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

Case No: 1284/5/7/18  
1290/5/7/18

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

Thursday 5 May 2022

Before:  
The Honourable Mr Justice Michael Green  
Derek Ridyard  
Sir Iain McMillan CBE FRSE DL  
(Sitting as a Tribunal in England and Wales)

**BETWEEN:**

Royal Mail Group Limited  
BT Group PLC and Others v DAF Trucks Limited and Others **Claimants**

v

DAF Trucks Limited and Others **Defendants**

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

Tim Ward QC, Ben Lask and Clíodhna Kelleher (On behalf of RM/BT)  
Daniel Beard QC, James Bourke and Daisy Mackersie (On behalf of DAF)

Thursday, 5 May 2022

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(10.30 am)

(Proceedings delayed)

(10.35 am)

THE CHAIRMAN: Good morning.

MR BEARD: Good morning. I have one minor thing that I wanted to correct from yesterday. I know the tribunal was too kind to pick me up when I misspoke. I referred to trucks that were 4x2 as having four axles, two of which steered. It is four wheels, two which steer.

THE CHAIRMAN: All right. I picked that up.

MR BEARD: I realised and it was my own embarrassment.

I thought I should clarify that first thing.

THE CHAIRMAN: Apology accepted.

MR BEARD: Thank you.

MR WARD: Sir, we now turn of course to the witness evidence and our first witness Mr Peatey of BT is here by video, as of course you can see. If I may, I will call him.

THE CHAIRMAN: Mr Peatey, can you hear us?

THE WITNESS: Yes, I can.

THE CHAIRMAN: You can and we can hear you. That is good.

All right.

I understand you have the form of affirmation before you?

THE WITNESS: That is correct.

1 THE CHAIRMAN: Can you give your full name, please, and then  
2 read out the affirmation?

3 MR RUSSELL PEATEY (affirmed)

4 THE CHAIRMAN: Thank you very much, Mr Peatey. I can see  
5 you have some assistance there but I assume you have  
6 access to all the documents electronically?

7 A. Yes, I have.

8 THE CHAIRMAN: Yes. Mr Ward.

9 MR WARD: Thank you, sir.

10 Examination-in-chief by MR WARD

11 MR WARD: Mr Peatey, have you given a witness statement in  
12 these proceedings?

13 A. I have given two witness statements.

14 Q. Are the contents of those statements true to the best of  
15 your knowledge and belief?

16 A. Yes, they are.

17 Q. Is there anything you wish to amend or alter in any way  
18 in those statements?

19 A. Nothing to amend, no.

20 MR WARD: Thank you. Please wait there. There will be  
21 questions for you from Mr Beard.

22 THE CHAIRMAN: Yes, Mr Beard will have some questions for  
23 you now, Mr Peatey.

24 Cross-examination by MR BEARD

25 MR BEARD: Mr Peatey, because of the orientation of the

1 cameras in this courtroom, when I am looking at you now,  
2 you can see me directly. Please do not consider it any  
3 way my being rude, but the reason I will look in this  
4 direction is because the screen I can see you on is in  
5 my eyeline now here, so I am in fact looking at you even  
6 though it does not look like I am directing the  
7 questions to you. I apologise for that. It is just the  
8 way that things are laid out.

9 As you say, you have given two statements. In your  
10 first statement, Mr Peatey, you say you became a member  
11 of the commercial vehicle team in 1994 and in 2004 you  
12 became a professional vehicle engineer in that  
13 commercial vehicle team. That is correct, is it not?

14 A. Yes, that is correct.

15 Q. Thank you.

16 THE CHAIRMAN: Sorry, are we able to -- can we have up the  
17 witness statement?

18 MR BEARD: Yes, of course, sorry. It is bundle {D/IC10}.

19 I think the non-confidential version will be fine.

20 We are not entirely clear why it is in fact in the  
21 confidential bundle because it is non-confidential. We  
22 do not see any confidential --

23 THE CHAIRMAN: There was not any passage in there that was  
24 confidential, I thought.

25 MR BEARD: No, no, not that we detected either.

1 THE CHAIRMAN: There was for Mr Nicholson, but --

2 MR BEARD: Yes, but, no, we had not detected anything for

3 Mr Peatey. So that is why I was raising the

4 relevance --

5 THE CHAIRMAN: So it does not really matter?

6 MR BEARD: No, it does not matter in the slightest. It is

7 the same text.

8 MR WARD: I am told that some of the exhibits are

9 confidential.

10 MR BEARD: Fair enough. I am grateful to Mr Ward.

11 So the commercial vehicle team. How many people

12 were in the commercial vehicle team, just out of

13 interest?

14 A. The total number in the -- up to 2000 were eight of us,

15 I believe, I recall, and then from 2000, there was an

16 additional three people of non-management grades.

17 Q. Thank you. In 2006, you joined the procurement team.

18 That is correct, is it not?

19 A. Yes.

20 Q. You have held roles as a manager and buyer until 2012

21 and then, as you explain in your statement, you were

22 promoted up through the procurement team. That is

23 right, is it not?

24 A. That is correct.

25 Q. The procurement team was responsible for sourcing trucks

1           for BT; that is correct?

2       A.   Yes.

3       Q.   It planned and organised the tenders and carried out the

4           negotiations; that is correct?

5       A.   That is correct.

6       Q.   Just roughly how many people were in the procurement

7           team when you joined it in 2006?

8       A.   In 2006 there would have been myself, my line manager --

9           there was two of us only --

10      Q.   Then -- I am sorry. I cut across you, Mr Peatey.

11      A.   Yes, for BT Fleet procurement there was two -- two

12           managers, myself and my line manager.

13      Q.   Who was that in 2006?

14      A.   In 2006 that was John Youe.

15      Q.   I see. Then over time that line management changed?

16      A.   Yes, so post 2006 there was a change in late 2010.

17           John Youe left and a new head of procurement came in at

18           that point.

19      Q.   Who was that, Mr Peatey?

20      A.   That was Teresa Dyche.

21      Q.   I see. Did other people join the procurement team after

22           2010?

23      A.   Yes. So the team was not strictly purely procurement at

24           that point. There were a number of other different

25           functions within, so other managers joined that. There

1           were still only two of us within procurement at that  
2           point.

3           Q. Do you mean there were only two of you involved in all  
4           of the procurement aspects or did you draw on other  
5           people?

6           A. We drew -- so I should clarify. In 2006, although the  
7           procurement team were two people, there were other  
8           members on the commercial input team that were licensed  
9           buyers, so they could run tenders because they passed  
10          the requirements to do so, but the pure procurement  
11          model itself was just two of us.

12          Q. When you say "licensed by [sic]", what you mean is that  
13          the people involved had specific training and experience  
14          in relation to running tenders; is that correct?

15          A. That is correct, yes.

16          Q. Let us look a little bit at that tender process, if we  
17          may. You have talked about it a little in your witness  
18          statement at paragraphs 3.2 and 3.3 and actually you  
19          mention there the involvement of various different teams  
20          in the process but, as I understand it, there are three  
21          main steps. First of all, in a tender process, BT would  
22          forecast what vehicles are required; second, BT would  
23          seek approval for the budget vehicle purchases; and,  
24          thirdly, the investment committee would meet to  
25          determine which purchases would be made. Is that

1 a broadly fair summary of three key steps, Mr Peatey?

2 A. Yes, that is a broad fair assessment.

3 Q. In carrying out those steps, I think your witness  
4 statement explains you draw on the accounts management  
5 team, the BT economics team, the fleet team and the BT  
6 finance department; is that right?

7 A. That is correct.

8 Q. Thank you. So let us just move through the procurement  
9 of trucks through tenders a little. You have explained  
10 in your witness statements how BT ran competitive tender  
11 processes and there are various stages to them.

12 If we could pick it up in -- I am picking this up by  
13 reference to your first witness statement at  
14 paragraph 4.1, {D/10/5}. As we understand it, BT would  
15 assemble a project team with specialists from various of  
16 the teams I have mentioned, including fleet, engineering  
17 and finance. That is correct, is it not?

18 A. That is correct.

19 Q. But you could still draw on other expertise such as the  
20 accounts management team and economics team; correct?

21 A. Yes, that is correct.

22 Q. So the aim of this structure of the multidisciplinary  
23 team was to ensure that BT had all of the relevant  
24 expertise and experience to get the best deal possible.  
25 That is correct, is it not?



- 1 A. Yes, to get the ultimate deal, yes, it was.
- 2 Q. Just to give me a sense of it, how many team members  
3 would be in this sort of project team, even if they were  
4 only working on it part-time?
- 5 A. From procurement, there would be one or two of us, so on  
6 the [...] support. From the engineering team, it would  
7 be the vehicle engineer who was the specialist in the  
8 area that the item was being purchased. We would have  
9 a finance partner aligned to us for that -- for our side  
10 of the business and then the wider -- as you say, the  
11 account management team and the vehicle economics team  
12 would also be part of that, but would not be a signatory  
13 to any award in the end. So the three elements were  
14 procurement, operational engineering and finance.
- 15 Q. Right. Then you have been talking about the specific  
16 individuals but presumably each of those individuals,  
17 including procurement, had people that assisted them  
18 within the organisation; is that correct?
- 19 A. Yes. I think it was a wider base. It was not just  
20 those three people that did all the piece and obviously  
21 we had to capture the requirements of the business, but  
22 that was done as part of the procurement -- procurement  
23 role, that we would gather stakeholder involvement and  
24 input.
- 25 Q. Thank you. I have just referred to the assemblage of

1 the project team. So the next step, as I understand it  
2 from your witness statement, was to prepare a document  
3 called a "statement of requirements", which would  
4 contain the technical and non-technical specifications  
5 for, in this case, the trucks you were wanting to  
6 procure. That is correct, is it not?

7 A. That is correct.

8 Q. Then you would prepare -- this is all done by the  
9 project team. You would then prepare a procurement  
10 plan; that is correct?

11 A. The procurement plan was a procurement function  
12 requirement so it was a responsibility of procurement to  
13 prepare the plan.

14 Q. Yes, and this procurement plan would include information  
15 on the scope of the tender, the adjudication criteria  
16 and indeed the key milestones during the tender process.  
17 That is right, is it not?

18 A. That is correct.

19 Q. Then after the procurement plan, the next step was the  
20 invitation to tender. That is right, is it not?

21 I think you explain this at paragraph 5.1, but just so  
22 I am clear, the invitation to tender would set out the  
23 parameters for the -- we will focus on trucks here --  
24 the trucks tender, so included draft contract, how  
25 responses would be adjudicated and it might attach some

1 kind of pricing schedule; is that correct?

2 A. Yes, it is correct.

3 Q. Thank you.

4 A. Sorry, the document was a boilerplate document so we  
5 just adapted it as per requirements.

6 Q. It was a boilerplate document?

7 A. Yes.

8 Q. So the terms and conditions and requirements for pricing  
9 schedules and so on, that was all just boilerplate?

10 A. Yes, (inaudible) for whatever, you would get a Post-it  
11 Note(?). Yes, that is correct.

12 Q. Now, I was tempted to take you through one of the tender  
13 documents but I will resist that temptation. I think we  
14 can probably all agree that the tender documents were  
15 a fairly detailed set of documents with quite a number  
16 of schedules attached, setting out the specifications in  
17 some detail. That is correct, is it not?

18 A. Yes, although I am aware of what was in them, I did not  
19 produce those, but they would carry the required  
20 specifications.

21 Q. Let us just turn one up then, just to clarify this. If  
22 we could go to {I1/418.1}, you will see that this is an  
23 "Invitation to Tender for the Supply of Large Goods  
24 Vehicles (Chassis)", and this is actually from 1998.  
25 I am not going to try and get you to identify the date

1 of the contract by the current BT logo. So if we could  
2 just go to page 5, {I1/418.1/5}, what we see there --  
3 I am just skipping through. This will be familiar to  
4 you because you have already said it is boilerplate, but  
5 this is the section that deals with contract duration  
6 and this is for the 1998 contract. It is saying:

7 "The duration of the Contract shall be for a period  
8 of three years ..."

9 As I understand it, what you are saying is for  
10 things like contract duration, that would be a standard  
11 provision but then presumably you would adapt the number  
12 of years or months or whatever that was going in the  
13 duration depending on what procurement you were engaged  
14 in; is that right?

15 A. Yes, that is correct. The three years would have been  
16 a fairly standard position.

17 Q. Fairly standard position, thank you. We also see in  
18 5.2:

19 "BT shall retain an option to extend the Contract by  
20 up to a year from the terms and conditions, including  
21 the price structure prevailing at time of invocation."

22 Was that also a fairly standard term that BT  
23 included or tried to include?

24 A. I cannot comment on that at the time. It is a variation  
25 but an extension option to --

1 Q. We will come back to that in due course. That is fine.  
2 Thank you.

3 Then if we just go down, we have got here "Quantity  
4 of goods". Now, obviously that will be adapted  
5 depending on what is being procured and here we are  
6 dealing with trucks and we see an outline of the key  
7 specifications and estimated contract quantity. You  
8 will see on the top right-hand side it says "...  
9 Estimated Contract Quantity [including] 12 month option  
10 to extend", so this is the specification in general  
11 terms of the trucks that you wanted to obtain with an  
12 indication of volumes; is that correct?

13 A. Yes, it is correct in terms of the description of the  
14 vehicle, not specification.

15 Q. That answer felt like you were about to qualify it in  
16 some way. I was asking you about the specification and  
17 the estimated contract volumes. Are you saying it is  
18 not accurate in relation to that?

19 A. No, the vehicle description is correct -- the vehicle  
20 description is correct and the estimated quantities  
21 would have been entered into at the time based on  
22 forecast. Sorry, you referred to specification. Each  
23 of those different vehicles would have different  
24 specifications attached to them.

25 Q. Yes, I am so sorry. I was only trying to pick out the

1 headlines. The detailed specifications would be in  
2 additional annexes or schedules. That is how it worked,  
3 was it not?

4 A. That is correct.

5 Q. We see a number of specifications there, "Platform  
6 Elevating [numbers] 3 and 4", "Light Cabling &  
7 Jointing", "Medium Cabling". Each of those -- "Pole  
8 Erection Unit" and so on. Each of those different  
9 variants required essentially a basic truck and then BT  
10 would separately acquire the specialist equipment that  
11 went with it, whether it was a body or other equipment;  
12 is that right?

13 A. Yes, I would -- I would agree with that statement.

14 Q. Thank you. Now, I will not go through all of the tender  
15 in more detail. Let us move on to the next stage.

16 These tenders were sent out to manufacturers, truck  
17 manufacturers, and then they would -- if they wanted to  
18 bid in, they would provide tender returns. That is  
19 correct as the next step in the process, is it not?

20 A. That is correct.

21 Q. Then BT would carry out a sort of initial but detailed  
22 adjudication process on those tenders. That is correct,  
23 is it not?

24 A. That is correct.

25 Q. When you are carrying out that adjudication process,

1           what you are trying to do is get the most economically  
2           advantageous offer for BT overall; is that correct?

