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

Salisbury Square House
8 Salisbury Square
London EC4Y 8AP

Monday 18th November - Tuesday 17th December 2024

Before:

The Honourable Justice Michael Green
Ben Tidswell
Professor Michael Waterson

Merchant Interchange Fee Umbrella Proceedings

A P P E A R AN C E S

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

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

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

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

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

Tuesday, 17 December 2024

(10.30 am)

In Private

In Open Court

Cross-examination by MR WILLIAMS

MR WILLIAMS: Good afternoon, Dr Trento.
A. Good afternoon, Mr Williams.
Q. Please can we turn to your first report at {RC-F/2/77}. You can see there from the heading, and in particular paragraph 10.15, that here you are discussing the use of publicly available price indices, rather than data from individual claimants.
A. Yes.
Q. Here, at paragraph 10.15, you are specifically addressing what you understand Mr Holt will do with the public data, but this would apply similarly to what Mr Coombs would do as well, would it not?
A. Anybody who used public data.
Q. Now, if we turn over the page, please, to page 78 {RC-F/2/78}, we see, right at the top, paragraph 10.19, under the heading, "Strengths of this approach" -- that is looking at the public data -- and you say that:

"The main advantage of this approach seems to me that is not demanding in terms of data collection, at least when compared to the approach of using the claimants' data (especially in the present case that involves a substantial number of claimants)."

Now, it is not just data collection from individual merchants which is demanding but it is also the cleaning of that data which is demanding as well, is it not?

A. I agree. I fully agree.

Q. You went for a process -- sorry to bring back unhappy memories -- of considerable back and forth with the merchants in question to understand that data and to rectify any issues within the dataset as part of that data-cleaning process?

A. That is the usual data-cleaning process, yes.

Q. Now, the substantial number of claimants that you have in mind here when you are talking about the present case in paragraph 10.19, as I understand it, is the over 2,000 SSH Claimants. Is that right?

A. Correct.

Q. If we could go to page 40, please {RC-F/2/40} -- this is still in your first report -- at about halfway -- about two-thirds of the way down the page, paragraph 5.8. Are you there, Dr Trento? Are you in hard copy?

A. Yes.

Q. I am grateful. You say at the end of the first line of paragraph 5.8:

"... it is simply not practicably to disclose, process and analyse data and accompanying qualitative evidence for over 2,000 claimants and estimate pass-on for each of them in a reasonable time ..."

That is consistent with something you said yesterday at page 15 of the transcript {Day17/15}, that we cannot possibly estimate the pass-on for each and every claimant. Now, obviously these demands would be magnified, would they not, if one were considering hundreds of thousands or if not millions of merchant claimants?

A. I agree.

Q. They would be magnified even yet further in circumstances where one would have to collect and clean the data and, on your approach, also collect disclosure going back from those hundreds of thousands or millions of claimants going back to 1992 and then for the 18-year period from 1992 onwards. Is that fair?

A. Yes.

Q. So if we can go back to page 78 of your report, please {RC-F/2/78}. This time if we look under the heading, "Limitations of the approach", that is the approach of looking at public data. At paragraph 10.20, you say that the underlying assumptions of this approach are, firstly, the selected price indices reflect prices of the products and services sold by the claimants and then at (ii) you continue:

"... the selected costs indices reflect the costs that are borne by the claimants ..."

Now, "by the claimants" there, do you mean the SSH Claimants?

A. I mean the SSH Claimants, yes.

Q. So, as I understand it, you are looking at this from the perspective of those SSH merchants, since you are only instructed, as I understand it, to consider the extent to which the MSC is passed on by the individual merchant claimants that form part of the SSH Claimants. Is that right?

A. That is right.

Q. You are not instructed to arrive at general conclusions about the entire UK retail economy or the pass-on rate for the UK retail economy?

A. No, I am not.

Q. Indeed if we can go back, please to page 15 of this report {RC-F/2/15}. At paragraph 1.33, towards the bottom of the page there, you state this:

"Due to the nature of this claim, Mr Merricks is looking to determine not just pass-on for individual merchants but for the UK economy as a whole. For the avoidance of doubt, I am not instructed to attempt to do so. However, it seems to me that an economy-wide pass-on can only be estimated by first estimating the pass-on for a range of different sectors that, together, cover the entire (or a sufficiently large part of the) UK economy, and therefore that there will be some overlap between the pass-on analyses in the SSH Claimants' claim, and in Mr Merricks' claim."

So you say there that economy-wide rate can only be estimated by examining the pass-on rate for sectors that cover this entire or significant part of the UK economy, but what I understand that you do, as you explored yesterday with Mr Jowell, is that you do not look at the public data but you instead analyse the pass-on rate for the nine analysed claimants -- that is one per sector -- and then you extrapolate the results to the rest of the narrowly defined sectors that you and Mr Economides defined and extrapolate yet further to the 30 other sectors. Is that a fair summary of where we reached yesterday?

A. Yes, with two caveats. One is I think we look at ten claimants, not nine, if I am not mistaken, because I think one is Primark, which is not an SSH claimant. The other one is the last part of the extrapolation, so the between sectors extrapolation. That is done entirely by Mr Economides.

Q. In total, it is 30 sectors?

A. I believe that to be correct.
Q. Those 30 sectors do not cover the entire UK economy, do they?
A. No, they only cover the sectors or sub-sectors where the SSH Claimants operate.
Q. So you are not drawing any general conclusions about the entire retail economy from those nine or ten claimant merchants, are you?
A. No.
Q. Your analysis also does not cover all of the stayed claimants in these proceedings either, does it?
A. It covers them to the extent that they can be associated to one of the sectors that are covered by my analysis.
Q. But the sectors are only arranged by reference to the SSH Claimants and not the stayed claimants?
A. Correct.
Q. So the stayed claimants were not listed and matched in the spreadsheet that Mr Jowell took you to yesterday, for example, where we saw the number of entities. Those number of entities are the SSH Claimants only?
A. Correct.
Q. You would accept, would you not, that the nine analysed claimants were not selected on the basis that they were representative of the stayed claimants or the wider sectors or even the UK economy as a whole, instead, as

we have seen from the letter this morning from Mastercard, they were selected on the basis of the size of the claims as a proportion of the make-up of the SSH Claimants' claim values and the fact that they were willing and able to provide data reasonably quickly. Is that a fair assessment?

A. Sorry, it is a very long sentence and many propositions, but --

Q. I can break it down, if that would help?

A. Yes, please. Sorry, I think it would help, yes.

Q. So the claimants are not selected on the basis that they were representative of the stayed claimants?

A. Correct.

Q. They were not selected on the basis that they were representative of wider UK sectors?

A. Correct.

Q. They were not also selected on the basis that the individual merchants in question were representative of the UK as a whole, so one could come up with a UK retail pass-on rate?

A. Correct.

Q. Instead, they were selected based purely on the size of the SSH Claimants' claim values --

A. Correct.

Q. -- and the fact that they were willing and able to

provide data within a certain time range envisaged?
A. Yes, I think maybe, yes, that part I cannot control. I think there is a submission by SSH who explains in detail how the claimants have been selected, but --
Q. Now, by contrast with the individual merchants' data, you would accept, I think, that the public data does provide sector-wide cost and price data?
A. Yes, for the sectors that are defined by the price or cost indices.
Q. Sometimes they are only sub-sectors of a wider sector, so for other retail, for example, we have the jewellers sub-sector covered by the public data but not the whole sector?
A. Yes, the sectors that are defined by, you know, in the PPI and in the CPI indices.
Q. Yes. You would agree also, I think, that the public studies are also sector-wide and sometimes UK economy-wide as well?
A. The public studies, I think there is a wide range of public studies and some of them, they only look at one company and some of them look at the wider, you know, range of companies.
Q. But you would accept some of them cover the whole UK retail economy as a whole on their face?
A. I cannot recall, to be honest.

Q. Do not worry. It is not a trick question.
A. No, no, just I cannot recall.
Q. You would accept, I think, also, that the public data generally has a UK-wide geographical scope, whereas individual merchants may only operate in certain parts of the UK?
A. It is possible, yes.
Q. Please can we go to {RC-G/9/158}. This is Mr Coombs' fourteenth report, so that is his reply report. If we look at table 22 there, you will see that here Mr Coombs in setting out the time periods covered by the experts' analyses of the merchant data for each merchant claimant. So the dates here are the date of the available data from each of those merchants.
A. Yes.
Q. Can I ask you to cast your eye over that table, please, and, in particular, the column with your name on it for obvious reasons. (Pause)
A. Yes, it looks right.
Q. A couple of questions arising out of that, if I may. So, firstly, this demonstrates a point that you were exploring earlier with Mr Jowell that where there are blanks, you do not do, at least in your first report, any regression analyses for Allianz, Pendragon, Pets at Home or WorldRemit, despite having the data you

extrapolate from other sectors, and we will not revisit that again?

A. It is true for my first report. For Pendragon, I do an analysis in the second report.

Q. Secondly, more important for present purposes, you can see that the data made available to run your regression analyses on are well after the Merricks claim period which ends in 2010?

A. Correct.

Q. If you look, for example, at M&S, there is two entries there, one for clothing and one for food, and then further down the page at Sony, you can see that the period of time of the data that is available is very often very limited. It is only a couple of years, is it not?

A. Yes, three years. Yes, less than three years.

Q. You can see that many of the years of the merchant data coincide with Covid, do they not?

A. Some data, yes. Some data, no, it is more recent.

Q. Finally, on this table, you would accept that the individual merchants' own claim periods are often longer than the data that is available here; that is, the claim periods start before the available data begins here and in fact, as I understand it, in every case, other than Allianz, the claim period is actually longer, ie earlier than the earliest date of the data that is available. Is that your understanding as well?

A. Sorry, I am very sorry, Mr Williams, can I ask you to repeat the question?

Q. Of course, no worries at all. Let me go more slowly.

I am asking you to consider that the start of the claim period --

A. Sorry, I just missed the first part of the question so that is why then I -- yes, but I understand you very well. It is not a matter of speaking slowly. I understand you very well.

