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IN THE COMPETITION
APPEAL TRIBUNAL

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

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Thursday 12 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)

Thursday, 12 May 2022

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(10.30 am)

THE CHAIRMAN: Mr Beard.

MR BEARD: Just before we carry on with the witness, we did make enquiries overnight in relation to the possibility of bringing Mr Borsboom forward. Obviously the video reconfiguration is no problem, but unfortunately for personal reasons that is not going to be feasible to bring him forward into Monday. I am sorry, sir. I think in the circumstances we stay where we are because we do not want to be jumping around with experts.

THE CHAIRMAN: That is fine by us.

MR BEARD: Sorry about that.

THE CHAIRMAN: Thank you for making enquiries.

MR RAYMOND ASHWORTH (continued)

THE CHAIRMAN: Good morning, Mr Ashworth. You will appreciate you are still under oath.

A. I do, thank you.

THE CHAIRMAN: Mr Ward has some more questions for you.

Cross-examination by MR WARD (continued)

MR WARD: Good morning, Mr Ashworth.

A. Good morning.

Q. Could we start, please, in your witness statement, which is {D/22/31}. We would like paragraph 111 so if we can

1 scroll up just a little bit, please.

2 "I am informed by the solicitors for DAF that these
3 proceedings relate in part to whether certain exchanges
4 of information relating to list prices had an impact on
5 sales prices."

6 I want to ask you about the next few words:

7 "I have never been involved in the setting of list
8 prices ..."

9 Now, in the case of DAF, we know that European list
10 prices were introduced I think in May 2002, but before
11 that they were UK list prices; is that right?

12 A. That is correct, yes.

13 Q. Can we now, please, turn to {I6/118}? This is
14 a document you probably heard me refer Mr van Veen to,
15 and this is a request for information from the OFT to
16 DAF in February 2012, and that was of course while you
17 were managing director of DAF UK. Do you remember this
18 document?

19 A. Only from yesterday.

20 Q. Only from yesterday. You did not remember it from ten
21 years ago?

22 A. No.

23 Q. Do you remember the OFT's investigation?

24 A. Oh, yes.

25 Q. So you would not be able to help us with whether you

1 personally approved this document?

2 A. I do not recall approving this document, no.

3 Q. Can we turn, please, to page 3 of the document
4 {I6/118/3}? I showed part of this to Mr van Veen
5 yesterday so your eye might have fallen on this while we
6 were speaking. Can we go down a little bit more,
7 please? We can see now at the top of the screen:

8 "The individuals listed below are current or former
9 DAF employees that are, or have been, involved in
10 determining the changes to the list price of DAF Trucks.
11 Given the changes to the procedures that were
12 implemented in September 2002 ..."

13 Although I think we now think May 2002.

14 "... the individuals for the period before
15 September 2002 were employees of DAF UK, whereas those
16 responsible for the decisions relating to changes to
17 list prices from September 2002 were employees of
18 DAF Eindhoven."

19 Then under "Prior to September 2002", it gives
20 a list: UK sales directors, Ian Jones and Ray Ashworth;
21 UK fleet sales directors, Ray Ashworth and Mark Oldbury;
22 UK retail sales directors, Nigel Hunt and Geoff Aylott;
23 then UK marketing directors, Tony Pain. So it says that
24 you were involved. Is that wrong?

25 A. I was involved, as I said yesterday, in approving

1 percentage increases, so it may be a pedantic point, but
2 the actual list price number I was not involved in. But
3 any increases or decreases, I would be involved in that,
4 yes.

5 Q. So talking about the UK era now, if you like, the
6 pre- -- not the DAF NV era.

7 A. Correct.

8 Q. So pre-2002. So can you help me a little bit more about
9 what your involvement was then? I did not quite follow
10 that.

11 A. So my involvement, from my recollection, I was not
12 involved in list prices movement at all at that stage.

13 Q. So sorry. Forgive me. It might be just that it is
14 confusing because of the time periods, but I think you
15 have just said two different things. Let us just
16 completely focus on the UK period, if I can call it
17 that, up to May 2002.

18 A. I understand.

19 Q. So we put all of the European list pricing out of our
20 minds.

21 A. I understand.

22 Q. The response the OFT is saying is that you were involved
23 in setting those list prices in the UK, in the UK
24 period.

25 A. So prior to 2003 I do not believe I was. I do not

1 recall doing that.

2 Q. Okay. So as far as you are concerned the document is
3 potentially just mistaken?

4 A. I believe so, yes.

5 Q. You would not be able to therefore help us in any way
6 with what went into this?

7 A. Elements of that, surely, because I was involved in the
8 OFT investigation. But I do not recall this document,
9 I do not recall seeing it at the end.

10 Q. Forgive me for pressing my questions. I just want to be
11 clear what you cannot recall. So you cannot recall any
12 role in the setting of these UK list prices?

13 A. That is correct.

14 Q. Then there is no point me asking you any more questions
15 about that.

16 THE CHAIRMAN: Can I ask a question about it?

17 MR WARD: Of course, sir.

18 THE CHAIRMAN: In the paragraph it says:

19 "The individuals ... below are ... or have been,
20 involved in determining the changes to the list [prices]
21 ..."

22 A. Yes.

23 THE CHAIRMAN: So are you distinguishing between setting
24 list prices and involved in increases or decreases,
25 which is what I think you said earlier, to list prices?

1 A. So to be -- from my memory, certainly latterly,
2 absolutely involved in the changes, and we had that
3 conversation yesterday about changes in list prices, but
4 from my memory I do not recall any involvement in
5 changes in list prices or setting of list prices prior
6 to 2003.

7 THE CHAIRMAN: Okay, thank you.

8 A. If I can be helpful there, the setting of list prices
9 prior to 2003 were set by the marketing department and
10 we have the name Tony Pain there.

11 THE CHAIRMAN: So insofar as it mentions your name there,
12 you say it is inaccurate?

13 A. I believe so, yes, sir.

14 MR WARD: Indeed you do say in your witness statement it was
15 set by the marketing director, Tony Pain, and just to
16 remind ourselves about Mr Pain -- I think we saw his
17 name yesterday. Sorry, I am just looking for
18 a reference. Yes, if we go to -- sorry, I cannot find
19 the reference. Can we go to {I1/431}? We looked at
20 this yesterday, you will remember. If we just scroll
21 down a little bit, this was the email which contained
22 competitor information from Verity McClernon from MAN.
23 If we just scroll up again a little more, is this the
24 same Tony Pain we are talking about here who forwarded
25 it to you?

1 A. That is correct, yes.

2 Q. Thank you. Can we now go to, please, document {C/9}?

3 This is a document prepared by DAF's lawyers for this

4 case. I am guessing you would not have seen this

5 before.

6 A. I have not, no.

7 Q. It talks about who was involved in the setting of UK

8 prices, at page 25, please, {C/9/25}. It says in

9 paragraph 76:

10 "At DAF UK, the Marketing Director was responsible

11 for list price setting."

12 Which is what you have just said.

13 But then at 78:

14 "During this period, general list price increases

15 were set by the Managing Director of DAF UK with input

16 from the management team."

17 That is obviously before you were managing director

18 because it is before 2002. Does that accord with your

19 recollection?

20 A. Yes, that would accord with my recollection.

21 Q. So that would be Mr McDonagh and then his predecessor --

22 I am trying to think who was his predecessor.

23 A. So previous to Kerry McDonagh is David Gill.

24 Q. Thank you. I am not going to try to take this any

25 further with you because you have explained you have no

1 recollection of it.

2 Let us turn back to pricing, the topic we spent most
3 of yesterday on. I want to talk to you now about
4 margin -- the system of margin target approvals, margin
5 approvals. You were here in court when we were talking
6 about it yesterday with Mr van Veen and I am not going
7 to run through all the basics of it again, but in
8 a nutshell, you had your target margins that gave you
9 authority and you explained that, for Royal Mail in
10 particular, all the transactions went up to PACCAR via
11 the M&S director.

12 Now, can I please ask you to look at {I1/384.3}?
13 This is a memorandum from John Kearney who is at DAF NV,
14 is he not, John Kearney?

15 A. He is, yes, that is correct.

16 Q. It is addressed to "Sales Managers Sales Units" and it
17 is 12 January 2005, "Guidelines to the List Price
18 Increase". Does this document look familiar to you?

19 A. It looks familiar. I have seen it recently.

20 Q. You have?

21 A. Recently.

22 Q. In preparation for today?

23 A. That is correct.

24 Q. So let us see what he says:

25 "On the 14th February ... DAF Trucks will publish

1 a new Price List reflecting a 3% price increase on Truck
2 and Option list prices.

3 "This price increase is an important instrument to
4 achieve DAF's 2005 margin targets. Therefore we need to
5 be able to achieve a significant net effect immediately
6 after February 14th."

7 So would you agree here, stating the obvious, that
8 he is saying that the price increase will drive
9 achieving the margin targets, ie achieving higher
10 margins?

11 A. That is exactly what I am [sic] saying, as I understand
12 it, yes.

13 Q. Now, in regard to Royal Mail, you say in your witness
14 statement, {D/22/29}, that you personally -- you say:

15 "I personally did not take into account metrics like
16 IKP or target margin in arriving at proposals for
17 Royal Mail ..."

