

This Transcript has not been proof read or corrected. It is a working tool for the Tribunal for use in preparing its judgment. It will be placed on the Tribunal Website for readers to see how matters were conducted at the public hearing of these proceedings and is not to be relied on or cited in the context of any other proceedings. The Tribunal's judgment in this matter will be the final and definitive record.

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

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

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

Wednesday 11 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**

---

**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)

Wednesday, 11 May 2022

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

(10.30 am)

THE CHAIRMAN: Good morning.

MR BEARD: Good morning, sir. Good morning, members of the tribunal.

We are now moving on to the witness evidence from DAF and, unless there are other matters that the tribunal wants to deal with or Mr Ward has other matters, I think I will simply call Mr Habets, who is the first witness.

THE CHAIRMAN: Yes. Nothing from us, so please proceed.

MR BEARD: Mr Habets.

MR JOS HABETS (affirmed)

THE CHAIRMAN: Thank you, Mr Habets. Please sit down and make yourself comfortable.

I see there are some files there. I assume they are for you.

Examination-in-chief by MR BEARD

MR BEARD: I think they have been provided by BCLP. The slim file, I am guessing, has a hard copy of your witness statement in.

A. Yes.

Q. The other file has documents in that Mr Ward may want to take you to but I have not seen that so I do not know.

If we could just call up bundle {D/IC23}. Although

1           it is a confidential document, I am only going to go to  
2           non-confidential pages.

3           Mr Habets, you have given a witness statement in  
4           these proceedings. Can you see the front page of it on  
5           your screen?

6           A. Yes, I can.

7           Q. Can we go to page 24 in this bundle, please,  
8           {D/IC23/24}? Is that your signature, Mr Habets?

9           A. That is my signature.

10          Q. Is this your witness statement?

11          A. This is my witness statement.

12          Q. It is true to the best of your knowledge and belief?

13          A. It is true to the best of my knowledge.

14          MR BEARD: Thank you very much. I do not have any questions  
15                   for you. Mr Ward will and the tribunal may as well. If  
16                   at any point you want to refer to information you  
17                   consider confidential in an answer, please do indicate  
18                   and we can make arrangements for the confidential  
19                   information to be provided only to those who are within  
20                   a confidentiality ring. Thank you.

21          THE CHAIRMAN: Now Mr Ward will have some questions for you,  
22                   Mr Habets.

23          A. Okay.

24          MR WARD: I should just say, before I do, I have no  
25                   intention of opening any confidential material today.

1 THE CHAIRMAN: Good.

2 Cross-examination by MR WARD

3 MR WARD: Good morning, Mr Habets.

4 A. Good morning.

5 Q. You explain in your witness statement that you are  
6 operations director of DAF Trucks NV and that you have  
7 been in that company since 1998.

8 A. That is all correct.

9 Q. You have had a variety of roles, including business  
10 economics and finance director?

11 A. That is correct.

12 Q. So would it be fair to say all your roles in the company  
13 have been on the sort of financial side of the business?

14 A. My whole career was within finance until 2017.

15 Q. Now, if we could turn up your statement, please, and go  
16 to page 4, {D/IC23/4}, at paragraph 12, you say:

17 "I was involved in, or responsible for, the setting  
18 of standard MLO costs for DAF NV from 2000 ... until  
19 2017 when I left my role as Finance Director."

20 Then you explain at 14 that:

21 "DAF NV sets standard MLO costs per component, per  
22 plant on an annual basis ... The standard MLO cost of  
23 a truck is the sum of the standard MLO cost for all of  
24 the components that make up that truck, ie the chassis  
25 and the options that can be selected via the

1 configurator."

2 Just for the tribunal's note, this is the measure of  
3 cost that both experts have used in the econometric  
4 analysis as a measure of variable cost.

5 Then you say at paragraph 15:

6 "DAF NV calculates the MLO margin of a truck sale by  
7 deducting the standard MLO cost ... from the revenue,  
8 alternatively referred to as 'net revenue' [but] ...  
9 Since 1998, when I started working at DAF NV, standard  
10 MLO cost has been ... the reference for margin  
11 calculations by the Board and PACCAR."

12 So for the board and for PACCAR and for DAF NV,  
13 standard MLO is the important measure of cost, is it  
14 not?

15 A. That is correct.

16 Q. You explain how it is calculated over about seven pages  
17 of your statement but I do not need to ask you any  
18 questions about that.

19 What I want to ask you about, though, is a different  
20 measure, IKP, which you talk about on page 5, if we  
21 could go to that, please, {D/IC23/5}. At paragraph 20  
22 you explain:

23 "IKP ... is calculated through the application of  
24 a fixed surcharge percentage to the Mainframe MLO Cost  
25 ... the IKP Surcharge varies between truck series and

1 was generally fixed annually. IKP cost is therefore  
2 a product of MLO cost."

3 So you start with MLO and then you add a percentage  
4 surcharge to get IKP; is that right?

5 A. That is correct.

6 Q. Then at paragraph 21 you say:

7 "DAF NV has not generally provided MLO cost data to  
8 its local sales units."

9 A local sales unit would be, for example, DAF UK,  
10 would it not?

11 A. That is correct.

12 Q. "The local sales units work on the basis of IKP cost  
13 data."

14 Strictly IKP is costs plus surcharge, is it not?

15 A. That is correct.

16 Q. "... local sales units' margin targets were, and still  
17 are, set by reference to IKP cost."

18 A. That is correct.

19 Q. If we could move forward now to page 14, {D/IC23/14},  
20 you explain how this mandate system works. You say at  
21 paragraph 57:

22 "During my time at DAF NV, IKP cost has been of  
23 limited relevance to decision making outside of the  
24 Marketing & Sales Department of DAF NV and the local  
25 sales units. In particular, PACCAR has never been

1 interested in IKP costs. For PACCAR, MLO has always  
2 been the relevant ... measure."

3 So what we are seeing here is that the senior  
4 decision-makers are interested in MLO cost but lower  
5 down the chain IKP is used for margin targets; is that  
6 right?

7 A. That is correct. We hid the actual cost from the sales  
8 units as we thought they didn't need to know the actual  
9 cost.

10 Q. We will come on to that in a bit more detail in  
11 a minute. We can see you summarise how the mandate  
12 structure works in paragraph 58. For the tribunal's  
13 note, we are talking to Mr van Veen about this too  
14 later, but in summary we see:

15 "... IKP is of relevance to DAF's mandate structure,  
16 which dictates which level within the PACCAR Group has  
17 authority to approve a particular transaction. The  
18 mandate structure is based on volume and margin  
19 thresholds. If the anticipated margin of a transaction  
20 is a certain level below the target margin, then that  
21 triggers an escalation to the next approval level. The  
22 local sales units' mandates were (and still are) defined  
23 using percentage deviations from IKP-based target  
24 margins."

25 So just to make sure we understand how this works,

1           you start with the MLO cost, you add a surcharge to get  
2           IKP --

3       A.   That is correct.

4       Q.   -- then in a sense what you do is challenge the local  
5           sales units to achieve a certain margin over and above  
6           the IKP?

7       A.   That is correct.

8       Q.   If they want to transact at lower than that margin  
9           threshold, then they have to escalate it?

10      A.   That is also correct.

11      Q.   Okay.  I would like to look on the next page where you  
12           talk about the calculation and use of IKP costs.  At 61,  
13           {D/IC23/15}, you say:

14                 "When I first joined DAF NV ... the purpose of IKP  
15                 was to cover costs that were not included in MLO, such  
16                 as SE&A ..."

17                 What is "SE&A"?

18      A.   "SE&A" stands for "sales, engineering and administrative  
19           overhead expenses".

20      Q.   "... and warranty costs.  The IKP Surcharge was  
21           calculated to cover these costs ... to calculate a more  
22           complete cost measure ...

23                 "However [you say at 62] this soon changed.  I would  
24                 say that by around 2003 on 2004, there ceased to be any  
25                 detailed cost calculations behind the IKP Surcharge,



1           although it was still used to set IKP cost. [It] was no  
2           longer a reflection of the costs that DAF NV actually  
3           incurred: it became an instrument by which DAF NV tried  
4           to steer local sales units to negotiate higher ...  
5           prices."

6                        So we have still got MLO cost, we have then got  
7           a surcharge, but the surcharge is no longer based on  
8           a cost measure.

9           A. That is correct.

10          Q. So would it be right, then, to say that it is more  
11          a matter of commercial judgment at that point?

12          A. The IKP surcharge was more something which marketing  
13          sales decided upon. There was no real content behind it  
14          anymore. It was a relic from DAF before the bankruptcy.  
15          PACCAR was not interested at all in IKP margins or what  
16          we did with them.

17          Q. So I think what you just said is that it was marketing  
18          and sales that decided on that, on the level of the IKP  
19          surcharge?

20          A. Yes, yes. We allowed them at least to have a say in  
21          that in the end. I approved the use of the percentage  
22          but we had them have a say in that.

23          Q. I see. So they put forward the proposed percentage to  
24          you?

25          A. From what I remember, they liked to keep the IKP at

1 a constant level and so, if MLO would come down let us  
2 say by 1% because of cost reductions, they would  
3 increase the MLO of the IKP surcharge with 1% so the IKP  
4 cost level for the sales unit stayed at the same level.  
5 For many years we realised cost reductions and to make  
6 them not visible towards marketing and sales. The IKP  
7 percentage was increased to keep that at a flat level.

8 Q. I will come on to that, if I may, in a little more  
9 detail in a moment. But if the marketing and sales team  
10 are in a sense proposing the level of the IKP surcharge,  
11 would that involve the director of the marketing and  
12 sales team?

13 A. Yes, it would, and the percentage -- they look at the  
14 IKP level and they did not want to pass on cost  
15 reductions and their input on the percentage gain.

16 MR RIDYARD: Mr Ward, sorry to interrupt you, just  
17 a clarification. When you talk about marketing and  
18 sales team, who are they and where do they sit?

19 MR WARD: Yes. Sorry, Mr Habets. I was going to suggest --

20 A. It would be the board member responsible for marketing  
21 and sales.

22 MR RIDYARD: So this is at head office level?

23 A. Yes.

24 MR RIDYARD: Thank you.

25 MR WARD: So, for example, Kerry McDonagh was --

1 A. For example, Kerry McDonagh, and they would not really  
2 discuss the percentage but more the effect of what would  
3 happen to IKP.

4 Q. Then you were asked to approve it, but they were the  
5 ones who essentially devised the level?

6 A. Their input was that they wanted to keep IKP constant  
7 deliberately to not pass on cost reductions towards the  
8 organisation and then recalculate it -- because cost  
9 reductions were 2%, we needed to increase the percentage  
10 by 2% to get to that flat level.

11 Q. I would like to pick that up in your witness statement  
12 and just make sure we have got this -- be as specific as  
13 we can, please. If we can go to page 15, paragraph 63,  
14 {D/IC23/15}, you say:

15 "The main reason for this change was that management  
16 of DAF NV did not want the local sales units, or the  
17 individuals within the Marketing & Sales Department ...  
18 to be aware of any cost reductions ..."

19 So when we are talking about the management, do you  
20 mean, for example, the director of M&S, Mr McDonagh,  
21 that we were just talking about?

22 A. That is correct, but also our general manager was of the  
23 opinion that cost reductions should not be visible for  
24 sales people.

25 Q. Fine, and the idea of that was to drive up their prices,

1 in effect?

2 A. To realise as best as possible sales prices.

3 Q. Then you say, if we look over the page, {D/IC23/16} --

4 this is -- in the same paragraph of your witness

5 statement this is a point you have already alluded to:

6 "... at a certain point, IKP cost could only be  
7 increased, because any increase in MLO cost would be  
8 reflected in an increase in IKP cost, but if there was  
9 a decrease in MLO cost, we would offset it by increasing  
10 the IKP Surcharge."

11 When you say "at a certain point", is that around  
12 the same time, 2003/2004, when the IKP margin was  
13 introduced?

14 A. The IKP -- I do not know whether that was exactly 2003  
15 or 2004. Marketing and sales used IKP for the entire  
16 period, I remember.

17 Q. So you cannot say exactly when it was that there was  
18 this surcharge -- sorry, this approach to costs was  
19 introduced?

20 A. I do not know the exact date.

21 Q. You do not know.

22 THE CHAIRMAN: Can I just ask, you said that you wanted IKP  
23 to remain constant or that was the object --

24 A. Yes.

25 THE CHAIRMAN: -- but yet, if MLO costs increased, you would

1 increase the IKP as well?

2 A. Yes, generally we did because the increase of MLO cost  
3 typically was for well-known reasons, where the sales  
4 units had argument(?) towards their customers too and  
5 then we handed it on to them.

6 THE CHAIRMAN: So it would increase if MLO costs increased  
7 but not if MLO costs reduced?

8 A. Correct.

9 MR WARD: So, in effect, if costs went down, the marketing  
10 and sales team would use IKP to keep prices up? In  
11 other words, you would have tried to avoid passing on  
12 the falling costs; is that fair?

13 A. That is correct, yes.

14 Q. The overall effect is IKP stays the same but there is  
15 less cost and there is more surcharge in the IKP?

16 A. That is correct.

17 Q. So that would mean more profit in effect?

18 A. Profit is depending on revenue. It has nothing to do  
19 with cost.

20 Q. All right. But in any event you end up with less cost  
21 and more surcharge in the IKP?

22 A. Correct.

23 Q. But then, if costs rose, you would keep the surcharge  
24 steady, total IKP would rise and the idea would be to  
25 pass on all of the costs while retaining your margin?

1 A. That is correct.

2 Q. So that meant that cost changes became a kind of one-way  
3 bet, did they not?

4 A. That is correct.

5 Q. At 64, {D/IC23/16}, you say:

6 "In my early years [second line] at DAF NV, we could  
7 make a profit on IKP cost, but as our margins got lower,  
8 it reached the point where almost every truck was loss  
9 making against IKP ..."

10 But you are not saying loss making just below the  
11 IKP level?

12 A. Correct.

13 Q. Because you say at the bottom of that paragraph:

14 "I can remember being asked by somebody from  
15 Marketing & Sales whether we really made a loss on all  
16 those trucks and explaining that was not the case."

17 A. This is correct.

18 Q. So there was, in a sense, some erosion of IKP, if you  
19 like, but it was still successful at ensuring the trucks  
20 were profitable?

21 A. I am not sure it was successful in ensuring that we  
22 realised higher sales prices. It was a push towards the  
23 sales organisation to stimulate them to realise as high  
24 a price as possible and we showed them a very high cost  
25 price, which at some point was so high they could only

1 realise negative margins.

2 MR RIDYARD: I am just a little confused by the reference to  
3 "Marketing & Sales" at the end of paragraph 64 because  
4 I thought earlier you said that marketing and sales was  
5 the entity behind this calculation or this approach to  
6 IKP, so why was someone in marketing and sales confused  
7 about whether sales were profitable because they  
8 presumably knew that the IKP margin had been inflated  
9 through this upward-only process?

10 A. Yes, yes, they knew that. At some point it did not work  
11 anymore. I would say marketing and sales chose to still  
12 have that metric, IKP, as their mandate structure metric  
13 and by that time all the IKP margins were negative, yes.

14 MR RIDYARD: Yes, I can see how someone in the UK business  
15 might be confused by what was going on because they were  
16 the ones being told the IKP number and then they must  
17 have known their prices were often below, so I can see  
18 them asking you that question, but someone in marketing  
19 and sales should not have asked you that question  
20 because they must have known why it was possible to  
21 sustain negative IKP margins.

22 A. I think at some point everybody knew that IKP was  
23 a hugely inflated number which was far off reality.

24 MR RIDYARD: Okay.

25 A. The board of management at DAF or PACCAR never talked

1 about IKP. Nobody was interested in it.

2 MR WARD: Are you able to help us with roughly when that was  
3 that it became just widely known?

4 A. It was a gradual process. Over time it grew away  
5 further and further from reality.

6 Q. Are you talking about the last ten years, for example?

7 A. Yes, 10/15 years. With the takeover of PACCAR, IKP lost  
8 its relevance and it was kept within marketing and sales  
9 because they wanted to keep the system working as they  
10 had it. In the board we never had discussions on that.  
11 It was something the way marketing and sales wanted to  
12 manage the business and manage the sales subsidiaries.

13 THE CHAIRMAN: When was the takeover by PACCAR? That was in  
14 the 1990s, was it not?

15 A. November 1996.

16 THE CHAIRMAN: Okay. You are saying from that time on it  
17 lost its relevance?

18 A. Yes, yes. PACCAR never asked about IKP and at that  
19 moment it still was, I think, a correct measure. A few  
20 years later it was still correct and then at some point  
21 it became -- it grew away from reality.

22 THE CHAIRMAN: Even though it was still used?

23 A. It was used only within marketing and sales. At the  
24 board level nobody knew about it, talked about it.

25 MR WARD: Just to be clear about the timeline in the light



1 of the chairman's question, PACCAR took over the  
2 business in the 1990s but the IKP surcharge was  
3 introduced in 2003/2004? That is what you said earlier.

4 A. No, no, that is incorrect. The IKP surcharge we had for  
5 decades.

6 Q. I am so sorry. You are quite right. Just let me put my  
7 question again. I was trying to clarify and actually  
8 managed to sow confusion. It was in 2003/2004 that you  
9 said there ceased to be any detailed cost calculations  
10 and that was the point where marketing and sales were  
11 adding this margin that was not related to -- this  
12 surcharge that was not related to costs?

13 A. That is correct. In the first years we still had  
14 detailed calculations behind it and we kept the system  
15 alive and I think at some point we realised cost  
16 reductions, and marketing and sales said, "Let us not  
17 pass them to IKP and let us increase the percentage to  
18 keep IKP flat".

19 MR WARD: Thank you. I have no more questions.

20 Questions from THE TRIBUNAL

21 SIR IAIN MCMILLAN: If we could go further on to  
22 paragraph 71 on your statement, {D/IC23/17}, if you go  
23 to the last sentence of paragraph 71:

24 "As soon as we have done the deal, we immediately  
25 lock in the actual exchange rate through a forward

1 contract."

2 That seems fairly clear, but if I could just have  
3 a little more clarity about that. That referred to the  
4 sale price to, for example, Royal Mail and BT? The  
5 forward contract would lock in the sales price?

6 A. Yes, that is correct.

7 SIR IAIN MCMILLAN: Presumably to protect DAF against  
8 adverse exchange rate risk?

9 A. Yes.

10 SIR IAIN MCMILLAN: Did you also lock in the costs to the  
11 two-way route from the euro to the pound sterling and  
12 back to the euro in terms of costs?

13 A. That is correct. We looked at the net position so if --

14 SIR IAIN MCMILLAN: Thank you very much. Just one more  
15 question. Presumably the tender amount -- when you  
16 responded to the tender, there would be an assumption  
17 about the exchange rate at that point in time but there  
18 would still be some exchange rate risk between the  
19 submission of the tender and the lock-in when the tender  
20 was accepted?

21 A. That is fully correct. There was a remaining exchange  
22 rate which, yes -- but over many years the pound  
23 sterling was a relatively stable currency and so that  
24 was overseable and accepted.

25 SIR IAIN MCMILLAN: Thank you very much.

1 THE CHAIRMAN: Can I just come back to the IKP?

2 A. Yes.

3 THE CHAIRMAN: You said that it was of no relevance to the  
4 board.

5 A. That is correct.

6 THE CHAIRMAN: When you say "the board", you mean the PACCAR  
7 board --

8 A. The DAF board, the PACCAR board.

9 THE CHAIRMAN: So the bodies that were making the ultimate  
10 decisions?

11 A. That is fully correct.

12 THE CHAIRMAN: But the marketing and sales director  
13 presumably sat on that board?

14 A. Yes.

15 THE CHAIRMAN: So the IKP percentage, the surcharge was  
16 fixed at that level, at the board level?

17 A. More or less, yes. We fixed the percentage for the  
18 year. Typically on a brief discussion, "Let us keep it  
19 stable", and the percentage needs to increase from 26%  
20 to 27% in order to achieve that, and then we agreed that  
21 we would use 27% for the new year.

22 THE CHAIRMAN: So it was looked at by the board each year  
23 even though the board thought it was an irrelevant --

24 A. No, it was not the entire board. It was me and the  
25 director of marketing and sales.

1 THE CHAIRMAN: Right. To what extent does this correlate  
2 with the gross list prices?

3 A. There is no correlation at all.

4 THE CHAIRMAN: Right.

5 A. No correlation at all.

6 THE CHAIRMAN: Okay.

7 A. It also went in strange negative margins on every deal  
8 at some point. Also marketing and sales people started  
9 asking, "How is this possible, that we can lose money on  
10 every truck?", and that did not happen, so also they  
11 knew it was a very artificial metric, and we set target  
12 margins which already were negative so they were not  
13 even supposed to achieve a positive IKP margin. It was  
14 an old system kept alive for no reason, I say. PACCAR  
15 maybe had discussions on it, they dropped the entire  
16 system, moved to MLO. PACCAR -- all of the subsidiaries  
17 of PACCAR only use MLO.

18 MR RIDYARD: Just as a follow-on to that question, if in one  
19 particular year the board decided, just hypothetically,  
20 it wanted to -- let us say it wanted to increase market  
21 share and was prepared to be a bit more aggressive on  
22 price and increase market share, how would it go about  
23 implementing that kind of policy at the national  
24 sales -- national divisional level? What would be the  
25 mechanism whereby it would decide, "This year we are

1 going to be chasing a bit of market share and having  
2 lower margins"?

3 A. I think every year we had the ambition to increase our  
4 market share and there was -- every country had a market  
5 share target for the new year and they tried to achieve  
6 that. What you also see is over the years more and more  
7 special discounts reclass(?) came in. In early 2000s  
8 the sales units could do a lot of deals within the  
9 mandate structure. At some point they needed to ask for  
10 approval from us for almost every deal, and they did and  
11 they got the approval.

12 MR RIDYARD: I am interested in the mechanism whereby that  
13 ambition would be transferred to the national -- to the  
14 local operation. Would it not be through saying --  
15 would it be through being more generous when it came to  
16 getting deals approved at head office or would it be  
17 through some other mechanism which would sort of send  
18 a signal to the operating divisions that they could  
19 chase market share by cutting margins? How would that  
20 be implemented at a national level?

21 A. I think more important than a margin goal was a market  
22 share goal, and we at least wanted to keep the share we  
23 had and we had an ambition to grow the share every year,  
24 and the margins which we could realise were part of the  
25 market and the competitive world around us, so we would

1 drop margins if competitors -- drop our prices when  
2 competitors would do it to first hold on to a share and,  
3 yes, to try to grow our share.

4 MR RIDYARD: Yes, okay. Thank you. Can I ask one other  
5 question, if I may? There is a table in your witness  
6 statement which is full of confidential data, by  
7 paragraph 73, but it shows -- I will just describe it in  
8 general -- it shows the margins relative to MLO that  
9 were made on the sales to Royal Mail. Would you be able  
10 to comment on whether -- I can imagine in many  
11 businesses you have some big customers and then maybe  
12 lots of much smaller customers, and that seems to be the  
13 case here, with Royal Mail being one of the bigger  
14 customers, so it is not surprising that margins might be  
15 lower on a big customer that was giving you attractive  
16 volumes. Can you comment on whether the patterns that  
17 we see in that table in your witness statement -- would  
18 they be unusual if you were comparing it with, I do not  
19 know, other countries where there was also a mixture of  
20 big and little customers or even within the UK business,  
21 where there were other large customers and many small  
22 customers?

23 A. The margins were extremely low and in some years I would  
24 say the lowest in all the deals we did, partly due to  
25 the pound sterling exchange rate in those years and our

1           desire to hold on to the very visible customers in the  
2           market, which Royal Mail was for us. There has been  
3           a lot of discussions whether we should step out and  
4           discuss them, because it made not a lot of sense, but,  
5           yes, the visibility of the customer made us decide to  
6           hold on to the customer and then also in the assumption  
7           that the exchange rate would move in the opposite  
8           direction at some point too.

9         MR RIDYARD: Okay, thank you.

10        THE CHAIRMAN: I did not ask you if you wanted to  
11         re-examine.

12        MR BEARD: No, I have no further questions for the witness.  
13         Thank you very much.

14        THE CHAIRMAN: Well, surprisingly quick, but there it is.  
15         That is the end of your evidence, Mr Habets. Thank you  
16         very much. You are now released.

17                                     (The witness withdrew)

18        THE CHAIRMAN: Shall we carry straight on?

19        MR BEARD: That is fine with us, yes.

20        THE CHAIRMAN: Thank you.

21        MR BEARD: I will just wait. I think Mr Ward is taking some  
22         instructions.

23        THE CHAIRMAN: Would it help to have a break now?

24        MR BEARD: Do you want five minutes?

25        MR WARD: I am happy to take five minutes.

1 MR BEARD: You were just taking instructions.

2 MR WARD: No, I am completely ready.

3 THE CHAIRMAN: Let us proceed then. It is Mr van Veen?

4 MR BEARD: Yes. Can we call Mr van Veen?

5 MR EELCO VAN VEEN (affirmed)

6 THE CHAIRMAN: Thank you, Mr van Veen. Please sit down and  
7 make yourself comfortable.

8 A. Thank you.

9 THE CHAIRMAN: It looks like some folders are making their  
10 way towards you. (Handed)

11 A. Thank you.

12 THE CHAIRMAN: Mr Beard.

13 Examination-in-chief by MR BEARD

14 MR BEARD: Good morning, Mr van Veen. You have provided  
15 a witness statement in these proceedings. Could we go  
16 to bundle {D/IC24}, please? In front of you, you may  
17 have a hard copy of it in that bundle.

