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

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 18th November - Tuesday 17th 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 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)

Monday, 9 December 2024

(10.00 am)

(Proceedings delayed)

(10.10 am)

THE CHAIRMAN: Good morning, Mr Beal.

Housekeeping

MR BEAL: Good morning. Before I call Mr Vassilis Economides to give evidence on behalf of the SSH claimants, please may I raise an important point that has arisen over the weekend. We have a bundle in Opus that was intended for supplemental documents, it is called RC-Q. It is divided into six subfolders, 1 to 6, to represent the various parties, and the idea was if a document came to light in the course of the hearing or was referred to or a particular document had been omitted, then exceptionally it could be added to this sub-folder.

Could we please pull up {RC-Q1/2/1}. One of the examples that this has been used by us is to upload an invoice. You may recall that, with Mr Holt, I referred to some invoices. Willkie Farr then said: which invoices are you referring to? They had not been present in Trial 1 so they had not seen some of these invoices. So they have uploaded an example of an invoice from the Trial 1 materials and we have uploaded another example. So that is, for example, that is how we have sought to use that particular sub-folder, Q1, which is ours.

The idea is when you upload a document, you also send a note to the other parties to explain what you are doing. Because of course this is standing in place of the old-fashioned way of doing things, when you would turn up before the Tribunal, hand up a paper document, explain to the Tribunal why you are asking for it to be included in the trial bundle, and then you would get on and, if the Tribunal were happy with the upload or the physical copy being given, then you could make reference to it.

Part of the idea, of course, it goes without saying, is to minimise the number of rabbits that are pulled from hats, and you will recall that last Thursday during the course of cross-examination I was somewhat surprised to see the terms and conditions for Travix had been uploaded after the end of the Travix cross-examination, and indeed after my cross-examination of Mr Harman, but we let that one go.

This Saturday morning my team received an email notification from Linklaters that a zip file of documents had been uploaded to the Visa sub-folder, which is RC-Q6, and I will ask you now, in a moment, to look at some of those documents, but instead of just being one document it was a number of documents.

So if we could perhaps please look at the first of those, that is Q6 ... I just need to find the reference {RC-Q6/3/1}. We have the Hilton analysis. This is an AlixPartners paper that produces a whole lot of graphs, demonstrating, it would seem, the share of the standard room bookings across all Hilton hotels. It is said to be relevant for the cross-examination of Dr Trento, so I cannot complain about it not being provided the day before -- it is not the day before, for example, Mr Economides' evidence. But it has been prepared by AlixPartners. It has not been dealt with by Mr Holt. Mr Holt is the only expert for Visa giving evidence, and my cross-examination with him is now long gone.

I am hoping, for Mr Holt's sake, he is on a beach in the Caribbean somewhere drinking cocktails, whether he is or not I do not know, but he has gone for Christmas. That is the point.

It has also been said in the covering email that accompanied this that the underlying data packs have been shared with Compass Lexecon, and therefore with Dr Trento. That was not in fact done. The information packs were belatedly shared on Sunday afternoon at 3.00pm. So when the initial upload took place on

Saturday morning, and it was said the underlying data had been shared with Compass Lexecon, that was not right.

Now, if we could look, please, at the next document here, we see {RC-Q6/6/1}, please. Again, this is a document that has been prepared by AlixPartners. You will see that it contains some statistics, purporting to represent the MSC as a proportion of EBITDA margins in 2023. Under the notes, there are various references to Bloomberg datasets, to material provided with the PSR study, the payment systems regulator study, and then --

THE CHAIRMAN: This document has been prepared by AlixPartners, and it is being served as, what, a further report, or is it just a document ...

MR BEAL: It is a paper, I think probably it is overstating it to say it is a report, but it is a paper that has been prepared by experts, which was not put in their positive or responsive case, that was not made available to me before I extensively cross-examined Mr Holt over the course of what was essentially two days, and which has come out of the blue on -- effectively being provided on a Sunday morning -- Saturday morning, sorry.

THE CHAIRMAN: Was there an explanation as to why it has only been prepared --

MR BEAL: I can read you exactly what the note said, because it came by email. We are asking for the emails and various other bits to be uploaded to the correspondence file, but in the meantime it says:

"The documents being uploaded to bundle RC-Q6 include ..."

So it does not deal with all of them.

"... a chart showing the analysis of the share of standard room bookings."

That is one I just referred you to. I have not gone into the detail of that, because it is wholly Trial 2 confidential, but they then said:

"The underlying data pack supporting this analysis has been shared expert to expert ..."

Which I am afraid was not right.

It then says they are dealing with public web pages, and I am going to come to that third set of documents in a moment.

Then they say:

"A note summarising AP's [that is AlixPartners'] findings from their analysis on MSC rates as a proportion of EBITDA margins across sectors. Visa's counsel may wish to refer to this document during cross-examination of Mr Economides."

Now, Mr Jowell this morning told me, shortly before you came in, that in fact he is not proposing to put this document to Mr Economides, but the point is that is not much help to me, because I have not been able to cross-examine Mr Holt on this at all.

THE CHAIRMAN: Well, I am just wondering what its status is. Is it ...

MR BEAL: Well, it has been uploaded to the trial bundle, that is the trouble. We do not have the old-fashioned --

THE CHAIRMAN: That does not give it any status, does it? But is it being put forward by Mr Holt as an addition to his report, or --

MR BEAL: Not at the moment. I think it was simply going to be put to Mr Economides, or now perhaps, because of concern that this issue is going to disrupt this hearing, Mr Jowell suggested to me that we might want to put this off, and I said to him, I am afraid rather uncharitably, I was not very keen to put it off, because I wanted to grasp the nettle now and deal with it.

Can I take you to the third set of documents, because the mystery deepens. If we look at {RC-Q6/2/1}, we have something describing itself as a "Shopify Annual Report". If we can bring that up. It is 200 pages long. It is in fact a Form 40-F, filed with the SEC in the United States. Entirely unclear what its status is. Mr Holt, of course, disclaimed any suggestion that we should be relying on qualitative evidence. This is not an analysed claimant, it is not even a UK claimant, it is not even a claimant. It is Shopify Inc. It seems to be a Canadian entity based in Ontario. It is filing with the SEC in the United States.

Then there is some supporting material in the other documents that were uploaded on Saturday morning where they are trying to rely on, for example, if we look at {RC-Q6/4/1}, 53 of the biggest brands and names on Shopify. {RC-Q6/5/1}, please. Shopify case studies.

There is no witness from Shopify. Shopify is not a claimant. It is entirely unclear whether or not Visa are seeking to put in qualitative evidence from somebody who is an unanalysed claimant, who is not even a claimant -- is neither analysed nor a claimant, and it is rather surprising, with respect, given their vociferous objection to the qualitative evidence that we have in fact relied upon and did serve in good time.

None of this has been dealt with in the positive case. None of this has been dealt with in the responsive case.

THE CHAIRMAN: This is an annual report, or it is some filing with the SEC?

MR BEAL: It is some filing with the SEC. It is 200 pages long.

THE CHAIRMAN: 200 pages long.

MR BEAL: Could we then please look at {RC-Q6/12/1}. So what happened, when the AlixPartners position paper, I am going to call it, rather than report, or mini report, came in, Willkie Farr said: it refers to a whole load of the material that we have not seen, because they had not been in Trial 1. Some of the PSR material was in Trial 1, I am familiar with it. I cannot remember whether this GPR 2023 paper was or not, I have a vague recollection it may have been a late edition at some point, it is 182 pages.

So we are in a position where very extensive material is suddenly being served not even a working day before cross-examination of Mr Economides and it is entirely unclear what its purpose is. This is not the occasional rabbit from a hat.

THE CHAIRMAN: So it has not been disclosed what the purpose of uploading these documents has been?

MR BEAL: Well, all I have is the explanation that they gave, and what they said on the Shopify stuff was simply that it would be -- they did not actually give any explanation. I can read you exactly what they said about the Shopify material. They simply said they were "uploading public web pages showing Shopify's major clients". It is not terribly satisfactory.

In terms of the GPR, this is an underlying document that is used as part of the rationale for the further analysis that has been conducted by AlixPartners; query Mr Holt, query not Mr Holt, it could be his team, I do not know, but it is being relied upon to support that additional material that is coming in from an expert after I have finished my cross-examination of that expert.

THE CHAIRMAN: Is there anything in his original reports concerning this?

MR BEAL: Nothing.

THE CHAIRMAN: No.

MR BEAL: No. Well, whether or not he covered this point, he did not have this analysis. If they had the analysis in the report, they simply would be able to put the analysis in the report to my witnesses.

THE CHAIRMAN: This has obviously been available for some time?

MR BEAL: It has.

So this is not -- as I say, this is -- a rabbit from a hat one is used to, and to indeed there are venerable practitioners at the bar who trade in that; but this rabbit farming at the milliners, sir, and it is to be discouraged, it amounts to litigation by ambush, and it is procedurally unfair.

I am sorry to raise the temperature early on a Monday morning but it is an important point.

THE CHAIRMAN: Right.

MR JOWELL: May I respond?

THE CHAIRMAN: Yes, of course.

MR JOWELL: Thank you.

So the first two documents that my learned friend refers to are both to be put to Mr Trento, which is what we intend -- wish to do, with the Tribunal's permission, and therefore I am not quite sure why we need to have this debate now, in the advance of Mr Economides' --

THE CHAIRMAN: Are you offering Mr Holt to be re-cross-examined?

MR JOWELL: Well, if they consider that necessary, but it is not -- but these are simply -- the first document relates to graphs of material relating to Hilton hotels, and in Mr Trento's second report he produced a graph -- an equivalent graph from one Hilton hotel, and all that the AlixPartners team have done is to create the equivalent graphs for the other Hilton hotels for which the data is available. We wish to show that to Mr Economides and we -- forgive me, to Mr Trento, and we think it is relevant for the Tribunal to see it.

If there are any objections about the accuracy of that data, then of course -- or the accuracy of the presentation, then of course the other side are welcome to come back and correct it, but it is not something, with respect, that we think should be controversial or that should require Mr Holt to come back.

THE CHAIRMAN: You say that Mr Trento had produced a graph for one Hilton hotel?

MR JOWELL: Yes, for just one Hilton hotel.

THE CHAIRMAN: Was that put to Mr Holt?

MR JOWELL: I think it probably was put to him but I cannot actually recall now. We would have to go back and check.

THE CHAIRMAN: Right.

MR JOWELL: But it certainly is in his evidence -- in his second report, so we did not have a chance to respond to it, and all they are doing is simply putting the same graphical information for the other --

THE CHAIRMAN: The second report has been around since when? October?

MR JOWELL: That is true, but this -- we are -- this was uploaded ten days away from Mr Trento's cross-examination, so you cannot say that we are ambushing him, that is not fair, and we were not holding it back, it is something that emerged, and we thought it would be useful for everyone to see, and --

MR TIDSWELL: The underlying materials are the data that was disclosed by Hilton, is that right?

MR JOWELL: Yes, that is correct.

MR TIDSWELL: So Dr Trento has access to that.

MR JOWELL: Yes, that is right.

MR TIDSWELL: I think you indicated in the email that Mr Beal read out that there would be some material that would be shared. Has that been shared?

MR JOWELL: Yes, I believe it has been shared.

MR TIDSWELL: So there seems to be some disagreement about that.

MR JOWELL: I think there was a misunderstanding. I think we thought they had some data packs, and it turns out they might not have, but that is now being provided.

MR TIDSWELL: Does that identify more specifically the data from which --

MR JOWELL: Yes, I believe it does. So they have time to look at this if they wish to, and of course if they want to say it is wrong, then they can say so, but it is very straightforward information, and it should --

THE CHAIRMAN: Technically you are applying to put this in evidence, really, are you not?

MR JOWELL: Well, yes, I suppose that is fair, yes, and to be put it to ultimately -- and to put it to Mr Trento, yes.

The second document, again, is -- again, the underlying data should not be controversial. It is simply looking at this question of the ratio between the MSC based upon publicly available data and publicly available data in relation to or easily attainable data from Bloomberg in relation to EBITDA margins, and it is just trying to illustrate the sort of proportions that one is looking at.

Again, we think that is important information for the Tribunal to have to consider this case, and we think it is proper that we should put that illustrative -- those illustrative calculations to Mr Trento, and we accept we will not put them to Mr Economides, because that would not be fair, and I made that clear to my learned friend.

So that is the --

THE CHAIRMAN: Why has that been produced late? Because ...

MR JOWELL: Well, again, because of the emphasis -- my learned friend put this emphasis in his cross-examination on the size of the MSC, and we simply wanted -- we wished to show: well, look at the size of the MSC in relation to EBITDA margins, and this is what one is looking at. Again, it is --

THE CHAIRMAN: So is that now part of Mr Holt's case?

MR JOWELL: Well --

THE CHAIRMAN: I am not sure that he was --

MR JOWELL: (Overspeaking) We simply -- look, I could presumably do the same thing by going to, say, a report in the public domain and then saying, "Let us suppose that EBITDA margins were these, and then let us look at what the proportion would be", but we simply tried to put it in a convenient way, and I am not sure --
THE CHAIRMAN: I understand that.
MR JOWELL: Again, it is not really -- it seems to us it is really a mathematical calculation based upon publicly available data.
THE CHAIRMAN: You are saying it is not something that really requires expert --
MR JOWELL: Yes, correct.
THE CHAIRMAN: -- expertise.
MR JOWELL: Correct. But, again if they say they have objections to the numbers, and if they want to check the numbers, they have ten days to do so. So, again, we see no -- there is no unfairness here, in our respectful submission. It is a useful document, again, for the Tribunal in our respectful -- an important document, in fact, for the Tribunal really to see.
THE CHAIRMAN: Yes.
MR JOWELL: If they want to respond to it in due course, of course they can do so. If they wish to make submissions about it, we have submissions in March. We have lots

and lots of time for them to come back on this. So we do not see any great unfairness in that.

The other document that they referred to, the Shopify document, is a document in the public domain -- two documents in the public domain, which -- again, we are perfectly entitled to put documents in the public domain to witnesses and --

THE CHAIRMAN: As you say, it is a question of fairness, though, is it not?

MR JOWELL: Well, it is.

THE CHAIRMAN: If this is something -- what does this relate to? (Inaudible)

MR JOWELL: (Overspeaking) Well, I will not be giving away any great secret --

THE CHAIRMAN: Well, I think you are applying to put it in evidence, so --

MR JOWELL: Well, it is a document in the public domain which I think I am entitled to put to a witness.

THE CHAIRMAN: So long as that witness has had fair notice of it.

MR JOWELL: Yes. But the matter is simply to show that Shopify, like a number of other companies referred to, classifies MSCs as part of cost of sales, that is only purpose of the document, and I could put that to him without having any documents.

THE CHAIRMAN: So we have 300 pages just to say that, do we?

MR JOWELL: Well, forgive us, yes, we probably should have -- you are quite right, we should have highlighted the point that was being made, but that is all, and there is no -- we are not suggesting it is an -- if my learned friend -- now, this is a document I think we understand that we put in a week ago, there has been no correspondence from the other side about it, the Shopify document, and --

THE CHAIRMAN: You only want to put this to Mr Trento?

MR JOWELL: Well, actually to Mr Economides.

THE CHAIRMAN: You do?

MR JOWELL: But, again, this is really not a -- if the Tribunal prefers otherwise, I can simply put the point in a simpler way. I can simply say that -- simply assert the point, but it is not -- it should not be a matter of great controversy. They have not actually objected in their correspondence to this document. The first I heard that there was objection to that document was when Mr Beal stood up.

MR BEAL: All of these documents were received at 11.00 am by my junior solicitor on Saturday.

MR JOWELL: I am afraid that is not right on part of this. This was uploaded earlier.

MR BEAL: We have correspondence on file. You are talking about the Shopify material?

MR JOWELL: Yes, it was uploaded on 2 December, I am told, so ... But there we are. In any event, I am content --

THE CHAIRMAN: When you upload something onto Opus, do you notify the other side that this is happening?

MR JOWELL: Yes, I am told, yes.

THE CHAIRMAN: Or is there some sort of alert that comes up on ... automatically? Or do you separately write to them and say ...

MR JOWELL: There is an email, I am told.

THE CHAIRMAN: There is an email?

MR JOWELL: Yes, I understand.

THE CHAIRMAN: Of 2 December?

MR JOWELL: Yes.

THE CHAIRMAN: Right.

MR JOWELL: I mean, but this is --

THE CHAIRMAN: So that was last Monday. What about the GPR document?

MR JOWELL: Oh, that is simply the underlying -- part of the underlying data for the document that I intend to put to -- would intend to put to Mr Trento regarding the percentages.

THE CHAIRMAN: The MSC.

MR JOWELL: The MSC, exactly. It is simply evidence of what --

THE CHAIRMAN: That is a public document?
MR JOWELL: That is a public document, yes.
THE CHAIRMAN: Okay.
MR BEAL: The Shopify case studies is dated 6/12/2024, and it was part of a package -- that case studies was part of a package received on Saturday morning.
The supporting material for --
THE CHAIRMAN: You did not get an email on 2 December saying this was being uploaded?
MR JOWELL: In relation to the Shopify report, that was presented on 2 December. I can confirm that I do not intend to go to the Shopify case studies, so that we can -- my learned friend does not need to worry about that.
THE CHAIRMAN: The case studies. Right.
MR BEAL: I have also been told at 10.05 this morning AlixPartners sent an email to Dr Trento with further documentation. It appears to be underlying analysis to support the document at RC-Q6, tab 3, which is the standard room share of Hilton. So when my learned friend says he understands that has been shared, if it has been shared it seems to have been shared since I have been on my feet, shortly before I was on my feet.
THE CHAIRMAN: Which document is that? The Hilton?
MR BEAL: The Hilton analysis.

In terms of smallness of the MIF, it was pretty clear in our positive case and in our responsive case that we were relying on the very small size of the MIF. Indeed, it has been a strong part of our case that we are following the Trucks line of reasoning, and that relies on the smallness of the MIF. So to suggest this only became apparent in the cross-examination of Mr Holt I am afraid is simply not right.

THE CHAIRMAN: This could be material that could have pulled together by Mr Jowell or his team and put to your witnesses, do you accept that?

MR BEAL: If there is a public document that he perceives to be relevant, such as the PSR material, for example, I have no objection to him, with advance notice, uploading that document, and then giving the witness an opportunity to have had sight of it, and he can then put a question by reference to that. I am not going to object to that.

THE CHAIRMAN: Dr Trento does have some notice now.

MR BEAL: He will have notice of the PSR material, yes.

THE CHAIRMAN: Right.

MR BEAL: But it is not ten days. He is on his feet next Monday, which is a week.

THE CHAIRMAN: Right.

MR BEAL: In terms of the other material, I am afraid I am simply lost as to why they are relying on Shopify annual reports. To say that it is a public document does not mean that it should be adduced. There are thousands of public documents out there relating to businesses. It is not going to seriously be suggested, I think, that they can all go in willy-nilly, without any thought being given to it.

THE CHAIRMAN: I think it seems like a relatively small point, with all due respect.

MR BEAL: If that is the case, I am completely at a loss as to why it needs over 250 pages of material supporting it.

THE CHAIRMAN: I think Mr Jowell --

MR BEAL: The more significant point, in my respectful submission, is the AlixPartners analysis which is, on any view, a mini report or a position paper, and I do not have an opportunity to cross-examine Mr Holt, and it is not fair --

THE CHAIRMAN: Well, do you think you want to?

MR BEAL: I will need to take instructions from my client and speak to Dr Trento to work out the extent to which that material is challenged, and then I may need to apply to have him recalled to give evidence, if the Tribunal is minded to let this material in.

But it is, I am afraid, an unsatisfactory process, and it is not fair, especially if it is about to be put to Mr Economides, who does not have access to Opus, as it happens, because it contains material that he cannot see, and that does raise a fairness issue, in my respectful submission.

THE CHAIRMAN: What was the -- there was one of the things that Mr Jowell wanted to put to Mr Economides, was there not?

MR BEAL: I forget which one it was.

THE CHAIRMAN: Was it Shopify?

Do you actually need to?

MR JOWELL: I do not need to, no.

THE CHAIRMAN: Right.

(Pause)

We think we should not make an absolute decision at this stage whether it should go in or not, but give you a little bit of time, which you have, before Dr Trento gives evidence, to consider what your position is and whether you want to object further, whether you want to call Mr -- recall Mr Holt. But for the time being, I think our initial view is that the material should probably be allowed to go in and for it to be put to Dr Trento, not to Mr Economides, I think that would be unfair, given the shortness of time.

It is unsatisfactory that this has happened so late, but these things do happen, and it is largely based on public data, it seems, and so we will essentially give you a couple of days to consider it.

MR BEAL: Could I just float one potential observation that has just occurred to me. If Dr Trento has time to do a short responsive position paper that he can then upload to Opus, with notice, then I cannot imagine there would be any objection to that.

THE CHAIRMAN: I do not think there could be an objection to that. So, yes, he is at liberty to do that, but otherwise we will review the position later in the week.

MR BEAL: Thank you.

Please may I call Mr Economides to give evidence.

MR VASSILIS ECONOMIDES (affirmed)

Examination-in-chief by MR BEAL

THE CHAIRMAN: Please sit down, Mr Economides.

THE WITNESS: Thank you. Good morning.

MR BEAL: Please could you give your business address to the Tribunal.

A. Of course. It is 160 Victoria Street in London.

Q. Please could you open the folder before you. I hope that you have there your proxy cost report. For those following online, it is {RC-F/3/1}.

Do you have that as the first of three reports?