3           That is what you are --

4           A. That is correct.

5           Q. But after that initial adjudication process, although it  
6           would be quite detailed, you would actually then seek  
7           further information from tenderers, that would be the  
8           next normal step in the process; correct?

9           A. Yes. Yes, it will be. Correct, yes.

10          Q. Then you would ask for that further information and  
11          actually then you would get into further negotiation  
12          with the tenderers who remained part of the tender  
13          process because presumably some could drop out. That is  
14          correct, is it not?

15          A. Clearly I cannot comment on this, but from my experience  
16          of dealing, 15 years, when you issue a tender, you will  
17          have suppliers that would outline your requirement in  
18          terms of "too costly, cannot meet it", but you would not  
19          necessarily notify them at that point in time, but you  
20          would not engage -- you would only further engage with  
21          those that became -- depending on the adjudication  
22          scoring matrix that you have, you know, the top three or  
23          four possibly you would re-engage with. As I say,  
24          I cannot comment on what happened in this contract but  
25          that is generally the BT procurement norm.

1 Q. We will come back a little bit to this contract in due  
2 course, but understood. So you would whittle down the  
3 list depending on the criteria that you were using for  
4 adjudication and then re-engage with the ones that you  
5 thought had most potential for further engagement; is  
6 that correct? Is that a fair summary of what you said?

7 A. That is a fair summary, yes.

8 Q. Then you would engage in further negotiations with those  
9 tenderers who you had not effectively whittled out; is  
10 that right?

11 A. That would be the process, yes.

12 Q. Then, of course, part of that negotiation would be  
13 trying to push down the prices of the products that you  
14 were procuring; is that correct?

15 A. Yes, including -- the aim is to get into position.

16 Q. Yes, I think you refer in your witness statements to  
17 making additional pushes, which would include on price,  
18 as you say.

19 I just want to look at a particular document.  
20 Actually within BT you had an internal policy guidance  
21 for negotiators so that you effectively maximised their  
22 negotiating skill and strategies. That is correct, is  
23 it not?

24 A. There are courses for that. Not everybody undertakes  
25 those courses.



1 Q. But you -- I am so sorry, I cut across you.

2 A. No. I believe there are courses, but it is not part of  
3 the standard training we do.

4 Q. I was actually asking you about a document. I am going  
5 to call it up. {I2/70.1}, please. So this is  
6 a document headed "Negotiation". It is an internal BT  
7 document and it talks about the "BT Group Corporate  
8 Procurement Policy", so it is part of the suite of  
9 documents that has been developed for that procurement  
10 activity. You have seen this document I think before?

11 A. I do not recall actually. I have seen variances of  
12 guidance documents, best practice documents, which  
13 I think this possibly may be one of those, but I do not  
14 recall --

15 THE CHAIRMAN: What is the date of this document? Do we  
16 know?

17 MR BEARD: I will confirm that. I do not have it in my  
18 notes. I will double-check. I think we will know.  
19 I apologise.

20 So you say you have seen these sorts of documents.  
21 Let us just look at the main headings in it. Obviously  
22 you have the issues about advantages and disadvantages  
23 and short listing, but if we could just go down,  
24 "Planning", it says:

25 "There is no substitute for planning!"

1           Then it runs through -- feel free to just review  
2           that section, Mr Peatey. Even if you had not seen this  
3           document, you had referred to other guidance documents.  
4           This importance of planning formed part of the way in  
5           which you engaged with procurement exercises of all  
6           sorts, did it not, Mr Peatey?

7           A. Yes, I mean, we would have used similar guidance  
8           documents just for, you know, next steps, what to look  
9           out for. There was not a descriptive guideline, "You  
10          must do this and sign it off". At this point in time,  
11          back in those -- I do not know the date of this document  
12          so I cannot comment further.

13          Q. Well, apparently we were told it was 2008, but that  
14          would not shock you, I imagine?

15          A. I -- no, I think there were probably variances of this  
16          as well before, but ...

17          Q. Understood. One of the things it does is it actually  
18          says in the second bullet on "Planning" -- when it says,  
19          "Know what the right price is ...", it is actually  
20          saying to anyone involved in procurement doing planning,  
21          "Look, you can call on other expertise, like the finance  
22          team", which I think you referred to earlier. That is  
23          correct, is it not?

24          A. It is correct, but -- it is generic.

25          Q. If you just turn over the page, please, {I2/70.1/2},

1 I am not going to run through all of this, but if we  
2 could just go down to "Negotiating". It may be generic  
3 but it is quite a detailed set of considerations that  
4 you are taking into account here. The first bullet is  
5 making sure you prepare the room. Then you have got to  
6 allocate roles and responsibilities. It works through  
7 into "Soft skills" and knowledge management.

8 THE CHAIRMAN: We can all learn a bit from this!

9 MR BEARD: Yes, a very helpful document.

10 The guidance that you have got here, you say it is  
11 generic, but this was the way in which you, as an  
12 experienced procurement manager, would approach  
13 negotiations and your colleagues would do so as well; is  
14 that correct?

15 A. I cannot comment on colleagues, but I would use  
16 something similar personally, but I cannot comment on  
17 how they prepared.

18 Q. No, I am sorry, I am not going to ask you how they  
19 prepared. I was more asking a generic question about  
20 how you within the procurement team prepared. You have  
21 answered in relation to you. I will leave it for those  
22 purposes.

23 Can we just pick up within -- could we just scroll  
24 down slightly? "Employing Knowledge Management", just  
25 under the table, it says:

1           "Use BT's brand name -- it can be attractive to  
2           suppliers to pull in other business."

3           So one of the things you would be doing is actually,  
4           as they put it in terrible management speak, leveraging  
5           your brand in negotiations; is that fair?

6           A. It depends on the situation sort of thing, but  
7           usually -- you know, BT is a big brand name. You  
8           would -- you know, people may use our name, but again  
9           I cannot comment on specifics.

10          Q. Well, let us just deal with it in relation to trucks for  
11          a moment. The thing about trucks is they move around  
12          and you at BT procure a lot of them, do you not?

13          A. Yes. I do not recall the numbers, but not as many as  
14          any other suppliers.

15          Q. Not as many. No, you are not the largest trucks buyer,  
16          I am sure. But you actually purchased, between 1997 and  
17          2006, 1,652 trucks, we think, from DAF alone. I am not  
18          going to ask you to confirm that number, that would be  
19          a particular cruelty, but that does not seem an  
20          outlandish figure to you, does it?

21          A. I cannot comment. Sorry, I do not know.

22          SIR IAIN MCMILLAN: May I ask a question, please?

23          MR BEARD: Please. Of course.

24          SIR IAIN MCMILLAN: I notice on the screen in front of me at  
25          the second bullet, "Employing Knowledge Management",

1           there is an expression there "win:win" and that  
2           expression appeared earlier under the "Advantages"  
3           section of this paper. I just want to be clear. Does  
4           that mean that it is part of the procurement policy at  
5           BT to make sure that BT wins well from the contract but  
6           also the supplier wins too? I am asking this question  
7           because is that to avoid a situation where the price is  
8           pressed down so hard that actually it makes it difficult  
9           for the company that wins the contract to deliver it  
10          profitably and puts the project at risk?

11         A. Yes. If I may give a generalisation here. I do not  
12          know this particular document. The win/win is always  
13          a position people spoke about, but you are correct in  
14          saying, if you get to the position where the supplier is  
15          in such a position they cannot deliver, then that is not  
16          a win. That is a position that BT does not want to be  
17          in or any other procurement function. There is no point  
18          driving price to the point where ...

19         SIR IAIN MCMILLAN: Thank you.

20         MR BEARD: Just going back to BT as a brand, BT as a brand  
21          is particularly attractive for truck manufacturers  
22          because your trucks are moving around all over the place  
23          and their brand will be associated with yours in  
24          relation to the goodwill in BT brand when they are  
25          carrying your livery; is that correct?

1           A. I do not know that I can comment on that because not  
2           everyone has a positive view of BT in terms of customer.  
3           So, yes, logically you can say BT was a good brand, but,  
4           you know, those -- how many million customers that are  
5           not with BT do not consider BT to be the best brand and  
6           they consider their alternative supplier to be the best  
7           brand, I would assume, so I cannot really answer more  
8           fully than that.

9           Q. So the bullet point on the document -- when it says,  
10           "Use BT's brand name -- it can be attractive to  
11           suppliers to pull in other business", you do not think  
12           in fact BT's brand name is actually that appealing and  
13           there should be an asterisk there?

14          A. No, no, that is not a fair statement. What they were  
15          referring to in this document is BT is not -- I do not  
16          know if it is an official document or a document that  
17          someone has put together for best practice based on  
18          their knowledge, experience and skills.

19          Q. Can we just go to paragraph 4.5 in your statement --  
20          second statement, {D/19/7}? Just in the final two  
21          lines, you say:

22                 "... BT awarded the contracts to DAF further to  
23                 a competitive procurement exercise and has brand power  
24                 that makes it an attractive customer."

25                 That is still your evidence, is it not, Mr Peatey?

1 A. Yes, that is still my evidence, but ...

2 Q. Thank you.

3 Can we just go on to the next page of the {I2/70.1}  
4 document, {I2/70.1/3}? In the middle of the page it  
5 says "BFO", and that is obtaining best and final offer,  
6 is it not?

7 A. That is correct.

8 Q. What the document refers to is preparing:

9 "... a list of all costs/prices obtained [from the  
10 tenderers] ... on an anonymous basis and asking for  
11 their best and final offer."

12 That is what it is suggesting to do there, and that  
13 was standard practice, I assume, in relation to  
14 procurement; is that correct?

15 A. I cannot comment, but it is not a process I have used.  
16 I cannot comment on what they did, but it is not  
17 something I have used, not on this basis.

18 Q. You did not use best and final offer processes; is that  
19 what you are saying?

20 A. No, that is not what I am saying. I am saying I did,  
21 but what I did not do was give them a graph to show,  
22 "You are number 3 here", which is what I think that line  
23 is suggesting.

24 Q. So you would not necessarily do it by a graph but you  
25 would use the material from one tenderer in negotiations

1 with another tenderer, even if it was not on a graphical  
2 basis; am I understanding correctly?

3 A. I think how we do it is an individual basis. It is not  
4 a direct piece that has been -- sorry, it is not a form  
5 of negotiation that I have been directed to use. Again,  
6 I cannot comment on what it was in 1998 and beyond.

7 Q. Mr Peatey, I was not asking whether you had been  
8 directed to use it or on what was in 1998 or indeed in  
9 2008 in relation to this document. My question was:  
10 would you use material from one tenderer in negotiations  
11 with another tenderer, even if you were not presenting  
12 it on a graphical basis? I think you accept that you  
13 would do that. Am I understanding correctly?

14 A. No, I would know from our internal adjudication where  
15 suppliers sat and we would push each supplier  
16 irrespective, so we would not reference back to one. To  
17 my knowledge, whether we would reference back to the  
18 supplier or not, submissions, I do not know, I do not  
19 know what happened, but I personally never have.

20 Q. You personally never have. Well, we will come back to  
21 that, Mr Peatey. I was diverting slightly from the  
22 course of the process of negotiation of tender and  
23 I talked about the adjudication process, which we will  
24 come back to a little further. But once the process of  
25 initial adjudication had been done and then going back



1 to the potentially whittled-down list of tenderers and  
2 engaging in further negotiations -- and just to be  
3 clear, there could be several rounds of further  
4 negotiations. That is correct, is it not?

5 A. There could be, yes.

6 Q. Yes. Then once those negotiations were completed, BT  
7 had a process for seeking sign-off of a deal. That is  
8 correct, is it not?

9 A. That is correct.

10 Q. That would involve the preparation of a procurement  
11 authority case; is that right?

12 A. That is correct.

13 Q. That would need to be approved at various levels in BT,  
14 including -- I will run through them and then you can  
15 agree or disagree -- operational, finance, procurement  
16 and in some circumstances legal; is that correct?

17 A. That is correct.

18 Q. So overall you and your procurement colleagues and  
19 others at BT had built a careful process that enabled  
20 procurement strategy that was carefully thought through  
21 and thoroughly executed; would that be a fair  
22 description?

23 A. Yes, that is a fair description.

24 Q. Now, I want to just look at one or two of the contracts  
25 that you have referred to in your witness statement, if

1 I may. Let us start with the contract in 1998. This is  
2 {I1/66/1}. This is the contract that followed on from  
3 the tender that I have referred you to earlier and you  
4 were involved in the contract management under this  
5 contract. You know that it ran from December 1998 until  
6 31 December 2002; do you recall that?

7 A. I do not really recall the date of that (inaudible) to  
8 be frank but ...

9 Q. Let me take you to the clause. It is not a dates test.  
10 So if we could just go to page 4 in this document,  
11 {I1/66/4}. Could we just scroll down that page maybe?  
12 That is fine. There we are. Thank you. "Contract  
13 Duration", so this is very much mirroring what you  
14 tendered for. Contract duration, 1 January 1999 to  
15 31 December 2001, but then with the 2.2 option to  
16 extend; yes? Do you see that?

17 A. Yes, I can see.

18 Q. So effectively it was a four-year contract at BT's  
19 option; is that a fair description?

20 A. That is correct.

21 Q. I am not going to take you to it because I took you to  
22 it in relation to tender, but this contract, although it  
23 is described as "large goods vehicles", covered that  
24 range of vehicles that we saw in the tender; you recall  
25 that?

1 A. Yes.

2 Q. I do not know whether you recall this, but obviously the  
3 1998 contract covering, as it did at BT's option, four  
4 years covered not only the period when trucks had to  
5 adhere to the emissions Euro 2 standard but also covered  
6 a period from October 2001 when trucks had to adhere to  
7 the Euro 3 emissions standard. Do you recall that?

8 A. I recall the requirement to adhere to the emissions  
9 standards. The date ranges I do not know, but all  
10 vehicles will have to comply.

11 Q. Yes, understood.

12 THE CHAIRMAN: Can I ask a question?

13 MR BEARD: Of course.

14 THE CHAIRMAN: The vehicles -- I am looking at quantity of  
15 goods, is that -- were BT obliged to purchase that  
16 number of vehicles over the course of the contract,  
17 including the extended contract, or was it entirely at  
18 their option, that is just an estimate?

19 A. Yes. Unless explicitly signed off, all BT contracts  
20 (inaudible) are frame contracts, no commitments and  
21 non-exclusive.

22 MR BEARD: If we move down, I may be able to assist.

23 THE CHAIRMAN: All right. Were you going to cover that?

24 MR BEARD: No, no, it is absolutely fine. If we go down,  
25 over the page to clause 6, {I1/66/6}, you will see there

1 effectively -- this is akin to the schedule or the table  
2 that we saw in relation to the tender and it confirms  
3 that it is only estimated figures. So this confirms  
4 Mr Peatey's answer. I am just providing that as  
5 a reference for the tribunal. You have dealt with the  
6 question I had on it.

