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IN THE COMPETITION
APPEAL TRIBUNAL

1517/11/7/22

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 18th November- Friday 20th December 2024

Before:

The Honourable Justice Michael Green
Ben Tidswell
Professor Michael Waterson

Merchant Interchange Fee Umbrella Proceedings

A P P E A R A N C E S

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 (UK) LLP)

Thursday, 12 December 2024

(10.00 am)

MS RACHEL WEBSTER (continued)

Cross-examination by MR SIMPSON (continued)

THE CHAIRMAN: Good morning. Good morning, Ms Webster.

MR SIMPSON: Good morning.

THE CHAIRMAN: Yes, Mr Simpson.

MR SIMPSON: I need to begin with an apology, sir. I saw on the transcript yesterday that I described the operator as having a "somewhat vulpine smile". I think that was the wrong word. I meant helpful and accommodating. So apologies for that.

THE CHAIRMAN: Being carefully noted.

MR SIMPSON: So, good morning, Ms Webster.

I want to start by going back to the issue of card usage as a proxy for aggregate MSC costs. I think we ended yesterday -- correct me if I am wrong -- with you accepting that your card usage graph was not reliable for the purposes that Mastercard relied on it for, but it did show an upward trend?

A. So the chart that we are talking about --

Q. Card usage.

A. -- at figure 2 --

Q. Yes.

A. -- shows the share of transactions accounted for by card

1 payments. I accept, given the exchange that we had
2 yesterday, that it would be appropriate to include
3 direct debit payments for regular payments that we were
4 shown in the UK Finance statistics. For the sectors
5 that that is relevant, that would be appropriate to
6 include in the denominator. That would have the effect
7 of reducing the rate of growth of card payments as
8 a share of transactions, but it would still show that
9 there would be growth.

10 So the exact numbers for some sectors where regular
11 payments are a feature in the retail economy would be
12 not as shown in that graph, figure 2.

13 Q. So is it reliable for card usage figures percentages, or
14 not?

15 A. So it may be indicative of the increase in card usage
16 for sectors that do not include regular payments, but
17 where sectors -- where retail sectors include regular
18 payments, I think it is clear from the material that you
19 showed yesterday that direct debits would be a form of
20 payment used in those sectors for those products for
21 regular payments.

22 Q. So it may be indicative of the increase in card usage
23 for sectors that do not include regular payments?

24 A. Making an assumption that it is regular --

25 Q. That is the direct debit point?

- 1 A. Sorry?
- 2 Q. That is the direct debit point?
- 3 A. Yes, exactly.
- 4 Q. What about cheques?
- 5 A. So the issue with cheques is that there may be some that
6 are included in the early part of the period which
7 relate to payments which are not in the retail economy,
8 but I do not have any information to understand the
9 impact that that would have on the figures.
- 10 Q. It is not just the early part. Although the figure
11 detects drops, you do not know the ratios of business
12 and consumer transactions across any year, do you, for
13 cheques?
- 14 A. For cheques, no, that is right.
- 15 Q. So the graph is not reliable, is it, for any purpose?
- 16 A. No, the part that would be ... Sorry, as shown, showing
17 the share of transactions, I agree that there are
18 uncertainties in relation to how that can be
19 interpreted. The numbers on which it is based show
20 a very material increase in the underlying value of the
21 card transactions.
- 22 Q. So you cannot say -- is that the value?
- 23 A. That is of the value of the card transactions.
- 24 Q. But it is not reliable as an indicator of usage?
- 25 A. The exact numbers I think it is difficult to tell

1 from -- sorry, the exact numbers are probably not
2 reliable in terms of showing the exact increase in the
3 proportion of transactions in the retail economy that
4 are associated with card payments. So I think that is
5 a fair statement.

6 When I have recalculated the chart, using different
7 assumptions of the relevant payment types to include in
8 the denominator, I still see a marked upward trend in
9 the share of transactions that is for card payments, but
10 the numbers change.

11 Q. So what the graph shows, or what we are left with, is
12 there was an upward trend but you cannot say what it
13 was?

14 A. In the share of transactions I cannot -- in the share of
15 transactions specific to retailers, that chart cannot
16 inform that issue.

17 Q. Well, I can therefore deal quite briefly with another
18 flaw in your methodology on this, as we suggest it is.

19 You treat card usage as a proxy for aggregate MSC
20 costs?

21 A. Yes.

22 Q. But that only holds if there is no variation in
23 aggregate MSC costs for merchants over the period?

24 A. I am not sure it means that it is not a proxy. It would
25 depend on the relative scale of the increase in card

1 usage relative to any change in MSC costs. So it may be
2 that the change in MSC costs is or is not sufficient to
3 outweigh the increase in card usage. I have made an
4 assumption, taken a view in my report, that any change
5 in MSC costs would not, on a per unit or a per
6 transaction basis, would not be sufficient to outweigh
7 the increase in card usage.

8 Q. So if that assumption is wrong, that is another reason
9 we cannot rely on the graph?

10 A. So if there were evidence that the MSC costs had fallen
11 to a degree that would offset the increase in card
12 usage, that would be correct.

13 Q. Well, not quite, Ms Webster, because you are putting it
14 forward as a graph the Tribunal can rely on.

15 A. So I am putting it forward as an indicator of the likely
16 increase in MSC costs, because I consider that MSC costs
17 are likely to be driven in large part by the
18 increased -- sorry, by the number of -- the value of the
19 transactions processed.

20 Q. But you cannot say whether MSC costs change, can you?

21 A. So my understanding, and I mentioned this in the
22 hot-tub, I have had a look at the period in -- around
23 2015, which was my understanding of when MSC costs on
24 a per unit basis would have come down due to the IFR,
25 and the PSR study shows that there is largely a sort of

1 flat line in terms of MSC costs that were incurred by
2 merchants of different sizes across the period 2014
3 to 2018.

4 Q. But you have not investigated or even considered any of
5 this in your report, have you?

6 A. In my report I have focused very clearly on usage, and
7 when writing that report, and looking at the -- looking
8 at the scale of the increase in card usage in terms of
9 the absolute increase in the value of transactions
10 processed by card payments, which is many orders of
11 magnitude, I have taken that as sort of the key point.
12 I do not consider that -- I have considered that that
13 scale of increase is so substantial that, to the extent
14 that there was a reduction in per unit costs or ... you
15 know, I did not consider that they would outweigh that
16 overall increase in usage.

17 Q. Now, sorry, Ms Webster, but you considered the increase
18 was so substantial that it was not even possible that
19 there were facts out there that you did not know which
20 would affect that point?

21 A. I think that is a fair description. So taking into
22 account figure 3 also in my report, which shows the
23 compound annual growth rates of card usage for specific
24 retail sectors, it is not possible to get this data on
25 a share of transactions basis, but this is absolute

1 increases. The increases are very, very large.

2 THE CHAIRMAN: Perhaps we need to go to that. What is the
3 reference, if we are going to it?

4 MR SIMPSON: Yes, we can go to it. It is {RC-F/14/121}.

5 THE CHAIRMAN: Yes.

6 MR SIMPSON: Now, you mentioned -- I am going to go to this
7 out of order, because it has been mentioned.

8 So you mentioned figure 3 in your report several
9 times yesterday and its relation to figure 2. Just
10 before we go to it, can we pull up yesterday's
11 transcript {Day15/131}. I do not have an Opus reference
12 for it. Yes, just go back to 130, please {Day15/130}.
13 Is that Day ... at the bottom of 130? I am not seeing
14 it.

15 Can I read out in the record what I am looking at?

16 THE CHAIRMAN: Yes.

17 MR SIMPSON: So it says -- it is an answer from you, where
18 I put it to you that -- hold on one second, let me make
19 sure I have the right one. (Pause)

20 Yes, I put it to you that there was a catastrophic
21 error in relation to cheques, and you said:

22 "So I have explained that I think that a proportion
23 of cheques would not have been relevant to retail
24 payments, payments in retail stores, but I then also had
25 the charts that are available alongside this total

1 picture, so this is figure 3 in my report, which shows
2 specific retail sectors, and it looks at the use of
3 debit card and credit card in those sectors and shows
4 the increase -- these are annual rates of increase of
5 transaction value for each of these different retail
6 sectors. Putting that alongside figure 2 meant that
7 I was not entirely reliant on figure 2 in reaching my
8 view about the increased use of cards."

9 That, I think, is the point you are returning to now
10 here?

11 A. Yes.

12 Q. Now, could we go back to the figure 3 diagram. Now,
13 there we see -- if we go back a page, please, figure
14 6.31, you describe what you are doing here. Can we pull
15 up 6.31 a bit more. {RC-F/14/120}

16 So:

17 "Figure 3 shows these trends were particularly
18 pronounced for some retail sectors. For example, the
19 annual average growth rate for the value of debit card
20 payments in the entertainment sector between 1995 and
21 2022 was 18.4%, which implies that the value of debit
22 card payments in the entertainment sector in 2022 was
23 around 95 times higher than what it was in 1995. For
24 credit cards, the annual average growth rate for the
25 value of credit card payments in the sectors belonging

1 to the category of 'other services' between 1995
2 and 2022 was 10.2%, implying a twelvefold increase over
3 the period."

4 Then we go over the next page and the graphs
5 {RC-F/14/121}. These are compound annual growth
6 rates --

7 A. Yes.

8 Q. -- for the top three sectors for debit cards and for
9 credit cards?

10 A. Yes, and also the total --

11 Q. The total --

12 A. The total --

13 Q. -- averaged across all.

14 A. The total is not specific to those top three sectors.

15 Q. No, the total runs across. This is also in your
16 spreadsheet, is it not?

17 A. Yes.

18 Q. So just a point of principle to start with: this tells
19 us nothing about card usage, does it?

20 A. I think it tells us that card usage has gone up for
21 these retail sectors and for the total.

22 Q. Well, if you mean the number of pounds spent on cards
23 has gone up, then, yes, but it does not mean that card
24 usage, as you are referring to it in your graph, has
25 gone up, does it?

1 A. So on the basis that at least a proportion of MSCs would
2 have been incurred on the basis of the value of the
3 transaction undertaken, if the value of the retail
4 transactions paid for by cards has gone up, then that
5 would imply -- sorry, I am maybe mixing things up. I am
6 assuming, therefore, there would be an increase in cost
7 associated with that, but ...

8 Sorry, perhaps you can put your question again, I am
9 not sure I have answered it.

10 Q. This may tell us how many more pounds have been spent,
11 but it does not tell us the same thing as your graph,
12 does it? Your graph tells us or purports to tell us the
13 percentage of transactions on credit and debit cards as
14 a proportion of the retail economy; yes?

15 A. Oh, I see. So if it were the case that payment through
16 the other methods had also gone up 95 times in the
17 entertainment sector, then it would be the case that
18 card usage relative to other forms of payment has not
19 increased.

20 Q. But these graphs take no account of the change in value
21 of money or the growth of the economy, do they?

22 A. No, they do not. They are simply straightforwardly
23 reported from the UK Finance statistics about the value
24 of transactions processed by card.

25 Q. So, other than telling us that the number of pounds

1 spent on debit cards and credit cards had gone up, and
2 gone up differentially in different sectors, it tells us
3 nothing?

4 A. So what I have taken from the charts is that it tells me
5 that the value of the transactions processed by cards
6 has gone up very substantially over the relevant period
7 from when the data starts to the end of the period by 22
8 times for debit cards and by roughly six times for
9 credit cards. That is thinking about the totals there.
10 I think that those increases are so substantial that
11 I did not expect, when writing this report, that they
12 would be offset by changes such as the general increase
13 in inflation in the economy.

14 Q. But --

15 A. Because the orders of magnitude are so large.

16 Q. But let us just start the beginning of that, shall we.

17 Consumer price inflation, as we have seen, has
18 practically meant prices doubled over the relevant
19 period; yes? The Bank of England stats show that; yes?

20 A. I think that is right.

21 Q. We have seen that GDP grew about 3.5 times over the
22 period; yes?

23 A. Which would include that --

24 Q. Which would include two things: which would include
25 inflation and economic growth; yes? If you were going

1 to have a figure that was going to assist the Tribunal,
2 you would need to account for those, would you not?

3 A. So I think what I am saying is that these increases, as
4 shown in this chart, are so substantial that they
5 would -- I did not feel the need to point out an effect
6 net of inflation, given the overall scale of the
7 increases.

8 Q. Are you still content with that approach?

9 A. Yes. I am trying to make a quite simple point about the
10 overall increase in the scale -- the value of the
11 transactions that are processed by cards.

12 Q. But, Ms Webster, you say that in one sector they have
13 gone up by 95 times. That is mathematically correct. I
14 mean, you did not work that out, did you, because it is
15 only shown by the figures in your spreadsheet?

16 A. Yes.

17 Q. You did work it out?

18 A. Sorry, it is shown --

19 Q. Your team did it?

20 A. Yes.

21 Q. You did not look at the underlying figures, did you?

22 A. At the time when this was produced, I did not. I looked
23 at the charts, I spoke to my team about the charts.
24 I have subsequently looked at the figures.

25 Q. So you are right, they have in absolute terms gone up 95

1 times. But if you factor in inflation and economic
2 growth, you have to divide by 3.5, do you not?

3 A. Not quite. Anyway --

4 Q. "Yes" or "no"?

5 A. I am not quite sure whether that is quite the right
6 calculation, but what I would say --

7 Q. How is it wrong?

8 A. -- is that a factor of 95 relative to a factor of 3 is
9 quite a material difference, so that would tell me that
10 it is an increase in card usage, irrespective of the
11 increase in inflation. It has gone up by relatively
12 more.

13 Q. So let me repeat the question: they have, in absolute
14 terms, gone up 95 times, but if you factor in inflation
15 and economic growth you have to divide by 3.5, do you
16 not?

17 A. I do not think 3.5. I think it may be more appropriate
18 to adjust for inflation.

19 Q. Well, let us say 2. Let us say 3.

20 A. Yes, if I say 2, if that is the rate of inflation, then
21 that would be right. So it would have gone up by
22 40-something --

23 Q. 47, whatever it may be?

24 A. Yes.

25 Q. But why did you not say that? Why did you use 95?

1 A. So I am trying -- as I say, I am trying to make a sort
2 of fairly simple point about the overall scale of the
3 increase and, whether one takes account of inflation or
4 not, the point is there is a very large increase in card
5 usage.

6 The figures that I presented in the share, figure 2,
7 which shows share of transactions, will already take
8 inflation into account, and we have discussed figure 2.

9 Q. But we cannot mix apples and oranges, can we? This is
10 saying something completely different.

11 A. I am bringing two sources of evidence on the -- trying
12 to bring two sources of evidence that report the
13 increase in usage of cards and take what they say in the
14 round about the likely increase in usage of cards facing
15 merchants.

16 Q. You say you are:

17 "... trying to make a sort of fairly simple point
18 about [I am just quoting from the transcript] the
19 overall scale of the increase ..."

20 But we cannot know the overall scale of the increase
21 unless we know what scale we are working on, can we?

22 A. Well, to my mind, whether the increase is a 40-fold
23 increase or a 95-fold increase, it is still
24 a material -- a very material increase that I consider
25 could be a factor affecting the treatment that merchants

1 made of MSCs.

2 Q. But if their costs and their prices were all going up at
3 the same rate, then how would it affect them?

4 A. So that is perhaps where the inflation effect comes in.
5 So that is my point, which is if costs facing a business
6 generally are going up by inflation, and then we have
7 got card usage going up by many multiples of that, then
8 my expectation is that the costs that would be facing
9 the merchants would be -- the MSC costs would become
10 then more visible, and that is --

11 Q. Hold on a second. Because they have more noughts on
12 them?

13 A. Because there would be a larger share of my overall
14 costs in running my business.

15 Q. But that is not right if all the costs have gone up at
16 the same rate, is it?

17 A. Is your point that all the costs would have gone up by
18 40 times?

19 Q. I am just suggesting you have to factor in inflation and
20 GDP growth, and economic growth, to make any realistic
21 comparison?

22 A. Yes, and I think my point is that the scale of the
23 increase that I observe from figure 3 is such that if
24 one factored in inflation, it would not detract from the
25 point that overall, merchants can be expected to have

1 faced increased card usage and therefore likely
2 increased MSC costs.

3 Q. Just to take one point. If the UK had suffered from
4 hyperinflation between 1992 and 2022, then the value of
5 card transactions could have gone up 10,000% or
6 100,000%; yes? It could have, if there was
7 hyperinflation?

8 A. Possibly, yes.

9 Q. But that figure on its own would tell us absolutely
10 nothing relevant to Mastercard's case, would it? It
11 would have to be considered in the context of the size
12 by value of the UK retail economy, which might itself
13 have gone up by 10,000% or 100,000%?

14 A. Yes, and in the ideal I would have liked to have had
15 these figures as shares of transactions, but that data
16 was not available in the UK Finance statistics, so
17 I have reported the data as it is and consider that the
18 scale of the increases for these sectors, and for the
19 total for the retail sectors considered, is such that
20 I would not expect the increased usage to have been
21 offset.

22 Q. But the scale of these increases has to be put relative
23 to the scale of the increase in size of the UK retail
24 economy, does it not?

25 A. So if it were more marginal, then I think that would be

1 very important. The scale of the increases in here are
2 so large relative to any increase in inflation that
3 I took the view that that was not necessary.

4 Q. Well, let us go to figure 3 again which is in front of
5 us.

6 THE CHAIRMAN: Can I just ask. You said you took the view
7 that it was not necessary. Was that at the time you put
8 this in, you decided that it was not necessary to
9 consider inflation and growth in the economy?

10 A. I think that is right. I think I looked -- again,
11 I think what I am clear about in this section of my
12 report is that I have got relatively limited evidence to
13 go on when going -- trying to look back in time, and
14 therefore I am trying not to push the evidence too far.
15 I am reporting what I see in terms of increases in card
16 usage to give a view in the round about potential
17 expectations for MSC costs driven by changes in card
18 usage.

19 Then what I have here are two different ways of
20 doing that, figure 2 and figure 3, where figure 3 is
21 specific to retail -- certain retail sectors, and where
22 the increases were so large that I thought that that
23 point stood on its own. Maybe in hindsight I could have
24 included the inflation adjustment, but I think the
25 point --

1 THE CHAIRMAN: Or at least explained that that was your
2 thought process?

3 A. Yes.

4 MR SIMPSON: So, just in a nutshell, what do these graphs
5 tell us?

6 A. They tell us that for certain merchants in retail
7 sectors, there has been a very large absolute increase
8 in the value of transactions that are processed by
9 cards.

10 Q. Now, in order to calculate these figures and that these
11 are the top three, you must have, or your team must have
12 calculated the whole ranking?

13 A. The data is -- I believe it is in the spreadsheet that
14 was shared.

15 Q. Yes, it is. So why did you not include the whole
16 ranking?

17 A. Well, in effect I did, because I included the total,
18 which includes both the three sectors that I have called
19 out as the -- where it is most significant, and then it
20 also includes the figures that are for the other sectors
21 of the retail economy.

22 So I think the point that I make in paragraph 6.31
23 is that the card usage data shows that there are
24 particular retail sectors that are more affected than
25 others, and experienced a larger increase than others,

- 1 and then clearly when one looks at the total that shows
2 the overall picture.
- 3 Q. Now, there is no scale on these graphs, is there, to the
4 left?
- 5 A. No, but the percentages are noted at the top of the
6 bars.
- 7 Q. They are, that is right. But do you accept that someone
8 reading this quickly might potentially be misled by the
9 lack of scale, because they would look at the 21.2%
10 yellow block, and it looks almost exactly the same as
11 the 10.2%? It is sort of half scale on the bottom one,
12 is it not?
- 13 A. The increases are lower in the bottom chart, yes.
- 14 Q. Do you think it would have been more satisfactory to put
15 a scale on? I know the percentages are there, but it is
16 the visual effect of a graph which it is for, is it not,
17 these blocks?
- 18 A. I think it is quite clear with the percentages, so
19 I would not have that worry.
- 20 Q. So to get to these graphs, we have the source
21 underneath, the APACS UK payment statistics 2006. In
22 fact it is also the 2016 ones, they have been omitted,
23 but I am not saying anything turns on that, it is just
24 an error, I am sure.
- 25 A. Right.

1 Q. Also the 2023 ones; you are using the same sources as
2 you are for figure 2?

3 A. Yes.

4 Q. Now, to get to the graphs, that involved collating
5 a very large number of figures from these tables, did it
6 not?

7 A. I mean, I think it is all in one table -- well, sorry,
8 because the data in any individual report only covers
9 a certain number of years, you have to go to the
10 different years to get the full time series, but it is
11 table 17-point -- sorry, 18.2 and 17.2 in the latest
12 payment statistics. So the data is contained within
13 a single table, I think, for debit cards, and a single
14 table for credit cards, from memory.

15 Q. I am just looking in principle at the exercise that
16 needed to be carried out to produce the graph. So the
17 table -- the figures had to be collated from those
18 APACS --

19 A. They were read from tables 18.2 and 17.2.

20 Q. But they are from three different tables, are they not?
21 Sorry, there is an error there. Take it from me, and
22 I am sure I will be corrected, but they are from three
23 different tables?

24 A. In terms of having to bring together across the ...

25 Q. You have 2006, which goes back a certain way, to 2016,

1 just as for the previous one?

2 A. Yes.

3 Q. So all the material had to be collated from that, and
4 then a spreadsheet had to be created which calculated
5 the compound growth for each of the ten sectors of the
6 economy into which APACS ultimately divides it, and
7 those are Mr Coombs' 12 sectors with a couple of them
8 aggregated; yes?

9 A. I think that is right.

10 Q. Take it from me for the moment, I am sure I will be
11 corrected.

12 That spreadsheet would then be created in order to
13 produce a derivative number, which would be compound
14 growth?

15 A. Yes.

16 Q. Then, on that, it would, in the cleverness of Excel,
17 rank them in order, it would give them a ranking?

18 A. Yes. I am not sure we used that function but --

19 Q. You did. It is in the spreadsheet and we are going to
20 go to it.

21 A. Right, okay.

22 Q. So {RC-Q4/16/1}. I have gone, yes, to the second one,
23 figure 3. The second tab, "Worksheet", sorry, at the
24 bottom. Sorry, my fault, I was not clear. If you
25 scroll down, please. Can you shrink this slightly.

1 Great, thank you, and scroll down.

2 So what we have is, as with a lot of these
3 spreadsheets, you have the intermediate output, that is
4 intermediate from your collation or your team's
5 collation of the APACS and UK Finance numbers?

6 A. Yes.

7 Q. Those numbers are taken from those tables?

8 A. Yes.

9 Q. Then we go up to final output and we see the final
10 collated figures. Then, at the bottom, you see, in very
11 light grey shading, the rankings, and those rankings are
12 a product of working out by Excel under the surface what
13 the top ones are; okay?

14 A. Yes.

15 Q. So for debit cards you have taken other services, 21%,
16 you have taken entertainment, 18%, and you have taken
17 hotels; yes?

18 A. Yes.

19 Q. They go down to the bottom one of 10 of mixed business,
20 which is 9%; yes?

21 A. Yes.

22 Q. If we scroll up.

23 Now, I suggest to you, Ms Webster, that it would
24 have been just -- it would have been very easy to put
25 that final output in a table in your report?

1 A. Yes, I could have done that.

2 Q. Any reason you did not?

3 A. I think there just are a lot of sectors, and the point
4 that I wanted to make in paragraph 6.31 was that there
5 are some sectors for which this was a very material
6 increase and therefore potentially a relevant factor,
7 card usage would be a relevant factor to take into
8 account. So for ease of exposition I chose the top
9 three, and then included the total to make sure that the
10 full picture was available, and then obviously shared
11 with the expert teams the spreadsheets.

12 Q. For ease of exposition?

13 A. Yes. So what I have been exploring in this section
14 about changes over time is whether there would have been
15 changes in MSC card usage that potentially have
16 a bearing on how merchants would have treated MSC costs
17 and whether that, therefore, is a relevant factor to
18 take into account, notwithstanding the fact that
19 I cannot draw inference specifically for the
20 implications for the rate of pass-on, but I am trying to
21 explore whether this is a relevant factor to take into
22 account.