A. Yes, I do.

Q. Could you turn, please, to page 212 {RC-F/3/212}.
A. Yes, I am there.
Q. I am just waiting for the system to catch up. That is an expert declaration and there is a signature at the bottom. Whose signature is that?
A. It is mine.
Q. Have you had a chance to refamiliarise yourself with this report?
A. Yes, I have.
Q. Are there any changes you would like to make?
A. No, there are not.
Q. Are the contents of that report true to the best of your knowledge and belief?
A. They are.
Q. Please could we now look behind your second divider in the physical bundle. This is {RC-F/4/1}. This is your sector extrapolation report, is that right?
A. That is correct.
Q. Could we then please turn to page 132 {RC-F/4/132}. Do you see a statement of truth and signature there?
A. I do.
Q. Have you had a chance to look back through this report as well?
A. Yes, I have.
Q. Do you have any changes to make?

A. No, I do not.
Q. Is it true to the best of your knowledge and belief?
A. It is.
Q. Finally, please, can we look at {RC-G/3/1}, which should be your supplemental expert report. Do you --
A. That is correct.
Q. Could we look, please, at page 190 {RC-G/3/190}. Again, there is an expert declaration and a signature there. Is that your signature?
A. It is mine.
Q. Do you have any changes you wish to make to this report?
A. No, I do not.
Q. Are the contents of this report true to the best of your knowledge and belief?
A. Yes, they are.
Q. Now, there has been some correspondence this morning relating to some work you carried out for one of the SSH claimants. Would you mind, in your own words, please, just explaining what the position is?
A. Yes, of course.
So as I was preparing for my cross-examination over the weekend I went over the long list of claimants, and I realised that there was one claimant that I had -- my firm had an engagement with about a year ago, and I had participated in that engagement as an expert advisor.

It is not a commercial relationship that is mine, I do not have a direct relationship with that particular client, but I provided expertise in that particular engagement.

Q. Thank you very much.

A. Just to also add: as the letter states, my understanding is that that particular claimant represents 0.1% of the claim.

Q. Did you take anything from that relationship that you have put in your expert report?

A. No, I did not. There is obviously sectoral experience that I gain from every engagement that I do, and this is why I am here, and this is why I was asked to create this report, but I did not take any confidential information and use it in that report. In any case, I was not -- I had not appreciated that was the case, so there was even no opportunity to do so, in fact.

MR BEAL: Thank you. If you wait there, there will be some questions for you.

A. Of course.

Cross-examination by MR JOWELL

MR JOWELL: Mr Economides, good morning.

A. Good morning.

Q. Before I start, I should make two things clear to the Tribunal and to yourself. The first is that I will not be challenging every single piece of evidence that is in your reports, pursuant to the understanding that we have; and, secondly, that I intend to start my questions just by reference to matters that can be mentioned publicly, but at a certain point, probably for the last half an hour or 45 minutes or so, we will have to go into private session when I take you to some confidential -- documents that are confidential to the claimants, but for now at least I would like to stay on matters that are not.

A. Of course.

Q. Now, you have acknowledged, I think, that you have no degree or other qualification in the field of economics, that is right?

A. That is correct.

Q. I also have not seen any reference in your CV or elsewhere to any accounting qualifications. Do you have any?

A. I have been taught accounting as part of my business degree. I have a Masters in Business Administration from INSEAD Business School, and accounting is very much part of the curriculum, but I am not a qualified accountant.

Q. So you do not have any accountancy qualifications as such?

A. I do not have an accountancy qualification. I do have a Masters in Business Administration.

Q. You also, I think, have two law degrees, Mr Economides?

A. That is indeed correct.

Q. Have you ever -- you mentioned your business degree at INSEAD. Have you ever taught at a business school?

A. No, I have not.

Q. Have you ever written any articles in any reputable journals of business or management?

A. I have published articles in my field of expertise. I would not say that they have been published in business journals, but they are published regularly by my firm as part of its own publications.

Q. So you have put things on your website or in articles for your -- for LEK, but you have not published anything in any known business journal?

A. That is correct.

Q. Now, if we could go, please, to your CV at {RC-F/3/221}, please. We see here that it tells us that you are a senior partner in LEK's London office and that before that you worked for another consultancy firm. It says:

"Vassilis is LEK Europe's leading expert in pricing strategy, with broad experience across industry sectors. He has specific expertise in retail and consumer goods, but his experience in pricing also includes financial services, healthcare ... building materials, industrial products, life sciences and B2B services. Vassilis's experience including expert support to clients in the context of CMA investigations, including market studies and merger investigations."

Now, we saw that CV in your report, and one also can go to the LEK website. If I could show you that, that is {RC-Q6/1/1}. It is a bit hard to read, but you can see it says:

"Vassilis Economides is a partner in LEK Consulting's London office. He is a senior member of LEK's European consumer practice and a leader in LEK's organisation and performance practice, working across industry sectors to provide expertise on organisational strategy and commercial effectiveness. He has over 15 years of experience in advising major organisations in Europe, the US and the Middle East.

"His specific areas of interest are go-to-market strategy and capabilities, customer relationship management, operating model transformation and organisational design, cost management and performance improvement, and sales and marketing effectiveness."

So it would appear from this description of your experience that it is really in organisational and strategic matters, customer relationship management, and there is no specific mention of pricing here, Mr Economides?

A. That -- it is -- thank you for highlighting it. This biography also says that I have 15 years of experience. Unfortunately that was true ten years ago and I now have 25 years of experience, and my photo probably looks a little bit different to what I look today. It is true that I have not updated this biography for the last ten years. It is the biography that has probably been there since I joined in 2013, if not shortly after.

Now, things have moved on since then, it has been a number of years, and I have become, more recently than that, about five years ago, responsible for the pricing practice in Europe. In addition, it is not true that this biography is focused on organisations. There are -- go-to-market strategy means bringing products to the market and the strategy for doing so. Customer relationship management includes commercial terms, what you charge to your customers, what terms you expect from them. Cost management and performance improvement is very relevant in this context. It is about managing costs, improving the performance, improving profitability, and sales and marketing effectiveness is about sales, and pricing is about sales.

So there are a number of elements here -- commercial effectiveness, I would argue, in the first paragraph -- that are very much related to commercial strategy and commercial practices, but you are right that this biography is now ten years old and needs some updating.

Q. It is fair to say that your experience over the years has not been -- at least, judging by this CV, it does not seem to have been mainly focussed on pricing, has it? It has been focused on a broad range of consulting matters; correct?

A. It is true that in our line of business, in our profession, we do support our clients across multiple different topics and engagements, and it is very -- it would be very hard for me to build a practice and serve my clients if I would exclude from my areas of expertise and my areas of engagement topics that are not 100% related to pricing, but over the past years it is certainly the case, and you can see that in other sources. My LinkedIn profile which -- it would have been interesting if you had downloaded it. I am sure you have checked it. I noticed --

Q. I have not checked it.

A. I noticed a few checks from legal firms on my LinkedIn profile over the past few days. You would see that pricing is the first word on that CV, and a lot of the things that are reflected in the previous version of the

CV that is included in my report are actually on the
public LinkedIn profile, and have been there for
a number of years.
Q. Well, we will certainly have a look at your LinkedIn
profile, Mr Economides.
A. Thank you. I am very happy to respond to any questions
you might have.
Q. In your reports, you also mention two individuals that
work for LEK, Mr Robertson and Mr Ward, who you seem to
rely on to a certain extent. You say -- Mr Ward, you
say, has contributed his expertise in financial services
in the public sector, and you say that Mr Robertson has
contributed his expertise in transport and travel. Do
you recall that?
A. That is correct, yes.
Q. Now, in these proceedings you give evidence about
a number of different sectors of the economy, in
particular what you call the nine analysed sectors and
then the many other additional sectors; yes?
A. Correct.
Q. You seek to extrapolate in your extrapolation reports
from the analysed sectors to the additional sectors?
A. That is correct.
Q. Now, you may be aware, my client, Visa's, solicitors,
wrote to SSH's solicitors to confirm the extent of your

experience in the various sectors, the analysed sectors and the additional sectors. Perhaps we can just look at the letter that they wrote. It is {RC-M/395/1}, please. If we could go to -- over the page, please, to paragraph 9 {RC-M/395/2}, you see what was asked was this:

"To allow Visa to better understand Mr Economides' experience in the relevant sectors, and therefore the basis for the assertions contained in the LEK reports, please provide the following information for each of the 'analysed sectors' and 'additional sectors' ..."

Then whether you have any professional experience in the sector; if so, which companies you have provided advice to in the sector, and where advice has been provided -- over the page, please {RC-M/395/3} -- we say we will restrict it to five; and for each company identified, what was the advice.

We then ask for -- to understand the expertise of individuals within LEK other than you, and we ask for which assertions are based on the experience of individuals other than you and the experience of those individuals relied on.

Then in 11, you see it is asked:

"To the extent that [you], Mr Ward and/or Mr Robertson have been engaged by any of the claimants in these proceedings on pricing matters, please provide copies of the proposed materials and any relevant [proposed] correspondence for each of these engagements."

I am sure you have seen this letter before?

A. I have.

Q. If we can go to the response, please, at {RC-M/414/1}. You see they -- you can see that they set out a table, helpfully, of those sectors where Mr Economides has direct personal experience of advising or assessing; the supporting partners, Mr Robertson's and Mr Ward's, experience; and then LEK Consulting's more wide experience of advising or assessing. Later, they decline to give any details of the actual engagements.

Now, if we start off in the analysed sectors, which are the top nine, I believe, in this table, we see that you do not have any personal experience of advising or assessing in the hotel sector; correct?

A. That is actually not correct. We applied a relatively high bar to what is behind each of those tick marks. So the fact that a tick mark is absent next to a sector does not mean that I have no experience, it means that I do not claim to be an expert in the sector, and that I was supported, completely under my responsibility, by another person in the firm, a close associate in this

case, Mr Robertson, who was closely involved in the case, in making sure that I could have access to information that is broader to the one that I would naturally have access and experience in from my own more limited engagements in that particular sector.
Q. Well, it does not suggest that you have any -- this suggests you do not have experience in advising and assessing the hotel sector, so I am -- you are saying that is wrong or ...
A. I am saying that we have applied a minimum threshold, because in my line of work, after 25 years of experience, I have actually touched most sectors of the economy, but I would not call myself as having direct personal experience, significant, substantial, in some of those sectors where the tick mark does not exist.
Q. So we can agree you do not have significant or substantial experience in the hotel sector?
A. That is correct.
Q. Okay. You do not have significant or substantial experience in the telecoms sector?
A. That is correct, as the table suggests.
Q. Yes. If we go down over the page, please, you do not have significant or substantial experience in the travel and leisure brokers sector?
A. That is correct. My colleague, Stuart Robertson, is an

expert in travel. He is a member of our transport practice.
Q. You do not have experience or expertise that is substantial of the university sector?
A. That is correct.
Q. Okay. If one then runs one's eye down the additional sectors, which I think are ten, and then if we go over the page through to 30 {RC-M/424/3}, we see that you seem to have personal substantial, significant experience in only seven of the 21 additional sectors; correct?
A. That is correct. I think one of the things I want to clarify is that in my profession we often have to work across industry sectors, and our clients choose to engage us, and our fees are not insignificant, to analyse sectors even in situations where we do not have direct substantial personal experience. Because the general skills that we bring as consultants, as analysts, as people knowledgeable in pricing or other relevant functions, like cost management, positions us well to have a view to analyse a new sector, draw conclusions, draw from experience that we have in similar sectors, and be able to add value to their problems and help them solve their problems.
Q. Well, I wanted to ask you about that, because if we

could go back a page, please, back to the previous -- sorry, one more, please {RC-M/414/1}, it describes these ticks as representing sectors where you have personal experience of advising or assessing; yes?
A. That is correct.
Q. But I think -- and I think as your last answer acknowledged, and as your previous answers acknowledged -- you have been advising and assessing as a management consultant on lots and lots of different things, not just pricing; correct?
A. That is correct. Pricing and margin management are my key areas of focus. Margin management broadly defines profit management.
Q. In recent years, perhaps, Mr Economides?
A. In recent years and before. In recent years and before.
Q. So my question is this: in all of these cases where you put a tick, are you saying that you have had substantial and significant experience in pricing in these sectors, or just in advising and assessing generally on some other matters?
A. In pricing and broad -- a variety of different topics, but it would include -- definitely include pricing.
Q. Would it include necessarily, in all of these sectors where you put a tick, a substantial and significant amount of pricing experience, or just perhaps some

experience?

A. I think it is important to clarify what our business is about. We help businesses grow, we help businesses generate profit, so everything that we do is very much linked to profitability and growth and value creation. So we -- our practice is not to provide advice for the sake of providing advice, or on organisational matters. When I say organisational interventions, it could be about, for example, redesign the organisational structure of a business to reduce its costs and improve its profit performance. When I say commercial effectiveness, it would be about driving sales and increasing its market share in the market. So there is a financial dimension to everything we do.

So the answer both to your narrow question, as to whether I have pricing experience in those sectors, is yes, but the broader question is also that everything we do is linked to value creation and profit improvement, and therefore each of those ticks I believe is highly relevant; every engagement we do is highly relevant to the topic.

Q. Well, there is a difference, is there not, between an advice about, say, re-organising something, and I accept that that -- you may be re-organising a company in a particular way, restructuring it, in order ultimately

to improve profitability. But that is rather different, is it not, from specific advice about how a company should price its products, is it not?
A. Well, I think the -- I take your point. Again, I will reiterate that each of those tick marks reflects pricing experience in -- substantial price experience in each of the sectors.
Q. Really? In every sector, specifically about how you -- about how they should price goods, in every single sector where you have put the tick?
A. Yes, that is indeed the case. I think the -- a lot of my reports have -- the reason why I can write reports that I do, and I can be here in this court, is because the topics that are being discussed are a bit broader than pricing. We have discussed supplier pass-on, we have discussed alternatives of managing a cost increase. I think it is actually a positive element that I am not just a pricing expert, because those questions that we are dealing with are about cost management and they are broader than just pricing.
Q. Could I then ask you about Mr Robertson and Mr Ward, because we see that in certain of these sectors it is said that, unlike you, Mr Robertson has experience in hotels and travel and leisure and motorway areas -- motorway service areas, and, unlike you, it is said that

Mr Ward has experience in telecoms.
    Now, unfortunately they have not given any expert statements in these proceedings, and so I cannot ask them any questions about their experience, but we do have copies of their CVs which you attach. If we go to Mr Robertson's CV at {RC-F/3/223}.
THE CHAIRMAN: Can I just ask, before we go away from this document, what time period you are talking about when you have been giving this advice on pricing?
A. I have been leading our pricing practice for the last five or six years, but the reason why I was assigned at all of leading the pricing practice is because a lot of my experience over the last 25 years has been linked to pricing.
THE CHAIRMAN: So where there is a tick on this table, that is because you have advised on pricing in the last five years, is that right?
A. That is correct.
THE CHAIRMAN: Okay.
A. I just want to clarify that is there is direct advice on pricing, there is also assessment of pricing dynamics for the purpose of making investment decisions. One of a -- one of our significant areas of engagement is helping investors make a decision as to whether to invest in a sector, and when I refer to investors,

I mean private equity, large private equity investors and part of that analysis relates to understanding the pricing dynamics in a sector, understanding the profit dynamics in the sector, understanding, very importantly, the different levers that are available to a business to improve its profit performance, so whether it is pricing or whether it is cost management or whether it is growth.

MR JOWELL: So just so that I understand, if we sought and obtained disclosure from LEK about your engagements in the last five years, we would see written evidence, would we, of your advising specifically on how to price in each of these sectors in which you put a tick?

A. You would see often broader engagements on improving the performance, the commercial performance and the profit performance of those businesses, and those would have a pricing dimension. Yes, there would be a pricing component to those engagements.

Q. A pricing component; but you would not necessarily be advising specifically on how they should price?

A. I would advise specifically on how they should price, but as I mentioned earlier, our engagements look at other dimensions as well. Clients want us to look at profit improvement often, and pricing is sometimes the stand-alone topic that we need to address. Sometimes it is in the context of a broader profit improvement engagement.

Q. If we --

A. This is the same with every firm, including some of the firms that are advising you or other parties in this -- in these proceedings. Strategy consultants provide advice on strategy. Pricing is part of strategy, cost management is part of strategy. If a client engages us to improve profit performance, there will be a question around: can we do anything -- what can we do on pricing? There might be a question: what can we do on cost management? We have to deal with both those questions, and I have to be involved and help businesses make trade-offs between those two questions, which I think is one of the questions in these proceedings, or core to these proceedings.

Q. Could we go to Mr Robertson's CV at {RC-F/3/223}. We see here in the first paragraph that he used to work in the Cabinet Office, and in the second paragraph it says his work is typically relied on in situations with significant financial implications, including commercial disputes and major investment decisions.

A. Mm-hmm.

Q. So there is no suggestion there that he is a pricing expert, is there?

A. The way I relied on the support and industry expertise from Mr Robertson and Mr Ward was exactly for that industry expertise. I am the pricing expert. I am the one who makes the assessment of the dynamics in different sectors from a pricing perspective. They, in this case, provided industry expertise, which includes pricing, includes pricing dynamics, but they are not positioned in the firm as pricing experts.
Q. No. So neither of them are pricing specialists?
A. They are industry experts in their areas of engagement. Mr Robertson has a lot of litigation support, dispute resolution experience as well, and he advised -- he supported me when it came to analysing the specific sectors, which I have identified as within their areas of expertise.
Q. But, again, he has no -- it does not seem, if you look at his education, he does not seem to have any economics degree and nor does he have any accounting qualifications. Are you aware of him having either of those?
A. No, but I think the reason why we are supporting these proceedings is not because of our economics experience. I think Dr Trento is providing that expertise.
Q. I asked a simple question. You are not aware that he has any accounting or --

A. No, I am not.
Q. You are not aware that he has ever worked in the pricing or finance department of any business?
A. No, he has not.
Q. No. When we see the project experience he has drawn from in supporting your work during the creation of this report, we see that under "Relevant project experience", it says there:
"Assessing benefits of workforce reform for [the] rail sector.
"Assessing impact of ... industrial action ...
"Quantifying the impact of driver shortages for bus operators ..."
If we go over the page:
"Quantifying impact of industrial action ...
"... staff savings ...
"... store closures following competition review ...
"Review of warehousing/distribution centre network ..."
So, again, he does not seem to have any, judging from this, pricing experience at all?
A. From -- you are right, with respect to this biography. I am aware that Mr Robertson does have pricing experience. But I will reiterate that the reason why I collaborated with him and I sought his support in this

case is not because of his pricing experience, it is about -- from -- it is due to his knowledge of the transport sector.

Q. Transport sector. Well, I mean, in the tick box which we saw before, it mentions he has experience in the hotels and travel and leisure and motorway service area sectors, but there is no mention of that in his CV, is there?

A. That is correct, but I -- he does have that experience. I think he focused in this CV on his litigation support experience.

Q. Well, I think, if you go back a page, what it says is {RC-F/3/223}, under "Relevant project experience", it says:

"Project experience that he has drawn from in supporting Vassilis during the creation of this report ..."

A. I think this list is not complete. I know that it is not complete.

Q. Right. Well, we certainly cannot tell from here that he has any pricing experience in any of those sectors, Mr Economides?

A. I did confirm that he is not involved due to his pricing expertise, but he does have -- he is a member of our transport practice and he does have relevant industry

expertise.
Q. But not in pricing?
A. Including in pricing. I am aware of a number of significant pricing engagements he has completed, but, again, he is not a pricing expert in the context of -- he is not engaged as a pricing expert in the context of his success but as administrator.
THE CHAIRMAN: This CV was drawn up specifically for your report?
A. It was drawn up at the very beginning of the process and --
THE CHAIRMAN: Just answer the question.
A. Yes. Yes, yes.
THE CHAIRMAN: Right. Okay.
MR JOWELL: So if we go to Mr Ward's CV on the next page, 225 {RC-F/3/225}, we see here that, again, we see his education and employment. Again, to the best of your knowledge, he does not have any accounting qualifications, am I right?
A. That is correct.
Q. He is not worked in the pricing or finance department of any business?
A. No, he has not.
Q. We see, again, here, the project experience that he has drawn from in supporting you during the creation of this

report -- of this report, and we see he has worked supporting OFT and CMA investigations and supporting expert witnesses, but, again, there does not seem to be anything in here about any experience of pricing in the telecoms sector, Mr Economides?

A. That is correct. He is -- Mr Ward is co-leader of our financial services practice, he has substantial experience of financial services. That includes some aspects -- some of the sectors that, as you saw, have tick marks against them that are relevant to this. He does have telecoms experience and the other sectoral experience that is illustrated on this -- on the table that we were looking at previously. It is not referenced on this particular biography.

Q. But he does not have pricing experience in the telecoms sector, does he?

A. He has the type of experience that I describe, which includes pricing and other matters.

Q. Well, there is no mention here of any telecoms experience and certainly no pricing telecoms experience, is there?

A. That is correct.

Q. Okay. Now, right at the end, it mentions that Mr Ward has some experience in:

"... the payments ecosystem and its interaction with

... consumers and merchants."
Just so that I understand, is that a reference to his involvement in this case?
A. No, it is not. It is broader experience.
Q. I see. Do you know what he is referring to there?
A. He is, as I mentioned, co-leader of our financial services practice, so he has been involved in commercial banking cases, and he has also been involved in, exactly as the point suggests, in other cases with respect to payments transfer, and generally how -- enablers of payments in the -- across industry sectors. I cannot speak to his detailed experience on the matter.
Q. Okay. Now, the first time that you personally surfaced, as it were, in these proceedings, from the perspective of my client, was in March 2023 when you wrote a letter to Stephenson Harwood in which you provided a method statement on how you might assist the Tribunal through an expert report on pricing. Do you recall that?
A. Yes.
Q. Now, how long prior to March 2023 were you advising the claimants?
A. I was not advising the claimants before that time.
Q. Well, there must have been some period before March 2023 because the letter would not have just come out of the blue?