Q. So I am just suggesting that these date ranges, where the data is available, do not match on precisely with the claim periods of the individual merchants?

A. Correct.

Q. So the claim periods are longer than the period you have the data available for?

A. I think that is correct, at least for most of the merchants.

Q. So you are extrapolating backwards your results from this data analysis to those earlier periods for the merchant claim periods where they are earlier than the earliest available date?

A. Correct. If there is a claimant for which the claim is, say, from 2014 onwards and I only have data from 2018

onwards, then I extrapolate back my finding to the earlier period, yes.
Q. I would like now to contrast this with the timespan of the public data and then perhaps we can break for lunch.
Please can we go back two pages in this report, so Mr Coombs's reply report, and this time look at table 21, please {RC-G/9/156}. This time Mr Coombs is setting out the time period of the analysis for the public data for each sector. So can I ask you to please cast your eye down the dates that the public data is available for in each sector.
A. Yes. (Pause)
Q. You can see here that these coincide with the Merricks claim period, which begin 1992, and they coincide to a much greater extent than the merchant data that we have just looked at?
A. Yes.
Q. You can see also that the public data are typically available for a considerably longer period of time than the merchant data that we have just looked at?
A. Yes.
Q. So that would mean that it is more appropriate for estimating a long-run pass-on rate for the Merricks claim period to look at the public data?
A. I think -- I do not think I need to opine on this, but

my understanding is that, yes, Mr Coombs has a different objective from mine, which is to estimate the pass-on for the whole of the UK economy and for a different period. I have not considered whether for his analysis then it is best to use the claimants' data or the public data.

Q. But if you were trying to assess the long-run rate of pass-on, would you accept that, all else equal, it is preferable to look at a longer dataset than a couple of years because you may therefore be underestimating the pass-on if you are only looking at data from a couple of years, rather than a longer timeframe?

A. I am not 100% sure about this, but in general I agree that if the only difference between two datasets is that one is longer and the other is shorter, then you would like to use the longer time series.

Q. Please can we turn to {RC-G/17/39}. This is Mr Holt's reply report, his twelfth report. If I could ask you to focus in on paragraph 94 and read that to yourself, please. (Pause)

A. Yes.

Q. Now, two caveats before I put my question. First, I do not accept that the MSC is a fixed cost; it is a variable cost, but that has been well explored with you already so we will not revisit that. Secondly, I do not accept that overheads cannot be passed through to prices, giving the interactions with gross operating and net margins, as my learned friends have already explored with you yesterday and today, and I explored in-depth with Mr Economides, so we will not go over that again.

But taking your point head-on, my question is this: if MSCs are treated as overheads, and that means pass-on may take a little bit longer to filter through to prices, Mr Holt is right in this passage that the length of time of the merchant data used in your analysis is not sufficient to estimate a long-run pass-on of overheads and that will mean that you understate the pass-on rate?

A. I disagree with this statement. I think, first of all, Mr Holt in cross-examination, he considered that paragraph 94 is an overstatement so the fact that you need multiple decades, he accepted that this is an overstatement. Then --

Q. I am asking for your view on this one, Dr Trento.

A. Yes, okay. My view is that you need to look at the mechanism by which the total overhead costs are passed on. Now, if the mechanism is it affects profitability -- sorry, total overhead costs affect profitability, profitability then affect prices, then you do not need to have a long time period in order to estimate the pass-on because the pass-on can take place within three months or six months or 12 months. You do not need decades of data. You do not need -- you can work with the data that claimants have provided.

MR WILLIAMS: Okay. If I can be granted a couple of minutes' indulgence, sir, I can finish off the whole section, I think?

THE CHAIRMAN: You had a couple of minutes anyway.

MR WILLIAMS: Excellent.

Can I show you one further document, please, at {RC-F/15/8}. This time we are in Ms Webster's first report at volume 2. The first paragraph I would like to look at is A.12. She says this:

"The primary source of data on costs and prices for the UK is the ONS, which collects and publishes a number of large datasets describing the evolution of prices and costs across a wide range of goods and services in the UK economy. The datasets are collected using internationally recognised methodologies that are broadly consistent over time, regularly checked to ensure quality and published with well-maintained documentation."

Is that a statement that you would agree with?

A. I have not looked at the details of the indices, but I believe the ONS is doing their best job, yes.

Q. Let us read together again the last passage, A.13:

"The price and cost data published by the ONS are used to produce the UK's headline inflation and GDP statistics. Consequently, this data is used by a large number of institutions to monitor and assess the state of the UK economy. For example, the headline ONS CPI [price] and PPI cost data is frequently referenced in the Bank of England's Monetary Policy Reports."

Is that a paragraph that you agree with?

A. Yes.

Q. Now, taking a step back and considering all the points we have explored at the end of this session on the material and the temporal coverage, the difficulties with collecting merchant data and so on, if you were instructed by Mr Merricks or if the Tribunal were to ask you for your assistance on how to come up with the UK retail pass-on rate for 1992 to 2010, you would not just look at the nine or ten individual merchants and ignore the public data and the public studies, would you? You would instead obviously take them into account, would you not?

A. So luckily I have not been instructed to estimate the pass-on for the whole of the UK economy from 1992 to 2008.

MR BEAL: (Inaudible) conflicted from doing so.

MR WILLIAMS: Different time periods; no?
A. It is a very difficult job. I have not thought about how I would approach this task.
MR WILLIAMS: Fair enough. We will leave it there, in that case.
THE CHAIRMAN: All right. So we will resume at 2 o'clock.
(1.02 pm)
(The luncheon adjournment)
(2.00 pm)
MR WILLIAMS: Good afternoon, Dr Trento. I have one follow-up question from our exchange immediately before lunch, which I was too eager to get to.
I accept that you have not thought about how you would approach the Merricks claim task, but can we at least agree that you would not approach it by relying on only the ten merchant claimants' data available?
A. I am sorry, I am not comfortable answering the question because I am not really -- I have not thought about it. I understand that if you are tasked with a very difficult -- a daunting task, like Mr Coombs has, you may want to take some shortcuts, but I can -- I am not really comfortable now saying what --
Q. By shortcuts, you do not mean that pejoratively?
A. No, sorry, not pejoratively.
Q. That is absolutely fine. I would now like to move on to

econometrics and your specific critiques of public data analyses that have been conducted. Now, depending on one's views, this either means that Christmas has come early or that Christmas cannot come soon enough, but we will see how we get on for the next hour.

In any event, I am going to ask you some targeted questions so I would be very grateful if you could continue to confine your answers to the specific question, because we have to bring everybody else in the room along with us on this journey. So you may think I am going a bit slowly --

THE CHAIRMAN: But you can try.

MR WILLIAMS: I will try my best. Professor Waterson, I will look over in case you, sir, have any additional questions.

PROFESSOR WATERSON: With your deep reading of the subject.

MR WILLIAMS: It has been a long weekend, sir.

I will take this slowly, and I know you might be keen to rush ahead when you think you know where I am going, but I am going to build things up bit by bit.

So let us turn then to the alleged omitted variable bias. Now, as I understand it, but again please correct me if I am wrong, one has an omitted variable bias if you have two conditions that are met. The first is that you have an excluded variable that has some effect on your dependent or your outcome variable which in our case is price. So far so good?

A. Yes.

Q. Secondly, that that omitted variable is correlated with at least one of the independent or explanatory variables which in our case in the cost. Is that also correct?

A. Correct, yes.

Q. So, to put it simply for our case, to translate that a little bit more into the practical world, if you do not control for something else that could be affecting the price and which is correlated with the costs, then you are not necessarily estimating the actual causal relationship between cost and price, which is what we are obviously interested in, but you could be estimating the effect of something else that is having an influence on the price, rather than only the effects of the costs on the price?

A. Sorry, I am going to read it back. Sorry, just one second. (Pause)

Yes, correct.

Q. So far so good. I have passed my first entrance exam, I think.

So the key driver of prices that you think the public data analyses of Mr Coombs, Mr Holt and Ms Webster do not account sufficiently for is the explanatory variable directly reflecting the intensity of demand. So I am going to ask you some questions about that.

A. Correct.

Q. So you would accept, would you not, that the intensity of demand itself is generally not directly observable, at least not in a straightforward way, for every sector across the UK economy from 1992 to 2010?

A. It is a difficult variable to find in the data.

Q. You would accept, would you not, that Covid represented the biggest demand shock that occurred during the period for which public and merchant data were analysed?

A. It was a very big shock. There have been very -- sorry, there have been other shocks that have been important, I do not know whether as important as Covid, but financial crisis, Brexit, the war in Ukraine. Anything that produces a business cycle in the economy, everything is important.

Q. So the financial crisis that you had in mind there was the 2008/2009 financial crisis?

A. That as well, yes.

Q. So let us take that in stages. So either excluding the Covid period from the analysis or including a Covid period indicator or dummy variable, that would reflect the changes in demand during that Covid period, would it not?

A. It would take care of the fact that the Covid period was different from the other periods, so, yes, it is a way of controlling for the effect of the Covid period.

Q. The inclusion of financial crisis dummies to control for the demand effects of that crisis, where relevant, would also control for changes in intensity of demand, would it not?

A. That is correct.

Q. There can also be seasonal changes in demand, so, for example, increases in ice cream sales during August is a classic example?

A. Yes.

Q. So including seasonal dummies means that any regression analysis would allow for the prices to be systematically higher or lower in particular periods of the year to control for demand, would it not?

A. It would, but not across years. Within the same year, yes.

Q. Yes. The inclusion of a time trend, which, as I understand it, is a variable that increases over time, that would mean that the regression also allows for some general changes in price over time that are unrelated to costs, and therefore including demand changes?