18 You were, of course, bound by those targets,
19 were you not? They were core to your authority?

20 A. That is correct, yes.

21 Q. So everybody working on the transaction, whether for
22 Royal Mail or BT or anybody, would have to know about
23 these targets, would they not?

24 A. Yes, they would.

25 Q. So in the case of BT, quite a lot of transactions were

1 referred up to DAF NV but not all, I think is the
2 position?

3 A. Yes, in the early stages of BT or in the early stages of
4 this period, BT were purchasing substantial volumes of
5 vehicles and, as I have indicated, volume tends to be
6 unfortunately discounted so they would have the
7 proposals submitted up the channel for authorisation.

8 Q. In the case of Royal Mail, they went to PACCAR, but, as
9 it were, via the M&S director at DAF NV; would that be
10 fair to say?

11 A. That is correct, yes.

12 Q. Mr van Veen said yesterday that, as he put it, you were
13 sort of -- generally this was, not about Royal Mail --
14 but you were sort of negotiating, is how he put it, when
15 you are putting a transaction up. Would you agree with
16 his description?

17 A. I think it is probably a fair description, yes --
18 negotiating, yes.

19 Q. But what I am suggesting to you is that what these
20 margin targets from DAF NV are making clear is what it
21 is they are trying to ask you to achieve in terms of
22 pricing. Would you agree with that?

23 A. Yes, they are obviously asking for me to achieve an
24 increase in transaction prices to increase our revenue.

25 Q. So that is another way, along with list prices, where

1 they are driving from above lower prices below?

2 Would you accept that?

3 A. Sorry, I am not quite clear on the question.

4 Q. Sorry, I am being whispered at, suggesting that

5 I mangled the question.

6 I will try again. I am suggesting that we have two
7 mechanisms we have been discussing, we have the list
8 prices that we mostly talked about yesterday and we have
9 the margin targets we are talking about today, and that
10 both of these are ways in which DAF NV from above are
11 driving higher prices in the transaction prices of the
12 subsidiaries below.

13 A. So margin targets, absolutely correct. That is the
14 second part of your question.

15 The first part of the question is the list prices
16 and, as I said yesterday, the list price increases are
17 the ones which are relevant. Of course, as I said
18 yesterday, if it was a 3% increase on list price, then
19 we were looking for a 3% increase on a transaction
20 price, not on a list price. So that was the -- that was
21 for the dealers particularly.

22 Q. It is not just dealers, though, is it, Mr Ashworth? We
23 talked about this too yesterday. If we go back to
24 a document {I2/113.03}, please, you will remember this
25 discussion we had yesterday about this exchange you had

1 with Mr te Velde and you accepted yesterday that
2 Mr Bensen was looking for more money "across the board".
3 That is page 152 of the transcript at lines 1 to 4,
4 {Day7/152:1-4}. You also accepted that this instruction
5 from Mr Bensen prompted you to seek an increase from
6 Royal Mail. That is page 146, lines 7 to 12,
7 {Day7/146:7-12}. So you accepted yesterday that this
8 pressure from above, transmitted in the form of list
9 prices, was relevant to customers like Royal Mail.

10 A. Yes, it was relevant. It was directly relevant for
11 dealers, but, of course, where you have fixed price
12 contracts it is a little bit more difficult to achieve
13 that increase.

14 Q. Indeed. In the course of the contract at least.

15 Let us also -- I just want to remind you of
16 something else we talked about yesterday, which is -- if
17 we just go to an example. This is {I6/99}, please.
18 Just one example of a number we looked at. These are
19 the product information bulletins. This is just an
20 example. You explained -- you can see this one is
21 talking about a list price increase and it is addressed
22 to all dealer document controllers but also all
23 marketing and sales recipients. You explained
24 yesterday, on page 155 at line 5, {Day7/155:5}, that
25 that would include Geoff Tyler. We know Geoff Tyler --

1 you told us -- worked 60% of his time on Royal Mail and
2 20% to 30% of his time on BT, so evidently these product
3 information bulletins were relevant for direct sales as
4 well?

5 A. It was obviously to ensure everybody was aware of that
6 information and that change, yes.

7 Q. When you said yesterday -- this time it is page 176,
8 lines 19 to 24, {Day7/176:19-24} -- you accepted that
9 when DAF increased its list prices, it was sending
10 a clear signal it wants higher prices, and that applies
11 also to direct customers as well as any other, does it
12 not?

13 A. So we want higher transaction prices.

14 Q. Yes.

15 A. Yes.

16 Q. Thank you. I wanted to just touch very briefly now on
17 another topic in your witness statement which is to do
18 with list prices, and that is options. This is on
19 page 35, {D/22/35}. You say in paragraph 127 -- if we
20 make sure we get the bottom of the paragraph, please,
21 you say seven lines from the bottom:

22 "I should, however, note that there was sometimes
23 a tendency within DAF UK to present options (not
24 included in the base chassis) to customers at list price
25 minus a discount."

1 Then you say, "For some options that Royal Mail
2 asked for", for example. Then you say:

3 "However, these options would then all be subject to
4 the negotiation on the price of the whole truck ..."

5 What is not easy to understand, Mr Ashworth, is why
6 list price would be relevant for options but not for the
7 truck itself. Please, if you can help us.

8 A. Okay, so I will try and explain that. Obviously, as
9 I explained yesterday, the list price of trucks was used
10 to make sure we had the highest price for the biggest
11 truck and the lowest price for the smallest truck. That
12 was a simple summary of what I said yesterday. For
13 options, you had very -- hundreds and hundreds and
14 hundreds of options, and in order to put any price on
15 those, then we used those prices specifically related to
16 a quotation. So that is where list prices of options do
17 actually take or play an absolute part in any question
18 of negotiation.

19 What the statement here is saying is that the
20 challenge here is that if you have an option --
21 a customer who takes a number of options, then those
22 options ideally you would like to bundle together so
23 that if a customer decided not to take one of them after
24 a negotiation, then you were able to adjust the price as
25 you felt appropriate. But obviously if you had each

1 individual item quoted, then you are now negotiating on
2 maybe 5/10/15 options, and that is another negotiation.

3 So that is why it is saying initially you may see in
4 tenders them itemised but, as we progress forward, we
5 have tried to bundle them. I am sorry that is a long
6 answer, but hopefully that explains the situation.

7 Q. Indeed you make clear in your witness statement just how
8 important options are because they can be 20% of the
9 price of the truck, you say.

10 A. That is correct. They could be, yes.

11 Q. So would you agree, therefore, that in fact that means
12 that the list price on the options are a material
13 feature in the negotiation of the transaction price?

14 A. Yes, I have to agree that.

15 Q. Let us now look at some documents on BT and Royal Mail
16 in particular. Now, you have acknowledged in your
17 witness statement that, for BT at least, DAF did refer
18 to list prices. Can I just remind you of your evidence
19 on this? This is paragraph 175, page 46, {D/22/46}.

20 You say:

21 "In looking at [DAF BT 21, which I will open for you
22 in a moment] ... I see that, at least at the start of
23 the Claim Period, BT requested that DAF ... and other
24 manufacturers to whom the tender was addressed, should
25 provide indicative sales for each ... truck model, as

1 well as a '% off Retail'."

2 I take it from your language in paragraph 175 you
3 did not remember this but you were shown this document?

4 A. I was shown this document, yes.

5 Q. In the course of preparing this statement?

6 A. Yes, I think it was 1990 maybe -- 1997, something like
7 that.

8 Q. Yes. I understand it would not be at the top of your
9 mind.

10 If we look at that document now, please, which is
11 {I5/5}, this is the invitation to tender. If we could
12 turn on to page 32, {I5/5/32}, I think we can see what
13 you were referring to. This is a blank pro forma
14 provided by BT, and we can see this is "Option 1" of
15 various pricing options, but the format is the same.
16 For each row there is a "Year 1-3 £ per unit" and then
17 "% off Retail" --

18 A. Yes, I see that.

19 Q. -- which I think, by implication, "Retail" here meaning
20 list price.

21 A. That is absolutely my understanding, yes.

22 Q. If we just turn back to your witness statement now,
23 please, at {D/22/47}, you say:

24 "At the time, it was common practice for government
25 procurement teams to have compensation packages which

1 included incentives according to the discount that they
2 were able to achieve off the headline price for the
3 products they were procuring, and so I believe that this
4 request relates to that (although I do not know for
5 sure)."

6 You have since seen, I am sure, BT's evidence that
7 that is not the case?

8 A. That is not the case. That is from the evidence, yes.

9 Q. So you would accept that, would you?

10 A. I would accept that, but I would have to say, from my
11 experience in any company, and although BT was not
12 a public company at this time, they continued to operate
13 like a public company by submitting OJEU notices, and
14 those OJEU notices, which were common for
15 municipalities, Royal Mail and BT, every one of those
16 always asked for a list price included in their tender,
17 hence the reason for my comment.