23 So I have highlighted, for each of debit cards and
24 credit cards, the particular retail sectors where there
25 is the largest increase in usage, because I think that

1 it is more likely to be the case that usage has
2 a bearing on MSCs -- merchants' treatment of MSCs where
3 the increase in card usage is greatest. So that is the
4 point that I am seeking to make.

5 Q. But you do not carry out a sectoral analysis?

6 A. I do not in the end develop pass-on rates which are
7 specific to different sectors. What I am trying to do
8 here really is illustrate that for some merchant
9 sectors, it would have been more significant in terms of
10 this increase in card usage.

11 Q. But what use is that to you in a context in which you
12 are not coming to any sectoral figures?

13 A. So in my findings in relation to -- sorry, my
14 conclusions in relation to the merchant claim period,
15 I identify a range for variable cost pass-on, and
16 I also -- so I do not -- I am not able to reach a view
17 specifically on fixed cost pass-on, and that is my base
18 case. Then the question is -- and I cannot
19 differentiate that across sectors because of the
20 limitations of the empirical evidence which I have
21 discussed. But that does not mean to say that if one
22 were looking back in time, one might want to have an
23 understanding about for which sectors would the increase
24 in card usage be more significant, such that if the
25 Tribunal wished to make any adjustment to pass-on rates

1 going back in time, it would know those sectors for
2 which it was a more important consideration.

3 Q. But you do not tell them all the sectors. How can they
4 do that?

5 A. So I have highlighted those for which it would be most
6 significant.

7 Q. You think it would, but it is a matter of evidence for
8 the Tribunal to decide what it is going to decide on
9 these things, but you do not put all the information
10 before them, do you?

11 A. So I accept that I have not put all of the detail for
12 all of the sectors. I have provided the total which
13 gives an average.

14 Q. You have not given any of the detail for seven of the
15 sectors, have you?

16 A. No. That is in the underlying spreadsheet.

17 Q. Which you did not supply with your report?

18 A. No.

19 THE CHAIRMAN: Mr Simpson, are you asking about other
20 services, or are you going to?

21 MR SIMPSON: I was going to go -- sir, you carry on, because
22 I was going to move to credit cards for a second, but do
23 carry on.

24 THE CHAIRMAN: Well, I was just going to ask what is
25 included in other services, because that is one of the

1 ones that you focus on.

2 A. Yes. So I have included that in my note to the table in
3 my report.

4 THE CHAIRMAN: Yes.

5 A. So it is financial -- it includes the financial services
6 sector and any other sectors other than --

7 THE CHAIRMAN: Other than.

8 A. -- food and drink, mixed business, clothing, household,
9 other retailers. That is the list that are separately
10 broken out. So other services captures all of that and,
11 perhaps most significantly, financial services.

12 MR SIMPSON: Sir, I understand your puzzlement because I had
13 not put the final bit of the jigsaw, in effect, which is
14 that these are the sectors relied on by Mr Coombs. This
15 is why he broke it down in the way he did, because there
16 is card expenditure data for these sectors. So the
17 other services sector is the same as the other services
18 sector that he relies on, because he needs to create the
19 weighted average for the UK economy.

20 Mr Williams points out, and I think I have pointed
21 out, it is ten, not 12, because the two have been
22 amalgamated in this, but I need not go into the
23 interstices of that for these purposes.

24 So if we scroll across, please, on the spreadsheet.
25 Yes, I think I have dealt with the point, because the

1 points I have made would apply to credit cards. We can
2 go across to credit cards. You will see the figures
3 there and the rankings there which are the basis of
4 credit cards.

5 Now, what I just want to establish, Ms Webster, is
6 why, for a Tribunal seeking to arrive at sectoral
7 pass-on rates for a 32-year period, would it only be
8 relevant to their consideration for you to present them
9 with the top three claims in value?

10 A. So I think that, in preparing this material, I have been
11 clear that I think the evidence available for
12 understanding the extent to which pass-on would have
13 been different, going back in time, the evidence is
14 relatively limited, and so I have not sought to give --
15 to be particularly precise in the estimates that I have
16 provided.

17 What I wanted to signal is an overall increase in
18 card usage, which, to the extent that that implies an
19 overall increase in MSC costs facing merchants, that
20 could have an impact on how the merchants treated MSCs
21 in their pricing decisions, and it is more consistent
22 with what I have done elsewhere in my report. It is
23 sort of: in the round, these are some high level factors
24 which appear to have been different as the period has
25 gone on from 1992 onwards, and I have sought to draw

1 attention to the broad changes, rather than suggesting
2 a more precise approach.

3 Q. So, Ms Webster, you say that the evidence available is
4 relatively limited. In that context, it is all the more
5 important to put all the available evidence before the
6 Tribunal, is it not?

7 A. Yes. Well, in retrospect, that may have been helpful.

8 Q. Do you accept that you should have done so?

9 A. I accept that it may have been helpful.

10 Q. I suggest to you that you should have done so,
11 particularly in the context of limited evidence.

12 A. Okay.

13 Q. That deals with figure 3.

14 I would like to go back to where we came in, which
15 is the issue of treating card usage as a proxy for
16 aggregate MSC costs. What investigations did you carry
17 out into whether there had been variations in aggregate
18 MSC costs for merchants over the period 1995 to 2022?

19 A. So, given the scale of the increases in usage, I took
20 a broad view that, on the basis of my general
21 understanding of changes in MIFs, I did not expect those
22 changes to be of a scale likely to offset these
23 increases in usage, so I did not investigate the changes
24 in MSC costs at the time.

25 Q. Because you regarded it as inconceivable that you could

1 come across any evidence which might contradict your
2 conclusions?

3 A. I considered that the scope for change in MSC costs
4 would not be sufficient to offset the increased usage in
5 cards.

6 Q. What if they dropped to zero?

7 A. Sorry?

8 Q. What if they dropped to zero?

9 A. So I think I must have had an awareness that that would
10 not have been the case.

11 Q. Well, they did in one year, off the top of my head
12 I cannot tell you which year, but I think 2020 to 2021
13 I think there was one part in which they did drop to
14 zero.

15 A. Right. But my understanding is that that is not
16 generally the case.

17 Q. But, Ms Webster, what was that understanding based on?

18 A. So, again, this may be -- forgive me, this may have been
19 considerations that my team undertook, but at no point
20 in the work that I have been doing have I been aware
21 that the MSCs had fallen to such an extent.

22 Q. Did you ask anyone?

23 A. I do not now recall the conversations that I had at the
24 time, but my understanding is that they would not
25 have -- the changes in MSC costs would not have been

1 sufficient. Subsequently, I have checked in relation
2 to -- the one change which I understand that was
3 particularly significant was around the introduction of
4 the IFR and, as I say, having looked at the PSR study,
5 which reports MSC costs to businesses of different
6 sizes, there was no change in MSC costs on a per unit
7 basis over that period.

8 Q. So you did not know about the IFR drop when you wrote
9 your report?

10 A. So I was aware there were changes that were brought in
11 at around the time -- sorry, around the time of the IFR,
12 and my expectation was that they would not have been
13 sufficient to counteract the very large increases in
14 card usage.

15 Q. What was that expectation based on?

16 A. It was a general awareness of the nature of the reforms
17 that were made at that time.

18 Q. Well, what did you know about the reforms that were
19 made?

20 A. That the most material impact was on the credit card MIF
21 with a smaller impact on the debit card MIF.

22 Q. Did you know the numbers?

23 A. I do not think I knew exactly. I think it was something
24 like 0.3 to 0.2 in relation to debit cards --

25 Q. Did you know the numbers at the time?

1 A. I think I had a general awareness, yes.

2 Q. You do not mention them in your report?

3 A. No. That is because the increases in card usage are so

4 large that I did not expect the change in MSC costs on

5 a per unit basis to have been sufficient to offset that.

6 In retrospect, it may well have been helpful to have

7 investigated further.

8 Q. Well --

9 A. This was a -- yes.

10 Q. So you know that MSC costs are comprised of the MIF, the

11 scheme fee and acquirer fees; yes?

12 A. Yes.

13 Q. Did you seek to ascertain what proportion of the MIF

14 acquirers passed on to merchants that changes over the

15 period 1995 to 2022?

16 A. No.

17 Q. So you did not investigate blended contracts, IC+

18 contracts and IC++ contracts and their effects?

19 A. No.

20 Q. Did you know that Trial 1 dealt with all these issues?

21 A. I have not followed Trial 1.

22 Q. Did you know that Trial 1 dealt with all these issues?

23 A. I do not think I did.

24 Q. Mastercard did not tell you that?

25 A. This was not in my view in putting together this section

1 of my report. It was not an important consideration for
2 me, given my overall expectation that changes would not
3 have been sufficient to offset these growth rates in
4 card usage.

5 Q. But an expert should not put their -- well, particularly
6 an empirical expert should not put their expectation
7 over evidence, should they?

8 A. So I accept that it would have been helpful to confirm
9 my expectation and that -- I can see that that would
10 have been a helpful step to take. But I am looking at
11 these increases in card usage and they are so
12 substantial that that was the view that I took.

13 Q. Sorry, Ms Webster, but that last sentence, I suggest to
14 you, was not the sentence of an objective expert:

15 "... it would have been helpful to confirm my
16 expectation ..."

17 It is not the sentence of an objective expert, is
18 it?

19 A. Sorry, I have -- I have tried to be objective here in
20 bringing what I see as relevant material to the
21 Tribunal. I have focused on changes in card usage,
22 because those are the changes which appear to be
23 greatest.

24 Q. So Donald Rumsfeld, of blessed memory, used to talk
25 about known unknowns, and I suggest to you that there

1 was a known unknown here for you.

2 A. I do not think it was entirely unknown. So my
3 expectation is -- so this was the expectation that
4 I had. My team were responsible for bringing together
5 this analysis for me. I trust my team to have told me.
6 If it was the case that they found evidence that card
7 costs on a per unit basis had been materially lower to
8 an extent that would have offset this increase in card
9 usage, then they would have let me know.

10 Apologies, there was so -- a very, very large amount
11 of work that was needed to go into producing my report,
12 and so it has been necessary for me to rely on the input
13 from my team. So therefore, in relation to some of the
14 specific questions like this one, I have not looked at
15 all of the detail.

16 Q. You know that it is the obligation of an expert, when
17 they have relied on the work of others, to say so?

18 A. Yes.

19 Q. But you have not said so?

20 For the transcript, please.

21 A. I cannot now remember what is at the beginning of my
22 report.

23 Q. I am sorry?

24 A. I cannot now remember if I state that I have relied on
25 my team.

1 Q. You do not.

2 A. Right. That was an oversight.

3 Q. Now, you were appointed the expert for the Merricks
4 claim in October 2023.

5 A. That is right.

6 Q. Card acceptance and card usage do not depend on any
7 merchant data, do they?

8 A. No.

9 Q. So there is no question of lack of time here to look at
10 these figures. You had plenty of time, did you not?

11 A. Yes, I did not start looking at -- well, sorry, in
12 October 2023 I think we were not clear that -- whether
13 or not the Merricks claim would be joined with these
14 proceedings.

15 Q. But you knew you were the expert in the Merricks claim?

16 A. Yes.

17 Q. Also that it was a huge claim?

18 A. Yes, and I did not start work at that point on this.

19 Q. When did you start the work?

20 A. In relation to this specific point?

21 Q. Yes.

22 A. I believe that was after Mr Merricks had joined the --
23 this claim, these proceedings.

24 Q. So you did not look at card usage or card acceptance
25 until after Mr Merricks had been joined into the claim?

- 1 A. Yes.
- 2 Q. On May 29, I think?
- 3 A. Yes.
- 4 Q. Why was that?
- 5 A. I do not recall at the time. I think there was
- 6 uncertainty as to whether Mr Merricks would be included
- 7 in the proceedings, so I had not treated it as
- 8 a priority to that point.
- 9 Q. When did you start work on other issues?
- 10 A. I began work on the public data and on the existing
- 11 studies in late January, from memory, which was after we
- 12 had had the evidential hearing on the 10 and 11 January
- 13 setting out the approach to evidence in this case.
- 14 Q. Now, Dr Niels represented you at the meetings leading up
- 15 to the joint expert report.
- 16 A. Yes.
- 17 Q. He says in the joint expert report that card acceptance
- 18 might affect pass-on.
- 19 A. Yes.
- 20 Q. But he does not mention card usage as potentially
- 21 affecting pass-on.
- 22 A. I do not recall the details.
- 23 Q. He does not.
- 24 A. Right.
- 25 Q. Did you discuss the issue of card usage and its

1 relevance, or not, before the JES was served?

2 A. I do not recall doing so.

3 Q. You do not, sorry?

4 A. I do not recall speaking specifically about card usage
5 at that time.

6 Q. What did you discuss with him prior to the JES being
7 served?

8 A. So we talked through each of the different components of
9 the JES and they included, at a broad level, the factors
10 that can be expected to affect pass-on, and those were
11 factors that were relevant to -- sort of largely about
12 economic theory, and then a section that related to
13 approach and the various sources of evidence.

14 So I saw drafts of Dr Niels and his team's proposed
15 entries, I read those and we talked about those, but
16 they were quite -- the JES was quite a high level
17 statement.

18 Q. But we can take it, then, that you agree with Dr Niels'
19 views as expressed in the JES?

20 A. Yes.

21 Q. You agree with the points of economic principle in his
22 reports in Sainsbury's and AAM?

23 A. So I did not look at either of those reports.

24 Q. No, I am not suggesting you did for the JES, no. But
25 having looked at them, you agree with them?

1 A. I mean, they cover lot of ground, so you may want to be
2 specific.

3 Q. I just want to ask you whether there is anything in them
4 on economic principle that you disagree with?

5 A. I am trying now to remember. I think in one of them, in
6 AAM, he may talk about the fact that all costs become
7 variable in the long-run. That is a discussion that we
8 have also had in the hot-tub. I do not know
9 specifically exactly what Dr Niels meant by that. It is
10 clear that if he meant that all costs are avoidable in
11 the long-run, then, yes, I take that view, they are
12 avoidable. My view is they do not become variable for
13 the purpose of price setting. If Dr Niels meant they
14 become variable for the purpose of price setting, then
15 that is not something that I would -- for
16 profit-maximising price setting, I would not agree with
17 that.

18 Q. Is there anything else you do not agree with?

19 A. I cannot recall anything, from the top of my memory.

20 Q. Well, to be fair to you, when we have a break, perhaps
21 you can have a think, and I will come back to it. Would
22 that be sensible?

23 I want to go back then to, finally, this point of --
24 I call it the Rumsfeld point. So in order to -- now
25 that these points on MSC costs have been brought to your

1 attention, do you accept that in order to work out
2 aggregate MSC costs across the economy for any given
3 year, you would have to ascertain the level of both
4 credit and debit card MIFs in that year?

5 A. The level of the credit card and debit card MIFs would
6 be relevant, in my view, to the -- I would expect they
7 would be relevant to the MSC that merchants would be
8 charged.

9 Q. Well, they are part of it.

10 A. So my understanding is with IC++ and IC+ contracts, they
11 would be passed straight through.

12 Q. I am not talking about pass-on, I am talking about the
13 components of an MSC at the moment, so perhaps I could
14 restate the question.

15 Do you accept that in order to work out aggregate
16 MSC costs across the economy for any given year, you
17 would have to ascertain the level of both credit and
18 debit card MIFs?

19 A. So I think they would be both relevant -- sorry, the
20 mix?

21 Q. MIFs.

22 A. The MIFs. So I expect that those would both be very
23 relevant factors that would affect an acquirer's
24 decision on what -- how to price the MSC.

25 Q. I am not talking about that. I am just asking a very

1 simple question, which is a "yes" or "no" answer really.

2 A. Well, I understand that they are input to MSCs.

3 Q. So you would need to ascertain them in order to work out
4 aggregate MSC costs across the economy?

5 A. Yes, I think I can accept that.

6 Q. But you did not?

7 A. No.

8 Q. Do you accept that you would also have to work out the
9 balance between credit and debit card transactions in
10 any given year, ie the volume of transactions to which
11 each MIF would apply?

12 A. So I think first best would, rather than going to the
13 underlying MIFs, would be to observe directly MSC costs
14 that were charged on a per unit basis by acquirers to
15 merchants.

16 Q. Sorry, I do not understand that answer. We are looking
17 at your point about aggregate MSC costs to merchants in
18 a given year, which is what your card usage graph was
19 about.

20 A. Yes.

21 Q. I am suggesting that because MIFs are different between
22 credit and debit, you would have to know the divide, you
23 would have to know the percentages of each to work out
24 aggregate MSC costs?

25 A. I think one would need to know the absolute volume of

1 each, rather than the share. So what I would need to do
2 is I would say, if I am the merchant: I have this set of
3 transactions, they are processed on the debit card.
4 What is the associated MSC cost with those transactions,
5 versus this is the set of transactions that I processed
6 with a credit card, what is the associated cost with
7 that?

8 Now, what I do not know is how the acquirer has set
9 the MSC and whether there would be an MSC which is
10 dependent on the individual transaction.

11 Q. That is a fair point, you have to know both value and
12 volume.

13 A. Yes, so --

14 Q. But you did not ascertain either?

15 A. So what I ascertained is that there is an increase in
16 credit card transactions, the value of transactions
17 processed with credit cards. There is also an increase
18 in the value of transactions processed on debit cards.
19 So long as one were in a situation where there is not
20 a material reduction in those across the piece, then,
21 because both credit card and debit card transactions are
22 going up, I would expect overall cost to go up.

23 Q. But to come to a conclusion on that, you would have to
24 investigate that, would you not?

25 A. Yes, or investigate, as I say, looking at the PSR study

1 which shows the overall MSC charge per unit across all
2 transactions.

3 Q. But you did not do that?

4 A. I have looked at that subsequently.

5 Q. You did not do it in your report?

6 A. As I said, I did not do that for my report.

7 Q. You would also have to know, would you not, to arrive at
8 aggregate MSC costs for any given year, the aggregate
9 level of acquirer pass-on of any reduction in MIFs in
10 that year to the merchant?

11 A. As I said, I think if one can go straight to looking at
12 the MSC costs, one does not need to then think about the
13 degree to which there was pass-on, because, in effect,
14 it is just looking at the end result.

15 Q. Sorry, how can you go straight to looking at the MSC
16 cost without working out the components of those and how
17 they are made up?

18 A. Because that is reported in the PSR study.

19 Q. Which you do not rely on.

20 A. Which I am saying -- so my expectation had been that any
21 change in the MIFs and in MSC costs would not have been
22 sufficient to offset the very large increase in usage.
23 I have subsequently looked the PSR study and observed
24 that actually, even around the time when there was, to
25 my understanding, one of the biggest changes to MIFs,

1 actually the MSC per unit prices charged to merchants
2 was largely unchanged.

3 Q. But I suggest to you that for this separate reason,
4 unless you investigate all those things properly, you do
5 not know whether you can treat card usage costs as
6 a proxy for MSC aggregate costs?

7 A. As I said, perhaps I made an assumption, but the scale
8 of the increase in card usage to my mind was so
9 substantial that I did not consider that it was
10 realistic that it would have been offset.

11 Q. I just want to look at that answer. (Pause)

12 I just do not understand that answer, I am afraid,
13 Ms Webster. You are saying it just -- I mean, you might
14 put water on to boil and the temperature might be rising
15 and someone might throw a huge chunk of ice in it that
16 would bring the temperature down. Are you suggesting it
17 is inconceivable that any change could possibly have
18 affected your conclusion, such that you did not even
19 think you should investigate it?

20 A. I think that is right. So the data that underpins
21 figure 2 in card usage, debit card usage, value of
22 transactions, has gone up 2,500%, and the increase in
23 credit card usage, value of transactions, is 400%.
24 Those figures are so substantial that, in my mind, it
25 was so unlikely that any change in MSC costs could

1 offset those increases.

2 Q. So I suggest that you cannot tell the Tribunal your
3 graph is reliable without having investigated that?

4 A. Are you talking about figure 3?

5 Q. Figure 2.

6 A. Figure 2. Which part of the inference is not reliable?

7 Q. Well, in figure 2 you treat card usage as a proxy for
8 MSC costs, and I am suggesting that unless you have
9 investigated MSC costs across the years, you cannot tell
10 the Tribunal your graph is reliable.

11 A. Yes, I am not sure that I would say they are a proxy.
12 They are an indicator, to my mind, of a likely increase
13 in MSC costs. What I observe from the underlying data
14 in figure 2 is these very large increases that I have
15 just read out. It may be the case that there is some
16 offset to that through a reduction in MSC costs per
17 unit, but I do not consider that they would be
18 sufficiently substantial that it removes the sort of
19 underlying point that card usage, and therefore likely
20 card costs, will have gone up substantially. It may be
21 that MSC costs have gone up by somewhat less than 2,500%
22 for debit cards and 400% for credit cards, I fully
23 accept that, but in my view, that does not remove the
24 point that it is more likely than not that MSC costs
25 will have gone up for merchants.

1 Q. So you say you are not sure you would say they are
2 a proxy. You said they were in the hot-tub, in answer
3 to a question from Professor Waterson --

4 A. Sorry, yes --

5 Q. -- and you said so in an answer to me this morning.

6 A. Yes, apologies, I think they are informative of. They
7 are not a proxy in the sense that you could say the rate
8 of increase for card usage would be the same as the rate
9 of increase for MSC costs. So apologies if I had left
10 that impression, it was not my intention.

11 Q. It was a firm impression. I want to go back to the
12 exchange. It is {Day6/78}. So you say at the bottom:

13 "MS WEBSTER: It is perhaps also just worth
14 emphasising the absolute change in volume -- in the
15 value of card transactions. So between 1995 and 2022,
16 credit card transactions, the value of those grew by
17 400%, and debit card transactions by 2,500%. So there
18 really is a very --

19 "PROFESSOR WATERSON: In pounds?

20 "MS WEBSTER: Yes, in absolute terms.

21 "So there is -- there just is a very marked change,
22 I think, sort of a bit reflecting your comment about
23 payment by cheque -- or standing behind people paying by
24 cheque in Sainsbury's.

25 "So the question then -- so I have used these as

1 a proxy for MSC costs, I have looked at usage, and
2 I accept that usage does not equal cost, because it
3 depends on the price that the merchants need to pay."

4 So you are changing that answer now, and you are
5 changing the answer you gave to me earlier this morning?

6 A. No, I stand by what's written here. I think the
7 question is: exactly what is meant by "proxy"? So
8 I have gone on to clarify here -- I have looked at usage
9 as being informative of the likely increase in the costs
10 to merchants of -- MSC costs to merchants, and I am
11 clear here, and it is important, it is not -- the exact
12 percentages will not be exactly right for MSC costs
13 because it depends on the price paid.

14 So if one takes from the word "proxy" that it is the
15 same rate applies, then that would not be quite right,
16 and I should be clear, but I think I have articulated
17 what I meant quite well there in the hot-tub.

18 Q. But if it is not a proxy, it does not tell us anything,
19 does it?

20 A. I think it is informative.

21 Q. Informative. How are you drawing a distinction? How
22 informative?

23 A. So my expectation, based on the very sharp increase in
24 card usage, is that MSC costs will have gone up to
25 a large extent because usage will drive the increase in

1 the costs, but to the extent that MSC costs are lower
2 later in the period, then that would have some
3 offsetting effect.

4 Q. Well, it would have --

5 A. So the rates would not have increased by quite as much
6 as the increases in card usage.

7 Q. You say "quite as much", but you do not know how much
8 because you have not investigated?

9 A. So having looked at the -- so the ... Going back to the
10 point that I made: these increases in card usage are so
11 substantial that I considered it was not credible that
12 any reduction in MSC costs would have offset it.

13 Q. Well, I suggest to you that it is not credible to put
14 forward a graph as informative about card usage as some
15 form of proxy for MSCs without investigating whether
16 they rose or fell or passed on or not during the whole
17 period?

18 A. Again, I was trying to make a simple point about the
19 very high increases in card usage.

20 Q. Well, we have dealt with that.

21 THE CHAIRMAN: We have rather dealt with it.

22 MR SIMPSON: Yes, we have. I am moving on.

23 Sir, I am assuming a break at 11.25 for current
24 purposes, because we are doing a three-hour stint until
25 1.00. Is that wrong or ...