18 A. Yes, I can see the front page.

19 Q. Can you see the front page on the screen in front of  
20 you?

21 A. I can, yes.

22 Q. Is that the front page of your witness statement?

23 A. Yes, that is correct.

24 Q. Okay. If we could go through to page 28 in the  
25 electronic version, {D/24/28}. You do not need to turn



1 it up in the paper version. Is that your signature,  
2 Mr van Veen?

3 A. That is my signature. That is correct.

4 Q. Are the contents of this witness statement true to the  
5 best of your knowledge and belief?

6 A. The contents is correct to the best of my knowledge,  
7 yes.

8 MR BEARD: Thank you. I do not have any questions for you,  
9 Mr van Veen. Mr Ward does. He has indicated that he is  
10 not intending to go to any confidential material this  
11 morning, but if any answer you wish to give involves  
12 confidential material, do indicate, please, to the  
13 tribunal. Thank you.

14 A. I will.

15 Cross-examination by MR WARD

16 MR WARD: Good morning, Mr van Veen.

17 A. Good morning.

18 Q. You have there your witness statement, but in the blue  
19 file there are various documents I might take you to  
20 with numbered tabs. If it is more convenient for you to  
21 look at them in hard copy, they are there. The odd one  
22 might have escaped and might end up on the screen --

23 A. Okay.

24 Q. -- but I hope it will be of help.

25 I want to start with your background and your role

1 in the business, please, for which we can start on  
2 page 2 of your witness statement, {D/24/2}. I am so  
3 sorry, not page 2, page 3, {D/24/3}. At paragraph 7 you  
4 say:

5 "In 1999, I became a Director of the Business  
6 Logistics department. Around 2002/3 we conducted  
7 a restructuring which resulted in the conversion of  
8 Business Logistics into the Trucks Logistics  
9 department."

10 Then at paragraph 8, if we look just towards the  
11 bottom of the page, you say:

12 "I became involved in the work of [sorry, it is the  
13 trucks commercial department, and you were] ...  
14 approving transactions under the mandate structure."

15 A. That is correct.

16 Q. Can I just ask, at the time you were doing that, how  
17 many other people at DAF NV had the same role of  
18 approving transactions under the mandate structure?

19 A. For this specific approval, mandate, I was the only one  
20 who had that role.

21 Q. You were the only one at that level for the whole  
22 company?

23 A. Could you please ...

24 Q. Sorry. Let me make sure I have got the question right.

25 So you are in DAF NV, you are working at approving

1 transactions under the mandate structure -- we will come  
2 to a little more detail about that -- were you the only  
3 person in DAF NV who had that role?

4 A. Well, there were several people within DAF who had  
5 a role in the full mandate structure, each had its own  
6 level of authority and on that specific level of  
7 authority I was the only one.

8 Q. You explain at the bottom of the page that you reported  
9 to the M&S director, who is the head of the marketing  
10 and sales division at DAF NV. So he was effectively  
11 your line manager, was he not?

12 A. Yes, that is correct.

13 Q. For the years you were in this role -- because if we  
14 look over the page at paragraph 9, {D/24/4}, you say in  
15 2007 you moved on and you were -- became responsible for  
16 DAF sales in the Netherlands and Scandinavia. So you  
17 operated the mandate structure -- your role in the  
18 mandate structure was just for four years then, was it,  
19 from 2003 to 2007?

20 A. In that specific approval step, that is correct.

21 Q. For the time you were in that role you would have been  
22 reporting to Kerry McDonagh, would you not --

23 A. Yes, that is correct.

24 Q. -- as M&S director?

25 So let us just make sure, for the benefit of the

1 tribunal, we understand how the mandate structure works.  
2 If I can summarise what I have learnt from your witness  
3 statement and then you can pull me back if I get it  
4 wrong. But the basic idea is the higher up in the  
5 approval chain you are, the higher the deviation is from  
6 target margin you could approve?

7 A. That is fully correct.

8 Q. So you start with the target margin and then you say  
9 local sales directors could approve between 3% and 7%  
10 but you could approve a 10% variation?

11 A. That is correct.

12 Q. Then ultimately some transactions we will see in  
13 a moment also had to go to the M&S director?

14 A. Yes, that is correct. If it was beyond my mandate,  
15 I would have to move on to the marketing and sales  
16 director.

17 Q. Were you in court just now when Mr Habets was giving his  
18 evidence?

19 A. Yes, I was.

20 Q. So you have heard the discussion that the margins'  
21 targets were set by reference to IKP?

22 A. Yes, that is correct.

23 Q. You personally were not involved in the setting of IKP?

24 A. I was not involved in the setting of IKP because I was  
25 part of marketing and sales in that approval role.

1 Q. What about the level of target margin itself? So you  
2 have the IKP figure but there is also a margin over and  
3 above. Mr Habets just gave the example of maybe 26% or  
4 27%, for example. Were you involved in setting that  
5 target margin above IKP, the figure you had to work to?

6 A. I was not directly involved in setting the surcharge on  
7 the MLO to arrive at the IKP. That was typically  
8 something that was done only at board level between the  
9 managing -- the director of marketing and sales and  
10 director of finance.

11 Q. What about the actual -- sorry, the question I wanted to  
12 ask was about the margin as against IKP. So you start  
13 with IKP and then DAF NV indicates how much margin over  
14 IKP it wants to earn. Who set that figure?

15 A. That was set by the board.

16 THE CHAIRMAN: The board of ...?

17 A. The board of management being, amongst others, the  
18 director of marketing and sales and director of finance.

19 MR WARD: So the director of marketing and sales would have  
20 been involved in that, in your case Mr McDonagh, during  
21 your period?

22 A. Yes, he would be involved in that.

23 Q. Now, also you say at page 9 on paragraph 33 of your  
24 witness statement, {D/24/9}:

25 "Throughout the period, DAF NV set an overall target

1 margin at a Marketing & Sales level, which was further  
2 broken down into target margins for each country, truck  
3 series and model type."

4 Was that also a responsibility of the marketing and  
5 sales director?

6 A. The marketing and sales director would typically set the  
7 overall target margin, probably also by series. The  
8 actual breakdown into models, countries, fleet retail,  
9 would be multiplied into hundreds of different separate  
10 target margins and at that point the marketing and sales  
11 director would not be involved in setting each  
12 individual target margin as long as it fitted within the  
13 overall approved target margin on corporate level.

14 Q. Let us look again, if we could, at your role in a little  
15 bit more detail. Could we turn to page 15, {D/24/15},  
16 of your witness statement? At paragraph 58 you say in  
17 the second line:

18 "... we did not simply rubber-stamp sales. We  
19 exercised our business judgment and, if we felt we could  
20 get more from the customer or market, we sent  
21 transactions back to the sales unit and asked them to  
22 re-negotiate. Sometimes this was the obvious solution,  
23 and it was not uncommon to respond to the Managing  
24 Directors of the sales units that DAF NV would not be  
25 able to approve the transaction and that DAF NV did not

1 consider that it was good enough. At this stage I might  
2 have discussions with the managing director of the sales  
3 unit to discuss how to [negotiate] ... on other  
4 occasions I would have longer discussions with the M&S  
5 Director ... on how to [approve] a particular deal."

6 So that is -- where the margins look particularly  
7 low, presumably it would go to the M&S director?

8 A. Yes, absolutely.

9 Q. Then also at paragraph 61 you talk about transactions  
10 going to PACCAR and you say in the second line:

11 "If I considered that a transaction needed to be  
12 sent to PACCAR, then my first step was to discuss the  
13 transaction with the M&S Director ..."

14 Now, I think you explain later in your statement  
15 that all Royal Mail transactions went to PACCAR.

16 A. To the best of my knowledge, all Royal Mail transactions  
17 had to go to PACCAR. I have not approved a Royal Mail  
18 transaction within my own mandate.

19 Q. So that would mean then, in those cases, the M&S  
20 director would always be involved in a deal involving  
21 Royal Mail, would it not?

22 A. Yes, consequently the marketing and sales director would  
23 be involved.

24 THE CHAIRMAN: Just so I understand the corporate structure,  
25 the marketing and sales director sits on the board of

1           PACCAR?

2           A. No, sits on the board of DAF Trucks NV.

3           THE CHAIRMAN: DAF NV?

4           A. Correct.

5           THE CHAIRMAN: You sat on that board as well?

6           A. No, I was reporting to the marketing and sales director.

7           THE CHAIRMAN: Okay. So there is a level in the mandate

8           where DAF NV board has to approve a transaction and --

9           A. Correct.

10          THE CHAIRMAN: -- there is a further level at PACCAR?

11          A. Yes, that is correct. Some transactions were so low in

12          margin that they were not within the mandate even of the

13          marketing and sales director of DAF Trucks NV and then

14          that would require a corporate approval memo which was

15          then -- it had to be approved by corporate in PACCAR

16          head office.

17          THE CHAIRMAN: Did PACCAR have its own marketing and sales

18          director?

19          A. Typically it would then immediately go to the CEO or the

20          vice-president responsible for DAF -- and/or the

21          vice-president responsible for DAF.

22          THE CHAIRMAN: Okay, thank you.

23          SIR IAIN MCMILLAN: Just to be clear, if I may, was the

24          approval of the transactions cumulative? In other

25          words, they would go from you to your sales and



1 marketing director who would have to sign it off at  
2 her level or his level before it was sent to the  
3 United States for sign-off by PACCAR?

4 A. Yes, absolutely.

5 SIR IAIN MCMILLAN: Thank you.

6 MR WARD: Let us look at one example. We can look at the  
7 non-confidential version because it is just  
8 illustrative. If we go -- it is to tab 6 of your  
9 bundle, Mr van Veen, but it is document {I1/402},  
10 please. Do you have that, Mr van Veen?

11 A. Yes, I see it on the screen.

12 Q. Thank you. This is an email from you, from March 2005,  
13 to Bart Wijnen. What is his role?

14 A. At that time Bart Wijnen was the controller of marketing  
15 and sales -- financial controller of marketing and  
16 sales.

17 Q. I see. It is copied to John Kearney, Arno Scheffer and  
18 Kerry McDonagh. The subject is "Royal Mail 2005  
19 approval request ...", and then we see in the text:

20 "Attached please find latest version including  
21 comments from Kerry and the Parts turnover on a yearly  
22 basis. Can you ... take it from here?"

23 So that shows us Mr McDonagh, does it not, taking  
24 a sort of active role in formulating these proposals?

25 A. Yes, Mr McDonagh would take an active role because he

1 had to sign it off before it went for approval to  
2 corporate in the US.

3 Q. If we look at the next document which is {I1/404}, tab 7  
4 for you, Mr van Veen, this is the attachment. I confess  
5 I do not know why these are redacted but they luckily do  
6 not matter for now. We can see this is the document  
7 attached:

8 "The Royal Mail is in the middle of a fleet renewal  
9 program and further volume can be expected in the course  
10 of 2005, including heavier vehicles with higher margins.  
11 Currently however a firm enquiry has been received for  
12 200 [vehicles] ... under the current agreement."

13 Then there are various prices.

14 Then at the bottom of the page it notes that, under  
15 "Royal Mail background":

16 "Royal Mail has historically been a DAF customer for  
17 more than 90% of their vehicle needs. They have a fleet  
18 of ... 10,000 trucks and purchase ... 5 million worth of  
19 parts ...

20 "As the Royal Mail defines its further purchase  
21 requirements, separate approval requests will be  
22 submitted."

23 So this is, I think, at least by reference to the  
24 ones I have seen, a fairly typical form of the approval  
25 request to PACCAR?

1 A. Yes, this is an example of that.

2 THE CHAIRMAN: Did you identify the author of this document  
3 and who it was going to? Did you see that? Mr or  
4 Mrs Goudriaan.

5 A. Can I please see the first page then of the document?  
6 That was from Mr Goudriaan, who was at that time the  
7 president of the board of management of DAF Trucks, and  
8 he would forward that memo to Mr Tembreull, who sat on  
9 the executive committee of PACCAR in the US.

10 MR WARD: Can I ask you to look at page 21 now of your  
11 witness statement, {D/24/21}, where you say at  
12 paragraph 85:

13 "I did not have access to confidential competitor  
14 information when approving transactions and did not take  
15 it into account. In the context of dealer sales,  
16 dealers sometimes told the employees at our sales units  
17 that they had heard from customers that the competitors  
18 had prices at certain (lower) levels, but we could not  
19 verify this and I ignored this information."

20 Could I now ask -- I am sorry, this is not going to  
21 be in your bundle, I do not think. Could we go to  
22 tab 22, which is Mr Ashworth's witness statement,  
23 page 21, {D/22/21}. Have you seen this before,  
24 Mr van Veen? I cannot think of a reason why you would  
25 have.

1 A. I am looking at paragraph --

2 Q. 72, and this is Mr Ashworth's witness statement.

3 A. Okay.

4 Q. He says:

5 "In practical terms ... the starting point for  
6 pricing for an established customer such as Royal Mail  
7 was the sales price it had previously negotiated ..."

8 Then he says:

9 "In addition to this, I took into account the  
10 following."

11 If you could look down to (h):

12 "Market intelligence (most often gained directly  
13 from Royal Mail, although sometimes also from DAF UK's  
14 dealers and other customers) on prices for comparable  
15 trucks made by other manufacturers."

16 So you see here he is saying, for him, market  
17 intelligence of that kind was useful. Is it your  
18 evidence that it was completely irrelevant to you?

19 A. I cannot comment on this statement.

20 Q. No, no.

21 A. For me, when I assessed the approvals, I often got  
22 information from our sales unit because those were the  
23 partners that I talked to, that they had competing  
24 offers at that customer who were lower and that I would  
25 definitely have to approve their request in order to win

1 the deal, and that was often an argument of the sales  
2 unit, the managing director of the sales unit, which  
3 I then often challenged because, in fact, you are also  
4 sort of negotiating. They were after the market share,  
5 they wanted to do the deal and they were giving me all  
6 kinds of considerations and arguments to approve, well,  
7 such low margin levels to get the deal. Then they would  
8 also argue sometimes that they had information about --  
9 from the customer about competing offers.

10 Q. But you just put all of that out of your mind, did you?

11 A. I might have considered it, but, again, these are all  
12 part of negotiation tactics of the managing directors to  
13 persuade me to approve the deal.

14 Q. The transactions come to you because they are trying to  
15 argue for, in effect, a particularly low margin on the  
16 deal. Would it not be relevant to you to know what the  
17 competitors were offering on the same deal?

18 A. Again, it was one of the arguments. If they would  
19 provide me with the information, then still I had to  
20 assess whether that was valid, hearsay, so it is all  
21 very difficult to judge and therefore I would typically  
22 disregard it.

23 Q. So what you are telling us is that, from your  
24 perspective, competitor information was something that  
25 could just be disregarded?

1 A. If it was given to me by the sales unit in persuading me  
2 to, let us say, approve a transaction, I was very  
3 sceptical and I would maybe not disregard it but not put  
4 very much weight to it.

5 Q. Can we look now, please, at tab 23 in the bundle in  
6 front of you, which is document {I1/458.1}, please.  
7 That is it, thank you. This is a slide deck prepared by  
8 you in September 2006 and the heading is "Competitor  
9 information for truck sales force". Do you remember  
10 this document?

11 A. Yes, I recognise it.

12 Q. Good.

13 A. I would like to flip through it.

14 Q. We will go through it, if that is okay, and you can stop  
15 me at any time if I gloss over something that you want  
16 to look at.

17 We can see on the first page of the print-out, the  
18 second slide, it says "Goal and target groups". The  
19 goal is to "Support the marketing- and sales targets",  
20 which I assume means, what, margin targets and volume  
21 targets?

22 A. Volume and margin targets, that is correct.

23 Q. Margin targets.

24 "By improving sales process effectiveness and  
25 efficiency.

1           "Through publishing competitor info for DAF  
2 dealers."

3           So those are the objectives.

4           The problem you have identified is there is a  
5 "requirement for competitor product info" and there is  
6 "no structural publication" and the main target here is:

7           "Truck salesmen at the DAF Dealerships."

8           So if we go to the next page, {I1/458.1/2}, you say  
9 "Process to proposal":

10          "Basic competitive info stopped after  
11 Re-engineering.

12          "Requirement vs availability ...

13          "Requirements validated against:

14          "Key user group TSI."

15          Can you tell us what that means?

16        A. That was the truck sales information system.

17        Q. What is that?

18        A. That was a system that would contain all our  
19 specifications and explanation of the unique selling  
20 points of certain features and the options of the truck  
21 to support the salesman to sell the product at best to  
22 our customers.

23        Q. So it is a sort of detailed breakdown of the DAF product  
24 to help the salesmen make the sale?

25        A. Yes, breakdown in terms of functionality and

1 characteristics, like let us say engine power and fuel  
2 consumption and -- so from a functional point of view,  
3 again, hand them the unique selling points to sell our  
4 products in the best way.

5 Q. What we see on the next slide, which is "Requirement and  
6 availability", is:

7 "Key User Group TSI (dealer salesmen) prioritised  
8 competitor info."

9 Do you recall what you mean by that? Are you saying  
10 that this was something they wanted or something they  
11 were already regarding as important?

12 A. Sorry, I did not --

13 Q. Let me just ask you. When you say the "Key User Group  
14 prioritised competitor info", can you help us with what  
15 that means?

16 A. Yes, the TSI system was populated with data from all  
17 kinds of source from DAF. There was a sort of user  
18 group who would identify how to develop the system  
19 further, and what it says here is that the user group  
20 gave, as one of the priorities to populate the system  
21 with the data, the specifications of other trucks to be  
22 able to allow the salesmen, our salesmen, to compare  
23 trucks.

24 Q. So, in other words, the TSI is not just DAF's product  
25 but would contain details of the products of all of your



1 competitors? Is that what you are saying?

2 A. The aim was that we could compare with the

3 specifications of our products to, let us say --

4 SIR IAIN MCMILLAN: Mr Ward, may I ask a question?

5 MR WARD: Of course.

6 SIR IAIN MCMILLAN: Comparing the specifications of

7 DAF Trucks with those of the competitors, that is how

8 you identified your unique selling points, was it?

9 A. Yes, that is how we tried to train our salesmen.

10 SIR IAIN MCMILLAN: Yes, thank you.

11 MR WARD: What the salesmen are saying is that there is

12 a priority for competitor info in the TSI; is that how

13 we should read it?

14 A. That is correct.

15 Q. Then we see in the next two bullet points down:

16 "Spec panel emphasised the need of competitor info."

17 What is the "spec panel"?

18 A. That was the specification panel.

19 Q. Then:

20 "During launch lack of competitor knowledge surfaced

21 in some cases.

22 "Euro IV/V availability.

23 "XF105 positioning."

24 Does "positioning" mean price?

25 A. I do not think so because this project, as I recall, was

1 purely about populating a system with specification  
2 information.

3 Q. Then we see -- if we go to the next page, please,  
4 {I1/458.1/3}, to the slide "Publication requirements":

5 "Scope: main European competitors.

6 "For dealers via TSI ..."

7 Then it says "Hot item section ...", including  
8 Euro 4 and Euro 5.

9 If we turn the page, {I1/458.1/4}, you see under  
10 "Needed capacity" it is talking about -- it says "Task",  
11 "Number of days/year". One is "Gather information",  
12 another is "Maintain relations". Can you say who that  
13 would be maintaining relations with?

14 A. Sorry, I cannot recall that.

15 Q. Okay. Then "Total 275". So is the idea that this would  
16 be 275 days of work a year? Not sure?

17 A. No, I am not sure.

18 Q. It is a long time ago.

19 A. I see more -- no, I cannot remember exactly. No,  
20 I cannot remember exactly.

21 THE CHAIRMAN: 275, what capacity is this talking about?

22 A. Man days.

23 THE CHAIRMAN: Man days spent on doing those tasks?

24 A. Exactly, yes. Now I read it, it says "Number of days  
25 [per] year", so that will not be an initial project

1 effort but that will be a continuous yearly effort.

2 MR WARD: If we go to the next slide, {I1/458.1/5}, I think

3 this confirms your recollection, "Management Summary":

4 "Competitor info can improve effectiveness and

5 efficiency [of the] sales force.

6 "Competitor [info] structurally published via Truck

7 Sales Information.

8 "Datagathering, editing and maintenance of

9 publishing competitor information within Truck Sales

10 Publications.

11 "Based on the capacity analysis at least one full

12 FTE is necessary."

13 Is that a full time equivalent person?

14 A. Yes, that is correct.

15 Q. Then we have a few screenshots at the end which I am

16 guessing are illustrative. The first one is of a DAF

17 telematics and infotainment system?

18 A. Yes, that is correct (overspeaking - inaudible).

19 Q. The next one is something from Volvo, {I1/458.1/6}. It

20 is a little hard to read, even blown up, as I tried

21 yesterday, but it says "Volvo Dynafleet".

22 "At the IAA ..."

23 It is a trade fair, is it not, the IAA?

24 A. Yes, that is the German trade fair; one of the leading

25 trade fairs in Europe.

- 1 Q. ... Volvo will introduce a new version of a Dynafleet  
2 transport information system ..."
- 3 So that sounds like it contains information there  
4 which is not yet in the public domain; would you agree?
- 5 A. No, I would not agree because typically, before the IAA,  
6 announcement would be made about introduction of new  
7 products.
- 8 Q. I see. So it is not that it is going to be announced at  
9 the IAA, it has already been announced?
- 10 A. Yes. Often, if there is new products, they are already  
11 being sort of pre-announced, like, "We are coming with  
12 a sort of solution and we are going to show it in detail  
13 at the IAA and it will become available for sale at the  
14 IAA".
- 15 Q. So what we see here, though, in any event, is a very  
16 large-scale market intelligence gathering operation;  
17 would you agree?
- 18 A. This project was focused on gathering specification  
19 information on competitor trucks, that is correct.
- 20 Q. Can I now ask you to turn to tab 25, please, in the  
21 bundle, which is document {I2/350.5T}. This is  
22 something at the opposite end of the scale of detail.  
23 This is an email chain -- do you have it Mr van Veen?
- 24 A. Yes, I have it in front of me.
- 25 Q. Thank you. At the top of the chain, just to see your

1 name, we see you emailing in August 2010 and the topic  
2 is "DTB option prices", which I think is DAF Trucks  
3 Belgium, is it not?

4 A. Yes, that is correct.

5 Q. Your response here is:

6 "Have we already given our input?"

7 But obviously now we are going to look at what you  
8 were inputting into.

9 If we go now to the bottom of that first page, this  
10 is an email which you were not copied to originally but  
11 among other people, Richard te Velde, and what was his  
12 job title?

13 A. This is an email from the time that I was managing  
14 director of DAF Netherlands and Scandinavia, so I moved  
15 beyond business logistics, trucks logistics, and Richard  
16 te Velde at that time was still the manager of the  
17 product specification department.

18 Q. Right. Anyway, Mr Saveniers, who is the sales manager  
19 for DAF Trucks Belgium, says:

20 "Herewith the reply from DTB concerning the new  
21 price structure for options."

22 He says:

23 "As requested you will find an answer to the options  
24 that were mentioned in the presentation.

25 "In order to minimise the work ... we have contacted

1 DAF NL and adopted their answer structure.

2 "We have, however, carried out a DT Belgium exercise  
3 with the following elements.

4 "Now that we have a new assistant who comes from MAN  
5 and we have the Mercedes option price list (gross) in  
6 our possession, you will find the comparable option  
7 prices of these competitors."

8 Are you able to help with how those price lists  
9 might have come into their possession?

10 A. No, sorry, I would not be able to help you with that  
11 because apparently that happened in DAF Trucks Belgium  
12 and then at that moment I was responsible for  
13 The Netherlands and Scandinavia.

14 Q. He says:

15 "We may yet obtain prices from Volvo, in which case  
16 we shall not fail to pass [these] on to you."

17 Then it says, {I2/350.5T/2}:

18 "For Belgium the new net price options constitute an  
19 unacceptable increase in the option prices directed to  
20 the end customer. The following example makes this  
21 clear.

22 "In the example of the spoiler + fender above you  
23 will see that, in Belgium, the net pricing price of 1321  
24 [euros] has been in use for many years ... In the new  
25 situation we will charge the end customer ... 1860 ...

1 This is a price increase of +29% ..."

2 Then:

3 "This example shows that, if we place the new price  
4 list at this level, we get for all the options in  
5 Belgium a price increase towards the end customer, who  
6 is for 85% a DAF customer and who has been accustomed to  
7 these prices for many years. Suddenly asking 29% more  
8 for an item that has not changed in its makeup is  
9 irresponsible. It is possible that dealers might then  
10 start purchasing [them] via ... the parallel [parts]  
11 market".

12 Then:

13 "So that you can test the actual price level against  
14 the competition you will find in the last column the  
15 info from MAN and Mercedes. This shows that the net  
16 pricing option price that we have operated ... is by no  
17 means too cheap."

18 So what seems to be happening here is that this  
19 proposed price increase in net prices is being compared  
20 to actual gross prices from MAN and Mercedes -- this  
21 price is; would you agree?