18 Q. I see, although, of course, you would not know why they
19 were asking for that list price just from the OJ?

20 A. No. As I say, it is my assumption and, as I say, I do
21 make it clear it is my assumption that that was how they
22 were incentivised. I did not clearly say it was BT,
23 but --

24 Q. No, you did not. You were quite clear you had no
25 specific recollection, in fairness, but I think equally

- 1 in fairness to you I am just putting back to you what
2 they actually said about it.
- 3 A. I understand.
- 4 Q. You also told us yesterday that you had 200 to 300
5 municipal customers.
- 6 A. Yes, that is correct.
- 7 Q. So were those customers that you would be providing list
8 prices to?
- 9 A. Every municipal or local authority is required to submit
10 an OJEU notice and therefore has exactly the same level
11 of detail required, and it was very common for them to
12 ask for list prices, yes.
- 13 Q. But it would be supposition as to exactly why they were
14 asking?
- 15 A. It was just that they requested it. I cannot say why it
16 was their request.
- 17 Q. What I want to do now is just look at the reply that
18 came back. So we saw the pro forma and I want to look
19 at the reply that came back from Royal Mail -- sorry, to
20 BT, I am sorry. It is {I5/19.1}. This is a tender
21 response, and if we could turn to, please, page 6,
22 {I5/19.1/6}, we will see at the bottom of the page,
23 please, it says to direct any orders to Andy Shadwell.
- 24 A. Yes.
- 25 Q. So the likelihood is he would have been in charge of

1 this tender exercise at that time?

2 A. Yes, he would have received -- and received the orders,
3 yes.

4 Q. Is it probable that you had any role in the drafting of
5 this tender reply?

6 A. I would expect I would have been, yes.

7 Q. Well, let us have a look at what it says. On page 2,
8 {I5/19.1/2}, at the bottom of the page, under the bullet
9 points, it says:

10 "The list prices for models and options as quoted in
11 the Appendix are based upon our latest published list
12 price issue ..."

13 While we do not have the appendix, that appears to
14 be, in all likelihood, the pro forma that BT would have
15 provided; would you agree?

16 A. Yes, and of course at this stage, which is obviously
17 1998, there were hard copy list prices available not
18 only to dealers but obviously to customers who were
19 direct sales. So they would have access to not only
20 DAF's but I assume other manufacturers' list prices in
21 hard copy form.

22 Q. Let us go to the next page, {I5/19.1/3}. What we see is
23 a table which itemises various different kinds of truck
24 and provides two different net prices on the top
25 right-hand corner. Top right-hand corner, "Chassis Nett

1 Orders before [week] 51/98", "Chassis Nett Order After
2 [week] 1/99 ...", and they are slightly higher prices in
3 that second column. Do you see that?

4 A. I do see that, yes.

5 Q. Let us see what is said below in terms of explanation.
6 If we could scroll down, please:

7 "A buoyant European market has increased truck
8 production, however, raw material suppliers have also
9 recognised the opportunity to apply price increases in
10 a rising market. Since Euro 2 last October Truck
11 manufacturers have generally held their pricing,
12 however, in the next few months all manufacturers are
13 likely to increase their list prices."

14 So pausing there, what we see is here a reliance on
15 what is at least a prediction about what other
16 manufacturers' list prices might do; would you agree?

17 A. I would agree with that, yes.

18 Q. Then you say:

19 "Although not yet declared ..."

20 "LDT" is presumably Leyland DAF Trucks, is it not?

21 A. That is correct, yes.

22 Q. "... [Leyland DAF Trucks] will be applying a 2.4%
23 increase to the list price of models and options in
24 August 1998."

25 So this is an example of what you were talking about

1 yesterday of actually using a potential increase in list
2 prices in the negotiation?

3 A. That is correct, yes.

4 Q. "As the current supplier to BT we would wish to point
5 out that we will have held our nett prices since
6 January 1998 for supplies through to March 1999. In the
7 past years of being the supplier to BT we also feel that
8 we have continuously developed the trading position to
9 BT's advantage against a volume of considerably less
10 than the forecasted 300 units ... Although we would like
11 to continue with our current pricing position
12 regrettably today's pressures on costs are proving hard
13 to endure [and] we are ... proposing a nett price
14 increase of 2.4% for orders placed after week 1, 1999
15 and through to week 51, 1999 ..."

16 What we can see there is that the net price increase
17 of 2.4 is also what they are saying was going to be the
18 list price increase; would you agree?

19 A. Yes, I would agree. Just to be clear, Andy Shadwell
20 often used the word "nett" with two ts, as opposed to
21 "net" with one t, to indicate the net price, in other
22 words a transaction price. So I cannot say absolutely
23 in every document, but I would think if you assume in
24 the documents you see, if he says "nett" with two ts,
25 that is the transaction price.

1 Responding to your question, then that is exactly
2 what I have been saying before. If there is a 2.4%
3 increase in list price, then we would hope to achieve
4 a 2.4% increase in transaction price or, in this case,
5 net price, if we could, with a fixed price contract but
6 generally in the marketplace.

7 Q. Just one second.

8 A. Sure. (Pause)

9 Q. So what we see here is not just a reference to list
10 prices as BT had asked for but actually, in a sense,
11 a kind of commercial argument pegging the potential net
12 price to the potential list price following the change?

13 A. Of course, in this period of time, the list prices would
14 have been available to BT in hard copy anyway so they
15 would see that.

16 Q. Here we are talking about the future change, though, are
17 we not?

18 A. Hard copy list prices were available until at least
19 early 2000, so this is in the future, yes.

20 Q. Can we turn to page 7, {I5/19.1/7}, because there is
21 a further use of list prices here. This is under the
22 heading "Contract Performance & Quality":

23 "LDT undertake to support BT with regular contract
24 reviews and will manage all contract improvement
25 initiatives as applicable to BT's business.

1 "In the course of any long term contract Leyland DAF
2 Trucks believe that there is a need for a continuous
3 assessment to ensure customer BT satisfaction. To
4 achieve this we would propose the following annual
5 measurements:

6 "Model List Prices -- Review against the
7 competition."

8 Do you recall that taking place?

9 A. I do not specifically recall it taking place, but
10 obviously we have included it in the contract so it was
11 an option to take place.

12 Q. This was another way in which list prices are being
13 brought to bear in order to ensure BT at least was happy
14 with the benchmarking?

15 A. Of course that would be something they would request as
16 well and it was in the public domain.

17 Q. Mr Ashworth, I am not aware of any evidence before the
18 court that shows they requested it but I am sure
19 Mr Beard will pop up with something if I am wrong. So
20 is that speculation on your part that BT specifically
21 requested that?

22 A. That -- it is only speculation so far as this is a table
23 which you will see appears in previous contracts and
24 future contracts.

25 Q. With BT?

1 A. With BT.

2 Q. That could equally have come from Mr Shadwell's own
3 initiative?

4 A. It could have, yes, or in discussions with me.

5 Q. I want to move on to Royal Mail --

6 THE CHAIRMAN: Can I just ask? You say that the gross list
7 prices were available to them at this stage and --

8 A. That is correct, yes.

9 THE CHAIRMAN: -- they would be able to see that there had
10 been a 2.4% increase in gross list prices?

11 A. That is correct, sir, yes.

12 THE CHAIRMAN: Similarly they would be able to see other
13 manufacturers' gross list prices?

14 A. I would have to assume that because the hard copy
15 documents were available in the public domain, yes.

16 THE CHAIRMAN: So they would be able to see any increases in
17 those prices?

18 A. Yes, they would, yes.

19 THE CHAIRMAN: Thank you.

20 MR RIDYARD: Can you give me some idea of how far in advance
21 those list prices were published -- in advance of the
22 implementation of the change?

23 A. In this period of time -- I cannot recollect in this
24 period of time, but typically my memory calls to the
25 fact that we would allow somewhere between 28 days,

1 maybe slightly longer, prior to any change in list
2 prices, and that was to ensure, as I hopefully explained
3 clearly yesterday, that what we wanted to achieve with
4 dealers was for them to go to customers who had
5 quotations and say, "Look, you now have 28 days to make
6 your mind up basically before the price may change". So
7 about 28 days was the typical non-written agreement with
8 the dealers.

9 MR RIDYARD: Thanks.

10 MR WARD: We talked yesterday about the extent to which list
11 prices were only relevant for price changes and I am not
12 proposing to put my case a second time on that.

13 What I did want to do was turn to Royal Mail. If we
14 could please pick up your witness statement again,
15 {D/22/32}, paragraph 115, you say:

16 "In negotiations that I was involved in with
17 Royal Mail, I do not recall anybody from DAF UK
18 referring to the specific list prices of trucks as
19 a means of negotiating a higher sales price."

20 Can we now turn up document {I1/10.3}, please? This
21 is a tender response for Parcelforce, of course a brand
22 of Royal Mail. If we look on page 7, {I1/10.3/7}, it is
23 initialled -- right at the bottom, please, there is
24 initialled "AJS". That is Mr Shadwell, presumably?

25 A. It is, correct.

1 Q. So, again, you would have probably had some sort of
2 oversight of this document, would you?

3 A. I would, yes.

4 Q. Can we turn, please, to page 4, {I1/10.3/4}, a little
5 bit higher up, please:

6 "In the course of any long term contract Leyland DAF
7 Trucks believe that there is a need for a continuous
8 assessment to ensure Parcelforce satisfaction. To
9 achieve this we would propose the following annual
10 (minimum) measurements:

11 "Model List Prices -- Review against the
12 competition."

13 I think that is verbatim what we just saw in the BT
14 one, is it not?

15 A. It is, and the list is virtually the same, yes -- not
16 virtually, it is the same.

17 Q. So you are not suggesting that this was also, as it
18 were, suggested by Royal Mail? Is this not clearly
19 coming from DAF?

