IN THE COMPETITION APPEAL TRIBUNAL 1517/11/7/22

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 18th November- Friday 20th December 2024

Before:

The Honourable Justice Michael Green
Ben Tidswell
Professor Michael Waterson

Merchant Interchange Fee Umbrella Proceedings

A P P E A R AN C E S

Ben Lask KC and Thomas Sebastian on Behalf of Allianz (Instructed by Pinsent Masons)

Sonia Tolaney KC, Matthew Cook KC, Owain Draper & Daniel Benedyk on behalf of Mastercard (Instructed by Jones Day LLP and Freshfields Bruckhaus Deringer LLP)

Daniel Jowell KC, Jessica Boyd KC, Isabel Buchanan, Ava Mayer & Aislinn Kelly-Lyth on behalf of Visa (Instructed by Linklaters LLP and Milbank LLP)

Kieron Beal KC, Philip Woolfe KC, Oscar Schonfeld, & Reuben Andrews on behalf of the SSH Claimants (Instructed by Scott+Scott UK LLP and Stephenson Harwood LLP)

Mark Simpson KC, Jack Williams & Alastair Holder Ross on behalf of Walter Merricks CBE (Instructed by Willkie Farr & Gallagher (UK) LLP)

Thursday, 5 December 2024

(10.30 am)

Housekeeping

THE CHAIRMAN: Good morning.

MR BEAL: Good morning, sir. Just by way of a quick housekeeping point, if I may. There has been quite a lot of press coverage of the Merricks settlement overnight and I would welcome perhaps two minutes of the Tribunal's time a bit later on to discuss the ramifications of that --

THE CHAIRMAN: Okay.

MR BEAL: -- just to flesh out ... I would like to just raise a couple of points of concern.

THE CHAIRMAN: What, after we finish with the expert witness?

MR BEAL: Yes, that seems the appropriate point, subject to anything you suggest to the contrary.

THE CHAIRMAN: By all means.

Can I raise another housekeeping point. I think you all know that there is a training day here tomorrow, so all the books and papers will need to be moved out, just so your teams or your clerks can know. I think the screens can stay, but that will need to be cleared out later.

MR BEAL: I will remove my props.

THE CHAIRMAN: Are we in open session now?

MR BEAL: We are at the moment, and I will, if I may, indicate expressly when I would like to move into closed.

THE CHAIRMAN: Yes, absolutely. All right.

MR GREG HARMAN (continued)

Cross-examination by MR BEAL (continued)

MR BEAL: Thank you.

Good morning, Mr Harman.

A. Good morning.

Q. Now, we were about to move on to supplier pass-on. Could I please invite you to look at a document. It is in {AB-D/37/250}. To explain, this is part of a minority opinion of Mr Derek Ridyard in the *Royal Mail* case where he nonetheless looks at supplier pass-on from the point of view of economic theory.

If you see, please, in paragraph 699, he states:

"The main results derived from the economics of pass-on do not envisage options that would fall into options (ii) or (iii) of the above categorisation. In other words, it is not normally predicted that a profit-seeking firm will respond to an increase in the input cost of making product A by reducing the amount it seeks to pay for inputs to unrelated products B or C. There is normally no causal link between these elements because a well-run firm will already have taken steps to ensure it does not incur higher costs than are necessary to make other products."

He then refers to the *Stellantis* Tribunal decision. Can you see that in paragraph 700?

A. Yes.

Q. Also to the Court of Appeal's endorsement of -- what happened in that case was that the supplier pass-on argument was essentially struck out as being unpleaded and speculative.

So it is right, is it not, that you cannot point in this case to a good economic theoretical support for supplier pass-on?

A. Well, I think that it is correct that the mainline theory predicts that, but I think there are other economic reasons why there may be deviation from that, such as principal-agent theory, as an example of why a firm might not be at its minimum cost.

What I have sought to do is to look at the evidence to see if the claimants year in, year out, are making efficiency savings, and I see year in, year out they are making efficiency savings, in part for inflation, but also when they are missing their targets. That to me suggests actually they are not at that minimum and I think, as I said, there are economic reasons why that might be the case.

Q. Which rational firm will not seek to make efficiency savings where they are available?

A. Well, I think there -- as I said, there are a number of economic reasons why that is, so I might just, if I can, take a minute just to outline those.

One is principal-agent theory, and that means that the incentives between principal and agent are not aligned. In a big firm, you see quite a lot of these relationships. There will be shareholder to the board, the board to the executive committee, the exec to management, management to buyers, for example, and each of those have their own incentives and, for example, if you were in the budgeting team and someone says, "Have a best go at setting your budget for the year", then it may it well be the case, in that instance, that the incentive for that person is not to overforecast their level of budget, because obviously if they miss it, they will be liable for that.

So that is just an example of where that mechanism could take place, but there are two other reasons as well. One, which I think Mr Economides says, is that in a particular year, you do not have enough management bandwidth to do all the efficiency savings that you might want to do. You have a job to get on with, and part of that job is savings. The third reason is that there is imperfect information, and without being challenged on a continuing basis, it is very difficult for you to, in one go, identify all of the efficiencies that might be available. That is why we see, year in, year out, with many of the claimants, they are reset a level of efficiency savings.

Now, the link, I think, to theory is that because it is difficult to understand where the minimum is, companies resort to a rule of thumb, and that rule of thumb mechanism might be, well, each year we would expect to achieve 3% efficiency, or every year we expect to offset inflation.

So there are good economic reasons why you might not be at the minimum, so I do not disagree that that is what theory tells you, but when I look at the record we see savings every single year, and sometimes very large savings, saying: we need to fill a gap of circa 500 million. That suggests to me you are not at the minimum, and one of the reasons is that it takes the board or the executive team to say: we are behind on budget; we now need to go the extra mile to make savings, otherwise we are not going to hit our targets.

Q. Now, none of the witnesses in this case have suggested that they engaged in renegotiation of their supplier

contracts because of the MIF, did they?
A. Not because of the MIF. But again we see in the factual record every year that they are trying to negotiate -- not all of them, some of them are negotiating with their suppliers for lower costs.
Q. But that does not establish, does it, a direct link between the overcharge on the MIF and the consequential renegotiation of a different supplier contract?
A. It does not show a direct relationship. That is why I have termed it an indirect relationship in my report.
Q. Even as a practical and in principle matter, when one switches to the counterfactual, you would effectively have to show, would you not, that faced with a reduction in the MIF, these companies would have approached their suppliers and said: we will pay you more money?
A. I mean, I am not going to opine on the legal test. What I can say -- what I see from the record is that when companies are behind, they seek to mitigate through either increasing prices, or reducing their supply costs, or by reducing discretionary costs, and if they cannot do that, then there may be a profit impact. Those are the four mechanisms that are open to a company.
Q. Which company would that not apply to?
A. Well, no, I think that is why -- if you have -- well,

you know, some companies are more sophisticated than others. What we see in these businesses is that there is very detailed budgeting at a very granular level. There is certainly a lot of monitoring that is going on to ensure why their under and overperformance. Why are they doing that? They are doing that so they can hit an EBITDA target. When they are behind on that EBITDA target they have to make decisions, and we see that in the record of their making decisions. Sometimes it might be in prices, sometimes it might be in costs, sometimes it might be in discretionary costs, sometimes it might be promoting volume growth.

I mean, these are the typical responses a firm would do to try and get as close to the target that they set on an ex ante basis.

Q. So your case essentially is unless a company -- unless a management of a company is not very good at its job, there will be pass-on, you anticipate, in every case?

A. No, I think that it will depend on the type of cost that we are talking about. If it was a variable cost that is common to the industry, I suspect that is more likely to be mitigatable. If it was a specific cost to a particular firm, and so it was out of line with the rest of the industry, and of course you do have differences in the relative efficiency of companies,

then that might be harder to mitigate through prices, because nobody is going to follow them and they would lose volumes, potentially, in that circumstance.
Q. Now, in your first report you have criticised the absence of documents relating to this issue, have you not?
A. I did. I asked for supplier documents. Of the ten claimants, only four provided documents on supplier pass-on and --
Q. Why would a company provide a document if it does not do something? If it has not renegotiated its supplier contracts as a result of any changes in the MIF, why would it be expected to have documents relating to that?
A. Well, we can see that they seek to offset cost of goods sales, for example, inflation, through negotiations with suppliers, and we see some of that in the information that we have got on supplier pass-through, and I can take you to that evidence, if that helps.
Q. Quite a lot of companies are going to take inflation expressly into account, are they not, when setting their prices or forecasting what revenues they are likely to make?
A. I think --
Q. It is very different with the MIF, is it not?
A. I think it is -- I think that what you observe is that

companies make a decision as to what can be passed on in prices, what can be passed on to suppliers, what can be reduced on other types of cost, whether they are overheads or discretionary. The record shows that happening. So I am not putting forward a theory that has no underlying support; you actually see this in detail in the documents.

Q. Now, in your second report, please, {RC-G/11/18}, paragraph 2.4.3.

A. Yes.

Q. I am not going to name a particular company, so I am going to -- because this is a confidential statement I will simply call it company X.

In 2.4.3(I), you say:

"... to the extent that [X's] operating costs would have been lower in the counterfactual scenario ..."

So you are relying on the counterfactual scenario here, even though you say it is a legal matter.

"... it may have been easier for [X] to achieve its budgeted inflation target."

Do you see that?

A. Yes.

Q. That is not evidence, is it, of a direct link between the reduction or increase in the MIF and any change in position with a different supplier?