A. I think it was our -- I cannot recall exactly the beginning of the conversation, but there were very -- there were -- at that time it was at most a short period of a few weeks before that.

Q. Were other individuals at LEK advising or assisting the claimants before that?

A. Not -- certainly not with respect to these proceedings. I cannot speak as to whether any of my partners, we have 250 partners across the world, were involved in providing some -- at some point in the recent past, advice to claimants on other matters, but certainly not with respect to these proceedings.

Q. Not in relation to these proceedings?

A. Not at all, no.

Q. Could I ask you something slightly different. Other than LEK itself, have you ever been a director of a business -- of a company that runs a business?

A. No.

Q. Have you ever worked as the CFO of a business?

A. No, I have not.

Q. Have you ever worked as a CEO?

A. No, I have not.

Q. Have you ever worked in the finance department of a business?

A. No, I have not.

Q. Have you ever worked in the pricing department of a business?
A. No, I have not.
Q. To the best of your knowledge, neither Mr Ward nor Mr Robertson also have never had any of those roles?
A. That is correct. I have been the head of LEK's London office, and in that capacity I have been managing the P&L of the business. It was a practice with 300 people and 35 partners and I was in charge of that.
I am now -- I now sit on the board of directors of LEK globally, but beyond my experience in LEK, in both advising clients and managing the business, I have not had experience in managing businesses.
Q. Now, if we could go back to, please, {RC-M/414/2}. We see there that neither you, nor Mr Ward, nor Mr Robertson had any experience in the universities sector?
A. That is correct.
Q. If we go -- if we could go to your first proxy selection report, which is at {RC-F/3/1}, and if we go, please, go to page 190 {RC-F/3/190}, we see that you are informing us about the business model for universities. There is a heading at 12.A.1, "Business model for universities" and at 12.3, you say:
"the breakdown of revenue in the 'other income'

category has not been made available to me; however, based on prior experience I would anticipate that this includes, but is not limited to, accommodation and catering revenue."

Now, since neither you nor anybody else in your immediate team had any experience in the universities sector, what is the prior experience that you are talking about here?

A. Well, as I mentioned, the fact that there is an absence of a tick mark does not mean that I do not have some prior exposure to a particular sector. I also -- I also leveraged my firm's experience and knowledge in particular sectors which I have been able to review and evaluate.

Q. Forgive me for interrupting, but this says "based on prior experience", so are you saying that is not your prior experience?

A. It is a combination of my firm's experience validated by me, and my own experience of having done work that might be tangential to this sector but not directly relevant to the sector.

Q. No, not directly relevant.

In your proxy report, Mr Economides, you identify seven factors that you say are relevant to there being a selection of a suitable proxy; yes?

A. That is correct.

Q. Then you apply your seven factors and you come out with what you say would be suitable proxies for the MSC?

A. That is correct.

Q. I think it is fair to put this to you, because I am going to be making this submission in due course: given that we have established that you are not an economist, that you do not have any accounting qualifications, that you have never been employed day-to-day in a business in any of these sectors, that you have not provided consultancy services in most of these sectors, I want to respectfully suggest that you are simply not, and never have been, in a position to give expert evidence as to the identity or weighting to be given to these various factors for the purposes of selecting proxy costs?

A. I would disagree to the extent that you asked me a question. I think what is relevant, and the specific angle that I am bringing to these proceedings is around what is important from a business perspective. I think this question has come up a number of times in the context of these proceedings: how do we enrich the economist's view of what is important with the business view?

I think a lot of the factual witnesses brought that perspective, and I hope you will find that the characteristics that I have identified for the identification of proxies are characteristics that are related and conducive to whether the MSC is taken into account in pricing decisions, which is the main mechanism for direct price pass-on, or whether a particular cost is taken into account in margin calculations, whether it is the gross profit or it is the operating profit, which I would argue is relevant for one of the main mechanisms, if not the main mechanism, for indirect pass-on. So what I am -- what I have been asked to provide is an alternative angle that is grounded in business practices, and that allows the identification of factors beyond those that have been identified by the expert economists that are related to business practice.

Again, I hope that you will find, and I can refer to the witness -- to the factual witnesses, to the claimant witnesses, that the facts I have identified are broadly aligned to the points that I make.

Q. We will come on to that when we go into private session.

Could I turn next to your extrapolation reports in which you seek to extrapolate results from one sector of the economy to other sectors of the economy. Now, in your extrapolation reports you again set out a list of factors that you say influence business decision-making, particularly pricing. If we go, for example, to your responsive report at {RC-G/3/155}, please, you see here paragraph 5.3 and we see you say -- you see:

"... I set out the list of factors that influence decision-making, particularly regarding pricing. These factors are based on my extensive experience advising businesses on pricing strategies."

If we go to your extrapolation report, the first extrapolation report, at, forgive me, at 3.17, which is {RC-F/4/23}, please. We see, again, in 3.17, you stress your experience. You say:

"I have developed this list of factors based on my experience of what market factors influence pricing decisions ..."

At 3.19, you say:

"My industry experience is my primary source underpinning this exercise ..."

Yes?

So you are relying on your industry experience as your primary source for your extrapolations; correct?

A. In addition to extensive research that I carried out with the support of my team.

Q. Now, if we go to table 1, which is {RC-F/4/14}, please. This is in your extrapolation report. You have helpfully provided a summary table of your recommended matching of the additional sectors to the analysed sectors, and we see here that you match number 8, gyms, to telecoms; yes? You give it a medium rating.

Now, if we go back, please, to {RC-M/414/1}, you will remember you have no experience, or no significant experience in telecoms. If we go down a page, please {RC-M/414/2}, you see number 17, gyms, and you have no experience of gyms and nor does Mr Robertson or Mr Ward.

So you seem to be matching one industry in which you have no experience to another industry in which you also have no experience?

A. I think the nature of the exercise, it is important to make it clear. I think part of the basis of this extrapolation report was my personal experience, and the experience of Mr Robertson and Mr Ward, but a large part of it was research and an understanding and analysis of the different factors that are prevalent in each industry with a view of creating this extrapolation.

I do not think it is reasonable to expect any single person to have experience across all the different sectors of the economy. There are more than 30 here, there could be more, depending on what model of sectorisation one uses, but I think the approaches that we used identified what is important in each of those industry sectors.

I can describe why telecoms were matched with gyms, it does have to do with the marginal cost of both industries being very low, and therefore the pricing dynamics being relevant and being similar.
Q. Just pausing there. You see, I would understand it if you were an economist, but your report is based on your experience that you profess, and if you have no experience, it does not seem to me that you are in a position to give evidence about the --
A. May I ask why an economist can have a view on a sector where they do not have direct expertise but a management consultant cannot?
Q. Because they have -- there are university departments in economics. There are Nobel Prizes in economics. It is a recognised specialty that has been established for over one hundred years.
A. But there are even more business managers than economists in the world, and there are business faculties, and there are people --
Q. Forgive me, but you are not -- I think we have established you are not an expert in business management either, you are not -- in the sense you are not an academic in that field. You are giving this as a person who has had practical experience. But if you do not have practical experience, you cannot make these

assertions, Mr Economides.
A. I am indeed making them on the basis of my practical experience, but I would argue that practical experience is exactly the reason why my view is relevant for these proceedings, because they complement the view of the expert economists that I would argue is extremely valid but might be a little bit more removed than -- from practice, than the experience that I bring.
Q. Well, let us look at another example {RC-F/4/15}, please. You see number 13, we have vehicle and accessory sales, that sector, and you have matched that with universities. Not perhaps the most obvious match, Mr Economides.
A. No, it is not, but I can explain the reason for it.
Q. If we go back to the letter {RC-M/414/1}, please, and we go to the second page {RC-M/414/2}, we see that you have no experience in vehicle accessory sales, that is number 22 at the bottom, and no one, if we look at number 9, in your team has any experience of universities?
A. That is correct. On vehicle accessory sales, my colleagues did have experience.
Q. Well, maybe. Probably not in pricing, I suspect.
A. As I mentioned before, our engagements invariably include pricing questions.

Q. Really? Mr Robertson and Mr Ward, their engagements do not invariably seem to involve pricing. They seem to involve industrial action.
A. As I mentioned earlier, I think their CVs are incomplete in that respect, and I think Mr Robertson is a key member of our transport practice, and Mr Ward is co-leader of the financial services practice and our public sector practices. It is clear to me that we should have provided a better biography for those two individuals.
PROFESSOR WATERSON: I am intrigued by this link between universities and vehicle sales. Can you explain?
A. Yes, of course, I can. I think, before I explain, I have to clarify that the exercise that we did, the extrapolation exercise, was constrained in one important respect. We had nine analysed claimants and we had to match everything against them. So we did not have enough granularity in the set that we were matching to be able to identify the ideal sector to -- for the match.
Now, with respect to this particular situation, I am not sure if I can name the claimant in the vehicle and accessory sales sector?
PROFESSOR WATERSON: I can guess who it is, thank you.
A. Yes. They make -- they enable transactions, they are

not a seller of vehicles, but they finance the sale of vehicles. They -- the transactions that they finance are significant transactions of high average value. If you look across the list of analysed sectors, universities is the only other one that has large value transactions. They -- a university often has to deal, when it comes to international students, with a dynamic of converting those -- attracting those students in a broadly similar way, again within the constraints of this exercise, that a business that finances large vehicle transactions, which is vehicle, would require.

They have a value based approach to how they attract those customer. A university has to communicate how they are different and to convince students that they are -- they have a superior offer than ...

PROFESSOR WATERSON: They have the latest model?

A. They have the latest model, yes. So it is true that it is a very constrained choice that we have to make, but it was based on the considerations that we looked at around the pricing model, around the business model, around the average revenue -- average price per transaction. It was the optimal -- the least bad choice that we had to make.

PROFESSOR WATERSON: While I am here, can I also ask: in general, and this is more of a yes/no type question, is your experience essentially qualitative or quantitative, your personal experience?

A. I apologise, I will need your help to clarify the question. You mean whether we do financial analysis, or --

PROFESSOR WATERSON: Yes.

A. We -- our practice is based on financial analysis.

PROFESSOR WATERSON: No, but your person experience.

A. My personal experience is -- all our engagements have a very significant financial analysis component. My personal experience is in financial analysis, whether it is about measurement of metrics, like price elasticities, or the translation of pricing strategies, or other strategies into forecast of business performance and financial performance.

PROFESSOR WATERSON: But when you speak of cross-sectors, then that is presumably not quantitative; in other words, when you compare vehicle sales to universities, it is a qualitative analysis?

A. Yes. So the evaluation -- the extrapolation report was based on qualitative factors. It was necessarily an outside-in exercise. We did not have access to data from the claimants that were outside the analysed sectors, so we had to carry out the exercise on the basis of factors that were identified as relevant for

the extrapolation exercise.
PROFESSOR WATERSON: Thank you.
MR JOWELL: So if we can keep going, I can show you also that captive motor finance you have matched to telecoms, again two sectors where you have no experience; yes?
A. That is correct.
Q. I have to suggest to you that, first of all, in those sectors where you have no experience, you have no proper basis to make this -- these extrapolations; correct?
A. As I highlighted previously, a large part of the work was based -- my personal experience, the experience of my colleagues was critical for this exercise, but we were supported by a team that carried out extensive research on the basis of a framework that we defined, that I defined, and they collected evidence, public information, from annual reports, from other sources, that we then used for the purpose of this exercise.
Q. Again, I have to suggest to you that, given that you do not have experience in most of the additional sectors, and only a little over half of the analysed sectors, you are just not in a position to be able to make these -- to identify these general factors that are relevant to the extrapolation of one sector to another, are you?
A. The framework that we have identified for the purpose of this exercise had a set of consistent factors that we

applied across all the industry sectors. This framework was developed on the basis of our -- my experience across the sectors, where I do have experience, and my research of the other sectors. Then I was supported by a team of analysts, as is the case in most -- in all the engagements that we do, in collecting information which I reviewed to make sure that the framework is applied consistently across industry sectors, very much, I would argue, like the work that an economist or any other expert would do in trying to draw conclusions, review data, draw inferences, educated inferences, from data, even in new sectors where they have been less active in the past.

Q. I would like to come on to --

THE CHAIRMAN: We need to take a break at some point. Is now a good time?

MR JOWELL: This is a good time.

THE CHAIRMAN: All right. We will take a ten-minute break.

I am sure you remember, Mr Economides, whilst you are in the witness box you cannot talk about things to anyone.

THE WITNESS: I understand.

THE CHAIRMAN: See you in ten minutes' time.

(11.33 am)

(Short Break)

(11.43 am)

THE CHAIRMAN: Yes, Mr Jowell.

MR JOWELL: Mr Economides, I would like to discuss a little bit about the factors that -- the general factors that you identify as relevant to your extrapolation. You identify I think five factors: business model, cost base and treatment of the MSC, competitive intensity, pricing strategy, and profitability. Do you recall that?

A. Yes, of course.

Q. I think you dropped two of your previous factors because they could not be practically researched. That is correct?

A. That is correct.

Q. Now, one factor that you mention is competitive intensity as relevant -- you say it is a relevant factor which you think affects the likelihood of pass-on.

So if we could go, please, to {RC-F/4/28}, we see here the heading, "Competitive intensity". You refer to Porter's Five Forces, then you say that you look, I think, at margin to reflect it. Is that right?

A. That is correct.

Q. At paragraph 3.36, you say:

"... price competition may limit the ability of a business to pass on increased costs, as price-sensitive customers ... consider alternative options ... are likely to switch to a competitor."

Particularly, you say, where there is low substitutability and differentiation.

So I was a bit unclear about this. Is your view that the more perfectly competitive the market is, the less likely it is that there will be pass-on, and, conversely, that the more monopolistic the market is, the more likely that there will be high pass-on? Or is it the other way round; am I getting it all wrong?

A. No, you are not. I understand that there is obviously the economic theory that relates to the factors that you describe, and I will not go there, because I am not an economist, as I think has been made clear.

The point that I am trying to make here is simple. In a world that is highly price-competitive, a business will be very careful from a practical perspective in terms of -- before deciding to increase prices. I think the factual witnesses made it very clear that the more competitive the market is, the more concerned they would be about implementing price increases.

So I am not commenting on the economic theory view of pass-on in relation to competitive intensity and competitive structure; I am commenting simply on the basis of actual business practice, which suggests that, in a highly competitive market, increasing prices is --

deciding to increase prices is a -- the bar is pretty high. I will refer to the --

Q. I just want to know -- so, directionally, the way you apply this is you said, well, the more competitive the market is, it is -- that is a -- that means the less likely they are to pass on?

A. I did not have to make that assessment because I have not been asked to provide my view on the level of pass-on. What I have been asked to provide my view on is whether the factors that are related to pass-on, one way or the other, equally apply across industry sectors for the purpose of the extrapolation report. So I will leave the assessment -- I leave the assessment of pass-on to the expert economists.

My exercise was simply to say if I observe a similar competitive structure in two sectors, that, from my perspective, would suggest -- would be a factor to take into account in matching those two sectors.

Q. In practical terms, your proxy for that is margins. So you say --

A. Not just margin, it is also an assessment of the competitive structure in an industry. There are two different factors that I have -- that are inter-related that I have taken into account in the extrapolation. One is the competitive structure and the competitive intensity in the market, and the different one is the margin.

Q. Okay.

A. I appreciate that they are linked.

Q. Now, another factor that you look at is whether it is a discretionary purchase?

A. Correct.

Q. Again, could you just tell us how and why you think the nature of a good as discretionary is going to be able to affect the rate of pass-on.

If I can give you an example and then you can tell us. So suppose you are buying clothes from Primark against buying clothes from Gucci. The clothes at Primark are going to be less discretionary, if you like, than those at Gucci. So let us say the price of cotton goes up, do you think the rate of pass-on is going to be higher or lower at Gucci or Primark or the same?

A. Again, my -- I am not -- I have not been asked to comment on the rate of pass-on. What I have been asked to do is compare factors across different industry sectors.

Q. But they have to be factors that are relevant to the rate of pass-on; right?

A. They are. They are. So the reason why -- whether a good is discretionary or not is, I think, relevant, is because the choice that consumers are faced with is not simply whether they would buy clothes or not, it is how many clothes they would buy and where they would buy them from. So a good that is a staple, a good that is -- like milk, or groceries, more broadly defined, would typically have, from a price elasticity perspective, a certain type of dynamic that is different to one for a discretionary good.

So everything else being equal, if one was to identify factors that make the environment in a sector similar, I think it is a relevant consideration, even before defining, pronouncing, whether pass-on would be higher or lower, which was not -- I was not instructed to have a view on.

Q. Well, take the -- if we take the Gucci/Primark example, they are within the same sector, are they not?

A. Yes, and I made it, I think, clear in my report that I consider Primark and M&S clothing to be, for example, representative of a certain price range within clothing, but I would not consider them to be representative of the luxury end of the market.

Q. Okay. Now, one of the main factors, I think it is fair to say that you rely on, is the treatment of the MSC in accounting terms. You say it matters whether the MSC is categorised for accounting purposes as an overhead or as part of cost of sales or cost of goods sold.

But if we look at some of your matching. For example, if we go to {RC-F/4/14}, please, we see that the additional sector, household goods, you have matched with fashion and retail -- fashion and accessories retail. You say in your report -- if we can go to it {RC-F/4/50}, please -- we see at 4.76, you say -- you explain this and you say:

"This assessment is due [the second sentence] to the similarities between businesses in the two sectors, in particular [you say]: both leverage a variety of business-to-consumer ... retail models [and, secondly], the MSC is typically treated as an overhead cost and forms a low proportion of the total cost base of businesses in both sectors ..."

Now, you do not actually cite any evidence about that for the household goods sector. If we go, please, to {RC-J6/210/91}, please, we see here this is the consolidated financial statement of FTD Companies, which as you would know, and we would know, by the name Interflora, who is, I believe, one of the claimants, and they are a claimant which forms part of the household goods sector; yes?

A. That is correct. I can respond to that, yes.

Q. Well, do you agree that they are part of the household

goods sector?
A. I do not think they should be part of the household sector.
Q. Ah, okay. Well, do you -- I mean, I can take you to the evidence, it is on page 104/91, but you accept that they categorise -- they categorise MSCs as part of their cost of revenues?
A. That is correct. If it is of interest to the court, I can give a bit more context of how MSC is categorised and when it is categorised as COGS or overheads, because I think --
Q. Actually, forgive me, the purpose really is for you to answer my questions, Mr Economides --
A. Yes.
Q. -- and I want to understand really how you explain simply why you say Interflora is not part of the household goods sector?
A. Interflora is an agent within the meaning of IFRS 15. B34 -- paragraph B34 of IFRS 15 indicates businesses that have, as a role, the representation of goods that other businesses provide. Interflora does not sell any product. What they do is they connect buyers with local florists, and local florists execute the orders. In a way, it is a bit like an online travel agent model that the court is familiar with.

IFRS 15 requires those businesses, in order to provide a fair representation of revenues and costs, to only recognise as revenue their commission or the fees that they make on a transaction, not the full value of the transaction between the principal and the customer. As a result, their revenues are a percentage, it is only the commission, and IS1, again under the IFRS rules, regards them to have a fair representation of the significant cost that they incur as a result of this, and therefore they have to recognise MSC as COGS.

That applies to all businesses that operate as agents, whether they are in the travel sector or they are online marketplaces, like an auction house, online auction house, or whether they are a food delivery platform, it is a uniform requirement.

Q. Forgive me, you are giving evidence there about accounting requirements, but you are not a qualified accountant, Mr Economides.

A. No, I am not, but my work requires understanding these factors.

Q. Well, I think if you want to give evidence about accounting requirements, you should have taken an accounting qualification, if I may suggest.

A. Yes, and --

Q. Could I ask you about this: you match five additional sectors with telecoms; yes? You match gyms, insurance, captive motor finance, toll roads and web-based services, right?

A. Correct.

Q. Now, we have established, I think, already, that you have no personal experience in telecoms, gyms or captive motor insurance, and I believe you also have no experience in toll roads or web-based services, according to --

A. No, for some of those sectors my colleagues have experience, but I do not.

Q. So I think the only one you have experience in is insurance. One of the bases on which you say that those sectors should match telecoms is because you say they would typically treat the MSC as an overhead cost?

A. Yes.

Q. Again, you do not provide any actual concrete evidence of that, are you aware?

A. That is correct.

Q. Okay. So can we look at an example of a web-based service.

A. Of course.

Q. Which is a company called Wix.com. Let us go to it at {RC-J6/212/100}. Now, this is a web development company, and on page 100 we see "Cost of Business

Solutions Revenue", and if you look at the third sentence, it says:

"It also includes costs that we incur when transactions are processed through payments by Wix, such as credit card interchange and network fees (charged by credit card providers such as Visa, Mastercard and American Express) ..."