1 THE CHAIRMAN: I was thinking 11.30, probably.

2 MR SIMPSON: Of course.

3 THE CHAIRMAN: That would be halfway, I think, if my maths
4 is any good.

5 MR SIMPSON: What I was doing -- Professor Waterson is on
6 this one. What I was doing was dividing the time and
7 taking ten minutes out of it --

8 THE CHAIRMAN: Oh, you said 11.25? Sorry, I thought you
9 said 11.45.

10 MR SIMPSON: Yes, approximately.

11 THE CHAIRMAN: Yes, fine.

12 MR SIMPSON: So I want to move on to card acceptance and
13 that is figure 4 in your graph. I want to go first to
14 your report {RC-F/14/123}, paragraph 6.36:

15 "As set out in section 3.4, the commonality of MSC
16 costs across merchants is likely to be a key driver of
17 the rate of pass-on -- that is, the rate of MSC pass-on
18 for a particular merchant is likely to be higher where
19 its rivals also face these costs. The available
20 evidence indicates that many merchants began accepting
21 cards much later than the beginning of the Merricks
22 claim period and that some of these did so significantly
23 later than their rivals, such that MSCs were not common
24 costs across all merchants during the Merricks claim
25 period."

1 So that is the premise of your point.

2 Now, before going to your graph, I want to deal with
3 some more general points on card acceptance. Presumably
4 the growing of -- the effect of growing commonality will
5 be incremental. If, as you say, commonality affects
6 pass-on of MSCs, then the wider card acceptance is, the
7 more likely merchants are to pass on the costs, so it
8 will grow incrementally. As it widens, so it grows.

9 A. Sorry, could you -- what is your question?

10 Q. So what I am saying is that your point is that the wider
11 card acceptance is, the more market-wide a cost is, the
12 more likely it is to be passed on, and I am suggesting
13 that you would see a relationship between card
14 acceptance and the likelihood of that pass-on. So the
15 more wide the card acceptance is, the more likely it is
16 to be passed on. There is not some binary break point
17 where they are going to be passed on as opposed to not
18 being passed on?

19 A. Yes, I agree with that.

20 Q. Now, would you accept that whether or not a cost is
21 market-wide is only one consideration in economic theory
22 for whether a cost is, all else equal, more likely to be
23 passed on?

24 A. I agree that it is one of a number of factors, as I set
25 out in my discussion of economic theory, I think it is

1 a particularly important factor that underpins the
2 conclusions that I reach about the likelihood of high
3 pass-on in my benchmark case.

4 Q. So it is one factor?

5 A. Yes, and in my benchmark case it is a particularly
6 important factor. It does a lot of the work in driving
7 the high pass-on rate.

8 Q. Now, the MSC is not a cost which is imposed on
9 merchants, like a price rise for their electricity.
10 They choose to incur it. Do you accept that?

11 A. Yes.

12 Q. Now, when merchants opt to accept cards, they are opting
13 for what they perceive to be the competitive advantage
14 over others in the same market, or trying to keep up
15 with their competitors by deriving the benefits they do
16 from card usage, are they not?

17 A. Yes. I think there is a number of reasons that I saw in
18 the survey evidence that I quoted, which included
19 convenience for customers, driving additional sales,
20 keeping up with competitors.

21 Q. Can we go to {RC-Q4/3/3}, the final paragraph on this
22 page. This is the article by Rochet and Tirole, 2006,
23 that is referred to in Mr Coombs' report.

24 Could you just bring up the final paragraph, it is
25 the only one we are interested in, and could I just ask

1 the Tribunal and you to read that. (Pause)

2 A. Yes.

3 Q. Do you accept that?

4 A. Which part?

5 Q. Particularly the final sentence.

6 A. So this:

7 "Put differently, merchants may be willing to accept

8 cards even if doing is so a money-losing proposition

9 from a narrow accounting viewpoint, that is when the

10 merchant discount exceeds the convenience benefit

11 they ... derive ..."

12 Yes, I am not entirely sure I follow quite what that

13 last bit means.

14 Q. If we go back to the previous sentence, that gives you

15 a bit of context. Would you agree with that?

16 A. I think -- yes, I am not quite sure the point that you

17 are putting to me. I think the question --

18 Q. Perhaps I will put the point a bit further when we have

19 gone a bit further through it.

20 A. Okay.

21 Q. So go over the page and the second paragraph. You can

22 skim the first, I do not think it is relevant but just

23 skim it, but it is the second one I am interested in

24 {RC-Q4/3/4}. (Pause)

25 A. Okay, I have read that.

1 Q. Do you accept that?

2 A. I do not think that I do. So I think there may be many
3 reasons why a merchant may decide to accept cards, and
4 it may allow -- it may be that it enables them to put up
5 their prices because of the competitive advantage that
6 is conferred on them. It might be that they choose not
7 to do that and, in effect, they are driving additional
8 sales by the convenience. So I do not think it
9 necessarily follows that, because a merchant has chosen
10 to accept cards, it has the ability to pass on the costs
11 of doing so in processing transactions in its retail
12 prices.

13 I would add that also once a merchant has made the
14 decision to accept cards, and let us say its competitors
15 have not, and let us say it has put up its prices to
16 reflect the costs that it faced, if that merchant then
17 faced a reduction in MSC costs because its competitors
18 did not face the same reduction in costs, there would be
19 no necessity for the merchant then to pass on the
20 reduction in the MSC costs.

21 Q. Well, I think it is fair to put this to you, but I think
22 the battle lines are fairly clear between you and
23 Mr Coombs on this so I will not press the point further.

24 A. Yes.

25 Q. I would like to go to {RC-G/12/148}. This is your

1 second report and if you could just skim through -- if
2 we can go to 7.12 and 7.13, please. This is the card
3 acceptance graph I am going to come to in a moment, but
4 if I could ask you and the Tribunal to read 7.12 and the
5 first paragraph of 7.13. (Pause)

6 A. Yes.

7 Q. I suggest to you that is slightly unfair to Mr Coombs,
8 if we go to {RC-F/10/49} at paragraph 2.72, because
9 Mr Coombs does acknowledge there are other factors --
10 can we go back to 2.70, please. I am sorry. Could
11 I ask you to skim 2.70 to 2.72. (Pause)

12 A. Yes.

13 Q. So would you accept you are being slightly unfair to
14 Mr Coombs in saying that this is the -- implying it is
15 the only factor they take into account? He also
16 mentions these other factors, does he not, in 2.72?

17 A. He does, and in 2.72 he makes the statement that I think
18 I particularly disagree with, which is the one about, in
19 the second sentence, the advantages mean the ability to:

20 "... 'claw back' the cost increase through
21 a commensurately higher price, which amounts to full
22 pass-on."

23 Q. I think we know where the battle line is there and the
24 disagreement between you, but would you accept that the
25 advantages he mentions in the final sentence are

1 advantages, are real advantages, for merchants?

2 A. Yes, I would.

3 Q. When we are looking at whether a cost is market-wide in
4 relation to card acceptance, we need to look at the
5 level of the market in which the business operates, do
6 we not?

7 A. Yes.

8 Q. So you cannot really look at card acceptance on a UK
9 economy-wide level, because there could be very big
10 variations between sectors?

11 A. I think that is right, and the reason why I also looked
12 to see if I could find examples where there would be
13 instances of competitors in the same market not
14 accepting cards at the same rate -- sorry, having
15 accepted them at the same point in time, because that
16 would be relevant evidence.

17 Q. So a general card acceptance graph across the whole
18 economy does not tell us anything, does it?

19 A. It tells us that card acceptance rates in general were
20 lower, and that could be for two reasons. It could be
21 because in any individual sector or for any individual
22 set of competitors, there is a lower rate of
23 commonality, so some merchants accept cards and some do
24 not, or it could be the case, as I think Mr Coombs has
25 described, which is there could be whole competitor sets

1 that all adopt card payments at the same point in time,
2 and then the growth in acceptance over time is through
3 additional competitor sets seeking to -- making the
4 decision to adopt cards.

5 Q. But you cannot tell anything from a general card
6 acceptance graph about pass-on because card acceptance
7 is sector or market specific, is it not?

8 A. What do you mean by card acceptance is market or sector
9 specific?

10 Q. Well, your percentage of merchants accepting or not
11 accepting cards will differ between different sectors
12 and markets; I thought we had agreed that?

13 A. Yes, sorry, I suspect that is likely.

14 MR SIMPSON: Thank you.

15 Will that be a convenient moment?

16 THE CHAIRMAN: Yes. A ten-minute break.

17 (11.26 am)

18 (Short Break)

19 (11.35 am)

20 THE CHAIRMAN: Yes, Mr Simpson.

21 MR SIMPSON: If I could go to paragraph 6.37 of your first
22 report {RC-F/14/123}. If we can zoom in on 6.37,
23 please. Flip over to figure 4 for a second. This is
24 a graph we have not dealt with yet, the card acceptance
25 commonality graph {RC-F/14/124}.

1 A. Yes.

2 Q. Can we flip back so we know what we are talking about
3 {RC-F/14/123}. You say:

4 "Figure 4 illustrates that a large number of
5 merchants began accepting cards after the beginning of
6 the Merricks claim period."

7 I may be being too subtle here, but by
8 "illustrates", you mean "shows", I assume?

9 A. Yes.

10 Q. But I suggest that there are a couple of problems with
11 this statement, because figure 4 tells us nothing about
12 the -- this is the precision point I raised at the
13 outset -- tells us nothing about the number of merchants
14 who began accepting cards after the beginning of the
15 Merricks claim period, does it? It shows percentage
16 point differences?

17 A. Yes, so the chart shows the proportion of businesses,
18 the number of outlets -- sorry, the number of -- yes,
19 the number of outlets accepting cards, divided by the
20 number of registered businesses reported by the ONS.

21 So, to the extent that there was a reduction in the
22 number of businesses in the ONS data, then this would --
23 that would be consistent with what Mr Simpson is saying,
24 that the share was going up, because --

25 Q. I was about --

1 A. -- the denominator has gone down.

2 Q. I was about to promise you I was not being pedantic, but

3 it is quite dangerous for a lawyer to promise that, but

4 ... because there is a deeper point here: it does not

5 actually show us, does it, the number? The graph is

6 a product of underlying numbers?

7 A. Yes, that is right.

8 Q. The underlying numbers you had not looked at when you

9 wrote your report?

10 A. I looked at the chart and discussed that with my team.

11 Q. So if we go to the spreadsheet underlying it at

12 {RC-Q4/16/1}, and tab 4, worksheet 4. That is a graph.

13 Can we go down. If we now look at these numbers, have

14 you looked at them since?

15 A. Yes.

16 Q. When did you first look at them since?

17 A. I cannot now remember. I did look at them afresh

18 yesterday evening.

19 Q. Had you looked at them before that?

20 A. I do not think I have looked at the spreadsheet.

21 I have talked about some of the entries for specific

22 numbers in the spreadsheet.

23 Q. Now, there are 13 years here within -- being a bit

24 generous and taking the second half of 2010 included,

25 there are 13 years within the Merricks claim period from

1 1997 to 2010. If we look at the number of merchants
2 accepting cards over that period, it goes from 517,000
3 to 988,000; yes?

4 A. Yes.

5 Q. So that is -- trust me on the maths, because those
6 instructing will interrupt if I get this wrong, not that
7 they will enjoy that, but 471,000 is the difference
8 there.

9 Now, if we then take the 13-year period from 2008 to
10 2021, the rise is from 892,000 to 1.55 million.

11 A. Sorry, which --

12 Q. Sorry, I have the number wrong and everyone can rejoice.

13 So if we go to 2008 to 2021, then we go from 892,796
14 to 1,660,430, before the drop that you exclude from your
15 graph; yes?

16 A. Yes.

17 Q. Mr Williams will now work out the difference. But it is
18 bigger. It is fatal to say one has done things properly
19 and then get it wrong, but it is bigger than the
20 difference -- even I can do that in my head, it is about
21 800,000 -- than the difference in the earlier period,
22 than the Merricks period, is it not?

23 A. Yes. So in both cases, there is roughly a doubling.

24 Q. Well, forget the doubling. What I am saying is that
25 when you do look at the underlying numbers, then in fact

1 you see that there is a greater rise in numbers during
2 the merchant period than during the Merricks period?

3 A. Yes, in absolute terms, that is right.

4 Q. Yes. We were talking in absolute terms. We were
5 talking about numbers?

6 A. Yes, but I was just saying in relative terms it is
7 a similar in increase.

8 Q. Of course, I am just --

9 A. The numbers, I agree with you.

10 Q. Yes. So looking then at percentages and the numbers on
11 which your calculations are based, I want to deal with
12 how your card acceptance percentages are calculated.

13 Now, if we go to figure 4 in the report, just going
14 back to the report we just had {RC-F/14/124}, and we
15 look at the note, and we just scroll down very slightly
16 if you could.

17 So, the source here is ONS APACS data?

18 A. Yes.

19 Q. That is one side of the equation, so the ONS APACS data
20 is used for one part of the calculation you are about to
21 do ...

22 A. Sorry, just to clarify, it is the APACS finance
23 reports --

24 Q. So sorry, yes --

25 A. -- that we were just looking at.

1 Q. I was eliding them, but it is APACS. It is not ONS at
2 this stage, just APACS. You are making sure --

3 A. Yes. So it is the same reports that we were looking at
4 earlier in relation to card usage --

5 Q. Exactly, yes.

6 A. -- and that tells us the number of outlets that are
7 accepting cards.

8 Q. I made a mistake. It is APACS for part 1 and it is ONS
9 for part 2.

10 A. That is right.

11 Q. We go on to ONS now. So the shares are calculated by
12 dividing the number of outlets accepting card payments
13 obtained by APACS and UK Finance by the number of
14 ONS-registered business obtained from the ONS; yes?

15 A. Yes.

16 Q. So the percentages are the products of those two
17 figures: number of registered businesses in the UK based
18 on ONS figures, divided by number of businesses
19 accepting cards.

20 A. Yes, and I think specifically outlets.

21 Q. Yes. Now, you did not exhibit the ONS -- you did not
22 exhibit the ONS numbers, but -- you probably know
23 this -- but Compass have got from the ONS the numbers --

24 A. Right.

25 Q. -- and they have checked them, and the numbers are

1 agreed. So it is not the underlying numbers that are in
2 issue here.

3 A. Okay.

4 Q. Now, neither we nor the Tribunal could calculate whether
5 you were right. We could not check these without
6 getting those numbers, I am afraid, and they were not
7 exhibited. But you say here for 2022, in the final
8 sentence:

9 "The figure for 2022 is excluded from the chart as
10 the data showed a significant and unexplained drop in
11 the number of outlets that accepted card payments."

12 A. Yes.

13 Q. Now, with hindsight, do you think that is a sufficient
14 explanation for what happens in 2022?

15 A. Yes. I mean, the drop in the numbers, and it may be
16 helpful to go to the UK Finance statistics to show them,
17 there was a 22% drop in the number of outlets accepting
18 card payments between 2021 and 2022. There was no
19 accompanying note to explain that drop that was reported
20 with the data, and it was out of line with the trend
21 that had been occurring prior to that point, which is --
22 can be seen on this chart.

23 The other thing which was odd to me was the
24 reduction in the number of outlets accepting cards
25 coincided with an increase, though, in both the number

1 of transactions processed by cards and the value of
2 those transactions, all as reported in table 15.1,
3 I think, of the APACS data. So it really does look like
4 an anomaly and it was unexplained. So, therefore,
5 I thought it would -- that it was right to say that
6 I had excluded it and not to take that further.

7 Q. Do you think it would have been helpful to say what the
8 drop was and what it was to?

9 A. Maybe for full transparency, I can see that that may be
10 helpful. I think what I have otherwise observed in this
11 data is a fairly steady upward trend, so also I do
12 not -- my view on what this data shows is not contingent
13 on that final data point.

14 Q. Well, it is not because you do not include it.

15 A. So I think whether it is included or not, it would not
16 change the conclusion that I draw from this chart.

17 Q. Well, do you want to tell the Tribunal now what the
18 percentage drops to?

19 A. So I think it goes to about 40, from memory, from 60 to
20 40, something like that, no?

21 Q. It goes to 46.

22 A. 46.

23 Q. Let us go to your spreadsheet where your team calculated
24 this. I think we have that ready loaded, do we not?
25 Yes, thank you.

- 1 A. I see. Thank you.
- 2 Q. Rather than just dropping it out, without explaining, do
3 you think it would have been helpful to give the
4 explanation you have just given and tell the Tribunal
5 the percentage in the report?
- 6 A. Yes. I did not do that because I thought it was most
7 likely an error, given it seemed odd to me, and
8 inconsistent with the other data that was available
9 through table 15.1, and -- yes.
- 10 Q. But what I do not understand, Ms Webster, is how you
11 knew it was an error, or the magnitude of the error, if
12 you had not seen the numbers?
- 13 A. So, again, that was through discussion with my team.
- 14 Q. Because it is not in the graph, is it? You could not
15 have seen that from the graph, because it has dropped
16 out of the graph.
- 17 A. No, but the graph stops at 2021.
- 18 Q. Yes, it does. In the discussions with your team, did
19 you ask to see the numbers?
- 20 A. No.
- 21 Q. Do you think it would have been better to?
- 22 A. In an -- maybe in an ideal world it is always helpful to
23 see more, but I trusted my team that they were putting
24 forward a representative view of what this data shows.
- 25 Q. So do you recall exactly what your team said to you that

1 was the basis of you dropping it out?

2 A. That it was unexplained. That there was a drop but it

3 was unexplained.

4 Q. Did they tell you how big it was?

5 A. I do not recall.

6 Q. Did they tell you what percentage it went to?

7 A. I do not recall. I think they may have done, but the

8 key point was it is one data point for one year, which

9 looks very odd in comparison to the rest of the data

10 points, and so I thought that it was not going to be

11 material to my conclusion that I would wish to draw off

12 the back of this chart.

13 Q. Not for the conclusion you wished to draw, I am sure

14 that was a slip, Ms Webster, but do you not think it

15 would have been helpful --

16 A. Sorry, that I considered it appropriate to draw, yes.

17 It was a slip. Thank you.

18 Q. But do you not think it would have been helpful for the

19 Tribunal to see it and know what the numerical drop was

20 and see whether there had been any other changes like

21 that previously? Do you not think it would have been

22 helpful to put that before the Tribunal, and us, rather

23 than us having to go and get a spreadsheet from a data

24 pack?

25 A. So I can only speak to how I treated that at the time,

1 and I was -- felt comfortable, given what I have just
2 described, that this is more likely an error than
3 a genuine change as a result of a substantial proportion
4 of outlets no longer processing card payments.

5 Q. So what investigations did you carry out into why this
6 drop to 46% had occurred?

7 A. Can you clarify what you mean by "what investigations"?

8 Q. Well, you are dropping out what looks like a very
9 significant data point which would alter the trend
10 line in your graph, and I am asking you, before you did
11 that, what investigations did you carry out as to the
12 explanation for why this drop had occurred?

13 A. So, again, this was work that was undertaken by my team.
14 They reported to me that there was no explanation for
15 this drop. They reported that it looked odd, because it
16 was inconsistent also with the prior years of data which
17 had, across the whole period, largely shown a sort of
18 steadily increasing trend. So there was no explanation.
19 It looks an odd result in the context of the wider
20 dataset.

21 Q. It does look odd, it does look odd, and that would mean,
22 surely, that it would need investigation. Why did
23 this -- is this an anomaly, is this -- why has this
24 occurred? Your team surely should have investigated
25 that. You should have investigated it?

1 A. Yes, the oddity of it in the context of the wider data
2 led me to believe that it was most likely an error. So
3 I was clear at the bottom of the table that I had
4 excluded it on that basis, but I have not written
5 exactly what the number -- well, I have obviously shared
6 what the numbers are in the data packs.

7 Q. But it is not good practice, is it, just to drop out an
8 anomalous number without considering why the anomaly
9 might have occurred?

10 A. But I have no information on why the anomaly occurred.

11 Q. Did you try and get any information?

12 A. No, I did not. I went with the rest of the dataset.

13 Q. Can I suggest that there are several things you should
14 have done before dropping it out. The first is you
15 should have looked to see whether there had been any
16 similar rises or falls in the number of businesses
17 accepting cards in, say, the last ten years; in other
18 words, is this an exceptional magnitude of change; yes?

19 A. So that is apparent from all of the other data points
20 that are in the chart, so one can see the changes over
21 time.

22 Q. Yes, you can see, can you not, that in '16/'17 you have
23 a steep rise?

24 A. Yes.

25 Q. In fact it is '17/'18.

1 A. '17/'18.

2 Q. If we look at the underlying data, in '17/'18 there is
3 a rise of 233,000 outlets accepting cards compared to
4 a drop of 376,000 which is the one you dropped out of
5 your chart.

6 So I suggest that, first of all, you should have
7 considered this point. Let me put that to you. If you
8 are dropping out an anomaly, you need to know whether it
9 is an anomaly, do you not?

10 A. Yes.

11 Q. It looks less of an anomaly when you see a big rise
12 a few years ago? There are big changes?

13 A. I think there is a difference with the increase that was
14 between 2017 and 2018 in that it was consistent with
15 what is a continual upward trend in terms of the number
16 and proportion of outlets accepting cards, so it looked
17 less anomalous. Then what happened post-2018 is the
18 number of outlets for the following three years remained
19 constant or grew a bit.

20 So, in that sense, I did not view the 2017 to 2018
21 increase to be anomalous; also, I was not seeking to
22 place weight on any individual figure in this chart,
23 but, rather, the overall increase which is the key point
24 that I wished to draw attention to in the chart.

25 Q. But if --

1 PROFESSOR WATERSON: Could I just break in here? Do these
2 figures get revised in subsequent years to any extent?

3 A. I do not know.

4 PROFESSOR WATERSON: Right.

5 MR SIMPSON: They do.

6 PROFESSOR WATERSON: Right. Thank you.

7 MR SIMPSON: So another question I was going to ask you,
8 Ms Webster, is -- another thing I am going to suggest
9 you should have done is get hold of the 2024 statistics.

10 A. Yes, I think they were not available when I wrote this
11 report.

12 Q. They were. They were published in July.

13 A. My apologies, I did not know that they were available.
14 I thought they had recently been released.

15 Q. We uploaded them last week and Mr Draper put them to
16 Mr Economides, not this bit of it, but he put the stats
17 to Mr Economides.

18 A. Yes, apologies, I thought they had been published only
19 recently.

20 Q. No, they were published in July.

21 A. Okay.

22 Q. Even if they were published only recently, would it not
23 have been better for you to look at them when they were
24 published and see whether this was just an anomaly?

25 A. So I have subsequently looked at the 2024 when I saw

1 them last week.

2 Q. Right, okay.

3 A. So that was the data for 2023. My observation is that
4 in relation to 2023, the figure is some -- is relatively
5 similar in terms of the number of outlets. It does not
6 look like there has been a revision.

7 THE CHAIRMAN: Similar to 2022?

8 A. Yes, so a similar low level. Again, there is no
9 explanation for that, and, again, it looks like this
10 lower number of outlets accepting cards is still
11 accompanied by an increase in the value of card
12 transactions and the number -- the volume of
13 transactions.

14 MR SIMPSON: Ms Webster, I may have misunderstood, which is
15 why I intervened in Professor Waterson's question.

16 The professor said:

17 "Do these figures get revised in subsequent years to
18 any extent?"

19 You said:

20 "I do not know."

21 A. But I do not know whether they are revised.

22 Q. But they are. They are revised in the 2024 figures.
23 Let us go to them {RC-Q4/26/1}. So if we go across,
24 this is one of those ones where you go to the bottom and
25 go across to table 15.1. Go down a bit, please. Stop.

1 Thank you.

2 Number of outlets accepting card payments. So 2022,
3 we have 1,391,291, which is a revision slightly upwards
4 of the --

5 A. Right.

6 Q. You had not looked at this?

7 A. I had not looked -- I have not studied it in detail.

8 What I observed is that there was still a drop and, as
9 you point out, that drop is less significant than it had
10 first been reported.

11 Q. Can we just clarify this slightly. You say you have not
12 looked at them in detail. Had you looked at them?

13 A. Yes, I had looked at them.

14 Q. So you had seen this number?

15 A. Yes.

16 Q. You had seen it was a revised number?

17 A. No, I had not noticed that it was a revised number. I
18 noticed that it was still lower than the 2021 figure,
19 and that it was still lower by a material amount, and
20 what I had not registered, when I looked at it, was that
21 it was lower by a somewhat lesser amount.