22 A. I cannot comment on this mail because this is a mail  
23 exchange between DAF Belgium and at that point the  
24 product specification department, and I sat back at that  
25 time at DAF Netherlands and Scandinavia, and then

1           apparently that went up to a further email exchange but  
2           I was not involved in that so I cannot comment on that.

3       Q.   I am really only asking you because at the top of the  
4           page it is forwarded to you for some reason.  Why  
5           would it be forwarded to you?

6       A.   The only reason why -- can I read the top of the page,  
7           please?

8       Q.   Of course.

9       A.   So I got this email from Jan van Malsen, who was the  
10          product manager at DAF Trucks Netherlands, just for  
11          information, and the only thing I said was, "Well, have  
12          you given the input to the product specification  
13          department or Richard te Velde?", but I did not or at  
14          least I cannot recall getting the full detail and  
15          attachments which were somewhere down the whole chain of  
16          emails.  I just asked, "Okay, did we give our input?",  
17          and that is it.

18      Q.   You do not express any surprise or concern about the  
19          fact that they seem to have got hold of these list  
20          prices.  {I2/350.5T/1}:

21                 "Now we have a new assistant who comes from MAN and  
22          we have the Mercedes option price list ... you will find  
23          the comparable ... prices of these competitors."

24                 That was not a matter of either surprise or concern?

25      A.   Well, again that was an email exchange from DAF Belgium.



1 I may not even have read it fully down the whole email  
2 chain. I only asked, "Did we give our input to the  
3 central department yet?" I did not comment anything  
4 further.

5 THE CHAIRMAN: When you say "our input", what do you mean?

6 A. The input from DAF Trucks Netherlands and Scandinavia.  
7 So apparently at some point the product specification  
8 department has asked for input. Apparently DAF Trucks  
9 Belgium have given that input and the product manager  
10 from my unit is -- well, this is the input from  
11 DAF Trucks Belgium, and the only thing I asked is,  
12 "Okay, have we given our input?", as being the  
13 DAF Trucks Netherlands sales unit.

14 THE CHAIRMAN: That is -- Mr van Malsen is your product  
15 manager?

16 A. That is correct. Mr van Malsen was at that time the  
17 product manager who operated in the DAF Trucks  
18 Netherlands sales unit.

19 THE CHAIRMAN: Who was blind-copied, it seems, into the  
20 earlier emails.

21 A. (Reads to self). That is correct, sir. That seems to  
22 be a blind copy, a BCC.

23 THE CHAIRMAN: Were you blind-copied as well?

24 A. I cannot say. I just -- well, what it says is that  
25 I got this email from Jan van Malsen so I have to assume

1           that I did not get directly a blind copy, but I cannot  
2           remember.

3           MR WARD: Could we now turn, please, to document 28 in your  
4           folder, which is {I1/461T}. This is an email you were  
5           copied in to from Olga Timmer-Kool, who is in business  
6           development, it says, to Guy Vanhuffel. Who is  
7           Guy Vanhuffel?

8           A. At that time Guy Vanhuffel I think was the managing  
9           director of the DAF Trucks Belgium sales unit.

10          Q. It is copied in to you and it says:

11                         "In the weeklies of week 36 DTB reports 'the  
12                         confirmation of the competitors ... concerning order  
13                         intake and registration levels ...'."

14                         Do you remember receiving that kind of information?

15          A. Sorry, can I -- can you explain what kind of  
16           information?

17          Q. What is described here, order intake and registration  
18           levels.

19          A. Again, this is an email relating to DAF Trucks Belgium.

20          Q. Yes.

21          A. At that time -- that was 2006 -- at that time I was at  
22           the trucks logistics department so I am not yet managing  
23           director of DAF Netherlands. We had discussions back  
24           then whether we could have order intake exchange on top  
25           of the -- as a regular registration exchange, so that

1           could be. I cannot remember for sure.

2           Q. So this is whilst you were in the role of margin  
3           approvals that we talked about earlier, it is in the  
4           window 2003 to --

5           A. Exactly. It was in that time period.

6           Q. She is saying:

7                        "Such exchanges (in particular concerning order  
8           intake) are formally prohibited and should not be  
9           mentioned ..."

10                      So that was an expression of concern about such  
11           exchanges, was it not?

12           A. Yes, that was an expression of concern.

13           Q. We do not have any reply from you on this that we know  
14           of.

15           THE CHAIRMAN: Well, what are the "weeklies", please, that  
16           are referred to?

17           A. The "weeklies" are -- every manager will send and submit  
18           some highlights of the week and these are very simple  
19           one- or two-liners. There would typically be four or  
20           five of those weeklies and that would be sent up the  
21           chain and they would get to a sort of weekly highlight  
22           report.

23           THE CHAIRMAN: What, number of sales or whatever?

24           A. Well, typically the number of sales would be in more  
25           structured reports. The weeklies would typically be

1 about deals won, let us say important deals won, or  
2 about exhibitions or about certain marketing campaigns  
3 or -- so more the subjective sort of events.

4 THE CHAIRMAN: Do you want to have a break now?

5 MR WARD: Yes, if that would be convenient, sir.

6 THE CHAIRMAN: We will have a ten-minute break now.

7 (11.41 am)

8 (A short break)

9 (11.54 am)

10 THE CHAIRMAN: Yes, Mr Ward.

11 MR WARD: I want to move on to a new topic now, Mr van Veen.

12 We can pick it up, please, at page 24 of your witness  
13 statement, {D/24/24}. I think you provide an excellent  
14 summary of your evidence on the topic of list prices in  
15 the heading here where you say "List prices --  
16 irrelevant for the approval process". I want to take  
17 you through a little bit of what you say and then we  
18 will discuss it, if that is okay. So the first thing  
19 you say is:

20 "When approving a transaction, I did not consider  
21 list prices because they have no relevance to ... the  
22 acceptability of the margin over cost ... of  
23 a particular transaction."

24 Then you make the same point in the next -- very  
25 much the same point in the first line of 93:

1           "Although list prices are not relevant for the  
2 mandate structure and approvals ..."

3           You have explained that what you were doing was  
4 essentially applying the margin targets in the mandate  
5 structure; yes?

6       A. That is correct.

7       Q. So what you are saying here is for that particular role  
8 list prices have no function?

9       A. That is what I am saying, yes, that is correct.

10      Q. Then you go on to explain what the list prices were for.  
11 Further down that paragraph you say:

12           "... both OMS and Sprint ... contain list price  
13 information for pre-configured base model and standard  
14 options ... Sprint and OMS automatically calculate the  
15 list price ... The reason for this is that DAF had, and  
16 continues to have, a ... complex product range and ...  
17 needed to be able to position products relative to each  
18 other. Historically, DAF has used list prices  
19 internally as a type of product positioning ..."

20           Then at the end of the paragraph you say:

21           "However, this information was not relevant to the  
22 negotiations of sales prices."

23           I want to make sure I understand your evidence here.  
24 When you say that is of no relevance to sales prices,  
25 are you just talking about your own function or are you

1           purporting to describe the entire business from senior  
2           management through to local dealers?

3           A. No, this applies to the entire business. List prices  
4           were not relevant when making any sales transaction  
5           whatsoever.

6           Q. I see. Well, we are going to pick this up with  
7           Mr Ashworth in some detail so I am not going to labour  
8           the court with these points twice, but I will just make  
9           a few very brief points to you so that you can at least  
10          hear what our case is.

11                  You, of course, were not directly involved in the  
12          negotiation between local sales units and their  
13          customers, were you?

14          A. That is correct, not in my time that I was in the trucks  
15          logistics department. After that, of course, when I was  
16          responsible for DAF Netherlands and Scandinavia, I was.

17          Q. You are not able to say what considerations went into  
18          the setting of IKP or margin targets?

19          A. Could you be a bit more specific in the question,  
20          please?

21          Q. Well, you have explained that the IKP -- the level of  
22          IKP was set at the board level and margin targets were  
23          set at the board level.

24          A. That is correct.

25          Q. So you were not involved with either of those?

1 A. Not at the general level, but detailing it out into, as  
2 I explained, into the separate countries, the separate  
3 models, fleet retail, where it would be multiplied in  
4 decomposed target margins for maybe even for hundreds of  
5 sales, hundreds of individual target margins. I would  
6 have assisted but I would not have an approval role.

7 Q. You are not on the board yourself so you are not able to  
8 help us with what role list price exchange might have  
9 had in the board's thinking?

10 A. No, I could not explain.

11 Q. I am going to go shortly to one example in an area where  
12 you have been working but for now I am going to talk  
13 about this in detail with Mr Ashworth. But I am just  
14 going to put to you our case, which is that, in  
15 practice, list prices did have an influence on final  
16 sale prices and that they were the starting point of the  
17 whole pricing structure. I take it you would not accept  
18 that?

19 A. No, I would not accept that. I mean, that is not how  
20 I perceive reality.

21 Q. That is fine. I want to move on again to another topic,  
22 which is emission standards. You explained that you  
23 were involved in the introduction of new emission  
24 standards for Euro 4 and Euro 5 and, in particular, for  
25 price setting. Can I show you that in your witness

1 statement, just also for the benefit of the tribunal?

2 You say, page 25, {D/24/25}, paragraph 98:

3 "I did, however, have some involvement in the  
4 transition from Euro III to Euro IV and Euro IV to  
5 Euro V ... and the introduction of the voluntary EEV ...  
6 during my time in ... Trucks Logistics ..."

7 Then you explain a little bit about where you sat in  
8 the process at paragraph 100:

9 "The introduction of model updates typically  
10 involved the formation of a number of informal  
11 committees and discussions at various levels within  
12 DAF NV. These committees included representatives from  
13 various departments within DAF NV, including me as  
14 a senior employee of the Trucks Logistics department (it  
15 was usual for an individual from Trucks Logistics to be  
16 involved in these discussions because Trucks Logistics  
17 was ultimately responsible for executing any pricing  
18 decisions in DAF's systems). I was part of the  
19 committee within DAF NV which was responsible for the  
20 introduction of truck models compliant with the  
21 Emissions Standards, including the pricing of those  
22 models and their introduction to the market."

23 I just want to get clear here -- sorry, one more  
24 piece to put on the table before I try to ask you to  
25 explain it to me. At page 26 at paragraph 104,



1 {D/24/26}, you say:

2 "The Product Specification & Price Management  
3 department had discussions with the product and price  
4 positioning panel ..."

5 So we have got two rather similar sounding  
6 organisations there. Can you just help us understand  
7 the situation a little bit better? The first question  
8 is: which of these were you on, if indeed either?

9 A. The best way to explain, the product specification  
10 department -- that was the department which was managed  
11 by Richard te Velde -- was part of the trucks logistics  
12 department, so that was under my responsibility in the  
13 period until 2007, and the price positioning panel would  
14 be a panel with a few representatives of that central  
15 department with a number of product managers from the  
16 sales units from the countries, to ensure that we would  
17 not make any decisions at central which were, let us  
18 say, completely out of line or illogical.

19 Q. Thank you. We have got in your answer that the product  
20 price positioning panel involved representatives from  
21 different sales units. I think that is what I heard you  
22 say.

23 A. That is correct.

24 Q. You were involved as part of the product specification  
25 department -- I am so sorry, I am trying my best to get

- 1 clear.
- 2 A. So the product specification department that was managed  
3 again by Richard te Velde, who directly reported to me,  
4 being responsible for trucks logistics in this time  
5 period until 2007.
- 6 Q. He reported to you?
- 7 A. Richard te Velde reported to me, that is correct, during  
8 that time period.
- 9 Q. So who else was involved in this process then? You were  
10 personally involved; we have got the representatives of  
11 the sales units. Who else was involved?
- 12 A. Can you ask which process you are referring to, please?
- 13 Q. Sorry, I am actually really asking about pricing. That  
14 is the bit I am interested in.
- 15 A. It would typically be the product specification panel --  
16 the price positioning panel who would give feedback,  
17 then the product specification department would come up  
18 with a proposal and any price change would be approved  
19 by my director, which would mean the director of  
20 marketing and sales.
- 21 Q. So ultimately the price approval, the ultimate approval,  
22 was given by the director of marketing and sales, again  
23 Kerry McDonagh?
- 24 A. That is correct.
- 25 Q. Can we look at an email which I hope will illustrate how

1           this worked, which is in your bundle at tab 11 and is  
2           {I1/444}. It is to "Managing Directors," and "Managing  
3           Directors" would mean of the local sales units,  
4           would it?

5           A. Yes, that would be correct. Could you explain the  
6           "[two] managing directors"?

7           Q. Just the top line of the email --

8           A. Sorry, I thought you just mentioned "two".

9           Q. Number two, no.

10          THE CHAIRMAN: Without the "w".

11          MR WARD: Sorry. I was just starting at the top.

12          A. Yes, okay.

13          Q. So those are the managing directors of the local sales  
14          units?

15          A. Yes, that is correct.

16          Q. It is from you and Mr van Geel. What is his job or  
17          hers?

18          A. Mr van Geel at that time was the manager of business  
19          development.

20          Q. It is copied to Mr McDonagh and various other people.  
21          Could you just tell us who these other people were it  
22          was copied to?

23          A. Kerry McDonagh was the director of marketing and sales;  
24          Ron den Engelsen was the manager for the central  
25          communications department; Theo Pas was responsible for

1 the product planning department; Rob Kieft, I would have  
2 to guess now, so -- I am not sure what position he held  
3 at that moment.

4 Q. Okay.

5 A. Neither can I remember what position Nico held at that  
6 moment, Nico den Houting, and Joost van de Griendt was  
7 one of the business intelligence -- business development  
8 staffing.

9 Q. So a wide range of people within DAF are being notified?

10 A. Yes.

11 Q. I see. It says, "Net price step-ups for CF Euro 4/5 and  
12 LF Euro 4", and it says:

13 "For the introduction of the new XF, CF and LF ...  
14 a Product Introduction Steering Committee was installed  
15 ..."

16 That is a slightly different term than the one you  
17 used in your witness statement, but I am guessing we are  
18 talking about the same thing here.

19 A. I am sure that is incorrect. That was a different  
20 panel.

21 Q. Who would be on that panel?

22 A. I think those were the people who were mentioned in the  
23 copies, the copyholders.

24 Q. I see.

25 It says:

1            "In this committee the relative positioning of the  
2            new Euro 4 and Euro 5 products has been extensively  
3            analysed and evaluated in the context of the product  
4            features and performance, the residual values, the  
5            repair and maintenance characteristics, the current  
6            model positioning and the higher positioning of the  
7            XF 105.

8            "The outcome of this evaluation are the net price  
9            step-ups ... compared to the existing Euro 3 models in  
10           the table below. Of course these step-ups apply to  
11           comparable specs ..."

12           Then it says:

13           "These step ups have been discussed with and  
14           approved by [Mr] McDonagh."

15           So do you recall Mr McDonagh's role in this  
16           exercise?

17           A. Yes, I do.

18           Q. He was involved in essentially signing it off?

19           A. Yes, he was.

20           Q. So what this is explaining I think here, if I am right,  
21           is that these are the price premiums over and above the  
22           Euro 3 truck which was at that point in the market?

23           A. Yes, that is correct.

24           Q. That is what it means by "step-up". Is that a fair  
25           example of how Mr McDonagh got involved in this process?

1 A. Yes, I think this is a fair example. In the end this  
2 was the end result of a long process on determining  
3 a proposal pricing. In the end, Kerry McDonagh being in  
4 the role of marketing and sales director, he would  
5 approve that.

6 Q. Can we now turn to document number 40 in your bundle,  
7 which is something I am afraid you probably have not  
8 seen before, number 40, and it is {I6/118/1}.

9 SIR IAIN MCMILLAN: Mr Ward, if I may, please.

10 MR WARD: Please.

11 SIR IAIN MCMILLAN: I think I have asked this question  
12 before in a different context, but not with this  
13 witness. The net price -- is the net price the same as  
14 the expected transaction price?

15 A. Not necessarily because the net price -- as you can see,  
16 this is a round number so this is what we on average  
17 want to achieve as a net result of the price increase,  
18 and that is composed of all the individual sales  
19 transactions after individual discounts and on average  
20 the aim was to provide this net result.

21 SIR IAIN MCMILLAN: Right, so it is average. Right, thank  
22 you.

23 MR WARD: Thank you, Sir.

24 SIR IAIN MCMILLAN: Perhaps I can come in again. So the net  
25 price, which is an average, is that the equivalent of

1 the expected average transaction prices?

2 A. If there is -- yes. I am very careful because it is --  
3 if we -- could I please go back to the document?

4 MR WARD: Yes, it was under tab 11 for you, and that was  
5 {I1/444}. It is still on the screen.

6 A. So the net price -- any number in this being round  
7 number would be the average and all the individual sales  
8 prices that would then follow in the real transactions  
9 after that time, the aim was that it would arrive  
10 approximately at that number.

11 SIR IAIN MCMILLAN: Yes, okay. Thank you.

12 THE CHAIRMAN: That is the increase? The increase; yes?

13 A. That is correct.

14 MR WARD: Thank you. I was going to take you to another  
15 document. Thank you, sir.

16 This is tab 40 for you and this is {I6/118}, if  
17 I just may take a moment to explain to the tribunal as  
18 well as Mr van Veen. Before the European Commission  
19 became involved in this cartel, the Office of Fair  
20 Trading carried out its own investigation and as part of  
21 the file disclosure, we obtained various things that the  
22 OFT had collected and had forwarded to the Commission.  
23 This is one such document, which is a reply to  
24 a section 26 notice by DAF in the UK. We are going to  
25 look at this document a number of times today.

- 1 A. Okay.
- 2 Q. I imagine, Mr van Veen, there is no reason why you would  
3 have seen this before?
- 4 A. No, I have not seen this before.
- 5 Q. No. Can I now just take you to page 3 of the document,  
6 {I6/118/3}, where we can see just at the bottom of what  
7 is on the screen, and in the middle of the page it  
8 says -- there is a heading that says "Prior to  
9 September 2002". Can you see that heading?
- 10 A. Not yet -- yes, I have got it.
- 11 Q. Thank you. Just above that I want to just put into  
12 context what I am about to show you.
- 13 "The individuals listed below are current or former  
14 DAF employees that are, or have been, involved in  
15 determining the changes to the list price of  
16 DAF Trucks."
- 17 Then it divides it into "Prior to September 2002"  
18 and "Post September 2002". If you scroll down -- you  
19 can see without scrolling, "Post September 2002", it  
20 says, "DAF Eindhoven Trucks Logistics Directors", and  
21 there you are, Mr van Veen, and underneath,  
22 "DAF Eindhoven Marketing and Sales Directors",  
23 van Putten, McDonagh and Bonsen. Is that accurate, that  
24 you were involved in setting list prices?
- 25 A. Yes, that is accurate.



1 Q. Was it just in respect of the euro emissions standards  
2 or more generally?

3 A. More generally because I sat on the pricing panel and on  
4 the department that had to implement the list prices in  
5 the systems, in the OMS systems. It was part of the  
6 responsibility of the trucks logistics department for  
7 which I was responsible.

8 Q. So you worked with the M&S director on that, did you,  
9 the setting of the list prices?

10 A. Yes, that is correct.

11 Q. I see. Correct me if I am wrong, but I do not think  
12 that is explained in your witness statement.

13 A. Sorry --

14 Q. It is not explained in your witness statement that you  
15 had that function.

16 A. Could you be a bit more precise on which function?

17 Q. Your involvement in setting list prices generally?

18 A. Yes, but that was not involvement. I did not have the  
19 final approval to set list prices but I was one of the  
20 members of the panel and, ultimately, it was also my  
21 responsibility because the product specification  
22 department fell under my responsibility to have those  
23 list price changes implemented in the systems.

24 Q. So, to be clear, we are talking about the European list  
25 price prices that were sent out by DAF periodically --

1 DAF NV periodically after 2002?

2 A. Yes, that is correct.

3 Q. You were involved in that, and we can see from the OFT's  
4 response, the response of the OFT -- I am so sorry -- we  
5 have got the M&S director. Was anyone else involved  
6 other than you -- let us go through. We have got you,  
7 we have got Bart Wijnen -- and what was his job?

8 A. The way I read it here is these are my successors,  
9 because when I left for DAF Netherlands, Bart Wijnen was  
10 my successor, then Bart Wijnen left and Toon Geenen was  
11 the successor of Bart Wijnen.

12 Q. I see. Similarly in the line below, we know  
13 Messrs van Putten, McDonagh and Bonsen were also, as it  
14 were, successors to each other?

15 A. Yes, that is correct.

16 Q. So European list pricing was just set by you and the M&S  
17 director?

18 A. There were more people involved because, again, you  
19 would have multi-disciplines, and that was the whole  
20 idea of the specification pricing panel, is to have more  
21 disciplines involved in setting ultimately the list  
22 price. There would then be a proposal. Ultimately the  
23 final decision would be up to the director of marketing  
24 and sales and I would have to implement it in my role as  
25 director of trucks logistics.

1 Q. Would you just give me a moment because I might be able  
2 to short-circuit some questioning on the basis of that.  
3 (Pause).

4 Thank you, sir.

5 Can we look at paragraph 105 now, please, of your  
6 statement, Mr van Veen, {D/24/27}? This is talking  
7 about setting the prices of new emission standards.

8 A. Sorry, I have not on the screen yet.

9 Q. I am so sorry.

10 A. Yes, I have it.

11 Q. Thank you. I want to look at the documents you are  
12 referring to.

13 "DAF's solicitors have shown me some documents  
14 relating to emissions pricing from the Claim Period  
15 which contained some competitor information on pricing  
16 ... I don't recall the competitor information in these  
17 documents. However, as I explain above, I do remember  
18 that competitors, experts and journalists would  
19 sometimes publicise the anticipated prices ... I do not  
20 know the source of the information in the documents but  
21 in any event, this information would not have changed  
22 any decisions that I would have made with respect to the  
23 pricing of Emission Standard compliant models because  
24 our objectives on the pricing of these models were  
25 mainly based on the costs to DAF and the value to the

1 market ..."

2 It is fair to say -- when you say it would not have  
3 changed any decisions you would have made, as you have  
4 explained, you were one of a number of people involved  
5 and of course Mr McDonagh had the final say, did he not?

6 A. Yes, that is correct.

7 Q. When you say in the middle of the paragraph -- I am so  
8 sorry, I think I have a wrong reference here. It is  
9 paragraph 102 I wanted to show you, now back on page 26,  
10 {D/24/26}. In the middle of the page you say:

11 "In addition to costs, we also considered how much  
12 we thought we could get out of the market for the  
13 new truck models and the positioning of the new truck  
14 model ..."

15 Would you agree that what you could get from the  
16 market would of course depend in part on your  
17 competitors' position, what they were charging for those  
18 trucks?

19 A. That would typically be how our specifications would  
20 relate to our competitors' products. For example, when  
21 we came up with a super space cab or a skylight, we knew  
22 we were unique and we asked a premium for that, and that  
23 was based on experience on let us say how much value we  
24 thought we could get out of the market.

25 Q. But ultimately price matters too here, does it not? The

- 1 price your competitors are charging is also going to  
2 affect what you can achieve?
- 3 A. No, that is not how I explain it, (inaudible).
- 4 Q. You do not think price matters when you are competing?
- 5 A. Oh, yes, price matters when you are competing in an  
6 individual transaction, but what it says here is that,  
7 for example, it was a particular feature on a truck  
8 which was -- we knew that was unique to DAF or which we  
9 were better in than our competitors, we thought we could  
10 ask -- try and ask a premium from the market.
- 11 Q. But whether you would succeed would depend to some  
12 extent on what your competitors were offering, would it  
13 not?
- 14 A. Well, typically, whether we would succeed would be  
15 dependent on how many of the transactions we in reality  
16 lost because that would then be followed by, for each  
17 individual transaction, a discount request and then it  
18 was again up to us whether we wanted to stick to our  
19 goal and maybe lose transactions or, in the light of our  
20 targets for market share, we would still, let us say,  
21 drop the prices and approve the transactions.
- 22 Q. If I may, I will just put my question one more time  
23 because I thought it was a simple question.
- 24 A. Sorry.
- 25 Q. The amount your competitors are charging would be

1 relevant to how much you could charge for your trucks?

2 A. In reality, in the field, of course. The customer would  
3 compare.

4 Q. Thank you.

5 Can we now turn to a document in fact you exhibited  
6 to your witness statement, and it was one of the ones we  
7 were talking about a moment ago. We can pick it up in  
8 the bundle in front of you, if you like, at tab 12,  
9 which is an English translation, but I am going to show  
10 you the Dutch as well in a moment, as Mr Beard asked me  
11 to, and I quite see why I should have and I apologise  
12 for that.