So -- and if we --

A. Again, I can -- sorry, I can answer this, if you want me to?

Q. Well, let me ask the question before you give the answer.

A. Okay. Sorry, I thought you were going to go somewhere else, that is why I ...

Q. So it seems that, if we go to {RC-J6/212/102}, we see the different categories. We see "Business Solutions" there, the third one down, "Cost of revenues", "Creative Subscriptions", "Business Solutions" --

A. Yes.

Q. -- and then "Gross profit"?

A. Correct.

Q. So in the case of this web-based company, it seems to be treating MSCs and similar costs as part of cost of sales, not --

A. That is not quite correct, unfortunately. There are --

a web-hosting business has to deal with two types of MSCs. One MSC relates to the MSCs incurred for the payment of its own subscriptions and services. That is reflected in overheads. There is a separate MSC that relates to enabling businesses that use the hosting services to accept payments on their websites. So basically a business can set up an e-commerce website in one of those web-hosting businesses, and they -- as a provider, they provide payment services to that business that is hosted on their website.

That is properly recognised as a cost of goods sold -- I have to say that, even though I am not a qualified accountant -- because it is a cost of providing a service and enabling a transaction --

Q. Mr Economides, forgive me. You are giving all this evidence, but you have told us you do not have any experience of the web-based services industry, so --

A. I have to answer your question, though.

Q. Well, you do not -- you can say, "I do not know". In a court of law, that is -- it may not be in management consulting, but in a court of law the answer, "I do not know" is perfectly acceptable.

A. But in this case I do have an answer, and that is the answer that I am providing.

Q. Well, very well. But based on what experience, Mr Economides?

A. Based on the experience that I have working with profit and loss statements of businesses, and based on additional research that I carried out in order to be able to have an informed view on the questions that are being asked in my reports and in the context of these proceedings.

Q. But -- well, very well.

I want to talk to you a bit about the points you do make in your report about accounting, if I may. You say in your responsive report, if we can go to that at {RC-G/3/37}, please, we see your conclusion 5:

"Costs are allocated to COGS or overheads on the basis of whether they are direct inputs into the production of a good or service, not whether the cost is fixed, variable or semi-variable."

Then you say:

"There are clear accounting guidelines and principles that are applied to this classification. Company accounts are regularly audited by external accounting professionals to ensure that they are compliant with the relevant guidelines and principles."

Now, I have to suggest to you the following: first of all, IFRS and UK GAAP have different reporting requirements. Are you aware of that?

A. I am aware. They converge significantly.
Q. The structure of a company's accounts will vary depending on which of the two main standards a company may follow?
A. It may vary on the margin, but not significantly.
Q. Are you aware that the terms "COGS" and "overheads" are not used at all in IFRS 9?
A. IFRS 9 applies to financial institutions --
Q. Forgive me --
A. -- and financial instruments.
Q. Forgive me, but IFRS is mandatory for one type of company and those are -- in the UK, and those are companies who -- where the securities are financial statements of UK companies whose securities are traded on a UK regulated market; in other words, the group accounts of all UK listed companies must use IFRS. Are you aware of that?
A. Yes, I am aware of that.
Q. Okay. Are you aware that neither IFRS 9, nor UK GAAP, says anything at all about how bank charges, payment processing costs or MSCs are to be categorised for the purposes of the accounts?
A. That is -- I understand this to be correct.
Q. Okay. You see, the impression from your report is that the relevant accounting rules somehow require or

encourage a business to classify particular costs in the same way, and that just is not so, is it?

A. It actually is, but I am worried that if I try to answer your question, you will remind me that I am not a qualified accountant. So I would need your permission to answer your question if -- despite the fact that I am not a qualified accountant.

Q. Very well, let us hear your answer.

A. Okay, thank you.

So IFRS 15 -- it is true that IFRS or UK GAAP are principles or guidelines that firms have to follow, and those are interpreted by auditors and accounting firms. So in a way, accounting firms and auditors become the guardians ensuring consistency in the application of those principles.

Some of the key principles: IFRS is the -- the system is a set of standards that listed companies have to comply with. IS1 suggests that all the accounts of a business have to be fair and represent the true picture of the business. IS2 talks about inventories, and one of the things that IS2 provides is that selling costs cannot be included in the definition of inventories. So that is not specific to MSCs, it is not specific to bank costs, but it is very clear that selling costs cannot be part of inventories.

Cost of sales is very much linked to the cost of inventories. Cost of sales is based on inventory. At the end of the period, minus inventory; at the beginning of the period, minus waste and any other changes that are related to the inventories.

The interpretation of these regulations is that in some cases retailers can -- well, retailers can include the cost of shipping goods from central warehouses to stores, because that is where the inventory is held. So if you look at a supermarket, what they have on the shelves is still considered inventory, so therefore it is still within the definition of inventory and therefore of cost of sales. Selling costs, however, anything that happens at the point of the transaction and beyond, is considered selling costs and cannot be included in that representation. Now, there are exceptions. The exception is if the service itself requires incurring MSCs, bank charges. For example, if you are facilitating a payment, you are accepting a payment, you are transferring a payment, and the MSC then becomes cost of sale of that transaction.

So it is true that it is all about principles, but principles are consistently applied, and it is actually interesting that -- we have all looked for examples where the rule does not hold true that most businesses recognise it as overheads, and we have not been able to find examples, other than the ones that I can attribute --

Q. Can I take you to an example?

A. Yes, please.

Q. So if we go to your responsive report {RC-G/3/34}, you set out two examples of what you say are P&L structures from two companies. One is Zara, yes, and the other -- otherwise known as Inditex, and the other is Tasty, a restaurant operator?

A. Yes.

Q. You say, if we go to page 36, please {RC-Q/3/36}, we see in 2.42 you say:

"The above P&L statements for Inditex and Tasty demonstrate how businesses in different sectors classify the same or similar costs into COGS or overheads based on their respective circumstances."

Okay?

Then in 2.42.2, you say:

"In Tasty's case, as a restaurant operator with two restaurant chains, understanding and tracking the cost to prepare and serve meals relevant to revenues is key to monitoring profitability. As such, it classifies the majority of its staff costs as COGS to (a) reflect the significant element of labour required to deliver the service it provides, such as front-of-house staff and kitchen staff; and (b) ensure that its measure of gross profit aligns to the core operations of the business."

Okay?

Then conclusion 6:

"The classification of the same or similar costs, [for example], staff salary costs, to COGS or overheads differs across sectors, depending on the extent to which a particular cost is a direct input into the production of a good or service in that sector."

Now, we have had very limited evidence in this case, and I do not want to go into private session just yet. So we have had the example of a restaurant chain, and I am not going to ...

A. I am aware.

Q. Yes. I am going to call it chain X.

A. Okay.

Q. You will recall --

MR BEAL: I am sorry to rise, but we only have one restaurant, so anyone who is following attentively will be able to work out who that is.

THE CHAIRMAN: Right.

MR JOWELL: Very well, let me come back to that. Maybe perhaps when we go into private session we will come back to it.

Let me give you another example. Online travel agents. You say all -- you say all online travel agents across the sector classify them the same, right? But if we look, say, at --

A. I apologise, I am not saying that.

Q. You are not saying that?

A. No, I am not saying that.

Q. Well, I can show you Expedia's accounts and they classify payment fees as cost of revenue, and I can show you Booking.com's accounts and they classify them as operating expenses.

A. Given that you do not want my accounting expertise, I am afraid that I will have to rely on this again, or lack thereof.

Expedia's model is very similar to another familiar travel agent. They complete a transaction on behalf of a customer. So basically they purchase and resell inventory, tickets, and collect payment, and therefore the transaction that they process is a very significant one, it is the full price of the package, whereas they recognise as revenue only the portion that relates to their commission or fees. Therefore -- and back to the point around agents under IFRS 15. They have to recognise the substantial MSCs, because they incur an MSC on the full transaction value, even though the revenue is a fraction, sometimes it is 5%, or it is definitely less than 10%; in order to give a fair representation of the accounts, they have to recognise the MSC as COGS within the meaning of the requirements of IFRS 15.

Booking.com historically did not have this model. Booking.com arranges a booking on people's behalf, and people visit their hotel and they pay at the end of their stay. So they, in most cases -- I am not saying that that is always the case -- they do not incur, they do not facilitate the full value of the transaction, they only then get paid a commission by the hotel.

In this sense, they are like every other merchant, the MSC for them is a selling cost, and therefore in the typical interpretation of the standard, it has to be recognised as an overhead.

Q. I suggest to you there is no basis at all for your evidence about accounting, Mr Economides, I am afraid.

A. Well -- but --

Q. So I suggest that there is no uniformity -- no real and particular uniformity within sectors.

A. I cannot agree with you on this point.

Q. All right.

Now, let me move on to another matter. You assume that not only do companies account for items in the same way within their accounts, but then, more fundamentally, you suggest that they then price day-to-day by reference to the same set of costs depending upon that accounting classification; in other words, you assume that the costs that go into pricing follow the accounting classification. Is that a fair summary?

A. I do not think it is a fair summary. I argue that the pricing model across different sectors is broadly the same. Now, we -- it is obvious that not all businesses in a sector will price in accordance to the same model. You have -- in the grocery sector the Aldi and Lidl that are pricing at the lower end, and they may take somewhat different factors into consideration, and you have Waitrose or M&S on the other extreme and M&S Food may price differently.

Your example previously with respect to Gucci, Zara in the middle, and then Primark at the lower end, I cannot assume that the pricing model of each of those businesses is exactly the same. The pricing dynamics in the sector, there is some consistency, but I cannot claim that restaurant X and restaurant Y will use exactly the same considerations in pricing their menu items.

Q. Well, I am grateful that you accept that, Mr Economides, because one of -- when I was putting questions to the various factual witnesses that we have had, and I do not think this is confidential, none of them were able to tell me how their competitors priced, or by reference to what factors they priced, and so you presumably do not know either?

A. I know, based on my experience, I have seen a number of different pricing models, but I think I have already indicated in my previous answer that I do not claim that all the businesses in a sector use the same factors or that I know what those factors are.

Q. Indeed, lots of businesses these days are competing for large segments of their business with online retailers, are they not?

A. That is true.

Q. So Amazon, eBay, Etsy, and so on, and those types of companies, they could price in a very profoundly different way to a high street retailer, could they not?

A. Potentially, yes. But I would argue also another high street retailer could price differently to another price in retail.

Q. I perfectly agree. If you take a company -- if you take a company like Amazon, particularly, it is likely to have a very sophisticated model of pricing. It is not going to miss out of account certain categories of cost just because they account for them in a particular way, are they?

A. I do not think it is a question of sophistication. I think when -- it is important to realise that the market dynamics that those businesses have to deal with, whether they have a sophisticated black box pricing algorithm, or they have a smart analyst sitting somewhere manually managing prices, the factors that they have to take into account are -- tend to be similar across industry sectors.

I will use the hotels as an example. I do not know of a single hotel, professionally run hotel, that does not seek to maximise revenue per room. That is the metric that is used in the industry. They are basically making sure that their capacity is utilised. If their inventory is not used one day and they move to the next, then they get no money from it.

So the factors that are relevant --

Q. Forgive me, you are not really saying that, say, Nobu is going to price in the same way as McDonald's, are you?

A. Nobu will target a pricing segment. They will look at their cost of goods. They will look at the value that they deliver. I think I have made in the past clear that --

Q. No, my point is their pricing methodology, the costs that they have regard to, they could be profoundly different between --

A. I would argue that Nobu's prices have nothing to do with their costs. I do not know if you will disagree with me, but I think they are largely based on the value that they deliver to the customer, and I think MSCs or any other costs are broadly irrelevant to that equation.

Q. Well, take the fashion sector. I think you have accepted that there are profoundly different types of companies across those sectors, and they are not going to have the same pricing methodology, are they, realistically?

A. Again, I will -- I think if you look at the higher end of fashion, Gucci and the like, I would argue that the cost of materials or any other costs have very little to do with their prices. I do not agree with you that, on the sophisticated luxury end of any market, costs become more important. If anything, they become less important.

Q. Well, let me talk to you more generally about how businesses price, because you have presented a picture in your reports essentially that the accounting classification is a very important driver of the costs that are taken into account when companies price.

I want to just understand exactly what you are saying and how far it goes, because if we go to your responsive report, for example, at 2.126 {RC-G/3/77}, you see you acknowledge there, in your conclusion 15, you say:

"Companies typically adopt an annual business planning and performance management cycle that allows for appropriate business planning, budgeting, management of operations and performance review throughout the year. This budgetary cycle is often part of a broader business plan for the firm that defines the revenue and profit growth framework for the business for a longer timeframe of three years or more."

In your responsive report, if we could go to {RC-G/3/129}, please, you see at 3.64.2, you say -- you effectively repeat your conclusion, your conclusion 15, and then after that you say:

"As a result, many corrective actions may not be implemented within a year, particularly to address relatively small variances which I evidence in conclusion 17."

If we could, finally, go to {RC-G/3/10}, in the same report, at 1.15.6, at the bottom, you say:

"Time is a key consideration with regard to how a business operates and the level of profitability it is able to achieve."

If we go to your responsive report, the same -- forgive me, your proxy report, which is at {RC-F/3/25}, please, we see 3.25.3, you say:

"Factor B6. I am not aware of the timeframe of the pass-on assessment and, as such, am unable to incorporate this into my analysis."

Finally, in this list of things -- I want to put it all together -- if we go to --

A. I am trying to keep track.

Q. Yes -- if we go to {RC-F/4/23}, you see 3.18, you say:

"I am aware, especially in economic literature, that there is consideration given to indirect mechanisms of pass-on."

Then you give an example of that.

Then you say:

"My approach does not explicitly account for these mechanisms and, as a result, may not do so."

Just putting all of those points together, your lack of consideration of the longer term, the longer budgetary cycles, which you acknowledge, and the indirect pass-on that you acknowledge, I want to just discuss --

A. I apologise, your summary is not quite correct.

So the first point that I want to make, maybe starting from the end --

THE CHAIRMAN: I do not know if I missed it, but I did not hear a question.

MR JOWELL: No, I did not put a question.
THE CHAIRMAN: Right. So can you wait until the question?
A. Yes.
MR JOWELL: I just want to discuss, if you like, with you, in light of those comments that you have made, the longer term budgetary processes and how you think they operate.
Now, I want to start with how companies monitor profitability. Now, I am sure you will agree that most companies will regularly monitor their profitability against one or more metrics?
You have to say "yes", Mr Economides.
A. Yes.
Q. The profitability metrics that the finance departments of businesses keep a close eye on typically include EBITDA or EBIT or some other similar measure; correct?
A. That is correct.
Q. Indeed, EBITDA is very often how bonuses -- based on which bonuses are allocated; correct?
A. It is one of the factors that is taken into account.
Q. Yes, and as part of that process of monitoring changes of EBIT, finance departments will seek to identify the reasons for changes to EBIT; correct?
A. That is correct. Major changes they would seek to identify.

Q. They seek to break down sources of additional revenue or reduced revenue year to year or quarter to quarter, whether that is a change in gross margin or a change in total sales, and they will seek to break that down into different parts of revenue; correct?

A. That is correct, again focusing on the major variances.

Q. They will also seek to break down the sources of additional or reduced costs year to year or quarter to quarter, including costs that are categorised as operating or overhead costs; correct?

A. Again, they will seek to track significant changes in costs, whether up or down.

Q. It is quite often for them to have an EBIT walk document, or an equivalent, which compares different categories of costs from -- to see how they have changed over the previous year or the previous quarter; correct?

A. It is often, not invariably, but it is often a way to represent changes.

Q. Yes, and they will seek to -- where there has been a change in a category of operating costs, they will seek to understand why there has been a change, will they not?

A. Again, focusing on the major variances.

Q. When management are able to identify that the change is industry-wide, such as a change in the cost of components or the change in the national living wage or wage inflation generally or energy costs, any other significant industry-wide change, they will often seek to cover that by increasing margin; correct?

A. That is not quite correct. I cannot agree with that. I think there are many different ways of managing an increase in costs, whether it is a firm wide -- a firm-specific or industry-wide one. Price increases is one of those mechanisms.

Q. It certainly is one of the mechanisms?

A. It is one of the mechanisms, indeed.

Q. Okay. Now, one of the things that you say repeatedly in your report is that small cost categories are unlikely to be reviewed or addressed in pricing decisions. Do you recall that evidence?

A. Yes, of course.

Q. Right. But if I want to just discuss what you mean by a small cost, because you have suggested that there is some sort of, if you like, 1% threshold, you suggest that, or --

A. I suggested, as a rule of thumb, there is -- there are other approaches to take.

Q. Yes. I think is not a more relevant approach to take to consider what is the EBITDA margin of the company and then see the cost as a proportion of that. So, for example, suppose that the EBITDA margin of a company is 5%, they say they are getting -- and there is a cost that is half a percent, so 0.5%. If that cost, either an increase or a decrease, flows directly through to the bottom line, it is potentially going to increase that EBITDA margin by 10%, is it not? So in that context, that would be a significant cost, would it not?

A. I do not agree with that conclusion. This is back to the exhibit that you uploaded over the weekend, which I appreciate we can discuss without actually having reference to that exhibit. I am very happy to do so.

Basically what you are describing is a very artificial picture where you have identified one very small cost, you have divided it by the very low EBITDA margin in certain industries, and that -- what it does is it exaggerates the size of that cost. If you were to apply that same approach to any other cost in the business of a similar size or larger size, you would probably arrive at a similar conclusion. However, if you --

Q. Well, I accept that, but I think it applies across the board.

A. If you will allow me. If you divide the major cost items say you are looking at a restaurant, the major cost items that restaurants typically look at probably represent 85% of revenue. I will assert that. I can refer you back to specific points if you want and we can add up the numbers. If you divide 85% by the operating margin, you will get to 1,200%, much higher than the 10% which you get by dividing --

Q. Mr Economides, that is mathematically correct, and I do not suggest they do not look into those accounts, but you are not seriously suggesting that all costs that are less than 1% of revenues are just invisible to management, are you?

A. I am not suggesting they are invisible, but management has limited capacity to deal with every single cost. Management has to focus on the key drivers of business performance. That is why management often creates -- makes choices. They choose three or four costs to focus on. They create key performance indicators, which are ratios that drive business performance, and they focus consistently on those.

The exercise you describe could be done for any cost. It could be done for postage, it could be done for the coffee that they buy for the coffee machine in the kitchen, and that -- elevated into an executive committee conversation.

Q. What I would like to do, if I may, is to go into private in order to show Mr Economides the visibility of these -- of costs of this magnitude from the documents we do have.

THE CHAIRMAN: Yes, of course. Mr Jowell, you said you would be two hours, I think, on the timetable?

MR JOWELL: Yes, and I have to --

THE CHAIRMAN: I know there was a suggestion on Thursday that you might be a bit longer, but hopefully not too much longer.

MR JOWELL: I am afraid I am going to be a bit longer. To be fair, we did not take up either of our allocated cross-examinations of the other witnesses last week.

THE CHAIRMAN: You are storing that up on the credit side, are you?

MR JOWELL: So if we can be allowed a little indulgence, but I am pretty confident that I will not be more than 45 minutes, so hopefully done by lunch time, and I am pretty confident we should be finished with Mr Economides today, given the estimates of my learned friends, quite comfortably.

THE CHAIRMAN: We were hoping that would be the case, if not earlier.

MR JOWELL: But if I could be allowed at least until lunch?

THE CHAIRMAN: Can you try and finish by lunchtime?

MR JOWELL: I will do my best.

THE CHAIRMAN: Right. We need to go into closed session then.

In private

In open court

Cross-examination by MR DRAPER

THE CHAIRMAN: Yes, Mr Draper.

MR DRAPER: Hello, Mr Economides. Can I ask you to look at paragraph 1.5 of your reply report, please {RC-G/3/7}. Do you see you set out in paragraph 1.5, which follows on to the next page {RC-G/3/8}, what you say are nine key issues that you are going to consider in your responsive case report?

Just a very small point to start with: I think point 3 is the same as point 6?

A. Yes.

Q. Is there a typo there?

A. I think so, yes.

Q. Is it that there are actually eight issues and you have replicated one?

A. Yes, I believe so.

Q. You see paragraph 1.6, if we can go back, please, to page 8 {RC-G/3/8}, identifies materials that you have been specifically asked to consider. Now, the instructions to consider those eight or nine issues and the materials set out there, were they provided to you in writing?

A. My instructions are in an appendix to this report.
Q. Page 192 then, please {RC-G/3/192}. Is that the letter you have in mind?
A. Yes.
Q. If we could look then, please, at paragraph 2.2, starting right at the bottom of the page, it says that you are instructed to provide responsive expert evidence. Then over the page, please {RC-G/3/193}, there is the detail of the instruction. Is that what you are referring to?
A. Yes, yes, and through conversations with Dr Trento, who we were asked to support, we identified a number of issues that we felt were -- which we felt were relevant for him to inform his responsive economic expert evidence.
Q. So if we go back to page 7, please {RC-G/3/7}. Is what you are saying that the instruction to consider these issues, mentioned here, is how you and Mr Trento interpreted, together, what we just saw in the letter?
A. Exactly.
Q. Is that right? If we can just look at some of these issues, please.
THE CHAIRMAN: Just remind me, we are in open session now, are we?
MR DRAPER: We are now, yes.

Number 2 is the inappropriateness of total costs or COGS as a proxy for the MSC in forming pass-on rates.

Number 4, over the page, please {RC-G/3/8}, how firms manage profit margin targets and VAT cost increases do not necessarily lead to price increases. Then the fifth issue there, why costs categorisation and pricing approaches tend to be relatively uniform within given industry sector.

A short point about the issues that I have just shown you, those are not neutrally stated as issues for you to consider but as points for you to make, are they not?

A. They are. The points that we, based on my experience and then the work that we did, we identified the points that I felt would be helpful to contribute to these proceedings. The points of view that I felt were helpful for the -- to consider to support Dr Trento in his evaluation.