A. It is a linear increase in price -- sorry, increase --

sorry, it is a linear trend, meaning that it does not follow the up and downs of the business cycles. It is just a linear trend.
Q. But you would accept that it does control, at least partially, for changes in demand on a linear basis over time?
A. If the demand changes linearly, then I would agree. But if the demand does not change linearly, which I think is the case, because it follows the business cycle, then I think that a trend will not capture the effect of demand.
Q. Now, I am not going to go through each public data regression analysis conducted by the three other experts in turn, but to the extent that they included any or all of the controls or variables that we have just discussed, they are therefore reflecting changes in demand over time, are they not?
A. Some of them, but not all of them.
Q. Now, despite pointing out the potential issue of omitted variable bias, you do not actually tell us what impact that has on the pass-on rate results that the other three experts have derived from their public data regression analyses, do you?
A. What I can tell is that there is going to be -- they are going to -- they have overestimated the effect of cost

on prices, to the extent that demand is -- to the extent that both costs and prices are correlated, so follow the business cycle which is -- in economics we say they are procyclical, and I expect that to be the case because prices, we know that they are procyclical, and then the costs that the experts are analysing are wholesale prices, which are, again, prices and they are also procyclical, so I can say that it is very likely an overestimation of the pass-on rate.

Q. You do not actually correct for that in your report or indeed state that conclusion in your report, do you?

A. That is correct, because the model that, for instance, Mr Coombs and Ms Webster are using, it is a model that only can estimate the relationship between two variables in time, and these variables are the price and the cost. You cannot include a third variable, which is demand.

Q. I would suggest to you that it would not have a very large, if any, impact given the controls and the dummies that they already do deploy to control for demand.

A. I think we do not know that.

Q. Let us now turn to --

A. Sorry, that --

PROFESSOR WATERSON: Can I just ask a supplementary?

MR WILLIAMS: Of course.

PROFESSOR WATERSON: When thinking about dummy variables or

trends, is the tenor of your argument that these are
rough and ready controls for demand? Is that what you
are saying?
A. Yes, that they do not reflect demand -- the ups and
downs of demands. They make capture some features of
demand, which is to the extent that demand is a linear
trend, which I do not think is the case, then the trend
will capture it, but, yes, the --
PROFESSOR WATERSON: The dummies for particular years?
A. Yes, the dummies for the Covid period, they take care of
the differences between the Covid and non-Covid periods,
so I think that part is covered by the dummy, yes.
MR WILLIAMS: At least in your reports, you do not recommend
or suggest or indeed implement any other controls for
demand that could have been used in addition to the
Covid, financial crisis and seasonal dummies, do you?
You do not actually test for that?
A. Sorry, in my own analysis, yes.
Q. Well, sorry, in terms of your critiquing the public data
analyses of other experts, and you say, well, there may
be this hypothetical problem, and I suggest to you that
it is not really a problem when there are controls that
have been implemented, so I am wondering if it really is
just a hypothetical academic potential issue, because
you have not actually told us or the Tribunal the extent

of that problem or how it could be solved or what it would look like if you included any other variables?

A. It cannot be solved within their model. I have not tried to solve it, yes.

MR WILLIAMS: Unless, sir, you have any other questions on that bias, I propose to move on to the simultaneity bias?

PROFESSOR WATERSON: No, I think I am okay on that for the moment.

MR WILLIAMS: Now let us turn to that bias. As I understand it, this essentially arises when causality runs in both directions. So here, that would be where it is not just the price that is being influenced by the cost, but also the cost potentially being influenced by the price?

A. Yes.

Q. If that a fair assessment?

I think I saw you nod, but for the transcript ...

A. Yes, yes.

Q. So applying that to our case, any issue with running regressions on public data would arise if the PPI cost variable were itself being influenced by the price variable of the CPI. That is right, is it not?

A. Or the wage is influenced by the prices.

Q. Or the wages, and we will come to discuss wages in a moment, but starting with our starter for 10. That is

potentially an issue, as I understand it, because obviously we are interested in looking at whether the prices, that is the CPI, are being affected by the cost, which is represented generally by the PPI, although I accept that on occasion Mr Coombs uses the RPI and sometimes AWE, the average weekly earnings, for wages?
A. Yes.
Q. Now, just so we are on the same page on definitions before I make some basic errors, a cost would be exogenous where it, the cost, is not affected by the price. Is that right?
A. Yes.
Q. A cost would be endogenous where it, the cost, is affected by price, so there is some potential for a feedback loop or circularity?
A. Correct.
Q. Okay. So we are really interested in looking for costs that are exogenous to the price, that is, they are not affected by the price --
A. Correct.
Q. -- and the cost.
Okay. Please can we go to {RC-G/2/91}. That is your second report, if you are following in hard copy, Dr Trento. If we can focus on the bottom of the page, please, paragraph 6.12. Now, a classic example of

simultaneity bias is the one you set out in this paragraph, which I can summarise briefly, I think, which is that a regression on crime and police stations is wrongly suggesting that the higher presence of police stations causes more criminal behaviour, which is obviously wrong and makes absolutely no sense, because it is the wrong way round, if anything, and instead the regression would probably be picking up the reverse relationship or causality of more crime triggering the installation of more police stations.

A. Yes.

Q. That is what you set out in this paragraph.

Let us compare that situation with our case. So if I could ask you, when everybody has read that paragraph, to turn over the page, once I give the operator a signal.

I think that is a yes. {RC-G/2/92}. We are now on page 92, and I am interested in paragraph 6.12, right at the top, the last sentence of that.

Starting at the second line, you say:

"In the case of CPI and PPI, instead [so comparing to our police station example] the two effects go in the same direction. Higher CPI [that is prices] result in higher PPI [costs] and vice versa. As a result, a regression's coefficient of the pass-on of PPI on CPI may be mis-estimated, as it may partly reflect the causal effect of CPI [that is prices] on PPI [the cost]."

So unlike the police station example, you are not suggesting a complete reverse causality of higher prices causing higher costs, are you? As I understand it, you are instead suggesting that there may be some partial level of simultaneous relationship between prices and costs, rather than a complete opposite causal effect, is that fair?

A. Can I ask what you mean by "complete"?

Q. So in the police station example, you are really testing me here, the theory was that the presence of higher police stations causes more criminal behaviour, and it is actually the other way round and it is just a complete flip. It is the wrong way round.

A. So, if I understand you correctly, what you are asking me is whether I can confirm that I am not suggesting that it is only the CPI that affect the PPI, but there could be an effect from CPI to PPI and vice versa. I agree with that.

Q. Brilliant. So please, with that in mind, can we go to page 207 of this report {RC-G/2/207} and paragraph 11.45(b). It is about halfway down the page.

You say this:

"I showed in section 6 [that is where we have just been] that regressing CPI on PPI can lead to simultaneity bias and any estimates that ignore the possible simultaneous relationship between CPI and PPI would then be biased and inconsistent without knowing which direction the bias will work."

So let us take that in stages. There is a simultaneous relationship, perhaps, between CPI and PPI that is only possible, so it can lead to a bias, but you do not know, do you, the direction the bias will work in? If I can unpack what that means. You do not know, or at least you do not tell us, whether the bias would be a downward one leading to a lower pass-on estimate than appropriate, or a higher pass-on rate than is appropriate. Is that fair?

A. I think it is fair. Once you get into simultaneity bias, you do not know what the direction of the bias is.

Q. You have not actually investigated that, have you?

A. Unless in certain particular cases, but it is not the case for CPI and PPI.

Q. Just to repeat that, you have not actually investigated which way the bias would go, downwards or upwards, in this case?

A. No.

Q. Therefore, you do not quantify or state whether any bias is large or small, do you?

A. We do not know. It could be anything.

Q. Now, if we go back to page 95 {RC-G/2/95}, back in section 6, please, the second paragraph on the page, that is paragraph 6.23. I am going to take this one slowly as well, once you are there, Dr Trento. It is page 95.

6.23, you say there:

"One could attempt to mitigate the bias by considering a so-called instrumental variables approach."

You say that that approach requires one to identify one or more such variables. Now, correct me if I am wrong, but what you would essentially be doing there, as I understand it, which is a caveat I should probably include throughout this cross-examination, but what you would essentially be doing is adding in a replacement variable for costs, which would be a variable that is correlated with costs but is not endogenous with prices, by which I mean that prices do not affect it.

A. It is broadly a correct explanation. It is a bit more complex, but it is broadly correct.

Q. The simple version of economics. "Econometrics for Dummies" is another book I have been reading.

A. (Inaudible) Professor Waterson.

PROFESSOR WATERSON: It is not a complete replacement.
A. I agree exactly, it is not a complete replacement.
PROFESSOR WATERSON: You can use the instrument alongside the variable that you are interested in examining.
MR WILLIAMS: So you would be adding it in. It could be additional.
PROFESSOR WATERSON: Well, yes, you ...
MR WILLIAMS: Sorry, I am not cross-examining you, Professor. Sorry.
MR ANDREWS: You are getting a free lesson.
MR WILLIAMS: I am very grateful.
Let us take it in stages. So by adding in an instrumental variable, you would have to work out, and be certain, that the instrument that you would be adding in is truly exogenous and is also correlated with costs, since otherwise you would end up with the same problem that you are trying to resolve of potential simultaneous issues?
A. Correct.
Q. Okay, so we need something that tracks costs but is not determined by the price?
A. Correct.
Q. Now, you do not actually tell us, from what I can see, what that something else, the instrumental variable, actually is, do you?

A. I do not, because it is ...
Q. Looking again at paragraph 6.23, four lines down, you say you can combine any such so-called instruments with econometric techniques to test for and ultimately solve any problem, but you do not actually go on to insert one into your analysis or any correction of the public data analysis, do you?
A. That is correct. Just a clarification that in my own analysis, I do not have this problem. Therefore I do not need to correct and use instruments.
Q. Just so I am clear on the scope of my question there, I mean in terms of if you were looking at any public data analysis from Ms Webster, Mr Holt or Mr Coombs, you have not done that to their analysis?
A. I have not done that to their analysis.
Q. So you do not offer actually your views of whether this can actually be done, this instrumental variables approach?
A. I think I cite a paper that does that but, to be honest, I now cannot recollect the details of that paper.
Q. Okay. Now that we can see your conclusion at paragraph 6.24, if we can read that very briefly. Now, it is perhaps an obvious point, but any bias in the estimated causality relationship between CPI and PPI is obviously only relevant where a public data analysis is

in fact carried out with those two measures?