22 Q. But did you then look at the 2023 figure?

23 A. Yes.

24 Q. That is lower than the 2022 figure.

25 A. Yes.

1 Q. Did you notice that?

2 A. Yes, I did.

3 Q. Did that not concern you at dropping out the anomaly?

4 A. So, again, there is still no explanation as to why there
5 would be a reduction in the number of outlets that are
6 accepting cards at the same time as an increase in the
7 value of card transactions that are processed and at the
8 same time as an increase in the volume -- and, so at
9 this point my team has emailed UK Finance, APACS, the
10 producers of the data, to try to understand and get
11 clarity on that. To the best of my knowledge, I do not
12 think we have a response to that.

13 When I had seen it as one data point, when I was
14 preparing my report, I considered it to be anomalous.
15 It still looks very odd to me, and I do not understand
16 how it is the case that there can be a reduction in the
17 number of outlets processing cards at the same -- of
18 such magnitude at the same time as a very material
19 increase in volume and value of transactions. It is
20 a very odd result.

21 THE CHAIRMAN: But can you still say it is anomalous if it
22 has happened two years running?

23 A. I now do not know what has caused it. It may be that
24 there is a change in the way in which APACS has recorded
25 the number of outlets, and I would have expected them to

1 have written about that in their report if that had been
2 the case, but there is no information. So when I saw
3 this figure had continued in 2023, that was when my team
4 emailed the producers of the data.

5 MR SIMPSON: You know, Ms Webster, when an expert finds that
6 something they have said inadvertently wrongly is wrong,
7 or there is updated information available, they have
8 a duty to draw it to the attention of the Tribunal?

9 A. So I do not know that what I said was necessarily wrong.
10 I still do not understand this data.

11 THE CHAIRMAN: When did your team email APACS?

12 A. Last week, or it may have been this week, apologies. It
13 might be -- I do not now recall whether it was the end
14 of last week or the beginning of this week.

15 MR SIMPSON: But you were concerned enough that your team
16 emailed APACS but not concerned enough to draw it to the
17 Tribunal's attention?

18 A. Yes, apologies, I -- maybe that probably would have been
19 helpful. I -- I really do not understand this data, in
20 the sense that I do not understand these particular
21 drops at the end of the period. The conclusion that
22 I was seeking to -- that I had taken from the data that
23 was available is there has been this steady increase in
24 every year up until 2022.

25 Q. But do you accept it was your duty to draw this new

1 potentially material information to the attention of the
2 Tribunal?

3 A. So I think that is my question, which is I am not sure
4 how material it is.

5 Q. It is material enough that you emailed APACS to try and
6 find out why it has happened. Is that not a threshold
7 for saying to the Tribunal, "Look, this has emerged.
8 These are the changes. These are the numbers. This is
9 what it does to my graph. I have asked APACS and I will
10 get back to you". Did it have to wait for my question
11 to get to that?

12 A. No, apologies, perhaps I should have said that earlier.

13 Q. Well, let us look -- sorry, operator -- I have been
14 asked to call the operator "operator". I have asked his
15 name and he prefers to be called "operator".

16 THE CHAIRMAN: It is a bit more polite than "vulpine".

17 MR SIMPSON: Thank you. I am grateful in a forensic way,
18 sir.

19 So, operator, I noticed you might have opened this
20 as not read only, which is what I want. I want it not
21 read only, because what I want to do is insert the right
22 figures. I am so sorry, we need to take the figures
23 from this graph.

24 Can we go back to Ms Webster's graph, one you had
25 open earlier.

1 THE CHAIRMAN: I am trying to picture you doing this back in
2 chambers for yourself.

3 MR SIMPSON: It is a very sad life!

4 So can we pull up this spreadsheet. It disappeared
5 off the side of the screen. I felt tempted to chase it.
6 That is the one, yes.

7 So what I would like you to do, if you could, is --
8 these can be hard-coded. In 2022, the left-hand column
9 under UK -- that is the one. Next to 22, the red,
10 1,284, I would like you to change that to 1,391,291.
11 I would like you to change the next one, below that, the
12 one below the one we changed, to 1,336,081.

13 Right. Now, unfortunately that does not go on to
14 the graph, because the graph cuts off the dataset, and
15 I do not, however long I spend in chambers, have the
16 ability to change the dataset. I tried.

17 PROFESSOR WATERSON: It is not too difficult.

18 MR SIMPSON: Thank you, sir. After the hearing perhaps
19 I can have coaching.

20 But the important point is they drop to 50%. So it
21 goes up from 46% and then 49%.

22 PROFESSOR WATERSON: With the caveat, obviously, that that
23 figure might subsequently --

24 MR SIMPSON: Of course it might. As you know, sir, what
25 happens is they revise them on a rolling basis, and the

1 longer it goes on, the less likely they are --

2 PROFESSOR WATERSON: I understand.

3 MR SIMPSON: Yes, sorry, I fully accept that. But on the
4 best data available to us, we have 50% and 49%, and you
5 thought that that might be an anomaly sufficient to
6 email APACS to try and find out whether it was, but,
7 but, you did not bring it to the Tribunal's attention
8 and I suggest you should have.

9 A. I think also -- it is perhaps also worth saying that
10 I do not think that it materially changes the conclusion
11 that I reach, having looked at the chart, on the basis
12 that the starting percentage, as can be seen here for
13 1997, is 33%. There is then -- so let us say we take as
14 given the figures for 2022 and 2023 of 50%, one
15 therefore -- one then also has to factor in that there
16 is a break in the data when the recording of the number
17 of businesses changed by the ONS such that there is a 10
18 percentage point jump in the middle of the series.

19 So, in effect, it would be -- if on a sort of
20 like-for-like basis, one would be comparing 33% in 1997
21 with 60% in 2023. So the point --

22 Q. So, you dropped that out again?

23 A. Sorry?

24 Q. You are going to reverse that for these purposes, are
25 you?

1 A. Reverse what?

2 Q. That change that occurred in '07/'08, you are going to
3 reverse that out, and that will leave you at 60%?

4 A. So if one -- so it is clear that over the period 1997 to
5 2006, which is reported on the same basis, there is an
6 increase in card usage which goes from 33 to 49% --
7 sorry, not card usage, card acceptance. So that is
8 looking at row 48 through to row 57.

9 Q. Can I pause you -- sorry.

10 A. Then there is a subsequent -- the data then resets back
11 to 41% and goes a further 10%, close to 10 percentage
12 points up to 2023.

13 Q. Well, I suggest the first thing this does is your
14 significant and unexplained drop becomes a trend
15 sustained for two years, which is far harder to see as
16 an anomaly, is it not?

17 A. I still do not understand whether that is genuine, given
18 what I am also seeing in the volume and value of card
19 transactions that are processed. It is very odd to me
20 that there should also be a set of merchants that have
21 accepted cards that then choose not to accept cards.

22 Now, I cannot read anything into it, that is a sort
23 of factual matter as to whether that is the case or not,
24 but it is an odd thing to observe at the same time as
25 continual increase in the value and volume of card

1 payments.

2 THE CHAIRMAN: The obvious thing that was happening then was

3 Covid, was it not?

4 MR SIMPSON: Actually, sir, you will find in the 2022

5 explanatory paper they say that the Covid effect has

6 gone and the economy is back, but --

7 THE CHAIRMAN: It has gone, okay.

8 MR SIMPSON: Obviously Ms Webster can answer, but that is

9 the --

10 A. That is my understanding.

11 Q. But Ms Webster, whatever the explanation, whatever the

12 Chairman has said, it was incumbent on you, was it not,

13 to try and look for one?

14 A. So when I first prepared my report, it was a single data

15 point which was out of sync with the rest of the trend

16 and out of sync with the increase in the volume and

17 value of card payments, and I noted that I had excluded

18 it because I did not trust the number.

19 THE CHAIRMAN: Well, is the answer then that you did not

20 actually look for an explanation?

21 A. No, I treated it -- at the time, I treated it as an

22 anomaly and excluded it and sought to draw my

23 conclusions on the basis of the longer period of data.

24 MR SIMPSON: Do you think you would still have treated it as

25 an anomaly for the second year?

1 A. It looks less likely to be an anomaly in a mistake
2 sense. It may be that it is due to some -- I really do
3 not know. I cannot explain how those numbers are
4 consistent with the value and the volume of the card
5 transactions.

6 Q. Let us assume it is not an anomaly for the moment. How
7 does that affect your conclusions on card acceptance
8 between the Merricks and the merchant claim periods?

9 A. Yes, so I think that is what I was trying to explain
10 earlier. What I would then see is an increase in --
11 from 33% card acceptance to 49% card acceptance over the
12 period 1997 to 2006, and then a subsequent increase from
13 49 -- where are we -- from 41% in 2007, and then that
14 41% either goes to 60%, which was the figure that
15 I included in my graph, or it goes to 50% if we consider
16 that these new data are accurate. But either way, there
17 is a material increase over the Merricks period --
18 sorry, the period 1997 through to 2006 and then another
19 increase after that.

20 Q. But it is a different increase, it is a lower increase?

21 A. It is a lower increase in the period 2007 through to the
22 most recent point.

23 Q. Sorry, it is also a lower increase in 1992 to 2024?

24 A. So --

25 Q. If you draw a trend line.

1 A. I think it is probably safer, given the break in the
2 data, given the calculation of the change in the way
3 that the number of businesses are recorded by the ONS,
4 it is safer to think about the period -- the increase in
5 the period prior to that change in recording and then
6 the increase afterwards.

7 Q. That is all new. You do not say that in your report?

8 A. When I describe the change, I think I do it in those two
9 periods.

10 Q. You do, but --

11 A. 6.37.

12 Q. -- you do not explain that that is the reason you should
13 treat them differently?

14 A. I am simply describing what is in the chart at that
15 point.

16 Q. But you are now saying that what is in the chart means
17 that you cannot rely on the data in the same way?

18 A. I do not think I am.

19 Q. Well, you observe that there was a break, and you
20 observe that that was because the ONS changed the way
21 they measured businesses, registered businesses?

22 A. Yes.

23 Q. But what is new now is you are saying that causes me
24 to demarcate Merricks from merchant period, that is new?

25 A. I do not think so. I am just trying to accurately

1 describe what I see in the chart, sort of following the
2 same way that I have done that in my first report.

3 Q. But assuming we take out that point, then it means the
4 trend line from 1992 to 2024 is flatter, is it not?

5 A. Yes. The alternative -- if one wanted to have a trend
6 line which went from 1997 to 2023, say, if we wished to
7 have that trend line, then one would need to make an
8 assumption about what to do around this change in the
9 ONS reporting of the number of businesses. So one way
10 would be just to shift up the whole right-hand side of
11 the graph for the percentage point drop that occurs at
12 the point in time when there has been a change in the
13 ONS recording.

14 So I have chosen, in how I have described it in
15 6.37, not to make that assumption.

16 Q. Sorry, I just need to look at that. As I understand it,
17 what you say in your report is: "When I compare the
18 beginning of the Merricks period with the end of the
19 merchant period, then things are very different".

20 A. So I have chosen to plot the available evidence that
21 I have got over the full period that I have, and in this
22 case it is 1997 through to -- and I chose 2021. Then
23 one can read from that that the card acceptance rate at
24 the beginning of that period is different from the
25 acceptance rate at the end of the period, but in this

1 case, in this chart, one needs to recognise that there
2 has been a change in the basis on which the denominator
3 is constructed and that complicates the comparison.

4 Q. It may complicate it, but --

5 MS TOLANEY: Sir, I am sorry to rise, because I have
6 actually tried to say this, but when Mr Simpson is
7 putting points that are not actually right or on a fair
8 premise, it is not acceptable, and if Ms Webster is
9 going to be told that things are not in her report when
10 they are in fact in her report, that is not a matter for
11 re-examination, she should be shown paragraph 6.37 of
12 her report; and Mr Simpson should, if he is saying
13 things about the report, I think, try and show the
14 paragraph of the report he has in mind.

15 THE CHAIRMAN: I think she referred to that paragraph.

16 MR SIMPSON: We have been to the paragraph.

17 THE CHAIRMAN: Yes.

18 MR SIMPSON: That is why Mr Williams did not interrupt me
19 when the point was made because we had been to the
20 paragraph.

21 MS TOLANEY: Questions have been put on the wrong premise.

22 MR SIMPSON: Perhaps Ms Tolaney can explain the wrong
23 premise.

24 THE CHAIRMAN: All right, well --

25 MR SIMPSON: Ms Tolaney is not explaining the wrong premise

1 so I will carry on.

2 MS TOLANEY: I have made the point.

3 MR SIMPSON: What is the wrong premise?

4 Sir, if it turns out, with the fisticuffs going on
5 here, that it is the wrong premise, then obviously
6 I will re-put it, but until I know what it is that is
7 wrong, I cannot.

8 THE CHAIRMAN: The wrong premise to which: your last
9 question or ...

10 MR SIMPSON: I do not know.

11 THE CHAIRMAN: No.

12 MS TOLANEY: Throughout, that this was somehow new was the
13 point.

14 THE CHAIRMAN: What, the split in the periods you are
15 talking about?

16 MR SIMPSON: Obviously that is not my point because it is in
17 the graph. My point is that the materiality or
18 otherwise of the split in the periods is now being
19 relied on for not drawing a trend line between the two
20 ends. That is the new point.

21 THE CHAIRMAN: Right. Well, I think we have sort of have
22 both your points and Ms Webster's response on this.

23 MR SIMPSON: Yes.

24 So just looking then at the numbers you were running
25 just then, Ms Webster. At that figure in the card

1 acceptance section, we have 1997 to 2010, and with the
2 revised figures still in there for the moment, we have
3 1997 to 2010, that is 13 years, and the rise in card
4 acceptance, we can see from the right-hand column, is
5 from 33 to 47%.

6 A. Sorry, why are you going to 2010?

7 Q. Because I am looking at the rise between the earliest
8 year you have in -- we have in the Merricks period to
9 the end of the Merricks period.

10 A. So the data that you have just shared for 2010 is on
11 a different basis to the data that you have -- data
12 point you have quoted for 1997, and that is because --

13 THE CHAIRMAN: I think we understand that.

14 MR SIMPSON: Yes, we have that. But absent an explanation
15 in your report as to how that should be applied, I am
16 just looking at the numbers that are in your
17 spreadsheet.

18 A. So in my report I have deliberately avoided trying to
19 draw a direct comparison between the figures that are
20 calculated on the later basis with the change in the ONS
21 denominator. So I have strictly said 1997 to 2006 and
22 then looked at the increase in the subsequent period.

23 Q. Okay. Let us do that then for the moment. So we have
24 33% to 49%, that is a 16 percentage point rise?

25 A. Yes.

1 Q. Now, you have concluded that changes in card acceptance
2 had no effect on pass-on in the merchant period, your 70
3 to 100% base case applies for the whole period?

4 A. Sorry, could you just repeat the start of that?

5 Q. Of course. We established yesterday that you concluded
6 that changes in card acceptance had no effect on pass-on
7 in the merchant period. Your 70 to 100% base case
8 applies, you explained, for the whole period?

9 A. So I think I explained that, on average, 70 to 100%
10 would be a relevant pass-on rate, in my view, for the
11 merchant period taken as a whole, and that there may be
12 differences in pass-on rates for any individual year,
13 but I could not be specific about what they would be.
14 So, in my view, it is appropriate to look at them, all
15 of the years, as one group, and apply an average pass-on
16 rate.

17 Q. But whatever the magnitude of changes in card
18 acceptance, overall they had no effect on pass-on in the
19 merchant period?

20 A. They would not have been sufficient to apply a different
21 rate on average.

22 Q. Yes. So if we look at the merchant period, going from
23 2007 -- and let us just drop out the anomalies for now;
24 okay? When you wrote your report, you had dropped out
25 anomalies; that is correct, is it not?

1 A. Yes.

2 Q. So if we look at the merchant period, it goes from 41 --
3 it goes from 47 -- I am so sorry, 41% through -- it has
4 been a long cross-examination -- to 2021 is 60%?

5 A. That would apply to the earliest of the claims. So to
6 the extent that most of them were after 2011, it would
7 be 50 to 60%.

8 Q. But we have already discussed yesterday that who is
9 claiming against whom for what time is not relevant to
10 your economics.

11 A. No, I am just saying if one wanted to focus on the
12 pass-on rates that would be appropriate for the
13 individual merchant claimants, then one would --

14 Q. But I do not.

15 A. -- have a slightly different starting point, depending
16 on which claimants we were talking about.

17 THE CHAIRMAN: It is all in the same methodology period?

18 A. Yes.

19 MR SIMPSON: That is the point I think I am establishing
20 here, sir.

21 A. Yes.

22 Q. So it is the same methodology, and there is in that
23 period from 2007, or 2008 we can take it, because it was
24 December 2007, through to 2021, there was a 19
25 percentage point rise?

- 1 A. Yes.
- 2 Q. So there is a greater percentage point rise, with all
3 anomalies removed, in the merchant period than the
4 Merricks period?
- 5 A. Yes.
- 6 Q. But card acceptance changes had no effect in the
7 merchant period, sufficient to make you change your
8 conclusion?
- 9 A. Insufficient for me to think that the overall rate of 70
10 to 100% would not be appropriate.
- 11 Q. So 19% is insufficient?
- 12 A. To change the average rate.
- 13 Q. 16% is sufficient?
- 14 A. So what I am comparing in this chart is to say that the
15 average acceptance rate or the individual levels of
16 acceptance rates in the earlier period are substantially
17 lower than the acceptance rate in the later period.
18 There is a continual upward trend in acceptance rates,
19 broadly.
- 20 Q. Where --
- 21 A. Apologies, this comes back to paragraph 6.24 that we
22 discussed yesterday, which is I am clear that there are
23 differences within the period, but I consider that the
24 differences between the periods, reflecting the fact
25 that the Merricks period is quite a lot earlier than the

1 merchant period generally, with some overlap, that that
2 is where the differences are greatest.

3 Q. But what I do not understand, Ms Webster, is how you
4 conclude that a 19 percentage point rise during the
5 merchant period does not materially affect your base
6 case, your 70 to 100%, but a 16 percentage point change
7 in the Merricks period has a profound effect?

8 A. No, I am not sure I would say it has a profound effect.

9 Q. I put that too strongly. It has a significant effect on
10 lowering pass-on.

11 A. So, again, I think that also goes beyond what I am
12 saying. What I am pointing to is the fact that
13 acceptance rates generally were substantially lower at
14 the beginning of the whole period for which I have data
15 relative to the end, which would be the 19% change
16 during the merchant period, plus the 16% change for the
17 Merricks period. It may be that that lower level of
18 acceptance at the start of the Merricks period is
19 a signal that there is less commonality of MSC costs
20 between merchants, also when put together with the
21 examples of certain merchants that I have mentioned in
22 my report, and that taking those two things together may
23 mean that pass-on rates were lower at the beginning of
24 the merchant period.

25 Q. But this is about commonality, is it not?

1 A. It is.

2 Q. It is about card acceptance across the market, and it is
3 about the old trope that the wider the charge, the more
4 likely it is to be passed on?

5 A. You mean the more -- the wider in terms of the reach of
6 merchants?

7 Q. Yes.

8 A. So who would be incurring?

9 Q. I was being semantically imprecise.

10 But why, then, if you look at these numbers, which
11 I appreciate you have not looked at until very recently,
12 in 2009 you have 44% card acceptance; right?

13 A. Yes.

14 Q. In that year, you think it is sufficiently market-wide
15 that it does not affect -- card acceptance does not
16 affect your pass-on conclusions?

17 A. So my pass-on conclusions are quite broad. So when
18 I start with my theoretical benchmark case, I am
19 assuming a very high degree of commonality, and that
20 would push me towards an expectation of pass-on of close
21 to 100%. Then what I do is I look at the empirical
22 evidence, and that is going to be empirical evidence
23 that is based on the pass on of other types of costs
24 which may be more or less commonly incurred.

25 I think I have agreed with Mr Coombs that I suspect,

1 in things like the public data, where we have PPI data
2 representing, most likely, COGS incurred by businesses,
3 it probably is the case that those costs are commonly
4 incurred. It may not be. You know, it might not be
5 100% that all businesses are facing the same costs.
6 Therefore, what I have with the empirical estimates is
7 perhaps more of a real world situation of not 100%
8 commonality but somewhat less than that, and that may be
9 one of the drivers of a lower pass-on rate.

10 So 70 to 100% gives me a broad estimate to work
11 with, which I think is broadly applicable for the
12 merchant period.

13 Q. But why, then, is 44% sufficient for the charge to be
14 market-wide in 2009 but 43% in 2003 is not enough to be
15 market-wide?

16 A. I do not think that is what I am saying. I am saying
17 that -- I am not taking any individual year in the
18 merchant claim and saying: this is the rate of card
19 acceptance, this is my view on commonality, this is my
20 view on pass-on for that year. I am saying: in the
21 round, for the merchant period, card acceptance rates --
22 sorry, my expectations of commonality are such that
23 there is a reasonable degree of commonality that would
24 be associated with pass-on in the range 70 to 100%.

25 Q. So what percentage does it reach market-wide enough

1 to --

2 A. I cannot make a comment on that.

3 Q. But if you cannot make a comment on that, how can you
4 say what the effect in the Merricks claim period would
5 be?

6 A. I have not made any claim as to the degree to which
7 pass-on would be lower in the Merricks claim period than
8 in the merchant claim period. What I have pointed to is
9 two things: general market stats here on card
10 acceptance, which, if that implied that there were
11 merchants within individual sectors who accept cards and
12 some who do not, and they are competing, that would mean
13 that there is less commonality, and that would point to
14 lower pass-on of a variable cost, and that is one of the
15 pieces of evidence that I point to.

16 Then the other is, because I accept Mr Coombs' point
17 that one might expect competitors in a sector to be
18 doing similar things, I have tried to understand whether
19 there might be instances where that may not be the case,
20 because that then would, again, be pointing to there are
21 some merchant sectors with some merchants that are not
22 doing the same as their rivals, they are not facing the
23 same MSC costs, and then that, alongside this evidence
24 on acceptance rates, gives me reason to think that it
25 could be the case that commonality was less in the

1 Merricks period than in the merchant period, and that
2 would be -- could be a relevant factor to take into
3 account in assessing pass-on in the Merricks period.

4 Q. But I suggest you are falling into the very trap that
5 I think you accepted you were not doing or should not
6 do, which is dividing them into Merricks and merchant
7 claim periods. You are asked for the years.

8 A. Yes, and I cannot be specific, as I have said, about:
9 this is what is happening in any individual year. What
10 I can see over the period is that earlier in the period,
11 which would be relevant to the Merricks claim but does
12 not have to be expressed as such, earlier in the period
13 it is the case that -- sorry, card acceptance appears to
14 be materially lower than in the later period, and that
15 is the key point.

16 Q. But just looking at the span from 1997, where we have
17 the statistics, through to 2024, ignoring, ignoring,
18 whether there is a Merricks claim or a merchant claim,
19 just looking at the economics, okay, where is the break
20 point?

21 A. So I do not think that there is a particular break
22 point. This was, again, what I set out in
23 paragraph 6.24 explaining my approach. I have sought to
24 test the hypothesis of whether one might expect there to
25 be a materially different rate of pass-on earlier in the

1 period, so during the 1990s, for example, relative to
2 later in the period, and the evidence that I observe is
3 that that might be the case. There may be a difference
4 that may be relevant.

5 Q. That all sounds very vague, Ms Webster, because if we
6 take the period as a period of all those years, if you
7 are going to say it was different, forgetting Merricks
8 or merchant, you are going to have to pick a point at
9 which you say it was different, and you cannot?

10 A. No, again, I come back to paragraph 6.24. There are --
11 it is a continual change that takes place, and the
12 question is: when one looks in the round at the years
13 that are affected by -- covered by the merchant period,
14 what does one make then of the changes that have
15 happened within that period? Here we have a range of
16 card acceptance rates from 40 to 60%, excluding the
17 final year, 40 to 50% if we take your -- the updated
18 figures. Then the question is: then, when I look at the
19 collection of years, or when one looks at the collection
20 of years in the Merricks claim, is there a reason then
21 to think that there would have been a difference in
22 market conditions and in the factors that influence
23 pass-on?

24 Q. Please stop thinking about the Merricks claim. Please
25 just look at the evidence in front of you, forgetting

1 whether Merricks is making a claim. When did the change
2 happen that it became irrelevant to pass-on? Forget
3 Merricks.

