this relates to motor
14 insurance; yes? So it relates to motor insurance but it
15 is looking at CI data. It is dated 2013. If we go to
16 page {F/229/4}:

17 "Pricing Parity -- Overview."

18 Then we see:

19 "CTM sources [so this is an internal document] 3rd
20 party data ... to monitor pricing relative to other
21 distribution channels ...

22 >Data is indicative ...

23 "Typically issues fall into one of three
24 categories."

25 Then you see 2 and 3:

1 "Difference in question set across channels.

2 "Incorrect mapping between CTM and provider question

3 set."

4 Now, the point that we see in these documents,

5 I understand that you are saying this might be just

6 stuff they are told, but there is no indication that

7 that is the position here.

8 A. So I will start my response, can I now?

9 Q. No, not yet, I am sorry, we still have some questions.

10 Mr Beard is sighing but I do want to get through my

11 questions and I have to put my case to you and I will

12 give you a chance to respond.

13 A. Okay.

14 Q. We do not see anything here, do we, that indicates that

15 this is what they have been told? These look like

16 internal documents expressing BGL's view.

17 A. You have shown me two slides of a PowerPoint relating to

18 a different market, motor, and --

19 Q. The other two were not relating to a different market.

20 A. These are two slides. This is the second slide from it.

21 Q. Yes.

22 A. I cannot see what it says in between, I do not know the

23 context. I am not going to try and infer where they

24 have come from. The third bullet that you have stepped

25 over is conscious pricing and product design, so that is

1 something that clearly they have inferred that insurers
2 are doing different conscious pricing decisions. CTM is
3 not an insurer, it is not setting the price, so almost
4 any pricing observation they see they have to understand
5 what drives it, so in some sense every conclusion CTM
6 has drawn is an inference based on what they understand
7 the insurers to be doing.

8 Q. Ms Ralston, of course BGL has to make the best of the
9 data, and we have seen that they had a highly
10 sophisticated system for monitoring prices each month,
11 and we see that they applied a tolerance level and we
12 see in their responses to requests for information by
13 the CMA they have explained that that is at least in
14 part because of these question set differences of data
15 mapping issues. We have seen that in their responses.

16 A. There is as you know a fundamental difference between
17 the data I am using and the one that CTM is describing
18 here. As the CMA pointed out in early Oxera reports we
19 had not fully controlled for all excess values, and that
20 has been done in the reports I rely on in HR1, HR2. So
21 CTM is not controlling for things that I have controlled
22 for in my analysis of this data.

23 Q. In your regression analysis?

24 A. And in my coverage analysis.

25 Q. Now, before we get to that, Ms Ralston, looking back at

1 your paragraph 7.2, so we are on {A/5/129}, you are
2 relying here on discussions you had with CTM, and we
3 have established that those discussions did not
4 elicit -- the discussions -- you summarised the
5 discussions as showing that you do not think this is
6 such a problem because there are fewer questions asked
7 by PCWs, but we have established that you did not find
8 out how many questions even CTM asks and compare that to
9 how many questions the direct channels ask.

10 A. I also refer to three insurers' statements in the
11 footnote.

12 Q. You do. You have relied on your discussions, so I want
13 to ask you about your discussions for the moment.

14 Now, where are your discussions recorded in your
15 report?

16 A. That sentence you refer to says I discussed with CTM
17 quite transparently. That is the record of the
18 discussions.

19 Q. So there is no further record of what they told you in
20 those discussions?

21 A. No.

22 Q. But you are relying on it as your first response to this
23 point about robustness of data. Did you know, were you
24 aware --

25 A. I did not order the points in terms of hierarchy in that

- 1 sense.
- 2 Q. Right, but it is one of --
- 3 A. It is one of the reasons.
- 4 Q. -- three points that you rely on.
- 5 A. This is, as you say, in relation to the effects. In
6 relation to coverage, which is what we were talking
7 about, there is a further important reason.
- 8 Q. Right, but I am looking at -- you still rely on these
9 reasons, do you not?
- 10 A. These are relevant reasons, yes.
- 11 Q. So what I am asking you is where -- and I think you have
12 said you have not recorded the discussions which you
13 rely on for the assertion that PCWs raise fewer
14 questions limiting the scope for discrepancies, and you
15 are aware, Ms Ralston, that CPR Part 35 requires you to
16 provide all the factual instructions you have received
17 from your clients so that your evidence can be tested
18 properly?
- 19 A. If I have overstated the point, then I am sorry.
- 20 Q. Well, when you asked -- when you spoke to CTM and had
21 these discussions that you rely on, did you talk to
22 someone who had relevant knowledge at the time during
23 the relevant period or do you not remember?
- 24 A. Yes, they were working at CTM during the relevant
25 period, yes.

- 1 Q. What was their position?
- 2 A. I do not know their job title. They were involved in
3 the discussions with partners. They were in the
4 commercial team.
- 5 Q. Were they analysing all of this data?
- 6 A. They were involved in the pricing parity snapshots that
7 reviewed -- I imagine they had someone in the team
8 analyse the data, they recorded them, as you know but
9 the Tribunal may not be aware, there were big
10 spreadsheets that observe pricing differences between
11 insurers and PCWs, how big they were, how frequent they
12 had been going on for, and the people I spoke to made
13 decisions upon those.
- 14 Q. People, so it is more than one. Was it more than one
15 person you spoke to?
- 16 A. Well, as you have noted, I did not keep a detailed
17 record of the conversation.
- 18 Q. No.
- 19 A. I know -- I think I know the two people I spoke to.
- 20 Q. Right, okay. I think we had better move on because we
21 cannot really take that any further.
- 22 A. So the other point I wanted to explain -- right, so in
23 coverage, firstly why I say in this paragraph about not
24 being so material or I say something about it, I do not
25 consider it likely that these differences would

1 materially affect the robustness, so what I am getting
2 at here is there could be some noise in the data here
3 that affects how prices compare, but I do not think that
4 would be systematically biasing the results, and I think
5 that is very relevant for the coverage charts.

6 We could turn to some. For example --

7 Q. I am going to come to them, Ms Ralston.

8 A. Okay.

9 Q. If there is a broad point you want to make now by all
10 means make it, but I am going to come to the coverage
11 charts.

12 A. The first broad point is why I do not think it would
13 materially affect it because these would be small
14 discrepancies that I would not expect to be one way or
15 the other to under or overstate pricing differences.
16 The second important point is why a pricing discrepancy
17 has arisen in my mind is less important to the fact that
18 there is one. So the CMA has even pointed to the L&G
19 example where L&G spoke to CTM about -- sorry, not CTM,
20 spoke to a PCW who was putting forward -- they were
21 talking about a promotional deal and they were saying
22 one way we can do this despite the wide MFN is to
23 exploit a question set difference.

24 So the fact that these question sets are -- any
25 differences there are being exploited to break the

1 terms, the contractual terms of the wide MFN, is why
2 when I want to look at the pricing to see did the
3 insurer in fact price consistently or inconsistently
4 with the wide MFN, I am happy to rely on that data
5 because I have this -- I have seen this evidence that --
6 and I think One Call also referred to when they were
7 probed by CTM as to why there was a pricing difference
8 between CTM and the other PCW they referred to question
9 sets, they brushed it away.

10 So, again, I see these question set excuses as being
11 overstated as a problem with the data and what we can
12 see is pricing.

13 The third point -- sorry, thank you for being
14 patient -- is these are the prices that competitors and
15 consumers see, and these are the prices that competitors
16 and consumers would respond to. Whether they have
17 arisen, whether the difference has arisen because of
18 a question set difference or not, if the price is £5
19 cheaper on MSM than CTM a consumer might well go for the
20 MSM product or a competitor may respond to that £5
21 discount.

22 So what is more important is is there a restriction
23 on pricing as the CMA suggests that the wide MFN
24 imposed.

25 Q. Thank you, Ms Ralston. Now, you have recognised the CMA

1 has found that CTM itself applied tolerance thresholds
2 when monitoring compliance with its wide MFNs; yes?
3 That is explained in the Decision. We do not need to go
4 back to it, do we?

5 A. That is the CMA's position.

6 Q. Let us have a look at the Decision then so we know where
7 it is, it is 8.58 to 8.59 at {A/1/264}. We see this
8 explained at 8.58 and 8.59.

9 Now, you are not -- you say it is the CMA's
10 position, but you are not quibbling with the fact that
11 they applied these tolerance thresholds, are you?

12 A. The quibble, as you put it, is about whether this was
13 external or internal tolerance, so whether insurers knew
14 there was a tolerance level and they could get away with
15 pricing within that range.

16 Q. I understand the point you are making, but I am looking
17 at what CTM was doing, and what CTM was doing was
18 regarding price differences as actionable only where
19 HIPs prices were more than £3 more expensive on CTM and
20 more than 30% of the risks exceeded that differential,
21 yes, in 2017 that is the approach they took. So if
22 prices fell within these thresholds that would not
23 appear in their monthly pricing snapshot and it would
24 not generally generate follow-up action. Do you accept
25 that that is what happened? What the CMA found had

1 happened.

2 A. I have not analysed this, and I understand that the
3 tolerance threshold that the CMA are referring to was
4 also considered internally as a way of prioritising
5 resources, and the levels would change according to
6 business needs.

7 Q. Right, well, let us look at {F/457/54}. This is BGL's
8 response to the statement of objections. Then let us
9 look at (185):

10 "As the CMA knows, apparent pricing differences
11 across PCWs can arise quite naturally ..."

12 Then it explains why, and it includes input or
13 mapping errors and differences in question sets. They
14 are not there saying this is what people tell us. They
15 are putting this forward as their position, yes, in
16 their response to the statement of objections; that is
17 what it looks like?

18 A. Yes.

19 Q. Then it says:

20 "This is illustrated ... by the response to the CMA
21 of ..." and they name some HIPs.

22 "Because of these considerations, it has been CTM's
23 policy to operate an internal 'tolerance' level, i.e. to
24 generally ignore any differences below the tolerance,
25 which was an internal guide not generally disclosed to

1 the HIPs. If CTM was priced more expensively by more
2 than £3 in respect of 30 per cent of the risks during
3 the month in question ... [then there are different
4 figures in 2016] CTM might contact the HIP in question
5 to try to understand the reason, although these
6 tolerances were not always strictly applied. These
7 procedures are followed across the board whether the
8 provider has a [wide MFN] or not."

9 You see there that CTM is saying that because of
10 these discrepancies in the data, that is why it applied
11 the tolerance thresholds, yes, that is what it is saying
12 here, yes?

13 A. I am just reading that and drawing a conclusion.

14 So that is what it is explaining there. It is
15 referring to those reasons above.

16 Q. Okay.

17 THE PRESIDENT: Ms Ralston, in your work, how far did you
18 explore the extent that question sets were different
19 between PCWs and also direct insurer channels?

20 A. I just relied on that discussion from CTM. I did not
21 try and access or access question sets.

22 Of course, I have run a few quotes as you might do
23 yourself to understand the market, but beyond that --
24 and they confirmed that -- that approach confirmed what
25 I had found that some direct websites were much longer,

1 but I have not done a systematic review.

2 THE PRESIDENT: So it is impressionistic, but in terms of
3 your impressions regarding different question sets
4 across PCWs, your assumption has been that they are
5 broadly the same?

6 A. Broadly. Partly by that L&G example where they sort of
7 seem to have found -- found something, they are like oh
8 look we can do it this clever way. If it had been very
9 easy to find these gaps, then L&G would not have sort of
10 put it in that way in my opinion, and the CMA's case is
11 not -- unless -- I will be corrected on this, but it was
12 not that the wide MFN contractually prevented insurers
13 from pricing more than £3 more expensively on CTM or
14 anything, it was all about a relative price floor. So
15 I have taken the CMA's decision or theories of harm and
16 I have baked them into -- they are the hypotheses that
17 I have been testing throughout my analyses.

18 THE PRESIDENT: The reason I am asking -- it may be we just
19 have to assume that the tenor of the questions is the
20 same across the board, but the reason I am asking is
21 most-favoured-nation clauses only work if you are
22 comparing apples with apples, whether they are narrow or
23 wide. In other words, if you have an additional
24 question which makes a material difference to the
25 evaluation of risk in whatever rating engine the insurer

1 is using, you are going to be comparing apples with
2 oranges. So the reason I am asking is I do not have
3 a problem with different questions for different PCWs
4 provided it makes no odds in terms of the assessment on
5 rating, but if you have differences which are material
6 in the sense that you are extracting more data that is
7 relevant to the rating of the risk across PCWs, then why
8 should we be saying that the most-favoured-nation clause
9 is triggered at all?

10 A. That is my view, absolutely. I am less worried why
11 there is a price difference, but if an insurer is
12 offering a cheaper price on another price comparison
13 website to CTM then CTM's wide MFN is not preventing the
14 insurer from doing so. I am testing that assumption
15 that CTM's wide MFN prevented insurers from changing
16 their prices across -- or differential pricing across
17 the platforms, and --

18 THE PRESIDENT: So you are doing it as it were the other end
19 of the telescope.

20 A. Yes.

21 THE PRESIDENT: You are looking at what is happening in the
22 market, whereas I am asking and you are very helpfully
23 answering whether you did it at the level of the
24 questions asked, and you have not done that exercise?

25 A. No, I have not done it at the question level.

1 THE PRESIDENT: So you cannot say whether the difference in
2 pricing arises because of a wilful breach of the clause
3 or actually strict compliance with the clause because of
4 let us say a material difference between questions?

5 A. I cannot say that.

6 THE PRESIDENT: You cannot say that, no, thank you.

7 A. I think --

8 PROF ULPH: Could I ask a question?

9 A. Can I -- one minor -- I have explained why I like to
10 look at market outcomes or outcomes. I think I saw that
11 without overstepping my position as an economist that as
12 an effects-based case we should look at effects rather
13 than just intent, but that is perhaps of less
14 importance. I consider looking at data can be quite
15 a systematic way of looking at behaviour.

16 THE PRESIDENT: Well, that is a helpful articulation of your
17 approach, thank you.

18 Professor, you had a question.

19 PROF ULPH: Could I ask a follow-up question? Another
20 reason why different HIPs might quote different prices
21 is that you might take the same questions but assess the
22 risk differently, so that the answers to the same
23 questions, they could still take a different view as to
24 what the intrinsic risk was on that. How does that
25 factor into your analysis of the reasons for there being

1 price differences?

2 A. Sorry, Professor Ulph, did you say they asked the same
3 questions but came up with different assessments of the
4 risk?

5 PROF ULPH: Risk profiles, yes.

6 A. So that would -- so if that was -- and is that the same
7 insurer has responded to the same questions on MSM and
8 CTM but thinks that customers on CTM are of a different
9 risk, then MSM has given a different price? So --
10 sorry?

11 PROF ULPH: You are just talking about reasons why prices
12 might differ, and I think you kind of answered my
13 question. Another reason why prices might differ is
14 this is between HIPs -- is that HIPs are assessing the
15 same risk, the same set of answers differently. That is
16 not the issue here. The issue is about why you might
17 price differently on one channel rather than another
18 channel, so the fact that two HIPs assess the same
19 situation differently would not be relevant to that
20 comparison. Have I understood that?

21 A. That is correct, yes.

22 PROF ULPH: Okay, thank you.

23 MS DEMETRIOU: Ms Ralston, just on this, just going back to
24 this, you say that you have controlled -- you have not
25 used the same data as CTM used, and I think it is fair

1 to say that there was an additional problem that the CMA
2 identified relating to different excesses; is that
3 right?

4 A. Yes.

5 Q. What you have done is you have addressed that in your
6 report?

7 A. Yes.

8 Q. But what you have not done is controlled in any way for
9 these question differences and mapping differences, have
10 you, because you have assumed they are minimal. That is
11 correct, is it not?

12 A. I have not controlled for the question set mapping
13 differences.

14 MS DEMETRIOU: Sir, I am conscious of time and that we
15 started a bit early. Is this a convenient moment, or
16 I can press on?

17 THE PRESIDENT: No, it is. Above all else, I am concerned
18 that both the shorthand writer and the witness do not
19 get overtired. So I hope Ms Ralston you will say if you
20 need a break, but this seems like a good time. Should
21 we say a 15-minute break as the only break for today?
22 Well, let us see.

23 MS DEMETRIOU: I do not know whether the transcribers would
24 prefer two shorter breaks. I think it may be easier to
25 have two shorter breaks.

1 THE PRESIDENT: Very good. We will take two 10-minute
2 breaks then and we will rise until 10.55.

3 (10.45 am)

4 (A short break)

5 (11.00 am)

6 MS DEMETRIOU: Thank you, sir.

7 Could we please turn to {A/5/85}. It is the bottom
8 of the page. Ms Ralston, just to locate this discussion
9 for the Tribunal, what you are doing here under the
10 heading, the heading in bold at the bottom of the page,
11 is looking at your first category of insurer; yes?

12 A. That is correct.

13 Q. You say that there are five insurers who stated -- that
14 provided qualitative evidence to the CMA and stated that
15 they considered their wide MFN to be unenforceable; yes?

16 A. Yes.

17 Q. One of them, Allianz, was not included by the CMA in its
18 own estimate so we just leave that aside.

19 Then another one is Ageas, which we have looked at
20 a little bit already, and this is an example of an
21 insurer which you say told the CMA that it considered
22 the wide MFN to be unenforceable so you have applied the
23 adherence test; yes?

24 A. Yes.

25 Q. Then if we look at {A/5/210}, we have looked at this

1 already, let us go back to it, you have the heading
2 "Ageas" in the middle of the page, and if we look at
3 A4.33, we have already established that there were only
4 12 months of data that you looked at, and for those 12
5 months you say that for three of the 12 months Ageas
6 priced inconsistently with its wide MFN because it
7 priced 50% of its risks more expensively on
8 ComparetheMarket than Confused, yes, and 25% of its
9 risks more expensively on ComparetheMarket than
10 Gocompare?

11 A. Yes.

12 Q. If we go over the page, please, to page {A/5/211}, we
13 see figure A4.2, and that suggests that there were six
14 or seven months that you looked at when Ageas priced
15 most or all of its risks equally as between CTM and
16 Confused; yes?

17 A. Yes.

18 Q. If we look at A4.3 on page {A/5/212}, that suggests,
19 does it not, that there were at least three months when
20 Ageas priced its risks equally as compared --

21 A. Sorry, I think I misheard the first question, I was
22 reading something.

23 Q. I am so sorry, let us go back to page {A/5/211}. This
24 is a comparison between ComparetheMarket and Confused.
25 So what I am saying is that this suggests, if we look at

1 the straight line, part of the line, that there were
2 perhaps six or seven months when Ageas priced most or
3 all of its risks equally as between ComparetheMarket and
4 Confused, yes?

5 A. I think I will quickly explain the chart so everyone is
6 familiar.

7 Q. Sure.

8 A. What I have done is I have matched the risks between --
9 in this chart it is CTM and Confused offered by one of
10 the brands, by Ageas Kwikfit. The Y axis gives you the
11 price difference, and then I have drawn three lines, so
12 I have drawn the median price difference, the
13 quartile -- so the lower and upper quartile, so the
14 median is saying that that is the -- 50% of the risks
15 are pricing more, a larger difference, than that median,
16 50% less, and then the quartiles give the range.

17 Then we have to focus quite hard unfortunately with
18 the colours and using lines. So Ms Demetriou has asked
19 me if this -- this shows, what I have drawn from it and
20 as I have reported, is that the median and the light
21 blue, which is the upper quartile, are far above zero,
22 so this is saying that the median, the typical risk in
23 some periods is above zero, so there is a pricing gap
24 for at least 50% of the risks, and that is happening for
25 the three months.

- 1 Q. Yes.
- 2 A. So now I am with you.
- 3 Q. Yes, thank you, that is very helpful. So I am with you
4 for what the three months shows.
- 5 A. Yes.
- 6 Q. I do not think this is controversial, but for the
7 remaining period it shows that they priced the same?
- 8 A. Yes.
- 9 Q. Thank you. If we go to A4.3 on page {A/5/212}, this is
10 a comparison of Ageas prices between CTM and Gocompare,
11 and we see here that there is a period towards the end
12 of at least three months, perhaps more, but let us say
13 three months, where Ageas priced its risks either the
14 same or more cheaply on CTM than on -- sorry, priced its
15 risks equally between the two price comparison websites;
16 yes?
- 17 A. Yes, there is a substantial period where the prices are
18 all over the place one might say, and then a period
19 where they happen to be pricing similarly.
- 20 Q. Right. Then if we look at the last diagram on A4.4,
21 this shows that it priced -- Ageas priced its risks
22 either the same or more cheaply on ComparetheMarket than
23 MoneySupermarket; yes?
- 24 A. Yes.
- 25 Q. Your analysis -- I think this is right -- does not look

1 at the picture after the relevant period for this
2 particular HIP, does it?

3 A. Yes, that is correct. The time is picked according to
4 the data.

5 Q. Yes. Let us look at what the CMA found. If we go to
6 {A/1/275} at 8.87 at the bottom of the page, so you will
7 know that the CMA found that 13 of the 17 providers with
8 wide MFNs that it has contacted it found priced
9 consistently with its -- priced the same or consistently
10 priced lower on CTM such that its pricing strategy was
11 consistent with CTM's wide MFNs. That is the CMA's
12 finding; yes?

13 A. Yes, that is what that paragraph says.

14 Q. If we look at annex L at page {A/1/579}, there you see
15 Ageas, and you see the CMA finding that there is uniform
16 pricing strategy during the relevant period such that
17 its prices were generally consistent with its
18 obligations under its wide MFN, and if we look at the
19 document and what Ageas said, the document being
20 referred to, so if we go to {F/302/3}, this is
21 a response from Ageas. You see that at the bottom of
22 the page under question 5:

23 "Currently Ageas Direct look at this as an overall
24 Home PCW lifetime pricing model rather than separately
25 by each individual PCW, so irrespective of any differing

1 commissions by PCW prices are charged as if each PCW
2 receives the same commission currently."

3 So that is what they are saying to the CMA, what
4 they said to the CMA; yes?

5 A. Yes.

6 Q. When you drew conclusions about Ageas' pricing
7 behaviour, did you take account of that statement?

8 A. I have not referred to it, but I do not think that
9 changes my opinion.

10 Q. Do you remember if you looked at it at the time when you
11 were considering all of this?

12 A. I have looked at annex L which summarises that
13 paragraph, so I am very -- I am familiar with that.
14 I cannot recall if I went to this particular document.

15 Q. No, I think to be fair to you the relevant part is into
16 annex L.

17 A. I saw that the CMA agreed that CTM's wide MFN did not
18 have a directly observable impact on its behaviour which
19 is what I am testing for in coverage.

20 Q. Yes, but you appreciate, do you not, Ms Ralston, that
21 when the CMA is finding that there is no directly
22 observable impact, it is not saying there is no
23 influence. You appreciate that, do you not, that that
24 is the CMA's case. The fact that there might not be
25 a piece of evidence saying, "We are pricing consistently

1 with the wide MFN because of the wide MFN", that does
2 not mean that the CMA has not found or has not concluded
3 that the wide MFN has had an impact on the market
4 dynamics or on this particular HIP. You understand that
5 is the CMA's case, right?

6 A. From what I have understood, the CMA considers the
7 network of wide MFNs and the network itself to be the
8 basis of coverage. I have set out a very different
9 opinion. In coverage I considered -- I would agree --
10 well, I would take the point of directly observable
11 impact, that is what I have meant by influence. So
12 there is a difference of approach.

13 Q. Right, okay.

14 A. So I am saying the fact that the CMA agrees with the
15 conclusion that there is no directly observable impact,
16 that is what I am referring to. I understand that the
17 CMA think that is irrelevant because there is a network,
18 but I do not. I think it is quite relevant if there is
19 an observable impact or not.

20 Q. I think you would accept, would you not, that leaving
21 aside relevance, because I do not think anyone is saying
22 it is irrelevant, but leaving aside relevance, there is
23 a difference, is there not, between saying that there is
24 not a directly observable impact on the one hand and on
25 the other hand concluding from that that the wide MFN

1 had no impact at all, so there is a difference between
2 those two statements. So to put it another way, you may
3 have no directly observable impact but there may in fact
4 be an impact operating as compared with the
5 counterfactual scenario?

6 A. So I would test for that fully in the effects analysis.

7 Q. But you agree in principle?

8 A. I am getting lost with the question.

9 Q. Right, that is fair. Let me re-ask it.

10 In a situation where you have a HIP which is pricing
11 consistently during the relevant period across the PCWs,
12 but there is no statement from the HIP saying we are
13 pricing consistently because of the PCWs, so there is no
14 evidence that reveals a direct link, do you accept that
15 there might in fact still be a link?

16 A. That is a hypothetical situation, and --

17 Q. I am asking you about the hypothetical situation.

18 A. There could possibly, but in this particular case we
19 have an insurer saying they have a reason why they are
20 pricing uniformly, which was not to do with the wide
21 MFN.

22 Q. Right, and if we look --

23 A. It also says it considered it -- I put it in A4.34
24 {A/5/210}:

25 "Ageas stated that it has never sought to adhere to

1 CTM's wide MFN and told the CMA it had 'verbally
2 communicated ...' [this]."

3 So in this case that we are focusing on, I am
4 quite -- I am very comfortable with the conclusions
5 I have drawn that there was no direct impact of the wide
6 MFN.

7 Q. So you are placing weight on this statement it made
8 about its behaviour after the event during the
9 investigation; yes?

10 A. Yes, I am.

11 Q. Now looking at your pricing analyses, so the three
12 figures that we have looked at, if we go back to page
13 {A/5/211}, but we have just looked at them, it is not
14 the detail I want to ask you about, we see that even if
15 we accept your methodology and even if we overlook the
16 difficulties with the data, there are some periods in
17 which Ageas priced consistently with the wide MFNs; yes?