This is one of those potentially so simple questions that it seems like a trick one.

A. Sorry, yes. No, I think I agree. So what you are asking me is whether my conclusion is based on the consideration of CPI and PPI?

Q. Yes, and you mentioned wages earlier, in fairness to you.

A. Yes.

Q. Okay. So let us consider the auto fuel sector. Now, in that sector Mr Coombs uses RPI. Now, the wholesale prices of petrol and diesel -- now "wholesale prices" is a bit of a misnomer there, because the wholesale price is actually the cost, is it not, in that situation?

A. Yes.

Q. So the wholesale prices, ie the cost of petrol and diesel, they are determined in the international wholesale markets for these products, and they fundamentally depend on the international supply and demand and, hence, the international price for crude oil, do they not?

A. Yes.

Q. So the price of petrol in the UK does not affect the global wholesale cost of price as this price is set on the international market, and if that is right, as

I think you have accepted, that means, does it not, that the wholesale prices, that is the cost, of petrol and diesel, are exogenous, that is, the price of UK petrol or diesel does not affect the wholesale cost? So this issue does not arise, is what I am saying.

A. I do not think you can say that, because the ... yes, I mean, there is a relationship between the two, and I do not know whether then we are going to omitted variable bias or not, but there is a relationship which is they both depend on the demand for petrol. There is a demand for petrol that brings up the CPI that may well also have an effect on the PPIs. I do not know now whether we are -- you know, it is a bit of a -- we need to decide whether we are in the park of omitted variable bias or simultaneity, but ...

Q. This is not something you have looked into in particular for your reports, though, is it?

A. I have not looked at this public data analysis in my report. I have addressed the public data analysis that is carried out by the other experts.

Q. So you are somewhat speculating about the relationship between wholesale prices of diesel and petrol --

A. No, I think it is quite clear to me that the two are related.

Q. Let us move on to the other example that you have given, which is wages. I would like to take an example.

So for the hotel sector, Mr Coombs uses only wages, that is the Average Weekly Earnings cost indices, as his cost variable in his regression analysis. Now, would you accept that wages in the hotel sector, for example, do not depend to a large extent on inflation of hotel prices or hotel room prices, but instead on prices of the wider economy?

A. I agree that they depend more on the price of the wider economy, of which hotel prices are a component.

Q. So wages are not likely, then, to be endogenous in that sector, but they are likely instead, are they not, to be exogenous, meaning that they are unlikely to be influenced materially by the sectoral CPI prices for hotels?

A. As I said, it is a mitigated effect, because we are only looking at one sector and we are not looking at the CPI for the whole economy, but the CPI for the whole economy is based on the CPI of the different sectors.

Q. Now, just talking about wages more broadly. Wages are typically set at the outset of a contract of employment and then reviewed periodically, would you accept that?

Sorry if I spoke too quickly. Wages are --

A. The reason why I am hesitating, you say "at the outset of a contract of employment and then reviewed periodically". I think that is correct, yes.

Q. Wages are typically set or reviewed on an annual or a longer timeframe, rather than on a weekly or monthly basis, generally?

A. That is correct, yes.

Q. So thinking about it from the perspective of the firm, for the rest of the time, in between setting and reviewing or re-setting wage levels, they are likely to treat those wages as exogenous, that is unaffected by prices, when they set prices during the rest of the year, are they not?

A. But endogeneity is at the beginning when the price is -- when the wage is set.

Q. But you would accept in the period in between, when they are -- I hesitate to use the word "fixed", because I do not mean a fixed cost necessarily, but when the wage level has been set in the period in between when the firm is considering the relationship between cost and price?

A. I do not -- I think it is -- I think it is difficult to agree because, as you said, wages can be reviewed at any time.

Q. The wages in retail sectors, such as wages for checkout staff, are unlikely to be strongly correlated to the demand for the underlying product or service being sold,

are they not?
A. I think what you are asking me is, for instance, if you look at supermarkets, then are the wages of employees of the supermarkets correlated or can they depend on the price of items that are sold in the supermarket, and my answer is yes.
Q. Labour markets are likely to be wider than sectors, so there is not a distinct labour market for hotel labour or a distinct market for shelf stackers, is that fair?
A. There is a -- there are -- well, it is a difficult question. There are different ...
Sorry, it is a difficult question.
Q. Perhaps --
A. Yes, sorry, maybe you ...
I mean, if I understand you correctly, what you are asking me is whether it could be the case that there is a labour market that is for ... there is a labour market from which both hotels and supermarket can grow? Was that the question, or is it completely different kind of question?
Q. Yes. There is not a distinct market for labour for hotels and a distinct market for labour for shelf stackers or restaurant staff.
A. I think there is some specialisation, but I can see that, particularly at the entry level, I think maybe

what you are asking we is whether, at the entry level, then you can switch from a restaurant to a hotel or vice versa.
Q. Yes.
A. I think at the entry level, I think that is probably fair.
Q. So taking that as our assumption, that would make it even more unlikely that wages depend to any material extent on the prices of any particular sector?
A. As I said before, I think the link is there. It is difficult to not see it, I think, in my opinion. But I agree with you that the fact that the experts are looking at sector-specific CPIs, it is a mitigation in the sense that they are not looking at the CPI for the overall economy, which gives you inflation, but they are looking at CPI for a specific sector.
But as I said before, for instance, if you think of supermarkets, then I can still see the link and the effect that goes from CPI to PPIs.
Q. So for all --
A. -- or to wages, sorry.
Q. So for all those reasons that we have been exploring, I will now put the punchline question which will tie this all together and hopefully make this make sense.
So for those reasons, wages in the Merricks claim

period are at least not likely to be endogenous, but
they are likely instead to be exogenous, meaning that
wages are unlikely to be influenced materially by the
CPI sectoral retail prices?

A. It is the same answer as before. I think it is
mitigated -- the concern is mitigated because we are
looking at sectors, but it is not eliminated.

Q. Please can we now go to --

PROFESSOR WATERSON: Could I just raise a question?

MR WILLIAMS: Of course.

PROFESSOR WATERSON: My suggestion is that many of the
employees, at least those who start in either of those
activities that we have just covered, would be on the
minimum wage or something closely associated with the
minimum wage. To that extent, their wages would depend
on decisions about the minimum wage, I assume. So,
then, would it be possible that those decisions about
the minimum wage would relate in part to other costs --
to prices within major sectors?

A. I think this is a very fair point, yes, a very good
point.

MR WILLIAMS: That would go beyond the specific sector in
question, but would go more broadly to other sectors in
the UK retail economy more broadly?

A. No, I think because what the ONS does, it estimates the average wage paid by companies that belong to a certain sector. So therefore, again, if we go to supermarket, then we have many entry level people, they are probably paid at the minimum wage level, and I think the point that Professor Waterson is making is that the minimum wage can be set with reference to inflation, including sectoral level inflation.

MR WILLIAMS: I am finished on wages, sir, if that is okay? Brilliant.

If we can go to page 93 of your second report, please {RC-G/2/93}. If we can look, please, at paragraph 6.17. Now, you say in the first line there that you agree that future retail prices do not directly affect current wholesale prices. That is costs. But then you say:

"Nonetheless, there is an expectation that future retail prices can be correlated with actual future retail prices and therefore can affect the current wholesale price."

So this is an indirect mechanism Back to the Future style?

A. I think the effect would be stronger in the contemporaneous price and cost than on expected terms.

Q. Then you refer to some literature below and, in particular, you refer to two papers for the thesis about a general relationship between CPI and PPI. I would like to begin with the Bank of England one that you cite in paragraph 6.19 from 2024. That is at {RC-J1.6/137/1}, and please can we go to page 20 {RC-J1.6/137/20}.

If we could focus in on the bottom of the page, I will read from, "Results for 2022 to 2024 versus 2017 to 2021".

So:

"In table 3, we showed the effects of changes in CPI inflation on own price expectations were present over the 2022 to 2024 period and also over the full sample from 2017. We now test whether the responsiveness of firms is different in 2022 compared with the relatively low inflation period of 2017 to 2021. These results are reported in table A3. They indicate there is an important difference in how firms update their price expectations in these two periods. In 2017 to 2021 years, there was no significant effect of changes in CPI inflation on own price expectations. Meanwhile, the effects are positive and significant for the 2022 to the 2024 period. The difference between these coefficient is significantly significant. These results are consistent with firms paying more attention to inflation dynamics over high inflation period and therefore adjusting their own price expectations. However, the absence of a significant effect over the earlier years could also be explained by the small variation in CPI inflation during this period, making it difficult to identify significant impacts.

"Overall, this section finds evidence that firms respond actively to changes in past CPI inflation by updating their own price expectations. Furthermore, their responsiveness is persistent and noticeably stronger when inflation relates increase rather than decrease. This behaviour is statistically significant when inflation is high but not in the years of 2017 to 2021."

If we turn over the page to page 22, you will see from the fourth line down, under figure 9, that CPI inflation increased five to sixfold between 2019 and the peak of 11.1% in October 2022. So the behaviour that they find in this study was only statistically significant when there was a high inflation period between 2022 and 2024; yes?