A. It does not show a direct relationship on the MIF. This particular claimant only provided information post-2020, so I have no information of when the MIF changed for this claimant, so it is impossible for me to calculate a direct --
Q. We know when the MIF changed for this claimant, because you know that post-Brexit the MIFs went up for anything other than the domestic MIF, do you not?
A. Yes, but they provided no financial information for that period so I cannot observe what happened.
Q. There is no evidence at all of X renegotiating contracts, is there?
A. I would have to quickly check, because I know that a number -- a fair --
Q. We will come back to X later when we are in closed session. You may have more latitude there to say what you want to say.
A. Okay.
Q. Can we look, please, at paragraph 2.4.3, which is at pages 18 to 19 of this report {RC-G/11/18-19}.
A. The second bullet from where I was?
Q. We are moving on to company Y.
A. Yes.
Q. Company Y is (II) -- sorry, this is 2.4.3, so a different -- under (II), there is a reference to

institution Y. Do you see that?
A. Yes.
Q. They have produced documents. Then what you say overleaf is that this would at least partially -- or it provided -- it therefore appears possible that company Y would have at least partially passed on through its negotiations with suppliers. But there is, again, simply no evidence of that, is there?
A. Well, what I have observed in this instance is that there is a change in cost and they have sought to pass that on through suppliers. Obviously that is not an MSC cost, because for the period that I am looking at this claimant, I do not have a change in the MSC. As you have indicated, the information that would be relevant for that period would be in 2015/2016, but this client was unable to provide documents for a certain time.
Q. Now, it follows you cannot show, on the balance of probabilities, can you, that any particular merchant renegotiated their arrangements with other suppliers to pass on the MIF overcharge?
A. I do not have any evidence that would show that from the factual records.
Q. Can we move on, please, to your selection of proxy costs. Now, this was not something that was considered in your first report, was it?

A. It was not. I was asked to consider that in my second report.
Q. You have not conducted a regression analysis yourself, so you do not actually need to find a proxy cost, do you?
A. No, I do not. I was asked to consider from an accounting perspective whether the overheads was likely to include a range of costs between fixed and variable, so that would also include semi-variable, and I explain the reason that I have been asked to do that is that to the extent that it is accepted or determined that there might be a difference between pass-on for fixed and variable costs, it would be helpful to reveal that and to compare that to the proxies that have been used.
So my evidence on the proxies is basically a taking of the overhead costs and trying as best I can from the available information to determine whether they are fixed, semi-fixed, semi-variable and variable.
Q. Well, you have not restricted yourself to accountancy evidence on that issue, have you?
A. I have -- so that part is definitely accountancy evidence. I have also suggested where a cost may, only in certain circumstances, be regarded as a common cost as well.
Q. Could we look, please, in your first report

{RC-F/13/29}, paragraph 3.3.1.
A. Yes.
Q. You say here:
"I am not instructed to assess price pass-on from the perspective of economic theory, because Ms Webster addresses this."
Do you see that?
A. Yes.
Q. The first reports were meant to be "warts and all" reports, were they not, from the appointed experts?
A. Could you repeat that, sorry?
Q. They were meant to be "warts and all", that was the expression used by the then Chairman, president of the Tribunal. When directing that first reports be served, you were meant to leave nothing off the table, so that reply reports were not where you were developing your positive case.
A. I am sorry, I am not sure I understand the question.
Q. It is very straightforward. When you were instructed to prepare your first report, which you did, you were not instructed to look at economic theory or proxy cost, were you?
A. Well, I can only go by what my instructions were.
Q. The direction from the Tribunal was that you put all of your positive case forward at that moment; correct?

A. That would appear correct from that. I cannot say anything other than I was instructed in my second report to look at that.
Q. That is gaming the directions from the Tribunal, is it not, because you are now doubling up two experts on the same issue, proxy costs?
A. Well, it is -- I was instructed to do something and obviously have to follow my instruction.
Q. You decided to do that, even though you were not opining on regression analysis or any of the areas covered by Ms Webster?
A. I am not opining on the evidence. As I said, I was looking at a very accounting-specific understanding of the costs.
Q. We have seen, for example, that whenever you refer to issues with regression analysis, you have to refer to other people's evidence as to whether or not a particular cost is too small to model; correct?
A. Yes, that is -- I do not opine on that in my second report.
Q. In your second report, please {RC-G/11/22}, paragraph 2.5.11, you here criticise Dr Trento for using total overhead costs as a proxy, and you then say:
"However, total overhead costs are unlikely to be appropriate proxies for the actual MSCs. This is

because some overhead costs will be fixed in nature while others will be variable."

Just pausing there. That is a classic economic analysis of costs, is it not, that you are purporting to give an opinion on?

A. Somewhere in the front of this report -- I mean, in the detail of this report, I make it very clear that if there is a different rate between fixed and variable, then it would be inappropriate from an accounting perspective to take complete overheads and think that is a proxy.

So, again, my input is going to Ms Webster. I am just saying that the total costs -- the total overhead costs include both fixed and variable, and if that was important to the regression, I am not opining as to whether it is, then that is something that might need to be taken into consideration.

I do not go any further than that.

Q. You have accepted that all of the -- or the majority of the analysed claimants do indeed treat MSCs as an overhead cost; correct?

A. Yes, as an overhead cost, but that is not -- you cannot equate overhead cost to fixed cost. So I do not -- I am not disagreeing that you might use an overhead cost; "might".

Q. You are objecting on the basis that overhead costs will be fixed in nature. You have just said overhead costs will not be fixed in nature.
A. No. I am saying that overhead costs will be both fixed and variable. So taking total --
Q. Or indeed semi-variable?
A. Or semi-variable. So taking that whole bucket of costs would be inappropriate if the pass-on rates for fixed and variable overhead costs differed.
Q. But if a company does not treat the merchant service charge as a cost of goods sold, it is equally wrong, is it not, to adopt a proxy that is cost of goods sold?
A. Well, what I am saying is that to the extent the econometricians think about it, then maybe a better proxy would have been variable overheads.
Q. Indeed, we can see that in your report {RC-G/11/22}, paragraph 2.5.12.
A. Yes.
Q. Where you end up, I think, is you would accept that total overhead variable costs would be the both -- best proxy?
A. Say that again?
Q. I am quoting your own words at you. The fifth line up from the bottom of paragraph 2.5.12, it says:
"In this case, a proxy based on aggregated variable

overhead costs may be appropriate from a financial perspective."

So here you are purporting to give accountancy expert evidence and you are saying aggregated variable overhead costs would be the better proxy to choose between the two others; correct?

A. Well, I say:

"To the extent the pass-on rates differ due to differences in these costs characteristics, I consider that total overheads are not a good proxy for the actual MSCs."

Q. Well, you have just said that overhead costs will include a mixed of fixed, variable and semi-variable costs; correct?

A. Yes.

Q. Pass-on rates are likely to differ between those different elements of the overheads, are they not?

A. So, yes, so to the extent that MSCs are variable costs in overheads, my point here is that it might have been better to consider variable overhead costs as opposed to total overheads, which is a mix of costs.

Q. Well, if -- the cost of interest here is the MSC charge; correct?

A. Yes.

Q. Or the MIF, but it is a component of the MSC charge.

A. Yes.
Q. Therefore, seeing how a firm deals with that cost is pretty important, in order to understand how it is likely to treat it in practice?
A. Yes. What you cannot see from the record is the degree to which fixed or variable costs are treated differently in the indirect mechanisms. The data is not granular enough. We do see, for example, certain overheads which are larger, I will admit, such as energy and staff costs, which probably have a degree of both variable and fixed costs, being an influence potentially on prices. So we can see only certain costs where that direct link appears to stem from. The other costs we do not know.
So what I am saying is that to the extent, and I am not saying it does have an effect or not, because that is not my expertise, but the extent to which through an indirect mechanism a fixed cost and a variable cost might end up being passed on at different rates, then it would be appropriate to use a proxy that shares the same characteristic as MSCs. Now --
Q. But you are choosing that selection because you think it will mimic the treatment of the cost by the business. So you are saying if an overhead is variable, let us take as an example labour costs. Now, labour costs will be classified as an overhead by most businesses;

correct?

A. It can fall into both. As I explained yesterday --

Q. You can select, within a margin of error, you can select to put it in a different part of the P&L; correct?

A. You can choose to allocate costs to cost of goods sale if you -- well, one, that is your decision to do so under the accounting standard. I think what it tends to rely on is your ability to allocate those costs to cost of goods sold on a reasonable basis, and if it is an unreasonable basis the auditor would probably have a difficulty with that.

Q. Yes.

A. So I think both categories are likely to have fixed and variable components, I think it is fair to say that the cost of goods sold is likely to be more variable than fixed, and I think that it is unclear in a set of overhead as to where the distribution falls in terms of fixed, semi-fixed and variable.

Q. Imagine that a business does not really care two hoots about that particular classification and what it cares about is working out what price to charge. If in fact the business does not take a particular overhead into account when setting its pricing, then suggesting that it does treat it as a variable cost, which would be a key determinant of pricing, would be misleading, would

it not?
A. As I think I say in my report, and have said, is that for the purposes of pricing, one cannot see the decisions the company makes with respect to overheads. As I have said, you can only see what they do with energy and with staff costs which have a component of variability in them. You cannot see what they would have done with MSCs for most of the claimants, because I do not have data in 2016 to observe what pricing decision they actually made.
If the question -- so I cannot get that link and I say that in my report. If you want to know if the company, not for pricing purposes, treats them as a variable cost, they do, because obviously they have to forecast them in the budget, and that will depend on the level of revenue of the business. That is why you --
Q. When you say they have to forecast them in the budget, perhaps when we come back later to the closed session you can point me to witnesses who say that.
A. I can show you the factual documents.
Q. Thank you.
THE CHAIRMAN: You are talking about the indirect mechanisms, are you?
A. I am.
THE CHAIRMAN: In the long term, the long-run?