20 A. I think my answer would be the same as for BT.

21 Q. The same being that you think they would have requested
22 it?

23 A. It would be a point that model list prices were
24 available and available to review with competition.

25 Q. Sorry, maybe I misunderstood your answer, but as I read

1 this -- let us see if we agree -- what is happening here
2 is DAF is actively proposing to carry out a review of
3 competition model list prices as part of its continuous
4 assessment to ensure Parcelforce satisfaction. It is
5 not just a suggestion that the customer go away and do
6 this on its own, is it?

7 A. No. If I can try and explain a bit wider. In this
8 period of time they were available publicly, so that
9 information was publicly available, and also this was
10 something that they would have access to for other
11 manufacturers, so including that was not -- it was
12 something that was publicly available, and certainly, as
13 I say, from experience, anybody who was supplied or
14 requested a tender from OJEU, they would ask for list
15 price information anyway, so it follows through that
16 process.

17 Q. I see. Thank you.

18 Can we turn now to {I1/265}? Here is another --
19 this is, we think, part of a tender response from 2002,
20 and this is Consignia, which is of course part of
21 Royal Mail as well. We can see at the top of the page
22 again "List Price" and "Nett Price" are being cited;
23 would you agree?

24 A. Yes.

25 Q. So this does appear to be another reference to list

1 prices in the course of negotiating a tender outcome
2 with Royal Mail; would you agree?

3 A. Yes.

4 Q. Can we now turn, please, to {I1/165.1}? This is an
5 email from Andy Shadwell to Simon Giles at Royal Mail,
6 Consignia. You are not copied into this. Have you seen
7 this before?

8 A. I may have done. I cannot recall. I may have done
9 recently.

10 Q. Let us have a look at it. It is short.

11 "Thank you for your time last Friday. To follow up
12 from ..."

13 Sorry, to read the strap line, it is about "Contract
14 Extension VEH397015 [amendment] 8":

15 "Thank you for your time last Friday. To follow up
16 from our discussions I am writing to confirm the price
17 hold I presented.

18 "Essentially our re alignment of market list prices
19 for our competing products 65 Series and 55 series at
20 17tonne has allowed me to review the nett price we had
21 requested for the supply of Vehicle Services 17tonne
22 requirements.

23 "For the contract extension, as discussed, we will
24 hold our nett selling price ..."

25 Would you agree that what is happening here is

1 Mr Shadwell is using the revision of the list prices to
2 negotiate the net price?

3 A. He is using the revision, any changes in net price --
4 sorry, any changes in list prices to obviously make his
5 case there, yes.

6 Q. So another example of list prices being used in the
7 course of negotiation with Royal Mail?

8 A. And changes in list prices specifically.

9 SIR IAIN MCMILLAN: May I just be clear before you leave
10 that page? I see that "nett" has two ts and therefore
11 it is the transaction price, transaction selling price,
12 in the mind of Mr Shadwell?

13 A. That is what I would believe.

14 SIR IAIN MCMILLAN: Yes, thank you.

15 THE CHAIRMAN: Sorry, what do you understand he means by
16 "Essentially our re alignment of market list prices ..."
17 -- what does he mean by that?

18 A. I do not know, sir. I am not sure.

19 MR RIDYARD: Do you think it might be saying, "Because we
20 have increased our list prices, look what a good deal
21 you are getting by us holding the price ..." --

22 A. It could be, yes. I am not sure. I mean, it may be
23 that -- it could be -- I am speculating here -- it could
24 be that because 65 Series and 55 Series were a similar
25 truck, in that they were in terms of carrying capacity,

1 so a 65 Series truck had a bigger cab, a more modern
2 cab, maybe, and a 55 Series had a smaller cab but they
3 could carry the same amount. So there was always this
4 negotiation at the time as do we sell 65 Series with
5 a premium cab to a customer or a 55 Series to a customer
6 and you would pay more for a 65 Series but you might get
7 a better cab, so it may be that we are aligning the two
8 prices here for the extension --

9 THE CHAIRMAN: But they were buying 55s?

10 A. Yes, they were.

11 THE CHAIRMAN: So -- yes.

12 A. So it could be that.

13 THE CHAIRMAN: Thank you.

14 MR WARD: Mr Ashworth, the picture that emerges from these
15 documents that we have been looking at is that DAF NV
16 was placing big demands on DAF UK to get higher prices.
17 Would you agree with that?

18 A. DAF NV was placing big demands on DAF UK to get high
19 prices because that was my job, yes.

20 Q. That was your job. We have seen that we have the list
21 price increases, we have the margin targets, we have the
22 use of IKP to disguise the true level of costs from the
23 sales units. All of these, would you accept, are ways
24 of putting pressure on you to achieve higher prices to
25 keep the central management happy?

1 A. It is part of the job. I would not say it is pressure
2 but it was part of the job.

3 Q. We know that, of course, Royal Mail was your
4 second-largest customer and that BT started out as a big
5 one, even if its significance tailed off.

6 A. That is correct.

7 Q. So these were big sales volumes, were they not, then?

8 A. They were, yes.

9 Q. So the prices that you were going to achieve on those
10 contracts are going to be important, are they not, to
11 both your results and to DAF NV?

12 A. Yes, they would be.

13 Q. So what I am suggesting to you is that these
14 instructions that are coming down from DAF NV to achieve
15 price increases or higher prices are just as important
16 for these very big customers as any other customers?

17 A. I would say that is a fair comment, yes.

18 Q. That would be the case whether or not they were actually
19 referred -- whether or not the list prices, say, were
20 actually referred to in a negotiation in the way we have
21 looked at a moment ago?

22 A. I think that is also a fair comment, yes.

23 Q. Now, of course, one thing we have discussed is that the
24 deals on BT and Royal Mail were won in competitive
25 tendering exercises.

1 A. That is correct, yes.

2 Q. Can I ask you to look at your witness statement at
3 {D/22/22}, paragraph 76? This is actually where you are
4 talking about attending some meetings at Royal Mail as
5 part of the bid process. You say:

6 "I nearly always attended these presentations, and
7 I recall that our competitors were often presenting
8 immediately before or after us, so we sometimes bumped
9 into them when arriving or leaving Royal Mail's offices
10 in London or Chesterfield. I never discussed the
11 pricing on Royal Mail contracts with my competitors
12 during these encounters or at any other occasion."

13 You would agree, I am sure, that in a competitive
14 tendering exercise it is of critical importance that the
15 bidders are independent of each other --

16 A. Oh, absolutely.

17 Q. -- because that way the customer will receive
18 independent best bids?

19 A. Yes.

20 Q. In fact, one thing you say in your statement at
21 paragraph 167, {D/22/45}, is:

22 "... I would describe the tractor market in the UK
23 as highly competitive."

24 A. That is correct, yes.

25 Q. Now, in your statement you make no mention at all of the

1 Commission decision that found DAF to have been part of
2 a price-fixing cartel for 14 years.

3 A. That is also correct.

4 Q. But you must be aware of it?

5 A. Oh, absolutely, yes.

6 Q. Indeed you were the managing director of DAF UK when it
7 was issued --

8 A. I was, yes.

9 Q. -- and throughout the whole of the Commission
10 investigation?

11 A. Yes, I was.

12 Q. Did you play any role in that investigation?

13 A. Only insofar as we had substantial documentation that
14 was previously acquired for the OFT investigation, which
15 obviously was 2010, so some four/five years earlier. In
16 that case, obviously, it was almost -- not quite --
17 a "Take the boxes away", but it was, "We have all the
18 volume of information there and you have this
19 information to take with you".

20 THE CHAIRMAN: It was 2010, was it, the OFT --

21 MR WARD: The OFT was 2010.

22 THE CHAIRMAN: So within the infringement period that we are
23 now talking about?

24 MR WARD: Yes -- well, what happened -- I will be corrected
25 from behind if I get this wrong -- but the OFT started

1 an investigation and then it handed over the file to the
2 Commission, who started its own investigation after
3 a whistleblower had contacted the Commission. The
4 Commission investigation began in 2011 and the decision
5 of the Commission takes that date, the start of their
6 investigation, to be the end of the cartel, although it
7 also says something like, "Well, we are directing you to
8 bring it to an end just in case you have not". So that
9 is roughly what happened.

10 I am getting nods. Good. So that is --

11 A. That is correct, yes.

12 Q. Have you read the decision?

13 A. I have, yes.

14 Q. You have. So what you will know is that what it shows
15 is that, when you were bidding, almost all the other
16 manufacturers were actually in the cartel, were they
17 not?

18 A. Yes, they were.

19 Q. So when you were bidding -- maybe it would be helpful,
20 just before running here, just to remind you of what the
21 decision says. Can we just turn it up, please? It is
22 in {AU/3.9/12}. Can we turn to page 12? I will just
23 show you a few edited highlights rather than trawl
24 through the entire thing with you.

25 A. Thank you.

1 Q. I hope it will be familiar. Page 12, it says,
2 paragraph 46:

3 "All of the Addressees exchanged gross price lists
4 and information on gross prices, and most of them ...
5 engaged in exchanging computer-based truck
6 configurators. All of these elements constituted
7 commercially sensitive information. Over time, truck
8 configurators, containing the detailed gross prices for
9 all models and options, replaced the traditional ...
10 price lists. This facilitated the calculation of the
11 gross price for each possible truck configuration. The
12 exchange was [on] both ... a multi-lateral and bilateral
13 level."