4 A. So, again, coming back to 6.24, I have sought to provide
5 information about a change in one of the factors that
6 I consider to be important in determining the rate of
7 pass-on, and I have set out an analysis that shows that
8 there may be reason to believe that there was a change
9 in commonality informed by two things: change in
10 acceptance rates and the change -- sorry, and these
11 examples of merchants. That is the extent of the
12 evidence that I have.

13 Q. You are not relying on the usage data anymore?

14 A. The usage data informs a separate point. So the
15 acceptance data here goes to the extent to which the MSC
16 was a common cost for merchants, and then that would
17 affect their rate of pass-on were they to treat the MSC
18 as a variable cost.

19 Q. We understand that.

20 A. The usage data --

21 Q. It is about variable costs or not.

22 A. Variable or fixed.

23 Q. Sorry to hurry, but I have time constraints, but I think
24 the Tribunal and I have that point.

25 THE CHAIRMAN: I think we have it.

1 MR SIMPSON: Just looking at the -- back at figure 2 then on
2 your usage figures. Now, let us assume against me, now,
3 that your usage figures are useful. If we go to
4 figure 2, the first worksheet in this spreadsheet,
5 please. Thank you. If we go down a bit, please, and to
6 figures under "Intermediate output", and here we have
7 15 years of the Merricks period from 1995 to 2010, again
8 being slightly generous, including the latter half
9 of 2010, and in that period card usage, according to
10 your graph, which obviously I disparage entirely --
11 I think you will be familiar with that now -- but if you
12 are right, then it goes from 3.5% card usage to 20.9%.

13 So we see that share of card payments, halfway down
14 the page -- sorry, yes, end of 2009. If we can go
15 to 2010, we can go to 204.4. I was cutting off too
16 early. So because I cut it off too early, I will have
17 to do some mental arithmetic, which is always dangerous,
18 and it is around a 21 percentage point rise.

19 So we have here 14 years of the merchant period,
20 from 2008 to 2022, and there it goes from 18.5% to
21 81.1%; okay?

22 A. Yes.

23 Q. So if a 62.6 percentage point rise in card usage over
24 a 14-year period, so merchant period, did not cause you
25 to alter your conclusions on pass-on for that period,

1 how could a 21% rise -- 21 percentage points -- it is
2 very important to be precise -- rise over a 15-year
3 period cause any change?

4 A. So, as I have explained in figure 6.24, I am testing the
5 proposition: is there change in market conditions over
6 the whole period, here 1995 to 2022, that would cause me
7 to take a view that pass-on rates may have been
8 different?

9 In this case, I am particularly thinking about what
10 does this tell me about the size of MSC costs for --
11 likely MSC costs for merchants, and then, if that is
12 a factor, if smallness is a factor that causes merchants
13 to treat their MSCs as a fixed cost, then that may
14 have -- the fact that payments would have been
15 smaller -- sorry, MSC costs would have been smaller at
16 the beginning of the period relative to the end may
17 cause there to be a different treatment of MSC costs by
18 merchants, and I cannot be specific about -- I think
19 I have been clear, I cannot be specific about the
20 materiality of that so as to give a number or to say
21 when it would have tipped for merchants -- they would
22 have included it as a variable cost at this point, they
23 would have treated it as a fixed cost at that point,
24 that is beyond what is capable to read from this data.

25 Q. I do not think you are getting my point. I am sure

1 I have put it badly.

2 A. Sorry.

3 Q. You have a single 70 to 100% base case for 2007 to 2024;
4 yes?

5 A. Yes.

6 Q. In that time, there was a 61 percentage point rise in
7 card usage, according to your own graph?

8 A. Yes.

9 Q. If you do not accept it, that is what your premise is.
10 That has --

11 A. But this is not relevant to the 70 to 100% base case.

12 Q. No, it is not, that is exactly right. You do not make
13 any change because of the 61 percentage point rise in
14 card usage.

15 A. But I would not make a change anyway, because the 70 to
16 100% only applies if merchants are treating the MSC as
17 a variable cost. If merchants are treating the MSC as
18 a fixed cost, then my expectation is that pass-on will
19 be very low.

20 Q. Of course. We have that.

21 A. So what this goes to -- this card usage point goes to,
22 is if card usage is low, MSC costs are likely to have
23 been lower, and then that may trigger merchants to
24 think: well, actually, it is not worth me looking at
25 these MSC costs, factoring them into my pricing, I am

1 maybe more likely to treat them as a fixed cost. So it
2 is not relevant at all to this 70 to 100%, and I have
3 made no prediction either --

4 Q. You are not seeing the fatal flaw in that, Ms Webster.
5 The fatal flaw is that if they are more likely to treat
6 them as fixed rather than variable, they are going to
7 fall out of your 70 to 100%. They are going to go out
8 of that 70 to 100%, and your 70 to 100% is going to
9 cover a narrower section of the economy, is it not?

10 A. Yes, I think that is my point.

11 Q. Right. But you do not say that here, do you? You have
12 a unitary number of merchants across the whole economy
13 in your 70 to 100% for the whole period. It does not
14 have any effect, this 61 percentage point rise?

15 A. No, I think the evidence that I have here is
16 insufficiently clear for me to reach a judgment on that.

17 Q. But as I understand it, across the merchant period, you
18 say roughly 68% -- let us call it the Merricks economy,
19 once you have done the numbers, resellers and
20 restaurants and bars. You say about 68% of that economy
21 across the merchant period treats costs as variable?

22 A. Yes, that is my --

23 Q. Yes, and that is true across the whole period?

24 A. Yes, that is my best interpretation of the evidence that
25 is available.

1 Q. Yes. If card usage affected anything, it would take
2 people out of that base case, would it not?

3 A. Yes.

4 Q. But it does not take anyone out of the base case, does
5 it, on your findings?

6 A. I feel that I have insufficient evidence in order to be
7 able to do that.

8 Q. But you do not, do you, because you have come to
9 a conclusion that 68% are within your base case? You
10 have sufficient evidence to do that, do you not?

11 A. This, I think, comes back to what we were talking about
12 either yesterday or the day before. The evidence in
13 relation to whether merchants treated MSCs as fixed
14 costs for purposes of price setting or as variable costs
15 is very limited. So I have come to the best view that
16 I can on the basis of that evidence in order to try and
17 be helpful and to avoid not reaching conclusions for
18 a larger proportion of the merchant economy.

19 On the basis of the evidence that I have, I have
20 taken the view that 68% of merchants, you know, by card
21 fees, would have treated the MSC as variable, and I do
22 not consider that the evidence that I have put forward
23 here in relation to card usage allows me to step away
24 from that.

25 Q. So I want to turn to -- much to the relief of everybody

1 present, I am sure -- a different topic, 6.26 of your
2 report {RC-F/14/118}. Just refresh your memory on that,
3 Ms Webster. (Pause)

4 A. Yes.

5 Q. So your report is about whether merchants passed on MSC
6 costs to consumers in the period 1992 to 2024; yes?

7 A. Yes.

8 Q. That is pass-on of MSC costs across the whole retail
9 economy from 1992 -- I think some points we can agree
10 on -- to 2024; yes?

11 A. So I think specifically I have looked at the whole
12 retail economy for the Merricks claim period, because it
13 is the retail economy as a whole that is relevant to
14 Merricks. The claims that Mastercard is facing are
15 a more limited set.

16 Q. Yes. Let us take the Merricks period for the moment
17 then. Your conclusions that rest on the magnitude or
18 otherwise of the MSC costs that merchants faced in the
19 Merricks claim period, they depend on card usage in that
20 period. I think we have that agreed between us?

21 A. Yes.

22 Q. Yes. Now, why would those conclusions be reinforced if
23 the Court of Appeal in 2025 upholds the CAT's decision
24 earlier this year that Mr Merricks' claim is restricted
25 to cross-border EEA MIFs?

1 A. So I think there are two routes by which that would be
2 the case. So in my first report I describe the impact
3 of lower usage, to the extent that that implies lower
4 MSC costs. It could have two effects on pass-on. The
5 first is to the extent that a merchant treated the MSC
6 as a fixed cost, then if one were then only looking at
7 an overcharge which related to the intra-EEA MIFs, then
8 the counterfactual where they are charged at a lower
9 rate would have a very, very small effect -- sorry,
10 smaller than in a world where all MIFs are relevant.
11 The change in the counterfactual MIF -- MSC would be
12 smaller, and then that would mean it would be less
13 likely to trigger a change in investment decisions,
14 which is, as we have discussed some days ago, the
15 mechanism by which fixed costs are passed on. So that
16 is the, I think, primary route through which there would
17 be lower pass-on.

18 It may be, also, that to the extent that the change
19 in the counterfactual, where intra-EEA MIFs are charged
20 at a lower rate, then means that the change in MSCs that
21 businesses have faced is smaller, and then that may mean
22 that it is less worthwhile a merchant thinking: I now
23 need to fine-tune my pricing.

24 Q. Ms Webster, I am sorry, I do not understand that at all.

25 Go back to 6.26:

1 "[Your] conclusions that rest on the magnitude of
2 the MSCs that merchants faced would be reinforced if the
3 Merricks claim were to be limited for UK merchants to
4 cross-border EEA MIFs ..."

5 Now, it was limited. Let us assume there is no
6 appeal, and let us assume the CAT decision
7 hypothetically stands.

8 A. Yes.

9 Q. Now, the decision by the CAT earlier this year that
10 restricted Mr Merricks' claim to cross-border EEA MIFs
11 did not change the magnitude of the MSC costs that
12 merchants faced in the Merricks claim period?

13 A. No, I think that is right, and I have just remembered --
14 sorry, I wondered if that could be a mechanism, so
15 I have refreshed my memory, and I think it is the first
16 of the two effects that I think is the one that would
17 lead to lower pass-on.

18 Q. Could you just refresh my memory on that?

19 A. The first one is that if a merchant is already in the
20 mindset of treating its MSC costs as fixed, then the
21 change that would result -- the change that would
22 result --

23 Q. From what?

24 A. In MSC cost as a result of a lower fee for intra-EEA
25 MIFs, the change to the MSC cost associated with that

1 would be smaller than in a world where the total MIF was
2 relevant.

3 Q. I do not get it. So you are talking about a decision
4 a merchant makes in the '90s to treat costs as fixed or
5 variable?

6 A. Yes. So we are assuming that they have decided that
7 they treat it as fixed. So if that were the world, that
8 is the world that I am describing --

9 Q. I am so sorry, I thought what you were saying is they
10 are more likely to treat it as fixed?

11 A. No, I am correcting myself. I think it is when they
12 treat it as fixed, the mechanism for pass-on is reduced,
13 because the size of the cost change associated with the
14 lower intra-EEA MIF will be smaller than it would in
15 a world where the whole MIF is being considered.

16 Q. Sorry, I do not understand. Because the merchant sees
17 an MSC; right?

18 A. Yes, and then in this world that I am now describing, in
19 the counterfactual, the merchant would see a change in
20 the MSC as a result of the --

21 Q. Of what?

22 A. Of a lower MSC -- so I am assuming a counterfactual in
23 which the MIF associated with intra-EEA payments is
24 lower, and I am making an assumption that that then
25 feeds into the overall MSC that the merchant sees.

1 Q. I do not understand that because it assumes that the
2 CAT, powerful though it may be, it does not have a time
3 machine. I mean, no one in the 1990s is going to know
4 what the CAT is doing in 2024 because at present the CAT
5 has many powers but they do not involve time travel.

6 A. So I am imagining a counterfactual in which the
7 infringement had not taken place, the MSC would have
8 been lower by an amount associated with the lower
9 intra-EEA MIF and the question is whether that would
10 have then been passed on in the form of lower prices to
11 consumers.

12 Q. No, that is not the counterfactual. That is not the
13 counterfactual at all. The counterfactual here is
14 a zero MIF.

15 A. So, if the infringement relates to the MIF which is
16 specific to intra-EEA transactions, then my assumption
17 is that MIF then does not arise, it is not in the MSC,
18 so the question -- if that MIF is not in the MSC, would
19 the saving that the merchant made on its MSC be then
20 passed on in the form of lower retail prices?

21 Q. But the agreed counterfactual here is a zero MIF.
22 I just do not understand the counterfactual you are
23 constructing.

24 THE CHAIRMAN: Is that actually the counterfactual?

25 MR SIMPSON: The counterfactual is a zero MIF.

1 THE CHAIRMAN: A zero MIF. Okay.

2 MR SIMPSON: How does that counterfactual alter with this
3 EEA decision?

4 A. So in the actual, the intra-EEA MIF was not zero. So
5 I am now assuming a counterfactual where the intra -- so
6 I can assume an intra-EEA MIF was zero and then the
7 question is: what then is the impact of that on the MSC
8 cost that the merchant faced? The answer is: my
9 expectation is it will have gone down somewhat by an
10 amount which is commensurate with the intra-EEA MIF
11 being set at zero and then my question is: is that then
12 passed on to consumers?

13 Q. But you are not --

14 A. I think that is what I am seeking to answer. My point
15 is because the intra-EEA MIF is so small, a proportion
16 of the MSC, it is unlikely that if that is what the
17 claim related to that it would be passed on through the
18 fixed cost method.

19 Q. But they set -- merchants set a single price --

20 A. Yes. So my assumption is that they might have set
21 a different single price which reflected the lower
22 charge, non-existence charge, on intra-EEA MIFs.

23 Q. I am sorry, they would have set a different single
24 price, you say, in a counterfactual -- I am still
25 confused. I am sorry, in a counterfactual in which what

1 happens would merchants have set a different single
2 price? They see a single MSC. They do not see behind
3 the MSC. They do not see the components of the MSC.

4 THE CHAIRMAN: That is your question -- that is what you are
5 putting to Ms Webster, that merchants do not see the
6 components of the MSC so they will not know whether it
7 is an intra-EEA MIF or any other MIF?

8 MR SIMPSON: Exactly.

9 A. Yes.

10 THE CHAIRMAN: So how can you posit that there would be some
11 difference because of a change just to the intra-EEA
12 MIF? Is that what --

13 MR SIMPSON: Yes, that is exactly the question. As they
14 say, you put it much better than I did, sir.

15 MR TIDSWELL: Surely the counterfactual we are working to --

16 MR SIMPSON: Sorry?

17 MR TIDSWELL: Surely the counterfactual we are working to
18 only involves -- on the assumption that you do not
19 succeed in the Court of Appeal, only involves the
20 intra- -- the cross-border EEA MIFs?

21 MR SIMPSON: That is relevant for the calculation of
22 quantum.

23 MR TIDSWELL: Well, it is also relevant to the
24 counterfactual, is it not? So what you cannot assume
25 for the counterfactual is that you have an infringement

1 for the domestic UK MIF and therefore the merchant is
2 assumed to have been reducing that at well. You cannot
3 assume that because it is not in the counterfactual.

4 MR SIMPSON: Well, what you have, sir, obviously if the
5 decision stands and the quantum that is claimable by
6 Mr Merricks diminishes, but if you are looking at what
7 would have occurred but for the infringement, then the
8 counterfactual which -- in the world -- in the
9 counterfactual world in which the merchant is operating
10 is a zero.

11 MR TIDSWELL: Zero for the cross-border EEA MIFs only
12 because, as you say, but for the infringement, as
13 I understand it, in the Court of Appeal, unless you
14 succeed in the Court of Appeal, you are not entitled to
15 say that the domestic UK MIF is zero, are you?

16 MR SIMPSON: No, but the --

17 MR TIDSWELL: So the infringement of that is not the
18 infringement. The infringement is the other MIF.

19 MR SIMPSON: This may be more a matter for submission than
20 anything else.

21 THE CHAIRMAN: I think it probably is.

22 MR SIMPSON: I have put the point and we can argue it out,
23 but the point, sir, is this: the query as to what is
24 claimable, what is within the scope of what Mr Merricks
25 can claim is a different query from what would have

1 occurred in the counterfactual because the
2 counterfactual is a Commission decision that you should
3 not charge MIFs. There is then an issue as to whether
4 that was -- there is a causation issue as to what
5 occurred there, whether it is intra-EEA or whether it is
6 domestic MIFs can be claimable, but what happened,
7 actually, was the Commission made a decision in the
8 counterfactual where there is no infringement, the MIF
9 would have been zero, the merchant would have got their
10 MSC and they would have passed it on, or not, in the
11 same way.

12 I think I have put the point to the witness
13 sufficiently --

14 THE CHAIRMAN: When you are exploring the counterfactual,
15 you are trying to put to the witness what would have
16 happened as a matter of fact?

17 MR SIMPSON: Yes.

18 THE CHAIRMAN: What decision would the merchants have taken
19 in the light of that --

20 MR SIMPSON: Yes.

21 THE CHAIRMAN: -- counterfactual?

22 MR SIMPSON: Yes. Yes, that is exactly right. I think
23 I probably explored it enough as well.

24 THE CHAIRMAN: Well, we can all think about it over lunch.

25 MR SIMPSON: Sir, just one thing.

1 THE CHAIRMAN: Yes.

2 You are going to finish shortly?

3 MR SIMPSON: We are on target.

4 THE CHAIRMAN: Oh, that is good.

5 MR SIMPSON: Would it be possible to sit at 1.45? Is that

6 too much to ask?

7 THE CHAIRMAN: Will that be enough of a break for you?

8 THE WITNESS: That will be fine for me, but --

9 THE CHAIRMAN: You have been in the box for a long time, so

10 I am fully aware of that, but I think that is -- we will

11 do that.

12 MR SIMPSON: I am grateful.

13 THE CHAIRMAN: So 1.45.

14 (1.05 pm)

15 (The luncheon adjournment)

16 (1.45 pm)

17 MR SIMPSON: So picking up on the point that came up just

18 before lunch, particularly from Mr Tidswell. Now,

19 I have to give a caveat, because I was not involved in

20 the causation trial, but I have been asked to make

21 a correction on which, very unlike me, I will not

22 particularly want to answer questions, because I might

23 not know the answers, because I have not been involved

24 in that trial, but if I can make the point and then I

25 will continue cross-examining.

1 So there has been a decision from the CAT that was
2 upheld by the Court of Appeal that Mastercard -- that
3 Mastercard is precluded in these proceedings from
4 arguing that the intra-EEA could have been anything
5 other than zero.

6 In a causation judgment earlier this year, the CAT
7 ruled that Mr Merricks had not shown the UK domestic
8 MIFs were causally affected as a matter of fact by the
9 intra-EEA MIFs. Mr Merricks sought permission to
10 appeal, which was refused.

11 There will now need to be a second trial, if the
12 settlement is not approved, which will consider the
13 issue of legal causation and the remainder of factual
14 causation based on what is the relevant counterfactual.
15 The first trial did not consider the counterfactual at
16 all. That is subject to the submissions you have seen
17 in relation to what counterfactual and whether
18 a counterfactual is relevant. They are in our opening
19 and they will be matters for closing.

20 But that is separate from the question in this
21 trial, which is whether merchants did or did not pass on
22 the MSC in whole. If they did, then we have to
23 establish -- we have established pass on of the MSC, and
24 fundamentally that is a factual issue.

25 So as matters presently stand, Mr Merricks' claim is

1 not limited to intra-EEA MIF transactions and would only
2 be so limited after a second causation trial.

3 I have just been asked to make that correction, and
4 it will be a matter for closing submissions, but that is
5 the current position as I am instructed it is, but I do
6 not think it is relevant for Ms Webster's
7 cross-examination.

8 THE CHAIRMAN: No.

9 MR SIMPSON: I will carry on with that now for a relatively
10 short time and then Mr Williams will ask some questions.

11 Just picking up where we were before lunch. Another
12 point, Ms Webster, that Mastercard makes is that
13 Mr Merricks' claim is against Mastercard only, and
14 almost exclusively in relation to credit card
15 transactions, and they do some mathematical wizardry to
16 demonstrate that this means that MSC costs for
17 merchants -- you have seen it in their opening, I am
18 sure -- in the Merricks claim period would have been so
19 tiny as to be almost imperceptible.

20 Now, you do not mention this point as part of your
21 reasoning that MSC costs would have been smaller in the
22 Merricks period, this point about different claims in
23 relation to different credit cards, etc, etc, one
24 against Mastercard, one against Visa, but the fact that
25 this claim is only against Mastercard, you do not

1 mention that point. Now -- and you do not mention in it
2 support of your reasoning that MSC costs would have been
3 smaller in the Merricks period, such that they would
4 have been more likely to treat them as fixed costs. Do
5 you agree with that reasoning?

6 A. Sorry, do I agree with the reasoning that merchants
7 would have been more likely to treat MSCs as a fixed
8 cost if they were only thinking about the Mastercard
9 element, is that your question?

10 Q. No. The point Mastercard makes is Mr Merricks' claim is
11 against Mastercard only --

12 A. Yes.

13 Q. -- and almost exclusively in relation to credit card
14 transactions. Does that affect your thinking in
15 relation to pass-on of MSC costs?

16 A. So I do not think it changes my view on the likelihood
17 that an MSC cost would have been viewed by -- treated by
18 merchants as a fixed cost. I am working -- in making
19 that statement, I am working on the assumption that
20 merchants see the MSC as a whole, and so the costs that
21 they would see would be an MSC associated with both
22 Mastercard and Visa costs. So I would not think it is
23 more likely that it would be -- that merchants would
24 have treated the MSC as a fixed cost.

25 Where it may become relevant is to the -- related to

1 what we were just talking about, if the infringement
2 relates to the element of the MSC, recognising that it
3 is one charge, but if the infringement relates to an
4 element of the MSC which is only on -- in relation to
5 Mastercard and only in relation to credit cards, then
6 the degree to which the MSC facing merchants is inflated
7 by the existence of the infringement, that would be to
8 a lesser degree than had the infringement been across
9 both Mastercard and Visa.

10 To that extent, assuming a counterfactual where that
11 higher rate of interchange is passed on through the MSC
12 for Mastercard credit cards, that -- the change in the
13 counterfactual could be -- would be relatively smaller
14 than were it also across Visa, and then that would have
15 implications for pass-on of MSCs if the merchant treated
16 them as a fixed cost.

17 So apologies, that is very convoluted, but that is
18 the mechanism by which I see there to be a potential
19 effect on pass-on.

20 Q. Okay. I think I have the point, and I think that is
21 a point then for submissions, rather than for anything
22 else. We have your view on it.

23 So your reasoning, if the infringement were specific
24 to Mastercard or specific to a particular credit card,
25 would be the same, as I understand it, as the reasoning

1 in relation to intra-EEA?

2 A. That is right.

3 Q. I see. So it is a matter of principle that we can
4 discuss with the Tribunal in due course.

5 A. Yes, and it relates to --

6 Q. Formally, I have to suggest that -- I put the same
7 point, that your reasoning is wrong, but I have put the
8 point, and you have explained, and we then make our
9 submissions.

10 I want to move on then to the retail economy. In
11 Coombs 9 -- it may not be necessary to go to it --
12 Mr Coombs used ONS statistics for the UK and Northern
13 Ireland to produce figures for the UK retail economy.
14 The context of Coombs 9 was the causation and volume of
15 commerce trial, in which we were, you and I, were not
16 involved.

17 Now, in order to produce a relevant volume of
18 commerce, Mr Coombs needed to -- sorry for the long
19 explanation, but I need to give you the background
20 because this has been new to me. In order to produce
21 a relevant volume of commerce, Mr Coombs needed to
22 deduct amounts attributable for tourists, for reasons
23 that I do not want to go into because I was not
24 involved, but to do this he needed to estimate the total
25 tourist spend as a percentage of the UK retail economy,

1 so he had to work out what the retail UK economy was.

2 Now, your colleague, Mr Parker, gave evidence at
3 that trial on causation and volume of commerce and, as
4 I understand it, your team assisted Mr Parker in that?

5 A. Some members of my team did.

6 Q. Some members of your team. Now, Mr Parker did not
7 challenge Mr Coombs' figures for the UK retail
8 economy -- as you know, he did not deal with them at
9 all -- and ultimately the volume of commerce was agreed
10 between them.

11 Now, in the hot-tub Mr Coombs referred to Coombs 9
12 and these retail economy figures, and you quite fairly
13 said that you would want to look at assumptions in
14 Coombs 9 as to what datasets had been selected.