A. I do not think --
THE CHAIRMAN: Not immediate pricing decisions?
A. It could be immediate, because what you see in the process is -- let us say you get halfway through the year and you are behind your budget. At that point in time, the firm may take action to address a certain cost difference or a revenue difference. They may be constrained in a particular year for whatever reason. So it could be short-term. If it is not in the short-term, in the following year when they do budgets and targeting it will be there again for them to decide how they are going to deal with, let us say, a cost shock.
THE CHAIRMAN: But in that scenario, I thought it was your evidence that the distinction between fixed and variable costs does not really matter because they are looking at all their costs?
A. Well, I think that is -- I think that is a fair point, because what I am saying is that I cannot see if it is fixed or variable.
THE CHAIRMAN: Yes.
A. So I cannot see that. So I think that the logical extension to that might be the way in which a company is thinking about how it reacts is in terms of total costs, but I cannot be sure of that because different firms may

have different levels of sophistication and may think
about things in different ways, but I cannot see that in
the factual evidence that I have.
MR TIDSWELL: When you say the data is not granular enough,
using the word "data", do you mean data in the sense of
financial information or do you mean more than that?
A. No, I mean -- well, the financial information. So on
prior cases where more disaggregated data -- data --
budgets, and the documents that support budgets and the
emails that support the decisions that are made, in
those cases you occasionally see them saying, for
example: VAT is changing, this is the action that we are
going to take.
MR TIDSWELL: So you are not just talking about numbers, you
are talking about the documents around them?
A. I think it is the documents which are important. We do
not have the level of granularity, and therefore the
suggestion that I am giving here in terms of a proxy is
that if you wanted to know whether there was
a difference between fixed and variable cost pass-on
through the indirect route, one of the options would
have been to test that by using a variable cost proxy of
overheads.
MR BEAL: Could we look, please, in your second report,
paragraph 3.4.5 {RC-G/11/28}. You are referring here to

the categories in the Supreme Court decision. Can you see that?
A. Sorry, is this in the first or second?
Q. The second {RC-G/11/28}, at paragraph 3.4.5. You say:
"... as the Supreme Court's ruling in *Sainsbury's* ... found, the claimants' business processes may lead to four potential responses ..."
You then set out four potential responses.
Your categorisation does not follow the numbering of the Supreme Court, does it?
A. Well, I am not quoting it.
Q. Why have you switched the numbering around? Is that not rather confusing?
A. Not to me at least.
Q. Could we look, please, in your first report {RC-F/13/11}, paragraph 2.1.3.
A. Yes.
Q. You have generally taken the position, have you not, that accounting classification by the business is not itself informative; arguably an interesting comment, giving that you are giving expert accounting evidence.
But when we look to see what you actually did in your first report, you keep on referring to the treatment of MSCs, and so on, "from an accounting perspective", do you not? That is a repeated phrase

within 2.1.3.

So why, when we look in your second report, please, at {RC-G/11/30}, paragraph 3.5.4, do you say that the accounting classification by the business is not informative?

Four lines down, you say:

"I do not a consider that the accounting classification of a cost item is itself informative about pass-on."

A. I am not sure that I see the connection between the two. Clearly what I am trying to -- what I have been instructed to do is to think about MSCs.

Q. From an accounting perspective?

A. From an accounting perspective.

Q. So if it is not informative, why do you not just say: this report can be one page long?

A. I do not think that is ... I am not sure that I follow that.

Q. Because you are saying it is not informative as to what they do from an accounting perspective.

A. What I am addressing -- so that is not what I am saying at all. The point in 3.5.4 is that Mr Economides, in his second report, claims that where costs are included in the financial statements matters for pricing purposes. It is a relatively strong comment. I am saying, from a matter of accounting, where costs sit in the P&L has nothing to do with pricing per se. It is a presentation of information that the international accounting community has come up with.

The financial accounts serve many, many purposes. They serve investors to make investment decisions, and so on and so forth. So I do not think it tells you anything about pricing per se, and that is the point that I am addressing here.

Q. Can we then look at your next paragraph there, 3.5.5, page 30. Four lines down, you say:

"... I do not consider that a claimant's business needs to have visibility of a specific cost item in isolation for it to influence [pricing, given price-setting, and so on, which] are designed to allow for the recovery of total costs in aggregate."

So you are rejecting, are you not, the suggestion that the small magnitude of the actual MSC is a reason to choose a large proxy; that is what you say at the conclusion of that paragraph.

A. Let me just please read that. (Pause)

I think the point that I am making here is there may be two types of costs, one which is large, and it may be very visible in the accounts. So I go back to my example of energy costs: energy costs go up, business is lower, it is a major cost increase.

The point that I am making about small is that the first one that I have just talked about is a first mechanism, but a second mechanism is by reference to total costs. Because if a company did not address all of the small costs that go into their business, they soon add up, and you die by 1,000 small price increases.

So the catch-all point is that it might wait until you get a total cost that takes you over a threshold. They work out what the reason for that is, and then make decisions on how they should mitigate that total cost increase.

Q. If that is your mechanism, you should be selecting total costs as a proxy, should you not, like Mr Coombs has?

A. No, because some of those costs may well, for example, not be pass-onable, because they might be specific to the business, so you cannot pass them on into prices.

The second point is what you do not know, even if it is specific and it is a total cost, whether that cost is being offset anyway by other cost efficiencies or whether it is actually flowing into pricing.

So I would go back: when you are thinking about the pass-on of costs from overheads, it seems to me reasonable to consider something that is most similar to MSCs, a variable cost, but it needs to be suitably large, obviously, for it to have econometric significance, and one way of doing that would be to look at variable overhead costs and to see if you have different results.

Q. Can we look, please, at {RC-J1.4/19/15}. This is the Commission's 2019 guidelines on pass-on. At paragraph -- recital 56, sorry:

"... other elements may, under certain circumstances, play a crucial role in the direct purchaser's price formation mechanism, and hence [on pass-on] ... one element which might be important in order to quantify passing-on is whether the input affected by the overcharge represent a large or small share of the direct purchaser's variable costs. A direct purchaser may face costs when changing its prices, so-called 'price adjustment costs'. If the overcharge only represents a small share of the variable costs, the direct purchaser may not find it profitable to pass on."

So the Commission is recognising, is it not, that the relative size of the variable cost that is in question is going to be an important factor?

A. Well, it says "may, [in] certain circumstances". So it is one of a number of points, and it will depend on the company as to whether -- as to how they account, how they monitor.

So one of the points that I make for various claimants is that the degree to which they actually review differences between budget and actual is at a very, very detailed level. So they will observe a cost difference of low thousands and say, "This is over and under for a certain reason".

So I think that that comment has to match the monitoring process. If the monitoring process was at a much higher level of aggregation, then, yes, smaller costs may fall through. But for most of these bigger companies, they have very detailed analysis.

Q. What I am going to suggest to you is that if the cost is very small, it may simply be too small to move the dial?

A. If it is far too small, I agree. I think there was a question on -- and I hate to bring up coffee shops, based on other cases. But, yes, if the cost of beans in terms of, let us say, a consultancy firm go up, are we going to increase prices? The answer is unlikely, right?

But that does not mean that that cost would not be addressed in some way, because that cost increase is going to sit in someone's budget. In my firm it sits under the operating office manager. They will observe those lower costs. It may not flow into prices, but if

that was significant enough for the pot of costs that
they were monitoring, they may -- I mean, in certain
circumstances they may take action and, you know, based
on the coffee upstairs in my office, I mean, that may
well be what has been happening, that they are going for
cheaper coffee.
PROFESSOR WATERSON: Can I ask: suppose that you have two
possible sets of costs which have the characteristics of
MIFs, so, for example, energy costs and something much
more aggregate.
A. Yes.
PROFESSOR WATERSON: Like cost of goods sold. Then what is
the choice between those two? Why choose one rather
than the other?
A. Well, I think that it would at least be interesting to
consider if they both gave very different answers.
PROFESSOR WATERSON: Yes.
A. If that was the case, then, you know, there would be
another discussion to be had. You know, it comes to me
that that would be, you know, something that one might
want to consider. That is all that I can say about it.
That analysis has not been done.
PROFESSOR WATERSON: By you or by anyone?
A. Correct, because I am not instructed to do the
econometrics.

Now, I should just -- to be absolutely fair to everybody, the level of information that has been given does not allow us, with the right level of specificity, to determine which overheads are all variable and which are all fixed and what degree they are fixed and variable, but that could be determined.

PROFESSOR WATERSON: Thank you.

MR BEAL: Now, following on from that point that Professor Waterson has just made, you are relying on implicit mechanisms here, not a direct link. I think we have established that.

A. Yes, we are talking about the indirect mechanisms that would apply to --

Q. When your two implicit channels are competitor benchmarking or profitability targets through EBITDA margins, those are both going to look at the overall cost position, are they not? EBITDA because it includes operating costs along with cost of goods sold?

A. In certain circumstances they observe, for example, that total overheads may be off, out of budget, either underperformance or overperformance.