14 Then at 47:

15 "In most cases, gross price information for truck
16 components was not publicly available and information
17 that was publicly available was not as detailed and
18 accurate as the information exchanged between, amongst
19 others, the Addressees. By exchanging current gross
20 prices and gross price lists, combined with other
21 information gathered through market intelligence, the
22 Addressees were better able to calculate their
23 competitors' approximate current net prices -- depending
24 on the quality of the market intelligence at their
25 disposal."

1 You will be aware that all of the cartelists,
2 including DAF, admitted all of this?

3 A. That is correct, yes.

4 Q. Then just for a little bit more context, if we go to
5 Recital 51, please, on the next page, {AU/3.9/13}, we
6 can pick up the second half of this paragraph, from:

7 "Occasionally, the participants, including
8 representatives of the Headquarters of all of the
9 Addressees, also discussed net prices for some
10 countries. They ... agreed on the timing of the
11 introduction of, and on the additional charge to be
12 applied to, the emissions technology complying with EURO
13 ... standards. In addition to agreements on the levels
14 of price increases, the participants regularly informed
15 each other of their planned gross price increases.
16 Furthermore, they exchanged their respective delivery
17 periods and their country-specific general market
18 forecasts, sub-divided by countries and truck
19 categories. In addition to the meetings, there were
20 regular exchanges of competitively sensitive information
21 by phone and email."

22 This looks familiar?

23 A. Yes.

24 Q. Then if we move on, please, to page 17, {AU/3.9/17} --
25 just up a little bit, please, 71 we want -- it says,

1 picking up the bottom half of this paragraph:

2 "The single anti-competitive economic aim of the
3 collusion ..."

4 A. Sorry to interrupt. Which paragraph are you --

5 Q. I am sorry if I did not say. 71.

6 A. 71, sorry, thank you.

7 Q. The bottom half of that:

8 "The single anti-competitive economic aim of the
9 collusion between the Addressees was to coordinate each
10 other's gross pricing behaviour and the introduction of
11 certain emission standards in order to remove
12 uncertainty regarding the behaviour of the respective
13 Addressees and ultimately the reaction of customers on
14 the market. The collusive practices followed a single
15 economic aim, namely the distortion of independent price
16 setting and the normal movement of prices for Trucks in
17 the EEA."

18 You have seen all this before?

19 A. Yes, I have.

20 Q. You understand it has been admitted by all of the
21 manufacturers?

22 A. Yes, I do.

23 Q. So, in fact, when you were bidding in these tendering
24 exercises, the rival manufacturers had a huge amount of
25 information about DAF and its pricing and had made

1 various agreements with DAF and all the others;
2 would you accept that?

3 A. It would appear so, yes, unbeknown to me.

4 Q. Unbeknownst to you. The decision itself tells us that
5 DAF NV, even if not you personally, had a huge amount of
6 information on its rivals.

7 A. That is what the decision says, yes.

8 Q. We saw yesterday that you at least had some information.
9 We went through a few examples yesterday.

10 A. Not specifically --

11 Q. Competitor information.

12 A. Competitor information, yes, but not specifically
13 related to this.

14 Q. Well, that might be a matter of submission but we looked
15 at the examples that we did.

16 What I am putting to you is simply this, that
17 although you were bidding in a tendering exercise, those
18 bids were taking place in a rigged market. Would you
19 accept that?

20 A. On the basis that I was personally bidding, I was
21 unaware of these activities going on all through the
22 time until obviously this investigation started in 2012,
23 as you say -- 2011, sorry, as you say. So I was bidding
24 in innocence or in my own capacity as either fleet sales
25 or managing director, as it progressed to, to the best

1 of my ability, to get the best margin from the customer
2 and the best volume.

3 Q. So it must have come as a shock to you when you read the
4 decision?

5 A. I think that is exactly the words I would use myself.
6 It was an absolute shock.

7 Q. So all of your best endeavours were in fact taking place
8 in a market that was rigged by the cartel?

9 A. So it would appear, yes.

10 MR WARD: Thank you. I have no further questions.

11 Re-examination by MR BEARD

12 MR BEARD: I have one or two questions that I want to ask,
13 picking up essentially matters that Mr Ward touched on
14 yesterday, but I thought it might be helpful just to
15 have the witness clarify because, as Mr Ward has very
16 efficiently skated past various issues, I think it might
17 be worth just going back.

18 Yesterday, he took you to paragraph 124 in your
19 witness statement. That is {D/IC22/34}. He took you to
20 paragraph 124. He did not take you to the OMS document
21 that we see below. I think we have a fuller, clearer
22 version of that. I have a reference for it because it
23 is crammed in at the bottom there. I will just find
24 that. {I2/30}, if we may. You have seen this document.
25 You exhibited it --

- 1 A. Yes.
- 2 Q. -- and included it as a screenshot. So in your
3 statement in paragraph 124 you talk about what this
4 document is.
- 5 A. Yes, I do.
- 6 Q. I just wanted to ask you actually just to explain what
7 we are seeing here in this screenshot. Before I do, you
8 have obviously set out some of the points in
9 paragraphs 125 to 127 in your witness statement, but
10 could you just explain what truck this is for? Can you
11 identify that from this?
- 12 A. Yes, I can. So if you go to the top right-hand corner,
13 you will see it is circled -- by me, that is my writing
14 there, "2008 [Corporate] Approval". On the top
15 right-hand side it is an FA 55220, 18-tonne, so that is
16 55 Series, 220 horse power, 18-tonne gross vehicle
17 weight.
- 18 Q. If we go over to the left-hand side of the page, could
19 you just talk us through what we are seeing in those
20 various rows there, please?
- 21 A. So obviously the top row is just a description of who
22 the customer is and it says Andy Shadwell is the contact
23 person and so on. The key items there are the ones
24 obviously I circled so I need to know what the model is.
25 The number there is what the expectation is in this

1 particular contract. So it does actually say in there
2 130 but I have noted afterwards it is 144, but that is
3 just my personal noted amendments. If I am taking this
4 document to produce at corporate approval, I do not want
5 to ask corporate approval for less than what we might
6 anticipate.

7 Then when you look down below that, then what you
8 have -- and it is the same if I read across, so just for
9 the first line, to be specific. The chassis is
10 obviously the chassis cab, as it is shown there, so that
11 is the 55220 18-tonne, and it shows that the list price
12 is £47,100. The net price, one t, is the list price
13 less 15%. All through any documentation, if you see
14 "net" with one t, you can generally consider that is
15 list less 15%, and that is a historic item which I refer
16 to in my witness statement from where we started using
17 list prices in around about the 1980s.

18 The cost price is the IKP, so this is this number
19 that Mr van Veen tried to explain yesterday and
20 I thought he did quite well at that. So that line there
21 then says -- and obviously then you just read across,
22 and the cost margin is obviously just the difference in
23 the two and the percentage is just the percentage made
24 out of that.

25 So we come down, the key item there, then options

1 are 4,860 list, and again that is 15%, and then there is
2 a cost price. The POV, that stands for "pre-order
3 validation", and basically what that is is items which
4 are not normal for us to specify. So they may need
5 engineering work. So this is where my product
6 engineering team, Bob Ford and so on, would make sure
7 that we can actually, to be very simple about it, screw
8 a particular item to a particular truck and it does not
9 foul anything or something like that. So that is POV
10 items and again it reads across in exactly the same way.

11 Additional spec, although it does not show clearly
12 here, but I can surmise that if it is £11,958, that has
13 to be a body and probably a tail-lift because for
14 a 55 Series chassis cab that we would sell, it would
15 need a body and a tail-lift and that is the sort of
16 number I would expect on here. There is further detail.
17 We can look at that if we needed to too.

18 THE CHAIRMAN: There is no 15% discount on that?

19 A. No, because that is a price that at this stage -- well,
20 sorry, for all the period Royal Mail purchased bodies as
21 either through us from a separate company. So a third
22 party would be Cartwright's and the tail-lift might be
23 Dhollandia, as I probably indicated.

24 So in that case there is now no difference there
25 other than we took in this case a small £50, so the IKP

1 is our -- is my number. So we have said that is the
2 actual price, 11,908, so we have taken £50 on that,
3 which is quite unusual. We might have taken a small
4 amount, sometimes we take more, but that is what it
5 shows in there.

6 You then -- so that is where the top bit goes. What
7 you have then -- that is how the numbers are in the top,
8 but you start off with the position -- in order to
9 create this document, you have agreed a price to the
10 customer, that that is the transaction price. So what
11 we have done, we have gone to the customer, we use our
12 best negotiating skills and we have agreed a transaction
13 price of £41,937.31. That is what we have agreed for
14 this customer.

15 So in order to create this document, we have to plug
16 that number in there first and then all the other
17 calculations just spin out and it creates an SDA value
18 of 15,852, so that is automatically rated. But the only
19 number we plug in are obviously the prices that we have
20 to from the list price but the actual number that is key
21 is we plug in the customer price.

22 Then internal provisions are anything that we may
23 take as a reduction off the customer price, so these are
24 things that the customer will not see but we need to
25 account for within the company. So that could be items

1 such as training that we offer to him, special tools
2 that we may offer to him. So we have to account for it
3 but it is actually in this price, so that is below the
4 line.

5 So we then end up with a margin of £41,420.31. You
6 can see the calculation just goes across to the cost
7 price. It shows the margin total then of £1,365.17, and
8 the percentage margin, which is the 3.3%, is simply
9 a calculation of £1,365.17 divided by £41,420.31, and
10 that comes to 3.3%. I have not got my maths out but
11 that should be -- hopefully that is what it should be.