13 We will start with the English for the benefit of  
14 everyone else in the room.

15 A. I am still waiting for a moment to get it on the screen,  
16 please.

17 Q. It is {I1/417T}. This is a cover email and in fact,  
18 perhaps just for your benefit, before we try and read it  
19 out, if we just go now, please, to {I1/417/1}, this is  
20 the Dutch version, and if you would like to read that to  
21 yourself and then I will go through the English with  
22 everyone else. (Pause)

23 A. Yes.

24 Q. Are you ready to indulge us now with the English  
25 translation?

- 1 A. Yes, of course.
- 2 Q. If we go back now to {I1/417T}, this, I hope you will  
3 agree, is a translation of the same document. If it is  
4 not, I am not going to have any come-back.
- 5 A. No, it is a correct translation.
- 6 Q. So this is from Mr te Velde to you and he has copied in  
7 Mr van de Griendt and Mr Kearney.
- 8 "Pricing Euro 4 models Overview Final":
- 9 "Please find attached the memo concerning the  
10 make-up of the list prices for the Euro 4 and 5 models  
11 including positioning SuperSpaceCab."
- 12 Which I think you were just referring to a moment  
13 ago. It says:
- 14 "Regarding content this memo was agreed in the  
15 Euro 4 Price team consisting of [various people]."
- 16 If we turn back to {I1/417/1}, which was the Dutch  
17 email, behind that, mercifully for me at least, is a  
18 memo that was in English at page 2 of the same  
19 electronic document, {I1/417/2}.
- 20 There we are, thank you. This was something that  
21 you exhibited to your witness statement. Do you recall  
22 that?
- 23 A. Yes, I have seen that document.
- 24 Q. Thank you. We see that the first line of the text is:  
25 "Please find below the explanation of the price of

1 Euro 4 models."

2 I would like to start in fact on the next page,  
3 {I1/417/3}, where we see the last line before the  
4 signature is "Positioning [of] Euro 5". What it says  
5 is:

6 "Euro 5 nearly equals the cost of Euro 4. We advise  
7 to raise the IKP to an artificial higher level. This  
8 will support the nett price and margin target."

9 You were here when we were talking about how IKP  
10 worked earlier?

11 A. Yes.

12 Q. So what we can see here is that the IKP is being used to  
13 drive both the price and the margin target by  
14 essentially -- I am just paraphrasing what is here -- by  
15 pushing it up to an artificially higher level; is that  
16 a fair read of what is happening here?

17 A. Yes, that was the correct intention of this phrase and  
18 this proposal, yes.

19 Q. Can we turn now to the next page, {I1/417/4}, which I am  
20 afraid is in landscape at least for me -- oh, no,  
21 marvellous. This is a table which is attached to the  
22 same memo, which is "Euro 4-5 Competitor Pricing", and  
23 someone has written in hand "List". It is asking a lot,  
24 but I have to ask, have you any idea who might have  
25 written in the word "List"?



1 A. I do recognise the handwriting from Mr van Geel.

2 Q. On the face of it, it appears that this is competitor  
3 list pricing information, does it not? Would you accept  
4 that?

5 A. It appears to be, yes.

6 Q. So would it be a fair construction of what is going on  
7 here that what we are seeing here is that IKP is being  
8 used to raise prices -- to raise prices but taking into  
9 account competitor list prices?

10 A. Yes, that is correct in that.

11 Q. There is a further point on this document I want to  
12 explore with you, if I may, which requires us to look at  
13 it a little bit more closely, starting on page 2,  
14 {I1/417/2}. Underneath the -- we will just go through  
15 it.

16 "Please find below the explanation of the price of  
17 Euro 4 models."

18 Then it describes some of the changes to those  
19 Euro 4 models. Then under the first three bullet points  
20 it says:

21 "The new price positioning is based on following  
22 nett price target elements."

23 You explained to Sir Iain that roughly speaking in  
24 this context "nett price" just means roughly the average  
25 transaction price you would like to realise.

1 A. The average -- yes, increase of transaction price --

2 Q. Average increase.

3 A. Correct.

4 Q. Thank you.

5 Then, again, it lists a bit of detail for the  
6 various models, but we can pick it up below the bullet  
7 points just above the table, where it says:

8 "Resulting in the following nett price adaptations  
9 and list price."

10 Am I right that "adaptation" is because it is taking  
11 existing prices and increasing them? We are starting  
12 with Euro 3 prices and we are bumping them up?

13 A. Yes, that is correct.

14 Q. Then what we see is three columns, "Discount", "Nett"  
15 and "List". So if we read across for the first truck in  
16 the table, "LF Euro 4", the discount is 36%, nett is  
17 4,000, list is 6,250. If we look down -- we can just  
18 look down the columns -- there are different levels of  
19 discount and there are different amounts being realised  
20 by nett and there are different list prices. So what we  
21 see is that, in order to achieve the net price that you  
22 wanted, there was a list price that would be -- you were  
23 anticipating a certain level of discount; is that fair?

24 A. I am not sure I understand the question. Could you  
25 please rephrase that?

1 Q. Of course. I was hoping it was just stating the obvious  
2 on the face of the table but let me try again. I did  
3 not mean to be confusing.

4 So just to take the examples -- take the first  
5 example, you want 4,000 increase for LF 45 and to  
6 achieve that what you are doing is increasing the list  
7 price by 6,250 but anticipating a discount against the  
8 list price of 36%?

9 A. Yes, that is approximately how it worked. The 36% would  
10 then be -- and I do not know exactly for this memo, but  
11 would, for example, be the average discount that we saw  
12 over the past few months or a year. Again every  
13 separate sales transaction had a separate discount. For  
14 that model we would then just estimate what the average  
15 discount has been and we would use that as a sort of  
16 recalculating -- calculating back to a list price. That  
17 is correct.

18 Q. So what is happening here, then, is that the list price  
19 is being increased in order to achieve the net price  
20 increase that you are aiming to obtain?

21 A. Yes. The causality, however, is not quite that. The  
22 aim was really to get to a 4,000 euro net average  
23 price -- transaction price increase and that was, in  
24 practice, steered by the target margin and the  
25 approvals. However, we needed to have a list price

1           because our system was populated with list prices, so  
2           that is how we calculated it back.

3       Q.   So you increase the list price, anticipating a discount  
4           of 36% to get the price you actually wanted, which was  
5           4,000?

6       A.   On average that is correct.

7       THE CHAIRMAN:  Sorry, just so I understand that, you are  
8           starting with the target of 4,000 for net transaction  
9           price?

10      A.   Again, as a target for the average transaction prices  
11         that we aim to achieve in the future.

12      THE CHAIRMAN:  The 36%, my arithmetic is not that good, but  
13         that is 36% reduction -- is the reduction from 6,250,  
14         the list price, to get to 4,000; is that right?

15      A.   Yes.  My arithmetic is also not that good so I hope --

16      MR WARD:  I have not checked it either.

17      A.   But that is the method behind it.

18      THE CHAIRMAN:  So what comes first?  The 4,000?

19      A.   The 4,000 comes first.

20      THE CHAIRMAN:  Then you work out the list -- what the list  
21         price needs to be and that turns out to be the 36%  
22         discount to list price?

23      A.   No, that is not really how the process works.  So the  
24         4,000, yes, that is what we started with, by way of --  
25         after a lot of internal consultation and discussion.

1           Then we would look at the average discount that was  
2           given for that particular model, like the LF, over the  
3           past, I do not know, three months or maybe a year --

4   THE CHAIRMAN: Average discount to what?

5   A. On the individual sales transaction. So we would simply  
6       list all the sales transactions from, for example, the  
7       previous year on LFs that would then give an average  
8       discount that we have given over that past year, and  
9       then we would say so approximately that would be -- have  
10      to be a list price.

11   MR WARD: May I just pick up the chairman's question, when  
12       he asked "Average discount to what?", so looking at that  
13       36%, am I right it is the average discount to list  
14       prices?

15   A. Yes, that is correct.

16   Q. Can we turn now to another document which is similar but  
17       from which we can extract something slightly different?  
18       It is tab 32. I think you are not using the paper  
19       copies, are you, so I will not trouble you with  
20       references.

21   A. No, it works perfectly.

22   Q. Good, then you are further ahead than me in  
23       digitalisation. It is document {I1/418}, please. It is  
24       a bit more of the same but there is an additional point.  
25       This is a memo from you -- sorry, not from you, to

1           you -- from Mr te Velde, 16 December 2005, "Pricing  
2           Euro 4 models ...", and it goes through some of the same  
3           thing:

4                 "Please find below the proposed prices of Euro 4  
5           models."

6           Then there are various bullets. Again we see:

7                 "Resulting in the following nett price adaptations  
8           and list prices."

9           But this time -- and I assume that the process here  
10          would have been the same -- at this time we can see it  
11          is in columns rather than rows, but if we look at the  
12          first one, what happens to be the first one, "XF105",  
13          emission standard Euro, 5,000, so that is the uprate,  
14          then some updated interior or exterior, 2,000, total net  
15          target, 7500, average discount, 48, and then the list  
16          price that is going to be needed. So this looks like  
17          essentially the same process, vertical rather than  
18          horizontal; is that fair?

19         A. Yes, that is how it looks like, yes.

20         Q. Then the last row is "IKP", which actually gives us the  
21          figures for IKP that presumably will be given to the  
22          sales force?

23         A. Yes, that is correct.

24         Q. What I wanted to ask you about was -- again we have got  
25          a reference to "Prices Competition ..." at the bottom of

1 the page and it says:

2 "Prices Competition (preliminary):

3 "Volvo ...

4 "MAN ...

5 "[Mercedes Benz] ..."

6 Would you agree that the reference to "preliminary"  
7 makes it sound as if these are not yet firm or public  
8 prices?

9 A. I am afraid I cannot remember the detail of what  
10 "preliminary" meant in this particular context, I am  
11 sorry.

12 Q. That is entirely understandable. I would like to show  
13 you another document which relates to pricing in  
14 Euro 4 --

15 THE CHAIRMAN: Can I just, before you leave that document --

16 MR WARD: Sir, of course.

17 THE CHAIRMAN: There is a line for "IKP" which Mr Ward just  
18 took you to. How was that figure calculated?

19 A. That for us was a given, so the -- again the marketing  
20 and sales director and the director of finance would  
21 establish the IKP surcharge. The MLO was the actual  
22 cost came out of the project, they would multiply it by  
23 the surcharge and that was the IKP, and for us, in this  
24 process, that was simply a given.

25 THE CHAIRMAN: So the list price is quite a substantial

1 amount, quite a substantial margin over IKP?

2 A. But the list price does not have any relation to the  
3 margin. The margin is determined by the sales  
4 transaction price and by that time the list price was  
5 already sort of an artificial thing we carried from the  
6 past, which was part of our whole system structure and  
7 we had to populate it.

8 MR WARD: Sir, if you are happy to, I will move on to  
9 another document.

10 THE CHAIRMAN: Yes.

11 MR WARD: Thank you. This time it is {I1/370.1}. This is  
12 a slide deck and we can see what it is all about on the  
13 second page, {I1/370.1/2}. This is "The road to euro 4  
14 and 5" and it is by Wil Helmes, P&SM, November 2004.  
15 So help us with this a little, please. Who is  
16 Wil Helmes?

17 A. Wil Helmes was one of the project planners that sat in  
18 the project planning department, which is the department  
19 that looks further out into the future with respect to  
20 product development requirements. He reported to  
21 Theo Pas, who already -- well, we saw in one of the  
22 previous documents he was also sitting on the spec  
23 panel. The "P&SM" stands for "product and services  
24 management", I think.

25 Q. "Product and ..."?



- 1 A. Sorry, I am second-guessing now.
- 2 Q. If all you can do is guess, I feel better that I am not  
3 sure.
- 4 A. No, sorry. I should not do that.
- 5 Q. It is not the product specification and price management  
6 department, for example?
- 7 A. Could be. I cannot remember exactly.
- 8 Q. So I do not know whether you will be able to remember  
9 having seen this before, it is a long time ago, but  
10 shall we look at it together?
- 11 A. I do not recognise it as such but maybe if we flip  
12 through it, it may sort of jog my memory.
- 13 Q. I will flip through the first couple of slides, it is  
14 quite long, and then I want to go to a slide towards the  
15 end, so not tax everyone's patience too much.
- 16 We can see page 3, {I1/370.1/3}, has some  
17 information about "Emission legislation in the EC".  
18 Then page 4, {I1/370.1/4}, "Maut categories". What is  
19 "Maut" in this context, do you know?
- 20 A. That was -- the "Maut", that was a taxation in Germany  
21 which was related to the emission level of the trucks  
22 and how much tax you would have to pay per kilometre  
23 and, obviously, the better your emission level, the  
24 lower the tax would be per kilometre that you would have  
25 to pay.

1 Q. Then there is a sort of technical section of the slides  
2 about different forms of emission reduction. If we go  
3 to page -- yes, we can see at a glance very nice  
4 diagrams, then at page 12, {I1/370.1/12}, there was  
5 something that was ventilated in the tribunal earlier  
6 last week, which is "EGR versus SCR", the two different  
7 types of emission reduction technology. At page 13,  
8 {I1/370.1/13}, it explains what the competition are  
9 doing in terms of the different systems that they had  
10 adopted.

11 Then there is, at page 14, {I1/370.1/14}, AdBlue,  
12 which was the solution that DAF adopted, was it not,  
13 AdBlue?

14 A. Yes, that is correct.

15 Q. Then production capacities on page 15, {I1/370.1/15}.  
16 Then we get on to 17, {I1/370.1/17}, "DAF strategy for  
17 Euro 4 and 5", which is to go for SCR, which is the  
18 AdBlue technology, is it not?

19 A. Yes, that is correct.

20 Q. Then there is planning on timing. Then if we go to  
21 slide 20, {I1/370.1/20}, it says "The road to euro 4  
22 and 5" -- is any of this looking familiar, by the way,  
23 Mr van Veen?

24 A. Well, the subjects also they look familiar. The  
25 presentation itself, I cannot recognise I have seen this

1 presentation, but the topics obviously I recognise.

2 Q. Well, we will see "Goal is sales"; not surprising for  
3 a profit-maximising business.

4 "Convince customers that the short term euro 4  
5 specification of competition is an interim solution with  
6 a limited pay-back time ..."

7 That:

8 "Euro 3 is still the best option if [you have] MAUT  
9 ..."

10 Then the last bullet point is:

11 "Sell euro 3 now and euro 5 when mature ..."

12 It says:

13 "We still need to sell Euro 3 for 1.5 year!"

14 Have you any idea why it might be saying that?

15 A. Yes, but again I would be now sort of assuming and  
16 trying to reason why that is.

17 Q. Okay. I do not want to ask you to do that. That is  
18 fine.

19 Let us look at the next slide, which is really the  
20 one that I took you to this for. This is "The road to  
21 euro 4 and 5" and it has Mercedes, Scania, MAN, then it  
22 continues over the page to other manufacturers. What we  
23 see here is "Model", "Fuel cons", presumably "Fuel  
24 consumption", in effect, "AdBlue" -- why would AdBlue  
25 have a percentage, do you know?

- 1 A. That would be the -- no, I do not know.
- 2 Q. Okay, then it has "net price". We can see, for example,  
3 the top line there, Mercedes Euro 4 is 5,500 euros, and  
4 if you just follow that row down with your eye you can  
5 see net prices for other manufacturers. Then  
6 "Availability", again various dates are given, but we  
7 can see, for example, in the bottom line here, we have  
8 various dates through from 2004 through to 2006. Does  
9 this look familiar to you at all?
- 10 A. I am sorry, it does not.
- 11 Q. Do you recall receiving this information at any stage?
- 12 A. No, I cannot recall having received this information.  
13 I do not remember.
- 14 Q. Would you agree with me that, if it is net prices about  
15 trucks that are going to be available in the future, it  
16 is most unlikely that this is public information?
- 17 A. Again, I would be second-guessing. I do not know --  
18 I do not know the document so I cannot recall the  
19 document so I cannot comment on how the content came  
20 about.
- 21 Q. That is entirely understood. Can I go back now -- well,  
22 before I do, what you have told us this morning is that  
23 you have been -- you were involved in European list  
24 price setting generally and --
- 25 A. Yes, that is correct.

1 Q. -- that you were involved -- you did that with a team,  
2 including the M&S director.

3 A. Yes, that is correct.

4 Q. Now, one thing you do not mention in your witness  
5 statement anywhere is the Commission's decision from  
6 2016 that found DAF guilty of collusion over pricing --  
7 gross price increases and the timing and passing on of  
8 costs for Euros 3 and 6 standards. You do not mention  
9 that in your decision [sic], but you must be aware of  
10 it.

11 A. I am aware of course, yes.

12 Q. Have you ever read the decision?

13 A. I have not read the decision in detail, I am sorry.

14 Q. But you are aware it is a 14-year history of information  
15 sharing and agreements on gross list prices and on  
16 emission standards?

17 A. I noted that it sort of started somewhere like 14 years  
18 ago, but I could not comment on the timing. Again,  
19 I have not read the whole document myself, as the  
20 outcome of the Commission.

21 Q. Can I just ask you to look at your witness statement,  
22 please? This is {D/24/11}, paragraph 42. This is  
23 a paragraph that is actually about the DAF intranet. At  
24 the bottom of the page -- sorry, bottom of the paragraph  
25 you say:

1            "I was never aware of DAF granting access to the  
2 closed satellite-based network or the intranet page to  
3 any of its competitors."

4            I think that is the closest the statement comes to  
5 talking about information exchange of the kind that is  
6 referred to in the decision. I just wanted to ask what  
7 prompted you to include that in your witness statement.

8            A. There was a question about how we published the list  
9 prices and I explained the history of how it went from  
10 paper to our configurators and through the closed  
11 satellite network and the intranet, and during that  
12 discussion it was, let us say, put down in my witness  
13 statement.

14           Q. You did not think of explaining your role in the setting  
15 of list prices in your witness statement?

16           A. It is not something that I, let us say, consciously sort  
17 of not mentioned or did mention. This is my witness  
18 statement.

19           Q. Now, you have told me that you were aware of the  
20 decision. We have looked at a few examples of  
21 information -- of competitor information, but were you  
22 aware more generally of what was going on in the  
23 behaviour that was described in the decision, the  
24 exchanging of list prices, the collusion over European  
25 emission standards? Were you aware of any of that at

1 the time?

2 A. No, I was not aware at the time. Obviously, I learnt  
3 from it after the events and let us say the statements  
4 from the Commission, but at that point I was not aware.

5 Q. So, for example, Mr McDonagh never mentioned it to you?

6 A. No, never mentioned it to me.

7 Q. So you are not in a position to help the tribunal with  
8 what use other people might have been making of that  
9 information as part of the processes that you were  
10 involved with?

11 A. I am not -- could you rephrase?

12 Q. Yes. So you have told us that you did not know any of  
13 this stuff that was in the decision and you have said  
14 Mr McDonagh did not mention anything about this. You  
15 have explained that, when it came to list price setting,  
16 in particular you worked with Mr McDonagh and with  
17 others, and I am really putting to you, though, that you  
18 cannot help us with how they might have used this  
19 information that came from the cartel.

20 A. That is correct. I cannot help with that. I know that  
21 Mr McDonagh did not share, let us say, the outcome with  
22 me, so ...

23 MR WARD: Sir, thank you. I have no more questions.

24 THE CHAIRMAN: Any re-examination?

25 MR BEARD: I have a couple of very brief questions.

1 Re-examination by MR BEARD

2 MR BEARD: You were just taken to a document, a PACCAR  
3 document, which was at {I1/370.1}. You fairly said you  
4 could not remember it and you were taken through to  
5 page 21, {I1/370.1/21}, "The road to euro 4 and 5" and  
6 the references to Mercedes, Scania and MAN and to "net  
7 price" that Mr Ward went to. He was suggesting that  
8 this was not public information. Were there any public  
9 announcements by any of the truck manufacturers around  
10 the time of Euro 4 or Euro 5 being introduced about  
11 pricing?

12 A. Yes, absolutely. This was the change to Euro 4 and  
13 Euro 5 potentially involving this new technology with  
14 a catalyst, with having to carry AdBlue as a new fluid  
15 on the truck. The whole trade press was all over this  
16 sort of change and the impact on the transport companies  
17 and it was not limited to let us say the emission  
18 standard but also limited to what does it mean to  
19 re-supply the AdBlue, and it also included let us say  
20 the impact on the operational cost for a transport  
21 company and therefore a lot of discussion by trade press  
22 journalists about what the incremental cost would be.  
23 So there was a lot going on in the public domain because  
24 it was a new change and impact on the transport  
25 companies.



1 Q. When you say "cost", do you mean cost to the customers  
2 or cost to the manufacturers?

3 A. Cost to the customers.

4 Q. Thank you. I do not know if it is possible to go back  
5 and actually show Mr van Veen the end of [draft] page 54  
6 of the livestream transcript, the question posed by  
7 Mr Ward. If not, I will read it out.

8 THE EPE OPERATOR: I can do that.

9 MR BEARD: That is great. Thank you very much.

10 Yes, picking it up at line [10], this is a question  
11 from Mr Ward. So this is just the transcript that has  
12 been running through, Mr van Veen.

13 A. Hmm-hmm.

14 Q. Just so you remember the question, {Day7/54:10}:

15 "I am going to go shortly to one example in an area  
16 where you have been working but for now I am going to  
17 talk about this in detail with Mr Ashworth. But I am  
18 just going to put to you our case, which is that, in  
19 practice, list prices did have an influence on final  
20 sale prices and that they were the starting point of the  
21 whole pricing structure. I take it you would not accept  
22 that?"

23 You said:

24 "No, I would not accept that. I mean, that is not  
25 how I perceive reality."

1           Mr Ward, perhaps unsurprisingly, moved on. Can you  
2           just indicate to us how you do or did perceive reality  
3           in that regard?

4           A. Could I please see the question again?

5           No, again, the reality was that there was a --  
6           typically, if there was a discussion with a customer,  
7           there was an expectation on the customer what he was  
8           willing to pay for the truck. The reference could be  
9           his previous transaction, the previous truck that he had  
10          bought a few years ago, and that was the start of the  
11          negotiation, what he actually was willing to pay as  
12          a transaction price for that truck and never -- and that  
13          sort of lets away a recalculation of how much discount  
14          would be required to arrive at that actual sales price,  
15          the transaction price. It was purely sort of arithmetic  
16          but it did not have any value whatsoever in establishing  
17          a transaction price. Does that answer the question?

18          Q. I was simply exploring what had been left in your answer  
19          so I will leave it there unless the tribunal --

20          THE CHAIRMAN: You say the discount to list price would be  
21          important to the customer?

22          A. No, he was only interested in the sales transaction  
23          price. He was -- the customer is only interested in  
24          what he has to pay. Whether we would have 10% discount  
25          to arrive at that price or 30% discount, whatever

1 discount, he does not care. He is only interested in  
2 the net sales transaction price that he will have to pay  
3 to DAF for the truck, and whatever complexity we have  
4 built around it, that was not any of his interest.

5 MR BEARD: If we can just go back to [draft] page 26 in the  
6 transcript, please, at the bottom of page 26, this was  
7 in part of the questioning from Mr Ward about the  
8 mandate structure. He was asking you about the years  
9 you were in the role, 2003 to 2007, in truck logistics  
10 and he says, {Day7/26:12}:

11 "For the years you were in this role -- because if  
12 we look over the page at paragraph 9 [I think in your  
13 witness statement, {D/24/4}], you say in 2007 you moved  
14 on and ... became responsible for DAF sales in the  
15 Netherlands and Scandinavia. So you operated the  
16 mandate structure -- your role in the mandate structure  
17 was just for four years then, was it, from 2003 to  
18 2007?"

19 You say:

20 "In that specific approval step, that is correct."

21 After you left that role in 2007 and moved to the  
22 Netherlands and Scandinavia, did you have any  
23 involvement in the approval process at all?

24 A. Well, the strange thing was I got them, let us say the  
25 regular approval mandate, as all the other MDs would

1           have. So in fact my approval mandate decreased and went  
2           back to the 7% in my role as managing director, whereas  
3           previously, being part of trucks logistics in that  
4           function, I had the 10%.

5           Q. So you were still involved in the mandate approval  
6           structure but with a lower --

7           A. In fact in reality one step lower.

8           MR BEARD: Understood. Thank you, I just wanted to clarify  
9           that answer.

10           I do not have any further questions. I do not know  
11           if the tribunal has any further questions.

12                               Questions by THE TRIBUNAL

13           THE CHAIRMAN: I just want to ask you. You said you do not  
14           think you had ever read the decision, the Commission  
15           decision, upon which this case is based; is that right?

16           A. Yes, I may have read some parts of it. I did not read  
17           it from A to Z.

18           THE CHAIRMAN: Were you not interested to see what DAF had  
19           signed up to in relation to this quite important matter?

20           A. Oh, yes, but we got well translated sort of operational  
21           or let us say explanations from the legal wording was  
22           to -- let us say, the way I best understood or we best  
23           understood it. So obviously within DAF the formal  
24           wording was sort of summarised and explained to us.

25           THE CHAIRMAN: Right. So you may not have read the original

1           thing but you had it explained to you --

2           A. Oh, absolutely. Absolutely, yes. I was referring to --

3           THE CHAIRMAN: It was important that you take on board

4           everything that had been found for the future?

5           A. Absolutely. So, again, a lot was explained to us and --

6           but on the question did I read the original document,

7           the legal wording, from A to Z, I am afraid I did not

8           read the legal wording.

9           THE CHAIRMAN: Right.

10          MR RIDYARD: Just one question, Mr van Veen. In relation to

11          the IKP targets and how you construct the price of

12          a particular truck, as I understand it, we have the MLO

13          numbers and that is, if you like -- I could think of

14          that as the ingredients of a truck, every possible

15          ingredient, and there is obviously thousands of

16          different combinations that you could put together in

17          a particular truck. All those ingredients have an MLO

18          cost, which is a calculation of the cost of providing

19          that ingredient. Then, in addition to that, we have the

20          IKP target, which is an uplift over the MLO cost at any

21          point in time. Is that more or less how it works?