A. Yes, but the authors explain that the reason why they may find little -- no statistical significance, I think in the page that we have just -- where we are coming from, sorry, I cannot remember what the number of the page was, but they are saying that the fact that they

may not -- they did not find statistical significance
effect may be because the CPI changes are very small.
Q. They certainly say that might be the case.
A. It may be the case, yes.
Q. But you would accept that between 1992 and 2010, which
is Merricks claim period that I am interested in,
inflation was far lower and a lot more relatively
stable, more like 1 to 3%?
A. I will take your word for it because I do not know. The
situation was different in Italy, but in the UK --
Q. That is entirely fair.
A. -- it was very different.
Q. So over the period 1996 to 2019, on a monthly basis the
annual rate of inflation was, on average, 2%, and the
range was between 0.1% and 5.2%. I think that just
gives you a little bit more background.
A. Yes.
Q. But this study does not support any significant effect
from prices to costs in that low inflation scenario,
does it?
A. Sorry, when we are talking about the low inflation
scenario, which is 2017 to 2021, if I am not mistaken --
Q. If we can go back to the previous page, we can see that
in the passages I read out.
A. Yes. Those years, if I remember correctly, they were

characterised by very -- almost zero, possibly, rate of inflation. So we are not talking about 2%, but I think we may be talking about lower rates. I am not an expert so I cannot say, but my recollection is that they could have been lower for the period analysed by the paper.
Q. But the key factor is that it was stable at a low level as well?
A. Again, I am not an expert, but I accept that if it was stable, maybe.
Q. Of course, taking a step back, this is a UK economy-wide paper about a UK-wide general cost inflation?
A. Yes.
Q. But that cannot, can it, necessarily be read across to what we are interested in looking at, which is whether there is any effect of expectations about future specific prices in one sector on the costs in that sector?
A. I think the situation for sector-specific prices would be potentially different.
Q. Potentially different; it would be a lower effect?
A. It is possible, yes.
Q. Can we then go to the second paper that you cite, please. That is at {RC-J1.6/78/2}. If we zoom in on the abstract, please, or perhaps if we look at the title first, "Evidence from Mexico". If we zoom in on the

abstract, you will see that this is a paper about the relationship between CPI and PPI in Mexico which is said to be -- to have successfully implemented inflation targeting after the economic crisis there and a high inflationary situation in 1995. Do you see that?

A. Yes.

Q. Then if you look at the final sentence of that abstract, it says:

"Our results indicate a bidirectional relationship. In short periods, (1 to 7 months ...) CPI [that is the price] is leading PPI [that is the cost], while for longer periods (8 to 32 months ...) PPI is the leading variable."

Do you see that?

A. Yes.

Q. Then can we go to page 8, please {RC-J1.6/78/8}. I am interested in the final paragraph on the bottom right, the one beginning, "The varying nature ...":

"The varying nature of the causal relationship between CPI [that is price] and PPI [the cost] over the frequency bands in the Mexican case may be due to market imperfections and/or frictions in the economy. The imperfections in the market, particularly the labour market, arise due to strong labour union and trade union which gradually pass it on to the other markets within the economy."

So this paper is not purporting to be drawing general conclusions about the relationship between CPI and PPI that are necessarily applicable to the UK economy in the period 1992 to 2010?

A. This is the usual problem of transporting a finding from one paper that is looking at a specific situation to a different specific situation. I agree with you that this paper is analysing the relationship between CPI and PPI in a different country.

Q. Then if we can go to the top right-hand column on page 9, please, it should begin -- yes, I can see it:

"In our study we also find that the PPI [that is the cost] is leading the CPI [that is the price] in the long-run [which is what one would expect]. But in contrast to the findings of Sidaoui et al we found the CPI [the price] is leading the PPI [the cost] in the short run."

So this paper ultimately concluded, did it not, that in Mexico prices were ultimately driven by rising production costs, over the long-term at least; yes?

A. No, but what they conclude is that there is a bi-directional relationship between the two. So, yes, prices affect -- sorry, costs affect prices.

Q. In the long-run.

A. But prices also affect costs.
Q. But the latter aspect is only in the short-term and temporarily, the short period that we have looked at in the abstract that --
A. Yes, but I do not -- even if it is in the short-run, that is still relevant to the analysis. Even the analysis -- even if the analysis looks at 20 years, that is a collection of short-term periods.
MR WILLIAMS: Sir, that ends my question on the simultaneity bias, unless you had any additional ones?
THE CHAIRMAN: I was hoping you were going to explain those graphs!
MR WILLIAMS: After Christmas. My learned friend, Mr Holder Ross, will address you in written closings.
THE CHAIRMAN: I look forward to it.
MR WILLIAMS: Sir, my final topic, and then it really is Christmas, subject to how long my learned Grinch, Mr Beal, wants to take in re-examination. I have been sat here for a long time, over five weeks, so I think we can have a joke between us.

May we please turn to {RC-G/2/104}. This is your second report again. I am interested in the bottom half of the page at paragraph 6.60. We have now moved on to the conversion of estimated pass-on elasticities -- sorry, the conversion of elasticities to absolute pass-on rates, and that is what you are discussing here.

If we look at paragraph 6.61 first, you say that the pass-on rate can be calculated -- that is the absolute pass-on rate can be calculated -- by multiplying the estimated pass-on elasticity by the price-cost ratio. Do you see that?

A. Yes.

Q. As you say then at paragraph 6.62, it is then necessary that the correct price-cost ratio is used, by which you mean that the ratio relies on the same prices and costs covering the same products in the same time period. Do you see that?

A. Yes.

Q. If we can turn over the page, please, we see your conclusion at paragraph 6.63 {RC-G/2/105}. Five lines up from the bottom, you say this, and it is the key conclusion. Beginning five lines up at the end:

"CPI and PPI therefore cannot be used to calculate price-cost ratios, and the other experts thus need to obtain price-cost ratios from other sources, meaning that they may include costs which are not included in their regression models (or vice versa). Such a mix-and-match approach in turn implies that their pass-on rates can overestimate or understate the true extent of pass-on."

Do you see that?

A. Yes.

Q. Now, you do not set out any analysis or conclusions here on whether Mr Coombs' or Mr Holt's conversions in fact overstate or understate pass-on, do you?

A. No, because we cannot find the relevant price-cost ratio, so it would be impossible to do that.

Q. Therefore, you do not conclude how significant any effect is likely to be on the absolute pass-on rates?

A. It cannot be done, yes.

Q. Now, the final set of questions for the day, and possibly in the trial in that case.

Now, if we adopt your point that you should include, within the cost-price ratio, only those costs used in Mr Coombs' econometric analysis, rather than all costs, and if that were possible, that would mean, would it not, that the price-cost ratio would go up, because one would be removing costs on your approach. So the costs then becomes a lower proportion of the price, if we exclude certain costs that you think Mr Coombs should have excluded?

A. Sorry, let me see if I understand.

What you have in mind is a price-cost ratio, that is the correct price-cost ratio, and we do not know what that is?

Q. Correct, and I understand it could also be considered to be mark-up or margin?
A. Yes, a mark-up or -- but it is a ratio between the price and the cost, so it could be, say, 130%, and imagine that this is the correct price-cost ratio.
Q. Correct.
A. Then what you are asking me, if I understand it correctly, is if you take the correct price-cost ratio and then you subtract some costs from the denominator, then the 130% becomes 150%.
Q. Correct.
A. Then when you multiply the 150% by the pass-on elasticity, then you are overestimating the pass-on rate.
Q. Not quite. So rather than beginning with the correct price-cost ratio, I am starting with Mr Coombs' price-cost ratio, which is based upon all of the costs. Your point is, well, he is mixing and matching, and therefore logically you would be saying to Mr Coombs, as I read it, he should be extracting some of these costs from your price-cost ratio, and my point is that if you extract certain costs from all the costs he is looking at, the price-cost ratio would therefore go up?
A. When you say "extract", you mean you take them out from the ...

Q. Correct.
A. I -- sorry, I am having difficulties. I am sure we can then understand each other, but I am having difficulties because what you are saying is Mr Coombs starts from a price-cost ratio?
Q. Correct.
A. Yes?
Q. Yes. I am applying the logic of your own section here.
A. Yes.
Q. That is the consequence of it.
A. Then you are saying if you take out some of the costs from the price-cost ratio --
Q. Yes.
A. -- then the price-cost ratio goes up. Yes, of course.
Q. Yes, because it would end up in a higher absolute pass-on rate because you would be multiplying by a higher number.
A. Yes. That is mathematics, yes.
Q. Exactly. So if your point in fact goes anywhere, that would mean Mr Coombs has been conservative under his approach, would it not?
A. That depends on what he has included in the price-cost ratio. So the problem with the price-cost ratio and CPI/PPI is that CPI and PPI -- sorry, let me -- if you take the claimants' data, you estimate some pass-on

elasticity, then you have the prices and the costs that you have used to estimate the pass-on elasticity, so you are then combining data that is the same data for price-cost ratio and for the pass-on elasticity.

If you take CPI and PPI, they are not built to be compared, you cannot take a ratio between the CPI and the PPI, so you have to take something else, and all of the experts are taking something else.

Q. So you would be logically be extracting from the costs that Mr Coombs did feed into the price-cost ratio, and I am putting to you that as soon as you extract the cost, the price-cost ratio goes up, so you are multiplying by a higher number, equating that the absolute pass-on rate, once you have corrected it for the error that we are talking about here, would actually increase the pass-on rate?

A. I think the part that I am missing is why would you want to extract costs from the denominator? This is the part that I am missing, sorry.

Q. That is the consequence of your report, if I can put it that way, because Mr Coombs uses total costs, and you are saying, well, look, there is a mix and match issue here. So logically, once someone has used all the costs --

A. (Overspeaking) Oh, sorry, I --

Q. -- extracting the costs. So I was trying to see the consequence of your argument, which you have not actually expressed in your report, where it would lead, and I am putting to you that actually it would lead to a higher result in the end, a higher absolute pass-on rate, if one were to be able to correct for the error as you see it in the report at least.

A. Sorry, let me see if I -- I think now I have got it. I think -- are you saying Mr Coombs does a CPI over a PPI analysis?

Q. Correct.

A. He does the estimation of the pass-on elasticity. Then for the price-cost ratio, he uses as part of the denominator, which is the cost, total cost, and not only the COGS.

Q. Correct.

A. Okay, I take your point, yes. Yes.

MR WILLIAMS: That is a very happy note to end on in that case. Thank you very much.

PROFESSOR WATERSON: Could I ask a couple of questions. The first one, which I think we have already partly covered, is one issue -- one potential problem with your approach is that you have many more observations on prices than you do on costs.