12 If you then scan across on that 3.3% -- sorry,
13 am I being too detailed here? Is this okay?

14 MR BEARD: I think it is helpful to the tribunal to
15 understand these documents because it explains how these
16 things were created.

17 A. Okay, thank you.

18 So if you scan across then, the margin difference --
19 so what it says then -- just above that you will see
20 a target margin, so this is what Mr van Veen was
21 referring to yesterday. So my target margin for this
22 chassis is 4.4% minus, so it is a negative target
23 margin. Most target margins were negative. It
24 surprises me that we have a margin difference which is
25 a positive margin because obviously I have got 3.3%, so

1 this is a very good deal for us, but the 55 Series
2 tended to be the most profitable truck in terms of my
3 seeing -- what I can see on the screen here. But of
4 course, as I have said in my witness statement, I am
5 referring this as a minus 4.4%, which refers to its
6 reference against IKP and IKP has no direct relevance to
7 cost prices.

8 THE CHAIRMAN: That 4.4% negative target -- that is the IKP
9 target margin provided to you by NV?

10 A. That is correct, yes. So I have --

11 THE CHAIRMAN: So they were expecting a negative margin to
12 IKP?

13 A. I think -- I do not want to be totally extreme here, but
14 virtually every margin was negative in my history,
15 I think. I never saw -- I cannot recall -- there may --
16 sorry, I am being very general here, but, if I recall,
17 I would say 90%-plus were negative.

18 THE CHAIRMAN: So you knew that IKP was not a fair
19 reflection of actual cost?

20 A. I think I have actually been more specific in my witness
21 statement and say I took no indication of IKP at all.
22 It is just a number, sadly.

23 THE CHAIRMAN: It is a number by reference to which your
24 targets are set?

25 A. That is the target -- the reference then, certainly,

1 sir, is the one where I have now -- then I am allowed to
2 sign off at a reference beyond the target margin. So
3 this is minus 4.4%, I am allowed, as managing -- if
4 I was -- the date -- if I was managing director at this
5 time -- 2008, not quite -- but if I was, I was allowed
6 to sign off 7% below IKP target margin. So in this case
7 I would be allowed to sign off at -- that would be,
8 what, 11.4% minus.

9 MR RIDYARD: When you say that the vast majority of your
10 sales were below the target margin, is that just
11 applying to direct sales or in general?

12 A. In general. The target margins for most trucks were
13 negative, most trucks, because what we used to receive
14 was a document in the very early stages where you would
15 have a list of target margins for every single model.
16 I think Mr van Veen explained this yesterday.

17 MR RIDYARD: Yes.

18 A. So you would have a list of every model, 45, 55, all the
19 models, all the specific models, and there would be
20 a target margin for each one, generally, as I say,
21 negative, for all the retail sales, all the dealers
22 sales, which, as I had indicated in my witness
23 statement, are about half of the sales that DAF made in
24 the UK.

25 Then for the other half, which includes -- if

1 I include that half, I can include direct sales, which
2 is obviously Royal Mail and BT -- then they had
3 a different set of target margins, which, as you
4 probably expect, were slightly lower so, in other words,
5 you could achieve a lower price, so there were two
6 target margins but in both cases were generally
7 negative.

8 MR RIDYARD: So the target margins differed for fleet sales
9 versus dealer sales versus direct sales?

10 A. Yes, and dealer sales were encompassed in fleet sales.
11 There was only two columns. Direct and fleet would
12 group together and the other sales were obviously one
13 there.

14 So in this case --

15 THE CHAIRMAN: Just so I can understand this, in this
16 particular case you are beating the target margin?

17 A. Correct, yes.

18 THE CHAIRMAN: Does that mean that you do not therefore need
19 to get approval?

20 A. No, the other proviso now is -- which is why it is very
21 keenly circled at the top -- is the volume. So I am
22 only allowed -- and it did change, but for most of the
23 period of time I was allowed to sign off 50 trucks. So
24 even if that was plus 20% -- you know, it did not matter
25 what my sign-off was, if it was more than 50 trucks,

1 I had to submit it for approval. So volume and target
2 margin. Well, I think that -- does that explain it?

3 MR BEARD: That is very helpful. Just one follow-up
4 question which is picking up a point I think that
5 Mr Ridyard was raising. You said that this was
6 a Royal Mail related document. How would it look if we
7 were talking about an order from a dealer in these
8 circumstances?

9 A. It would be very similar, but obviously what we are
10 seeing here is a document that I would see. As you can
11 see that there is a gap between the cost price and the
12 cost margin and I think that is where -- when you go to
13 higher authority, you get other costs going in there.
14 So coming down from my team, they would not even see
15 the cost price, they would just see the net price. So
16 from a dealer side, a dealer sign-off would just be,
17 again, they would have the authority but they would have
18 a lower authority. So a lower authority for a dealer
19 sign-off would be 3% for the dealer sales -- for my team
20 in the dealer sales and then for the manager would
21 be 5%, but very similar.

22 Q. Sorry, you are saying you would not have the cost price
23 column. Would you have an SDA in a dealer?

24 A. Oh, absolutely. All this data would be exactly the same
25 for a dealer, exactly the same. But, obviously, for

1 here we have got a body in here. That would not be for
2 a dealer.

3 Q. In terms of how this was created for dealers, could you
4 just outline how the negotiation would work with
5 a dealer in those circumstances?

6 A. So -- yes. So for a dealer, the dealer would again do
7 exactly what I would have done, which is go to the
8 customer, negotiating a price. How he would do that is
9 he would configure the model in something called
10 Sprint -- so that was our configurator at the time --
11 and in doing so he would create his own price that he
12 wanted to achieve. That would be whatever that price is
13 there.

14 He would then do exactly the same as we do, which is
15 plug his number into the SDA system -- this is the OMS
16 system which I think we have referred to in the past, so
17 OMS creates SDAs. So we plug his number into the OMS
18 system and he would see whatever the allowance was
19 there, which is the SDA number -- in this case it is
20 15852 -- and he would then ask for authority to have
21 that approved by one of my team in the retail side of
22 this -- of the dealer sale side of the business. If
23 that came through to a dealer, a retail sales manager,
24 one of my team, and it was less than 3% away from the
25 target margin, he could approve it if he felt it was

1 appropriate.

2 Q. Thank you.

3 Could we just go to the transcript at page 170
4 line 12, please, from yesterday, {Day7/170:12}? I can
5 take you back to the document that is referred to there
6 but you may remember you were asked some questions about
7 a 4.8% list price increase. Do you recall that?

8 A. Yes, I recall that.

9 Q. If we just go over the page to 171, {Day7/171:10}, you
10 were asked about this 4.8% price increase. You said --
11 as you have said consistently in relation to list prices
12 increases, it is "an opportunity for us to move the
13 transaction price but it is not guaranteed". What
14 did you mean by "not guaranteed" in those circumstances?

15 A. So because you are in a negotiating position with the
16 customer, the customer will only pay what he feels is
17 the appropriate price to pay, as in any negotiation. So
18 our objective was to get as much as possible and the
19 customer's was to obviously pay as little as possible.

20 Q. You referred in the course of your evidence yesterday to
21 I think hoping for half of the list price increase for
22 each DAF customer at a transaction price level.

23 Would you expect those list price increases to impact
24 Royal Mail or BT transaction prices?

25 A. If there was a fixed price contract, then obviously we

1 were locked into that, but if we had an opportunity to
2 negotiate at the end of the contract, then we would
3 obviously negotiate to improve -- to increase the
4 transaction price as much as possible, and we would use
5 whatever tools are in my toolbox to do that.

6 THE CHAIRMAN: That is for a new contract then?

7 A. Absolutely correct, sir.

8 MR BEARD: We will obviously see the data in relation to
9 that in due course.

10 You were taken to bundle {I1/218} yesterday. I can
11 go back to the transcript but you probably remember
12 this. It was a Consignia invoice.

13 A. Yes.

14 Q. Sorry, I think I put the question wrongly to you.

15 I think I was not fair to your evidence yesterday. In
16 relation to the previous question, I think the point was
17 that you said that overall you would expect half of
18 a transaction price -- you would aim for half of
19 a transaction price increase across all customers; is
20 that correct?

21 A. Yes. As an average, yes, that is correct.

22 Q. If we just go to the Consignia document that you can see
23 on the screen, I think Mr Wards took you to the list
24 price column and then there is this discount percentage
25 that he referred to. We have already been looking at

1 the OMS system. Is this a different discount from the
2 one that we saw in the OMS system?

3 A. So, answering your first part of your question and then
4 I may explain a bit further after, if that is okay.

5 Q. Yes.

6 A. So this is the same discount we see. So the list price
7 and the 15% get you to the net price, which is,
8 obviously, the column on the right-hand side. So those
9 two numbers, the 66430 and the 56645 [sic] are the two
10 numbers you would see in the OMS system as the list and
11 the net.

12 Just to maybe give you a further explanation of this
13 because I know you found it amusing about the date
14 yesterday, sir, this document is actually a dealer
15 document and it is unique because direct sales are the
16 only customers that we invoice directly and so
17 Royal Mail and BT actually see this document. So it
18 would be very familiar to a dealer to see list less 15%
19 and so on, but because we only have one invoicing
20 system, we have to invoice out through using our dealer
21 documentation, and this is why it has such extended
22 details on it.