22          A. That would be IKP cost and the target would be the

23          target margin against the IKP cost.

24          MR RIDYARD: Of course. So we have the MLO, which might be

25          100, the IKP target which brings it to 110, just as an

1           example, and then above that you would have another --  
2           you would have the IKP and then the target above that.  
3           So let me start again. So let us say the MLO is 100 for  
4           something, then we have the IKP surcharge which might  
5           bring it to, just as an example, 110, and then you would  
6           have the IKP target margin which would bring it to 120,  
7           for example?

8           A. No. To make a bit more precise --

9           MR RIDYARD: Please do.

10          A. -- so the MLO would be 100, the surcharge would bring  
11          that up to an IKP cost of 110, then we said we would  
12          like to have a margin -- so that is the difference  
13          between the sale price, the transaction price and the  
14          IKP cost -- we would like to have a margin of 10, and  
15          then we would formulate that 10 euros into a percentage  
16          of cost and that would be the target. So the target  
17          will always be a percentage-wise margin target.

18          MR RIDYARD: Okay. Fine. So my question really was then,  
19          given that structure, that hierarchy of the elements, at  
20          one level I can see that understanding all of the  
21          products is incredibly complicated because there are so  
22          many hundreds and thousands of possible combinations of  
23          ingredients, but if you have got a particular IKP  
24          target, is it fairly mechanistic, a fairly simple  
25          mechanistic process, to say, "Well, if the sum of the

1 MLOs, of the MLO ingredients, for this truck comes to  
2 a certain number, then the IKP cost comes to  
3 a predefined uplift on that and then the target comes to  
4 a predefined uplift on that number"? So it is quite  
5 mechanistic going from the -- starting with the MLO and  
6 the cost of the ingredients to the IKP above it and then  
7 the target above that. So once you know the  
8 ingredients, do you -- automatically it is quite easy --  
9 is it easy or difficult to know what the IKP target for  
10 that set of ingredients, that combination of  
11 ingredients, would be?

12 A. There is a sort of disconnect between the IKP costs and  
13 the target margin. The IKP cost is quite mechanistic  
14 because of the MLO and then the surcharge factor which  
15 produces the actual residual(?) cost. Then on the  
16 target margin, that was the top-down process, where the  
17 overall target margin, for example, on a series level,  
18 on the LF or on the CF or on the XF, was agreed in the  
19 board, then that would be composed of hundreds of  
20 models, over 20 countries, distinguishing between fleet  
21 and retail, and that would then be decomposed for every  
22 combination of those parameters into a target margin for  
23 that specific second, and that was not an automatic  
24 deterministic(?) process. There you would make some  
25 decisions that, on average, you would arrive at the

1           agreed target margin at board level. That would mostly  
2           be a couple of cycles of simulations, whether it would  
3           actually add up.

4       MR RIDYARD: I see.

5       THE CHAIRMAN: So the target margin percentage, there were  
6           lots of different percentages depending on the product?

7       A. That is correct. So, for example, there was a target  
8           margin on the CF. Well, let us take an example of 5%  
9           which is nothing to do with reality, but it could very  
10          well be that a specific model of the CF with a specific  
11          horsepower and cab variant for a fleet in Italy would  
12          have a different target margin. That could have  
13          a different target margin of 2%. Then there could be  
14          another country, like in Germany, where the target  
15          margin for that specific model could be, for example,  
16          7%. Again, these were hundreds of different  
17          permutations and in the end it was the job to arrive  
18          back at the average target level that had been  
19          achievable --

20       THE CHAIRMAN: So the target margin had to be set for all  
21          those different possibilities?

22       A. Correct.

23       THE CHAIRMAN: So that was quite a burdensome task?

24       A. Correct. That was.

25       THE CHAIRMAN: That was done by the board?



1       A. No, it was not done by the board. So that was our job,  
2       together with the control department. The board set the  
3       overall level at, for example, series like, "This needs  
4       to be the target margin for the LF, this needs to be the  
5       target margin for the CF, this needs to be the target  
6       margin for the XF model, period", then we would,  
7       together with control, detail that out into how that  
8       would be implemented in the systems and it was our role  
9       to ensure that all these different elements would add up  
10      to the board decision.

11     THE CHAIRMAN: So what you did was work out from what the  
12      board had said what the actual individual target margins  
13      would be, which would be passed to the sales people in  
14      particular countries?

15     A. Yes, and we did that together with control, the control  
16      department, financial control department, who of course  
17      made sure that all the -- the mix of all the different  
18      elements would add up to the board decision and we would  
19      not be below that or above that. That is how the  
20      process works.

21     THE CHAIRMAN: Right, and that did not feed into list prices  
22      at all?

23     A. No, it did not feed into list prices whatsoever.

24     THE CHAIRMAN: Okay.

25     MR RIDYARD: Thank you.

1 THE CHAIRMAN: All right. Well, thank you very much,  
2 Mr van Veen.  
3 A. Thank you.  
4 THE CHAIRMAN: That is the end of your evidence and it is  
5 lunchtime, so you are welcome to speak to whoever you  
6 want over lunch.  
7 A. Thank you very much.  
8 MR BEARD: Mr Ward did intimate yesterday that we might get  
9 to Mr Ashworth at some point today. It seems to me we  
10 are going to be at Mr Ashworth at 2 o'clock.  
11 THE CHAIRMAN: Yes. We will resume at 2.00 with  
12 Mr Ashworth.  
13 (1.01 pm)  
14 (The short adjournment)  
15 (2.00 pm)  
16 THE CHAIRMAN: Good afternoon, Mr Beard.  
17 MR BEARD: We now call Mr Ashworth.  
18 MR RAYMOND ASHWORTH (affirmed)  
19 THE CHAIRMAN: Thank you, Mr Ashworth. Please sit down.  
20 A. Thank you.  
21 Examination-in-chief by MR BEARD  
22 MR BEARD: Good afternoon, Mr Ashworth. You have given  
23 a witness statement in these proceedings and you have  
24 got a couple of files in front of you. I think those  
25 are mostly going to be files of documents that Mr Ward

1           may be intending taking you to. I do not know what is  
2           in those but he will direct you in due course. I am  
3           just going to take you to your witness statement and  
4           I will just do it online. You will see it come up on  
5           the screen. It is {D/IC22}, please. Do you recognise  
6           that as the front page of your witness statement?

7           A. Yes, I do.

8           Q. If we could just go through to page 59, please,  
9           {D/IC22/59}, is that your signature, Mr Ashworth?

10          A. Yes, it is.

11          Q. Now, I understand that you have one correction or  
12          clarification that you wanted to make.

13          A. Yes, I believe there is some information given in  
14          paragraph 147 which is not quite correct.

15          THE CHAIRMAN: Do you know which page that is?

16          A. I am not sure.

17          MR BEARD: 40, please, {D/IC22/40}. At 147 you say:

18                 "I cannot recall where negotiations landed in  
19                 relation to the supply of Euro V trucks to Royal Mail.  
20                 DAF's solicitors have told me that we agreed ..."

21                 What is the clarification?

22          A. The clarification is that the information provided to me  
23          by the solicitors was not strictly correct and that the  
24          LF 55 series tractors did actually have a £500 excess  
25          applied, additional charge applied.

1 Q. Could we just call up document {J4/IC173/2}?

2 THE EPE OPERATOR: That is confidential.

3 MR BEARD: Yes, it is okay for these purposes, I think. Go  
4 down to paragraph 7. This is a letter that is between  
5 the lawyers. Have you seen this letter?

6 A. Yes, I have.

7 Q. I am leading to some extent in relation to this  
8 correction, but, in relation to paragraph 7, is this  
9 a reference to the material that you are referring to as  
10 correcting?

11 A. Yes, it is.

12 Q. Thank you. Apart from that, are the contents of your  
13 statement true to the best of your knowledge and belief?

14 A. Absolutely correct.

15 MR BEARD: Now, I do not have any questions for you,  
16 Mr Ashworth. Mr Ward will have questions for you. As  
17 I said to the witnesses this morning, if in the course  
18 of providing an answer you are concerned that you might  
19 be referring to confidential information, please do  
20 indicate and we will make arrangements that you can  
21 provide your answer more fully when only those that are  
22 privy to the confidential information should hear it.

23 A. I understand that.

24 MR BEARD: Thank you very much.

25 THE CHAIRMAN: Mr Ward.

## 1 Cross-examination by MR WARD

2 MR WARD: Good afternoon, Mr Ashworth.

3 A. Good afternoon.

4 Q. You have three bundles I think in front of you.

5 A. Yes.

6 Q. A white one from DAF's solicitors -- the two blue ones,  
7 which are from my solicitors, contain documents we might  
8 look at in the course of the afternoon or tomorrow.

9 I am sure we will go into tomorrow. Just to explain,  
10 the first bundle is numbers 1 to 44 and the second  
11 bundle is beyond that, but I will do my best to take you  
12 to the right bundle. I am assuming you would prefer to  
13 look at documents in hard copy than on the screen?

14 A. I am happy to start on the screen if that works and we  
15 can go to documents if we need to.

16 Q. Good. Well, you let me know whatever is going to be  
17 most convenient for you and we will do that in due  
18 course.

19 A. Thank you.

20 Q. Let me start, if I may, by asking you about your role in  
21 DAF. It would be helpful to have your witness statement  
22 open on page 3 initially, {D/22/3}, just at the very  
23 bottom of the page, please. You explain here that you  
24 were managing director of DAF UK from March 2009 until  
25 your retirement in May 2017.

1           "As Managing Director, I was responsible for all  
2 aspects of the business of DAF UK."

3           I would like, if I may, just to get a sense of what  
4 is involved in DAF UK as a business. We have talked  
5 a lot already about marketing and sales, but can you  
6 just give us a sense of the different divisions of  
7 DAF UK?

8       A. Okay. So in DAF UK there were essentially divisions of  
9 sales, parts and a financial operation. My  
10 responsibility was basically marketing and sales, so in  
11 sales predominantly. Parts was a separate division,  
12 although it had a dotted line responsibility to me, and  
13 finance was an independent operation within the  
14 operation within the UK.

15       Q. So as managing director you were not responsible for all  
16 of those ultimately?

17       A. Ultimately and directly, no. Just purely the senior  
18 person on site in the UK.

19       Q. In the marketing and sales division, DAF UK, roughly how  
20 many people were there?

21       A. In marketing and sales overall the whole team was about  
22 100 people.

23       THE CHAIRMAN: We are talking about the whole period or --

24       MR WARD: I am not asking for a year-by-year analysis.

25       THE CHAIRMAN: Fairly similar throughout --

1 A. No, it sadly reduced dramatically over the period, but  
2 during my reign as managing director, around about  
3 100 people.

4 MR WARD: Now, before that let us look at -- I just want to  
5 follow your career path through DAF a little bit, if  
6 I may. At paragraph 11 on the next page, {D/22/4}, you  
7 say you were a fleet and municipal sales director from  
8 1991 to 2002. You say at that point you were  
9 responsible for a team of fleet sales managers with  
10 responsibility for fleet customers. We will come to  
11 those in a minute. We will talk about the types of  
12 customers in a moment. But how many fleet sales  
13 managers were there in your team?

14 A. About that time, I would say about six or maybe even  
15 seven.

16 Q. Were they also responsible for municipal customers or  
17 was that a different team?

18 A. That was a different team that was responsible for  
19 municipal customers.

20 Q. Roughly how many of those were there?

21 A. At that time around about four people.

22 Q. I inferred from your statement that you were also  
23 responsible at that time for direct sales; is that  
24 right?

25 A. Yes, that is correct.

- 1 THE CHAIRMAN: What do you mean by "municipal customers"?
- 2 A. So "municipal customers", essentially local authorities  
3 and -- I think local authorities probably sums it up to  
4 the best of my ability, yes.
- 5 MR WARD: So you also had direct sales responsibility within  
6 the fleet and municipal team?
- 7 A. That is correct, yes.
- 8 Q. How many people did you have in the team dealing with  
9 direct sales?
- 10 A. Throughout the whole period, one person.
- 11 Q. One person.
- 12 I think you had said that there were five direct  
13 sales customers: Royal Mail, BT, HM Prisons, Ministry of  
14 Defence and Morrisons.
- 15 A. That is correct.
- 16 Q. Which was the biggest?
- 17 A. I would say Royal Mail.
- 18 Q. Really? I think you said earlier -- somewhere in your  
19 statement you said it was the second largest, but --
- 20 A. Sorry, if I may clarify?
- 21 Q. Please.
- 22 A. Royal Mail was the largest in the direct sales team but  
23 overall, in the business of DAF, it was the second  
24 largest.
- 25 Q. Second largest to who?



1 A. Ryder.

2 Q. In terms of fleet sales, roughly how many customers were  
3 there?

4 A. Typically, again, around about 100 fleet customers.

5 Q. And municipal?

6 A. Gosh, every local authority, so it could be 200/300.

7 Q. I think I am right in thinking that the dealer network  
8 was independent of DAF?

9 A. The dealer network was independent bar one during the  
10 period, which was ultimately sold. That was  
11 Heathrow Truck Centre and that dealer was sold and then  
12 became independent, so at the end of the period it was  
13 a totally independent network.

14 Q. Roughly how many dealers were there?

15 A. So the dealers were 36 dealer locations and they were  
16 consolidated down to about 19 ownership companies.

17 Q. DAF UK had relationships with those dealers, did it not?

18 A. Yes, it did.

19 Q. So you were involved in both -- you were negotiating  
20 with them over the prices that they would charge --  
21 sorry, that you would charge them for the trucks they  
22 sold to the customers?

23 A. That is correct, yes.

24 Q. Now, if we go back to your statement in paragraph 12,  
25 {D/22/4}, you say -- this is after you had been fleet

1           and municipal sales director, which was for nine  
2           years -- you became commercial operations director in  
3           2002. Was that a promotion?

4           A. That was a promotion, yes.

5           Q. You say that you were responsible for sales and sales  
6           engineering teams, so can you help us understand what  
7           was the additional responsibility that came with that  
8           promotion?

9           A. So the additional responsibility was, as fleet and  
10          municipal sales director, I was responsible, as the  
11          title would suggest, for fleet sales and municipal  
12          sales. As commercial operations director, I took on the  
13          additional responsibility for retail sales or regional  
14          sales, that was essentially dealer sales, and also sales  
15          engineering, where we had a small sales engineering team  
16          in DAF UK to help support customers in any engineering  
17          questions.

18          Q. So do you then become the effective line manager of the  
19          head of fleet and municipal sales?

20          A. That is correct, yes.

21          Q. At paragraph 27, please, if we could turn to that on  
22          page 7, {D/22/7}, you explain that:

23                 "Over the course of DAF UK's relationship with  
24                 Royal Mail ... all direct contact ... was through  
25                 DAF UK, as opposed to ... dealers ... Within DAF UK,

1 Royal Mail was assigned a dedicated account manager to  
2 manage the relationship, who was responsible for the day  
3 to day engagement with Royal Mail."

4 That was Andy Shadwell followed by Geoff Tyler?

5 A. That is correct.

6 Q. That is the one person in the organisation who was  
7 responsible for direct sales?

8 A. Yes, that is correct.

9 Q. So each of those people was responsible for BT,  
10 Royal Mail, HM Prisons, Morrisons and MoD?

11 A. Yes, that is correct.

12 Q. Did they have any other responsibility or was that -- it  
13 sounds like a full-time job. Was it a full-time job?

14 A. That was a full-time job, and Morrisons was added  
15 latterly, after the Foden brand was closed.

16 Q. After ...? I am so sorry.

17 A. After we closed the Foden brand.

18 Q. Right. They were previously a customer of Foden brand,  
19 were they?

20 A. That is correct.

21 Q. What you say in paragraph 27 is that Mr Shadwell, then  
22 Mr Tyler, spent 60% of their time handling BT and  
23 Royal Mail. We heard -- have you been following the  
24 proceedings at all?

25 A. Yes, I have.

1 Q. So you will have heard Mr Beard go through some of the  
2 detail of the procurement exercises. But the way you  
3 make -- the way it sounds, from what you have said, is  
4 that they might be doing three days a week dealing with  
5 Royal Mail out of the five customers.

6 A. So out of the five customers, they could spend 60% of  
7 their time on Royal Mail. Of course BT in the early  
8 days was quite a complex supply, so that would be maybe  
9 another 20%/30%, and then Prison Services and ultimately  
10 Morrisons would add the rest.

11 Q. So that must mean that there was an awful lot of contact  
12 going on then between Mr Tyler and Mr Shadwell and  
13 Royal Mail if it was keeping them busy for 60% of their  
14 time?

15 A. Yes, there was.

16 Q. Now, you also say in paragraph 28 that, when you were  
17 fleet and municipal sales director, Andy Shadwell  
18 reported directly to you as he had the day-to-day  
19 running of the account and in fact you say later there  
20 was something similar for BT in the early days, when  
21 they were a larger account.

22 A. That is correct.

23 Q. So if I can -- forgive me. I hope I am not labouring  
24 this, but just to try and understand what the corporate  
25 structure is here, you had Andy Shadwell and Geoff Tyler

1           who were the account managers. They reported directly  
2           to the fleet and municipal sales director, which was you  
3           for nine years. The fleet and municipal sales director  
4           reported to the commercial operations director?

5           A. That is correct, yes.

6           Q. Then at the top of the tree, where you were from 2009,  
7           you had the managing director. Would it be right that  
8           the commercial operations director reported to the  
9           managing director?

10          A. That is correct, yes.

11          Q. Now, you also say at paragraph 29, {D/22/8}, that once  
12          you became commercial operations director and you got  
13          that promotion, you continued to supervise Andy on the  
14          account, but of course by then presumably his  
15          replacement as fleet sales director was his immediate  
16          supervisor, which I think was Mr Oldbury.

17          A. Not directly. I think, if I recall, we actually placed  
18          Andy Shadwell reporting to me, but I may not be 100%  
19          correct on that.

20          Q. I will try to remind you of what you actually say  
21          because I do not mean this to be a memory test of your  
22          witness statement.

23          A. Thank you.

24          Q. If you look at paragraph 31(b), {D/22/8}, you say that  
25          Mark Oldbury, who was the fleet sales director between

1           2002 and 2008, he took over your role, he attended some  
2           negotiations with Royal Mail, but he did not take  
3           decisions on prices "without me".

4           A. That is correct. I think that is what I am inferring.

5           Q. By the time you were managing director in 2009 -- well,  
6           commercial director, then managing director -- you  
7           obviously also had a lot of other responsibilities as  
8           well as Royal Mail, did you not?

9           A. Yes, I did.

10          Q. What we see then is there were various layers of  
11          management between you and Mr Tyler and Mr Shadwell at  
12          different times; different layers at different times.  
13          Would you accept that you would have only ever had  
14          partial visibility of what Mr Shadwell and Mr Tyler  
15          discussed with their customers, whether Royal Mail or  
16          otherwise?

17          A. I am not sure I would say "partial visibility" because  
18          obviously at the level of the account and the volumes  
19          involved, then -- ultimately, when we looked at any  
20          contract of this size, then I would be very keenly  
21          interested in what we were doing and what our intentions  
22          were.

23          Q. What I would suggest to you is that at your level of  
24          seniority you cannot have attended every significant  
25          meeting or discussion.

- 1 A. That is fair to say.
- 2 Q. While we are still on this topic of organisation, we see  
3 on page 8, {D/22/8}, you talk about -- paragraph 31 we  
4 were just looking at -- who were the other key  
5 individuals involved in the Royal Mail relationship, and  
6 you talk about in (a) David Gill as the managing  
7 director from 1992 to 1999. You of course became  
8 managing director in 2009 and there is of course  
9 a ten-year gap there, is there not? So can you help us  
10 with who was the managing director -- were the managing  
11 directors between those two?
- 12 A. So after David Gill, from my memory now, I think it was  
13 Kerry McDonagh, then after Kerry McDonagh I believe it  
14 was Aad Goudriaan, and then after Aad Goudriaan it was  
15 Ian Jones for four weeks, and then after Ian Jones it  
16 was Stuart Hunt, and then after Stuart Hunt it was me.
- 17 Q. Do you know why Ian Jones only lasted for four weeks?
- 18 A. I do not, but he had probably some issues that he wanted  
19 to go and work for somebody else. That is my  
20 speculation.
- 21 Q. Is that the same Ian Jones who went to work for  
22 Mercedes Benz?
- 23 A. That is the same Ian Jones who became managing director  
24 of Mercedes Benz.
- 25 Q. If we could turn back to paragraph 6 of your statement

1 on page 3, {D/22/3}, you say at the bottom of the page,  
2 when you were managing director, you reported only to  
3 the director of marketing and sales of DAF NV.

4 A. That is correct.

5 Q. That person was, at least for a while, Mr McDonagh, was  
6 it not?

7 A. No, that was not when I was managing director. The  
8 person who was marketing and sales director in DAF NV  
9 was Ron Bonsen.

10 Q. May I ask you, please, to turn to tab 13 in the bundle,  
11 if you would like a hard copy, or {I6/80.2}, please.  
12 This is a document that you may not have seen before but  
13 we found it on the Commission file that was provided to  
14 us by DAF and it contains various people's names and  
15 positions. If we look at it together, please, we can  
16 see Mr McDonagh.

17 A. Hmm-hmm.

18 Q. We see "Period 2000-2001", he is managing director of  
19 DAF Trucks Limited. Then in the period 2001 to 2007 he  
20 was director of marketing and sales, so that was before  
21 you became managing director of DAF?

22 A. That is correct, yes.

23 Q. While you were in your previous role, did you have any  
24 dealings with him?

25 A. In my previous roles, yes, because obviously he worked



- 1           in the UK.
- 2       Q. Did you have dealings with him as director of marketing  
3           and sales?
- 4       A. No, he left the position of director of marketing and  
5           sales before I became managing director.
- 6       Q. Your predecessor as managing director presumably would  
7           have had dealings with him?
- 8       A. Yes, they would have.
- 9       Q. His predecessors that are listed here, if you look again  
10           at this table, we have got Mr van den Assem, who was  
11           director of marketing and sales from 1993 to 1999, and  
12           Mr van Putten, who was director from 2000 to 2001. Your  
13           predecessors would have dealt with them as well  
14           presumably?
- 15      A. Yes, they would.
- 16      Q. Can we turn to document 15? This is {I1/125.1}.
- 17           I think Mr Beard opened this document as well. This is  
18           an email from Mr Shadwell to you and Mr McDonagh,  
19           talking about:
- 20                 "I have negotiated the following position with  
21           The Post Office."
- 22                 Do you see that?
- 23      A. Yes, I do.
- 24      Q. We need not concern ourselves with the detail, but you  
25           are most welcome to read it. It is quite closely typed.

1           Is that a sort of typical example of how Mr McDonagh  
2           might have been copied in to these kinds of  
3           communications?

4           A. Yes, I would say that is typical.

5           Q. Turning to a different topic now. You explain in your  
6           evidence that Royal Mail and BT were both very focused  
7           on price. Would that be fair to say?

8           A. Yes, that was one of their objectives but not their  
9           whole objective.

10          Q. Not their whole objective, but let me just remind you of  
11          what you say about this. If we could turn in your  
12          witness statement to page 13, paragraph 48, please,  
13          {D/22/13}, you say picking up at the second line --  
14          well, you say very frankly and fairly:

15                 "With all upgrades from the basic vehicle  
16                 specification and/or additional options, DAF UK would  
17                 attempt to charge the customer more. Ultimately though,  
18                 especially with Royal Mail, the negotiation would always  
19                 come down to the price the customer was willing to pay  
20                 for the whole truck ..."

21                 Then if we turn on to page 45, {D/22/45},  
22                 paragraph 167, you say:

23                 "BT compared DAF UK's prices to its competitors and  
24                 requested benchmark comparisons against ... other  
25                 customers ... DAF UK came under pressure on price,

1 performance and reliability in all of the BT tenders for  
2 heavy trucks."

3 We know that both BT and Royal Mail purchased from  
4 you in tendering exercises.

5 A. That is correct, yes.

6 Q. Would you agree that the harder the other truck  
7 companies competed, the tougher it would be for you to  
8 get the prices you wanted in those tender exercises?

9 A. I think that is a fair comment.

10 Q. Now, I wanted to ask you about market intelligence. If  
11 we could turn to page 21, please, {D/22/21}, of your  
12 statement, you say, paragraph 72 -- you probably heard  
13 me show this to Mr van Veen this morning.

14 A. Yes, I did.

15 Q. So we can take this quickly. You say here that you did  
16 take into account market intelligence and you say:

17 "... (most often gained directly from Royal Mail,  
18 although sometimes ... from DAF UK's dealers and other  
19 customers) on prices for comparable trucks made by other  
20 manufacturers."

21 Just pausing there, you are talking about Royal Mail  
22 here because you are understandably addressing  
23 Royal Mail pricing, but would it be fair to say that  
24 that is a factor that you generally took into account,  
25 including with other customers?

1 A. If we had reliable information provided by the customer,  
2 then, yes, we would take that into account.

3 Q. Well, you say here at least "dealers and other  
4 customers" so not only from the customers, surely?

5 A. One has to assume that the dealers would only assume(?)  
6 that from their customers, although they may -- as some  
7 of our dealers were multi-franchise, they may have that  
8 information to them from the other franchises, but  
9 generally it was from -- the ultimate starting point was  
10 the customer.