Q. I think, if I may say so, I am sorry to interrupt, but I think my point is a much more straightforward one, which is within those implicit channels, you are not capable of saying this bit is variable costs, cost of

goods sold, and this bit is overheads, because the margin itself will capture both, will it not, and the competitor's pricing, on your case, will cover both?
A. Would the margin cover both types of cost?
Q. If it is EBITDA it has to, by definition?
A. It does, yes. It is an aggregate measure.
Q. So by choosing a COGS proxy, you are necessarily focusing much more directly on something that is going to factor directly into the price determination calculus?
A. I am not sure that I see the link between whether there is a different mark-up on fixed and variable costs.
Q. Well, you just do not know, do you, because you have no evidence as to what the different pass-through rates are for fixed versus variable costs?
A. I have worked with hundreds of companies. I have never seen a difference between them.
Q. I thought you would accept -- well, as a matter of theory you would accept, would you not, that it is posited that there will be different pass-through rates?
A. Yes, but I do not think anybody actually ever thinks about pass-on or the level of margin on top of different types of cost. It may turn out that way, but no business actually thinks in that way.
Q. So if it is does not matter which stack of costs you are

using, because you say the pass-through rate empirically is likely to be the same, you could just pick total overheads costs, could you not? That will show the same pass-on rate, on your analysis?

A. No, what I am saying is that I have never seen a business think about the margins that it is getting on a variable cost versus a fixed cost because nobody thinks about margin.

Q. The evidence is everyone thinks about gross margin and uses that, and there are some people also, for different reasons, usually not price setting, rely on EBITDA margin for, for example, shareholder return and investment decisions?

A. Well, so the gross margin should always be higher than the EBITDA margin, right, because it has to recover total overhead costs. The size of that difference will be based on two factors. One is the relative size of fixed costs, some businesses will have much more fixed costs than others and some will be quite thin, and we have already discussed that there are certain types of overhead that could be classified as cost of goods sold. So that is first point.

The second point -- sorry, let me just read that again ... The second is the required level of margin of the firm. So the level of the margin of the firm is

calculated as a target, you have a level of fixed costs, and those two together are going to tell you what gross margin you need to obtain the EBITDA margin of the firm. So you cannot compare a gross margin and say, "Variable costs are getting a higher margin than fixed costs", because it is not linked in that way.
Q. Let us break this down so I understand the point you are making. Gross margin equals revenue minus cost of goods sold?
A. Yes, or EBITDA minus overhead costs.
Q. EBITDA bundles together cost of goods sold and overhead costs?
A. It does.
Q. So by selecting an EBITDA margin, rather than a gross margin, as the mechanism that you are relying upon to show implicitly pass-on in the long-run, you are necessarily bringing in to play a basket of costs that is broader than just cost of goods sold?
A. Again, I am not sure that I follow the point.
Q. Well, the point is if you are simply focusing on cost of goods sold, the appropriate margin to consider, in terms of target setting and so on, would be the gross margin, but that is not the margin that you land upon for showing changes in the implicit channel of costs?
A. Well, I think what is missing from your point there is

that these things are linked together. They are not separate, they are not independent of each other. The gross margin has to be high enough to be able to recover fixed costs.

Q. You have told us that your opinion is that in practice there will be no difference between the pass-through rate for overhead costs and cost of goods sold?

A. No, you asked me a question about the margins. I have accepted that different types of overheads, if they are fixed or variable, may have different rates of pass-through, through an indirect mechanism. That is why I suggested if you looked at variable overheads, you would be able to test whether that hypothesis was true. Because the economists have a fundamental -- not disagreement, but conversation about whether pass-on rates are different for fixed and variable costs.

Q. Have you looked at Dr Trento's evidence in this case?

A. Which --

Q. His regression analysis based on both variable costs and overhead costs.

A. I do not believe that he has looked at variable overhead costs.

Q. He has looked at total overhead costs and then he has looked at cost of goods sold, and he has applied a regression analysis to each of them and he has found different rates of pass-on.

A. Yes. So the problem is that if you are taking total overhead costs in your regression that includes both fixed and variable, then it comes up with an aggregate for the fixed and variable bunch. So your pass-on rate will be lower for overheads if the assumption is that overheads that are fixed have lower pass-on rates.

Q. Whereas if you choose a proxy that is cost of goods sold, you are picking the single largest component of something that drives the pricing calculus, is highly visible, and is therefore give to give you a much higher pass-on rate; correct?

A. I mean, that may be the case. What I am saying is not that you should do that. I say that that shares a closer resemblance to MSCs because they are variable.

Q. Well, how do you know? Because you have not conducted any regression analysis.

A. I am saying that both --

Q. A matter of economic theory, is that where you are going with it?

A. No, I think we are at odds. I am saying that both of them are variable costs. I am not saying they will both produce the same pass-on rate.

Q. That is an economic theory point. But in practice, if a company does not treat the MSC as being a cost of

goods sold, and therefore a variable cost, marginal cost, going into the pricing calculus, it is misleading to give it that label, is it not?
A. Well, I said right at the beginning of this conversation that I do not have sufficient evidence to know how it treats different overheads from a pricing perspective because the MSC has not changed. I can note that there are overheads, such as energy and staff costs, that potentially do feed into the pricing process.
My point about the proxy that we are on is that if you thought that variable overheads had a different rate of pass-on to fixed overheads, bearing in mind that I cannot observe how each of those is treated, then one option may have been to look at variable overhead costs and compare it potentially, then, to the other regressions that people have done.
THE CHAIRMAN: But nobody actually did that?
A. No, nobody has done that because --
THE CHAIRMAN: But you are saying that in your analysis, that is the most appropriate proxy to variable overheads costs; is that what you are saying?
A. Well, I say it because there is a question as to what the relevant proxy should be.
THE CHAIRMAN: Yes.
A. I observe that there is an indirect mechanism, and there

is a question as to whether that indirect mechanism may lead to a different pass-on rate to an explicit mechanism, and we know for the explicit mechanism there is a different theory between fixed and variable costs, and so I am assuming -- I am suggesting that that could also be applied to the indirect method, and that would see whether variable fixed costs -- some aggregation that was higher than the MSC but variable, so that you got statistical significance -- produces a different rate --

THE CHAIRMAN: But we will never know, because nobody has done that, right.

A. I know, but -- this was not meant to be a criticism. It was the second report. So I observed what was done. I was asked -- instructed to look at what the relevant proxies were, and I said to the extent that this matters, then one should note that there is a fundamental difference with some of the characteristics of total overheads compared to MSCs.

MR BEAL: Please could we look in your second report {RC-G/11/31} at paragraph 3.5.11. Here you are considering some but not all of the characteristics that Mr Economides identifies appear relevant for selecting a proxy cost, and you suggest, no doubt from an accounting perspective, that he has not taken into

account whether the cost is likely to be common to competitive businesses or firm-specific. Can you see that?
A. That is an observation that I make, again because the economic theory suggests that might be a relevant difference.
Q. The economic theory you are not considering?
A. But I have to observe what somebody else is saying on it. I think that I --
Q. Mr Economides is not giving economic opinion evidence, he is giving industry business practice evidence.
A. I know, but these are then flowing into econometric models, and so I am --
Q. You are tag-teaming with Ms Webster on this point?
A. Correct.
Q. Now, in terms of whether or not it is in fact an industry-wide cost, you are not suggesting are you, that all merchants pay 0.2% on their sales to Visa or Mastercard?
A. I think that when we refer to common costs, they do not have to be exactly the same. I do not think you would find many instances of any costs being exactly the same. I think the threshold is sufficiently the same. Do we think that all competitors are likely to incur these type of costs? I think it is a reasonable supposition

that they do, and they may vary to certain degrees.
Q. Common costs for a specific firm are usually those costs which have to be smeared across different product category ranges in order to provide budgetary recovery; correct?
A. That is --
Q. -- in that sense.
A. That is a different definition of common costs. A common cost means that it is the same cost, the same MSC charge that faces every company. So that is common if --
Q. Let us explore that point. First of all, there are different rates for debit and credit cards; correct?
A. Yes.
Q. Some businesses accept debit but not credit?
A. Yes, that is true.
Q. There are different rates for consumer and commercial cards?
A. Yes.
Q. Some companies do not accept commercial cards?
A. I will take your word on that.
Q. We had some evidence in Trial 1.
You would accept there are different rates for different regional transactions?
A. I understand that to be true.

Q. There are different rates for card present and card not present transactions?
A. Yes.
Q. Of course a business will have a panoply of different payment costs ranging from BACS payments, electronic payments, alternative means of payment, cash, for example, cash cost?
A. Yes.
Q. So when a company has a broad category, such as payment charges, in its disaggregated accounting data, that data will nonetheless cover, will it not, different compositions of the payment charges for a given claimant?
A. Yes, except I had not finished my answer. There may be differences because of mix. You know, maybe in more simple terms people only pay cash in one store and other people pay credit charges. My point is --
Q. Can we -- sorry.
A. My point is that if you want to think about a cost of -- if a cost is common, a company would ask the question: is it likely -- do I have any information that the costs that they face are radically different to our own? Now, if the answer to that question is "yes", then there is a degree of specificness about those costs, and that would be a different thing.

Q. Can we look at Ms Webster's graph, please, as you are tag-teaming with her on this (inaudible). {RC-F/14/124}, please. This is Ms Webster's graph showing the number of outlets accepting cards over a prolonged period, 1997 through to 2021. Can you see that?
A. I do.
Q. Even by 2021, some 40% of UK-registered businesses were not accepting cards. Do you see that?
A. Yes.
Q. At least some of those businesses will be exercising a competitive constraint on some of my clients, will they not?
A. Say that again.
Q. At least some of those 40% of businesses UK-wide will be exercising a degree of competitive constraint on some of my clients?
A. Yes, I think that there would be a competitive constraint. I think the question is if that constraint would differ between businesses in a significant way.
Q. You would accept, would not you, that firms, for example, with a large proportion of cash or direct debit customers would necessarily have a different reaction to the cost stack than, say, online sellers who rely on debit or credit card purchasers?