7 THE CHAIRMAN: It looks like somebody has worked out how  
8 many have actually been bought as of February 2001 and  
9 how many are outstanding; is that right?

10 MR BEARD: I do not know the origin of the manuscript  
11 numbers. I do not know if Mr Peatey can assist us in  
12 relation to that. Unless he included them, I am not  
13 going to ask him. Did you include those manuscript  
14 numbers on this contract?

15 A. No.

16 Q. No. I am not going to -- because -- so you are  
17 obviously right arithmetically, but whether what it is  
18 saying is "This is all we ever received" or "We expected  
19 more" or whatever, we do not know.

20 Could we go to {I1/49.2}, please? So this  
21 is July 1998. It is a letter from BT to DAF. If we  
22 could just go down to the bottom of the next page,  
23 {I1/49.2/2}, I just wanted to show who had actually sent  
24 it, that was all. This is from Andrew Jakubiec. Is  
25 that the correct pronunciation?

- 1 A. Yes, I think it is Jakubiec.
- 2 Q. Thank you. So was he formerly within the procurement  
3 team, Mr Peatey?
- 4 A. Yes, I think we need to clarify here. Up till 2001  
5 procurement was a separate corporate function, so they  
6 would assist across the whole BT Group worldwide, and  
7 Andrew Jakubiec was assigned to the fleet business as  
8 being procurement lead --
- 9 Q. So he was the -- I am sorry, I cut across you. Please  
10 finish.
- 11 A. Yes, sorry. He was not actually working for BT Fleet,  
12 he worked for BT Group itself as a direct --
- 13 Q. But then he was brought in to assist BT Fleet because he  
14 was a specialist procurement manager; correct?
- 15 A. That is correct.
- 16 Q. Right. Thank you.
- 17 If we just go back to the previous page,  
18 {I1/49.2/1}, it says "Dear Andy", and so this is  
19 actually to Andy Shadwell who was at DAF. I think you  
20 knew Andy Shadwell; is that right, Mr Peatey?
- 21 A. I knew Andy Shadwell, yes.
- 22 Q. Thank you. It says:  
23 "Thank you for your offer referenced ... dated  
24 7 July ..."
- 25 So this is the response to the tender.

1           If we go down to the third paragraph:

2           "I would advise that BT considers the contents of  
3 both these Schedules [so the schedules had been provided  
4 in line with the tender] as fair and reasonable with  
5 high levels of compliance ... being achieved by other  
6 suppliers. As compliance to these schedules forms part  
7 of the supplier selection ... I would like to give you  
8 the opportunity to revise and improve your offer prior  
9 to any shortlisting of suppliers for [sic] the  
10 negotiation phase is completed."

11           It may be "before".

12           "Please note that your stated price increases have  
13 been noted and on the assumption that there is no  
14 increase for the final period have resulted in your  
15 total vehicle purchase costs over 3 years exceeding the  
16 best price by approximately 12%. Would you please  
17 therefore offer firm prices for each year of the  
18 Contract as was requested in the tender as well  
19 improving the individual purchase prices you have  
20 offered. A single fixed price lasting for the period of  
21 the Contract is the preferred pricing option."

22           So this is an example, in relation to the contract  
23 you had referred to, of BT, its specialist procurement  
24 department, pushing back hard against DAF; is that  
25 correct?

1       A. Well, I cannot comment on that because I do not know the  
2       detail of what it relates to in terms of what the  
3       costings were.

4       Q. You say you do not know about the costings, but I asked  
5       you in general terms: is this an example, so far as you  
6       are aware, of the push-back by specialist procurement  
7       against DAF in the course of a negotiation?

8       A. Again, the evidence is on the screen but it is not  
9       something I am familiar with and it is a route taken by  
10      an individual, I suspect. That is their preferred way  
11      of doing it.

12     Q. I see. Just there at the end it says:

13               "A single fixed price lasting for the period of the  
14      Contract is the preferred pricing option."

15               Was that a general approach within BT, that you  
16      wanted to have fixed prices so you had predictability  
17      and stability across contracts?

18     A. That is correct, yes.

19     Q. Let us jump forward. {I1/52}, please. So this is  
20      actually a DAF document, so obviously I am not  
21      suggesting you have seen it, but it is from  
22      Andy Shadwell, who was the recipient of that letter that  
23      we were just referring to, to David Gill, who is  
24      DAF UK's managing director at the time. It says under  
25      the subject "BT Tender Unofficial Reaction" -- so this

1 is part of the process of negotiation:

2 "I met with Alan Bishop of BT last Friday for an  
3 unofficial chat ..."

4 Now, could you just explain to me who Alan Bishop  
5 was? It may well be he very much still is Alan Bishop,  
6 but at the time what he did within BT?

7 A. Yes, Alan Bishop was the vehicle engineer responsible  
8 for the trucks element and some other element which  
9 I cannot quite recall, but primarily the trucks, those  
10 listed within the contract.

11 Q. So Mr Bishop would be part of the procurement team that  
12 we described previously, would he?

13 A. Yes, he would be representing the vehicle engineering  
14 team. I cannot say whether he was part of the overall  
15 project team.

16 Q. You cannot say whether he was part of the overall  
17 project team?

18 A. No.

19 Q. Understood. We may well be able to draw some inferences  
20 from this because there was an unofficial chat and you  
21 can see there that Mr Shadwell has been told by  
22 Mr Bishop:

23 "We are number 2 in the frame to Iveco Ford who have  
24 made an amazing offer."

25 So clearly there people within BT, in the course of



1           this tendering process, are putting back specific  
2           information to DAF with a view to putting pressure on  
3           them in negotiations, are they not?

4       A. I cannot comment on what was said or if it was said. We  
5       can just see the documents. It could be individual  
6       style. I cannot comment.

7       Q. So when it says in the third bullet, "Alan suggested we  
8       need to think hard about our offer and should perhaps  
9       consider the following adjustments ...", I would suggest  
10      to you that what is happening is that BT are coming back  
11      and saying, "Your offer is too high", and specifically  
12      suggesting ways in which it can be improved; would you  
13      agree with that?

14      THE CHAIRMAN: I do not really see how Mr Peatey can comment  
15      on that.

16      MR BEARD: I will leave it.

17            Could we go to document {I1/60.1}? If we could just  
18            go down to I think the second page. I just want to show  
19            who it is from -- third page, I apologise, {I1/60.1/3}.  
20            Just show the "Yours sincerely". So this is a letter  
21            from Mr Shadwell, who you knew. If we could go back up  
22            to the top, {I1/60.1/1}, this was for the attention of  
23            Mr Jakubiec again, so "Dear Andrew". So here we have  
24            a response from Mr Shadwell at DAF, September 24, 1998,  
25            to Mr Jakubiec. If you just go down to the third

1 paragraph, you will see there a complaint effectively  
2 being made about the levels of volume that were secured  
3 under a previous contract. Do you want to just read  
4 that?

5 A. Paragraph 3?

6 Q. Yes, it begins "In May 1994 ...". I think there is in  
7 fact an error in one of the dates in there but it does  
8 not matter for the question I am going to ask you.

9 (Pause)

10 A. Okay.

11 Q. Thank you. So it is in the context of this negotiation  
12 and a complaint -- well, an issue is being raised --  
13 I will put it more neutrally -- that in terms of  
14 previous contracts prices were offered on the  
15 expectation of certain volumes by DAF and in fact those  
16 volumes were not forthcoming and that creates a problem  
17 for the manufacturer when they are pricing at  
18 a particular level, expecting certain volumes but  
19 supplying only fewer trucks. Was that a common issue  
20 that was raised with you in these procurement processes?

21 A. No, I do not recall. I was not involved in any  
22 negotiation process until beyond 2006.

23 Q. I see, you were not involved in any negotiation process  
24 until 2006. So do you recall seeing this correspondence  
25 at all?

1 A. No. If it was directed to Andrew Jakubiec, it would  
2 have gone to their office, which was separate to our  
3 office.

4 Q. You would not have been copied in on it. So if we go on  
5 to the second page in this document, {I1/60.1/2}, I will  
6 just ask you to read the paragraph that is there:

7 "We have taken the comments of your letter seriously  
8 ..."

9 (Pause)

10 A. Okay.

11 Q. So there we see -- I am not asking you to comment  
12 because you say you have not seen this correspondence --  
13 DAF saying that they essentially put in a price increase  
14 as compared to the previous contract but they will  
15 withdraw that given the feedback they have had. But you  
16 were not privy to any of these discussions right through  
17 to 2006 and did not see any material; is that right?

18 A. I do not believe I have seen any of this material, no.

19 Q. If we can just go down the page, you will see there in  
20 paragraph 4 there is a discussion about -- in the fourth  
21 paragraph, a discussion about emissions standards and  
22 holding prices firm.

23 THE CHAIRMAN: If he has not seen this correspondence --

24 MR BEARD: I am just going to ask one question about the  
25 next -- in general terms. I recognise that there is

1 a limit to how far I can go with this, given that ...  
2 The difficulty is he refers to these contracts in his  
3 witness statement and therefore we were trying to  
4 identify -- the difficulty we have is Mr Peatey is the  
5 only witness we can ask these questions of.

6 THE CHAIRMAN: Yes.

7 MR BEARD: If he is not able to answer them, then we will  
8 make submissions in due course on the matter.

9 THE CHAIRMAN: Yes.

10 MR BEARD: That is not a criticism of Mr Peatey, I should  
11 stress. That is not the point I am making, Mr Peatey.

12 The fifth paragraph, if I may:

13 "As a global company, BT ... recognise ... risk ...  
14 [of] economics ... on business."

15 Now, I am not going to ask you whether or not that  
16 is true. I think everyone can take that as read. But  
17 what is being asked for here is a provision in the  
18 pricing for inflation protection. Was that a common  
19 request from suppliers and, in particular, truck  
20 suppliers on these long-term contracts?

21 A. I can only go on the contract terms agreed. I do not  
22 recall seeing this particular clause in other contracts,  
23 although it may have been. My role in the team was to  
24 manage the delivery element of the contracts, not the  
25 financial element of the contracts. But I think it is

1 fair to say that some suppliers would want to put  
2 a caveat in that, if X was not met, then Y would apply.  
3 So I ...

4 Q. But you make that statement from your general view of  
5 the world rather than any particular experience of it  
6 being dealt with because, as you have said, you were not  
7 involved in the finance negotiations; is that correct?

8 A. That is correct. I was not involved in any of the  
9 negotiation. But I do recognise that form in the  
10 contracts that I have done since my -- since 2006 in  
11 other areas, not trucks.

12 Q. Thank you. Could we go to document {I1/60.6}? So this  
13 is a DAF fax, 26 October 1998, to Mr Jim Seaton. Could  
14 you tell us who Mr Jim Seaton was and what he was doing  
15 in BT in 1998, if you can recall?

16 A. Yes, Jim was the senior vehicle engineer, so myself and  
17 the vehicle engineers at that time all reported in to  
18 Jim. He was our line manager.

19 Q. He was your line manager. He would be involved in the  
20 project teams for procurement; is that correct?

21 A. I cannot confirm that. It may be the vehicle engineer,  
22 such as Alan Bishop directly, but logically Jim would be  
23 aware.

24 Q. Were you aware that Mr Seaton got involved in financial  
25 discussions as well as engineering discussions on

1 procurement?

2 THE CHAIRMAN: Mr Peatey, can you hear us?

3 A. Sorry. I said "No". Sorry.

4 MR BEARD: Sorry, Mr Peatey. I did not hear your answer.

5 Thank you.

6 Could we go to document {I1/63.1}, please? This is  
7 a note of a meeting between DAF and BT,  
8 10 November 1998. I think the first question I need to  
9 ask is: were you at that meeting?

10 A. If I read the documents, I can probably confirm. Unless  
11 you can confirm that to me, I cannot recall.

12 Q. You do not recall. This is not the sort of meeting you  
13 would have attended?

14 A. Well, no, not in an official capacity. We would --  
15 I would attend supplier meetings as part of a sort of  
16 wider development piece, but I was not involved directly  
17 in terms of negotiations and stuff like that, if that  
18 makes sense --

19 Q. Well, let me just clarify.

20 My questions are all about your physical attendance,  
21 not the capacity you attended in, so can I ask the  
22 question again? Did you attend this meeting?

23 A. I do not recall, no. I attended a handful of meetings  
24 over the years. I cannot recall this one. Unless you  
25 specifically tell me I was there, I cannot recall that.

1 Q. When you say "a handful of meetings", you mean a handful  
2 of meetings relating to negotiation of procurement  
3 contracts with truck suppliers; is that what you are  
4 saying?

5 A. No, it was more I would have been on a relationship  
6 position or elements of the contracts that I managed in  
7 terms of performance -- management, delivery and  
8 performance.

9 Q. Those would be the meetings you attended; is that your  
10 answer?

11 A. (Broken audio - inaudible) yes.

12 Q. Sorry, we got -- the connection broke slightly. I am  
13 just going to confirm that we got a clear answer in  
14 relation to that.

15 So when you talked about the "handful of meetings",  
16 were you talking about the meetings that you attended in  
17 relation to the management in terms of performance that  
18 you looked after?

19 A. I think the fairest way to put it, I would attend -- we  
20 used to have -- there used to be regular meetings all  
21 the time between the team and the suppliers.

22 I attended, you know, as I say, a handful -- maybe two  
23 a year, maybe. It was more of a development, a day-out  
24 sort of type scenario, not with a specific focus on,  
25 "Right, these are the costs, this is what we need to

1 drive down", because that was not my role.

2 What I would attend and say is, you know, "Your  
3 delivery performance is 97% of where we require it to  
4 be. Because it has knock-on effects, what can we do?"  
5 As you are aware, these contracts would have liquidated  
6 damages clauses within them, so it is about either -- we  
7 are talking about performance and stuff like that. So  
8 mine was just purely relationship, development, get out  
9 a bit, team meetings.

10 Q. I see. So, again, I cannot really ask you questions  
11 about this document, about the information that is being  
12 provided about Iveco, because you do not recall this  
13 meeting?

14 A. I do not, sorry.

15 Q. No.

16 THE CHAIRMAN: Whose note is this? Is it Mr Shadwell's?

17 MR BEARD: This is from Mr Shadwell, yes. His initials  
18 I think are at the bottom.

19 Could we just go on to document {I1/64.2}? This one  
20 you definitely could not comment on because this is only  
21 a DAF document and the questions I was going to ask you  
22 were about the intelligence that was being provided in  
23 relation to Iveco and Mercedes and the pricing pressure  
24 that was being put on DAF, but I do not think you are  
25 able to speak to this.



1 A. No, that is correct.

2 MR RIDYARD: Mr Beard, may I ask a question?

3 MR BEARD: Of course, please.

4 MR RIDYARD: Mr Peatey, I recognise what you are saying  
5 about the specific contracts here, but I was interested  
6 in this notion of BT, as a buyer, giving information to  
7 one of the bidders about the prices of rival bids in  
8 order to encourage them to reduce their prices. You  
9 seem to suggest that that is not a practice that --  
10 I think you said that is not something that you would  
11 have done. Is there any downside to doing that because  
12 it seems, on the face of it, to be quite a good way to  
13 encourage the supplier to reduce their price?