23 Q. Sorry, just to clarify what we are actually seeing in
24 this document -- I am not going to test your maths, but,
25 as I understand it, if we take, for instance, a simple

1 round number five rows down, the £200, which I think is
2 to do with chassis paint, you then see a discount of 15%
3 and then -- I am just doing the maths -- but that is
4 a £30 discount on 200 and you see a net price of 170.

5 A. That is correct, yes.

6 Q. But then at the bottom here, it says "Carried Forward",
7 there is the sum of £40,247.76. Do you know what that
8 number is?

9 A. I am assuming there is a second page to this document.

10 No.

11 THE CHAIRMAN: I was wondering that. The second page that
12 we have, is that the back of --

13 MR BEARD: I think that may be --

14 A. This is the reverse of the first page.

15 Q. If you go over again --

16 A. If you just go back -- thank you -- because there should
17 be something in the bottom right-hand corner that is
18 actually the invoice price normally.

19 Q. I think it would go beyond re-examination if I took
20 Mr Ashworth to the actual contract in relation to this
21 because Mr Ward would -- but we will deal with that in
22 submissions in due course and we can explain what that
23 number is.

24 THE CHAIRMAN: All right.

25 A. But if it would be helpful, obviously this is list less

1 15% but we know that the actual transaction price is
2 substantially lower than that, so there would be
3 a number which -- and it was important to get the actual
4 number correct on the invoice because that is what --

5 THE CHAIRMAN: The "Carried Forward" figure, that is not --

6 A. It is obviously not the total because -- no.

7 THE CHAIRMAN: It is less than the top figure.

8 A. It may well be the invoice price, but I am surprised it
9 is at that point. Normally it is in the bottom box.

10 But I may be incorrect on that, sir.

11 SIR IAIN MCMILLAN: So it suggests that there is another
12 document that starts "Brought Forward".

13 MR BEARD: I do not know whether or not that is the case but
14 we do actually have the contract in relation to this so,
15 as I say, not really something for re-examination.

16 I think -- I am concerned that the impression that was
17 being left by this document by Mr Ward was not
18 necessarily entirely representative of what was going on
19 in relation to the contract, but we will come back
20 to it.

21 THE CHAIRMAN: I think we have had the explanation --

22 MR BEARD: Yes, we have had the explanation so far as

23 I think we can go, so I will deal with that.

24 MR WARD: Can I say, I only opened this document in order to
25 talk about what the 15% was.

1 MR BEARD: Fair enough. We will put that in context in due
2 course.

3 If we go back to the transcript from yesterday,
4 page 161, please, at line 19, {Day7/161:19}, you will
5 see Mr Ward was taking you to a document, {I1/437.1},
6 which is a PIB. He says:

7 "... I think I am using really just to illustrate
8 a general point about how these SDAs work."

9 Could we just call that up and we can go back to the
10 paragraph, {I1/437.1}. Thank you. If you just want to
11 review that.

12 If we scroll down the page because Mr Ward actually
13 asked you about that.

14 A. Yes.

15 Q. You will recall Mr Ward asks you about what "AFD" and so
16 on was. We will go back to the transcript, if we may,
17 at {Day7/161:19}.

18 A. Yes, "available for delivery".

19 Q. If we could just scroll down so Mr Ashworth can see and
20 the tribunal can see the full question and then the
21 response. Thank you. If you read that page and we will
22 keep going down because it is questions I have not in
23 relation to AFD.

24 So just stop by line 14, {Day7/163:14}. That is
25 fine. What I just wanted to clarify was this reference

1 you made there to an unused or unordered SDA. What
2 would that be?

3 A. So if you had an SDA, as we have just seen, in the OMS
4 system -- and I went through the detail there -- if you
5 already have that approved, then that is approved for
6 a specific transaction price but it obviously has in
7 there a given list price if the calculation shows out
8 because that is how you end up with your sign-off
9 against your target margin.

10 If the list price increases, even though you may
11 have a transaction price agreed -- sorry, let me go
12 backwards. So once you have that approved, then you are
13 able to submit an order. You quote the SDA number,
14 which is given, and that is an order which is
15 automatically accepted because the order, as long as it
16 is exactly the same as completed within the OMS system
17 and you have submitted it with the SDA number, then the
18 two tie together and it says, "Yes, you have that
19 approved, and yes, we will build it". That is how that
20 system works.

21 So in this case, if we have a list price increase,
22 then because you may have an agreed transaction price
23 and you have not actually put your SDA in the system,
24 then if the list price moves, because when you go
25 bottom-up, that affects the calculation, because

1 obviously the numbers that fall out will mean -- so let
2 us say it came out at just on my sign-off as 7% below
3 the target margin -- so I could sign it off -- if you do
4 the calculation with the list price increase that goes
5 into the system and you have not submitted your order,
6 then obviously what happens is it says, "This is outside
7 your authority. You cannot submit this order because
8 you have no authority to submit it because the numbers
9 are different". So it is an encouragement to get your
10 order in the system and then you may wish to resubmit it
11 after the price has moved, but, of course, it would be
12 outside my authority and we may have to submit it to
13 higher authority if there was a good justification for
14 it.

15 Q. So if the SDA was not used and a new SDA would be
16 outside authority, what are you assuming is the request
17 from the dealer? Are you assuming it is the same
18 transaction price or a higher transaction price?

19 A. So the dealer has two choices. He can say,
20 "I absolutely need this price otherwise it becomes
21 a standard negotiation". In any way he would say,
22 "I need this transaction price, and although we have
23 just moved the numbers in the system, I really need the
24 price and I have a good justification", and there is
25 a narrative system in the OMS system to say that and

1 I may -- it may not be me, it may be one of my team --
2 would pick up the phone and have a conversation and we
3 may still approve it.

4 The alternative is he would go to the customer and
5 say, "Sorry, you are too late. I need some more money".
6 But, generally speaking, you would obviously want to
7 secure the deal at the price he had secured so he would
8 make a good justification for holding the price even
9 though it may be just after the price move -- the list
10 price movement.

11 Q. What sort of factors would you be taking into account
12 when he came back with that justification?

13 A. So, if it was an existing customer, if this was a few
14 days, a week, maybe even ten days after the price move,
15 so he has only just missed the barrier coming down, if
16 you will, if it was an opportunity to break into
17 a customer and we were having this negotiation, we did
18 not want to go back and renegotiate again, if we had
19 a conquest deal here -- so a number of other factors
20 that were taken into account in the system -- in our
21 negotiation about how valued it would be to say no or
22 yes, or, more correctly, how valued it would be to say
23 yes to the customer -- to the dealer, to say accept this
24 deal or what would the consequences be if you said no.

25 THE CHAIRMAN: Can I just ask in relation to the increases

1 in gross list prices and how that feeds into the system,
2 does that -- once it goes into the system, the increase
3 in gross list prices, does that automatically affect the
4 IKP target margin?

5 A. By calculation it will do, yes.

6 THE CHAIRMAN: Right. So there is a correlation between
7 those two figures?

8 A. Yes, because obviously, as you work down the
9 calculation, there is a correlation there, yes.

10 THE CHAIRMAN: So that is why your authority might be
11 affected by an increase going through the system --

12 A. That is correct, sir.

13 THE CHAIRMAN: -- in that way?

14 A. Yes.

15 THE CHAIRMAN: That is the way head office therefore
16 reflects the increase in gross list prices, is through
17 the increase in the margin?

18 A. Correct.

19 THE CHAIRMAN: The IKP margin, thank you.

20 MR BEARD: Can I just clarify the answer there? I think the
21 chairman was asking about an automatic effect on the IKP
22 target margin. Were you involved in setting those
23 margins?

24 A. No, I was not.

25 THE CHAIRMAN: How much longer are you going to be because

1 we have not had our break.

2 MR BEARD: I have got two more and then I was going to stop.

3 I was trying to get through --

4 THE CHAIRMAN: No, of course. I understand. I think maybe
5 we will just carry on, then, if the transcriber is okay.

6 Thank you.

7 MR BEARD: Thank you. That is very kind.

8 Just a couple of questions in relation to points
9 made this morning. It is clarification. If we could go
10 to document {I1/265}, this was one document -- we will
11 come back to this -- it is one document where there is
12 a list price reference in relation to Consignia.
13 Mr Ward asked you about the net price but I do not think
14 he showed you the bottom. He allowed you to scroll
15 through this document. So if we could just scroll
16 further down, at the bottom it talks about a "Total Nett
17 Price" with two ts, but then it talks about a "Consignia
18 Price for 14 [tonne]/24 York Carrier Chassis". Do you
19 want to scroll back up so you can compare the numbers?

20 I am not asking you to do any arithmetic but you had
21 referred previously to nett with two ts being
22 a transaction price. We see this is a 14-tonne 24
23 York carrier for Consignia. What do you understand that
24 bottom price to be that we just saw at the bottom of the
25 page?

1 A. I think this is my exception to the rule where he has
2 got nett price with two ts to be list less 15%, but the
3 number -- if we scroll down to the bottom, please -- so
4 the actual price is 27,126. That is what -- the
5 transaction price I would assume given to the customer.