A. If companies -- yes, I mean, that may well be the case, and I think it depends on then who the claimants see as their competitors. So, for example, if it was in the grocery world, we see them price benchmarking off the big companies. The question that I would have when it comes to common costs is the degree to which they think that MSCs would be common across that category of companies that they think are their immediate competition.

MR BEAL: That is where I now move on to look at the specific claimants' data.

THE CHAIRMAN: Shall we have a ten-minute break and then go into closed session?

MR BEAL: That would be convenient.

THE CHAIRMAN: All right. A ten-minute break.

(11.29 am)

(Short Break)

(11.40 am)

In Private - redacted

(2.11 pm)

Cross-examination by MR WILLIAMS

MR WILLIAMS: Good afternoon, Mr Harman. Let us dive straight into the difficult topic of cost proxies which is fun for an afternoon.

THE CHAIRMAN: Should we be going into open session?

MR WILLIAMS: We can go in open session, sir, yes.
THE CHAIRMAN: Can we do that? Thank you.

In open court

MR WILLIAMS: If we can turn to your second report {RC-G/11/21}.
A. Yes.
Q. Here we are in your executive summary, to orientate yourself. Can we focus on the bottom half of the page, please, under the heading "The SSH Claimants". You there summarise what three experts have done, Mr Economides, Dr Trento, who does not actually use the cost proxies recommended by Mr Economides, and then Mr Holt, and then you summarise your response to each in turn.
So starting with Mr Economides, you conclude, if we turn over the page {RC-G/11/22}, as I think you already have, you understand the proxies that he uses to be too small, and Dr Trento does not use them. Then you respond to Dr Trento and Mr Holt.
Now, let us start with your response to Mr Holt, if we may, at the bottom of the page.
A. Yes.
Q. At paragraph 2.5.13, essentially because it is a lot shorter.
Your first point in the sentence there is that you

essentially agree that in principle MSCs are variable costs; right?

A. I do.

Q. Then you conclude that since COGS contain a higher degree of variable costs, COGS may be a more suitable proxy than total overheads which is what Dr Trento uses?

A. Correct.

Q. So far so good.

Now, you say "may" there, but if you look in the middle of the preceding paragraph, 2.5.12, starting at the end of the fourth line and into the fifth line, you actually say, and I quote:

"To the extent that pass-on rates differ due to differences in these costs characteristics, I consider that total overheads are not a good proxy for the actual MSCs."

Now, taking that in turn, as I think you can see from the previous sentence, the cost characteristics you have in mind here, correct me if I am wrong, are, first, overheads including more fixed costs and, secondly, firm and more firm-specific costs, is that right?

A. Correct.

Q. Those are the costs characteristics you have in mind?

A. Yes.

Q. So I think I am right in thinking, but please correct me if not, that the conditional nature of all of this depends upon economic theory being right that pass-on rates differ for fixed and variable costs and, again, for market-wide and firm-specific costs?

A. That is true. I think I state that in my report, that to the extent those things hold, yes.

Q. So despite the tentative language back in paragraph 2.5.13, is your position actually that if the theory is correct, COGS are a more suitable cost proxy compared to total overhead costs, and that explains the "may" in your sentence at 2.5.13?

A. Economics makes a distinction between variable costs, or marginal costs, more accurately, and fixed costs. They do not make a characterisation of where they sit in the P&L. I, in my investigation, as I have said before, identified -- I am not able to identify whether fixed costs -- sorry, overhead costs are actually passed on differently depending whether they are fixed or variable.

Q. Well, before we get to that analysis, I promise we will, I am just trying to establish at this stage whether your "may" there, compared to the "are", as we looked at before, is actually premised upon if the theory is correct, so we will come to the theory, if it is correct, COGS "are" more suitable as a proxy, not that

they "may" be more suitable?
A. They --
Q. I am reading your own language. I am not trying to trip you up on this. There is just a slight inconsistency between what you say at 2.5.12, the fifth line down, total overheads "are" not a good cost proxy, and then the "may" later on. I think I have worked out the distinction, I just wanted to check my understanding on that.
A. Yes, I mean, I think that is accurate. I would probably say that to the extent that you could calculate variable overheads, you may want to -- you know, you might want to include all variable costs together as opposed to only a subset of them.
Q. I understand you say you would like to be able to do that.
If we look at your last sentence of 2.5.12, you start there by saying:
"Whilst there is insufficient disclosure to determine the reliable estimates of total overhead variable costs ..."
So in this case, your evidence is that none of the experts can actually do your preferred exercise there?
A. I think that is correct.
Q. Okay. I would now like to turn to consider your

response to Dr Trento, but before we go through that and the rest of this page in detail, it is worth me showing you one additional passage. So please can we go to page 34 first, before we return to this page. {RC-G/11/34}

At 3.5.21, here you are summarising your response to Mr Coombs' evidence. He is the expert on behalf of my client, Mr Merricks. You say that Mr Coombs uses a total cost proxy for his analyses of Allianz, Primark and some SSH claimants by generally using an average total cost. Then you say that comprises a mix of fixed and variable costs and some common costs and some firm-specific costs.

Now, your key conclusion appears to be here in the bottom two lines, and I quote that you:

"... do not consider this is likely to be an appropriate proxy for the actual MSCs for the same reasons as set out in relation to Dr Trento's analysis above."

Do you see that?

A. I do.

Q. So that explains why I am going to go back to look at your section under Dr Trento's heading. I am addressing it, of course, from the perspective of Mr Merricks and Mr Coombs.

If we go, with that in mind, back to page 22. Let us go through this a bit more slowly. I know that Mr Beal has taken us to this page, but he did not take you through it bit by bit and I would like to.

Starting at paragraph 2.5.11, at the third line there, you say that:

"Total overhead costs are unlikely to be an appropriate proxy for the actual MSCs because some overhead costs will be fixed in nature while others will be variable."

Now, pausing there for a moment. Have you found that sentence, before I carry on?

A. Yes.

Q. So this is the first of two reasons that you give for why a variable cost proxy of COGS may or is more suitable than overhead costs.

A. Yes.

Q. Now, I just want to check my understanding of the thinking here. It seems to be threefold, but please stop me at each stage if you disagree with anything I am about to say.

So the first line of the reasoning seems to be that fixed costs are more likely to be passed on at a lower rate than variable costs. I think you said that earlier. So far so good?

A. Yes.
Q. Then, secondly, to the extent that overheads contain more fixed costs, pass-on rates would be lower?
A. Yes.
Q. Then, thirdly, the conclusion that this is inappropriate because the MSC is a variable cost and so using a cost proxy including fixed costs would understate the true MSC pass-on rates in your view?
A. Yes.
Q. So taking that as a correct premise for present purposes only, as you will understand, that means, does it not, that Mr Coombs' total cost proxy underestimates the true pass-on rate, in your view, for the MSC, because he includes fixed costs in the proxy; that is the inescapable logic, is it not?
A. I think it is the logic, yes.
Q. So Mr Coombs' results are actually favourable to Mastercard on this basis, because it is a higher, pass-on rate?
A. On the premise that there are, I guess, differences between these rates. But if that holds, that would be the logical extension of my conclusion.
Q. We will come back to that premise but I take that for present purposes.
With that in mind, if we could please turn to the

transcript in draft from today from earlier at page 20, if it is still there. Let me just wait for that to come up.

So as you will see from the first sentence, the Chairman is asking you about the long-run or the long-term, and then at line 10 you are also talking about the long-run, because you say "if it is not in the short-term ..."

Then skipping down to line 14, the Chairman says:

"But in that scenario [which I think we agree is the long-run scenario], I thought it was your evidence that the distinction between fixed and variable costs does not really matter because they are looking at all their costs."

You answer:

"I think that is a fair point."

Then at line 22, you carry on the conversation and you say:

"So I think that the logical extension to that might be that the way in which a company is thinking how it reacts in terms of total costs."

So my question is: if the distinction between fixed and variable costs does not really matter in the long-run, does that not undermine your first assumption in response to Mr Coombs' total cost proxy, about the

distinction between fixed and variable costs in the short-run?
A. You might need to step me through that. Sorry, it has been a long day.
Q. Sorry, that is understood. Let me take that a bit more slowly.
So we have discussed already that one of your two reasons for rejecting a total costs proxy from Mr Coombs is because Mr Coombs' total cost proxy will include more fixed costs than variable costs, and therefore, as we established, that would underestimate the pass-on rate in your view.
Here you are talking about long-run, which Mr Coombs, I think you will know, is assessing?
Is that a yes for the transcript?
Is that a yes, Mr Harman? Sorry, I can see you nodding, but ...
A. Yes.
Q. I am grateful.
Then you say, in agreement with the Chairman from earlier, that it is a fair point that the distinction between fixed and variable costs essentially breaks down over the long-run, so that a cost that might be fixed in the short-run will turn into a variable cost in the long-run. You agree with that and you take it one step

further and say that the logical extension to that might be the way the company is thinking about how it reacts in terms of total costs.

So, with those two statements in mind, what I am putting to you is that this undermines the first reason you have given in your expert report for why you reject a total cost proxy?