A. Yes. I do not see this as an issue, but I agree with the description, yes.

PROFESSOR WATERSON: Right. But in your estimations, do you take account of the effect of that on the degrees of freedom in your regressions?

A. Yes.

PROFESSOR WATERSON: So in other words, if you have, say, 30 observations on costs, then -- but you have many, many more observations on price, would you agree that the true number of degrees of freedom in your estimations is simply 30?

A. Okay, sorry, yes, now I understand the question. Yes, what you are asking me is, I am saying there are millions of data points in the claimants' data, which is correct, and then you are telling me, yes, there is million of data points, but these are related to prices and COGS and the characteristics of the product, but when you do an estimation of the pass-on of total overhead costs you only have maybe 50 observations.

PROFESSOR WATERSON: Yes.

A. I agree with that. I think this makes the estimation of the pass-on of total overhead costs more challenging than the estimation of COGS. I agree with that.

PROFESSOR WATERSON: Thank you.

So the sort of follow-up from that is regarding statistical significance, and I think it is true that you, in your tables of point estimates, do not include the error -- any estimate of the variants or standard error or D value, or whatever, in your -- in most of your tables.

You are going to point to a counter-example, I bet.

A. No, sorry, I am just double-checking.

I think I always report the standard errors in parenthesis, but I am looking at my first report. I think I only have the standard error in parenthesis, but I think I understand the question probably.

PROFESSOR WATERSON: So the question is: how do you regard a point estimate which is a number but is not statistically significantly different from zero?

A. Yes, so exactly for the reason you mention, which is for the pass-on of total overhead costs we have less or fewer observations. I have regarded the point estimate, even if it is not statistically significant, as the pass-on rate. So imagine I estimate a pass-on of 14%, for instance, but that is not statistically significant, and then there is a question of whether it is not statistically significant because I do not have enough observations, so it is, in technical terms, a question of the power of the analysis. For that, I have regarded that 14%, in the example, as if it were statistically significant, so I have considered that 14% is my best estimate and not zero.

PROFESSOR WATERSON: Right. So would you agree that your approach necessarily means that you have -- in general you have relatively few observations on cost?

A. On the total overhead costs?

PROFESSOR WATERSON: Yes.

A. Yes.

PROFESSOR WATERSON: So the problem is potentially larger than in some of the alternate methodologies?

A. Sorry, can you say that again?

PROFESSOR WATERSON: The problem is potentially larger than in some of the alternative methodologies that the other experts --

A. The problem of the standard errors, you mean?

PROFESSOR WATERSON: Yes.

A. I think that is not the case if we compare our analysis to the public data analysis.

PROFESSOR WATERSON: No, I agree.

A. I agree, fully agree that if we compare our estimates of the pass-on of COGS, or the estimates of other experts on the pass-on of COGS, with our estimate of the pass-on of total overhead costs, just because of the data composition that you described before, which is we have millions of observations for COGS and maybe 50/100 observations for total overhead costs, then the estimate is going to be very, very precise for COGS and less precise for total overhead costs. I agree with that.

PROFESSOR WATERSON: Thank you.

I have another --

A. Sorry, can I make another --

THE CHAIRMAN: Do you have any re-examination?

MR BEAL: Just very briefly.

A. Sorry, can I make one last point which is I agree with the -- I have explained that estimates are less precise for total overhead costs, and then there is a question of whether, because they are less precise, then we need to go and ignore them and actually look at the pass-on of COGS, and I think the answer to that question would be no, because we -- what we see is that the pass-on of COGS, you know, the mechanism is different and the pass-on rates are very different.

So, as I said this morning, we tried the first best, it did not work. We tried the second best, it did not work. We tried the third best, which in our opinion is total overhead costs, it did work with the limitation you set out.

Then the question is: because of the limitation, should we go to the fourth best, which in my opinion is the fourth best, which is COGS, and in my opinion the answer is no.

PROFESSOR WATERSON: Thank you.

Re-examination by MR BEAL

MR BEAL: Dr Trento, in racing we have the concept of the last furlong. This is not the last furlong, because a furlong is divided into chains, there are ten chains in a furlong, so this is the last chain.

Could we please look in transcript Day 17 at page 82, lines 8 to 9 {Day17/82:8-9}. I hope you can see here you were asked a question and you say:

"Again, I do not think this is for me. I think this is mostly for Mr Economides, but what I can see is that there is some regularities in there which is if MSC is small part of the cost, then they are treated as overheads. If they are key input into costs, then they are treated as [and you say] MSCs."

A. Sorry, yes, I meant COGS, not MSCs.

Q. Thank you.

A. In line 9.

Q. Yes.

You were taken to the Ernst & Young and Copenhagen Economic study. Please could we turn that up {RC-J4.2/141/168}.

You were asked about this study and what they measured. Can you see from the first paragraph there what exactly they were trying to measure? The second

paragraph down, perhaps?
A. The second paragraph, the part that says, "Since the pass-through ..."?
Q. What I am trying to ascertain is it was put to you that this was a credible study for estimating pass-on, and so I am trying to establish exactly what the study was measuring, because you were not taken to this page.
A. Yes. One second. (Pause)
Yes, so this paper -- exactly -- so this paper did not estimate the pass-on of the reduction in interchange fees.
Q. Could we look then, please, at page 170 and the first paragraph. What exactly was the regression analysis carried out on by the authors of this study? {RC-J4.2/141/170}
A. The first paragraph, sorry?
Q. Yes, please. (Pause)
A. Yes, it is not clear what they are using to -- so they are saying that they had cannot estimate the cost savings from the reduction interchange fees directly.
Q. Could we then please look at the bottom of page 175, top of page 176, if we can drill in on that section {RC-J4.2/141/175}. Given that it was put to you that this study is a reliable estimate of pass-through for the purposes of this trial, could I ask you to read the

bottom of that page and then the top of page 176 and then give us any observations you might have {RC-J4.2/141/176}. (Pause)

A. Yes, I have read. (Pause)

Yes, so the report is explaining that they are estimating the pass-on of what they call direct costs, which I understand to be the COGS, and then they are saying that the interchange fee is not a direct cost but is rather an indirect cost.

Q. You were taken to a graph for a claimant I shall not mention, it is {RC-G/18/95}, and you referred to another graph which you were not then taken to. So if we could please pull up side-by-side two graphs. The first one is there. The second one is {RC-G/17/99}.

A. Yes.

Q. I shall not mention the name of the claimant, but you can see there, is that the graph you had in mind?

A. Yes. So I was shown the first -- sorry.

Q. I am sorry? You were shown the first one?

A. I was shown the first one and I made the point that the graph is not accurate. When you try to reproduce it, you cannot reproduce it, and that actually in the same report there is a different -- sorry, there is a second graph which is supposed to be exactly the same, so the evolution of total overhead costs for that particular claimant, and that chart, which is the one on the right-hand side, which we understand is correct, it looks different from the first one and surely less lumpy than the first one.

Q. For the final section I am afraid I do need to go into closed.

A. Sorry, maybe one last point?

Q. Yes, of course.

A. Which is even the second chart, which is the one on the right-hand side moving average has not been applied this chart. So once you apply moving average to this chart, it becomes even less lumpy.

THE CHAIRMAN: All right. You want to go into closed session?

MR BEAL: Please, yes.

THE CHAIRMAN: Can we do that, please.

In Private

In Open Court

PROFESSOR WATERSON: Thank you.

Yes, so a question I put to Ms Webster, and I will put it to you as well, to be fair.

In terms of different approaches, what is your view about the most appropriate level of analysis in trying to do this thing that you have described as not possible to do the first best, not possible to do the second best.

Does it make sense to, in general, use a variable which is relatively small but shows variation in order to try and proxy for the MIF, or is it better to use a relatively large variable, and does your answer depend on whether you are using a variable like COGS or some part of the COGS or a variable like overheads?

A. So on the first question, whether it is better to use a small proxy or a big proxy, I think it would be better to use a small proxy. I understand this would be the approach that has been followed by Mr Economides to identify the proxies. We have asked him to find proxies that are, even if small, larger than the MSC, and we have tried to calculate -- to estimate the pass-on of those proxies, but unfortunately, just because they did not have enough variation, we have only been able to do that for Travix and not for the other ones, and therefore I think this when we slip from the second best to the third best.

Then, sorry, the second question was?

PROFESSOR WATERSON: Does your answer depend on whether you would be looking at some portion of COGS or some portion of overhead costs?

A. I think for -- I think my answer to the first question is it would always be better to look at a small cost.

You can only do that when the MSC or the proxy cost is part of COGS, because then you can do -- you can explore the millions of data -- data points.

The reason I think why we then, or I ended up doing the analysis of total overhead costs is not because I think this is the correct proxy, I think the correct proxy is probably the ones that maybe Mr Economides identified, or something that is smaller, but it is because it was the only proxy, I think, that was available, even if it was a very big proxy, that followed down the path from the first best to the second best, I think the total overhead cost was the best proxy we could use.

It has the downside of maybe being too big with respect to the MSCs.

PROFESSOR WATERSON: Right. Thank you.

A. Thank you.

THE CHAIRMAN: Can I just follow up on that. So I think you said that COGS would be sort of a third best or fourth best?

A. Fourth best, yes. Well, sorry -- yes.

THE CHAIRMAN: Well, the first two I think you said you could not use because you would not have the data or would not be able to be measured?

A. Yes, so the first one -- sorry.

THE CHAIRMAN: Go on. The first one was what?
A. The first one we tried to estimate the pass-on of the MSC.
THE CHAIRMAN: The MSC, yes. Then it was Mr Economides' smaller overhead costs?
A. Then the second one was the Mr Economides' smaller overhead costs.
THE CHAIRMAN: Yes.
A. Then the third one is total overhead costs.
THE CHAIRMAN: Yes.
A. Then --
THE CHAIRMAN: The fourth is COGS?
A. I do not know whether it is fourth, or maybe there is something else between total overhead costs and COGS, but I do not see --
THE CHAIRMAN: Well, did you consider anything else?
A. I do not -- we did not consider anything else.
THE CHAIRMAN: So it really came down to a choice between total overhead costs and COGS?
A. Unfortunately, yes.
THE CHAIRMAN: Can you -- it is obviously a difficult, very difficult issue, and it is one that we will have to grapple with, but can you see that there is validity in the circumstances to using COGS?
A. For the claimants that treat the MSC as overhead costs,

I do not think so. I do not think that COGS is a reasonable proxy for two reasons.