15 Mr Coombs gave evidence a week later, and Mr Cook did
16 not challenge the figures in Coombs 9, and so we have
17 taken from that that you have checked it and you are
18 okay with it?

19 A. I think that is broadly right. I think it is -- if I am
20 right, those figures were used as the denominator for
21 something.

22 Q. So I would like to go then to the numbers. They are
23 summarised in a spreadsheet, as you have seen, that was
24 uploaded last week, comparing your numbers with Coombs 9
25 {RC-Q4/23/1}.

1 So the left-hand column -- if we go to -- if we just
2 do this fully. On the right hand spreadsheet, the
3 worksheet, UK retail economy, those are Mr Coombs' 1992
4 to 2022 figures, running from 283 billion to
5 1.5 trillion. He has limited himself in the first sheet
6 to the years that you are dealing with.

7 A. Yes.

8 Q. If we go back to the first sheet for comparison and to
9 the right, if we can move right, we see the graph that
10 is produced by these figures, and we see a fairly flat
11 line for credit cards, 12 to 14% over the period, but
12 a significant upward trend for debit cards, 8 to 48%
13 over the period, and there is an aggregate line as well.

14 So we have then the total percentage goes from 20%,
15 adding them both together, 8 and 12%, at the beginning
16 of the period, to 62% over the -- to the end of the
17 period, and we compare that because Mr Coombs
18 incorporated your spreadsheet in the next sheet, and we
19 can see that if we go to -- up a bit, to share of card
20 payments, the middle, yes, intermediate output, middle
21 column, share of card payments, you go from 3.5% to
22 81.1%. That is if your graph is right, and we have been
23 through all that.

24 A. Yes.

25 Q. So if we go back to the comparison tab at the top, and

1 across back, please, I suggest to you that we can see
2 how far off the figures in your sheet are. Mr Coombs'
3 retail economy is 355 billion in 1995, yours is just
4 over 2 trillion. So your retail economy is, as we see
5 in the next column, 569% of the actual retail economy?

6 A. Yes, and to be clear --

7 Q. Would you accept that that is a catastrophic error?

8 A. So I think I have been careful not to label it as the
9 retail economy, because that is not what it is an
10 estimate of. It is the total transaction values,
11 excluding direct debit and automated credit.

12 Q. I want to come back to that, because I just want to
13 check something, but I must say that is a new
14 understanding for me, because I understood you to accept
15 from me yesterday that you were seeking to calculate the
16 retail economy.

17 A. So in order to be able to draw inference -- so what
18 I was seeking to do in this whole section is to
19 understand the change in the use of card payments, the
20 prevalence of that, in the retail economy. I have two
21 sources of data. I have one which is shown in figure 2,
22 which draws on these figures that are here. That is not
23 the retail economy, that is just total transactions,
24 excluding automated credit and direct debit. I then
25 have figures in figure 3 which are specific to retail

1 sectors, but what I cannot do for the figures in
2 figure 3 is show a share of transactions. I can only
3 look at the absolute values.

4 Q. So, yes, I am a bit confused, but you are saying that
5 you are not -- in your graph, your denominator, your
6 overall universe, is not the UK retail economy?

7 A. That is right.

8 Q. So how can it be used for the purposes of this action?

9 A. So I had identified what I thought were the main sources
10 of payment types relevant to the retail economy, and
11 that is what I reported in the chart, and I had to make
12 some assumptions in order to do that.

13 Q. But that is a new position, is it not, Ms Webster,
14 because {Day15/119}, I said to you:

15 "I think Professor Waterson raised this in the
16 hot-tub. It certainly came up that the denominator
17 column in your spreadsheet represents in figures the UK
18 retail economy as you saw it for the basis of this
19 graph?"

20 You said:

21 "Yes, that is the denominator in my analysis."

22 A. Apologies, I realise I must have misspoken then. I did
23 not have that in front of me and may have misremembered.

24 Q. So I just want to go -- now, would you accept that the
25 card usage figures you give are fundamental to the

1 conclusions that you draw that Mastercard relies on?

2 A. I consider that those figures in figure 2 and the
3 figures in figure 3, and also some observations that
4 I make about the sophistication of pricing approaches
5 taken by merchants based on some of the factual evidence
6 that I reviewed in Mr Harman's report, those three
7 things, taken together, give me cause to think that
8 there may be reason why merchants, going back further in
9 time, treated -- may have been more likely to treat MSCs
10 as a fixed cost, and that is the -- that is the view
11 that I reach in my report.

12 Q. Well, perhaps I phrased the question wrongly.

13 Would you accept that the card usage figures you
14 give are fundamental to the conclusions that you draw
15 that Mastercard relies on, based on those figures?

16 A. So I have not, as I said I think yesterday, looked
17 specifically at the Mastercard statement openings that
18 are referred to. I am talking very specifically about
19 the analysis that I have brought in my report.

20 Q. Well, let me just -- if you have not looked at it, let
21 us just go to a couple of examples. {RC-A/5/4},
22 paragraph 6(2) of the opening we are looking at, if you
23 can pull that up, please, operator.

24 "There was also low usage of credit cards, with the
25 available data indicating that the alleged MIF

1 overcharges only applied to a very small proportion of
2 transactions specifically less than 1% (by value) at the
3 start of the Merricks Claim period, rising to only 4%
4 (by value) by the end. As a result, in rough terms, the
5 claimed overcharge amounts to around 0.01% (of
6 merchants' prices) in the earlier years of the claim,
7 rising to a maximum of only around 0.04% by the end of
8 Merricks claim period."

9 The footnote for the calculation sends us to -- if
10 we go down to the footnote -- section H for note 4, and
11 if we go through to page 72, it is in fact paragraph 214
12 which replicates this paragraph {RC-A/5/72}. So we have
13 214, which replicates what we have just seen in 6(2),
14 and the first sentence of 214 then has another footnote
15 of less than 1% by value, which is footnote 281, which
16 itself goes to another footnote, which tells us to go to
17 another footnote.

18 So I do not I know whose idea that was, but we do
19 get there in the end, and the final destination of our
20 travels is footnote 281 on the previous page -- no, it
21 is not, it is footnote 276 on the previous page
22 {RC-A/5/71}. So could we pull that up.

23 So this is:

24 "Based on the best data available [that is your
25 data, Ms Webster], credit cards were used for around 8%

1 of payments in 2008. Mastercard had around 50% of the
2 credit card market in the UK."

3 Then we go to the previous footnote:

4 "Based on the best data available, credit cards were
5 used for 2.1% of payments (by value) in 1995."

6 Now, do you accept, given what you have said in the
7 last couple of days, that this data is not reliable for
8 this purpose?

9 A. I think that the -- for the exact figures, I think that
10 is right. I think that is the discussion that we have
11 had. So the discussion that we have had is that I think
12 there has been this increase in trend in the share of
13 transactions by card payments, but the precise figures,
14 I think, are sensitive to what is assumed to be
15 included.

16 Q. That follows for all the paragraphs that rely on those
17 figures; yes?

18 A. I have not seen all of those paragraphs, but --

19 Q. As a matter of logic, it would follow?

20 A. I would think that would be a concern.

21 Q. Is that a yes?

22 A. Yes.

23 Q. So then if we look at card acceptance. If we go back to
24 paragraph 5 {RC-A/5/3}:

25 "The merchant claims relate almost exclusively to

1 the period from November 2010 onwards ..."

2 Well, we have seen that is wrong -- well, in
3 principle, like we have said, most of them do, but
4 I will not go through that.

5 "... and all the Mastercard and Visa transactions,
6 (including credit cards, debit cards, commercial cards
7 and inter-regional transactions). This was a time
8 period in which there was close to universal acceptance
9 of payment cards by retailers ..."

10 Now, the graph you -- the graphs you have given do
11 not show close to universal acceptance for cards, do
12 they? The highest it goes to is 60, adjusted 50 to 49
13 by the end.

14 A. That is what the graphs show.

15 Q. So you would accept, would you not, it is not close to
16 universal acceptance?

17 A. So when I have produced that chart, I have focused not
18 on the absolute levels in the chart but more on the
19 trend over time, and the reason for that is that
20 I have included in my denominator these businesses
21 identified in the ONS data that are either paying VAT or
22 PAYE, and I think, as Mr Coombs has pointed out, it is
23 likely that that ONS data includes some businesses which
24 are not in the retail economy, they are not
25 retail-facing, and therefore if one were to take those

1 out, the levels in the chart would, to the extent that
2 those businesses are less likely to be accepting card
3 payments because they are not retail-focusing, the whole
4 level of the chart would shift up.

5 So I think it is dangerous to read too much into the
6 absolute levels of card acceptance.

7 Q. I am not asking about evidence you might have given,
8 Ms Webster; I am asking about the evidence you have
9 given and the chart that you have put in your report.

10 A. Yes, I think I have described how that should be
11 interpreted and I have looked at it for the change over
12 time.

13 Q. When you say "I have not focused on the absolute levels
14 in the chart", I do not know what you mean. You come to
15 a percentage of card acceptance for each year, that is
16 the basis of your spreadsheet. You may not have focused
17 on it, but they are there, those numbers, are they not?

18 A. So in seeking to draw inference from the chart, it is
19 the figures that I have presented in paragraph 6.37,
20 where what I am focusing on is the change over time and
21 that is what I think is the key point.

22 Q. I am afraid we have to go back to your spreadsheet then,
23 if I can remember the number of it. It is {RC-Q4/16/1}
24 and the card acceptance tab, number 4, please. The
25 percentage then, as adjusted -- leave it there, thank

1 you very much. You may not have focused on them, but
2 those are the percentages of card acceptance you are
3 putting forward?

4 A. Yes.

5 Q. They do not show near universal card acceptance, do
6 they?

7 A. It is not possible to infer the level of card acceptance
8 purely in the retail economy from those figures, it is
9 possible to show a trend. Those figures are the best
10 estimate that I have, including using my denominator,
11 which is available to me, of the ONS businesses.

12 Q. But those are the best estimates, that is what you are
13 putting before the court. Just as a matter of simple
14 truth, Ms Webster, they do not show near universal card
15 acceptance, do they?

16 A. Not if one includes in the denominator businesses which
17 are not in the retail economy.

18 Q. No, no, please, just look at the column.

19 A. Those figures do not show universal acceptance of cards
20 by businesses in the UK as measured by the ONS.

21 Q. Or near universal?

22 A. For businesses in the UK, yes, that is right.

23 MR SIMPSON: Thank you.

24 Cross-examination by MR WILLIAMS

25 MR WILLIAMS: Good afternoon, Ms Webster. I have two topics

1 this afternoon, beginning with some questions on
2 econometrics. So I will leave you to guess who drew the
3 short straw between myself and Mr Simpson. I have a
4 tendency to be a bit Tiggerish at times and speak too
5 quickly, so if at any moment I do, please do ask me to
6 slow down.

7 So beginning with the questions on econometrics.
8 You would agree with me, would you not, that it is only
9 sensible to compare properly specified econometric
10 models against other properly specified econometric
11 models?

12 A. Generally, that is the preferred approach.

13 Q. Otherwise, if you were to compare the ranges between
14 a well specified model and a badly specified model, that
15 would not tell you anything useful about the accuracy or
16 the reliability of the well specified model, would it?

17 A. I think generally I can agree with that.

18 Q. You would also presumably agree with me, I hope, that a
19 model -- whether a model is well specified or not
20 includes consideration of what control variables or
21 dummy variables to include or exclude?

22 A. That would be part of the consideration. I think
23 I would add that, consistent with the discussion that we
24 had in the hot-tub, I do think it is relevant to be
25 guided by what one thinks is relevant from an economic

1 perspective, so I think that should be taken into
2 account in thinking about how a model should be
3 constructed and how conclusions based on that model
4 should be drawn.

5 Q. Of course. So with that in mind, please can we go to
6 your second report at volume 2 and at page 60 of that
7 {RC-G/13/60}. I will just wait for you to get that,
8 Ms Webster.

9 A. Thank you.

10 Q. It is quite difficult to read because of the colours.

11 A. Yes, agreed.

12 Q. We should see there figure 4, which is entitled, "Range
13 of pass-on estimates implied by inclusion of time trend
14 and financial crisis dummies as defined by Mr Coombs".

15 Now, this is just looking at Mr Coombs' public data
16 analyses, is it not?

17 A. Yes.

18 Q. So what you will see on the left-hand side, and I will
19 describe this so that everybody in the room follows our
20 discussion, is a list of the public data analyses that
21 Mr Coombs conducts in certain sectors. So there is one
22 for the vehicle services sector, one for the travel
23 agents sector, one for other retail sector -- that is
24 the jewellers -- one for the household sector, one for
25 hotels, two for food and drink, two for entertainment,

1 and four for automotive fuels, that sector. You can see
2 that on the left?

3 A. Yes.

4 Q. So there are eight of the 12 sectors covered off by
5 these analyses. That is right, is it not?

6 A. Yes.

7 Q. Now, as I understand it, but, again, please do correct
8 me if I am wrong, what you are doing here is testing the
9 sensitivity of Mr Coombs' results for the inclusion or
10 the exclusion of some of the control variables that
11 Mr Coombs either includes or excludes in his analyses,
12 namely the time trend and the financial crisis period
13 dummies. Is that a fair description of what you are
14 doing here?

15 A. That is right. From memory, these were variables that
16 Mr Coombs identified as potentially relevant, and then
17 I think he ran his analysis but did not necessarily,
18 I think, from memory, present the results. So I have
19 run the analysis and presented the results in this
20 table.

21 Q. So if we look under the figure at the explanation of the
22 dots to see that, the colours are very difficult to
23 read, but the first of the four in the top left is grey.
24 So that is where there is no time trend or financial
25 crisis dummy included. Then the red dot is the time

1 trend and where the time trend is included. The blue
2 dot is where the financial crisis dummies are included.
3 The purple dot, which is one in the bottom right-hand
4 side corner, is where both the time trend and the crisis
5 dummies are included. Does that follow?

6 A. Yes.

7 Q. So far, so good. I have been reading a book called
8 "Nearly Harmless Econometrics", and so far I think we
9 are nearly harmless, so so far, so good.

10 PROFESSOR WATERSON: It can become a habit, you know!

11 MR WILLIAMS: I skip the equations.

12 PROFESSOR WATERSON: (Inaudible) Mr Simpson, between
13 spreadsheets and regression.

14 MR WILLIAMS: Now, you do not actually identify on this
15 figure the dots for any sectors that are actually the
16 results that Mr Coombs uses in his pass-on estimates, so
17 what I will do is I will show you as we go through the
18 analyses, so there will be a little bit more description
19 before I put my punchline question to you, if you will
20 forgive me for that.

21 Now, before I do put some questions, just to set the
22 scene for this yet further, were you here for Mr Cook's
23 cross-examination of Mr Coombs?

24 A. Yes -- sorry, I saw it on the live stream.

25 Q. So you have watched that exchange?

1 A. Yes.

2 Q. Now, Mr Cook did not refer to this figure specifically
3 in his cross-examination of Mr Coombs, but it appears
4 that this figure must have underpinned at least some of
5 his questions, because he put a series of points about
6 whether Mr Coombs was right to include or exclude these
7 controls, and the point seemed to me, insofar as I could
8 follow it, that it would make a material difference to
9 the results whether one included or excluded the two
10 variables on this chart. Is that your understanding as
11 well?

12 A. Yes.

13 Q. Now, let us look at this figure and go through it bit by
14 bit. So the travel line, that is the second one, we can
15 see that it does not make much of a difference whether
16 one adds or excludes the variables, because the dots are
17 very closely clustered together. Would you agree with
18 that?

19 A. Yes.

20 Q. Likewise, if we look at the other retail line, that is
21 the third one, the same is the case, the dots are pretty
22 close together, it does not make a material difference?

23 A. Yes, they are fairly close.

24 Q. Again, the same for the household sector, that is the
25 fourth one, would you agree with that?

- 1 A. Yes.
- 2 Q. Then if we go down to food and drink number 1, which is
- 3 actually the second one listed here, again, the results
- 4 are all very closely clustered together regardless of
- 5 whether the controls are included or excluded?
- 6 A. Yes. It looks from that one that the difference in the
- 7 pass-on elasticity is about 10%.
- 8 Q. Then likewise, for all four of the auto fuel sector
- 9 ones, they are all closely clustered together?
- 10 A. Yes.
- 11 Q. So any issues, insofar as there are any, only arise for
- 12 the ones where there are large ranges where Mr Cook's
- 13 point about large variability and changing results may
- 14 bite, so they are the four sector ones that I am going
- 15 to go through and ask you some questions about, just to
- 16 orientate us for that.
- 17 So if we please start the top of the figure, which
- 18 is the vehicle services sector. Now, Mr Coombs' result
- 19 is the grey dot, so you will see that at the far
- 20 left-hand side of the line, and interpreting what that
- 21 means, that means that he does not include a time trend
- 22 or any financial crisis dummies results and his
- 23 elasticity result is therefore 0.88. Can you see that?
- 24 I know you are following these on the grey dot.
- 25 A. Yes.

1 Q. Given that his result is the furthest to the left of the
2 line, right at this side of it, that is the lowest
3 pass-on elasticity within the range. I confess that
4 I am a little bit surprised by any criticism on this
5 one, because I am right, am I not, that if Mr Coombs is
6 wrong, and so he should have included either of the
7 controls, then the pass-on elasticity and the absolute
8 pass-on rate would be higher than his actual result
9 represented by the grey dot?

10 A. Yes, and perhaps it is important to clarify what I was
11 seeking to do in producing this chart, which is not
12 necessarily to say Mr Coombs' estimates are wrong and
13 they are too high or they are too low, it was more to
14 show that there is a degree -- a high degree of
15 uncertainty with respect to the estimates. So it does
16 not matter to me that Mr Coombs' estimate is at the
17 lower end of the range of estimates, what is important
18 is actually how stable are these estimates to the
19 inclusion of dummy variables that may be economically
20 relevant.

21 Q. In making that assessment, I thought we had established
22 at the outset, which is why I asked the basic questions
23 as I saw them about only comparing well-established
24 specifications of models against other well-established
25 ones. So if it is not the case that one should include

1 or exclude depending on what he has done, that range
2 estimate here is not quite accurate, is it?

3 A. So that is why I added the caveat that I did in response
4 to one of your questions, which is if there is a set of
5 variables, these dummy variables, that you think may be
6 economically relevant to the relationship between cost
7 and prices, I consider that it is appropriate to explore
8 the implications of including those dummy variables to
9 see the effect that it has on the coefficient of
10 interest.

11 Q. Okay. So going back to my point on vehicle services and
12 how your chart may have been used in cross-examination,
13 even though it may not have been your point, Mr Coombs,
14 with his result at the far left of this using the grey
15 dot, or represented by the grey dot, rather, he is being
16 conservative and favourable to Mastercard on any basis,
17 because if he is wrong, he has underestimated the
18 pass-on, if he had actually included a time trend or
19 dummy variable according to this range. That is right,
20 is it not?

21 A. So, sorry, it is right that he has been conservative in
22 his estimate? I mean, I agree with that, but it was not
23 the point that I was seeking to make with the chart. It
24 is more that one needs to have a degree of caution in
25 terms of how one assesses the pass-on rates estimated by

1 the public data and to recognise the uncertainty in
2 those estimates when using them.

3 Q. Okay. If we now move on to the hotels line in the
4 sector for that one. This is the fifth line down. Now,
5 Mr Coombs' result that he actually uses is the red dot,
6 so that is an elasticity of 0.42, and, again, it is on
7 the left-hand side of this line, so he includes a time
8 trend but excludes a financial crisis dummy. Again,
9 that is the lowest pass-on elasticity result shown here,
10 is it not?

11 A. It is the lowest shown here, yes.

12 Q. So even if he is wrong, which I do not accept, about
13 including a time trend or excluding a financial crisis
14 dummy, you would actually be increasing it if you made
15 changes to what he has done, and when I say increasing
16 it, I mean increasing the price pass-on elasticity and
17 therefore the absolute pass-on rate?

18 A. So if one made the changes which I have made based on
19 the set of dummies that Mr Coombs has identified, then
20 the effect would be to increase the pass-on rate. There
21 may be other changes to Mr Coombs' analysis which may
22 have the opposite effect, because in the time available
23 I think we have done the analyses that we can, but there
24 may have been specifications that, as all experts, we
25 did not try, that would come up with different results.

1 Q. I understand that.

2 PROFESSOR WATERSON: Can I just check, before we go further

3 on this. When you or your team included these various

4 dummies that he had not included, or vice versa, the

5 results that we are looking at here, do they all relate

6 to variables which are statistically significantly

7 different from zero?

8 A. When you say "they", are you saying the statistical

9 significance of my dummy variable -- of these dummy

10 variables that I have put in?

11 PROFESSOR WATERSON: Yes.

12 A. I cannot remember the detail of that, because I think in

13 some instances they may not and in some they may.

14 PROFESSOR WATERSON: Right.

15 A. I would need to check.

16 PROFESSOR WATERSON: So if they were put in that they were

17 statistically insignificant, then that does not provide

18 evidence of a difference from a more parsimonious

19 result?

20 A. So what I have done -- I put them in, and they are

21 statistically insignificant. If they do not move the

22 estimate on the PPI, then I think I am sort of happy

23 that that means that the estimate on the PPI is

24 relatively stable. If actually I think this dummy

25 variable could be informative and I include it, and

1 I find that the inclusion shifts the coefficient on the
2 PPI, then that -- even if the -- even if the dummy
3 variable that I include, the coefficient is not
4 statistically significant, I still consider that because
5 of the effect it has on the coefficient on the PPI,
6 I consider it still could mean that the base
7 parsimonious regression may be delivering a pass-on
8 estimate that is not quite right.

9 PROFESSOR WATERSON: Thank you. I think that is clear.

10 MR WILLIAMS: I am very grateful, that shortcuts some of my
11 questions. I am quite relieved about that.

12 Just going back to the simple lawyer's point on this
13 one. With Mr Coombs' dot being the far left one, the
14 red one, for the hotel sector, again, I will be making
15 the point that he has picked the lowest result, and that
16 even if he were wrong, which I am not going to accept,
17 obviously, then the result would actually be a higher
18 pass-on rate than he has calculated. So this is
19 actually a point in my favour, not in Mastercard's
20 favour. Do you follow that, Ms Webster?

21 A. When you say a point in your favour ...

22 Q. In terms of it being a lower pass-on rate and therefore
23 conservative. Mastercard's case is obviously that for
24 the Merricks claim period the pass-on rate should be
25 lower than what Mr Coombs has overall calculated, but

1 here he is using, for the hotel sector, the lowest
2 estimates from the public data.

3 A. Yes, for these set of sensitivities, absolutely.

4 Just to say that when I have looked at the public
5 data, I have not thought about it in the context of what
6 it tells me for either of the claims. I have thought
7 about: if this is the data that I have, what can I say,
8 with the data that I have, about the pass-on of
9 COGS-type costs --

10 Q. We will --

11 A. -- to retail prices.

12 Q. We will come on to that. I am just trying to ask some
13 very narrow questions for the next 45 minutes or so.

14 A. Yes.

15 Q. That takes us, I think, to food and drink. If we look
16 down the left-hand side, you will see there are two
17 public data analyses for food and drink. You already
18 have my point that for food and drink specification
19 model 1, which is the second one listed here, the
20 results are all clustered together, so it does not
21 really matter whether one includes or excludes the
22 variables. But what is really crucial to note, before I
23 ask my question, is that Mr Coombs in fact ultimately
24 uses food and drink number 2, which is the first one
25 listed here, for his overall result, he does not use

1 food and drink 1.

2 Now, the result he uses for food and drink
3 specification model 2 is the red dot, which has an
4 elasticity of 0.85, and that is lower than all of the
5 results for food and drink model number 1, is it not?

6 A. Yes.

7 Q. So, again, you would agree with my suggestion that that
8 is being conservative and using the lower model
9 estimate, the red dot for food and drink 2, rather than
10 using the food and drink model 1, which would result in
11 higher pass-on rates estimate?

12 A. It is conservative for the set of options that are here.

13 Q. Yes, all of my questions can be taken on that premise.
14 I am only looking at the universe of this figure.

15 A. Yes.

16 Q. Now to hone in on the food and drink model number 2, the
17 one he actually uses. His result is the red dot, the
18 0.85, because he includes a time trend but he excludes
19 a financial crisis dummy. Now, it looks like it will
20 only move ever so slightly lower to around -- lower than
21 0.85, the red dot, but still higher than 0.8, which is
22 only a minor difference.