A. But do I not go on, at the bottom of that, to say that I cannot be sure, because different firms may have different levels of sophistication and may think about things in different ways? What I am -- when I was replying to the Chairman, what I was saying is that it is very difficult for me to see if the companies treat overheads differently between fixed and variables.
I explain that I see some evidence, like energy costs, where they may seek to increase prices as a consequence, but I do not see other categories of costs being treated differently.

So it is unknown to me as to whether the businesses treat total overheads as something that they will recover in the long term, because in part it would depend if they were firm-specific.

Q. I think you have addressed my answer about the level of economic theory with a practical answer, and we will come back to the economic theory, if I may, later.

But let us return to where we were in your second report on page 22 {RC-G/11/22}, back at 2.5.11.

Five lines down, right at the end this time, you then say:

"Some overhead costs are likely to be firm-specific ..."

Which is the exact point you have just made to me, which is why I have gone back to this.

"... while other costs will be common across competitors."

Then you continue that:

"Estimating what is, in effect, an average pass-on rate for a number of different types of costs is unlikely to be informative of the pass-on rate for actual MSCs which are variable in nature and common across the sector."

So, again, I am taking your second reason this time, the distinction between firm-specific and common, and I think that your reasoning appears to be threefold and I would like to check that I have understood it.

The first step in the logic seems to be that firm-specific costs are more likely to be passed on at a lower rate than market-wide costs?

A. Yes. Potentially not at all.

Q. Then the second step seems to be to the extent that total overheads or total costs contain more firm-specific costs, then the pass-on rate would be lower?

A. Yes.

Q. Then, thirdly, the punch line that that this is inappropriate because the MSC is a market-wide cost, and so using a cost proxy including firm-specific costs would understate the true MSC pass-on rate. Is that your position?

A. Yes, but premised on the fact that in terms of fixed and variable, for example, I am relying on the economists saying that there potentially is different pass-on. So I am not opining on whether I accept that as a premise.

Q. Okay. I am going to tackle this at this stage. We are at page 22. If we can look at paragraph 2.5.12. You say there, and I have taken you to this passage already, and I think it is consistent with what you have just said:

"The total overhead costs include fixed costs as well as firm-specific costs."

Then four lines down, you use your conditional language again. You say:

"To the extent that pass-on rates differ due to differences in these two cost characteristics, then total overhead costs are not a good proxy."

Now, in respect of your consideration of Mr Coombs' assessment for pass-on between 1992 and 2010, which you dismiss for the same reasons as that is paragraph, the premise of your position must logically be that the theory applies similarly to both the long-run as well as the short-run, because you are dismissing the total cost proxy that Mr Coombs uses for long-run reasons and you are dismissing it for that reason.

So the theory that your report is premised upon, I am putting to you, is based upon that economic theory applying across the short-run and the long-run. Is that something you would accept?

A. I am not sure that I was explicitly providing a view on that.

Q. I can agree with you on that. So perhaps it can just put it this way: it is the inescapable logic of your position that if you are rejecting a total cost proxy, for the reasons we just discussed about the distinction between fixed and variable and common costs and firm costs, that you must be premising this part of the report on that economic theory?

A. Let me just re-read what you said. (Pause)

Well, I am not sure that I explicitly think that, because I do not actually introduce the time dimension to these considerations, so ...

Q. Okay. Then if I can try this way: let us just assume that if the theory does not hold for the long-run, let us take that as an assumption in my proposition, your views on Mr Coombs' cost proxy also would not hold either? So if the economic theory is incorrect, your rebuttal here of total cost proxy also does not work?
A. So hang on, if you are saying that if I reject that fixed costs are recovered in the long term, so I do not believe that they are recovered, then would that not be consistent with me saying in the short-term they would not be recovered? Because you cannot have that I reject it in the long term but accept it in the short term.
Q. No, it would have to be consistent across the board. My starting point is that the theory applies to both scenarios. You are rejecting both proxies, both the short-run scenario and the long-run?
A. Yes, I think -- but, as I said, I was not explicitly thinking about long-term; I was thinking about in the short-term in that regard.
Q. Okay. So I think we established at least that it is based on economic theory and it is to the extent that economic theory is correct.
    Can we please turn to {RC-F/13/157}. This is your CV. If we look at A.1.2, you see there that you have 30 years' experience and are an expert in many things,

including competition and economic regulation; yes?
A. Yes.
Q. If we look at A.2.2, you note that you have a distinction in a Masters in competition economics?
A. Correct.
Q. Then if you turn over the page, please, we can see the beginning of a very long list of you giving evidence in lots of competition matters. Do you see that?
A. Yes.
Q. Now, given that, and what you said yesterday about it not being beyond your competence to address the economic theory that your report is premised upon, you would be able, would you not, to address some questions from me about the underpinning of that theory for your opinions on the cost proxies and whether that -- to the extent that view is correct. You would be able to address that economic theory if I put some questions to you, would you?
A. I would, but noting obviously I have not thought deeply about the question but I can take some questions.
Q. Okay. Let me show you some materials in that case that tackle the first premise, that fixed and variable costs are passed on to different extents.
You participated in the JES process in these proceedings, did you not?

A. The joint expert report?

Q. Sorry, the joint expert statement back in December of last year. Well, perhaps I can take you to it because you signed a statement of truth on it. I am not trying to trip you up here.

If we go to {RC-K/19/20}. Perhaps if we can go to page 2 to begin with, to see the signature and declaration. So is this just the summary that the experts consider, and then page 3, in the middle. So this is the joint expert statement.

Now, you did not register any disagreement with Dr Niels, Mastercard's other expert, as part of that joint expert statement, did you?

A. No.

Q. You did not register any disagreement with Mr Holt's views as expressed in that joint expert statement either, did you?

A. No. But is there wording to the effect that I was only considering certain aspects of the joint statement?

Q. That is entirely possible. You addressed the supplier part of --

A. Correct.

Q. I am just taking you now to economic theory, so we can work out whether the underpinning of your report in these proceedings is correct or not, and, in fairness, I think the easiest and fairest way for you to do that is to show you other people's statements and see if you agree or disagree with them.

A. From memory, I think, what I have been brought in to do is to think, in this matter, on supplier pass-through, and I am not in instructed to look at the econometrics. So, again, I am happy to take some points, but I think that this was signed on the basis of my contribution to it.

THE CHAIRMAN: Also, it is made clear that he is giving evidence as an accountant, rather than as an economist.

A. Yes.

THE CHAIRMAN: So query how far you can go with this.

MR WILLIAMS: I will take it briefly in that case, sir.

Perhaps we can have a look at a couple of passages starting on page 20. In the middle of the page, you will see Dr Niels' response here. In the second paragraph of that big box, he states:

"Whether a cost is variable or fixed depends on the relevant timeframe because in the long term many costs that are fixed in the short-term become variable."

Is that something you agree with?

A. I mean, there is a -- there is the theory of long-run incremental average costs that, you know, is premised on the basis that over the longer term costs will be variable. I do think that it matters as to whether they are firm-specific or not, because if you were inefficient in comparison to other competitors, you would find it difficult to pass on those costs.

So, there, the long-term would have to be that you achieved the same level of efficiency as your competitors. Assuming that that is possible, that could be a very, very long-term. But with respect to costs which are common, you may be able to achieve that more quickly.

Q. Can I ask what you mean by "very, very long-term" in that answer, how many years, and by what metric are you judging that?

A. I mean, I could not -- it would be firm-specific and it would depend on the level of efficiency difference between them. It would depend on whether there are structural differences between them, which may or may not make it achievable. It might depend on the size of the business, whether you had economies of scale that could not be achieved.

So, as I said, you would have to give me a case-by-case basis and I would tell you -- I probably would not be able to tell you, but, with analysis, you might be able to.

Q. A point that you keep on returning to, and moving away from the JES, is about firm-specific versus common costs. That is the second premise that we have looked at, that market-wide costs can generally be expected to be passed on to a higher degree than firm-specific costs.

Now, we will obviously cover this with Ms Webster, whose report yours is based on, but if I could ask you, please, to turn back to the transcript from earlier today at page 25.

A. Yes.

Q. We see, four lines down, the answer:

"So the catch-all point is that it might wait until you get a total cost that takes you over the threshold. They work out what the reason for that is and then make decisions on how they should mitigate that total cost increase."

Then the question:

If that is your mechanism, you should be selecting the total costs as a proxy, should you not, like Mr Coombs has?"

Mr Beal is there essentially putting a question that I may have put to you, but your answer is:

"No, because some of those costs may well be, for example, not pass-onable, because they might be specific to the business, so you cannot pass them on to prices."

Now, a finding of high pass-on rates does not depend on the cost being a market-wide cost. So even firm-specific costs can be passed on to a high extent, can they not?

A. I think that is much more difficult, if there is a significant difference between your costs, which are firm-specific, and a competitor's.

Q. Well, it is not right to say that firm-specific costs cannot be passed on into prices, is it, which is what you say in line 13 there?

A. If a cost was truly at the limit of firm-specific, so no element of it was incurred by another company -- I mean, let us take online versus bricks and mortar. If you were competing with Amazon but you were on the high street, you would have great difficulty in trying to pass-through your physical building costs, as we have seen over a number of years. You would have to, in the long term, change your business, and whether you were able to change the business depends on many factors. Lots of companies, as we have seen from the high street, have failed. Woolworth's, for example, never got the ability to become an online trader.