14 A. I would suggest it is an ethical position, personally,  
15 for me. You know, I would -- if that was me, I would  
16 tell them they are not the lowest bid. I would not give  
17 them -- I would not potentially give them a target  
18 price. But different discussions go on, you get  
19 different leads from senior people and how to approach  
20 that.

21 This seems to me -- what I am looking at here is  
22 a person's preferred method or the way they would do it,  
23 because ultimately the end result: "I will get the  
24 ultimate deal for the business" is the one that we are  
25 striving for. How they got there is personal

1 preference, I would suggest.

2 MR RIDYARD: You are saying that you personally did not like  
3 to do that because of ethical considerations?

4 A. Yes, and I think -- yes, I am, and I think -- I do  
5 not -- I honestly do not recall any documentation  
6 providing us with that information: that is the way to  
7 approach it. But back in 1998, as I say, procurement  
8 was a separate function. They may have had a different  
9 set of how they went around achieving their objectives,  
10 but I just cannot comment on that, sorry.

11 MR BEARD: Thank you, Mr Ridyard.

12 I am conscious of the time. I was thinking now  
13 might be a sensible time to take a short break.

14 THE CHAIRMAN: Yes. All right. Mr Peatey, we are going to  
15 have a short ten-minute break so in some way I think you  
16 should mute or turn off your cameras, but we will resume  
17 at 11.55.

18 (11.44 am)

19 (A short break)

20 (11.57 am)

21 MR BEARD: I am grateful.

22 I just wanted to ask you if you had seen the  
23 contract extension for 1998. Can we go to {I1/66/1},  
24 please? If we could just go over the page so we can see  
25 what the contract document is, {I1/66/2}, you will see

1 this is related to the 1998 contract that we saw the  
2 tender and contract for earlier. If we go down to  
3 page 6, please, {I1/66/6}, that is "Quantity of Goods",  
4 as we have seen before. If we go down to 7, that is the  
5 prices for those trucks that are provided -- for the  
6 basic trucks that are provided. It says at 7.1:

7 "Prices detailed for the above items together with  
8 any variants applicable are shown below and are for the  
9 duration of the contract period."

10 So these were all fixed price contracts for the  
11 duration, were they not?

12 A. Yes, this one is indicating 6th(?) of the (inaudible)  
13 where it determined contract period, yes.

14 Q. As far as you are aware, they did not include any  
15 provision, any of these contracts, for changes by  
16 reference to changes in exchange rates, did they?

17 A. I do not know the detail of this contract, but what  
18 I can say is that we would exclude any -- try to exclude  
19 any such reference to that because it is an unknown  
20 figure and the supplier should offer pricing based on  
21 their risk assessment, I would suggest.

22 Q. Thank you.

23 MR RIDYARD: Mr Beard, I notice that on item 7.2, {I1/66/3},  
24 it says "All prices shown in this Contract shall be  
25 subject to annual review".

1 MR BEARD: Yes.

2 MR RIDYARD: Is that ...?

3 MR BEARD: I had some questions on that. There is a limit  
4 to what I can actually ask this witness, but, yes, if we  
5 go down to 7.2, it says:

6 "All prices shown in this Contract shall be subject  
7 to annual review, but in any event shall not exceed  
8 those indicated."

9 Was this a standard boilerplate clause in your  
10 tenders -- in your contracts, I am so sorry.

11 A. No, not in the ones I put together. It is a slightly  
12 sloppy comment, I think, suggesting that we look at  
13 reduction, but --

14 Q. Well, you say it is sloppy, Mr Peatey. What this clause  
15 does is mean it is always a downward review, is it not?

16 A. Yes. By "sloppy", I meant that it does not expressly  
17 state that, that it is (inaudible). They say the  
18 opposite way, sorry, my personal opinion, drafting.

19 Q. You are suggesting that it could have been drafted more  
20 clearly but actually you are not disputing that it is  
21 a downwards only revision provision, are you?

22 A. No, as it is written I cannot dispute that, no.

23 Q. It is clarified there in 7.2, but I think we probably  
24 knew this from the fact that we were only dealing with  
25 estimated volumes, but, for the avoidance of doubt, BT

1           could invite competing tenders from third parties at any  
2           time. Is that your understanding of how these contracts  
3           worked?

4           A. Again, the wording suggests that, but as stated  
5           previously, these are non-commitment, non-exclusive  
6           contracts, so we could have two, three, four suppliers  
7           providing the same units if we determined that is the  
8           best position.

9           THE CHAIRMAN: The downwards only is confirmed in 7.3, is it  
10          not, as well?

11          MR BEARD: Yes.

12          THE CHAIRMAN: Mr Peatey?

13          A. Yes.

14          MR BEARD: All of these clauses are to the benefit of BT,  
15          are they not, Mr Peatey?

16          A. Yes, I cannot dispute that, the way they have been  
17          written.

18          Q. Now, the original term of the 1998 contract was from  
19          1 January 1999 to 31 December 2001. I think you know  
20          that the contract was extended for an extra year. That  
21          is correct, is it not?

22          A. I believe it was, looking at the documents, yes.

23          Q. But you do not recall? It is only from looking at  
24          documents?

25          A. Yes. I mean, I do not recall. It is only from looking

- 1 at documents.
- 2 Q. No. BT was willing to extend this contract because it  
3 was getting such good prices from DAF, was it not?
- 4 A. I cannot comment on that. I think answering with the  
5 statement, if we did not have a clear forecast or  
6 projection, it would not be uncommon for contracts just  
7 to be extended to buy a little bit more time to allow  
8 that process to work through.
- 9 Q. Are you saying that that was the position here,  
10 Mr Peatey?
- 11 A. I do not know. I cannot comment on that.
- 12 Q. Could we go to {I1/212.1}, please? So this is a meeting  
13 between BT and DAF involving Mr Shadwell, Mr Ford from  
14 DAF, Mr Tinsley from Leyland Trucks, and this must be  
15 Alan Bishop and Jim Seaton from BT; that is right?
- 16 A. That is correct.
- 17 Q. Now, you are not listed as attending, but could this be  
18 a meeting you would have attended or, since it was to do  
19 with negotiations and finance, not one you would have  
20 attended?
- 21 A. I would suggest it is not one of the type of meetings  
22 I would have attended.
- 23 Q. So I cannot really ask you questions about the price  
24 reductions that are illustrated here or the price  
25 changes.

1           Do you recall that DAF was providing Euro 3 trucks  
2           to BT under this contract at the same or indeed lower  
3           prices than it had been providing the same Euro 2  
4           trucks, Mr Peatey?

5           A. I am not aware of that, but we normally would ask that  
6           prices are not increased to a change in legislation,  
7           is -- would be an odd clause.

8           Q. Thank you.

9           Could we go to {I1/237.1}, please? So this is  
10          actually a document from DAF in October 2001. I will  
11          not take you to the bottom of it. It is from  
12          Mr Shadwell to Mr Seaton. Do you remember seeing this  
13          letter at any point?

14          A. No, sorry.

15          Q. If we could just move over the page to page 2,  
16          {I1/237.1/2}, you will see there that there is  
17          "BT Matrix Prices" for the DAF models and there are  
18          timings. You will see "Chassis Nett Orders Before  
19          [week] 51/01" and then for "Before [week] 51/02". Just  
20          to be clear, what that is doing is comparing the prices  
21          before the end of 2001 with the prices for 2002. That  
22          is correct, is it not?

23          A. It would be correct, yes.

24          Q. Have you seen this table before?

25          A. Again, I cannot comment. I have seen similar tables but

1 I cannot recall seeing this one specifically.

2 Q. So you do not recall the fact that -- of the remarks on  
3 the right-hand side which indicate no price changes or  
4 reductions in prices for the various trucks?

5 A. No, I do not recall those.

6 THE CHAIRMAN: What does "bhp" stand for?

7 MR BEARD: Brake horsepower, I believe, sir. Sorry, I did  
8 not know if that was directed for me or Mr Peatey.  
9 Mr Peatey is the engineer or the specialist in these  
10 things.

11 Mr Peatey, did I get my answer right there?

12 A. Yes. I am not an engineer, but you did get your answer  
13 correct, yes.

14 Q. Thank you, Mr Peatey.

15 A. (inaudible) describe what it is, but yes.

16 Q. Can we go to document {I1/286.1}, please? This is  
17 a contract document, 1 January 2003. It is the  
18 follow-up contract from the one that we have previously  
19 been looking at. You can obviously do the date maths.  
20 We were just looking at an extension through to the end  
21 of 2002. This one picks up 1 January 2003.

22 This is a three-year contract, running to the end of  
23 2005, but, again, it was extended, was it not? Do you  
24 remember that?

25 A. I do not remember that.



- 1 Q. You do not remember that.
- 2 A. If I just may clarify: my role, we placed contracts --  
3 sorry, orders based on the contract number. When a new  
4 contract came in, we just changed the contract number on  
5 the system, priced orders off that contract with the  
6 pricing. So in terms of -- I probably would have seen  
7 this documentation after signature on that system but I  
8 had no involvement in how the document was put together  
9 or tenders were put together.
- 10 Q. No, understood. So to some extent your position was  
11 that when you received documentation like this, the  
12 pricing was not significant to you because you were  
13 trying to deliver the trucks that -- I will call them  
14 "your customers" -- within BT wanted and ensuring  
15 delivery times and provision of whatever options and  
16 liaison with the bodybuilders; is that fair?
- 17 A. That is correct. So I input pricing, contract number,  
18 lead times into the main ordering system.
- 19 Q. So you are not able to comment on whether or not this  
20 was a fixed price contract, but from your previous  
21 answers you would expect it to be?
- 22 A. Yes, I would expect it to be fixed price, but clearly  
23 the clauses that I cannot see on the screen at the  
24 moment would determine.
- 25 Q. Yes. Sorry, I am not -- there was no trick in that

1 question. It is in fact a fixed price contract,  
2 Mr Peatey.

3 Indeed, if we go to {I3/330/1}, please -- I am not  
4 going to take you to the tender schedule. I am assuming  
5 you would not have seen it necessarily. But let us look  
6 at this. This is an email to Janet Entwistle,  
7 Robert Whitrow and Dave Walker. Are you able to tell us  
8 who those people are? I should say, I do not want to in  
9 any way confuse you in relation to dates. We understand  
10 this is a document from 2002 or around the end of 2002.

11 A. Yes, I will concur it is 2002. So Janet Entwistle was  
12 the managing director of BT Fleet, Robert Whitrow was  
13 a finance and commercial director of BT Fleet and  
14 Dave Walker, not ringing a bell, but I would suggest he  
15 was in group procurement, more senior to John Youe,  
16 required for the sign-off, based on the date of the  
17 contract.

18 Q. I think -- have you mentioned John Youe before? I think  
19 you did -- sorry, you go ahead, Mr Peatey.

20 A. Yes, sorry, John Youe was my line manager from 2006 to  
21 2010(?).

22 Q. This is one of these procurement case documents that  
23 I think we referred to when we were discussing the  
24 general tender documents. That is right, is it not?  
25 Sorry, I did not catch your answer, Mr Peatey.

1 A. Sorry. That is correct.

2 Q. I am so sorry. There are occasionally just glitches on  
3 the audio, which is why we wait momentarily.

4 Do you recall seeing this document?

5 A. Unfortunately I have seen many of these. I do not  
6 recall this one specifically, but I would suggest I have  
7 seen it, but I do not recall.

8 Q. You do not recall.

9 A. No. If I -- not an evasive comment. I did scan all of  
10 our contract documentation into a SharePoint site so  
11 I would have seen all of these documents even just via  
12 a scanner, so I have seen hundreds of contracts during  
13 this period.

14 Q. Yes, it is probably an unfair question in those  
15 circumstances. "Have you read this document?" I think  
16 is probably the fair question in those circumstances.

17 A. If it was provided as part of this evidence, yes,  
18 I would have. I can imagine what is below that, but  
19 I simply just do not recall that I read this actual  
20 document.

21 Q. Thank you. Could we go to page 2, {I3/330/2}, just over  
22 the page, please? So this is a procurement case setting  
23 out the overall contract value. We just see at point 2,  
24 "Contract Period", again for three years, "with the  
25 option to extend for a further 12 months, subject to

1           satisfactory negotiation". Do you see that? So that  
2           was the standard approach that seems to be adopted; is  
3           that fair?

4           A. Yes, it was. A slight variation, (inaudible)  
5           requirements(?) are not existing terms but clearly that  
6           was not in the brief(?).

7           Q. Then if we go over the page to page 3, {I3/330/3}:

8                     "Potential suppliers were identified based on  
9           BT Fleet's knowledge of the market together with input  
10          from the customer. This was to provide the flexibility  
11          to consider bids for the whole range or to stratify in  
12          line with customer requirements ..."

13                    Then it lines out the six OEMs that have been  
14          referred to in these proceedings, and it indicates that  
15          at least four of them had positively responded to the  
16          tenders. Do you remember them responding to the tenders  
17          and those tenders, Mr Peatey?

18          A. No, I do not. I was not in the procurement team at this  
19          point.

20          Q. No. Then below that we see the adjudication criteria  
21          which we referred to earlier on in relation to the  
22          adjudication process. It attaches different percentage  
23          weights to the different components, but "Whole Life  
24          Cost" is given the heaviest weight. Is that a standard  
25          approach in relation to this sort of adjudication?

1 A. Yes, I would suggest generally the whole life cost would  
2 be the highest percentage.

3 Q. Yes. In relation to these tenders, in fact DAF scored  
4 significantly well in relation to every area. We see  
5 that just below. That is how you do the scoring; is  
6 that right?

7 A. Yes, that is correct. That scoring is based on  
8 fulfillment of the factors, just not on the issue of the  
9 cost.

10 Q. No, understood. It is across all the adjudication  
11 criteria cumulatively; is that correct?

12 A. That is correct.

13 Q. Then we have actually got consideration here of the  
14 "Post Tender Negotiation", so this is a description of  
15 the sort of interactions that we have touched on earlier  
16 that occur after the initial tender submission. That is  
17 correct, is it not?

18 A. That is correct.

19 Q. You were not involved in the negotiations so you do not  
20 know about how DAF made an initial offer with a price  
21 increase and then that was negotiated away? You do not  
22 know any of that?

23 A. No, I do not. Sorry.

24 THE CHAIRMAN: Can I ask a question about the adjudication?

25 MR BEARD: Of course. At any point, sir.

1 THE CHAIRMAN: So the fact that DAF had been the supplier  
2 for the last ten years, that does not enter the  
3 adjudication process calculation; is that right?