18 A. Yes.

19 Q. There is a year which you have not analysed; yes?

20 A. Which year?

21 Q. Well, you say you have 12 months of data, so you have
22 analysed 12 months of data. The relevant period was 24
23 months. So you have not analysed the other 12 months.

24 A. Okay, but it is not one year, you know, you are
25 splitting --

1 Q. It is split.

2 A. Yes.

3 THE PRESIDENT: Is there any reason for that, Ms Ralston?

4 It might be just to keep the task in manageable rounds.

5 A. No, I think it would be to do with the data. So

6 I applied like a decision rule to drop data if I did
7 not -- based on enough observations, I think I applied
8 a threshold of 150 per month.

9 THE PRESIDENT: Yes, I see. So when we looked at the CTM
10 and Gocompare graph, you had 1,154 risks per month, and
11 it was that in volume -- it was above 150 per month you
12 were looking at; is that right?

13 A. Yes, so perhaps -- sorry, I did look at the data, like
14 in just very plain terms, and brands would come and go,
15 and I have not always got an answer as to why that would
16 be. That was partly why I was quite convinced about
17 selective quoting and partial delisting and other
18 matters. But, yes, I took the data. If the data was
19 not high enough, I would drop it. I did not want to be,
20 you know -- I did not want that to be a problem, an
21 unreliability.

22 THE PRESIDENT: That is helpful. Then just to understand
23 how you accomplished the matching exercise, where you
24 are looking -- let us look at this page. You have
25 "average number of risks per month = 831". Now, that

1 must mean 831 data points from CTM and 831 data points
2 from Confused. Is that right?

3 A. Yes. It is at the risk level.

4 THE PRESIDENT: Yes.

5 A. So you can think of like a risk as a person.

6 THE PRESIDENT: That was my question. How do you identify
7 that it is the same risk? Do you reference the person?
8 Do you reference the property insured? What is the
9 basis on which you say this is the same risk being
10 quoted for?

11 A. There are risk ID details and risk ID -- so, yes, that
12 is how you match it at the risk level. So person is an
13 approximation because you have a person and then you
14 have their own home, so you then have to -- and then
15 there is a further thing which I improved on between the
16 Oxera reports and these reports is same person, same
17 home, same compulsory excess but they may put in £100
18 voluntary excess as opposed to 150 on another PCW. So
19 that was the further level of control. So they are
20 matching very much if you type in the same details,
21 given the question sets, it is the same risk. It is
22 very granular. It is matched at that level.

23 THE PRESIDENT: Because you could not do it at the risk ID
24 level because each quotation would have a different
25 reference number, because they are coming through

1 different channels?

2 A. We refer it as ID.

3 THE PRESIDENT: Sorry?

4 A. We do refer to it as ID. I think in the data set that

5 ID --

6 THE PRESIDENT: That is fine. What I am trying to work out

7 is how you did the matching, and what you did was you

8 looked at the identity of the insured, the name or

9 address of the property insured and then you also looked

10 at the terms of the insurance?

11 A. So I would need to look at the data set to remind myself

12 exactly of the fields, but that is the broad approach.

13 It captures the same person for the same home across the

14 price comparison websites.

15 THE PRESIDENT: Forgive me, because there is so much

16 material, it is probably in your report. Is it in your

17 report so I can chase this up later on?

18 A. What, the --

19 THE PRESIDENT: The precise way in which you matched risks

20 so that you could say there are 831 data points where

21 you are comparing like with like?

22 A. It would have been in the data sets whether we have --

23 I have written down like, but the code is there, so

24 I might read in the code, you can show how you are

25 matching. I can confirm that and --

1 THE PRESIDENT: I do not want to take up time, but if there
2 is a more granular explanation in the evidence, then
3 just give us the reference. I would be interested.

4 MR BEARD: I do not think that the internal coding
5 description to which Ms Ralston is referring is actually
6 set out here. I think she has explained it broadly.

7 THE PRESIDENT: Right.

8 MR BEARD: But I do not think that detail. But I had not
9 understood that there was any controversy about this.

10 THE PRESIDENT: No, certainly not controversy.

11 MR BEARD: No, and I think that might be why it does not get
12 explained. That was the parenthetical end of it.

13 THE PRESIDENT: I am just interested in understanding how
14 Ms Ralston had gone about her work. It may not matter
15 at the end of the day, but I always take the view that
16 questions that crop up should be asked because this is
17 the only time one can do it.

18 MR BEARD: Of course.

19 THE PRESIDENT: I am so sorry, Ms Demetriou.

20 MS DEMETRIOU: Not at all.

21 MS LUCAS: Sorry, I had one question arising out of that.

22 THE PRESIDENT: Professor, you go first.

23 PROF ULPH: Could I just ask a question of clarification.
24 When you are doing this, you have identified individual
25 risk both on CTM and Confused. These are then customers

1 who are multi-homing, so they have gone on to both PCWs
2 to seek a quote. Have I understood that correctly?

3 A. Okay, so I have explained this in the reports, and also
4 Ms Glasgow took us through it, but CI is a third party
5 consultancy, and they run 2,100 risks through various --
6 all the PCWs and insurers' websites. So it is not me,
7 for example, quoting. It is probably a robot that is
8 simulating real people. So they are like for like
9 comparisons.

10 PROF ULPH: Thank you. That is very helpful.

11 MS LUCAS: My question arose out of something you said which
12 was that as part of the matching process you have people
13 who have the compulsory excess and then there is the
14 voluntary excess they can also tick-box for. I was not
15 quite clear whether you would match those people where
16 they had ticked on another site the extra voluntary
17 cover, voluntary excess, whether you would have matched
18 those?

19 A. So this is controlled for in my analysis, so it would
20 make sure I am comparing the £100 excess person with the
21 £100 on the other website.

22 MS LUCAS: The 150 on ...?

23 A. Yes.

24 MS LUCAS: Thank you.

25 THE PRESIDENT: Sorry, this is obviously in the answer you

1 gave, but when you say "Source: Oxera analysis of CI
2 data", what you are saying is this is the analysis of as
3 it were the robotic quotations, so we are not talking
4 real people at all here, we are just talking about
5 quotations that have been pushed through by CI in order
6 to actually ensure it is like for like?

7 A. Yes, and I talk about it, just so you can read it in
8 more detail, {A/5/203} onwards, and in {A/5/204} I talk
9 about the CI sampling approach, and at the top of page
10 {A/5/205} I talk about this excess point.

11 THE PRESIDENT: Thank you. We will not take up time now
12 because I do know that Ms Demetriou is pressed for time,
13 but thank you for that reference. We will follow that
14 up.

15 MS LUCAS: I hate to say I have one question which I think
16 I might just get out of the way now because it is just
17 vexing me a bit. Can we turn up {A/5/212}.

18 It is simply the box at the bottom, the key,
19 suggests that for example in the bottom half of that
20 page you have identified the median and I could not see
21 it on there. It has been slightly vexing me.

22 A. That will be underneath one of the lines.

23 MS LUCAS: Underneath?

24 A. Yes. I cannot tell if you. It could be underneath the
25 upper quartile or it could be underneath the lower

1 quartile. Given Ageas say they uniformly priced due to
2 the direct channel point perhaps it is underneath the
3 median -- sorry, perhaps it is under the zero line.

4 MS LUCAS: Okay, sorry.

5 MS DEMETRIOU: Not at all. I think in fact you do not
6 really rely on that particular figure, do you, in your
7 analysis, so your conclusion is based on Confused and
8 Gocompare, but you do not mention the MoneySupermarket
9 figure in terms of your conclusion?

10 A. I do not mention it, no.

11 Q. If we go back to page {A/5/211}, I think we have
12 established that in relation to ComparetheMarket and
13 Confused for the greater part of the period pricing was
14 the same; yes? So this evidence, this pricing evidence,
15 Ms Ralston, is actually quite mixed, is it not? Would
16 you accept that?

17 A. I think if you break a rule you break a rule whether you
18 do it every day for 12 months or for three months of the
19 12 months. So I think it is quite convincing they broke
20 a contractual clause.

21 Q. Right, so that is your evidence, is it, as an expert
22 economist, that when people break rules they do it
23 forever rather than just sporadically. That is what
24 you -- you think you are in a position to help the
25 Tribunal on that point, do you? Because what I am

1 asking you is a different question. I am asking you
2 whether on face of these graphs the pricing evidence is
3 mixed.

4 A. Perhaps I said it with too much conviction. I do think
5 that whether you are trying to understand that someone
6 was constrained by a contractual clause, if you have
7 data that is consistent with their own statement that
8 they were not, that is convincing evidence that they
9 were not constrained.

10 Q. Right, but leaving aside the statement -- and
11 I appreciate you are looking at them both together,
12 I understand your answer, but just looking at the
13 figures, the picture is mixed, is it not?

14 A. No, I would say that if you have -- you do not need to
15 consistently be disregarding something to have
16 disregarded it during the relevant period.

17 Q. Right, so the reason that you have concluded that this
18 evidence is not mixed is because of an inference you
19 make that Ageas, if they had broken the rule, would have
20 done it throughout the relevant period?

21 A. No, I am not saying that they broke it throughout the
22 relevant period. I am saying that this is evidence that
23 they broke it during the relevant period.

24 Q. Right, but not throughout the relevant period? You
25 cannot say that, can you?

- 1 A. No, that is not the test I have applied.
- 2 Q. Right.
- 3 A. I have not tried to say that.
- 4 Q. So what you have done is established that there is some
5 inconsistent pricing for part of the relevant period?
- 6 A. Yes.
- 7 Q. You say on that basis the evidence is not mixed so I am
8 going to exclude them from my effective coverage. That
9 is correct, is it not?
- 10 A. No, I have used the qualitative and quantitative
11 evidence together to draw that conclusion.
- 12 Q. Okay, that is fair. So you have looked at their
13 statement to the CMA?
- 14 A. Yes.
- 15 Q. You have found that for some of the period, there is
16 some pricing which is inconsistent with the wide MFN,
17 and your conclusion is that is not mixed evidence, I am
18 going to exclude them from effective coverage. That is
19 accurate, is it not?
- 20 A. Yes.
- 21 Q. Let us turn to what you say about One Call. I do not
22 have time to go through every single one of these
23 insurers, I am going to put the points I think I need to
24 put to make our case, but let us look at One Call. So
25 this is on page {A/5/214}.

1 You see there that One Call is also an insurer that
2 falls within this first category, right, that you say
3 considered its wide MFN to be unenforceable, so it is in
4 your first group.

5 A. Yes.

6 Q. If we turn, please, to {A/5/214} -- we are on that page,
7 I am grateful -- we can see that the statement you rely
8 on -- and this is at A4.41 -- the statement you rely on
9 in respect of One Call is recorded -- so looking at
10 A4.41 you say that:

11 "The CMA acknowledges that One Call 'considered that
12 the wide MFNs may have been unenforceable' but
13 nevertheless includes One Call in its assessment of
14 market coverage on the basis that it had a wide MFN ...
15 and that CTM took enforcement action against [it] ..."

16 Then you say -- you then say that -- let us look,
17 please, at the Decision. So let us go to the Decision
18 and look at what the CMA did. So Decision {A/1/72},
19 paragraph 4.27. Can we go back to the previous page,
20 please {A/1/71}.

21 Do you see at the bottom of that page, this is what
22 you are relying on, that:

23 "... One Call ... considered that the wide MFNs may
24 have been unenforceable; this was on the basis of their
25 interpretation of ..."

1 If we go over the page {A/1/72}:

2 "... the effect of the PMI Order [the motor
3 insurance order] 2015 banning the use of wide MFNs in
4 private motor insurance and on-going scrutiny by the
5 CMA ..."

6 That is the statement you rely on recorded in the
7 Decision, is it not?

8 A. Yes, that is one of the points I rely on.

9 Q. Let us turn to {F/382/1}. This is a response by
10 One Call to a Section 26 request for information, and if
11 we go to page {F/382/11} of this document, if we look at
12 the bottom of the page, question 4:

13 "Please describe to what extent changes in the
14 Commissions paid by One Call to PCWs have affected the
15 premiums set by One Call for Home Insurance on PCWs, or
16 on other Channels, over the Relevant Period. Please
17 explain why changes ... were (or were not) fully passed
18 through to premiums for Home Insurance. If a PCW
19 reduced our commission, this reduction would be passed
20 on entirely to the consumer's premium for that specific
21 PCW. This would not impact the {F/382/12} premiums on
22 other PCWs. Prior to the removal of the MFN, we would
23 not have been able to do this and the discount would
24 have been spread across all aggregators. This has now
25 allowed us to pass the full commission reduction on to

1 consumers that have bought on that specific channel and
2 advertising this on the relevant site for true clarity."

3 So what One Call is saying here in its response is
4 that the removal of the wide MFN has changed the manner
5 in which it is able now to respond to reductions in
6 premiums by PCWs; yes?

7 A. Yes.

8 Q. And to reflect that in differential pricing.

9 Now, do you recall if that is a statement,
10 a response, that you took into account when conducting
11 your coverage analysis?

12 A. I relied mainly on the CMA's decision and statement that
13 it may have to consider it unenforceable.

14 Q. Okay, and if we go on to page {F/382/17}, question 13,
15 you see that:

16 "The CMA understands that at least one of One Call's
17 PCW Agreements ... included a Wide MFN ..."

18 You see that being referred to.

19 If we go over the page {F/382/18} to question 14:

20 "Please explain ... the extent to which the decision
21 of a PCW to introduce or remove a Wide MFN, or replace
22 it with a Narrow MFN ... has affected the premiums for
23 Home Insurance ... this has allowed us to work with
24 aggregators to reduce the premiums we offer our
25 consumers."

1 Did you see that when you looked at all of this?

2 A. Yes, I am also very familiar with One Call's promotional
3 deal activity during the relevant period.

4 Q. Right, but what they are saying is that after the
5 relevant period, they have responded to the removal of
6 the wide MFN in their pricing; yes? That is what they
7 are saying here.

8 If we look at 15:

9 "Please describe whether and, if so, how, One Call's
10 strategy concerning the negotiation of any
11 Commissions ... has been affected by the presence of any
12 Wide MFN in ... PCW Agreements."

13 Then it is asking about level of commission, whether
14 those have been affected by the presence of wide MFNs.

15 Then you see:

16 "Due to the presence of the wide MFN in our
17 contract, regardless of what commission we paid
18 aggregators, we have had to offer the same prices to our
19 consumers. The changes have allowed us to work closely
20 with PCWs to offer prices to our joint consumers that
21 are reflective of the commission we pay. As mentioned
22 on earlier questions, this has resulted in volume
23 uplifts and cheaper prices for our consumers."

24 Do you see that? This is about what happened after
25 the relevant period; yes?

1 A. I did not rely on this statement or this document. The
2 way in which One Call engaged in promotional deals
3 throughout the relevant period, it seems inconsistent
4 with what they are saying there, because I think you are
5 implying they were saying they could not do PDs during
6 the relevant period when in fact they did.

7 Q. Well, let us have a look at question 16, because that
8 does relate to PDs:

9 "Please describe whether and, if so, how, One Call's
10 strategy concerning [PDs] ... has been affected ...
11 Having the wide MFN in place has made it so One Call
12 could not successfully complete any promotional
13 campaigns [I think this is the point you are making].
14 As mentioned previously, if One Call's commission on one
15 {F/382/19} PCW were £10 cheaper, it restricted us
16 ensuring that this was passed on to our consumers."

17 Now, two things are being said in all of this
18 Ms Ralston, are they not? The last point relates to
19 PDs, I am going to come back to that. The first point
20 relates to their action after the relevant period. They
21 are saying we can now price differentiate because the
22 wide MFN has gone; yes, you agree that is what they are
23 saying?

24 A. That is what they are saying.

25 Q. Right. You did not take that statement into account,

1 did you, in reaching your conclusion on the qualitative
2 evidence?

3 A. So my charts show whether they did change their
4 behaviour after, and you do not see that.

5 Q. Right, so what you are doing here is saying for Ageas
6 you say a qualitative statement is very important and
7 I view the mixed pricing information through the lens of
8 the qualitative statement, but here you are brushing it
9 aside, are you not, because you are saying my pricing
10 information does not really show a change of behaviour
11 after the relevant period, so it is rather a pick and
12 mix approach, is it not, Ms Ralston?

13 A. There are good reasons for One Call to not be -- to not
14 have so much faith in their statements given the
15 statements that they have made about their promotional
16 deals during the relevant period where they explain to
17 CTM that the promotional deal with I think
18 MoneySupermarket in 27 was only as a result of question
19 sets, and I refer to that in my assessment of One Call.

20 Q. Right, and they said that in the context of being
21 enforced against by CTM, no? So when they carried out
22 promotional deals in the relevant period in each case
23 they were challenged by CTM, were they not? Were you
24 aware of that?

25 A. I am aware CTM reached out to One Call as it does with

1 other insurers about pricing discrepancies, and for the
2 first promotional deal I have noted that it was
3 identified by CTM, and this is noted in the Decision
4 too, in February 2016, and CTM flagged this according to
5 the CMA to One Call. However, despite this, One Call
6 continued, and I think it is in the third Oxera report
7 where we talked about there being quite some time before
8 the promotional deal was removed.

9 Q. Right, so you are effectively looking at the evidence
10 that you think helps your client and you are not placing
11 any weight -- is this fair? -- on the contrary evidence
12 which shows in your words a mixed picture, to put it at
13 its lowest?

14 A. I have found it hard to interpret the qualitative
15 evidence, so I have also used pricing. I note that
16 One Call is quite a small insurer, 1.8% of share, and so
17 what I have done, I have also not found the evidence on
18 Aviva and AXA convincing that they were constrained, but
19 I think they are larger insurers, so I have included
20 them in the coverage.

21 Q. Right.

22 A. Now, I still am of the view that it is more informative
23 to exclude One Call than include it, but this is
24 a detailed analysis, and I think it is more informative,
25 I have set out the various reasons why I think it is

1 more informative to exclude One Call.

2 Q. Right, well, let us come to your pricing analysis. Let
3 us have a look at that. If we turn to {A/5/214}, we see
4 the results -- we see that what you say at A4.40 is that
5 it shows -- your pricing analysis shows that One Call
6 priced more expensively on CTM relative to
7 MoneySupermarket between October 2017 and October 2018;
8 yes? So priced at least 75% of risks more expensively
9 on CTM relative to MoneySupermarket and between
10 March 2016 and January 2018 One Call priced more than
11 25% of risks more expensively on CTM relative to
12 Confused. That is your conclusion on pricing.

13 If we look at figure A4.7 on page {A/5/215}, what we
14 see is that for part of the period -- so at the
15 beginning and the end -- actually One Call is pricing
16 equally on CTM and MoneySupermarket for that portion of
17 the relevant period, yes? So we see the horizontal line
18 at zero.

19 A. Yes, we see a period of time where they are pricing
20 consistent.

21 Q. According to your methodology on pricing, where you see
22 equal pricing, that suggests that the HIP was
23 constrained by its wide MFNs; yes? Because you say,
24 when you are explaining your test, if the insurer was
25 constrained by its wide MFN, that if it was constrained

1 you would expect to see equal pricing, you would not
2 expect to see more expensive pricing on CTM. That is
3 right, is it not?

4 A. No, I would not apply the test like that here.

5 Q. But this is the adherence test you are applying, yes,
6 here?

7 A. I do not consider that One Call is constrained at all
8 because it is doing these two promotional deals.

9 Q. But the promotional deals we have established that they
10 were enforced against, CTM contacted them when they --

11 A. If we look at {B/21/69} --

12 Q. Sorry, which page?

13 A. It is {B/21/69}. This is the third Oxera report, the
14 response to the SO, and this is where I am explaining
15 how -- so you are talking about the enforcement and
16 I just refer to it in loose terms but the dates here
17 are -- and this is all referring to the CMA's analysis
18 of the enforcement as you can see, the footnotes are all
19 to the SO which -- they have just disappeared. So CTM
20 reached out to One Call in February. The pricing
21 disparity only ends in July 2016. Now promotional deals
22 typically only lasted a couple of -- up to -- two or
23 three months actually is on average, two or three
24 months, I can be precise.

25 So looking at this as an economist, as a sort of

1 outsider, just looking at what happened, I see those
2 dates as very unconvincing evidence that that
3 promotional deal was influenced by any reaching out by
4 CTM.

5 Q. Right, well, let us look at what the Decision says. Can
6 we go, please, to M.109 onwards. This is the deal with
7 MoneySupermarket that we are looking at so --

8 A. This is the second deal after this apparent enforcement,
9 it then does another promotional deal.

10 Q. Can I take you to the bits in the Decision?

11 A. Great.

12 Q. So {A/1/624}. What we see the CMA has found at
13 paragraph 109 is that:

14 "In early 2017, One Call agreed a promotional deal
15 with MoneySupermarket ..."

16 Yes?

17 At 110:

18 "The resulting pricing disparity ... was identified
19 by CTM as part of its monitoring ..."

20 Then you have -- they then at 111, they request an
21 explanation from One Call for the price difference and
22 then they write to them saying you are in breach of
23 contract, yes, so that is what has happened.

24 If you go over the page {A/1/625}, we see at 112
25 One Call replying, noting that the pricing disparity

1 was -- they give a reason, and then they say what we are
2 going to do is give you the same deal, yes? So the
3 result is that they proposed to CTM to mirror the
4 question set to allow them to benefit from exactly the
5 same rate. So the upshot is that the enforcement is
6 successful.

7 A. So as I explained, I read that as saying an excuse of
8 data, when in fact there is promotional activity going
9 on, but I would agree that here it appears that One Call
10 is offering, as a result of the wide MFN, to lower the
11 prices on CTM.

12 Q. Yes, and so the difficulty, Ms Ralston, is what you are
13 doing is picking and choosing, are you not, the evidence
14 that suits your client's case. So we do not see
15 anywhere any reference to the statements, the response
16 to the Section 26s, where One Call said well after the
17 relevant period we have responded by differentially
18 pricing, something we could not do before. So you are
19 not relying on that. What you are doing is picking and
20 choosing the evidence that suits your client, are you
21 not?

22 A. I have explained I felt that AXA and Aviva is -- and the
23 15 insurers the CMA did not account for, or did not
24 capture evidence for, and Grove & Dean, for none of
25 those there is convincing evidence that they were

1 directly influenced which is my criteria. But I include
2 them, so I think that is quite a balanced approach.

3 Q. Right, okay.

4 THE PRESIDENT: Ms Ralston, let me just unpack that a little
5 bit.

6 You have a variety of sources of data. You have
7 your econometric analysis.

8 A. Yes.

9 THE PRESIDENT: You also have the statements by the
10 participants in the market as to what they did or
11 thought they were doing at the time.

12 A. Yes.

13 THE PRESIDENT: When these point in the same direction, no
14 problem, you can reach a conclusion because all of the
15 evidence is pointing in the same direction. The problem
16 arises when you have the evidence pointing in different
17 directions as here.

18 Would it be fair to say that your approach is to
19 accord primacy to the data that you have mined over the
20 more general anecdotal statements, as you might
21 characterise them, of the market participants, as simply
22 your view as an expert of the weight that is to be
23 accorded to these divergent pieces of evidence?

24 A. Two or three years ago, I would have just agreed.

25 I have spent more and more time on this case reading

1 more and more of the factual evidence, so I would not
2 put hierarchy there in a general statement. I have
3 explained with One Call why I have put more or less
4 weight on different statements, but I do not think
5 I would make a sweeping statement that I generally
6 disregarded the factual evidence.

7 THE PRESIDENT: I would not go so far as to say "disregard".
8 I was really trying to work out the weight you are
9 according to these things.

10 A. I would put more weight on the empirical stuff in the
11 round, yes.

12 THE PRESIDENT: This may be a question you just cannot
13 answer because memory is a difficult thing, but have, to
14 your recollection, there been any cases where you have
15 disregarded the data in favour of the statements of
16 a market participant, in other words where you have
17 inconsistency, but you have gone with the --

18 A. I cannot recall that, so perhaps that is a fair
19 approach. Fair description of my approach.

20 THE PRESIDENT: Thank you.

21 MS DEMETRIOU: Can we just go to page {A/5/216}, please.

22 I am looking at the bottom figure, so A4.9. This is the
23 comparison between CTM and Gocompare; yes?

24 A. Yes.

25 Q. What you see is for most of the period equal pricing on

1 ComparetheMarket and Gocompare during the relevant
2 period; yes?

3 A. Yes.

4 Q. But this is not something you have commented on in your
5 report, have you, specifically, in reaching your
6 conclusion?

7 A. I may not have commented on this chart.

8 Q. Let us move on from One Call to --

9 A. Do you want me to interpret that? There is no reason --
10 I am very comfortable with that chart. I do not think
11 that shows --

12 Q. Right, I am just -- well, you have not taken it into
13 account, have you, in your report? Where do you
14 mention --

15 A. Well, it is an account. It is in the report. It is
16 published for everyone to see.

17 Q. Why do you not explain why you are comfortable with this
18 graph, then?

19 A. So I do not see this chart as showing any evidence that
20 One Call -- taken in the round, as all of this, that
21 there was an impact of the wide MFN.

22 Q. Right.

23 THE PRESIDENT: Why is that?

24 A. I did look at the changing behaviour which starts over
25 12 months after the removal. That change in behaviour

1 is not consistently across all the PCWs, and it is
2 specific to Gocompare which makes me think there is
3 something specific to Gocompare, perhaps Gocompare did
4 something, as opposed to the wide MFN that is an impact
5 on every -- would impact all PCWs at the same time, and
6 the long time period since the removal of the wide MFN
7 and the pricing going in all directions, not just more
8 expensively on CTM.

9 THE PRESIDENT: So Ms Ralston if I can just unpack that, the
10 point that would be made against you on figure A4.9 is
11 that there is a consistency in the pricing, an absence
12 of difference, which suggests that the wide
13 most-favoured-nation clause has bite. To that extent it
14 is a point as it were in favour of the analysis of --
15 not the approach, the analysis of the CMA.