6 Q. I think I have one more question. {I5/19.1/3}, please.
7 I am sorry, I do not have the transcript reference, but
8 this was a document you were shown this morning
9 indicating chassis net orders before -- this is a BT
10 document -- week 51 of 98 and then chassis net orders
11 afterwards. I think it was put to you that this was an
12 intention to raise prices by 2.4%. Do you know whether
13 or not that attempt to raise prices by 2.4% was
14 successful at that point?

15 A. I cannot remember.

16 Q. No. I think it is something we will come back to in
17 submissions in due course.

18 Just finally, you have referred to, on a number of
19 occasions, the hope, the expectation, that on average
20 you would get half the transaction price increase --
21 list price increase in transaction prices.

22 A. That is correct.

23 Q. How successful were you in achieving that aim,
24 particularly in relation to large or direct customers?

25 A. I think a very simple answer to that is, on average, we

1 knew that from history that was generally what we could
2 get, and if you take the balance of -- if you say 50/50
3 and we put Royal Mail in the 50% of big customers and BT
4 in that bit, and the 50% of retail customers, then we
5 would expect to get a substantial amount from retail
6 customers and less from BT, so the balance comes out
7 that way. So it is sometimes zero on fleet customers
8 and sometimes full amount on retail customers because
9 you would expect a customer buying one truck, you would
10 achieve a full percentage increase with that customer.
11 On the balance it is 50/50. It was a very rough -- but
12 it was very similar in terms of models as well.

13 Q. Did that vary across the period we are talking about,
14 from 1997 --

15 A. From memory, very little. It was a very good rule of
16 thumb, I think is probably the best way I can describe
17 it, yes.

18 MR BEARD: I am grateful. I have no further questions.

19 I do not know if the tribunal has any.

20 Questions by THE TRIBUNAL

21 THE CHAIRMAN: I have one question. You were asked by
22 Mr Ward about the decision.

23 A. Yes.

24 THE CHAIRMAN: You said you were shocked by it and you
25 frankly admitted that you thought now, with the benefit

1 of hindsight, that you were actually bidding in a rigged
2 market.

3 A. Absolutely, sir, yes.

4 THE CHAIRMAN: But you knew your competitors' gross list
5 prices when you were engaged in a tender process,
6 did you?

7 A. Only up to about 2002 when they were publicly available.
8 After that I had no knowledge --

9 THE CHAIRMAN: Because they were in hard copy form?

10 A. Yes.

11 THE CHAIRMAN: So after then you would not be aware of their
12 gross price lists?

13 A. No, I would not, unless a dealer would have access to
14 that and give me some --

15 THE CHAIRMAN: Right.

16 A. But not publicly, no, sir.

17 THE CHAIRMAN: When you did know about -- I mean, you
18 obviously knew about gross price list increases within
19 DAF --

20 A. Yes.

21 THE CHAIRMAN: -- and sought to implement them.

22 A. That is correct.

23 THE CHAIRMAN: But if you knew about price list increases
24 for your competitors, would you be able to work out what
25 impact that might have on their transaction prices?

1 A. Not at all.

2 THE CHAIRMAN: Would you make any sort of assumption if you
3 knew what their gross price list increase was?

4 A. My only assumption would be if they were working in the
5 same way as I was working, but I tended to be very
6 focused on what we would achieve and only take
7 information that was given to me from either customers
8 or dealers that was absolutely -- I could validate as
9 competitive information. But anything else I would --
10 my objective was -- because obviously I did not know the
11 cost price, which is quite unusual for a managing
12 director, but my objective was to get the maximum volume
13 at the highest revenue for the company. So I was
14 focused entirely on that and, if I was given competitive
15 information, either by the customer or by -- which was
16 obviously validated, then I would take that into
17 account, but otherwise I was just there to achieve what
18 I could in the marketplace.

19 THE CHAIRMAN: Did you find that odd, that you did not know
20 what the actual cost price was?

21 A. Yes, I did, sir.

22 THE CHAIRMAN: You were going into negotiations with one
23 hand tied behind your back?

24 A. Yes, sir.

25 THE CHAIRMAN: All right.

1 MR RIDYARD: May I ask a question that is sort of related to
2 Mr Beard's last question? I understand there is
3 a difference in price level between the prices you
4 achieved on the fleet sales versus the rest, the bulk --
5 the direct and the -- sorry. The dealers sales on one
6 hand and the fleet plus direct sales on the other hand.
7 Could you comment on whether that differential in price
8 or margin changed over time, over the period that we are
9 talking about?

10 A. I would say not, no. I would say that it is sadly
11 a very simple fact of negotiation. Volume means
12 discount, so the bigger the volume that you are
13 enquiring for, the higher discount. The only exception
14 to that, if you are looking to conquest a customer, then
15 you might be supplying a small volume initially to that
16 customer, then you might have a high discount there --

17 MR RIDYARD: Yes.

18 A. -- but in general terms, no.

19 MR RIDYARD: To be clear, my question was really --
20 I understand in general there is going to be a gap
21 between big customers and small customers, that is true
22 in many markets, I am sure, but over time, did that gap
23 get bigger or smaller or did it stay more or less the
24 same?

25 A. I would think probably about the same or similar. Yes,

1 it was one where -- as I say, if we were achieving -- if
2 you said "We are looking for 4.8%" and we got 2.4%, then
3 I would look to achieve 4.8% from a one-off customer and
4 maybe nothing from a big customer so ... and because
5 they were -- in terms of volume, 50% were small
6 customers and 50% were big customers, then in very
7 simple rule of thumb it panned out.

8 MR RIDYARD: Okay, thank you. My last question was in your
9 witness statement, you mentioned -- it was actually in
10 paragraph 75 but I do not think we need to turn to it --
11 you mentioned that one of the things that you looked
12 at -- market information you looked at was information
13 from the SMMT about truck sales in the market as
14 a whole, and you say that was updated on a daily basis.

15 A. Yes.

16 MR RIDYARD: Can you just comment on how you used that
17 information? How was it useful to you when you were
18 looking at the market and how it was developing?

19 A. So one of the objectives in the market was to retain
20 market share and, as I have explained in my witness
21 statement, we had a substantial market share in the
22 United Kingdom, and the SMMT in the early stages or
23 certainly prior to the OFT investigation and certainly
24 prior to probably about 2006, they would provide us with
25 information of registration data. So that was daily

1 registration data for all manufacturers, so that was how
2 many trucks we would register in one day and how many
3 trucks other manufacturers would register in one day.

4 So that was in some ways an indication, as I think
5 I have said in my witness statement, and it was only an
6 indication because obviously it would have been
7 transactions that would have taken place -- to get to
8 a registration, you have to go back to having the truck
9 built, having a body put on it some time, ordered,
10 negotiated, so it is a lot of history(?). So the actual
11 transaction price could be three months, six months,
12 nine months ago, but it gave you -- if you could follow
13 it, you were looking at a trend, so it was more trend
14 information, if you like.

15 MR RIDYARD: So the market share information they gave you
16 was across the whole truck market?

17 A. That is correct, sir, yes.

18 MR RIDYARD: Thanks.

19 A. Sorry, just to be clear, and of course that information
20 ceased to exist when the OFT investigation was
21 undertaken.

22 SIR IAIN MCMILLAN: I would like, Mr Ashworth, just to build
23 a little on the question that the chairman put to you
24 and which you answered. In your negotiations with BT
25 and Royal Mail, you wanted to achieve the very best

1 outcome of margins, profitability and so on for
2 DAF Trucks. To do that, you used various tools in your
3 toolbox. I think those were the words that you used.

4 A. Yes.

5 SIR IAIN MCMILLAN: Now, an infringement did take place, the
6 market was rigged -- that has been admitted. That was
7 the findings of the European Commission -- and that
8 involved exchanges of information on prices and other
9 financial information. Just to be clear, is your
10 position to the tribunal that that information which was
11 obtained unlawfully was not one of the tools in your
12 toolbox, you knew nothing about these behaviours on the
13 part of the various companies and that played no part in
14 your negotiations, the use of such information?

15 A. That is absolutely correct.

16 SIR IAIN MCMILLAN: Thank you.

17 THE CHAIRMAN: Any questions arising out of that?

18 MR WARD: No thanks.

19 THE CHAIRMAN: Thank you very much, Mr Ashworth. We have
20 finished your evidence rather quicker than you probably
21 anticipated, but you are free to go.

22 A. Thank you.

23 THE CHAIRMAN: We are free to go, I think --

24 MR BEARD: Yes.

25 THE CHAIRMAN: -- for a very long weekend.

1 MR BEARD: Yes, we have a long weekend. On Tuesday morning
2 we will have Mr Borsboom by video.

3 THE CHAIRMAN: That is at 10.30 on Tuesday?

4 MR BEARD: That is the plan for that.

5 THE CHAIRMAN: (overspeaking - inaudible) too long with him?

6 MR BEARD: I do not have the answer to that.

7 THE CHAIRMAN: You do not need to commit.

8 MR WARD: No.

9 THE CHAIRMAN: All right. Then we will go straight on with
10 the cross-examination of Mr Harvey.

11 MR BEARD: That is the plan, yes, absolutely.

12 THE CHAIRMAN: Perfect. There is nothing else we need to
13 deal with now?

14 MR BEARD: I do not think so. No housekeeping.

15 THE CHAIRMAN: Thank you very much. Have a good weekend,
16 all, and see you Tuesday.

17 (12.09 pm)

18 (The hearing adjourned until
19 Tuesday, 17 May 2022 at 10.30 am)

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