11 Q. If you have been following proceedings, you will have  
12 heard Mr Giles for Royal Mail and Mr Peatey for BT  
13 saying that they did not provide customer bid  
14 information to DAF. Do you accept that that could be  
15 the case?

16 A. I accept that Mr Giles and Mr Peatey would not provide  
17 that information, yes.

18 Q. I want to ask you now about market intelligence that you  
19 might have received from competitors. Now, if you have  
20 been following proceedings, you will have already heard  
21 me talk about the so-called peers group meeting at  
22 Castle Coombe on 1 December 2003. Did you hear that  
23 discussed?

24 A. Yes, I did.

25 Q. Can we look at the note together, please? That is in

1           your bundle at tab 22 and the document reference is  
2           {I6/127}. Have you seen this note before?

3       A. I have seen this note, yes.

4       Q. When did you last look at it?

5       A. Several weeks ago.

6       Q. Several weeks ago. Was it shown to you in preparation  
7           for these proceedings?

8       A. Yes, it was.

9       Q. Now, I can take this quite quickly. When we look at the  
10           attendees, we see at the top of the page, "Apologies for  
11           absence: Ian Jones ..." Is that the same person we were  
12           just talking about?

13      A. Yes, that is correct.

14      Q. Then under "Attendees", we have got in the fourth line,  
15           among the various other truck companies, Stuart Hunt.  
16           This is from 2003. Is this from the time when he was  
17           managing director of DAF UK?

18      A. Yes, that is correct.

19      Q. You have seen this before so we can be quick about it.  
20           But among the various things that it says of course is  
21           different truck companies here in the first paragraph  
22           indicating various intended price increases.

23      A. Yes, that is correct.

24      Q. DAF in particular are indicating a price increase prior  
25           to the show. Would that be the IAA again that we were

1 talking about this morning? I know you are not there.

2 A. I am not there. I can make an assumption, but I assume  
3 this is the -- if it is a UK document, which it is, then  
4 it would be the UK show. That is my assumption.

5 Q. Okay. It is probably not a fair question as you were  
6 not there and you do not know what they were talking  
7 about. It just capitalised the "Show". Whoever wrote  
8 this thought it was probably obvious.

9 In any event, there is all sorts of other  
10 information in here and you have heard me go through  
11 this if you have been following proceedings and, unless  
12 you would find it helpful, I am not going to go back  
13 through it.

14 Do you remember being made aware of this at the  
15 time?

16 A. No, I do not.

17 Q. Could I ask you to turn to {I6/118.1}? This is an  
18 invitation:

19 "Subject: Stuart/Tony/Ray.

20 "... re Stuart's recent Castle Coombe meeting."

21 It is 5 December, which is four days after the  
22 meeting.

23 Then it says:

24 "Meeting Status: Accepted.

25 "Organizer: Jackie Vines on behalf of Stuart Hunt."

1                   Was she his PA?

2       A.   That is correct, yes.

3       Q.   Then:

4                   "Attendees: Ray Ashworth; Stuart Hunt, Tony Pain."

5                   Can you tell us who Tony Pain was?

6       A.   Tony Pain was the marketing director for DAF UK.

7       Q.   So having seen that invitation, do you now recall

8                   attending this meeting?

9       A.   No, I do not.

10      Q.   Would you accept it is possible that you did?

11      A.   I am sure it is -- I am sure I did attend it.

12      Q.   You are sure that you did?

13      A.   Well, I am sure from the email that I attended it.

14      Q.   You did attend, although in fairness --

15      A.   I cannot remember.

16      Q.   -- it is nearly 20 years ago, you cannot remember?

17      A.   That is correct.

18      Q.   Can you now turn to the next document -- sorry, you are

19                   not using the paper file, are you?

20      A.   No, I am fine.

21      Q.   Well, I will not keep troubling you with the references

22                   if I can remember not to. It is {I6/100} and this is

23                   a "Product Information Bulletin" sent out by you

24                   in March 2004. We can just see the headline:

25                   "List Price Increase of 3% effective 5th April ..."

1           There are many of these documents in the file, I am  
2           not going to say "Do you remember this one?" as there  
3           must be literally dozens, but the point I am making to  
4           you is that it is in fact the same list price -- it is  
5           a list price increase of 3%, which was what was proposed  
6           in the -- what DAF said in the Castle Coombe meeting  
7           that it was planning to do, a 3% increase. Do you agree  
8           with that?

9           A. Sorry, I am not sure what the question is.

10          Q. The question I am asking you is: you can see that it is  
11          the same figure of 3%?

12          A. It is the same figure of 3%, yes.

13          Q. Are you able to help -- I think probably not -- as to  
14          whether there was information passed to you from the  
15          Castle Coombe meeting that might have been relevant to  
16          the process of sending this out?

17          A. I cannot help on that.

18          Q. Too long ago. Would you agree it is possible?

19          A. On the basis that I have created this document, my  
20          information normally on documents of this case so I can  
21          only talk generally -- so on this document at this stage  
22          I would be applying a percentage increase, in this case  
23          3%, on the pricing which was given to me from Eindhoven,  
24          so from DAF NV.

25          Q. That would be true of all of your European list -- where



- 1           there were European list price increases, they would  
2           come from Eindhoven?
- 3       A.   That is correct, yes.
- 4       Q.   Can you remember who communicated these things from  
5           Eindhoven?
- 6       A.   I cannot remember exactly, no, but I would suspect it  
7           would have been the marketing and sales director.
- 8       Q.   Marketing and sales director. Let me show you another  
9           example that I suspect you have seen before. It is  
10          {I1/431}. This is an email thread about Euro 4 pricing  
11          and we can see your name is at the top. But I would  
12          like to go to the bottom of the thread, if we could,  
13          please. The bottom of page 1 is all we need. This is  
14          an email from Verity McClernon of MAN ERF. ERF was  
15          a subsidiary of MAN, was it not, at that time -- sorry,  
16          I said "at that time" without saying when it was -- in  
17          2005?
- 18       A.   In 2005, yes, I think it was by then, yes. It was  
19          a very close period of time, but, yes, I think it was.
- 20       Q.   She addresses Alison Woodcock. Is she of DAF,  
21          Alison Woodcock?
- 22       A.   Alison Woodcock is a DAF employee, yes.
- 23       Q.   Then people from Renault, Iveco, Scania and Volvo. The  
24          heading is "Euro 4/5", and she says:  
25                 "Hi,

1 "I am looking for some information on Euro 4/5.

2 "basically the price difference between Euro 3  
3 and 4, ours will be between £2,500 and £3,500 increase  
4 depending on engine size. All are EGR and PM cat.

5 "Also do you think there will be a change in the oil  
6 ... intervals? There won't be with ours.

7 "Thanks for your help."

8 Do you remember seeing this email before?

9 A. I do not, not before. I have seen this recently but not  
10 at the time.

11 Q. You have seen it recently. When did you see it most  
12 recently?

13 A. A few weeks ago.

14 Q. Were you asked to look at it in preparation for today?

15 A. Yes, I was.

16 Q. So then you will be well aware that what follows above  
17 is we see Tony Pain emailing you and Stuart Hunt, and  
18 Stuart Hunt at this point is still the managing  
19 director, and it says:

20 "Stuart, Ray.

21 "An indication of how much MAN will be charging for  
22 Euro 4. We have not responded as I don't think it's  
23 a good idea to send emails on such things."

24 Then you forward it to various people, including  
25 Andy Shadwell, within DAF, saying:

1                   "For info -- please use discretely."

2                   So what we have here clearly is competitor  
3                   information, is it not, about Euro 4 and 5 pricing?

4           A.   Yes, it is.

5           Q.   Why did you think it was useful to forward it?

6           A.   Because it was information from competitors and  
7                   therefore I viewed that as being absolutely correct  
8                   information.

9           Q.   And relative to the pricing activities carried out by  
10                   the members of the team, presumably?

11          A.   Sorry, I do not quite understand the question.

12          Q.   You forwarded it to Nigel Hunt, Bob Ford, Andy Shadwell  
13                   and Tony Kelly. Tell me who the others are. We know  
14                   who Andy Shadwell is, of course. He was handling the  
15                   direct accounts, including Royal Mail and BT. But who  
16                   are these other people?

17          A.   So Mark Oldbury we know; Nigel Hunt was responsible for  
18                   retail sales or the other sales; Bob Ford, sales  
19                   engineering; and Shadwell we know; and Tony Kelly was  
20                   order administration.

21          Q.   Sorry, I did not catch that.

22          A.   Order administration at that time, I believe, yes.

23          Q.   So you thought this information was relevant to all of  
24                   those functions then?

25          A.   Yes, I did.

1 Q. In particular of course the pricing activities of  
2 Andy Shadwell and Nigel Hunt, who were both involved in  
3 actual deal-making?

4 A. Yes, they were.

5 Q. Can I show you another document, please --

6 THE CHAIRMAN: Can I just ask a question on that?

7 MR WARD: Of course, sir.

8 THE CHAIRMAN: Going down to the bottom of the email, they  
9 are referring to the price difference between Euro 3  
10 and 4 being between 2,500 and 3,500. Is that to net  
11 prices or gross prices?

12 A. I could only assume what it meant, but --

13 THE CHAIRMAN: What did you think it meant?

14 A. Well, I think what it would mean, that their envisaged  
15 price would be what they were anticipating -- what they  
16 were hoping to achieve.

17 THE CHAIRMAN: In the actual transaction?

18 A. Yes.

19 MR WARD: That would be -- sorry, I did not mean to talk  
20 over you, sir. That would be a net price rather than  
21 a list price?

22 A. That is what I would have assumed it to be, yes.

23 Q. Can we turn to document {I1/255.2}? Now, this is an  
24 email, again forwarded to you, and we have got a reply  
25 from you, but looking halfway down the page, we can see

1 "From Jackie Vines On Behalf Of Ian Jones". As we know,  
2 Jackie Vines is a PA within DAF. We assume at this time  
3 Ian Jones is working within DAF, not at Daimler; is that  
4 correct?

5 A. That is correct, yes.

6 Q. Unless she is wearing two hats.

7 A. No, only one hat.

8 Q. Good. He emails various people, including  
9 Kerry McDonagh, Stuart Hunt and you. He says:

10 "I am reliably informed that ERF will close  
11 in July 2002, making 170 people redundant ... It is also  
12 reported that MAN will build ERF badged vehicles in  
13 Munich to import to the UK to satisfy ongoing demand.

14 "We will accelerate our ERF action plan to further  
15 exploit this opportunity."

16 Can you help with what the ERF action plan might  
17 have been?

18 A. Yes. Obviously, ERF at the time was a competitor and,  
19 if ERF was closing its operation in the UK, then that  
20 may have provided an opportunity for us to approach ERF  
21 customers, expounded the benefits of DAF and the  
22 benefits that DAF Trucks have.

23 Q. You forward this email to a range of people, some of  
24 whom we have seen before, Mark Oldbury, Tony Kelly, and  
25 who is Dave Skinner?

- 1 A. Dave Skinner at the time was head of the engineering  
2 operation.
- 3 Q. Engineering. You say:  
4 "Please treat the following information as  
5 confidential until further info is available."  
6 Can you remember why you would have said that?
- 7 A. I can only read the email here and obviously this is  
8 involving people being made redundant at a future date,  
9 which is obviously in July and the email is in February,  
10 and therefore any release of this information was  
11 obviously of great concern if that was in the public  
12 domain.
- 13 Q. So the inference is this would not have been public  
14 information at the time?
- 15 A. I am sure it would not have been but I could not say  
16 exactly.
- 17 Q. Again, I suggest that therefore it probably came from  
18 MAN itself, did it not?
- 19 A. I could not suggest where it came from but I could give  
20 you an answer. ERF was an operation which was very  
21 close to our own operation in Foden, almost in the same  
22 town -- not quite, but very close together. So that  
23 information may have come through Foden but I am only  
24 speculating now.
- 25 Q. Can we go now to {I1/491.01}? This is an email -- again

1 I think perhaps we can go to the second page, please,  
2 {I1/491.01/2}. This is an email from you of March 2007  
3 to a large number of recipients. I am guessing from  
4 their internet addresses that these are probably  
5 dealers.

6 A. That is correct, yes.

7 Q. If we look where it is cc'd, it is cc'd below, below all  
8 those dealers, to Stuart Hunt, then two names,  
9 Andy Shadwell and, at the end of the line, Geoff Tyler.  
10 The subject is "Competitor leadtimes". Does this email  
11 look familiar at all?

12 A. I can see the familiarity, yes.

13 Q. You say:

14 "With our current extended leadtimes ..."

15 What does that mean? What does it mean, "extended  
16 leadtimes"?

17 A. So if you -- because DAF was a company that was a build  
18 to order company, so you placed an order for a truck and  
19 we built it, obviously if volumes increased, then lead  
20 times could extend. So an extended lead time might  
21 be -- typically you might expect a truck to be built in  
22 six, seven, eight weeks. Obviously, if there was an  
23 extension to that, then that might cause a problem to  
24 our customers so concerns were always on extended lead  
25 times.

1 Q. You say:

2 "... I have gathered the following information on  
3 our competitors. As always, there will be limited  
4 exceptions, but this is how I see it."

5 You have got lead times for all of those. Can you  
6 recall where you had obtained that information?

7 A. I cannot recall where I got that information, no.

8 Q. It is not publicly accessible, is it, that kind of  
9 information?

10 A. It is not publicly accessible. It may be through the  
11 dealers. Sorry, it may be publicly -- it may be  
12 available through the dealers.

13 Q. But you would agree that this kind of information is  
14 relevant to how you can price? If you know what they  
15 are in terms of lead times, then that is obviously going  
16 to tell you something about how keen they are for  
17 volume?

18 A. There will be some impact on the pricing, yes.

19 THE CHAIRMAN: Is that why you were forwarding it to all the  
20 dealers?

21 A. Yes.

22 MR WARD: Can we go now to {I2/277.1}? This is an email  
23 from Kevin Lanksford to you on 3 December 2009. I think  
24 by then -- that is the year you became managing  
25 director. I must confess, if you told us the month,



- 1 I cannot remember.
- 2 A. I became managing director on 30 March of that year.
- 3 I was not going to become the managing director on
- 4 1 April!
- 5 Q. Very wise. So you were managing director by the time
- 6 you received this email. Kevin Lanksford, he is fleet
- 7 sales director, I think.
- 8 A. He was at that time -- yes, he would have been at that
- 9 time because he did leave the company afterwards.
- 10 Q. What he says is:
- 11 "Ray.
- 12 "Mark ..."
- 13 Which I think we assume is Mark Oldbury, as he is
- 14 copied in here.
- 15 A. That is a reasonable assumption, yes.
- 16 Q. ... asked me to furnish you with some
- 17 customer/competitor intelligence regarding pricing for
- 18 your forthcoming meeting with the senior board."
- 19 Is the senior board the board of DAF NV?
- 20 A. That would have been -- yes, it would have been. It
- 21 might have even been with PACCAR because that was
- 22 obviously very shortly after I became managing director
- 23 and I recall I had to make some presentations not only
- 24 to the board of DAF but also to the board of PACCAR.
- 25 Q. Then what follows below is essentially an example to do

1 with Renault's pricing for a company called Gulliver,  
2 who I think is a truck hire company, is it not, or was?

3 A. It was, yes. It has now unfortunately gone out of  
4 business, yes.

5 Q. It says:

6 "Please see below response from Gary Clark re  
7 Gulliver's ..."

8 Looking down the thread, we can see Gary Clark is  
9 the truck sales manager from the Cardiff Truck Centre,  
10 so that is a dealer, I assume?

11 A. That is a dealer that supplies trucks to Gulliver, yes.

12 Q. It says:

13 "... see below ... from Gary Clark re Gulliver's  
14 Renault pricing.

15 "I think they might be pulling his chain and I've  
16 asked him if he can discretely check again."

17 Then there are some various bits of pricing  
18 information about the Renault pricing, I think.

19 So my question really is: why would the senior board  
20 be interested in this?

21 A. It was probably part of my presentation at the time.

22 Q. Looking at what Kevin Lanksford says is:

23 "Mark asked me to [forward] you with some  
24 customer/competitor intelligence regarding pricing for  
25 ... the senior board."

1           So can you recall what it was you were being asked  
2           to provide or you were trying to provide?

3           A. I cannot recall specifically at the time, no.

4           Q. But what we can see, by inference at least, is that you  
5           thought they would be interested in this kind of  
6           competitor pricing information?

7           A. Yes, obviously I have asked for it so, yes, it must have  
8           been part of my presentation, yes.

9           Q. Can we now, please, turn to {I2/131.7}? This is an  
10          email and the signatory at the bottom is Dave Cussans,  
11          director of operations of MAN Truck & Bus UK. Have you  
12          seen this document recently?

13          A. I have seen it recently, yes.

14          Q. Were you asked to review it for the proceedings?

15          A. Yes, I was.

16          Q. So you will be very familiar with what it says, but let  
17          me, if I may, just go through part of it. We can see it  
18          was sent on 2 March 2009, at the top, and it is the  
19          "SMMT CV Directors Meeting". Can you help us understand  
20          what "SMMT CV" is?

21          A. So "SMMT" stands for "Society of Motor Manufacturers and  
22          Traders", the "CV" is "commercial vehicle" and obviously  
23          directors' meeting.

24          Q. It says that at the event "in London on Thursday, other  
25          attendees were" and you are listed as the first. I see

1           our friend Mr Jones about four lines down as well and  
2           various representatives of the other truck  
3           manufacturers. Do you recall this meeting?

4       A. I recall meetings of this type, but specifically this  
5           one -- I cannot remember this specific one, but meetings  
6           of this type, yes.

7       THE CHAIRMAN: I do not think you were managing director by  
8           that date, were you?

9       A. No, I was not.

10      MR WARD: I am so sorry, you are quite right. 31 March,  
11           I am so sorry. I had March in my mind but I should have  
12           remembered 1 April.

13      A. I think, sir, the announcement would have been that  
14           I would be announced as managing director so it would  
15           have been assumed that I would take up the position even  
16           though I was not actually appointed formally.

17      THE USHER: Mr Ward, I am just going to restart the video  
18           conference. There is a slight error with the stream.  
19           Give me two seconds. (Pause)

20      MR WARD: Are we okay?

21      THE USHER: Yes, you are okay.

22      MR WARD: Thank you very much.

23           As you know, it says at the end, the last  
24           substantive paragraph:

25           "What was more useful than the meeting itself, was

1 the discussion before, during or after. With the  
2 exception of Scania, all Heavy Truck manufacturers  
3 openly and firmly dismissed the exchange rate as  
4 'irrelevant' or 'not applicable' to stock vehicles.  
5 They openly stated that they are on a mission to  
6 liquidate current UK stocks and that they are in 'dealer  
7 protection and survival mode' DAF and Iveco confirmed  
8 openly that they have made funds available and offered  
9 dealers financial support ... They have all received  
10 price increases for forward production (MB 3%, DAF 6%,  
11 Renault 6.5%, Iveco 5%, Scania 5%) Ian Jones said that  
12 we will not find the new transaction price until all  
13 stocks are washed through -- he estimated between 4,000  
14 and 5,000 ..."

15 Now, I just want to ask you a couple of questions  
16 about this, recognising you have just said you do not  
17 remember this specific meeting, so let us see if you are  
18 able to help. It is 2009 so it is in the height of the  
19 financial crisis, is it not?

20 A. Yes, it is.

21 Q. So, obviously -- and your witness statement has made  
22 clear -- it is not surprising that, like many  
23 industries, the truck industry was having a difficult  
24 time?

25 A. That is correct.

1 Q. When you say "DAF and Iveco confirmed openly that  
2 they" -- sorry, "you say"; the note says -- "made funds  
3 available and offered dealers financial support", can  
4 you remember what that was about?

5 A. Yes, at the time, as I have just explained, DAF was  
6 a build to order company so we took orders and we built  
7 trucks. Prior to the financial crisis what was  
8 happening is customers started to cancel vehicles.  
9 Another point that was relevant, that prior to the  
10 financial crisis orders and -- I think we have seen  
11 before -- lead times were becoming excessive, so we had  
12 orders which were placed for trucks with extended lead  
13 times. So what we were getting was long lead times with  
14 confirmed orders that we were planning to build and then  
15 suddenly what we had is cancellations at an exponential  
16 rate so we ended up building lots of trucks with no  
17 homes to go to, hence the reason for stock, which is  
18 very unusual in our business -- in DAF's business.

19 Q. Where we see this pricing information, the price  
20 increases for forward production, would those have been  
21 list prices, do you think? We see Mr Jones said, "we  
22 will not find a new transaction price until all [prices]  
23 are washed through", so list all transactions -- "until  
24 all stocks", I am sorry.

25 A. I am not sure what we referred to, but generally what

1           was declared from our side, if we were talking about any  
2           price, it would be a list price movement.

3       Q.    Would you accept that this is highly sensitive  
4           information that has been exchanged here between  
5           competitors?

6       A.    I would think this information that is suggested there  
7           is sensitive, yes.

8       Q.    And that this would have been helpful to you in pricing  
9           your own trucks, would it not?

10      A.    It depends whether you are talking about list prices or  
11           transaction prices.

12      Q.    Well, Mr Ashworth, there must be a reason why these  
13           senior people gather together in a meeting and exchange  
14           this highly sensitive information. It was not for fun,  
15           was it not?

16      A.    It was not, no, and of course any increase in list  
17           price, if we are talking about DAF, which obviously  
18           I can talk on with authority, then the increase in list  
19           prices would be a relevant point.

20      THE CHAIRMAN: Relevant to what?

21      A.    In terms of if we are negotiating with a customer, then  
22           the list price movement that you make is obviously  
23           a percentage that I am looking at, so that percentage  
24           may have some impact on what you are negotiating with  
25           the customer and the ultimate transaction price -- so

1 not the absolutely number but the percentage.

2 THE CHAIRMAN: The percentage increase to gross price lists  
3 would have an impact --

4 A. On what you were negotiating with the customer, it could  
5 do, yes.

6 MR WARD: Is that because, as Mr van Veen explained this  
7 morning, that one, in a sense, would expect a certain  
8 level overall of discount from the list price -- taking  
9 transactions in the round, I think is what he was  
10 saying.

11 A. In my whole career, I have never had any discussions  
12 about discount on list price.

13 Q. Let me just make sure I understood your evidence. You  
14 said the percentage, I think, increase in list prices  
15 may have had some impact on what you are negotiating  
16 with the customer and the ultimate transaction price, so  
17 not the absolute number but the percentage?

18 A. That is correct.

19 Q. I understood you might have been saying the same thing  
20 as Mr van Veen but it sounds like you are not. Can you  
21 explain how that would work? So if the list prices go  
22 up 3%, say, hypothetically, I think what you are  
23 suggesting is that that could have an effect on the  
24 transaction price insofar as you are negotiating down  
25 from that higher number?



1       A. So if you are looking at a price increase, say 3%, then  
2       what we would do, we would announce that to our dealer  
3       network. Obviously the dealer network is negotiating  
4       with customers and the dealers would use that to say to  
5       a customer, "We have a discussion on the table here,  
6       that discussion is about to close", and in order for  
7       them to ensure they could close that deal, then they may  
8       use that to say, "DAF is announcing a list price  
9       movement on -- in two weeks' time so please place your  
10      order today otherwise I may have to apply that to you".  
11      But, you know, as Mr van Veen said, ultimately the  
12      negotiation is what the customer is prepared to pay, not  
13      what the list price increase would be.

14     Q. So, Mr Ashworth, you formulated that quite narrowly.  
15     You have posited that as being only about dealers and  
16     you have posited it as applying only where there is  
17     a change in the list price.

18     A. But it is correct.

19     Q. What I would suggest to you is there is no particular  
20     logic to that. If the list price is potentially  
21     influential on a customer, it could be influential in  
22     a range of circumstances, could it not?

23     A. It is influential in the circumstances I have just  
24     explained.

25     Q. You are suggesting it is only in that circumstance?

1 A. It is predominantly in that circumstance.

2 THE CHAIRMAN: Can I just ask in relation to dealers then?

3 Dealers might use that information, I think was what you  
4 were saying, in order to negotiate with their customer.

5 A. Yes, it was a tool in their toolbox, if you would like  
6 to use that phrase, which the dealer could then go to  
7 the customer and hopefully close a deal with a concern  
8 to the customer that says, "Unless you close the deal  
9 today, you may have to pay more for the truck -- the  
10 transaction price". Now, at the end of the day, the  
11 customer might say, "So be it, this is the price I am  
12 going to pay. Even if it is after the price increase,  
13 it is up to whether you want to accept the deal or not".

14 THE CHAIRMAN: What about the deal between DAF UK and the  
15 dealer?

16 A. So the deal between DAF UK and the dealer, that is where  
17 it was important because obviously in the system, the  
18 OMS system which I referred to in my statement, so in  
19 our analysis system or -- sorry -- our authority system,  
20 then what you would have is a change in the list price,  
21 so without going into excessive detail at this stage,  
22 sir, the need for a dealer to ensure that he had  
23 actually submitted his request for authority and that  
24 had been approved. If he did not actually apply that  
25 deal, in other words get the customer to pay the price,

1           then it may be that he would have to apply again because  
2           the system had changed the -- the numbers in the system  
3           were changed.