Q. In paragraph 1.6 you say you have been asked specifically to consider the paragraphs there listed. Who asked you specifically to consider those?

A. I think those were jointly with Dr Trento and the legal teams. We identified that those were the ones, the paragraphs of overlap with the work that I do, ie I understand that there was a need to be efficient and to some extent manage our focus and the effort that we would spend on this, so we jointly identified references to my name or other matters that were relevant for my area of expertise, because admittedly a large part of the reports are beyond my area of expertise as they relate to economic theory and economic analysis.

Q. Now, in section 4 of your responsive report, you deal with shifts in card payment over time and the relevance of that to pass-on rates, and you address, in particular, Ms Webster's evidence as to changes between the Merricks period and the merchant claims period.

Now, I want to ask you some questions about the sources of material that you have relied on.

A. Yes.

Q. The Merricks claim period began in 1992 and ended in 2008 with a run-off period to 2010, did it not?

A. I presume. So I am not involved in the -- I have not looked at the Merricks claim specifically.

Q. But you do know the period covered by the Merricks claim, do you not?

A. I do not, no.

Q. You did not know what period you were talking about when you addressed Ms Webster's evidence in relation to differences between the two periods, is that right?

A. All I -- I know from Ms Webster's own report, which started in 1995, which I understood at the time, based on her report, was the beginning -- the early part of the Merricks claim, but I am not involved in the Merricks claim and I have not been instructed to look at anything in relation to the Merricks claim specifically.
Q. So just to clarify, you were not aware that the Merricks claim period went back to 1992, is that right?
A. No, I was not.
Q. In section 4 of your responsive report, you do not mention any contemporaneous documents dating from the Merricks claim period, do you?
A. I am sorry, I am not ... I do not understand the question.
Q. In section 4 you have some footnotes --
A. Yes.
Q. -- referring to things like claimant evidence and Ms Webster's report, but none of them is a reference to any contemporaneous document from the Merricks claim period, is it?
A. I am not sure I can differentiate between documents that are relevant for the Merricks claim. I reviewed a number of different documents that were made available to me, and other documents that I have been able to source, but I am not able to attribute them specifically

to the Merricks claim.
Q. Well --
A. But they may be from the period of the Merricks claim.
Q. I am talking about contemporaneous documents, so documents relating to matters in the 1990s or in the early 2000s, you do not refer to any in section 4. Are you saying you reviewed such contemporaneous documents but simply have not referred to them?
A. No, I did not. But for the purpose of the specific section that you are describing, the analysis of card and cash payments over time, I did look at data that goes back to that period.
Q. Yes. The merchant claimant witness statements that you refer to, those do not cover things like cost monitoring and pricing practices in the 1990s, do they?
A. No, they do not.
Q. You did not ask the willing claimants or any of the claimants for information about how their treatment of MSCs may have differed over time going back to the 1990s, did you?
A. No, I did not ask anything beyond what was made available to me or is available in the witness statements.
Q. So if you have not reviewed contemporaneous documents from the period, and if you have not obtained

information from the claimants, can I take it that what you are doing in section 4, when you talk about the Merricks claim period, is speaking from your own experience?
A. The data -- that is correct, my own experience, and the data that I was able to source around the share of transactions value by payment type.
Q. Now, you provide a short CV with your reports, but there is a slightly more detailed one at {RC-M/76.5/5}, please. This is just slightly more detailed than the one with your reports.
So if we look down at employment history, we see that you have been employed at LEK Consulting since 2013, and that is three years after the end of the Merricks claim period, your work at LEK; yes?
A. Yes, I was previously at a different consulting company called Monitor Group.
Q. Over the page, please {RC-M/76.5/6}. So you were at Monitor Group between 2004 and 2013. Where were you working in that period?
A. You mean location-wise?
Q. Yes.
A. London. London as of 2005. I was in Athens, Greece, in 2004.
Q. You were elected to partnership in 2011. So I take it

from 2004 to 2011, you were in a role of associate or something similar?

A. A post-MBA consultant, as I joined after my MBA, all the way to then manager, and then partner.

Q. The role described in the next bullet:

"Leading expert in pricing in retail and consumer in Europe."

What was your geographic focus during that time? Were you focused on retail in one jurisdiction or many jurisdictions?

A. I was focusing on retail and consumer in the UK, in France. A lot of the consumer goods sector in Europe is -- consistent manufacturers of consumer goods distribute their products across multiple geographies in Europe, and I was therefore involved in that. There are multiple -- some of the manufacturers, the pricing engagements that we do for them relate to multiple geographies, so they are looking to determine their pricing strategy at the same time in the UK or in France or in Germany. Those are the majors markets, but there might be also lesser markets that they are interested in as part of one pricing strategy.

Q. So if we focus on the Merricks claim period, which ended in 2008, but with a run-off to 2010, so let us take 2010 as the end point for these purposes, what UK retail

sectors did you work on between 2004 and 2010?
A. Retail sectors? I worked extensively in grocery and food and beverage, and I also worked at the time in telecoms, even though it is not shown as an area of expertise, just because it -- currently, because it was relevant back then, but less so now.
I have worked in fashion. I have worked in discretionary goods. I have worked in financial services as well, and healthcare. I apologise, I have not structured by thoughts around the work that I was exactly doing ten years ago, 15 years ago.
Q. Of course. But it was not -- your work was not uniquely focused on the UK in that period, it was broader at that time?
A. It was -- my work at the time was quite focused on consumer goods manufacturers, looking at the sectors that I described, and looking at a number of their international pricing strategies. So UK was invariably one of the markets, but there were other markets that I looked at.
Q. Was your work at that time principally forward-looking, in the sense of helping firms to set their strategy or take decisions for their operations at that time and going forward?
A. Yes. Defining strategy by necessity has to be

forward-looking. There is no reason to review past strategic choices, other than to inform future strategic choices. So we would review business performance, we would review figures, we would review the evolution of different markets, including the historical evolution, for the purpose of defining a future-looking strategy.

Q. As a general matter, you were not, in relation to your -- the matters you were advising on, you were not looking back to how these firms had monitored their costs or dealt with recovery of costs or price back in the 1990s, were you?

A. No, the 1990s would be too far back. But given the timing of my work in, say, 2005 onwards, the history that the work would assess would typically start in the early 2000s.

Q. None of the work that you were doing related specifically to MSCs or card payment costs, did it?

A. Not specifically to MSCs, no.

Q. Could we have up page 145 of the reply report, please, which is {RC-G/3/145}.

Do you see there at paragraph 4.37, you say:

"In my 25 years of experience as a commercial advisor, I am not aware of a business that specifically itemises the MSC costs in a manner that makes them visible to the senior management of a firm, either as part of management accounts typically reviewed by senior management, or as part of statutory or other external reporting."

Do you think it would have been helpful to mention there that your experience in terms of the UK only went back as far as 2004?

A. I think that I was making a general point, that I do not -- I have never observed MSC costs as being itemised in management accounts, which I think is still true in the sense that MSC costs might be found in other documents, but not in the management accounts themselves. I did not feel it was relevant to specifically qualify the geographic scope, of how the geographic scope of my experience changed over the 25-year period, but it is the case that I was potentially -- well, I was less focused on the UK at the time than I have been since 2005, so the last 20 years.

Q. Yes. Forgive me, I said 2004 in my question, and I think you made clear earlier that it was 2005 that you moved to the UK?

A. Yes.

Q. Do you think it might also have been appropriate to mention that you had not, before this litigation, ever focused specifically on MSC costs or indeed on card payment costs?

A. I have. The fact that I have not observed MSC costs on management accounts does not mean that I have not had to deal with payment costs in my work.

Maybe I am misunderstanding your question?

Q. Maybe we could try it this way: if you had been asked in 2010 whether you were an appropriate person to speak to costs monitoring and pricing practices during the Merricks claim period, starting in 1992, do you think you would have felt competent to provide such expert opinion?

A. In 2010? In light of my increased emphasis since then on pricing, which was previously the case as well, I think that a large part of my work is related to research, and not necessarily always first-hand experience in dealing with some of those matters. If first-hand experience was required, then nobody living could potentially comment on pricing practices some years ago. I think research, I believe, is an appropriate way of infilling and pushing -- moving backwards one's experience to be able to comment on things that happened in the past.

Q. You see, that is very interesting, because I asked you earlier about the absence of reference to contemporaneous documents in section 4, and you confirmed to me that that was evidence you were giving based on your own experience. I think you are rather rowing back on that now, you see, because you do not actually refer to any research or other documents you have relied on in section 4 that shed light on pricing practices in the 1990s, do you?

A. But I am not claiming that I have provided specific expertise with respect to the Merricks claim and the Merricks period. I have only provided, to assist the Tribunal, some information on the penetration of credit cards over time, and that is the extent of my consideration of matters that relate to the '90s.

Q. So perhaps, let us see if we can agree this: you are not in a position to speak as an expert to cost monitoring and pricing practices during the Merricks period, are you?

A. I am able to analyse data from available public sources and reach conclusions based on the available data, but my personal experience does not span those years.

Q. If we look then at the data. If you could turn, please, to page 137 of your responsive case report {RC-G/3/137}. So you see this is figure 2 from Ms Webster's report, I am sure you are very familiar. You say at 4.6 that the rate of growth shown by Ms Webster's graph is "greatly exaggerated". I am going to ask you some questions about that.

You make several criticisms over the next few paragraphs. Let us see if we can take them one-by-one, not necessarily by reference to the words of your report. You say that the figures shown by Ms Webster are higher for recent years because of market changes during the pandemic. Do you recall making that criticism?

A. Yes.

Q. Can we turn, please, to Ms Webster's report at {RC-F/14/116}. You see in paragraph 6.24, if you can just remind -- read that to yourself, please. (Pause)

A. Yes.

Q. Just over the page to finish the paragraph {RC-F/14/117}.

So Ms Webster has set out why it is that she is particularly comparing the early part of one period with the later. It is because that shows the most market change.

A. Correct.

Q. So she has explained quite fairly what she is doing there. So what she does is not to exaggerate the difference, is it, it is just to reflect accurately the difference between the early part of the Merricks period and modern times?

A. I agree with that. I think we also, during the hot-tub, spent time discussing some issues with the data underlying this chart.

Q. We will come to that.

It is true, is it not, that although you refer to the Covid period, the trend of card usage rates and transaction volumes on cards increasing has continued, has it not?

A. Presumably, yes, since -- potentially it has -- yes, that is true. I have not seen the latest data. I know that there has been a new set of data that was provided.

Q. Yes. We can look at that briefly at {RC-Q4/26/1}, please. It has to be downloaded. This is the 2024 UK finance payment statistics. Is that what you were referring to?

A. Yes.

(Pause)

Q. Thank you. This is a fairly large dataset. It has tabs along the bottom of the screen. If the operator can take us, please, to tab 6.2.

So do you see there, 6.2 is showing us transaction volumes in the UK, and do you see that it has continued to increase up to the most recent period that we have?

A. Transaction values, I presume, have also --

Q. Yes. If we go to tab 6.3, please, the same is true for transaction values.

Now, if we go to tab 15.1, there is a bit of detail I wonder whether you can help me with.

A. I think ... it is the wrong arrow.

Q. I think the operator may need to continue going even further right. The tabs have come back. There we go.

The dataset presented here, if you look at 15.1, Mr Economides, looks to be a count-up of the number of point of sale terminals in retail businesses. Now, do you know what definition of point of sale terminal is used for these purposes?

A. I assume it is the machine that goes into a retail environment to process card payments.

Q. Yes, a traditional card acceptance machine that forms part of a larger point of sale; is that your understanding?

A. Yes.

Q. So this would not include, then, things like taking credit or debit cards payments directly on to a mobile phone?

A. I cannot say.

Q. Thank you.

If we could go then to -- back to the points you make about figure 2, if we could have your reply report at {RC-G/3/138}, please. At paragraph 4.7, you explain that, rather than Ms Webster's approach of looking at the earliest data and more recent data, that you prefer to look at the mid-points of the Merricks period and the merchant claim period. Now, I suggest that your approach has its own merits and demerits. It will, for example, miss out some of the true picture if it were very different in the early '90s from in 2000. That is fair, is it not?

A. That is fair, yes.

Q. Effectively, your approach compresses the difference between the two periods to only 17 years, whereas in reality we have a stretch of some 32 years between the start and the end?

A. Yes. The logic is that by looking at the mid-points, you are almost averaging, and you are looking at a trend that represents the average of the two periods rather than the full-length, the starting and the end point, which may be a little bit overstating the growth that took place.

Q. But it equally will obscure the position if you had dramatic differences, between, say, 1992 and the year 2000, if you did not have a consistent trend but something different from that?

A. Yes, but if you have, for example, a very high rate of increase at the beginning of the period, then you would assume that your observations as to the majority of the years in that period would be tainted and influenced by that increase that happened at the beginning of the period, so you would need to somehow compensate for that in a different way.

Q. For present purposes, let us take your mid-point comparison. You say that if one takes those two years of 2000 and 2017, that debit card usage increased by only 36 percentage points. Do you see that?

A. Yes.

Q. That is an increase from 3 to 39%, so that is debit cards increasing by 13 times. That is very substantial and potentially quite significant, is it not?

A. Yes, it is significant. I think obviously the starting and the end point are important, so 13 times 1 can be 13. Three times 13 is 39, obviously. If they were to move from 6 to 70 -- to 78, that would be even more significant. So it is both the magnitude -- the number of times of the increase, the magnitude of the increase, but it is also the starting point. But I think we have previously discussed that there are some issues with the dataset that --

Q. I am going to come to that. I am just focusing now on what you say about it.

If we can look at credit card usage. So with credit cards, you say, again using the world "only", that it increased by 8 percentage points and the absolute figures are 4% and 12%. So there is a threefold increase as regards credit cards, is there not?

A. Yes, but at 12%, I would argue it is still relatively low.

Q. Well, if we add the two together, debit and credit, we go from 7% to 51%; yes?

A. Correct.

Q. So focusing on not just the amount of the increase, absolute or relative amount of the increase, but comparing the figure at the start with the figure at the end in terms of likely significance, we have gone from a small minority, 7%, to a majority, 51%?

A. Yes. I was making the point only compared to the numbers provided by Ms Webster which went from 3.5 to 85.

Q. Yes, that is bigger than that, but it is certainly very substantial and potentially significant, is it not?

A. Yes, but I would argue less so than the previous range.

Q. You identify in paragraph 4.8 what you call three significant issues with Ms Webster's analysis. So your first criticism is the data presented is incomplete as Ms Webster has omitted to show the share of payments made by cheque.

If we can go back over the page, please, to page 137

{RC-G/3/137}, so we can see what you are talking about, the percentages shown on here are calculated by reference to a total that does include cheques, are they not?
A. They are. I think the point that I was trying to make is the one that I made during the hot-tub, that the -- I would have expected, or I think it would have been appropriate to include the line for the cheques, because that would have highlighted the issue that exists with cheques, which is the fact that they are used both for B2C and (inaudible).
Q. Well, it would have done two things. It would have given us a lot of comfort, because the numbers would have added up to 100 at each stage, which is always nice to see.
A. Potentially, yes.
Q. We will come on to your point about cheques, that potentially some of them -- some of them should not be in the denominator, is your point about cheques, because they will be partly retail and partly business to business. We will come to that in a moment.
A. Yes. If I may add, I was -- I felt that adding the line for the cheques would have made the analysis more transparent in terms of highlighting the issue, which was highlighted in the footnote but not in the chart

itself.

Q. If we could look at your version, then, that does include the line. It is at {RC-Q1/13/1}. This was the analysis that you provided shortly before the hot-tub session that you have just referred to. Was there any reason why you did not provide this with your responsive report or shortly afterwards?

A. I had not identified the issue in the way that it occurred to me when the materials for the hot-tub were provided to us, because when that material was provided to us, I felt that I would have to prepare myself to discuss it, so I went back to the data to try to understand more carefully what points I could make during the hot-tub, and that is why this data arose.

Q. So what we see effectively is the cheque line reducing, and starting to reduce quite dramatically from around the middle part of the first decade of this century, is that fair?

A. That is fair, yes.

Q. Could we go back to the second point that you make, so back to page 138 of the responsive report, please {RC-G/3/138}. You say here:

"The data includes business to business transactions and, as such, the shares by payment methods are not representative of consumer to merchant transactions."

Now, Ms Webster in fact excluded from the denominator direct debits and automated credits, did she not?

A. I do not think, though, that is sufficient to --

Q. Just answer the question first.

A. Yes, yes, yes.

Q. You agree with that decision, do you not, to exclude them on the basis that a very large proportion of those will be business to business transactions?

A. I agree that they are not relevant, but I am not sure that that is sufficient to make the analysis relevant.

Q. So do you agree that direct debits and automated credits ought to be removed? Just looking down, that deals with your third point there, does it not? So you in fact agree with Ms Webster that it is appropriate to have excluded direct debits?

A. The position that I took when I was writing my responsive report is unfortunately that the dataset is unsalvageable, and that I needed to find a different dataset. That is why we looked at the dataset from the British Retail Consortium.

Q. Yes. I will ask you about the British Retail Consortium data. My question was whether you accept that Ms Webster was right to exclude direct debits and, therefore, that your third criticism therefore falls away?

A. I am not -- I am not sure that I agree with that point. I think that the right --

Q. Pause there. So let us go to the transcript of Day 5, this is the hot-tub, please, at page 54 {Day5/54}. Do you see at line 19, this is you going through Ms Webster's data and making your comments on it there. So if you can just read to yourself, please, from line 19 to the end of the page and indicate when you have done that. (Pause)

A. Yes.

Q. Then over the page, please. If you read the rest of this page, I will draw your attention to some particular parts.

You say here, at line 3:

"Answer: The reason is that Ms Webster has excluded automated payment and direct debits from the chart. Automated payments have had explosive growth. Now, automated payments are not particularly relevant in a retail environment, so it is not completely inappropriate to exclude them. Direct debits are quite consumer-oriented but they are also not particularly applicable in the retail environment, so I think it is also appropriate to exclude them."

Just stop there and I will show you one more.

Page 59, please {Day5/59:4-12}. You say:

"... Ms Webster has made an assumption, and I cannot disagree with that assumption, that we can remove automated credit because they are not relevant for retail environment. We can probably also remove direct debits ..."

So I just want to be clear --

A. I go on to say that they are relevant for some claimants, one of the claimant is mentioned there, and others will be relying on a lot of direct debits, and they are probably less relevant for traditional retailers.

So if one were to do an analysis specifically for traditional retailers, that would -- it would indeed be appropriate to remove direct debits. But when businesses like telecoms or consumer services are included, I think the removing direct debits creates some problems.

Q. But if you want to do a total economy, total retail economy view then, if you have to include or exclude direct debits, your view would be, like Ms Webster, that it is better to exclude them because they will be so, in general, dominated by business to business transactions?

A. Direct debits would not be dominated by business to business transactions, they would be dominated by --

direct debit is primarily a -- there is a significant component that is consumer to business transaction. There are other mechanisms that are more appropriate for business to business transactions.

I think that it all comes down to do the analysis properly and what is the denominator. If it is the traditional retail space, people going into stores and buying, then it is fair to exclude direct debits. If we are looking at a broader definition of sales that includes sales and services, then direct debits have to be included.

I refer also to the data provided by Mr Coombs that did look at sales, consumer sales -- consumer services. There are significant other issues with this, I am not sure if you want to go there. But if you do include services, then you have to include direct debits.

Q. If we could go back to page 137 of your responsive report, please {RC-G/3/137}, just to focus again on the graph. I thought we were agreed on direct debits and automated payments, but let us park that for present and focus on your concern about cheques.

Your point on cheques is essentially that some of the cheques will have formed part of the retail economy, and so including all cheques will tend to depress the figures shown for cards, because the denominator is

bigger than it ought to be. That is your concern?
A. Yes, and that affects the first half of the chart where the cheques were prevalent. It does not affect the second half of the chart where cheque have declined.
Q. Directionally, the higher proportion of cheques that were business to business, the bigger the distortion in the early period will be; that is your point?
A. That is correct.
Q. Now, during the hot-tub you said if one were to assume that two-thirds of the cheque payments made in 1995 were business to business, that would increase the card payment percentages very considerably, and you mentioned a figure of 60% for card payments. Do you recall that?
A. I do recall that, but I think I made it clear at the time that was just -- there was a degree of uncertainty there. It was based on an analysis of the numbers in 2010 where I was contrasting BRC data with the data from APACS.
Q. Essentially you were using those numbers as an illustration, is that fair?
A. That is absolutely fair.
Q. You were not suggesting that it would in fact be appropriate to assume that two-thirds of cheques in 1995 were business to business. That was not an assumption that you made?