16 A. I think --

17 THE PRESIDENT: But the reason you say -- the fact that
18 prices go together may be because of the
19 most-favoured-nation clause, but it may not be. That is
20 fair?

21 A. Yes, I think that is fair.

22 THE PRESIDENT: What you are saying is there is significance
23 in when the divergence in prices occur in that it does
24 not occur the moment the WMFNs are lifted because later
25 that is what you get from this; is that right?

- 1 A. Yes, much later as well.
- 2 THE PRESIDENT: So what you are saying is that if the wide
3 most-favoured-nation clauses were acting as
4 a constraint, the divergence we see at the end of that
5 diagram would occur much sooner?
- 6 A. Yes, that is correct.
- 7 MS DEMETRIOU: Of course when you explain your test, if we
8 go to page {A/5/83}, your adherence test, what you are
9 saying there is that the adherence test asks whether the
10 insurer risks -- prices risks more expensively on CTM
11 relative to other PCWs during the relevant period, and
12 what you see on this chart is that they did not; yes?
- 13 A. On that particular chart.
- 14 Q. On that particular chart, okay.
- 15 Can we turn to {A/5/89}, please.
- 16 This is your next category of statement. You say
17 that five insurers, at the bottom of the page:
- 18 "Five ... insurers ... stated that their wide MFN
19 was not a constraint ..."
- 20 Yes?
- 21 A. Yes.
- 22 Q. If we look at 5.58 you set out the names of those
23 insurers, and Legal & General is one of them, yes, and
24 you know that that HIP had the largest share of PCW
25 sales; yes?

1 A. Yes.

2 Q. Right. Now, at 5.68, so we are looking at page
3 {A/5/91} -- sorry, let us go first to -- so 5.68, you
4 see that -- 5.69, sorry, so we are on page {A/5/92}, you
5 refer to statements at 5.69 and 5.70, statements by
6 Legal & General during the investigation to the effect
7 that its wide MFN only constrained that HIP at the edges
8 of its action, yes, so that is what you are placing
9 reliance on.

10 A. Yes.

11 Q. Let us look at the Decision at paragraph 8.52, so this
12 is {A/1/262}. One second. I think I have a wrong
13 reference. Please bear with me. I apologise for this.
14 (Pause) I am going to come back to that particular
15 point.

16 I want to go instead to {F/346/1}, please.

17 This is a Legal & General document; yes?

18 A. Yes.

19 Q. Have you seen it before? You have probably seen it
20 referred to at least in this appeal.

21 A. I have heard it in the hearings.

22 Q. Right, and so you see there that what they are saying
23 internally -- and this is March 2015:

24 "... our main priority is getting the wide MFN
25 clause removed, before we will consider an increase in

1 CPA.

2 "This is because we know that by keeping the wide
3 MFN clause and taking an increase in price, we will be
4 worse off compared to our competitors as we have to both
5 keep prices aligned and take a CPA increase. We know
6 that two of our main competitors ... do not have wide
7 MFNs ... in their agreement, and as a result our
8 position is being harmed on the other aggregator sites
9 as we are unable to compete."

10 Then you see at the end:

11 "Once the wide MFN clause is removed we will
12 reconsider taking an increase in CPA."

13 Yes?

14 A. Yes.

15 Q. Did you take that document into account at the time when
16 you were conducting your effective coverage analysis?
17 Did you see that document?

18 A. I do not recall relying on it or reviewing it, no, but
19 it is very inconsistent with the fact that they had
20 a promotional deal for I think over 12 months during the
21 relevant period.

22 Q. Right, okay, well let us look at inconsistencies in
23 a minute. If we go to the Decision at page {A/1/282},
24 so 8.103.

25 This is the part of the Decision that deals with the

1 main Legal & General evidence, yes? You see at the
2 bottom of the page that:

3 "Legal & General told the CMA that it always had
4 a general 'operating awareness' of the wide MFN in its
5 contract ... and that it 'typically ... abided by [its]
6 terms ...'. It also stated that it did not want to
7 {A/1/283} be in a position of being in breach of
8 contract ... Despite this, in its response to the SO,
9 Legal & General's position was that, absent CTM's wide
10 MFN, it did not consider that 'it would have a greater
11 incentive to enter into promotional deals with other
12 PCWs' and that where promotional deals ... 'have
13 ostensibly been rejected ... this would not have been
14 the only reason'. As such, Legal & General told the CMA
15 that CTM's wide MFN 'had no perceptible impact on its
16 pricing strategy'."

17 So there CMA is acknowledging the evidence that you
18 rely on; yes?

19 A. Yes.

20 Q. Right. Then what it says, it goes on to say, is, well,
21 its contemporaneous internal documents and its responses
22 to information requests, as well as its repeated
23 requests to CTM to remove its wide MFNs, show that it
24 was actually a constraining factor on it. So there is
25 an inconsistency, yes, that is what the CMA is

1 identifying between the statements you rely on and the
2 internal documents?

3 A. That is the CMA's view.

4 Q. That is the CMA's view. We then see at 8.105 on page
5 {A/1/283} that:

6 "... Legal & General's pricing strategy, in 2017
7 [it] put a price increase on CTM on hold because of
8 CTM's wide MFN. In an internal email, [its] pricing
9 team recommended an increase in the prices set on CTM by
10 1% intended to reflect an increase in CTM's commission
11 fees but at the same time indicated that 'a differential
12 rating approach' to PCWs based on their performance was
13 to be put on hold because of CTM's wide MFN."

14 Yes? So we have seen that. That is what is being
15 reflected here.

16 Then if we look at {F/250/1} -- that is a wrong
17 reference. I am going to have to come back to that.

18 If we go to {F/347/1}, let us go to page {F/347/2}
19 first, please, and work from the bottom. Do you see the
20 email on 30 June:

21 "... I ... told her we had had the 1% previously
22 discussed signed off ..."

23 Then it says:

24 "I agree with you that if we must take it, we will
25 have to pass on the increase to their customers only."

1 So it is talking about commission increase from CTM
2 and it is saying if we take that we will have to pass it
3 on to all of our customers.

4 Then at the top of the page:

5 "Position today is that we cannot afford this
6 increase and will pass onto their customers only if they
7 force this on us, regardless of [the wide] MFN ..."

8 Then --

9 A. Sorry, are you at the top or the bottom of the page?

10 Q. Right, I was first of all at the bottom of the page.

11 A. Okay.

12 Q. The last email. Then if we go back to the previous
13 page --

14 A. Did the thing you just said just say "regardless of the
15 wide MFN"?

16 Q. Well, let us look at the whole email.

17 A. Okay. Sorry, I have not, as you know, have not relied
18 on this, so I am just going through what you are telling
19 me.

20 Q. So let us look at page {F/347/1} at the bottom:

21 "... we believe we had agreed a 1% increase ..." and
22 now they have "... pushed up almost back up to the 3%
23 they initially proposed.

24 "What is frustrating about this is that CTM present
25 the desire to want to work in partnership, so when we

1 are honest with them about market pressures they then
2 use this against us."

3 Then we see on the next page {F/347/2}:

4 "... this is the perfect storm scenario when they
5 know we are under market pressure and expect us to take
6 a significant increase, they won't back off from MFN so
7 expect us to either absorb this cost or to pass onto
8 consumers across the whole market, instead of just to
9 them."

10 Then they say:

11 "... we cannot afford this increase and will pass
12 onto their customers only if they force this on us,
13 regardless of MFN ..."

14 So what they are doing is discussing the constraints
15 placed by the wide MFN on them in these commission
16 negotiations; yes?

17 A. I am not familiar with the role of Sarah Lloyd,
18 John Hyde, Cheryl Agius. I am not familiar with their
19 role, the context of these emails.

20 Q. Right.

21 A. I found L&G's response to the SO which we could pull it
22 up, but I remember that they put a lot of -- they said
23 something about putting these documents in context.

24 Q. Right.

25 A. So I thought that it was sensible to take an insurer's

1 own position on these documents rather than make my
2 inference having not had all the background as to who
3 these people are and the importance of these emails.

4 Q. All right, so is this a fair summary of what you have
5 just said, that during the investigation L&G made
6 various comments or statements to the CMA?

7 A. Yes.

8 Q. You preferred to take those at face value rather than
9 interrogate the contemporaneous documents?

10 A. Yes.

11 Q. Now, if we go back to the Decision at 8.106, page
12 {A/1/284}, do you see here that what they are saying is
13 that CTM's wide MFN was also a factor in
14 Legal & General's decision not to enter into promotional
15 deals with CTM's rival PCWs, and it stated that there
16 were some occasions --

17 A. Sorry, which bit of this page am I looking at?

18 Q. Sorry, 8.106 at the top.

19 A. Yes.

20 Q. It is the main part of the paragraph. I am looking at
21 the italics, which is --

22 A. Yes, I can see that.

23 Q. "... there were some occasions where the presence of the
24 Wide MFN in the Comparethemarket ... agreement had been
25 a contributing factor in L&G not proceeding with a

1 Promotional Deal. The removal of this clause removed
2 the risk of being in breach of the ... agreement."

3 Yes?

4 If we look at {F/321/1}, if we look at the bottom of
5 the page -- and I appreciate that you do not know who
6 the people are, but I do want to take you to the
7 contemporaneous evidence, so this is 22 February 2017:

8 "We've been approached by MSM who would like to run
9 an above the line marketing campaign with them to
10 include a provider exclusive offer such as 10% off or a
11 voucher ...

12 "As you know we have a wide MFN ... in our
13 agreement ..."

14 Then at the top:

15 "I am not satisfied that we can operate the MSM
16 proposition without breaching the ... clause ..."

17 Yes? So again what we see here is in internal
18 documents a reference to the wide MFN operating as
19 a constraint; yes?

20 A. I understand that vouchers would not be constrained.

21 Q. Right, it is also talking about 10% off.

22 A. In terms of constrain meaning not going ahead, I do not
23 think that an email from Wayne to Vicky referring to
24 that is saying that. I would -- if I was keen to do
25 a promotional deal and I was Wayne, and one of the ones

1 on the table, the options on the table, was a voucher
2 which would not conflict with the clause, I would be
3 a bit more perseverant, I would push ahead.

4 Q. Would you? Why is it not a constraint that some types
5 of promotional deal are off the table? That is
6 a constraint.

7 A. I was trying to be quite careful with my words in terms
8 of constraint meaning prohibiting something going ahead.

9 Q. So by constraint -- so when you are talking about
10 whether the wide MFN is a constraint, you mean that in
11 a very particular sense, do you, that it prohibited
12 a deal that is on the table, that is what you mean, that
13 is what you are assessing, is it, in your analysis?

14 A. Observable impact, influence --

15 Q. Right, and it is not an observable impact to say, well,
16 we have this clause which is standing in the way of some
17 forms of promotional deal, you do not count that as an
18 observable impact?

19 A. I think observable goes to materiality and so, you know,
20 is this just a fly in the ear, how irritating is that
21 wide MFN. Reading this, as I said, for the first time
22 my immediate feel was that that is not too annoying.

23 Q. Right, so you have applied a threshold of -- you have
24 applied quite a tough threshold, is this right, so if --

25 A. So we are now inferring what I said now in relation to

1 the specific evidence to my more systematic approach in
2 my report.

3 Q. Well, Ms Ralston, you call it a more systematic
4 approach, but you have not actually taken any of this
5 evidence into account, have you?

6 A. I was -- I have explained why I have relied on the
7 response to the SO.

8 Q. You have.

9 A. I have also referred to I think quite an important fact
10 that L&G did a long-running promotional deal during the
11 relevant period, over 12 months, so that is important to
12 me in terms of an influence.

13 Q. Right, and this is not important, we can discard this
14 piece of evidence completely, can we?

15 A. So if an insurer has stated that in their response to an
16 authority that we have now put the documents in context,
17 I think we should perhaps put less weight on those
18 documents.

19 Q. Right, can we agree that the question of weight and
20 where we put weight is for the CMA in the first instance
21 and for the Tribunal in the second instance and not for
22 you as an expert economist. That is not within your
23 expertise, is it, how to weigh up different types of
24 evidence?

25 A. I do not know the law on that. I am just telling you

1 how I have interpreted it.

2 Q. No, it is not the law, I am asking whether you have any
3 particular expertise that helps the Tribunal compare
4 a submission to the CMA on the one hand with
5 contemporaneous evidence that looks inconsistent with it
6 on the other, do you have any particular expertise that
7 sheds light on that balance that has to be made, that
8 determination?

9 A. No, I am just giving it as why I have put more weight on
10 certain evidence over another.

11 Q. Right, okay. Now, if we look at {F/284/1}, we then see
12 a communication between L&G with MoneySupermarket. This
13 is just to end -- where they are saying we cannot do
14 this contractually; yes?

15 A. Yes, and I saw this earlier.

16 Q. You saw that earlier, okay. If we go back to the
17 Decision, please, on page {A/1/284}, and let us look --
18 sorry, let us go to {A/1/285}. Let us look at what is
19 said at (b), so 285, please. So:

20 "August 17 ... a customer strategy manager at
21 Legal & General sent an email to senior personnel
22 seeking a 'steer ...' from the Leadership Team regarding
23 'the opportunity to be part of the MSM ATL campaign in
24 September [2017]. The email notes that [L&G's] Trading
25 Team had highlighted a number of risks including that

1 'L&G would be in breach of the "most favoured nation"
2 clause in the CTM contract'."

3 Again, is that something you were aware of, and did
4 you take it into account?

5 A. I was aware that the evidence on L&G was mixed, there
6 was some contemporaneous evidence and then that was put
7 in context in the SO by the insurer itself.

8 Q. Right, and so when you say it is mixed, I thought that
9 your approach was with mixed evidence to apply
10 a conservative approach and include them in coverage,
11 but you have not done that, have you, with L&G. Do you
12 want to revise your conclusion on that? Do you think
13 with hindsight actually your evidence is mixed?

14 A. I was referring to part of the evidence of L&G being
15 mixed, that part --

16 Q. Sorry, say that again.

17 A. When I said just then I was aware of some of the
18 contemporaneous documents, and when I said "mixed"
19 perhaps I meant could be open to different
20 interpretations.

21 Q. Right.

22 A. Then I put that -- then I relied on the SO where -- the
23 response to the SO where L&G put their own
24 contemporaneous documents in context.

25 Q. Right. So when you said "mixed", when you said at the

1 beginning of your methodology that if evidence is mixed
2 I have erred on the side of caution and included them,
3 what did you have in mind by "mixed"?

4 A. So when someone -- when the evidence could be
5 interpreted different ways but the insurer themselves
6 have interpreted it in a certain way, I have not had
7 to -- I felt I did not have to reinterpret the factual
8 evidence again.

9 Q. Ah, I see. So that is important to establish. So by
10 "mixed" you are not saying the evidence is mixed as
11 a whole, you are saying if what they say after the event
12 does not look very mixed, I am not going to treat it as
13 mixed, I am not going to look at the contemporaneous
14 evidence at all. Has that been your approach, just to
15 establish it?

16 A. Because someone close to the facts, someone from the
17 same firm, has put it in context, that gave me
18 reassurance.

19 Q. Right, and if we go back to paragraph 8.106 at page
20 {A/1/284}, you are saying I placed weight on what L&G
21 said to the CMA, rather than the documents at the time,
22 but what I showed you at the top of 8.106 is part of
23 what they said to the CMA in response to a Section 26
24 notice, but did you not regard that as mixed? Because
25 there they are saying "some occasions", they are saying

1 it clearly, "where the presence of the Wide MFN ... had
2 been a contributing factor". They said that to the CMA.
3 So we are not looking at contemporaneous documents here.
4 You say I place weight on their statement to the
5 authority, but you do not seem to have placed weight on
6 that, have you?

7 A. Yes, so my coverage analysis is the first step to
8 understand if there is a directly observable impact.

9 Q. Right.

10 A. So in that sense I take all the evidence in the round,
11 and L&G did a long-running promotional deal for over 12
12 months. It is saying that it -- here, it was
13 a contributing factor, so one of many, to understand the
14 impact when there are five reasons, six reasons and one
15 of them is something you want to disentangle from the
16 others, it is best to go to the econometrics.

17 Q. We are going to come to that, do not worry, but I am
18 dealing with effective coverage at the moment.

19 A. Because my criteria of effective coverage is is there an
20 observable impact. That is why I drew the conclusions
21 I did on L&G.

22 Q. Okay, well, can we go back to the Decision on page
23 {A/1/285}.

24 I think because this is a contemporaneous document
25 you will not have taken it into account; is that right?

1 But what the CMA is explaining here is it is setting
2 out -- you can see this at the bottom of the page in the
3 citation in italics -- contemporaneous evidence from
4 October 2017. In fact, this was from an internal -- you
5 see -- let us trace it through.

6 So:

7 "... internal briefing pack dated June 2017 ahead of
8 a ... meeting with MoneySupermarket ..."

9 We have seen that document in this case, and there
10 is a deal on the table, but MoneySupermarket cannot hold
11 the slot unless L&G is confident it would go ahead with
12 the deal despite the wide MFN. Then what you see in the
13 briefing pack is this:

14 "The wide MFN in the CTM agreement prevents us from
15 being able to work with [MoneySupermarket] on exclusive
16 pricing offers, such as the above the line activity that
17 [they] are running with partners ...

18 "As part of this years ... CPA ... negotiation we
19 have again pressed for the removal of the wide MFN,
20 however, this is {A/1/286} currently non-negotiable with
21 CTM, until the current CMA ... is completed.

22 "... should we decide to provide cheaper rates to
23 non-CTM customers, we ultimately risk CTM switching us
24 off.

25 "We have spoken to [MoneySupermarket] about

1 pencilling us in for ... the slot in October ... once
2 the CMA decision has been made, however they cannot hold
3 this for us unless we are 100% confident ... we will do
4 the offer even if the CMA rules don't change and we
5 could end up in breach with CTM."

6 So again I think that is probably a document,
7 because it was a contemporaneous document, that you did
8 not take account of, is that right?

9 A. Yes.

10 Q. If we look at the documents or some of them, so if we go
11 to {F/324/1}, this is the briefing pack, you see the
12 date, and let us go to page {F/324/3}. Agenda item 3,
13 "Exclusive offers and CTM wide MFN".

14 It is a bit odd is it not, do you agree, to be
15 discussing this if the wide MFN had no effect? Why
16 would they care about it? It raises a question, does it
17 not?

18 A. Yes, it is certainly on the topics, it is on the list of
19 discussion topics.

20 Q. Right, and if we go to page {F/324/5} we have seen this
21 before, do you remember this document, we have seen it
22 in court?

23 A. Yes.

24 Q. But there is quite an extensive discussion here about
25 the wide MFN, and it says at paragraph 2:

1 "The wide MFN ... prevents us from being able to
2 work with MSM on exclusive pricing offers, such as the
3 above the line activity that MSM are running with
4 partners ...

5 "The CMA is currently completing a market study ..."

6 Then we see:

7 "... Private Motor Insurance ... banned wide
8 MFN's ... but did not state that there would be a read
9 across to other products ...

10 "We suspect that CTM has partners that do not have
11 the wide MFN for home insurance, particularly where they
12 have a joint motor/home agreement with CTM ..."

13 Then we see:

14 "As part of this year's CPA negotiation we have
15 again pressed for ... removal ... currently
16 non-negotiable ...

17 "Ahead of the CMA decision, should we decide to
18 provide cheaper rates to non-CTM customers, we
19 ultimately risk CTM switching us off. We have spoken to
20 MSM about pencilling us in ... [but] they cannot hold
21 this for us unless we are 100% confident that we will do
22 the offer even if the CMA rules don't change ..."

23 You see that, yes?

24 A. Yes, I see that.

25 Q. Then if we go back to the Decision {A/1/286}, and this

1 time looking at (d), we see there a month later the same
2 view being expressed in relation to a proposed deal with
3 MSM to launch in 2018; yes?

4 A. Yes, I am reading the quote.

5 Q. Right, and then at -- let us go to the next page,
6 {A/1/287}.

7 A. So do you know why they took a different position on the
8 wide MFN?

9 Q. I am so sorry, Ms Ralston?

10 A. You are very familiar with L&G's documents, and the
11 thing that was always troubling me was that they did
12 this promotional deal with Confused during -- from
13 August 2015 to November 2016, so I have always found
14 that quite -- if they were constrained by the wide MFN,
15 how could they be so bold to do this promotional deal?

16 Q. That was a piece of evidence that you were relying on,
17 was it, the fact that they did a promotional deal with
18 Confused?

19 A. Yes.

20 Q. You preferred that piece of evidence to all these other
21 pieces of evidence, or you did not look at these other
22 pieces of evidence, which one was it?

23 A. No, that is why I have asked you the question.

24 Q. No, I am not here to answer questions. I am so sorry,
25 Ms Ralston, I will deal with my submissions.

- 1 A. So I am explaining if -- yes, I have relied on the
2 promotional deal they did as strong evidence in my
3 opinion that they were comfortable with doing
4 a promotional deal should they wish given they did do
5 one.
- 6 Q. Right, so that is cherry-picking, is it not, though,
7 Ms Ralston, because you are relying on that promotional
8 deal because it helps CTM, but you are not relying on
9 these promotional deals that were blocked because that
10 was not direct evidence provided to the CMA after the
11 event, it is not in context. Have I got you right?
- 12 A. I do not think you have shown me a specific deal that
13 was blocked.
- 14 Q. Right, I am showing you here a constraint, let us use
15 the terminology -- let us use different terminology. So
16 we have looked at 8.106 and the constant references,
17 consistent references, in the contemporaneous documents
18 about the constraint placed by the wide MFN on these
19 deals going ahead.
- 20 A. The two deals you have shown me was one where there was
21 a voucher, there was a workaround on my view.
- 22 Q. Right.
- 23 A. Here I have just seen some slides about October/November
24 which was never proven because the wide MFN was removed,
25 so we cannot be sure that there were any deals on the

- 1 two you have shown me that were blocked.
- 2 Q. Okay, and if we go back, please, to the Decision on page
3 {A/1/287} and {A/1/288}, this relates to a different
4 type of insurance; yes? They are internal documents.
5 Have you looked at this, because if you have not looked
6 at this then I am not going to -- have you looked at
7 these documents? I am not going to press the point.
- 8 A. Which documents? The footnotes which I cannot see so
9 I cannot answer that question?
- 10 Q. It is a description of documents. So you see there the
11 CMA saying that -- {A/1/287} so 8.108, for example,
12 internal documents relating to different types of
13 insurance.
- 14 A. No, I expect I did not look at pet insurance.
- 15 Q. Okay, and then at 8.109 evidence from MoneySupermarket
16 and Confused corroborating that Legal & General declined
17 to enter into detailed discussions about promotional
18 deals with MoneySupermarket and Confused during the
19 relevant period because of the CTMs; yes?
- 20 A. Yes, I think that evidence from MoneySupermarket is the
21 Section 26 where they refer to those three insurers,
22 yes, I have looked at that document.
- 23 Q. Right. Now, if we look at your pricing analysis on L&G,
24 so let us go to {A/5/84}. Well, let us start at
25 {A/5/84} so let us look at the test. At 5.37 -- so here

1 you are applying constraint test 1 and constraint test
2 2, yes, to L&G?

3 A. Yes.

4 Q. You say that if a HIP was constrained by its wide MFNs,
5 you would expect to see it pricing more expensively on
6 CTM relative to other PCWs after disapplication of the
7 wide MFNs; yes?

8 A. Yes.

9 Q. You find that this is what happened in respect of L&G,
10 so let us look at that. That is {A/5/222}. At A4.57
11 you say that:

12 "After the disapplication of CTM's wide MFNs, the
13 proportion of risks L&G has priced more expensively on
14 CTM ... has drifted upwards."

15 Yes?

16 A. Yes.

17 Q. "However, this drift has been very gradual. Given that
18 L&G has stated that it was not constrained by its wide
19 MFN, I do not attribute this trend as evidence that L&G
20 was directly constrained by its wide MFN."

21 Let me see if I have this right. You found a drift
22 in the direction that you would expect, if it had been
23 constrained; yes?

24 A. The test is not if there is a drift.

25 Q. No, it is priced more expensively on CTM relative to

1 other PCWs after this application?

2 A. Yes.

3 Q. You found that this has happened; yes?

4 A. I am happy to talk about the charts and why I am happy
5 to interpret --

6 Q. No, I just want to first of all establish -- let us take
7 it in stages -- do you find that there is more
8 expensive -- the proportion of risks L&G has priced more
9 expensively --

10 A. So I try to be very transparent with my criteria and put
11 them -- put the thought process out in very transparent
12 terms. So I am sort of setting tests, as I even call
13 them, so things are tractable, whereas I do consider
14 everything in the round. It has been put to me as if,
15 if there is anything that is marginally inconsistent
16 with a test, that that is sufficient to say there is
17 a directly observable impact or that it was affected,
18 and that is why I am resisting, so I am trying to be
19 quite careful.

20 So when I look at those charts and the behaviour
21 I see by L&G, that is not consistent with -- in my mind
22 of someone who is liberated by a wide MFN and, hooray,
23 they can do what they want. You know, there is no
24 evidence -- this does not present evidence to me that
25 they were constrained.

1 Q. Right, so you are saying that -- let us go back to page
2 {A/5/222} and A4.57 and the second bullet. You are
3 saying -- what you say is quite clear, so you say, well,
4 they have priced more expensively?

5 A. Yes.

6 Q. But that is a gradual drift, and what I am doing is I am
7 looking -- given that, you say:

8 "Given that [it] has stated that it was not
9 constrained by its wide MFN, I do not attribute this
10 trend as evidence that L&G was directly constrained ..."

11 Right? So what you are saying is I have observed
12 a trend which might be consistent with there being an
13 effect of the wide MFN, but I am relying on -- the
14 reason I am not attributing that to the wide MFN is
15 because of its statement to the CMA; yes?