4       MR WARD:  Sir, if it helps, we are going to go to some  
5           documents which are going to --

6       THE CHAIRMAN:  Sorry, I have jumped the gun.

7       MR WARD:  No, no, it is all very helpful.

8       MR RIDYARD:  Can I ask a question just to square the circle  
9           of what was mentioned before?  So this negotiation with  
10          the hypothetical dealer customer, it suggests that at  
11          least for some customers the list price was -- they took  
12          that into account.  So when the dealer said to the  
13          customer, "Well, if you do not close the deal by next  
14          month, there is a danger that the list price has gone up  
15          and therefore your price will go up", that suggests that  
16          the customer has paid some attention to list prices as  
17          well because that is where it had some -- obviously,  
18          they would take their own view about whether to believe  
19          it or not, as you just described --

20       A.  Yes.

21       MR RIDYARD:  -- but the customers would take the list price  
22          changes into account too and it could be a factor that  
23          would hurry them up and get them to agree a deal?

24       A.  I think it is exactly right what you said, is that it is  
25          the list price changes which would be the encouraging

1 factor --

2 MR RIDYARD: Catalyst maybe.

3 MR WARD: Mr Ashworth, I am going to look at some documents  
4 now about how list price changes took effect, but what  
5 I am going to be suggesting to you is that it is broader  
6 than you have just suggested. I can see that one can  
7 see why it might take effect in that way, but can we  
8 look now at some documents about how this was actually  
9 done.

10 A. Sir, if I may just add to that, why I specifically added  
11 to the comment on dealer. Is that acceptable, sir?

12 THE CHAIRMAN: Yes.

13 A. So the reason for that obviously is that Royal Mail, BT  
14 and others had fixed price contracts so any change in  
15 list price became irrelevant. That is why we referred  
16 it specifically to dealers who were negotiating on  
17 a one-off deal. Thank you.

18 MR WARD: Well, of course, in that regard, Mr Ashworth,  
19 there is a difference between changes that took place  
20 during the period of fixed price and prices that were  
21 fixed at the beginning in the light of whatever were  
22 then the prevailing prices, is it not?

23 A. I am still not sure --

24 Q. Sorry, let me stylise my point. If you have a contract  
25 that runs from 2004 to 2009 with fixed prices, then one

1 can see why you might say, "Well, list price changes in  
2 2007 are of no relevance", but it is a separate question  
3 whether list price changes that took place before the  
4 contract began were of no relevance, is it not?

5 A. I am still not clear on the question but I will try and  
6 answer it. So if there was any list price changes, then  
7 it had no relevance to the conversations and negotiation  
8 that we had had with Royal Mail and that is the specific  
9 point I am making. This is a Royal Mail discussion, not  
10 a discussion about customers for dealers.

11 Q. We will come to that in due course, if we may.

12 A. Thank you.

13 Q. But let us start with the use of list prices, and can we  
14 go to your witness statement at page 31, {D/22/31}? The  
15 topic here is "List prices and the recording of sales  
16 prices in DAF's internal systems". You say at 112:

17 "List prices provided an overview of DAF's product  
18 offering. They created a relative internal list price  
19 positioning hierarchy, by ranking the different  
20 configurations and components in a logical order  
21 dictated by their technical complexity and their added  
22 value to the customer."

23 Then at the bottom of the page -- because you  
24 explain the multiple options, but at the bottom of the  
25 page you say:

1            "In this context, list prices were relevant only in  
2 relative terms, as compared with other list prices,  
3 rather than the list price number itself being of any  
4 other relevance."

5            Then you say:

6            "Sales prices to dealers and customers were very  
7 different ... they were set at a different level and  
8 were generally agreed after extensive negotiations on  
9 a deal-by-deal basis. Sales prices were negotiated  
10 'bottom-up' instead of 'top-down' -- they were not  
11 negotiated as a discount to list prices."

12            What I want to do now is look at some documents  
13 about the way that list prices were used. Let me start,  
14 please, with {I2/113.03}. This is an email chain which  
15 starts with an email to you, at the bottom of the page,  
16 please. This is from Richard te Velde, who we heard  
17 about this morning, and I am going to get it wrong if  
18 I tell you what his job was but perhaps you can do it  
19 for me, the other way around. He is from DAF NV?

20            A. Yes.

21            Q. He was to do with product ...?

22            A. Product pricing and -- well, product pricing.

23            Q. Product pricing. Good enough for now, even if we have  
24 not got his exact title.

25            He writes to you and the subject is "Ron Bonsen" --

1           sorry the date is January 2009, so we are back in the  
2           financial crisis here -- "Ron Bonsen requests for list  
3           price increase DAF UK; what percentage and timing?"  
4           Mr Bonsen at that point was M&S director, I think.

5           A. Yes, he would have just been appointed I think probably  
6           in 2008, so yes.

7           Q. He had succeeded Kerry McDonagh by then?

8           A. Yes.

9           Q. Let us look at what he says. Do you remember this? Is  
10          this already familiar or...?

11          A. I have seen this recently.

12          Q. You have seen it recently, good. So:

13                 "Ron phoned me just now to inform me he wanted  
14                 a list price increase for the UK to compensate for the  
15                 Pounds value against the euro.

16                 "Price increase percentage.

17                 "Ron was thinking of 12-13%, but maybe even 15%. He  
18                 was referring to playing an example role as ... market  
19                 leader.

20                 "What percentage are you aiming for?"

21                 Then there are some suggestions about timing. Then  
22                 in italics at the bottom, {I2/113.03/2}:

23                 "What is your view with respect to timing of  
24                 activating the new prices?"

25                 So you are not actually being asked the question

1           whether to do it; you are being asked the question when.

2           Is that fair?

3       A.   He is -- yes, I think that is fair.

4       Q.   Here is your answer on the previous page, {I2/113.03}:

5           "Richard

6           "See below our considered response ...

7           "Overview.

8           "Our role as a Sales Unit is to maximise the sales  
9           volume and the revenue from our market place."

10          Which seems unimpeachable.

11       A.   Yes.

12       Q.   Then -- I can read out absolutely everything in here but  
13           if I can just move on to the last bullet point under  
14           "Overview":

15           "We understand that we need to implement  
16           a substantial price increase ... to mitigate the costs  
17           arising out of the currency issues with sterling."

18           In other words, because of the change in sterling,  
19           DAF NV is unhappy, they are getting a lot less money; is  
20           that fair to say?

21       A.   That is correct, yes.

22       Q.   What you propose, rather than going with the big bang  
23           that Ron Bonsen seems to want, is something a bit more  
24           staggered, where you are offering him -- it is in  
25           bold -- 6% in week 7 and then automatically generate



1 a further 2% in after sales in week 25, so in fact it is  
2 three-stage, then implement 4% in week 33. So you are  
3 offering a sort of 10 plus 2 price increase but  
4 spreading the pain a little bit more?

5 A. That is correct.

6 Q. Then you have "Implications", negative and positive.

7 You say under "-ve":

8 "The major risk is that any price increase will  
9 simply stop all new orders and challenge customer  
10 loyalty.

11 "A high price increase could jeopardise existing  
12 orders.

13 "All heavy trucks in the UK effectively increase in  
14 price by approx 4% ...", with the end of an emissions  
15 incentive, so "customers would effectively see a  
16 cumulative 15% increase" and that has "low order input  
17 implications on Leyland plant".

18 So would it be a fair summary that what you are  
19 saying, under negatives, is that this is going to hurt  
20 your orders if the list prices go up in this way?

21 A. Yes, I am.

22 Q. Then on positives you say:

23 "Two stage increase secures a more rational  
24 discussion with Customers and Dealers in an environment  
25 where discounting is prevalent.

1           "There are few buyers in the market today therefore  
2 a smaller initial increase may still encourage a sale.

3           "And finally and probably most critical at this  
4 time, a list price [increase] move will make the unsold  
5 stock look more attractive."

6           So would you agree that what we are seeing here,  
7 then, is your concern that a list price increase is  
8 actually going to affect the volume of customer orders?

9       A. Yes, I am.

10      Q. So that shows us, does it not, that list prices are in  
11 fact relevant to customers?

12      A. If I can just be exact, list price increases do have an  
13 impact, as I have said before, yes.

14      Q. So when you say that list prices are just for  
15 positioning, what you are accepting here is that at  
16 least a list price increase will in fact be relevant to  
17 buyers?

18      A. List price increases will have an impact, yes.

19      Q. So it is bottom-up, except for the fact that list price  
20 increases can in fact affect buyer behaviour?

21      A. So it is bottom-up, yes, and list price increases can in  
22 fact -- as I have just said before, can impact buyer  
23 behaviour, yes.

24      Q. We see, if we look at your witness statement at  
25 paragraph 90 -- if you could turn that up. That is

1 {D/22/25}. It is the same period:

2 "As economic conditions worsened and Royal Mail's  
3 volumes of truck purchases decreased, we asked  
4 Royal Mail for an increase in pricing in 2009, mainly to  
5 try to offset the very heavy impact of fluctuations in  
6 currency exchange rates."

7 That looks at least as if what you were doing here  
8 is what your ultimate boss, Mr Bonsen, was asking for.  
9 Would that be fair?

10 A. I think that is fair. I think he is looking for an  
11 increase in the transaction price and I am going to ask  
12 Royal Mail if we can do that because we have a fixed  
13 price contract, yes.

14 SIR IAIN MCMILLAN: Just very quickly, can I ask a question?  
15 Does that mean, Mr Ashworth, that there is a link  
16 between the list price and the transaction price? That  
17 is what you appear to be suggesting.

18 A. In my mind, there is not. It is purely -- if we are  
19 looking at how we announced movements in pricing, then  
20 we do not go to the market and say, "Customer prices  
21 will increase by 2%"; we go to the market and say "List  
22 prices are going to increase by 2%". Essentially what  
23 we are looking for is a customer price to increase by  
24 2%. The relevance of the actual number which is the  
25 list price has no relationship to the transaction price

1           that the customer pays, but the increase is relevant, as  
2           I have said.

3           THE CHAIRMAN: Can I just take you back to the email we were  
4           looking at?

5           MR WARD: It is {I2/113.03}.

6           THE CHAIRMAN: Thank you. The email from Mr Bonsen, I think  
7           it is --

8           MR WARD: Yes.

9           THE CHAIRMAN: -- at the bottom of the page.

10          MR WARD: Strictly, sir, it is Richard te Velde who is  
11          reporting Mr Bonsen's view.

12          THE CHAIRMAN: Oh, I am sorry.

13                 So Mr Bonsen wanted a list price increase, it  
14          says --

15          A. Yes.

16          THE CHAIRMAN: -- to compensate for the pounds loss because  
17          of the exchange rate fluctuation.

18          A. Yes.

19          THE CHAIRMAN: So how will a list price increase compensate  
20          for that?

21          A. Because what he is asking me to do is to go out to the  
22          market and say, "If we move list prices by 15%, you go  
23          to your customer and ask him to move his price by 15%",  
24          so it is -- I am trying to make the differentiation  
25          between the actual number. So the list price could be

1           £50,000 or £200,000, but the percentage -- so the 15% is  
2           obviously a different number on 50 than 200, but 15% is  
3           the critical number, so I would be looking for 15% on  
4           whatever the customer paid. But the only absolute  
5           number in the marketplace, in our marketplace, at DAF,  
6           which obviously the dealers see in the system, is a list  
7           price. They do not see individual customer prices --

8           THE CHAIRMAN: The only way it actually compensates is if it  
9           translates into the transaction price, does it not?

10          A. Yes.

11          MR WARD: Mr Ashworth, you are positing a world where it  
12           only matters --

13          SIR IAIN MCMILLAN: Mr Ward, do you mind if I --

14          MR WARD: No. I am so sorry. I just did not see you.

15          SIR IAIN MCMILLAN: I just want to understand this better.

16           If we go back to the transcript on page [145], Mr Ward,  
17           you asked Mr Ashworth, {Day7/145:9}:

18           "So that shows us, does it not, that list prices are  
19           in fact relevant to customers?"

20           The answer that you were given was:

21           "If I can just be exact, list price increases do  
22           have an impact, as I have said before, yes.

23           Then you went on to ask:

24           "So when you say that list prices are just for  
25           positioning, what you are accepting here is that at

1           least a list price increase will in fact be relevant to  
2           buyers?"

3           Now, you seem to suggest otherwise to the question  
4           that I put to you.

5           A. I am sorry, I am not sure what you --

6           SIR IAIN MCMILLAN: Because I was asking if there was  
7           a connection from the list price down to the transaction  
8           price and you said there was not, but in answer to  
9           Mr Ward's questions, you appear to suggest that there is  
10          a link.

11          A. There is a link between the percentage increase. That  
12          is the only link that I would ever have a relationship  
13          to because the list price could be any number that -- it  
14          could be any number. That is why a percentage is the  
15          important one because, as I was explaining, if the list  
16          price was £50,000, then obviously a 10% increase has one  
17          number; if the list price was £200,000, it would be  
18          a different number. But I will not be looking at the  
19          number, I will be looking at the 10%.

20          SIR IAIN MCMILLAN: So that 10% increase, say, on the list  
21          price could have a link or would have a link back to an  
22          increase to the transaction price?

23          A. Yes, it would, which would be 10%.

24          SIR IAIN MCMILLAN: Right. Thank you. You have answered my  
25          question.

1 MR WARD: Mr Ashworth, is not the simple and plain obvious  
2 meaning of all of this that DAF NV wanted more money out  
3 of the UK and for that reason they wanted a list price  
4 increase, and that means the list price increase was  
5 expected to drive higher transaction prices? Would you  
6 accept that?

7 A. So I agree that the list price increase would drive or  
8 could drive increased transaction prices.

9 Q. I think you are trying to suggest that this could only  
10 happen in some sort of -- how can I put it? --  
11 transitional state for someone who sees the before and  
12 after price, someone who thinks, "Oh, I am just about to  
13 buy a truck and the dealer is telling me a 15% price  
14 increase is round the corner". So for those, if you  
15 like, marginal customers in time it might have an  
16 impact. That is your case, is it not?

17 A. It is for those customers that may be buying, but  
18 ultimately for dealers who are in the position of  
19 wanting to place orders, it has an impact on whatever  
20 they agreed in the authority in the system because,  
21 obviously, the system is linked to list prices for  
22 authorities, so if the list price changes in the system,  
23 then an authority that has already been agreed may not  
24 be agreed -- well, if it is at the absolute limit of  
25 that authority, then of course, if the list price

1 changes, then that will not be accepted as an order.

2 Q. Mr Ashworth, there is not -- sorry, Mr Ridyard.

3 MR RIDYARD: Would a list price automatically change the  
4 price at which DAF UK sells to the dealer?

5 A. It would -- I think the simple answer is yes because  
6 obviously the dealer has to submit a request to place an  
7 order. So that request goes into a system which is  
8 geared to his price he wants to buy from DAF and that is  
9 geared -- that price is geared to the list price. If  
10 the list price increases, then -- obviously he has asked  
11 for a certain amount of support in there -- then it may  
12 be that that support is not agreed to the then new list  
13 price because the transaction is obviously at  
14 a different level, but we may still agree it. It is an  
15 authorities level -- it is an authorities issue.

16 MR WARD: I see the time, but if it would be tolerable for  
17 the shorthand writer, could we continue another few  
18 minutes because we are in the middle here of something.

19 THE CHAIRMAN: Yes.

20 MR WARD: Thank you. With all due apologies to the  
21 shorthand writer.

22 I just want to unpick a couple of things you have  
23 said, Mr Ashworth. The first thing I am going to  
24 suggest to you here is there is nothing to limit the  
25 impact of list prices to those people who were somehow



1 put off by a perceived change. Mr Bensen is asking for  
2 an increase because he wants more money across the  
3 board. Would you accept that?

4 A. I will, yes.

5 Q. When we look at your witness statement -- could we go  
6 back to that, please, at {D/22/31}? At the bottom of  
7 the page, you have said in paragraph 112 -- you have  
8 explained how list prices are only there to provide an  
9 overview and then at the bottom you say:

10 "In this context, list prices were relevant only in  
11 relative terms, as compared with other list prices,  
12 rather than the list price number itself being of any  
13 other relevance."

14 What I am suggesting to you is we have already seen  
15 from these documents that the idea is that the increase  
16 in list price will generate more revenue from actual  
17 customers. Would you accept that?

18 A. I would accept that the increase in list price would do  
19 but the statement here is that the list prices  
20 themselves do not have any relevance.

21 Q. Well, if an increase in list price is having an effect,  
22 the list prices themselves are having an effect,  
23 are they not?

24 A. If you are looking at percentage, then I am looking at  
25 percentage increase, the percentage increase on

1 a customer transaction price is a different number to  
2 what is an increase on a list price.

3 Q. Can I move on to what you said about dealers because  
4 I want to just explore that as well, just for five  
5 minutes at the most.

6 You have explained to the chairman in answer to his  
7 question, in a dealer sale, the dealer buys the truck  
8 from DAF and sells it to the customer.

9 A. That is correct.

10 Q. The dealer makes a profit on the margin they can get  
11 from the customer over the price they pay to DAF?

12 A. That is correct, yes.

13 Q. So if the list price -- and you have accepted the list  
14 price can influence the dealer price, which we will come  
15 on to after the break.

16 A. Yes, I have.

17 Q. So if the list price influences the price to the dealer,  
18 then it is going to influence the price they can charge  
19 the customer, is it not?

20 A. If the list price changes by a percentage, yes, it will.

21 Q. So would you accept, therefore -- it follows, it seems,  
22 I suggest -- that if the list price goes up, the dealer  
23 price goes up and the customer price is likely to go up?

24 A. The first part of your statement is correct. The  
25 "likely" is a negotiation point, yes.

1 Q. But it is a negotiation where the goalposts have moved  
2 upwards, is it not? Sorry to mix my metaphors.

3 A. Yes.

4 MR WARD: Sir, that would be a convenient moment, if it is  
5 for the tribunal.

6 THE CHAIRMAN: I am not sure about goalposts moving upwards.

7 MR WARD: No, that was a terrible thing to say. It sounds  
8 like a very violent football match from the 1970s.

9 THE CHAIRMAN: We had better have a break. We will have  
10 a ten-minute break.

11 (3.19 pm)

12 (A short break)

13 (3.32 pm)

14 THE CHAIRMAN: Yes, Mr Ward.

15 MR WARD: Thank you.

16 Could we now turn, please, to {I1/434.3}? This is  
17 another product information bulletin. It went out from  
18 you and it goes -- in fact they all go to all dealers  
19 and all marketing and sales recipients. I think that is  
20 the standard addressees for the product information  
21 bulletin, is it not?

22 A. That is correct, yes.

23 Q. So "Marketing & Sales Recipients", does that mean the  
24 DAF UK department or would that include DAF NV marketing  
25 and sales?

1 A. That would normally just include DAF UK, but obviously  
2 for information there will be some relevant copy held  
3 with DAF NV.

4 Q. But that would be everybody in the team such as people  
5 like Geoff Tyler and so forth?

6 A. Yes, it would, yes.

7 Q. And of course you, if you are not the person who sends  
8 it?

9 A. Yes.

10 Q. This is really an example of many to illustrate the  
11 point I am about to make so you can tell me if you  
12 disagree. But it says "European List Price Increase":

13 "The continuing increase in the cost of raw  
14 materials has forced us to review our cost base and, as  
15 such, we are announcing a European List Price increase  
16 of 2% on chassis cabs with effect from Monday  
17 16th January 2006."

18 We will come on to the next bit in a moment, but  
19 here we have -- and I think -- would you agree with me?  
20 I have seen quite a few PIBs that make this point about  
21 costs.

22 A. Yes.

23 Q. If list prices were only about positioning, there would  
24 be no need to do this, would there? Why would you  
25 increase the list prices because of a cost increase?

1 A. Because the only information available to dealers in the  
2 marketplace is list price. There is no other  
3 information that -- we do not have IKP, we do not have  
4 MLO. That is the only information they have that gives  
5 them a positioning of a truck.

6 Q. But why do they need to know -- if all trucks are going  
7 up by 2%, that does not affect the positioning, does it?

8 A. It only affects positioning in terms of the  
9 authorisation of any support they are looking to  
10 purchase the truck.

11 Q. But the relative position of the trucks is not changed,  
12 is it? The CX85 still costs more than the CX75 --  
13 sorry, I made those up. They may not be real models.  
14 Forgive me.

15 A. So in terms of the relativity of each one, they would  
16 remain similar. They may move at different amounts.  
17 You may increase an XF more than a CF and may increase  
18 a CF more than an LF, depending on what we felt was  
19 appropriate.

20 Q. But this is a list price increase that is across the  
21 board, is it not?

22 A. That is correct.

23 Q. LF, CF, XF, it is all the same?

24 A. In this case, yes, it is.

25 Q. So there is no change to relative positioning at all?

- 1 A. In this case you are correct, yes.
- 2 Q. Instead what is being said is there has been a cost  
3 increase which is driving this; yes?
- 4 A. That is what it says, yes.
- 5 Q. So is the very purpose of this not to get higher prices  
6 to recoup higher costs?
- 7 A. It is, yes, and that is what the 2% is requesting.
- 8 Q. So it is not just about positioning; it is about  
9 actually getting more money, is it not?
- 10 A. It is about percentage increase to achieve more money,  
11 yes.
- 12 Q. Or, to put it another way, put up transaction prices?
- 13 A. So you would be looking to achieve an increased  
14 transaction price, yes.
- 15 Q. Indeed, what we can see here is it is a bit more  
16 specific than that.
- 17 "In order to reduce the impact of this change, we  
18 will limit the increase on the Retail NET Price Matrix  
19 to 1%."
- 20 Can you help us with what the retail net price  
21 matrix is?
- 22 A. Okay, I will try to be as succinct as possible. So one  
23 of the projects that we started in the UK was to put  
24 a position to dealers to allow them to negotiate prices  
25 with customers without the need to first request

1 authority from DAF, so hitherto customers would  
2 negotiate with dealers and dealers would negotiate with  
3 customers. They would then place their request into DAF  
4 to ask for approval if the price that they wanted to  
5 quote their customer was acceptable. Then they would  
6 take that price back to their customer and they would  
7 negotiate. The major problem with that, as I am sure  
8 anybody who understands a negotiation, is that there is  
9 time, so a time delay. By the time you have gone back  
10 to your customer to say "Great news, I have got this  
11 price", what has happened is the customer has already  
12 got competitive pricing, changed his mind, gone  
13 somewhere else, so the time delay.

14 So the objective to this was to try and introduce  
15 a system where dealers could have a price that we knew  
16 would be acceptable in authority terms, so well within  
17 my sign-off authority, and that they could go and quote  
18 that price to a customer and hopefully close the deal  
19 immediately. Hopefully that has been as succinct as  
20 I could be.

21 Q. That is very helpful. What it is telling us, though, is  
22 that those prices are going up because the list price is  
23 going up?

24 A. They are going up by 1%, yes.

25 Q. Would you agree that by justifying the list price

1           increase in terms of cost, it would make it more likely  
2           that sales teams would try to achieve it? They would  
3           not just see it as more padding?

4       A. When you are producing a list price increase or a  
5           percentage increase, as it shows there, then you have to  
6           have some reason for doing it and this is obviously the  
7           reason in this case.

8       Q. Can we turn now, please -- sorry.

9           Can we turn now to document {I1/444.2}? This is  
10          another PIB. You are not the author but you have  
11          confirmed you would be one of the recipients. This time  
12          it says:

13                 "The new net price matrix, incorporating the ...  
14                 Euro 4 models now available ... has been sent to each  
15                 dealer ... This follows the same format as the XF105  
16                 [and it] is represented by a % discount from the  
17                 published list price."

18                 Then it says at the bottom of the page:

19                 "The % discount ... will continue to be rolled out  
20                 [on all] models, although the % will vary between  
21                 models."

22                 So would you agree that again what we see is this  
23                 net price being fixed by reference to the list price, by  
24                 the percentage of it?

25       A. So the reason for sending this out was, following on



1 from my initial explanation, I had some great concerns  
2 that what we were doing was issuing out information to  
3 our dealers on specific prices for specific trucks, and  
4 that was of grave concern to me because that was  
5 extremely confidential. So what we were doing here was  
6 saying, "Let me do something that no one else knows  
7 about and that no one else has any information, which is  
8 our list price, and let us just do a discount off list  
9 price, our list price, so then you can work it out  
10 because you have that information as our dealers and  
11 hopefully nobody else has that", so it became more  
12 secure.

13 Q. Can we talk now about SDA, special discount allowances?

14 A. Yes.

15 Q. In your witness statement you explain -- perhaps I will  
16 go to it rather than try and paraphrase it from memory.  
17 It is obviously dangerous, is it not? It is  
18 paragraph 124, {D/22/34}. Do you have that?

19 A. I do not have it.

20 Q. I am sorry, it is {D/22/34}.

21 A. I have it now, yes.

22 Q. You have it. Thank you.

23 You say:

24 "In administrative terms, the relevant dealer or  
25 account manager ..."

1           So the account manager would be someone like  
2           Andy Shadwell or Geoff Tyler?

3           A. That is correct, yes.

4           Q. "... at DAF UK would configure the relevant truck in  
5           Sprint. Approval ... would ... be sought by submitting  
6           [an] SDR ..."

7           Is there a difference between "SDA" and "SDR"?

8           A. Unfortunately it got washed into the same thing, but, to  
9           be absolutely specific, "SDR" is a special discount  
10          request and an "SDA" is a special discount  
11          authorisation. So in theory you request it and get  
12          the -- but everybody just called them "SDAs".