A. Not for '95. For 2010, there was some evidence to suggest that that was the right percentage, but not for 1995.
Q. It follows then, I think, that you were not putting forward as a realistic percentage the idea that back in 1995, 60% of the retail economy comprised payment by cheque -- forgive me, by debit and credit cards?
A. No, I cannot have a view on this. I was just extrapolating from 2010 and --
Q. You say you do not have a view, because you do not know what proportion of cheques back in 1995 were business to business and what proportion were retail?
A. I do not.
Q. One final question on this. The figures for direct debit shown here, that would also, presumably, would it not, include some proportion of business to business payments?
A. I would assume that is the case.
Q. But like cheques, you are not able to express a view on what the proportion is?
A. No, no.
Q. So it follows, does it not, that the figures for card payments shown on this graph would also be affected somewhat by the inclusion of business to business transactions, just as with cheques, and, again, we do

not know the percentages?
A. Yes, although across the period as well. So it might be that some of the high growth that we see in recent years, some of it might be linked to business transactions, although they do align pretty well with the BRC data, which gives me at least confidence, based on those two data points, that the recent figures are more representative of the retail environment.
Q. Now, you do prefer the BRC data for the period to which it relates, but that data only goes back as far as 2010, does it not?
A. That is correct.
Q. So it does not assist us much with understanding what the position was in the 1990s?
A. No, it does not -- it did assist me to have one data point to interpret 2010, which is the beginning of the BRC data, in order to understand what percentage of cheques might be business versus retail at that point in time -- consumer at that point in time.
Q. You referred earlier to a distinction between what you called, I think, traditional retail, which is things like high street retailers, and other things forming part of the retail economy, where, for example, subscription models might predominate, gyms and so on?
A. Correct.

Q. The BRC data will be traditional retailers in that sense, will it not?
A. It will be very much biased towards that, yes.
Q. I want to explore with you a couple of reasons for which card payments have come to predominate the retail landscape in recent years. The first one is chip and PIN technology. Are you aware of when chip and PIN technology was introduced in the UK?
A. I am aware that the UK was a leader in that technology. I believe it was early 2000s, was it not?
Q. It was. We have a payment statistics report from 2006 {RC-J5.2/1/1}, please. If we could turn, please to page 45 {RC-J5.2/1/45}. Do you see there in the right-hand column there is reference to chip and PIN technology, and in the final paragraph, do you see about halfway down:

"National roll-out began in October 2003. At the beginning of 2005 retailers that had not upgraded their terminals to accept chip and PIN cards became liable for any fraud losses that new technology could have prevented. From February 2006 chip and PIN cards holders could no longer expect to be able to sign for their transactions."

So it looks like chip and PIN cards were available from 2003 and likely picking up in terms of presence and importance from around 2006. Does that match with your recollection?

A. Yes.

Q. Now, before that, it seems from this document -- I am showing my youth and I am proud of it -- that before that, card users would hand their payment card to the retailers who would swipe the card through a machine and that would then produce a receipt for the card user to sign. Is that right?

A. Yes, and it was even worse; people would use cheques and guarantee them with a reverse of a card, so ...

Q. What happened, do you know, to those signed receipts that were handed back to the retailer? Were they taken to the bank along with cash?

A. No, it is not my -- my understanding is that they are not taken to the bank. I think practices may differ, but I think they were retained as proof that a transaction had taken place. But I am not -- I cannot comment on the exact process at that point in time.

Q. So the importance of this technology, whatever the precise details of the technology before it, that was an important development in terms of the convenience of card usage, was it not?

A. You refer to -- undoubtedly it was, but you refer to an example, to a process on the side of the merchant.

I would argue that a lot of the penetration in credit cards and debit cards were driven by consumers using them in addition to merchants accepting them.

Q. It was also more convenient for a user to be able to enter a PIN number?

A. Absolutely.

Q. Another change that increased convenience for users: contactless payment. I am testing you again, Mr Economides. When did contactless payment come into the UK?

A. I am going to say -- I would prefer not to say, but if it is important ...

PROFESSOR WATERSON: It is like Mastermind.

THE CHAIRMAN: You do not want to show your age!

A. I am not as proud!

MR DRAPER: Mr Holt is slightly older than both of us and, more relevantly, has a report that addresses it. It is number 8, which is at {RC-K/21.5/55}, please.

You see at paragraph 149 there, he refers to:

"The introduction of contactless in 2007, which increased the ease and speed of card transactions ..."

He says that:

"... might be another reason for increased use of cards ..."

While we are here, can we turn to page 57, please

{RC-K/21.5/57}. So keeping that in your head, that they came in in 2007, but what figure 22.15 shows us is that in terms of the proportion of payments made, it is from around 2014/2015 that they came to make a significant part of the total of what are referred to here as spontaneous card payments. Do you see that?

A. Yes.

Q. Just for the Tribunal's note, rather than for you, Mr Economides, "spontaneous card payment" is defined in the 2006 statistics report that we looked at, at {RC-J5.2/1/40}, and it simply means non-recurring payments, so not things like subscriptions, but payments in a retail environment, in a shop, for example.

So it looks as though contactless came in in 2007 but took off somewhat more recently than that, maybe in the last ten years or so, and the introduction of contactless payment was an important change in terms of cards becoming more convenient for users, was it not?

A. I would agree with that.

Q. These days we also have, do not we, card payment being taken by mobile phone or card readers that interact with a mobile phone, rather than needing a point of sale?

A. That is indeed correct.

Q. So what we have seen here is two important, I suggest important, technological changes that assisted in terms of making card usage more convenient. One came very much in the second half of the Merricks claim period, and one came to importance, at least, at or after the end of the Merricks claim period. Do you agree with that?

A. Yes. Chronologically, yes.

Q. Could we turn, please, to page 140 of your responsive case report {RC-G/3/140}. Do you see at paragraph 4.16, you say -- you refer to an absence of information, and you then say:

"It is not possible to provide conclusive evidence that none of the merchants have changed their pricing approaches with respect to the MSC. I am, however, not aware of any instance that this has been the case."

Now, given what we have discussed about the extent of your knowledge over the Merricks claim period, would you agree with me that you really ought to have caveated that by reference to your lack of experience and knowledge of the Merricks claim period?

A. I would agree -- I am not sure I would need to caveat it, because I am making a simple point that I was not aware of any instance. I am not claiming that I am proving anything by the lack of knowledge of that instance.

I think also the way I considered this matter is that credit cards have -- and debit cards have become more important over time, and the fact that they are taken or not taken into account, the way they are currently, it would be hard to believe that, going backwards, they were more significant in pricing decisions than they are today. So if they are not significant today, when penetration is as high as it is, when MSCs are not taken into account in pricing decisions in the majority of cases, I am not sure why they would have been taken into account 20 years ago when penetration was lower?

Q. Stopping there. That is a very important point, if I may say, about the structure of your conclusions in section 4. In essence, what you are saying is you do not think MSCs are, in recent years, sufficiently important, visible, and so on, to feature in pricing, and given that they were less important, less significant and less visible in the Merricks claim period, you do not see why the position will have been any different. Is that fair?

A. That is fair.

Q. So you are saying that directionally the Merricks claim period is probably worse in terms of showing pass-on of MSCs, but your view is that the position is bad enough now that being worse does not make any difference. Is

that a fair caricature?
A. It is hard for me to have a view as to the Merricks period, as you successfully proved at the beginning of your cross-examination, but I have not observed -- I have not seen any evidence that suggests that the price -- that MSCs were any more relevant to pricing decisions than they are today, and I would expect that, based on logic and the research that I did do, that there was no change whereby historically they were taken into account in pricing and then right now they are not.
Q. We will come back to that in a moment. Maybe focusing on an example will help. If we go to page 142, please {RC-G/3/142}. We are dealing here with -- do you see you set out your -- some of your conclusions in 4.24, and you refer specifically in 4.24.2 to travel and leisure brokers?
A. Yes.
Q. You refer to businesses that currently include the MSC cost in their COGS. Do you see that?
A. Yes.
Q. You say you are not aware of any information to suggest that MSC costs were previously treated as overheads in the travel and ledger brokers sector and you can think of no reason why that might be the case; yes?
A. Yes.

Q. At 4.24.3, you mention specifically online businesses like Travix, and you say they are unlikely to have changed their accounting practices during the relevant period. Do you see that?
A. Yes.
Q. What do you mean by "the relevant period" in that passage?
A. Well, I was commenting on that entire period that was represented in the charts.
Q. So all the way back to 1995?
A. Well, I was not that specific, I was looking at the mid-points, but --
Q. Including the Merricks claim period? You are not just referring to the merchant claim period?
A. Yes.
Q. Travix was founded in 2011, was it not?
A. Yes, I am not aware of the exact date when they were established.
Q. In the 1990s, travel agents would have been at least overwhelmingly bricks and mortar businesses?
A. In the '90s, yes.
Q. They would have had the overheads associated with maintaining a bricks and mortar network, would they not?
A. Yes.
Q. So things like rent, labour costs, business rates,

cleaning, all of the substantial overheads associated with a high street presence. Is that fair?

A. Yes.

Q. They would therefore have needed to generate substantial gross margins to service those overheads, would they not?

A. Yes.

Q. In all likelihood, they would have been taking a substantial proportion of their payments by cheque back in the 1990s, would they not?

A. Potentially, yes.

Q. Card payment would have been much less significant for them than for an online-only operation like Travix. Is that fair?

A. That is fair, yes.

Q. MSCs, therefore, would have formed a very much smaller proportion of the overheads incurred by a bricks and mortar travel agent than by an online travel agent in recent years. That is fair, is it not?

A. Correct. I think the point was simply that with the growth of online travel agents, obviously cheques were no longer the typical means of payment, so cards become a lot more prevalent. So my expectation is that from the inception of those online models, those businesses would be a lot more likely to represent MSCs as COGS

because of their business model.
Q. Those are businesses in the merchant claim period, are they not?
A. They are -- yes, they are in the merchant claim period.
Q. Just focusing on these travel agents in their offices on high streets. They would not have had available, would they, in the 1990s, the kind of sophisticated pricing technology that merchants can use now?
A. No, they would not, although I would not want to speculate as to --
Q. They would not have the kind of granular realtime information about competitor prices that merchants can now obtain in sectors like online travel agency?
A. The nature of competition was very different back then. People would be a lot less able to shop around. They would typically walk into a travel agent and choose out of the products that were offered to them.
Q. Yes. Having regard to the differences that we have just discussed, do you genuinely still see no reason why a travel agent in the 1990s might have adopted a different approach to pricing and treated MSCs differently from a firm like Travix, do you genuinely see no reason for that?
A. I was not commenting on traditional travel agents with a high street presence; I was specifically looking at

the online segment of this, of which Travix is representative.

Q. If we look at paragraph 4.25, still on the same page, you say that:

"For the majority of businesses, the position of the MSC in the P&L statement is unlikely to have changed."

Are you talking there about all the way back to 1992?

A. I am talking about specific businesses that were evaluated and considered, that for each of those businesses I did not have any evidence that the position of the MSC in the P&L has changed.

Q. You also had not looked for any evidence relating to the treatment of MSCs in the 1990s, had you?

A. No, not in the 1990s, but I was making a point based on both the accounting standards that we discussed earlier, and the understanding of the business model of those different businesses, and I saw no -- I see no reason why the accounting treatment of the MSC for those businesses would have changed.

Q. You say you cannot rule out -- in the same paragraph, Mr Economides:

"I cannot rule out that it is possible that a small minority of businesses may have changed the treatment of MSC costs from overheads to COGS or vice versa, which may influence the likelihood that the MSC costs were or were not passed on."

Given your lack of knowledge about the Merricks claim period, you are not able to say whether it is a small minority or a large minority or anything else, are you?

A. Well, I have laid out the reasons why I think that most of the businesses would not have an incentive to change the accounting treatment of the MSC. I have also explained what the principles that apply to the accounting treatment of the MSC are. But the point that I am making here is that I cannot rule out that some businesses may have changed, but based on my assessment, I did not see a reason why that -- the accounting treatment would have changed.

Q. Yes. You come on to consider in your report --

PROFESSOR WATERSON: Can I just ask: you say in the beginning of that paragraph "for the majority of businesses", so that is a quantitative statement, it is saying more than 50%. What do you base that figure on?

A. Well, I base it on the fact that the accounting principles applied before and during that period, and it is my understanding, as I explained previously, that the accounting treatment of the MSC is not coincidental, it is driven by the business model of the business.

Therefore businesses that treat it as overhead have a reason to do that, and unless their business model has fundamentally changed, for example they came from -- they moved from being what is called the merchant model, where they buy and resell products, to one where they are just making bookings on behalf of a client, the accounting treatment of the MSC, the same principles would apply, and it would still be in the same location.

So to give you an example, Booking.com --

PROFESSOR WATERSON: We have had the Booking.com example already.

A. Well, it is in a period of transition, so I cannot rule out that at some point it may change, the way they treat the MSC. But I did not see any evidence that I considered that it is highly likely that business models of many companies have changed over that period.

PROFESSOR WATERSON: My point was really about the quantitative statement.

A. Yes.

MR DRAPER: You go on in your report to identify certain factors that have changed between the early period and now. The first that you mention is in paragraph 4.29 on page 143 {RC-G/3/143}, which is that MSC costs are more substantial now than they previously were, and you say that that possibly increases the likelihood of them being taken into account in pricing decisions.

The first point on that: MSC costs are in fact much more substantial now than they were in the 1990s, are they not?

A. Yes, that is correct.

Q. We know from your proxy report that you consider the size of a cost to be important to its likely treatment. That is right, is it not?

A. That is right. Obviously the size of the MSCs is related to factors such as card penetration, and I think we have debated the fact that card penetration -- the change in card penetration may be a bit different to what was presented in Ms Webster's report.

Q. In your proxy report, when you are comparing a potential proxy to the MSC costs, you treat it as effectively an argument against that proxy where it is substantially larger than the MSC, do you not?

A. That is correct.

Q. Just to give a feel for that, in many instances you say that proxies are, in terms of size, potentially inappropriate where they are four or three or five times larger than the MSC. Is that a fair summary?

A. Yes, that is fair.

Q. So they do not need to be many, many multiples larger. In your view, if a cost is, say, four times larger, that is potentially going to make a difference?

A. I think four times larger is a bit borderline. We were focusing on excluding, predominantly. Obviously we were constrained as to the proxies we had to choose from, but we were looking for something that would be more than ten times larger. So I would argue six or eight times larger would be problematic for the purposes of the proxy exercise. Three times larger, I know that there are instances where we had to -- or even four, potentially, we had to agree to that.

Q. Here I would just say that I have here four examples where you considered a cost to be sufficiently large that it, for that reason, would not seem to be a good proxy, where it was only four or -- four times larger or three and a half times larger; you are not going to disagree with that, are you?

A. No. It was also related to whether we could find other things that were closer in size.

Q. So I think you probably -- we are not going to agree on precise figures, but you probably agree that that kind of relationship would be seen for comparing MSC costs now to MSC costs back in the 1990s. We are going to be talking multiples in terms of scale, are we not?

A. Yes. There is no disagreement around that. I think the point -- it is important to differentiate between the proxy exercise and the point that you are making now. In the proxy exercise, we were -- I was not making an assessment as to the rate of pass-on, I was looking for a cost that resembles the MSC but is bigger and potentially can be analysed.

Because I could not pronounce on the rate of pass-on, all I was doing was supporting the expert economists and choosing a cost that would share as many characteristics as possible with the MSC. This is a different point that is being made in this paragraph. This paragraph is about the fact that I believe that visibility of the MSC is still low at this point in time.

Q. Yes.

A. We -- I take it that it does exist in accounts, a (inaudible) cost exist in the accounts, but in terms of its importance in management conversations, it is still a minor cost, and therefore it is unlikely that it would have been more visible in the past or more relevant for business decisions.

Q. Yes. So another change that you would, I think, accept is that although MSCs still now often feature in a broader category of costs in accounts, they will now often make up a very substantial proportion of that category, will they not?

A. Yes.
Q. Whereas if you went back in time and, say, you had a category of payment costs or costs associated with transactions, back in the 1990s a very substantial chunk of that would relate to cash payments?
A. I cannot speculate on this, but I also would like to submit that I am not confident that cash handling was accounted for in the same way in the P&L, i.e. that businesses would recognise the cost of cash in the same way.
Q. You do not know?
A. I do not know.
Q. Another factor that you accept has changed between the Merricks claim period and the merchant claim period is that MSCs are now more of a common cost. You accept that as a proposition, do you not?
A. Yes.
Q. There is a higher commonality across merchants?
A. That is true.
Q. Can we have up page 148, please {RC-G/3/148}. So you say, at paragraph 4.47, that although you agree in principle with Ms Webster, that the increase in card penetration likely increases commonality of MSC costs across merchants:
"... I consider that this commonality of costs can

only have affected pricing decisions to the extent that ..."

Then you set out three conditions.

A. Yes.

Q. Do you see that?

So you are considering whether commonality affects pricing decisions. I just want to put to you, to see whether you were aware of this, that when Ms Webster is talking about commonality, she is referring to that factor as changing the likely rate of pass-on on the assumption or in circumstances where MSCs are treated as a variable cost. So her reference to commonality is not about how the MSCs are treated, it is about what the consequence of that is for pass-on rates. Were you aware of that?

A. I am aware that there is an economic definition of industry-wide, and this is the point that I am trying to make in this paragraph, that in order, from a business practice perspective, for an industry -- for a cost to be considered industry-wide, and to impact pricing decisions as an industry-wide cost, it has to be recognised as such.

Q. So essentially you are dealing with commonality in a different way from how Ms Webster is?

A. I am.

Q. You are dealing with it in terms of whether you think that the increased commonality would mean the MSCs were taken into account in pricing?
A. Correct.
Q. Can we look then at your conditions, please, that are still up on screen.
So the first requires that MSCs be specifically visible to management and discussed. So you are addressing your mind, with this factor, to a conscious or deliberate decision to change prices in response to a change in MSCs; is that right?
A. Yes.
Q. Your second and third conditions, if you just remind yourself of those, those are also about a pricing change being prompted or triggered by a change in MSCs specifically, is that fair?
A. Yes.
Q. Now, I want you to consider with me a hypothetical and see whether you agree with what I conclude from it.
So let us consider a firm that proposes to make a price increase prompted by general costs inflation, and the question is not whether to raise prices but by how much. Are you with me so far?
A. Yes.
Q. Now, assume with me that costs other than the MSC make

it necessary to put through a price increase. Do you follow that?
A. Yes.
Q. So the price increase would happen in the actual world and also in the counterfactual world of MSCs with very low or zero. Are you with me so far?
A. Yes.
Q. Assume that in the counterfactual world, however, because MSCs are very low or zero, when the merchant comes to decide on the scale of the price increase, they choose a smaller price increase. Do you follow?
A. Yes.
Q. That might be because, with MSC costs being smaller, they can hit the same EBITDA target with a smaller price increase?
A. That is where I will -- I will want to express some concerns, because there is an assumption in what you are describing that businesses are looking to hit a certain EBITDA target, but businesses are looking to maximise EBITDA. So that is one point, that if in a counterfactual scenario they felt that there is an opportunity to increase prices and thereby drive up volume or gross profit, they would do that, irrespective of whether they only need to do it to some extent to pass on inflation. They could go beyond that. So in

a counterfactual scenario, they may very well implement very similar price increases that they would in the default scenario.

I think the other thing to also note is that you refer to inflation, but I think businesses will not have a complete P&L-wide sense of inflation. When businesses talk about inflation, if it is a grocery business talking about inflation they will look at the suppliers and how much extra they are charging for their products, and they would consider as inflation the inflation in raw materials or things that they purchase. They may look at the wages and they may say: we have an inflation in the wages of X. They will -- so I think we -- when they say passing on inflation, it might not be that you pass on every element of inflation that impacts your P&L, it might very well be that you pass on the ones that are more visible.

Q. The EBITDA target is not arbitrary, is it? It is the firm's expectation of what it can reasonably achieve in the market with regard to competitive conditions, for example?

A. EBITDA cannot be calculated in isolation. Businesses can not look at the competitive environment and say: this is the EBITDA that I can achieve. Businesses, as I think the court has heard many times, they will

manage their prices in the best possible way, they have engines to do it, they have people that do it, and then they try to configure the business, configure the overhead to deliver the best EBITDA possible.
Q. You have expressed several times in your report the point that it can be difficult to put through price increases because of volume loss. Do you recall expressing that concern?
A. Yes.
Q. So a merchant that is able to achieve its target EBITDA margin with a smaller price increase is taking a lower risk of losing so much volume that it wipes out the benefit of the price increase, is it not?
A. I still I am not -- I am still not agreeing with you on this notion of EBITDA target. EBITDA target is a relative term. EBITDA target is a business looks at the performance of one year and they say: we would like to achieve 2 percentage points of improvement next year. If the pricing engine says that actually you can achieve 3 percentage points, they will take it.
So businesses are not solving -- the pricing teams are not solving for an EBITDA, they are solving for the best possible price to put in the market, whether you look at it from my perspective as a strategy consultant and or you look at it from an economist's perspective.

Q. Let us not worry so much about EBITDA targets. But if you assume with me, specifically, that a lower price increase might be put through under the circumstances that I have described, you do not like EBITDA targets being the way that that happens --
A. Sorry, when you say the circumstances you describe; in the counterfactual?
Q. Yes, where MSC costs are lower, therefore a price increase still occurs but it is smaller, because --
A. I am not agreeing with you that MSCs and price -- and level of price increase are related in the way that you are describing. I believe that for claimants that are dealing with MSCs as overheads, the management of those overheads is quite removed from pricing. There are many instances where businesses are faced with an overhead challenge where they are realising that their gross profit is declining and their overheads are either stable, or even increasing in some cases. That could very well be because they are hit by inflation both at the gross profit and at the overhead level. They will seek to reduce the overheads, that is the natural instinct of every business. That is the way the economics of business work. Because overhead ratio, it is a measure that I have described in my report, is overheads as divided by revenue, and at that point in

time, if you are trying to manage overhead ratio by increasing prices, you may -- in an elastic market the overhead ratio deteriorates.

Q. If we are talking here in particular about an overhead cost that is common to the firm and its competitors, and will be known to all of those competitors to be common, in the sense that all of their principal competitors are also incurring the same cost, then it makes a lot of sense to take it into account in deciding on the size of a price increase, does it not?