4 A. That is correct because it would give an unfair  
5 advantage or disadvantage if you measured their  
6 delivered performance, for example, where we would not  
7 have that set against the other suppliers who we have  
8 not worked with. So it was always based on new lead  
9 cost, are parts supplied, parts cost, economic life of  
10 the vehicle, residual value of the vehicle, end of life,  
11 fuel consumption. There is a whole host of measures in  
12 there, but what we did not consider, there was not --  
13 they did not get like 10% because they were an existing  
14 supplier, you know, and had been for X number of years.  
15 That was never a factor or one of the factors --

16 THE CHAIRMAN: But presumably it is quite an important  
17 consideration for your part, is it not?

18 A. I think because of the known factor, yes, it could be  
19 a consideration, but it is not actually part of the  
20 adjudication matrix as such.

21 THE CHAIRMAN: Thank you.

22 MR BEARD: If we could go on to page 4, {I3/330/4}, at the  
23 bottom of the page, if you just scroll down a little --  
24 yes, "Benefit Statement". This is a benefit statement  
25 referring to the pricing -- focusing on the pricing at

1           this point. What is being identified here is the  
2           overall benefits of the tender that is being put forward  
3           for consideration by those more highly -- the people  
4           within the approval chain within BT; that is correct?

5           A. Yes, that is correct.

6           Q. We will come back to, in due course, the fact that most  
7           of the prices are reduced. Can you just tell us what  
8           "front under run protection" is?

9           A. I cannot. I suspect it is a safety feature that -- so  
10          cyclists do not get -- or pedestrians get under  
11          vehicles.

12          Q. Thank you. I think you are absolutely right, Mr Peatey,  
13          it was a legislative requirement that was brought in for  
14          those purposes.

15                 Then if we could just go over the page to page 5,  
16                 {I3/330/5}, you will see there that we have got  
17                 "Additional Benefits of Recommended Option":

18                 "Fixed Pricing from DAF for a further 3 years (we  
19                 will have had effectively the same price for 6 years)  
20                 despite reducing volumes. Improved specification to  
21                 include near side driving mirror, and front under run  
22                 protection."

23                 So what was being pointed out here was the  
24                 desirability of having fixed pricing for this contract  
25                 and the fact that the prices that DAF were offering had

- 1 not actually increased at all as compared to the last  
2 contract, but you cannot comment on this? You do not  
3 remember this?
- 4 A. No. This was not a document I was involved with. But  
5 you would point out, you know, what you achieved.
- 6 Q. Thank you. Can I just clarify, Mr Peatey -- this  
7 document is exhibited to your witness statement. How  
8 did you come to select it for inclusion in your witness  
9 statement?
- 10 A. It would have been an example of a procurement case  
11 I would have been asked to provide.
- 12 Q. So did you go back through all the procurement cases you  
13 had or did someone suggest that this was a good one to  
14 include?
- 15 A. I do not know the answer to that. I cannot recall  
16 because of the period of time this has been going on, in  
17 terms of when we commenced the process. I may have been  
18 asked to provide some examples and then agreed to  
19 provide a good example, but I do not recall.
- 20 Q. Now, you have already mentioned that that contract that  
21 I was referring to previously ran from 2003 until 2005.  
22 Are you aware that there were long negotiations about  
23 renewing the contract in 2005?
- 24 A. Not directly, I suspect.
- 25 Q. So you are not aware that BT again managed to push the



1 same fixed prices as had been achieved under this  
2 contract? You do not know that?

3 A. No.

4 Q. So can we just go to {I3/331}, please? So this is the  
5 procurement case memo for the 2005 contract -- for the  
6 extension, I am sorry, in 2005. You will see that,  
7 "Procurement case for the take-up of the 4th year  
8 extension option on contract ..."

9 A. Yes.

10 Q. You do not remember seeing this?

11 A. No. Sorry.

12 Q. Can we just go to page 3, though, {I3/331/3}? You see  
13 under the heading "Recommendation":

14 "It is in BT's best interest to place this  
15 fourth-year extension ... as all prices for chassis with  
16 the Euro 3 engines remain the same as tendered over  
17 three years ago. Additionally, they clearly won the  
18 business in a competitive tender situation at a [time]  
19 where volumes were anticipated to be much higher than  
20 the current reality; other tenderers reflected that  
21 lower volumes would drive lower discounts, thus  
22 maintaining the pricing 'status quo' must be seen as  
23 a clear gain."

24 Given your understanding, you can understand why,  
25 from BT's point of view, maintaining prices at those

- 1 levels was a clear gain, can you not, Mr Peatey?
- 2 A. Yes, because euro emissions standards increased prices  
3 so retaining vehicles at lower cost is a positive  
4 position.
- 5 Q. I have got a few more questions for you, Mr Peatey.  
6 I want to go to your second witness statement, if I may.  
7 Earlier today you stated that you were not involved in  
8 the negotiation process until beyond 2006 and you have  
9 made clear, very fairly, what documents you have not  
10 seen, even though they were exhibited to your statement,  
11 and that you were not involved in the financial  
12 negotiations. But if we could go to paragraph 4.4 of  
13 your second statement, {D/19/7}, you say that list  
14 prices could form a focal point for negotiation. Now,  
15 I do not understand on what basis you can give that  
16 evidence in relation to any period prior to 2006,  
17 Mr Peatey. Was that something that was suggested to you  
18 to include in your witness statement?
- 19 A. No. Which clause are we looking at? Sorry. It is not  
20 on my screen.
- 21 Q. I am so sorry, Mr Peatey. 4.4.
- 22 A. Sorry, yes. Would you like to repeat the question now  
23 I have got that? Sorry.
- 24 Q. So you have given evidence, very fairly, that you were  
25 not involved in the negotiation process until well

1           beyond 2006 and you have made it very clear, fairly,  
2           that the documents I have been taking you to you have  
3           not seen and you were not involved in the negotiations.  
4           So at least in relation to the period up until and  
5           beyond 2006, I do not understand how you can give  
6           evidence that gross list prices could form a focal point  
7           for negotiation in relation to trucks for BT.

8           A. Well, I would disagree with your comment there because,  
9           clearly, where you have a list price -- if a list price  
10          is 50 and you are being offered a price of 48, you know,  
11          there is probably more to go at, and it was something  
12          that procurement used to like to say: "We have got  
13          25/30% off this price". So it was not just used in  
14          trucks; it was used across the whole of its business,  
15          where it is applicable.

16          Q. Mr Peatey, we are only interested in trucks today. You  
17          have made it very clear that you were in no way involved  
18          in the financial negotiations in relation to any of the  
19          contracts running through and beyond 2006. On what  
20          basis can you give evidence that, in relation to those  
21          contracts, gross list prices could form a focal point  
22          for negotiation? You do not know, do you, Mr Peatey?

23          A. It is useful to have a visibility of those. I was not  
24          involved in the negotiation, no, but when you have  
25          numbers, then you use that to your negotiating

1 advantage.

2 Q. Mr Peatey, you were very, very careful not to provide  
3 any views about any of the negotiation or comment on the  
4 negotiation and procurement arrangements that I have  
5 been taking you to, yet, when I come to this statement,  
6 you appear to be confident that gross list prices would  
7 form a focal point of negotiation in relation to  
8 negotiations you were not involved with. This evidence  
9 is not sound, is it, Mr Peatey?

10 A. It is sound. I was not involved in negotiations but it  
11 is one of the tools. So this would be from my relevant  
12 experience beyond 2006. It is a form of information,  
13 market information, that you would use, so my comment  
14 stands. It is useful to have visibility. I did not  
15 suggest that I had that visibility. I said it would be  
16 useful to have that visibility as a general concept.

17 Q. As a general concept. You just said "From my relevant  
18 experience beyond 2006". You provided a second witness  
19 statement in these proceedings which was the first time  
20 you referred to list prices, Mr Peatey. You give no  
21 examples, so far as I can see, of where in negotiations  
22 list prices were referred to in your experience, do you?

23 A. Are we looking at a specific clause or just ...?

24 Q. I am looking at your witness statement, Mr Peatey. You  
25 have just given an answer to the court that, "... from

1 my relevant experience beyond 2006. It is a form of ...  
2 market information, that [I] would use ..."

3 A. Yes.

4 Q. You have given no examples in your witness statement,  
5 have you, Mr Peatey?

6 A. I do not believe I have, but it did not specifically ask  
7 for that. But I have used it in negotiating for parts  
8 and many other negotiations.

9 Q. I see. Just to be clear, Mr Peatey, we have run through  
10 documents involving the period from 1998, 1999, 2000  
11 through 2004, you did not know anything about those  
12 negotiations, but in your second witness statement you  
13 refer specifically to four documents which you say  
14 identify list price as well as nett, with a double t,  
15 price payable to BT. That is at 4.3, if we can just  
16 scroll up, so you can recall. Did your lawyers suggest  
17 you should include those four documents in your  
18 statement, Mr Peatey?

19 A. Let me read through, please. (Pause)

20 THE CHAIRMAN: You are in danger of straying into privilege  
21 matters, but I think it is okay so far.

22 MR WARD: Sir, I am starting to get concerned. It really  
23 depends what the substance of the question is.

24 MR BEARD: I am not going to ask about what his lawyers did,  
25 if that comforts Mr Ward. I am asking how these

1 documents were selected for his witness statement.

2 THE CHAIRMAN: All right.

3 A. What I can comment on is that when we were going -- when  
4 I was asked to -- do I have the relevant contacts,  
5 because, as you state at the top, I am one of the very  
6 few or the last people around from that period, because  
7 I had access to these documents, I did retrieve(?) them.  
8 Now, I cannot comment why list price, net price, was  
9 included in the contracts. It was clearly -- I cannot  
10 comment on the way it was done. But I have seen those  
11 documents but I was not involved to negotiate, and  
12 I would have selected those contracts as being relevant  
13 contracts that should form part of this procedure.

14 THE CHAIRMAN: Sorry, I am not sure that Mr Beard was  
15 referring to contracts. He was referring to the letters  
16 that you refer to in paragraph 4.3.

17 A. Okay. I would have been provided copies of those  
18 letters as part of this involvement.

19 MR BEARD: So you were provided copies of these, but, as  
20 with many of the other documents, you are not suggesting  
21 that you saw them or read them at the time they were  
22 produced, are you?

23 A. That is correct. I was not in the procurement team at  
24 that point.

25 Q. No, and you were not involved in any way in the

1 negotiations at the time of any of these documents,  
2 were you? I think you have confirmed that, Mr Peatey.

3 A. Yes.

4 Q. So you cannot comment at all on whether or not any of  
5 these figures were relevant to any of the negotiations,  
6 can you, Mr Peatey?

7 A. No, I suspect I cannot.

8 MR BEARD: Might I just have one moment to -- it may be  
9 I can short-cut a number of questions, if I can just  
10 switch the microphone off for a moment.

11 THE CHAIRMAN: Yes, okay.

12 MR BEARD: Another document I wanted to ask you about,  
13 bundle {I2/331.1}. Can we just go to the top of this  
14 document, please? Do you remember seeing this document  
15 before, Mr Peatey?

16 A. Yes, I would suggest it is in my documents -- sorry, it  
17 looks like a document I would put together.

18 Q. When did you put it together, do you recall, Mr Peatey?

19 A. No, it would have been -- you know, it would have been  
20 relevant to the date shown on the document, I suspect.

21 Q. We have looked at the metadata and we can see that it  
22 appears to be produced by you from 2010, but as far as  
23 we can see -- since it is your document you will be able  
24 to explain -- but on the left-hand side those are dates  
25 in reverse order; is that right? So it is 2010 --

- 1 A. Yes, that is correct.
- 2 Q. -- March 30, right. So these are copies of emails that  
3 you have pasted into a table; is that right?
- 4 A. Yes, it would have been, yes.
- 5 Q. Obviously there are lots of blank lines above it. Is  
6 that because you deleted emails that were in those rows  
7 previously?
- 8 A. No. This is a personal document to -- because we have  
9 no system to easily collate information, it is a form of  
10 document that I used, and still use today, to collate as  
11 a quick reference position. Those lines above purely  
12 are because there has been nothing currently(?) above.
- 13 Q. I am very sorry, could you just repeat that last answer?  
14 It just did not come up on the transcript. I think it  
15 was just because of the connection here, Mr Peatey.
- 16 A. Okay. Sorry. Yes, so because we had no system for  
17 easily recording emails, meeting notes, this is a Word  
18 document that I would put together -- and I use  
19 a similar format today -- to capture salient points of  
20 emails or meeting notes and sometimes they are full  
21 drafts of emails that I have copied in as a quick  
22 reference tool. The blank lines above are purely  
23 because there was no entries in the blank lines above.
- 24 Q. Understood. Understood.
- 25 So, as I understand it, we have got about eight or



- 1           nine emails here and, if those are dates, that covers  
2           a period from August 2008 through to March 2010.
- 3           Did you have other documents like this that you compiled  
4           with, as you put it, salient emails and so on?
- 5           A. For other suppliers, yes.
- 6           Q. For other suppliers you did?
- 7           A. Yes, so any supplier engagements, as I say, I found  
8           it -- at the time it was a quick and easy reference  
9           mechanism.
- 10          Q. So we know that from 2006 BT actually did not buy that  
11          many trucks from DAF and it did not have framework  
12          contracts. From who else did you buy trucks from 2007,  
13          say, onwards?
- 14          A. I do not recall. I suggest, if there was, it would be  
15          minimal --
- 16          Q. It would be minimal, and so --
- 17          A. -- because of the financial position at the time --  
18          sorry, because of the financial economic position at the  
19          time.
- 20          Q. I see. Just in relation to that, you did not actually  
21          buy many trucks from DAF over this period, did you?
- 22          A. I do not know the answer to that. It was not my  
23          contract. We did not buy a lot of vehicles from  
24          anybody, so it is a fair(?) assumption.
- 25          Q. Do you think -- if you had been buying trucks from, say,

1           Iveco or Mercedes or whomever else, do you think you  
2           might have done a similar exercise in relation to emails  
3           with them?

4           A. Yes, I mean, these are personal notes, so what you will  
5           not find is every single email from DAF in there or from  
6           any other suppliers, but I did operate that to try and  
7           get some semblance of organisation at the time.

8           Q. Understood. Could we just go over the page to page 2 in  
9           this document, {I2/331.1/2}, so -- I am sorry, actually  
10          could we go back to page 1, {I2/331.1/1}? I apologise.  
11          That was unhelpful of me. If we could just see the  
12          bottom entry there, 2009, July 22:

13                   "Meet with Geoff Tyler (DAF) and Warren Howlett  
14                   (Imperial Commercials)."

15                   Can you just tell the tribunal who Imperial  
16                   Commercials are, please?

17          A. I -- yes, as it says in the second line, it was one of  
18          the DAF dealer groups.

19          Q. It was one of the DAF dealer groups. Right. Thank you.

20                   I just want to go over the page, {I2/331.1/2}.  
21                   There is just one point. You have talked about some of  
22                   these being salient points. The fourth bullet from the  
23                   bottom, this is "Geoff", so this is Geoff Tyler at DAF:

24                   "Geoff confirmed that there is no correlation  
25                   between list price of items and cost to [BT Fleet] as

1 Daf employ a cost model -- [it] means that if a part is  
2 10% of the cost and was removed, then [that] would not  
3 automatically mean a 10% reduction in total cost as each  
4 part/item is allocated a different % weighting ..."