23 A. Yes.

24 Q. Would you agree that you move to the purple dot, so it
25 is not particularly a significance difference, is it?

- 1 A. It looks like a small difference.
- 2 Q. That leaves entertainment, so I will be quite quick on
- 3 this one. Mr Coombs again explores two models, as you
- 4 will see here, but in fact, again, he only adopts one of
- 5 the results ultimately. So he uses entertainment model
- 6 number 1 which is the second one listed here. The
- 7 result that he adopts is represented by the grey dot, if
- 8 you can see that, which is a pass-on elasticity of 0.91,
- 9 if that helps find it?
- 10 A. It does. Thank you.
- 11 Q. So it is the one towards the right-hand side here.
- 12 A. Yes.
- 13 Q. So he does not include a time trend or a financial
- 14 crisis dummy. Now, he also adopts the grey dot, or his
- 15 result is represented by the grey dot for the
- 16 entertainment model number 2, and if you look very
- 17 closely at that one, you will see that is the one that
- 18 is marginally above 1, and his result there is 1.01.
- 19 So my point is very similar for the choice for the
- 20 food and drink ones: by using his model number 1 and his
- 21 result 0.91, and not the 1.01 from his model 2, he is,
- 22 again being conservative, as we have understood that
- 23 word, is he not?
- 24 A. Relative to his alternative choice for entertainment 2.
- 25 Q. Yes. You will be relieved to hear -- I am certainly

1 relieved to hear -- that is it on the econometrics, and
2 we will now move on to the interpretation of the factual
3 evidence for your economic analyses.

4 Now, in the break, sir, you should have received an
5 A3 document, which is merely two pages from Ms Webster's
6 report, and I have cleared this with my learned friends
7 for Mastercard, and Ms Webster also has a copy that has
8 been provided to her.

9 For the Opus reference, please can we turn to
10 {RC-G/12/23}. Can we have a split screen, please,
11 having table 1 on the left-hand side, and the next page,
12 table 2, on the right-hand side {RC-G/12/24}. I am
13 going to keep on coming back to these tables, so it will
14 helpful to keep your folders open for tables 1 and 2 of
15 Ms Webster's reply report or the A3 sheet of paper in
16 front of you.

17 Now, if I can go through a slight description to
18 unpack what we see in front of us, and you can correct
19 me if I get anything wrong. This is intended to be
20 entirely uncontroversial.

21 So table 1 on the left-hand side is your final
22 results, your updated conclusions, for the merchant
23 claimants, and the title for table 2 is, "Updated
24 conclusions for the Merricks sectors during the merchant
25 claim period (using the Mastercard sector definitions)".

1 So let us start by looking at table 1. You have the
2 left-hand column there entitled, "Category", and the
3 categories are now well-known, they are resellers,
4 producers and non-profit maximising entities, and they
5 are the three groups that you assign the merchants to.
6 Is that correct?

7 A. That's right.

8 Q. Now, although there are three groups listed there on
9 table 1, if you look at the equivalent for table 2, and
10 you look at the producers of products and services, then
11 you have "/unclear". So am I right in thinking that
12 actually there is a fourth category that could have been
13 put under table 1 of unclears?

14 A. So had I had a merchant whose activities straddled
15 producer and reseller and/or regulated, then it may have
16 been appropriate to have an unclear.

17 Q. That is entirely understandable. I am just trying to
18 establish that actually you have resellers -- you have
19 three buckets: resellers, producers, non-profit
20 maximising entities, but there are some, across the UK
21 retail economy at least, which are unclear which of
22 those three buckets they would be put into?

23 A. Yes.

24 Q. If we look back at table 1, we will go to the third
25 column this time, "Associated document producing

1 claimants", and only counting Allianz once, you group
2 nine of the merchant claimants into those three groups,
3 and I should alert you that the green highlighting there
4 means that designation is confidential.

5 If I could ask you also to look at the note and read
6 that to yourself at the bottom of table 1.

7 A. Yes.

8 Q. So you actually also group Sony as a reseller and assign
9 it to the base case of 70 to 100% pass-on?

10 A. Correct.

11 Q. Now, on the right-hand side of table 1 in the final
12 column of "Relevant MSC pass-on scenario", you see the
13 relevant scenarios that you assign to each category: the
14 base case, which is your 70 to 100% pass-on, and the
15 fixed cost scenario and the unclear scenario, I think
16 that is well established by now, and obviously "unclear"
17 means unclear.

18 Now, if we do the same exercise for table 2 as
19 quickly as possible in light of the time. This is the
20 key one for the Merricks claim, and again on the
21 left-hand side under the category heading you see your
22 groups again. Then in the second column, this time you
23 have subcategories. Now, these are the 27 Mastercard
24 internal sectors that it divides the whole UK economy
25 into, is that right?

1 A. Yes.

2 Q. Now, these sectors are obviously different from the
3 classifications in the public data that Mr Coombs uses,
4 and the Mastercard data for its card expenditure data,
5 for its 27 sectors, is only from 2011, that is after the
6 Merricks claim period, until 2023. That is right, is it
7 not?

8 A. Yes.

9 Q. Also, it is only card expenditure data for Mastercard's
10 cards, not Visa's, for example?

11 A. Yes.

12 Q. As we know, there are public card expenditure data for
13 the Merricks claim period from 1995 onwards and that
14 covers all cards, so it would include credit and debit
15 cards from Mastercard and Visa, for example?

16 A. Yes.

17 Q. Now, I ask this because it is right, is it not, that we
18 need card expenditure data to produce weights for each
19 of the sectors to derive a UK retail economy pass-on
20 rate, do we not?

21 A. Yes.

22 Q. For that purpose, would you accept that it would be more
23 accurate for the Merricks claim period to use card
24 expenditure data to weight the relevant sectors that is
25 contemporaneous?

1 A. I think that the -- sorry, did you say the UK PS data?
2 Is that what you called it?

3 Q. Essentially, yes. I am putting to you really that
4 Mr Coombs' weightings are based on more accurate data
5 because, in respect of the Merricks claim period at
6 least, because they are contemporaneous to the claim
7 period, and therefore that would be more sensible to
8 use.

9 A. So I think that is right, that data covers much more --
10 well, the data for Mastercard that I have used for the
11 weightings here does not go back in time covering the
12 Merricks period. So one has a choice as to whether to
13 backward -- extrapolate backwards from the Mastercard
14 weightings from the period when they become available
15 in 2011, going back to the beginning of the Merricks
16 claim period, or to try to use the sector weightings
17 that Mr Coombs has used, and there are pros and cons of
18 each.

19 Q. Going back to table 2, so on the right-hand side, I am
20 now looking at the share of the Merricks claim column.
21 What you see there is that you then produce a percentage
22 for what portion of the Merricks claim value your base
23 case is applicable for, and you come out with a total of
24 68% for the base case of 70 to 100% pass-on rate which
25 is formed of all the resellers, and one set of

1 producers, namely restaurants and bars?

2 A. Yes.

3 Q. Then the 32%, you are unclear as to what percentage for
4 pass-on should apply or not.

5 I would like to start, please, with thinking about
6 the producer and unclear group, for which you say it is
7 unclear whether they treated the MSCs as variable or
8 fixed, so the 32% here. Please can we go to page 61 of
9 this reply report {RC-G/12/61}, paragraph 4.46. I am
10 going to put two passages to you and then I will ask
11 a question. This is the first one just to read. It is
12 at the top of the screen there. (Pause)

13 A. Yes.

14 Q. Then if we could turn over, please, to paragraph 4.50
15 {RC-G/12/62}. Please can I ask you to read that to
16 yourself as well. (Pause)

17 A. Yes.

18 Q. Now, I have a lawyer's caveat before I get to the
19 question, I am afraid, but I need to put this on record.
20 Now, obviously all of this depends on the subjective
21 treatment of how individual merchants treat the MSC, so
22 I need to make clear that Mr Merricks' position is that
23 basing conclusions on what we would say is a very small,
24 self-selected and unrepresentative evidence base, and a
25 limited disclosure exercise to get to that limited

1 evidence pool, is not the approach. We also say that an
2 approach looking at the MSC treatment could not possibly
3 be replicated across the whole UK economy from between
4 1992 to 2010.

5 Now, there will be legal submissions on that in due
6 course, but I need to make clear upfront that I do not
7 accept the premise of the exercise, but what I am
8 concerned with, putting questions to you as an economic
9 expert, is to take your approach at face value and see
10 the implications of these two paragraphs and your
11 approach. That is more for the Tribunal's benefit and
12 my learned friends'.

13 Now, what you are not saying in these two
14 paragraphs, as I read them at least, is that you know
15 for a fact that each and every producer and each and
16 every non-profit maximising entity treated the MSCs in
17 the manner that economic theory would predict for fixed
18 costs. You are not saying that all of them would not?

19 A. No.

20 Q. I think we have that on the transcript? Yes. Sorry,
21 I am slightly hard of hearing, so if you could speak up
22 with the "yes" and "no", I would be very grateful.

23 So some portion of the 32% that we looked at in your
24 table 2 could in fact have treated the MSC in the manner
25 that economic theory predicts for variable costs. That

1 is right, is it not?

2 A. Yes.

3 Q. You are also not saying that there would be no pass-on

4 for the 32% unclears, only that it is unclear whether it

5 is 70 to 100% base case or some other lower percentage.

6 Is that also correct?

7 A. That is correct.

8 Q. Now, please can we go to your first report and volume 1

9 and that is at {RC-F/14/27}. Can I ask you, please,

10 once that is in front of you ... I will be asking you to

11 read paragraph 2.72, if the Tribunal is there more

12 quickly. (Pause)

13 A. Yes.

14 Q. So you categorise Travix and Sony as resellers on this

15 basis and you put them both in the base case?

16 A. Yes.

17 Q. That is because they set prices expressly based on MSC

18 levels, including the fact they treated them as COGS?

19 A. Yes.

20 Q. Now, as I understand it, that is because you looked at

21 what Mr Harman did, and you explored this with Mr Woolfe

22 and how he assessed the documents, and then you also had

23 your own look when you got to your second reply report.

24 Is that understanding broadly correct?

25 A. Yes. So in both my first report and my second report,

1 I am using the assessment that Mr Harman has made of the
2 factual evidence in order to inform my view.

3 Q. We see here a defined term in paragraph 2.72 which is
4 "document producing claimants". Now, that means that
5 Mr Harman does not look at WorldRemit, because
6 WorldRemit did not in fact produce any documents. So
7 I would like to show you another expert's assessment of
8 WorldRemit and see if, if at all, that affects your
9 conclusions of the tables we have been looking at.

10 So if I could ask us, please, to go to Dr Trento's
11 reply report at {RC-G/2/71}. Now, we are in
12 paragraph 5.14 here, and I am interested in (iii),
13 please. We will read this one together. So it says:

14 "Differently from other claimants, Travix and
15 WorldRemit treat the MSCs as COGS ... these are two
16 exceptions who both operate in an almost
17 undifferentiated product market ... Travix is a reseller
18 of aeroplane tickets and WorldRemit provides money
19 transfers. For both, the MSCs make up a significant
20 proportion [about four lines up] of the fee they charge
21 in excess of the costs they incur ... As a result, it is
22 not surprising that they monitor the MSCs closely ..."

23 So essentially, if I can summarise, WorldRemit
24 treats the MSC as COGS and it closely monitors. So this
25 I think you would describe as an explicit channel of

1 pass-on?

2 A. Yes.

3 Q. Now, so based on your reasoning and applying your own
4 logic for Travix, as we have already seen, for
5 consistency, would you also treat WorldRemit as falling
6 within your base case of 70 to 100% because they treat
7 MSCs as COGS?

8 A. Yes, based on what I have read I would agree with that.

9 Q. So with that in mind, if we go back to our split screen
10 and the tables 1 and 2, please {RC-G/12/23-24}. In
11 table 1 you do not list WorldRemit on this table but,
12 given what we have just said, as I understand it, you
13 would put it in a base case?

14 A. That is right.

15 Q. Now, if we look at table 2, and looking at the list of
16 sectors matched to resellers, that is the grey box, it
17 does not seem to me at least, but please do correct me
18 if I am wrong, that WorldRemit fits into any of the
19 Mastercard sectors set out in that resellers' list. Is
20 that your understanding as well?

21 A. That WorldRemit would not fall in that categorisation?

22 Q. Would not fall within any of the subcategories which are
23 Mastercard's -- some of Mastercard's 27 sectors that are
24 in grey. I am building this up bit by bit. I will go
25 to the white one, if you agree with that so far.

- 1 A. I agree with that.
- 2 Q. So that then begs the question of into which --
- 3 A. Sorry, just to check, I assume it is not in other
- 4 retail, but I do not have that level of recall of
- 5 exactly the sectors.
- 6 Q. It is genuinely an open question, I am not trying to
- 7 catch you out with this one.
- 8 A. Yes.
- 9 Q. But what I do see when I look at the producers set of
- 10 sectors is quasi cash and other services, and it struck
- 11 me that WorldRemit might fit into one of those sectors.
- 12 Would you agree with that?
- 13 A. I think that is probably right, yes.
- 14 Q. So that means, if that is right, and we will take that
- 15 as an assumption at least for now, that means that you
- 16 are including merchants in your unclear base case that
- 17 for consistency you should actually include within your
- 18 base case, and if that is right, that would mean that
- 19 the 68% is actually understated and your 32% is
- 20 overstated because actually some entities falling within
- 21 those sectors in white should actually be -- have the
- 22 base case applied to them?
- 23 A. So, the reason for the labeling in the table is that
- 24 I am working with Mastercard sectors which are at
- 25 a certain level of aggregation. So I think it is right

1 that table 2, those which I have labelled as unclear is
2 correct. I think what is clear is that there may be
3 some businesses which are sitting within those sectors
4 that operate more as resellers, so I cannot move the
5 whole sector up to the reseller category but there may
6 be merchants that sit within there that are operating as
7 resellers that therefore, on my framework that I have
8 applied, would be more likely than not to treat the MSC
9 as a variable cost and therefore the base case would
10 apply.

11 So I think I am agreeing, therefore, with what you
12 are saying. What I do not have is the ability to add
13 any percentage -- be specific about the percentage
14 uplift above 68% that it would be appropriate to attach.

15 Q. Now, you say you cannot move whole sectors up, so let us
16 just take, for argument's sake, the fact that WorldRemit
17 fits in with quasi cash. I do not know whether that is
18 true but let us make that assumption for now.

19 For restaurants and bars, you were prepared to move
20 the whole of that producer category up from what was
21 unclear in your first report to the base case, just on
22 the basis of Wagamama's. So applying the same reasoning
23 and same approach that you have taken for Wagamama's and
24 restaurants, would you not be moving the whole sector or
25 sub-sector that WorldRemit falls into also into your

1 base case?

2 A. So I think that then depends on the similarity of the
3 businesses that are included in that sector. I would
4 need to do an investigation into quasi cash to
5 understand the nature of the merchants that are included
6 in that and then, if actually they are all quite similar
7 to WorldRemit, then that would be an appropriate thing
8 to do.

9 Q. Okay. Can we please now turn to {RC-Q4/30/1}. Now,
10 this was a hand-up that was put to Mr Economides in his
11 cross-examination, so you probably have not seen it
12 before, but you have seen his three reports before, have
13 you not?

14 A. I have not read them in detail.

15 Q. Well, you will be very relieved to hear I am only
16 interested in column B here. We will not be looking at
17 any of the numbers.

18 Now, what Mr Economides has done, and this is merely
19 copying and pasting what he has done in column B, with
20 one correction which is highlighted in green, is he has
21 labelled whole sectors as where he considers that
22 sector, the merchants falling within it, would likely
23 treat the MSC as a COG or as overheads, and this is the
24 same logic by which you put certain merchants into your
25 base camp, etc.

1 So looking down column B, you will see that he
2 places sector 4, digital products, in the COGS treatment
3 category, travel, online auction sites, cross-border
4 payments, and entertainment events and ticketing, all in
5 the sectors where he considers that merchants would
6 likely treat MSCs as COGS.

7 A. Yes.

8 Q. Now, this is relevant, is it not, on your approach,
9 because you look to get comfort, as you described it
10 with Mr Woolfe, from evidence that merchants in fact
11 treated the MSC as a variable cost such as COGS, and
12 that feeds into your assessment as an explicit channel.
13 That is a fair assessment?

14 A. Yes.

15 Q. So now if we keep this table showing and then on the
16 right-hand side of the screen, please, show your table 2
17 {RC-G/12/24}. What I am going to ask you is where each
18 of Mr Economides' sectors where he puts COGS, where they
19 may fall on your chart, and, again, so I am giving the
20 game away really, but essentially I am wondering whether
21 the 68% is understated, because actually some of the
22 unclears, you may actually have evidence from
23 Mr Economides that suggests that they treat them as
24 COGS, and therefore I am going to ask whether the 68%
25 should be inflated now you have seen this evidence you

1 have not seen before.

2 So starting then with digital products, where would
3 that fall within your -- or Mastercard's 27 sectors, or
4 at least where would you match that up closely to?

5 A. I believe that is other services.

6 Q. Okay. So that would, again, mean that if you are taking
7 a consistent approach, as you did for Travix, Sony and
8 WorldRemit, based on the treatment of MSCs, and if
9 Mr Economides is correct, then should that sector not,
10 or at least part of it, also have the base case 70 to
11 100% pass-on rate ascribed to it?

12 A. So I would say a part of it could have the base case
13 ascribed to it. My understanding is that other services
14 is quite a broad category, and so I recall, when
15 thinking about Sony, which was the claimant that fell
16 into this category, there is a question --
17 I specifically raised in my report a question about its
18 relevance for the wider sector in which it operates.

19 Q. That is quite understood. So we will just take
20 Mr Economides' next sector. He has travel and leisure
21 brokers, number 7. I will ask the same question and we
22 will do the same exercise. What sector of Mastercard's
23 27 do you think that most likely falls into?

24 A. So part of that would certainly be in travel agencies,
25 which is already identified as a reseller.

- 1 Q. So that would not have any effect on the 68%?
- 2 A. No.
- 3 Q. I was wondering whether it might fall within other
- 4 transport?
- 5 A. No, I think it is more likely travel agencies. I think
- 6 I may -- I am looking in my report, because there may be
- 7 a detailed description of these sectors, but ...
- 8 Q. We might have to wait for re-examination for that one,
- 9 if that is okay?
- 10 A. Yes.
- 11 Q. So the third Mr Economides sector is the online auction
- 12 sites sector, and he again says COGS.
- 13 Where would online auction sites fall within your
- 14 categorisation, based on Mastercard's 27 sectors?
- 15 A. I do not know for certain. It could be other retail.
- 16 It could be other services.
- 17 Q. I think the same point follows, but if it is other
- 18 services --
- 19 A. Then a portion may be appropriate to categorise as base
- 20 case.
- 21 Q. So the 68% would go up and the 32% would go down but we
- 22 do not know by how much?
- 23 A. Yes.
- 24 Q. Then the fourth sector from Mr Economides is
- 25 cross-border payments. This one might be easier. I am

1 going to suggest it might fall into quasi cash or other
2 services. Would you agree with that?

3 A. Yes.

4 Q. So the same point again: that would mean the 68% is
5 understated and the 32% is overstated?

6 A. Yes, but without clarity on quite how much.

7 Q. That is understood. I am afraid we do not have the
8 detailed granular breakdowns matching this is all up.
9 I am just giving you some evidence and asking your view
10 whether this, taking account of the same sort of
11 approach that you took to Mr Harman's evidence, whether
12 this may give you some comfort or cause you to re-assess
13 your conclusions?

14 A. Yes, I should say in doing that, I am taking these
15 categorisations and the evidence presented in column B
16 at face value.

17 Q. That is entirely fair.

18 Then, finally, Mr Economides labels entertainment,
19 event and ticketing. Again, I am going to suggest to
20 you that it might fall within recreation, which is
21 listed under your producer/unclear category at the
22 moment. Would you agree with that?

23 A. Yes, I think it may fall there.

24 Q. The same point again: it would mean the 68% is
25 understated, and so the base case of 70 to 100% pass-on

1 should apply to more sectors or parts of sectors than is
2 labelled here. Would you agree with that?

3 A. Yes.

4 Q. Okay. Please can we turn now to {RC-J4.2/141/1}. This
5 is a study prepared for the European Commission, it is
6 dated 2020, and it is about interchange fees
7 specifically, because it is about the Interchange Fee
8 Regulation of 2015. Have you seen this document before?

9 A. I have been made aware of it and I think I have seen it
10 referred to in these proceedings. I have not read it
11 fully.

12 Q. Just so you know, it is referred to in Mr Coombs'
13 thirteenth report and it is one of his previous studies,
14 so --

15 A. Yes, so in which case, one of my team will have read it.

16 Q. When did you first look at this or have this referred
17 to, Ms Webster, can you remember?

18 A. So I will have looked at it in my overview -- sorry,
19 I will have looked at the summaries produced by my team
20 in my overview of the existing studies, but I have not
21 read the paper.

22 Q. I am reminded that Mr Woolfe also may have referred you
23 to this document or part of it.

24 A. Yes.

25 Q. I am going to go to page 189, please. If we could zoom

1 in on the bottom half of the page, "Interviews with
2 selected merchants". If I could read with you the first
3 paragraph and then the last paragraph.

4 So the first paragraph says:

5 "We have also interviewed pricing managers from ten
6 large merchants in the retail, travel and accommodation
7 sectors with activities in several EU Member States.
8 The interviews were conducted over the phone from
9 1 September to mid- 2019. They were typically with two
10 to three pricing managers in each interview."

11 Then the last paragraph begins:

12 "A majority of the merchants operated a price
13 calculation model to help them determine optimal pricing
14 from the cost side."

15 This is the key sentence to focus on:

16 "In most calculation models, payment costs were an
17 explicit variable cost category in line with many other
18 variable costs within a main category, as, for example,
19 store costs, station service costs or store expenses,
20 and under control of the local store. In a single case,
21 it appeared as though payment costs were treated as
22 a fixed cost that was not controlled at a local store
23 level."

24 Now, obviously I accept this is only ten merchants,
25 so it is a limited pool of evidence, but that roughly

1 doubles our pool of evidence available from the
2 merchants in this case, does it not?

3 A. So when I have looked at the factual evidence, I suppose
4 I have looked at it at a more granular level than is
5 summarised here. I think what this evidence shows is
6 that different merchants could treat it in a different
7 way, with the majority, in this case, reporting that
8 they treat it in effect as COGS.

9 Q. So I have two questions arising out of that. The first
10 is in response to what you have just said about the
11 majority. Does the fact that a majority of them put the
12 payment costs specifically into an explicit variable
13 cost category give you any further comfort of your
14 approach saying that the majority of merchants in fact
15 treated the MSC as a variable cost?

16 A. So I feel somewhat nervous taking too much comfort from
17 this without having sort of looked at the underlying
18 evidence that goes into it. I think this is consistent
19 with the view that I have reached in relation to
20 resellers, that a relatively large proportion of
21 merchants may be more likely than not to have treated
22 the MSC as a variable cost. So I suppose I would say it
23 is consistent with that. What I do not know is how
24 these merchants were selected or the questions that they
25 were asked or the materials that they produced.

1 Q. I do not want to over-egg it; neither do we.

2 I have scoured this document from cover to cover and
3 there is no explanation of these interviews or the
4 methodology or how -- who these merchants were, it just
5 says there are ten large merchants in those sectors. So
6 I am not hiding anything from you, and there is no
7 further comfort that I can give you on that.

8 So I accept it is a limited pool of evidence but it
9 is consistent?

10 A. Yes.

11 Q. So my second question is going to be based upon the
12 first sentence of the first paragraph, which is that
13 they interviewed ten large merchants in the retail,
14 travel and accommodation sectors. Now, with that in
15 mind, please can we go back to our split screen for
16 table 2, please, and I am going to ask a very similar
17 question as I did for the Mr Economides' sectors for the
18 travel and accommodation sectors in particular
19 {RC-G/12/23-24}.

20 You have put airline and other transport in your
21 producers/unclear, 32%. But does not this evidence from
22 the Copenhagen study at least suggest that some travel
23 sector merchants will categorise the MSC as variable
24 costs and should therefore be in your base case, even
25 though they are a producer/unclear?