13          Q. Okay, thank you. That is helpful. In both cases, what  
14          they do is request the special discount allowance and  
15          you explain effectively to bridge the gap between what  
16          the customer is willing to pay and the relevant price?

17          A. You are bridging the gap between what the customer is  
18          prepared to pay under this price, yes.

19          Q. Can we look now at {I1/437.1}? This is another PIB.  
20          Again, I think I am using really just to illustrate  
21          a general point about how these SDAs work.

22                 It is "European Price Increase ... SDA & Order  
23                 Implications".

24                 Sir Iain, you asked a question about this, I think  
25                 even during opening, a long time ago, about how SDAs

1 work, and I hope we are going to get the proper answer  
2 now from the person who understands rather than  
3 a counsel answer.

4 "Following PIB 81/2005A ... which announced the  
5 European List Price increase, this PIB details how this  
6 will affect Orders and SDAs.

7 "Orders for Euro3 models ... will be confirmed &  
8 invoiced at the new price."

9 Sorry, the dates matter.

10 "... from Monday 16th January 2006 will be ... at  
11 the new price.

12 "Orders ... received from Monday 19th December ...  
13 which are slotted for build ... will ... be confirmed  
14 ... at the new price."

15 Then it says:

16 "When raising new SDAs please request a realistic  
17 AFD."

18 What is "AFD"?

19 A. That is "available for delivery". That is when you  
20 would like your truck to be delivered.

21 Q. I see. Then:

22 "The DAF Manager can then make a decision knowing  
23 whether the SDA is at new or old price.

24 "As in previous price increases, unused (unordered),  
25 old price SDAs will be cancelled ... New orders from

1 this date will need new SDAs.

2 "A New Net Price Matrix has ... been issued ..."

3 Is it not right that what is being done here, as it  
4 says, as in previous price increases, is you cancel any  
5 existing SDAs because you want the price to take effect  
6 rather than justifying -- allowing it to go through some  
7 previous discount against the old price?

8 A. So what we are doing here is we are implementing  
9 a change in the system which obviously has an impact on  
10 the authorised SDAs that are already out in the system.  
11 Now, if they have not been enacted, in other words  
12 a dealer has not said, "I want to place that order",  
13 then he cannot get that order in the system because  
14 there is different pricing in the system.

15 Q. Is not the object of this to avoid transactions going  
16 through at prices fixed by reference to the old prices?

17 A. I would not say that is the object, but that is the  
18 outcome.

19 Q. So that is one way in which the increased list prices  
20 can be given effect, is it not? New SDAs will have to  
21 be requested and considered?

22 A. Yes, it could have an effect and, as it says here, you  
23 can resubmit your SDA and we may agree to it not having  
24 an effect. It is our decision in that case.

25 Q. Can we now turn, please, to {I1/331.2}? This is a memo

1 from -- "To: Managing Directors Sales Units", from  
2 Kerry McDonagh, who is of course M&S director at this  
3 point, "Listprice increase April 5th 2004".

4 Now, you were not a managing director at that point,  
5 but you were, of course, senior in the DAF UK pricing  
6 infrastructure so I do not know whether you would have  
7 seen this before. Does it look familiar?

8 A. I have seen it recently.

9 Q. So you were shown it recently in preparation for today?

10 A. Yes.

11 Q. I see. Let us look at it together.

12 "After our discussion in the Marketing and Sales  
13 staff on December 17, 2003, we have decided to set the  
14 yearly list price increase for 2004 at 3% for all LF, CF  
15 and XF chassis and options. The increased list prices  
16 will be effective for orders submitted as of April 5,  
17 2004."

18 Then down to the third paragraph:

19 "As we discussed this will not be a 'cosmetic'  
20 exercise and we expect this list price increase to  
21 produce a real increase in nett revenues."

22 Then he says:

23 "We will discuss the exact mechanisms in more detail  
24 nearer to the time, but please note that to avoid  
25 excessive intake of unsold orders against current list

1 prices ... we expect you to pay special attention to the  
2 special discounts on orders submitted between the  
3 announcement of the price increase and April 5th. In  
4 general at least orders submitted before April 5th, but  
5 requested for delivery after ... should ... produce the  
6 bottom line result [even though] they are ... invoiced  
7 [on] the current list prices."

8 So what Mr McDonagh is saying here, is he not, is  
9 that he wants to see net price improvements as a result  
10 of the list price increase?

11 A. That is what he is suggesting here, yes.

12 Q. So, again, the change in prices is not merely a matter  
13 of positioning, is it?

14 A. The change in prices --

15 Q. List prices.

16 A. The change in list prices -- as I have said before, the  
17 percentage increase in list prices has an impact, yes.

18 Q. Then it even says in the next paragraph:

19 "We will re-implement the net price increase  
20 analysis tool to be able to measure the net effect of  
21 this price increase and we will send you bi-weekly  
22 a report."

23 Did you receive any of those reports?

24 A. I cannot recall actually. I may have done.

25 Q. You may have. But it sounds like what he wants to do is

1 monitor the prices to make sure or to be able to see  
2 whether it is having the desired non-cosmetic effect?

3 A. That is correct, yes.

4 Q. So, once again, what we see is list prices driving or  
5 aiming to drive at least real changes in transaction  
6 prices; would you agree?

7 A. I would agree again, increasing list price, a percentage  
8 increase in list price, has an impact, yes.

9 Q. Can we look now, please, at {I1/290.6}? This is an  
10 email from Stuart Hunt or Jackie Vines on his behalf --

11 A. Hmm-hmm.

12 Q. -- 7 March 2003, to Kerry McDonagh and you, among  
13 others. This is Stuart Hunt, and he is the managing  
14 director of DAF UK at this time?

15 A. Correct.

16 Q. This is a few months before the peers group meeting that  
17 we looked at in Castle Coombe. He says:

18 "I recently mentioned to you that we were  
19 considering a truck pricing review. Please note that we  
20 will shortly be announcing a 4% list price increase,  
21 effective from 14th April. This will be dependent on  
22 capability to change the Sprint ..."

23 Then he says:

24 "In the event that our [customers] do not follow  
25 and/or we are unable to make a reasonable part of the

1           increase stick, we can suppress a general 'cost of  
2           living' Euro increase for the UK by modifying the  
3           exchange rate factor ..."

4           Have you seen this before?

5       A. No, I have not, but it does actually say that "our  
6           competitors do not follow".

7       Q. Yes, indeed, as I just read. What I wanted to ask you  
8           about, though, firstly, are these words "unable to make  
9           a reasonable part of the increase stick". Would you  
10          agree that what this shows is that Mr Hunt was at least  
11          hoping that part of this list price increase would  
12          stick, meaning stick in transaction prices?

13       A. That is what is suggested here, yes.

14       Q. Can you help with what he says in the last few words,  
15          which is:

16               "... suppress a general 'cost of living' Euro  
17               increase for the UK by modifying the exchange rate  
18               factor in the system."

19          Are you able to explain what that means?

20       A. So, yes, in the system there was a fixed exchange rate  
21          unit applied obviously because the pricing was in euros  
22          and obviously for the UK it was in pounds sterling.  
23          That fixed the UK exchange rate position had been fixed  
24          for, gosh, many years and this was something that, if  
25          the exchange rate was going to change dramatically, then



1           we may want to look at it, but we obviously had that  
2           fixed for a long time unchanged.

3       THE CHAIRMAN: For many years?

4       A. For many years, yes.

5       THE CHAIRMAN: Really?

6       A. Yes.

7       MR WARD: We are not talking here about the budget rate in  
8           the OMS, are we?

9       A. Yes, we are.

10      Q. Well, I think we have heard elsewhere that that was  
11         changed annually. Does that sound like it might be  
12         right?

13      A. No, this is the UK transaction position rate which  
14         I understand was not changed, only -- I think in my  
15         time, only twice.

16      THE CHAIRMAN: So this is converting the prices that you  
17         have agreed with your customers into euros?

18      A. This is why the pricing in the system was actually  
19         converted from the euro price to the UK price. Going  
20         back the other way, obviously that is where -- I think  
21         where maybe I am not being clear in my answer is that  
22         the pricing agreed obviously was then converted back  
23         into euros at the budget rate. So the price coming out  
24         from Eindhoven was at a euro price transaction price --  
25         sorry, euro price list price and that was a fixed rate

1           and that had not moved for many years. Then transaction  
2           price, going back, was at the budget rate, whatever that  
3           may be. So, for example, that might be at 1.43, this  
4           could be at 1.41, 1.49, whatever it was there.

5           THE CHAIRMAN: So just the list prices were converted by  
6           reference to this fixed rate?

7           A. Yes. Yes.

8           MR WARD: Can we now turn to document {I1/398.1}? This is  
9           a document addressed -- I am not going to try to  
10          pronounce this, having heard Mr van Veen do it this  
11          morning, but something like Goudriaan.

12          A. Goudriaan.

13          Q. Not too bad. From Mr McDonagh, "Cc: Board of  
14          Management". "Board of Management" would be the board  
15          of DAF NV, would it not?

16          A. Yes, that is correct.

17          Q. It is a weekly status report and there are all manner of  
18          items in here, including a short section on the UK on  
19          the second page, please, {I1/398.1/2}. If we look at  
20          the third bullet point, he says:

21                 "Price increase becomes effective from Monday with  
22                 3% being applied to all nett prices from this date and  
23                 all negotiations with customers having the same ...  
24                 applied for both retail and fleet."

25                 The point I am making here, again, is what we see

1           here is the price increase affecting net prices, this  
2           time he mentions both retail and fleet. So the price  
3           increase is expected to affect net prices, is it not?

4           A. That is what it is saying, yes.

5           Q. Can I take you now, please, to {I2/39.1}? This is an  
6           email from you dated 11 April 2008. We see a lot of  
7           people copied in, including a lot of people who I think  
8           are dealers, but then a lot of the same names we know  
9           from DAF UK, such as Mr Shadwell, Stuart Hunt and so  
10          forth.

11          A. That is correct.

12          Q. This is you emailing on the topic of "Price Increase",  
13          and you are saying, {I2/39.1/2}:

14                 "You will be well aware of the current pressures on  
15                 the economy and the increasing costs ... These pressures  
16                 have a direct impact on the costs of bringing the  
17                 product to market and apply to all Truck manufacturers.

18                 "As a consequence, and with immediate effect, there  
19                 will be a European list price ... of 3% on all chassis  
20                 ... with an additional local increase which is 1.8% for  
21                 the UK -- In total, a 4.8% increase."

22                 So, pausing there, we can see again this price  
23                 increase is being justified by reference to costs, can  
24                 we not?

25          A. Yes, it is.

1 Q. Then you say:

2 "The new list prices will be effective from Monday  
3 14 ... and the Field teams have been briefed on how to  
4 apply the additional 1.8%."

5 Again we see all unused SDAs expiring on Monday  
6 14 April and requiring resubmitting, so would you accept  
7 again this is a method to make sure the list price  
8 actually bites on new truck sales?

9 A. So, again, I would answer the same way, that this is an  
10 opportunity for us to move the transaction price but it  
11 is not guaranteed.

12 Q. Not guaranteed, but that is the opportunity.

13 Then you say, two paragraphs down:

14 "The price increase will be communicated to the  
15 Press prior to the CV Show next week and will be made  
16 public both to our customers and our competitors."

17 Just pausing there, what is the point of disclosing  
18 this to the press if it is just about positioning?

19 A. Because prior to the CV show there was always a press  
20 briefing or press conference that we would attend  
21 individually as DAF and they would always be interested  
22 in our positioning in terms of any price movement that  
23 might affect customers.

24 Q. So if these prices are only about positioning, then  
25 there would be no reason for anybody to be interested in

1           them, would there?

2           A. So if I try and explain, what I have been saying is that  
3           the price percentage increase is relevant. The  
4           actual -- whatever the number is, the actual price  
5           number is not relevant, so it is the price increase  
6           because that is what we are applying here and that is  
7           what we are applying to the market.

8           Q. We have had your evidence on that now.

9                     Let us look then at {I2/65}.

10          THE CHAIRMAN: Sorry, just before we move away from that  
11          one, I notice that it says you were adding an additional  
12          local increase of 1.8%. What is that based on?

13          A. So that is based on me -- sorry, can I see what date  
14          this is? Was I managing director at the time? I am not  
15          sure.

16          THE CHAIRMAN: No, I do not think so. I think it is 2008.

17          A. 2008, so it may be just prior to being... that is okay.

18                     So what I was doing there is I was -- I was  
19          obviously still responsible for sales at that time. So  
20          what I would be doing there is I would be providing, to  
21          put it mildly, an instruction to my sales team to say  
22          that, "If you normally signed off an authority at X,  
23          then I would look for you to sign off that authority at  
24          another 1.8% betterment". So there was no traps in it,  
25          there was no checks, it just had to be, "That is what

1 I am looking for you to do and when you go to any  
2 customer that you already have a conversation with, then  
3 if it is the existing customer, I would expect you to  
4 get 1.8% on top of whatever the 3% you may get", so ...

5 THE CHAIRMAN: So that is a target you are providing for  
6 your sales department?

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

8 THE CHAIRMAN: It is not directed by the head office?

9 A. No. The 3% obviously is something which we -- which you  
10 cannot circumvent because obviously it is in the system  
11 and you cannot break that. That becomes a factual  
12 position. The 1.8 is a target, absolutely.

13 MR WARD: Can we move on now, please, to {I2/65}? This is  
14 an email from Ian Jones dated 29 May 2008. Have you  
15 seen this before?

16 A. I am not sure if I have been shown this. I am not sure.

17 Q. Okay. We will look at it together. By this point, if  
18 we go to the second page, please, we can see  
19 a signature, {I2/65/2}. Ian Jones is now managing  
20 director of commercial vehicles at Mercedes Benz, so  
21 that is 2008. Do you know how long he was in that post?

22 A. I believe until he retired, so certainly when he left  
23 DAF he moved into that position and I am not sure what  
24 day he retired.

25 Q. Okay. Now, this is an internal Mercedes Benz email so

1 I am not suggesting you would have seen this at the time  
2 but there is a reason for showing you. You can see  
3 Mr Jones is saying to Andreas, who I am afraid I do not  
4 know who that is, Andreas Schmid of Mercedes Benz --  
5 do you happen to know that name?

6 A. No, I do not.

7 Q. He says, {I2/65/1}:

8 "I see from recent correspondence that there seems  
9 to be some confusion over the realised price increase  
10 for 2008/2009. I thought I'd drop you a short email to  
11 clarify our understanding, prior to us meeting this  
12 evening when we can discuss this matter further.

13 "When I met with yourself and Uli in Berlin some  
14 weeks ago, we discussed an exchange rate recovery price  
15 increase of ... 4 and 5% and agreed 4.5%. This was to  
16 be implemented in addition to any planned ... increase  
17 for MP3 and other inflationary moves ..."

18 Then he says:

19 "There were two factors that I asked to be taken  
20 into account:

21 "Firstly, that it is unrealistic to expect a 100%  
22 achievement of a price increase, particularly where [it]  
23 is so large."

24 Now, pausing there, I am not asking you to comment  
25 on Daimler, but I think you probably agree from DAF's

1 perspective that when you implement a price increase,  
2 you do not expect 100% of it to stick.

3 A. That is correct.

4 Q. Then he says:

5 "To plan on the basis that every single customer  
6 pays 100% of our ambitious price movement would give us  
7 an unachievable plan."

8 I suspect you would agree again?

9 A. Yes, I would.

10 Q. "It was therefore proposed that we plan on the basis of  
11 an 80% achievement of the total price increase and  
12 I believed that this was understood and accepted ..."

13 Does 80% sound like a reasonable aspiration for you,  
14 in general terms?

15 A. From a DAF perspective, I would say that is ambitious.

16 Q. Okay, let us see what he says. He says:

17 "(For your information, DAF took a 4.5% ...  
18 increase, including inflation, and advised me privately  
19 that they were budgeting on realising 2.4%.)"

20 This comes fairly shortly after the email we just  
21 saw from you. I should have made the dates clear, I am  
22 so sorry. This is 29 May 2008 and your email was in  
23 fact 11 April 2008 that we were looking at a few minutes  
24 ago. So here he is being told privately by someone at  
25 DAF that you were budgeting on realising 2.4%. Does



- 1           that sound about right to you?
- 2           A. Are you asking does it sound right that someone at DAF  
3           would say that?
- 4           Q. No, firstly, whether you think that would be  
5           a reasonable assessment by DAF, that at 4.5 you might  
6           get 2.4?
- 7           A. That would be a reason -- I would normally say about  
8           half, so it is a reasonable -- I would say 2.5%, so yes.
- 9           Q. Do you recall whether you were the person who  
10          communicated this?
- 11          A. Absolutely not. Sorry, to be clear on that, I do not  
12          recall it, so absolutely not, I was not the person.
- 13          Q. I understand.
- 14                 Now, would you accept that what these documents  
15          show, that we have been looking at this afternoon, is  
16          that list price changes are being used as a tool to  
17          drive price increases in actual transactions?
- 18          A. Yes, I think I have said that.
- 19          Q. So DAF NV is sending a clear signal it wants higher  
20          prices. You adjust the SDAs to make sure it gives  
21          effect and, as you said just a moment ago, you are  
22          expecting to get something like half of it in terms of  
23          actual improved transaction prices?
- 24          A. That is a reasonable summary, yes.
- 25          Q. Can we talk just briefly about the general discount

1 allowance because we have been talking about the SDA.  
2 There is also the GDA, the general discount allowance.  
3 This is a sort of standard 15% that comes off the top,  
4 is it not? So you start with a list -- sorry, you will  
5 not accept that language and I did not mean to start  
6 with something inflammatory. It is a standard 15%  
7 discount by reference to list prices?

8 A. That is incorrect.

9 Q. Still incorrect, okay. Could you educate me then?

10 A. So in the system -- if I explain the OMS system, which  
11 is the one where it obviously has an impact -- so in OMS  
12 you have a list price, and you will see that data in my  
13 witness statement -- there is a list price, there is  
14 a net price, with one "t", which is the list less 15%,  
15 the UK market -- it may be different for other markets  
16 but for the UK market it is that. A "GDA" is a general  
17 discount allowance and a GDA consists of items which --  
18 gosh, they may cover marketing, promotions,  
19 international truck service, so breakdown services and  
20 so on. So this is to account for any revenue generated  
21 out of the truck sale that you could actually allocate  
22 out of a truck sale, so, in other words, every customer  
23 pays a small amount for marketing of DAF Trucks, for the  
24 breakdown service that DAF Trucks has and so on.

25 Q. I think we may be at cross-purposes.

1 A. I am sorry.

2 Q. I am sure it is my fault, not yours. Let me try and  
3 illustrate my point by reference to a document. This is  
4 {I1/128}, please. Right, I have obviously given you the  
5 wrong reference so let me try again. Unfortunately that  
6 is the reference I have. Could we just see if there is  
7 any help from behind on this one?

8 Sir, would you mind just giving me a moment to see  
9 if we can locate this? (Pause)

10 Human error, mine. Could we try {I1/218}? There we  
11 are. Marvellous. This is, I think, just a typical  
12 example of a DAF invoice to -- in fact it says  
13 Consignia. Does it look to be a typical type of format  
14 for an invoice?

15 A. Yes, it does.

16 Q. Good. What I was actually asking you about, if we just  
17 look at -- we can just see from the top line, even  
18 though there are all sorts of different items in here as  
19 well, we have got the FT85 CF 380 with a list price of  
20 66,430 and then there is a discount of 15%, and that 15%  
21 runs down the entire column of the invoice.

22 A. Yes.

23 Q. That is what I was talking about.

24 A. Oh, sorry.

25 Q. No, I am sure it is my fault, but I thought that was the

- 1           general discount allowance.
- 2       A. No, that is just a standard discount off list price,  
3           which is, as I have said in my witness statement,  
4           a historical position going back to the mid-1980s, when  
5           the list prices were relevant.
- 6       Q. So it is a sort of starting discount rather than  
7           a finishing discount, one might say?
- 8       A. Yes. Well, it was relevant in 1980; it is not relevant  
9           now.
- 10      Q. Well, would you agree that if you present a discount of  
11         15% to your customers, that is likely to encourage them  
12         to think they have got a good deal?
- 13      A. I am not sure how the customers would see that, but at  
14         a price -- you see the ultimate price that they pay is  
15         down at the bottom there, which is -- well, it is not  
16         the complete price, but just say the top price, 56,465.  
17         That is substantially more than 15% when it actually  
18         gets down to the bottom.
- 19      Q. They did a lot better than that in the end.
- 20      A. Yes, they did.
- 21      Q. The suggestion I am only making is, if you start by  
22         saying, "You are getting 15% off", is that not likely to  
23         give the customer a warm feeling rather than thinking  
24         they are starting from the full price?
- 25      A. It may do, yes.

1 THE CHAIRMAN: Can I ask the date of this?

2 MR WARD: Let me see if I can see it. I am sorry, sir.

3 THE CHAIRMAN: "1/09/28".

4 MR WARD: Maybe it is in reverse. Would it be?

5 A. If it was Consignia, then obviously Consignia was around  
6 about 2003/2004, something like that.

7 THE CHAIRMAN: Maybe 28 September 2001; is that possible?

8 A. Could be. Could be. That is possible, yes.

9 MR WARD: Yes, that is the view that has come from behind  
10 me, for what it is worth.

11 THE CHAIRMAN: Right.

12 MR WARD: Sir, it is 4.10. I am about to embark on a new  
13 topic. I have not much more for Mr Ashworth so --  
14 I know you are only sitting until 3.00 tomorrow. You  
15 can remind me of this. There is no danger of going past  
16 lunch at all.

17 THE CHAIRMAN: So we do not need to start early?

18 MR WARD: We certainly do not need to start early and I am  
19 thinking, rather than me pushing through, this would  
20 enable me -- Mr Ashworth's answers have saved me a lot  
21 of time and I can reconsider what I am going to do.  
22 I do not think I will be terribly much longer with him.  
23 If it is not too much of a burden to ask him to stay in  
24 purdah overnight just to indulge me for a fairly short  
25 session in the morning rather than trying to gallop

1 through and possibly deal with --

2 THE CHAIRMAN: I think he was prepared to possibly stay in  
3 purdah for about three or four days, so -- clearly over  
4 the weekend.

5 MR WARD: I know, and that is certainly not going to arise  
6 now.

7 THE CHAIRMAN: Right. What about the impact on the rest of  
8 the timetable then? Are we able to move anyone forward?

9 MR WARD: I think tentatively it is good news in the sense  
10 that I spoke to Mr Beard at lunchtime and, as you know,  
11 Mr Borsboom is giving evidence by video.

12 THE CHAIRMAN: Yes.

13 MR WARD: Our proposal was to be that Mr Borsboom would stay  
14 where he was so we do not have to ask him to change his  
15 arrangements. I doubt I will make many enemies in this  
16 room if, in effect, what happens is we have  
17 a non-sitting day on Friday and Monday.

18 THE CHAIRMAN: Right. So there is no possibility of  
19 bringing forward the experts? I mean, that is all set  
20 in the diary, is it, now?

21 MR BEARD: I do not think we can bring forward the experts  
22 without completing the fact witnesses. I can make  
23 enquiries overnight in relation to Mr Borsboom, but we  
24 had obviously put in place the arrangements for the  
25 video hearing that morning, so I think --

1 THE CHAIRMAN: I do not imagine it would be that difficult  
2 to rearrange a videolink. I know he has other problems,  
3 but --

4 MR BEARD: Yes. Well, I will make enquiries if that is  
5 possible.

6 THE CHAIRMAN: I think that would probably be helpful.  
7 I mean, if we can get ahead of the timetable, I think  
8 that would probably suit everyone, would it not? You  
9 can see if he could be available on the Monday.

10 MR BEARD: We will also need to make enquiries of the  
11 experts, that they can actually make it, because  
12 obviously we have got Mr Harvey and then Professor Neven  
13 and I do not know what the positions of either of those  
14 people are.

15 THE CHAIRMAN: Yes. Well, if you could just make some  
16 enquiries, we can revisit this tomorrow.

17 MR BEARD: Of course. Yes, happily.

18 THE CHAIRMAN: All right. Great. We will resume at 10.30  
19 tomorrow. You have obviously heard about purdah.

20 A. I have, yes.

21 THE CHAIRMAN: You have been warned about it, but it does  
22 mean that tonight, at least, you must not discuss the  
23 case with anybody.

24 A. Absolutely correct, sir.

25 THE CHAIRMAN: Thank you very much.

1 (4.11 pm)

2 (The hearing adjourned until  
3 Thursday, 12 May 2022 at 10.30 am)

4

5

6

7

8

9

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 JOS HABETS (affirmed) .....1

    Examination-in-chief by MR BEARD.....1

    Cross-examination by MR WARD.....3

    Questions from THE TRIBUNAL.....16

MR EELCO VAN VEEN (affirmed) .....23

    Examination-in-chief by MR BEARD .....23

    Cross-examination by MR WARD .....24

    Re-examination by MR BEARD .....87

    Questions by THE TRIBUNAL .....91

MR RAYMOND ASHWORTH (affirmed) .....97

    Examination-in-chief by MR BEARD .....97

    Cross-examination by MR WARD .....100

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12