Q. Okay.

PROFESSOR WATERSON: On this point, if we think about electricity -- I do from time to time -- then if there

is a rise in the price of uranium, it would be quite easy, would it not, for a nuclear power station to pass that on?
A. Yes.
PROFESSOR WATERSON: Even in a very long run in terms of, you know, decades?
A. Yes. I mean, there are going to be firm-specific examples where it is possible, but, you know, as my online/offline comparison means, you know, in some places it is not achievable to do it in a reasonable point(?). So I think one of the claimants -- I will not go there. I think I would have to go into ... It is fine.
MR WILLIAMS: You will be relieved to hear, I am relieved to hear, that is the end of cost proxy, so I will move on to *Sainsbury's*.
Please can we turn back to your first report in these proceedings at page 5 {RC-F/13/5}. At paragraph 1.1.3 there, three lines down, you say that of relevance to these proceedings, you provided evidence on behalf of Mastercard, on the question of pass-on and interchange fees, firstly in *Sainsbury's*, and then, secondly, in Asda, Argos and Homebase, and the Morrisons litigation, which is often referred as to AAM.
A. That is correct.

Q. Now, firstly, I would like to turn to your evidence in *Sainsbury's*, in that case. So your first report is at {RC-K/3/1}.
A. Yes.
Q. Now, in fairness to you, Mr Harman, as that is loaded up, I should flag that a lot of this document is redacted, so that neither I, nor Mr Merricks, nor any of the legal team have actually seen the underlying material in those redactions, so please not to reveal anything under the redactions. I am only going to ask you about the open passages that I have seen.
A. Yes.
Q. Now, if we go to page 26, please {RC-K/3/26}, again, we were taken to this very briefly yesterday. At paragraph 2.11, under the heading "Effect of the actual MIF on Sainsbury's prices", you say that you consider, in section 7, the extent to which Sainsbury's prices included any MIF overcharge.
You continue that you conclude that Sainsbury's is, and I quote:
"... likely to have passed on any MIF overcharge to customers ..."
For four reasons only, two of which we can see.
The first of those, at point (2), is because the BRC, that is the British Retail Consortium, the OFT,

that is the predecessor to the CMA, the Commission, EuroCommerce and the ERRT:

"... claim that retailers generally recover interchange fees through price changes to customers. Hence, any MIF overcharge would be likely passed on to consumers."

Now, the BRC is a trade association that represents a large range of UK retailers?

A. That is correct.

Q. If we go to {RC-J4.10/31/2}, we can see from the first paragraph there, this is a submission by the British Retail Consortium, and it explains its role in the third line and says it is a trade association of the retail industry representing more than 90% of the total retail trade in the UK. Its membership covers:

"... all sectors from the large multiples and department stores, through to the corner shop, from food and drink to furniture and DIY, from town centre to rural and mail order. Its members occupy in excess of 290,000 shops ..."

So it is not just supermarkets, is it?

A. Correct.

Q. If we go back to where we were, please, page 26, the next organisation that you refer to {RC-K/3/26}, is EuroCommerce. Now, that is a European organisation

again representing a very large range of EU retailers, is it not?
A. Yes.
Q. Including at the time UK ones, I should probably ask, post-Brexit?
A. Yes.
Q. Not just supermarkets?
A. That is my understanding.
Q. Again, the European Retail Round Table, before it disbanded in 2019, was another European organisation representing a large range of companies from the retail sector too. Is that your understanding?
A. That is my understanding.
Q. Again, not just supermarkets?
A. I do not know, but I can take you word for it, if that is ...
Q. Including at the time UK retailers, not just supermarkets?
A. Yes.
Q. Now, in summary, here, in this passage, you only refer to evidence from regulators and retail associations, rather than retailers themselves. So I would like to show you section 7 which this is purporting to summarise.
Please can we go to page 64, please {RC-K/3/64}.

You say, at paragraph 7.6, that you consider the effect of the actual MIF on retail prices of Tesco and Asda and the evidence that you have reviewed suggests that both passed on the actual MIF to customers through higher prices. You can see, at paragraph 7.8, a quotation from Tesco. Is that the quotation from Tesco that you had in mind yesterday in response to Mr Beal's questions from Mr Mourant?

A. Yes.

Q. If you take some time to read that to yourself, please. Sorry, if we can just go back.

A. The expanded part?

Q. Yes, just the quotation. (Pause)

A. Yes.

Q. So you can see that Tesco regard credit card handling costs as an input cost which it recovers through its general pricing policy, and you see in the first line of that quotation it mentions DSG. Now, that is the entity that operated Dixon's, Curry's, PC World and Link stores, is it not?

A. It is.

Q. They are not supermarkets either, are there?

A. No. I mean, they are re-sellers.

Q. If we turn over the page to page 65, please, you will see evidence there from Asda that, according to you, that it has also stated that it passes on credit card MIFs in the form of higher prices to all consumers.

A. That was my understanding.

Q. Now, I am obviously not go going to go through any more of the quotations but I have two questions arising out of that. Having just seen the materials from retailers, presumably you would agree with me that you also based your conclusions on retailer evidence, not just from regulators and retail associations?

A. I mean, that is correct. I think that this was one input into my analysis, of course, but there was a preponderance of evidence approach that took all the information together in forming a conclusion. This was, you know, simply one element of it, and therefore the conclusion is quite specific to, in this case here, Sainsbury's.

Q. But you are considering evidence, are you not, from retailers and not just supermarkets and not just Sainsbury's, are you not, in this report?

A. I mean, the vast majority -- I mean, it is a relatively long report. As I said before, there was something like 45,000 documents for Sainsbury's over a different time period. I mean, it was in mid-2000s, I mean, like, mid-2010s.

What was apparent from that case is how Sainsbury's actually operated, how it set its prices at a very detailed level, how it went about planning. We looked at the margins of the company. They --

Q. We will come to that point. I am just asking you a very specific question at the moment.

A. I am just saying that that is obviously -- I do not want to put over-weight on something when this was one input in many. I mean, obviously I relied on it, but it is one point in many.

THE CHAIRMAN: What was the nature of this evidence, if it was evidence, from Asda, that you were relying upon?

A. Well, I think that these were pretty much -- there was quite a lot of debate and submissions on the impact of MSCs and --

THE CHAIRMAN: Specifically from Asda you are referring to there?

A. Yes, correct.

THE CHAIRMAN: Where had it stated that it passed on credit card MIFs?

A. We would have to go down to ten years ago.

THE CHAIRMAN: The footnote, I think, is referring to the ERRT.

A. Yes. Was it 195? If you go up to Asda --

MR WILLIAMS: We might have to come back to that at the end, sir.

A. But it was either the BRC or an organisation like the BRC that was representing different retailers, and this was their submission, saying that they would pass on the MSC in prices.
Q. Okay. Now, the claim period in the *Sainsbury's* litigation began in December 2006, and having seen some of the evidence that we have relied upon, and I can give you some examples, if it would help, but you would presumably agree with me that the evidence you looked at and considered in your report pre-dated December 2006 in some instances?
A. You would have to take me there.
Q. If we can perhaps --
A. I am not dismissing that or disagreeing with that. I truly cannot remember.
Q. Perhaps if we can go to one example of the Tesco evidence. If we go back to footnote 193 on page 64, you can see that the witness statement you refer to there is earlier on in 2006, so from March 2006. Then an earlier example from 2000 from the BRC that we have looked at.
    If we go to page 66, please {RC-K/3/66}. At footnote 198, it is from August 2000.
    So there is evidence that you referred to which is pre-dating the claim period?
A. The claim period, yes, that is correct.

Q. You would not have any reason to believe, would you, that your reasoning or your conclusion to pass-on of consumers magically only appeared in December of that year?
A. No. There was a history of organisations like this saying that they would pass on the MSC.
Q. Okay. If we go back to page 26 {RC-K/3/26}. That was your first open reason. If we now look at your second open reason. I think this comes back to one of the points you were keen to address, Mr Harman. At point number (4) there, you say that there was a reason for high pass-on because in competitive markets within profit margins the rate of pass-on is likely to be high.
Now, if we turn over the page, please {RC-K/3/27}, you can see there a heading "Effect of a lower MIF on [Sainsbury's] prices". Now, this part, I think you are summarising your conclusions for section 8, and here you have moved from the actual effect in the actual world, which you address in section 7, to the effect on the prices in the counterfactual if MIFs are lowered. That is correct, is it not?
A. Yes.
Q. You conclude here, and I quote again, that Sainsbury's is:
"... likely to have passed on all, or substantially

all, of a reduction in the MIF to its customers through lower prices ..."

The one reason that you set out there, that we can see at (2), is that DSG and the British Retail Consortium claim that the MIF would reduce input costs to retailers, and that since retailing is a competitive activity, the clear expectation must be that lower input costs will be reflected in lower prices.

So both this reason and the one we have looked at on the previous page are concerned with the impact of high competitiveness and low margins in retail generally on whether pass-on would be high or low. Is that right?

A. When I was doing this case, that was a finding that I made, which was consistent with the way in which Sainsbury's actually operated.