5 So the salient point here that is being communicated  
6 is no correlation between list price of items and cost  
7 to BT Fleet insofar as DAF is concerned. Was that what  
8 you were taking away and storing in here?

9 A. That comment would have been pretty much verbatim from  
10 Geoff. That was the way it ran(?), so ...

11 MR BEARD: Mr Peatey, thank you for your time this morning.

12 I do not have any further questions for you. The  
13 tribunal may have one or two questions or Mr Ward may  
14 have one or two questions to ask you in re-examination,  
15 but I do not have any more, so thank you very much for  
16 your time.

17 A. Thank you.

18 THE CHAIRMAN: Mr Ward, do you have any re-examination?

19 MR WARD: No, I do not. Thank you, sir.

20 Questions by THE TRIBUNAL

21 MR RIDYARD: Mr Peatey, just to go back to this question  
22 about the list prices, we saw earlier the adjudication  
23 criteria for looking at the different bids that you got,  
24 but how and where would the list price or discount to  
25 list price fit into any of those adjudication criteria?

1       A. It would not. It would be the price that was being  
2       offered for the tender to go into the model, and I can  
3       only comment on this from seeing this, is that people  
4       would -- to make them look better, a better expression  
5       than that, to show that they actually had a good  
6       negotiation, they say, "We have actually achieved 30%  
7       off this price", or similar in their procurement cases  
8       to justify how -- demonstrate how good a job they did.  
9       But it was not part of the cost modelling because if  
10      something is 50% off £80,000 or 50% or 40% off £70,000,  
11      then -- you know, 50% off £80,000 is still -- would  
12      still be more expensive. So we just use the base unit  
13      cost that has been offered.

14      MR RIDYARD: I suppose when I read this I was sort of  
15      naturally a bit sceptical about whether the discount off  
16      list price would mean anything. It would only mean  
17      something if you thought the list price -- the  
18      relationship between list price and actual prices was  
19      similar for all the different suppliers, otherwise it  
20      does not really help you to know whether you are getting  
21      a good deal or a bad deal, does it? I am just  
22      interested to know why you focused on this discount to  
23      list price here.

24      A. No, it informs two things. So the unit cost being  
25      offered is one that we use for adjudication. In terms

1 of the discount off list price, that can be used as  
2 a negotiation tool. So if we are only getting 15% off  
3 list, you think the supplier could offer more. Again  
4 the third point, it was used in procurement cases just  
5 to say, as a procurement professional, or to the  
6 seniors, "I think I have done a good job because I have  
7 got 25% off list price", for example. So it did not  
8 form part of the actual costing, the award(?). It was  
9 just the verbiage of the procurement case.

10 MR RIDYARD: Okay, thank you.

11 THE CHAIRMAN: I think you said, Mr Peatey, when Mr Beard  
12 was asking you questions about this, that the list  
13 prices were part of the market information that you  
14 would use. What did you mean by that, "market  
15 information"?

16 A. If -- well, it is just assessing what -- I suppose  
17 ultimately it is assessing what the unit cost of the  
18 vehicles are. Did I make that statement? I assume it  
19 is on your screen if I have. But it was just -- as  
20 I say, it is more of a tool to say, you know, "We have  
21 achieved X% off this price". This price in itself would  
22 indicate what the market looks like in terms of the unit  
23 costs across the whole market, but we never focused on  
24 getting 20% off this price, that will do. It was the  
25 bottom line figure, irrespective of what the discount

1           was on this price.

2           THE CHAIRMAN: Was this public information then that you  
3           were using or these were list prices that were provided  
4           to you by the suppliers?

5           A. I cannot confirm in this case, but generally the list  
6           price would be known in the market. It would be  
7           advertised on websites or other information provided by  
8           manufacturers, as we see today in adverts for vehicles.

9           THE CHAIRMAN: Right. Finally, as I understand it, you only  
10          became involved in terms of negotiating from 2006  
11          onwards.

12          A. Yes, but not in the DAF contracts. But I joined the  
13          procurement team in 2006 and was responsible for my own  
14          set of contracts.

15          THE CHAIRMAN: But there were no relevant DAF contracts  
16          I think post 2006?

17          A. No, no. I do not believe there was, no.

18          THE CHAIRMAN: All right. Those are all the questions from  
19          us and from everyone, so thank you very much, Mr Peatey.  
20          That is the end of your evidence.

21          A. Thank you.

22          THE CHAIRMAN: You are free to sign off now.

23                 Right.

24          MR BEARD: Thank you. We will check the transcript. I am  
25          not sure that Mr Peatey did say that list prices formed



1 A. No, this is ...

2 MR BEARD: BCLP provided them for the witness and gave us  
3 the opportunity to review, but -- I am sure there is not  
4 a secret code throughout!

5 Examination-in-chief by MR WARD

6 MR WARD: Mr Nicholson, do you have in front of you the  
7 witness statement that you have provided in these  
8 proceedings?

9 A. Yes.

10 Q. I understand there is a one-word correction that you  
11 want to make. I should say for the benefit of the  
12 tribunal it was long since flagged up to DAF and I have  
13 reminded Mr Beard about it already today.

14 Could you turn to page 14, please, {D/11/14}?  
15 Paragraph 4.13, you say, four lines from the bottom:

16 "I estimate that Openreach generated approximately  
17 70% of its revenue from services subject to glidepath  
18 controls between 2006 and 2018."

19 A. Yes.

20 Q. Can you explain to the tribunal the correction that you  
21 wish to make?

22 A. So these were in fact -- that 70% related to --  
23 determined -- where there is a price control that Ofcom  
24 determined, whether it be OPR, CPR, minus X type control  
25 or it determined price, so sometimes it was a determined



1 price.

2 Q. So would it be fair --

3 A. So it would be a price control.

4 Q. So we can delete the word "glidepath"?

5 A. Yes.

6 Q. Is your statement otherwise true to the best of your

7 knowledge and belief?

8 A. Yes.

9 MR WARD: Thank you. Please wait.

10 Cross-examination by MR BEARD

11 MR BEARD: Good afternoon, Mr Nicholson. I do not have lots

12 of questions for you, you may be pleased to know, and

13 they are mostly in the form of clarification. I know

14 that you have had extensive experience of charge

15 controls of various sorts at Openreach and indeed before

16 that at Wholesale.

17 A. Hmm-hmm.

18 Q. Now, I know there is a slightly confusing terminological

19 issue that Wholesale became Openreach, but there is

20 a separate entity called BT Wholesale; okay? I am going

21 to -- when I refer to Openreach, I mean the historical

22 entity that started off as Wholesale and became

23 Openreach, and when I refer to BT Wholesale, I will make

24 that clear.

25 A. Okay.

1 Q. Just for the tribunal's benefit, it was because  
2 previously Wholesale was a division of BT that was not  
3 subject to regulatory separation. When Openreach was  
4 then separated out, what was called "Wholesale" became  
5 "Openreach" and there was then a separate division  
6 within BT, not Openreach, that got named "BT Wholesale".  
7 Mr Nicholson can correct me if my summary is wrong.

8 A. No.

9 Q. Thank you. Now, the purpose of your evidence you have  
10 put forward -- you are here as a witness of fact but you  
11 are just explaining how you understand the price  
12 control -- regulatory price controls that applied to  
13 Openreach. We know that Mr Budd, whose statement  
14 I think you have seen, Mr Richard Budd --

15 A. Yes.

16 Q. -- provides some evidence on Wholesale price control  
17 separately. If I could, I just want to check I am  
18 getting the map of the entities right. Could we have  
19 called up -- unfortunately I think it may be  
20 confidential, but -- it is labelled as "Confidential",  
21 but actually the page I want to go to is not, which is  
22 at E -- you do not need to look at it in hard copy. It  
23 will come up on your screen. It is {E/IC26/24}. You  
24 should have a diagram. I am not going to ask you about  
25 any of the numbers on it, Mr Nicholson, so worry not

1           about that. This is just making sure we have got the  
2           flows correct.

3           Just so you have context, this is taken from the  
4           expert report of Mr Bezant in these proceedings.

5           A. Okay.

6           Q. So just one or two questions to make sure that we are in  
7           the same place in relation to this. On the left-hand  
8           side he has drawn in "DAF" and then you have got a box,  
9           which is "BT plc's vehicle operations/BT Fleet". It is  
10          your understanding that it was that entity that bought  
11          trucks from DAF?

12          A. Correct.

13          Q. Yes. Then we have a line going through to "Openreach",  
14          which is indicating that Openreach itself then obtained  
15          trucks from -- I will refer to it as "BT Fleet". That  
16          is the correct process, is it not?

17          A. Correct.

18          Q. Yes. You are talking about Openreach in your evidence  
19          and you are not talking about some of the other entities  
20          like BT Retail, BT Wholesale or BT Global Services.  
21          That is correct, is it not?

22          A. I do reference the BT Wholesale services in my statement  
23          but, you know, if what you are asking me is does this  
24          make sense to me, this makes sense to me, yes.

25          Q. Yes. We will come on -- I am not trying to edit your

1 evidence by some sleight of hand here. That was not my  
2 intention. But your evidence is focused on Openreach,  
3 which is where you have been operating. That is  
4 correct, is it not?

5 A. Yes.

6 Q. Although you refer to Wholesale in your evidence, you do  
7 not, I think, seek to talk at all about retail or global  
8 services.

9 A. No.

10 Q. No. Thank you. So first point of clarification, if  
11 I may -- if we go to 3.16 of your witness statement, you  
12 have a hard copy there. Does the tribunal want it on  
13 the screen? Would that be useful? It is {D/11/9}.

14 A. Yes.

15 Q. You say in that paragraph:

16 "The vast majority of WLR, WLA and Alternate  
17 Interface services ..."

18 They are just a range of services that Openreach  
19 provides?

20 A. Correct.

21 Q. Yes.

22 "... reported in the RFS ..."

23 Regulatory financial statements?

24 A. Regulatory financial statements, yes.

25 Q. Thank you.

1            "... were price controlled throughout the period.  
2            On the basis of the above, in 2007 I would estimate that  
3            approximately 72% of Openreach's reported revenues were  
4            derived from the sale of products that were directly  
5            subject to price regulation and that by 2018 that  
6            percentage rose to approximately 93%."

7            That is correct?

8            A. Correct.

9            Q. That is correct. So could we just pull up {J4/IC87/6},  
10           please?

11           THE EPE OPERATOR: That is confidential.

12           MR BEARD: Yes, I do not think -- is there an issue? I have  
13           confirmation that it is fine. I am most grateful for  
14           those behind. Thank you for checking.

15           Now, I do not know whether you were involved in the  
16           preparation of this. I am guessing you probably were --

17           A. I was, yes.

18           Q. So this was a schedule to a letter from BT's solicitors,  
19           BCLP, 17 September 2021, which provides a little bit  
20           more detail on this. I just wanted to check that the  
21           material referred to in your witness statement at 3.16  
22           is essentially this stuff.

23           A. I believe so, yes.

24           Q. You believe so. Okay. Well, that may shorten things.  
25           You see at 40, BCLP, but I am sure with your input,

1           said:

2           "Without waiving privilege, we have made enquiries  
3           with Mr Nicholson as to his estimate that Openreach  
4           generated approximately 70% of its revenue from services  
5           subject to glidepath controls ..."

6           Now, that was something that you just corrected with  
7           Mr Ward.

8           "Mr Nicholson has explained that his evidence ought  
9           to refer to 70% of Openreach's revenues being subject to  
10          direct price controls ..."

11          The answer you gave to Mr Ward's initial question --  
12          you talked about determined price controls, but direct  
13          price controls captures the notion; is that right?

14         A. Yes, that is right.

15         Q. What you are referring to there are price ceilings, so  
16          a lid on what BT can charge for a particular type of  
17          product --

18         A. Correct.

19         Q. -- and a glidepath, which I will come back to because  
20          I just want to take you through a couple of diagrams on  
21          that, primarily from Mr Budd.

22          "We will provide a corrected version of  
23          Mr Nicholson's evidence ..."

24          Well, that did not happen until about ten minutes  
25          ago, but it was beautifully done so do not take issue

1 with that.

2 MR WARD: Thank you!

3 MR BEARD: "We have set out below the supporting  
4 calculations for Mr Nicholson's evidence that 70% of  
5 Openreach's revenues were subject to direct price  
6 controls."

7 Can I just be clear what we are then talking about?  
8 Could we just go down a page, please, {J4/IC87/7}? You  
9 see the grey at the bottom -- I know this is a slightly  
10 odd way of doing it. These are the headings and it says  
11 "Directly Price Regulated" in the right-hand column. If  
12 we can go down to the next page, {J4/IC87/8}, having  
13 that in mind, am I right in thinking that the 72% at the  
14 top and the 93% at the bottom are the figures that you  
15 were referring to in your witness evidence?

16 A. I would have also taken out some non-price regulated  
17 ethernet services during the period which were above  
18 1 gigabit and above services, yes. So although this is  
19 the reported RFS, even reported stuff in the RFS was not  
20 price-regulated.

21 Q. I am sorry, I just lost the last bit of your answer  
22 there.

23 A. So for ethernet services, there will be services that,  
24 although reported in the RFS, were not subject to price  
25 controls. In the early years, that would have been

1 services above 1 gigabits, for example, so there were  
2 some exclusions here.

3 Q. Yes. That is how you calculate 72%; is that right?

4 A. Yes.

5 Q. Sorry, you are just explaining what those numbers are,  
6 you are not qualifying them?

7 A. That is right.

8 Q. Thank you. That is very helpful.

9 What we are seeing here is that you start off -- as  
10 you were just putting it, you had more exclusions and  
11 then effectively you have fewer and fewer exclusions  
12 down to sort of 7% exclusion by 2018.

13 A. Correct.

14 Q. We have already touched on the fact that we are talking  
15 about two types of price control, primarily price  
16 ceilings and glidepaths. I think the experts have  
17 agreed that the majority of the price controls were  
18 actually glidepath controls, and that would not surprise  
19 you?

20 A. No.

21 Q. Ofcom actually had a preference for glidepath control,  
22 did it not?

23 A. That is right.

24 Q. Let us just look at glidepath controls fairly briefly,  
25 if we may.



1 A. Okay.

2 Q. I am going to ask to call up another page from  
3 Mr Bezant's report. {E/IC26/34}, please. That is  
4 confidential but I think this one, again, is fine  
5 because it is actually just diagrammatic.

6 Now, you will see at the top -- this is again in  
7 Mr Bezant's report, but he is not claiming copyright on  
8 this one because, as you can see in the heading, it says  
9 "Mr Budd's illustration of glidepath charge controls"  
10 and it is actually taken from Mr Budd's evidence.

11 I just wanted really for you to -- to take you  
12 through so we understand what is going on in this  
13 diagram. So Mr Budd's evidence is about the  
14 BT Wholesale price control -- the BT Wholesale from  
15 2006, but this is a rather more generic diagram that he  
16 has provided.