1 A. I think it depends what is referred to by merchants in
2 the travel sector. So if they were travel agents, they
3 will already be in my reseller category. If they were
4 airlines, then that would be different.

5 Q. But it suggests that your 68% may be conservative,
6 because we have only had a limited evidence pool from
7 certain merchants in these proceedings. There may well
8 be others out there and, at least from what we can see,
9 at least somebody in the travel sector suggested that
10 they included the MSC in their variable cost category?

11 A. Yes, but that may be in the -- as I say, I do not know
12 whether they are already in my reseller category or not.

13 Q. Then you have also put hotel/motel in the
14 unclear/producers 32% camp too. But does not the
15 evidence from the Copenhagen study, again referencing
16 accommodation service providers, suggest that perhaps
17 some hotel/motel sector merchants will also categorise
18 the MSC as a variable cost and therefore should be
19 included within the base camp?

20 A. So I think that is a possibility. I cannot rule it out.
21 I also note that we have -- Mr Harman has reviewed
22 evidence from one of the document producing claimants
23 that is in that category.

24 Q. Please can we -- we already have it on the screen,
25 tables 1 and 2. Thank you very much, operator.

1 So I am going to move on to the same topic but from
2 a different angle. You will see in the first row of
3 table 1 that you assign Allianz ABSL to the resellers
4 category and the base case. Can you see that?

5 A. Yes.

6 Q. That is 70 to 100% pass-on. Then you will see in the
7 second row, although it is in the producers category,
8 you have an insurance provider subcategory, and Allianz
9 LVIC is in the base case?

10 A. Yes.

11 Q. Now, where would you assign the third Allianz entity,
12 Fairmead?

13 A. That would be the same as LVIC.

14 Q. So that is base case 70 to 100%?

15 A. Yes.

16 Q. Even though they are a producer?

17 A. Yes. My understanding -- sorry, the reason for that is
18 my understanding is that both Fairmead and LVIC are
19 insurance underwriters and the Fairmead business,
20 I assume, was operated in a similar way to the LVIC one.
21 We did not have, from memory, much document -- many
22 documents produced by Fairmead, but there were quite
23 a lot of documents produced by LVIC that Mr Harman
24 reviewed.

25 Q. With that in mind, can we look across at table 2 and you

1 should see, three lines up from the bottom of your
2 producer/unclear category, professional services. Now,
3 you can take it from me that is where insurance
4 providers sits within Mastercard's categorisation. Is
5 that also your understanding of where insurance
6 providers would fit?

7 A. I think that is probably right.

8 Q. So what -- given what you have said about Allianz and
9 all three Allianz entities, does that not mean that at
10 least some portion of the professional services group
11 representing insurance should not actually be labelled
12 unclear but should instead be labelled base case and
13 have the 70 to 100% pass-on rate applied to that
14 subcategory?

15 A. It may be that some portion of their professional
16 services base case would apply.

17 Q. You say "it may be"; but it is the case that, taking
18 your own methodology where you have assigned, for
19 example, restaurants and bars, on the basis just of
20 Wagamama's disclosure, into the base case consistently,
21 the whole subcategory of professional services for
22 insurance should also be ascribed to base case, is that
23 not right?

24 A. So I would need to look again, but, from memory, the
25 professional services sector in Mastercard's data is

1 quite broad and would cover businesses which go beyond
2 insurance underwriting. So that is the reason for my
3 caution. If actually the insurance underwriting were
4 considered to be representative of the professional
5 services sector, then it would be appropriate to move
6 the whole of professional services up, but that is not
7 a view that I have taken.

8 Q. I think in fairness to you, I should show you another
9 passage of your report which has this exact same table
10 but with more notes ascribed to it. So if we go to
11 page 123 of your second report, volume 1 {RC-G/12/123}.
12 So this table 11 is the same as table 2 that we have
13 just been looking at but, as I say, it has a few more
14 notes. So if we can zoom in on the notes. Can you read
15 those to yourself. I am not yet going to ask you a
16 question before I show you another passage, but if you
17 tell me once you have read those, please. (Pause)

18 This is table 11. It should be 111.

19 A. Yes, I think this is consistent with the point that
20 I have just made.

21 Q. It is. Therefore, because you refer to, at the end:

22 "See Webster 1, Volume 1, paragraphs 6.12 to 6.13)."

23 For the reasoning, I would like to take you to that.

24 So if we could please go to Webster volume 1 of your
25 first report at paragraph 6.12 {RC-F/14/111}. This is

1 the passage you refer to.

2 If we look at 6.12, you say there that LVIC and
3 Fairmead are professional services. Pausing there, that
4 does not actually tell us why you cannot draw inferences
5 for the insurance sector, does it?

6 A. No.

7 Q. So that leaves the only possibility of 6.13. So if
8 I could ask you to read that to yourself, please.

9 (Pause)

10 A. Yes.

11 Q. So all this says is that you cannot draw inferences from
12 the insurance providers to the whole of the professional
13 services category, such as the estate agency services
14 category, but that does not justify why you do not split
15 out insurance providers and assign just them to the base
16 case, rather than lumping them into the 32%, does it?

17 A. So I have been using Mastercard data at that level of
18 aggregation, which is professional services. I am
19 noting that there are a range of different business
20 types, one of which would include insurance
21 underwriters. So I am saying for the whole of the
22 professional services sector, Mastercard sector,
23 I cannot be clear about how merchants in that sector
24 treated the MSC for the purpose of price setting.

25 Q. The last question of this sort before we finish and then

1 we will look at one more table very briefly. If we can
2 go back to table 2, please {RC-G/12/24}, it is on the
3 right-hand side of the A3. If we look at that, you put
4 all of the utilities, that is the penultimate line,
5 within the unclear camp and the 32%, and you say the
6 relevant MSC scenario is unclear.

7 But please can we go -- I am sorry for jumping
8 around -- to your first report at {RC-F/14/26}. I am
9 interested in paragraph 2.70(a) and the last line of
10 that, in particular:

11 "Many high street retailers fall into this category
12 [which is your resellers category], for example Primark
13 and M&S, and also firms like British Gas, the retail arm
14 of Centrica."

15 So at least some portion of your utilities group
16 should also fall into your base case of 70 to 100%,
17 considering it is a reseller, should it not?

18 A. Yes. So that is right, it is the same reasoning that
19 I have just been through in relation to professional
20 services and just not being able to conclude for the
21 whole of the utilities group.

22 Q. So, again, just to put the punchline, your 68%
23 applicability for the base case is understated and your
24 32% is overstated?

25 A. I think that is right. What I have not pointed out,

1 I suppose, is there could be instances where there are
2 merchants who are resellers who are not passing on --
3 sorry, not treating the MSC as a variable cost. I think
4 it is important just to recognise the level of
5 uncertainty, but I agree with the point that you have
6 just made, and in what I have set out, I have made an
7 assumption that it is more likely than not that
8 resellers as a group would treat the MSC as a variable
9 cost.

10 PROFESSOR WATERSON: Would you agree that the methodology
11 you have used here is to use the Mastercard sectors?

12 A. Yes.

13 PROFESSOR WATERSON: Therefore that means that you cannot
14 draw out, for example, insurance providers separately --

15 A. That right.

16 PROFESSOR WATERSON: -- without using a different
17 methodology?

18 A. That is right.

19 Just going back to the comment we had earlier, this
20 is why slightly I have preferred using the Mastercard
21 sectors to the sectors that Mr Coombs has used, because
22 it has enabled -- because the Mastercard sectors are at
23 a lower level of granularity -- a higher level of
24 granularity, it allows me to reach a conclusion on
25 whether it is base case or not for a larger proportion

1 of the retail economy.

2 MR WILLIAMS: Sir, I have five minutes, and my learned
3 friend for Visa has said it is okay to use that, if that
4 is ...

5 THE CHAIRMAN: I was only getting concerned, because we did
6 start early, that we should -- that Ms Webster and the
7 transcriber should have a break.

8 MR WILLIAMS: Yes. My learned friend had 45 minutes. I am
9 well within my allocation at the moment. I am actually
10 coming in underbudget, so I have ... Is five minutes
11 okay?

12 THE CHAIRMAN: Yes, we will have five minutes and then we
13 will have a break.

14 MR WILLIAMS: Then my learned friend for Visa will ask some
15 questions. This is the very last series of questions.
16 I am going to go to one more table, but you will be
17 relieved to hear we will not go through it in anything
18 like the granular detail I have just gone through this
19 table with you.

20 If we could turn to volume 1 of your second report,
21 please, {RC-G/12/124}. Now, this is headed, "Updated
22 conclusions for the Merricks sectors using the merchant
23 claim period using the UK PS sector definitions".

24 So, as I understand it, this is equivalent to your
25 table 2 that we have been looking at, but this time it

1 is done on the basis of Mr Coombs' public data sectors,
2 not Mastercard's 27 sectors?

3 A. That is right.

4 Q. Now, you only list ten subcategories, ten sectors there,
5 rather than 12, but just so we bottom this point out
6 that we looked at earlier, that is firstly because you
7 combine automotive fuels with the vehicle sector. Is
8 that right?

9 A. Yes.

10 Q. Secondly, because you combine the financial services
11 sector with the other services sector?

12 A. I think that is right, yes.

13 Q. But in fact there is separate card expenditure data
14 available from 2002 onwards for the financial services
15 sector, and there is separate data available from 2010
16 onwards for the automotive fuel sector, so that is why
17 Mr Coombs uses 12 and not ten?

18 A. Yes.

19 Q. Now, interestingly, if you look at the producers of
20 products and services/unclear, you have entertainment in
21 your producers/unclear category. Do you see that?

22 A. Yes.

23 Q. But we have already seen in your version of this table,
24 table 2, that you actually have restaurants and bars,
25 which is part of the entertainment sector, as falling

1 within the base case. So does that not logically mean
2 that, for consistency, entertainment or at least some
3 portion of entertainment should also be in the base
4 case?

5 A. It would be some portion of entertainment.

6 Q. I wonder whether what has happened here is that you
7 updated your conclusions between your first and second
8 reports as to whether restaurants and bars should be
9 included in the base case or the unclear case and that
10 it just has not followed through in this version of the
11 table in your second report?

12 A. So I think this is sort of following the description
13 that Professor Waterson gave in terms of I have taken
14 the sector as a whole and I have thought: can I allocate
15 this either to resellers or not, and because of the
16 breadth of the entertainment sector, UK PS sector,
17 I have not been able to do that. That is why I prefer
18 the Mastercard sectors, because I can separately
19 identify restaurants and bars, and then I have a firmer
20 view in relation to the likelihood that they passed
21 on -- sorry, treated the MSC as a variable cost.

22 Q. Now, it obviously logically follows, but I want you to
23 confirm this, that if your table 2's base case of 68% is
24 understated for any of the reasons that we have explored
25 this afternoon, then this table's base case is also

1 understated for the same reasons, so that I do not have
2 to go through each and every matching exercise that we
3 have done over the past hour. Is that a fair position?

4 A. I am happy to accept that.

5 Q. So you will be relieved to hear that I do not propose to
6 go through that again, and indeed, subject to one
7 question that Mr Simpson has asked me to put to you,
8 because he did not come back to you, this will be last
9 question from me.

10 So we needed to come back to you as to whether you
11 disagreed with Dr Niels on any more issues in
12 Sainsbury's or AMM. Have you had a chance to reflect on
13 that over lunch, his reports in those proceedings?

14 A. I briefly reflected. I cannot recall anything
15 particular.

16 MR WILLIAMS: In which case, I am grateful. Thank you very
17 much.

18 THE CHAIRMAN: Okay. Right. So we will have a ten-minute
19 break.

20 (3.19 pm)

21 (Short Break)

22 (3.29 pm)

23 Cross-examination by MS BOYD

24 THE CHAIRMAN: Ms Boyd.

25 MS BOYD: Good afternoon, Ms Webster. I am conscious you

1 must feel like you have been sitting there for a very
2 long time and I will try and be as efficient as I can.
3 To that end, can I suggest that if you agree with
4 something I say, then maybe try and keep it short. If
5 you disagree, then of course feel free to explain your
6 position, but I imagine that you may be looking forward
7 to the end of the day possibly even more than the rest
8 of us, and so if we can collaborate on making it
9 efficient, that would be good for everyone.

10 So the other thing is at some point I will need to
11 look at some confidential material, so I will -- not
12 immediately, but I will tell you when that moment comes.

13 THE CHAIRMAN: Right.

14 MS BOYD: So you have explained, Ms Webster, that in
15 reaching the conclusions you do on MSC pass-on in the
16 merchant claim period, you draw on economic theory,
17 empirical evidence and Mr Harman's conclusions on what
18 the factual evidence provided by the document producing
19 claimants shows, and the questions I am going to ask are
20 all about the last item in that list, so the document --
21 your conclusions in relation to the document producing
22 claimants.

23 By way of review, and just to situate these question
24 in your analysis, what you call your base case is
25 a scenario in which merchants treat MSCs as variable

1 costs on a per unit basis for the purposes of their
2 pricing decisions. Correct?

3 A. Yes.

4 Q. That is the base case, because MSCs are variable costs
5 as a matter of their economic characterisation, and so
6 the base case is that those costs are treated as
7 economic theory predicts costs of that type will be
8 treated. Is that correct?

9 A. Yes.

10 Q. So just to be clear, when you speak of a merchant
11 treating a cost in the way that economic theory predicts
12 for variable costs, what you mean is that they take that
13 cost into account in their pricing decisions, but that
14 could be directly or indirectly, it could be consciously
15 or unconsciously, explicitly or implicitly. Is that
16 correct?

17 A. Yes.

18 Q. You contrast this base case scenario with a fixed cost
19 pass-on scenario applicable where the factual evidence
20 indicates that merchants treat MSCs in the manner that
21 economic theory would imply for fixed costs?

22 A. Yes.

23 Q. Again, just to be clear, when you speak of a merchant
24 treating a cost in the way economic theory predicts for
25 a fixed cost, what you mean is that they do not price by

reference to that cost, consciously or unconsciously,
directly or indirectly, explicitly or implicitly?

A. Correct.

Q. So if the cost affects prices down the line in that
scenario, it will be by the way you very clearly
explained, which is by affecting investment or entry or
exit decisions which may have impact on the market and
therefore on prices?

A. Yes.

Q. In very broad terms, where a merchant treats the MSC as
a variable cost, both economic theory and the empirical
evidence suggests there is high pass-on?

A. Yes.

Q. By contrast, when a merchant treats a cost as a fixed
cost, economic theory predicts lower pass-on?

A. Yes, particularly in the fixed cost scenario for a cost
that is as small as the MSC.

Q. So far, so good.

In terms of which of these scenarios applies to each
of the individual businesses that have provided evidence
in this case, can we turn up again, please, table 1
which you were looking at with Mr Williams a few minutes
ago at {RC-G/12/23}. We have looked at this very
recently so I do not need to say much about it, but as
you have confirmed, in most -- in the case of most of

1 the merchants, you have placed them in the base case in
2 that table. In the case of two, you decided there is
3 insufficient evidence, and Three is the only document
4 producing claimant for whom you have concluded that the
5 fixed cost scenario applies in your reply report,
6 ie that the evidence shows they are likely to have
7 treated costs in the manner economic theory would
8 predict for fixed costs, correct?

9 A. So this was the view that I took when I did my reply
10 report, and I made my comment about the treatment of one
11 of those resellers at the beginning of my evidence.

12 Q. Indeed. I think we can say that was Holland & Barrett,
13 and you concluded -- in this report you concluded that
14 they, like the majority, also treated MSCs as variable
15 costs, but you qualified that evidence on Tuesday in
16 your oral evidence and I want to come to that in
17 a minute.

18 So as you explain in your reports, and you confirmed
19 in your evidence on Tuesday, your conclusions are not
20 based on having reviewed the factual evidence in detail
21 yourself?

22 A. That is correct.

23 Q. You have relied on Mr Harman's assessment of the factual
24 evidence. But you have applied to Mr Harman's
25 assessment a framework for considering the factual

1 evidence, and you looked at this with Mr Woolfe on
2 Tuesday, but if we can turn it up again, please, it is
3 {RC-G/12/52}. This is in the same report. Thank you.
4 Can we zoom in a bit on the first -- thank you.

5 So the title is, "Framework for considering the
6 factual evidence". Taking this at a lick, at
7 subparagraph (a) you say:

8 "Economic theory indicates that MSCs should be
9 treated by profit maximising merchants in their pricing
10 decisions as variable costs ..."

11 So that is the starting point?

12 A. Yes.

13 Q. Subparagraph(b), but it is possible some do not, which
14 is why you need to look at the evidence, in your view.

15 Then going on to paragraph 4.23, you say there that
16 where MSCs are treated as COGS, it is clear in your view
17 that they are treated as variable by the merchant.

18 Then the next paragraph, 4.24, where they are
19 treated as overheads:

20 "... the question [you say] is whether they are
21 likely to set prices taking MSCs into account, or would
22 take them into account if MSCs were to change."

23 Then going on to the next page {RC-G/12/53}, you
24 identify three important factors or indicia that if they
25 were manifest in the factual evidence would lead you to

1 consider it more likely that the merchant treats the
2 cost as a variable cost, and you looked at these with
3 Mr Woolfe.

4 A. Yes.

5 Q. But, again, just by way of review, factor (a) is that
6 a material proportion of overhead costs are variable in
7 nature or at least not obviously fixed. You explain
8 that is because you would expect a profit maximising
9 merchant to be looking for ways in which to identify
10 changes in such overhead costs and determine the
11 implications for any such changes for pricing decisions?

12 A. Yes.

13 Q. You have -- you have helpfully clarified -- come back to
14 and clarified that insight a couple of times in your
15 oral evidence, I think. But if I can just paraphrase,
16 and tell me if I have not got it right, but the point is
17 that if a significant proportion of overheads are
18 variable, then it is not in the interests of the
19 merchant to treat all overheads as fixed for pricing
20 purposes, because that is going to take them away from
21 profit maximisation, and you said yesterday in your
22 evidence that if a firm had overheads, 40% of which were
23 variable, say, then it would seem, in your view,
24 irrational that the variable nature of the overheads
25 would not be taken into account in pricing?

1 A. Yes.

2 Q. So the second factor is that the merchants' approach to
3 pricing decisions involves it monitoring target margins
4 that are net of overheads and/or budgets for overhead
5 costs, and the merchant also has a process that allows
6 it to adjust its prices depending on its performance
7 against the target margins or cost budgets, and again
8 you have helpfully added a bit more nuance in the course
9 of your oral evidence in relation to this factor, and
10 I am hoping you will recall making these points without
11 my having to show them to you in the transcript, just
12 from the point of view of timing, but do say if I have
13 got them wrong or you would like to see where you said
14 that.

15 So the first point is you have explained that, in
16 your view, the existence of EBITDA monitoring on its own
17 is not enough. Do you recall saying that?

18 A. Yes.

19 Q. You said what you would be looking for instead was:

20 "... some recognition that the merchants look at
21 a more granular level and specifically identify, have
22 the capability to identify, variable elements of
23 overheads as distinct from fixed."

24 Do you recall saying that?

25 A. Yes.

1 Q. You said that what is relevant is whether the merchant
2 has:

3 "... processes in place which mean that it can look
4 distinctly at different types of overheads and then make
5 a decision as to whether to pass them on."

6 Do you recall saying that?

7 A. Yes.

8 Q. You said:

9 "They need to be able to monitor at a lower level of
10 aggregation and to understand the nature of the cost
11 changes."

12 Do you remember saying that?

13 A. Yes.

14 Q. You did explain, however, that this mechanism:

15 "... does not require the merchants, the people
16 setting prices in the merchants, to have had awareness
17 of the MSC. It requires the business as a whole to have
18 identified that there has been a change in cost and/or
19 a reduction in margin which is triggered by a change in
20 variable cost, and that could be the cost bucket that
21 includes the MSCs."

22 A. Yes.

23 Q. Do you remember that? You gave as a particular example
24 of a way in which this might be monitored the use of
25 a cost ratio or expense ratio. Do you recall that?

1 A. Yes.

2 Q. Mr Woolfe at one point characterised your position as
3 being:

4 "... that the merchant should also identify that
5 changes in its costs are due to the MSC and take action
6 in respect of those."

7 You disagreed with that characterisation, and you
8 said:

9 "I do not think it is necessary. It could be the
10 case that the cost bucket that includes the MSCs has
11 gone up, and let us say that is caused by a change in
12 the MSC, then a merchant that observes that change in
13 the cost bucket, and understands that is a change in
14 variable costs -- "

15 Then you were cut off, but you were going to finish
16 the sentence something along the lines: would know
17 enough to pass on that increase in variable costs. Have
18 I got that right?

19 A. I think that is correct.

20 THE CHAIRMAN: Ms Boyd, I think you are only entitled to
21 cross-examine on points of difference between Visa and
22 Mastercard.

23 MS BOYD: I am sorry, sir, it is rather a long run-up, but I
24 absolutely am intending to cross-examine on points of
25 difference.

1 THE CHAIRMAN: Okay.

2 MS BOYD: I am setting out what I understand to be
3 Ms Webster's framework and the implications of that
4 framework, but I then want to put to her that, in
5 respect of her conclusions in relation to two merchants,
6 and they are Holland & Barrett and Three, in relation to
7 which she has reached conclusions that are not the same
8 as Visa's conclusions, are adverse to Visa, and that
9 was -- in her reply report that was the case in relation
10 to Three, but it is also --

11 THE CHAIRMAN: Right. It felt a little bit like it was
12 re-examination, but anyway.

13 MS BOYD: I take the point, sir, and that is not the
14 intention.

15 THE CHAIRMAN: Okay.

16 MS BOYD: But I will try and move on to something that may
17 be more clearly recognised as cross-examination.

18 THE CHAIRMAN: Okay.

19 MS BOYD: Could I just wrap up what I have been saying in
20 relation to Ms Webster's evidence so far. Can I just
21 summarise: your position, as I understand it, is that if
22 the evidence showed that MSCs are characterised as
23 overheads but the business monitors targets that are net
24 of overheads, and it monitors overheads at a level of
25 granularity that permits it to see which costs are

1 variable and which are fixed, and there is a mechanism
2 whereby underperformance against its targets could lead
3 to an adjustment in prices, then that would suggest to
4 you that the merchant was likely to treat MSCs as
5 variable costs rather than as fixed costs?

6 A. Yes.

7 Q. Okay.

8 Now -- then, sorry, factor (c), or factor 3, is
9 that -- the third factor is that ideally you say your
10 conclusion would be based on practical examples of
11 changes in the cost, triggering changes in prices, but
12 you explain that is not high priority in terms of those
13 factors?

14 A. I think that is a recognition of the available evidence
15 but that has not generally been available.

16 Q. Yes. Now, before we move on, one factor you do not hear
17 mention as being relevant to your assessment is
18 benchmarking against competitors' prices, but you will
19 recall that that is one of the things that Mr Harman
20 identifies in relation to a number of the merchants as
21 a possible route of pass-on, and it is correct, is it
22 not, that you accept that where there is evidence that
23 a merchant prices by reference to competitors, and that
24 those competitors take into account the MSCs, that would
25 be a mechanism by which MSC are passed on. Is that

1 correct?

2 A. Yes, it requires the second of your two statements to
3 hold. So I agree that benchmarking prices against
4 competitors could be a mechanism for the pass-on of the
5 MSC costs, but one would need to know that those
6 competitors themselves passed on MSC costs.

7 MS BOYD: Thank you. Sir, I think now is the moment to go
8 into private, if we may, because I want to look at some
9 documents.

10 THE CHAIRMAN: All right. Can we do that?

11 Yes, we are in private now.

12 In Private

13 In Open Court

14 Housekeeping

15 THE CHAIRMAN: So it is Dr Trento.

16 MR WOOLFE: I believe so, yes, starting on Monday morning at
17 10.30.

18 THE CHAIRMAN: We are hoping to get through him in
19 three days. I hope that is possible.

20 MR WOOLFE: We will not be the ones cross-examining, so
21 those to my right are in charge of that.

22 THE CHAIRMAN: All right. Well, thank you all very much,
23 and we will see you at 10.30 on Monday.

24 (4.22 pm)

25 (The hearing adjourned until 10.30 am)

on Monday, 16 December 2024)

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