16 A. Yes, that is the reason I provide.

17 Q. Now that you have seen that the evidence in relation to
18 L&G's views as to the constraints imposed by the wide
19 MFN, now you have seen some of the other evidence --

20 MR BEARD: I am sorry, some of the other evidence,

21 Ms Demetriou has now qualified her statement, thank you.

22 MS DEMETRIOU: That is all I am asking. Mr Beard can make
23 submissions later.

24 MR BEARD: No, no.

25 MS DEMETRIOU: But given you have seen some of the other

1 evidence about L&G, do you now accept that the evidence
2 was mixed?

3 A. I have explained why -- and I still think -- the
4 contemporaneous evidence is hard -- I explain why
5 I relied on what L&G says about their own
6 contemporaneous evidence in their response to the SO.
7 I was in the hearing and I also saw the other evidence
8 that Mr Beard is referring to, and I do not want to --
9 I am also putting weight on the promotional deal that it
10 did during the relevant period.

11 Q. Where do you put that in your report, out of interest?

12 A. Paragraph 4.78, so page {A/9/101}. It is discussed at
13 length in the promotional deal analysis.

14 Q. Yes, okay, we will come back to the promotional deal
15 analysis. So you are placing weight on that.

16 A. Yes.

17 Q. But what I am asking you now is having seen some of
18 these other documents, do you accept that there is mixed
19 evidence about constraint, so yes or no?

20 A. There are different interpretations of that evidence.

21 Q. I am asking you about your view.

22 A. So the two PDs that you put to me I was saying I do not
23 think that they were prohibited by the wide MFN for the
24 reasons I gave, one there was a workaround, second it
25 was going to happen after the event, so it was never

1 tested.

2 I have said that I find it hard to interpret all the
3 emails at the time and fully understand those emails.
4 That is my ability to interpret them, but I know others
5 such as the CMA have drawn strong views on what those
6 mean.

7 Q. Okay and when you say that you are looking for
8 a directly observable impact, where people internally
9 are saying, well, shame about this wide MFN, we have
10 this deal on the table which they will not hold open for
11 us, you do not see that as a directly observable
12 constraint?

13 A. Well, if that example never got borne out.

14 Q. So if something does not get borne out because -- for
15 whatever reason, you do not think it is a constraint on
16 behaviour? I just want to make sure I understood
17 your --

18 A. So there their promotional deal was going to happen in
19 November or December, and so there was no constraint
20 because they are saying we want to go ahead, I think it
21 was an internal email, we can pull it up, saying,
22 you know, by the way, guys, MSM want us to commit, and
23 I think that is what it was saying. So I am saying,
24 well, we do not know -- an internal email saying MSM
25 want us to commit is not saying we are not going to do

- 1 it or we cannot commit.
- 2 Q. Right, and I have shown you some of the responses to the
3 CMA. They are set out in the Decision, but again where
4 for example the company is saying there were some
5 occasions where the presence of the wide MFN has been
6 a contributing factor in not proceeding with
7 a promotional deal you are not counting that as
8 a constraint?
- 9 A. No.
- 10 Q. Right, okay. So your position --
- 11 A. Because it is a contributing factor. That is all they
12 are saying. They are not saying it was an observable
13 constraint or something to that effect.
- 14 Q. So let me get this right. To be a constraint for the
15 purposes of your analysis it has to be the only factor
16 that has caused a deal not to go ahead?
- 17 A. Not the only. It needs to be observable or driving, it
18 needs to be an influence, yes.
- 19 Q. So why is it not observable if they are referring to it
20 and saying this was a contributing factor?
- 21 A. Observable is me referring to -- well, using CMA
22 language about what is observed in a market about
23 behaviour changing.
- 24 Q. Right, okay, so you disregard the views of people in the
25 business at the time as to what constraint they thought

1 the clause placed on them, you disregard that, if you
2 cannot trace it through to an observable act?

3 A. I think conduct needs to change, yes.

4 Q. So your position, just to summarise on L&G, your
5 position for the Tribunal is that the evidence is not
6 mixed, and so on your conservative approach you are
7 happy for it to be excluded from your effective
8 coverage?

9 A. So with the conservative, I will qualify there, with the
10 conservative that was talking about the effective
11 coverage in the round. It was including -- and I may
12 have put "conservative" in the wrong place of my
13 description of the coverage in HR1, section 5.

14 THE PRESIDENT: Let us bring it up to see exactly what it
15 says.

16 MS DEMETRIOU: It is {A/5/83} paragraph 5.32.

17 A. My position on conservative is I feel by taking 15
18 insurers, where there is no evidence, plus the three,
19 Grove & Dean, AXA and Aviva where there is mixed
20 evidence, within coverage I considered that, that is why
21 I call it conservative. Then when I have gone through
22 each insurer, what my position is is that I have taken
23 the approach where it is most informative, I have put
24 them in the bucket according to whether it is the most
25 informative.

1 Q. Right. That is not what you say, is it, at 5.32,
2 because you say:

3 "If the qualitative and empirical evidence, overall,
4 suggests that an insurer was not influenced ...

5 I consider that it is more informative to exclude that
6 insurer from the market coverage. Where the evidence
7 is ..."

8 THE PRESIDENT: Sorry, 5.32, did you say?

9 MR BEARD: I think it is 5.33.

10 MS DEMETRIOU: Oh, I am so sorry.

11 THE PRESIDENT: That is all right. I was not following you,
12 that is all right.

13 MS DEMETRIOU: "If the qualitative and empirical evidence,
14 overall, suggests that an insurer was not influenced by
15 its wide MFN during the Relevant Period, then I consider
16 that it is more informative to exclude that insurer from
17 the market coverage. Where the evidence is mixed,
18 I have taken a conservative approach and included the
19 insurer in the market coverage."

20 So at least what you are saying here is that your
21 conservative approach is not across the board, but you
22 are looking at it on an insurer by insurer basis, is
23 that fair?

24 A. What I was clarifying is I was referring to my approach
25 to Aviva, AXA, Grove & Dean and those three, that is

1 where I am saying the evidence for those three is mixed,
2 so I --

3 Q. Yes, I understand that. What I am putting to you is
4 that you have generally taken -- you have adopted the
5 same approach to all of them, have you not, so you have
6 asked yourself is the evidence mixed? If it is, I am
7 going to be conservative, which is why you have included
8 those three in the assessment. So if you had thought
9 the evidence was mixed for L&G, you would have included
10 L&G as well, would you not?

11 A. So that is where I am clarifying.

12 Q. Right.

13 A. I have excluded L&G because I think it is more
14 informative, so the previous sentence is accurate, and
15 when I wrote the second -- the final sentence and I am
16 not saying I disagree with it, but I just wanted to
17 further clarify with what I meant, what I am referring
18 to. So I would not say that -- as I say, in a way,
19 those sentences are a little contradictory, because is
20 it more informative or is it conservative and what I am
21 trying to explain is where I have generally taken the
22 more informative, or what I consider the more
23 informative, but there were three insurers which
24 I thought the evidence was quite mixed, and so for
25 a conservative approach I put them in.

1 Q. So have I got this right that where evidence is mixed in
2 relation to other insurers, you have not worried too
3 much about that, you have excluded them because of the
4 approach you have taken for the three that you have
5 talked about?

6 A. I do not think the evidence is generally mixed for the
7 other insurers. I think we have gone through L&G and
8 why I do not think that that would qualify as in general
9 mixed.

10 Q. Right.

11 A. Yes, so I think the evidence is quite clear on most
12 insurers, and I have not needed to make that decision
13 about whether to be conservative or not. I think the
14 evidence is quite clear.

15 Q. Okay.

16 THE PRESIDENT: Just so that I understand the stage of the
17 process, then, Ms Ralston, what you are doing is you are
18 as it were defining the data set to which you then
19 subsequently apply later analyses about the effects of
20 what you can discern from that data set as to the
21 effects of wide MFNs; is that right?

22 A. I thought quite hard about how to define "wide MFNs" in
23 the effects analysis and indeed whether I should
24 restrict it just to those that are left in scope after
25 this analysis, but I stuck to the Decision where the

1 Decision finds a network of wide MFNs had an effect, and
2 so I define my analysis around that, so the 32 insurers.
3 So it does not feed in and it does not feed through
4 separate.

5 THE PRESIDENT: Thank you.

6 MS DEMETRIOU: Sir, Mr Beard has just reminded me I do not
7 know what you want to do about the time.

8 THE PRESIDENT: Yes. What I am wondering is rather than
9 have a 10 minute break out of half an hour, whether we
10 rise early and have an hour's break and then resume at
11 1.30, thereby ensuring everyone has a rest but we do not
12 lose 10 minutes.

13 MS DEMETRIOU: That is fine with me, sir, thank you.

14 THE PRESIDENT: Good.

15 Ms Ralston, you will probably remember but do not
16 talk to anybody about your case. Thank you very much.
17 We will resume at 1.30.

18 (12.36 pm)

19 (The luncheon adjournment)

20 (1.31 pm)

21 THE PRESIDENT: Ms Demetriou, before you begin -- oh,

22 Mr Beard, you are both on your feet.

23 MR BEARD: It was only on a timing issue, sorry, but I will
24 pause. You had a before we begin question.

25 THE PRESIDENT: I was going to explain, I do not know if

1 anything can be done about this, but for a 20-second
2 period during the private session this morning -- that
3 is to say page 46 of the [draft] transcript and page 47
4 of the transcript -- the live stream accidentally went
5 live, and I am afraid the names of Allianz, Ageas and --
6 only those two were mentioned to those who were
7 listening on the live stream.

8 We do not know exactly how many that will have been.
9 When the live stream session ended, it was four people,
10 I doubt if it was any more than that at the beginning,
11 but I felt that the CMA ought to know in particular
12 because we have been at some pains to preserve the
13 confidentiality.

14 So I can only apologise. We can give you the page
15 if you wish to see it, but I think probably you ought to
16 have that, Ms Demetriou.

17 MS DEMETRIOU: That would be helpful.

18 THE PRESIDENT: I am afraid the horse has bolted, there is
19 nothing we can do about it.

20 MS DEMETRIOU: I understand.

21 THE PRESIDENT: It ought at least to be on the record as
22 a mea culpa from our part.

23 MS DEMETRIOU: Thank you.

24 THE PRESIDENT: Mr Beard?

25 MR BEARD: It was only on timing. I spoke to Ms Demetriou

1 about timing this afternoon, given the Tribunal's
2 indications. We have spoken to Ms Ralston briefly. On
3 the basis that there would be a break around 2.45, 250,
4 depending on where Ms Demetriou is, for 10 minutes, and
5 depending on where the Tribunal is in terms of timings,
6 Ms Ralston has indicated she would be willing to sit
7 through until 4.30 answering questions, but I think
8 beyond that time it is probably going to turn into an
9 excessively long day for the witness starting at -- even
10 though there was a little bit of a delay in starting
11 with the witness this morning.

12 THE PRESIDENT: The fact is you are spending the emotional
13 capital hanging around and that is as much as actually
14 being in this box. 4.30 it is and I am very grateful to
15 Ms Ralston for that.

16 MR BEARD: The only other matter -- sorry -- is that we have
17 also discussed overall timings.

18 Now, Ms Demetriou has quite fairly said I had a day
19 and a half, I think I may be a little longer. That will
20 take us into -- I have said if she can ensure she is
21 finished by the middle of tomorrow afternoon, I will
22 then ensure that I have dealt with Professor Baker end
23 of tomorrow afternoon and through into Friday, but
24 I think the position has to be that we will be going
25 through into Friday. So I thought I should just

1 indicate that to the Tribunal in case there were any
2 particular difficulties or we need to factor other
3 matters in because that is only an internal counsel
4 discussion, it does not take into account your position.

5 THE PRESIDENT: No, that is fine. We had thought --

6 MR BEARD: I assumed you had anticipated but I thought
7 I would double-check at this stage.

8 THE PRESIDENT: Subject always to the comfort of the
9 witnesses, we would want to stretch the court day so
10 that you can cover as much as you like. I do not like
11 parties being forced to trim their questions, I know you
12 can do it, but I do not like it, and I would rather
13 consider other options insofar as we can.

14 On the other hand, we do have to finish the evidence
15 on Friday, I think, for the rest of the timetable to
16 work.

17 MR BEARD: Yes, I think we are all in sort of violent
18 agreement about this, but I just thought I would mention
19 it because counsel have been discussing it.

20 THE PRESIDENT: I am grateful. Thank you, Mr Beard.

21 MS DEMETRIOU: Sir, thank you.

22 Obviously I need to proceed quite briskly and I hope
23 that is understandable because there is quite a lot to
24 cover.

25 THE PRESIDENT: Yes, Ms Demetriou, look, you obviously

1 cannot put every point.

2 MS DEMETRIOU: No.

3 THE PRESIDENT: That is inevitable in these cases, but
4 particularly so here. I know you will go to the points
5 that matter, and no one will be in a position of saying
6 this point was not put. That is understood.

7 MS DEMETRIOU: Sir, I am grateful.

8 Ms Ralston, good afternoon. I am still on your
9 effective coverage analysis. I want to look at Qmetric
10 now, please.

11 Could we turn to {A/5/89}.

12 While we are getting that up, it is a large HIP, is
13 it not, so it has over 6% of PCW sales in 2017, you are
14 aware of that?

15 A. Yes, I think it grew during the period.

16 Q. If we look, please, at this page, we see at the bottom
17 of the page we are now in your category of five insurers
18 who stated that their wide MFN -- so we are in the same
19 category as L&G, sorry, and another HIP in this category
20 is QMetric.

21 You say that it stated the wide MFN was not
22 a constraint on its pricing.

23 If we look at 5.59, you see that:

24 "... one insurer (QMetric) stated that up until
25 May 2017, six months prior to disapplication, its wide

1 MFN was not taken into account in its pricing strategy."

2 Yes?

3 A. Yes.

4 Q. So their statement does not relate to the final six
5 months of the relevant period?

6 A. Yes, I have tried to make that clear.

7 Q. If we turn to page {A/5/228} in your report at A4.70, we
8 see that you say that for the most part -- do you see
9 that, the first sentence -- so:

10 "... for the most part, not influenced by the
11 existence of its wide MFN ..."

12 Yes?

13 A. Yes.

14 Q. So it is fair to say, is it not, that the reason that
15 you qualify your conclusion in that way is because
16 QMetric was forced to end a promotional deal with
17 Confused in May 2017 and reduce its pricing on CTM
18 following enforcement action by CTM, that is right, is
19 it not? We see that referred to at A4.68.

20 A. Yes, I say:

21 "The CMA considers that CTM took 'enforcement' ..."

22 The reason I cut it at May 2017 is because QMetric
23 has stated that up until May 2017.

24 Q. Right, okay. You say at A4.69 that it would have ended
25 this promotional deal anyway, and that that statement

1 was acknowledged by the CMA.

2 A. Correct.

3 Q. If we turn to {F/306/36}, this is a response of QMetric
4 to a CMA information request, so {F/306/36}, what you
5 can see is that -- you can see a description here of the
6 enforcement of -- of enforcement action taken by CTM.

7 If we look in the middle of the page to the issue in
8 2017, you see there QMetric's response. In this
9 response it is explaining that the matter was raised by
10 CTM and QMetric had to take the matter very seriously
11 because of the escalation process now involved and
12 because delisting would have represented the potential
13 loss of more than 50% of all of its new business, and so
14 in the light of this it took the following action; yes?

15 You see that what it did was it agreed to comply
16 with CTM's ultimatum, so it terminated the exclusive
17 deal, and then it goes on to say, as you have noticed,
18 that it said it would have terminated it shortly
19 afterwards anyway on economic grounds; yes? But it is
20 still a response to the enforcement action; do you
21 agree? Which is no doubt why you have qualified your
22 conclusion?

23 A. I rely on the Decision and the fact that QMetric states
24 that up until May 2017. That is why I limit it. I am
25 not sure what is a definition of enforcement and that is

1 contested, this is the CMA's description of enforcement.

2 Q. You did not look at this response to an information
3 request when you -- you did not look at this particular
4 response when you were --

5 A. I probably looked at it, but I have not relied on it.
6 I have relied on the Decision, the footnote --

7 Q. Then we see that if we -- we then see the replacement of
8 the wide MFN has had no effect on -- sorry, I am looking
9 above that. This led to it increasing its commission by
10 2% from 1 June 2017 and to a reduction in the prices
11 quoted on CTM by QMetric by approximately 1%; yes? So
12 what they are doing is increasing commission on Confused
13 and then that led to -- and then QMetric reduced its
14 prices on CTM by about 1%. They are saying it is in
15 response to the enforcement action, what I am calling
16 the enforcement action; yes?

17 A. I think that sentence was quite confusing.

18 Q. Right.

19 A. "This led to CF". What does CF mean?

20 Q. CF is Confused, because this is about the termination of
21 the exclusive deal with Confused.

22 A. So Confused increased its commissions? I am not sure
23 about that point.

24 Q. Yes, because after the enforcement action what is
25 happening is -- this is the action that they are

1 describing that they took after the CTM enforcement
2 action, and so they are saying they reduced the prices
3 on CTM by approximately 1%; yes? So they are
4 responding --

5 A. Sorry, I find the first part of that sentence hard to
6 interpret because it is saying -- I can see it says
7 a reduction in the prices quoted on CTM by approximately
8 1%, but it precedes that by saying something that I do
9 not fully understand. It is saying -- you are telling
10 me that CF means Confused, I could interpret that, I can
11 see the link. I do not see why Confused is increasing
12 its commissions and how this is saying that this is
13 a reaction to a removal of -- this is a reaction to the
14 enforcement, as you say, of CTM.

15 Q. Well because, Ms Ralston, because it has terminated the
16 deal, because what QMetric has done is it terminated the
17 deal which was a deal for lower commission with
18 Confused, so it has terminated the deal and then
19 Confused has put its commission back up again. That is
20 what is being said.

21 If we turn to, in the same document, page
22 {F/306/42}, please, you can see here at number 2 -- so
23 number 1 says that it took the following steps when it
24 received the warning from CTM, it terminated the
25 exclusive deal, it makes the point that it would have

1 terminated this deal shortly afterwards anyway, then
2 reduced the price which it was quoting on CTM by
3 approximately 1% in order to bring the price disparity
4 to a level which was within CTM's tolerance; yes?

5 A. Yes, that is what it says.

6 Q. Right, and you have no reason to think that this is not
7 accurate information that is being provided to the CMA,
8 have you?

9 A. No.

10 Q. If we go back to the Decision, please, to {A/1/617}, if
11 we look at M.91, you see that this result was also
12 recorded in an internal CTM presentation; yes?

13 A. Yes, that is what it is saying, yes.

14 Q. If we go back to page {A/1/610} in this Decision, at
15 M.72, you can see here -- so I am looking at the main
16 part of M.72; yes?

17 A. Yes.

18 Q. You can see the statements that you rely on, so QMetric
19 stated that it did not generally observe its wide MFN
20 clause, and it was not taken into account in its pricing
21 strategy; yes? So the CMA is acknowledging those
22 statements.

23 "However, notwithstanding these statements ... [the
24 CMA finds that its] wide MFN was a relevant
25 consideration when QMetric price tested and on other

1 occasions, as summarised below ..."

2 There is then an explanation of the other occasions
3 on which the CMA found that it did influence QMetric's
4 behaviour; yes?

5 A. Yes.

6 Q. So we see, for example, at -- we see in 2016, if we go
7 over the page to page {A/1/612} at M.76, we see that
8 there are two occasions in 2016, one is at M.76 and one
9 is at M.77, where QMetric altered its pricing in order
10 to comply with its wide MFN obligations; yes?

11 A. So M.75 says such differentiation was attributed by CTM
12 to question set issues, am I reading the right
13 paragraphs?

14 Q. Then if you go on to the next paragraph:

15 "CTM continued to closely monitor QMetric's pricing
16 in 2016. Following a review meeting between CTM and
17 QMetric on 16 February 2016, QMetric provided to CTM ...
18 a summary of topics covered at that meeting, which
19 included: 'Discrepancy in pricing should be back to
20 Sep-Nov levels in March'."

21 Then you see at 77 that risk data is sent by CTM --
22 records that risk data should be sent to QMetric and
23 that QMetric was pricing within -- relating to
24 MoneySupermarket only and that QMetric was pricing
25 within the compliance tolerance thresholds on Confused

1 and Gocompare.

2 Then if we go to the next page on {A/1/613}, you see
3 at 78 an email exchange referring to where CTM notes
4 that QMetric had told it that it expected differences
5 would return to the typical level prior to the question
6 set changes, and CTM would review again post live. Do
7 you see that?

8 A. Yes, I see all those points.

9 Q. So this is evidence, is it not, aside from the events of
10 the end of 2017, which show that the wide MFN was having
11 an influence on QMetric's conduct?

12 A. These paragraphs have said that, as I have stated,
13 QMetric would be pricing within a range and other
14 paragraphs it says it has tended to price uniformly
15 across PCWs. CTM has reached out to QMetric and asked
16 about discrepancies, I see that. I am aware that CTM
17 also asked about discrepancies with non-covered HIPs
18 because it always wanted the best prices. That is part
19 of the dispute about what is enforcement and what is
20 a PCW trying to get the best prices for its customers.

21 Q. Right, okay.

22 A. So in terms of -- given the contractual clause was not
23 to price more expensively on CTM, given QMetric is
24 stating it would continue some pricing differences,
25 you know, that is inconsistent with the contractual

1 clause.

2 Q. All right, well, let us try this. If you look at page
3 {A/1/611} and at (c) at the top of page {A/1/611}:

4 "In June 2015, QMetric removed a banner on
5 Confused's platform which stated: 'Can't buy cheaper
6 anywhere else'. CTM had contacted QMetric stating that
7 it considered the banner to be a breach of its wide MFN
8 and requiring its removal."

9 Were you aware of that when you looked at the
10 qualitative evidence in relation to QMetric?

11 A. I have read this Decision thoroughly so I am sure I have
12 read that. I can see in the footnote that this is
13 a note of a CMA meeting with QMetric.

14 Q. Yes.

15 A. I was aware that the interactions between QMetric and
16 CTM were of some dispute between the CMA and BGL, so
17 I was aware that there was doubt over those statements,
18 yes, that is my position.

19 Q. But where you have ended up is that you have excluded
20 QMetric from your coverage; yes?

21 A. I have.

22 Q. But if we go to {A/1/96}, please -- I am so sorry, that
23 is a wrong page. {A/1/99}. I am so sorry, I am
24 completely wrong, it is {A/5/99}. I apologise to
25 everyone.

1 So you reached a different conclusion in respect of
2 another HIP, Grove & Dean, did you not, so you have
3 included them in your coverage; is that right?

4 A. Yes.

5 Q. If we can go, please, to page {A/5/96}, at the bottom of
6 the page you have included Grove & Dean in the category
7 of insurers that have stated they did not change their
8 pricing strategy post-disapplication; yes?

9 A. Yes, that is where I have put them.

10 Q. Then if we go to page {A/5/99} and look at 5.97, you say
11 there that:

12 "Grove & Dean's pricing behaviour suggests that it
13 was not influenced by its wide MFN."

14 Yes?

15 A. Yes.

16 Q. So:

17 "In particular, it does not appear to have reacted
18 to the disapplication of CTM's wide MFNs and priced
19 a greater proportion of risks more expensively ..."

20 So you are finding that --

21 A. So the difference is QMetric and One Call at least have
22 been of some discussion for some time between BGL and
23 the CMA, this alleged enforcement. So at times I have
24 looked at the pricing behaviour and I am more familiar
25 with some of the contemporaneous documents about this

1 alleged enforcement. Grove & Dean I have not
2 scrutinised to the same extent, so in the interests of
3 time of preparing this report I wanted to -- I took that
4 approach to be more conservative. I put them in the
5 coverage.

6 Q. Could it be that the difference in your approach was
7 driven by the fact that Grove & Dean's share was 0.3% of
8 the market and QMetric's share was 6.1% of the market,
9 so actually including Grove & Dean does not give away
10 very much from your client's perspective, does it,
11 Ms Ralston?

12 A. That could also be a reason why it had less attention by
13 the CMA throughout the investigation, so it was not --
14 there was not the driving factor. I have put a bit of
15 energy in the past about the other insurers, so I felt
16 closer to the events, but Grove & Dean I was not that
17 close to all the material.

18 Q. No, but it is striking I would suggest that you are
19 happy or content to include Grove & Dean because you are
20 aware of the CMA's view, but in the face of consistent
21 mixed, I am going to put it at its lowest because we do
22 not say the evidence is very mixed, but mixed evidence
23 from L&G which is the largest insurer you have
24 nonetheless felt able to exclude them from market
25 coverage. It is not a consistent approach, is it?

1 A. I think one has to prioritise what work they produce,
2 what analysis they do, and it makes sense to prioritise
3 larger insurers.

4 Q. Let us have a look at British Gas now. So this is on
5 page {A/5/97}, please. So British Gas is a HIP that you
6 have excluded; yes?

7 A. Yes.

8 Q. You say that this falls into the category of -- you say
9 that it is -- well, let us look at 5.88. Sorry, so this
10 is {A/5/97}, at 5.89.

11 So:

12 "British Gas's pricing behaviour is consistent with
13 its statements that it was not influenced by its wide
14 MFN."

15 Yes?

16 A. Yes.

17 Q. If we go back a page {A/5/96}, I think we can see in the
18 footnote at the bottom of the page the statements -- you
19 have footnoted the statements that you are referring to;
20 yes?

21 A. Yes.

22 Q. For British Gas -- this is the document at {F/554/1}.
23 Can we have a look at this.

24 If we turn to page {F/554/3}, we can see here that
25 what is being said is -- I am looking in the middle of

1 the -- do you see the paragraph that starts:

2 "During the negotiation of the agreement ...
3 [British Gas] repeatedly pushed for [the] clause ... to
4 be removed, but were informed by Compare The Market that
5 that [it] was non-negotiable."

6 Do you see that?

7 Then what you see in the following paragraph is that
8 British Gas managed to negotiate some additional wording
9 which left it some flexibility to price differently to
10 different customers.