17 A. Hmm-hmm.

18 Q. It shows essentially three green building blocks in  
19 relation to the glidepath price control and I just want  
20 to check that we are understanding these correctly. So  
21 the dark green at the bottom, that is showing  
22 depreciation, so that is the cost to BT which is sort of  
23 derived from its capital costs in loose terms. Is that  
24 fair?

25 A. That is right, yes.

1 Q. So that dark green bit would include costs to BT derived  
2 from capital costs on vehicles, for example?

3 A. Yes.

4 Q. Then the middle green, that middle green is showing  
5 operating costs, as is signalled on the right-hand side;  
6 correct?

7 A. Correct.

8 Q. So we can see dark and mid-green is essentially the  
9 bundle of BT's costs in simple terms, correct?

10 A. Yes, P&O costs, referred to.

11 Q. Then the pale green shows a return on capital employed,  
12 the ROCE, as it is sometimes called.

13 A. Yes.

14 Q. That is the element of profit that the regulator  
15 permitted BT to earn over and above those capital costs.  
16 That is correct, is it not?

17 A. Correct.

18 Q. Yes, and then you have got on the other side, "Current  
19 unit price", on the left-hand side. What that starting  
20 price is is it is above BT's efficient cost plus return  
21 on capital -- permitted return on capital employed at  
22 the start of this period.

23 A. Okay.

24 Q. Well, I am just referring to the red dot, "Current unit  
25 price", in this diagram.

- 1 A. Yes.
- 2 Q. We are just trying to essentially illustrate how  
3 glidepath works here.
- 4 A. Hmm-hmm.
- 5 Q. Just in very simple terms, the reason it is called  
6 a "glidepath" is because the regulatory control is  
7 trying to get that unit price to glide down from one red  
8 dot to the next red dot across the period; is that  
9 a fair summary?
- 10 A. That is right.
- 11 Q. What it does is it does that by allowing BT's nominal  
12 prices to increase by a measure of price inflation which  
13 could be RPI, regulatory price -- Retail Price Index or  
14 Consumer Price Index, minus what is referred to as  
15 an "X factor", and that is how you do the gliding. That  
16 is correct, is it not?
- 17 A. The slope of the line is the X.
- 18 Q. Yes, the slope of the line is the X. Thank you very  
19 much. The regulator determines that X factor that would  
20 bring the starting price in line with its forecast as  
21 part of the price control?
- 22 A. Correct.
- 23 Q. Thanks. So you, I think, have explained in your witness  
24 evidence that the first step for Ofcom when it is  
25 establishing a glidepath control is to establish the

1 base year costs. I will not take you back to your  
2 witness statement. It was almost always the case, was  
3 it not, that Ofcom used BT's historic fully allocated  
4 costs as the starting point for base year costs?

5 A. Rarely would they use them unadjusted, so they were  
6 always adjusted.

7 Q. That I am not going to dispute, but my question was they  
8 used them as a starting point?

9 A. A starting point, yes.

10 Q. When we referred to BT's fully allocated costs or you do  
11 in your witness statement, you are referring to what is  
12 reported in the regulatory financial statements?

13 A. Correct.

14 Q. When we talk about the regulatory financial statements,  
15 we talk about BT's regulatory financial statements, but  
16 here "BT" means actually BT Plc as a whole; is that  
17 correct?

18 A. Correct.

19 Q. The BT RFS -- and I am sorry, we are already drifting  
20 into terrible acronyms --

21 THE CHAIRMAN: Well, I was going to ask. There are a hell  
22 of a lot of acronyms, particularly in Mr Nicholson's  
23 witness statement, with all due respect. It would  
24 probably help if we had, at some stage, a list of all  
25 the --

1 MR BEARD: A glossary can be provided. There is no problem  
2 with that. I am sorry. I did not unpack some of the  
3 acronyms about services and so on because I am not sure  
4 they are material. "Regulatory financial statement" is  
5 relevant. Yes, we can certainly provide that. Indeed,  
6 actually, I think in the back of one or two of the Ofcom  
7 price control documents they actually contain a glossary  
8 for non-technical readers to actually try and get hold  
9 of some of these things. But, yes, is the short answer.  
10 We will sort that out.

11 THE CHAIRMAN: Thank you.

12 MR BEARD: I think, to be fair to Mr Nicholson, actually in  
13 his witness statement each acronym is defined the first  
14 time it is used --

15 THE CHAIRMAN: I know, it is, it is, but you have to flick  
16 back --

17 MR BEARD: We will sort that, that is fine, or we will  
18 liaise with BCLP to sort that.

19 Anyway, we are talking about a set of regulatory  
20 financial statements that exist for BT Group, which is  
21 what the RFS is, and they are prepared in accordance  
22 with the accounting methodology document; is that right?

23 A. Yes.

24 Q. The accounting methodology document is an absolute  
25 privilege to read! It is extraordinarily long and

1           complicated. I am not going to take you through all of  
2           it, Mr Nicholson --

3           A. Good.

4           Q. -- but can I ask you just one or two questions about it,  
5           if you do not mind? This is it. Could we go to  
6           {I6/221/102}? I am not even going to begin to try and  
7           contextualise what I am asking you about in the overall  
8           scheme of the regulatory mechanism, but here we have  
9           a sector about motor transport. This is obviously  
10          concerned with the cost values and calculations in  
11          relation to motor vehicles.

12          A. Hmm-hmm.

13          Q. So you will see there at the top it says:

14                 "This sector contains the asset values and  
15                 depreciation of motor vehicles used in BT's business."

16                 So this is the whole of BT's business --

17          A. Yes.

18          Q. -- as we have discussed.

19                 "BT operates a range of vehicles, purchased as new  
20                 vehicles or acquired under lease arrangements. Vehicle  
21                 assets are recorded under two main Classes of Work ..."

22                 We are already in more acronyms, "CoW". I am going  
23                 to call it just "classes of work".

24                 Then you have, "New Vehicles and Accessories", which  
25                 is "NVAC"; is that right?

- 1 A. Yes, that is the first class of work.
- 2 Q. Yes, that is the first class of work, I am so sorry.
- 3 That includes -- the reason why this one is relevant is
- 4 because it includes not only pool cars, vans and light
- 5 goods vehicles but heavy goods vehicles and
- 6 4-wheel-drive vehicles. I think you recognise that the
- 7 trucks we are talking about in this case would fall
- 8 within that category. That is right, is it not?
- 9 A. That is right.
- 10 Q. I will skip over the next class of work. If we could
- 11 then go to page 176, {I6/221/176}. We are now in the
- 12 base methodology dictionary so it does more than a mere
- 13 glossary, this document. But halfway down the page,
- 14 under the base reference "DTNFA", you have a heading
- 15 "Motor Transport Fixed Assets".
- 16 A. Yes.
- 17 Q. The description is:
- 18 "This base apportions the Net Book Value ... of
- 19 Motor Transport fixed assets."
- 20 A. Yes.
- 21 Q. It says the methodology is:
- 22 "This Group unit makes detailed internal transfer
- 23 charges with regard to which units use its service,
- 24 an ASPIRE report can be produced of the internal
- 25 transfer charges identifying the Products and Plant

1           Groups ... which are served by it and an apportionment  
2           is made on this basis."

3           Now, all I want to just clarify here is whether you  
4           understand the reference to "internal transfer charges"  
5           to be a reference to the internal charges from BT Fleet,  
6           that we saw in that initial diagram, to other businesses  
7           within BT; is that correct?

8           A. That is correct, yes.

9           Q. There is one more passage I want to go to in this  
10          document. It is at page 1006, {I6/221/1006}. If you  
11          work your way nine columns down, you will see something  
12          that says "4A9110" and then it says "Gross Book Value  
13          Accommodation Plant NWK".

14          A. Yes.

15          Q. Do you see that?

16          A. This is where he is saying motor transport costs are  
17          apportioned using analysis --

18          Q. Precisely. Receiving the transfer charge from BT Fleet  
19          management.

20          So I just want to check, this phraseology, that  
21          means that the actual cost of the trucks, in other words  
22          the asset values and depreciation, are allocated to  
23          different parts of the business that pay transfer  
24          charges based on an assessment of their activities; is  
25          that what is going on here?



1 A. That is correct. So broadly speaking it is trying to  
2 reflect the usage of the different divisions in terms of  
3 the vehicles they use.

4 Q. So, for example, part of the actual costs of trucks  
5 would be allocated to Openreach insofar as Openreach is  
6 using those trucks?

7 A. Yes, so if they use 50% of the trucks, they get 50% of  
8 the cost type of thing.

9 Q. Fine. Thank you. That is great. That is very helpful  
10 on that terminology.

11 THE CHAIRMAN: So that document is an internal BT document  
12 drawn up for the purposes of preparing their accounts;  
13 is that right?

14 MR BEARD: It is not for the purpose of preparing -- I will  
15 leave it to Mr Nicholson to answer, but if the question  
16 is directed to me, it is drawn up as an internal BT  
17 document but it is for the purposes of the regulatory  
18 financial statements, and what is required by that is  
19 not just a BT decision, it is actually under the  
20 regulatory scheme. But Mr Nicholson --

21 THE CHAIRMAN: Can you confirm that?

22 A. Yes. So Ofcom requires to report each year costs in  
23 a particular way, so that is the regulatory financial  
24 statements. There is also additional documents required  
25 to be reported, and one of them is to describe how the

1 allocations are -- how we allocate or attribute costs to  
2 different businesses. This particular document has been  
3 through review by Ofcom in public consultation so it was  
4 called the "Cost Attribution Review" back in 2014,  
5 I think it was, and when we update it, we have to --  
6 Ofcom has to agree with us that we are describing things  
7 in the right way and stuff, so there is quite a lot of  
8 governance that goes round because it -- what it is  
9 supposed to do is allow stakeholders to understand how  
10 we are attributing particular costs so they can comment  
11 on whether they think that is a relevant cost for  
12 a particular service.

13 THE CHAIRMAN: What is the date of this particular document?

14 MR BEARD: Let me check what this was.

15 A. I think this one is quite old, but it would be in the  
16 period --

17 MR BEARD: This is 2009, this one.

18 A. Yes.

19 MR BEARD: This was one taken from, as Mr Nicholson says,  
20 the relevant period.

21 You referred to stakeholders being able to  
22 understand the attribution of particular costs.  
23 Obviously -- well, I say "obviously" -- in addition to  
24 those or if you treat Ofcom as a stakeholder, then it is  
25 also to enable Ofcom to understand attributions of costs

1 and then deal with those in the price controls that it  
2 is applying; that is correct?

3 A. Correct.

4 Q. Yes.

5 Just a passing question in relation to one part of  
6 your witness statement. Just for your notes it is 1.7  
7 but we do not need to go to it. You describe trucks in  
8 1.7 as being provided to BT Plc from BT Fleet under  
9 lease agreements, but just so I am clear and just  
10 confirming, when BT Fleet purchased vehicles, it bought  
11 them outright from DAF and --

12 A. Correct.

13 Q. -- you are then talking about effectively internal  
14 transfer arrangements when you talk about those leasing  
15 arrangements; correct?

16 A. Correct.

17 Q. Now, in your statement around 4.17, {D/11/15}, you  
18 explain that Ofcom typically made adjustments to the  
19 costs in BT's regulatory financial statements to  
20 calculate the base year costs, and you have already made  
21 that point in the course of giving your evidence this  
22 afternoon.

23 What I want to do is just go to a diagram which sets  
24 out the structure of one of Ofcom's price controls and  
25 just ask you one or two questions about how that works

1           essentially, and I will do it sort of box by box, if  
2           I may.

3           So could we go to {I4/30/30}? So this is the LLCC,  
4           which is the "leased lines charge control"; correct?

5           A. Yes.

6           Q. This one -- I am not going to go to the whole document.  
7           This is from a document relating to the Business  
8           Connectivity Market Review in 2013.

9           A. Okay.

10          Q. So it is BCMR 2013. Now this is one example -- you have  
11          probably seen various of these in the past, they do not  
12          radically change from price control to price control,  
13          but I hope it will be just a convenient way to look at  
14          some of the key points in your statement about how  
15          glidepath controls were constructed.

16          A. Yes.

17          Q. This is perhaps as much for the tribunal as for you --  
18          you probably are well aware of this -- but green is an  
19          input or an assumption, broadly speaking, on this  
20          diagram, pink is a calculation and turquoise-blue is an  
21          output. Is that a fair summary of the colouring?

22          A. Yes.

23          Q. If we start in the top left-hand corner, we have a box  
24          containing two green bits under the heading "Base year  
25          (2011/12) data".

- 1 A. Yes.
- 2 Q. The first input into this box is the regulatory  
3 financial statements, so that is the RFS that we were  
4 talking about.
- 5 A. Correct.
- 6 Q. Then, in addition to that, you have got "BT information  
7 requests". So you provide the regulatory financial  
8 statements but information requests in addition may be  
9 made to you in relation to data; is that correct?
- 10 A. Yes. So typically Ofcom would use their powers under  
11 section 135 of the Comms Act and they would ask for more  
12 detail than is in the regulatory financial statements so  
13 that they can drill down into particular cost centres or  
14 whatever they are interested in. You know, in this  
15 particular case, it would have been -- probably hundreds  
16 of separate questions would have been asked about  
17 different, you know, management -- it could be  
18 management information, it could be anything here.
- 19 Q. So you are already starting with quite a voluminous  
20 piece of information in the regulatory financial  
21 statements but then Ofcom drills down to get a more  
22 refined take on different entries in that --
- 23 A. Correct.
- 24 Q. -- magnum opus?
- 25 A. Hmm-hmm.

1 Q. Yes, okay.

2 Then -- I think we have already touched on this --  
3 you have got a greeny-pink box which indicates that the  
4 regulator can then make adjustments to the base year  
5 costs. Those adjustments, they will vary depending on  
6 the charge controls so they might, for example, involve  
7 aligning costs with a particular basket of services  
8 subject to a price control. That would be one thing  
9 that they might do?

10 A. Yes, but more generally there would be cost exclusions  
11 where Ofcom do not consider the costs to be relevant  
12 when set with an economic price, so a typical example  
13 would be, when we pay pension deficit payments, Ofcom do  
14 not consider that to be a going forward economic cost of  
15 running that business so they exclude it. So it is  
16 those sorts of adjustments.

17 Q. Then just below the mixed box, you have got a pink box,  
18 which is the model that has been developed through these  
19 inputs then calculates the base year costs. It is  
20 a complicated calculation but it is a mechanistic  
21 calculation that is based on the RFS subject to those  
22 adjustments; is that correct?

23 A. Correct.

24 Q. So this may be stating the bleeding obvious, as it is  
25 technically known, but if the RFS data was different but

1 the adjustments remain the same, then the output in the  
2 first pink box will be different?

3 A. Correct.

4 Q. Yes. Now, you have explained in your witness statement  
5 that once Ofcom had base year costs, then it considered  
6 a range of other factors, like volume and productivity  
7 and inflation, to generate forecast efficient costs  
8 based on BT's fully allocated costs. That is correct,  
9 is it not?