A. No, it does not, I am sorry, because the overhead -- there are any overheads that move in the same -- at the same time, from period to period. When a business is looking at its overheads, they see a lot of movements up and down, and they will not reach a conclusion that MSC went down, so therefore we have to decrease our prices. They will look at overheads.

The other important point is when there is a budget discussion, functions will -- businesses will come with a wish list of things that they want. They want a new IT system, they want to add people to the finance function, they want to increase marketing spend. If one cost goes down, in the budget conversation the more -- most likely outcome is that they will say: now we can fund the IT system, now we can do this other thing.

Overheads are more likely to move between each other than then move to gross profit and to pricing.

Q. When you say they are more likely to move between each other, are you thinking there of a situation in which a merchant responds to an increase in one overhead by seeking to negotiate down the costs imposed by other suppliers?

A. I am very happy to discuss this topic. I have made that point in the hot-tub. When overheads are increasing faster than revenue, the natural instinct of a business will be to reduce the overheads, to -- and the overheads are reduced in three different ways. I can go into this if you ...

Q. I do not think we have time for that.

THE CHAIRMAN: Talking of which, how much longer are you going to be?

MR DRAPER: About five minutes, I think.

THE CHAIRMAN: All right. Shall we carry on and then take a break after that?

MR DRAPER: I think that would make sense, sir.

MR WILLIAMS: Just to note, Mr Draper is already about 20 minutes over schedule. I do have up to an hour with Mr Economides too. My allotted time at the PTR, in fairness, I noted 45 minutes, but of course since then Allianz and Primark have gone away and we have made savings in the timetable. I just wanted to alert you to that. Mr Draper has spent about 55 minutes with Mr Economides on the Merricks claim period, and so I do have points that I need to put today. I am conscious that might squeeze time for re-examination as well.

THE CHAIRMAN: Right, I think, looking at ... you were due to have 45 minutes, I think?

MR WILLIAMS: Yes, Mr Draper was due to have an hour and I was due to have 45 minutes. I will try my best to cut my cloth --

THE CHAIRMAN: We certainly have to finish today with Mr Economides.

MR DRAPER: If we could turn then to page 152 of your report, Mr Economides. This I where you summarise your conclusions about the differences between the two periods. Do you see that? {RC-G/3/152}

A. Yes.

Q. It is paragraph 4.61. So you identify two changes, an increase in the size of the MSC and the MSC becoming more essential to merchants. Now, both of those changes, all else being equal, would tend to imply higher pass-on in the merchant claim period compared to the Merricks period, would they not? Directionally, that is what they do?

A. Directionally, yes. But the materiality of the change is also relevant in this assessment.

Q. Then in 4.62, you say that those changes:

"... can only have affected pricing decisions to the extent that ..."

You then set out the conditions that we have already been looking at?

A. Yes.

Q. Yes. So you are again considering, are you not, a conscious decision to make a pricing change in response to MSCs specifically, so prompting or triggering a change; yes?

A. Yes.

Q. You say in 4.64 that you would expect pass-on rates to be similar across the two periods. We do not accept that for reasons that you and I have discussed. But see if we can agree on essentially the thrust of your evidence: you agree that there are potentially important differences between the two periods, do you not?

A. I agree that some of the factors that I think are relevant have changed, but I assessed these specific changes and I did not find them to be material to the extent that the pass-on rate would have significantly changed between the two periods.

Q. Let me see if I can summarise you approach and see whether you agree. The thrust of your evidence is that conditions, even in the merchant claim period, are not conducive to changes in MSCs resulting in changes in prices, yes?

A. Correct.

Q. You accept that there are relevant differences between the merchant claim period and the Merricks claim period, and you agree that those changes directionally would tend against MSCs changes, resulting in changes in prices; yes?

A. Correct.

Q. So, essentially, because you consider conditions are not conducive even now, when they are more in favour of MSCs being taken into account, it follows that they were not taken into account in the Merricks claim period?

A. I think I agree with you.

Q. So if you assume with me, for the sake of argument, that many merchants in the merchant claim period do take MSCs into account, expressly or implicitly, you are broadly aware of the arguments about that, about MSCs affecting prices, assume with me that they do, then your evidence would be that, directionally, there was probably less of that behaviour in the Merricks claim period. That would follow from the logic of your report, would it not?

A. Yes, I think to the extent that there was -- there is pass-on in the merchant claim period, yes, by

implication it would be less in the period of Merricks, but that is based on this framework that I have set out.
MR DRAPER: Thank you. No further questions from me, sir.
THE CHAIRMAN: Thank you. Right, we will take a ten-minute break.
(3.23 pm)
(Short Break)
(3.30 pm)
Cross-examination by MR WILLIAMS
MR DRAPER: Sir, with apologies for interrupting Mr Williams, looking at the time and Mr Williams' estimate, I wonder whether Ms Webster can be released for the evening?
THE CHAIRMAN: Yes, I think so.
MR DRAPER: Thank you very much.
THE CHAIRMAN: I know I asked for her to be here, but, yes, that is absolutely fine. Thank you.
MR WILLIAMS: Good afternoon, Mr Economides.
A. Good afternoon.
Q. Let us begin, if we may, with sector extrapolation. Mr Jowell KC has already covered this with you in some detail so I can be very brief. The 30 sectors that you look at, that is the nine that you look at directly and the 21 additional sectors by extrapolation, they do not cover the UK economy as a whole, do they?

A. No, they do not.
Q. Rather, they just cover the businesses represented by the SSH claimants?
A. That is correct.
Q. So on your division of the UK economy, how many sectors of the UK economy are not covered by your analysis?
A. I have in my report, the last section of the extrapolation report, I have looked at that, I do not know if you have seen it, but I have defined a number of sectors, and in order to secure coverage of a significant percentage of the economy, I believe that the assessment carried out so far covered about 70% of the relevant economy.
Q. Could we actually turn to that, please. I do not have the reference to hand, but I believe that is at the end of your second report.
A. {RC-G/3/183}.
Q. We will just wait for that to come up on the screen.
So what I understand you to be doing here is coverage of Visa sub-sectors in your reports, and 30 of those sectors are the ones that you have looked at, is that correct?
A. Yes. So to explain this exercise ... Sorry, yes.
Q. We will take this in stages. They are the blue ones that you have ticked?

A. Yes.
Q. Then the ones that are white, you have not analysed either the nine or the 21. These are additional to those 30 sectors, is that correct?
A. Yes, that is correct.
Q. Now, what this is using, as you can see there from the subtitle, is the Visa card expenditure data from 2012 to 2022; yes?
A. Yes.
Q. As we explored earlier with Mr Draper, the Merricks claim period is 1992 to 2010, is it not?
A. Correct.
Q. Of course this is based on Visa's card expenditure but not Mastercard's card expenditure, is that correct?
A. Yes, that is correct.
Q. You will appreciate that Mr Merricks's claim is against Mastercard; yes?
A. Yes.
Q. You will also appreciate, I think, that the Visa 14 sectors have one which is business to business, which would be covered in this extrapolation as well?
A. Yes.
Q. So this is not a suitable metric by which you can say you have covered the entirety of the Merricks claim period data, is it?

A. No, but I never suggested that it is. I was simply comparing the sectors that I did evaluate against the Visa MIF expenditure, assuming that Mastercard was broadly the same, although I did clarify that it would -- that would have to be checked.

Q. If we just turn over to the next page, please, you will see there are a quite a few sectors that have no blue and no tick, meaning you have not covered them, just for absolute clarity.

A. Yes, and they are rank ordered based on percentage of MIF, so the ones on the second page are significantly smaller.

Q. Yes, in relation to the Visa card expenditure --

A. In relation to the --

Q. You will appreciate that obviously in the Merricks proceedings, we need to arrive at a UK-wide pass-on rate; are you aware of that?

A. Yes, I am aware of that.

Q. You will understand for that, taking a sectoral approach, one needs to have weights for each of the sectors to arrive at a single weighted average pass-on rate at the end of the day for the UK-wide estimate?

A. Depending on the approach used, yes.

Q. You have not provided sectoral weights for each of your 30 sectors for the Merricks claim period, have you?

A. No, I have not.
Q. That is all I wanted to address on sector extrapolation. I will adopt all of the points that my learned friend put to you earlier on that.
Moving then on to direct debits, and we can deal with this very briefly as we canvassed it extensively with Mr Draper.
Please can we turn to your re-cast version of the now infamous chart about card usage. That is at {RC-Q1/1/1}. Now, Mr Draper took you to page 3 of this document pack, which is a version of this table, but as you can see here from the grey title at the top of the page, it represents the share of total transaction values of individuals and businesses by means of payment in the UK from 1995 to 2022. Do you see that?
A. Yes.
Q. Now, this, as I understand it, but please correct me if I am wrong, is using the same data source as Ms Webster uses for her chart from the APACS?
A. Yes, I believe so. I am pretty confident that is the case.
Q. Am I right in thinking that all you have done here is to add to Ms Webster's chart by including from her own data source that she uses, but you have included all transaction types. So, for example, you have shown the

line for cheques, which is in grey sloping downwards, you have also included the direct debits line in blue, and you have also included the automated credits line in black?

A. That is correct. I simply represented on the exhibit all of the full dataset available.

Q. So you have not conducted any backwards extrapolation, have you, here? This is the same time period as Ms Webster's usage chart?

A. Yes, there is no adjustment.

Q. The extrapolation you have conducted, when you were speaking about this in the hot-tub, is your later chart on the last page of this document?

A. Yes.

Q. Is that correct?

A. Correct.

Q. Now, please can we go to your second report, which is at {RC-F/4/26}, please. If we look at paragraph 3.27 at the bottom, about five lines into that passage you say, in the brackets:

"Subscriptions and regular bills are commonly paid for by direct debits."

Do you see that?

A. Yes.

Q. Those include consumer subscriptions and bills, do they not?

A. Yes.

Q. If we look at the footnote, if we scroll down the page, please. In footnote 8, right at the bottom of the page, you give a reference to the UK payments market summary, so I would like to have a look at that document, please. That is at {RC-J1.2/66/6}. If we zoom in, please, on the left-hand side of the page, if possible, underneath the orange heading there about direct debits, you will see there in the second line of the first paragraph, it says this:

"Direct debit is a familiar, long-established and widely trusted method for paying regular bills and this is used by nine out of ten consumers."

Do you see that?

A. Yes.

Q. Then at the bottom left-hand corner, please, the penultimate paragraph, beginning with the word "Consumers", it states:

"Consumers are far more likely to use direct debit than businesses. Businesses tend to prefer to retain more direct control over the timing and the amount of their outgoing payments although may still use direct debits to pay for business-critical services."

You would agree with all of that, would you?

A. I would agree. I do not, as I mentioned earlier, have more detailed information. So I can agree with this statement, but I cannot substantiate it.
Q. So a very significant portion of direct debits are consumer transactions, would you agree with that?
A. That would be my expectation.
Q. You will be relieved to hear, that is it on chart, usage and direct debits, so I will move on to my next topic which is the size of the MSC.
    Now, I obviously adopt all of the point that Mr Jowell KC has already put to you about the relevance and the role of size as a consideration and I will not repeat those, however, I am going to compare the size to total costs and to operator margins.
    Mr Jowell has covered the topic with you by putting specific pieces of the disclosure evidence to you. I am going to take an alternative approach, which is to look at what you do, explore those figures that you have produced, and then take your own assumptions and your own figures at face value and see what they themselves show on their own terms, just to put that into context.
    So with that in mind, please can we turn to your second report which is at {RC-F/4/32}. If we could zoom in a bit but keep the whole graph on the page, please, the whole table. If we can also look at the title

before we do that, perhaps, please. Thank you.

So as you can see there, this is a summary of your conclusions for your nine so-called analysed sectors and you can see those listed in first column there, beginning with hotels. Then you have columns on business model; likely MSC treatment, that is where you put overheads or COGS; then you have a column for MSC as a percentage of total cost; and then we have columns for competitive intensity, pricing strategy and, finally, profitability on an operating margin basis.

Now, looking, firstly, at your column MSC likely treatment, that is the second column, I will not repeat the points that have already been put to you today about it not being right to assume that merchants in one sector categorise MSC in the same way. But taking your own approach, as I understand it, there is an error in your likely MSC treatment column that your solicitors have corrected, and that is for the digital products sector?

A. Yes.

Q. That is the fourth one down, and, as I understand it, that should read "COGS" and not "Overheads", is that correct?

A. That is correct.

Q. That is the first column.

The second column that I am interested in is in fact the third one, that is the next one on MSC as a percentage of cost base. Now, as I understand it, this is your assessment of MSC costs in aggregate in the merchant claim period presented as a proportion of the total costs, is that correct?
A. Yes.
Q. Now, for the travel and leisure brokers sector, so that is the third from bottom, you say that MSC costs are greater than 1% of total costs. Do you see that?
A. Yes.
Q. Could we go to page 99 of this report, please {RC-F/4/99}. If we focus on table 18 there, you will see in the second row of that table the analysed one, that is the travel and leisure brokers, so for the very same sector that I have just been looking at, travel and leisure brokers, you have actually put in the MSC as a percentage of cost base 4 to 6% of the MSC as a percentage of cost base. Go 4 to 6% is correct and not 1%, is it not?
A. It is greater than 1%. Yes, 4 to 6 is correct. I think if you look at the representative claimant in that particular sector, there are --
Q. I do not want to go into confidential --
A. I am not going to do that. Yes, I think there might be

different number, but this is the sectoral figure.

Q. If we just I go to page 46 of this report and follow that exact point through, and I will show you what the representative, in your view, claimant says, and obviously we do not accept that it is a representative claimant, but we if go right to the bottom of page 46 {RC-F/4/46}, at paragraph 4.62, you say you:

"... expect the MSC accounts for a similar share of overall cost base across both sectors."

Now, pausing there. As we are about to see, "both sectors" actually means the online auction site sector and the travel and leisure broker sector.

Then you continue:

"The MSC most likely represents 3 to 5% of total cost base for online auction sites sector."

Then you say:

"Since the MSC as an isolated figure was not available for the representative travel and leisure broker client, I estimated that MSC amounts to 4 to 6% of total costs by referring to published data for similar businesses, eg Expedia and eDreams."

A. That is a mistake. The data was available for the claimant.

Q. So if we go back to page 32, just to make this abundantly clear. In the summary table, where you say

greater than 1% for the travel and leisure brokers, I think you now accept it should say circa 4 to 6%?
A. Yes, yes.
Q. So that is the second error of the table, but in fact, even that is conservative?
A. Yes.
Q. Can we please go your first report at {RC-F/3/165}. Now we have confidential information on this page so I will not read it out, but if I could please direct your attention to 10.20.2, that begins with relative size as a cost component. Now, this page of your analysis is about the travel and leisure broker sector. As you will see from the confidential information, you discuss the relative size of the MSC as a cost component for this claimant.
A. Yes.
Q. Can you just read that paragraph to yourself, please.
A. Yes, I have.
(Pause)
Q. So at the very end of that paragraph, you do reach some more precise figures for the size for this claimant's MSC costs as a proportion of total costs, and you see those figures on the penultimate line?
A. Yes.
Q. So actually even the 4 to 6% would be conservative,

would it not?
A. The 4 to 6 represented the sector, a view of what would be average in the sector, because I did look at other businesses, not just the claimant.
Q. Now, if we can go back to the table, please, at {RC-F/4/32}, you see there in the first row, for hotels, you say that MSC as percentage of cost base is lower than 1%. Do you see that?
A. Yes.
Q. Can we go back to your first report, please, at {RC-F/3/44}. Again this is confidential, but if you look at the top right-hand side of the corner, you can see which entity and which sector we are looking at there?
A. Yes. This particular entity has a disproportionately high percentage of business credit cards and therefore the credit card commission cost would be higher and also foreign cards.
Q. Well, let us just this in stages, if we may, please. If you can read the first three lines on the top of the page, the sentence beginning with, "In the version of ..." Let me know when you have read that.
A. Yes.
Q. Then if you turn over the page, please, to page 45, this is also confidential, but can I ask you to please read

to yourself paragraph 4.26, about halfway down the page {RC-F/3/45}. (Pause)

A. Yes.

Q. I emphasise in particular the last five words of the second line for that passage.

A. 4.26?

Q. That is right, yes.

A. Yes.

Q. Now, if we go back to the table again {RC-F/4/32}, your whole report is premised upon that particular hotel chain being representative of the whole sector, is it not?

A. We have -- in order to carry out this assessment, we also looked at other hotels. So we did not want to make the -- we did not want to assume -- I did not want to assume that representative claimants are the only source of information.

Q. I am sorry, I am not sure I understand, because you only have one claimant entity for that sector, the hotel sector. Your position, as I had understood and read your reports, was that it was representative, and therefore you have extrapolated the results, and Dr Trento has extrapolated his results, from that one claimant to the rest of that sector.

A. Yes, so for the purpose of this analysis we were looking at sectors, we were not looking at specific claimants, so we did not -- I did not want to bias the analysis based on specific claimants that might be present in those sectors.

So when we say, for example, that an entertainment, a fixed asset entertainment, a theme park, is linked to hotels, it would be very difficult to draw a conclusion as to whether a theme park fits this particular hotel. So we were drawing conclusions at that sectoral level.

Q. In terms of your summary here for the whole sector for the hotels, based on the evidence we have just looked at from the one data source we have, your lower than 1% figure in your table, that is unlikely to be correct, is it not?

A. Well, it is unlikely to be correct for hotels that have a very large percentage of business credits cards that have a higher MSC than 1%.

Q. Well, which other hotels and MSC data did you look at then?

A. I think we also looked at Marriott hotels. We looked at a smaller chains in the UK. We looked to make some broader assumptions than just looking at one.

Q. Has that data been disclosed or have you just looked at that from information you have from your experience and past work in that sector?

A. I think -- no, I am not sure it has been disclosed, but I think the observation here was for hotels as a sector rather than one specific claimant.
Q. Okay. Now, as the title of this page says, if we can have a look at that again, these are just for the nine analysed sectors, but there are equivalent tables in your report for each of the 21 additional sectors, are there not, these yellow colour rows?
A. Yes.
Q. If we can go to page 43 to see an example of that, please {RC-F/4/43}. We see there in the first row you have the same table for the online auction site sector?
A. Yes.
Q. If you look at the first row of that for the online auction sites, then you look at the MSC as a percentage of the cost base column, that is the less than 1% of the online site sectors, that another error, is it not, that understates the size of the MSC, given the passage that I read out earlier, that you think the MSC likely represent 3 to 5% in that sector?
A. Yes, and it says bigger than 1%, larger than 1%.
Q. Okay. Now, given that there are lots of these additional mini tables to add to the main one, and I have pointed out a number of consistency errors in them --

A. I apologise, I do not see an error here. It says more than 1%.
Q. It would be clearer, would it not, to actually, like you have for the other sectors, where you have put a specific percentage in a range where it suits, to actually have said circa 3 to 5% here, rather than greater than 1%? Do you not agree that it is a slightly misleading presentation of the matter?
A. I think we -- there is a table on page 45 where we look at all the sources that we have used for this particular sector and I think we did see a significant variation. So above 1% was a way to suggest that the MSC is more significant than it is in other sectors without anchoring on a specific figure.
Q. Okay. So I think we agree that your main body text says that it is 3 to 5%, so we can move on from that.
THE CHAIRMAN: Mr Williams, are you suggesting that they put ranges in the table on page 32?
MR WILLIAMS: Page 32, yes, in other situations.
THE CHAIRMAN: But it is either lower or greater than 1%, is it not?
MR WILLIAMS: In some of the other tables across the report, there are ranges --
THE CHAIRMAN: I know that, but I think you were saying it was -- table 4 was mistaken.

MR WILLIAMS: I am suggesting that it would have been clearer to have the circa 3 to 5% --

THE CHAIRMAN: Right, okay that is a slightly different point. Okay.

MR WILLIAMS: But given the large range of these tables, all I have done is I have collated them together on to a single page.

If we can go to {RC-Q4/30/1}. Now, as you see from the title, this is output from your own numbers for MSC costs compared to operating margins. Now, for the avoidance of doubt, I want to make two points immediately clear. The first four columns, A to D, which we will go through in turn in a moment, are merely copying out from your tables that we have looked at, as corrected, as I see it at least for consistency, highlighted in green. If we can just see the whole table, please.

There is no new evidence here. It is not new expert evidence. The first four columns here are your tables just on one page because there are obviously 30 sectors.

Then the second point I want to make immediately clear, before we go through this very slowly, is that I have done this for illustrative purposes only, taking your own numbers and your own assumptions at face value and then we will see what the implications are.

Have you seen this document before now?
A. It was shared with me on Friday, I think, evening.
I have a couple of comments. I am very happy to engage in a conversation with you because --
Q. Well, let us --
A. -- on the numbers, but I think there are some flaws in how the data is represented.
Q. I will go through the table in a very --
THE CHAIRMAN: So that I understand what this document is, it is something you prepared?
MR WILLIAMS: Yes, this is something that we prepared. So the first four columns are merely his own tables, as we have just seen from the yellow. I am going to go through this in quite granular detail and it would have taken me a very long time, sir, and you would have got probably very bored, if I had gone to each table each time, so I have collated it. Then columns E and F, as we will see, are simple divisions, and I will walk through both you, and the witness, in fairness to him, exactly what they represent --
THE CHAIRMAN: I just wanted to know the provenance of the document.
MR WILLIAMS: Yes. This is something I put as a mere aide-mémoire to make this quicker.
THE CHAIRMAN: Okay.

MR WILLIAMS: So let us take each column slowly in turn.