Q. Well, let us look at your reasoning on that topic. If we can turn, please, to page 69 in section 8. Can I ask you, please, to read paragraphs 7.24 and 7.25, including the quotation. This is the underlying evidence for your point {RC-K/3/69}. (Pause)

A. Yes, that is consistent with my expectations.

Q. So essentially going back to my previous point, when you were concerned with the impact of high competitiveness and low margins, you were considering that in the retail sector more generally, because you are looking at

sectors beyond supermarkets here?
A. I mean, I was stating that. What I went on to do was to examine what Sainsbury's profitability actually was, and looked at the level of MSCs that they were actually charging, and I looked at the ratio of those two, to which I concluded for Sainsbury's that they were a material cost and that its margins were actually thin, yes.
Q. I think that is a yes to my question.
A. What I did not -- I cannot remember if I actually looked at -- I may have looked at other companies in the grocery sector. I may have done, maybe I did, but probably not wider.
Q. I can help you and show you just a few more. But the passage here from EuroCommerce is about retailing more generally, is it not? It is not specifically limited, that quotation, to the supermarket sector or Sainsbury's?
A. Well, is it not in relation to the retail banking sector?
Q. That is the sector enquiry it is responding to, which is obviously about MSCs, but it is not the case that EuroCommerce itself is limiting to the banking sector?
A. They are making a general statement in the quote, yes.
Q. Okay. Perhaps if we can turn over the page to page 70

{RC-K/3/70}. We also see another quotation there in which you describe the ERRT as a Europe-wide industry body representing CEOs of retail companies, not just supermarkets.

If you look at the quotation, it says:

"In a sector such as retail where margins can be below 1%, the excessive cost of the fees is inevitably passed on to [customers]."

Then you fairly note that the ERRT represents the interests of its member companies, including Asda and Tesco. But its membership is not limited to Asda and Tesco or supermarkets, is it?

A. No. If I recall, Asda and Tesco -- well, certainly Sainsbury's profitability was above the 1%.

Q. One last quotation, I promise. Page 78, please, of this document {RC-K/3/78}. You will see at the very top of the page a quotation from DSG, who we established operated businesses like Dixon's and CarphoneWarehouse, who you agreed were not supermarkets.

A. Correct.

Q. It states that:

"As a large retail organisation operating in a highly competitive marketplace and tight margins, any cost reduction that can be realised will automatically benefit customers."

So, again, this is not just evidence about the supermarket sector, is it?

A. It seems to be applying to a more general section of the market, yes.

Q. So despite, as we have now seen, I think, that you are relying on a broader range of evidence, ultimately the Tribunal in *Sainsbury's* was indeed primarily concerned with the position of Sainsbury's itself and supermarkets?

A. Correct.

Q. Now, I was not involved in *Sainsbury's*, for better or for worse, and I also do not have access to the full unredacted materials, again probably for the better, but from what I can see, the experts in that case did not review or show the Tribunal the results from all of the 200 to 300 previous public studies that have been made available in these present proceedings. Is that also your understanding?

A. I cannot recall. I certainly did not.

Q. Again, from what I can see, but correct me if I am wrong, and if you can remember, of course, the experts did not conduct econometric analyses on all the public data sources such as those that have been conducted in these proceedings by Mr Coombs, Ms Webster and Mr Holt?

A. I could not confirm that.

Q. Well, perhaps one last question on this, then, without going into any confidential specifics that you may be aware of. In terms of the econometric analysis that was conducted on merchant data in those proceedings, do you know if any econometric analysis, beyond Sainsbury's data, was conducted for any other merchants?
A. This is Mr Niels' evidence. I really cannot remember back all the way to that date.
Q. I cannot ask him any questions, so I hope you will forgive me for asking the only person that was involved at that litigation.
A. Of course. But there was a quite separate demarcation of the work that we were doing, whereas in this case my input is directly into Ms Webster's. There, our evidence sat apart from each other. I mean, I did address some of the economics in this case from a frame-working perspective, but I did not -- you know, other than that, I did not really rely on Dr Niels' --
Q. That framework perspective, as you just referred to it, included considerations of economic theory, did it not? So we saw the margins example?
A. Yes, I commented on the economics in that case, what I would expect to influence pass-on, yes.
Q. That is your evidence in the *Sainsbury's* litigation. I would now like to move on to the second litigation

that you mentioned that you have been involved in, Asda, Argos and Morrisons, the AAM litigation.

This is my final topic and we will be briefer. You also produced reports on behalf of Mastercard in that litigation in August 2022, did you not?

A. I did, yes.

Q. This again concerned pass-on of interchange fees, did it not?

A. It did.

Q. But this time obviously concerning two different supermarkets, that is Asda and Morrisons?

A. Yes.

Q. But also the retailers, Argos and Homebase?

A. Yes.

Q. In this instance, we do not actually have your report, unfortunately, but please can I ask you to turn to {RC-C/55/1}. Now, this is Mastercard's defence in the Argos proceedings, dated, you will see from the yellow text at the top, September 2022, so a month after your expert report.

Now, just so you are aware, and in fairness to you, Mastercard's solicitors, Jones Day, have told us that this defence is "substantially identical" to Mastercard's defences in the Argos and Morrisons claims as well, but I am just taking you to this one example.

If we can turn to page 2, please {RC-C/55/2}, you will see at paragraphs 4(a) and (b) there the claim periods, and you will see that the claim periods begin from May 2007 for EEA MIFs alleged overcharges, and from mid-2006 for the UK MIFs. Do you see that?

A. Yes.

Q. Now, with that in mind, can we turn to page 58, please {RC-C/55/58}. Now, this is part of Mastercard's case on pass-on. It is really difficult to read, I am afraid, in yellow, so if you need any time, please do ask me. But the first sentence there, at 145FA, Mastercard relies upon your report and a report from Dr Niels for the reasons given in those reports.

I would like to focus, please, on subparagraphs (a) and (d) and they say, and I quote:

"For the reasons given in those reports:

"(a) The claimant recovered the relevant Mastercard MIFs through its actual prices during the claim period."

Then at (d):

"The claimant would have passed on all or substantially all of any [cost] reduction in costs in the counterfactual through lower retail prices."

So just to test your understanding, this matches up with your report. Point (a) seems to be about the actual world?

A. Mm.
Q. Actual pass-on to consumers of any inflated MIFs, whereas (d) is the counterfactual world removing overcharge. Is that your understanding?
A. That is. You know, just to point out that in (e), the position was also, to the extent that it was not passed on in prices, then it was likely to be passed on in supplier costs.
Q. You have beaten me to my very next point. So Mastercard's primary position, taking into account (a), (d) and (e), seems to be it is up to 100% merchant pass-on to consumers through price rises, that is (a) and (d), with substantially full pass-on as the alternative in (d), and in the further alternative, supplier pass-on?
A. Correct.
Q. That reflects your evidence given, does it?
A. For those claimants.
Q. Now, I say up to 100%, but it has been rightly pointed out to me that it is 100%, and then the alternative is that it would be lower. But the starting point and the primary case is 100%.
A. Well, in those cases what I found is a very strong mechanism in terms of price pass-on and a very strong mechanism in terms of supplier pass-on. How it was

actually passed on is still -- you know, you cannot be 100% sure, of course, but together I think there was 100% pass-on.
Q. Presumably that applied to a number of different sectors, because here you are not just looking at supermarkets, you are also looking at the markets that Argos and Homebase fall into?
A. Well, I mean, two of them were groceries and one of them was slightly different, but a re-seller in a competitive market.
Q. So that is pass-on from earlier on, in 2006 onwards. Can you remember, though, if you relied -- support the conclusion of full or, alternatively, nearly full pass-on of evidence from before 2006 to support those conclusions?
A. I cannot recall.
Q. Now, we have seen that your view in Sainsbury's was that Sainsbury's operated from at least December 2006 in a competitive market with thin margins, so pass-on rate was likely to be high. So presumably your evidence for Asda and Morrisons was the same, albeit that their claim period started earlier in 2006?
A. I mean, I would have certainly looked at their profitability over the claim period.
Q. Did it support your conclusion?

A. Again, so a preponderance of evidence. One of the things that was happening at the tail end of that was more aggressive, low prices from the likes of Aldi and Lidl, and therefore you actually saw a drop in profitability over that time. So there was that complication. But I think, generally speaking, a lot of the internal processes of those businesses were relatively similar.
Q. So in addition to that, we have seen that you relied upon DSG's evidence in *Sainsbury's*, that retail markets they operated in were highly competitive and with tight margins. So was it the same case for the market that Argos operated in, in this report?
A. I am guessing. I would imagine so, but --
Q. Was it the same also for the market that Homebase operated in?
A. I cannot recall on the Homebase side, but that is just because of memory.
Q. Well, do you have any reason to believe that the competitiveness of the markets of the DSG entities compared to those for the markets that Argos operated in only became competitive in 2006 and differed in any way?
A. Without seeing those sections of my report, I would be speculating.
Q. You say you are guessing, but it must have been the

case -- this is 2022, this report, so it must have been the case, based on your conclusions here. You have agreed that your reports supported the Mastercard pleading here of full pass-on as the primary position?

A. I do not disagree that that is the conclusion that I reached. As I said, there was a preponderance of evidence in terms of those companies in particular and, you know, again I was mostly looking at their processes at a very detailed level to see how they reacted to cost shocks, there were quite a few cost shocks over that period, and you could trace through more cleanly what was happening with different types of costs.

MR WILLIAMS: I have no more questions. Thank you.

THE CHAIRMAN: Thank you, Mr Williams.

MS BOYD: No questions.

Re-examination by MR DRAPER

MR DRAPER: Three topics, if I may.

If we could go back to Travix, briefly, I am sure everyone will be pleased to hear. It was put to you that Travix buys and sells flights and hotel bookings and so is not like Booking.com and is an agent.

THE CHAIRMAN: Do we need to go into closed session or are okay?

MR DRAPER: We probably do, yes.

THE CHAIRMAN: Right, okay. I thought, as you were going to a specific company, we probably ought to.

MR DRAPER: We will need to shortly anyway.

THE CHAIRMAN: All right. Can we close down.

(3.04 pm)

In Private - redacted

(3.50 pm)

(The hearing adjourned until Monday, 9 December 2024 at 10.00 am)