11 Do you see that?

12 A. I see that.

13 Q. Then if we go to page {F/554/4}:

14 "Please explain any changes in British Gas' ...
15 pricing strategy ..."

16 We see British Gas -- this is given --

17 "... [~~X~~
18]"

19 Yes? So that is what it is saying about its pricing
20 strategy.

21 A. Yes.

22 Q. But there is not a statement there, is there, that it
23 was not influenced -- it has not said anywhere that it
24 was not influenced by the wide MFN, has it, which is the
25 statement that you have attributed to it?

1 A. So for British Gas, another smaller one, I went to annex
2 L when preparing HR2 which is in the CMA's decision
3 where they have categorised various statements by the
4 insurers where British Gas -- and that is how I have
5 identified relevant underlying documents and to some
6 extent I have gone back to those as well as what the CMA
7 has said, but my reading of annex L was that there was
8 quite some agreement that British Gas was not influenced
9 because it wanted to price uniformly in the relevant
10 period.

11 Q. Right, but you cannot point to a statement where it said
12 it was not influenced?

13 A. The thing -- it is a -- if we go to annex L, it is page
14 585, I think.

15 Q. Let us go to {A/1/585}, please.

16 A. So point 2 in the third column:

17 "After the Relevant Period, British Gas changed
18 strategy to act as a broker, but overall pricing
19 strategy has not changed."

20 Q. Yes.

21 A. Then -- yes, so that is where I have drawn on, so I have
22 not got a specific quote unless there is one in my
23 report that I have overlooked right now, but that is
24 where I have started my exploration with British Gas.

25 Q. I understand. I think we can agree that there is no

1 statement saying it was not influenced by the wide MFN
2 during the relevant period?

3 A. I have not identified one.

4 Q. Right, okay. In terms of pricing behaviour, your
5 approach is that if a HIP was constrained by its wide
6 MFN, you would expect it to have priced equally on CTM
7 relative to other PCWs during the relevant period and
8 priced more expensively on CTM after the relevant
9 period; yes?

10 A. Sorry, I was just continuing to read the evidence on
11 British Gas. Could you repeat your question?

12 Q. Of course I can. I am moving on to your pricing
13 behaviour which I think this is common ground, but your
14 approach is that if a HIP was constrained by its wide
15 MFN, what you would expect to see is that it priced
16 equally on CTM relative to other PCWs during the
17 relevant period and that it priced more expensively on
18 CTM post-disapplication?

19 A. Yes, some change like that, yes.

20 Q. Then if we go to {A/5/234}, I am looking at the figures
21 for British Gas on that page and there is one on the
22 following page, in fact that is the kind of pattern we
23 see, is it not? So we see equal pricing on CTM relative
24 to other PCWs during the relevant period, and then more
25 expensive pricing on CTM post-disapplication?

1 A. I interpret those charts in paragraph A4.27 just before
2 it, and I do say that in reflection of seeing that
3 change seven months -- more than seven months -- nine
4 months after I point out that I would expect to see an
5 increase soon after the disapplication.

6 Q. Right, so this is not a case -- again, this is another
7 case not where your pricing test is not met but where it
8 has been met in your view too late?

9 A. The reason it is important to see a soon change is other
10 factors change in the market. Insurers can change their
11 behaviour for other factors in the market. British Gas
12 has actually changed -- has actually said that it
13 changed its strategy to act as a broker which could be
14 quite a fundamental change in behaviour. So I do not
15 want to separate those two points out.

16 Q. Right.

17 A. You need to see change soon after.

18 Q. So that is why you say at A4.78, if we go back to page
19 {A/5/233}, please, you say that -- you acknowledge that
20 British Gas entered into a promotional deal with
21 Confused in March 2019 but you say that was too late to
22 be relevant too, do you not?

23 A. Yes, I say I do not attribute that to the -- to show
24 evidence of a direct influence.

25 Q. Right, so again your approach is to sideline or explain

- 1 away evidence that is unhelpful to your client but to
2 zoom in on evidence that you think is helpful?
- 3 A. I think I have given quite a bit of page length to that
4 promotional deal. I do not think I sidelined it.
- 5 Q. Okay, but you do not accept that it is evidence that the
6 wide MFN had an impact?
- 7 A. My interpretation is that it is not evidence.
- 8 Q. Can I ask you now to turn -- can we please turn to page
9 {A/5/39}, so this is a different part of your report.
10 I want to look at paragraph 3.38 at the bottom. I am
11 slightly moving topic, but it is a related topic.
- 12 What you say there is the economic literature, you
13 say that that provides two main relevant insights for
14 the current case, and if we go over the page {A/5/40},
15 you say:
- 16 "First, if CTM's wide MFNs did influence an
17 insurer's pricing behaviour, the overall effects of this
18 could be both pro-competitive, as well as
19 anti-competitive."
- 20 Yes?
- 21 A. Right.
- 22 Q. Then you say at -- the second point we see at 3.42, this
23 is the point about market coverage, so you say:
- 24 "... given that CTM's wide MFNs covered only part of
25 the market and were not consistently effective, in the

1 same way that the potential concerns identified in the
2 economic literature would unravel under such
3 circumstances as a matter of theory, the CMA's concerns
4 might unravel as well."

5 Yes?

6 A. Yes.

7 Q. So there are two points that you are making here about
8 the literature.

9 Just to take briefly the first of the points, at
10 3.40 you offer an example of a possible pro-competitive
11 effect, do you not?

12 A. Yes.

13 Q. You address the question of pro-competitive effects in
14 your second report too, so let us have a look at that.
15 {A/9/52} at 3.3 you say:

16 "The literature has not only identified conditions
17 in which wide MFNs may potentially result in
18 anti-competitive effects" because of course you do
19 accept that the literature does identify possible
20 anti-competitive effects, "but also conditions when
21 pro-competitive effects dominate (not just in terms of
22 price but also efficiency). Which of these effects
23 prevails depends on the specific circumstances of the
24 market in question and the assumptions ... in the
25 theoretical models ..."

1 Yes?

2 A. Yes.

3 Q. If we turn to {A/12/17} -- and this is the joint
4 experts' statement which I think you have in hard copy
5 in front of you?

6 A. Yes.

7 Q. I am looking at page 17, so D.1 and D.2, we see the
8 proposition that:

9 "CTM's [wide] MFNs are not justified by the
10 theoretical possibility that competition could benefit
11 if [wide] MFNs encourage platform investments by
12 limiting show rooming."

13 Then at D.2:

14 "CTM's [wide] MFNs are not justified by the
15 theoretical possibility that competition could benefit
16 from [wide] MFNs if providers have most or all of the
17 bargaining leverage when negotiating with platforms."

18 Yes, so those are the two propositions?

19 A. Yes.

20 Q. Then of course we see Professor Baker's position is he
21 agrees with those and what he is saying is that the
22 theoretical economic mechanism by which some wide MFNs
23 might be pro-competitive in the literature do not
24 pertain in this case. That is his position.

25 What you say is that you have not analysed whether

1 those points arise in this case, so you say, "Neither
2 Agree nor Disagree", this case does not focus on the
3 possible justifications for wide MFNs.

4 "These justifications have been identified in
5 theory, but I have not analysed whether they are apply
6 in this case."

7 That is correct, is it not? You have not done that.
8 You know, do you not, that your client is not running
9 a case here before the Tribunal in its appeal that any
10 anti-competitive effects are outweighed by
11 pro-competitive effects; you know that, do you not?

12 A. Yes, I know that.

13 Q. So in fact I think we can therefore agree that one of
14 the two insights you gain from the literature is not
15 relevant to this particular case because CTM is not
16 running a case about pro-competitive effects. That is
17 right, is it not? You have not been asked to consider
18 it and they are not running the case, so the Tribunal
19 does not need to concern itself with any possible
20 pro-competitive effects in this case.

21 A. There is a means to an end. The end is that the wide
22 MFNs have not had effect, pro-competitive or
23 anti-competitive. That does not mean that the means to
24 the conclusion has no relevance. I think it is relevant
25 to understand that there could be pro-competitive

1 effects.

2 Q. But nobody is asking the Tribunal to examine whether in
3 fact there were in this case?

4 A. I think we are asking the Tribunal to examine the
5 overall effects of these wide MFNs, and I think it is
6 relevant to understand what has happened, I think this
7 is part of the context. Even if overall there is no
8 efficiency benefit.

9 Q. No efficiency benefit, okay. Now, if we turn to
10 {A/9/58}, I want to look at -- I am now turning to the
11 second of the points you make, and this is the point
12 about partial market coverage which you say is the
13 second insight you gained from the literature; yes? To
14 be clear about the point you are making, your point, as
15 I understand it, is that the models developed in the
16 economic literature do not address the position where
17 there is partial market coverage. That is right, is it
18 not? I think you say that at 3.18, in the first bullet
19 point:

20 "The theoretical literature has not yet considered
21 the effects of wide MFNs ... where, in equilibrium ..."

22 A. Yes.

23 Q. So that was my caveat but you have pointed it out, so
24 I do not need to point that out.

25 A. Yes.

1 Q. Your point is not, and I do not think you are saying,
2 are you, you are not going so far as to say the
3 literature establishes that wide MFNs which partially
4 cover the market do not have anti-competitive effects or
5 cannot have anti-competitive effects, you are not going
6 that far, are you?

7 A. So these theoretical models, in those theoretical models
8 an equilibrium cannot exist with partial coverage where
9 there are effects. So in those situations, then it
10 would unravel.

11 Q. I am going to get to unravelling, I am going to get to
12 unravelling, but what I want to just establish at the
13 moment is if we look at -- sorry, just give me a moment,
14 Ms Ralston, sorry.

15 If we look at page {A/5/76} -- I promise we will get
16 on to unravelling but I am looking at the footnote at
17 the bottom of the page. You say:

18 "As explained in section 3B, the academic literature
19 does not consider situations of partial coverage and
20 therefore it cannot be assumed that there would be
21 negative effects of a wide MFN in such a situation."

22 That is what you are saying, really, is it not, on
23 this second point?

24 A. Yes.

25 Q. Thank you.

1 Let us stay here on this page. What you have done
2 here is put forward a mechanism by which unravelling can
3 occur; yes?

4 A. Yes.

5 Q. To make sure I understand it, what you are saying -- so
6 you are saying -- so unravelling means if coverage is
7 incomplete, you are saying any anti-competitive effects
8 would unravel so there is no effects of the wide MFNs in
9 light of incomplete coverage. Or you are saying that is
10 possible, to be fair to you, you are saying that is
11 possible?

12 A. Yes.

13 Q. Your view, I think, is that one of the factors relevant
14 to whether unravelling might or is likely to occur is
15 the extent of market coverage. I think that is correct,
16 is it not?

17 A. Yes.

18 Q. If you have a clause covering 80% of the market,
19 unravelling is less likely than if you have one covering
20 2% of the market?

21 A. I have not considered 80% coverage.

22 Q. No, I am asking you a wildly hypothetical question, but
23 do you agree with the principle that in principle degree
24 of market coverage can have a bearing on this question?

25 A. I went to the cartel literature to understand the extent

1 to which partial coverage, like the extent to which you
2 would get unravelling.

3 Q. I am going to come to that. I will come to that. I am
4 just taking things in stages.

5 A. So in my view in this market, because of the intensity
6 of competition between the insurers that are not
7 covered, the fact that they include household brands and
8 so are not just followers but price setters would
9 mean -- and that there is -- even if there is only 20%
10 of volume, there is a number of agents outside, so they
11 will compete with each other, and always have that
12 incentive to steal one another's share, and of course
13 those that are not able in the CMA's view to undercut
14 and price match, that will drag down the prices. So
15 unravel, yes. So I am not sure that in 80% coverage you
16 would have -- you would still have harm. I am not sure
17 that would be the case.

18 Q. Okay, let us look at the mechanism that you put forward.
19 So you are saying that HIPs, without wide MFNs,
20 essentially -- I am just going to try to paraphrase what
21 I think you have just said just to make sure I have it
22 right, but HIPs without wide MFNs can list lower prices
23 on platforms offering lower commissions; yes?

24 A. Yes.

25 Q. In doing so, those HIPs would steal business from

1 suppliers covered by wide MFNs, so they are competing by
2 offering lower prices, they would steal business, and if
3 suppliers with wide MFNs could not react, for example
4 because the platform imposing the wide MFN did not
5 reduce its commission, then they would lose sales and so
6 that exerts a competitive pressure -- that restores
7 competitive pressure on the PCW imposing the wide MFN.
8 That is essentially the mechanism, yes?

9 A. There is a further mechanism --

10 Q. Go on.

11 A. -- which is you have -- there is also you have said one
12 HIP covered, one HIP not covered. We are in a world
13 where there is obviously at least two uncovered and two
14 covered, so it is the competition between the uncovered
15 HIPs as well, pulling down prices.

16 Q. I understand.

17 A. Yes.

18 Q. If we turn to {A/9/60} I have come to the cartels
19 analogy. So 3.24, you say that:

20 "... in situations where firms produce {A/9/61}
21 homogenous products and are not capacity constrained,
22 the effects of a non-inclusive cartel will unravel."

23 Then you cite, I think, from a paper, that is right,
24 is it not, if we go over the page, you cite there from
25 a paper, you say:

1 "Forming a non-inclusive cartel to increase the
2 market price is pointless as capacity unconstrained
3 competition of the non-cartelized firms will drive down
4 the price to the competitive level. Thus, in this case,
5 a cartel triggers neither price- nor umbrella effects."

6 Yes? Now, you are not of course saying that
7 a cartel always has to cover all supplies in the market
8 in order to produce effects, are you? You are not
9 saying that? There can sometimes be umbrella effects;
10 yes?

11 A. Yes, I am saying that -- well, I am quoting what this
12 finding of this paper is, that even in an extreme
13 situation of price fixing, even extreme things such as
14 that can unravel, which I found quite compelling.

15 Q. But you recognise -- I am asking you now generally, you
16 recognise that a cartel can be effective even if some
17 suppliers are not part of the cartel and that it can
18 produce umbrella effects; yes?

19 A. Yes, cartels can be effective.

20 THE PRESIDENT: By umbrella effect, just to be absolutely
21 clear --

22 MS DEMETRIOU: An umbrella effect, exactly.

23 THE PRESIDENT: -- you are talking about a situation where
24 the non-cartelists in effect benefit from the higher
25 price created by the cartel.

1 MS DEMETRIOU: Exactly.

2 THE PRESIDENT: Inadvertently --

3 MS DEMETRIOU: Or not as the case -- they may see prices go
4 up, they may not know there is a cartel but they may see
5 prices go up and follow them, or there may be an
6 inadvertent response.

7 THE PRESIDENT: I meant inadvertent of the cartel, rather
8 than --

9 MS DEMETRIOU: Yes, exactly.

10 I think what you are saying is that there are some
11 circumstances, is this right, in which the existence of
12 outside suppliers will mean that the cartel has no
13 effect at all, so not always but sometimes, depends on
14 the circumstances; yes?

15 A. Some cartels can be effective. Wide MFNs are not
16 cartels.

17 Q. No, but you are here -- I am testing your analogy. So
18 if we go to {F/678/1}, this is the paper on umbrella
19 effects that you cite from.

20 If we look at the abstract, I think it is fair to
21 say that the paper is directed to showing that umbrella
22 effects are likely in lots of circumstances. You have
23 picked out a part which shows when they are unlikely,
24 but the thrust of the paper is examining when they
25 arise. What is being said here is that:

1 "Umbrella effects arise irrespective of whether
2 non-cartelists act as price takers ... or respond
3 strategically to the increased demand. Sizeable
4 umbrella effects can also arise when non-cartelists are
5 outside the relevant market ..."

6 So -- and it goes on to talk about a price increase
7 being triggered where purchasers from a cartel pass on
8 the price increase, yes? So the thrust of the article
9 is about showing the circumstances in which umbrella
10 effects exist, so it is saying that they are reasonably
11 common?

12 A. So as an academic article I do not think it has
13 a thrust. In some sense it is trying to explore and
14 show how the extent of coverage and other determinants
15 can affect those umbrella effects.

16 Q. Okay, so let us look at page {F/678/2} and the second
17 paragraph. What they are saying here is that:

18 "Umbrella effects arise when price increases of
19 certain products lead to a diversion of demand to
20 substitute products."

21 They say:

22 "As cartels usually cover less than 100% of the
23 firms in a market, [so where] there are non-cartelized
24 firms whose products are substitutes ... for at least
25 some buyers, umbrella effects arise."

1 Yes?

2 A. Yes, so normally cartels are amongst the dominant firms,
3 the ones that are price setters, and the term
4 "umbrella", I mean, it comes from the analogy that there
5 is an umbrella and the others follow and price higher,
6 price up to it. I am very aware of that context, but
7 I am saying even in this extreme scenario, even when we
8 have other cases where spillovers and umbrellas have
9 arisen, even those papers, even those papers, find that
10 unravelling can occur.

11 Q. Right, so we will go to that in a minute, but what they
12 are saying here, they say:

13 "As we discuss in this article, the increased demand
14 for substitutes typically leads to higher prices of the
15 substitute products."

16 Yes? So that is what they are finding. Then if we
17 go to page {F/678/3}, please, paragraph three, and again
18 what it is saying, you see:

19 "As already noted above, one of our objectives in
20 this paper is to show that when the market is not fully
21 covered, a price increase also by cartel outsiders can
22 typically be expected, at least when the cartel operates
23 for a sufficiently long time and when its price increase
24 is substantial."

25 Yes?

1 A. I think those are important caveats or points to note,
2 yes.

3 Q. Let us go to page {F/678/7} because this is where the
4 sentence that you cite arises. We are under the heading
5 and we are in the second paragraph under the set heading
6 and you have cited the sentence "forming a non-inclusive
7 cartel", that is the bit you have extracted just to
8 locate it. So:

9 "Forming a non-inclusive cartel to increase the
10 market price is pointless as capacity unconstrained
11 competition of the non-cartelized firms will drive down
12 the price to the competitive level. Thus, in this case,
13 a cartel triggers neither price- nor umbrella effects."

14 Yes?

15 A. Yes.

16 Q. Then it is important, is it not, to look at the sentence
17 before that because what that says is:

18 "If firms are identical, produce a homogenous
19 product with constant marginal cost and compete in
20 prices, we are in the standard Bertrand model where the
21 market outcome is the same as in a market where all
22 firms are price takers."

23 Yes? The standard Bertrand model, it uses quite
24 extreme assumptions does it not, so it assumes, for
25 example, that firms are not competing on non-price

- 1 aspects of their competitive offering?
- 2 A. These are points that I refer to in 3.25 to justify the
3 relevance of that conclusion. I refer to how home
4 insurance tends to be considered a homogenous product.
- 5 Q. Right, okay. At the moment I am on the article, we will
6 come to 3.25 of your report.
- 7 A. Right.
- 8 Q. Really if -- I mean, this is because if products are not
9 identical, then consumers will have different
10 preferences about which products best meet their needs,
11 right, and they will trade off price and quality
12 characteristics of a product when making their
13 purchasing decision. So the situation is different if
14 the products are not homogenous. So in those
15 circumstances, the response of the sellers not covered
16 by the cartel will depend on that trade-off, will it
17 not?
- 18 A. So I talk about while there may be some differentiation
19 of home insurance products sold on PCWs, and then
20 I refer to industry reports that confirm it is typically
21 considered a homogenous product.
- 22 Q. Yes, in the market definition parts of this case you and
23 Dr Niels have been at pains to emphasise these other
24 aspects of competition, have you not, so you have said
25 in fact that the CMA should have conducted a SSNIP in

1 relation to marketing, for example, and usefulness of
2 sites and so on?

3 A. That would be the PCW level of competition. I am
4 referring to the product of home insurance.

5 Q. But actually both PCWs and home insurers are relevant,
6 are they not, for this aspect of your reasoning?

7 A. The reason -- you have to consider them together when
8 you consider about the effects.

9 Q. Yes.

10 A. So the CMA's theory of harm or finding of harm, as has
11 been discussed yesterday, is about how an impact on
12 retail pricing might have an indirect effect on PCW
13 commissions, so we cannot think about in this bit, in
14 the effects analysis, we cannot think about how PCWs
15 compete on commissions absent thinking about the
16 intensity of the price competition between the insurers
17 on the platforms.

18 So I think that is what drives the -- that is what
19 drives the competitive dynamics in this market.

20 Q. So you are saying, are you, that competition between
21 PCWs is not relevant to this part of the analysis?

22 A. No, I am explaining why the intensity of competition
23 between the insurers on price is relevant to
24 understanding whether the wide MFNs would unravel, any
25 effects of them would unravel or not because the

1 mechanism is all about retail prices, it is not all
2 about PCWs' fixed commissions, it is all about this
3 created a relative price constraint between insurers on
4 the platforms and that, as an indirect effect, inhibited
5 PCW competition.

6 Q. Well, let us have a look at your first report again at
7 {A/5/165}, please. If we look at 9.32, you are saying:

8 "Below, I set out the evidence that other forms of
9 competition between PCWs and HIPs were also
10 important ..."

11 A. Yes.

12 Q. Then if we go to 9.35, here you set out the non-price
13 dimensions of competition between PCWs; yes?

14 A. Yes.

15 Q. Then turning to home insurer, 9.46 which is on page
16 {A/5/168}:

17 "In the case of HIPs, even for sales through PCWs,
18 where I agree customers are price-sensitive, non-price
19 factors are also important for HIPs to attract sales.
20 These factors include the following as explained below:

21 "the strength of an insurer's brand;

22 "ease of use of the HIP's own website;

23 "non-price promotional deals."

24 Yes?

25 A. Yes.

1 Q. If we look at {A/2/73}, this is BGL's notice of appeal
2 and I am looking at paragraph 272:

3 "Nor is price competition the only, or most
4 significant, form of competition between PCWs or
5 insurers."

6 Then you see at 273:

7 "Insurers compete on non-price factors such as:

8 "Brand strength ..."

9 You see the same points; yes?

10 A. Yes.

11 Q. If we could go to {B/33/94}, this is BGL's response to
12 the statement of objections. If we look at
13 paragraph 420, we see:

14 "Customers of motor insurance are much more price
15 sensitive than customers of home insurance."

16 Then it explains why, and then we have:

17 "Therefore, home insurance customers will be more
18 focussed on the quality and coverage of the insurance
19 they willingly buy, prioritising factors such as brand
20 name rather than merely looking at the cheapest result
21 from a PCW search. Therefore, the market dynamics are
22 quite different ..."

23 Yes? Do you disagree with that statement in the
24 response to the SO? Do you think that that has it
25 wrong?

- 1 A. Which part of the statement?
- 2 Q. Well, the statement that says that home insurance
3 customers are more focused on the quality and coverage
4 of the insurance they buy, prioritising factors such as
5 brand name rather than price, do you disagree with that?
6 I think you do, do you not?
- 7 A. It is a relative -- it is a statement relative to motor
8 insurance.
- 9 Q. It is, but the statement in the middle says that they
10 prioritise -- that is not a relative statement. They
11 are saying they prioritise factors such as brand name
12 rather than merely looking at the price; yes? Do you
13 see that is what they say?
- 14 A. They say they will be more focused on quality and
15 coverage and I think they are saying that in relation to
16 motor, so I think that is still saying relative to motor
17 they will prioritise factors such as brand name rather
18 than just looking at the cheapest.
- 19 Q. I think that when we look at the sections I have taken
20 you to at section 9 of your report where you are quite
21 keen to emphasise that price is not the only parameter
22 of competition between HIPs, you are keen to emphasise
23 that, are you not, because you are trying to establish
24 there that promotional deals were not very important,
25 and that is because you say suppliers compete on

1 parameters other than price. That is what you were
2 doing there. You cannot have it both ways, can you,
3 Ms Ralston? So if non-price parameters of competition
4 are important and the products are not completely
5 homogenous, then we are not within the exceptional
6 situation identified in the paper on umbrella damages,
7 are we? We cannot have it both ways.

8 A. So the exceptional situation of umbrella, can I take it
9 in parts? I think it is more helpful for me to say what
10 I think is relevant. I think all these dimensions of
11 competition are relevant.

12 Q. Right.

13 A. The cartel literature is based on traditional value
14 chains. What I am trying to highlight here is that --
15 and I find it a useful reference to draw on literature
16 that exists and that has given guidance about spillovers
17 and unravelling, but that literature does not take
18 account of two-sided platforms and what we are trying
19 to -- what I am trying to augment is this traditional --
20 this literature on a traditional value chain where there
21 is just one level of competition, the -- in that case
22 the cartelists, they are just competing, with the fact
23 that in this market we have -- the intensity of
24 competition between PCWs is influenced by the intensity
25 of competition by insurers, and in terms of which is

1 more important, price or other factors, I do not think
2 I have drawn a conclusion. I have said they can compete
3 on many dimensions.

4 Q. That is very fair. If there is some product
5 differential, then even if price is important, then I am
6 thinking about cartels at the moment, non-cartelists may
7 react to price increases by increasing their own prices
8 and you get umbrella effects; yes?

9 A. That is where I differ there because the fact is that
10 the stronger brands are outside the coverage here.

11 Q. No, I am just asking you about cartels, I am asking you
12 about the paper. I am asking you about the paper that
13 you have cited and looking at cartels. So the reason
14 why the authors say we are in a world -- so the
15 unravelling world they posit in relation to cartels is
16 in a Bertrand model world?

17 A. Yes.

18 Q. So what I am saying to you is that if we are not in that
19 world and there is some product differentiation then
20 even if price is an important parameter of competition,
21 then the non-cartelists might react to the higher price
22 of the cartel by increasing their own prices; yes?

23 A. What I was pointing out is in that world, the cartelists
24 are the price setters, the dominant ones, and that is
25 why the people outside follow. What I am saying is we

1 have some big names, AA -- I list them in I think 235 --
2 that are outside, and so they do not want to follow.