10 A. That is correct.

11 Q. We can actually see that in the diagram that we were  
12 looking at before because, after the base year costs  
13 calculation, we see an arrow pointing towards "Cost  
14 forecast for each basket". When it refers to "basket",  
15 it means a group of services. That is correct, is it  
16 not?

17 A. Yes, so typically what Ofcom will do is they will set  
18 a control group of services and we have to maintain --  
19 overall we have to reduce the revenue by a certain  
20 amount against that basket of services, so it might be  
21 connections with rentals combined or it could be  
22 different variants, you know, different speeds of leased  
23 lines in this case, ethernet -- leased lines in this  
24 case, yes.

25 Q. Also pointing to that box that refers to the cost

1 forecast for each basket are "Other assumptions". We  
2 see there "Efficiency", "Cost elasticities", "Weighted  
3 average cost of capital" and "Asset price changes". So  
4 those are the sorts of assumptions or assessments that  
5 would be made by Ofcom that would feed into this  
6 calculation?

7 A. Correct.

8 Q. Correct. Then it is not just that. You also see,  
9 coming at that pink box from the top, "Volume  
10 forecasts", so assumptions are being made about the  
11 overall volume of particular services?

12 A. Correct, and then from those -- they work out what the  
13 volume of the services are, so let us say the service in  
14 question was a leased line, just for the sake of  
15 argument -- they work out, "Well, we think there is  
16 going to be 1,000 leased lines", and then they convert  
17 that into components. So they would say, "Each leased  
18 line uses one fibre, therefore that is 1,000 fibres that  
19 you are going to need". Now, the cost would be the  
20 component. So it is quite a complicated sort of  
21 translation they had to do, lots and lots of judgment  
22 involved and what-not, yes.

23 Q. But what they are doing is they are drilling down into  
24 all of these things --

25 A. Yes.



- 1 Q. -- in some detail, yes.
- 2 So all of these assumptions are combined into this
- 3 so that you get essentially a forecast of costs and then
- 4 that cost forecast is combined with revenue forecasts
- 5 for each basket, which is the third pink box?
- 6 A. Yes.
- 7 Q. Then it is using those calculations in the model, using
- 8 those inputs, that generates the value of X that Ofcom
- 9 wants to impose; that is correct?
- 10 A. Yes.
- 11 Q. So looking at the model as a whole, it would be right
- 12 that if any one particular input changed but all of the
- 13 others stayed the same, then that would feed through
- 14 into an effect on X generated by the model?
- 15 A. Yes, but it would not necessarily be the same size as
- 16 the input is the problem. I mean, that is -- the
- 17 generalised issue here is that if you put, let us say,
- 18 a million pounds in on the left-hand side, you do not
- 19 necessarily get a million pounds out on the right-hand
- 20 side. That is really the issue.
- 21 Q. Well, X, of course, is not actually a sum, is it?
- 22 A. No.
- 23 Q. It is a percentage, so --
- 24 A. What I mean is if you put an extra million pounds of
- 25 cost in in the left-hand side, you are not necessarily

1 going to get a million pounds more revenue to recover  
2 that cost on the right-hand side because of, you know,  
3 the assumptions about efficiency, cost elasticities,  
4 inflation as price changes and volume forecasts.

5 Q. So what you are saying is there can be an  
6 interrelationship between different elements in the  
7 model?

8 A. Yes.

9 Q. That if you change one part of it, that could  
10 potentially have an impact on another part which in turn  
11 then changes what X is?

12 A. Yes.

13 Q. Let us for the moment just hypothesise that there is no  
14 interrelationship between one change in input --

15 A. Okay.

16 Q. -- that would then just work through into a change in X

17 A. Yes. It would flow through.

18 Q. Thank you. Let us just go back to glidepath controls  
19 for a minute. Glidepath controls were not used in all  
20 circumstances. We have talked about the predisposition  
21 of Ofcom to using them but they tended to be used more  
22 when a service was mature and so future costs could be  
23 forecast with less error; is that fair?

24 A. Yes.

25 Q. At paragraph 4.29 of your statement, {D/11/19}, you

1 identify some reasons why Ofcom's forecast costs might  
2 not in the end reflect actual cost movements. Do feel  
3 free to turn that up, please. I am only going to ask  
4 you one or two questions about these very, very briefly.  
5 But it is not your evidence, is it, that -- in fact  
6 forecast costs might not, in the end, reflect actual  
7 costs is in and of itself a factor that affects the  
8 price cap because a difference between forecast and  
9 actual is inherent in the whole model?

10 A. Correct.

11 Q. So it is the forecast costs, and at (i) in 4.29,  
12 {D/11/19}, you talk about issues concerning recruitment  
13 of new engineers as being something that might affect  
14 the cost movements; is that right? I am somewhat  
15 reducing that paragraph, but that is broadly what you  
16 are talking about?

17 A. Yes.

18 Q. But the engineers you are talking about -- you are not  
19 talking about mechanical engineers, you are talking  
20 about telecoms engineers, are you not?

21 A. That is correct, yes.

22 Q. So that is not relevant for trucks and --

23 A. No.

24 Q. Thank you. Then, at (ii), you are saying essentially  
25 that there were no mechanisms for over-recovery and

1           there was not some sort of benefit sharing. The cap in  
2           question you were talking about there would be supposed  
3           to be a target; is that fair?

4           A. Yes, so Ofcom's -- one of Ofcom's objectives is to  
5           encourage us to be efficient and therefore they say, "We  
6           think this is a reasonable level of cost for what we  
7           expect you to be providing. If you do better and  
8           innovate, well, that is all good and then the next time  
9           round we will re-adjust the start base and everybody  
10          wins, it is a win/win for everyone". So that is one of  
11          the reasons why they like charge control. They are not  
12          really after saying, "I want you to recover £100  
13          million". They are saying, "Here is a target. Go and  
14          beat it", and sometimes you do not beat it. Sometimes  
15          you are deficient, but, you know, the incentive is on  
16          you to innovate and try to be more efficient, yes.

17          Q. That part of the charge control, that concept within the  
18          charge control, that would be true whatever level you  
19          set the particular price cap at?

20          A. Yes.

21          Q. Then in (iii) you are talking about assumptions on  
22          volumes, inflation and efficiency. Those are inputs to  
23          the model we have just looked at and they could affect  
24          the level of the price cap for the reasons we have just  
25          been talking about; is that right?

1 A. Yes. These -- the assumptions that Ofcom made tended to  
2 be the issues which we had most to say about in response  
3 to the public consultations and even appeals of their  
4 decisions, where we thought that they had made the call  
5 wrong because the evidence did not support what they  
6 said. So these adjustments are not -- they are  
7 contentions rather than being things that everybody  
8 agrees they should make.

9 Q. Just to be clear, these assumptions are applied by Ofcom  
10 after the stage we saw about identifying the costs  
11 through the regulatory financial statements?

12 A. Yes.

13 Q. So these assumptions come afterwards. I see.

14 A. It is the regulatory judgment they apply when they set  
15 the prices.

16 THE CHAIRMAN: Did you just refer to public consultation?

17 A. Yes.

18 THE CHAIRMAN: What did you mean by that?

19 A. So every charge control that Ofcom -- when they set  
20 a price, they say, "Here is the reason I am doing it"  
21 and you have got SMP or whatever it happens to be. So  
22 they do a market review, they define what the product or  
23 service market is, they say, "We have got market power",  
24 they then say, "Is it reasonable to set your prices or  
25 your price controls? Could you be abusive?" or

1           whatever, and they set the price control. Then, when  
2           they are setting the prices, they go to a public  
3           consultation and say, "This is the modelling we have  
4           done, here are all the adjustments we made to the base  
5           year, here is what we are assuming about efficiency,  
6           here is what we are assuming about volumes", and all the  
7           stakeholders, including Openreach, would respond and say  
8           whether they agreed or disagreed with Ofcom's judgment  
9           call in each case.

10          THE CHAIRMAN: Other people even outside of BT can respond  
11           to that --

12          A. And they do.

13          THE CHAIRMAN: -- as to whether they are approaching it in  
14           the right way?

15          A. And they do.

16          THE CHAIRMAN: I can imagine.

17          A. You can imagine, like it is an existential issue --

18          THE CHAIRMAN: It is a hot issue, yes.

19          A. -- for quite a number of businesses. Right, yes.

20          THE CHAIRMAN: Right. Okay.

21          A. So it is quite a rigorous process and well -- I mean, to  
22           be fair to Ofcom, it is a big job that -- they do  
23           discharge it --

24          THE CHAIRMAN: Then you have the opportunity to appeal its  
25           decision ultimately?

1 A. Correct, yes.

2 THE CHAIRMAN: You did sometimes do that?

3 A. We did and also others did, so Sky, TalkTalk and  
4 Vodafone.

5 MR BEARD: Yes, Mr Nicholson and I are familiar with some of  
6 those appeals indeed.

7 A. Yes.

8 Q. If I may, I am going to stray into a ludicrous  
9 hypothetical world for a moment, but let us for a moment  
10 assume that BT did in fact pay some sort of overcharge  
11 in relation to the trucks that it is purchasing.

12 A. Hmm-hmm.

13 Q. You understand that what the experts are trying to work  
14 out is whether BT's prices would have been lower in  
15 a counterfactual scenario where the cost of trucks would  
16 have been lower -- you understand that is what the  
17 experts --

18 A. That's correct.

19 Q. Yes, I am not asking you for your opinions on that --

20 A. Yes, yes.

21 Q. -- just to be clear.

22 Now, your evidence is that you did not know about  
23 any alleged overcharge and you had no reason to think  
24 that anyone else within BT had any reason to know about  
25 an alleged overcharge; that is correct?

1 A. That is correct.

2 Q. So in the counterfactual scenario there is no reason to  
3 think that anybody in BT would have taken a different  
4 approach to pricing, is there?

5 A. Correct.

6 MR BEARD: I do not have any further questions for  
7 Mr Nicholson.

8 THE CHAIRMAN: The counterfactual scenario that you are  
9 talking about is where there is no overcharge?

10 MR BEARD: No, it is where there is an overcharge.

11 THE CHAIRMAN: Where there is.

12 A. Sorry, where there is an overcharge I think --

13 MR BEARD: Sorry, the counterfactual scenario is where there  
14 is no overcharge.

15 THE CHAIRMAN: Yes.

16 MR BEARD: The hypothetical is that there is an overcharge.

17 We are not accepting --

18 THE CHAIRMAN: The hypothetical or the counterfactual only?

19 MR BEARD: No, because we are not accepting there is any  
20 overcharge and therefore I am putting this forward on  
21 a hypothetical basis. In that hypothetical world the  
22 counterfactual is then no overcharge, which is what  
23 I was putting to Mr Nicholson, which I think he has  
24 answered in relation to that.

25 THE CHAIRMAN: It is either something you knew about or it



1           was not happening.

2       MR BEARD: Well, he did not know about it and --

3       THE CHAIRMAN: Sorry, he did not know about it, yes.

4       MR BEARD: -- therefore the question I was asking, whether  
5           it had any impact on his approach to pricing, and he  
6           answered no, so I have no more -- sorry, I know it is  
7           a tortured double hypothetical --

8       THE CHAIRMAN: I think I understand, yes.

9       A. I suppose the point that I was trying to make was that  
10           I do not think if we had -- I do not think that, absent  
11           the overcharge, the prices would have been any  
12           different. That is really what I am saying.

13       MR BEARD: That issue is one for experts.

14       A. Sorry?

15       MR BEARD: That issue is one for the experts.

16       A. Yes, of course.

17       MR BEARD: Yes, thank you.

18       THE CHAIRMAN: Any re-examination?

19       MR WARD: Just one brief topic, if I may.

20                           Re-examination by MR WARD

21       MR WARD: Mr Nicholson, you were talking about the public  
22           consultation that takes place on each of these charge  
23           controls and you explained that stakeholders contribute  
24           to those consultations and you said it is an existential  
25           issue for some of those stakeholders. Now, we know that

1 Openreach is essentially a wholesale supplier and I am  
2 sure I am only saying things that are absolutely common  
3 ground here, but it supplies wholesale to various other  
4 broad -- retail providers like Sky and TalkTalk and  
5 others in the market.

6 A. Yes.

7 Q. Can you just give a little bit more sense of what you  
8 mean by "existential issue for them"? What is their  
9 interest in the consultation?

10 A. So if you took the example that we discussed, which was  
11 the leased lines charge control, there are probably 70  
12 or 80 communication providers who buy those services  
13 from Openreach. Some of them will be providing business  
14 services, so connecting up computer services for  
15 a company, for example -- yes? -- and if the price were  
16 to be very high or the price was to go up, for example,  
17 they will have done long-term contracts based on their  
18 assumption about what is going to happen in the future.  
19 That could very easily affect their viability. That is  
20 an example. That is a very extreme example -- right?

21 But, more generally, the bigger players, so that  
22 would be people like Sky or TalkTalk and Vodafone,  
23 because these are services they lease from BT, they do  
24 not see them as services that they can -- the cost that  
25 they can control and the way that they attempt to

1 control them is by responding to and hobbling Ofcom.

2 Q. So forgive me for asking you a question that is both

3 open and -- well, what view do they take of the pricing

4 that should be imposed for BT going forwards?

5 A. You mean generally?

6 Q. Yes, is there any way one can generalise it?

7 A. Generally they want the lowest possible price -- yes? --

8 and the highest possible level of service. Just like

9 I do, I suppose.

10 MR WARD: I do not think anyone is too surprised by your

11 answer. Thank you very much.

12 THE CHAIRMAN: Sounds like rational behaviour to me.

13 Thank you very much, Mr Nicholson.

14 A. Thank you.

15 (The witness withdrew)

16 THE CHAIRMAN: 10-minute break?

17 MR BEARD: I think we are finishing early for today, because

18 I think Mr Jeavons is going to be 10.30 tomorrow

19 morning.

20 THE CHAIRMAN: Is that okay for finishing by lunchtime?

21 MR BEARD: Yes, I think we are pretty confident we can do

22 that. If Mr Jeavons -- in terms of our questions, yes,

23 we think that is right. We can never predict the

24 answers of the witness.

25 THE CHAIRMAN: You cannot say what is going to happen up

1           here.

2           MR BEARD: No, that is obviously true. No, I meant actually  
3           for the witness rather than necessarily the tribunal.

4           THE CHAIRMAN: All right. 10.30 tomorrow then.

5           (2.55 pm)

6                               (The hearing adjourned until  
7                               Friday, 6 May 2022 at 10.00 am)

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10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX

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

MR RUSSELL PEATEY (affirmed) .....2

    Examination-in-chief by MR WARD.....2

    Cross-examination by MR BEARD.....2

    Questions by THE TRIBUNAL.....66

MR LIAM NICHOLSON (affirmed) .....70

    Examination-in-chief by MR WARD.....71

    Cross-examination by MR BEARD.....72

    Re-examination by MR WARD.....104

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8