Column A is your 30 SSH sectors using your numbering of the sectors. Do you see that?

A. That is correct.

Q. Then column B is your assessment of the likely MSC treatment but with the one consistency error corrected. Now, you already have the points that have been put to you by my learned friends earlier, that we do not agree that how the MSC treat it is relevant, and that even if it is, when one considers the treatment as overheads, that does not rule out pass-on. That is my caveats before we explore all of that again.

But what I would like to put to you is if you look down column B, you will see that in five sectors merchants are, in your view, likely to treat the MSC as COGS, so that is sectors 4, 7, 12, 24 and 29. Do you see that?

A. Yes, for the reasons that I explained previously.

Q. Yes. So for those sectors you would accept, would you not, that as part of COGS, your position is that the MSC will tend to undergo more regular and more detailed review by management?

A. Yes, compared to the overheads, yes.

Q. As part of COGS, therefore, MSCs in your view, at least in these sectors, are more likely to influence pricing decisions in those sectors?

A. More likely, yes.

Q. Now, earlier on you said that all businesses that operate as agents also have to recognise MSCs as COGS. So does that mean that in sectors here where you have put "Overheads", that there are some who will treat them as COGS, despite your categorisation here?

A. I have tried, by adjusting the SIC classification, to separate the businesses that are likely to be agents, and that is why, for example, online travel agents are separate from vertically integrated travel companies.

Q. I am not sure that answers my question, with respect.

I am suggesting to you here, if you look down column B and you see where there are overheads labelled, I am just asking whether there are any agents in any of those sectors, in your view, because your evidence earlier was that where there is an agent, that business has to recognise MSCs as COGS, so I am merely asking you to identify the sectors in which, despite your categorisation, there will be some agents who treat them as COGS?

A. I am responding that I created this sectorisation approach in order to separate, in a separate sector, the businesses that are likely to act as an agent. I went over the 1,900 claimants to characterise them, and

Interflora is an example of one that was misclassified, but the ones that are likely to operate as agents have been separated from others in separate sectors.

Q. So there are no agents here in any sector, in your view, where you have put "Overheads"?

A. Based on the best efforts that I -- yes, my best efforts, yes.

Q. That is clear.

Let us move on to column C then. So this your MSC as a percentage of total costs column that we have already at quite extensively. You will see in green, just for clarity, I have amended those percentages that I think actually represent your own evidence, and for consistency purposes.

A. I understand.

Q. This is comparing the size of the MSC cost as against total costs. My question is: judging the size of a cost by reference to total costs, rather than by reference to profit margins, does not show you the relative impact of that cost on profitability of the business, does it?

A. I think it is -- as I mentioned earlier in a similar exercise and question that was put to me by counsel, it is -- you are right, in contrasting the size of the cost versus profitability, but unfortunately it is an artificial way of looking at things that is not related to actual business practice.

Q. So let me perhaps put the question in a slightly different way. Comparing the size of a cost as a proportion of total costs may make it seem small, especially for businesses with high operating costs, but that may not be the case in reality. So if we take an example, a cost of £50,000 may appear negligible compared to total costs of, say, £10 million, but if the firm had made a profit of £100,000, the cost actually represents 50% of the profits, does it not? So the same amount would be a very sizeable cost, judged that way, would it not?

A. The mathematics I have to agree with, but from a business perspective, a business cannot go after a £50,000 item of cost, no matter how big it is with respect to the margin, when they have to deal with much, much larger costs that can make or break the business.

Q. Well, a cost that represent 50% of profits is going to attract management attention, is it not?

A. It will not, because there is no management attention to spend on this item. There just is not.

Q. That is rather a big assumption that you are making?

A. No, I can give you an example. I have a very significant supermarket client that has invited me to help them restock the shelves this Christmas. For them, that is the major issue. It is a shortage of people to restock the shelves. They are asking their advisors to come in and restock. All the members of the management team are there for Christmas to restock shelves. That is the issue for them.

Q. I do not like giving evidence, but when I did my first job for £3.40 per hour in Savers, when I was 16, stacking the shelves, I certainly was not making pricing decisions --

A. We are not going to be paid for that, by the way. It is a --

Q. Okay. Now, obviously it is interesting --

THE CHAIRMAN: Mr Williams, I know we have a lot to get through but you are both talking very fast. I think it is probably making it difficult for the transcriber, and also for us to keep up.

MR WILLIAMS: I apologise. I will slow down. If that error occurs again, please do stop me.

Now, obviously less profitable businesses, so those with low operating or net margins, face more pressure to pass on additional costs to maintain their profit margins, do they not?

A. They face more pressure to deal with costs, and they have the same bandwidth, if not reduced bandwidth, versus companies with higher profit margins, to deal with these issues.

Q. So you would agree, would you not, that for firms with low margins, even small changes in costs can have a large effect on profits and significantly reduce margins if they were to increase?

A. Yes, I am, though, challenging the actionability of those profits -- of those savings in the face of much more significant issues that those businesses have.

Q. Okay, that is column C. We will move on to column D which is profitability operating EBIT margin, and, again, these are your own numbers without any changes from your tables.

I am going to assume for present purposes that they are correct, so, again, we are absolutely clear, Mr Merricks does not accept them. We have already seen evidence from a hotel chain about their margin size that Mr Jowell looked at, and we have looked at the size of the MSC relative to operative revenue. We have heard from Mr Harman about the margins for supermarket and Mr Coombs' evidence on net margins.

But what I have done in columns E and F is really simple maths using your own numbers. Now, I will not spend very long with column E., my focus will be on column F. The reason for that will become obvious and I will check you agree. But in column E, I have simply taken your column C, which is your figure for the aggregate MSC costs as a percentage of the total costs, and then I have divided that by your column D which is your estimate of operating margin for each sector.

Now, that gives the MSC costs as a share of total costs as a percentage of operating margins. Now, that obviously, I appreciate, mixes apples and pears, to say the least, because on one side of the fraction for the MSC you are looking at a share of total costs, and then on the other you are looking at operating margins which is obviously itself calculated relative to revenue. Do you agree with that?

A. I agree that it is apples on at ranges. I agree that there is some directional value in this.

Q. Yes. So we will quickly move on to column F, in that case, because it is unlike column E, it is comparing apples with apples.

So in column F, I have done another really simple calculation. So I have taken your own assumption in your report, which is that MSCs account for 0.5% of revenues in every sector.

A. That is unfortunately not a correct assumption. If I made that assumption, I was wrong. This is not going to be the case clearly for sector number 7, it is not going to be the case for sector number 12.

Q. If we can --
A. Also sector number 29.
Q. In those sectors, will the percentage of the MSC as revenue be higher?
A. Much higher.
Q. Okay. Well, what I am going to show you is your report for where I have taken that assumption from, and obviously it is against me if there would be sectors with percentages of the MSC that are higher by revenues. Do you agree with that point?
A. I agree with you, and I am happy to engage with you on the substance of where you are going with --
Q. I am being very conservative against --
A. Yes, yes.
Q. I will show you briefly where I have taken that assumption from. So if we could go to your second report, please, at {RC-F/4/27}. If we could look, please, at paragraph 3.32 and, in particular, your last lines. So you say:

"I have done this by assuming a 0.5% MSC paid on all revenue earned with a conservative assumption that 100% of these transactions are made by card."

A. Yes, I think the -- this paragraph should read ". .. 0.5% MSC paid on all transactions paid by credit card". So for businesses that recognise as revenue a portion of the transaction value, then obviously the number would be higher.

Q. Okay. So if we can go back to the handout, please, which was the last document we were looking at, and carry on with column F and, as I say, I am taking the conservative assumption which explains the title of "Assumed MSC costs", because I am taking 0.5% of revenue in each and every sector, and I am dividing that by your MSC costs in column E. Do you follow the calculation?

A. I do, and I think it is the right -- a better calculation at column E.

Q. I am very relieved to hear that, but I am glad I marked my own homework with column E.

Now, again, I do not accept it is right to assume 0.5% revenues, partly for the reasons that you yourself accepted that some of these should be higher. But what column F gives us is MSC costs as a share of revenue as a percentage of the operating margin, yes?

A. Yes.

Q. Now, looking down at the percentages in column F, please, we see the MSCs representing, as a percentage of operating margins, figures of around 20% in sector 22. Do you see that?

A. Yes.

Q. 15% or around 15% in sectors 2 and 19. Do you see that?

A. Yes.
Q. Around 10% in sectors 4, 8, 11, 27 and 30?
A. Correct.
Q. Nobody has shouted "bingo" out yet, but there we go. Then around 5% in multiple other sectors?
A. Yes, and 7 and 12 would have a much higher number than the one you are showing here.
Q. I am very grateful for that. So surely you would agree, looking at those percentages, that MSC costs represent significant portions of operating margins, do they not?
A. They do, but this is a KPI that -- sorry, KPI stands for key performance indicator that businesses do not track. If you had done the same exercise, and I am not allowed to ask questions here, but if you had done the same exercise with a much larger cost item, say with salary costs in restaurants, which represent 30% of revenue, you would get a much, much higher number which actually aligns much more closely with what businesses look at.
Q. I am interested that you say that, because if we can turn to your third report, please, at {RC-G/3/113}, if we look, please, at paragraph 3.18.2, and if you can tell me when you have read those two lines and we will turn over the page.
A. Yes.
{RC-G/3/114}

Yes.

Q. If we go to this document but at page 78, please {RC-G/3/78}, and look at paragraph 2.130, this is the one I want to read out to you. You say:

"Two key financial metrics that management teams tends to focus on ..."

Then you mention gross profit margin, but you then say:

"... operating profit margin."

So it is right, is it not, that management will prioritise addressing matters that affect operating margin which you yourself say in your report is a key financial performance indicator; yes?

A. Undoubtedly. If a business does not look after its operating profit margin, they will go out of business.

The point I am making is if you look at the impact on operating profit margin, there are costs that have a much higher impact than the ones that you -- the MSC, and your exercise is an interesting one, but it is an artificial exercise, because it overstates the important of MSC. If you had done the same exercise for all the costs that a business is faced with, you will get obviously similar numbers for every single small cost item and you will get much more significant numbers for much larger cost items.

Q. Well, I am obviously interested in the size of the MSC. It is rather beside point, the high or large size of other costs, is it not?
A. No, it is not, because again management has -- there are about -- I am not going to speculate how many costs a business has to face. If you divide each one in the same way, you will see them as being material, but management bandwidth is constrained, and they have to focus on the things that are most material. They cannot focus on an item which I would argue is not the most actionable of items, because a lot of the claimants have emphasised that it is a relatively inflexible cost, and take their eyes off the ball, which in most cases it is COGS, is salaries, is property, is rent, etc.
Q. So are you making a point there, Mr Economides, that actually management would prioritise the gross profit margin, rather than the operating margin?
A. I am making two points. Obviously operating profit margin is the most important, is the bottom line. That is the most important metric. The point that I am making is between revenue and operating profit margin, there are hundreds if not thousands of costs. Management has to do their best to manage the growth of the business and the profit conversion of the business. When they do that, they have limited bandwidth, they

have limited capabilities, they have limited resources at their disposal, whether financial or human. So they will naturally prioritise what is called, in business terms, the core business. The core business for a retailer is stores and how they operate. It is about the goods and the pricing of the goods and how they get the goods to the store. They will have to make choices.

So I am not arguing that the metrics are not important. They are very important. But the levers available to manage those metrics, business has to be choiceful around.

Q. But we have seen from the evidence that Mr Jowell put to you earlier that in fact -- I obviously have to be careful of the confidentiality, but a number of the merchants do in fact look at categories with the MSC in, or look at the MSC directly, do they not?

A. Looking at it is not the same as actively managing it, is my point. If you -- back to the point that -- the exhibits I was referred to, some of those items were very small and the -- and by the way, for one of the claimant that you highlighted was in the above 1% category, in the hotels, that was by their own admission a cost that they did not consider to be material to manage, because they did not see it as a lot of flexibility in that particular cost.

Q. Well, we differ in your interpretation of the evidence but that is a matter for submissions.
A. Yes.
Q. I will now move on to my next topic. My next topic is about whether firms would notice the MSC. Mr Jowell put to you quite a few points about the high-visibility of the MSC, which is what we have just been talking about, and I obviously adopt those points. I just have a few additional questions.
A. Of course.
Q. So if please can I take you to {RC-Q4/29/1}. This whole document is Trial 1 confidential, so please do not refer to any specifics. But what you can see here is an invoice. Do you see that?
A. Yes.
Q. If you look under the blue heading, "How we worked this out", you can see that the first line item says "Transaction charges". Do you see that?
A. Yes.
Q. Now, if we turn over to page 2, please {RC-Q4/29/2}, we can see those transactions broken down. So taking this slowly, if you look at the first column, what you will see is transactions broken down into Mastercard and Visa cards, do you see that?
A. Yes.

Q. You can also see the different types of cards used, consumer or business cards. Do you see that?
A. Yes.
Q. Now, if we look at the third column, you will see a rate per transaction. Now, that is the MSC, is it not?
A. I think, yes. Yes, it is.
Q. So businesses will know the rate of the MSC, will they not?
A. Businesses negotiate the rate of the MSC and put it in a contract so they would know it, I would hope.
Q. If you look at the final column, the total column, the business will also know the total MSC costs incurred, will they not?
A. Yes.
Q. If we go back to the first page {RC-Q4/29/1}, please, you will see the text just above the heading we looked at earlier about how we worked this out, it says:

"This month's invoice."

So the company will know both the MSC costs and the MSC rate on a regular basis, will they not?
A. They will, absolutely. They will definitely know it. They are paying a bill. The finance department would absolutely know what they are paying.
Q. So it is a highly visible cost is the point that I am putting to you?

A. Well, I think there is a difference between businesses know that the cost exists and highly visible. The way I am using -- I am using in my report "highly visible", I refer to the executive team regarding it as an active lever that they need to manage.
Q. This is speculation, is it not, because you have only looked at documents from nine claimants for a very limited period of time so you are speculating when you say that, are you not?
A. The reason I have been engaged is because of my experience of assisting a large number of clients in management conversations and I can -- I know from that experience that this is not a topic that is discussed.
Q. Okay. One last topic, which I can be very quick on, so I will finish in time for Mr Beal to also have some time for re examination.
Menu costs. So, in light of the time, I will just paraphrase a point that you make in your report, essentially that smaller cost changes may not lead to changes in prices because of adjustment or so-called menu costs which might mean that it is not worth the hassle essentially to change the price.
A. Yes.
Q. Is that a fair summary?
A. That is fair.

Q. Now, it is obvious that the longer period of time that goes on, there is more opportunity for price changes to be made; right? It is a really obvious point to put to you.

A. Yes, and businesses will reprint the menus anyway every six months, if it is a restaurant, and they might -- the menu costs become irrelevant at that point.

Q. Exactly. So MSCs could have been taken to account with other cost changes when prices were already re-assessed or changed, could they not?

A. They could have. We are spending a lot of time focusing appropriately on MSC, but obviously there are many cost movements that happen from one period to the other. Some will be positive, some will be negative.

Q. I would like, please, to take you to Ms Webster's second report at {RC-G/12/39}. Now, right at the bottom of the page, please, we will see paragraph 3.39(a). Now, in the second line, she says that she recognises that at least for certain sectors, and we will explore that with her, pass-on may not be immediate and it may occur over a period of time or -- over the page, when you are ready {RC-G/12/40}:

"... with some delay, implying that the expected extent of MSC pass-on may be lower when shorter timeframes are considered. This may be the case where, for example, merchants face material costs in adjusting their prices in which case the small size of any change in MSCs may cause a delay in implementing any price change until other cost changes have occurred that make it profitable to do so."

So it is about delay, not the fact there would never be cost pass-on. Would you accept that?

A. To the extent that a business decides to implement a price change, yes, I think this is absolutely fair. I would argue that, as I mentioned earlier, an increase in MSC costs or increased MSC cost does not necessarily lead to price changes.

Q. If we scroll down on the page, please -- this is my very last point I want to show you -- to paragraph 3.40. If I could leave you to read that to yourself, please, in full, both (a) and (b).

A. Yes. (Pause)

Yes.

Q. So the point seems to be here, if I can I summarise, that price adjustment costs and size matters less over long time frames and that is something you would agree with, is it not?

A. I would agree with that.

Q. In any event, if costs are a significant portion of margins, like we have seen today from the evidence from

Mr Jowell and that I have put to you based on your own numbers, then the benefit of increasing prices is likely to outweigh any price adjustment or menu cost, is it not?

A. I do not agree with that for the reasons that I have explained. I think your analysis of the cost versus the margin is misleading and artificial and inflates the size of the cost, but I will agree that menu costs become less relevant in a longer timeframe.

MR WILLIAMS: Thank you very much.

THE CHAIRMAN: Thank you, Mr Williams.

Mr Beal.

Re-examination by MR BEAL

MR BEAL: Mr Economides, it was put to you that the evidence you considered for hotels was just one hotel. Please could I get you to look at {RC-F/4/66} and a footnote. Mr Simpson is taking pity on my throat. I am asking that to go into the transcript.

A. Yes.

THE CHAIRMAN: At least it means you have to go slowly, I imagine.

MR BEAL: Well, that is probably an advantage for the transcriber.

A. So, thank you for reminding me. So we have Hilton, we have IHG, which is Intercontinental, and we have Orbis, which is an information source that provides averages across a range of hotels.

Q. Could we please have a quick look at {RC-J1.2/20/1}. This is an exhibit that was an exhibit to your first report. Is that right?

A. Yes.

Q. Or one of your reports. What does this show?

A. Well, this is the annual report of IHG Hotels in the Intercontinental Hotels Group.

Q. Please could we then look at {RC-J1.2/55/1}. What is this?

A. This is the Ibis World extract that I referred to. It is for restaurants. It is the -- it is sectoral figures for service restaurants in the UK.

MR BEAL: Thank you. I do not have any further questions in re-examination.

Questions by THE TRIBUNAL

THE CHAIRMAN: Can I just ask you one question, Mr Economides: is this the first time you have given expert evidence?

A. It is.

THE CHAIRMAN: Because I noticed you did not refer to any other experience of this.

A. I have participated and supported CMA investigations, but mostly in terms of providing data in the process.

THE CHAIRMAN: Well, welcome to the fray.
A. Thank you.
THE CHAIRMAN: That is the end of your evidence. Thank you very much.
THE WITNESS: Thank you very much. Thank you.

(The witness withdrew)

Housekeeping

THE CHAIRMAN: Right.
MR BEAL: We now move on to Ms Webster. The prediction of time for her is beyond my control because I am not having any part in her cross-examination.
THE CHAIRMAN: Are you not?
MR BEAL: Could I perhaps invite Mr Woolfe to indicate how we are doing on timetable?
THE CHAIRMAN: Well, it is fortunate, considering your voice, that you are not --
MR BEAL: It would have been even longer.
MR WOOLFE: I think on the original timetable, Mr Economides was still due to be giving evidence into early tomorrow. Obviously we revised it at the end of last week.
THE CHAIRMAN: Yes.
MR WOOLFE: I think the merchant claimants were down for just under seven hours in total with Ms Webster, so a bit over a day.
THE CHAIRMAN: Yes. Six hours 50, I think.

MR WOOLFE: Something like that. I am sure we will finish within that. I suspect, though, I may well be more than the whole of tomorrow.

THE CHAIRMAN: Okay. Then it is Merricks cross-examining Ms Webster, Mr Simpson, I cannot work out --

MR SIMPSON: There is a very precisely negotiated 9.75 hours.

THE CHAIRMAN: Is it?

MR SIMPSON: Yes, as I recall.

THE CHAIRMAN: Because it goes over on the original timetable to the following Monday.

MR SIMPSON: I am sorry, sir?

THE CHAIRMAN: I am just looking at the original timetable and you were due to go over until the next Monday.

MR SIMPSON: Yes, we are hoping we can avoid that.

THE CHAIRMAN: Well, I am. I think we need to -- we should finish with Ms Webster by this week, by the end of Thursday, should be the target.

MR SIMPSON: Certainly I agree that would be something to aim for.

THE CHAIRMAN: Visa have .75, is that right?

MS BOYD: Yes, sir, we will not exceed that.

THE CHAIRMAN: Well, do we need to -- the only question is whether we need to start early tomorrow?

MR WOOLFE: I have no objection to starting early tomorrow.

I think if we start early, that gives me half an hour. I can then be done pretty quickly the following morning. I think I cannot guarantee to necessarily be done by the end of the day, but I think on the timetable we would have been going two hours into -- we would have been going -- sorry, we would have been going two hours into Wednesday. I am sure we can shave at least an hour off that, if not more, if we start early tomorrow. So that gives some more time.

What I am saying is if we did start half an hour early tomorrow --

THE CHAIRMAN: I do not think we can actually, I am afraid. Well, possibly the next day. We will see. I mean, I imagine if we started early tomorrow, then that will sort of set the pattern for the rest of the week, so maybe it is a good idea not to.

MR WOOLFE: Right. Shall we perhaps take stock towards the end of tomorrow?

THE CHAIRMAN: Yes.

MR WOOLFE: But on the understanding that we will be finishing fairly early on Wednesday morning.

THE CHAIRMAN: Yes. I mean, I think the target really ought to be that we finish with Ms Webster by the end of Thursday, and then we can start with Dr Trento on Monday morning and hopefully get through him in three days as well. So we will have one day at the end for closing submissions.

MR WOOLFE: Since I am the only one standing, I am grateful for the indication.

THE CHAIRMAN: All right. 10.30 tomorrow then.

(4.27 pm)

(The hearing adjourned until 10.30 am on Tuesday, 10 December 2024)