3 Q. I think you are agreeing with me on the proposition in
4 relation to cartels but saying it does not apply, it is
5 not applicable in this case, so I think you are --

6 A. No, I am saying that that literature starts from
7 a premise that the cartel is the -- is dominant in some
8 sense, they are the price setters, it is implicit in
9 their models.

10 Q. Right.

11 A. We are not in that situation. So in that situation that
12 they -- where the cartel is the big brand names, it is
13 the big brand names, then that would -- the point you
14 are making would transpire, but in the present case the
15 more recognisable insurers, many of them are outside the
16 coverage of the wide MFN.

17 Q. I think you would also accept, would you not, that
18 a significant proportion -- I think you do accept
19 this -- a significant proportion of consumers single
20 homed in the relevant period?

21 A. Yes.

22 Q. So they used only one PCW and they are not comparing
23 prices across PCWs. That is also a factor that would
24 militate against unravelling, is it not?

25 A. So there is a material proportion that are multi-homing,

1 yes. So I think quite a lot, is it not between 20 and
2 40%?

3 Q. Yes. I am saying that the larger proportion that is
4 single homed is a factor that is relevant to take into
5 account, is it not, in determining whether or not
6 unravelling is likely?

7 A. I would say the amount, the very material amount that
8 are multi-homing is sufficient. I am not sure everyone
9 in the market needs to multi-home.

10 Q. I am going to move on to promotional deals.

11 A. Yes.

12 Q. I am going to look at the non-econometric -- I am going
13 to save the pleasures of econometrics for one -- because
14 I think we can go into open session on the econometrics,
15 so I am going to look at the non-econometric parts of
16 promotional deals. I can start and then we can take
17 a break. I do not know --

18 A. I am happy.

19 Q. You are happy for me to start, thank you.

20 I am going to start with a question I think that we
21 can agree on because we have just been talking about it.

22 You accept that competition on price is important
23 for PCWs and for HIPs?

24 A. Yes.

25 Q. You also accept that PDs, promotional deals, are a form

1 of price competition; yes?

2 A. Yes.

3 Q. But what you are disagreeing with -- and let us go to
4 the agree/disagree table at {A/12/10}. At C.1 you
5 disagree with the proposition that promotional discounts
6 are an important means by which PCWs and HIPs compete;
7 yes?

8 A. Yes.

9 Q. You have seen the evidence, have you not, that
10 MoneySupermarket, which you know is CTM's biggest rival,
11 was the biggest rival during the relevant period, told
12 the CMA that in 2017 it adopted the strategy of
13 improving price competitiveness for consumers and one of
14 the two strands of this strategy was using targeted
15 pricing investments and offers, so offering promotional
16 deals, you know that that was an important part of
17 MoneySupermarket's strategy; yes?

18 A. Yes.

19 Q. Consistently with that strategy -- and let us take up
20 the Decision so I am not just reading facts at you. If
21 we look at {A/1/189}, paragraph 7.74, we see that
22 MoneySupermarket agreed 18 deals in the relevant period
23 in home insurance; yes?

24 A. Yes.

25 Q. The CMA also found that, like MoneySupermarket,

1 Confused's strategy during the relevant period focused
2 on agreeing temporary promotional deals. We see that at
3 7.83 on page {A/1/192}. Do you see that, "focussed on
4 agreeing temporary promotional deals with selected
5 providers and improving quotability"; yes?

6 A. Yes.

7 Q. If we go to 7.86 we see that Confused did -- we can go
8 over the page {A/1/193} -- 12 deals in home insurance in
9 the relevant period. I think you also know, and 7.98 on
10 page {A/1/195}, that another member of the Big Four,
11 Gocompare, did not engage in any promotional deals in
12 the relevant period but has done a number of them since
13 the relevant period ended, and we see that at 7.98; yes?

14 Now --

15 A. It has run three, it says.

16 Q. Yes.

17 A. Okay.

18 Q. We know from page {A/1/202} at paragraph 7.111 that CTM
19 has also agreed promotional deals, has entered into
20 promotional deals with HIPs since the end of the
21 relevant period; yes?

22 A. A very long time after the relevant period.

23 Q. I know that is a point that you are keen to emphasise,
24 but I am just establishing the number at the moment. We
25 can come back to the time point. I am not going to go

1 through the underlying evidence, but just to take you to
2 page {A/1/225} of the Decision and paragraph 7.170, the
3 CMA found that a total of 21 providers in 2017 agreed
4 a total of 68 deals; yes, sorry, during and since the
5 relevant period to be fair, so during and since. They
6 are not all in 2017.

7 A. Yes.

8 Q. But during and since the relevant period, 68 deals have
9 been agreed by 21 HIPs.

10 In fact when we look at your report at {A/5/158},
11 what you say at 9.11 is that promotional deals were not
12 important to all PCWs and to all HIPs; yes?

13 A. Yes.

14 Q. So I think you would accept in the light of the evidence
15 that they were important to some of them; yes? I think
16 that is what you are saying?

17 A. Yes, I think MoneySupermarket has put emphasis on
18 promotional deals.

19 Q. Right. You say at 9.12 that promotional deals typically
20 last around two months, and I think that is common
21 ground between you and Professor Baker?

22 A. Yes.

23 Q. You say that that is a short period of time, but I think
24 you would accept, would you not, that if a consumer pays
25 a lower price as a result of a promotional deal during

1 that two-month period, the fact of the duration of it
2 will not matter to that particular consumer, indeed to
3 other consumers that have availed themselves of the
4 promotional deal in that two-month period?

5 A. They benefited for a year.

6 Q. Quite a lot of consumers could in principle avail
7 themselves of a promotional deal during a two-month
8 period?

9 A. In principle.

10 Q. If we look at Professor Baker's report, if we go to
11 {A/7/15}, I am looking at footnote 44, he says that the
12 median length of a promotional deal was 61 days, but the
13 mean length was 105 days, and he says that more than 20%
14 of the deals lasted for more than 180 days.

15 Then if we turn back to -- if we look at
16 paragraph 46 -- so in the same footnote, sorry, you see
17 that what he says about the average commission discount,
18 he says that:

19 "... the average commission discount was £3.40.

20 That amounts to more than 7% of the average commission
21 fee."

22 The average retail price discount is 6%.

23 If we go back to your first report to {A/5/158} --

24 A. I think are you going to where I might present different
25 numbers on that?

1 Q. I am not sure is the answer. Let us see. Then if I do
2 not go to it you can tell us. If we go to {A/5/158} you
3 say at 9.13 -- is this what you mean?

4 A. Yes, and then I think we come back in my second report
5 where I think -- so, yes, I think the numbers are
6 smaller, and I am putting them in level terms.

7 Q. Right.

8 A. Then I think actually it was Dr Walker who queried how
9 many of my -- the PDs were actually that size and
10 I respond to that, but, yes, I mean, in general the PDs
11 were around £5 or less.

12 Q. Right, okay. You make a point here, I think, about
13 how -- yes, exactly. So that is the point you are
14 making here, is it not, that 28 of the 69 deals were
15 worth £5 or less; that is the point you are referring
16 to?

17 A. Yes.

18 Q. I understand. The inference you want the reader to
19 draw, the Tribunal to draw from that is that the
20 monetary value of the deals is quite small; yes?

21 A. I am just reporting the facts.

22 Q. Right. But some of the deals would have been obviously
23 for a higher value than that?

24 A. Yes, I am just, as I state, obviously 69 take away 28
25 will be more than £5. I am not trying to mislead

- 1 anyone.
- 2 Q. No, I am just putting -- I am not putting anything
3 difficult to you at this stage.
- 4 A. Okay.
- 5 Q. If a lot of customers took up a given promotional deal,
6 then the total discount, if you added it all together,
7 could get quite large, could it not?
- 8 A. What do you mean by the total? They are all getting
9 around maybe £5 or in some cases a median value of £7.
- 10 Q. Yes, but if you have lots of consumers, it is really
11 a simple point, if you have lots of consumers receiving
12 that discount, then the amount in total that the cohort
13 of consumers are receiving, if you aggregate it, could
14 be quite a large sum?
- 15 A. Yes, but of course these discounts are only on one PCW
16 at a time.
- 17 THE PRESIDENT: Really what you are saying, Ms Demetriou, is
18 that the cost to the person providing the discount is
19 greater.
- 20 MS DEMETRIOU: I am so sorry, sir, I did not hear that.
- 21 THE PRESIDENT: The point you are making is simply that if
22 you have a successful promotion, the cost of providing
23 it is greater to the person providing it.
- 24 MS DEMETRIOU: Yes, I am making that point and I am making
25 a very trite point which is that in terms of assessing

1 the economic significance of these deals, one is not
2 looking at each discount in isolation but a 5% discount
3 across lots of people could be quite a lot of money. It
4 is a trite point, but it is a point which we make.

5 Now if we go to paragraph 9.14 of your report on
6 page {A/5/159}, you say that what you are doing here is
7 assessing how important activity in promotional deals
8 was relative to the home insurance market more
9 generally; yes?

10 A. Yes.

11 Q. I think you would accept, would you not, that if it were
12 established that the wide MFNs had an effect on
13 promotional deals that was not insignificant or
14 appreciable, then it would not matter, would it, that
15 the PCWs might have earned more revenue through other
16 means?

17 A. Sorry, I am not talking about what PCWs earn in revenue
18 here. I am trying to understand the materiality of
19 promotional deals. I mean, another way that it has been
20 put is the relevance of inter-brand versus intra-brand
21 competition. So we are talking about a form of
22 competition that is one PCW specific, so as you were
23 pointing out if lots of customers bought that £5, that
24 is quite useful to customers. What I am pointing out
25 here is that because it is on a single PCW, of course

1 that is going to be less than if four PCWs had the
2 discount, which would happen if insurers cut their price
3 across the board.

4 Q. I understand. You are also pointing out at 9.14, what
5 you are doing is considering the total investment in
6 promotional deals by each PCW and comparing it to their
7 total commission revenue; yes?

8 A. Yes, so there I am looking at it from the PCW
9 perspective, yes.

10 Q. So the question I am putting to you is that if it were
11 established -- and I appreciate your case is that it is
12 not, but if it were established that the wide MFNs had
13 an effect, a non-insignificant effect on promotional
14 deals, then it would not matter, would it, that the
15 price comparison websites earned more revenue through
16 commissions, even much more revenue through commissions.
17 That relative analysis is not actually relevant, is it?

18 A. In my opinion, it is.

19 Q. Okay. Well, let us look at your analysis. This is the
20 analysis that was originally -- initially set out on
21 table 9.1 which is over the page {A/5/160}.

22 Sir, I am looking at this, I am looking at the time
23 and I am looking at this and I am wondering I can either
24 press on for about 10 minutes or we can take the break
25 now. I am between groups of questions as it were.

1 THE PRESIDENT: I understand. Shall we take a break now?

2 A. I can continue.

3 THE PRESIDENT: We will continue for 10 minutes, then.

4 MS DEMETRIOU: Okay. So looking at table 9.1, you redid

5 this analysis, did you not, in the light of some

6 comments made by Professor Baker and we can see your

7 revised results in your second report; yes? So let us

8 pick it up from there.

9 A. Yes, that is only a sensitivity to show that I do not

10 consider the criticism to materially affect the

11 conclusions.

12 Q. No, and I am not making a forensic point, at least I am

13 not on this --

14 A. I just wanted to clarify --

15 Q. I am just trying to trace through what happened.

16 A. Table 9.1 is my view as to the materiality of PDs from

17 a PCW perspective.

18 Q. Thank you. If we go to page 83 of your second report,

19 I think it is --

20 A. Yes, I have that.

21 Q. So it is {A/9/83}. This table is headed "Investment in

22 promotional deals as a proportion of PCWs' commission

23 revenue ..."

24 Yes? What it purports to show is -- it is

25 purporting to show investment in promotional deals as

- 1 a percentage of total commission revenue; is that right?
- 2 A. Yes, with each line setting out the calculation, and the
3 methodology is in the note which might be helpful for
4 people to --
- 5 Q. Yes, I am going to come back to the methodology, I will
6 come back to it, but I want to at the moment take the
7 figures at face value.
- 8 So the point that you are making as I understand it
9 is that what you are trying to show is that investment
10 in promotional deals as a proportion of revenue from
11 commissions is small?
- 12 A. I am just reporting the facts. These are the numbers
13 that I calculate and I am trying to show they are small.
14 I am just reporting --
- 15 Q. No, I understand that.
- 16 A. Right, okay.
- 17 Q. But the conclusion you draw is that -- this is in the
18 context of a report showing that promotional deals are
19 insignificant.
- 20 A. I drew the conclusion after the analysis is all I am
21 saying.
- 22 Q. No, no, I certainly was not trying to suggest you had
23 reached your conclusion before you carried out the
24 analysis.
- 25 A. Okay.

1 Q. Looking at this table, we see, for example, that
2 Confused in 2016 is investing 7% or rather the
3 proportion of its PD spend is 7% of its commission
4 spend. Is that right? Have I interpreted the figures
5 correctly?

6 A. I would rather we went to my first report because this
7 is the sensitivity where I am saying even -- so I think
8 it might be helpful for people to know the criticism
9 that this responds to. I will quickly say the
10 methodology as explained in the note is to take the
11 commission discount, say it is £3.40 we referred to
12 earlier I think from Professor Baker's and you multiply
13 it by the volume of sales that the PCW would have given
14 the £3.40 on. I have to estimate that because it is not
15 reported.

16 So I look -- there is a very good data set of all
17 the volumes of policies sold by each brand through each
18 PCW, but that is at an annual level.

19 So I took -- I divided that number, say it was 120,
20 by 12 months to get in that case 10. Then I applied the
21 duration of the promotional deal to -- maybe it is two
22 months, so then we get 20, and in my first report
23 I thought, okay, maybe more people bought during the
24 promotion, and I applied an uplift of 15%, and that was
25 based on some factual evidence. I did try and find some

1 evidence.

2 It was put to me, and Ms Demetriou's point is
3 perhaps even more customers bought during that period,
4 maybe I should inflate that number more, and so the
5 table we are looking at here is where I have inflated it
6 by 100%, I have said rather than it being 20, they
7 actually got four months' worth of sales during that
8 two-month window, which I think is quite extreme, but it
9 was just to say even then we are talking about in my
10 view quite small values of investment when we have seen
11 other investment that these PCWs do on marketing and
12 Google, and, yes.

13 Q. Okay, thank you, you have saved me actually lots of
14 questions, so that has been very efficient.

15 Can I just take you to {F/291/13}. This relates to
16 a MoneySupermarket deal. What you see here is
17 a reference to MSM investing £700,000 in advertising
18 spend; yes? You see there that what is being said is
19 that:

20 "[It] is the first time AXA ... had participated in
21 a truly co-branded ATL campaign with a PCW, generating
22 a significant uplift in Home Insurance new business
23 volumes with conversions almost tripling, during the
24 promotional period. MoneySupermarket was also able to
25 attract new customers to its Lead Generation platform."

1 Where you say that you applied originally a 15%
2 uplift, and then 100% you think is generous, here is an
3 example of sales tripling, no, as a result of a PD? So
4 if you were looking just -- I appreciate you are not
5 just looking at this example, but if you were, this is
6 an indication that actually they can generate more than
7 100% additional sales?

8 A. Yes, that one says tripling, "with conversions almost
9 tripling". So I am not sure that would mean that sales
10 tripled; it would mean that the conversion rate has
11 tripled.

12 Q. But it provides some indication?

13 A. Yes.

14 Q. Your view, though, if we look at {A/9/82} -- and this is
15 what you have just been explaining to the Tribunal. You
16 say that you have applied, in this further analysis,
17 100% uplift on sales, but if we look four lines down you
18 say you consider that 15% is likely -- you still think
19 it is likely to be a reasonable assumption; yes?

20 A. Yes, and I reminded myself of the references, so they
21 should be in here. I did -- I cannot recall from memory
22 which insurers, but I tried to find -- I tried to find
23 estimates as to how much their sales had uplifted.

24 Q. Yes, I do not think that the MoneySupermarket one we
25 just looked at is in there, but anyway. Going back, we

1 do not have to look at it again, but the
2 MoneySupermarket investment of £700,000 in the marketing
3 deal with AXA, you would agree, would you not, that that
4 is a sizeable sum in itself?

5 A. To me, £700,000 is a lot of money. I think it is useful
6 to put things in the context of their general
7 advertising spend.

8 Q. That is a fair response, but the question really I have
9 for you is that you have not reflected investments of
10 that kind, have you, in this table? You have only
11 factored in --

12 A. No, it is commissions.

13 Q. Yes, commission fee discounts.

14 A. On the basis that it was not entirely clear whether
15 those were incremental investments in TV or above the
16 line advertising that would have happened otherwise, but
17 just for AXA -- sorry, MoneySupermarket's brand more
18 generally.

19 Q. But you accept though, even though it was difficult --
20 I understand it might have been difficult to disentangle
21 the data, but you accept and it looks on face of this
22 document that there would have been other sums invested
23 in supporting the promotional deals?

24 A. The reason I did not include it was not because of the
25 disentangling. I am saying what is the counterfactual?

1 Would that £700,000 have been spent on some other
2 promotion which was MoneySupermarket specific as opposed
3 to AXA in that case?

4 Q. So you have assumed that it would have been, and so you
5 do not count it, is that right?

6 A. No, I am explaining my reason for not attributing it
7 because I could not -- I did not want to make an
8 assumption.

9 Q. I understand, thank you. If we look at paragraph 4.17,
10 so we are on {A/9/83}, you make here various further
11 points about the value of promotional activity as
12 a proportion, for example, of the estimated value of PCW
13 sales; yes?

14 A. Yes.

15 Q. The detail of that is over the page at {A/9/84}.

16 I think it is fair to say, and you gave a very
17 efficient explanation to the Tribunal of your
18 methodology, but I think it is fair to say that you have
19 approached this table on the same basis as 4.1; is that
20 right?

21 A. Yes, and the reason to focus on commission discounts is
22 because that is relevant to the theory of harm. Of
23 course, these TV adverts could continue, could have been
24 a different form of competition.

25 Q. If we look at -- if we take your figures in 4.2 at face

1 value, the total investment in PDs by PCWs in terms of
2 commission discounts in 2018 -- where do we find that?
3 That is at --

4 A. A.

5 Q. A. That is quite a sizeable sum, is it not? You would
6 say in absolute terms it might look big, but relatively
7 it is not big. Is that your point?

8 A. So this is the 100% uplift.

9 Q. Yes.

10 A. So, yes, I would say in -- relative to the value of
11 commissions they are earning, 1 million across four
12 PCWs.

13 Q. Of course from the perspective of consumers what matters
14 is the pounds and pence in terms of the discount. They
15 do not care what proportion of investment the PCWs are
16 making in PDs as compared to anything else, do they?

17 A. I think they would compare to the counterfactual of the
18 discount they could have otherwise got.

19 Q. Right. If we turn back -- if we think about your
20 critical loss analysis then there you were making the
21 point that PCW users are price sensitive and a 2 to 4%
22 increase in retail prices is likely to prompt switching.
23 So I think you would accept, would you not, that these
24 discounts are likely to be meaningful for consumers?

25 A. Yes, I accept that.

1 MS DEMETRIOU: Sir, is that a convenient moment to stop?

2 THE PRESIDENT: Yes, thank you.

3 Just to be absolutely clear, when we are talking
4 about promotional deals, you are only focusing on those
5 which involve a degree of reduction in the policy price,
6 you are not talking about non-monetary promotional
7 deals?

8 A. I do include, to be conservative, a Sainsbury's voucher
9 and also there is Autonet's promotional deal which was
10 across all price comparison websites, but because they
11 were wide MFN insurers and they are in the after period
12 to discount them might create further questions, but
13 I have also explained that in the report.

14 THE PRESIDENT: In short, though, you are looking at those
15 PDs which can be computed in money or money's worth?

16 A. Yes.

17 THE PRESIDENT: Whereas, for instance, the cuddly toys or
18 the other things, those have fallen by the wayside?

19 A. They are outside scope, yes.

20 THE PRESIDENT: Do you carry out any analysis of the number
21 of as it were non-valuable PDs, ie the ones which are
22 not in money's worth, have you looked at those in terms
23 of the number and nature?

24 A. I have not quantified the non-monetary promotional deal
25 activity.

1 THE PRESIDENT: Either before or after the cut-off date we
2 are looking at?

3 A. No, we could draw inferences from other tables on PCWs'
4 advertising spend, but I have not got that set out in my
5 report. I cannot point it to you.

6 THE PRESIDENT: It is not something you thought relevant to
7 consider.

8 A. I agree.

9 THE PRESIDENT: I do not know if you have any questions
10 arising out of that?

11 MS DEMETRIOU: Sir, I think now is a convenient time to take
12 a break.

13 THE PRESIDENT: I agree. Thank you. We will rise until
14 3.15, thank you.

15 (3.00 pm)

16 (A short break)

17 (3.20 pm)

18 THE PRESIDENT: Yes, Ms Demetriou.

19 MS DEMETRIOU: Thank you, sir.

20 Ms Ralston, could we now turn up your first report,
21 {A/5/161}, paragraph 9.20. I am at the bottom of the
22 page. You are saying that:

23 "... the importance of promotional deals from a HIP
24 perspective, as set out in Figure 9.1, generally there
25 were only around five HIPs engaging in a promotional

1 deal each month, rising to at most nine. This is small
2 in comparison to the total number of HIPs active on PCWs
3 during the Relevant Period ..."

4 You have seen, I think -- I am going to take this
5 quite quickly given time, but you have seen what
6 Professor Baker says about your figure 9.1. Let us just
7 have a look at that. {A/7/17}.

8 What he says at paragraph 51 is that when you adjust
9 these figures to reflect the size of the HIPs engaging
10 in promotions, it shows that during some months HIPs
11 engaging in promotions accounted for more than 40% of
12 home insurance sales on PCWs, HIPs engaging in
13 promotional deals accounted for at least 30% of sales on
14 PCWs nearly half the time, and providers accounting for
15 approximately 80% of sales on PCWs employed promotional
16 deals during and after the relevant period.

17 I think what you say in response to that, just
18 cutting to the chase, is this overlooks the fact that
19 promotional deals apply only to a subset of HIP sales;
20 yes? So you are saying mainly it is sales through the
21 PCW. But just to put to you the point,
22 Professor Baker's point is a different one because he is
23 saying that the figures show that the providers who had
24 a substantial interest in promotional discounts were
25 significant in the market. So it was not just a small

1 number of small HIPs that were engaging in promotional
2 discounts. You understand that point, do you not?

3 A. Yes, I accept, because MoneySupermarket could continue
4 to do promotional deals with non-covered HIPs who were
5 also household brands, so it follows that they are not
6 going to be small players, they were continuing to do
7 promotional deals.

8 Q. Right, and I want to again look very quickly at another
9 topic on promotions. If we go just to locate it in the
10 joint expert statement at {A/12/11}, this is proposition
11 C.2, and what you are saying here is you say that:

12 "It is common ground ... that promotional deals were
13 not always of interest to PCWs and HIPs."

14 You give the example of Gocompare; yes?

15 Now, you rely in this context generally on
16 a theoretical analysis contained in Oxera's third
17 report, do you not, submitted during CMA's
18 investigation?

19 A. That is part of the evidence, yes.

20 Q. That sets out a theoretical analysis of incentives to do
21 promotional deals; yes?

22 A. Yes, I wanted to explore why it was that insurers were
23 stating that they might not be interested in doing
24 promotional deals. I wanted to understand from
25 a theoretical perspective why that could be a situation

1 in a market.

2 Q. If you look -- let us look at what Professor Baker says.
3 If we go to {A/7/22}, paragraph 60, he says, including
4 in the footnote, that if you take the reported results
5 of the theoretical analysis at face value, they do show
6 that there were incentives to promote, and again I want
7 to look briefly at what you say in response because I do
8 not think there is very much between you actually on
9 this, so if you look at -- if we look at {A/9/88}, your
10 second report, paragraph 4.36, you say that his
11 interpretation is actually broadly in line with yours;
12 yes? So there may be incentives, there may not be
13 incentives, it all depends.

14 A. Yes, I say there may or may not be incentives to
15 promote.

16 Q. Your models in the third Oxera report, they assume, do
17 they not, that if there is a promotional deal it will
18 involve a 5% discount on commissions; that is right, is
19 it not?

20 A. Yes, the models are theoretical and then you calibrate
21 them to the market reality, and in the calibration
22 I presented or we presented in the third Oxera report £5
23 was the assumption on the discount to the consumer.

24 Q. So you have adopted -- is this fair? -- a binary
25 approach. So either they discount by £5 or they do not

1 discount at all?

2 A. So the theoretical model which was supplemented with an
3 Excel model, so you can change any of those criteria
4 which Professor Baker or the CMA's team indeed did, what
5 I am saying is that model had £5 in. You can change it
6 so it is not binary in that sense.

7 Q. I understand. If we look at what Professor Baker did,
8 so let us go to {A/7/23}, he says that -- I am looking
9 at the last sentence of 61:

10 "Even assuming discounts must have a minimum size,
11 as in the model, discounting would be a dominant
12 strategy for both firms for discounts nearly as large as
13 the discount amount that the model assumes (again using
14 the other calibration assumptions adopted by
15 Ms Ralston)."

16 If we look at footnote 85, he says using your own --
17 he says using your model's own assumptions, promotion by
18 both PCWs is the Nash equilibrium for any discount up to
19 £4.18, yes?

20 A. Yes, if you keep the other parameters constant.

21 Q. So you are not disputing his figures?

22 A. No.

23 Q. So what he is saying there is on your own model you can
24 pick a discount of any amount up to and including £4.18,
25 and both PCWs on your theoretical model would be

1 incentivised to do a promotional deal in that amount
2 rather than not doing a promotional deal?

3 A. Some of the other assumptions in the model might be on
4 the more conservative side, so I would not place too
5 much weight on changing the discount by -- you know, 25%
6 as he has done changes the conclusion.