THE CHAIRMAN: Not reasonable?

A. Not a reasonable proxy, COGS, for two reasons. One is the mechanism for pass-on is completely different. COGS are a different category is the first thing that companies look at when they set their prices. Overhead costs may affect prices through profitability, but it is a different mechanism for the pass-on.

THE CHAIRMAN: So that would only be through a somewhat more indirect mechanism when you are dealing with overheads?

A. Yes, it is, but also, apart from indirect, I think it is really the mechanism is really different so the company needs to identify a change in profitability.

THE CHAIRMAN: Yes.

A. It needs to consider that the change in profitability, they need to do something about it. They cannot just absorb it and reduce their margins. They need to do something about it. Then they need to decide that the thing that they need to do about it is not reducing other costs or postponing other costs or expenditure, but it is actually increase their prices. So there is a big -- it is a long way to the -- for the pass-on mechanism to take place and takes different steps.

For COGS, the COGS changes and immediately you see

a reaction in prices. So it is two different --
THE CHAIRMAN: I understand. Is that the main reason then that you think the mechanism by which COGS affects prices and by which overheads affect prices is the main reason why you have gone down the overheads route?
A. Yes, I would fully agree with that, and maybe the last point is that when we then look at the estimated pass-on rates, we can see that they are very, very different between COGS and total overhead costs.
THE CHAIRMAN: Is that something to do with the mechanism then by which they have been taken into account?
A. Yes, because, as I said before, the company needs to identify the change in profitability.
THE CHAIRMAN: Yes.
A. They need to take action. The action must be that one.
THE CHAIRMAN: Understood.
A. For COGS, it is just cost changes, price changes.
THE CHAIRMAN: I follow.
(Technical issue)
THE CHAIRMAN: Shall we take the break now then. All right, ten minutes.
(3.15 pm)
(Short Break)
(3.30 pm)
THE CHAIRMAN: Did anyone want to ask Dr Trento anything

more?

MR WILLIAMS: It was only out of a list of four I missed a fifth option, which was the total cost proxy. So rather than total overheads, where would that sit in the schema that you have gone through and why was that rejected?

A. You are right.

THE CHAIRMAN: Is that Mr Coombs' proxy?

MR WILLIAMS: Yes, Mr Coombs'.

A. I have missed that. Obviously that is another option. In my opinion, that is also not informative, because total costs, a large part of it is COGS, and therefore for the reason that I do not consider COGS to be a relevant proxy for the MSC, for the same reasons I do not consider total costs to be a good proxy for the MSC, but it is surely an additional option for the Tribunal.

THE CHAIRMAN: Is it below COGS or above COGS? I think that is what you were going to put?

A. I do not know. It is -- well, at least it does include the overhead costs but, I do not know. To be honest, it is difficult to rank.

THE CHAIRMAN: Right. Well, I think that is the end of your evidence. You have come in well underbudget.

Thank you very much, Dr Trento. You are free to go.

THE WITNESS: Thank you. It was an honour.

(The witness withdrew)

Housekeeping

MR BEAL: Could I just very quickly mention the housekeeping you referred to earlier, sir, and if we could allow Dr Trento to be released to the back of the room, rather than -- unless you want to carry on sitting there during the procedure?

THE CHAIRMAN: Yes.

MR BEAL: There are some dates being bandied around, dates for written closings for this trial, and how that interacts with the positive cases, the responsive cases, and then a CMC for Trial 2B.

THE CHAIRMAN: Pausing there, I assume you are not asking for Mr Holt to be recalled?

MR BEAL: No.

THE CHAIRMAN: All right.

MR BEAL: I did say my ambition was not to have to ask for that, and that is the position we have reached.

THE CHAIRMAN: So that is the end of the evidence?

MR BEAL: That is end of the evidence.

I mean, rather than dealing with detailed dates, because I have not had a chance really to discuss it with my learned friends, can I just outline where I think the parties have broadly got and to what the division is?

THE CHAIRMAN: Yes.

MR BEAL: So positive cases for Trial 2B, which is acquirer pass-on, I think is being mooted as the end of January, which we have no problem with.

THE CHAIRMAN: I heard 24 January.

MR BEAL: That is fine.

MR WILLIAMS: It is 31 January.

MR BEAL: 31st? High or low, it is going to be like a game show.

THE CHAIRMAN: Are you suggesting 31 January?

MR BEAL: 31 January is what I am now being told, on my feet. The responsive case is then a month after, which would be the end of February. 24 February, I am told. 24th, 28th. I do not have a diary. This is just an outline. The CMC would be between the two, so mid-February, and I think there is broad consensus that that would work.

Then written closings, Mr Merricks and the SSH Claimants are suggesting 24 March? 7 March. Sorry, 7 or 10 March, and the -- as I understand it, the defendants are suggesting much later in March, so about the time of the trial itself, which we say, I am afraid, is too late. Then there will need to be written closings for 2B, which cannot sensibly come before the evidence in 2B, so that will have to be the Monday of the second week of the two weeks we have slotted in. It cannot conceivably, we respectfully suggest, be earlier than that because you need to hear the evidence.

THE CHAIRMAN: Are you doing skeletons in 2B?

MR BEAL: Well, 2B, there will already have been positive cases and responsive cases for 2B, and then we have the closing for 2A.

THE CHAIRMAN: That will really --

MR BEAL: That will then be the opening of 2B at the same time, which will be 7 or 10 March. Mr Williams is telling me written openings for 2B, separate from the written closings for 2A, 17 March, which I -- it is being suggested that is agreed, but ...

THE CHAIRMAN: Yes.

MR BEAL: So that is the broad outline with details --

THE CHAIRMAN: Right. Well, we were thinking we would like the closings submissions on 2A to be earlier than that. I mean, there is quite a lot of time now until we resume and we would like some time with the written closings.

MR BEAL: Yes.

THE CHAIRMAN: So I think what we would be looking at is end of February for the written closings, so that will give us a few weeks to get on top of all of that.

MR BEAL: You are not going to get pushback from me on that, because in fact we had suggested that initially, but that was then pooh-pooh'd, and we decided to make common cause with Mr Merricks rather than being the awkward one.

I am going to let everybody else speak.

MS TOLANEY: We obviously understand the Tribunal's instincts on that. The only reason we were content with the date proposed by the Merricks team, 10 March, is obviously we have that piece to deal with, and it might make life a bit easier if the approval process is underway or, we do not know the timetable at the moment, even completed perhaps, who knows, by the time the Tribunal is presented with --

THE CHAIRMAN: Well, yes, obviously that must be the hope, I would have thought.

MS TOLANEY: That is right. We thought 10 March would just give that little bit more leeway, accepting that realistically the middle of the trial, which is where we had originally suggested, later in March, was not going to be helpful.

THE CHAIRMAN: But I would suggest that it is probably better for you as well to do this whilst it is fresh in everyone's mind --

MS TOLANEY: That is right.

THE CHAIRMAN: -- rather than leaving it later.

MS TOLANEY: We understand that. It is really what the

Tribunal will have to read, plus whether any costs can be saved, from the Merricks piece at least.

THE CHAIRMAN: I understand that. Maybe if we have a slightly earlier date, that will encourage everybody to get the approval.

MS TOLANEY: I do not think that is in our hands, sir. We have not had a listing date yet. We have had a response I think literally in the last half an hour from the Tribunal, but we have not actually had a date listed yet.

THE CHAIRMAN: Have you actually issued an application? Well, I suppose it would not be you, but I had heard that an application had not yet been issued?

MR WILLIAMS: Sir, I understand that one needs the date from the Tribunal first before the application, because all of the notice periods for notifying the class, in terms of alerting them to the fact that there is a hearing at which they can make submissions, if they so wish, all those notices need the date, so we have bit of a chicken and egg problem.

There is a second reason why we would be advocating for an early period in March for the written closings, and that is because the timetable for the responsive cases on acquirer pass-on, that is the 2B, falls at the end of February. Now, experience tells that we have crammed an awful lot, with the expert economist teams and the legal teams, into a very short period of time, and that would create a real crunch period where there is an awful lot of work happening in January and February, in addition to the settlement approval workstream as well, and therefore it would buy all of the teams here, not just the Merricks and Mastercard parties, at least a week in early March for the closings.

THE CHAIRMAN: Right. You do have very big teams, I think on all sides.

MR WILLIAMS: I think there are varying sizes of teams amongst the different parties.

THE CHAIRMAN: More than two months for closing written submissions is quite generous, even taking into account all the other things you need to do.

MR WILLIAMS: I understand that. We are obviously just keen to try and reserve costs and efforts where we can.

THE CHAIRMAN: I understand that. All right.

Does anybody else want to say anything about timings?

MR JOWELL: Just to echo (inaudible), that we do appreciate the Tribunal's (inaudible).

THE CHAIRMAN: Right.

(Pause)

We know the start date for Trial 2B, or we do not know that yet? I know it was moved forward to 24 March, I think.

MR BEAL: I am so sorry, I missed the question because I was --

THE CHAIRMAN: The start date of Trial 2B.

MR BEAL: That is 24 March, finishing on 5 April. The first week would be evidence for Trial 2B, which is going to be expert evidence, I think, principally.

THE CHAIRMAN: Then we will only need a week for oral closings?

MR BEAL: Yes.

THE CHAIRMAN: That will include closings on the acquirer pass-on as well.

MR BEAL: Yes. So we will -- we bear the burden of proof on 2B, so we will have to prepare our written closings over that weekend and then produce them on the Monday morning. The other teams will have longer, but they will have to produce theirs in response later that week. So it is going to be a busy time.

THE CHAIRMAN: It is.

MR BEAL: Happily on 2B I think there is broad consensus that IC+ and IC++ is not troublesome.