7 Q. But you agree that what he has presented there -- you do
8 not dispute what he has presented there?

9 A. No, I am just explaining -- putting it in context.

10 Q. Let us turn to -- let us look at the evidence on
11 promotional activity by covered HIPs as compared with
12 non-covered HIPs. So let us go to the Decision first of
13 all at {A/1/327}.

14 If we look at paragraph 9.23, that explains what
15 table 9.1 is showing; yes? So it is promotional deals
16 agreed during the relevant period by providers subject
17 to wide MFNs and providers without wide MFNs.

18 If we can go over the page, please {A/1/328}, we see
19 that there were five concluded by providers subject to
20 wide MFNs and 24 concluded by non-covered HIPs; yes? We
21 know that 32 providers of 45 were subject to the wide
22 MFNs?

23 A. 32 of the --

24 Q. On the CTM side?

25 A. Yes, and I can see the table.

1 Q. I appreciate you have your own views about the reason
2 for the difference and we will come on to that, but one
3 thing you cannot say is that the difference is caused by
4 the fact that there were more HIPs without wide MFNs,
5 right, because we know that that is not right. There
6 were more HIPs without wide MFNs on CTM's panel than
7 there were HIPs with wide MFNs.

8 Now, if we can go to the agree/disagree statement,
9 so {A/12/12} and proposition C.3:

10 "When CTM's [wide] MFNs were in place, covered HIPs
11 promoted substantially less than non-covered HIPs
12 because of CTM's [wide] MFNs, rather than because
13 covered HIPs have less 'appetite' for pursuing
14 promotional deals."

15 You disagree with that proposition, but just to
16 tease it out, I think you agree with the first part of
17 the proposition, right, so the factual point that during
18 the relevant period covered HIPs promoted less than
19 non-covered HIPs, and the disagreement relates to the
20 cause. Is that right?

21 A. Yes.

22 Q. If we turn up your first report, please, at {A/5/174},
23 paragraph 9.69, you are considering that table that we
24 have just looked at, are you not, and you are saying
25 that the most relevant finding from this comparison is

1 that CTM's wide MFNs did not constrain HIPs from
2 undertaking promotional deals; yes?

3 A. Yes, I think that is an important observation to draw
4 from the table.

5 Q. So what you are saying is that in practice some covered
6 HIPs did PDs during the relevant period despite the
7 terms of the wide MFNs?

8 A. Yes, that is what that says.

9 Q. Of course you are not aware that the CMA has ever
10 suggested otherwise, are you, because the point the CMA
11 is making -- the CMA has not ever sought to claim that
12 the wide MFNs were perfectly complied with at all times
13 by all HIPs; you understand that, do you not?

14 A. I understand that the CMA -- the CMA is saying that --
15 is implying from that table that the difference between
16 the number of promotions by covered and non-covered HIPs
17 is due to the wide MFN, and in my opinion the fact that
18 wide MFN HIPs are doing promotional deals undermines
19 that, it makes me cast doubt over that as a conclusion.

20 Q. What you are saying at 9.70 is that the CMA has not
21 fully explored other factors that could have had
22 a material impact on that difference; yes?

23 A. Yes.

24 Q. You say that there may be more than one factor that
25 drives the difference?

1 A. So then I start to explain what we have heard that
2 MoneySupermarket wanted to target the big headline names
3 which are outside, they are the non-covered HIPs in
4 general.

5 Q. We will come to that. The first proposition I just want
6 to put to you, you are not suggesting, I do not think,
7 that the existence of the wide MFN is not one of those
8 factors, are you? You are not saying it is irrelevant,
9 are you, the difference?

10 A. No, at that stage I am saying what are all the factors
11 that could have driven that difference.

12 Q. Right, and in your report you are not finding that it
13 was -- you are not finding in this part of your report
14 that it was irrelevant, are you? You accept in
15 principle it might be relevant.

16 A. I think it is possible, yes. I want to look at how the
17 wide MFN insurers behaved immediately after and whether
18 they were constrained during the relevant period.

19 Q. The first point you make is that you say that there may
20 be -- in particular you say whether fewer HIPs with wide
21 MFNs were asked to engage in promotional deals by
22 MoneySupermarket and Confused.

23 Now, presumably you accept that one reason why a PCW
24 might not ask a HIP with a wide MFN to do a promotional
25 deal is because they knew the HIP was subject to a wide

1 MFN, because the HIP might have told them in the past?

2 A. I am looking at the reasons MoneySupermarket -- and the
3 Decision says as to -- it says that PCWs did not want to
4 do promotional deals with all insurers, it wanted to do
5 it with the big brand names. That is what I had in my
6 mind there. I am saying that we know that those PCWs,
7 or at least MoneySupermarket, wanted do it with the big
8 brand names.

9 Q. We have seen, have we not, some examples in the
10 Decision, and in fact we have discussed the example of
11 One Call earlier on, that was a smaller provider, was it
12 not, but there was an appetite for doing a promotional
13 deal with One Call, was there not, with both Confused
14 and MoneySupermarket?

15 A. Yes, so here I am just asking the question has the CMA
16 explored all the other factors. It could be that what
17 drives the difference is that fewer HIPs with wide MFNs
18 were asked, that is the point I am making.

19 Q. I am exploring that point.

20 A. Yes.

21 Q. You make the point about the smaller providers, but
22 again there is evidence in the Decision -- you accept --
23 that there was an appetite to do promotional deals with
24 smaller providers. One example is One Call.

25 A. So it is I think agreed that PCWs quite naturally were

1 not going every day, I did not get the impression were
2 going every day to every insurer to try and broker some
3 deals, and so I think you are putting to me there are
4 occasions when the result was a PCW did a promotional
5 deal with a smaller HIP and I am not ruling that out,
6 I am just saying in general if larger brands who are
7 more attractive to the PCWs for promotional deals are
8 not covered, that could be a plausible reason as to why
9 there were more promotional deals by non-covered
10 insurers.

11 Q. If we go to {A/1/329}, 9.27 of the Decision, we see
12 there a reference to large providers rejecting several
13 offers of promotional deals with -- this is 9.27(a) --
14 rejecting several offers of promotional deals with CTM's
15 rivals, MoneySupermarket and Confused during the
16 relevant period. We have seen some of that evidence;
17 yes?

18 A. Yes.

19 Q. Then at 9.27(b) you see that the CMA has found that:

20 "In four of the five instances in which promotional
21 deals were agreed [with] providers with a wide MFN ...
22 CTM took steps to enforce its wide MFN to seek to
23 prevent the provider conferring a price advantage on
24 a rival PCW."

25 Again, we have looked at some of that evidence

- 1 directly.
- 2 A. Just on that first point where I said "Yes", I am saying
3 I have seen the evidence but the relevance of the wide
4 MFN to the rejection is of disagreement.
- 5 Q. Right, well, that is a question for the Tribunal.
- 6 A. No, I just wanted to clarify when I was saying u-huh, it
7 was I have seen the evidence.
- 8 Q. No, you are not accepting the CMA's case, I understand.
- 9 A. Yes.
- 10 Q. You are not in a position to dispute the factual
11 findings made by the CMA, are you? I mean, it is not
12 for you to find the facts?
- 13 A. I think I have to look at the facts and try my best to
14 interpret them.
- 15 Q. But you have not looked -- I think you have established
16 you did not look when you were doing your coverage
17 analysis at all the contemporaneous documents.
- 18 A. So I explained where -- I have looked at lots of facts,
19 particularly the facts that have been around in this
20 investigation for some time, but for Grove & Dean and
21 British Gas and the smaller ones that gained more
22 attention later on, I relied more on the CMA summary of
23 the facts in the Decision.
- 24 Q. Let us turn to the question of what happened to the
25 level of promotional activity after the wide MFNs were

1 removed. If we could go back to the Decision at
2 {A/1/331} and table 9.2.

3 This shows that in the 19 month period from
4 January 2016 to July 2017 -- so that is during the
5 relevant period -- that the number of promotional
6 deals -- sorry, that three providers accounting for
7 10% -- over 10% of sales entered into five promotional
8 deals; yes? Then we see the numbers go up after the
9 relevant period to seven providers accounting for over
10 20% of sales making nine deals; yes? So it is comparing
11 a 19-month period with a 19-month period.

12 As the CMA notes at 9.32 on the same page, of those
13 seven, six were providers that had not previously agreed
14 a promotional deal during the relevant period; yes? So
15 you have seen that. Three of those six had rejected
16 promotional deals during the relevant period because of
17 CTM's wide MFNs. So that is the CMA's finding.

18 Then at 9.34 over the page {A/1/332} you see that
19 the CMA is also aware that at least a further three
20 providers previously subject to wide MFNs had agreed
21 promotional deals in the very first few months of
22 January 2020.

23 A. I respond to all of this in my report.

24 Q. We are going to look at it.

25 A. Okay.

1 Q. Then if we go to table 9.3 at page {A/1/346}, what we
2 see is that the total number of promotional deals by the
3 Big Four PCWs was almost twice as great in the 19-month
4 period following the disapplication as it was in the
5 19-month period during the relevant period; yes? So we
6 see those figures there.

7 A. 38 is a lot less than 52.

8 Q. You are quite right. My maths is much worse than yours.
9 I should not overstate the case in that way.

10 THE PRESIDENT: Again these are promotional deals as
11 I discussed with the witness which are money or
12 equivalent of money?

13 MS DEMETRIOU: Yes, exactly. They are not toys.

14 THE PRESIDENT: They are not cuddly toys.

15 MR BEARD: I think that is a question you might want to
16 direct to the witness as to exactly -- when you say
17 money or equivalent of money, is the question the
18 Tribunal is raising whether it is cash or cashback?
19 I think the issue may well be that it is a question of
20 the premium falling rather than something else.

21 THE PRESIDENT: Yes, I think the -- well, Ms Ralston can
22 correct my understanding.

23 A. Yes.

24 THE PRESIDENT: I think Ms Ralston what you said was that it
25 was money which includes --

1 A. As far as I am aware they are generally money, it is
2 just there is the Sainsbury's which is a voucher.

3 THE PRESIDENT: Indeed. Just to be clear, it is a discount
4 on the premium. It is also a cashback discount that
5 does not reflect the headline premium but involves money
6 returning, and it is on the fringes, things like
7 Sainsbury's vouchers or tokens or whatever you would
8 call them?

9 A. Yes, and this is the CMA's numbers, they have collected
10 all the data and, yes, but that is my take on it.

11 THE PRESIDENT: I directed the question to Ms Demetriou
12 because it is the --

13 MR BEARD: Sorry, I apologise. I wanted to make clear
14 because some of these things might matter in due course.

15 THE PRESIDENT: Well, that is exactly why I am wanting to be
16 absolutely clear about what everyone is saying. I am so
17 sorry, Ms Demetriou.

18 MS DEMETRIOU: No, no, of course not, sir.

19 Ms Ralston, just to be clear, I am at the moment
20 establishing what the CMA found and I am going to go to
21 your report, so I am not asking you to agree with
22 everything, I know that you do not agree with everything
23 the CMA found, but I do want to set it out.

24 If we then go on to page {A/1/347}, looking at
25 figure 9.1, this shows the number of promotional deals

1 available to customers in any month; yes? You can see
2 that the figures that the CMA has found are appreciably
3 bigger post-disapplication, especially from
4 September 2018 onwards. That is what it shows.

5 A. Well, there is a bit of a fall after September 2018.
6 You know, if you look at for example February 2019, what
7 is that, three promotional deals less, so --

8 Q. Right, the trend generally is upwards after that period,
9 and if we then look, please, at -- over the page at 9.74
10 {A/1/348}, the CMA is saying there that:

11 "... while there were on average 5 deals in place
12 per month during the Relevant Period, this increased to
13 6.9 deals per month in the 19 months after CTM stopped
14 enforcing its wide MFNs and to 8.8 deals per month for
15 the period October 2018 to June 2019."

16 So again I am just setting out what the CMA found.

17 Then you see at 9.75:

18 "This trend is consistent with an increase in price
19 competition ..."

20 Presumably, just pausing there, you would agree that
21 it is consistent with an increase in price competition.
22 I know that you take issue with whether this trend can
23 be attributed to the wide MFNs, but you agree it is
24 consistent, not inconsistent, with increased
25 competition, is it?

1 A. So this trend is driven by non-covered insurers
2 promoting more, and so that would be consistent with
3 non-covered insurers promoting more. Whether in general
4 price competition even restricted to PCW sales has
5 increased depends on whether absent the PD they would
6 have cut prices across all PCWs.

7 Q. If we turn to page {A/1/368} in the Decision and look at
8 table 9.4, this shows what happened to the number of
9 promotional deals agreed by non-covered HIPs, does it
10 not, during and post the relevant period. So again I am
11 just establishing what the table shows. So we see that
12 at 9.132:

13 "In relation to the number of promotional deals
14 entered into by providers not subject to wide MFNs ...
15 Table 9.4 shows that, since [the disapplication they]
16 entered into more promotional deals ... than during
17 [the] comparable 19 months [previously]."

18 A. This is the non-covered insurers, yes, this is the trend
19 for them.

20 Q. You see -- so you -- let us look at what you say about
21 it. You say that -- if we go back to your report at
22 {A/5/177}, I am going to look at some of the points you
23 make in relation to these findings. At paragraph 9.78,
24 one of the bases on which you criticise the analysis is
25 you say it does not take account of the duration of the

1 promotional deals and the size of the discount, yes? So
2 you say that in 9.78.

3 A. I certainly think that is a problem. I think my main
4 issue is attributing this trend, which is much more
5 prevalent in the insurers that were not covered by the
6 wide MFN as evidence and as a link to the removal of the
7 wide MFN.

8 Q. You understand we are going to come back to this --

9 A. Okay, but I just thought before you said my first reason
10 was the most important, I am just saying indeed I think
11 you should account for duration when you are trying to
12 understand the materiality of these trends. Indeed,
13 I think that is also important.

14 Q. Right. So can we look, please, starting with duration,
15 can we look at table 1 in Professor Baker's report at
16 {A/7/18}.

17 This table is looking at what happened to HIPs
18 covered by wide MFNs, yes, so we see that at the top?
19 The first two rows reflect data we have already seen in
20 Decision table 9.2, yes, which we have just gone to.

21 You see in row 3 that what Professor Baker has done
22 is taken on board your point about duration of the deals
23 and he notes that there is a 33% increase in the number
24 of promotional months in the 19 months during the
25 relevant period and 19 months after it. You understand

1 I think that what he means by promotional months is the
2 total number of months for which promotion was in force
3 aggregated across the providers?

4 A. That is driven by very much the later months because in
5 fact of course, as you know, in the six months after the
6 number of promotional deals by the covered HIPs did not
7 increase, in fact fell.

8 Q. I know you have a point about timing, and of course the
9 CMA as you know considers that there may well have been
10 a time-lag before promotional deals started, but I know
11 there is a dispute on that point.

12 Now, you respond to this in your second report. If
13 we can go to {A/9/101}.

14 You adjust Professor Baker's analysis in three ways,
15 do you not. First you make it more precise, measuring
16 promotional days rather than months; yes?

17 A. That is the minor adjustment, yes.

18 Q. Secondly you have added in a promotional deal by
19 Legal & General which you say occurred during the
20 relevant period, and we see that at 4.78; yes?

21 A. Yes.

22 Q. But you say at footnote 369 that this was agreed in
23 August 2015, that is before the start of the relevant
24 period; yes?

25 A. But it was active, yes, during the relevant period.

1 Q. But you understand the CMA's position is that the effect
2 of the wide MFN, it has its effect at the time that it
3 is agreed, because if the wide MFN is going to be
4 preventing or constraining a deal, that constraint
5 happens at the time it is agreed at the start of it, not
6 later on.

7 A. That would be inconsistent with its position on
8 spillovers. I understood -- sorry, it is not for me to
9 say if it is inconsistent, but I understood that the
10 effect is sort of more general, and if there is an
11 effect on wide MFN insurers, it also affected the
12 non-covered insurers, and it is not just about the
13 particular date that they agree something but more
14 generally their sort of presence.

15 Q. That is absolutely what the CMA says, but the point that
16 I am putting to you is a much narrower one which is when
17 one is asking was a promotional deal constrained by
18 a wide MFN, so did it happen despite the wide MFN, was
19 it constrained by a wide MFN, then one is looking at the
20 date of agreement, right, so you are looking at the date
21 in which it -- on which the agreement occurred.

22 A. I think that this promotional deal, I cannot remember,
23 is it January 2015, the start of the relevant period?
24 When is the start of the relevant period?

25 Q. It is December 2015.

1 A. So this deal lasted for eleven to twelve months in the
2 relevant period. That is why I think it should not be
3 discounted. It is clearly a part of the factual --
4 facts of what happened in the relevant period.

5 Q. Right, but if you look at -- if we go to your table on
6 page {A/9/102}, so that is over the page, just to
7 establish, are these rows referring to promotional
8 months and days? They include the Legal & General deal,
9 do they not?

10 A. Yes, that is why there is a 6 in the top row compared to
11 5 in the CMA's top row.

12 Q. I think you would accept, would you not, that if you
13 exclude that deal, then there is an increase in the
14 duration of promotions in the period after the WMFNs are
15 disapplied as Professor Baker notes in his table 1?

16 A. Could you just say that one again?

17 Q. Yes. If you exclude that deal, then there is an
18 increase, if you are looking at duration of promotions,
19 there is an increase in the period after the relevant
20 period as compared to the relevant period?

21 A. I mean, my analysis in table 9.3 of {A/5/180} where
22 I look at the daily agreed value, and I look at many
23 different time windows, and I see that that falls and
24 that only if we look at the 38-month window of the CMA
25 is there an increase.

1 Q. Right, we will come back to the windows. The third
2 adjustment that you make in your table is that you also
3 set out a measure of the actual promotional activity
4 engaged in and compare it to potential level of
5 promotional activity; yes?

6 A. Yes, I do that.

7 Q. It is not a criticism, but you did not look at that in
8 your first report, just to be clear, did you; you did
9 not look at this potential --

10 A. Professor Baker put a lot of proportions in and I wanted
11 to respond in terms of, well, I think it is more useful
12 to look at proportions relative to potential size.

13 Q. Your potential promotional activity analysis, that
14 assumes, does it not, that each of the 32 HIPs with
15 a wide MFN has an active promotional deal at any one
16 time and that each promotional deal lasts 105 days on
17 average?

18 A. Yes, though of course I am accounting for that period of
19 time, so I am not double-counting months, but, yes, I am
20 saying they could have been promoting persistently
21 throughout that period and they chose -- or they were
22 not.

23 Q. Right, but it is not very likely, is it, so the point of
24 promotional deals is that they are short, sharp deals,
25 are they not, so it is not very likely that they would

- 1 have all been promoting persistently --
- 2 A. I think this is where we are in agreement that
- 3 promotions are not going to be as strong a form of price
- 4 competition as other forms of price competition which
- 5 are persistent and do not last only two months.
- 6 Q. On the basis of these assumptions, what you see in table
- 7 4.3 is an increase in the actual relative to potential
- 8 figures, do you not, for both number of PDs and number
- 9 of providers, so you see an increase from the relevant
- 10 period to the post-relevant period, 3 to 5 and then --
- 11 A. Yes, yes, I report on those. I am just putting those
- 12 proportions there to give context.
- 13 Q. Of course this table only looks at promotional deals by
- 14 covered HIPs during the relevant period, does it not,
- 15 and you know that the CMA's case is that the removal of
- 16 the wide MFNs had impacts as you have said on all HIPs,
- 17 and, as you have said, it is the CMA's case that you
- 18 recognise that, and also on PCWs. So you have not shown
- 19 any equivalent results, have you, which look at the
- 20 duration of promotional deals for all HIPs?
- 21 A. No, I look at that with the econometrics where I look at
- 22 all HIPs there and I look at whether there is evidence
- 23 that they increased promoting, using econometrics. I do
- 24 not just do my econometrics on wide MFN insurers for
- 25 promotional deals.

1 Q. Is it because you worked those results out and they were
2 not very helpful to you, Ms Ralston?

3 A. No, I have not worked them out.

4 Q. If we go back to your first report at {A/5/177}, if we
5 look, please at paragraph 9.78, you also say that --
6 I am back to the paragraph we are looking at. I am
7 looking at size now, that the CMA's analysis does not
8 take account of the size of the agreed discount, and
9 this is a point, I think, is it not, that Oxera raised
10 on behalf of BGL during the investigation stage, so it
11 is a point made in the Oxera fourth report. Shall we
12 just have a look at that? It is at {B/22/49}.

13 You set out some tables here which show average
14 daily agreed values of promotional deals pre and
15 post-disapplication, and you are seeking to show,
16 I think, that if you take different timeframes then the
17 average daily value of promotional deals actually went
18 down post-disapplication, right, you say that is what
19 this shows.

20 So table 6.3 is for all HIPs pre and
21 post-disapplication, and 6.4 we can see is for the
22 covered HIPs only; yes?

23 A. Yes.

24 Q. If we look at the CMA's response to this for a moment in
25 the Decision, so if we go to annex Q at {A/1/708}, and

1 if it is possible to have both pages up at the same
2 time, I think that might be the best way of looking at
3 it.

4 So the CMA is responding to this at Q.72 to Q.73,
5 and if we turn to {A/1/718}, Q.101, you can see there
6 that the CMA is saying that Oxera's analysis excluded
7 deals by Tesco Bank, right, which were agreed in 2017
8 during the relevant period, yes, do you see that?

9 A. Yes.

10 Q. Then if we look at table Q.2 just above that, that shows
11 the position for wide MFN HIPs, so it is a version of
12 table 6.4 but adjusted to reflect the CMA's various
13 points about the data set; yes?

14 A. Yes.

15 Q. Then if we go to Q.3 over the page, that is a version of
16 table 6.3, is it not, from the Oxera fourth report?

17 A. Yes.

18 Q. Showing the position for all HIPs again adjusted to
19 reflect the CMA's points about the data set including
20 the Tesco promotional deal; yes?

21 A. Yes.

22 Q. What it shows is that there was a significant change in
23 the average daily value of promotional deals in the post
24 period when you used the CMA's timeframes, so at that
25 time the CMA was considering 23 months pre-withdrawal

1 and 19 months post, yes, and taking average figures, and
2 there was also an increase, if we look at the Oxera
3 preferred timeframe of 12 months pre and 12 months post,
4 we see that there is also an increase, yes, do you see
5 that?

6 A. Yes.

7 Q. If we turn back to -- or in fact if we turn back to
8 table 9.3 of your first report, so that is at {A/5/180},
9 this shows the agreed daily -- the daily agreed value of
10 promotional deals by covered HIPs before and after
11 disapplication, and it is basically a copy-out of that
12 table at Q.2 of the Decision that we just looked at,
13 maybe we can just get that up again. So that is at
14 {A/1/718}. Can we put it next to, please, {A/5/180}.

15 The only slight difference being that the CMA's
16 period, time period, is 19 months pre and 19 months post
17 which makes -- sorry, CTM's period is 19 months pre and
18 19 months post which makes the two periods the same
19 length, whereas previously the CMA had used a longer pre
20 period, but otherwise what you are doing is presenting
21 the result from table Q.2 of the Decision, so that is
22 the results from Oxera's fourth report table 6.4
23 adjusted to reflect the changes in data set; yes?

24 A. Yes, I think we have --

25 Q. So you have accepted here, I think, the CMA's points in

- 1 annex Q about the data set because your table 9.3
2 factors those points in?
- 3 A. Yes, I think this factual point about Tesco's I would
4 accept, if I have misallocated, I should have corrected
5 and I am presenting that here.
- 6 Q. You do not give an equivalent table for all HIPs, do
7 you?
- 8 A. No, I do not.
- 9 Q. If we go back to table Q.3 in the Decision, so that is
10 {A/1/719}, this shows that the average daily value of
11 promotional deals increased by £20.32 across all HIPs
12 after the WMFNs were withdrawn using the CMA's preferred
13 period; yes?
- 14 A. Yes.
- 15 Q. As we have seen, even on Oxera's 12-month pre and
16 12-month post period there is also an increase, but what
17 you have not done, I think, is presented -- you have not
18 done the same job for this table, have you, in your
19 report as you did in Oxera 4?
- 20 A. I have not presented an equivalent of this table. What
21 did you mean by the same job presented?
- 22 Q. In contrast to what you have done in relation to -- you
23 have traced through -- so in Oxera's fourth report you
24 have looked at the covered HIPs and you have adjusted
25 the table then subsequently to take account of the CMA's

1 points on data, but you have not -- even though in Oxera
2 4 you have a table on non-covered HIPs, or all HIPs
3 rather, you have not traced through the same -- you have
4 not adopted the same steps and presented an equivalent
5 table in your report for these proceedings, have you?

6 A. No, I have not. It still supports this chart, table 9.3
7 in my report comes under the heading of the CMA's
8 results are sensitive to the time period chosen, and the
9 CMA's Decision in Q.3 also shows that if you choose
10 a different time period the numbers change quite
11 markedly.

12 Now, I see your point that on a 24-month period
13 there is still a positive increase, but the point of
14 this analysis is to say be careful about the time period
15 because the conclusions in the results are changing.

16 Q. If we go back to your table at {A/5/180}, table 9.3,
17 this shows the pre and post relevant period promotional
18 activity of covered HIPs and the first row shows that
19 the average daily value of promotions increased by £3.94
20 if you are looking at 19 months prior and 19 months
21 post; yes?

22 A. Yes.

23 Q. Just going back to a discussion we had a little earlier,
24 you referred to the average retail price discounts that
25 were agreed in the promotional deals and the median

1 value was £7?

2 A. Yes, that is correct.

3 Q. So that increase of £3.94 is actually significant, is it
4 not?

5 A. I am not sure if we are comparing like for like.

6 Q. Right.

7 A. This average daily value metric is -- so this is

8 calculating the actual value of the promotional deals

9 taking into account -- so how would you compare them?