THE CHAIRMAN: Yes. Well, okay, so the dates for the positive cases and responsive cases being 31 January and

28 February, I think we can accept. It is a little longer for the responsive cases than we had in mind, but I think we are prepared to allow that. But in relation to the written closings, on what we have just heard, we also want those to be in by 28 February as well.

We also need to talk about length of closing written submissions, and we had in mind a page limit of 100 pages. Is that --

MR BEAL: That is quite tight.

THE CHAIRMAN: -- going to cause any problems? You have got many pages of submissions and positive cases and responsive cases, so you only need to really build on that to take into account the evidence that we have heard, but if you are going to argue for more, do so.

MR BEAL: No, I am not going to argue for more.

THE CHAIRMAN: Yes.

MR BEAL: Could I just mention as well the CMC listing, because we suggested mid-February for that and we --

THE CHAIRMAN: Do we need a CMC?

MR BEAL: Well, we would like to please ask the Tribunal to think about listing Trial 3, so --

THE CHAIRMAN: Do we need a CMC for that?

MR BEAL: If we can do it by paper, then ... The concern is that there will not be much agreement and there will be lots of pieces of paper flying around, but if the

Tribunal would prefer to deal with that issue on paper, then so be it.

THE CHAIRMAN: So you need a direction from us, do you, as to when that should be heard?

MR BEAL: When it should be listed yes.

THE CHAIRMAN: When it should be listed, right.

MR BEAL: Because I think there are differences of view as to which year we are talking about.

MR TIDSWELL: What about content? Is there any disagreement about the content, because presumably it is everything else, is it?

MR BEAL: So we prepared a draft agenda for what is going be in Trial 3, and it would cover 1013, foreign law, I think limitation, various other bits and bobs.

Ah, I am told we have not had a response to our draft suggestion of what would be going in. There are four or five things, principally, that were --

THE CHAIRMAN: What is your time estimate for Trial 3?

MR BEAL: It is still the subject of discussion. It partly depends on what is in issue, but exemption would probably, I would have thought, be two to three weeks on its own.

THE CHAIRMAN: This obviously does not involve Merricks, does it?

MR BEAL: Not if their settlement is approved.

THE CHAIRMAN: No, but anyway; anyway, it would not, I do not think, would it?

MR BEAL: Well --

THE CHAIRMAN: Unless I have misunderstood.

MR BEAL: I do not think there is anything there, actually, because volume of commerce -- volume of -- the counterpoint for damages, apart from overcharge, is volume effect, so that does not affect them either.

THE CHAIRMAN: Yes.

MR BEAL: But I probably ought to let them say what affects them, rather than second guess.

THE CHAIRMAN: Right. Well, we have certain availability problems in February for CMC, or I certainly do.

MR BEAL: Yes, the Tribunal has a lot on.

Can you leave it with us and we will see what might sensibly be agreed, and then we can have perhaps a more targeted application for a specific hearing, if we need one.

THE CHAIRMAN: Yes.

MR BEAL: Subject, of course, to what my learned friends say.

MR JOWELL: One possibility is to try (inaudible) listing, or considering whether to list Trial 3, one could do that as part of Trial 2B, either at the start or at the conclusion. It is not that long until then. But we are in obviously in the Tribunal's hands.

THE CHAIRMAN: But when it is said to be a disagreement over years, you are talking not this year or next year, you are talking whether it is 2026 or 2027, is that right?

MR BEAL: I think we wanted 2025 but that may be ambitious.

MR JOWELL: That is clearly going to be impossible, is it not? Well, one can have -- I mean, whether one has the debate in February or March does not seem to us to be of huge --

THE CHAIRMAN: I can see that. I thought the original suggestion was that there should also be a CMC for Trial 2B, but I am not sure we really need that.

MR JOWELL: Indeed. We are not aware of anything that actually would be on the agenda for that. Of course, things can pop up following positive cases, so one could have something on a precautionary basis, but we do not currently see a specific item ourselves.

THE CHAIRMAN: There is also another party involved in Trial 2B, is there not?

MR JOWELL: There is, yes, the class claimant, another class claimant, yes.

THE CHAIRMAN: Yes.

Ms Tolaney.

MS TOLANEY: Can I just go back first on closing length.

THE CHAIRMAN: Yes.

MS TOLANEY: We would like a little bit extra if we are dealing with Merricks as well, if that is possible, so we were going to ask for an extra 25 pages if we have to deal with the Merricks' claim at that stage.

THE CHAIRMAN: Right. So you are obviously the only one dealing with both.

MS TOLANEY: Exactly.

THE CHAIRMAN: So --

MR BEAL: We are facing a pass-on challenge from Mr Coombs so we have to deal with Merricks' evidence as well.

THE CHAIRMAN: I suppose that is right. All right.

MR JOWELL: There is one point I think I should --

THE CHAIRMAN: An extra 100 pages for us to read.

MR JOWELL: There is the question of economy-wide pass-on which I think we debated earlier on at the very start and we considered that of these proceedings that we considered that that is in these proceedings, not least because of the Merricks cases in these proceedings, and that requires an economy-wide assessment, and we also know that that is an important stepping stone into Trial 3 for exemption.

Now, if the Merricks claim now settles between now and closing submissions, there is, I suppose, an issue as to whether the Tribunal will still, in this 2A proceedings, be resolving economy-wide pass-on. We would certainly be encouraging it to do so, because it is -- to us it seems to make some sense to do so, because then that is an important piece of that is resolved in advance of Trial 3, but it may be that my learned friend has --

THE CHAIRMAN: Was it in your positive case?

MR JOWELL: Yes.

THE CHAIRMAN: It was?

MR JOWELL: Yes.

THE CHAIRMAN: Right.

MR JOWELL: Mr Holt certainly has estimated an economy-wide pass-on, for precisely that purpose, because we consider it is important for exemption in due course.

I mean, it is possible to park that and put it into -- if Merricks settles and put it into Trial 3, but we are not anticipating that --

THE CHAIRMAN: Anyway, you are going to deal with it, and you need 25 pages to deal with it. That is the question.

MR JOWELL: That is what is triggered this. We hope that we would not need to use to all of that 25 pages, but we might like to have the possibility of doing so if we have to deal with that issue as well.

THE CHAIRMAN: All right. Well, we will say 125 pages but we hope you do not have to use all of that.

MR JOWELL: Yes. I am grateful.

MS TOLANEY: Then Trial 3, just to say that we had some reservations really because of Mr Tidswell's point as to not really knowing the scope or content and therefore length of that trial, possibly pending judgments in Trial 1 and 2A and 2B. So we thought it was really very premature to start listing that trial now. It may well be that we can have a more informed discussion by Trial 2, as Mr Jowell has sensibly suggested, but I should say that it is quite difficult to start, and certainly talking about a trial in 2025 seems unrealistic to us. I think we would --

THE CHAIRMAN: You have seen the agenda from the claimants.

MS TOLANEY: We have, and we will need to go back on that.

THE CHAIRMAN: Yes. Well ...

MR TIDSWELL: I was making a slightly different point, actually, which is that we have a list of issues that people put a lot of effort into, which I think is a very good document, or at least it was the last time I looked at it. It may not be any more, but the question --

MS TOLANEY: But some issues may fall away. There are things --

MR TIDSWELL: I think my question really was whether there was any suggestion that there was anything that would not be dealt with in Trial 3; in other words, is there any suggestion that what remains of the list of issues does not get dealt with?

MS TOLANEY: I do not think so.

MR TIDSWELL: In which case, I would have thought that is your agenda, so I am not sure why it is so difficult to work out what the agenda is. I can see there might be some difference of view about how much work is required and how much time is required for trial for some of those points, so obviously that is something that does need to be sorted out, put I assume that is the real issue between the parties.

MS TOLANEY: I think that is right, and timing, realistically, as to whether one should actually have judgments coming through, which may influence the parties, or alternatively keep on listing, and therefore there is no time for processing the consequences of earlier judgments. That is what we are hesitant about, the skew of the hearings without that processing time and indications from the parties.

THE CHAIRMAN: Are you saying you are content to leave it until the start of Trial 2B?

MS TOLANEY: Exactly. When there is more processing time.

THE CHAIRMAN: We can talk about it then.

MS TOLANEY: Indeed.

THE CHAIRMAN: So we will essentially park it until then. But if there is --
MR BEAL: I can see the sense in that.
THE CHAIRMAN: -- some burning reason why you need it dealt with earlier, then you can try --
MR BEAL: We can try and do by correspondence, and if I am still standing up here in three months' time, encouraging you to list Trial 3, then I have failed in the correspondence.
THE CHAIRMAN: Right.
MR BEAL: If I can put it that way. We will do what we can, sir, of course.
THE CHAIRMAN: Great.
MR BEAL: I think the only other thing was the written opening for Trial 2B.
THE CHAIRMAN: Ah, yes. What did you say?
MR BEAL: Conceivably this was agreed, 17 March 2024.
THE CHAIRMAN: That is the week before --
MR BEAL: Currently we have not agreed it but --
THE CHAIRMAN: That is the week before the start?
MR BEAL: Yes.
THE CHAIRMAN: So exchange of openings --
MR BEAL: We are fine with that, after five weeks.
THE CHAIRMAN: Page limit on that?
MR BEAL: That is in your gift, sir, but, yes, one of the

desirable ... We will have had the positive case. We had responsive cases very recently.

THE CHAIRMAN: 25 pages?

MR BEAL: That would be perfect.

THE CHAIRMAN: All right.

MR BEAL: Subject to anyone else's suggestion.

THE CHAIRMAN: So written openings on Trial 2B, 25 pages, and 17 March. Okay.

Anything else that we should deal with?

Well, thank you very much, and well done for getting it done in such good order.

MR BEAL: Please could we thank the transcriber and the operator as well for their service.

THE CHAIRMAN: Yes, it has all been done very efficiently, so thank you very much. Have a very good Christmas.

MR BEAL: Thank you.

(3.54 pm)

(The hearing adjourned)