10 This is saying that there is a deal in the market, and

11 this is what it equates to on a daily basis, and how

12 that changed.

13 Q. Yes, and so the point I am putting to you is that the
14 change cannot be disregarded as an insignificant change,
15 can it, in the current context or would you say it is?

16 A. So relative to a typical promotional deal being £7 and
17 we are seeing that pre -- on the CMA's approach, the
18 typical daily value is almost £7 and post it is almost
19 £10.50 and the change of £4.

20 Q. In that context it is a reasonable proportion, is it
21 not?

22 A. It is a reasonable proportion. These are all quite
23 small numbers relative to the value of home insurance,
24 but, yes, it is a reasonable proportion.

25 Q. But not small numbers for price-sensitive consumers?

1 A. No, we have agreed that they might be attracted by small
2 numbers.

3 Q. You have referred -- I just wanted to look at the
4 shorter periods that you have -- or think about the
5 shorter periods.

6 Of course if the CMA -- you have referred to certain
7 shorter periods in your table.

8 A. Yes.

9 Q. You say that when you use these periods the average
10 value of promotional deals decreases after withdrawal of
11 the wide MFNs.

12 Now, of course, if the CMA is right to say that the
13 wide MFNs are likely to have had persistent effects,
14 then those effects would not be captured without taking
15 a longer period, would they?

16 A. By definition, persistence would imply there would be
17 a delayed reaction, yes.

18 Q. So in fact taking a short period assumes that there were
19 not persistent effects and that every HIP will have
20 acted very quickly after the relevant period to conclude
21 a promotional deal, does it not?

22 A. Short periods do not -- I am not referring to those
23 periods I have considered of 12 months before and after
24 as short.

25 Q. You also refer to three months before and after.

1 A. Could you be specific in your question, with short, and
2 I was not quite sure what I was agreeing or disagreeing
3 with.

4 Q. Of course. Let me try and be more accurate. So the
5 shorter a period you take then the more you are
6 assuming, or the more important the assumption that
7 there were not persistent effects and that every HIP
8 will have acted very quickly after removal of the wide
9 MFNs to make a promotional deal?

10 A. That is not particularly true with this table of wide
11 MFN. We only have a handful promoting before, so you
12 would only need slightly more than a handful promoting
13 quite soon after for there to -- if it were the case
14 that 31 of the 32 wide MFN HIPs were promoting the four,
15 then you would need the 32nd to promote for there to be
16 a change, but because there is just a small handful
17 promoting both before and after, you only need one or
18 two to increase to do so after to change the results.

19 Q. But you are still assuming, are you not, that things
20 changed quickly because if in fact the wide MFNs had
21 persistent effects and it took a bit more time for
22 competition to get going, assume for a moment that that
23 is right, then what you would need to do is take
24 a longer period, would you not?

25 A. I am just being careful. Because of the fact that they

1 are ignoring the MFN anyway and promoting, we cannot
2 have persistence for them because they have already set
3 up their systems to promote, so they are not
4 constrained, they can continue to promote, you know,
5 they were promoting before so they can promote after, so
6 we do need to assume that those that were liberated from
7 the wide MFN were able to react to the liberation in
8 some sense, but I think that is quite a modest
9 assumption.

10 Q. What I am asking you is whether you agree that the
11 assumption that they are liberated -- so the kicking
12 into effect of competition post-liberation, if that took
13 a while to get going, then taking a short window is not
14 very informative because you are not capturing the
15 effects, are you?

16 A. I would want to allow, you know, three to six months, to
17 be quite conservative, to allow that.

18 Q. Right, okay. If we go back to Professor Baker at
19 {A/7/19}, please --

20 A. We do have factual evidence on the relevant time period
21 which I am sure you are familiar with with, you know,
22 MoneySupermarket saying they could do promotions I think
23 within a matter of days and then they say four weeks if
24 it involved television advertising, and I am also
25 familiar with the reasoning. So MoneySupermarket --

1 I have looked into AXA who was the first wide MFN HIP to
2 do one quite soon after removal, that was in
3 February 2018, and it transpires that MoneySupermarket
4 already had a deal in place with Tesco's, a non-covered
5 HIP, but Tesco's pulled out, I could not find out why
6 they pulled out, and AXA stepped in, and obviously AXA
7 and MSM have had that relationship some time.

8 So other than the AXA promotional deal which was
9 short, one month, we do not have any wide MFN HIPs
10 promoting in the six months after, which I find quite an
11 important point, so I have highlighted it.

12 Q. Of course competition can be -- is generally iterative,
13 is it not, so what you may have is an escalation in time
14 of number of promotional deals; yes?

15 A. But we do not see in March or April or May or June any
16 of these other wide MFN HIPs jumping to do a promotional
17 deal, so, yes, competition can be iterative, and that is
18 what I have done, taken into account, in some of my
19 spillover tests, but I do not see the evidence of a sort
20 of sequential effect.

21 Q. Of course we will come to your spillover effects
22 tomorrow.

23 A. Okay.

24 Q. I think that would be quite cruel to come to them at
25 4.15 for everyone, not least for me, but in any event

1 you do accept, because we have seen it, in your Q.3 that
2 if you take -- Q.3 of the Decision, sorry -- that if you
3 take the 12-month post and pre period you do see an
4 increase, I think we have established that, and you have
5 also seen the evidence in the Decision showing that
6 promotional deals really got going from October 2018,
7 have you not?

8 A. The Decision could well put forward that since
9 October 2018 promotional deals increased. What are you
10 referring to? I would say that after -- a year after
11 disapplication is a very long time to attribute that to
12 the wide MFN.

13 Q. Going back to Professor Baker's report, please, at
14 {A/7/19}, paragraph 55, what he is doing here is -- we
15 see this, I think, over the page {A/7/20}. He redoes
16 your analysis, does he not, in table 9.3 of your first
17 report but allocates promotional deals to the pre and
18 post period based on the date on which they were agreed
19 or commenced; yes?

20 A. Yes.

21 Q. So you understand the CMA's case that the reason he has
22 done that is because if you are testing the impact of
23 the WMFN on an ability to agree a deal it is the date of
24 agreement rather than the dates that relate to when the
25 deal was implemented, that is what the CMA says, you

1 understand that?

2 A. I understand they say that, but I also have an issue
3 with that approach because when they were agreed, one of
4 the very long promotional deals, when it was agreed, was
5 to be three months, I think, but then it was renewed
6 four times over. So I think it is the second point you
7 will make.

8 Q. I am going to come to that one.

9 A. Okay.

10 Q. But I just want to put a point to see if you agree with
11 this. If the CMA -- let us say that there were a deal
12 agreed at the end of the relevant period while the wide
13 MFNs were in place, and it was a deal agreed by
14 a covered HIP, so it was agreed despite the wide MFN,
15 then if you are testing the impact of the wide MFN you
16 are going to allocate it to the relevant period, are you
17 not, even if actually it took place afterwards, because
18 what you are asking yourself is did the wide MFN prevent
19 the deal, and if actually a covered HIP during the
20 relevant period entered into a deal, then you would be
21 complaining, would you not, if the CMA then said, well,
22 we are going to allocate that to the post period because
23 that would boost the post period when in fact it was
24 agreed despite the wide MFN. Do you agree with that?

25 A. I agree with that logic, yes.

1 Q. Your analysis in table 9.3, it does not do this, does
2 it, because you have included in your pre period, you
3 have included in your pre period deals that started like
4 the L&G deal before the relevant period, have you not,
5 and continued into it; yes?

6 A. I am not sure everyone is necessarily going to be
7 following the details of what we are doing, and I might
8 just take a moment to just say.

9 So my approach says there is a deal and it might
10 have been agreed on January one year, and it lasts three
11 months, and suppose it is £10 each month. I take
12 a discount of £10 in January, a discount of £10 in
13 February, a discount of £10 in March. This is the month
14 that discount was awarded. If the deal got renewed in
15 April, again it would be £10 in April until the deal
16 expired.

17 The CMA's approach -- so I would not be overlooking
18 when it started, of course the discount is only applied
19 from January, it is not applied from before then. The
20 CMA's approach would be in the case of, say, a £10
21 discount that was renewed after three months then lasted
22 in total six months, so you have got £60, they would
23 attribute that £60 all to January, the date it was
24 agreed, even if it was renewed after three months.

25 I feel it is more informative to look at when the

1 promotion is in the market, partly because we cannot be
2 quite sure when all the deals were renewed, that data
3 was not clearly captured, I have relied on the CMA's
4 collection of all the PDs, and I have reviewed some of
5 them and found that they were renewed. So although they
6 lasted a longer period of time it was not on day one
7 they agreed to do a very, very long PD, it was over time
8 they renewed them.

9 So based on that data, I think it makes more sense
10 to just look at when the PD is in the market.

11 Q. Thank you for explaining that. That is contrary to the
12 logic that you just agreed, is it not, because I just
13 said to you well let us say that there is a six-month
14 deal that commences in, say, October 2017, and it goes
15 into the post period, then it would not be right to
16 attribute most of that to the post period if it was
17 concluded by a covered HIP during the relevant period
18 because what you are looking at is whether the wide MFN
19 prevented deals or whether --

20 A. That, as you are pointing out, would work against my
21 client's interests.

22 Q. Yes.

23 A. But that is the approach I have taken.

24 Q. Right. Okay, but the upshot is that it is imbalanced,
25 is it not, because there were no deals in that category,

1 so what you have done is you have included the L&G deal
2 which makes a difference on that basis which gives your
3 pre period a boost, but there is no analogous downside,
4 is there, on your approach in terms of the post period,
5 so you are not comparing like with like, are you?

6 A. I am comparing like for like. I take a consistent
7 approach of when was a promotion in the market. As
8 I said, I think it is very important market context that
9 one of the large insurers was promoting for eleven
10 months of the relevant period and to overlook that
11 I would think is -- would not give a full effect, a full
12 evaluation of the effect of the wide MFN.

13 Q. Let us look at -- so you do make this point in response
14 to Professor Baker. You say that his approach in his
15 table 2 does not account for the fact that deals were
16 extended, and you have given the example of a deal
17 between Aviva and MoneySupermarket that was extended
18 four times.

19 Then what you do is you present an adjusted table to
20 reflect this example. So let us have a look at that.
21 That is in {A/9/105}. That is table 4.5. We can see
22 above that it says:

23 "Table 4.5 below shows the impact of correcting for
24 this error, and allocating the value of the
25 Aviva-MoneySupermarket deal to the five relevant dates",

1 when they are extended, right, so that is what you have
2 done there?

3 A. That is correct.

4 Q. You say that when you treat this as five separate deals,
5 struck on five different dates, then this shows -- we
6 are looking at the table -- that the value of the PDs
7 fall post-disapplication in all bar one timeframe, yes?
8 So we see that there, and we see that explained at 4.91.

9 Now in fact I think it is right, is it not, that the
10 entirety of this deal took place after the relevant
11 period, did it not, so it is not one that crossed over?

12 A. Yes, it starts on 13 June 2018.

13 Q. The only reason this adjustment assists you is because
14 some of the renewals took place after your various
15 cut-off points; yes?

16 A. That is why there is a correction, yes, because if you
17 are to attribute value of a promotional deal that
18 actually comes to the market many months after the CMA
19 or any of these cut-off points, my cut-off points, then
20 of course if you were to bring that forward to before it
21 is actually in the market, you are going to boost the
22 value of promotional activity in the after period,
23 I consider that a false impression of the activity going
24 on at that time because firstly that promotional
25 activity is not in the market yet, it has not

- 1 transpired, and secondly it has not even been agreed
2 yet, it was only agreed on renewal.
- 3 Q. So you are saying essentially you have got to count that
4 as five separate deals because each time you have an
5 agreement to renew it. That is your logic?
- 6 A. Yes, you should look at when it is in the market because
7 that is when it will stimulate others. No one knows
8 what is going to happen in those three-month windows,
9 they did not know they would renew.
- 10 Q. Right. Looking just at this table, if we take the CMA
11 period, even with your correction there is still an
12 increase, is there not; that is right, is it not?
- 13 A. Yes.
- 14 Q. If you are treating this, Ms Ralston, as five deals
15 rather than one, then going back to your table at 4.3,
16 so page {A/9/102}, should not the number 9 in the top
17 row be 13 rather than 9? If you are treating it -- if
18 you say, as you say, you do not know when it started
19 that it is only going to be three months, so we have to
20 treat it -- treat each renewal separately?
- 21 A. Oh indeed, Aviva is covered. I can look into that and
22 make sure that is consistent.
- 23 Q. Right. So I am right, am I not, that you cannot have it
24 both ways. You cannot say, well, I am only going to
25 count it once when I am looking at the numbers but when

1 I am -- on my other table I am going to divide it into
2 five different agreements; you cannot do both, can you?
3 That is inconsistent.

4 A. So I would not want to be inconsistent and can look into
5 that. I have explained, I hope quite clearly, why
6 I think attributing the full value in that early period
7 would not be as informative.

8 Q. No, and you have only taken this single example of
9 a renewed promotional deal so you have not looked at
10 whether there are others that fall into that category
11 that you need to adjust for. I think that is fair, is
12 it not?

13 A. Yes, this is the CMA's sort of -- I would say the CMA
14 comes with the simple -- I call it simple promotional
15 deal analysis which has managed to complicate more and
16 more and we have got further and further involved. But
17 each time I am more responding to CMA's analysis.

18 Q. I understand. I think I am going to finish this topic
19 at least on time, so I have only got a few more
20 questions for you. The final topic I want to look at in
21 relation to promotions, you say that it is your view
22 that promotions are not always beneficial for consumers;
23 yes?

24 A. Yes.

25 Q. Let us look at what Professor Baker says in the joint

1 expert statement, so at {A/12/14}.

2 He says that the CMA finds -- he makes the point
3 that the CMA found that commission reductions were
4 almost entirely passed through to retail price
5 reductions, and half the time the retail price
6 reductions exceeded the agreed to amount; yes? That is
7 the CMA's finding. That is a reference, you understand,
8 to the CMA's analysis in section 7 of the Decision. You
9 have seen that?

10 A. I have seen that.

11 Q. As far as I can work out, you do not dispute
12 Professor Baker's summary of this analysis, do you? You
13 say instead in your response to the same proposition in
14 the joint statement that the CMA's conclusion that
15 commission reductions were passed through does not
16 provide the full picture, but you do not dispute what is
17 said about pass-through; is that correct?

18 A. I do dispute it. That is in my report.

19 Q. Right. To be clear, you accept -- let us take this step
20 by step. You accept what Professor Baker says, that an
21 average promotional deal involves a 7% commission
22 reduction; yes?

23 A. £7.

24 Q. £7 commission reduction.

25 A. I think that is a typical agreed amount. I do not

1 know -- it is quite unclear what was actually given to
2 consumers.

3 Q. But you are disputing the pass-through figures, you say
4 that that is not reflected, generally that is not part
5 of --

6 A. No -- yes, because do insurers actually -- so if it is
7 co-funded it would be £3.50 commission discount, that
8 could well be passed through to consumers, but that
9 would only be a 50% reduction of the agreed amount, and
10 I dispute that it has been established that that £7,
11 that full pass-through, would happen. I do not know if
12 the insurer actually kept their side of the bargain.

13 Q. Oh, I see, okay. What you also say if we look at this
14 statement, the joint statement, is that you found that
15 the price on other PCWs often rose and promotional deals
16 were sometimes funded through price increments to other
17 consumers on other channels; yes?

18 A. Yes.

19 Q. You also say that the CMA's analysis does not test
20 whether a promotional deal led to lower consumer prices
21 on the target PCW in absolute terms; yes?

22 A. Yes.

23 Q. Of course the CMA recognised this issue -- can we go to
24 the Decision at {A/1/232}. That is 7.189.

25 You see that what the CMA is saying there is:

1 "While the results of this analysis are consistent
2 with promotional deals leading to a decrease in
3 providers' retail prices on the relevant PCW and an
4 improvement in the retail price quoted by the provider
5 on the relevant PCW relative to rival PCWs, the analysis
6 did not consider what would have happened to the
7 provider's retail prices in the absence of the
8 promotional deal. For example, if the provider would
9 have reduced its price on the {A/1/233} relevant PCW
10 even without the deal, the CMA's analysis would
11 overestimate the effect of the deal (and conversely, if
12 the provider would have increased its price ... the
13 CMA's analysis would underestimate the effect). It is
14 not clear how such a counterfactual would have been
15 [established]. Therefore, the CMA has considered the
16 results of its analysis alongside other evidence,
17 particularly the evidence obtained from providers and
18 PCWs, to assess the extent to which [promotional deals
19 I think it should say] in themselves ... led to
20 reductions in providers' retail prices."

21 So the CMA is acknowledging the issue, is it not,
22 and it is saying that we have looked at the evidence
23 from providers, and you then have at 7.191 and 7.192 an
24 explanation of what the CMA was told, what it did and
25 what it was told, and you do not have any basis, do you,

1 to dispute those factual findings?

2 A. Were you referring to footnote 834, "The CMA asked" --

3 Q. I am looking at 7.191:

4 "... asked [the] 13 providers how they implemented
5 promotional deals and in every instance the providers
6 told the CMA that they reduced the price on the relevant
7 PCW ... In addition, in all but one instance this also
8 resulted in a relative price improvement for the
9 relevant PCW compared to other PCWs ...

10 "Consistent with the evidence from providers, the
11 two PCWs that focused on agreeing promotional deals ...
12 told the CMA that they have processes in place to ensure
13 that the agreed reductions in retail prices occurred
14 during the promotional {A/1/234} deal. One of these
15 PCWs also submitted an analysis of one of its
16 promotional deals showing a reduction in the retail
17 price."

18 Then you see the CMA's finding on the basis of the
19 evidence that it has gathered, and the point that I am
20 trying to establish is that you are not disputing or you
21 do not have any basis to dispute what the CMA was told,
22 do you, by these providers?

23 A. That is why I was asking which insurers you were
24 referring to which were in the previous footnote, so
25 I have looked at the data, so I found in particular for

1 Admiral there was quite concerning evidence as to
2 whether they were passing through the discount to
3 consumers, and then we have the qualitative evidence
4 that I have referred to in 4.53 where I saw four
5 insurers talking quite -- making quite concerning
6 statements, Admiral stated that it would generally apply
7 an increase to other channels.

8 Q. I think it is fair to say that you have not done
9 a thorough analysis of all of the underlying evidence in
10 this case, have you, in relation to this point?

11 A. I have tried to be quite thorough, and I have pointed to
12 the evidence that I find quite concerning on promotional
13 deals. I have also looked at whether the CMA's own
14 ranking analysis would establish whether the insurer was
15 getting more customers or moving up in the ranking, and
16 I found that has not established it. For example, I saw
17 that the CMA did not even look at the ranking for 19
18 deals because it recognised that those were brands which
19 were more expensive and so would not even be in the top
20 of the -- on the front page of the screen of a PCW.

21 Q. Can I just establish, in relation to this line of
22 evidence, did you look at the contemporaneous documents
23 as well or were you looking at what the CMA was told
24 during the investigation?

25 A. So I have included the URNs on paragraph 4.53 of my

1 second report which -- you know, so these are URNs.

2 Q. I think that --

3 A. So again promotional deals have been going -- the
4 benefits or lack thereof for consumers has been a point
5 of issue for some time, so I have looked at quite a bit
6 of factual evidence on that.

7 MR BEARD: Just to be clear, URN is just unique reference
8 number, so it is the document's numbers.

9 A. I believe if people would like to see them, I think the
10 team have put links in my report, so they will be on the
11 EPE document.

12 MS DEMETRIOU: This is just for the transcript. Mr Armitage
13 is saying that I mis-spoke at page 174 of the
14 transcript, I said that -- mistakenly apparently said
15 that there were more HIPs without wide MFNs on CTM's
16 panel than HIPs with wide MFNs, and it is obviously the
17 other way round, so thank you.

18 I think that is -- it is also after 4.30. I have
19 finished a section, and so I think we can move on
20 tomorrow and I think that we can start in public
21 session. There will be some confidential figures, but
22 I will be able to navigate those. Obviously if
23 Ms Ralston finds that difficult we can reassess.
24 I certainly do not want to place her in a difficult
25 position as far as that is concerned.

1 THE PRESIDENT: That is duly noted, and I am sure Ms Ralston
2 will make it clear whether she is inhibited by the
3 threat of confidentiality, but we will proceed in
4 public, thank you.

5 Two points.

6 Firstly, I do not want questions from the Tribunal
7 to derail matters tomorrow, so I thought I would raise
8 two areas of Tribunal questioning, not necessarily to
9 put them now but to make them clear on the radar to see
10 how quickly they can be dealt with.

11 If we could put up on the screen {F/727/1} just so
12 we know what we are talking about, this is the analysis
13 that Professor Ulph took Dr Walker through, and we will
14 need, I think, to have your response to this just so
15 that we have both experts' points.

16 I do not know, Professor, whether we can do it
17 quickly on the basis that Ms Ralston can say whether she
18 agrees or disagrees just like that the detail having
19 been gone through, but that is the first point.

20 Second is we sent a letter I think to the parties
21 indicating that Professor Ulph had some questions in
22 relation to the paper at {F/565/1}. This is a paper
23 which Professor Ulph has selected because I think it is
24 referenced in both your expert report and in that of
25 Professor Baker.

1 Professor, you have some questions in relation to
2 this. I think it would be helpful just to have an
3 understanding of what those questions are going to so
4 that we can budget timewise.

5 PROF ULPH: I think it would take me not a huge amount of
6 time but I would want to go through the points I want to
7 make, there is about four separate matters I would like
8 to put to both Ms Ralston and Professor Baker, so
9 I think this would take maybe 5, 10 minutes to do. The
10 stuff on the note I did I think will be very quick.
11 I just have two very small questions to ask Ms Ralston.
12 So it may be sensible to try to deal with both now and
13 then we could leave this until tomorrow and the end of
14 her evidence.

15 THE PRESIDENT: That might be helpful. Ms Ralston, do you
16 mind if we deal with the {F/727/1} document now and then
17 we will let you go?

18 A. Sure, that is fine.

19 THE PRESIDENT: I am very grateful, thank you.

20 If you could bring up that document, thank you.

21 Professor, I will hand over to you.

22 Questions by THE TRIBUNAL

23 PROF ULPH: I just have two relatively small questions.

24 First of all, do you agree that the formula, the
25 second one that I give there, is the appropriate one to

1 use to do critical loss analysis in the situation that
2 we are dealing with here, and in particular does it give
3 us a clear sense of what the right price is to be
4 thinking about or the right costs to be thinking about,
5 what are the right profits to be evaluating?

6 A. Yes, the equation at the very bottom is -- I agree with
7 and agree with the terminology you have adopted in terms
8 of prices and costs.

9 PROF ULPH: Also would you agree that your original formula,
10 which I think Dr Walker characterised in paragraph 68 of
11 his report, is not necessarily wrong, but it is just
12 a special case with this formula in the context where
13 the marginal costs of a PCW of handling these insurance
14 policies is zero?

15 A. Yes, that is correct.

16 PROF ULPH: Maybe there is one quick final question. When
17 you produced the formula in your first report, was that
18 essentially the assumption you had at the back of your
19 mind and you would just ignore this idea of looking at
20 the costs as well?

21 A. No, it is a fortunate accident. In the footnote 110,
22 I wrote out what would be the profit gained and lost and
23 how I rearranged it, and I lost a term somewhere, but as
24 you say it is the situation where if marginal costs were
25 zero and margins were 100%, and when we briefly

1 discussed it the other day, I said that that is -- could
2 be an analogy to introducing a consumer booking fee
3 because the PCW already has the marginal cost of the
4 sale, so there is zero marginal cost of -- or arguably
5 zero marginal cost of just introducing a second fee for
6 a sale that would have otherwise occurred, but, again,
7 I was not so foresighted to predict that in my first
8 report.

9 PROF ULPH: Did you also say at some point when you were
10 being cross-examined by Mr Lask that many economists do
11 regard these price comparison websites as being fixed
12 cost businesses or have I just misunderstood that?

13 A. I did make that comment. I do not think I made it
14 specific to economists, I was speaking as a generalist.
15 You might see them as fixed costs. Maybe that is only
16 the way economists think, though.

17 PROF ULPH: Thank you, that is very helpful, thank you.

18 THE PRESIDENT: Thank you very much, Ms Ralston, you are
19 free from the witness box for the evening, but please do
20 not speak about your evidence.

21 A. Yes, thank you.

22 THE PRESIDENT: The only remaining question is 9.30, 10.00,
23 10.30 tomorrow?

24 MS DEMETRIOU: Sir, subject to the Tribunal being prepared
25 to do this, we have discussed it provisionally with

1 Ms Ralston, she would be prepared to start at 9.30 if
2 the Tribunal and the court staff -- if that is possible.
3 I think if we do do that, I will finish -- I am hoping
4 that with a fair wind I will finish at lunchtime, which
5 is my one and a half days with two slightly extended
6 days, and Mr Beard can then, subject to re-examination,
7 start in the afternoon and have his one and a half days
8 that he has been allocated.

9 THE PRESIDENT: We are all very grateful to you, Ms Ralston,
10 for accommodating us, thank you, and we will say 9.30
11 because it seems to me that it is important that we
12 enable both of you to put your cases as fully as time
13 permits, and we are all obviously very grateful to the
14 support staff for enabling this to happen, and I know
15 I speak for everyone in that regard.

16 So 9.30 tomorrow morning in public.

17 MS DEMETRIOU: Thank you very much.

18 THE PRESIDENT: Thank you.

19 MR BEARD: Thank you.

20 (4.42 pm)

21 (The hearing adjourned until 9.30 am on
22 Thursday, 11 November 2021)

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INDEX

PAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Housekeeping1
MS HELEN RALSTON (recalled)8
In private.....10
MS HELEN RALSTON (continued)10
 Cross-examination by MS DEMETRIOU10
 Questions by THE TRIBUNAL219